209.07.1-3. Licensing and bonding

3.1 Authorized constructor. Water wells subject to these rules shall be constructed only by persons having a valid license under Act 641 of 1969, enacted by the General Assembly of the State of Arkansas, unless exempt under provisions of that Act.

3.2. Supervision. During the construction, alteration, or repair of a water well, or installation or repair of pumping equipment, there must be, ~~within a two-hour drive~~ on site, a person who has obtained a registration certificate and has been certified in the type of construction engaged or an apprentice under personal supervision as defined by Rule 3.10.1.1. At all times in which only an apprentice is on site, ~~T~~the person ~~who has obtained a registration certificate or an apprentice with proper supervision as defined by~~ supervising the apprentice under Rule 3.10.1.1 shall remain informed and have knowledge of the status of the work being accomplished.

3.3 Engineers and geologists. Arkansas Registered Professional Engineers and Arkansas Registered Professional Geologists practicing geotechnical engineering or geologic investigations may be declared exempt from certification, bonding, and testing requirements upon application for exemption from the Commission.

3.4 Fees. The following fees will be charged for licensing, registration, and rig permitting.

Drilling and Pump System License $350.00

Pump System-Only License $175.00

Drilling-Only License $175.00

Driller Registration Certificate $125.00

Pump Installer Registration Certificate $125.00

Apprentice Certificate $125.00

Rig permit $145.00

3.4.1 Fees non-refundable. All applicants for registration certificates shall pay said fees prior to completing the exam. Once processed, all application and licensing fees are non-refundable.

3.5 Categories for registration certificates

3.5.1 Driller registration.

3.5.1.1 Consolidated. Includes water well construction techniques for all water wells, other than monitoring wells, completed in rock formation or in formations which will not cave, including the overburden and soils overlying consolidated formations.

3.5.1.2 Unconsolidated. Includes water well construction techniques for all water wells, other than monitoring wells, completed in sand, clay, and gravel formations which are caving in nature.

3.5.1.3 Monitoring and piezometer. Includes construction for the purpose of locating and sampling for engineering or geological data or sampling ground water.

3.5.1.4 Hydrofracturing. Includes pumping or injecting fluids into a well and does not include the use of explosives.

3.5.1.5 Geothermal. Includes construction of wells built for the purpose of geothermal energy exchange including earth-coupled and direct exchange systems.

3.5.2 Pump installer registration.

3.5.2.1 Turbine pumps. Includes equipment consisting of, or used in conjunction with, line shaft turbine pumps.

3.5.2.2 Submersible pumps. Includes equipment consisting of, or used in conjunction with, submersible pumps and motors.

3.5.2.3 Jet pumps. Includes equipment used in conjunction with the jetting action of a venturi nozzle.

3.5.2.4 Monitoring / purging/ sampling. Includes pumps and other devices permanently installed to purge monitor wells, obtain samples from a monitoring well, or recover foreign substances from ground water.

3.5.2.5 Positive displacement pumps and other devices. Includes the installation of equipment and pumping devices not listed above, such as hand pumps, windmills, stroke pumps or sucker rod pumps and equipment.

3.5.2.6 Plugging. Registered pump installers who have demonstrated knowledge of the applicable rules and possession of the required skills by passing a test on those subjects administered by the Commission are authorized to plug abandoned water wells

3.6 Water well contractor licenses.

3.6.1 General. Any person who contracts for or is engaged in well construction or pump installation shall hold or be employed by a person holding an Arkansas Water Well Contractor License. The Water Well Contractor shall hold the proper license, certificates, and permits for the type of construction engaged and shall meet continuing education requirements as set forth herein.

3.6.2 Categories for licenses.

3.6.2.1 Drilling and pump systems. Includes contracting for all elements of water well construction, including drilling and pump installation.

3.6.2.2 Pump systems. Includes contracting for the installation and repair of pumps and related equipment and does not include excavating the well.

3.6.2.3 Drilling. Includes excavation of a water well, modification of the borehole, setting or removal of casing up to the point of installing or repairing pumping equipment and plugging abandoned water wells.

