



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Health TITLE-SERIES: 64-32  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 64-32 Vital Statistics

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: W. Va. Code §16-5-1 and §16-5-3

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §16-5-3(a) The Department of Health and Human Resources shall propose rules for legislative approval in accordance with the provisions of Article 3, Chapter 29A of this Code . . .

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/14/2019

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/15/2019

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/A

**SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:**

This rule governs the installation, maintenance, and operation of the only system of vital statistics throughout the state pursuant to W. Va. Code §16-5-1 et seq. Changes are being sought to make technical clean-ups, to add language regarding processes added to the state code after the existing rule was last changed in 2012, to provide for a missing allowance for hardship cases as is provided for in statute, and to make stipulations that were not accounted for in the current rule. 64 CSR 32.4.3 (new), 64 CSR 32.7.2 (modify), 64 CSR 32.10.2 (new to comply with Code), 64 CSR 32.10.3 (modify), 64 CSR 32.15.4.a (new), 64 CSR 32.19.3 (modify)

**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:**

Amendments to the rule involve the provision of a statutory allowance to override certain requirements for the removal of bodies from place of death and authorization for the disposition of the bodies for hardship reasons, under very specific circumstances. Additionally, language has been added to provide guidance in the creation of birth certificates for safe-haven babies pursuant to W. Va. Code §49-6E-1 et seq. Also, the rule adds a security provision that specifies that the security paper used to create security documents must be obtained from a company in the U.S. or Canada, and that the paper must be printed in the U.S. or Canada. Finally, the rule was modified to specify that the State Registrar may also use Social Security Numbers obtained from the filing of vital records as long as the use is not disapproved by the Social Security Administration.

**SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:**

**A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:**

N/A

**B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:**

N/A

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
<b>Personal Services</b>			
<b>Current Expenses</b>			
<b>Repairs and Alterations</b>			
<b>Assets</b>			
<b>Other</b>			
<b>2. Estimated Total Revenues</b>	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

**Yes**

**Debra G Garnes -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

64CSR32  
TITLE 64  
LEGISLATIVE RULE  
BUREAU FOR PUBLIC HEALTH  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
  
SERIES 32  
VITAL STATISTICS

**§64-32-1. General.**

1.1. Scope. -- This legislative rule complements W. Va. Code §16-5-1 *et seq.*, the State Vital Statistics Law.

1.2. Authority. -- W. Va. Code §§16-1-4 and 16-5-3.

1.3. Filing Date. -- ~~May 2, 2012.~~

1.4. Effective Date. -- ~~May 2, 2012.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

**§64-32-2. Duties of State Registrar.**

2.1. Media, Forms, Certificates, Electronic Data Files.

2.1.a. All forms, certificates, records, electronic data files, and reports used in the system of vital statistics are the property of the Bureau and shall be surrendered to the State Registrar upon demand. The forms prescribed and distributed by the State Registrar for reporting vital statistics shall be used only for official purposes. Only those forms furnished or approved by the State Registrar shall be used in the reporting of vital statistics or in making copies. Electronic data records will be accepted only when standards set by the State Registrar are met and with the prior approval of the State Registrar before transmission.

2.2. Requirements for Preparation of Certificates.

2.2.a. All forms, certificates, and reports relating to vital statistics shall either be typewritten or printed legibly in black, unfading ink, or stored on electronic media approved by the State Registrar. All signatures required shall be entered in unfading ink or stored electronically. Unless otherwise directed by the State Registrar, a certificate is not complete and correct and acceptable for registration that:

2.2.a.1. Does not contain the certifier's name typed or printed legibly under his or her signature;

2.2.a.2. Does not supply all items of information called for or satisfactorily account for their omission;

2.2.a.3. Contains alterations or erasures;

2.2.a.4. Does not contain handwritten signatures or the approved electronic equivalent as required;

2.2.a.5. Is marked "copy" or "duplicate";

2.2.a.6. Is a carbon copy;

2.2.a.7. Is prepared on an improper form;

2.2.a.8. Contains improper or inconsistent data;

2.2.a.9. Contains items completed with pictographs or ideographs or writing that is not part of the standard twenty-six letter English alphabet or modifications thereof;

2.2.a.10. Contains given names or surnames written with symbols that have no phonetic standing on their own other than numerals used for generational identifiers or common punctuation such as hyphens for hyphenated names, apostrophes used as part of a given name or surname, commas to separate surnames from generational identifiers, and periods in generational identifiers or when an initial or abbreviation is used as part of a name;

2.2.a.11. Contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting in disease; or

2.2.a.12. Is not prepared in conformity with rules or instructions issued by the State Registrar.

### 2.3. Designation of Local Registration Offices.

2.3.a. The State Registrar shall determine whether offices other than the section of vital statistics are needed in West Virginia to aid in the efficient administration of the system of vital statistics. The determination shall be based on an evaluation of the most efficient method to meet the needs of the people of West Virginia with respect to the establishment and operation of the system of vital statistics.

2.3.b. If the State Registrar determines that additional offices are necessary, the offices shall be designated only with the approval of the Bureau. The duties and responsibilities may be assigned to currently existing offices or special branch offices of the section of vital statistics may be established in those areas where they are determined necessary, or a combination of existing offices and branch offices may be used. In all cases where existing offices are used, the employees of the offices shall be subject to the control of the State Registrar when they are performing functions relating to the system of vital statistics.

2.3.c. The State Registrar shall appoint a local registrar for each designated local registration office. The local registrar shall, with the approval of the State Registrar, appoint one or more deputy local registrars of vital statistics. The deputy registrar shall perform the duties of the local registrar in the absence or incapacity of the local registrar and shall perform any other duties that are prescribed. The State Registrar may remove a local registrar or deputy local registrar for cause.

