

EFFECTIVE DATE
JUNE 7, 2011

NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

178 NAC 10

TITLE 178 ENVIRONMENTAL HEALTH

CHAPTER 10 LICENSURE UNDER THE WATER WELL STANDARDS AND CONTRACTORS'
PRACTICE ACT

10-001 SCOPE AND AUTHORITY: These regulations govern credentialing and continuing competency under the Water Well Standards and Contractors' Practice Act, Neb. Rev. Stat. §§ 46-1201 to 46-1241, and the Uniform Credentialing Act (UCA).

10-002 DEFINITIONS

Act means Neb. Rev. Stat. §§ 46-1201 to 46-1241, known as the Water Well Standards and Contractors' Practice Act.

Active Addiction means current physical or psychological dependence on alcohol or a substance, which develops following the use of alcohol or a substance on a periodic or continuing basis.

Alcohol or Substance Abuse means a maladaptive pattern of alcohol or substance use leading to clinically significant impairment or distress as manifested by one or more of the following occurring at any time during the same 12-month period:

1. Recurrent alcohol or substance use resulting in a failure to fulfill major role obligations at work, school, or home;
2. Recurrent alcohol or substance use in situations in which it is physically hazardous;
3. Recurrent legal problems related to alcohol or substance use; or
4. Continued alcohol or substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the alcohol or substance use.

Attest or Attestation means that the individual declares that all statements on the application are true and complete.

Board means the Water Well Standards and Contractors' Licensing Board.

Business Engaged in the Installation of Pumps and Pumping Equipment means any activity or enterprise undertaken for profit or otherwise which involves the installation of pumps and pumping equipment on water wells. The term shall not include any such activity carried out by an individual on land owned by him/her and used by him/her for farming, ranching or agriculture purposes or as his/her place of abode.

Business Engaged in the Construction of Water Wells means any activity or enterprise undertaken for profit or otherwise which involves the construction of water wells. The term shall not include any activity carried out by an individual on land owned by him/her and used by him/her for farming, ranching or agricultural purposes or as his/her place of abode.

Certificate of Completion means written evidence or documentation that shows attendance and completion of a continuing education program.

Continuing Education means that education required as a condition of licensure under the Act, for the maintenance of skills necessary for the protection of groundwater and the health and general welfare of the citizens and the competent practice of the construction of water wells, the installation of pumps and pumping equipment, and water well monitoring which has been approved by the Board in accordance with 178 NAC 10-007.

Continuing Education Program or Program means a formal offering of instruction or information to licensees for the purpose of maintaining skills necessary to the protection of groundwater and the health and general welfare of the citizens and the competent practice of the construction of water wells, the installation of pumps and pumping equipment, water well monitoring, the inspection of chemigation systems, or the inspection and servicing of flow meters. Programs may be offered under names such as, "school," "clinic," "forum," "lecture," "course of study," "educational seminar," "workshop," "conference," "convention," or "short course."

Complete Application means an application that contains all of the information requested on the application, with attestation to its truth and completeness, and that is submitted with the required fees and all required documentation.

Confidential Information means information protected as privileged under applicable law.

Construction of Water Wells means and includes all acts necessary to make a water well usable for the purpose for which it is intended including, without limitation, the siting of and excavation for the water well and its construction, alteration, or repair, but excluding the installation of pumps and pumping equipment.

Consumer means a person receiving health or health-related services or environmental services and includes a patient, client, resident, customer, or person with a similar designation.

Conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere or non vult contendere made to a formal criminal charge, or a judicial finding of guilt irrespective of the pronouncement of judgment or the suspension thereof, and includes instances in which the imposition or the execution of sentence is suspended following a judicial finding of guilt and the defendant is placed on probation.

Credential means a license, certificate, or registration.

Department means the Division of Public Health of the Department of Health and Human Services.

Dependence means a maladaptive pattern of alcohol or substance use, leading to clinically significant impairment or distress, as manifested by three or more of the following occurring at any time in the same 12-month period:

1. Tolerance as defined by either of the following:
 - a. A need for markedly increased amounts of alcohol or the substance to achieve intoxication or desired effect; or
 - b. A markedly diminished effect with continued use of the same amount of alcohol or the substance;
2. Withdrawal as manifested by either of the following:
 - a. The characteristic withdrawal syndrome for alcohol or the substance as referred to in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, published by the American Psychiatric Association; or
 - b. Alcohol or the same substance or a closely related substance is taken to relieve or avoid withdrawal symptoms;
3. Alcohol or the substance is often taken in larger amounts or over a longer period of time than was intended;
4. A persistent desire or unsuccessful efforts to cut down or control alcohol or substance use;
5. A great deal of time is spent in activities necessary to obtain alcohol or the substance, to use alcohol or the substance; or to recover from the effects of use of alcohol or the substance;
6. Important social, occupational, or recreational activities are given up or reduced because of alcohol or substance use; or
7. Alcohol or substance use continues despite knowledge of having had a persistent or recurrent physical or psychological problem that was likely to have been caused or exacerbated by alcohol or the substance.

Director means the Director of Public Health of the Division of Public Health or his/her designee.

Good Cause means a substantial reason consistent with the purposes of the Act.

Hour of Continuing Education means 1 hour of credit toward the continuing competency requirements of the Act (Neb. Rev. Stat. §46-1225).

Inactive Credential means a credential which the credential holder has voluntarily placed on inactive status and by which action has terminated the right to practice or represent him/herself as having an active credential.

Installation of Pumps and Pumping Equipment means the procedure employed in the placement and preparation for operation of pumps and pumping equipment at the water well location, including connecting all wiring to the first control and all construction or repair involved in making entrance to the water well, which involves the breaking of the well seal.

Installed Water Well Equipment means but is not limited to equipment that may be set up for use on a water well, such as main line check valves, vacuum relief valves, chemigation devices, and flow meters.

License means an authorization issued by the Department to an individual to engage in a profession which would otherwise be unlawful in this state in the absence of such authorization as provided by Neb. Rev. Stat. § 38-118.

Licensed Natural Resources Ground Water Technician means a natural resources ground water technician who has taken a training course, passed an examination based on the training course, and received a license from the Department indicating that s/he is a licensed natural resources ground water technician.

Licensed Pump Installation Contractor means an individual who has obtained a license from the Department and who is a principal officer, director, manager, or owner/operator of any business engaged in the installation of pumps and pumping equipment or the decommissioning of water wells.

Licensed Pump Installation Supervisor means any individual who has obtained a license from the Department and who is engaged in the installation of pumps and pumping equipment or the decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a pump installation contractor.

Licensed Water Well Contractor means an individual who has obtained a license from the Department and who is a principal officer, director, manager, or owner-operator of any business engaged in the construction or decommissioning of water wells.

Licensed Water Well Drilling Supervisor means any individual who has obtained a license from the Department and who is engaged in the construction or decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a water well contractor.

Licensed Water Well Monitoring Technician means any individual who has obtained a license from the Department and who is engaged solely in the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment or pumping systems. A licensed water well monitoring technician shall not supervise the work of others.

Military Service means full-time duty in the active military service of the United States, a National Guard call to active service for more than 30 consecutive days, or active service as a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration. Military service may also include any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. (From the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as it existed on January 1, 2007.)

Pattern of Incompetent or Negligent Conduct means a continued course of incompetent or negligent conduct in performing the duties of the profession.

Practice means work done under the Water Well Standards and Contractors' Practice Act that requires a license. (See 178 NAC 10-003.)

Profession means any profession or occupation named in subsection (1) or (2) of Neb. Rev. Stat. § 38-121.

Provider means an institution, organization or individual that presents continuing education programs to licensees and requests approval from the Board for the programs.

Pumps and Pumping Equipment means any equipment or materials utilized or intended for use in withdrawing or obtaining ground water including, but not limited to, seals, tanks, fittings, and controls.

Sampling Event means the collection of a single sample or a single set of samples per each site visit from a water well for the purpose of water quality analysis.

Served in the Regular Armed Forces has the same meaning as “military service” in these regulations.

Supervision or its derivatives means the ready availability of a person licensed under the Act for consultation and direction of the activities of any person not licensed who assists in the construction of a water well or the installation of pumps and pumping equipment. Contact with the licensed contractor or supervisor by telecommunication will be sufficient to show ready availability.