3.6.2.4 Master electricians. A Master Electrician holding a valid license may repair or install pressure switches, control boxes and other electrical components of the pumping equipment at the well head without holding licenses issued by the Commission. The Electrician shall adhere to these rules for the installation and is not authorized to break the well seal, or alter, cut or drill into the casing.

3.6.2.5 Master plumbers. A Master Plumber holding a valid Master Plumber License may repair or install pressure switches, pressure tanks, valves and pipes at the well head, without holding licenses issued by the Commission. The plumber shall adhere to these rules for the installation and is not authorized to break the well seal, or alter, cut or drill into the casing.

3.7 Bonding.

3.7.1 Conditions of bond for resident and nonresident contractor. The Water Well Contractor as defined in Act 641, as amended, as principal and a surety company or corporation authorized to do business in the State of Arkansas as surety shall bind themselves and their successors and assigns jointly and severally to the Arkansas Water Well Construction Commission for the use and benefit of the public in the full penal sum of no less than twenty thousand dollars ($20,000.00) for each licensing year beginning August 1, 2016; that said principal and any person employed by him shall duly comply with Act 641 of 1969, as amended, and all rules pertaining to said Act. Any one contract, as prescribed herein by Rule 3.7.7, between said principal and a person doing business with said principal exceeding twenty thousand dollars ($20,000.00) or the amount of aforesaid bond if in excess of twenty thousand dollars ($20,000.00) shall require said principal to enter into a separate agreement and a bond equal to the amount of said contract as required in Subsection (c) of Section 11 of Act 641 of 1969.

3.7.2 Recovery of damages. Any and all persons doing business with said principal or person in his employ, who have been damaged by reason of violation of any of the provisions set out in Act 641 of 1969, as amended, and all rules pertaining to said Act, may in their own name and without joining the Commission as a party, sue thereon and join in said action as one of the defendants against the surety on said bond(s).

3.7.3 Exhaustion of administrative remedies. No action shall be taken against the principal and surety on said bond(s) until all reasonable administrative remedies have been exhausted by the Commission.

3.7.4 Term of bond. Each bond shall be construed as a new bond in the sum aforesaid in Rule 3.7.1, for each year it remains in full force unless the bond is waived as set forth in Rule 3.7.8.

3.7.5 Termination of bond. The surety shall terminate each bond by giving not less than thirty (30) days written notice of the effective date of said termination to the Commission. Termination shall not relieve said surety or principal of any liability during which the bond was in force until a period of not less than five (5) years from the effective date of termination has expired.

3.7.6 Bond form. The Commission shall provide a contractor's bond form to each person applying for the contractor's license. Each contractor's license shall be issued only after the receipt of the original copy of the water well contractor's bond prescribed above and said form is completed and notarized. The contractor's license may be renewed annually without receipt of a new contractor's bond form provided the Commission has proof that the original contractor's bond(s) remains in full force and effect.

3.7.7 The amount of the contract. "The amount of the contract" as used in Rule 3.7.1 shall be defined as the amount or cost of the construction of the well, including but not limited to the cost of drilling, casing, screens, grout, seals, etc., excluding the costs of systems employed, constructed or installed on the discharge side of the pressure tank or beyond the point of discharge from the pump if no tank is employed, or to pivot systems, ditches, pumping stations, pump houses, buildings, air conditioning duct work, or items which the water well contractor may construct or install, but are not directly connected with the construction of the well or included under the Definition or Scope of a water well as prescribed in Subsection (E) of Section 3, and Section 4 of Act 641 of 1969, as amended, and these rules.

3.7.8 Waiver. The Commission shall reserve the right to waive the requirement of obtaining a water well contractor's bond in the amount of twenty thousand dollars ($20,000.00) in favor of a bond of a lesser amount to those contractors whose contracts for each one-year period consistently amount to less than twenty thousand dollars ($20,000.00). The contractor must provide proof that he is unable to obtain a bond, or such bond would cause an undue hardship. Further, the Executive Secretary of the Commission must be willing to recommend that a bond of a lesser amount would be sufficient protection for any persons doing business with the Contractor.