2.3.d. The State Registrar shall delegate those duties and responsibilities to any local registration office he or she considers necessary to ensure the efficient operation of the system of vital statistics. These may include any or all of the following:

2.3.d.1. The receipt and processing of records of birth and death and reports of fetal death occurring within the registration district. This would include the receipt of these records and reports from the person responsible for their filing, checking them for accuracy and completeness, and forwarding them to the section of vital statistics at intervals prescribed by the State Registrar;

2.3.d.2. Maintenance of all birth and death records received for filing. These records are considered to be in the custody of the State Registrar and are subject to the same requirements regarding disclosure as are records in the possession of the State Registrar. Records maintained by a local registration office shall be surrendered to the State Registrar upon demand;

2.3.d.3. Issuance of certified copies of birth and/or death records. The records from which the certified copies are issued are those maintained in the local registration office or shall be provided by the section of vital statistics. All forms and procedures used to issue the copies shall be provided or approved by the State Registrar. If it is determined appropriate and feasible, any local registration office may be provided access to all birth and/or death records in this State;

2.3.d.4. Acting as the agent of the State Registrar in their designated area and providing assistance to physicians, hospitals, funeral directors, and others in matters related to the system of vital statistics; and

2.3.d.5. Performing any other duties prescribed by the State Registrar.

2.3.e. The State Registrar, with the approval of the Bureau, shall determine the responsibilities and duties of each local registration office independently.

**§64-32-3. Birth Registration for Out-of-Institution Birth Documentary Evidence.**

3.1. When a birth occurs in this State outside of a hospital or institution, and the birth certificate is filed before the first birthday, the State Registrar may require additional evidence in support of the facts of birth.

3.2. The State Registrar shall complete and file a certificate of birth upon presentation of the following evidence by the individual responsible for filing the certificate:

3.2.a. Evidence of pregnancy, such as, but not limited to:

3.2.a.1. A prenatal record;

3.2.a.2. A statement from a physician or other health care provider qualified to determine pregnancy;

3.2.a.3. A home visit by a public health nurse or other health care provider; or

3.2.a.4. Other evidence acceptable to the State Registrar;

3.2.b. Evidence that the infant was born alive, such as, but not limited to:

3.2.b.1. A statement from the physician or other health care provider who saw or examined the infant;

**64CSR32**

3.2.b.2. An observation of the infant during a home visit by a public health nurse; or

3.2.b.3. Other evidence acceptable to the State Registrar;

3.2.c. Evidence of the mother's presence in West Virginia on the date of the birth, such as, but not limited to:

3.2.c.1. If the birth occurred in the mother's residence;

3.2.c.1.A. A driver's license, or a government-issued identification card, which includes the mother's current residence on the face of the license or card;

3.2.c.1.B. A rent receipt that includes the mother's name and address;

3.2.c.1.C. Any type of utility, telephone, or other bill that includes the mother's name and address; or

3.2.c.1.D. Other evidence acceptable to the State Registrar; or

3.2.c.2. If the birth occurred outside of the mother's place of residence, and the mother is a resident of West Virginia, the evidence shall consist of:

3.2.c.2.A. A notarized affidavit from the tenant of the premises where the birth occurred, that the mother was present at those premises at the time of the birth;

3.2.c.2.B. Evidence of the affiant's residence similar to that required in subsection 3.2. of this section;

3.2.c.2.C. Evidence of the mother's residence in the State similar to that required in subsection 3.2. of this section; or

3.2.c.2.D. Other evidence acceptable to the State Registrar; and

3.2.c.3. If the mother is not a resident of West Virginia, the evidence shall consist of clear and convincing evidence acceptable to the State Registrar.

**§64-32-4. Infants of Unknown Parentage; Foundling Registration.**

4.1. The report for an infant of unknown parentage shall be registered on a current certificate of live birth and shall:

4.1.a. Have "foundling" plainly marked in the top margin of the certificate;

4.1.b. Show the required facts as determined by approximation and have parentage data left blank; and

4.1.c. Show the name and title of the custodian in lieu of the attendant.

4.2. When a report has been placed in a special file as provided by W. Va. Code §16-5-13(d), the State Registrar may inspect the information for purposes of properly administering the system of vital statistics.

4.3 A birth to be registered under the provisions of W.Va. Code §49-6E-1 et seq., a “Safe-Haven” statute, shall be filed at the direction of the State Registrar.

**§64-32-5. Delayed Registration of Birth.**

5.1. Delayed Certificate of Birth Form.

5.1.a. All certificates registered one year or more after the date of birth shall be registered on a delayed certificate of birth prescribed and furnished by the State Registrar.

5.2. Who May Request the Registration of a Delayed Certificate of Birth.

5.2.a. Any person born in this State whose birth is not recorded in this State, his or her parent or guardian, or any other person age 18 years or over acting for the registrant and having personal knowledge of the facts of birth may request registration of a delayed certificate of birth, subject to this rule and instructions issued by the State Registrar.

5.2.b. Each application for a delayed certificate of birth shall be signed and sworn to before an official authorized to administer oaths by the person whose birth is to be registered if that person is 18 years of age or over and is competent to sign and swear to the accuracy of the facts stated in the application; otherwise the application shall be signed and sworn to by one of the parents of the registrant, his or her guardian, or any other person age 18 years or over having personal knowledge of the facts of birth.