Water Sampling Practices means acts by which ground water samples are obtained from a water well or pumping system in which the water well seal is broken. The term generally includes any act which serves to protect the integrity of the water well or the quality of the ground water and may include preparation of the sampling point, use of sampling equipment, and certain aspects of sample collection. Water well monitoring technicians may temporarily employ sampling equipment or pumping equipment in a water well for each and every sampling event after which time the equipment must be removed. Natural resources ground water technicians may temporarily employ sampling equipment. Employment of sampling equipment for longer periods of time or pumping equipment may only be carried out by a licensed pump installation contractor or supervisor and is deemed to be pump installation rather than water sampling practices.

Water Sampling Techniques means the procedure(s) and/or method(s) by which water sampling practices are conducted.

Water Well means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting fluid as defined in Neb. Rev. Stat. § 81-1502 into the underground water reservoir. Water well does not include any excavation made for obtaining or prospecting for oil or natural gas, or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission.

Well Repairs means any change, replacement, or other alteration of any water well, pump or pumping equipment or any other activity which requires a breaking or opening of the well seal.

Well Seal means an arrangement or device used to cap a water well or to establish and maintain a junction between the casing or curbing of a water well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the water well.

10-003 TYPES OF LICENSES/WHEN REQUIRED

10-003.01 A water well must be constructed, pumps and pumping equipment must be installed and repaired onsite, and water wells must be decommissioned in accordance with Title 178 NAC 10 and 12.

10-003.02 A water well may only be opened or the seal may only be broken by:

1. A licensed contractor or supervisor or a person working directly under the supervision of a licensed contractor or supervisor;
2. An individual who owns a water well on land owned by him/her and used by him/her for farming, ranching, or agricultural purposes or as his/her place of abode.
3. A licensed water well monitoring technician or a licensed natural resources ground water technician,
4. A licensed operator of a public water system in the course of his/her employment or someone under his/her supervision, or
5. A state electrical inspector in the course of his/her employment.

10-003.03 A licensed water well contractor may have supervisory authority over all employees.

10-003.04 A licensed water well drilling supervisor shall work under the supervision of a licensed water well contractor and may have supervisory authority over noncredentialed employees.

10-003.05 A licensed pump installation contractor may have supervisory authority over all employees.

10-003.06 A licensed pump installation supervisor shall work under the supervision of a licensed pump installation contractor and may have supervisory authority over noncredentialed employees.

10-003.07 A licensed water well monitoring technician may work independently and shall not have supervisory authority.

10-003.08 A licensed natural resources ground water technician employed by a natural resources district may work independently and shall not have supervisory authority over any credentialed or noncredentialed persons.

10-003.09 An individual who owns land and uses it for farming, ranching, or agricultural purposes or as his/her place of abode may, on such land, construct a water well, install a pump in a well, or decommission a driven sandpoint well.

10-004 INITIAL CREDENTIAL

10-004.01 Qualifications: To receive a credential to practice as a licensee under the Act, an individual must meet the following qualifications:

1. Age and Good Character: Be at least 19 years old and of good character;
2. Citizenship/Resident Information: Be a citizen of the United States, an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (INA) and who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant whose visa for entry, or application for visa for entry, is related to employment as a credential holder in the United States.
3. Examination: Pass the examination(s) for licensure prescribed by the Board unless the person qualifies for a temporary hardship license as provided in 178 NAC 10-005.08;
4. Otherwise comply with the Act and all standards, rules and regulations adopted and promulgated pursuant to the Act; and
5. For water well and/or pump installation contractors, furnish proof to the Department that there is in force a policy of public liability and property damage insurance issued to the applicant in at least the sum of \$100,000.00.

10-004.02 Application: To apply for a credential to practice as a licensee under the Act, an individual must submit a complete application to the Department. A complete application includes all required documentation, the required fee, and a written application. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. Written Application: An individual may apply for 1 or more licenses under a single application. The Department issues licenses to individuals for any category or combination of categories for which they have passed any required examination(s) and otherwise meet the requirements of the Act and 178 NAC 10.
 - a. Personal Information:
 - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
 - (2) Date of birth (month, day, and year);
 - (3) Place of birth (city and state or country if not born in the United States);
 - (4) Mailing address (street, rural route, or post office address; and city, state, and zip code, or country information);
 - (5) The applicant's:
 - (a) Social Security Number (SSN); or
 - (b) Alien Registration Number ("A#"); or
 - (c) Form I-94 (Arrival-Departure Record) number).Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
 - (6) The applicant's telephone number including area code;
 - (7) The applicant's e-mail address (optional);
 - (8) The applicant's fax number (optional);
 - (9) Citizenship: The applicant must state that s/he is one of the following:
 - (a) A citizen of the United States;
 - (b) An alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (INA) and who is eligible for a credential under the Uniform Credentialing Act; or

- (c) A non-immigrant whose visa for entry, or application for visa for entry, is related to employment as a credential holder in the United States;
 - b. Practice Before Application: The applicant must state:
 - (1) That s/he has not practiced as a licensee under the Act in Nebraska before submitting the application; or
 - (2) If s/he has practiced as a licensee under the Act in Nebraska before submitting the application, the actual number of days practiced in Nebraska before submitting the application for a credential and the name and location of practice;
 - c. The type of license desired;
 - d. The name, address and telephone number of the business with which the applicant is/will be engaged;
 - e. All addresses and phone numbers of each business location;
 - f. The nature of the business;
 - g. The person's affiliation with the business;
 - h. The name of all partners in a partnership and the business address and telephone number of each partner;
 - i. If a corporation, the officers and directors of that corporation and the address and telephone number for each office of that corporation within the state.
 - j. If applying for licensure as a water well and/or pump installation contractor, proof of public liability and property damage insurance in the amount of at least \$100,000 from the insurance company(ies);
 - k. If the applicant is licensed/certified in any other state or jurisdiction, and whether or not disciplinary action has been taken against the license/certificate;
 - l. Which exam(s) s/he needs to take: the Nebraska exam, the water well monitoring technician exam, the natural resources ground water technician exam, the pump installation exam, and/or the general drilling exam.
 - m. Persons requesting a hardship exemption for licensure must indicate the reasons for the request;
 - n. Persons requesting special arrangements for administering the exam must list the reasons for the request and the special arrangements sought, and
 - o. Attestation: The applicant must attest that:
 - (1) S/he has read the application or has had the application read to him/her;
 - (2) All statements on the application are true and complete;
 - (3) S/he is of good character
 - (4) S/he has not committed any act that would be grounds for denial under 178 NAC 10-009. or if an act(s) was committed, provide an explanation of all such acts; and
 - (5) For the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114, s/he is a citizen of the United States or a qualified alien under the federal Immigration and Nationality Act. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her United States Citizenship and Immigration Services (USCIS) documentation upon request.
2. Documentation: The applicant must submit the following documentation with the application:

- a. Evidence of age, such as:
 - (1) Driver's license;
 - (2) Birth certificate;
 - (3) Marriage license that provides date of birth;
 - (4) Transcript that provides date of birth;
 - (5) U.S. State identification card;
 - (6) Military identification; or
 - (7) Other similar documentation;
- b. Evidence of good character, including:
 - (1) Other Credential Information: If the applicant holds a credential to provide health services, health-related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed. The applicant must have the licensing agency submit to the Department a certification of his/her credential;
 - (2) Disciplinary Action: A list of any disciplinary actions taken against the applicant's credential and a copy of the disciplinary action(s), including charges and disposition;
 - (3) Denial: If the applicant was denied a credential or denied the right to take an examination, an explanation of the basis for the denial;
 - (4) Conviction Information: If the applicant has been convicted of a felony or misdemeanor, the applicant must submit to the Department:
 - (a) A list of any misdemeanor or felony convictions;
 - (b) A copy of the court record, which includes charges and disposition;
 - (c) Explanation from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address behaviors/actions related to the conviction;
 - (d) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required;
 - (e) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and
 - (f) Any other information as requested by the Board/Department;
- c. Evidence that the applicant is:
 - (1) A citizen;
 - (2) An alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (INA) who is eligible for a credential under the Uniform Credentialing Act; or
 - (3) A non-immigrant whose visa for entry, or application for visa for entry, is related to employment as a credential holder in the United States;
- d. Evidence of citizenship, lawful permanent residence, and/or immigration status may include a copy of:
 - (1) A U.S. Passport (unexpired or expired);
 - (2) A birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal;
 - (3) An American Indian Card (I-872);

- (4) A Certificate of Naturalization (N-550 or N-570);
- (5) A Certificate of Citizenship (N-560 or N-561);
- (6) Certification of Report of Birth (DS-1350);
- (7) A Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240);
- (8) Certification of Birth Abroad (FS-545 or DS-1350);
- (9) A United States Citizen Identification Card (I-197 or I-179);
- (10) A Northern Mariana Card (I-873);
- (11) An Alien Registration Receipt Card (Form I-551, otherwise known as a "Green Card");
- (12) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
- (13) A document showing an Alien Registration Number ("A#") with visa status; or
- (14) A Form I-94 (Arrival-Departure Record) with visa status;
- (15) A request for special accommodations, if special testing accommodations are needed by the applicant;
- (16) Any other documentation as requested by the Board/Department; and

3. Fee: The applicant must submit the required license fee (See 178 NAC 11) along with the application and all required documentation.