3.7.9 Cash bond. Persons who install pumping equipment or repair pumping equipment that have been granted a waiver for a twenty thousand dollar ($20,000) bond and are unable to post a twenty thousand dollar ($20,000) bond may post in lieu of a water well contractor's bond an escrow cash bond of no less than five hundred dollars ($500.00) per year until twenty thousand dollars ($20,000) is accrued. Persons authorized to post an escrow cash bond in lieu of posting bond shall also submit a statement of personal indemnification signed by the principal owner or Chief Executive Officer.

3.8 Mail.

3.8.1 General. All persons licensed or certified by the Commission agree to keep the Commission advised of his or her current address and must readily accept all mail sent to them from the Commission.

3.8.2 Registered or certified mail. Registered or certified mail sent with proper postage and to the last known address that is returned unclaimed shall be considered adequate notification of notice served.

3.8.3 Change of address. The Commission shall be notified of any change of address within fifteen (15) days of the change.

3.8.4 Refusal to accept mail. Refusal to accept mail is considered a violation of these rules and will result in immediate suspension of any registration or license until the matter is resolved and could result in further disciplinary action.

3.9 Continuing education. Beginning August 1, 2002, as a condition of annual license renewal, a contractor or one designee who is a partner, officer, or full-time employee and a registered driller or pump installer shall submit proof of 6 approved continuing education credits completed during the previous licensing year. For each additional designee, two (2) additional credits will be required per contractor per year. Credits exceeding the required number may be carried over into the next licensing year. The Commission may pre-approve continuing education programs and the number of credits to be given for those programs therefore. Programs submitted for pre-approval shall be considered by the Commission only upon submission, by the sponsor or attendee, of a written description, which must

include the names and qualifications of the presenters, the time and location, the proposed number of credits, and the program's objectives. Programs may be held in-state or out-of-state and must be related to water wells or pump systems technology, science, or health, sound business practices, or compliance with the Commission's Rules and other governmental and industry requirements including worker health and safety. Program sponsors must provide written proof of attendance to attendees, and providers of pre-approved classes must provide a list of attendees to the Commission by July 31 of each year.

3.10 Apprenticeship program.

3.10.1 General. A natural person obtaining the knowledge, skills, and abilities necessary to obtain a certificate of registration as a pump installer under the personal supervision of a registered pump installer or to obtain a certificate of registration as a water well driller under the personal supervision of a registered water well driller may apply to the Commission for an apprenticeship certificate.

3.10.1.1 Personal supervision. "Personal supervision" means that the supervisor is at the job site with the apprentice or within two hours' traveling distance of the apprentice whenever the apprentice is working in well construction or pump installation. When the supervisor is not physically present at the job site with the apprentice, the supervisor must be reachable at any time by wireless telephone or radio contact.

3.10.1.2 Supervisor Employment. A registered certificate holder serving as an apprentice supervisor shall be a full-time employee of the company hiring the apprentice.

3.10.2 Requirements for apprenticeship certificate. All applicants for apprenticeship certificates must submit the following:

1. Completed application form;

2. Notarized letter from a registered certificate holder stating:

a. That he or she holds a certificate of registration in the same area or a comparable area sought by the apprenticeship applicant and that he or she has held that certificate for at least five of the previous ten years;

b. That he or she has no record of construction violations in the specialty area unless waived by the Commission;

c. That he or she has no outstanding fines or fees owed to the Commission;

d. That he or she is willing to serve in a supervisory capacity during the apprenticeship;

e. The number of apprentices including the applicant that the supervisor currently supervises or anticipates supervising within a year of drafting the letter will not exceed five; and

f. A description of the training program;

3. Written statement from a contractor employing the supervisor whereby the contractor agrees to accept responsibility for the apprenticeship;

4. Copy of driver's license or other document illustrating that applicant is at least eighteen years old; and

5. Registration fee.

3.10.3 Registration for concurrent apprenticeships. An applicant may register for both a drilling apprenticeship and a pump installer's apprenticeship at the same time. Each registration will require separate registration fees.

3.10.4 Transfer of supervisory authority. A supervisor may agree to temporarily transfer supervising responsibility to a person holding a certificate of registration in the area sought by the apprentice and employed by the same contractor. The supervisor to whom responsibility is temporarily transferred must not already supervise more than five other apprenticeships and must meet the requirements of 3.10.2.