5.3. Facts to be Established for a Delayed Registration of Birth.

5.3.a. The minimum facts which shall be established by documentary evidence shall be the following:

5.3.a.1. The full name of the person at the time of birth;

5.3.a.2. The date of birth and State of birth;

5.3.a.3. The full maiden name of the mother; and

5.3.a.4. The full name of the father; except that if the mother was not married either at the time of conception or birth the name of the father shall not be entered on the delayed certificate except as provided in subsection 5.4. of this section.

5.4. Delayed Registration Following a Legal Change of Status.

5.4.a. The State Registrar may establish a new delayed certificate of birth reflecting changes when evidence is presented reflecting a legal change of status by adoption, legitimation, paternity determination, or acknowledgment of paternity.

5.4.b. The State Registrar shall place the existing certificate and the evidence upon which the new certificate was based in a special file. The file shall not be subject to inspection except upon order of a court of competent jurisdiction or by the State Registrar for purposes of properly administering the system of vital statistics.

5.5. Documentary Evidence -- Requirements.

5.5.a. To be acceptable for filing, the name of the registrant at the time of the birth and the date and place of birth entered on a delayed certificate of birth shall be supported by at least:

5.5.a.1. A hospital record created at the time of birth, or two pieces of acceptable documentary evidence, if the record is filed within 10 years after the date of birth; or

5.5.a.2. Three pieces of acceptable documentary evidence, if the record is filed 10 years or more after the date of birth.

5.5.b. Facts of parentage shall be supported by at least one document.

5.6. Documentary Evidence -- Acceptability.

5.6.a. The State Registrar shall determine the acceptability of all documentary evidence submitted.

5.6.a.1. Documents presented, including but not limited to census, hospital, church, and school records, shall be from independent sources and shall be in the form of the original record or a duly certified copy or a signed statement from the custodian of the record or document. Documents must have been established at least one year prior to the date of application.

5.6.a.1.A. Affidavits of personal knowledge are not acceptable as evidence to establish a delayed certificate of birth unless the registrant is at least 10 years of age and the affidavit is signed by one of the parents.

5.6.a.2. All documents submitted in evidence:

5.6.a.2.A. For persons age 10 years or over, except for affidavits of personal knowledge, must have been established at least 10 years prior to the date of application, or within 3 years of the date of birth; and

5.6.a.2.B. For persons under 10 years of age, must be dated at least one year prior to the date of application or within the first year of life.

5.7. Abstraction of Documentary Evidence.

5.7.a. The State Registrar shall abstract on the delayed certificate of birth a description of each document submitted to support the facts shown on the delayed birth certificate. This description shall include:

5.7.a.1. The title or description of the document;

5.7.a.2. The name and address of the custodian;

5.7.a.3. The date of the original filing of the document being abstracted; and

5.7.a.4. All birth facts required by subsection 5.3. of this section contained in each document accepted as evidence.

5.7.b. The State Registrar shall return all documents submitted in support of the delayed birth registration to the applicant after review except for an affidavit of personal knowledge if submitted as documentation.

5.8. Verification by the State Registrar.

5.8.a. The State Registrar shall verify:

5.8.a.1. That no prior birth certificate is on file for the person whose birth is to be recorded;

5.8.a.2. That he or she has reviewed the evidence submitted to establish the facts of birth;  
and

5.8.a.3. That the abstract of the evidence appearing on the delayed certificate of birth accurately reflects the nature and content of the document.

5.9. Dismissal After One Year.

5.9.a. The State Registrar may dismiss applications for delayed certificates which have not been completed within one year from the date of application. Upon dismissal, the State Registrar shall so advise the applicant and shall return all documents submitted in support of the registration.

**§64-32-6. Certificates of Birth Following Adoption, Legitimation, Paternity Determination, and Paternity Acknowledgment.**

6.1. Legitimation.

6.1.a. The State Registrar shall prepare a new certificate of birth for a child born in West Virginia if the natural parents marry after the birth of the child and upon receipt of sworn acknowledgment of paternity and a certified copy of the parents' marriage record. However, if another man is shown as the father on the original certificate of birth, the State Registrar may prepare a new certificate of birth only when a determination of paternity is made by a court of competent jurisdiction or following adoption.

6.2. Court Determination of Paternity.

6.2.a. The State Registrar shall prepare a new certificate of birth for a child born in West Virginia upon receipt of a certified copy of a court determination of paternity. If a new surname of the child is not decreed by the court, the parents or legal guardian may specify a new surname to be placed on the certificate of birth as long as the registrant is under eighteen years of age.

6.3. Acknowledgment of Paternity.

6.3.a. The State Registrar shall prepare a new certificate of birth for a child born out of wedlock in this State upon receipt of a sworn acknowledgment of paternity signed by both parents and a written request by both parents that the child's surname remain the same or be changed on the certificate. However, if another man is shown as the father of the child on the original certificate, the State Registrar may prepare a new certificate only when a determination of paternity is made by a court of competent jurisdiction or following adoption.

6.4. In lieu of preparing a new birth certificate under the provisions of subsections 6.1, 6.2, and 6.3 of this section, the State Registrar may alter the original certificate provided that the fact of alteration is not obvious on the face of the certificate.

6.5. New Certificate.

6.5.a. The new certificate of birth prepared after adoption, legitimation, court determination of paternity, or acknowledgment of paternity shall be on the form in use at the time of its preparation and shall include the following items and any information necessary to complete the certificate:

6.5.a.1. The name of the child;

6.5.a.2. The date and city and/or county of birth as transcribed from the original certificate;

6.5.a.3. The names and personal particulars of the adoptive parents or of the natural parents, whichever is appropriate;

6.5.a.4. The name of the attendant, printed or typed;

6.5.a.5. The birth number assigned to the original birth certificate; and

6.5.a.6. The original filing date.

