

## SUMMARY OF PUBLIC COMMENTS AND DEPARTMENT'S RESPONSE

### DISCLOSURE OF VITAL STATISTICS DATA, REPORTS AND RECORDS

#### 10-146 CODE OF MAINE RULES CHAPTER 4

The Department of Health and Human Services, Maine CDC held a public hearing on May 15, 2018 on 10-146 CMR chapter 4 - Disclosure Of Vital Statistics Data, Reports And Records, a new rule proposed to repeal and replace 10-146 CMR chapters 4 (Public Access to Vital Records) and 8 (Release of Restricted Vital Statistics Data). Representatives from Maine CDC, including staff from the Office of Data, Research, and Vital Statistics (DRVS), were present during the public hearing. On April 25, 2018, a notice of agency rulemaking was provided to the public, including stakeholders, which was announced on the Secretary of State website and Maine CDC Rules website, as well as published in five major newspapers. Comments were accepted through May 28, 2018.

| Commenter ID # | Name                             | Date                                | Representing   | Format           |
|----------------|----------------------------------|-------------------------------------|--|------------------|
| 1              | Helen Shaw                       | 5/14/18 (Written)<br>5/15/18 (Oral) | Records Preservation and Access Committee (RPAC)                   | Written and Oral |
| 2              | Ken Braveo;<br>Jan Meisels Allen | 5/23/18                             | International Association of Jewish Genealogical Societies (IAJGS) | Written          |
| 3              | Janet A. Alpert                  | 5/27/18                             | Records Preservation and Access Committee (RPAC)                   | Written          |
| 4              | Samuel Howes                     | 5/28/18                             | Maine State Archives   | Written          |

Table 1.

Commenters 1 – 4 are identified in the table above and presented oral and/or written comments. Comments have been summarized below, and each summary is followed by the Department's response that explains whether the changes were made, based on the comment. If the Department made no change in response to the comment, an explanation of the reason is provided. The summary list of changes identifies new changes resulting from either public comment or Assistant Attorney General review of the rule for form and legality. Changes made following public comments and review by the Office of the Attorney General are contained in the adopted rule.

#### GENERAL COMMENTS

**1. Comment:** Commenter 1 reviewed past collaborative work specific to revising rules related to access to vital records and highlighted changes between 2011 drafted language and the proposed rule. Commenter 1 expressed concerns with some aspects of the proposed rule, many of which were shared in 2014 and 2015. In written comments, Commenter 1 described 2011 legislation as amending 22 MRS § 2706 to allow public access to legacy records, and recited past communications from DRVS in 2015 and 2016 regarding proposed revisions to the rules governing access to records.

**Response:** The Department thanks the Commenter for providing this information. The Department made no changes to the rule based upon this Comment.

2. **Comment:** Commenter 2 expressed support of the rule consolidation if changes do not result in loss of access.

**Response:** The Department thanks the Commenter for providing this information. The Department made no changes to the rule based upon this Comment.

3. **Comment:** After having been involved with stakeholders who worked on legislation for P.L. 2011, ch. 58, Commenter 3 expressed disappointment that the concerns raised in previous years were not incorporated into the rule.

**Response:** The Department considered input from stakeholders from previous years in the development of the proposed rule changes. Comments submitted by commenters in Table 1 were considered for changes to include in the adopted rule. The Department finds the rule is consistent with the statute and balances the interests of assuring public access to vital records information with protecting privacy and preserving the integrity of vital records and indexes. The Department made no change based on this comment.

4. **Comment:** Commenter 1 stated that Chapters 4 and 8 address very different types of research on very different types of information, and expressed the opinion that combining Chapters 4 and 8 and the removal of wording regarding inspection and access in Chapter 4 results in a "confused and conflicted document which at times subverts the purpose of 22 MRS § 2706."

**Response:** The Department finds that the rule is consistent with 22 MRS § 2706 and clarifies the disclosure of and access to vital statistics data, reports and records, to better serve the public, genealogical researchers and municipal clerks. The Department made no change based on this comment.

5. **Comment:** Commenter 2 stated that the proposed rule further restricts the general public's access to vital records and suggested that the Department recognize threats to identity theft (i.e. massive data breaches of government, financial and business systems), rather than increase restriction for public access to restricted vital records.

**Response:** The Department finds that the rule is consistent with the statute and balances the interests of assuring public access to vital records information with the protection of privacy and preserving the integrity of vital records and indexes. The Department made no change based on this comment.

6. **Comment:** Commenter 4 stated that the proposed rule "fails to state that researchers can view the records" and, because of this omission, it could be concluded that the public will no longer be allowed to view microfilm records.

