The Board of Licensing of Water System Operators (“the Board”) advertised its proposed rule changes to the Water System Operators Licensing Rule on the Secretary of State’s webpage, the Maine CDC webpage, the Board’s webpage and five major newspapers on December 27, 2017. The Board then held a public hearing on January 19, 2018. Written comments were accepted through January 29, 2018. Comments were received from the following:

### TABLE OF COMMENTERS

<table>
<thead>
<tr>
<th>ID #</th>
<th>First Name</th>
<th>Last Name</th>
<th>Date</th>
<th>Representing</th>
<th>Format</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>David</td>
<td>Pelletier</td>
<td>12/29/17</td>
<td>Deer Isle - Stonington Schools</td>
<td>Written</td>
</tr>
<tr>
<td>2</td>
<td>Licia</td>
<td>Goodridge</td>
<td>12/29/17</td>
<td>Regional School Unit #19</td>
<td>Written</td>
</tr>
<tr>
<td>3</td>
<td>Bruce</td>
<td>Berger</td>
<td>12/29/17; 1/17/18</td>
<td>Maine Water Utilities Association</td>
<td>Written</td>
</tr>
<tr>
<td>4</td>
<td>Christopher</td>
<td>Weismann</td>
<td>12/29/17</td>
<td>Berwick Water Department</td>
<td>Written</td>
</tr>
<tr>
<td>5</td>
<td>Kirsten</td>
<td>Hebert</td>
<td>1/22/18</td>
<td>Maine Rural Water Association</td>
<td>Oral and written</td>
</tr>
</tbody>
</table>

Commenter #5 presented oral comments, which were submitted as written comments, and are listed below with all other comments received.

The Board met on February 9, 2018, to review these comments. The Board’s response follows each comment and explains whether the suggestions were followed by the Board. If the Board made no change in response to the comment, an explanation of the reasons why no changes were made is provided below. A summary list of changes follows these comments and responses and identifies changes to the proposed rule resulting from either public comment or the Assistant Attorney General’s review of the Rule for form and legality.

### GENERAL COMMENTS

1. **Comment:** Commenter 3 stated that changes within the rule are great steps toward simplifying processes.

   **Response:** The Board thanks the commenter. No change was made to the rule as a result of this comment.

2. **Comment:** Commenter 5 stated that the Maine Rural Water Association is generally supportive of the Board’s efforts to identify and, in turn, clarify ambiguous and confusing parts of the existing rule.

   **Response:** The Board thanks the commenter. No change was made to the rule as a result of this comment.

### SECTION 4: OPERATOR LICENSE CLASSIFICATION AND STATUS
3. **Comment:** Section 4(2): Commenter 1 requested that the “inactive” license status, with the grace period, not be removed from the rule, stating that delays in mailing may result in late receipt of renewal applications.

**Response:** The Board, through this rulemaking, is seeking to align the rule with statute in response to the advice of the Office of Attorney General. The grace period in the current rule does not comply with 22 M.R.S. §2625, which specifies that the Board shall issue biennial licenses, and 22 M.R.S. §2623, which states it is unlawful for any person to perform the duties of an operator, as defined, without being duly licensed. No change was made to the rule as a result of this comment.

4. **Comment:** Section 4(2): Commenter 2 opposed removal of the grace period, and suggested including “wording that would not allow consecutive years to pass... but allow a year's deadline to be missed.”

**Response:** The Board has reviewed this comment, and, as stated in Comment 3 above, is seeking to align the rule with statute. No change was made to the rule as a result of this comment.

5. **Comment:** Section 4(2): Commenter 3 requested that the elimination of the grace period occur over the course of two to three years. Commenter 5 requested that the elimination of the grace period be postponed until 2019, if the change remains in the adopted rule, and that written notice be provided to each individual license holder.

**Response:** The Board has reviewed this comment, and, as stated in Comment 3 above, is seeking to align the rule with statute. In regard to the request to postpone implementation, the Board notes that initial notification of the intent to change this rule was provided in December 2017. The Board will provide notification of the implementation of this rule in a similar fashion when the rule is adopted. No change was made to the rule as a result of these comments.

6. **Comment:** Section 4(2): Commenter 5 requested clarification regarding the removal of the grace period. The commenter asked if the intent of the rule change is to eliminate an operator from being “in responsible charge” if they have not renewed their license by December 31. The commenter asked the Board to reconsider this change, if that is the intent, due to the fact that water utilities with one or two operators may find it difficult to meet this new deadline.

**Response:** The Board has reviewed this comment, and, as stated in Comment 3 above, is seeking to align the rule with statute. The Board finds that sufficient notification was provided to licensed operators to allow each operator adequate time to plan for the implementation of each change. No change was made to the rule as a result of this comment.