6.5.b. The State Registrar shall prescribe or approve forms for the submission of the information necessary to locate the existing certificate and to complete the new certificate.

6.6. Existing Certificate to Be Placed in a Special File.

6.6.a. After preparation of the new certificate, the State Registrar shall place the existing certificate and the evidence upon which the new certificate was based in a special file. The file shall not be subject to inspection except upon order of a court of competent jurisdiction or by the State Registrar for purposes of properly administering the system of vital statistics or as otherwise provided by W. Va. Code or the Code of State Rules.

**§64-32-7. Death Registration.**

7.1. Acceptance of Incomplete Death Certificate.

7.1.a. If all the information necessary to complete a death certificate is not available within the time prescribed for filing of the certificate, the funeral director or person acting in that capacity shall file the certificate with all information that is available and satisfactorily account for all the items that are omitted. In all cases the medical certification must be provided by the person responsible for the certification. If the cause of death is unknown or pending investigation, the cause of death shall be shown in those terms on the certificate. The person providing the medical certification of cause of death also shall authorize the final disposition of the body

7.1.b. The funeral director or person acting in that capacity shall file a supplemental report providing the personal information omitted from the original certificate with the State Registrar as soon as possible, but in all cases within 30 days of the date the death occurred.

7.1.c. The certifier responsible for providing the medical information shall file a supplemental report providing the medical information omitted from the original certificate with the State Registrar within 30 days of the date the death occurred. If extended time is needed to get information, the certifier shall notify the State Registrar. The State Registrar may provide for an extension not to exceed 60 days or as necessary in cases in which the certifier is a State Medical Examiner or his or her designee or county medical examiner or county coroner.

7.1.d. The State Registrar may direct that a supplemental report be made a part of the existing death certificate. The reports shall be considered an amendment and the death certificate shall be marked "Amended."

7.2. Hospital or Institution ~~May~~ Shall Assist in Preparation of Certificate.

7.2.a. When a death occurs in a hospital or other institution and the death is not under the jurisdiction of the State Medical Examiner or his or her designee or the county medical examiner or county coroner, the person in charge of the institution, or his or her designated representative, shall initiate the preparation of the death certificate by:

7.2.a.1. Placing the full name of the decedent and the date, time, and place of death on the death certificate and obtaining from the attending physician placed in charge of the decedent's care at the time of death or another certifier as specified in W. Va. Code §16-5-19(c)(1) the medical certification of the cause of death; or

7.2.a.2. If the attending physician placed in charge of the decedent's care is not the pronouncing physician, placing the full name of the decedent and the date, time, and place of death on the death certificate, providing the name of the attending physician placed in charge of the decedent's care to the funeral director or person acting in that capacity. The hospital or institution shall obtain the pronouncing physician's or other pronouncing licensed health professional's attestation when the attending physician placed in charge of the decedent's care or another certifier as specified in W. Va. Code §16-5-19(c)(1) is absent; and

7.2.a.3. Presenting the partially completed death certificate to the funeral director or person acting in that capacity.

**§64-32-8. Delayed Registration of Death.**

8.1. The registration of a death after the time prescribed by W. Va. Code and rules shall be registered on the current certificate of death form or an alternate delayed certificate of death form in the manner prescribed in this subsection.

8.1.a. If the attending physician or another certifier as specified in W. Va. Code §16-5-19(c)(1) or the State Medical Examiner or his or her designee or the county medical examiner or the county coroner at the time of death and the attending funeral director or person who acted in that capacity are available to complete the certificate of death, it may be completed without additional evidence and filed with the State Registrar. For those certificates filed one year or more after the date of death, the attending physician or another certifier as specified in W. Va. Code §16-5-19(c)(1) or the State Medical Examiner or his or her designee or the county medical examiner or the county coroner and the funeral director or person who acted in that capacity shall state in accompanying affidavits that the information on the certificate is based on records kept in their files. Delayed registrations of death filed under this provision are to be filed on the current certificate of death form and are to be stamped "Delayed".

8.1.b. In the absence of the attending physician or another certifier as specified in W. Va. Code §16-5-19(c)(1) or the State Medical Examiner or his or her designee or the county medical examiner or the county coroner and the funeral director or person who acted in that capacity, the certificate may be filed by the next of kin or spouse of the decedent and shall be accompanied by two documents which identify the decedent and his or her date and place of death. Delayed registrations of death filed under this provision are to be filed using a delayed certificate of death form provided by the State Registrar. A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the delayed certificate of death form.

8.2. In all cases, the State Registrar may require additional documentary evidence to prove the facts of death.

**§64-32-9. Disposition of Reports of Fetal Death and Induced Termination of Pregnancy.**

9.1. Reports of induced termination of pregnancy are statistical reports only. The State Registrar may dispose of the reports when all statistical processing of the reports has been accomplished. However, the State Registrar may establish a file of the reports so they will be available for future statistical and research projects. The file shall be retained for as long as the State Registrar considers necessary and then he or she shall destroy it. The file may be maintained by photographic, electronic, or other means as determined by the State Registrar, in which case the original report from which the photographic, electronic, or other file was made shall be destroyed.

9.2. The provisions of this rule also apply to all records or reports of fetal death and are also applicable to filings of reports of induced termination of pregnancy filed prior to the adoption of this rule. Reports of fetal death filed prior to the adoption of this rule shall be retained indefinitely as the original files or photographic or electronic files.