**Response:** The definition of "genealogist disclosure agreement" in Section 1 of the rule specifies that it applies to all records viewed, regardless of repository location, and names the following locations: municipal office, the Department and the Maine State Archives. Section 8(B) refers to applicants who have a direct and legitimate interest and applicants who are conducting health, medical or social research. Section 8 contains the conditions of release of vital statistics data, reports and records that may apply to the applicant. In response to this comment, the Department has amended Section 2(C) to further clarify access, by adding the following paragraph to the rule:

4. *Legacy records as defined in Section 1 may be viewed at the Maine State Archives. Non-certified copies of records as specified in Section 2(E)(2) below, may be issued from the Maine State Archives in accordance with 5 MRS §95(12).*

7. **Comment:** Commenter 1 stated that public information found within non-closed records should be readily accessible and that the methods set out are not practical for those who may not know all details for a search.

**Response:** The process to request information is explained in Section 2 of the rule. In certain circumstances, indexes and vital records information may be available. Department staff are readily available to assist in the search for vital statistics, data, reports and records. The Department refers the commenter to the Department's response to Comment 6 and the change to Section 2(C) of the rule which refers to public access to records available through Maine State Archives.

8. **Comment:** Commenter 2 stated that the International Association of Jewish Genealogical Societies (IAJGS) is an umbrella organization of 78 genealogical societies and Jewish historical societies, formed in 1988 to advance genealogical study, elevate research standards and provide voice sponsors Record Preservation and Access Committee (RPAC). Commenter 2 expressed support of RPAC's comments and for comments submitted by Helen Shaw (Commenter 1).

**Response:** The Department thanks the commenter for providing suggestions on behalf of IAJGS. The Department made no change based on this comment.

9. **Comment:** Commenter 4 recommended that more information be included in the rule. Commenter 4 stated "as a repository of vital records, Maine's State Archives will be affected by the proposed change" and that more information regarding the disclosure agreement and potential impact on researchers at the Maine State Archives is needed.

**Response:** The genealogist disclosure agreement provides the applicant with the scope of access and details about the genealogical code of ethics and method of inspection. The genealogist disclosure agreement is a separate requirement for researchers, and this form will be uploaded to the program's website, following adoption of the rule. The Department refers the commenter to the Department's response to Comment 6 and the noted change made to Sections 2(C) of the rule. The Department finds that the genealogist disclosure agreement assures a necessary level of protection and preservation of vital records information. In response to this comment, the Department amended Section 3(A), to further clarify "genealogist disclosure agreement," by adding the following paragraph to the rule:

*The State Registrar may require, as part of a completed application, a signed confidentiality agreement for vital statistics data requests or, if the applicant is requesting restricted vital records, a signed genealogist disclosure agreement which includes a code of ethics. Agreement forms can be accessed at <http://www.maine.gov/dhhs/mecdc/public-health-systems/data-research/vital-records/forms/index.shtml>.*

10. **Comment:** Commenter 4 stated that, after the amendment of 22 MRS § 2706 in 2011, in collaboration with DRVS, microfilm containing vital records of marriages and deaths was removed from public view on the Maine State Archives website. In addition, microfilm of birth records from 1937 to 1955 was also removed from public view. DRVS agreed that microfilm pertaining to records before 1937 could be viewed at the Archives. Commenter 4 noted that the proposed rule omits existing rule language related to viewing groups of records which can be done at the Maine State Archives, suggesting that it be restored.

**Response:** The Department confirmed that alternative methods of inspection are available and are described in the genealogist disclosure agreement. The Department refers the Commenter to 29-255 CMR chapter 4 for the public use of materials and facilities in the Maine State Archives. The Department also refers the commenter to the Department's response to Comment 6 and the noted change made to Section 2(C).

11. **Comment:** Commenter 4 stated that the retention schedules require physical records remain at DRVS for 100 years before being transferred to Archives and requested that the Department consider the following: the Archives currently holds records dating up to 1922 and the proposed language appears to mean that the records in Archives' custody should be considered completely public, under 5 MRS § 95 and 22 MRS § 2706; that the proposed rule change applies to all vital records, which seems to contradict 5 MRS § 95

which speaks to records in the custody of the Maine State Archives; and that records up to 1918 should be completely under the care of the Archives, as they have remained in the agency for 100 years, and are more than 75 years old.

**Response:** The Department finds the rule implements necessary assurances to protect and preserve vital records from deterioration, mutilation, loss or destruction, as specified in 5 MRS §95(3). The Department refers the commenter to the Department’s response to Comment 6 and the noted change made to Section 2(C) of the rule.

