



# RULE-MAKING ORDER

## CR-103 (June 2004) (Implements RCW 34.05.360)

**Agency:** Office of the Secretary of State, Elections Division

- Permanent Rule  
 Emergency Rule

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.  
 Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.  
 Later (specify) \_\_\_\_\_

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes  No If Yes, explain:

**Purpose:** The purpose of these rules is to implement new legislation passed by the 2009 Washington State Legislature that is already in effect.

**Citation of existing rules affected by this order:**

Repealed: 434-324-075, 434-324-100, 434-324-190, 434-324-200, 434-324-210, 434-324-220, 434-324-230, 434-324-240, 434-324-250, 434-324-260

Amended: 434-230-015, 434-235-020, 434-235-030, 434-261-005, 434-261-086, 434-264-020, 434-324-005, 434-324-008, 434-324-010, 434-324-040, 434-324-045, 434-324-085, 434-324-090, 434-324-095, 434-324-106, 434-324-113, 434-324-130, 434-324-165

Suspended:

**Statutory authority for adoption:** RCW 29A.04.611

**Other authority :**

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR \_\_\_\_\_ on \_\_\_\_\_ (date).

Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_  
 Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_  
 e-mail \_\_\_\_\_

**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.  
 That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The 2009 Washington State Legislature passed new legislation, SSB 5270, SSB 6122, and SB 5359, that became effective on July 26, 2009. There is insufficient time to adopt these rules through the permanent rulemaking process pursuant to the deadlines of the August Primary and the November General Election. In addition, the Office of the Secretary of State has sent a draft of the proposed rules to stakeholders and interested parties on July 6, 2009, and posted the draft rules on the agency's website. The agency s accepting public comment through August 25, 2009.

**Date adopted:** 8/5/2009

**NAME (TYPE OR PRINT)**

Steve Excell

**SIGNATURE**

**TITLE**

Assistant Secretary of State

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: August 05, 2009  
TIME: 1:11 PM

**WSR 09-17-001**

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	<u>18</u>	Repealed	<u>10</u>

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

**WAC 434-230-015 Ballot format.** (1) Each ballot shall specify the county, the date, and whether the election is a primary, special or general.

(2) Each ballot must include instructions directing the voter how to mark the ballot, including write-in votes.

(3) Each ballot must explain, either in the general instructions or in the heading of each race, the number of candidates for whom the voter may vote (e.g., "vote for one").

(4)(a) If the ballot includes a partisan office, the ballot must include the following notice in bold print immediately above the first partisan congressional, state or county office: "READ: Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(b) When the race for president and vice-president appears on a general election ballot, instead of the notice required by (a) of this subsection, the ballot must include the following notice in bold print after president and vice-president but immediately above the first partisan congressional, state or county office: "READ: Each candidate for president and vice-president is the official nominee of a political party. For other partisan offices, each candidate may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(c) The same notice may also be listed in the ballot instructions.

(5) Counties may use varying sizes and colors of ballot cards if such size and color is used consistently throughout a region, area or jurisdiction (e.g., legislative district, commissioner district, school district, etc.). Varying color and size may also be used to designate absentee ballots, poll ballots, or provisional ballots.

(6) Ballots shall be formatted as provided in RCW 29A.36.170. Ballots shall not be formatted as stated in RCW 29A.04.008 (6) and (7), 29A.36.104, 29A.36.106, 29A.36.121, 29A.36.161(4), and 29A.36.191.

(7) Removable stubs are not considered part of the ballot.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

**WAC 434-235-020 Voter registration.** (1) A uniformed, service, or overseas voter may register to vote by providing:

(a) A voter registration application issued by the state of Washington;

(b) A federal post card application issued by the federal voting assistance program;

(c) A federal write-in absentee ballot issued by the federal voting assistance program;

(d) A national mail voter registration form issued by the election assistance commission; or

(e) An absentee ballot with a valid signature on the return envelope oath.

(2) Pursuant to RCW 29A.40.010, a uniformed, service, or overseas voter does not have to be registered in order to request an absentee ballot. Consequently, a uniformed, service, or overseas voter may request a ballot and be registered after the registration deadlines of RCW 29A.08.140 (~~(, 29A.08.145, and WAC 434-324-075)~~) have passed.

(a) If the voter is not (~~(previously)~~) currently registered, the county auditor must register the voter immediately. The voter must be flagged in the voter registration system accordingly.

