

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF AUCTIONEER EXAMINERS

[49 PA. CODE CH. 1]

Licensure by Endorsement

The State Board of Auctioneer Examiners (Board) amends § 1.3 (relating to definitions) and adds §§ 1.27 and 1.28 (relating to licensure by endorsement; and provisional endorsement license) to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The provisions of 63 Pa.C.S. § 3111 (relating to licensure by endorsement) require licensing boards and commissions to “issue a license, certificate, registration or permit to an applicant to allow practice in this Commonwealth” provided the applicant meets the following criteria: “[h]olds a current license, certificate, registration or permit from another state, territory or country” whose licensing “requirements are substantially equivalent to or exceed the requirements. . . in this Commonwealth;” “[d]emonstrates competency;” “[h]as not committed any act that constitutes grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice that profession or occupation in this Commonwealth, unless the board or commission determines” this conduct is not an impediment to granting the “license, certificate, registration or permit;” “[i]s in good standing and has not been disciplined by the jurisdiction that issued the license, certificate, registration or permit unless the. . . board or. . . commission determines” this conduct is not an impediment to granting the “license, certificate, registration or permit;” and the applicant “[p]lays any fees[, as] established by. . . regulation.” Additionally, 63 Pa.C.S. § 3111 authorizes boards and commissions to “issue a provisional license, certificate, registration or permit” while an applicant is satisfying remaining requirements for licensure by endorsement, for which the Board must set by regulation the terms of expiration. Further, section 32 of the Auctioneer Licensing and Trading Assistant Registration Act (act) (63 P.S. § 734.32), authorizes the Board to adopt rules and regulations necessary for the proper administration and enforcement of the act.

The act of July 1, 2020 (P.L. 575, No. 53) added 63 Pa.C.S. § 3111 as part of the consolidation of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) into 63 Pa.C.S. Chapter 31 (relating to powers and duties). The text of 63 Pa.C.S. § 3111 was originally added to Act 48 by the act of July 1, 2019 (P.L. 292, No. 41).

Background and Need for the Amendments

This final-form rulemaking is needed to effectuate 63 Pa.C.S. § 3111, which requires the Board to issue a license to an applicant licensed in another jurisdiction who meets the requirements for licensure by endorsement as set forth in 63 Pa.C.S. § 3111. Under 63 Pa.C.S.

§ 3111, the Board must determine whether the other jurisdiction’s standards for licensure are substantially equivalent to or exceed those established by the Board. Additionally, 63 Pa.C.S. § 3111 requires the Board to determine the methods by which an applicant can demonstrate competency, such as completion of continuing education or having experience in the profession or occupation for at least 2 of the 5 years immediately preceding the filing of the application. Under 63 Pa.C.S. § 3111(b)(2), the Board must also establish, by regulation, the expiration of provisional endorsement licenses.

This final-form rulemaking sets forth the Board’s criteria for eligibility for licensure by endorsement, including the specific methods required for an applicant to demonstrate competency. It also sets forth the requirements for granting a provisional endorsement license. Under 63 Pa.C.S. § 3111, the Board may establish appropriate fees for this licensure. Accordingly, the Board has determined that the fee for submission of an application for licensure by endorsement shall be the same as the corresponding application fee for initial licensure under § 1.41 (relating to schedule of fees).

A notice of proposed rulemaking was published at 52 Pa.B. 2969 (May 21, 2022), for 30 days of public comment. The Board received one public comment from the Pennsylvania Auctioneers Association. The Professional Licensure Committee of the House of Representatives (HPLC) submitted comments and separately submitted a joint letter co-signed by the Consumer Protection and Professional Licensure Committee of the Senate (SCP/PLC). As part of its review under the Regulatory Review Act, the Independent Regulatory Review Commission (IRRC) provided comments and recommendations. The following represents a summary of the comments received and the Board’s responses.

Summary of the HPLC Comments and the Board’s Responses

The HPLC commented on § 1.27(a)(1)(i) which requires the applicant to provide a copy of the current law and regulations, including the scope of practice, from the jurisdiction where the applicant holds an active license. The HPLC expressed a concern that this requirement is not explicitly stated in the statute and suggested it should be Board Counsel’s responsibility to research the laws and regulations of the jurisdiction from which the applicant is applying.

For the following reasons, the Board is not amending § 1.27(a)(1)(i) in this final-form rulemaking: 1) it is the applicant’s burden to prove to the Board that qualifications for licensure are met; 2) applicants, as a practical matter, generally have access to the laws and regulations of the jurisdiction in which they are licensed, and—particularly when an applicant is licensed outside of the United States—are in a position to obtain those laws and regulations and provide them to the Board; and 3) placing the responsibility on the Board and its legal counsel to research the laws and regulations of other jurisdictions, particularly other countries, will likely be burdensome and costly to the Board. That financial burden, in turn, would have to be passed along to the Board’s licensees in the form of increased biennial renewal fees, or alternatively, if the costs were applied towards application fees, the cost to apply for a license would have to be increased.

While the Board will take steps to verify the laws and regulations of other jurisdictions, the Board believes having the applicant provide that initial information is the most appropriate, efficient and cost-effective approach.

The HPLC next commented on § 1.27(a)(4), recommending that the Board clarify this subsection by specifying the type of discipline that may preclude licensure and the time frame for when this discipline occurred. While the HPLC suggested that the Board distinguish between formal discipline and a complaint, the Board does not think it is appropriate to make this type of distinction because a complaint is neither formal nor informal discipline. Additionally, the Board does not believe it is appropriate to predetermine the type of discipline or the time frame within which the discipline occurred. Instead, the Board believes it is appropriate to evaluate discipline on a case-by-case basis in accordance with subsection (c).