**§64-32-10. Authorization for Final Disposition.**

10.1. Removal of Body.

10.1.a. Before removing a dead body or fetus from the place of death, the funeral director or person acting in that capacity shall:

10.1.a.1. Obtain assurance from the attending physician or another certifier as specified in W. Va. Code §16-5-19(c)(1), the physician or other licensed health professional who pronounces death that the death is from natural causes and that the attending physician placed in charge of the decedent's care or another certifier as specified in W. Va. Code §16-5-19(c)(1) will assume or has assumed responsibility for certifying to the cause of death or fetal death and receive permission to remove the body from the place of death; or

10.1.a.2. Notify the State Medical Examiner or his or her designee or the county medical examiner or the county coroner if the case comes within his or her jurisdiction and obtain authorization to remove the body.

10.2. Special Allowance for Hardship Cases.

10.2.a. In deaths which have been investigated by the West Virginia Office of the Chief Medical Examiner, their coroner, or designee, and it has been determined that:

10.2.a.1. The death does not fall under the purview of the Office of the Chief Medical Examiner; and

10.2.a.2. The attending physician or other medical certifier is unavailable to allow for removal and final disposition of the body within a time period to prevent an undue hardship to the family; and

10.2.a.3. With allowance by the Office of the Chief Medical Examiner, their coroner, or designee, that separate authorization for removal of the body and the authorization for disposition signed by the attending physician or other medical certifier who is to certify to the cause of death is not necessary before removal and final disposition.

~~10.2.~~ 10.3. Authorization for Disinterment and Reinterment.

~~10.2.a.~~ 10.3.a. Upon receipt of a written application signed by the next of kin or spouse and the person who is in charge of a disinterment or upon receipt of an order of a court of competent jurisdiction which directs a disinterment, the State Registrar shall issue an authorization for the disinterment and reinterment of a dead body to a licensed funeral director.

~~10.2.b.~~ 10.3.b. Upon receipt of a court order or signed permission of the next of kin or spouse, the State Registrar may issue one authorization to a licensed funeral director to permit disinterment and reinterment of all remains in a mass disinterment provided that, insofar as possible, the remains of each body are identified and the place of disinterment and reinterment are specified. The authorization shall be permission for disinterment, transportation, and reinterment.

~~10.2.c.~~ 10.3.c. A dead body deposited in a receiving vault shall not be considered a disinterment when removed from the vault for disposition.

~~10.2.d.~~ 10.3.d. In all cases a court of competent jurisdiction must order disinterment and reinterment before issuance of authorization in which it is the intention that the disinterment of a dead body is to be performed and the casket is to be opened for any purpose, other than solely for removal of the remains for subsequent cremation authorized by a cremation permit issued by the State Medical Examiner's office.

**§64-32-11. Registration of Marriage and Delayed Registration of Marriage.**

(Reserved for future use)

**§64-32-12. Amendment of Vital Records.**

12.1. Amendment of Minor Errors on Birth Certificates During the First Year.

12.1.a. Amendment of obvious errors, transposition of letters in words of common knowledge, or omissions may be made by the State Registrar within the first year after the date of birth either upon his or her own observation or query or upon request of a person as defined in subsection 12.3 of this section. When the additions or minor amendments are made by the State Registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change shall be made on the certificate in such a way as not to become a part of any certified copy issued. The certificate shall not be marked "Amended."

12.2. All Other Amendments.

12.2.a. Unless otherwise provided in this rule or in the W. Va. Code, all other amendments to vital records shall be supported by:

12.2.a.1. A notarized affidavit setting forth:

12.2.a.1.A. Information to identify the certificate;

12.2.a.1.B. The incorrect data as listed on the certificate;

12.2.a.1.C. The correct data as it should appear; and

12.2.a.2. One or more items of documentary evidence which support the alleged facts and were established at least five years prior to the date of application for amendment or within seven years of the date of the event.

12.2.b. The State Registrar shall evaluate the evidence submitted in support of any amendment, and when he or she finds reason to doubt its validity or adequacy, he or she may reject the amendment and advise the applicant of the reasons for this action.

12.2.c. The State Registrar may in all cases require additional documentation.

12.2.d. Any other amendment to vital records not specifically provided for in this rule or in the W. Va. Code or one which was previously rejected by the State Registrar shall be made in accordance with an Order from a court of competent jurisdiction.

### 12.3. Who May Apply.

12.3.a. One of the parents if the registrant is under 18 years of age, the guardian or legal representative working in behalf of the registrant, the registrant if he or she is age 18 years or over, or the individual responsible for filing the certificates may make application to amend a birth certificate. In all other cases, an amendment shall be made by court order.

12.3.b. The next of kin or spouse, the informant listed on the death certificate, or the funeral director or person acting in that capacity who submitted the death certificate may make application to amend a death certificate. The physician or the State Medical Examiner or his or her designee or the county medical examiner or the county coroner who certified to the cause of death are the only parties who may make application to amend the medical certification of the cause of death.

12.3.c. The county clerk in the county in which a marriage license was issued may accept applications for amendment of facts of marriage. The application shall be made jointly by both parties to the marriage or by the survivor. In the event the marriage to which the application relates was terminated by divorce, dissolution of marriage or annulment on or before the date of application for amendment, the applicant may request amendment only of those items on the certificate of marriage which relate to the applicant.

12.3.d. Either party to a terminated marriage may make application for amendment of matters contained in certificates of divorce, dissolution of marriage or annulment which are not part of the decree or court order. The court that terminated a marriage may make application for amendment of matters contained in certificates of divorce, dissolution or marriage, or annulment which are part of the decree or court order.

12.3.e. Amendments to delayed certificates of birth other than the correction of minor errors or the establishment of paternity by affidavit of paternity, shall be made by court order.