10-004.03 Department Review: The Department will act within 150 days upon all completed applications for initial credentialing.

10-004.04 Denial of Initial Credential: If an applicant for an initial credential does not meet all of the requirements for a credential, the Department will deny issuance of a credential. If the applicant is found to have committed any act which would be grounds for denial of a credential as listed in 178 NAC 10-009, the Department may deny issuance of a credential. To deny a credential, the Department will notify the applicant in writing of the denial and the reasons for the determination. The denial will become final 30 days after mailing the notice unless the applicant, within that 30-day period, requests a hearing in writing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

10-004.05 Withdrawn Applications: An applicant for a credential who withdraws his/her application or whose application is rejected by the Department prior to administration of the examination will be allowed the return of his/her fee, except for a \$25 administrative fee to be retained by the Department.

10-004.06 Practice Prior to Credential: An individual who practices as a licensee under the Act prior to issuance of a credential is subject to assessment of an administrative penalty under 178 NAC 10-012 or such other action as provided in the statutes and regulations governing the credential.

10-004.07 Confidentiality: Social Security Numbers obtained under this section are not public information but may be shared by the Department for administrative purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to this information.

10-004.08 Address Information: Each credential holder must notify the Department of any change to the address of record.

10-004.09 Non-English Documents: Any documents written in a language other than English must be accompanied by a complete translation into the English language. The translation must be an original document and contain the notarized signature of the translator. An individual may not translate his/her own documents.

10-005 EXAMINATION OF APPLICANTS FOR LICENSURE

10-005.01 Type and Categories: The examination for licenses is designed in accordance with Neb. Rev. Stat. § 46-1223. Applicants for licensure as a water well monitoring technician must successfully complete the examination sections described in 178 NAC 10-005.01 items 1 and 2. Applicants for licensure as a water well contractor, water well drilling supervisor, pump installation contractor, or pump installation supervisor must successfully complete the applicable examination sections described in 178 NAC 10-005.01 items 1 and 3. Applicants for licensure as a natural resources ground water technician must successfully complete the examination section described in 178 NAC 10-005.01 item 4. All examinations are written unless special hardship provisions apply, and consist of the following:

1. Section I, the "Nebraska Section", which examines the applicant's knowledge of Nebraska minimum standards for water wells and water well pumps and pumping equipment, the geological characteristics of the State of Nebraska, and the Act, rules and regulations adopted pursuant to the Act and other laws and regulations as may apply to groundwater and the water well industry.
2. Section II, the water well monitoring category, which examines the applicant's knowledge in water sampling practices and techniques and measuring groundwater levels.
3. Section III
 - a. For applicants for licensure as a water well contractor or as a water well drilling supervisor, the special knowledge category consists of current drilling practices and techniques in general drilling and/or environmental drilling.
 - b. For applicants for licensure as a pump installation contractor or supervisor, the special knowledge category consists of current pump installation practices and techniques.
4. Section IV, the natural resources ground water technician category which examines the applicant's knowledge concerning the inspection of chemigation systems, measuring and recording static water levels, inspecting and servicing flow meters, and taking water samples.

10-005.02 Examination Contents: The Department with the approval of the Board may contract with examination development consultants, water well technical experts or other technical experts as deemed necessary to prepare the examinations and may assign a member or members of the Board to work with the consultants and technical experts to assure that the

requirements of this rule and regulation are complied with. All persons holding a license under the Act, or any other persons involved in developing an exam are not allowed to take the exam for a period of 3 years after completion of the exam.

10-005.03 Passing Scores: All applicants taking the examination must achieve a score of at least 70% on each required examination section(s) to successfully complete the examination requirements for licensure under the Act. When an applicant satisfactorily passes an examination section as herein required, the applicant need retake only those section(s) which have not yet been passed.

10-005.04 Board Representation at Examinations: The Board must be represented at all examinations by 1 or more members of the Board or a Board approved proctor who will observe details of the examination and report to the Board.

10-005.05 Review Materials: The Board must, to the extent possible, provide to each applicant for licensure a list of published or unpublished materials and the source of each which may be useful as teaching or review materials in preparation for the examination. The list must specify that materials listed thereon may not necessarily cover all matters tested.

10-005.06 When Required: Examination is required for licensure under the Act for:

1. All applicants for initial regular licensure; and
2. All applicants for reinstatement of licenses
 - a. Whose license has been expired or on inactive status for a period of two or more years, or
 - b. Who have not met the requirements for continuing competency each renewal period, or
 - c. Who have been required to retake the examination as a condition of discipline.

10-005.07 Special Arrangements

1. Administering Examination - Hardship Exceptions: In case of hardship, and with good and sufficient cause shown, the Board may provide for special arrangements for administering the examination which to the extent possible will accommodate the hardship without compromising the examination purposes. Hardships may include but not be limited to reading difficulties, physical skills limitations or absence from the state during regular examination dates. Accommodations may include special proctors or readers, oral examination, dictation of answers or non-resident proctor.
2. Hardship Application: Any individual who believes s/he may have good and sufficient cause to request a hardship exemption may request the Board to review his/her petition for hardship ruling by submitting a written request which includes:
 - a. A completed application for license;
 - b. A written description of the hardship;
 - c. A suggestion of the accommodation requested.

3. Recommendation to Department: The Board reviews each hardship request submitted and approves or denies it. If the Board approves the request, it notifies and directs the Department to make the accommodation.

10-005.08 When Not Required: Upon a finding by the Board that a current licensed contractor has died and that business cannot function unless the applicant is issued a temporary contractor's license or upon a finding by the Board of other good cause and a recommendation by the Board that a temporary license should be issued without examination, the Department will issue a temporary license to the applicant who meets all other qualifications for the requested license.

10-005.08A Hardship Licensing: The Board may upon application recommend that the Department grant a temporary hardship license without examination provided all other requirements are fulfilled by the applicant when the current licensed contractor has died or for other good documented cause.

10-005.08B Application: Any individual who believes s/he may have good and sufficient cause to request a temporary hardship license may request the Board to review his/her petition for a ruling by submitting a written request which includes:

1. A completed application for a license;
2. A written description of the hardship.

10-005.08C Recommendation to Department: The Board must review each such request submitted and must recommend approval or denial of the request to the Department to issue the temporary hardship license.

10-005.09 Eligibility for Examination: In order to be eligible to take the examination for licensure under the Act, an applicant must meet all qualifications necessary for the issuance of the appropriate license other than examination. Applicants for the examination required for reinstatement must meet all requirements for reinstatement of the license other than examination.

10-005.10 Time and Place of Examination: The Department will hold examinations for licensure at least 4 times each year, with no less than 1 examination during each calendar quarter, in Lincoln, Nebraska, at the test sites the Department, with the advice of the Board, may determine.

10-005.10A If a regularly scheduled examination is canceled due to inclement weather or other cause, a new examination date will be scheduled and notice given to all eligible candidates.

10-005.10B Special arrangements for administering examinations may be made by the Department upon recommendation by the Board in cases of hardship determined by the Board.

10-005.11 Notice to Examinees: Applicants eligible for examination will be provided with:

1. Notice of the date, time and place of the examination;

2. An admission card or receipt and information on the requirements for admission to the examination site;
3. Information on equipment or materials needed for the examination, if any;
4. Information on the general format of the examination and tentative schedule of examination periods;
5. At the request of the applicant, copies of Department regulations pertinent to the examination and Nebraska law covered in the examinations; and
6. Other information pertinent to the conduct of the examination as the Board and Department may determine.

10-005.12 Administration: Examinations may be administered by representatives of the Department, Board members or their designated representatives, or a combination of the same. The identity of examinees must not be disclosed on the examination papers in such a way as to enable the examiner to know by whom it was written.