(b) (~~(A voter who registers to vote by signing the return envelope of the absentee ballot is not required to provide a driver's license number, Social Security number or other form of identification as outlined in RCW 29A.08.113.)~~) A uniformed, service, or overseas voter must use his or her most recent residential address in Washington, or the most recent residential address in Washington of a family member.

(c) If the county auditor is unable to precinct the voter due to (~~(an)~~) a missing or incomplete residential address on the application, the county auditor must attempt to contact the voter to clarify the application. If, in the judgment of the county auditor, there is insufficient time to correct the application before the next election or primary, the county auditor must issue the absentee ballot as if the voter had listed the county auditor's office as his or her residence. A special precinct for this purpose may be created. Upon its return, the ballot must be referred to the county canvassing board. The only offices and issues that may be tabulated are those common to the entire county and congressional races based on the precinct encompassing the auditor's office. Such registrations are only valid for the primary or election for which the ballot was issued. If the actual precinct is not determined before the next primary or election, the registration must be canceled.

(d) A voter who registers to vote by signing the return envelope of the absentee ballot is not required to provide a driver's license number, Social Security number or other form of identification as required in RCW 29A.08.107.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

**WAC 434-235-030 Absentee voting.** (1) A uniformed, service, or overseas voter may request or return an absentee ballot by:

(a) Any manner authorized by WAC 434-250-030;

(b) A federal post card application issued by the federal voting assistance program; or

(c) A federal write-in absentee ballot issued by the federal voting assistance program.

(2) Pursuant to RCW 29A.40.070, absentee ballots issued to registered uniformed, service, or overseas voters must be mailed at least thirty days prior to the election or primary. Requests for absentee ballots received after that day must be processed immediately.

(3) The county auditor may issue an absentee ballot by mail, e-mail, fax, or other means as specifically requested by the voter.

(4) ~~((If a voters' pamphlet for that primary or election is available, the county auditor must include a voters' pamphlet with the absentee ballot.))~~ Pursuant to RCW 29A.40.061, the county auditor shall provide the appropriate web site information with the absentee ballot.

(5) If the county auditor is unable to issue an absentee ballot due to insufficient information, the county auditor must attempt to contact the voter to clarify the request. If the county auditor is unable to obtain sufficient information to issue the absentee ballot, the county auditor must attempt to notify the voter of the reason that the ballot was not issued.

(6) Pursuant to RCW 29A.40.150, ~~((the secretary of state must furnish envelopes and instructions for absentee ballots issued to uniformed, overseas and service voters. Absentee ballots issued to voters in these categories must be mailed postage-free, and))~~ return envelopes must be ~~((marked))~~ printed to indicate that they may be returned postage-free. ~~((For purposes of RCW 29A.40.150, service voters do not include participants of the address confidentiality program established in chapter 40.24 RCW.))~~

AMENDATORY SECTION (Amending WSR 09-12-078, filed 5/29/09, effective 6/29/09)

**WAC 434-261-005 Definitions.** (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed on an absentee ballot as part of the initial processing, and on a poll ballot after breaking the seals and opening the ballot containers from the precincts or, in the case of precinct counting systems, prior to the certification of the election;

(2) "Duplicating ballots" is the process of making a true copy of valid votes from ballots that may not be properly counted by the vote tallying system. Ballots may be duplicated on blank ballots or by making changes on an electronic image of the ballot. The original ballot may not be altered in any way;

(3) "Readable ballot" is any ballot that the certified vote tallying system can accept and read as the voter intended without alteration, and that meets the standards of the county canvassing board subject to the provisions contained in this title;

(4) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. Unreadable ballots may include, but not be limited to, ballots with damage, write-in votes, incorrect or incomplete marks, and questions of (~~vote~~) voter intent. Unreadable ballots may subsequently be counted as provided by these administrative rules;

(5) "Valid signature" on a ballot envelope for a registered voter eligible to vote in the election is:

(a) A signature verified against the signature in the voter registration file; or

(b) A mark witnessed by two people.

(6) "Overvote" is votes cast for more than the permissible number of selections allowed in a race or measure. An overvoted race or measure does not count in the final tally of that race or measure. Example of an overvote would be voting for two candidates in a single race with the instruction, "vote for one."

(7) "Undervote" is no selections made for a race or measure.

(8) "Election observers" means those persons designated by the county political party central committee chairperson to observe the counting of ballots and related elections procedures.

**WAC 434-261-086 Statewide standards on what is a vote.** (1) Pursuant to 42 U.S.C. § 15481(a)(6) and *Bush v. Gore*, 531 U.S. 98 (2000), the following standards determine whether irregular marks on a ballot constitute a valid vote that may be counted.