12.4. Amendment of Registrant's Given Names on Birth Certificates Within the First Year.

12.4.a. The parent or parents, if both are named on the birth certificate, or the guardian, person, or agency having legal custody of the registrant may until the registrant's first birthday, amend the given names by submission of a notarized affidavit.

12.4.b. After one year from the date of birth the provisions of subsection 12.2 of this section shall be followed to amend a given name if the name was entered incorrectly on the birth certificate. After one year a court of competent jurisdiction must submit a legal change of name order to change a given name.

12.5. Addition of Given Names on Birth Certificates.

12.5.a. For a child whose birth was recorded with no given names, the parent, or parents if both are named on the birth certificate or the guardian, person, or agency having legal custody of the registrant may, until the registrant's seventh birthday, submit a notarized affidavit to add the given names to the certificate of birth.

12.5.b. After 7 years of age the provisions of subsection 12.2 of this rule shall be followed to add given names.

12.6. Amendment of Cause of Death.

12.6.a. The State Registrar may amend the cause of death only upon receipt of a signed statement or by an approved electronic notification by the physician or the State Medical Examiner or his or her designee or the county medical examiner or the county coroner who originally certified the cause of death. In the absence or inability of the physician or with his or her approval, the cause of death may be amended upon receipt of a signed statement or by an approved electronic notification from his or her associate physician, or the chief medical officer of the institution in which death occurred, or the State Medical Examiner or his or her designee or the county medical examiner or the county coroner who assumes jurisdiction of the case provided that individual has access to the medical history of the case. The State Registrar may require documentary evidence to substantiate the requested amendment.

12.7. Amendment of the Same Item More than Once.

12.7.a. Once an amendment of an item is made on a vital record, except for causes or manners of death to be amended by the State Medical Examiner, or a clerical error on the part of the State Registrar, the State Registrar shall not amend that item again except upon receipt of a court order from a court of competent jurisdiction.

12.7.b. For purpose of accuracy only, the State Medical Examiner may at any time amend the cause and manner of death based on autopsy results, additional scientific study, or further inquiry or investigation for any death originally certified by the State Medical Examiner or his or her designee or the county medical examiner or the county coroner or for any death certified by another physician that the State Medical Examiner or his or her designee or the county medical examiner or the county coroner claims jurisdiction.

12.8. Methods of Amending Certificates.

12.8.a. The State Registrar may amend certificates of birth, death, marriage, and divorce, dissolution of marriage, or annulment in the following manner:

12.8.a.1. Completing the item in any case where the item was left blank on the existing certificate.

12.8.a.2. Preparing a new certificate showing the correct information when the State Registrar determines that the nature of the amendment requires it.

12.8.a.2.A. The new certificate shall be prepared on the form used for registering current events at the time of the amendment. Except as provided elsewhere in this rule, the item number of the entry that was amended shall be identified on the new certificate.

12.8.a.2.B. In all cases, the new certificate shall show the date the amendment was made and be given the same State file number as the existing certificate. Signatures, if any, appearing on the existing certificate shall be typed on the new certificate.

12.8.a.3. Drawing a single line through the item to be amended and inserting the correct data immediately above or to the side of the item. The line drawn through the original entry shall not obliterate the entry.

12.8.a.4. In special circumstances, when determined necessary and proper by the State Registrar, completing a special form which shall include the incorrect information as it appears on the original certificate, the correct information as it should appear, an abstract of the documentation used to support the amendment and sufficient information about the registrant to link the special form to the original record. When a copy of the record is issued, a copy of the amendment shall be included or;

12.8.a.5. Amending a record maintained in an electronic file by changing the item or items to be amended. The date of amendment shall be made a part of the record and the original information shall also be retained.

12.9. Administrative Amendment.

12.9.1. Upon investigation of filed vital records incorporated into the holdings of the State Registrar or a local registrar or local custodian that were filed with incomplete or missing file dates or registrar's signatures, the State Registrar shall, if possible by approximation or other means, make an administrative amendment to the record. The records shall be marked "Amended" and the date of the amendment shall be noted in administrative files indexed to the corrected record.

**§64-32-13. Record Preservation.**

13.1. When an authorized reproduction of a vital record has been properly prepared by the State Registrar and when all steps have been taken to ensure the continued preservation of the information, the record from which the authorized reproduction was made may be disposed of by the State Registrar. However, the State Registrar may not dispose of the record until the quality of the authorized reproduction has been tested to ensure that acceptable certified copies can be issued and until a security copy of the document has been placed in a secure location removed from the building where the authorized reproduction is housed. The State Registrar shall maintain the security copy in such a

manner to ensure that it can replace the authorized reproduction should the authorized reproduction be lost or destroyed.

13.2. The State Registrar shall offer the original documents from which the authorized reproductions are made to the section of Archives and History of the Division of Culture and History - hereinafter known as the "State Archives". The State Archives may retain permanently the records provided if they adhere to the restrictions in the vital statistics law related to access to the records. If the State Archives does not wish to place the records in its files the State Registrar may destroy the documents in accordance with W. Va. Code and rules of the State Archives. The destruction shall be by approved methods for disposition of confidential or sensitive documents.

**§64-32-14. Disclosure and Protection of Integrity of Vital Records.**

14.1. The State Registrar, a local registrar or any other custodian of vital records shall not permit inspection of, or disclose information contained in, vital statistics records, or copy or issue a copy of all or part of any vital statistics record unless he or she is satisfied that the applicant is authorized to obtain a copy or abstract of the record.