**12. Comment:** Commenter 4 stated that the current rule speaks to groups of records, and that people are able to view the records at the Maine State Archives if they want to view large groups. The Commenter observed that the proposed rule removes this language from the rule, implying that it should be restored.

**Response:** The Department refers the Commenter to 29-255 CMR chapter 4 for the public use of materials and facilities relating to the data, reports and records deposited in the Maine State Archives. The Department also refers the commenter to the Department’s response to Comment 6 and the noted change made to Section 2(C) of the rule.

**13. Comment:** Commenter 4 stated that the new rule indicates that applications, identification, and fees need to be provided before a copy of a record can be issued. The Commenter stated that as it stands, researchers have been allowed to view records on microfilm and to print copies if they want – being charged only for the photocopy. The Commenter observed that the proposed rule does not include language for viewing vital records and only contains language for copies being issued. The Commenter implied that this should be changed.

**Response:** This rule is not intended to restrict access available through Maine State Archives or the allowances set out in 10-146 CMR chapter 7 which allows a researcher three requests for copies provided at no charge. The Department refers the Commenter to the Department’s response to Comment 6. The Department made no change based on this comment.

**14. Comment:** Commenter 4 stated that the proposed rule “fails to state that researchers can view records”, and “with that omission, it may be concluded that the public will no longer be allowed to merely view microfilm records.” The Commenter stated this should not be the result of the rule change.

**Response:** The Department did not intend for the rule to prohibit researchers or the public from viewing microfilm records available through Maine State Archives. Access to records or indexes registered with DRVS is described in Section 2 and includes hands on inspection of the original record or index and alternative methods that may be available. The Department refers the commenter to the Department’s response to Comment 6 and the noted change made to Section 2(C) of the rule.

**15. Comment:** Commenter 3 expressed support for ensuring proper access and for strong record preservation policies and practices.

**Response:** The Department thanks the commenter. The Department made no change based on this comment.

**16. Comment:** Commenter 2 supported including proof of membership that is either a membership card or statement on society letterhead with membership dates.

**Response:** The Department thanks the commenter. The Department made no change based on this comment.

## SECTION 1.

**17. Comment:** Commenter 3 criticized the limitation of genealogical researchers to reviewing “abstracts,” rather than originals. Commenter 3 stated that genealogists know how to handle aging records, and that transcriptions are derivative and less reliable.

**Response:** The Department has scanned original records dated from 1892 to present and finds that the scanned images replicate the original and are no less reliable than the original record. The images of the scanned records may be then be issued as a certified or non-certified copy as defined in Section 1. Abstracts are issued only when the original or scanned record is not accessible or legible. In the interest of protecting the physical integrity and condition of the record, hands on access or inspection of original, paper based records will not be permitted if there is an alternative method that may be used. The Department made no change based on this comment.

**18. Comment:** Commenter 1 asked that “access” be defined, stating that from previous meetings and comments, “access” means very different things to DRVS, town clerks, and genealogists.

**Response:** The parameters of access to vital statistics data, reports and records is described in Section 2 and includes restrictions due to confidentiality and the availability of an alternative to hand-on inspection. Access may be limited to preserve the original, paper-based records and indexes and to protect confidentiality. The Department made no change based on this comment.

**19. Comment:** Commenter 2 spoke to the definition of “confidentiality agreement,” stating that genealogists, whether researching their own family history or working on behalf of a client, must be able to disclose the identity of persons mentioned in vital records to the client, the client’s family and perhaps their medical team. Commenter 2 asked whether the provision for a confidentiality agreement would apply only to vital statistics, and not vital records. Commenter 3 also stated that genealogists need to share information contained in restricted vital records with clients, lawyers, military service members, courts, and other entities who agree to keep the information confidential. Commenter 3 stated that the proposed rule should not be adopted until the application, disclosure agreement, and code of ethics are drafted for public comment.

**Response:** The Department considered input from stakeholders in the development of the proposed rule and related program forms, including the genealogist disclosure agreement. In January 2015, stakeholders reviewed a draft document that included language specific to the code of ethics. The final version of this genealogist disclosure agreement, which includes the code of ethics, will be uploaded to the program’s website following the adoption of the rule. The Department refers the commenter to the Department’s response to Comment 9 and the noted change made to Section 3(A) of the rule. The Department made no change based on this comment. The Department also refers the commenters to Sections 8 (C) and (D) of the rule, which contain conditions that include a signed confidentiality agreement, for, specifically, the release of restricted vital statistics data. The purpose of this rule is to establish standards for vital record access, including additional criteria that must be met in order to access restricted vital records. Finally, the Department also refers the commenter to Sections 2(A) and (B) of the rule. Vital records may not be used for any purpose, other than as stated in the approved application. The Department finds that the rule is consistent with the statute and balances the interest of public access to vital records information with assuring the necessary protection of privacy and preservation of the integrity of vital records and indexes, and that it is not intended to prevent appropriate access. The Department made no change based on this comment.