(a) Target area. Any marks made in the target area shall be counted as valid votes, with the exceptions below. Any marks made outside of the target area (~~((will only))~~) shall be valid only if they fulfill the consistent pattern requirements in (b) of this subsection. Marks that trace or outline the target area are not valid votes unless they fulfill the consistent pattern requirements in (b) of this subsection. Exceptions:

(i) Obvious stray marks.  
(ii) Hesitation marks.  
(iii) Parts of written notes.  
(iv) Corrected votes, (~~((according to the instructions printed on the ballot or written instructions provided by the voter, which may include arrows, circles, and written words))~~) as described in (c) and (e) of this subsection.

(b) Consistent pattern. Marks made outside of the target area shall only be counted as valid votes if a consistent pattern of marks is used throughout the whole ballot. This means that all races and issues for which the voter has indicated a choice must have the same mark. If some marks are in the target area and some are not, but the same *type* of mark is used in a consistent pattern throughout the whole ballot, (~~((they))~~) all such marks shall (~~((all))~~) be counted as valid votes. If the marks strike through candidate names or ballot measure responses in a consistent pattern throughout the whole ballot, all such marks shall be counted as valid votes.

(c) Corrected votes.

(i) If the voter has followed the instructions for correcting a vote, the stricken vote shall not be counted.

(ii) If a second choice is marked, it shall be counted as a valid vote (~~((~~

~~((ii))~~). If a second choice is not marked, the race shall be considered undervoted (~~((~~

~~((iii))~~). If the voter has marked two target areas and placed an 'X' over one of the marked areas, the choice without the 'X' shall be counted as a valid vote.

(d) Not a correction. If the voter has both marked a choice correctly and (~~((also))~~) placed an 'X' in the same target area, but has not marked a second target (~~((area as if attempting to correct the vote))~~), it shall be counted as a valid vote. Changes made by the voter to wording printed on the ballot will not invalidate votes cast for that race or measure.

(e) Written instructions. If the voter has attempted to correct a vote and provides written instruction (~~((on))~~) regarding his or her intent, it shall be counted as the voter instructed. Written instruction includes words, circles, or arrows.

(f) Identifying marks. (~~Ballots that have a legible signature, address sticker or address stamp anywhere on the ballot, other than a write-in line, must be rejected. Initials or illegible signatures~~) Marks identifying the voter, such as initials, signatures, or addresses do not disqualify a ballot.

(g) Overvotes. Races or issues that have more target areas marked than are allowed are overvotes. No votes for that race or issue shall be counted. An exception is write-in votes for a candidate already printed on the ballot, as provided in (i) of this subsection.

(h) (~~No bubble.~~) Write-in: Blank target area. If a name is written on a write-in line, it shall be counted as a valid write-in vote regardless of whether the corresponding target area is marked.

(i) Write-in: Already on the ballot. If the name of a candidate who is already printed on the ballot is written in, that vote shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate. This applies even if both target areas are marked or no target areas are marked.

(j) Write-in: Name variations. If a write-in vote is cast for a *declared* write-in candidate using a commonly recognizable nickname or spelling variation, it shall be counted as a valid vote for that candidate.

(k) (~~Mystery~~) Write-in: Blank line. If the write-in target area is marked, but no name is written on the line, it shall not be counted as a valid vote, even though it may be tallied as a write-in vote by the tabulation system.

(l) (~~Mystery~~) Write-in ((with a)): Blank line and candidate. If a candidate's target area is marked, *and* the write-in target area is marked but no name is written on the line, it shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate.

(m) Write-in: Name combinations. If a write-in vote is cast for a candidate with a combination of names already on the ballot, it shall NOT be counted as a vote for either printed candidate, but rather shall be counted as a valid vote for the name as written.

(n) Write-in: Overvotes. If a candidate's target area is marked and something other than that candidate's name is written in the write-in response area, it shall be counted as an overvote and not a valid vote for any candidate. This applies whether or not the target area for the write-in is marked.

(o) Write-in: Not eligible. A write-in vote for a race (~~that does not appear on the ballot is for a race on which the voter is not eligible to vote, and~~) not appearing on the voter's ballot shall not be counted.

Exception: If a provisional ballot has been cast and the voter has written in an office or measure that is not on the ballot, that vote shall be counted if it is determined, based on the voter's registration, that he or she is eligible to vote for that office or measure.