As indicated in § 1.27(c), the Board is authorized to determine that prohibited acts and disciplinary actions are not an impediment to licensure under 63 Pa.C.S. § 3111. In determining whether a prohibited act or disciplinary action is an impediment to licensure, the Board is dutybound to apply the caselaw and other applicable laws. See *Secretary of Revenue v. John's Vending Corp.*, 453 Pa. 488, 309 A.2d 358 (1973); *Bethea-Tumani v. Bureau of Professional and Occupational Affairs, State Board of Nursing*, 993 A.2d 921 (Pa. Cmwlth. 2010). As part of that analysis, the Board may consider the facts and circumstances surrounding the prohibited act or disciplinary action, and other factors such as an increase in age or maturity of the individual since the date of the prohibited act or disciplinary action, any disciplinary history or lack of disciplinary history before and after the date of the prohibited act or disciplinary action, the successful completion of education and training activities relating to the prohibited act or disciplinary action and any other information relating to the fitness of the individual for licensure.

The HPLC also commented on § 1.28(b)(1), which would allow the Board to issue a provisional license for less than a year. Section 3111(b)(2) of 63 Pa.C.S. requires the Board to establish an expiration date for provisional licenses in its regulations. The Board, along with most of the other boards and commissions under the Bureau of Professional and Occupational Affairs (Bureau), has determined that an expiration of 1 year is generally an appropriate time frame for most—but not necessarily all—applicants. In the interest of public safety, the Board determined that providing some discretion is necessary for instances where the remaining licensure requirements can and should be completed in less than a full year. For example, if an applicant merely needed to complete ten additional continuing education credits, it generally should not require a full year to obtain these credits. Another example would be an applicant who needs 2 additional months of experience to meet the competency requirements. A provisional license of a duration that is less than a full year, such as one that expires after perhaps 4 months or 6 months, would typically be a sufficient amount of time to meet this requirement.

It is in the public interest to ensure that a licensee becomes qualified or competent as expeditiously as possible. While the Board certainly will provide a full year when the facts warrant it, the Board wants its licensees to be qualified and competent as soon as practicable. The

Board anticipates this discretion would be utilized in a situation where an applicant's obligations to meet any remaining requirements are minimal. To allow a full 12 months in all situations opens the door for an individual to practice for many months before they even attempt to meet the remaining requirements. In the interest of public safety, the Board believes it is best for applicants who have been issued a provisional license to meet the remaining requirements within a time period closely tied to the length of time reasonably necessary to meet the specific requirements in question.

The final comment by the HPLC suggests an amendment to § 1.28(d) to delete the language that would preclude an individual from being issued more than one provisional license. A provisional license is an unrestricted license that is issued to provide a short period of time to an applicant to practice while simultaneously working to meet the Board's licensure by endorsement requirements. While the Board would typically not issue an unrestricted license to an applicant who has not met the licensure standards or who has not proven competency, the General Assembly gave boards the discretion to do so by means of a provisional license, as long as there was an established expiration for the provisional license. The Board is concerned that allowing for multiple provisional licenses could be used as a mechanism to circumvent licensure standards and, therefore, does not believe it is necessary or appropriate to allow multiple provisional licenses.

The Board's regulations do allow a provisional license holder to request an extension of the provisional license for up to 1 additional year. The Board believes this time frame is more than sufficient. Moreover, there is nothing that prevents an applicant who held a provisional license that expired from reapplying for a license by endorsement under § 1.27. However, the applicant in that instance would not be eligible for an additional provisional license. Ultimately, the Board determined that protection of the public warrants the limitation of one provisional license per applicant to ensure the citizens of this Commonwealth are receiving services from qualified and competent licensees.

Summary of IRRC's Comments and the Board's Responses

IRRC, in its comment, identified the comments provided by the HPLC, and indicated that it will consider the HPLC comments and the Board's responses to the issues raised in determining whether the regulation is in the public interest. The Board's responses to the HPLC comments are set forth in the summary of the HPLC comments and the Board's responses.

IRRC first referenced a joint letter from the Majority and Minority Chairs of the HPLC and the SCP/PLC in which the Board and the Bureau were urged to prioritize the promulgation of this final-form rulemaking. The Board and Bureau wish to make clear that the absence of fully promulgated regulations has not impacted the ability of any of the Bureau's boards and commissions to implement Act 41. The Bureau and the Board are not aware of any instances where the absence of fully promulgated regulations caused a barrier to employment for applicants from other jurisdictions. Similarly, to the Bureau's and Board's knowledge, there have not been any delays in moving professionals into the workforce where the delay resulted from the lack of regulations.

In fact, hundreds of licenses have been issued to applicants coming from other jurisdictions under the licensure by endorsement provisions of Act 41 (now codi-

fied at 63 Pa.C.S. § 3111). When Act 41 was enacted, the boards and commissions immediately drafted interim competency methods and other policies and procedures related to licensure by endorsement under the newly passed statute. This enabled Act 41 implementation to begin upon the act's effective date, while allowing the necessary time to initiate regulations and move them through the entire rulemaking process, from the drafting of proposed regulations to publication of the final-form regulations.

