

# Marine Contractors Licensing Board

## Proposed Regulations

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# TITLE 26. DEPARTMENT OF THE ENVIRONMENT

## SUBTITLE 30. MARINE CONTRACTORS LICENSING BOARD

Authority: Environment Article, Title 17, Subtitles 1,2,3,4 and 5, Annotated Code of Maryland

### Chapter .01 General Regulations

#### .01 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Approved continuing education" means courses of study or programs of instruction in an area of marine construction and related subjects designed to improve, advance, or extend professional skill and knowledge relating to the practices of a marine contractor and that are approved by the Board in accordance with the requirements of this subtitle.

(2) "Board" means the Marine Contractors Licensing Board.

(3) "Credit hour" means the amount of time, usually one hour per 50 minutes of instruction, that is accredited by the Board or the institution sponsoring the continuing education.

(4) "Entity" means a business with its principal office in the State that employs more than one individual and provides marine contractor services in the State.

(5) "Gross negligence" means an intentional failure of a licensee or applicant for a license to perform an action or inaction as expected by the profession under the same circumstances, in reckless disregard of the consequences as affecting the life or property of another.

(6) "Hours of approved continuing education" means the value given by the Board for participation in continuing education.

(7) "Incompetence" means an action or inaction by a licensee or an applicant for a license which demonstrates a general lack of knowledge or ability to perform marine contractor services.

(8) "License" means a professional license issued by the Board under this subtitle to an individual or entity to perform marine contractor services in the State.

(9) "Licensed marine contractor" means an individual or entity that has received a license from the Board to perform marine contractor services.

(10) "Licensee" means licensed marine contractor.

(11) "License renewal period" means the 24-month period immediately preceding the expiration date of the license.

(12) Marine contractor services.

(a) "Marine contractor services" means construction, demolition, installation, alteration, repair, or salvage activities located in, on, or under State or private tidal wetlands.

(b) "Marine contractor services" includes:

(i) Dredging and filling;

(ii) The construction, demolition, installation, alteration, repair, or salvage of structures including boathouses, boat or other personal watercraft lifts or ramps, slips, docks, floating platforms, moorings, piers, pier access structures, pilings, wetland observation platforms, wetland walkways, and wharfs;

(iii) The construction, demolition, installation, alteration, repair, or salvage of stabilization and erosion control measures, including revetments, breakwaters, bulkheads, groins, jetties, stone sills, marsh establishments, and beach nourishment or other similar projects; and

(iv) Activities that require authorization under Title 16 of the Environment Article, Annotated Code of Maryland.

(13) "Misconduct" means an action or inaction by a licensee or an applicant for a license that is deficient from the action or inaction expected by the profession under the same circumstances.

(14) "Representative member" means the individual member of an entity appointed for the purposes of submitting an application for a license on behalf of the entity.

(15) "Similar contractor experience" means construction, demolition, installation, alteration, repair, or salvage activities located above the mean high tide and requiring authorization from the Department, in accordance with Title 5, Subtitles 5 and 9, of the Environment Article, Md. Code Ann.

(16) Solicit to perform.

(a) "Solicit to perform" means to try to obtain either directly or indirectly a job from a customer or potential customer to perform marine contractor services.

(b) "Solicit to perform" does not include responding to a request for a proposal or a bid solicitation issued by an agency of the federal, state, or local government or a general contractor.

#### .02 License Required; Exceptions.

A. Except as provided in §B of this regulation, a person shall be licensed by the Board as a marine contractor or be employed by an individual or entity that is licensed by the Board before the individual or entity may:

(1) Perform marine contractor services in the State; or

(2) Solicit to perform marine contractor services in the State.

B. Exceptions.

(1) An individual who is employed by an agency of the federal government or the State may perform marine contractor services while in the performance of the duties of their employment without having to obtain a license from the Board.

(2) A residential or commercial property owner may perform marine contractor services on the property owner's own property without having to obtain a license from the Board.

(3) An individual who performs marine contractor services while in the performance of the duties of their employment on behalf of a county or municipality in the State is not required to pay a fee for the issuance or renewal of a license or a test administered by the Board.

