



# RULE-MAKING ORDER

**CR-103P (May 2009)**  
**(Implements RCW 34.05.360)**

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

**Permanent Rule Only**

**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)

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

Yes  No If Yes, explain:

**Purpose:**

These rules are regarding a number of issues needed for preparation and implementation of upcoming elections. A new section is being adopted clarifying procedures in the event of an emergency. Existing rules are amended to update and modify candidate filing, vote by mail, recount, voting systems and the state voters' pamphlet. A newly redesigned voter registration form is being adopted.

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

Repealed: 434-215-090.

Amended: 434-215-012, 434-215-025, 434-215-070, 434-215-170, 434-250-040, 434-250-050, 434-250-100, 434-250-310, 434-264-010, 434-324-106, 434-335-030, 434-335-060, 434-335-150, 434-335-170, 434-335-240, 434-335-510, 434-335-520, 434-335-550 and 434-381-170.

Suspended:

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

**Other authority :**

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

Adopted under notice filed as WSR 09-24-106 on December 2, 2009 (date).

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

WAC 434-215-004 was being shown as a new WAC when it really was only to amend 434-215-005. Since WAC 434-215-005 was not proposed in earlier notices, it will not be included in this round of rulemaking. WAC 434-250-050 was amended to rearrange wording order and to change the date from June 30, 2010 to December 31, 2010. WAC 434-335-060 was amended to add in wording on testing contests that allow a voter to vote for multiple candidates. WAC 434-335-550 was amended to clarify what equipment falls under this rule and what equipment falls under 434-335-560.

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 \_\_\_\_\_

**Date adopted:** January 18, 2010

**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: January 18, 2010**

**TIME: 11:05 AM**

**WSR 10-03-072**

(COMPLETE REVERSE SIDE)

**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	_____	Repealed	_____

**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	<u>3</u>	Amended	<u>19</u>	Repealed	<u>1</u>
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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	_____

NEW SECTION

**WAC 434-208-120 Emergencies.** As chief election officer, the secretary of state shall make reasonable rules consistent with federal and state election laws to effectuate any provision of Title 29A RCW and to facilitate the execution of its provisions in an orderly, timely, and uniform manner relating to any federal, state, county, city, town, and district election. In the event of a natural or manmade disaster or catastrophe, the secretary of state will consult with county auditors of impacted counties to determine the impact of the disaster or catastrophe on the administration of the election, and how best to mitigate that impact. The secretary of state may adopt emergency rules and procedures necessary to facilitate administration of the election in the impacted counties. The emergency rules and procedures must be limited in duration and scope to that necessary to administer the election. A natural or manmade disaster or catastrophe may include, but is not limited to, fire, flood, mudslide, landslide, tsunami, extreme snow or wind, pandemic, technological failure, or broad scale violence or terrorism.

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

**WAC 434-215-012 Declaration of candidacy (~~--Offices subject  
to a primary~~)**. Declarations of candidacy filed either in person  
or by mail shall be in substantially the following form:

<b>FOR OFFICE USE ONLY</b>			
Date _____	Fee Paid \$ _____	Filing No. _____	Office Code _____
<input type="checkbox"/> Check	<input type="checkbox"/> Debit/Credit		
<input type="checkbox"/> Cash	<input type="checkbox"/> Filing Fee Petition	Voter Registration # _____	Clerk Initials _____

## DECLARATION OF CANDIDACY

1. I, \_\_\_\_\_ am a registered voter residing at:  
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

2. \_\_\_\_\_  
(STREET ADDRESS OR RURAL ROUTE) (CITY) (COUNTY) (ZIP)

and, at the time of filing this declaration, I am legally qualified to assume office if elected.

3. My campaign contact information is:

\_\_\_\_\_  
(MAILING ADDRESS) (CITY) (STATE) (ZIP)  
\_\_\_\_\_  
(TELEPHONE NUMBER) (EMAIL ADDRESS)

4. I declare myself as a candidate for the office of:

\_\_\_\_\_  
(NAME OF OFFICE including DISTRICT or POSITION NUMBER)  
\_\_\_\_\_  
(CONGRESSIONAL OR LEGISLATIVE DISTRICT, COUNTY, CITY, OR OTHER JURISDICTION)

5. Filing Fee (check one):

- There is no filing fee because the office has no fixed annual salary;
- I am submitting a filing fee of \$10 because the fixed annual salary of the office is \$1,000 or less;
- I am submitting a filing fee of \$\_\_\_\_\_, an amount equal to 1% of the annual salary; or
- I am without sufficient assets or income to pay the filing fee and am submitting a filing fee petition in lieu of this fee.