The licensure by endorsement regulations that have not yet been fully promulgated are not the only rulemakings currently in progress within the Bureau's 29 boards and commissions. There are dozens of others, many of which also require priority treatment, from fee packages that are needed to keep the boards fiscally sound and operational, to many other rulemakings that impact the ways in which professionals train, practice and qualify for licensure. At any given time, the Bureau has well over 100 packages in various stages of the regulatory development and promulgation process. The 23 boards and commissions still working on their licensure by endorsement regulations will continue to do so, mindful of the importance of completing them as soon as possible.

IRRC next asked what standard would be used to determine whether a jurisdiction is substantially equivalent for the applicant to show competency by experience under § 1.27(a)(2), and inquired as to whether this provision places an additional burden on the applicant or the Board given that the experience may have occurred in several different jurisdictions. The Board reads § 1.27(a)(2) in conjunction with the substantial equivalency requirement under § 1.27(a)(1). If the Board determines that the licensing jurisdiction where the applicant has a current license in good standing has licensing standards that are substantially equivalent to those established by the Board for purposes of § 1.27(a)(1), substantial equivalency will also be established for purposes of assessing competency by experience under § 1.27(a)(2). If the applicant wishes to have the Board consider experience gained in one or more additional jurisdictions, the Board would make the same substantial equivalency analysis. In the same way that the Board would not grant a license by endorsement under 63 Pa.C.S. § 3111 to an individual who is licensed in a jurisdiction with requirements that are not substantially equivalent, the Board does not believe that experience gained in a jurisdiction that falls short of being substantially equivalent should be counted towards the years of experience for purposes of establishing competency. Other than providing a copy of the laws and regulations of the other jurisdiction, there is no initial burden on the applicant to actually provide its own substantial equivalency analysis, nor is the applicant expected to make a comparison between the Board's laws, rules and requirements on the one hand, versus the laws, rules and requirements of another jurisdiction on the other. The Board will perform that analysis.

IRRC also asked whether the Board has considered creating and publishing an annual determination of those jurisdictions in the United States which have laws and regulations substantially equivalent to the Commonwealth. The Board would initially note that since the inception of Act 41, the Board has not received any applications for licensure by endorsement. Not all jurisdictions license auctioneers, and those that do periodically update and change their licensing requirements. The

Board cannot assume that the laws and regulations of a given jurisdiction will remain the same for any extended period of time. The Board does an individual assessment of each applicant at the time the application is submitted. This ensures that the Board is using the most up-to-date and accurate information available when making decisions on these applications, to best ensure that all auctioneers licensed under 63 Pa.C.S. § 3111 are competent and safe to practice the profession. As such, and given the low volume of expected applications for licensure by endorsement under 63 Pa.C.S. § 3111, the Board believes that these provisions in this final-form rulemaking balance the protection of the public health, safety and welfare with the burden and cost to applicants and the Board.

IRRC also requested that the Regulatory Analysis Form (RAF) be updated to include a list of specific persons and groups involved in developing and drafting the proposal. The Board has attached a list of stakeholders to the final RAF.

IRRC asked the Board to provide a specific estimate of the costs to the regulated community for translation of an applicable law, regulation or rule, and to address the cost of the Criminal History Record Check (CHRC) fee. Translating the law, regulation or other rule to English is a necessary part of the application process. If the Board is unable to understand the other jurisdiction's requirements, it will not be able to determine whether those requirements are substantially equivalent. The Board does not anticipate that many applicants will incur this cost. Nevertheless, the Board anticipates the cost for translation would be approximately \$25 per page to translate from the most common languages. With regard to the CHRC costs, the Commonwealth's fee of \$22 and Federal Bureau of Investigation fee of \$18 have been included in the RAF as requested. The Board is unable to determine with certainty the CHRC fees that would be assessed by other states, territories or countries. The RAF has been updated to reflect these costs to the regulated community.

Summary of the Pennsylvania Auctioneers Association's Public Comment and the Board's Response

The Pennsylvania Auctioneers Association (Association) provided its support for the proposed rulemaking but commented that the regulation may have a negative impact on slowing down the licensing process currently in place for reciprocity. The Board determined that, due to the projected low number of applicants applying for licensure by endorsement under 63 Pa.C.S. § 3111, the review and processing of these applications would not have a negative impact on the current licensing processes of the Board. The Association also asked the Board to consider adding a residency requirement to the regulation. The Board considered these comments at its public meeting on September 12, 2022, at which the Association was in attendance. After discussion, it was decided that the Board did not have the authority to amend the regulation as suggested because residency is not a requirement to practice as an auctioneer in this Commonwealth under the act (63 P.S. §§ 734.1—734.34).

Miscellaneous Clarifications

Twenty-seven Boards under the Bureau are drafting and publishing regulations for licensure by endorsement under 63 Pa.C.S. § 3111. In an effort to keep language in the regulations as consistent as possible, the Board is amending the regulations based upon comments from the review process of other regulations. The amendments are stylistic and do not have a substantive impact on the regulations.

The Board amends § 1.3 to correct the name of the act.

The Board amends § 1.27(a)(2)(i) to clarify the requirement that the experience required for competency must have been obtained under a license, certificate, registration or permit in a jurisdiction or jurisdictions that have substantially equivalent licensure standards. The amendment makes clear that the Board will consider experience accumulated in more than one jurisdiction when calculating the required experience.

The Board adds the term “discipline” to the heading of § 1.27(c) to be consistent with the language in § 1.27(a)(3) and (4) and to clarify that subsection (c) applies not just to prohibited acts but also to discipline.

