

**DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF HOUSEHOLD GOODS AND SERVICES**

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing scheduled.

Subject Matter of Proposed Regulations: Household Mover Enforcement Regulations

Section(s) Affected: Amend and Retitle Division 27, Adopt new Chapter 1 with title, Adopt new Chapter 2 with title, Adopt Section 2800 in Article 1 with titles, Sections 2940, 2941, 2942, and 2943 in Article 2 with titles, and Sections 2970, 2971, and 2972 in Article 3 with titles in Chapter 2 of Division 27 of Title 16 of the California Code of Regulations.

Background and Statement of the Problem:

The Department of Consumer Affairs (DCA), Bureau of Household Goods and Services (Bureau), is the state agency charged with licensing, regulating, and investigating complaints against 17 different license categories in California, totaling approximately 41,285 licensees pursuant to Business and Professions Code section 9810. These licensing categories include Appliance Service Dealers, Electronic Service Dealers, Furniture and Bedding Manufacturers, Custom Upholsterers, Thermal Insulation Manufacturers, and Service Contract Sellers and Obligor. It is the Bureau's duty to enforce and administer various sections of the Business and Professions Code (BPC), including Chapter 20 of Division 3 (commencing with Section 9800), and Chapter 3 (commencing with Section 19000) and Chapter 3.1 (commencing with Section 19225) of Division 8.

In 2018, the Legislature passed Senate Bill (SB) 19 (Hill, Chapter 421, Statutes of 2017), which transferred the authority to regulate household movers from the Public Utilities Commission (Commission) to the Bureau. Specifically, SB 19 transferred administration of the Household Goods Carriers Act to the Bureau by renaming the Household Goods Carriers Act to the Household Movers Act and moving the Household Movers Act (Act) to Chapter 3.1 of Division 8 of the BPC, section 19225, *et seq.*

Section 19234.1 of the Act states: "Protection of the public shall be the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions under this chapter. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."¹ In transferring authority

¹ "License" and "permit" will be used interchangeably throughout this proposal in accordance with BPC section 23.8, which defines "licensee" as any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by the BPC.

to the Bureau, the Legislature found and declared in Section 3 of SB 19 (enacted as described below as the CPUC Oversight Act) that the Bureau succeeds to and is vested “with all the authority, duties, powers, purposes, functions, responsibilities, and jurisdiction of the Public Utilities Commission, its predecessors, and its officers for the purposes of [the transfer],” including the authority to “prescribe reasonable rules and regulations as may be necessary to implement, administer, and enforce” the Bureau’s duties in addition to rules and regulations specifically authorized by the California Public Utilities Commission Governance, Accountability, Training, and Transportation Oversight Act of 2017 (“CPUC Oversight Act” -- Stats. 2017, Ch. 421, § 8) or any other provision of law (see Underlying Data).

Likewise, BPC section 19228 states:

- (a) Notwithstanding any other law, and until the time the director adopts regulations implementing this chapter, powers granted to, or duties imposed on, the Public Utilities Commission pursuant to the former Chapter 7 (commencing with Section 5101) of Division 2 of the Public Utilities Code are transferred to, and may be exercised by, the director in administering this chapter.
- (b) All rules, regulations, general orders, forms, and Maximum Rate Tariff 4, as most recently amended as of July 1, 2018, by the Public Utilities Commission, adopted, administered, or enforced by the Public Utilities Commission for purposes of implementing and administering the former Chapter 7 (commencing with Section 5101) of Division 2 of the Public Utilities Code, that are in effect immediately preceding July 1, 2018, shall remain in effect and shall be administered and enforced by the director, until the operative date of regulations adopted by the director to implement this chapter.
- (c) Until the operative date of regulations implementing this chapter, household movers shall observe the rules, regulations, general orders, and Maximum Rate Tariff 4, as most recently amended as of July 1, 2018, by the Public Utilities Commission, that are administered and enforced by the director pursuant to this chapter. A violation of those rules, regulations, general orders, or tariff may be grounds for discipline.

Currently, the Bureau has no division in the California Code of Regulations that pertain to household movers and the Bureau’s regulation in accordance with the Act or that contain all rules necessary for the performance of the Bureau’s duties as authorized by the CPUC Oversight Act and the Act. Thus, to implement the Act and pursuant to the Bureau’s authority described above, the Bureau seeks to amend Division 27 to rename it from the Bureau of Electronic and Appliance Repair to the “Bureau of Household Goods and Services” along with new chapters and articles in Title 16 of the California Code of Regulations (CCR), for the placement of all rules and regulations described in this proposal regarding definitions for the new Division, administrative citations, the contest of citations, citation compliance, assessment of fines, substantial relationship criteria, rehabilitation criteria, and advertising, and all future household mover rules and

regulations prescribed by the Bureau. These rules and regulations are necessary to help empower the Bureau to act “with all the authority, duties, powers, purposes, functions, responsibilities, and jurisdiction of the Public Utilities Commission, its predecessors, and its officers” and to ensure that protection of the public shall be the Bureau’s highest priority.

Additionally, consumer protection is best achieved when members of a regulated industry are compliant with all rules, regulations, and laws. As BPC section 19228 shows, various authorities govern household movers, potentially creating confusion or difficulty within the industry in reconciling which statutory or regulatory requirements apply. Therefore, proposed revisions to Division 27 will also be used to consolidate certain authorities, thereby further encouraging clarity, understanding, and compliance by the industry and strengthening consumer protection.

Additionally, beginning in 2020, in accordance with the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), BPC section 481 requires boards within the DCA to develop criteria for use when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions it regulates. Further, BPC section 493 requires the boards to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions it regulates by using criteria, including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of the profession. The substantial relationship requirement stems from the due process principle that a statute constitutionally can prohibit an individual from practicing a lawful profession only for reasons related to his or her fitness or competence to practice. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 448; *Moustafa v. Board of Registered Nursing* (2018) 29 Cal. App. 5th 1119, 1135.)

In addition, BPC section 482 requires boards to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license. Specifically, the amendments of BPC section 482 through AB 2138 requires boards to consider whether an applicant has completed the criminal sentence at issue without a violation of parole or probation in addition to the board’s applied criteria. In the context of professional licensing decisions, the courts have said that, “[r]ehabilitation...is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration.” (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058, internal punctuation omitted.) Additionally, the Legislature’s “clear intent” in enacting AB 2138 was “to reduce licensing and employment barriers for people who are rehabilitated.” (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal. App. 5th 1119, 1135.)

To satisfy these statutory mandates, the Bureau is proposing to include proposed sections in Division 27 that will specify the “Substantial Relationship Criteria” and the “Rehabilitation Criteria.” To promote fairness in all application reviews, these sections will also establish and clarify that the Bureau will use the same criteria when deciding

whether to deny, suspend, or revoke a household mover permit based on “professional conduct” or an “act” that resulted in disciplinary action, in accordance with, respectively, BPC sections 480 and 141.

Finally, BPC section 137 authorizes the Bureau to promulgate regulations requiring licensees to include their license numbers in any advertising, soliciting, or other presentments to the public. Household movers are not currently required to provide their license numbers to the public on advertisements and presentments. This omission makes it more difficult for consumers to ascertain if an individual is licensed or qualified to perform that particular work. Accordingly, the proposal would resolve the problem of insufficient license information provided to the public by requiring all public presentments and advertisements in connection with the rendition of household mover services to include the household mover’s name and Bureau-issued permit number along with other disclosure requirements for brokers and vehicles operated by a household mover as specified.

In this rulemaking proposal, the Bureau proposes to include new chapters in Division 27 for better organization of the Bureau’s regulations and the following articles and new CCR sections in Division 27:

- Article 1, “General Provisions,” for regulations that have general applicability. CCR Section 2800 will create definitions for certain commonly used terms in the proposed regulations.
- Article 2, “Enforcement,” for regulations that will implement the Bureau’s enforcement program for violations of the Act. CCR Section 2940 will clarify the Bureau’s authority to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines. CCR Section 2940 will also implement the Bureau’s citation program, in accordance with BPC sections 125.9 and 148, including by specifying the required contents of citations. CCR Section 2941 will establish how a cited party may contest citations and request an informal citation review conference and the informal citation review conference process. CCR Section 2942 will establish the process for how a cited party may comply with citations and orders of abatement. CCR Section 2943 will implement when and how a fine may be assessed, including the amount thereof if a fine is issued, compliance requirements, consequences for nonpayment, and the factors the Bureau will consider when issuing an administrative fine.
- Article 3, “Miscellaneous,” for regulations that do not fit in other articles that serve specific purposes. CCR Section 2970 will implement the “Substantial Relationship Criteria” and CCR Section 2971 will implement the “Rehabilitation Criteria” the Bureau will use when considering whether to deny, suspend, or revoke a license based on a criminal conviction, professional misconduct, or an act that is grounds for disciplinary action per section 141, Division 1.5 (commencing with Section 475), and section 19239 of the BPC. CCR Section 2972 will establish certain advertising requirements for household movers, including requiring household

movers to include their name and Bureau-issued permit number in all advertisements and set other disclosure requirements for brokers and vehicles operated by a household mover as specified.

Anticipated benefits from this regulatory action:

The proposed regulatory language will implement the CPUC Oversight Act and help empower the Bureau to exercise its licensing, regulatory, and disciplinary functions under the Act. The benefits of amending Division 27 to adopt new chapters, articles and regulatory sections include:

- Proposed Article 1, “General Provisions,” will clarify the meaning of certain terms and provide how they will be construed universally among various authorities that govern the household mover industry. This will create uniformity among those sources and promote greater compliance by the industry. A “General Provisions” article will also support Chapter 2 of Division 27’s overall organization to promote easy identification of the Bureau’s regulations. Specifically, by housing regulations that are general in nature, other articles that serve a specific purpose can be labeled and arranged accordingly, allowing for information to be easily found.
- Proposed Article 2, “Enforcement,” will clarify the Bureau’s authority to enforce the Act and implement the Bureau’s enforcement program for violations of the Act—significant steps toward helping curtail illegal activity within the household mover industry and advancing the Bureau’s mission to make “the protection of the public . . . paramount.” The proposed regulations will create an incentive to comply by: establishing the Bureau’s citation program; specifying what a cited party must do after receiving a citation; and making clear the consequences of a violation. A household mover will either elect to follow regulations or be subject to fines, permit suspension or revocation, or more severe penalties, including criminal prosecution. The establishment of an informal citation conference review process will add a second layer of review for citations, allowing cited parties to pursue a simpler and more expeditious way to challenge citations and potentially eliminate unnecessary administrative appeals. Finally, many of the procedures proposed in Article 2 mirror and substantially replicate procedures the Bureau uses for its other programs, thus promoting uniformity, consistency, and fairness among all programs.
- Proposed Article 3, “Miscellaneous,” will be used to place regulations that do not fit in other articles that serve specific purposes and, thus, will function similarly to other “Miscellaneous” articles the Bureau uses for its other programs. This will promote uniformity, consistency, and fairness among all the Bureau’s programs and will likewise support the organization of proposed Chapter 2 of Division 27, to allow for the easy identification of regulations. For this regulatory package, the Bureau is proposing to include sections that will clarify the Bureau’s statutory authority to deny, suspend, or revoke a

household mover permit based on a conviction of a crime, professional misconduct, or an act that resulted in disciplinary action. More importantly, as mandated by AB 2138, these proposed sections will establish the “Substantial Relationship Criteria” and the “Rehabilitation Criteria” the Bureau must consider when making these decisions. By implementing these criteria, the Bureau will advance AB 2138’s goal to reduce barriers to licensing, promote reduction of recidivism, and provide economic opportunity to individuals otherwise disadvantaged by past misconduct.

Proposed Article 3 will also include a section specifying “Advertising” requirements, including that a household mover’s advertisements must include the household mover’s name and Bureau-issued permit number, advertisements by brokers must include a disclaimer that brokers do not take possession of or participate in the transportation of consumers’ belongings, and vehicles used by household movers who engage in transportation of household goods or personal effects must display certain information as specified. The Board anticipates that consumers will benefit from the proposal, including by being better informed of who is and who is not a licensed household mover and making more informed decisions about with whom they choose to do business and thereby enabling consumers to be better protected from fraudulent or misleading claims about a household mover’s license status.

Finally, in its entirety, proposed changes to Division 27 will provide greater clarity to the household mover industry about its rights and responsibilities. It will also inform the larger community of the same, including consumers, representatives for the household mover industry, such as business associations, business leaders, and attorneys, and government actors involved in an enforcement or judicial action, including Deputy Attorneys General and Administrative Law Judges.

Specific purpose of, and rationale for, each adoption:

A detailed explanation of the proposed amendments follows.