(p) Write-in: Vote in the wrong place. A write-in vote for a race appearing elsewhere on the ballot shall be counted as a valid vote, as long as all other requirements are fulfilled and the

office, position number and political party, if applicable, are clearly indicated.

(q) Messy marks. When otherwise valid votes marked for a candidate partially extend into the response area of another candidate, it shall be counted as a vote if most of the mark is in the proper area and intent can easily be discerned.

(r) Pattern of partisan voting. Voter intent in any single contest shall not be determined based on a pattern of partisan voting on the ballot.

(s) Anything else. Voter intent on ~~((any))~~ questionable marks not ~~((explicitly falling within the parameters of))~~ covered by the rules in this manual must be determined by county canvassing boards~~((, operating under))~~ according to all applicable laws of the state of Washington and the ~~((rules of the))~~ canvassing board manual. Where more than one rule may apply, the county canvassing board has authority to determine which rule is most appropriate.

(2) The secretary of state shall publish an illustrated version of these standards in each optical scan and digital scan voting system used in the state. The secretary of state shall distribute the illustrated version to each county canvassing board and post it on the web site.

(3) The secretary of state shall periodically review and update the manual as necessary, and seek input from county canvassing boards and other interested parties to ensure that the standards remain current and comprehensive.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

**WAC 434-324-005 Definitions.** As used in this chapter:

(1) "Active status" means a designation assigned to voters with complete voter registration records signifying that the voter is eligible to vote.

(2) "Applicant" means a person who has applied, or is applying, to become a registered voter in the state of Washington.

(3) "Auditor" means "county auditor" and means the county auditor in a noncharter county or the officer in a charter county, irrespective of title, having the overall responsibility to maintain voter registration to conduct state and local elections.

(4) "County election management system" means software used by county auditors to manage computer files pertaining to elections and includes, but is not limited to, voter registration records.

(5) "County registration number" means an identifier assigned to each registered voter by the county auditor.

~~(6) ("Motor voter data" means computer information concerning an applicant that is common to both driver's license and voter registration records. This includes name, address, date of birth, sex, the date of the application, the location of the office where the application was submitted, the applicant's driver's license number, the applicant's Social Security number (if provided), and the applicant's previous driver's license number if the applicant has changed names.~~

~~(7)) "Electronic registration" means the electronic submission of voter registration applications.~~

~~((8)) (7) "Extraction," as used in this chapter, means the creation of an electronic list of specific information from the entire official statewide voter registration data base.~~

~~((9) "Late registration absentee ballot" means an absentee ballot cast by a voter who registered pursuant to RCW 29A.08.145 after the close of the regular registration period.~~

~~(10) "Licensing agent" or "agent" means the employees serving the public at driver's licensing offices operated by the department of licensing.~~

~~(11)) (8) "New county" means a county in Washington state that a registered voter is moving to from another county within Washington state.~~

~~((12)) (9) "Previous county" means a county in Washington state that a registered voter lived in prior to moving to a new county.~~

~~((13)) (10) "Pending status" means a voter registration record is not yet complete, and the applicant is not yet a registered voter.~~

~~((14)) (11) "Pending cancellation" means the registered~~

voter's registration record must be canceled within a specified amount of time and he or she is not eligible to vote.

~~((15))~~ (12) "Registered voter" means any elector who has completed the statutory registration procedures established by Title 29A RCW.

~~((16))~~ (13) "Secretary" means secretary of state or any other person authorized by the secretary of state to act on his or her behalf.

~~((17))~~ (14) "State registration number" means a unique identifier assigned to each registered voter by the state, pursuant to RCW 29A.08.651.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

**WAC 434-324-008 Review of county election management systems.**

(1) Each auditor must notify the secretary of the intent to purchase or install a new county election management system. The county election management system must be approved by the secretary to ensure it meets the technical specifications promulgated by the secretary to interface with the official statewide voter registration data base. This approval must be obtained prior to the purchase or installation of the system.

(2) A county election management system must have the capability to:

(a) Store information required in WAC 434-324-010;

(b) Generate a list of registered voters in a county and their registration statuses;

(c) Track information specific to single elections, including the issuance and return of vote by mail and absentee ballots;

(d) Scan voter registration forms; and

(e) Store and provide access to images of signatures of registered voters.