10-005.13 Examination Security: Subject to the provisions of 178 NAC 10-005.14 and 10-005.15, no applicant, license holder, or persons other than Department staff, Board members, or legal representatives or test experts consulting with the Department or Board, will be provided with advance copies of or access to examination questions, answers, or answer keys, with copies of past or proposed questions, answers or answer keys, or any information disclosing the content of or compromising the integrity of any examinations or portions of examinations under development, in use, or proposed to be used.

10-005.13A All examination materials must be kept under lock and key when not under review by Department staff, Board members, or Department legal counsel, or test consultants to the Department and Board, in use during an examination, or under review by an examinee or his/her legal representative in accordance with 178 NAC 10-005.15, item 8.

10-005.13B The Department must maintain a log of persons provided access to examination questions, answers, or other examination materials in a form as agreed between the Department and Board.

10-005.13C Any applicant or license holder who subverts an examination may be subject to discipline under 178 NAC 10-009.

10-005.14 Security Procedures During Examination: Security procedures during the examination include but are not limited to:

1. Admission Identification: All examinees are required to show at least one piece of picture identification and an admissions card provided by the Department.
2. Late Admissions: No late admissions to the examination room are allowed. Any time following commencement of verbal instructions by the proctor is considered late.

3. Distribution of Materials: Examination books, sheets and/or answer sheets will be handed individually and directly to each examinee. Each examinee will receive only one examination book, sheet, and/or answer sheet.
4. Examinations Instructions: The chief proctor will read verbatim the instructions for the examination and will not repeat them.
5. Answering Questions: The proctors will not answer any questions concerning content during the examination. If an examinee thinks a test item is misprinted or incorrect, the examinee will be told to answer the question as it reads. The examinee will be assured that a report of this concern will be made before the examinations are scored.
6. Leaving the Examination Room: Examinees may be permitted to go to the restroom unescorted one at a time. The proctor must hold the examinee's test book, sheet, and/or answer sheet during this absence. No additional testing time is allowed.
7. Leaving the Examination Permanently: If an examinee must leave the examination because of an emergency or illness, the examinee's test book, sheet, and/or answer sheet will be collected. If an examinee finishes the examination early s/he may leave the examination room after all materials are collected; however, to ensure proper security of test materials, no examinee may leave the room during the last 10 minutes of the testing time.
8. Permitted Materials: Examinees must have nothing on their work surface or area except the test book, sheet, and/or answer sheet, identification/admission card, and any materials or equipment needed to respond to exam questions.
9. Taking the Examination: No examinee may work ahead or behind when the examination requires all examinees to work simultaneously on one section or part of the examination. Examinees must stop writing at the end of the session. No extra time will be allowed.
10. Notes: No examinee may write notes concerning the examination nor may examinees remove pages from the test or leave the examination room with any materials held during the examination.
11. Communications: Examinees must not communicate with anyone other than the proctor in any way after the examination questions have been distributed. No electronic communication devices are allowed.
12. 10-Minute Warning: A warning will be given when there are 10 minutes left in the examining session.
13. Observers: No persons are allowed in the examination room other than the examinees, Board members, Department staff, designated proctors, or their representatives administering the examination.

14. Proctors: If more than one proctor is necessary for test administration, 1 proctor will be designated as chief proctor. The chief proctor has the authority and responsibility to assure that the examination is conducted under the conditions and procedures required by 178 NAC 10 with the assistance of the other proctors.
15. Disruptive Behavior: An examinee who exhibits behavior that disrupts or interferes with the testing conditions for other examinees and who fails to cease the behavior will be removed from the examination room after failure to comply with 1 warning.
16. Irregular Behavior: An examinee who is suspected of giving, copying, or otherwise receiving unauthorized information about the contents of the examination will be immediately removed from the examination room and have his/her application for licensure returned as unaccepted.

10-005.15 Access to Examinations: All persons who take and fail examinations required under the Act and Department and Board regulations may review their own answers subject to the following conditions:

1. Review may take place only after results of the examination have been issued by the Department.
2. Photographic identification is required.
3. Review must take place in the offices of the Department during regular business hours.
4. Review may take place only in the presence of a representative of the Department. A representative of the Board may also be present.
5. The answer sheet may not be taken from the site designated for review.
6. Answers may not be copied from the answer forms. Notes may be made but must be limited to the question number and any objections, challenges or questions concerning examination questions and answers. The Department will review notes and may confiscate them if, in the opinion of the representative, the notes are likely to compromise the integrity of the examination.
7. No questions may be asked of or answered by the Department or Board representative during review concerning the examination or answers. Questions, objections, or challenges may be submitted to the Board in writing for its consideration.
8. The examinee may have legal counsel present during review or authorize, in writing, legal counsel to review the examination and answer sheet in his/her absence. Review by counsel is subject to the same conditions and terms as those for the examinee.

10-005.16 Discovery on Examinations During Appeals: Unsuccessful examinees in the process of administrative appeal of the denial of a license for failure of the required

examination may review their own answer sheets as set forth in 178 NAC 10-005.15 and the questions and model answers marked wrong or not given full credit on their answer sheets. No copies of examination materials are provided except upon order of the Director or a court of competent jurisdiction. If the number of wrong answers is so great that release of copies of the records will jeopardize the security of the examination, or if access to and/or copies of the questions is sought, the Director or a court of competent jurisdiction, on motion, may order disclosure of such records as are relevant under such conditions as are warranted in the circumstances. Conditions on records found by the Director to be subject to disclosure may include, but are not limited to:

1. Restrictions on who may possess the copies;
2. Restriction on the number of copies thereto which may be made;
3. Restriction on distribution of any copies provided;
4. Restriction of the persons who may review the material or copies thereof, including limitations on the examinee;
5. Procedures for maintaining security of the copies and for documenting or logging access provided;
6. Security of the examination during hearing and further appeal; and/or
7. Other measures as may be deemed necessary to ensure that security is maintained.

10-005.17 Access to Other Examination Materials: Any person may have access to public records concerning examinations and their development, or statistical information available, if any, relating to examination results.

10-005.18 Failure of Examination: Failure of an examination required for licensure or reinstatement of a license results in denial of the application for the license or its reinstatement.

10-005.19 Retakes of Examinations: An examinee who fails to pass an examination may, upon reapplication for licensure or for reinstatement retake the examination at any regularly scheduled examination.

10-006 CONTINUING COMPETENCY REQUIREMENTS: Each person holding an active credential under the Act must on or before the date of expiration of the credential, complete at least 12 hours of continuing education related to the discipline for which his/her license was issued unless the continuing education requirements are waived in accordance with 178 NAC 10-008.03 or 10-008.04. Each credentialed individual is responsible for maintaining certificates or records of continuing competency activities.

10-006.01 General Requirements:

10-006.01A Each individual licensed under the Act may, following his/her completion of each continuing education program, submit to the Board an affidavit evidencing his/her

completion of the program or may in the alternative make one or more affidavit submissions to the Board of evidence of all programs completed during the applicable period on or before December 31 of each even-numbered year after the initial renewal.

10-006.01B Licensees must submit one or more notarized affidavit(s) showing evidence of completion of the programs. The affidavit(s) must include the name, address, telephone number, and license number of the individual; the program name and provider; the program location; the program dates; and the number of continuing education hours that were earned at each program. The licensee must submit a copy of all certificates or other evidence of completion provided by the program sponsor for each program included on the affidavit.

10-006.01C Whenever licensees serve as presenters in a program, they may receive credit only for their initial presentation during a single renewal period, regardless of the number of times a program is presented.

10-006.02 Responsibilities: The licensee is responsible for:

1. Maintaining documentation of attendance at continuing education programs; and
2. Verifying with the Board that the continuing education program is approved by the Board in accordance with 178 NAC 10-007.

10-006.03 Application for Waiver: In order to apply for a waiver of continuing education requirements for circumstances other than initial renewal and military service, the licensee must submit on or before December 31 of the applicable renewal period a written request for a waiver addressed to the Department which includes:

1. The applicant's license number;
2. The number of continuing education hours for which waiver is sought;
3. A narrative explaining what circumstances beyond the applicant's control prevented completion of all or part of the continuing education requirements, including, but not limited to, pertinent dates and identification of persons by name, address, and telephone number, who have direct knowledge of the grounds claimed for waiver; and
4. Documentation of the circumstances which prevented the licensee from fulfilling the continuing education requirement. Documentation may include, but is not limited to, things such as letters from treating physician(s) stating that the licensee suffered a serious illness or physical disability, duration of the illness and recovery period and the inability of the licensee to complete the continuing education hours.