1. Adopt Article 1, “General Provisions,” and new CCR Section 2800 with the title “Definitions” and specified subsections (a)-(d) in proposed new Chapter 2 entitled “Household Mover Act Regulations” of Division 27 of Title 16 of the California Code of Regulations

A. Purpose: The Bureau proposes to adopt Article 1, with the title “General Provisions,” for the placement of regulations that have general applicability to the household mover industry, and add a new CCR section 2800 and a sentence that the definitions in this section “shall govern the construction of this chapter unless otherwise indicated,” and add definitions for “Act”, “Advertising”, “Chief”, “Code”, and “Household Goods” or “Personal Effects,” which are terms commonly used throughout the Act and in this proposed chapter in Division 27.

B. Rationale: The Bureau and other programs within the Department have used “General Provisions” articles to house regulations that have general applicability, such as clarifying the purpose of a program or describing general program information. This article and related proposed regulatory section will serve the same purpose for the Bureau’s administration of household movers, thus creating consistency and uniformity among all programs.

For the purposes of this proposal, the Bureau submits proposed CCR section 2800, and its title “Definitions.” The purpose of this section is to clarify the meaning of certain terms and provide how they will be construed universally in this new Chapter 2 and the Act that governs the Bureau’s regulation of the household mover industry. This will create uniformity in understanding the applicable provisions in this Chapter and in some cases, the Act, and thereby promote greater compliance by the industry. The following definitions are proposed to be added to new CCR section 2800 and were developed through the expertise of Bureau staff, reconciling various terms of art in the industry with federal, state, and California Public Utilities Commission laws:

Section 2800, subdivision (a): This subdivision provides: “‘Act’ means the Household Movers Act, as enacted in Chapter 3.1 of Division 8 of the Business and Professions Code (beginning with Section 19225).”

This definition is necessary because this proposal implements the Household Movers Act and specifies what the shortform term “Act” means when used throughout the Bureau’s regulations. This definition also clarifies that the Household Movers Act replaced the Household Goods Carriers Act, which was previously administered by the Commission and repealed by SB 19. By defining “Act” in this manner, it places an emphasis on the Household Movers Act as the current, authorizing statute that must be followed by household movers engaging in household mover business in California and resolves any ambiguity for users of the regulations regarding which law is being referenced in the applicable proposed regulations in this new Chapter 2.

Section 2800, subdivision (b): This subdivision provides: “‘Advertising,’ as used in the Act and in this Chapter, means any form of oral or written communication that solicits or offers to provide any consumer the services of a household mover as defined in Section 19225.5 of the Code by any means, media or form of advertisement, including: any card, estimate, bill of lading, agreement for moving services, sign, billboard, lettering on vehicles, brochure, pamphlet, circular, stationery, newspaper, magazine, newsletter, printed or published advertisement online or in any other electronic medium, including via an application or software or via access through data-enabled device, such as a computer, tablet, or cellular phone, and any form of directory under any listing for a household mover or any word or words intended to engage, solicit, arrange or offer work for which a permit is required by Section 19237 of the Act.”

The Bureau does not currently have a definition in the Act or in regulation that specifies what it considers “advertising” for household movers and therefore subject to regulatory

oversight by the Bureau. This definition is necessary to specify and provide notice to the regulated community of what the Bureau will consider as “advertising” by a household mover and, therefore, when such “advertising” must comply with the Bureau’s regulations and Act. For example, proposed section 2972 (described below) will require “advertising” to include certain information. This definition is needed to describe as many known types of advertising as practical to help ensure the most effective enforcement of the laws and regulations under the Bureau’s jurisdiction.

To construct this definition, the Bureau relied, in part, on other regulatory agencies with similar enforcement authority, such as the Contractors State License Board (see Cal. Code Regs. tit. 16, § 861), and incorporated advertising methods known to be used by household movers to help ensure that all methods of solicitation of a consumer were considered and therefore subject to review by the Bureau for the protection of the public. The methods include all forms of written communication whether it be in traditional hard copy formats (any card, estimate, bill of lading, agreement for moving services, sign, billboard, lettering on vehicles, brochure, pamphlet, circular, stationery, newspaper, magazine, newsletter), electronic media (printed or published advertisement online or in any other electronic medium, including via an application or software or via access through data-enabled device, such as a computer, tablet, or cellular phone), business directory listings (and any form of directory under any listing for a household mover), or other forms of communication (whether verbal or otherwise) that include “any word or words intended to engage, solicit, arrange or offer work for which a permit is required by Section 19237 of the Act.” The definition for advertising is tied to BPC section 19237, which is the section of the Act that prescribes permit requirements, to ensure proper notice to the regulated community that the Bureau’s jurisdiction is limited to those acts of solicitation that are related to the business activities regulated by the Bureau under the Act.

Section 2800, subdivision (c): This subdivision provides: “Chief” has the meaning set forth in Section 19225.5 of the Code.”

Existing law at BPC section 19225.5 defines the term “Chief” for the purpose of interpreting the Act but the Bureau has no regulations that specify the same meaning consistent with the Act. This proposal would establish such a definition to ensure greater comprehension by the regulated community of the term “Chief” and identify the Bureau officer responsible for enforcement of the Act and the Bureau’s proposed regulations. The term is used throughout this proposal to identify the Bureau Chief’s duties with regard to implementation of the various standards proposed in this new Chapter.

Section 2800, subdivision (d): This subdivision provides: “‘Code’ means the Business and Professions Code, unless otherwise specified.”

This definition is necessary to create a shortform reference to “Code” to mean the Business and Professions Code to help ensure greater comprehension and readability by the users of these regulations. In addition, it is necessary as it further specifies that when used, it generally means that the law it is referencing is contained in the Business

and Professions Code and not other laws administered or enforced by the Bureau that use the word “code” (unless otherwise specified in any applicable regulation in the chapter).

Section 2800, subdivision (e): This subdivision provides: “‘Household Goods’ or ‘Personal Effects,’ as used in the Act and in this Chapter, mean personal property other than real estate, belonging to an individual or their immediate family, customarily found in the home and used in connection with the maintenance, use, and occupancy of the premises as a home.”

BPC section 19225.5 uses “household goods and personal effects” to define the scope of a household mover. This definition is necessary because the terms, “household goods” and “personal effects,” are not defined in the Act, but used throughout the Act, and those terms are capable of multiple interpretation. For example, the proposed advertising regulation in CCR section 2972, which uses these terms, needs to have an accompanying definition to help ensure adequate notice to the regulated community and consistent enforcement of the rules regarding advertising. In the Bureau’s experience, these proposed definitions are similar to what are commonly understood as “household goods” or “personal effects” in the industry, and thereby subject to the Bureau’s jurisdiction to regulate transportation of these items in accordance with the Act.

2. Adopt Article 2 and its Title, “Enforcement,” and CCR sections 2940, 2941, 2942, and 2943 in proposed Chapter 2 of Division 27 of Title 16 of the California Code of Regulations

Purpose: The Bureau proposes to adopt Article 2, its title “Enforcement,” and accompanying citation process and procedure regulations to provide notice regarding the location of these regulations and to implement this part of the Bureau’s enforcement program, including by establishing the Bureau’s citation program for violations of the Act. For the purposes of this proposal, the Bureau submits the following proposed sections to be added to this Article: section 2940, “Administrative Citations”; section 2941, “Contest of Citations – Citation Review Conference”; section 2942, “Citation Compliance”; and section 2943, “Assessment of Fines.”

Rationale: Proposed Article 2, its title and accompanying regulations are necessary to more effectively empower the Bureau to carry out its enforcement duties under the Act and to meet its mandate as stated in BPC section 19234.1: “Protection of the public shall be the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions under [the Act]. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

Additionally, this article and accompanying regulations are necessary because the Bureau does not currently have a citation program for violations committed by household movers or unlicensed operators, even though the Bureau has statutory authority to establish one in accordance with the CPUC Oversight Act and more specifically per BPC

sections 125.9 and 148. Thus, the Bureau is proposing to adopt Article 6 to establish a section for regulations relating to this program. Creation of a new article and implementing regulations is necessary to maintain organization of the regulations, provide specificity regarding the Bureau's citation authority, and eliminate confusion regarding how citations issued with fines and orders of abatement are authorized to be issued and enforced against household movers or unlicensed operators and confusion regarding the process for complying with or contesting such citations issued by the Bureau.

CCR Section 2940, Administrative Citations: Proposed CCR section 2940 clarifies the Bureau's enforcement authority pursuant to BPC sections 125.9, 148, 19279, and 19279.1. The adoption of this section and corresponding title also implements a system for the issuance of citations containing orders of abatement and fines and lists all requirements the Bureau must follow, including that citations must be in writing, how citations must be served, and the information citations must include. The Bureau proposes to include the following subdivisions in proposed CCR section 2940.

- **Subdivision (a):** This subdivision provides: "The Chief or their designee is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against any permitted household mover ("permitholder") and any officer, director, agent or employee of any household mover for any violation of the provisions of the Act and any regulations adopted pursuant thereto."

The purpose of this subdivision is to establish who is authorized to issue citations and against whom citations may be issued. Pursuant to BPC sections 10 and 9810, the Chief is authorized by law to administer and enforce the Act and to further delegate responsibilities for enforcement of the Act to others. This subdivision is therefore necessary to establish who possesses the authority to issue citations to household movers for violations of the Act or the Bureau's regulations.

BPC section 125.9 authorizes the Bureau to establish a citation program and to issue orders of abatement and fines "where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto." Though BPC section 125.9 authorizes the Bureau to establish a household mover citation program, the Bureau has not yet implemented this statute in regulation. Currently, when these violations do not rise to a level warranting discipline through an administrative action, the Bureau addresses these violations with the household mover through education efforts such as notices and letters and/or various conferences with Bureau representatives. The Bureau needs a tool to address more serious violations of the Act that do not rise to the level of a disciplinary action. When the Bureau issues a citation, consumers will be able to access this information when the Bureau posts information to the internet pursuant to

BPC section 27. This information will assist consumers in making a more informed decision when choosing a household mover. The issuance of fines and orders of abatement is necessary for the protection of the public and to discourage violations by household movers. Fines also serve as a penalty for committing violations of the Act and a deterrent against future violations.

Finally, the Bureau adds the shortform reference “permitholder” and a list of individuals who may be cited to this subsection to further specify that the Bureau is authorized to issue citations and fines or orders of abatement to the permitholder and the listed individuals associated with the permitholder. The shortform reference helps to distinguish this subsection from the authority exercised in subsection (b) for unlicensed persons. It is necessary to narrow the subject matter in subsection (a) to “permitholders” because this rulemaking will create another citation program in (b) for unlicensed activity. The proposed reference to “permitholder” will eliminate potential confusion for the public and facilitate charging efforts when initiating administrative actions.

Adding the list of licensees further specifies the Bureau’s authority to issue citations under the Bureau’s citation program. Under the Act, the Bureau is authorized to take enforcement or other legal action against these individuals and the permitholder for violations committed by these individuals (see BPC sections 19239, 19269, 19269.1, 19277, 19277.1, 19279, and 19282). As the California Court of Appeal has noted:

“If a licensee elects to operate his business through employees he must be responsible to the licensing authority for their conduct in the exercise of his license and he is responsible for the acts of his agents or employees done in the course of his business in the operation of the license.” (*Cornell v. Reilly* (1954) 127 Cal.App.2d 178, 186—187; see also, *Randle v. Cal. State Bd. of Pharmacy* (1966) 240 Cal.App.2d 254, 261.)

As a result, to further specify who may be cited under the Act in accordance with California law and precedent, the Bureau specifies that the Chief or their designee is authorized to determine whether a citation should be issued to the permitholder and any officer, director, agent or employee of any permitholder for any violation of the Act and any regulations adopted pursuant thereto.

- **Subdivision (b):** This subdivision provides: “In addition to subsection (a), the Chief or their designee is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, as defined in Section 302(d) of the Code, who engage or attempt to engage in any activity including

advertising for which a permit is required under the Act (“unlicensed activity”).”

The purpose of this subdivision is to establish who is authorized to issue citations and against whom citations may be issued for unlicensed activity and to specify that the Bureau’s citation authority for unlicensed activity violations extends to any form of business organization specified in BPC section 302(d), which states:

“Person” means an individual, partnership, corporation, limited liability company, association, or other group, however organized.

This is necessary to ensure that violators of the Bureau’s licensing laws are held accountable no matter what form of business they choose to operate. This subdivision is also necessary to establish who possesses the authority to issue citations to household movers for unlicensed activity as discussed in the rationale for subsection (a) above. BPC sections 125.9 and 148 authorize the Bureau to establish such a program and to issue orders of abatement and fines to unlicensed persons who are acting in the capacity of a licensee under the jurisdiction of the Bureau. Though BPC section 148 authorizes the Bureau to establish an unlicensed activity citation program, the Bureau has not yet implemented this statute in regulation. This proposal is therefore necessary to authorize the Bureau to establish such a program. The issuance of fines and orders of abatement to unlicensed persons, as specified, is necessary for the protection of the public and to discourage violations by unlicensed persons, as defined. Fines also serve as a penalty for committing violations of the Act and a deterrent against future violations.