6. Please print my name on the ballot exactly as follows: \_\_\_\_\_  
(PLEASE PRINT)

7. If the office is partisan, your party preference, if any, will be printed on the ballot exactly as follows:

- (Prefers  Party) or
- (States No Party Preference)

If you fail to check a box or provide a party name, "(States No Party Preference)" will be printed.

I declare that this information is, to the best of my knowledge, true. I also swear, or affirm, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

*Note: Your signature must be personally attested to by a notary public or by the officer with whom the declaration is filed.*

**8. Sign Here X** \_\_\_\_\_  
(SIGNATURE OF CANDIDATE AS REGISTERED TO VOTE)

STATE OF WASHINGTON, COUNTY OF \_\_\_\_\_  
(SEAL OR STAMP)

Signed or Attested before me on \_\_\_\_\_  
(DATE)

by \_\_\_\_\_  
(CANDIDATE)

\_\_\_\_\_  
(SIGNATURE OF NOTARY)

\_\_\_\_\_  
(TITLE)

MY APPOINTMENT EXPIRES: \_\_\_\_\_

Candidate: Return all copies to your Elections Dept.  
Distribution: White—County; Yellow—PDC; Pink—Candidate



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

**WAC 434-215-025 Filing fee petitions.** (1) When a candidate submits a filing fee petition in lieu of his or her filing fee, as authorized by RCW 29A.24.091, voters eligible to vote on the office in the general election are eligible to sign the candidate's filing fee petition.

(2) The filing fee petition described in RCW 29A.24.101(3) does not apply. The filing fee petition must be in substantially the following form:

The warning prescribed by RCW 29A.72.140; followed by:

"We, the undersigned registered voters of [the jurisdiction of the office], hereby petition that [candidate's] name be printed on the ballot for the office of [office for which candidate is filing a declaration of candidacy]."

(3) A candidate submitting a filing fee petition in the place of a filing fee may not file the declaration of candidacy electronically.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-215-070 Electronic filing--((Standards)) Requirements.** An electronic system to file declarations of candidacy shall be an online system accessible to candidates on the world wide web that ~~((records the information specified in RCW 29A.24.031 (1) through (4) and WAC 434-215-090. At a minimum, the system shall perform the following functions))~~ is capable of:

(1) ((Verify)) Recording each candidate's name, date of birth, voter registration address, mailing address, phone number, e-mail address, and political party preference for partisan offices, and the office and position number for which each candidate is filing;

(2) Verifying the candidate's voter registration status, and that the voter registration address is within the jurisdiction of the office for which the candidate is filing;

~~((2) Check the candidate's name against the name returned by the electronic transfer of funds process;~~

~~(3) Allow the filing officer to verify filings before filing information is made public;~~

~~((4) Accept)) (3) Accepting electronic transfer of funds for the payment of filing fees((, except that a candidate submitting a filing fee petition in the place of a filing fee may not file the declaration of candidacy electronically));~~

~~((5) Inform)) (4) Informing, and ((require the)) requiring each candidate to acknowledge, that submission of the form constitutes agreement that the information provided with the filing is true, that he or she will support the Constitution and laws of~~

the United States and the state of Washington, and that he or she agrees to electronic payment of ~~((the))~~ any filing fees; and ~~((6) Inform the candidate that knowingly providing false information on a declaration of candidacy is a class C felony as provided by RCW 29A.84.311.)~~ (5) Allowing the filing officer to verify each filing before it is made public.