(3) A county's election management system must conform to all of the requirements of state law and of these regulations, and if it does not, the secretary must notify the auditor of the nature of the nonconformity. The auditor must correct the nonconforming aspects of the county election management system and provide to the secretary such evidence of the change or changes in the system as ~~((that office))~~ the secretary may deem appropriate.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

**WAC 434-324-010 County election management system-- Applications for voter registration.** (1) Each auditor must enter and maintain voter registration records in the official statewide voter registration data base by using a county election management system. Each record must contain at least the following information from the voter registration application in a format compatible with the official statewide voter registration data base:

- (a) Name;
- (b) Complete residential address;
- (c) Complete mailing address;
- (d) County registration number;
- (e) State registration number;
- (f) Gender;
- (g) Date of birth;
- (h) Date of registration;
- (i) Applicable district and precinct codes;
- (j) (~~Dates upon~~) Elections in which the individual has voted, if available;

(k) Washington state driver license number, Washington state identification card number, and/or the last four digits of the applicant's Social Security number; and

(l) A scanned image file (format .tiff) of the applicant's signature.

(2) In the case of an applicant who (~~applies for voter registration by mail and sends~~) provides a copy of one of the alternative forms of identification listed in RCW (~~29A.08.113~~) 29A.08.107 for registration purposes, the auditor must either maintain a scanned image of the identifying document or make a notation in the registration record indicating which alternative form of identification was provided to the auditor. Pursuant to RCW 29A.08.710, a scanned image of the identification is not available for public inspection or copying.

(3) Upon entry of an applicant's information, the auditor must check for duplicate entries.

(4) Each auditor must have a quality assurance program to maintain accurate data entry into the statewide voter registration data base.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

**WAC 434-324-040 Data transfer to secretary and registration status.** (1) Following entry into the county election management system, all information in the application for voter registration

must be transferred electronically to the secretary for identity verification. The secretary must assign the application a state identification number.

(2) If the applicant provided a Washington driver's license number or state identification card number, the applicant's identity is verified with the department of licensing. If the applicant provided the last four digits of his or her Social Security number, the applicant's identity is verified with the Social Security Administration through the department of licensing.

(3) If the applicant's identity is not verified in the computerized verification process, the secretary must notify the county election management system accordingly. The county auditor must first confirm the accuracy of the information entered in the county election management system from the voter registration application. The county auditor must correct any errors and again attempt to verify the applicant's identity automatically.

(4) If the applicant provided a Washington driver's license number or state identification number and the identity is not verified in the computerized verification process, the information on the application may be considered a "match" if the number on the application exactly matches a number issued by the department of licensing, and it is clear to the county auditor that the information on the application describes the person on the department of licensing record. Reasons that the county auditor may conclude that the information on the application describes the person on the department of licensing record include, but are not limited to, the following:

(a) The first, middle, or last name on the application is a variation of the first, middle, or last name in the department of licensing record;

(b) The first, middle, or last name has transposed letters or another typographical error on the application or in the department of licensing record;

(c) The first and last names are transposed on the application or in the department of licensing record;

(d) The first and middle names are transposed on the application or in the department of licensing record;

(e) The applicant has a compound or hyphenated name which is not accurately or completely set forth on the application or in the department of licensing record;

(f) The first or middle name is abbreviated with initials on the application or in the department of licensing record;

(g) The last name on the application and the last name in the department of licensing record are not the same but, based on other information, the county auditor concludes that one of the names is a maiden name or a former name of the same person; or

(h) The month and day of the applicant's date of birth are transposed on the application or in the department of licensing record.

If the county auditor concludes that the information on the application describes the person on the department of licensing record, the county auditor must override the computerized failure

to verify and must note the reason it is considered a match. The county auditor must place the applicant on the official list of registered voters in active status.

(5) If the applicant's identity is not verified in the computerized verification process, either because the information did not match or because the applicant claimed he or she did not have a driver's license or Social Security number, the applicant must be provisionally registered pursuant to RCW 29A.08.107. The registration record must be flagged as still requiring verification of the applicant's identity before the applicant's ballot may be counted.

AMENDATORY SECTION (Amending WSR 09-12-078, filed 5/29/09, effective 6/29/09)

**WAC 434-324-045 Verification of applicant's identity.** (1) If the applicant is provisionally registered pursuant to WAC 434-324-040(5), the county auditor must verify the applicant's identity before counting the applicant's ballot. The county auditor may use other government resources and public records to confirm the applicant's driver's license or state identification card number or the last four digits of the applicant's Social Security number. The county auditor may also attempt to contact the applicant by phone, e-mail or other means to obtain identification information.