- **Subdivision (1):** This subdivision provides: “Any sanction authorized for the unlicensed activity under this section shall be separate from and in addition to any other civil or criminal remedies authorized under the Act.”

The purpose of this subdivision is to clarify that any sanction that results from a finding of unlicensed activity will be treated by the Bureau as separate from other civil and criminal penalties authorized by the Act, and additional civil or criminal penalties may result from the unpermitted activity.

This subdivision is necessary to inform the household mover industry that a violation of unlicensed activity, or operating without a valid permit, may result in multiple sanctions authorized by the Act. This subdivision also conforms with BPC sections 19281 and 19282. BPC section 19281 states that “[e]very violation of [the Act] . . . is a separate and distinct offense.” BPC section 19282 states that “[a]ll

remedies and penalties accruing under this chapter are cumulative to each other and to the remedies and penalties available under any other law, and a suit for the recovery of one remedy or penalty does not bar or affect the recovery of any other remedy, penalty, or forfeiture or bar any criminal prosecution[.]” However, the statute does not specify which “penalty” BPC section 19282 specifically applies to. This regulation would further specify and provide notice to unlicensed operators and the regulated community that the penalty of citation and fine and order of abatement does not prevent the Bureau from exercising the Bureau’s other enforcement or prosecutorial authority as noted above.

- **Subdivision (c):** The purpose of this subdivision is to establish all requirements the Bureau must follow when issuing a citation, including that the citation must be in writing, how the Bureau must serve the citation, and what information the Bureau must include in a citation.

Additionally, BPC sections 125.9 and 148 require a similar system for all types of administrative citations—i.e., the system for issuing a citation to an unlicensed person must be similar to the system required for a licensee. Thus, the citation procedures and requirements the Bureau must follow are consolidated here. Consolidating citation procedures and requirements in one regulation also promotes easy access to the information and ensures the household mover industry is wholly aware about their rights and what to expect when the Bureau issues a citation. This subdivision also adds uniformity by replicating citation procedures and requirements the Bureau uses for its other programs, thus enabling a consistent and fair process across all license types. Specifically, this subdivision is consistent with implementation of the Bureau’s citation authority for other licensing programs it regulates at Title 4, section 1383.1 and Title 16, section 2771 of the California Code of Regulations (CCR), respectively.

- **Subdivision (1):** This subdivision provides that the citation “shall be in writing and shall describe with particularity the nature of the violation, including a specific reference to the provision of law determined to have been violated.”

BPC section 125.9 provides that citations “shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.” (Bus. & Prof. Code, § 125.9, subd. (b)(1).) This subdivision mirrors this statutory requirement and specifies the citation will contain a reference to either the statute or regulation violated to ensure implementation is consistent with Section 125.9 and provides all requirements for citations in one convenient location. This also ensures the cited party is placed on notice of the provision of law

violated and can marshal a defense.

- **Subdivision (2):** This subdivision provides that the citation “shall be served upon the cited party personally or by registered mail pursuant to Section 11505(c) of the Government Code.”

This subdivision states how the cited person will be served in accordance with Government Code section 11505(c), which applies to all administrative actions in accordance with the Administrative Procedure Act and provides that, “no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as provided herein...” This ensures the cited person receives adequate notice of the citation so they may exercise the rights provided by the regulation to contest the citation.

- **Subdivision (3):** This subdivision provides that the citation “shall contain an order of abatement fixing a reasonable time for abatement of the violation.”

BPC section 125.9 requires a citation program provide for an order of abatement (an order issued commanding the cited party to stop the conduct at issue and comply with the applicable law or regulation alleged to have been violated). (Bus. & Prof. Code, § 125.9, subd. (b)(2).) To ensure that the citation corrects the conduct at issue and make the orders legally enforceable against a noncompliant party in accordance with proposed regulations at CCR 2941, all citations “shall” contain an order of abatement. This subdivision is necessary to implement this requirement to inform cited persons what orders citations may contain, the time frame required to comply with the order, and to include all requirements in one convenient location. The issuance of orders of abatement is necessary for protection of the public and discouragement of violations by household movers.

- **Subdivision (4):** This subdivision provides that the citation “may contain a fine not to exceed the amounts specified in Section 125.9 of the Code and, where applicable, issued and assessed in accordance with Section 2943.”

BPC section 125.9 authorizes a citation program to provide for an administrative fine not to exceed \$5,000 for each inspection or investigation. (Bus. & Prof. Code, § 125.9, subd. (b)(3).) Additionally, Article 8 of the Act authorizes the Bureau to seek penalty fines for various violations of the Act. For example, BPC section 19279.1 provides that “the bureau may issue a citation and fine of not more than five thousand dollars (\$5,000) for each violation” of operating

without a valid permit. Proposed section 2943, further described below, will provide the Bureau's system for assessing such penalty fines.

This subdivision is necessary to implement these requirements in those cases where a fine is issued and to inform cited persons about the fines a citation may contain and the amounts thereof when imposed. Specifically, it notifies a cited party that a fine issued pursuant to BPC section 125.9(b)(3) will not exceed \$5,000 and penalties for violations of the Act are provided in proposed section 2943. The issuance of fines is necessary for protection of the public and discouragement of violations by household movers. Fines also serve as a penalty for committing violations of the Act and a deterrent against future violations.

- **Subdivision (5):** This subdivision provides that the citation "shall inform the cited party of the opportunity to request an informal conference or an administrative hearing, or both, to contest the citation pursuant to Section 2941."

BPC section 125.9 requires the citation to "inform the licensee that if the licensee desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the [Bureau] within 30 days of the date of issuance of the citation or assessment." (Bus. & Prof. Code, § 125.9, subd. (b)(4).) This subdivision implements that requirement and informs the cited person they have a right to request an informal review conference pursuant to proposed section 2941. This is necessary so cited persons know their rights and the process to contest a violation.

- **Subdivision (6):** This subdivision provides that the citation, "[i]f . . . issued for acts other than unlicensed activity as provided in subsection (b), shall inform the permitholder that failure of the permitholder or cited party to pay a fine or comply with an order of abatement, or both, within 30 days of the date of assessment or order, unless the citation is being appealed, may result in disciplinary action being taken by the Bureau. The permitholder or cited party shall be informed that if a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the permitholder's permit and the permit will not be renewed without payment of the renewal fee and fine."

This subdivision is necessary to implement the law as described in BPC section 125.9(b)(5) and place cited persons affiliated with a household mover permit on notice of the possible consequences for nonpayment of the fine. Subdivision (b)(6) establishes that a citation

issued for acts other than unlicensed activity (excepted because the notice is applicable only to those who are licensees of the Bureau) will include a notice to the cited person that failure to comply with an order of abatement or failure to pay the required fine may result in disciplinary action pursuant to BPC section 125.9(b)(5). The notice will also inform the cited person that, in accordance with BPC section 125.9(b)(5), if the citation is not contested and a fine is not paid, the full amount of the unpaid fine will be added to the permit holder's renewal fee, and the permit will not be renewed until the fee and fine are paid. By including this information in the citation, it places the cited party on notice that failure to comply with the citation may adversely impact the household mover permit for which they are associated. This section is intended to encourage a cited person to comply with orders of abatement and pay fines in a timely fashion.

- **Subdivision (7):** This subdivision provides that the citation “[i]f . . . issued pursuant to Section 19279.1 of the Code, shall include an order to cease all advertising for household moving services.”

This subdivision establishes that a citation issued pursuant to BPC section 19279.1 (i.e., operation without a valid permit) will include an order requiring the cited person to cease all advertising for household moving services. BPC section 149 provides that if the Bureau has probable cause to believe that a person is advertising the offering or performance of services, without being properly licensed by or registered with the Bureau, the Bureau may issue a citation under BPC section 148 containing an order of correction that requires the violator to cease unlawful advertising. This proposal is necessary to specify, and place unlicensed household movers on notice, that the Bureau will make this order part of every citation involving unlicensed activity. Unlicensed activity presents a significant risk of harm to the consumer as licensure helps ensure that minimum standards are continuously met through the Bureau's regulatory oversight. Cease practice orders are necessary to help ensure that consumers are not misled and encourage unlicensed operators to come into compliance and obtain a permit as required by the Act.

CCR Section 2941, Contest of Citations – Citation Review Conference: The purpose of proposed CCR section 2941 and its title is to implement the Bureau's citation review conference (i.e., an informal conference) procedure. This section is necessary because it will establish a second layer of review for citations, allowing cited parties to pursue a simpler and more expeditious way to challenge citations and potentially eliminate unnecessary administrative appeals. Proposed CCR section 2941 also clarifies that a cited party who opts for an informal conference

does not eliminate their right to also seek an administrative hearing—i.e., they can do both. Proposed CCR section 2941 also adds uniformity by replicating procedures the Bureau requires for its other programs, thus enabling a consistent and fair process for all licensees regulated by the Bureau. Specifically, this section is consistent with the Bureau’s citation review conference procedures at Title 4, CCR section 1383.5, and Title 16, CCR section 2772, respectively.

- **Subdivision (a):** This subdivision provides: “In addition to requesting a hearing provided for in subdivision (b)(4) of Section 125.9 of the Code, the cited party may, within ten (10) days after service of the citation, notify the Chief or their designee in writing of a request for a citation review conference regarding the acts charged in the citation.”

The purpose of this subdivision is to establish the administrative appeal process entitled “citation review conference” and provide the timeframe in which a cited party may request a citation review conference, if they wish, in addition to or in lieu of requesting an administrative hearing.

This subdivision is necessary to create the “second layer” of review noted above (AKA “citation review conference”) and provide the timeframe in which a cited party may contest a citation through an informal citation review. The Bureau chooses a 10-day timeframe for the request to encourage an expeditious process. In the Bureau’s experience, this is sufficient time for a cited party to decide whether to contest a citation through this informal process and notify the Bureau in writing.

- **Subdivision (b):** This subdivision provides: “The Chief or their designee shall hold, within 30 days from the date of receipt of the request, a citation review conference with the cited party or with the cited party’s designated legal counsel or authorized representative. At the conclusion of the citation review conference the Chief or their designee may affirm, modify, or dismiss the citation, including any fine levied or order of abatement issued. The Chief or their designee shall state in writing the reasons for the action to affirm, modify, or dismiss the citation and transmit a copy of the findings and decision to the cited party within 20 days from the date of the informal office conference. If the decision is not contested as provided in subsection (c), the informal citation review decision shall be deemed to be a final order with regard to the citation issued, including any fine amount levied or any order of abatement issued. A cited party may not request an informal conference for a citation that has been affirmed or modified following an informal conference.”

The purpose of this subdivision is to establish and place affected parties on notice when the Bureau will act upon a request for an informal citation review conference and who may accompany a cited person to the conference. This subdivision is also necessary to establish the timeframe in

which the Bureau will hold an informal citation review conference. The Bureau establishes a 30-day timeframe for acting upon a cited party's request to provide the Bureau with sufficient time to perform the necessary administrative functions to schedule and prepare for the conference and provide the cited person with adequate time to prepare a defense. The Bureau provides the cited person the ability to be accompanied by a legal or other authorized representative to assist the cited person during the hearing and to ensure due process as the conference is a legal proceeding.

This subdivision also outlines the possible results after an informal citation review conference is held and is necessary to establish what may potentially occur after an informal citation review conference is held. This subdivision provides the context for a cited person's options when a citation has been affirmed or dismissed, or is modified, as explained in subdivision (c) (described below).

This subdivision also establishes the content of the decision, that a copy of the Bureau's findings and decision will be provided to the cited party, and the timeframe for the Bureau's decision after holding the informal citation review conference. This subdivision is necessary to afford due process to a cited person by explaining the Bureau's reasoning for affirming or dismissing a citation, and to communicate when such a decision will be provided. In the Bureau's experience, 20 days is a reasonable timeframe for the Bureau to prepare a written decision and send the decision to the cited party.

This subdivision also establishes that the informal citation review conference decision is final, including any order of abatement or fine issued pursuant to the decision, and that a cited party may not request an informal conference for a citation which has been affirmed or modified following an informal conference. This subdivision is necessary to provide the decision is considered "final" and establishes an end to the informal citation review process; the hearing option is still available (as specified in subdivisions (a) and (c) of this section). This is necessary because it would not be efficient or provide a pathway for resolution if the Bureau were required to keep reconsidering the same facts via an informal conference review procedure.

- **Subdivision (c):** This subdivision provides: "The cited party does not waive any right to request a hearing to contest a citation by requesting a citation review conference as provided in this section. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for the new citation, it shall be requested within 30 days of the date of the issuance of the new citation in accordance with subdivision (b)(4) of Section 125.9 of the Code."

The purpose of this subdivision is to clarify that a cited party does not waive their right to request an administrative hearing by requesting a citation review conference. It also establishes what occurs if the Bureau modifies a citation after holding a citation review conference, that a new citation will be issued, and how a cited party may challenge the new citation before an impartial hearing officer.