NEW SECTION

**WAC 434-215-170 Filing qualifications.** When state law requires a candidate to possess all qualifications of the office at the time of candidate filing, a candidate must satisfy this requirement at the time of candidate filing; a candidate cannot rely on possessing the qualifications at a later time, such as election day or the beginning of the term of office.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-215-090	Electronic filing--Required information.
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AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

**WAC 434-250-040 Instructions to voters.** (1) Instructions that accompany an absentee ballot must include:

(a) How to cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;

(b) Notice that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an overvote and no votes for that office or ballot measure will be counted;

~~(c) ((Notice that, if a voter has signed or otherwise identified himself or herself on a ballot, the ballot will not be counted;~~

~~(d))~~ An explanation of how to complete and sign the affidavit on the return envelope;

~~((e))~~ (d) An explanation of how to make a mark, witnessed by two other people, if unable to sign the affidavit;

~~((f))~~ (e) An explanation of how to place the ballot in the security envelope and place the security envelope in the return envelope;

~~((g))~~ (f) An explanation of how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

~~((h))~~ (g) Notice that postage is required, if applicable;

~~((i))~~ (h) Notice that, in order for the ballot to be counted, it must be either postmarked or deposited at a designated deposit site no later than election day;

~~((j))~~ (i) An explanation of how to learn about the locations, hours, and services of voting centers and ballot deposit sites, including the availability of accessible voting equipment;

~~((k))~~ (j) For a primary election that includes a partisan office, a notice on a separate insert (~~(printed on colored paper)~~) explaining:

"Washington has a new primary. You do not have to pick a party. In each race, you may vote for any candidate listed. The two candidates who receive the most votes in the August primary will advance to the November general election.

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."

~~((l))~~ (k) (i) For a general election that includes a partisan office, the following explanation:

"Washington has a new election system. In each race for partisan office, the two candidates who receive the most votes in the August primary advance to the November general election.

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."

(ii) In a year that president and vice-president appear on the general election ballot, the following must be added to the statement required by ~~((1))~~ (k)(i) of this subsection:

"The election for president and vice-president is different. Candidates for president and vice-president are the official nominees of their political party."

~~((m))~~ (l) Any other information the county auditor deems necessary.

(2) Instructions that accompany a special absentee ballot must also include:

(a) A listing of all offices and measures that will appear upon the ballot, together with a listing of all persons who have filed for office or who have indicated their intention to file for office; and

(b) Notice that the voter may request and subsequently vote a regular absentee ballot, and that if the regular absentee ballot is received by the county auditor prior to certification of the election, it will be tabulated and the special absentee ballot will be voided.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

**WAC 434-250-050 Envelopes.** Absentee ballots must be accompanied by the following:

(1) A security envelope, which may not identify the voter and must have a hole punched in a manner that will reveal whether a ballot is inside;

(2) A return envelope, which must be addressed to the county auditor and have a hole punched in a manner that will reveal whether the security envelope is inside. The return envelope must display the official election materials notice required by the United States Postal Service, the words "POSTAGE REQUIRED" or "POSTAGE PAID" in the upper right-hand corner, and the following oath with a place for the voter to sign, date, and write his or her daytime phone number:

\_\_\_\_\_  
I do solemnly swear or affirm under penalty of perjury that I am:

~~((I am))~~ A citizen of the United States;

~~((I am))~~ A legal resident of the state of Washington;

~~((I will be))~~ At least 18 years old on ~~((or before))~~ election day;

Voting only once in this election;

~~((I am))~~ Not ~~((presently denied my voting rights as a result of being convicted of a felony))~~ ineligible to vote due to a felony conviction; and

~~((I have)) Not ((been judicially declared mentally incompetent)) disqualified from voting due to a court order((; I have not already voted in this election; and I understand it is illegal to cast a ballot or sign a ballot envelope on behalf of another voter.))~~

It is illegal to forge a signature or cast another person's ballot. Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

\_\_\_\_\_  
Signature of voter \_\_\_\_\_ Date \_\_\_\_\_

The return envelope must include space for witnesses to sign. The return envelope must conform to postal department regulations.

County auditors may use existing stock of envelopes until December 31, 2010.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

**WAC 434-250-100 Ballot deposit sites and voting centers. (1)**

If a location only receives ballots and does not issue any ballots, it is considered a ballot deposit site. Ballot deposit sites may be staffed or unstaffed.

(a) If a ballot deposit site is staffed, it must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. If a deposit site is staffed by two or more persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of their duties. Staffed deposit sites open on election day must be open from 7:00 a.m. until 8:00 p.m. Staffed deposit sites may be open prior to the election according to dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place of deposit on the ballot envelope, and such ballots must be referred to the canvassing board.