14.1.a. Unless access to vital records would jeopardize acceptance by any agency of the federal government as specified in regulations promulgated under the Intelligence Reform Act or other similar provisions of federal law, in addition to applicants specified in W. Va. Code §16-5-28(a), the following persons or entities are authorized to obtain a copy or abstract of a vital record:

14.1.a.1. A person or entity who can prove that they have a direct and tangible interest in the content of the record and that the information contained in the record is necessary for the determination of a personal or property right.

14.1.a.2. In the case of birth records, the registrant, a member of his or her immediate family, his or her guardian, or their respective authorized representatives.

14.1.a.3. In the case of a death record, any immediate family member, any surviving relative who has a direct or tangible interest in the record, or their authorized representative.

14.1.a.4. In the case of a fetal death record or report, a parent listed on the record or his or her authorized representative.

14.1.a.5. In the case of marriage and divorce records, the parties married, their adult children, adult grandchildren and additional generations or their authorized representatives.

14.1.b. Family members doing genealogical research and genealogists representing a family member may obtain copies of records needed for their research. The registrant or relevant family members as defined in §16-5-28(a) of the W. Va. Code or rules promulgated shall submit appropriate authorization.

14.1.c. The term "authorized representative" includes an attorney, physician, funeral director, or other designated agent acting on behalf of the registrant or his or her family.

14.1.d. The term "immediate family" includes:

14.1.d.1. A mother or father;

14.1.d.2. A son or daughter;

14.1.d.3. A brother or sister;

14.1.d.4. A husband or wife;

14.1.d.5. A mother-in-law or father-in-law;

14.1.d.6. A son-in-law or daughter-in-law;

14.1.d.7. Grandparents, great-grandparents, and additional generations of the same family;

14.1.d.8. Grandchildren, great-grandchildren, and additional generations of the same family;

14.1.d.9. A stepmother or stepfather; and

14.1.d.10. A stepchild.

14.1.e. If the father's name is not shown on the certificate of birth, he or his family members cannot obtain copies of the record without a court order, a court ordered determination of paternity naming him as the father, a completed notarized affidavit of paternity accepted for filing by the section of vital statistics, proof of marriage to the mother at the time of conception or birth of child, or proof of adoption.

14.1.f. The natural parents of adopted children may not obtain copies or abstracts of the record unless the requesting natural parent retains legal rights as a parent after the adoption.

14.1.g. The State Registrar shall not provide listings of names or addresses from vital records to the general public for private use or distribution or commercial firms or agencies for commercial or business use.

14.2. All requests for disclosure of information contained in vital records or reports for research which identifies any person or institution shall be submitted in writing or by an approved electronic process to the State Registrar.

14.2.a. Each request shall contain:

14.2.a.1. The objectives of the research;

14.2.a.2. Peer review and approval of the research protocol for any contact of research subjects or their families;

14.2.a.3. Storage and security measures to be taken to assure confidentiality of identifying information, and provision for return or destruction of the information at the conclusion of the research;

14.2.a.4. A time frame for the research;

14.2.a.5. An acknowledgment and agreement that ownership of all information provided by the State Registrar remains exclusively in the Bureau and that use of the information by the researcher

constitutes a license only for usage during the course of the research and creates no ownership rights by the researcher; and

14.2.a.6. An acknowledgment and agreement that release of identifying information contained in vital records or reports by the researcher to any other person or entity may be made only with prior written approval of the State Registrar.

14.2.b. The State Registrar shall review all requests to determine compliance with the following:

14.2.b.1. The request contains all required elements;

14.2.b.2. The request adequately justifies the need for the requested information;

14.2.b.3. The requested information can be provided within the time frame set forth in the request; and

14.2.b.4. The Bureau has adequate resources with which to comply with the request;

14.2.c. The State Registrar shall enter into research agreements for all approved research requests. Each research agreement shall specify exactly what information will be disclosed and shall prohibit release by the researcher of any information which may identify any person or institution. Additionally, each research agreement may provide that in the event of a breach of the agreement the principal investigators and collaborators shall be barred from participation in future research agreements and shall pay to the Bureau the sum of \$5,000.00 per violation of the research agreement.

14.2.d. For all requests for disclosure of information contained in vital records or reports for research which does not contain identifiers but may identify any person or institution, the State Registrar shall obtain a signed agreement from the person or entity requesting the information which provides the following assurances:

14.2.d.1. The recipient will neither use nor permit others to use the information in any way except for statistics reporting and analysis;

14.2.d.2. The recipient will neither release nor permit other persons or entities to release the information or any part of the information to any person who is not a member of the organization without approval of the State Registrar;

14.2.d.3. The recipient will neither attempt to link nor permit others to attempt to link the data set with individual identifiable records from any other data set;

14.2.d.4. The recipient will neither use nor will allow anyone else to attempt to use the information to learn the identity of any person or institution included in the information provided; and

14.2.d.5. If the identity of any person or institution is discovered inadvertently, the recipient will not make use of this knowledge; will immediately notify the State Registrar; will safeguard or destroy information which led to the identification of the individual or institution as requested by the State Registrar; and will inform no one else of the discovery.

14.3. The State Registrar, a local registrar or another custodian shall not issue a certified copy of a record until the applicant has provided sufficient information to locate the record. Whenever it is necessary to establish an applicant's right to information from a vital record, the State Registrar a local

registrar or another custodian may also require identification of the applicant or a sworn statement or other good and sufficient evidence of the applicant's identity and his or her right to the information.

14.4. When 100 years have elapsed after the date of birth, or 50 years have elapsed after the date of death, fetal death, marriage or divorce, dissolution of marriage, or annulment, the records in the custody of the State Registrar, a local registrar or another custodian, unless otherwise prohibited by statute or rules promulgated, shall become available to any person upon submission of an application containing sufficient information to locate the record. For each copy issued or search of the files made, the State Registrar or local custodian shall collect the same fee charged for the issuance of certified copies or a search of the files for other records in his or her possession.