**20. Comment:** Commenter 2 also inquired about the “genealogist disclosure agreement,” a “code of ethics” referenced in that definition, and scope of the code of ethics, stated to apply to *all* records viewed. The

Commenter 2 again stated that genealogists must be permitted to share information with their families and the ability to disclose the identify of persons mentioned in vital records.

**Response:** The genealogist disclosure agreement, which contains the code of ethics, and the confidentiality agreement, which applies to data requests, are separate requirements. The final version of the genealogist disclosure agreement provides the applicant with the scope of “access” and details about the "genealogical code of ethics" and "method of inspection." The required agreement assures a necessary level of protection and preservation of vital records. The confidentiality agreement and the genealogist disclosure agreement will be uploaded to the program’s website following the adoption of the rule. The Department refers the commenters to the Department’s response to Comment 9 and the noted change made to Section 3(A) of the rule. The Department made no changes to the rule based on this comment.

- 21. Comment:** Commenter 4 also commented on the definition of “genealogist disclosure agreement,” asking that Maine State Archives be made better aware of the Disclosure Agreement so that the agency may determine how it will impact researchers at Maine State Archives.

**Response:** The Department refers the Commenter to the Department’s response to Comment 9. The Department made no change based on this comment.

- 22. Comment:** Commenters 1 and 2 referred to the definition of “inspection of vital records” and asked where in the rule is the “method of inspection specified by the State Registrar” explained.

**Response:** The Department refers the Commenter to the Department’s response to Comment 9. The Department made no change based on this comment.

- 23. Comment:** Commenter 2 pointed to the definition of “genealogical researcher” and the reference in that definition to a genealogical researcher identification card. The Commenter stated there is no explanation of the card in the definitions and suggested that it be defined.

**Response:** Section 2(B)(3) specifies a genealogical researcher identification card as a requirement for a genealogist requesting access to restricted vital statistics data, reports and vital records. The Department refers the commenters to Section 9 regarding the registration requirements for a genealogical researcher to obtain a genealogical researcher identification card. In response to this comment, the Department has amended Section 1 to further clarify genealogists’ access by adding the following term and definition:

*15. Genealogical researcher identification card means the card that is issued by the Department to a genealogical researcher following a completed application approved in accordance with this rule, and that affords a registered genealogical researcher access to restricted vital records.*

- 24. Comment:** Commenters 1, 2 and 3 commented regarding the definition of “restricted vital statistics data, reports and vital records.” The commenters stated that this definition has been changed since the October 2015 draft, including the deletion of the important words “that are not public record as specified in section 2.” Commenter 2 stated that the omission of this phrase was concerning [sic], stating an understanding that under PL[undated], c. 58 / LD 258, records of births, marriages, deaths and fetal deaths are public records after the “embargo period” but may be accessed within the embargo periods by those with genealogical researcher cards and by specified family members.

**Response:** The Department finds that definitions in the rule distinguish “restricted vital statistics data, reports and vital records” from “public records” and that Section 2 contains adequate detail regarding eligibility requirements to access restricted and non-restricted records. In response to these comments, the Department has amended Section 1 to further clarify the difference in record types by adding the following language to the definition of “restricted vital statistics data, reports and vital records:” “*Restricted vital*

*statistics data, reports and vital records are not public records as defined by 22 MRS §2706(7)."*

Additionally, the Department refers the commenters to the Department's response to Comment 6 and the noted change made to Section 2(C) of the rule regarding access.

## SECTION 2

**25. Comment:** Commenter 1 stated "this entire section presumes the applicant wants to purchase a copy of a vital record which the applicant has already identified as the one he/she wants." The commenter reasoned that 22 MRS § 2706(7) makes older vital records public records, and that 1 MRS § 408-A allows the public "to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record." Commenter 1 asserted that, "The authority of the State Registrar in refusing to allow inspection or copying of public vital records is not final and is subject to the provisions of Title 1 M.R.S. Sec. 408-A(4)."