10-007 APPROVAL OF CONTINUING EDUCATION PROGRAMS: The Board will evaluate applications from licensees or providers for approval of continuing education programs. The Board will grant approval for a specific number of hours of continuing education and will indicate to which occupational activities the program applies.

10-007.01 General Requirements for Approval: To be approved for hours of continuing education all continuing education programs must meet the following general requirements:

1. Content must relate directly to ground water or the water well industry and must include but is not limited to, water well and water well pump standards, geologic characteristics of the State, state groundwater laws and regulations, water well construction and pump installation practices and techniques; water well monitoring; inspection of chemigation devices; and inspection or repair of flow meters;
2. Presenters of programs must be qualified by education, experience or training; and
3. The program provider agrees to provide each attendee a certificate of attendance and to submit a complete attendance record to the Board no later than 30 days after the occurrence of each program provided and must include the following information and assurances:
 - a. The name and address of licensed individuals in attendance,
 - b. Program title,
 - c. Program date(s), and
 - d. Number of hours each individual was in attendance.

10-007.02 Application: To obtain approval of a continuing education program, a provider or a licensee must submit a written application, which must include the following information:

1. The applicant's name, address and telephone number;
2. The name, address, and telephone number of the provider;
3. The name, location and date(s) of the program;
4. A description in detail of program content;
5. A description of program objectives;
6. A description of the qualifications of each presenter;
7. The number of hours of continuing education credit for which approval is requested;
8. In the case of application by a provider, a description of the process the provider uses to verify attendance; a sample of the document required in 178 NAC 10-007.01 item 3 which the provider must issue to attendees; and, the means by which and the time the provider intends to maintain records of attendance.
9. In the case of application by a licensee a copy of any written evidence or certification of attendance of the program from the provider showing attendance and completion of the program and properly executed affidavit of completion of continuing education programs as required in 178 NAC 10-006.01B.

0-007.03 Additional Information: An applicant may submit additional documents or information as the applicant may consider relevant to the application and compliance with the provisions of these regulations.

10-007.04 Applications for CEUs: The Board will consider only applications which are complete. In the event that the Board determines an application is incomplete, the Department

will notify the applicant of the information necessary to complete the application. The Board may accept alternative sources of evidence from that required under 178 NAC 10-007.

10-007.05 Continuing Approval: Once the Board has approved an application for any continuing education program, reapproval is not required for each occasion on which the program is presented provided the program is not changed, or program requirements are not changed by law or regulation. If the program, or any portion of a program is changed, or requirements are changed by statute or regulations, reapplication must be made. The program provider must notify the Department in writing each time an approved continuing education program is presented. The notification must include the date, number of hours presented, and a statement that the program presented was not changed from the program approved previously by the Department.

10-007.06 Advertisement of Approvals: After the Board has granted its written approval of an application, the provider is entitled to state upon its publications: "This program is approved for _____ (number of credit hours approved) hours of continuing education credit (on water well construction licenses, pump installation licenses, water well monitoring technician licenses, or natural resources ground water technician licenses) (or any combination) under the Nebraska Water Well Standards and Contractors' Practice Act".

10-007.07 Prior Approval: The Board must receive an application that contains all the required information at least 65 days prior to the date on which the program is to be presented in order for the Board to issue prior approval. Board action on applications received less than 65 days prior to the date on which the program is to be presented may be deferred until the next regularly scheduled Board meeting.

10-007.08 Post-Program Approval: Applications for approval of a continuing education program made after the program has occurred must be submitted to the Board within 1 year from the date the program was presented.

10-007.09 Provider Record Keeping: In order for the Board to approve a continuing education program, the provider must maintain the records of all certificates of completion issued for the most recent 3 years. The records must identify the following:

1. Full name of each recipient;
2. License number;
3. Program title;
4. Date(s) of program;
5. Program description; and
6. Number of hours of continuing education credit earned.

10-007.10 List of Approved Continuing Education Activities: The Board must provide, upon request, a list of all approved continuing education activities currently available to the public. The list must include but need not be limited to information on the location where the activity is to be held, the number of credit hours assigned, and program description.

10-007.11 Approved Continuing Education Activity - Loss of Approval

10-007.11A The Board may withdraw or suspend approval of a program if the Board determines that:

1. The provider changed the program teaching method or program content without notice to the Board and the Board's approval of the program as changed;
2. The provider issued a certificate of completion to an individual who did not attend or complete the approved program in accordance with the provisions under which the program was approved;
3. The provider did not give certificates of completion to all individuals who have satisfactorily completed the approved activity in accordance with the provisions under which the program was approved;
4. The provider does not maintain records for certificates of completion issued; or
5. Fraud or misrepresentation has occurred with the application for program approval, maintenance of records, teaching method, program content, or issuance of certificates for a particular course or program.

10-007.12 Appeal: If the Board proposes to deny, suspend or withdraw approval of a continuing education program, it must send notice and provide opportunity for hearing in accordance with the Administrative Procedure Act and its rules of procedure 184 NAC 1.

10-008 RENEWAL: An individual who wants to renew his/her credential under the Act must request renewal as specified in 178 NAC 10-008.02 and must meet all requirements for continuing competency for each renewal period. All credentials issued by the Department under the Act will expire on December 31 of each even-numbered year.

10-008.01 Renewal Notice: At least 30 days before the expiration of a credential, the Department will notify each credential holder at the last known address of record. The renewal notice will include:

1. The type of credential;
2. The credential number;
3. The expiration date;
4. Continuing competency requirements for renewal;
5. The amount of the renewal fee; and
6. Information on how to request renewal and how to place a credential on inactive status.

10-008.02 Renewal Procedures: The request for renewal may be submitted in person or by mail or Internet, and must include all required documentation and the renewal fee, which must be paid no later than the expiration date. The applicant may obtain an application from the Department or construct an application.

1. Application: The applicant must attest that all information in the application is truthful and complete, and the applicant, in his/her application:
 - a. Must provide the following information:
 - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
 - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code, or country information);
 - (3) The applicant's:
 - (a) Social Security Number (SSN); or

- (b) Alien Registration Number (A#); or
 - (c) Form I-94 (Arrival-Departure Record) number.
Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
 - (d) Telephone number including area code.
 - b. Must state that s/he is one of the following:
 - (1) A citizen of the United States;
 - (2) An alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (INA) and who is eligible for a credential under the Uniform Credentialing Act; or
 - (3) A non-immigrant whose visa for entry, or application for visa for entry, is related to employment as a credential holder in the United States;
 - c. May provide the following information about him/herself:
 - (1) The applicant's e-mail address; and
 - (2) The applicant's fax number;
 - d. Must indicate that s/he:
 - (1) Is of good character;
 - (2) Has met the continuing competency requirements specified in 178 NAC 10-006.01; or has requested a waiver if s/he meets the requirements of 178 NAC 10-008.03 and/or 10-008.04;
 - (3) Has not, since the last renewal of the credential, committed any act which would be grounds for action against a credential as specified in 178 NAC 10-009.01 or if an act(s) was committed, must provide an explanation of all such acts. and
 - (4) Is a citizen of the United States or a qualified alien under the federal Immigration and Nationality Act, for the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her USCIS documentation upon request.
- 2. Documentation: The applicant must submit the following documentation with the application:
 - a. Alien or Non-Immigrant: Evidence of lawful permanent residence, and/or immigration status may include a copy of:
 - (1) An Alien Registration Receipt Card (Form I-551, otherwise known as a "Green Card");
 - (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
 - (3) A document showing an Alien Registration Number ("A#") with visa status; or
 - (4) A Form I-94 (Arrival-Departure Record) with visa status;
 - b. Other Credential Information: If the applicant holds a credential to provide health services, health-related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed;
 - c. Disciplinary Action: A list of any disciplinary actions taken against the applicant's credential and a copy of the disciplinary action(s), including charges and disposition;

- d. Denial: If the applicant was denied a credential or denied the right to take a credentialing examination, an explanation of the basis for the denial;
- e. Conviction Information: If the applicant has been convicted of a felony or misdemeanor since his/her last renewal or during the time period since initial credentialing if such occurred within the previous two years, the applicant must submit to the Department:
 - (1) A list of any misdemeanor or felony convictions;
 - (2) A copy of the court record, which includes charges and disposition;
 - (3) Explanation from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address the behaviors/actions related to the convictions;
 - (4) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required;
 - (5) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and
 - (6) Any other information as requested by the Board/Department;
3. For licensed contractors, proof of public liability and property damage insurance in the amount of at least \$100,000.00; and
4. The renewal fee according to 178 NAC 11-003.