3.10.5 Apprentice responsibilities. An apprentice's certificate may be revoked for engaging in prohibited activities.

3.10.5.1 Driller apprentice responsibilities. A driller apprentice shall:

1. Represent his supervising driller during operations at the well site;

2. Not perform, or offer to perform, any services associated with water well drilling except under the personal supervision of a certified driller; and

3. Not perform, or offer to perform, any services associated with pump installation unless the apprentice holds a pump installer apprentice certificate or pump installer certificate of registration.

3.10.5.2 Pump installer apprentice responsibilities. A pump installer apprentice shall:

1. Represent his supervising pump installer during operations at the well site;

2. Not perform, or offer to perform, any services associated with pump installation except under the personal supervision of a certified pump installer; and

3. Not perform, or offer to perform, any services associated with water well drilling unless the apprentice holds a driller apprentice certificate or driller certificate of registration.

3.10.6 Length of apprenticeship. A person must be apprenticed with the Commission for at least two years before that person is eligible to apply for certification as a water well driller or pump installer.

3.10.7 Eligibility to apply for driller and pump installer certification.

3.10.7.1 Supervisor recommendation. After the apprentice has completed at least two years of apprenticeship, the apprentice's supervisor may send the Commission a letter on the apprentice's behalf stating that the apprentice is ready to sit for examination to obtain a certificate of registration as a water well driller or pump installer.

3.10.7.2 Application by apprentice. After the apprentice has completed two years of apprenticeship, the apprentice may submit IRS W2 Wage and Tax Statement forms demonstrating that he has spent three years in the employ of a licensed water well contractor and that he is ready to sit for the certificate of registration examination. The Commission will then approve or disapprove the apprentice to take the examination.

3.10.7.2.1 Inability to secure letter from contractor. If after the apprentice has completed at least two years of apprenticeship but is unable due to extenuating circumstances to secure a letter from his supervisor recommending that he be qualified to sit for examination, the apprentice may petition the Commission to waive the requirement that he provide a letter from a supervisor prior to sitting for the examination.

3.10.8 Renewal of apprenticeship certificate. An apprentice's certificate shall be deemed expired on July 31 of each year. If the apprentice has knowingly violated Commission rules or owes fees assessed by the Commission, the Commission may choose to deny renewal. A certificate must be renewed prior to the certificate's expiration date by complying with the following requirements:

1. Submission of the renewal application form; and

2. Payment of an annual registration fee to the Commission.

3.10.9 Change of responsible supervisor or contractor. If a supervisor terminates supervision of an apprentice, the contractor employing the apprentice must send a written statement to the Commission stating the relationship has ended. In order to continue the apprenticeship, the apprentice must find another certificate holder to supervise him or her, and that new supervisor must send a notarized letter to the Commission that meets the requirements of Rule 3.10.2.

3.10.10 Apprenticeship program exemption.

A. A person who has previously held a water well driller or pump installer certificate of registration from the Commission and seeks reinstatement shall not be required to complete the apprenticeship program.

B. A person seeking reinstatement shall pay the certificate of registration fee set out in Rule 3.4 and demonstrate via application that he or she:

1. Was previously registered in this state in the area of interest;

2. Held the registration in good standing at the time of registration;

3. Did not have his or her registration revoked for:

a. An act of bad faith; or

b. A violation of law, rule or ethics;

4. Is not holding a suspended or probationary registration or license in any state; and

5. Is sufficiently competent in his or her area of interest by satisfactorily completing a competency examination approved by the Commission.

C. If the person seeking reinstatement applies for reinstatement within a year of the expiration of his or her certificate, he or she will not be required to take the Commission's competency test.

3.10.10.1 Continuing Education. The Commission may require the person to participate in continuing education consistent with these rules.

3.10.10.2 Reciprocity. A person shall not be required to comply with the requirement of 3.10.10 to obtain reinstatement of a license if the person meets the requirements of reciprocity.