**Response:** Vital Records as defined in Section 1 are governed by a set of laws that are specific to the disclosure of and access to vital statistics records, reports and records. These more specific vital records statutes take precedence over FOAA regarding disclosure of the records as specified in 22 MRS § 2706. The Department refers the commenter to the Department's response to Comment 6 and the noted change made to Section 2(C) of the rule and also the Department's response to Comment 26 below.

**26. Comment:** Commenter 1 questioned whether Section 2 is lawful under FOAA "when public vital records are merely being accessed and transcribed and there is no purchase of a non-certified or certified copy."

**Response:** The Department refers the commenter to the Department's response to Comment 6 and the noted change made to Section 2(C) of the rule. In Maine, there are over 300 statutory exceptions to the Freedom of Access Act's definition of a public record. Many of these exceptions specifically designate a certain type of record, or a class of information within a record, as confidential or otherwise not subject to the Freedom of Access laws. Vital records, vital reports, indexes, related documents, and personally-identifying data or information contained therein are confidential and not considered public records under Maine's Freedom of Access Act. Under the rule, those records that are not exempt from the Freedom of Access Act are not subject to the "direct and legitimate interest" test that applies to vital records, and available to the public for a reasonable fee. The Department relied on the language in the Model State Vital Statistics Act and Regulations from the U.S. Department of Health and Human Services, National Center for Health Statistics (NCHS). The Department made no change based on this comment.

**27. Comment:** Commenter 2 submitted that Section 2(B) violates statute which specifies that vital records not within the restricted dates are public records and that the public can inspect and copy these records at any reasonable time. Commenter 2 expressed concern that the rule does not contain clear language regarding access to records that are not public records.

**Response:** The Department is in agreement that, in accordance with statute, public records can be inspected and copied at any reasonable time. Section 2 of the rule contains criteria for accessing non-restricted or public records and also specifies the additional criteria that must be met by those requesting access to restricted vital statistics data, reports and records. The Department also refers the commenter to the Department's response to Comment 7 and to changes noted in the response to Comment 6. The Department made no change based on these comments.

**28. Comment:** Commenter 1 requested clarification of Section 2(C) and asked whether this section applies to all vital records or just those within restricted time.

**Response:** Section 2(C) applies to all vital records and other confidential records. Subsections A and B of Section 2 contain criteria specific to restricted and non-restricted vital statistics data, reports and vital

records. The Department refers the commenter to the Department's response to Comment 6 and the noted change made to Section 2(C) of the rule that includes reference to "legacy records" that can be viewed through Maine State Archives. The Department made no change based on this comment.

- 29. Comment:** Commenters 1, 2, and 3 expressed concern regarding language in Section 2(C)(1) regarding access to indexes and asserted that the word "indexes" should be removed. Commenters 1 and 2 recommended a state-wide index that need only include names, the date and location of the event, and that this be available online minimally, to ensure efficiency. Commenters 2 and 3 supported state-wide indexes that are available to the public to ease administrative burden.

**Response:** The Department finds that the processes to access vital records and indexes are consistent with 22 MRS § 2706 and ensures the protection of privacy and the integrity of vital records and indexes. The Department refers the commenters to the response to Comment 26. The Department made no change based on these comments.

- 30. Comment:** Commenter 2 observed that under Subsection C(1) "hand-on" inspection is not permitted if there is an alternate method that may be used. The Commenter stated that an abstract is never a substitute for an actual vital record. Abstracts may contain transcription errors, misinterpretation of handwriting, missing data, and omit original signatures. Commenter 2 requested that, as long as the original record is available, it be made available for "hands on inspection" or alternatively via a photograph, digital scan, or microfilm.

**Response:** The Department finds that the processes to access vital records and indexes are consistent with 22 MRS § 2706. The Department refers the Commenter to the Department's response to Comment 17. The Department made no change based on these comments.

- 31. Comment:** Commenter 2 stated that language in statute directs State custodians of records to permit inspection and specifies that the State Registrar has authority to deny access for anyone convicted of record destruction or theft of records. Commenter 3 stated that language referring to "over-handling" of paper records and indexes will provide town clerks the opportunity to unreasonably withhold access.

**Response:** The Department finds that the processes to access vital records and indexes are consistent with 22 MRS § 2706 and ensures the protection of privacy and the integrity of vital records and indexes. The Department refers the commenters to the response to Comment 27. The Department made no change based on these comments.

- 32. Comment:** Commenter 3 stated "genealogists consider transcriptions a derivative and thus a less reliable source."