(2) If, after these attempts, the county auditor is still unable to verify the applicant's identity, the county auditor must send the applicant an (~~identity verification~~) identification notice that includes a postage prepaid, preaddressed form by which the applicant may verify or send information. The (~~identity verification~~) identification notice must include:

(a) A statement explaining that because the applicant's identity cannot be verified with the information provided on the application, he or she is provisionally registered to vote.

(b) A statement explaining that if this information is not provided, the applicant's ballot will not be counted.

(c) A statement explaining that federal law requires the applicant to provide a copy of one of the following forms of identification either before or when they vote:

(i) A Washington driver's license or state ID card;

(ii) The last four digits of his or her Social Security number;

(iii) Valid photo identification;

(iv) A valid enrollment card of a federally recognized tribe in Washington;

(v) A current utility bill, or a current bank statement;

(vi) A current government check;

(vii) A current paycheck; or

(viii) A government document, other than a voter registration

card, that shows both the registrant's name and current address.

(3) If the applicant responds with updated driver's license, state ID card, or Social Security information, or with a copy of one of the alternative forms of identification, the flag on the voter registration record must be removed, allowing the applicant's ballot to otherwise be counted the first time he or she votes after registering.

(4) If the applicant fails to respond with adequate documentation to verify his or her identity, the applicant's voter registration record must remain flagged. If the applicant votes by mail, he or she must be notified that the ballot will not be counted unless he or she provides adequate verification of identity.

(5) A provisional registration must remain on the official list of registered voters for at least two general elections for federal office. If, after two general elections for federal office, the voter still has not verified his or her identity, the provisional registration shall be canceled.

AMENDATORY SECTION (Amending WSR 07-02-100, filed 1/3/07, effective 2/3/07)

**WAC 434-324-085 Acknowledgment notice (~~(of new registration or transfer)~~).** (1) The auditor must send an (~~(acknowledgement)~~) acknowledgment notice to an individual by nonforwardable, address correction requested mail if an individual:

(a) Registers to vote;

(b) Transfers his or her registration record within the county;

(c) Transfers his or her registration record from another county within Washington state; or

(d) Changes from one precinct to another because of a change in precinct boundaries.

(2) The (~~(notice must acknowledge that the request of the individual has been processed and)~~) acknowledgment notice must include:

(a) Voter's full name;

(b) Mailing address;

(c) County name;

(d) Precinct name and/or number; and

(e) The date the voter registered.

AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

**WAC 434-324-090 Cancellation due to death--Process ((and notification)).** (1) An auditor must cancel the voter registration records of a deceased voter as authorized by RCW 29A.08.510.

(2) In addition to comparing a list of deceased persons prepared by the registrar of vital statistics with voter registration records pursuant to RCW 29A.08.510, the secretary may also compare voter registration records with deceased persons information from the Social Security Administration. Comparisons must be conducted on a monthly basis. For any potential matches identified through the registrar of vital statistics or Social Security Administration, the secretary must confirm that the dates of birth are identical. The secretary must generate a county list of matching names, identified as potentially deceased voters, and ~~((deliver it to the))~~ provide the names to each auditor electronically. The auditor must review the list within five days and approve or reject the proposed cancellations. The secretary may assist the auditor with this review.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

**WAC 434-324-095 Cancellation due to death--Forms ((to cancel voter registration)).** Pursuant to RCW 29A.08.510, the auditor must ~~((maintain a supply of,))~~ furnish to the public upon request ~~((, and include in the supplies sent to each precinct for use by the precinct election officials,))~~ forms for the purpose of permitting registered voters to request that the voter registration record of any person, whom they personally know to be deceased, be canceled.

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

**WAC 434-324-106 Felony conviction--Secretary's quarterly comparisons.** (1) Once a quarter, the secretary must perform comparisons with the department of corrections, as authorized in RCW 29A.08.520, to search for registration records of felons who are under the ~~((legal custody))~~ authority of the department of corrections due to an adult felony conviction. The secretary must create a list of felon voters by matching the first name, last name, date of birth, and other identifying information.

(2) For each felon voter, the secretary must change the

voter's registration status to "pending cancellation." This change of status must be entered prior to the first extraction or pull of absentee or mail ballots. The official statewide voter registration data base must automatically notify the county election management system of the change. Voters with pending cancellation status must not be included in a poll book or be mailed an absentee or mail ballot.