This subdivision is necessary to afford due process to a cited person and establish how a cited person may challenge the decision made by the Bureau after the informal citation review conference. It clarifies that a cited party reserves their right to request an administrative hearing even if they request a citation review conference. It also explains the Bureau's process after a citation is modified, including that a new citation will be issued. It also provides the process for challenging a new citation, which derives from BPC section 125.9(b)(4). BPC section 125.9(b)(4) provides, in part that a cited party, "who desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the" Bureau "within 30 days of the date of issuance of the citation." This proposal is therefore necessary to implement due process requirements for contesting a new citation in accordance with these procedures required by statute.

CCR Section 2942, Citation Compliance: Proposed CCR section 2942 and its title is necessary to implement the Bureau's system for citation compliance and to clarify for cited parties the procedures they must follow after receiving a citation, including when a fine must be paid, when an order for abatement may be extended, and the consequences of failing to pay a fine or correct a violation.

- **Subdivision (a):** This subdivision provides: "An assessed fine shall be paid within 30 days of the date of the fine assessment issued pursuant to a citation, or as applicable, a final affirmed or modified citation as provided in Section 2941. If a fine is not paid after a citation has become final, the fine shall be added to any cited party's permit renewal fee, if the fine was issued against a person associated with a permit. A permit shall not be renewed without payment of the renewal fee and fine. "Final" for the purposes of this section shall mean: the Bureau's decision has become effective, the cited person did not submit a written request to contest the citation as required by Section 2941, and the timeframe for submitting such a request under Section 2941 has passed."

The purpose of this subdivision is to establish when a fine must be paid and the consequences of failure to timely pay the fine after the citation is final.

This subdivision is necessary to implement BPC section 125.9(b)(5) and establish a 30-day timeframe for payment of the assessed fine. It establishes this timeframe by reference to the finality of affirmed or

modified citations so a cited person knows when the fine must be paid if they have chosen to challenge a citation. The section implements the requirements of BPC section 125.9(b)(5) by providing unpaid fines are added to a license renewal and provides that a license shall not be renewed without payment of the renewal fee and fine. These consequences incentivize timely payment of a fine and protect the public when a cited party has not timely paid their fine. This subdivision provides the Bureau authority to hold the cited parties accountable for their violations as well as encourage compliance.

- **Subdivision (b):** This subdivision provides: "The time to abate or correct a violation as provided for in an order of abatement may be extended for good cause. If a cited party who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond the cited party's control after the exercise of reasonable diligence, the cited party may request an extension of time from the Bureau in which to complete the correction. Such request shall be in writing and shall be made within the time set forth for abatement."

The purpose of this subdivision is to establish how a cited person may request an extension of time in order to comply with an order of abatement.

This subdivision is necessary to ensure cited persons understand how to request an extension of time to comply and for the Bureau to receive the information it needs to evaluate such requests. Issues may arise to hinder or impact a cited party's ability to comply with the Bureau-issued order of abatement. The Bureau requires a cited party to demonstrate reasonable diligence in order to obtain such an extension to show good faith in attempts to comply with the order, e.g., some attempt to make payment to comply with an order.

- **Subdivision (c):** This subdivision provides: "When a citation is not contested, or if it is appealed and the cited party does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed shall constitute a violation and a failure to comply with the citation or order of abatement."

The purpose of this subdivision is to establish the consequences of failure to comply with abatement orders and fines.

This subdivision is necessary to establish consequences of a cited party's failure to comply with abatement orders and fines and to provide adequate notice to the regulated community of the consequences of noncompliance. Failure to comply with an order of abatement and/or failure to pay the required fine will constitute a violation of the Act in accordance with authority to take further action in BPC section 125.9(b)(5).

- **Subdivision (d):** This subdivision provides: "A permit holder's failure to timely comply with an order of abatement or pay an assessed fine may result in further disciplinary action being taken by the Bureau including suspension or revocation of a permit, or placement of the permit on probation."

The purpose of this subdivision is to establish failure to comply with abatement orders and fines may result in disciplinary action.

This subdivision is necessary to implement BPC section 125.9(b)(5) and inform a cited person that if they fail to comply with an order of abatement or fail to pay the required fine, then the Bureau may take disciplinary action, including by suspending or revoking the permit or by placing the permit on probation. This subdivision places the cited party on notice that failure to comply with the citation/order of abatement may adversely impact their Bureau-issued permit. This section is intended to encourage a cited person to comply with orders of abatement and pay fines in a timely fashion.

Section 2943, Assessments of Fines: The purpose of proposed section 2943 is to implement the Bureau's system for assessing fines and to provide notice and transparency to the household mover industry about the monetary and other penalties that may result from a citation.

- **Subdivision (a):** This subdivision is necessary to specify the guidelines the Bureau will use in determining how the Bureau will assess a fine for citations that are issued pursuant to BPC sections 19279, 19279.1, 19279.2, 19279.3 and 19280. The first sentence of this subsection indicates that these requirements will apply "in addition" to the requirement of Section 2940, citations that include specified violations "shall" contain a fine assessed as specified in accordance with the range of penalties as specified in the table provided. This is necessary to ensure that all citations issued by the Bureau are consistently issued in accordance with the Bureau's requirements set forth in proposed CCR section 2940 and to specify when specific citations "shall" contain a fine (since Section 2940(c)(4) allows fine issuance to be optional). This assists the regulated community with notice and understanding of when a fine "shall" be issued. These standards are the minimum necessary, in the Bureau's experience, to help remediate violations of the Act and provide greater deterrent effect short of further enforcement action.

The Bureau proposes to display the information in a table that lists each citation authority, the description of the violation, and the range of fines that the Bureau may charge, from minimum to maximum. For example, the table lists that a citation issued in accordance with BPC section 19279, described as a "[v]iolation of any rule, regulation, or requirement," may

result in a minimum fine of \$250 and up to a maximum fine of \$500 per offense. The Bureau is proposing the table format for easy identification and to mirror similar formatting used by the Bureau in Title 4, CCR section 1383.2 for its Home Furnishings and Thermal Insulation program, thus creating consistency. This format also creates transparency by making explicit the monetary penalties that may result from a citation, ideally creating a deterrent effect and incentive for the household mover industry to comply.

Additionally, the Bureau uses minimum and maximum fine amounts when assessing fines for its Home Furnishings and Thermal Insulation program, as provided in Title 4, CCR section 1383.2, and proposes to do the same for the household mover industry. This will likewise promote consistency and fairness among the Bureau's programs. The maximum amounts listed in the table are mandated by BPC sections 19279, 19279.1, 19279.2, 19279.3, and 19280, and BPC section 19281 authorizes the Bureau to treat "each day's continuance [of a violation] as a separate distinct offense[.]" Therefore, the Bureau adds notice of this authority to fine accordingly in the Table.

The Act does not require any minimum amounts for a fine, but BPC section 19277 provides that all violations charged under the Act may be subject to criminal prosecution, indicating the seriousness of any violation of the Act. Thus, the Bureau looked to the Penal Code to consider an appropriate amount for a minimum fine. Penal Code section 19.8 authorizes a fine of up to \$250 for an infraction, and the Bureau proposes to set \$250 as the minimum fine amount for all administrative citations it issues. Given the impact to public health, safety, and welfare that a violation of the Act represents, including that any offense may be treated as a crime, the Bureau believes that using the maximum fine amount for an infraction as the minimum fine amount for an administrative citation is appropriate.

- **Subdivision (b):** The Bureau proposes to adopt this subdivision to set forth the criteria the Bureau will consider in determining whether to impose an administrative fine and the amount of the administrative fine, if issued, pursuant to BPC section 125.9. The purpose of this subdivision is to specify the facts and circumstances the Bureau will consider when determining whether to impose an administrative fine or what fine amount to use if a fine is issued for a cited party. This is necessary since not every citation issued by the Bureau will contain an administrative fine (see CCR 2940). The Bureau specifies seven criteria it will consider. It utilizes these criteria to communicate to cited parties the Bureau is not arbitrarily deciding to issue an administrative fine or set the fine amount but will base its decision on multiple criteria. These criteria are necessary to appropriately set the amount according to the facts of the case, to provide due process to cited parties, and for the Bureau to consider all aggravating and mitigating facts

in assessing an administrative fine.

Proposed subdivision (b) also adds uniformity by replicating the administrative fine procedures the Bureau requires for its Home Furnishings and Thermal Insulation program, thus enabling a consistent and fair process. Specifically, this subdivision is consistent with the Bureau's list of factors provided at Title 4, CCR section 1383.3.

- **Subdivision (1):** This subdivision provides: "The good or bad faith exhibited by the cited person."

This factor means the Bureau will weigh whether the city party acted in good or bad faith in committing the violation.

By using the criteria to evaluate the good or bad faith of the cited party, the Bureau is evaluating the cited party's conduct of honesty and blameworthiness with respect to the violation when considering a fine. This factor will incentivize cooperation with the Bureau in attempts to comply with the Act. This factor is also mandated to be used in determining the amount of the fine by BPC section 125.9(b)(3).

- **Subdivision (2):** This subdivision provides: "The nature and severity of the violation."

This factor means the Bureau will consider the kind of violation and the seriousness or gravity of the conduct. For instance, if the violation is one that threatened the safety of consumers, the Bureau would be likely to find the conduct aggravated under this factor. To the extent the Bureau finds the conduct serious and more likely to cause such harm, this would weigh in favor of issuing a fine, and factor into the amount of such a fine if one is imposed. This factor is also mandated to be used in determining the amount of the fine by BPC section 125.9(b)(3) (termed as "gravity of the violation", rephrased here for greater understanding and notice to affected persons).

- **Subdivision (3):** This subdivision provides: "Evidence that the violation was willful."

This factor means the Bureau will weigh whether the cited party's conduct was intentional. When the Bureau finds the cited party made an inadvertent error, this would be a mitigating factor as the violation was unintentional and may be corrected through education. However, if the Bureau finds the cited party intentionally committed a violation of the Act, then this would be an aggravating factor as it

was not a mistake or a lack of education, but rather an intentional decision.

- **Subdivision (4):** This subdivision provides: “History of previous violations.”

This factor means the Bureau will consider whether the cited party repeatedly violates the Bureau’s statutes and regulations. To the extent a cited party has committed past violations, this would weigh in favor of issuing a fine, because they have shown an inability or unwillingness to conform their conduct to the law. Similarly, if the cited party has committed more than one violation, this is more blameworthy, and would weigh in favor of issuing a fine, and factor into the amount of such a fine if one is imposed. This factor is also mandated to be used in determining the amount of the fine by BPC section 125.9(b)(3).

- **Subdivision (5):** This subdivision provides: “The extent to which the cited person has cooperated with the Bureau’s investigation.”

This factor means the Bureau will consider the extent to which the cited party has cooperated in and demonstrated good faith in the investigation. This is to evaluate the cited party’s cooperation or obstruction in the Bureau’s investigation of the issue that resulted in the issuance of the citation. The factor of mitigation or aggravation will be used by the Bureau to evaluate the amount of an administrative fine and is intended to incentive cooperation with Bureau investigations.

- **Subdivision (6):** This subdivision provides: “The extent to which the cited person has mitigated or attempted to mitigate any loss caused by his or her violation.”

This factor means the Bureau will consider whether the cited party mitigated the damage or injury they caused by the violation. If the cited party took steps to correct the error, the Bureau would find this mitigating in imposing any fine and the amount of the fine. This factor is intended to encourage cited parties to remedy situations prior to Bureau involvement, and/or accept Bureau suggestions that would compensate for any damages suffered due to a violation.

- **Subdivision (7):** This subdivision provides: “The extent of consumer injury, which is a direct and proximate result of the violation.”

This factor means the Bureau will consider a consumer’s injury and weigh the degree of causation involved in the cited party’s violation.

This is intended to encourage household movers to conduct moves in accordance with the Act, and to properly care for consumers' household goods and personal effects while in their care. A household mover that causes injury to a consumer or their property will be considered an aggravating factor.

- **Subdivision (c):** This subdivision provides: "Where a citation lists more than one occurrence of the same violation, the amount of the assessed fine shall be cumulative and stated separately for each violation."

The purpose of this subdivision is to clarify that, if a citation lists more than one occurrence of the same violation, a fine amount will be assessed for each occurrence, and that the total assessed fine will be cumulative and stated separately for each violation.

This subdivision is necessary to clarify for the household mover industry that each occurrence of a violation will be treated as a separate and distinct offense for which a fine will be charged. This subdivision is necessary to conform issuance of citations with BPC sections 19281 and 19282. BPC section 19281 states that "[e]very violation of [the Act] . . . is a separate and distinct offense . . . and in case of a continuing violation, each day's occurrence thereof is a separate and distinct offense." BPC section 19282 states that "[a]ll remedies and penalties accruing under this chapter are cumulative to each other[.]" This specificity ensures adequate notice to the regulated community and consistent administration of the citation program.