The Board adds § 1.28(c)(3) to clarify that the expiration of a provisional license is a terminating event.

Fiscal Impact and Paperwork Requirements

This final-form rulemaking should have no adverse fiscal impact on the Commonwealth or its political subdivisions. The costs to the Board related to processing applications for licensure by endorsement under 63 Pa.C.S. § 3111 will be recouped through fees paid by applicants. Applicants for licensure by endorsement under 63 Pa.C.S. § 3111 will pay the same application fee as all other applicants for initial licensure under § 1.41.

Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 11, 2022, the Board submitted a copy of the proposed rulemaking, published at 52 Pa.B. 2969, to IRRC and to the chairpersons of the SCP/PLC and the HPLC. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Board provided IRRC, the SCP/PLC and the HPLC copies of comments received as well as other documents when requested. In preparing the final-form regulation, the Board considered all comments received.

Under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on April 19, 2024, the Board delivered this final-form rulemaking to IRRC, the SCP/PLC and the HPLC. Under section 5.1(j.2) of the Regulatory Review Act, the final-form rulemaking was deemed approved by the SCP/PLC and the HPLC on June 19, 2024. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 20, 2024, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law, and all comments received were considered in drafting this final-form rulemaking.

(3) This final-form rulemaking does not include any amendments that would enlarge the scope of the proposed rulemaking published at 52 Pa.B. 2969.

(4) This final-form rulemaking is necessary and appropriate for the administration of 63 Pa.C.S. § 3111 and the act.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 1, are amended by amending § 1.3 and adding §§ 1.27 and 1.28 to read as set forth in Annex A.

(b) The Board shall submit this final-form rulemaking to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall submit this final-form rulemaking to IRRC, the SCP/PLC and the HPLC as required by law.

(d) The Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau as required by law.

(e) This final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

GERALD A. RADER,
Chairperson

(Editor’s Note: See 54 Pa.B. 3855 (July 6, 2024) for IRRC’s approval order.)

Fiscal Note: Fiscal Note 16A-6412 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 1. STATE BOARD OF AUCTIONEER EXAMINERS

GENERAL PROVISIONS

§ 1.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Auctioneer Licensing and Trading Assistant Registration Act (63 P.S. §§ 734.1—734.34).

Board—The State Board of Auctioneer Examiners.

Jurisdiction—A state, territory or country.

LICENSURE

§ 1.27. Licensure by endorsement.

(a) *Requirements for issuance.* To be issued a license by endorsement under 63 Pa.C.S. § 3111 (relating to licensure by endorsement), an applicant shall satisfy all of the following conditions:

(1) Have a current license, certificate, registration or permit in good standing to practice auctioneering in another jurisdiction whose standards are substantially equivalent to or exceed those established under sections 3(e) and 5(c) of the act (63 P.S. §§ 734.3(e) and 734.5(c)) and § 1.24 (relating to application for auctioneer license for individuals). The following apply:

(i) An applicant shall submit a copy of the current applicable law, regulation or other rule governing licensure, certification, registration or permit requirements and scope of practice in the jurisdiction that issued the license, certificate, registration or permit.

(ii) If the applicable law, regulation or other rule is in a language other than English, at the applicant's expense, the applicable law, regulation or other rule shall be translated by a professional translation service and verified to be complete and accurate.

(iii) The copy of the applicable law, regulation or other rule must include the enactment date.

(2) Demonstrate competency by one of the following:

(i) Experience in the practice of auctioneering by demonstrating, at a minimum, that the applicant has actively engaged in the practice of auctioneering under a license, certificate, registration or permit in a jurisdiction or jurisdictions that have substantially equivalent licensure standards, for at least 2 of the 5 years immediately preceding the filing of the application with the Board.

(ii) If the applicant does not have experience in the practice of auctioneering for at least 2 of the 5 years immediately preceding the filing of the application with the Board as provided in subparagraph (i), achieving a passing score on the Pennsylvania Auctioneer Licensure Examination within the 5 years immediately preceding the filing of the application with the Board.

(3) Have not committed an act that constitutes grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice auctioneering under section 20(a) of the act (63 P.S. § 734.20(a)).

(4) Have not been disciplined by the jurisdiction that issued the license, certificate, registration or permit.

(5) Have paid the application fee for auctioneer license as required under § 1.41 (relating to schedule of fees).

(6) Have applied for licensure in accordance with this chapter in the manner and format prescribed by the Board.

(b) *Interview and additional information.* An applicant may be required to appear before the Board for a personal interview and may be required to submit additional information, including supporting documentation relating to competency and experience. The applicant may request the interview to be conducted by video teleconference for good cause shown.

(c) *Prohibited acts and discipline.* Notwithstanding subsection (a)(3) and (4), the Board may, in its discretion, determine that an act prohibited under section 20(a) of the act or disciplinary action by a jurisdiction is not an impediment to licensure under 63 Pa.C.S. § 3111.

§ 1.28. Provisional endorsement license.

(a) *Provisional endorsement license.* The Board may, in its discretion, issue a provisional endorsement license to an applicant while the applicant is satisfying remaining requirements for licensure by endorsement under § 1.27 and 63 Pa.C.S. § 3111 (relating to licensure by endorsement).

(b) *Expiration of a provisional endorsement license.*

(1) An individual holding a provisional endorsement license may practice for up to 1 year after issuance of the provisional endorsement license. The Board, in its discretion, may determine that an expiration date of less than 1 year is appropriate.