(4) An individual who performs marine contractor services while in the performance of the duties of their employment on behalf of a county or municipality in the State may do so without having to obtain a license from the Board if the individual is performing marine contractor services that:

(a) Would present a de minimis risk to human health or the environment;

(b) Do not require a federal or State permit; and

(c) If the marine contractor services involve an existing structure, except a shore erosion control structure, and do not increase the footprint of the structure.

**.03 Qualifications and Licensure.**

A. The Board may not issue a license to an applicant whose trade or fictitious name or trademark is so similar to that used by another licensed marine contractor that the public may be confused or misled by the similarity.

B. Except as provided in §A of this regulation, the Board shall license an applicant if the applicant:

(1) Submits an application for a license on the form required by the Board;

(2) Is eligible to take the examination as provided in §D of this regulation;

(3) Takes and passes the written marine contractor examination for the appropriate license category, as recognized by the Board;

(4) Provides the Board with satisfactory evidence that the liability insurance and workers' compensation insurance requirements of COMAR 26.28.02.01B have been satisfied;

(5) Has a federal tax identification number;

(6) If applicable, submits satisfactory evidence of the resolution of any acts which may subject the applicant to disciplinary action under COMAR 26.28.04; and

(7) Pays the required license issuance fee.

C. Either an individual or an entity may apply for a license.

D. An applicant is eligible to take the examination if the applicant has at least two years of approved experience as a full-time marine contractor or demonstrates similar contractor experience as documented in the application and accepted by the Board. An applicant must demonstrate the necessary experience in marine contractor services relevant to and included in the License Category for which they are applying, in accordance with COMAR 26.28.01.05.

E. If the applicant is an entity, the entity shall appoint a member of the entity as the representative member to make the application and take the examination on behalf of the entity.

**.04 Scope of License to Entity.**

While a license to an entity is in effect, a licensed entity may:

A. Employ individuals who are not licensed marine contractors to provide marine contractor services to the public on behalf of the licensed marine contractor entity; and

B. Represent itself to the public as a licensed marine contractor entity.

**.05 License Categories.**

A. General

(1) A license issued by the Board only authorizes the performance or solicitation of marine contractor services as described by the applicable license category.

(2) Any licensed marine contractor that performs, or solicits to perform, marine contractor services outside the scope of their applicable license category will be considered to be performing marine contractor without a license, and subject to disciplinary action by the Board, pursuant to COMAR 26.28.04.01A.

B. License Categories

(1) Category 1: Heavy Marine Construction. This license category is suitable for contractors who perform, or solicit to perform, the following marine contractor services:

(a) Bridges and highways, large scale commercial development, commercial dredging, cargo and naval wharfs, beach renourishment, heavy salvage, and any other large scale marine services, as approved by the Board.

(b) Marine contractors licensed under Category 1 may also perform any of the marine contractor services authorized under Categories 2, 3, and 4 of this section.

(2) Category 2: Residential and Commercial Marine Construction. This license category is suitable for contractors who perform, or solicit to perform, the following marine contractor services:

(a) Piers, docks, wharfs, marinas, boathouses, pile driving, moorings, boat lifts, floating docks, riprap revetments, bulkheads, weirs, seawalls, boat ramps, living shorelines, beach nourishment, dunes, dredging, salvage, and any other medium to small scale marine contractor services, as approved by the Board.

(b) Marine contractors licensed under Category 2 may also perform any of the marine contractor services authorized under Categories 3 and 4 of this section.

(3) Category 3: Limited Marine Construction. This license category is suitable for contractors who only perform, or solicit to perform, a limited subset of the marine contractor services listed in Category 2. A Category 3 License only authorizes the specific marine contractor services identified in the License, as issued by the Board.

(4) Category 4: Incidental Marine Contractor Services. This license category is suitable for contractors who perform, or solicit to perform, the following marine contractor services: directional boring, aquaculture, submerged aquatic vegetation and wetland grass planting, and any other related marine contractor services, as approved by the Board.

**.06 Duration of License.**

A. A license is valid for two years from the date of issuance.

B. A license is invalid after the expiration date of the current license, if not renewed in accordance with the requirements of COMAR 26.28.02.06.

C. An expired license may not be reinstated and the former licensee must meet the qualifications for a new license as described in Regulation .03 of this chapter.