3.11 Rules applicable to active duty service members, returning military veterans, and spouses.

3.11.1 Expedited and temporary certification for active duty military, returning military veterans, and spouses.

A. The Commission shall expedite the certification process for any individual applying for Arkansas accreditation who

1. Holds a substantially equivalent certificate issued by another state, territory, or distrit [FN1] who is in good standing with that state; and

2. Is one of the following:

a. An active duty military service member stationed in the State of Arkansas;

b. A returning military veteran applying within one (1) year of his or her discharge from active duty; or

c. The spouse of a person described by (2)(a) or (b).

B(1). The applicant will still need to demonstrate competence to drill wells or install pumps in Arkansas by passing the Commisison's test.

(2). However, an applicant may obtain temporary certification pursuant to Rule 3.12.4 until the applicant has met the Commisison's testing requirement.

3.11.2 Consideration of military training and experience.

A. When considering an application for certification from a person described by Rule 3.11.1.2 who does not have certification from another state, territory, or district, the Commisison shall:

1. Consider whether the applicant's military training and experience is substantially similar to experience or education required for the applicable permit or license; and

2. Accept documentation of the applicant's military training and experience in lieu of experience or education required for the applicable permit if the Commission determines the military training and experience is a satisfactory substitute for the experience or education required for the permit.

B. The applicant will still need to demonstrate competence to drill wells or install pumps in Arkansas by passing the Commisison's test.

3.11.3 License or permit expiration.

A license or permit issued by the Commission held by an active duty military service member or the spouse of an active duty military service member deployed outside Arkansas shall not expire until one hundred eighty (180) days following the active duty military service member's or the spouse's return from active deployment.

3.11.4 Continuing education exemption.

A. The Commission shall allow a full or partial exemption from continuing education requirements for the following individuals:

1. An active duty military service member deployed outside of the State of Arkansas;

2. A returning military veteran applying within one (1) year of his or her discharge from active duty; or

3. The spouse of a person under (1) or (2) of this section.

B. The Commission may require the completion of continuing education before issuing any subsequent renewals.

3.12 Reciprocity.

3.12.1 Reciprocity agreement.

An applicant holding an occupational license from an entity of another state, territory, or district of the United States that has entered into a written agreement with the Commission shall qualify for a certificate of registration as a water well driller or pump installer once he or she has satisfied the terms of the agreement.

3.12.2. Reciprocity qualifications.

An applicant, who holds a substantially similar certification from another state, territory, or district of the United States that has not entered into a reciprocity agreement with the Commission, applying for reciprocal certification as an Arkansas Water Well Construction Commission Water Well Driller or Pump Installer, shall meet the following requirements:

1. The applicant holds certification in good standing;

2. The applicant shall not have had a certification revoked for an act of bad faith or a violation of law, rule, or ethics;

3. The applicant does not hold a suspended or probationary license in another state, territory, or district of the United States;

4. The applicant has held the certificate for two years;

5. The applicant demonstrates sufficient competence in the field by passing the Commission's certification exam which tests applicant's knowledge of the Arkansas Water Well Construction Act, Ark. Code Ann. § 17-50-101 *et seq.*; Water Well Construction Rules; and general knowledge of water well construction.

6. The applicant is eighteen years of age or older; and

7. The applicant pays a registration fee in accord with Rule 3.4.

3.12.3 Required documentation of substantially similar program.

A. As evidence that the applicant's certificate from another jurisdiction is substantially similar to the Commission's requirements for a certificate of registration, the applicant shall submit the following information:

1. Evidence of current and active certification from another state, territory, or district of the United States.

2. Evidence that the other jurisdiction's certification requirements are similar to those required by the Commission.

B. To demonstrate that the applicant meets reciprocity requirements, the applicant shall provide the Commission with:

1. The names of all states in which the applicant is currently certified or has been previously certified;

2. Letters of good standing or other information from the licensing entity of each jurisdiction in which the applicant is currently or has ever been certified showing that the applicant has not had his certificate revoked for an act of bad faith or a violation of law, rule, or ethics and does not hold a certificate on a suspended or probationary status.

3.12.4 Temporary certification for a person holding certification from a substantially similar program.

A. The Commission shall grant a 90-day temporary certificate of registration to any individual holding a water well driller or pump installer certificate of registration from another state, territory, or district of the United States upon being presented with evidence of a current and active occupational certification substantially similar to the practice of water well drilling or pump installing in Arkansas.