7. **Comment:** Section 6(4): Commenter 5 suggested that the grace period be reduced from 60 days to 30 days.

**Response:** The Board has reviewed this comment, and, as stated in Comment 3 above, is seeking to align the rule with statute. This suggested change would also present an inconsistency between rule and statute. No change was made to the rule as a result of this comment.

**SECTION 6 LICENSING PROCEDURE**
8. **Comment**: Section 6 (4)(E): Commenter 5 noted that this section makes reference to Training Contact Hours, pursuant to Sub-section 6(c), and suggested this reference should actually point to Section 5 (A-E).

**Response**: The Board agrees with the Commenter. The section was corrected accordingly, as a result of this comment.

9. **Comment**: Section 6 (4)(F): Commenter 5 noted that the word “and” should be removed from the first sentence.

**Response**: The Board agrees with the Commenter. The Board removed the word “and” in this section, as a result of this comment.

**SECTION 7 ENFORCEMENT**

10. **Comment**: Section 1: Commenter 3 stated: “We [Maine Water Utilities Association] are concerned that this potential change is not well defined. Additionally we are also concerned that it may lack statutory authority. We agree that there needs to be a means of processing violations by licensed operators, and the Board of Licensure of Water System Operators is a logical place to do that, but do they have the authority to do so? Presently the Board has been granted statutory authority to issue, suspend or revoke licenses. We feel before the Board is able to take on other enforcement action, the statute needs[to] be amended. Once the amendment has been made the Board would then have the authority to do so.” Commenter 5 asked if statutory amendment is necessary to broaden the listed actions that may result in the suspension or revocation of a license.

**Response**: The Board has reviewed these comments and determined that 22 M.R.S. §§2625 and 2628, and 5 M.R.S. §12004-A, grant the Board the statutory authority to implement the changes made in this section of the rule. Statutory authority is clear that the Board may exercise its authority to suspend or revoke operator licenses. The purpose of a rule is to clarify in what circumstances that authority will apply. This additional clarity in the rule helps licensed operators understand which violations may lead to enforcement action. Therefore, there is no requirement to amend statute, in order to implement these changes. No change was made to the rule as a result of these comments.

11. **Comment**: Section 1(a-i): Commenter 3 stated: “Several of our members have questioned the vague definition term [sic] such as lack of maintenance, enforcement action, and false or misleading statements, terms or actions like these could and are likely to be challenged. We feel it is imperative that these terms need to be properly define [sic], and that the statute supports their intent.” Commenter 5 requested clarification of the definition of “environmental damage.” Commenter 5 stated that the phrase “lack of maintenance” is incredibly broad and far reaching.

**Response**: The Board has reviewed these comments and determined that the Board’s policy adequately describes these terms. This policy is available to the public and sufficiently defines these terms. The Board determined that the public process by which enforcement actions are administered allows for due process and consistency in application of these standards. No change was made to the rule as a result of these comments.

**APPENDIX A**
12. **Comment:** Commenter 4 recommended adding a line entry for "chemical oxidation" with a value of 5 points, or higher, in the context of a complex challenge that a water system is facing, in their efforts to oxidize a variable level of dissolved manganese from the surface water source prior to coagulation. Commenter 4 anticipates that the time, attention, and knowledge required to control this process in such a way that the SMCL of 0.05 is met will equal the effort they currently invest in coagulation + filtration + chlorination.

**Response:** The Board has reviewed this comment and finds that this suggestion is outside the scope of this rulemaking. No change was made to the rule as a result of this comment.

**SUMMARY OF CHANGES RESULTING FROM COMMENTS & AAG REVIEW:**

Changes made in response to public comment:

**SECTION 6 LICENSING PROCEDURE**

- Page 10-Section 6(D)(5): The internal reference in this subsection was changed to Section 6(E)(2).
- Page 11-Section 6(D)(6): The word “and” was removed from the first sentence.

Changes made in response to AA Review:

The AAG did not recommended any changes to the proposed rule.

In addition to the changes listed above, the following style and format changes were made:

- The outlining throughout the document was changed to reflect standard outlining practice in accordance with the Maine Legislative Drafting Manual. The section references in the comments correspond to the original outlining scheme in the current rule; the references in this summary correspond to the final document.

- **pp. ii and Page 14, Section 8:** Replaced the word “Procedures” with “Appeals.”

**SECTION 2 DEFINITIONS**

- Page 2- The words “State of” in the definitions of Board and Department were removed.
- Page 3- The word “their” was replaced with “his or her” in the definition of Operator.
- Pages 10 and 11- The acronym “TCH” replaced the phrase “Training Contact Hours” throughout Section 6.