10-008.03 Waivers for Military Service: A credential holder who has served in the regular armed forces of the United States during part of the credentialing period immediately preceding the renewal date, or is actively engaged in military service as defined in 178 NAC 10-002, is not required to pay the renewal fee or to meet the continuing competency requirements if acceptable documentation is submitted to the Department. The individual must document his/her military service by submitting to the Department:

1. Military identification proving that s/he is in active service;
2. Military orders; or
3. A letter from his/her Commanding Officer indicating that s/he is on active duty.

Upon receipt of acceptable documentation, the Department will waive the fee and the continuing competency requirements and renew the credential. The credential will remain active until the next renewal period.

10-008.04 Waiver of Continuing Competency Requirements

10-008.04A The Department waives continuing competency requirements for individuals who were first credentialed within the 24-month period immediately preceding the renewal date.

10-008.04B The Department may waive continuing competency requirements, in whole or in part, upon submission by a credential holder of documentation that circumstances beyond his/her control have prevented completion of these requirements. These circumstances may include that the licensee suffered a serious or disabling illness or physical disability which prevented completion of continuing education hours during the 24 months immediately preceding the license renewal date.

10-008.05 Audit: The Board reserves the right to audit for good cause the continuing education filing of any licensee by notifying the licensee and requesting the licensee to produce within 30 days of mailing all documents verifying attendance at approved continuing education programs.

10-008.06 Failure to Document: If a licensee is unable to document any hours of attendance at a continuing education program after audit as provided in these regulations, the Department will not include those hours in the calculation of the total of continuing education credit hours earned by the applicant for renewal of his/her license.

10-008.07 Department Review: The Department will act within 150 days upon all completed applications for renewal.

10-008.07A False Information: The Department may refuse to renew a credential for falsification of any information submitted for renewal of a credential. The refusal will be made according to 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

10-008.08 Address Information: Each credential holder must notify the Department of any change to the address of record.

10-008.09 Expiration of a Credential: A credential expires if a credential holder fails to:

1. Notify the Department that s/he wants to place his/her credential on inactive status upon its expiration;
2. Meet the requirements for renewal on or before the date of expiration of his/her credential; or
3. Otherwise fails to renew his/her credential.

10-008.09A Failure to Renew: A credential automatically expires without further notice or opportunity for hearing if a credential holder fails by the expiration date of the credential to either:

1. Submit documentation of continuing competency; or
2. Pay the required renewal fee.

10-008.09B Failure to Meet Continuing Competency Requirements: The Department will refuse to renew a credential, after notice and opportunity for hearing, if a credential holder fails to meet the continuing competency requirements for renewal by the expiration date of the credential.

10-008.09C Right to Practice: When an individual's credential expires, the right to represent him/herself as a credential holder and to practice under the Water Well Standards and Contractors' Practice Act terminates.

10-008.09D Practice After Expiration: An individual who practices after expiration of his/her credential is subject to assessment of an administrative penalty under 178 NAC 10-012 or such other action as provided in the statutes and regulations governing the credential.

10-008.09E Reinstatement of an Expired Credential: If a credential holder wants to resume practice under the Act after failing to renew his/her credential by the expiration date, s/he must apply to the Department for reinstatement as specified in 178 NAC 10-011.

10-008.10 Inactive Status: When an individual wants to have his/her credential placed on inactive status, s/he must notify the Department in writing. There is no fee to have a credential placed on inactive status.

10-008.10A Request for Inactive Status: When the Department has received notification that an individual wants to have his/her credential placed on inactive status, the Department will notify the credential holder in writing of the acceptance or denial of the request.

10-008.10B Placement on Inactive Status: When an individual's credential is placed on inactive status, the credential holder must not engage in practice as a licensee under the Act, but may represent him/herself as having an inactive credential.

10-008.10C Return to Active Status: A credential may remain on inactive status for an indefinite period of time. An individual who wants to have his/her credential returned to active status must apply to the Department for reinstatement and meet the requirements specified in 178 NAC 10-011.

10-009 DISCIPLINARY ACTIONS

10-009.01 Grounds for Action Against a Credential: A credential to practice a profession may have disciplinary actions taken against it on any of the following grounds:

1. Misrepresentation of material facts in procuring or attempting to procure a credential;
2. Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;
3. Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;
4. Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to Neb. Rev. Stat. § 38-175;
5. Conviction of:
 - a. A misdemeanor or felony under Nebraska law or federal law, or
 - b. A crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;
6. Practice of the profession:
 - a. Fraudulently,
 - b. Beyond its authorized scope,
 - c. With gross incompetence or gross negligence, or
 - d. In a pattern of incompetent or negligent conduct;
7. Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;

8. Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;
9. Illness, deterioration, or disability that impairs the ability to practice the profession;
10. Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;
11. Having had his/her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to 178 NAC 10-009.05 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this part;
12. Use of untruthful, deceptive, or misleading statements in advertisements;
13. Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;
14. Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;
15. Violations of the Uniform Credentialing Act, the Water Well Standards and Contractors' Practice Act, or the rules and regulations under either of those acts;
16. Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;
17. Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act.
18. Failure to file a report required by Neb. Rev. Stat. §§ 38-1,124 or 38-1,125;
19. Failure to maintain the requirements necessary to obtain a credential;
20. Violation of an order issued by the Department;
21. Violation of an assurance of compliance entered into under Neb. Rev. Stat. § 38-1,108;
22. Failure to pay an administrative penalty;
23. Unprofessional conduct as defined in 178 NAC 10-009.02;
24. Permitting, aiding, or abetting the practice of the trade or the performance of activities requiring a license by a person not licensed to do so;
25. Conduct or practices detrimental to the health or safety of persons hiring the services of the licensee or of members of the general public;
26. Practice of the trade while the license to do so is suspended or practice of the trade in contravention of any limitation placed upon the license;
27. Failing to file a properly completed notice of abandonment of a water well required by subsection (8) of Neb. Rev. Stat. § 46-602; or
28. Failing to file a water well registration required by subsection (1), (2), (3), (4), or (5) of Neb. Rev. Stat. § 46-602 or failing to file a notice required by subsection (7) of Neb. Rev. Stat. § 46-602.

10-009.02 Unprofessional Conduct: Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or the ethics of the profession, regardless of whether a person, consumer, or entity is injured, but does not include a single act of ordinary negligence. Unprofessional conduct also means conduct that is likely to deceive or defraud the public or is detrimental to the public interest. Unprofessional conduct includes but is not limited to:

1. Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;
2. Cheating on or attempting to subvert the credentialing examination;

3. Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that the person is entitled to practice a profession for which s/he is not credentialed;
4. Knowingly disclosing confidential information except as otherwise permitted by law;
5. Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder;
6. Failure to keep and maintain adequate records of service;
7. Failure to comply with any federal, state, or municipal law, ordinance, rule, or regulation that pertains to the applicable profession; or
8. Failure to comply with any law, ordinance, rule or regulation that pertains to the applicable profession.

10-009.03 Temporary Suspension or Limitation

10-009.03A The Department may temporarily suspend or temporarily limit any credential issued by the Department without notice or a hearing if the Director determines that there is reasonable cause to believe that grounds exist under 178 NAC 10-009.01 for the revocation, suspension, or limitation of the credential and that the credential holder's continuation in practice or operation would constitute an imminent danger to the public health and safety. Simultaneously with the action, the Department will institute proceedings for a hearing on the grounds for revocation, suspension, or limitation of the credential. The hearing will be held no later than 15 days from the date of the temporary suspension or temporary limitation of the credential.

10-009.03B A continuance of the hearing will be granted by the Department upon the written request of the credential holder, and the continuance must not exceed 30 days unless waived by the credential holder. A temporary suspension or temporary limitation order by the Director will take effect when served upon the credential holder.

10-009.03C A temporary suspension or temporary limitation of a credential under 178 NAC 10-009.03 will not be in effect for more than 90 days unless waived by the credential holder. If a decision is not reached within 90 days, the credential will be reinstated unless and until the Department reaches a decision to revoke, suspend, or limit the credential or otherwise discipline the credential holder.