(2) Upon a written request and a showing of good cause, the Board may grant an extension of no longer than 1 year from the expiration date of the provisional endorsement license.

(c) *Termination of a provisional endorsement license.* A provisional endorsement license terminates if any of the following occurs:

(1) The Board completes its assessment of the applicant and denies or grants the license.

(2) The holder of the provisional license fails to comply with the terms of the provisional endorsement license.

(3) The provisional endorsement license expires.

(d) *Reapplication.* An individual may reapply for licensure by endorsement under § 1.27 after expiration or termination of a provisional endorsement license; however, the individual may not be issued a subsequent provisional endorsement license.

[Pa.B. Doc. No. 24-1048. Filed for public inspection July 26, 2024, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF CRANE OPERATORS

[49 PA. CODE CH. 6]

Licensure by Endorsement

The State Board of Crane Operators (Board) adds §§ 6.16 and 6.17 (relating to licensure by endorsement; and provisional endorsement license) to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The provisions of 63 Pa.C.S. § 3111 (relating to licensure by endorsement) require licensing boards and commissions to “issue a license, certificate, registration or permit to an applicant to allow practice in this Commonwealth” provided the applicant meets the following criteria: “[h]olds a current license, certificate, registration or permit from another state, territory or country” whose licensing “requirements are substantially equivalent to or exceed the requirements. . . in this Commonwealth;” “[d]emonstrates competency;” “[h]as as not committed any act that constitutes grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice that profession or occupation in this Commonwealth unless the board or commission determines” this conduct is not an impediment to granting the “license, certificate, registration or permit;” “[i]s in good standing and has not been disciplined by the jurisdiction that issued the license, certificate, registration or permit unless the. . . board or. . . commission determines” this conduct is not an impediment to granting the “license, certificate, registration or permit;” and the applicant “[p]ays any fees[, as] established by. . . regulation.” Additionally, 63 Pa.C.S. § 3111 authorizes boards and commissions to issue a provisional license, certificate, registration or permit while an applicant is satisfying remaining requirements for licensure by endorsement, for which the Board must set by regulation the terms of expiration.

Section 302(5) of the Crane Operator Licensure Act (act) (63 P.S. § 2400.302(5)) authorizes the Board to promulgate and enforce regulations as necessary to carry into effect the provisions of the act.

The act of July 1, 2020 (P.L. 575, No. 53) added 63 Pa.C.S. § 3111 as part of the consolidation of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) into 63 Pa.C.S. Chapter 31 (relating to powers and duties). The text of 63 Pa.C.S. § 3111 was originally added to Act 48 by the act of July 1, 2019 (P.L. 292, No. 41) (Act 41).

Background and Need for the Amendments

This final-form rulemaking is needed to effectuate 63 Pa.C.S. § 3111, which requires the Board to issue a license to an applicant licensed in another jurisdiction who meets the requirements for licensure by endorsement as set forth in 63 Pa.C.S. § 3111. Under 63 Pa.C.S. § 3111, the Board must determine whether the other jurisdiction's standards for licensure are substantially equivalent to or exceed those established by the Board. Additionally, 63 Pa.C.S. § 3111 requires the Board to determine the methods by which an applicant can demonstrate competency, such as completion of continuing education or having experience in the profession or occupation for at least 2 of the 5 years immediately preceding the filing of the application. Under 63 Pa.C.S. § 3111(b)(2), the Board must also establish, by regulation, the expiration of provisional endorsement licenses.

This final-form rulemaking sets forth the Board's criteria for eligibility for licensure by endorsement, including the specific methods required for an applicant to demonstrate competency. It also sets forth the requirements for granting a provisional endorsement license. Section 3111 of 63 Pa.C.S. further provides that the Board may establish appropriate fees for this licensure. Accordingly, the Board has determined that the fee for submission of an application for licensure by endorsement shall be the same as the application fee for initial licensure under § 6.4 (relating to fees).

A notice of proposed rulemaking was published at 52 Pa.B. 1978 (April 2, 2022), for 30 days of public comment. The Board did not receive any comments from the public or the Consumer Protection and Professional Licensure Committee of the Senate (SCP/PLC). The Professional Licensure Committee of the House of Representatives (HPLC) submitted comments. As part of its review under the Regulatory Review Act, the Independent Regulatory Review Committee (IRRC) provided comments and recommendations. The following represents a summary of the comments received and the Board's responses.

Summary of the HPLC Comments and the Board's Responses

It should be noted at the outset that the annex delivered to IRRC on March 10, 2022, differs from the version that was published by the Legislative Reference Bureau at 52 Pa.B. 1978. In the published version, original § 6.16(a) was moved and renumbered as subsection (d). Subsections (b), (c) and (d) were then renumbered as subsections (a), (b) and (c), respectively. The Board will refer herein to the version published at 52 Pa.B. 1978.

The HPLC commented on § 6.16(a)(1)(i) (referred to by the HPLC as § 6.16(b)(1)(i)), which requires the applicant to provide a copy of the current law and regulations, including the scope of practice, from the jurisdiction where the applicant holds an active license. The HPLC expressed a concern that this requirement is not explicitly stated in the statute and suggested it should be Board

Counsel's responsibility to research the laws and regulations of the jurisdiction from which the applicant is applying.