B. An individual holding a substantially similar certification shall submit a completed application, proof of certification, and a certificate of registration fee identified in Rule 3.4.

3.12.5 Applicant with experience from a state, territory, or district that does not require certification.

An applicant from a state that does not certify water well drillers shall meet requirements 5, 6, and 7 in Rule 3.12.2, as well as provide the following documents:

1. An affidavit containing separate paragraphs accounting for at least two years of employment by a water well drilling or pump installation business or businesses including the following information:

a. Business phone number and address,

b. Name of applicant's supervisor;

c. Description of duties performed by applicant while employed by the business;

d. Dates of applicant's employment,

e. Number of well drilled by applicant or the number to which applicant has installed pumps, or both, if applicable, and

f. Type of rigs used by applicant to perform these duties.

2. Either two years of Internal Revenue Service (IRS) W2 Wage and Tax Statement Forms demonstrating two years of employment as a water well driller or pump installer, whichever is applicable, or insurance or bonding documents corresponding to dates of employment with the business or businesses.

3.13 Criminal background checks.

3.13.1 Disqualification from registration and licensure due to criminal conviction.

A. The Commission shall require all applicants to undergo a state and federal background check at the Commission's expense.

B. With the exception of a waiver granted pursuant to Rule 3.13.2, no individual is eligible to receive or hold certification or licensure if the individual has pleaded guilty or nolo contendere to or been found guilty of any of the offenses identified in Ark. Code Ann. § 17-3-102(a) by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court, unless the conviction was lawfully sealed under the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 *et seq.*, or otherwise previously sealed, pardoned or expunged under prior law.

C(1). An individual seeking certification or licensure shall be permanently disqualified from receiving certification or licensure if the individual has been convicted of any of the crimes listed at Ark. Code Ann. § 17-3-102(e).

(2). The permanent disqualification for an offense listed in § 17-3-102(e) does not apply to an individual who holds a valid certification or license on July 24, 2019.

D. The Commission shall not disqualify an applicant if the date of conviction or incarceration or on which probation for the disqualifying offense occurred is more than five (5) years prior to application for certification or license, if the individual:

1. Was not convicted for committing a violent or sexual offense; and

2. Has not been convicted of any other offense during the five-year disqualification period; or

3. The applicant was arrested for but not subsequently convicted for an offense.

3.13.2 Waiver of disqualification due to criminal conviction.

A. If an individual has been convicted of a crime listed in Ark. Code Ann. § 17-3-102(a), except for those permanently disqualifying offenses found in subsection (e), the Commission may waive disqualification or revocation of a certification or license based on the conviction if a request for a waiver is made by:

1. An affected applicant; or

2. An individual holding a certification or license subject to revocation.

B. The Commission may grant a waiver on the following basis without limitation:

1. The age at which the offense was committed;

2. The circumstances surrounding the offense;

3. The length of time since the offense was committed;

4. Subsequent work history since the offense was committed;

5. Employment references since the offense was committed;

6. Character references since the offense was committed;

7. Relevance of the offense to a commission license or certification; and

8. Other evidence demonstrating that certification or licensure of the applicant does not pose a threat to the health or safety of the public.

C. A request for a waiver, if made by an applicant, must be in writing and accompany the completed application and fees.

D. The Commission will respond with a decision in writing and will state the reasons for the decision.

E. An appeal of a determination under this section will be subject to the Administrative Procedures Act § 25-15-201 *et seq.*

3.13.3 Pre-certification or pre-licensure criminal background check.

A. An individual may petition the Commission for a pre-certification or pre-licensure determination of whether the individual's criminal record will disqualify the individual from certification or licensure and whether a waiver may be obtained.

B. The individual shall obtain the pre-certification or pre-licensure criminal background check petition form from the Commission.

C. The Commission shall respond to a completed petition with a written decision within a reasonable time.

D. The Commission's response will state the reason or reasons for the decision.

E. All decisions of the Commission in response to the petition will be determined by the information provided by the individual.

F. Any decision made by the Commission in response to a pre-certification or pre-licensure criminal background check petition is not subject to appeal.

G. The Commission shall retain a copy of the petition and response for review during the formal application process.