10-009.04 Department Action: The Department will follow the procedures delineated in the Uniform Credentialing Act to notify credential holders of any disciplinary action to be imposed and the time and place of the hearing.

10-009.05 Sanctions: Upon the completion of any hearing held regarding discipline of a credential, the Director may dismiss the action or impose the following sanctions:

1. Censure;
2. Probation;
3. Limitation;
4. Civil Penalty;
5. Suspension; or
6. Revocation.

10-009.05A Additional Terms and Conditions of Discipline: If any discipline is imposed pursuant to 178 NAC 10-009.05, the Director may, in addition to any other terms and conditions of that discipline:

1. Require the credential holder to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral or both, at the option of the Director;
2. Require the credential holder to submit to a complete diagnostic examination by one or more physicians or other qualified professionals appointed by the Director. If the Director requires the credential holder to submit to an examination, the Director will receive and consider any other report of a complete diagnostic examination given by one or more physicians or other qualified professionals of the credential holder's choice if the credential holder chooses to make available the report or reports by his/her physician or physicians or other qualified professionals; and
3. Limit the extent, scope, or type of practice of the credential holder.

10-010 VOLUNTARY SURRENDER OR LIMITATION: A credential holder may offer to voluntarily surrender or limit a credential issued by the Department. The credential holder must make the offer in writing on a form provided by the Department or constructed by the credential holder, which must include the following information:

1. Personal Information:
 - a. First, middle and last name;
 - b. Mailing address (street, rural route, or post office address), city, state, and zip code;
 - c. Telephone number; and
 - d. Fax number.
2. Information Regarding the Credential Being Offered for Surrender or Limitation:
 - a. List credential(s) and credential number(s) that would be surrendered or limited;
 - b. Indicate the desired time frame for offered surrender or limitation:
 - (1) Permanently;
 - (2) Indefinitely; or
 - (3) Definite period of time (specify);
 - c. Specify reason for offered surrender or limit of credential; and
 - d. Specify any terms and conditions that the credential holder wishes to have the Department consider and apply to the offer.
3. Attestation: The credential holder must:
 - a. Attest that all the information on the offer is true and complete, and
 - b. Provide the credential holder's signature and date.

10-010.01 The Department may accept an offer of voluntary surrender or limitation of a credential based on:

1. An offer made by the credential holder on his/her own volition;
2. An offer made with the agreement of the Attorney General or the legal counsel of the Department to resolve a pending disciplinary matter;
3. A decision by the Attorney General to negotiate a voluntary surrender or limitation in lieu of filing a petition for disciplinary action; or

4. A decision by the legal counsel of the Department to negotiate a voluntary surrender or limitation in response to a notice of disciplinary action.

10-010.02 The Department may reject an offer of voluntary surrender of a credential under circumstances which include, but are not limited to, when the credential:

1. Is under investigation;
2. Has a disciplinary action pending but a disposition has not been rendered; or
3. Has had a disciplinary action taken against it.

10-010.03 When the Department either accepts or rejects an offer of voluntary surrender or limitation, the Director will issue the decision in a written order. The order will be issued within 30 days after receipt of the offer of voluntary surrender or limitation and will specify:

1. Whether the Department accepts or rejects the offer of voluntary surrender; and
2. The terms and conditions under which the voluntary surrender is accepted or the basis for the rejection of an offer of voluntary surrender. The terms and conditions governing the acceptance of a voluntary surrender will include, but not be limited to:
 - a. Duration of the surrender;
 - b. Whether the credential holder may apply to have the credential reinstated; and
 - c. Any terms and conditions for reinstatement.

10-010.04 A limitation may be placed on the right of the credential holder to practice a profession to the extent, for the time, and under the conditions as imposed by the Director.

10-010.05 Violation of any of the terms and conditions of a voluntary surrender or limitation by the credential holder will be due cause for the refusal of renewal of the credential, for the suspension or revocation of the credential, or for refusal to restore the credential.

10-010.06 Reinstatement following voluntary surrender is set out in 178 NAC 10-011.

10-011 REINSTATEMENT: This section applies to individuals previously credentialed in Nebraska who seek the authority to return to practice in Nebraska with a valid Nebraska credential. To qualify for reinstatement, the applicant must first meet the requirements for renewal. Individuals may apply for reinstatement as follows:

1. An individual whose credential has expired, been placed on inactive status, voluntarily surrendered for an indefinite period of time, or suspended or limited for disciplinary reasons, may apply for reinstatement at any time.
2. An individual whose credential has been voluntarily surrendered for a definite period of time may apply for reinstatement after that period of time has elapsed.
3. An individual whose credential has been revoked may apply for reinstatement only after a period of two years has elapsed from the date of revocation.
4. An individual whose credential has been permanently voluntarily surrendered may not apply for reinstatement.

The voluntary surrender of a credential may be unrelated to disciplinary matters, or may be done to resolve a pending disciplinary matter, in lieu of disciplinary action, or in response to a notice of disciplinary action.

10-011.01 Reinstatement From Expired or Inactive Status or Following Voluntary Surrender Unrelated to a Disciplinary Matter

The applicant must submit to the Department a written application on a form provided by the Department or constructed by the applicant.

1. Application: The applicant must attest that all information in the application is truthful and complete, and the applicant, in his/her application:
 - a. Must provide the following information:
 - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
 - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code or country information);
 - (3) The applicant's:
 - (a) Social Security Number (SSN); or
 - (b) Alien Registration Number (A#); or
 - (c) Form I-94 (Arrival-Departure Record) number.Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
 - (4) If the applicant holds a professional credential in another state, a list of the state(s) and type of credential; and
 - (5) Telephone number including area code;
 - b. Must state that s/he is one of the following:
 - (1) A citizen of the United States;
 - (2) An alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (INA) and who is eligible for a credential under the Uniform Credentialing Act; or
 - (3) A non-immigrant whose visa for entry, or application for visa for entry, is related to employment as a credential holder in the United States;
 - c. If the applicant is an alien or non-immigrant, s/he must submit evidence of lawful permanent residence, and/or immigration status may include a copy of:
 - (1) An Alien Registration Receipt Card (Form I-551, otherwise known as a "Green Card");
 - (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
 - (3) A document showing an Alien Registration Number ("A#") with visa status; or
 - (4) A Form I-94 (Arrival-Departure Record) with visa status;
 - d. May provide the following information about him/herself:
 - (1) E-mail address;
 - (2) Fax number; and
 - e. Must indicate that s/he:
 - (1) Is of good character;
 - (2) Has met the continuing competency requirements specified in 178 NAC 10-006 within the 24 months immediately preceding submission of the application;

- (3) Has not practiced in Nebraska since s/he last held an active credential, or if the applicant has practiced in Nebraska since s/he last held an active credential, the actual number of days practiced;
 - (4) Has not committed any act which would be grounds for action against a credential as specified in 178 NAC 10-009 since the last renewal or issuance of the credential (whichever is later), or if an act(s) was committed, provide an explanation of all such acts; and
 - (5) Is a citizen of the United States or a qualified alien under the federal Immigration and Nationality Act, for the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her USCIS documentation upon request; and
2. Fee(s): The following fee(s):
- a. If the credential is expired or inactive, the reinstatement and renewal fees; or
 - b. If the credential was voluntarily surrendered, the renewal fee.

10-011.01A If an applicant has practiced while his/her credential was expired, inactive, or voluntarily surrendered, the Department may, with the recommendation of the Board, take one or more of the following actions:

1. Deny the application to reinstate the credential;
2. Reinstatement the credential to active status and impose limitation(s) or other disciplinary actions on the credential; and/or
3. Reinstatement the credential.

10-011.01B If an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:

1. Deny the application for reinstatement of the credential;
2. Reinstatement the credential to active status and impose limitation(s) or other disciplinary actions on the credential; and/or
3. Reinstatement the credential.

10-011.01C The Department will act within 150 days on all completed applications.

10-011.01D The Department's decision may be appealed to the Director by any party to the decision. The appeal must be in accordance with the Administrative Procedure Act.

10-011.02 Reinstatement Following Suspension, Limitation, Revocation, or Voluntary Surrender to Resolve a Pending Disciplinary Matter, In Lieu of Discipline, or In Response to a Notice of Disciplinary Action: An individual whose credential was suspended or limited may apply for reinstatement at any time. An individual whose credential has been revoked may apply for reinstatement after a period of two years has elapsed from the date of revocation. An individual whose credential was voluntarily surrendered may apply for reinstatement according to the order entered by the Director.