(b) Unstaffed ballot deposit sites consist of secured ballot boxes that allow return envelopes, once deposited, to only be removed by authorized staff. Ballot boxes located outdoors must be constructed of durable material able to withstand inclement weather, and be sufficiently secured to the ground or another structure to prevent their removal. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are

either employees of or appointed by the county auditor must empty each ballot box with sufficient frequency to prevent damage and unauthorized access to the ballots.

(2) If a location offers replacement ballots, provisional ballots, or voting on a direct recording electronic device, it is considered a voting center. The requirements for staffed ballot deposit sites apply to voting centers. Each voting center must:

(a) Be posted according to standard public notice procedures;

(b) Be an accessible location consistent with chapters 29A.16 RCW and 434-257 WAC;

(c) Be marked with signage outside the building indicating the location as a place for voting;

(d) Offer disability access voting in a location or manner that provides for voter privacy;

(e) Offer provisional ballots, which may be sample ballots that meet provisional ballot requirements;

(f) Record the name, signature and other relevant information for each voter who votes on a direct recording electronic voting device in such a manner that the ballot cannot be traced back to the voter;

(g) Request identification, consistent with RCW 29A.44.205 and WAC 434-253-024, from each voter voting on a direct recording electronic voting device or voting a provisional ballot;

(h) Issue a provisional ballot to each voter who is unable to provide identification in accordance with (g) of this subsection;

(i) Have electronic or telephonic access to the voter registration system consistent with WAC 434-250-095 if voters are voting on a direct recording electronic voting device;

(j) Provide either a voters' pamphlet or sample ballots;

(k) Provide voter registration forms;

(l) Display a HAVA voter information poster;

(m) Display the date of that election;

(n) Provide instructions on how to properly mark the ballot;

(o) Provide election materials in alternative languages if required by the Voting Rights Act; and

(p) Use an accountability form to account for all ballots issued.

(3) Ballot boxes must be (~~(locked and sealed)~~) secured at all times, with seal logs that document each time the box is opened and by whom. Ballots must be placed into (~~(sealed)~~) secured transport carriers and returned to the county auditor's office or another designated location. At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or (~~(sealed)~~) secured to prevent the deposit of additional ballots.

**WAC 434-250-310 Notice of elections by mail.** (1) A jurisdiction requesting that a special election be conducted entirely by mail, as authorized by RCW 29A.48.020, may include the request in the resolution calling for the special election, or may make the request by a separate resolution. Not less than (~~forty-seven~~) forty days prior to the date for which a mail ballot special election has been requested, the county auditor shall inform the requesting jurisdiction, in writing, whether the request is granted and, if not granted, the reasons why.

(2) In the event that a primary is to be conducted by mail, the auditor must notify the jurisdiction involved not later than seventy-nine days before the primary date.

(3) A county auditor conducting an election by mail, including a county auditor that conducts every election by mail, must state:

(a) The election will be conducted by mail;

(b) (~~The precincts that are voting by mail if it is only specific precincts rather than the entire county;~~

~~(c))~~ The location where voters may obtain replacement ballots;

~~((d))~~ (c) Whether return postage is required;

~~((e))~~ (d) The dates, times and locations of designated deposit sites and voting centers; and

~~((f))~~ (e) If the county auditor does not conduct all elections by mail, the fact that regular polling places will not be open.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07,  
effective 6/30/07)

**WAC 434-264-010 Recount(~~Definition~~)**. A recount is the process for retabulating the votes for a specific office or issue on all valid ballots, including write-ins, cast in a primary or election. If a ballot has been duplicated in accordance with WAC 434-261-005, the duplicate shall be counted.

NEW SECTION

**WAC 434-324-026 Voter registration form.**

**instructions**

You must be a United States citizen to register to vote.

**how to register to vote or update a registration**

Please print all information clearly using black or blue pen.

Mail or deliver this form to your County Elections Office. Addresses are on the next page.

**for more information**

**online** www.vote.wa.gov

**call** 1-800-448-4881

**visit** your County Elections Office

This registration will be in effect for the next election if postmarked or delivered no later than the Monday four weeks before Election Day.

If you miss this deadline, please contact your County Elections Office.

You will receive your ballot by mail. Contact your County Elections Office for in-person voting options.

If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to 5 years, a fine of up to \$10,000, or both.

Your name, address, gender and date of birth are public information.