**§64-32-15. Copies of Data from Vital Records.**

15.1. The State Registrar, local registrars and other custodians authorized by W. Va. Code to produce certified copies of vital records may produce certified copies by mechanical, electronic, or other reproductive processes.

15.2. Each certified copy issued shall be certified as a true copy by the officer in whose custody the record is entrusted and shall include the date issued, the name of the issuing officer, the State Registrar's, local registrar's or another custodian's signature or an authorized facsimile thereof, and the seal of the issuing office. In addition, all certified copies of a birth record shall include at a minimum the following information: a certificate or file number or other indexing reference, the given name or names, the surname, a generational identifier, if any, the date of birth, the state and city or county of birth, the sex, the name of the parents when known, and the date of filing. In addition, all certified copies of a death record shall include at a minimum the following information: the given names, the surnames, a generational identifier, if any, the date of death, the date of birth or age, the state and city or county of death, the sex, and the date of filing.

15.3. All certified copies shall include the minimum security features required for acceptance by federal agencies as specified in regulations promulgated under the Information Reform Act or similar federal statutes and shall include:

- 15.3.a. Sensitized security paper;
- 15.3.b. A background security design;
- 15.3.c. A copy void pantograph; and
- 15.3.d. Consecutive numbering;

15.4. To further enhance security, the State Registrar, local registrar and other custodians may use other security features including, but not limited to, engraved borders, prismatic printing, erasable fluorescent background inks, nonoptical brightener paper, microline printing, complex colors, security threads or fibers, intaglio print, security laminates, and toner adhesion.

15.4.a. All paper to produce certified copies shall be obtained from a printing company with offices located within the United States or Canada and be printed within the United States or Canada.

15.5. Verification of the facts contained in a vital record may be furnished by the State Registrar to any Federal, State, county, or municipal government agency or to any other agency representing the interest of the registrant. The verifications shall be on a form prescribed and furnished by the State

Registrar or on a form furnished by the requesting agency and acceptable to the State Registrar; or, the State Registrar may authorize the verification in other ways when it is in the best interests of his or her office.

**§64-32-16. Fees.**

Unless specifically approved by the State Registrar or as otherwise provided by W. Va. Code or rules, the State Registrar shall not issue a certified or uncertified copy of a vital record until the fee for the copy is received.

**§64-32-17. Persons Required to Keep Records.**

17.1. Each funeral director shall keep a record containing, as a minimum, the following information about each dead body or fetus the funeral director handles:

17.1.a. The date, place, and time of receipt;

17.1.b. The date, place, and manner of disposition;

17.1.c. If the dead body or fetus is delivered to another funeral director, the date of the delivery and the name and address of the funeral director to whom it was delivered; and

17.1.d. The items required by the certificate of death for those deaths for which the funeral director was required to file the certificate.

**§64-32-18. Matching of Birth and Death Certificates.**

18.1. When carrying out the birth and death matching program, the State Registrar shall establish written guidelines which provide the standards for determining a match does exist. These standards shall specify the information about the decedent which should be available and which should be compared to the information on the birth certificate before a match can be made. These items include as a minimum whenever possible: the name of the decedent; the name of the father and the maiden name of the mother; the date of birth or age of the decedent; the state of birth of the decedent; and the marital status of the decedent. The State Registrar shall not establish a match unless there is documented proof of the fact of death.

18.2. Once a match of a birth and a death is established, the State Registrar shall post the date of death, the state where the death occurred, and the death certificate number to the birth certificate or to an electronic record which identifies the birth certificate.

**§64-32-19. Social Security Numbers to be Reported; No Good Cause for Refusal; Limitations on Use of Social Security Numbers.**

19.1. Persons or entities required under W. Va. Code or rules to report social security numbers to the section of vital statistics shall do so.

19.2. Unless a social security number has not been assigned, or absent other provisions of federal regulations, W. Va. Code or rules, there shall be no good cause for not furnishing a social security number.

19.3. Unless otherwise restricted by W. Va. Code or rules, the State Registrar may use a social security number obtained from the filing of a vital record for all purposes approved by or not disapproved by the Social Security Administration.

**§64-32-20. Use of Names on Records.**

20.1. Birth Registration Generally.

20.1.a. Unless otherwise provided by W. Va. Code or rules, birth certificates shall be filed by the State Registrar with the name of the registrant provided by the parents to the person or entity required to file the birth certificate unless:

20.1.a.1. The mother was an unemancipated minor, in which case the registrant's surname may only be filed in the legal surname of the mother until paternity is established unless specifically allowed otherwise, in writing or by an approved electronic process, by the unemancipated minor's mother's parents or legal guardian or at the order of a court of competent jurisdiction; or

20.1.a.2. It is known the registrant will be placed for adoption in which case the certificate of birth shall be filed with the registrant's surname as either the legal surname or the maiden surname of the mother, as she directs; or

20.1.a.3. A court order from a court of competent jurisdiction exists that orders another name be registered; or

20.1.a.4. The name provided contains commonly recognized profanity or is otherwise demeaning, in which case the State Registrar shall only register the birth in the requested name by order of a court of competent jurisdiction.

20.2. Only one generational identifier may be used after the surname. Generational identifiers may not take the form of commonly conferred academic honorifics such as, but not limited to, MD, JD, DO, Esq., BA, BS, MA, MS, or PhD, or other designations not commonly used as generational identifiers.

**§64-32-21. Administrative Due Process.**

21.1. Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests, or privileges shall do so in a manner prescribed in the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1.