For the following reasons, the Board is not amending § 6.16(a)(1)(i) in this final-form rulemaking: 1) it is the applicant's burden to prove to the Board that qualifications for licensure are met; 2) applicants, as a practical matter, generally have access to the laws and regulations of the jurisdiction in which they are licensed, and—particularly when an applicant is licensed outside of the United States—are in a position to obtain those laws and regulations and provide them to the Board; and 3) placing the responsibility on the Board and its legal counsel to research the laws and regulations of other jurisdictions, particularly other countries, will likely be burdensome and costly to the Board. That financial burden, in turn, would have to be passed along to the Board's licensees in the form of increased biennial renewal fees, or alternatively, if the costs were applied towards application fees, the cost to apply for a license would have to be increased. While the Board will take steps to verify the laws and regulations of other jurisdictions, the Board believes having the applicant provide that initial information is the most appropriate, efficient and cost-effective approach.

The HPLC next commented on § 6.16(a)(4) (referred to by the HPLC as § 6.16(b)(4)), recommending that the Board clarify this subsection by specifying the type of discipline that may preclude licensure and the time frame for when the discipline occurred. While the HPLC suggested that the Board distinguish between formal discipline and a complaint, the Board does not think it is appropriate to make this type of distinction because a complaint is neither formal nor informal discipline. Additionally, the Board does not believe it is appropriate to predetermine the type of discipline or the time frame within which the discipline occurred. Instead, the Board believes it is appropriate to evaluate discipline on a case-by-case basis.

As indicated in § 6.16(c), the Board is authorized to determine that prohibited acts and disciplinary actions are not an impediment to licensure under 63 Pa.C.S. § 3111. In determining whether a prohibited act or disciplinary action is an impediment to licensure, the Board is dutybound to apply the caselaw and other applicable laws. See *Secretary of Revenue v. John's Vending Corp.*, 453 Pa. 488, 309 A.2d 358 (1973); *Bethea-Tumani v. Bureau of Professional and Occupational Affairs, State Board of Nursing*, 993 A.2d 921 (Pa. Cmwlth. 2010). As part of that analysis, the Board may consider the facts and circumstances surrounding the prohibited act or disciplinary action, and other factors such as an increase in age or maturity of the individual since the date of the prohibited act or disciplinary action, any disciplinary history or lack of disciplinary history before and after the date of the prohibited act or disciplinary action the successful completion of education and training activities relating to the prohibited act or disciplinary action and any other information relating to the fitness of the individual for licensure.

The HPLC also commented on § 6.17(b)(1), which would allow the Board to issue a provisional license for less than a year. The provisions in 63 Pa.C.S. § 3111(b)(2) require the Board to establish an expiration date for provisional licenses in its regulations. The Board, along with most of the other boards and commissions under the Bureau of Professional and Occupational Affairs (Bureau), has determined that an expiration of 1 year is generally

an appropriate time frame for most—but not necessarily all—applicants. In the interest of public safety, the Board determined that providing some discretion is necessary for instances where the remaining licensure requirements can and should be completed in less than a full year. For example, if an applicant merely needed to complete ten additional continuing education credits, it generally should not require a full year to obtain these credits. Another example would be an applicant who needs 2 additional months of experience to meet the competency requirements. A provisional license of a duration that is less than a full year, such as one that expires after perhaps 4 months or 6 months, would typically be a sufficient amount of time to meet the requirement.

It is in the public interest to ensure that a licensee becomes qualified or competent as expeditiously as possible. While the Board certainly will provide a full year when the facts warrant it, the Board wants its licensees to be qualified and competent as soon as practicable. The Board anticipates this discretion would be utilized in a situation where an applicant's obligations to meet any remaining requirements are minimal. To allow a full 12 months in all situations opens the door for an individual to practice for many months before they even attempt to meet the remaining requirements. In the interest of public safety, the Board believes it is best for applicants who have been issued a provisional license to meet the remaining requirements within a time period closely tied to the length of time reasonably necessary to meet the specific requirements in question.

The final comment by the HPLC suggests an amendment to § 6.17(d) to delete the language that would preclude an individual from being issued more than one provisional license. A provisional license is an unrestricted license that is issued to provide a short period of time to an applicant to practice while simultaneously working to meet the Board's licensure by endorsement requirements. While the Board would typically not issue an unrestricted license to an applicant who has not met the licensure standards or who has not proven competency, the General Assembly gave boards the discretion to do so with a provisional license, so long as there was an established expiration for the provisional license. The Board is concerned that allowing for multiple provisional licenses could be used as a mechanism to circumvent licensure standards and, therefore, does not believe it is necessary or appropriate to allow multiple provisional licenses.

The Board's regulations do allow a provisional license holder to request an extension of the provisional license for up to 1 additional year. The Board believes this time frame is more than sufficient. Moreover, there is nothing that prevents an applicant who held a provisional license that expired from reapplying for a license by endorsement under § 6.16. However, the applicant in that instance would not be eligible for an additional provisional license. Ultimately, the Board determined that protection of the public warrants the limitation of one provisional license per applicant to ensure the citizens of this Commonwealth are receiving services from qualified and competent licensees.

Summary of IRRC's Comments and the Board's Responses

IRRC, in its comment, identified the comments provided by the HPLC, and indicated that it will consider the HPLC comments and the Board's responses to the issues raised in determining whether the regulation is in the public interest. The Board's responses to the HPLC

comments are set forth in the summary of the HPLC comments and the Board's responses.