- **Subdivision (d):** This subdivision provides: "Fines not paid to the Bureau within 30 days of a fine assessment issued pursuant to a citation shall be cause to suspend, revoke, place on probation, or deny renewal of a permit."

The purpose of this subdivision is to inform the household mover industry about the consequences of failing to timely pay the fine after a citation is issued.

Specifically, BPC section 19283 authorizes the Bureau "to deny the renewal of a permit or to suspend, revoke, or place it on probation," if a fine is not paid "within the specified time period for a violation." This subdivision is necessary to implement this authority. It also provides notice to the household mover industry that failure to pay the required fine in a timely manner may result in adverse action against a renewal application for a permit or an existing permit. This section is intended to encourage a cited person to pay fines in a timely fashion.

- **Subdivision (e):** This subdivision provides: "Fines assessed for citations

issued in accordance with Section 19279.1 of the Code shall be paid to the Bureau before a permit may be issued under Section 19237 of the Code. Failure to pay the fine within 30 days of the date of a fine assessment issued pursuant to a citation shall be grounds for denial of a permit pursuant to Section 19239 of the Code.”

The purpose of this subdivision is to establish that the Bureau will not issue a household mover permit to an applicant who has not paid a fine that resulted from a citation for unlicensed activity.

BPC section 19279.1 authorizes the Bureau to issue a citation to any person who operates as a household mover without a valid permit. This subdivision is necessary to provide notice to the household mover industry that the Bureau will not issue a permit to an applicant who has an unpaid fine resulting from unlicensed activity and until the applicant has paid the fine. BPC section 19239(f) authorizes the Bureau to deny a permit to an applicant who has “committed any act that, if committed by a permit holder, would be grounds for a suspension or revocation of the permit.” BPC 125.9(b)(5) authorizes the Bureau to take disciplinary action against a permit holder or to refuse to renew a permit for failure to pay a fine or comply with an order of abatement, or both, within 30 days of the date of assessment or order. As a result, the Bureau is specifying and providing advance notice in this proposal that such authority will similarly be applied to applicants for a permit. This section is intended to encourage cited parties to come into compliance and pay fines resulting from unlicensed activity.

7. Adopt Article 3, “Miscellaneous,” in proposed Chapter 2 of Division 27 of Title 16 of the California Code of Regulations

Purpose: The Bureau proposes to add Article 3, “Miscellaneous,” for regulations that do not fit in other articles. For the purposes of this proposal, the Bureau submits the following sections: section 2970, “Substantial Relationship Criteria”; section 2971, “Rehabilitation Criteria”; and section 2972, “Advertising.”

Rationale: Proposed Article 3 will be used to place regulations that do not fit in other articles that serve specific purposes and, thus, will function similarly to other “Miscellaneous” articles the Bureau uses for its other programs. This will promote uniformity, consistency, and fairness among all the Bureau’s programs and will likewise support the organization of proposed Chapter 2 in Division 27, to allow for the easy identification of regulations.

For the purposes of this regulatory package, and to implement AB 2138, the Bureau is proposing to include sections specifying the “Substantial Relationship Criteria” and the “Rehabilitation Criteria” the Bureau must consider when considering whether to deny, suspend, or revoke a household mover permit based on an applicant’s or a licensee’s

conviction of a crime. The Bureau will also be using these criteria for applicants and licensees who have a history of professional misconduct or an act that resulted in disciplinary action. The Bureau proposes to include these sections to satisfy its statutory mandates and to further AB 2138's goals of reducing licensing barriers, promoting reduction of recidivism, and providing economic opportunity to individuals otherwise disadvantaged by past misconduct. This information will also provide transparency and greater understanding to the household mover industry about their rights and encourage predictability and fairness in the application process.

To promote consumer awareness and assist consumers in making more informed decisions about household movers, the Bureau also proposes to include a section in Article 3 that will specify certain "Advertising" requirements.

Section 2970, Substantial Relationship Criteria: The purpose of this section is to implement AB 2138. In accordance with AB 2138, BPC section 481 requires all "boards" (defined in BPC section 22 to include all agencies subject to the Code), including the Bureau, to develop criteria, when considering the denial, suspension, or revocation of a license or registration, to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions it regulates. Further, BPC section 493 requires the Bureau to determine whether a crime is substantially related to the qualifications, functions, and/or duties of the profession it regulates by using criteria including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of the profession. The substantial relationship requirement stems from the due process principle that a statute, constitutionally, can prohibit an individual from practicing a lawful profession only for reasons related to his or her fitness or competence to practice. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 448; *Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1135.)

Proposed section 2970 will also establish that the Bureau will use the same criteria for license applicants and licensees that have a history of discipline pursuant to BPC section 141, since the substantially related acts that are the basis for discipline in an out-of-state jurisdiction may be used to discipline a licensee under BPC section 141. Proposed section 2970 will also establish that the Bureau will use the same criteria for applicants that have a history of "professional misconduct" pursuant to BPC section 480, since the Bureau may consider such misconduct in denying licenses under BPC section 480 as amended by AB 2138.

Rationale: The proposal is necessary to provide the appropriate notice to applicants and licensees that conviction of crimes, discipline in an out-of-state jurisdiction, and professional misconduct are grounds for license denial, suspension, or revocation, and implement the requirements of BPC sections 141 and 480. Existing law at BPC section 141 authorizes the Bureau to discipline a licensee for discipline taken by another state, a federal agency, or another country ("foreign jurisdiction") for any act "substantially related" to the practice regulated

by the California license. In addition, BPC section 480(a)(1) and (a)(2) authorizes the Bureau to deny a license on the basis that the applicant has been convicted of a crime, as specified, or was subject to formal discipline by a licensing board located in or outside California for “professional misconduct” under specified conditions.

This proposal will add references to BPC section 141 (discipline by a foreign jurisdiction), crimes, and “professional misconduct” to a newly proposed substantial relationship criteria regulation at CCR section 2970 to more accurately reflect the Bureau’s authority to deny or discipline on these grounds. The Bureau does not currently have a substantial relationship criteria regulation that sets forth what crimes, professional misconduct, or acts the Bureau believes are logically connected to a household mover’s fitness or competence to practice the profession or to the qualifications, functions, or duties of the household mover permit. This would include a standard that specifies that a crime, professional misconduct, or act is considered substantially related “if it evidences present or potential unfitness of a household mover to perform the functions authorized by the permit in a manner consistent with the public health, safety, or welfare.”

In the Bureau’s experience, this standard will be equally relevant when considering crimes or acts committed by a licensee in this state or a foreign jurisdiction or professional misconduct committed by an applicant before another licensing board. As a result, these proposed changes are necessary to give proper notice to those affected applicants and licensees of what standard the Bureau will use when evaluating what crimes, professional misconduct, or acts the Board considers “substantially related” and that could be a basis for household mover permit denial, suspension, or revocation by the Bureau pursuant to BPC sections 141, 480, 490, or 19239(f) (additional grounds for denial of a household mover permit based upon conviction of crimes “substantially related” to the profession). This proposal is also necessary to consolidate into one regulation the criteria the Bureau will apply in evaluating whether a crime or other misconduct is substantially related to the household movers’ profession.

Proposed section 2970 also largely replicates the “substantial relationship criteria” the Bureau uses for its other programs, thus creating uniformity, consistency, and fairness among all programs. Specifically, this section is consistent with the Bureau’s “substantial relationship criteria” at Title 4, CCR section 1380 and Title 16, CCR section 2767, respectively. This proposal is also necessary to consolidate into one regulation the criteria the Bureau will apply in evaluating whether a crime or other misconduct is substantially related to the household movers’ profession, as follows:

- **Subdivision (a):** This subdivision provides: “For the purposes of denial, suspension, or revocation of the permit of a household mover pursuant to Section 141, Division 1.5 (commencing with Section 475), or subdivision (f) of Section 19239 of the Code, a crime, professional

misconduct, or act shall be considered to be substantially related to the qualifications, functions, or duties of a household mover if to a substantial degree it evidences present or potential unfitness of a household mover to perform the functions authorized by the permit in a manner consistent with the public health, safety, or welfare.”

The purpose of this subdivision is to establish how the Bureau will determine whether a crime, professional misconduct, or act shall be considered substantially related to a household mover’s qualifications, functions, or duties when considering whether to deny, suspend, or revoke a permit as authorized by law at BPC section 141, Division 1.5 (authorizing denials), or subdivision (f) of BPC section 19239 (relating to denials of permits for household movers). This language will be added to more accurately reflect the Board’s legal authority to consider denials, suspensions, or revocations, as set forth in these sections of the Business and Professions Code, including BPC section 141, which authorizes the Bureau to discipline a licensee for discipline taken by another state, a federal agency, or a foreign jurisdiction for any act that is substantially related to the profession regulated by the licensee’s California license.

This subdivision is also necessary to implement AB 2138 and to codify the due process principle expressed in case law that a statute may constitutionally prohibit an individual from practicing a lawful profession only for reasons related to their fitness or competence to practice. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 448; *Moustafa v. Board of Registered Nursing* (2018) 29 Cal. App. 5th 1119, 1135.)

- **Subdivision (b):** This subdivision implements AB 2138 and BPC section 481, which require each board to develop criteria to aid it when considering the denial, suspension, or revocation of a license to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions regulated by the board, and to include the specific criteria mandated for consideration by AB 2138’s amendments to BPC 481.

BPC section 480(a) authorizes boards to deny an application for licensure based on conviction for a crime or act substantially related to the licensed business or profession. Likewise, section 490, subsection (a), authorizes boards to suspend or revoke a license on the basis that the licensee was convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession. BPC section 481 requires boards to develop criteria to help evaluate whether a crime is substantially related to the regulated business or profession and the boards to establish the criteria via regulations.

The Legislature’s clear intent in enacting AB 2138 was to reduce licensing and employment barriers for people who are rehabilitated. (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal. App. 5th 1119, 1135.) Accordingly, in AB 2138, the Legislature amended BPC section 480 to limit the boards’ ability to use prior convictions or acts when denying licenses. Beginning July 1, 2020, boards may not deny a license to an applicant because the applicant was convicted of a crime, or due to the acts underlying the conviction, if the applicant has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged. (BPC, § 480, subds. (b) & (c), as added by AB 2138, § 4.)

Absent these circumstances, AB 2138 permits boards to deny a license when an applicant has been convicted of a crime if the crime is substantially related to the qualifications, functions, or duties of the regulated business or profession and one of the following conditions exist:

- 1) the conviction occurred within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of: (a) a serious felony under Penal Code section 1192.7; (b) a registerable offense under Penal Code section 290, subdivision (d)(2) or (3)); or, (c) a felony financial crime that is directly and adversely related to the fiduciary qualifications, functions, or duties of a specified business or profession regulated by the Accountancy Board, Professional Fiduciaries Bureau, Contractors State License Board, Bureau of Security and Investigative Services, and Cemetery and Funeral Bureau;
- 2) the applicant is presently incarcerated for the crime; or
- 3) the applicant was released from incarceration for the crime within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of: (a) a serious felony under Penal Code section 1192.7; (b) a registerable offense under Penal Code section 290, subdivision (d)(2) or (3)); or, (c) a felony financial crime that is directly and adversely related to the fiduciary qualifications, functions, or duties of specified businesses or professions regulated by the Accountancy Board, Professional Fiduciaries Bureau, Contractors State License Board, Bureau of Security and Investigative Services, and Cemetery and Funeral Bureau.

AB 2138 also specifies three criteria that boards must consider when evaluating whether a crime is “substantially related” to the regulated business or profession. Accordingly, the proposed regulation lists each

of these criteria for the Bureau to consider when making a substantial relationship determination as required by law. This proposed addition is necessary to conform the regulation to statute, and to consolidate the Bureau's substantial relationship criteria in one place.

The criteria include all the following:

- **Subdivision (b)(1):** This subdivision provides: “The nature and gravity of the offense.” This subdivision conforms with BPC section 481(b)(1).
- **Subdivision (b)(2):** This subdivision provides: “The number of years elapsed since the date of the offense.” This subdivision conforms with BPC section 481(b)(2).
- **Subdivision (b)(3):** This subdivision provides: “The nature and duties of a household mover.” This subdivision conforms with BPC section 481(b)(3).
- **Subdivision (c):** This subdivision provides which “crimes, professional misconduct, or acts” the Bureau will consider as “substantially related” for “the purposes of subsection (a).” The purpose of this subdivision is to clarify the crimes, professional misconduct, or acts that are substantially related to the qualifications, functions, or duties of a Bureau licensee. These include violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any laws governing the practice of a licensee. This subdivision also lists other conduct that the Bureau has determined are substantially related to the duties of a licensee. The list of crimes, professional misconduct, and acts provided in this subdivision provide guidance on which conduct may trigger the Bureau's authority and follows:
 - **Subdivision (c)(1):** This subdivision provides: “Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 3.1, Division 8 of the Code.”