**.07 Identification of Licensed Marine Contractor.**

A. The Board will provide each licensed marine contractor with a license that includes the:

- (1) The license category
- (2) Name of the licensed marine contractor;
- (3) License number;
- (4) Address of the principal office and each branch office, if the licensee is an entity;
- (5) Issuance date of the license;
- (6) Expiration date of the license; and
- (7) Representative member, if the licensee is an entity

B. A licensed marine contractor shall include the license number:

- (1) In all advertising related to the provision of marine contractor services; and
- (2) On all large equipment used in the course of the licensee's work as a marine contractor. The license number shall be marked with at least three inch block lettering.

**.08 Other Authorizations Required.**

A license under this subtitle does not allow a licensed marine contractor to perform any work in, on, or under State or private tidal wetlands for which all required authorizations have not been obtained, including authorization under Title 16 of the Environment Article, Annotated Code of Maryland.

## **Chapter .02 Licensing Procedures and Fees**

**.01 Application Procedures.**

A. An application for a license shall be:

- (1) Made on the form provided by the Board; and
- (2) Completed fully and signed under oath by the individual applicant or representative member, if the applicant is an entity.

B. In addition to satisfying the requirements of §A of this regulation, each application shall be accompanied by supporting documentation including:

- (1) Whatever evidence the Board deems necessary to establish professional qualifications and experience; and
- (2) Certificates of insurance verifying that the applicant carries:
  - (a) Commercial general liability insurance with a \$300,000 total aggregate minimum; and
  - (b) Workers' compensation insurance, unless exempt by law.

**.02 Application Form.**

A. For all applicants, the application form shall require:

- (1) The name of the applicant;
- (2) The license category being applied for;
- (3) The address of the applicant's principal place of business and each branch office;
- (4) Current and previous employment of the individual applicant or representative member, if the applicant is an entity, relevant to the field of marine contracting;
- (5) All trade or fictitious names the applicant intends to use while performing marine contractor services; and
- (6) A federal tax identification number.

B. For entity applicants, in addition to the requirements in §A of this regulation, the application form shall require:

- (1) A list of the entity's owners, members, or partners;
- (2) A designated representative member for the purpose of the application and examination; and
- (3) Verification that the representative member is a member of or employed by the entity.

### **.03 Incomplete Application.**

A. An application is not complete until all required application documents, including the fee and supporting documentation, have been received by the Board.

B. The Board may return an application to the applicant with a statement of the reason for rejection if the Board determines that the application does not contain:

- (1) The name and address for each individual applicant or entity owner;
- (2) The current and previous employment of the applicant relevant to the field of marine contracting;
- (3) The address of the applicant's proposed principal place of business and each proposed branch office;
- (4) All trade or fictitious names that the applicant intends to use while performing marine contractor services; or
- (5) The application fee.

C. The Board shall withhold final consideration of the application until the application is complete. If all requested supporting documents are not received within 90 days of receipt of the application, the Board shall notify the applicant of the missing documents.

D. Applications for a license shall be held for 1 year from the date of the initial receipt, after which time the application will be terminated and the application fee forfeited.

### **.04 Action on an Application.**

A. Except as provided in Regulation .03 of this chapter, the Board shall review all applications within 60 days of receipt of the completed application.

B. Action on an application includes one of the following:

- (1) Return of the application if the Board determines that it is incomplete;
- (2) Approval of the applicant for examination for the appropriate category, as determined by the Board;
- (3) Denial of the application for a license.

C. Notification. The Board shall give written notification to an applicant of any action taken by the Board on the applicant's application.

D. Denial of Application for License.

- (1) The Board may deny an application for a license if the Board determines that the applicant has:
  - (a) Failed to demonstrate that the applicant is eligible for examination under COMAR 26.28.01.03; or
  - (b) Committed any act that would be a basis for disciplinary action under COMAR 26.28.04.01.
- (2) The Board shall notify an applicant of the basis for the denial by first-class mail.

E. Reconsideration and Appeal of Application Denial.

- (1) An applicant may appeal the denial of the application under §D of this regulation by notifying the Board in writing by certified mail within 30 days of receipt of the Board's decision.
- (2) In the case of a denial under §D(1)(a) of this regulation, an applicant may appeal the denial of the Board in writing by certified mail within 30 days of receipt of the Board's decision by:
  - (a) Submitting new or additional evidence to clarify or amplify the applicant's qualifications; or
  - (b) Requesting an informal meeting with the Board.
- (3) In the case of a denial under §D(1)(b) of this regulation, the applicant may appeal the denial by requesting a hearing in accordance with the procedures outlined in COMAR 26.28.04.