IRRC inquired about the burden and costs of having an applicant submit a copy of the applicable laws and regulations from the jurisdiction that issued the license under § 6.16(a)(1)(i) and requiring that the copy of the applicable law or regulation include its enactment date under § 6.16(a)(1)(iii). As noted in response to the previously noted HPLC comment, placing the burden on the Board to obtain this information would lead to additional costs that would have to be passed along to applicants and licensees in the form of increased application fees or higher biennial renewal fees, or both. It could also increase the processing time for these applications if the Board has to first search for and gather the relevant laws and regulations from one or more jurisdictions. After considering all options, the Board believes the requirement that the applicant obtain the laws and rules from their state, jurisdiction or country is the most appropriate, efficient and cost-effective manner to supply the Board with the information necessary for the Board to make a timely determination on the application.

IRRC also asked what standard would be used to determine whether a jurisdiction is substantially equivalent for the applicant to show competency by experience under § 6.16(a)(2) and inquired as to whether this provision places an additional burden on the applicant or the Board, or both, given that the experience may have occurred in several different jurisdictions. The Board reads § 6.16(a)(2) in conjunction with the substantial equivalency requirement under § 6.16(a)(1). If the Board determines that the licensing jurisdiction where the applicant has a current license in good standing has licensing standards that are substantially equivalent to those established by the Board for purposes of § 6.16(a)(1), substantial equivalency will also be established for purposes of assessing competency by experience under § 6.16(a)(2). If the applicant wishes to have the Board consider experience gained in one or more additional jurisdictions, the Board would make the same substantial equivalency analysis. In the same way that the Board would not grant a license by endorsement under 63 Pa.C.S. § 3111 to an individual who is licensed in a jurisdiction with requirements that are not substantially equivalent, the Board does not believe that experience gained in a jurisdiction that falls short of being substantially equivalent should be counted towards the years of experience for purposes of establishing competency. Other than providing a copy of the laws and regulations of the other jurisdiction or jurisdictions, there is no initial burden on the applicant to actually provide its own substantial equivalency analysis, nor is the applicant expected to make a comparison between Board's laws, rules and requirements on the one hand, versus the laws, rules and requirements of jurisdiction X on the other. The Board will perform that analysis.

IRRC questioned whether the Board has considered creating and publishing an annual determination of those jurisdictions in the United States which have laws and regulations substantially equivalent to the Commonwealth. The Board would initially note that since the inception of Act 41, the Board has not received any applications for licensure by endorsement. Not all jurisdictions license crane operators, and those that do periodically update and change their licensing requirements. The Board cannot assume that the laws and regulations of a given jurisdiction will remain the same for any extended period of time. The Board does an individual assessment of each applicant at the time the application

is submitted. This ensures that the Board is using the most up-to-date and accurate information available when making decisions on these applications to best ensure that all crane operators licensed under 63 Pa.C.S. § 3111 are competent and safe to practice the profession. As such, and given the low volume of expected applications for licensure by endorsement under 63 Pa.C.S. § 3111, the Board believes that these provisions in this final-form rulemaking balance the protection of the public health, safety and welfare with the burden and cost to applicants and the Board.

IRRC requested that the Regulatory Analysis Form (RAF) be updated at Question 8 to include the statutory citation to the Board’s authority to promulgate regulations in the final RAF. This has been completed as requested.

IRRC also requested that the RAF be updated to include a list of specific persons and groups involved in developing and drafting the proposal. The Board has attached a list of stakeholders to the final RAF.

IRRC asked the Board to provide a specific estimate of the costs to the regulated community for translation of an applicable law, regulation or rule, and to address the cost of the Criminal History Record Check (CHRC) fee. Translating the law, regulation or other rule to English is a necessary part of the application process. If the Board is unable to understand the other jurisdiction’s requirements, it will not be able to determine whether those requirements are substantially equivalent. The Board does not anticipate that many applicants will incur this cost. Nevertheless, the Board anticipates the cost for translation would be approximately \$25 per page to translate from the most common languages. With regard to the CHRC costs, the Commonwealth’s fee of \$22 has been included in the RAF as requested. The Board is unable to determine with certainty the CHRC fees that would be assessed by other states, territories or countries. The RAF has been updated to reflect these costs to the regulated community.

Miscellaneous Clarifications

Twenty-seven boards under the Bureau are drafting and publishing regulations for licensure by endorsement under 63 Pa.C.S. § 3111. In an effort to keep language in the regulations as consistent as possible, the Board is amending the regulations based upon comments from the review process of other regulations. The amendments are stylistic and do not have a substantive impact on the regulations.

The Board amends § 6.16(a)(2) to clarify the requirement that the experience required for competency must have been obtained under a license, certificate, registration or permit in a jurisdiction or jurisdictions that have substantially equivalent licensure standards. The amendment makes clear that the Board will consider experience accumulated in more than one jurisdiction when calculating the required experience.

The Board adds the term “discipline” to the heading of § 6.16(c) to be consistent with the language in § 6.16(a)(3) and (4) and to clarify that subsection (c) applies not just to prohibited acts but also to discipline.

The Board adds § 6.17(c)(3) to clarify that the expiration of a provisional license is a terminating event.

Fiscal Impact and Paperwork Requirements

This final-form rulemaking should have no fiscal impact on the Commonwealth or its political subdivisions. The costs to the Board related to processing applications

for licensure by endorsement under 63 Pa.C.S. § 3111 will be recouped through fees paid by applicants. Applicants for licensure by endorsement under 63 Pa.C.S. § 3111 will pay the same application fee as all other applicants for initial licensure under § 6.4, and may incur costs associated with translation of documents.