This subdivision establishes that the Bureau will consider violations and attempted violations of that Act, which is found in “Chapter 3.1, Division 8 of the Code,” as substantially related to the qualifications, functions, or duties of a licensee. The Act governs the requirements of licensees. Accordingly, violations of the Act and attempts, both direct and indirect, to violate the Act, are inherently related to the qualifications, functions, or duties of a licensee. For example, a violation of the billing requirements

outlined in the Act would be a violation of the functions and duties of a household mover licensed by the Bureau. This addition recognizes that a violation or attempted violation of the laws or regulations governing household movers are indicative of potential issues with the individual's competence; problems with personal or professional judgment; and inability to practice in a manner consistent with the health, safety, and welfare of the public. As a result, these proposed changes are necessary to give proper notice to those affected applicants and permit holders that the Bureau considers these violations to be "substantially related" to this profession, which could be a basis for permit denial, suspension, or revocation.

- **Subdivision (c)(2):** This subdivision provides: "Crimes, professional misconduct, or acts involving dishonesty, fraud, deceit, or theft with the intent to benefit oneself or another or to harm another." Proposed subdivision (c)(2)(A) provides: "Crimes, professional misconduct, or acts involving the acquisition or provision of false, altered, forged, counterfeit, or fraudulent statements or documents." Proposed subdivision (c)(2)(B) provides: "Crimes, professional misconduct, or acts involving robbery, burglary, any form of theft, any form of fraud, extortion, embezzlement, money laundering, forgery, false statements, or an attempt to commit any of those offenses."

This subdivision establishes that crimes, professional misconduct, or acts involving dishonesty, fraud, deceit, or theft with the intent to benefit oneself or harm another, including the crimes specified in subdivisions (c)(2)(A) and (c)(2)(B), are substantially related. The inclusion of these types of crimes, professional misconduct, or acts is appropriate because, among other reasons, household movers engage in commercial transactions involving trust between themselves and the public. Commercial transactions require an element of trust in the delivery of products as described, for amounts and under conditions agreed to. Past evidence of crimes, professional misconduct, or acts involving dishonesty, fraud, deceit, or theft relate to concepts of truth and trustworthiness, both in action, as relating to the transportation of household goods and personal effects, in communication to others, and in forming and performing agreements. As a result, these proposed changes are necessary to give proper notice to those affected applicants and permit holders that the Bureau considers these violations to be "substantially related" to this profession, which could be a basis for permit denial, suspension, or revocation. This subdivision also conforms with BPC section 475 and BPC section 19275(d).

- **Subdivision (c)(3):** This subdivision provides: “Crimes, professional misconduct, or acts involving an attempt or conspiracy to commit such crimes listed in [subdivision c].”

This subdivision establishes that crimes, professional misconduct, or acts involving an attempt or conspiracy to commit the crimes listed in subdivision (c) are substantially related. The inclusion of these crimes, professional misconduct, or acts is appropriate for any individuals “attempting” or “conspiring” to commit such conduct and for the same reasons described above. As a result, these proposed changes are necessary to give proper notice to those affected applicants and permit holders that the Bureau considers these violations to be “substantially related” to this profession, which could be a basis for permit denial, suspension, or revocation.

- **Subdivision (c)(4):** This subdivision provides: “Serious felonies, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.”

This subdivision establishes that “serious felonies” and “crime[s] for which registration is required,” as provided in the Penal Code, are substantially related. This subdivision conforms with BPC section 480. BPC section 480(a)(1)(A) provides that certain felony crimes will be classified as exempt from any timeframe or other restriction to evaluate an applicant’s criminal history due to the nature and seriousness of these types of crimes. These exempt crimes include “serious” felonies as defined in Penal Code section 1192.7 and crimes requiring registration as a sex offender under Penal Code section 290(d)(2) and (d)(3).

This new subsection is comparable to subsection (c)(2), discussed above, but it relates to the more serious crimes identified under BPC section 480(a)(1)(A). The Bureau currently does not have regulations that distinguish these types of felonies from others; however, this proposal will adopt such standards. The Bureau proposes this as substantially related criteria since these types of crimes, in the Bureau’s experience, still require a longer track record of appropriate behavior to meet minimum rehabilitation expectations. Establishing this criterion will help the Bureau identify those applicants who present the greatest risk of harm to the public and take possible action to prevent them from obtaining or retaining licensure. Consequently, these proposed changes are necessary to implement this approach to identifying

and evaluating the most serious felonies and crimes requiring sex offender registration as “substantially related” to the qualifications, functions, or duties of a household mover.

- **Subdivision (c)(5):** This subdivision provides: “Crimes, professional misconduct, or acts involving physical violence against others.”

This subdivision establishes that crimes, professional misconduct, or acts involving physical violence against others are substantially related. Such crimes are related because household movers often enter consumers’ homes to prepare for and conduct a move, making the consumers more vulnerable to physical violence. Ensuring the safety of consumers and their families is a priority for the Bureau. As a result, these proposed changes are necessary to give proper notice to those affected applicants and permitholders that the Bureau considers these violations to be “substantially related” to this profession, which could be a basis for permit denial, suspension, or revocation.

- **Subdivision (c)(6):** This subdivision provides: “Crimes, professional misconduct, or acts that indicate a substantial or repeated disregard for the health, safety, or welfare of the public.”

This subdivision establishes that crimes, professional misconduct, or acts indicating a substantial or repeated disregard for the health, safety, or welfare of the public are substantially related.

Section 19234.1 of the Act provides that “[p]rotection of the public shall be the highest priority for the bureau,” thus it would be appropriate for the Bureau to consider these types of crimes as evidencing present or potential unfitness of a household mover to perform the functions authorized by the permit in a manner consistent with the public health, safety, or welfare. The Bureau proposes this as substantially related criteria since these types of conduct, in the Bureau’s experience, still require a longer track record of appropriate behavior to meet minimum rehabilitation expectations due to the nature (substantial disregard) or history of the conduct involved (repeated disregard). In the case of crimes, professional misconduct, or acts that indicate “repeated” disregard for public health, safety or welfare, such conduct shows a tendency to re-offend, which presents great risk of harm to the public. Establishing this criterion will help the Bureau identify those applicants who

present the greatest risk of harm to the public and take possible action to prevent them from obtaining or retaining licensure. Consequently, these proposed changes are necessary to implement this approach to identifying and evaluating these types of crimes, professional misconduct, or acts. These proposed changes are also necessary to give proper notice to those affected applicants and permitholders that the Bureau considers these violations to be “substantially related” to this profession, which could be a basis for permit denial, suspension, or revocation.

- **Subdivision (d):** This subdivision provides: “If an applicant or permitholder wishes to contest a permit denial, suspension, or revocation based on a substantially related conviction, professional misconduct, or act, the applicant or permitholder may request a hearing pursuant to subdivision Sections 19239 or 19268 of the Code to determine if the permit should be denied, suspended, or revoked.”

The purpose of this subdivision is to clarify that when a crime, professional misconduct, or act that is substantially related to the qualifications, functions, or duties of a Bureau licensee results in a registration denial, suspension, or revocation, the applicant or licensee may request a hearing to appeal the Bureau’s decision.

This subdivision is necessary to provide advance notice and clarity to applicants and registrants regarding their due process rights when the Bureau takes action to deny, suspend, or revoke a license on the basis of substantially related criteria. BPC sections 485 and 19239 inform an applicant of their due process rights in the case of a license denial. However, because the substantially related criteria also apply to suspensions and revocations, the Bureau finds it necessary to notify affected parties that due process rights are likewise afforded to existing licensees that experience these types of enforcement actions. This subdivision complies with BPC section 485 and the statutory requirements of sections 19239 and 19268 of the Act, which grants applicants and licensees the right to have a hearing upon the denial, suspension, or revocation of a license. These provisions are repeated for the convenience of the affected party and ensures that an applicant whose application is impacted by conviction of a substantially related crime or professional misconduct, or licensee that has been subjected to disciplinary action because of a substantially related act as provided in BPC section 141, is aware of their due process rights.

Section 2971, Rehabilitation Criteria: The purpose of proposed section 2971 is to comply with the requirements of BPC section 482(b)(1), which require the Bureau to consider whether an applicant or licensee has made a showing of

rehabilitation if the applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation or whether after applying rehabilitation criteria that the applicant or licensee is rehabilitated. As Section 482 does not prescribe rehabilitation criteria, the proposal also provides a specific list of criteria for the Bureau to consider for these applicants and licensees. The criteria are limited to considerations relevant to the crime and the criminal sentence since Section 482 requires the Bureau to consider rehabilitation in the narrow context of an applicant or licensee who completed the criminal sentence without a parole or probation violation. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other professions that the Bureau regulates and other boards under the Department of Consumer Affairs.

BPC section 482 requires boards to develop criteria to evaluate the rehabilitation of an applicant or licensee when considering denying or disciplining a license based on a conviction, acts of dishonesty, fraud, or deceit, or acts that would be grounds for discipline, and to consider evidence of rehabilitation in making such decisions. BPC section 480(b) prohibits boards from denying a license based solely on a misdemeanor conviction if the applicant meets the requirements of the board's criteria of rehabilitation.

Operative July 1, 2020, BPC section 480 prohibits boards from denying a license on the basis that the applicant was convicted of a crime or on the basis of the acts underlying a conviction, if the applicant "made a showing of rehabilitation pursuant to Section 482." (BPC, § 480, subd. (b).) In deciding whether to deny a license based on a conviction, the Bureau must consider evidence of the applicant's rehabilitation, pursuant to the process established in the Act, or its regulations and as directed under BPC section 482. (BPC, § 481, subd. (c); see also BPC, § 493, subd. (b)(2) ["A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation"].)

Proposed section 2971 is necessary to establish criteria the Bureau will use for evaluating rehabilitation, when deciding whether to deny a license based on a criminal conviction. (BPC, § 482, subd. (a).) The Bureau must also decide whether an applicant "made a showing of rehabilitation," if the applicant or licensee completed the criminal sentence at issue without a violation of parole or probation. (BPC, § 482, subd. (b).)

Unlike the substantial relationship criteria, BPC section 482 does not prescribe rehabilitation criteria that boards must consider when denying or taking disciplinary action against a license. Pursuant to BPC section 482, the Bureau must consider whether an applicant or licensee who complied with the terms of parole or probation made a "showing of rehabilitation" when considering a denial or suspension or revocation of a license.

This proposal specifies the criteria for the Bureau to consider when making the

determination that the applicant or licensee who has successfully completed the criminal sentence has made a showing of rehabilitation. In the Bureau's experience, the following criteria are necessary to assist the Bureau in evaluating whether the applicant or licensee "made a showing" of rehabilitation: (1) the nature and gravity of the crime(s); (2) the length(s) of the applicable parole or probation period(s); (3) the extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified; (4) the terms or conditions of parole or probation and the extent to which they bear on the applicant's or registrant's rehabilitation; and (5) the extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification. Since the purpose of evaluating rehabilitation is to determine whether the applicant or licensee is sufficiently reformed to be licensed, but BPC section 482 requires the Bureau to evaluate rehabilitation in the context of an applicant or licensee who completed the criminal sentence without violating parole or probation, each of these criteria provide information specific to the criminal sentence and terms or conditions of parole or probation. This information will allow the Bureau to apply the relevant criteria when making a determination of the applicant's or licensee's rehabilitation. In addition, to provide uniformity with other DCA boards, the criteria are proposed by the Bureau pursuant to DCA's recommended rehabilitation criteria.

Proposed section 2971 also substantially replicates the "rehabilitation criteria" the Bureau uses for its other programs, thus creating uniformity, consistency, and fairness among all programs. Specifically, this section is consistent with the Bureau's "rehabilitation criteria" at Title 4, CCR section 1381 and Title 16, CCR section 2768, respectively.

- **Subdivision (a):** This subdivision provides: "When considering the denial, suspension, or revocation of a permit pursuant to Division 1.5 (commencing with Section 475) of the Code on the grounds that the applicant or permitholder has been convicted of a crime, the Bureau shall consider whether the applicant or permitholder made a showing of rehabilitation if the applicant or permitholder completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Bureau shall consider the following criteria." Subdivisions (a)(1) through (a)(5) list the criteria the Bureau shall consider.

The purpose of this subdivision is to establish the criteria the Bureau must use when determining whether an applicant or licensee has made a showing of rehabilitation if the applicant or licensee completed the criminal sentence at issue without a violation of parole or probation. There are no current regulations that explicitly require the Board to consider whether the applicant made a showing of rehabilitation if the individual completed the criminal sentence at issue without a violation of parole or probation. Since BPC section 482 requires the Bureau to

consider whether, under those circumstances, the applicant or licensee has made a showing of rehabilitation for licensing or disciplinary purposes, the Bureau is adding this new requirement to this regulation to provide adequate notice to applicants and permitholders that this new requirement must be considered by the Bureau prior to considering denial, suspension, or revocation.