(3) The secretary must mail a notification letter to each felon whose status is pending cancellation. The notification letter must be sent to the felon's last known registration mailing address and to the department of corrections indicating that his or her voter registration is about to be canceled. The letter must contain language notifying the felon that he or she ((may)) must contact the auditor's office to ~~((correct the information or request a hearing if the felon status is not correct or the right to vote has been restored))~~ contest the pending cancellation. The letter must also inform the felon that he or she may request a provisional ballot for any pending elections. The notification letter must ~~((contain substantially the following language:~~

Dear .....,

~~—According to the Washington state Constitution, a person who has been convicted of a felony is disqualified from voting until the right has been restored. State law requires that the right be restored only after all conditions of all felony sentences have been fulfilled or by a certificate of restoration issued by the governor.~~

~~—Based on name, date of birth, and other identifying information maintained in state voter registration records and department of corrections records, you have been found ineligible to vote due to a felony conviction. The felony conviction record information includes:~~

- ~~— Felon's name~~
- ~~— Felon's date of birth~~
- ~~— County of conviction~~
- ~~— Case/cause number~~

~~Your voter registration is pending cancellation. If you would like to dispute this finding, you have 30 days from the postmark date on the envelope to provide documentation that this is incorrect or request a hearing. You must contact:~~

- ~~— County auditor~~
- ~~— County auditor's address~~
- ~~— County auditor's phone number~~

~~You may also request a provisional ballot for any election scheduled to occur prior to the resolution of your registration status.~~

~~If you do not contact the county elections department within 30 days to dispute the finding, your voter registration will be canceled.~~

~~— Voting before the right is restored is a class C felony. The right to vote may be restored by proof of one of the following for each felony conviction:~~

- ~~1. A certificate of discharge, issued by the sentencing court;~~
- ~~2. A court order restoring civil right, issued by the sentencing court;~~
- ~~3. A final discharge and restoration of civil rights, issued by the indeterminate sentence review board; or~~
- ~~4. A certificate of restoration, issued by the clemency and pardons board; or~~
- ~~5. A pardon, issued by the governor.~~

Further information about how to get the right to vote restored may be found at [www.sccstate.wa.gov/elections/faq.aspx](http://www.sccstate.wa.gov/elections/faq.aspx).

~~Sincerely,~~  
~~Elections Division~~  
~~Office of the Secretary of State~~

~~The secretary must provide an explanation of the requirements for restoring the right to vote.)~~ include:

(a) An explanation that a felon loses the right to vote until the right is restored;

(b) For a conviction in a Washington state court, the right to vote is restored as long as the felon is not serving a sentence of confinement or subject to community custody with the department of corrections;

(c) The reason the felon has been identified as ineligible to vote;

(d) An explanation that the felon's voter registration will be canceled due to the felony conviction; and

(e) How to contest the pending cancellation. The secretary must send to each auditor the voter registration and conviction information for each matched felon registered in that county.

(4) If the felon fails to contact the auditor within thirty days, the felon's voter registration must be canceled. If an election in which the felon would otherwise be eligible to vote is scheduled to occur during the thirty days, the felon must be allowed to vote a provisional ballot.

(5) The felon's eligibility status may be resolved and the pending cancellation status reversed without scheduling a hearing if the felon provides satisfactory documentation that the felon's civil rights have been restored, the conviction is not a felony, the person convicted is not the registered voter, or the felon is otherwise eligible to vote. The auditor must notify the voter, retain a scanned copy of all documentation provided, and notify the secretary. The secretary must flag the voter registration record to prevent future cancellation (~~(based on the same felony conviction)~~) on the same basis.

(6) If the felon requests a hearing, the auditor must schedule a public hearing to provide the felon an opportunity to dispute the finding. In scheduling the hearing, the auditor may take into account whether an election in which the felon would otherwise be eligible to vote is scheduled. The notice must be mailed to the felon's last known registration mailing address and must be postmarked at least seven calendar days prior to the hearing date. Notice of the hearing must also be provided to the prosecuting

attorney.

(7) The auditor must provide the prosecuting attorney a copy of all relevant registration and felony conviction information. The prosecuting attorney must obtain documentation, such as a copy of the judgment and sentence, or custody or supervision information from the department of corrections, sufficient to prove ((the felony conviction)) by clear and convincing evidence that the felon is ineligible to vote. It is not necessary that the copy of the document be certified.

(8) If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility in time to hold a hearing prior to certification of an election in which the felon would otherwise be eligible to vote, the prosecuting attorney must request that the auditor dismiss the current cancellation proceedings. The auditor must reverse the voter's pending cancellation status, cancel the hearing, and notify the voter. A provisional ballot voted in the pending election must be counted if otherwise valid. The prosecuting attorney must continue to research the felon's voting eligibility. If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility prior to the next election in which the felon would otherwise be eligible to vote, the prosecuting attorney must notify the auditor. The auditor must notify the secretary, who must flag the voter registration record to prevent future cancellation ((based)) on the same ((felony conviction)) basis.