Sunset Date

The Board continually monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 10, 2022, the Board submitted a copy of the proposed rulemaking, published at 52 Pa.B. 1978, to IRRC, the SCP/PLC and the HPLC for review and comment. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Board provided IRRC, the SCP/PLC and the HPLC copies of comments received as well as other documents when requested. In preparing the final-form regulation, the Board considered comments received from IRRC and the HPLC. No comments were received from the public or the SCP/PLC.

Under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on April 19, 2024, the Board delivered this final-form rulemaking to IRRC, the SCP/PLC and the HPLC. Under section 5.1(j.2) of the Regulatory Review Act, the final-form rulemaking was deemed approved by the SCP/PLC and the HPLC on June 19, 2024, section 5.1(e) of the Regulatory Review Act, IRRC met on June 20, 2024, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law, and all comments received were considered in drafting this final-form rulemaking.

(3) This final-form rulemaking does not include any amendments that would enlarge the scope of the proposed rulemaking published at 52 Pa.B. 1978.

(4) This final-form rulemaking is necessary and appropriate for the administration of 63 Pa.C.S. § 3111 and the act.

Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 6, are amended by adding §§ 6.16 and 6.17 to read as set forth in Annex A.

(b) The Board shall submit this final-form rulemaking to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall submit this final-form rulemaking to IRRC, the SCP/PLC and the HPLC as required by law.

(d) The Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau as required by law.

(e) This final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

STEVEN KUNCELMAN,
Chairperson

(*Editor's Note:* See 54 Pa.B. 3855 (July 6, 2024) for IRRC's approval order.)

Fiscal Note: Fiscal Note 16A-7104 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 6. STATE BOARD OF CRANE OPERATORS

LICENSURE

§ 6.16. Licensure by endorsement.

(a) *Requirements for issuance.* To be issued a license by endorsement under 63 Pa.C.S. § 3111 (relating to licensure by endorsement) as a professional crane operator, an applicant shall satisfy all of the following conditions:

(1) Have a current license, certificate, registration or permit in good standing to practice as a professional crane operator in another jurisdiction whose standards are substantially equivalent to or exceed those established by the Board under section 502 of the act (63 P.S. § 2400.502) and § 6.11 (relating to general requirements). The following apply:

(i) An applicant shall submit a copy of the current applicable law, regulation or other rule governing licensure, certification, registration or permit requirements and scope of practice in the jurisdiction that issued the license, certificate, registration or permit.

(ii) If the applicable law, regulation or other rule is in a language other than English, at the applicant's expense, the applicable law, regulation or other rule shall be translated by a professional translation service and verified to be complete and accurate.

(iii) The copy of the applicable law, regulation or other rule must include the enactment date.

(2) Demonstrate competency by the following: experience in the profession of crane operating by demonstrating, at a minimum, that the applicant has actively engaged in the practice of crane operating under a license, certificate, registration or permit in a substantially equivalent jurisdiction or jurisdictions that have substantially equivalent licensure standards for at least 2 of the 5 years immediately preceding the filing of the application with the Board.

(3) Have not committed any act that constitutes grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice crane operating under section 703(a) of the act (63 P.S. § 2400.703(a)) or §§ 6.41—6.44 (relating to disciplinary actions).

(4) Have not been disciplined by the jurisdiction that issued the license, certificate, registration or permit.

(5) Have paid the initial licensing application fee as required by § 6.4(a) (relating to fees).

(6) Have applied for licensure in accordance with this chapter in the manner and format prescribed by the Board.

(b) *Interview and additional information.* An applicant may be required to appear before the Board for a personal interview and may be required to submit additional information, including supporting documentation relating to competency and experience. The applicant may request an interview to be conducted by video teleconference for good cause shown.

(c) *Prohibited acts and discipline.* Notwithstanding subsection (a)(3) and (4), the Board may, in its discretion, determine that an act prohibited under section 703(a) of the act or §§ 6.41—6.44 or disciplinary action by a jurisdiction is not an impediment to licensure under 63 Pa.C.S. § 3111.

(d) *Definition.* As used in this section, the term "jurisdiction" means a state, territory or country.

§ 6.17. Provisional endorsement license.

(a) *Provisional endorsement license.* The Board may, in its discretion, issue a provisional endorsement license to an applicant while the applicant is satisfying remaining requirements for licensure by endorsement under 63 Pa.C.S. § 3111 and § 6.16 (relating to licensure by endorsement).

(b) *Expiration of a provisional endorsement license.*

(1) An individual holding a provisional endorsement license may practice for up to 1 year after issuance of the provisional endorsement license. The Board, in its discretion, may determine that an expiration date of less than 1 year is appropriate.

(2) Upon a written request and a showing of good cause, the Board may grant an extension of no longer than 1 year from the expiration date of the provisional endorsement license.

(c) *Termination of a provisional endorsement license.* A provisional endorsement license terminates if any of the following occurs:

(1) The Board completes its assessment of the applicant and either denies or grants the license.

(2) The holder of the provisional license fails to comply with the terms of the provisional endorsement license.

(3) The provisional endorsement license expires.

(d) *Reapplication.* An individual may reapply for licensure by endorsement under § 6.16 after expiration or termination of a provisional endorsement license; however, the individual may not be issued a subsequent provisional endorsement license.

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