The applicant must submit to the Board a written application on a form provided by the Department or constructed by the applicant.

1. Application: The applicant must attest that all information in the application is truthful and complete, and the applicant, in his/her application:
 - a. Must provide the following information:
 - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
 - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code or country information);
 - (3) The applicant's:
 - (a) Social Security Number (SSN) or
 - (b) Alien Registration Number (A#); or
 - (c) Form I-94 (Arrival-Departure Record) number.
Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
 - (4) If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
 - (5) A statement of the reason the applicant believes his/her credential should be reinstated;
 - (6) Proof of restitution to all persons suffering damage or injury as a result of the actions for which the disciplinary measure was imposed; and
 - (7) Telephone number including area code; .
 - b. Must state that s/he is one of the following:
 - (1) A citizen of the United States;
 - (2) An alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (INA) and who is eligible for a credential under the Uniform Credentialing Act; or
 - (3) A non-immigrant whose visa for entry, or application for visa for entry, is related to employment as a credential holder in the United States;
 - c. If the applicant is an alien or non-immigrant, s/he must submit evidence of lawful permanent residence, and/or immigration status may include a copy of:
 - (1) An Alien Registration Receipt Card (Form I-551, otherwise known as a "Green Card");
 - (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
 - (3) A document showing an Alien Registration Number ("A#") with visa status; or
 - (4) A Form I-94 (Arrival-Departure Record) with visa status;
 - d. May provide the following information about him/herself:
 - (1) E-mail address;
 - (2) Fax number; and
 - e. Must indicate that s/he:
 - (1) Is of good character;
 - (2) Has met the continuing competency requirements specified in 178 NAC 10-006 within the 24 months immediately preceding submission of the application (or other requirements as specified by the practice act);

- (3) Has not practiced in Nebraska since s/he last held an active credential, or if the applicant has practiced in Nebraska since s/he last held an active credential, the actual number of days practiced;
 - (4) Has not committed any act which would be grounds for action against a credential as specified in 178 NAC 10-009 since the last renewal or issuance of the credential (whichever is later), or if an act(s) was committed, provide an explanation of all such acts; and
 - (5) Is a citizen of the United States or a qualified alien under the federal Immigration and Nationality Act, for the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her USCIS documentation upon request; and
2. Fee: The renewal fee found in 178 NAC 11.

10-011.02A The Board will make a recommendation regarding reinstatement following suspension, limitation, revocation, or voluntary surrender within 180 days of receipt of the application.

10-011.02B The Department, with the recommendation of the Board, may:

1. Conduct an investigation to determine if the applicant has committed acts or offenses prohibited by Neb. Rev. Stat. § 38-178;
2. Require the applicant to submit to a complete diagnostic examination, at the expense of the applicant, by one or more physician(s) or other professionals appointed by the Board. The applicant may also consult a physician(s) or other professionals of his/her own choice for a complete diagnostic examination and make available a report(s) of the examination(s) to the Department and to the Board;
3. Require the applicant to pass a written, oral, or practical examination or any combination of examinations at the expense of the applicant;
4. Require the applicant to successfully complete additional education at the expense of the applicant; or
5. Take any combination of these actions.

10-011.02C On the basis of the written application, materials submitted by the applicant and the information obtained under 178 NAC 10-011.02B, the Board may:

1. Deny the application for reinstatement; or
2. Recommend to the Department:
 - a. Full reinstatement of the credential;
 - b. Modification of the suspension or limitation; or
 - c. Reinstatement subject to limitations or subject to probation with terms and conditions.

If the applicant has practiced while his/her credential was suspended, limited, revoked, or voluntarily surrendered, the Department may assess an administrative penalty pursuant to 178 NAC 10-012, in which case a separate notice of opportunity for hearing will be sent to the applicant.

10-011.02D An affirmative vote of a majority of the full membership of the Board as authorized by statute is required to recommend reinstatement of a credential with or without terms, conditions, or restrictions.

10-011.02E Full Reinstatement: If the Board recommends full reinstatement of the credential, modification of the suspension or limitation, or reinstatement of the credential subject to limitations or subject to probation with terms and conditions, the Board's recommendation will be sent to the applicant by certified mail. The following information will be forwarded to the Director for a decision:

1. The written recommendation of the Board, including any finding of fact or order of the Board;
2. The application for reinstatement;
3. The record of hearing, if any; and
4. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the applicant.

10-011.02F Denial, Modification, Limitation, or Probation: If the Board's initial decision is to deny the application for reinstatement, recommend modification of the suspension or limitation, or reinstate the credential subject to limitation or probation with terms and conditions, notification of the Board's decision will be mailed to the applicant by certified mail.

1. The initial decision or recommendation of the Board will become final 30 days after the decision or recommendation is mailed to the applicant unless the applicant requests a hearing within that 30-day period.
 - a. If the applicant requests a hearing before the Board, the Department will mail a notice of the date, time, and location of the hearing. The notice will be sent by certified mail at least 30 days before the hearing.
 - b. Following the hearing, the Board may deny the reinstatement or recommend full reinstatement of the credential, or recommend modification of the suspension or limitation, or recommend reinstatement of the credential subject to limitations or probation with terms and conditions.
2. If the applicant has been afforded a hearing or an opportunity for a hearing on an application for reinstatement within two years before filing the current application, the Department may grant or deny the application without another hearing before the Board.

10-011.02G Decision Denial: If the Board's final decision is denial of the application for reinstatement, the applicant will be notified by certified mail. The applicant may appeal the Board's denial to District Court in accordance with the Administrative Procedure Act.

10-011.02H Board Recommendation: If the Board's final recommendation is full reinstatement of the credential, modification of the suspension or limitation, or reinstatement of the credential subject to limitations or probation with terms and conditions, the Board's recommendation will be sent to the applicant by certified mail. The following information will be forwarded to the Director for a decision:

1. The written recommendation of the Board, including any finding of fact or order of the Board;
2. The application for reinstatement;
3. The record of hearing, if any; and
4. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the applicant.

10-011.021 Director's Review: The Director, upon receipt of the Board's recommendation for full reinstatement, modification, or probation, will review the application and other documents and make a decision within 150 days of receipt of the Board's recommendation and accompanying documents. The Director will enter an order setting forth the decision. The Director may:

1. Affirm the recommendation of the Board and grant reinstatement; or
2. Reverse or modify the recommendation if the Board's recommendation is:
 - a. In excess of statutory authority;
 - b. Made upon unlawful procedure;
 - c. Unsupported by competent, material, and substantial evidence in view of the entire record; or
 - d. Arbitrary and capricious.

The order regarding reinstatement of the applicant's credential will be sent to the applicant by certified mail. The Director's decision may be appealed to District Court by any party to the decision. The appeal must be in accordance with the Administrative Procedure Act.

10-012 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists of practice without a credential to practice a profession. Practice without a credential for the purpose of this regulation means practice:

1. Prior to the issuance of a credential;
2. Following the expiration of a credential; or
3. Prior to the reinstatement of a credential.

10-012.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without being credentialed:

1. The person admits to engaging in practice;
2. Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;
3. Billing or payment records document the provision of service by the person;
4. Service records document the provision of service by the person;
5. Water well registration or other government records indicate that the person was engaged in practice; and
6. The person opens a business and announces or advertises that the business is open to provide service.

For purposes of this regulation, prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.

10-012.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for practice without a credential. To assess the penalty, the Department will:

1. Provide written notice of the assessment to the person. The notice will specify:
 - a. The total amount of the administrative penalty;
 - b. The evidence on which the administrative penalty is based;
 - c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;
 - d. That the Department will within 30 days following receipt of payment of the administrative penalty, remit the penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5 of the Constitution of Nebraska;
 - e. That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property. The Department may also collect in such action attorney's fees and costs incurred directly in the collection of the administrative penalty; and
 - f. Failure to pay an administrative penalty may result in disciplinary action.
2. Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.

10-012.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

10-013 FEES: Fees referred to in these regulations are set out in 178 NAC 11, unless otherwise specified.

THESE AMENDED RULES AND REGULATIONS replace Title 178 NAC 10, Licensure of Water Well and Pump Installation Contractors and Certification of Water Well Drilling and Pump Installation Supervisors, and Water Well Monitoring and Natural Resources Ground Water Technicians, effective June 13, 2007.