(9) A hearing to determine voting eligibility is an open public hearing pursuant to chapter 42.30 RCW. If the hearing occurs within thirty days before, or during the certification period of, an election in which the felon would otherwise be eligible to vote, the hearing must be conducted by the county canvassing board. If the hearing occurs at any other time, the county auditor conducts the hearing. Before a final determination is made that the felon is ineligible to vote, the prosecuting attorney must show by clear and convincing evidence that the voter is ineligible to vote due to a felony conviction. The felon must be provided a reasonable opportunity to respond. The hearing may be continued to a later date if continuance is likely to result in additional information regarding the felon's voting eligibility. If the felon is determined to be ineligible to vote due to felony conviction and lack of rights restoration, the voter registration must be canceled. If the voter is determined to be eligible to vote, the voter's pending cancellation status must be reversed and the secretary must flag the voter registration record to prevent future cancellation ((based)) on the same ((felony convictions)) basis. The felon must be notified of the outcome of the hearing and the final determination is subject to judicial review pursuant to chapter 34.05 RCW.

(10) If the felon's voter registration is canceled after the felon fails to contact the auditor within the thirty day period, the felon may contact the auditor at a later date to request a hearing to dispute the cancellation. The auditor must schedule a

hearing in substantially the same manner as provided in subsections (6) through (9) of this section.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

**WAC 434-324-113** ~~((Voter registration list maintenance.))~~  
**Lacking the qualifications necessary to vote.** ~~((In addition to conducting searches to identify felons, duplicate registration records, and deceased voters as outlined in this chapter, the following applies:~~

~~(1) Each even-numbered year, maintenance of the voter registration list, as required by RCW 29A.08.605, must be completed ninety days prior to the date of the primary in that year. If a county conducts all elections by mail and receives address change information from each ballot mailing, additional list maintenance is not required. The voter registration list maintenance program is complete upon mailing the required notices. Counties have discretion to also run the voter registration list maintenance in odd-numbered years.~~

~~(2))~~ (1) If, at any time, the secretary finds that a registered voter does not possess the qualifications required by state law to exercise his or her right to vote for reasons not listed in this chapter, the secretary must refer such information to the appropriate county auditor and county prosecutor.

~~((3))~~ (2) If, at any time, the auditor finds that a registered voter does not possess the qualifications required by state law to exercise his or her right to vote for reasons not listed in this chapter, the auditor must notify the county prosecutor.

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

**WAC 434-324-130 Lists of registered voters for the public.**  
(1) Pursuant to the provisions of RCW 29A.08.710, 29A.08.720 and 29A.08.740, the auditor or secretary must furnish to any person, upon request, the current list of registered voters at actual reproduction cost. The auditor or secretary may also provide a list of canceled voters. Auditors may combine these lists. The auditor or secretary may, upon request, select names and addresses from the voter registration records on the basis of the precinct code, the district code, date of registration, or voting history of each individual voter in that portion of the voter registration

file. Such lists must contain the information prescribed in RCW 29A.08.710 for each registered voter and may be in ~~((the form of computer printouts, microfilm duplicates, or electronic media copies of such information))~~ printed or electronic form.

(2) Such voter registration lists may not be used for commercial purposes. The person making the request must be provided a copy of RCW 29A.08.740.

AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

**WAC 434-324-165 Disaster recovery and security plans.** The secretary must maintain disaster recovery and security plans for the voter registration data base. A copy of the plans must be stored offsite. Both plans are exempt from public disclosure pursuant to RCW ~~((42.17.310 (1) (ddd)))~~ 42.56.420.

**( (MOTOR VOTER) )**

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-324-075	Timelines for new and transfer registrations.
WAC 434-324-100	Felony conviction--Notice from county clerk.
WAC 434-324-190	Voter registration at driver's license facilities.
WAC 434-324-200	Registration procedure.
WAC 434-324-210	Oaths and warnings.
WAC 434-324-220	Transfer of information from the department of licensing to the secretary of state.
WAC 434-324-230	Weekly transmittal of data from the department of licensing to the secretary of state.
WAC 434-324-240	Transfer of data, and reports from the secretary of state to the county auditors.

WAC 434-324-250

Transfer of voter registration  
forms to counties.

WAC 434-324-260

Processing records received from  
the secretary of state.