The addition of this text at the beginning of this section also allows the Bureau to clearly distinguish between these criteria and other rehabilitation criteria that the Board may use in considering denials, suspensions, or revocations based upon other statutory authority (e.g., see proposed CCR 2971(b) and Bus. & Prof. Code, §§ 141 and 7090)).

Addition of five criteria to be used in evaluating an applicant's or permitholder's showing of rehabilitation if the applicant or permit holder completed the criminal sentence at issue without a violation of parole or probation.

To meet constitutional requirements, courts have found that criminal probation conditions must be reasonably related to the goals of enhancing rehabilitative and deterrence objectives and protecting the victim. (*People v. Jungers* (2005) 127 Cal.App.4th 698, 703.) However, courts typically reject the view that applicants and licensees who comply with the terms of their parole or probation are, per se, rehabilitated:

“The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].)

The purpose of the Bureau's licensing and enforcement proceedings are to protect the health, safety, and welfare of the public. As the courts have stated: “The purpose of such a proceeding is not to punish but to afford protection to the public upon the rationale that respect and confidence of the public is merited by eliminating from the ranks of practitioners those who are dishonest, immoral, disreputable, or incompetent.” (*Borrer v. Department of Investment* (1971) 15 Cal.App.3d 531, 540; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) To further assist the Bureau in exercising its discretion for the protection of the public and with the foregoing legal

principles in mind, the Board proposes to use the following five criteria listed at proposed 2971, subsections (a)(1)-(5) to evaluate whether the applicant or permitholder has made a “showing of rehabilitation” when they have completed their criminal sentence at issue without a violation of parole or probation.

- **Subdivision (a)(1):** This subdivision provides that the Bureau must consider: “The nature and gravity of the crime(s).”

The Bureau must consider the nature and gravity of the crime because this is the offense against which the applicant’s or licensee’s rehabilitative efforts will be evaluated. This criterion is necessary because the nature and gravity of the offense may provide an indication of the level to which the applicant or licensee has shown disregard for the safety and welfare of others.

- **Subdivision (a)(2):** This subdivision provides that the Bureau must consider: “The length(s) of the applicable parole or probation period(s).”

The Bureau will consider the length of the applicable parole or probation period because the length of time that the applicant or licensee served probation or parole without a violation is relevant to evaluating rehabilitation and whether the applicant or permitholder will comply with licensure requirements in the future. (See *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 [“a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice”].)

- **Subdivision (a)(3):** This subdivision provides that the Bureau must consider: “The extent to which the applicable parole or probation period was shortened or lengthened and the reason(s) the period was modified.”

The Bureau must consider the extent to which the parole or probation period was shortened or lengthened, and the reason for any change, because such periods can be shortened or lengthened for good or bad conduct and this may bear on whether the applicant or licensee is sufficiently rehabilitated.

- **Subdivision (a)(4):** This subdivision provides that the Bureau must consider: “The terms or conditions of parole or probation and the extent to which they bear on the applicant’s or permitholder’s rehabilitation.”

The Bureau must consider the terms or conditions of parole or probation and the extent to which they bear on rehabilitation because the actual parole or probation terms can inform the Bureau on whether the applicant or licensee is rehabilitated. Harsher terms may indicate that the applicant or licensee needs a level of oversight by law enforcement that is not appropriate for a Bureau permitholder who interacts directly with the public. Less strict terms may show evidence that the applicant or permitholder poses less of a risk to others or less of a risk to repeat the offense.

- **Subdivision (a)(5):** This subdivision provides that the Bureau must consider: “The extent to which the terms or conditions of parole or probation were modified and the reason(s) for modification.”

The Bureau must consider the extent to which the terms or conditions of parole or probation were modified and the reason for modification because this may be relevant for the Bureau’s determination. Terms that are modified in favor of the applicant or permitholder may demonstrate that the applicant or permitholder has proven he or she poses no risk to others while enhanced terms may demonstrate a lack of rehabilitation or the need for additional supervision by authorities.

- **Subdivision (b):** The purpose of implementing this subdivision is to comply with BPC section 482(b)(2), which requires boards to consider whether, in applying its rehabilitation criteria, an applicant or licensee has made a showing of rehabilitation (if ground for denial or discipline does not involve the conduct specified in proposed subsection (a) of this section). The criteria of subdivision (b) may be applied when: (1) the applicant or licensee has not completed the criminal sentence at issue without a violation of parole or probation; (2) the Bureau does not find a sufficient showing of rehabilitation based on the narrow criteria in subdivision (a); or (3) the denial, suspension, or revocation is based on something other than a crime, such as professional misconduct or being subject to disciplinary action for acts in another state, or one or more grounds specified in BPC section 19239.

As BPC section 482 does not prescribe rehabilitation criteria, this proposal also provides a specific and comprehensive list of criteria for the Bureau to consider for these applicants and licensees, which is not limited to the applicable parole or probation. The proposed criteria incorporate subdivision (a) so that similarly-situated applicants and licensees have the opportunity to be evaluated by the Bureau under the

same set of criteria. The criteria also anticipate that the Bureau may be considering “act(s)” that are the basis for the denial, suspension, or revocation because the Bureau may be evaluating the rehabilitation of an applicant or licensee where the ground for denial, suspension, or revocation involves acts of professional misconduct, rather than a conviction. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other boards under DCA.

BPC section 482 requires boards to develop criteria to evaluate the rehabilitation of an applicant or registrant when considering denying or disciplining a license based on a conviction, acts of dishonesty, fraud, or deceit, or acts that would be grounds for discipline, and to consider evidence of rehabilitation in making such decisions. BPC section 480(b) prohibits boards from denying an applicant a license based solely on a misdemeanor conviction if the applicant meets the requirements of the board’s criteria of rehabilitation.

Operative July 1, 2020, BPC section 480 prohibits boards from denying or disciplining a license on the basis that the applicant was convicted of a crime if the applicant “made a showing of rehabilitation pursuant to Section 482.” (BPC, § 480, subd. (b).) In deciding whether to deny a registration based on a conviction, the Bureau must consider evidence of the applicant’s rehabilitation, pursuant to the process established in the Law or its regulations and as directed under BPC section 482. (BPC, § 481; see also BPC, § 493, subd. (b)(2), [“A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation”].)

To implement AB 2138, it is necessary for the Bureau to establish criteria for evaluating rehabilitation when deciding whether to deny a license based on a conviction. (BPC, § 482, subd. (a).) The Bureau must also decide whether an applicant or licensee “made a showing of rehabilitation,” if the applicant or licensee did not complete the criminal sentence at issue without a violation of parole or probation, but the Bureau finds when applying its rehabilitation criteria, that the applicant or licensee is rehabilitated. (BPC, § 482, subd. (b).) BPC section 480(a)(2) also authorizes boards to deny a license based on prior disciplinary action based on substantially related professional misconduct as determined by another licensing board.

Unlike the substantial relationship criteria, AB 2138 does not prescribe rehabilitation criteria that the Bureau must consider when denying or disciplining a license. Pursuant to BPC 482, the Bureau must consider whether an applicant or licensee who may not have complied with the terms of parole or probation made a showing of rehabilitation sufficient

for licensure, as well as those the Bureau does not find made a sufficient showing of rehabilitation based on the criteria in subsection (a) or when the denial, suspension, or revocation is based on something other than a crime. This allows individuals with criminal convictions two opportunities to demonstrate a showing of rehabilitation before a decision is made on an application or disciplinary case consistent with the public policy behind enactment of AB 2138.

This proposal includes criteria specified in proposed subdivision (a) and adds other criteria. Each of these criteria are designed to focus the Bureau's evaluation on facts and circumstances relevant to an applicant's or licensee's rehabilitation so the Bureau knows which criteria it must review to make a determination. In the Bureau's experience, these proposed standards would be useful when considering denials or discipline based upon crimes, professional misconduct, or acts (as specified), which are grounds for denial and discipline for permit holders and applicants before the Bureau. These standards are needed to provide the Bureau with a fair, balanced, and thoughtful approach to evaluating whether sufficient rehabilitative efforts have been made to satisfy the Bureau that the applicant or permit holder is presently fit or eligible for a permit. As a result, these proposed changes are necessary to give the Bureau discretion to analyze rehabilitation evidence using these criteria when considering a denial, suspension, or revocation of a permit and to give proper notice to those affected regarding what standards the Bureau will use in evaluating whether a "finding" of rehabilitation should be made in accordance with BPC section 482(b)(2).

- **Subdivision (b)(1):** This subdivision provides that the Bureau must consider: "The nature and severity of the act(s), professional misconduct, disciplinary action(s), or crime(s) under consideration."

The Bureau will consider the nature and gravity of the crime or act for the same reasons as discussed for subdivision (a)(1). This is the offense or misconduct against which the Bureau will judge the applicant's or licensee's rehabilitation. This criterion is necessary because the nature and gravity of the offense may provide an indication of the level to which the applicant or permit holder has shown disregard for the safety and welfare of others.

- **Subdivision (b)(2):** This subdivision provides that the Bureau must consider: "The total criminal record and evidence of any act(s), professional misconduct, disciplinary action(s), or crime(s) committed subsequent to the act(s), professional misconduct,

disciplinary action(s), or crime(s) under consideration as grounds for denial, suspension, or revocation.”

The Bureau will also consider the applicant’s or permitholder’s criminal record as a whole. The complete criminal record may provide insight into whether prior offenses will be repeated. In the interest of consumer protection, the Bureau should not provide licenses to individuals who are considered to have a high risk of repeating their past criminal acts. Proposed subdivision (b)(2) would also require the Bureau to consider evidence of any act committed subsequent to the act or offense under consideration. Subsequent acts may also indicate whether the offense will be repeated. It may not be reasonable to provide licenses to individuals who have an extensive history of criminal acts as there may be a high risk of repeating their past criminal offenses.

- **Subdivision (b)(3):** This subdivision provides that the Bureau must consider: “The time that has elapsed since commission of the act(s), professional misconduct, disciplinary action(s), or crime(s) under consideration.”

The Bureau would consider the time that elapsed since commission of the prior crimes or misconduct. The passage of time bears on a person’s rehabilitation, and accordingly, it is necessary to consider this criterion in evaluating rehabilitation.

- **Subdivision (b)(4):** This subdivision provides that the Bureau must consider: “Whether the applicant or permitholder has complied with any terms of parole, probations, restitution, or any other sanctions lawfully imposed against the applicant or permitholder.”

The Bureau will consider whether the terms of parole, probation, restitution or other sanctions imposed on the applicant or licensee were met. The information allowed by this criterion bears on rehabilitation in terms of the applicant’s or licensee’s willingness to make amends from prior misconduct and willingness to conform to the rules of licensure. Accordingly, it is necessary for the Board to consider these elements to evaluate an applicant’s or licensee’s reformation from prior misconduct.

- **Subdivision (b)(5):** This subdivision provides that the Bureau must consider: “The criteria in subsections (a)(1) through (a)(5), as applicable.”

The Bureau will also consider the criteria in subdivision (a). This

is necessary to ensure that all applicants and permit holders convicted of a crime have the opportunity to be evaluated under the same set of rehabilitation criteria. For those who completed their criminal parole or probation without a violation, the Bureau would first evaluate their eligibility for a permit under the criteria in subdivision (a). If the applicant or permit holder did not demonstrate sufficient rehabilitation under the criteria in subdivision (a) or is otherwise ineligible, the Bureau would apply the broader criteria in subdivision (b), including those who did not complete their criminal parole or probation without a violation. This way, similarly-situated applicants and permit holder (those being considered for denial, suspension, or revocation based on a conviction) have the benefit of the same set of criteria.

- **Subdivision (b)(6):** This subdivision provides that the Bureau must consider: “If applicable, evidence that the conviction has been dismissed pursuant to Sections 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or expungement.”

The Bureau will consider evidence of dismissal proceedings pursuant to Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425. The Bureau is prohibited from denying a permit on the basis of a conviction that has been dismissed. (BPC § 480(c).) The Bureau also may not require an applicant to disclose any information or documentation regarding their criminal history per BPC section 480(f)(2).

However, a permit holder’s decision to disclose or the Bureau’s discretion to consider these proceedings as a factor that might demonstrate rehabilitative efforts is still applicable in disciplinary matters involving licensees or permit holders because these areas of law were not amended by AB 2138 (BPC section 480’s prohibitions only apply to applicants). As these recent amendments to BPC section 480 demonstrate, there are other dismissal or “expungement” type proceedings in the California Penal Code other than just Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, and 1203.425 that a criminal defendant may use to obtain relief from the penalties of a conviction. For consistency with these Penal Code provisions and for accurate notice to staff and the regulated community regarding the types of proceedings that the Bureau will consider as a rehabilitative or mitigating factor in disciplinary cases, the Bureau proposes adding references to Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, and 1203.425, “or a comparable dismissal or expungement” to this subsection. Also,

in the event that the criminal offender record information (CORI) report the Bureau receives from the Department of Justice in accordance with BPC section 144 does not disclose that an applicant or permitholder has received a dismissal or expungement, this proposal is necessary to provide notice that in the event a permit is denied, suspended, or revoked based on the substantially related criteria, an applicant or permitholder may submit evidence of dismissal to support their application for a household mover's permit or continued licensure with the Bureau and as evidence of rehabilitation.