### **.05 Examination.**

A. The Board shall notify the applicant of the applicant's eligibility to take an examination for the appropriate license category at least 30 days before the next scheduled examination.

B. The Board shall offer a written examination at least three times a year.

C. The times and places within the State for the written examination shall be announced by the Board.

D. The passing score for the examination is 70 percent.

E. Except as provided in .05F of this regulation, an applicant who fails the examination may apply for reexamination by submitting the examination fee.

F. An applicant who has failed the examination three times may be required to appear in person before the Board and satisfy any additional requirements approved by the Board before reexamination.

### **.06 License Issuance Fee.**

A. After an applicant passes the examination, the applicant shall pay the license issuance fee as determined by the Board.

B. Within 30 days of the receipt of the license issuance fee, the Board shall issue the license.

### **.07 License Renewal.**

A. At least two months before a license expires, the Board shall send to the licensed marine contractor by first-class mail or electronically;

- (1) A renewal application; and
- (2) A notice that states:
  - (a) The date on which the current license expires;
  - (b) The date by which the Board must receive the renewal application for the renewal to be issued and mailed before the license expires; and

(c) The amount of the license renewal fee.

B. Failure to notify the licensed marine contractor does not relieve the licensee of the licensee's obligation to renew the license, nor does it affect the expiration of the license.

C. A license may be renewed for a two-year period by the Board if the licensed marine contractor has:

(1) Submitted an application for renewal before expiration date of the license;

(2) Paid the license renewal fee established by Regulation .09 of this chapter;

(3) Completed the necessary continuing education as required by COMAR 26.28.03 and submitted satisfactory evidence of compliance with the continuing education requirements;

(4) Submitted satisfactory evidence of compliance with the insurance requirements as required by COMAR 26.28.02.01;

and

(5) If applicable, submitted satisfactory evidence of the resolution of any license violations, suspensions, denials, revocations, or other Board actions taken under this subtitle.

#### **.08 Keeping Information Current; Change of Representative Member.**

A. A licensed marine contractor shall keep its contact information current with the Board.

B. Within five business days after any change of contact information, a licensed marine contractor shall submit to the Board written notice of:

(1) Any change in the address or telephone number of an existing office or principal place of business; and

(2) If the licensee is an entity, the addition of a branch office.

C. A licensed entity shall keep current with the Board the identity of the person designated as the representative member.

D. Within five business days after the change, a licensed entity shall submit to the Board a written request to designate a new representative member, which shall include:

(1) The name of the newly-designated representative member;

(2) Verification that the newly-designated representative member is a member of, or employed by, the entity; and

(3) The qualifications of the newly-designated representative member, as required under COMAR 26.28.01.03D.

E. If the Board determines that a newly-designated representative member is eligible to take the examination, the representative member shall take the examination on the next date on which the examination is scheduled.

#### **.09 License Replacement or Modification.**

A. A licensed marine contractor may obtain a duplicate license to replace a license that has been lost, destroyed, or mutilated if the licensee:

(1) Makes a written request to the Board, and

(2) Pays the license replacement fee to the Board.

B. A licensed marine contractor may obtain a license modification, if the licensee:

(1) Makes a written request to the Board, stating the reason for the request;

(2) Provides the new or changed information to the Board (e.g., an address change or, if the licensee is an entity, a name change); and

(3) Pays the license modification fee to the Board.

## **Chapter .03 Continuing Education**

### **.01 General.**

A. In order to renew a license, a licensed marine contractor shall submit to the Board satisfactory proof of the completion of at least 12 credit hours of approved continuing education.

### **.02 Approval of Continuing Education.**

A. Approved continuing education shall be designed to improve, advance, or extend the licensee's professional skill and knowledge relating to the provision of marine contractor services.

B. The Board will approve courses for purposes of satisfying the continuing education requirements in .01 of this chapter, based on the following:

(1) Course objectives;

(2) Course outline;

(3) Training material;

(4) Instructor credentials;

(5) Student evaluation methods and criteria; and

(6) Relevance to the applicable license category.