**Response:** 22 MRS § 2707 specifies the evidentiary character of vital records and states that any certificate or record of any live birth, marriage, death or fetal death filed under this Title, or a copy thereof duly certified by its official custodian, shall be prima facie evidence of the fact of such birth, marriage, death or fetal death, if not "amended" or "delayed." The probative value of "amended" or "delayed" records shall be determined by the judicial or administrative body or official before whom the certificate is offered in evidence. The Department refers the Commenter to the Department's response to Comment 17. The Department made no change based on these comments.

- 33. Comment:** Commenter 2 stated that, as drafted, the restriction on access applies to records and indexes. The Commenter asserted that indexes should not be treated the same as records, nor have the same confidentiality provisions as vital records, and stated that indexes are a way to deny access. Commenter 2 submitted that the Department should not be applying the 2011 Model Vital Statistics Act, which has never been approved federally. Commenter 2 asserted that language be amended to eliminate all references to restricting access to indexes to avoid "indexes" from being construed to mean the same as "vital records."

**Response:** The Department notes that some indexes do have the same confidentiality provisions as vital records depending upon the timeframe and possible confidential data which may directly or indirectly identify other individuals. The Department has considered a number of sources in the development of rule changes, including, but not limited to, input from stakeholders and language contained in the Act. The Department made no change based on this comment.

- 34. Comment:** Commenter 2 cited 22 MRS § 2706 which permits inspection of records or copies of the record and stated "abstracts are never a substitute for an actual vital record." Commenter 2 requested access to handle, or to photograph or scan the entire original record when the original record is still available.

**Response:** The Department finds that the processes to access vital records and indexes ensures the protection of privacy and record integrity, and is consistent with 22 MRS § 2706. The Department confirmed that, when copies of vital records are issued, these copies contain the content of the original record and the Department refers the Commenter to the Department's response to Comment 17. The Department made no change based on this comment.

- 35. Comment:** Commenter 4 observed, with respect to Subsection E(4), that the proposed rule indicates that individuals may purchase a copy of vital records on municipal letterhead, or non-certified copies of vital records from municipal clerks. The Commenter suggested that the proposed rule failed to account for records dated from 1860's or the municipal records from de-organized towns the records of which are in custody of the Maine State Archives.

**Response:** This rule is not intended to restrict or duplicate language in 29-255 CMR related to municipal records from de-organized towns. The Department has added language in Section 2(E)(4) to include the Maine State Archives as a record source for records prior to 1892.

- 36. Comment:** Commenter 4 observed that copies of some records may be obtained from the Maine State Archives, and suggested that language should be added to specify that copies can be on Maine State Archives letterhead, or from the Maine State Archives.

**Response:** 29-255 CMR, ch. 10, § 3 provides that the State Archivist shall accept all permanent records of any de-organized Maine municipality. In response to this comment, the Department amended Section 2(E) to clarify that copies of records created prior to 1892 may be available through Maine State Archives by adding the following language to Section 2(E)(4) of the rule: "..., or the Maine State Archives."

- 37. Comment:** Commenter 4 observed that the proposed rule pretends to apply to all vital records, in contravention of 5 MRS § 95, which controls records in the custody of the Maine State Archives.

**Response:** The rule is intended to implement 22 MRS §2706 and provide clarification regarding access and disclosure of vital statistics data, reports and records registered with DRVS. The Department refers the Commenter to the Department's response to Comment 6 and the noted change made to Section 2(C) of the rule regarding access.

- 38. Comment:** Commenter 4 stated that records up to 1918 should be completely under the care of the Maine State Archives, as they have remained in the agency for 100 years, and are more than 75 years old.

**Response:** The Department is in agreement to discuss a schedule as specified in 5 MRS § 95(7) and believes that vital records in the custody of the Maine State Archives should be viewed or issued in accordance with Secretary of State, 29-255 CMR chapter 4 rules. The Department made no change based on this comment.

**39. Comment:** Commenter 2 observed that the rule allows access to vital records to be restricted as deemed appropriate by the State Registrar. The Commenter quoted 22 MRS § 2706 as stating that custodians of records “shall” permit inspection of records, thus denying the Registrar discretion to restrict access. Commenter 2 acknowledged that it may be appropriate to bar access in those few instances when a person has been convicted of destroying or stealing public documents, but appeared to request that the Registrar not have discretion to deny access.

**Response:** The Department finds that the processes to access vital records and indexes are consistent with 22 MRS § 2706 which states that inspection shall be permitted when the State Registrar or clerk determines the applicant has direct and legitimate interest in the record, and that this determination may be subject to review by the Superior Court. Restrictions in rule are intended to ensure the protection of privacy and the integrity of vital records and indexes. The Department refers the commenters to the response to Comment 27. The Department made no change based on these comments.