- **Subdivision (b)(7):** This subdivision provides that the Bureau must consider: "The applicant or permitholder has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code."

The Bureau will consider a certificate of rehabilitation as evidence of rehabilitation. Although BPC section 480(c) prohibits the Bureau from denying a license to anyone who has obtained a certificate of rehabilitation, this proposal would make clear that a certificate of rehabilitation may also be considered as evidence of rehabilitation in the event of a suspension or revocation. For applicants, as noted above in the rationale for subdivision (b)(6), this is necessary in the event the Bureau is unaware of such certification and to provide notice that it will be considered as evidence of rehabilitation.

- **Subdivision (b)(8):** This subdivision provides that the Bureau must consider: "Evidence, if any, of rehabilitation submitted by the applicant or permitholder."

The Bureau will consider any evidence of rehabilitation submitted on behalf of the applicant or licensee. The Bureau is required to consider such evidence under BPC section 481(c); however, it is necessary to retain this requirement in order to consolidate the Bureau's rehabilitation criteria in one place.

- **Subdivision(c):** This subdivision provides: "When considering a petition for reinstatement of a permit under the provisions of Section 11522 of the Government Code, the Bureau shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in this section."

Pursuant to section 11522 of the Government Code, a person whose license has been revoked or suspended may petition the Bureau for reinstatement after "a period of not less than one year has elapsed from

the effective date of the decision or from the date of the denial of a similar petition.” The purpose of this subdivision is to establish that the Bureau will use the rehabilitation criteria specified in this proposed section 2971 when considering such a petition.

This subdivision is necessary to inform permitholders about their right to petition for reinstatement and the process the Bureau will follow when evaluating the petition. This subdivision also promotes fairness by ensuring that all similarly-situated applicants and licensees are provided the opportunity to be evaluated under the same set of rehabilitation criteria.

Section 2972, Advertising: The purpose of proposed section 2972 is to consolidate certain requirements regarding advertising by household movers that exist in other authorities. To promote consumer awareness and aid consumers in making more informed decisions about household movers, proposed section 2972 also establishes an advertising requirement for brokers and requires household movers to display their permit numbers on their vehicles, as specified.

- **Subdivision(a):** This subdivision provides: “A household mover shall include their name and Bureau-issued permit number in all forms of advertising, solicitation, or other presentments made to the public in connection with the rendition of household mover services for which a permit is required by the Act.”

The purpose of this subdivision is to require household movers to include their license numbers in all forms of advertisements or presentments made to the public in connection with the rendition of household mover services.

This subdivision is necessary to increase licensure transparency in the household mover industry by providing consumers with the household mover’s license number information. BPC section 137 authorizes all boards or bureaus within the Department of Consumer Affairs to require professional license numbers to appear on all forms of advertisements or presentments made to the public. That statute provides consumers with information they can use to identify licensed individuals before consulting with or contracting for services. There is no current regulation requiring household movers to provide their names and “Bureau-issued permit number” (to avoid confusion regarding which “permit” is required to be displayed) on all forms of advertising, soliciting, or presentments to the public. This leaves consumers at risk of contracting with an unlicensed individual performing services or not knowing the permit status of the person or entity performing services on their behalf. Licensure by the Bureau helps ensure minimum standards in the household movers’ profession are continuously met and enforced. This

proposal would help consumers make informed decisions about licensed household mover services that are required to obtain a permit (those services for which a permit is required by the Act per BPC section 19237) and implement the consumer notice protections established under BPC section 137 to require a household mover to include their Bureau-issued permit on all forms of advertising, solicitation, or other presentments made to the public.

- **Subdivision(b):** This subdivision provides: “In addition to the requirements of subsection (a), any advertisement by a broker shall communicate that the broker does not take possession of the cargo or assume responsibility for the cargo and is not party to the agreement for moving services.”

The purpose of this subdivision is to require brokers to expressly state and make clear in advertisements that their role in household moves is limited.

This subdivision is necessary to clarify for consumers that, although brokers are defined as “household movers” by the Act, brokers only engage in the act of “arranging” the move pursuant to BPC section 19225.5(a). The Bureau has found that advertisements by brokers do not always make clear their limited role in a household move. By requiring brokers to disclose that they do not take possession of a consumer’s cargo, or assume responsibility for it, and that they are not party to moving services agreements, consumers will be put on notice that only the household mover who conducts the move will be responsible for all aspects of the move, including any damage or loss that occurs to a consumer’s cargo (e.g., see BPC sections 19245 and 19246).

- **Subdivision(c):** This subdivision provides: “Household movers who engage in transportation of household goods shall display the Bureau-issued permit number on every vehicle operated by the household mover and shall comply with the requirements of Section 19236 of the Code. The permit number must be legible and not less than 1 ½ inches in height.”

BPC section 137 authorizes the Bureau to “promulgate regulations requiring licensees to include their license numbers in any advertising, soliciting, or other presentments to the public.” The purpose of this subdivision is to implement this authority and require household movers to display their permit number on every vehicle they operate since this is often a primary method that household movers use to advertise their services. For the reasons noted above in the rationale for subdivision(a), such disclosures ensure a more informed consumer,

which will help consumers make educated decisions about who to trust with their household goods and personal effects. The Board also anticipates that licensed household movers in California will benefit from the proposal by distinguishing those household movers authorized by law to operate in California from unlicensed individuals.

This subdivision is also necessary to implement BPC section 19236, which authorizes the Bureau to require, by regulation, that household movers display certain information on their vehicles. In accordance with BPC sections 137 and 19236, this subdivision mandates a household mover to display their Bureau-issued permit number on every vehicle they operate. To promote consumer awareness and easy access to this information, this subdivision requires the permit number to be legible and at least 1 ½ inches in height. This standard is the same as those required for the display of name, business address and business license number on commercial vehicles for specified types of licensed contractors in law at BPC section 7029.5.

Underlying Data

Technical, theoretical, or empirical studies, reports, or documents relied upon:

1. Senate Bill (SB) 19 (Hill, Chapter 421, Statutes of 2017):
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB19
2. Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018):
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2138
3. Minutes from Bureau of Household Goods and Services Household Movers Regulations Workshop – February 7, 2019:
https://bhgs.dca.ca.gov/about_us/meetings/minutes_20190207hbm.pdf

Economic Impact Assessment:

The Bureau has determined that this regulatory proposal will have the following effects:

- It will not create jobs within the State of California because the regulations are intended to establish enforcement guidelines for individuals to comply with current law.

Additionally, while AB 2138 is intended to reduce barriers to licensure, the Bureau has been complying with the provisions under current law. As a result, the Bureau does not anticipate any additional jobs to be created from the regulations.

- It will not create new businesses within the State of California because the regulations are intended to establish enforcement guidelines for individuals to comply with the current law.

Additionally, while AB 2138 is intended to reduce barriers to licensure, the Bureau has been complying with the provisions under current law. As a result, the Bureau does not anticipate any additional businesses to be created from the regulations.

- It will not affect the expansion of businesses currently doing business within the State of California because this proposal is adopting regulations for an existing industry that was already regulated by the state and transferred to the Bureau for oversight.
- This regulatory proposal will have a positive impact on the health and welfare of California citizens to the extent the prospect of being cited for violations promotes compliance by the household mover industry, thereby strengthening consumer protection. This regulatory proposal would also increase access to licensed businesses, which will allow for greater consumer choice and create a more competitive market.
- This regulatory proposal does not affect worker safety because it does not propose regulations that impact worker safety.
- This regulatory proposal has no effect on the environment because it does not involve the environment.

Business Impact:

The Bureau has made an initial determination the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

These proposed regulations establish an enforcement program for household movers. In the event a licensee violates the Bureau's laws and regulations in a manner that warrants a citation, the citation and fine issued is not sufficient to eliminate a particular job or household mover's business. The fine issued is avoidable, should the licensee comply with laws and regulations of the Bureau.

It is paramount household movers follow the appropriate procedures and business processes in accordance with current law and the Bureau's regulations. The purpose of the proposed regulations is to ensure household movers are compliant and promote best business practices for California consumers.

The Bureau estimates up to 100 citations will be issued to household movers per year with an average fine amount of \$500, which would result in penalty payments of \$50,000 per year and up to \$500,000 over a ten-year period as follows:

Bureau of Household Goods and Services Citations & Fines - Economic Impact (costs)													
			Years Ongoing										
Item	Ave Fine Amt	Citations Per Yr	Yr-1	Yr-2	Yr-3	Yr-4	Yr-5	Yr-6	Yr-7	Yr-8	Yr-9	Yr-10	Total
Fine Payment	\$500	100	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$500,000
Total Costs:			\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$500,000

The provisions related to AB 2138 will also not have a significant adverse economic impact on businesses. This initial determination is based on the purpose of AB 2138, which seeks to reduce barriers to licensure for applicants with criminal histories or prior discipline. However, the Bureau has been in compliance with AB 2138 since it became operative on July 1, 2020 and does not anticipate any significant impacts to businesses resulting from the regulations.

Fiscal Impact Assessment:

The Bureau anticipates workload and costs related to the issuance of citations and fines. Total workload and costs are estimated to range from approximately \$254,000 to \$320,000 per year and up to \$2.9 million over a ten-year period including:

Citation and Fines: The Bureau estimates 100 citations and fines will be issued per year and anticipates workload costs of approximately \$2,100 per citation, which results in workload costs ranging from approximately \$210,000 to \$274,000 per year and up to \$2.4 million over a ten-year period as follows:

Bureau of Household Goods and Services Citations & Fines - Fiscal Impact (workload costs)													
			Years Ongoing										
Item	Costs	Citations Per Yr	Yr-1	Yr-2	Yr-3	Yr-4	Yr-5	Yr-6	Yr-7	Yr-8	Yr-9	Yr-10	Total
Issuance of Citation & Fine (SSA)	\$2,100	100	\$210,000	\$216,300	\$222,789	\$229,473	\$236,357	\$243,448	\$250,751	\$258,274	\$266,022	\$274,002	\$2,407,415
Total Costs:			\$210,000	\$216,300	\$222,789	\$229,473	\$236,357	\$243,448	\$250,751	\$258,274	\$266,022	\$274,002	\$2,407,415

SSA: Staff Services Analyst @ \$94/hr (includes DCA Distributed Admin) & a three percent annual salary rate growth factor

Citation Appeals: The Bureau estimates 5 percent (5) of citations issued per year will be appealed beginning with an informal conference held by the Informal Citation Review Conference Panel to affirm, modify, or dismiss the citation. The Bureau anticipates workload costs of approximately \$1,300 per appeal, plus Attorney General and Office of Administrative Hearing costs of \$7,500, which results in total costs ranging from approximately \$44,000 to \$46,000 per year and up to \$450,000 over a ten-year period as follows:

Bureau of Household Goods and Services Citation Appeals - Fiscal Impact (workload costs)													
Item	Costs	Appeals Per Yr	Years Ongoing										Total
			Yr-1	Yr-2	Yr-3	Yr-4	Yr-5	Yr-6	Yr-7	Yr-8	Yr-9	Yr-10	
Issuance of Citation & Fine (SSA)	\$1,300	5	\$6,500	\$6,695	\$6,896	\$7,103	\$7,316	\$7,535	\$7,761	\$7,994	\$8,234	\$8,481	\$74,515
AG/OAH	\$7,500	5	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$375,000
Total Costs:			\$44,000	\$44,195	\$44,396	\$44,603	\$44,816	\$45,035	\$45,261	\$45,494	\$45,734	\$45,981	\$449,515

SSA: Staff Services Analyst @ \$94/hr (includes DCA Distributed Admin) & a three percent annual salary rate growth factor
Attorney General/Office of Administrative Hearings

Revenues: The Bureau estimates up to 100 citations will be issued to household movers per year with an average fine amount of \$500, which would result in penalty revenues of \$50,000 per year and up to \$500,000 over a ten-year period as follows:

Bureau of Household Goods and Services Citations & Fines - Fiscal Impact (revenues)													
Item	Ave Fine Amt	Citations Per Yr	Years Ongoing										Total
			Yr-1	Yr-2	Yr-3	Yr-4	Yr-5	Yr-6	Yr-7	Yr-8	Yr-9	Yr-10	
Fine Payment	\$500	100	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$500,000
Total Revenues:			\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$500,000

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No such alternatives have been proposed, however, the Bureau welcomes comments from the public.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the Bureau welcomes comments from the public.