C. Approved continuing education may consist of participation in any of the following, provided there is satisfactory proof of completion acceptable to the Board:

(1) College-level or postgraduate course work given by an accredited college or university;

(2) Courses, seminars, workshops, or lectures;

(3) Extension studies and correspondence courses;

(4) Papers published in professional journals and requiring peer review;

(5) Instruction of approved continuing education courses; or

- (6) Other continuing education acceptable to the Board.
- D. The Board will maintain a current list of all continuing education that has been approved by the Board.
- E. The Board will determine the credit hours of approved continuing education as follows:
  - (1) Credits shall be approved in not less than ½ hour increments;
  - (2) Credits shall be approved on an hour-for-hour basis for attendance at an approved continuing education program; and
  - (3) Credits are approved on a two-for-one hour basis for the instructor of an approved continuing education program.
- F. The sponsor of a continuing education course or a licensed marine contractor may request that the Board approve a course by submitting a request for approval on a form provided by the Board.

### **.03 Proof of Continuing Education.**

- A. Approved continuing education obtained within the appropriate license renewal period shall be credited as provided under Regulation .02E of this chapter.
- B. Each licensed marine contractor is responsible for the submission of proof of all approved continuing education to the Board.
- C. Proof of continuing education consists of:
  - (1) Official transcripts from the educational institution;
  - (2) A certificate or other documentation signed by the instructor or sponsor of the continuing education, attesting to the satisfactory completion of the continuing education; or
  - (3) Other documentation determined by the Board to be adequate, in light of the nature of the continuing education, to establish that the continuing education was actually received by the licensed marine contractor.

## **Chapter .04 Disciplinary Action**

### **.01 Denials, Reprimands, Suspensions, and Revocations.**

- A. Subject to the hearing provisions of Regulation .02 of this chapter, the Board may deny, refuse to renew, suspend, or revoke a license if the applicant or licensed marine contractor:
  - (1) Performs or solicits to perform marine contractor services without a license;
  - (2) Unless authorized to perform marine contractor services under this title, represents to the public by title, by description of services, methods, or procedures, or otherwise that the individual or entity is authorized to perform marine contractor services in the State;
  - (3) Violates a provision of Environment Article, Title 17, Annotated Code of Maryland, or a regulation under this subtitle;
  - (4) Fraudulently or deceptively obtains or attempts to obtain a license for the licensed marine contractor or for another individual or entity;
  - (5) Fraudulently or deceptively uses a license;
  - (6) Commits any gross negligence, incompetence, or misconduct while practicing marine contractor services;
  - (7) Fails to comply with the terms of a tidal wetlands authorization issued under Environment Article, §§ 16-202 or 16-307, Annotated Code of Maryland;
  - (8) Violates any provision of, or regulations adopted under Environment Article, §§ 16-202 or 16-307, Annotated Code of Maryland; or
  - (9) In the Chesapeake and Atlantic Coastal Bays Critical Area, as defined under Natural Resources Article, §8-1802, Annotated Code of Maryland, fails to comply with:
    - (a) The terms of a State or local permit, license, or approval; or
    - (b) Any State or local law, an approved plan, or other legal requirement.
- B. For the purpose of this regulation, an act or omission of any principal, agent, or employee of an applicant or licensed marine contractor may be construed to be the act or omission of the applicant or licensed marine contractor, as well as of the principal, agent, or employee.

### **.02 Procedures for Disciplinary Action.**

- A. Before taking any action pursuant to Regulation .01 of this chapter or COMAR 26.28.02.04C(2), the Board shall refer a proposed decision to the Secretary, or their designee, for final approval pursuant to § 8-205.1 of the State Government Article, Annotated Code of Maryland. Once a final decision has been made by the Secretary, or their designee, the Board shall give the applicant or licensed marine contractor against whom the action is contemplated notice and the opportunity for contested case hearing.
- B. At least thirty days before the hearing, the hearing notice shall be:
  - (1) Served personally; or
  - (2) Sent by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the last known address of the individual or entity.
- C. The notice of hearing and hearing shall conform to the provisions of the Administrative Procedures Act, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.
- D. If, after due notice, the individual or entity against whom the action is contemplated fails or refuses to appear, the Board nevertheless may hear and determine the matter.
- E. A person aggrieved by a final decision of the Board is entitled to judicial review in accordance with §§ 10-222 and 10-223 of the State Government Article, Annotated Code of Maryland.