### SECTION 3

**40. Comment:** Commenter 1 stated that the applicant’s relationship to the registrant is only required when restricted records are requested, and that anyone may request a non-restricted record. The Commenter recommended that the rule clarify that the applicant’s relationship is only required when requesting restricted records and is not needed for access to non-restricted vital record. See Section 3(B)(2).

**Response:** The Department confirmed that the relationship to the registrant is not required for all requests. In response to this comment, the Department amended Section 3 to clarify when the disclosure of relationship is required by rule, by adding the following conditional language in Section 3(B)(2): “..., *if required by Section 2;*”

### SECTION 4

**41. Comment:** Commenter 1 requested clarification of the purpose of Section 4(C) and asked whether this pertains to restricted records or to any record requested.

**Response:** Section 4(C) pertains to any vital record and permits a municipal clerk or the Department to require a sworn statement from the applicant as an attestation of the proof of identification provided by the applicant. The purpose of Section 4 is to ensure the eligibility of the applicant. However, not all records registered with the State Registrar are considered “vital records.” The Department amended Section 4 to further clarify by revising language in Section 4(C) of the rule to replace “right to data from a vital record” with “eligibility.”

### SECTION 5

**42. Comment:** Commenter 1 stated that the Department’s fee collection practices are “ridiculous” and result in the Department “giving away hundreds of thousands of dollars.” Commenter 1 asserted that the current fee collection needs to be reviewed and clarified.

**Response:** Department thanks the Commenter for providing this information and is in the process of reviewing the Department’s fee collection practices. The Department made no changes based upon this comment.

**43. Comment:** Commenter 4 stated that, regarding fees, the proposed rule does not address the opportunity to view copies at no charge or charges for only photocopies, and only referred to issued copies.

**Response:** The Department finds that the rule is consistent with 22 MRS § 2706 and clarifies the disclosure of and access to vital statistics data, reports and records to better serve the public, genealogical researchers and municipal clerks and believes that vital records in the custody of the Maine State Archives should be viewed or issued in accordance with Secretary of State and 29-255 CMR chapter 4. The Department refers the Commenter to the Department’s response to Comment 6, the noted change made to Section 2(C) of the rule regarding access and to 10-146 chapter 7 which governs fees that may include charges for assisting in a record research whether the record is located. The Department made no change based on this comment.

## SECTION 6

**44. Comment:** Commenter 1 asserted that the title of Section 6 needs to be clear that the section applies only to records within the restricted time periods and suggested the following title revision: "Direct and Legitimate Interest in Restricted Vital Records."

**Response:** Section 6(A) explains “direct and legitimate interest” as it relates to eligibility of those groups listed that may obtain vital statistics data, in accordance with requirements of the rule. In response to this comment, the Department amended Section 6 to clarify that certified and non-certified copies will be issued in accordance with Section 2 of the rule, by adding the following subsection:

*D. Copies of vital records. Certified copies and non-certified copies of vital records, including restricted vital records, requested by an eligible applicant will be issued in accordance with Section 2.*

**45. Comment:** Commenter 1 recommended that Subsection A(1) include a cross reference to 22 MRS § 2706(5).

**Response:** The Department reviewed Section 6 and amended Section 6(A) to include a reference to 22 MRS § 2706(5).

**46. Comment:** Commenter 3 stated concern with the limitation in Section 6(A) to “applicants who may or may not have a direct and legitimate interest.” Commenter 3 stated that family researchers, like genealogists with a researcher card, should have access to restricted records. The Commenter cited an increased interest in inheritable diseases, evidenced by more than three million DNA tests processed by 23andme.com, including genetic health reports. Commenter 3 stated that adoptees are one of the largest groups that have ordered tests of ancestry and health reports because they often have limited information about their origins or genetic diseases.

**Response:** The Department finds that the rule does not restrict family or others who demonstrate direct and legitimate interest. The Department refers the Commenter to the Department’s response to Comment 45. The Department made no change based on this comment.

## SECTION 8

**47. Comment:** Commenter 2 asked whether the description of procedures to maintain the confidentiality and security of identifiable vital statistics data in Subsection C(4) relates solely to information from vital statistics. The Commenter stated that genealogists must be able to share vital records information with clients.

**Response:** The genealogist disclosure agreement, which includes the code of ethics, and the confidentiality agreement, which applies to data requests, are separate requirements. The Department refers the commenter to requirements contained in Section 8 that specify conditions under which vital statistics data may be released to the applicant, and specifically subsections (C) and (D). Section 8 requires the applicant to submit internal protocols that assure an appropriate level of security and confidentiality for any vital record obtained for the purposes stated in the approved application, and that will be used by the Department to determine whether to release vital records requested by the applicant. The Department refers the commenters to the Department's response to Comment 9 and the noted change made to Section 3(A) of the rule. In response to this comment, the Department amended Section 8(C)(4) of the rule by adding clarifying language to the end of that section as follows: "...including any intended release of vital statistics data approved by the Department. These described procedures must explain the protocols consistent with the confidentiality agreement developed and maintained by the Department."

## SECTION 9

**48. Comment:** Commenter 1 submitted that the proposed rule does not include "genealogical code of ethics" or "method of inspection," or a reference to locate the "genealogical code of ethics" or "method of inspection." Commenter 1 claimed that this material has been removed or relocated where it cannot be accessed easily and asserted that this material must be "returned to the application web page or made more easily found." Commenter 1 stated that it is obvious that not all are aware of the requirements or benefits related to a Research Identification Card and emphasized the importance of addressing this thoroughly.

**Response:** In January 2015, stakeholders reviewed a draft document that included the genealogist code of ethics as well as methods of inspection. The final version of the Department's genealogist disclosure agreement, which provides details about the "genealogical code of ethics" and "method of inspection," will be uploaded to the program's website, following the adoption of the rule. A signed genealogist disclosure agreement is required in order for a genealogist researcher to receive restricted vital records. The Department refers the commenters to the Department's response to Comment 9 and the noted changes made to Section 3(A) of the rule. Additionally, the Department added "genealogical researcher identification card" to Section 1 of the rule.

**49. Comment:** Commenter 2 stated that the \$50 fee for a genealogical researcher card that is good for one year is likely a barrier for individuals with few family members born in Maine and noted that there was an agreement reached in previous stakeholder meetings which was that the fee would be \$25 and valid for two years.

**Response:** Section 9 does *not* specify the fee for genealogical researcher cards, so comments specific to the amounts of fees are outside the scope of this rulemaking. Charges for copies of vital records and for services performed in the processing and preparation of vital records as authorized by 22-A MRS § 210 are governed by 10-146 CMR chapter 7. The Department refers the Commenter to 10-146 CMR chapter 7, Vital Records Fees. The Department made no change based on this comment.

**50. Comment:** Commenter 3 proposed that Section 9 be expanded to include rules, procedures, and exceptions for genealogists holding valid researcher card, similar to Section 8 which includes details about health, medical and social researchers.

**Response:** The Department finds that the criteria in Sections 2(A) and 2(B) for the release of all vital statistics data, reports and vital records and Section 9 dedicated to genealogical researcher registration provide sufficient guidance. The Department refers the Commenter to the Department's response to Comment 48 regarding the added definition of "genealogical identification card" to clarify that this card

affords a genealogical researcher the additional access of restricted vital statistics data, reports and vital records.

## **LIST OF CHANGES IN RESPONSE TO COMMENTS AND AAG REVIEW**

### **General**

- Revised rule title
- Removed “vital” as a qualifier for the type of record referenced throughout the rule, where applicable
- Minor corrections to grammar and format throughout the rule

### **Section 1**

- Revised construction to combine purpose and definition sections into one section
- Added term and definition, “Abortion”
- Amended definition of “applicant”
- Removed “Court of competent jurisdiction”
- Amended definition of “date of event”
- Added term and definition, “Fetal death”
- Added term and definition, “Genealogical researcher identification card”
- Removed “Identification”
- Amended definition of “Indexes”
- Amended definition of “Inspection of vital records”
- Added term and definition, “Legacy records”
- Added term and definition, “Marriage”
- Amended definition of “lineage of applicant”
- Added term and definition, “Non-restricted vital statistics data, reports, and records”
- Removed “Record”
- Removed “Report”
- Amended definition of “Restricted vital statistics data, reports and vital records”
- Removed “Statistical research”
- Removed “Supporting documentation”
- Removed “Verification”
- Amended definition of “Vital statistics data”

### **Section 2**

- Amended Section 2(A)
- Added Section 2(C)(4)
- Amended Section 2(E) and Subsection 4
- Added Subsections (E)(5) and (E)(6)

### **Section 3**

- Revised Section 3(A)
- Amended Section 3(B)(2)

### **Section 4**

- Amended Section 4(C)

### **Section 6**

- Amended Section 6(A)
- Added Section 6(D)

### **Section 8**

- Amended title of Section 8
- Amended Section 8(C)(4)

### **Statutory Authority**

- Revised to include chapters repealed and replaced