\*optional information

09/2009

**Washington State Voter Registration Form**

register online at www.vote.wa.gov

**qualifications**

**if you mark no to either of these questions, do not complete this form**

I am a citizen of the United States of America.  yes  no

I will be at least 18 years old by the next election.  yes  no

**personal information**

last name first name middle

date of birth (mm / dd / yyyy) phone number\*  male  female

residential address (in Washington)

city zip

mailing address (if different than residential address)

city state / zip

email address\*

I am in the Armed Forces (includes National Guard and Reserves)

I am a U.S. citizen living outside the U.S.

**Washington driver's license / state ID #**

**if you do not have a Washington driver's license or state ID card, provide the last four digits of your Social Security number**

x x x - x x -

**oath**

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am not presently denied the right to vote as a result of being convicted of a felony, I will have lived in Washington at this address for thirty days immediately before the next election at which I vote, and I will be at least 18 years old when I vote.

sign here

date here

**former registration**

**if you are already registered and are changing your name or address, fill out this section (this information will be used to update your registration)**

former last name first name middle

former residential address city state / zip

NEW SECTION

**WAC 434-324-036 County-to-county transfers.** Pursuant to RCW 29A.08.420, a registered voter may transfer his or her registration to another county by submitting a new voter registration application. Prior to sending a verification notice, the county auditor shall use the voter registration data base to verify whether the registration is a transfer. The minimum information necessary to complete the transfer to the new county is name, residential address and a signature. The new county may request additional information to confirm that the registration application is a transfer.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

**WAC 434-324-106 Felony (~~(conviction--Secretary's quarterly comparisons)~~) screening process.** (1) (~~(Once a quarter)~~) The law on when the right to vote is restored following a felony conviction is established in RCW 29A.08.520. Three times a year, 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 authority of the department of corrections due to an adult felony conviction)~~) compare the voter registration records to lists of felons who are either incarcerated or on community supervision with the Washington state department of corrections, and to lists of felons convicted in federal district courts with a sentence of at least fifteen months incarceration. 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, if the person is incarcerated or on community supervision with the department of corrections, to the offender's department of corrections address indicating that his or her voter registration is about to be canceled. The letter must contain language notifying the felon that he or she must contact the auditor's office to 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 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. For a conviction in another state or federal court, the right to vote is restored as long as the felon is no longer incarcerated;

(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~~) voting 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 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 Washington department of corrections, the out-of-state court or prison, or the federal court or Bureau of Prisons, sufficient to prove 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 on the same 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 on the same 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 09-03-110, filed 1/21/09, effective 2/21/09)

**WAC 434-335-030 Initial application for certification.** Any person or corporation (applicant) owning or representing a voting system or a vote tabulating system, part of a system, equipment, materials or procedure may apply in writing to the secretary of state for certification (~~(December 1st and ending June 30th the following year. Certification examinations and hearings are only conducted between December 1st and September 15th of each year))~~).

(1) The application must include, but is not limited to, the following information:

(a) A description of the applicant, business address, ((customer references,)) and list of election products((:));

(b) A description of the equipment or software under review, the equipment or software version numbers (~~(, release numbers,)~~) and operating and maintenance manuals (~~(, training materials, and technical and operational specifications.~~

~~(c) Documentation of all other states that have tested, certified and used the equipment in a binding election, and the length of time used in that state. The information for each state must include the version numbers of the operating system, software, and firmware, the dates and jurisdictions, and any reports compiled by state or local governments concerning the performance of the system))~~).

(2) The secretary of state may request the applicant provide additional information such as:

(a) Customer references, training materials, and technical and operational specifications;

~~((d))~~ (b) A copy of a letter from the applicant to each voting system test laboratory which((:

~~(i) Directs the voting system test laboratory to send a copy of the completed voting system test laboratory qualification report to the secretary of state;~~

~~(ii))~~ authorizes the voting system test laboratory to discuss testing procedures and findings with the secretary of state((; and

~~(iii) Authorizes the voting system test laboratory to allow the secretary of state to review all records of any qualification testing conducted on the equipment.~~

~~(e) A technical data package conforming to the 2002 Voting Systems Standards (VSS), Vol. II, Sec. 2 standards that includes:~~

~~(i) Identification of all COTS hardware and software products and communications services used in the operation of the voting system (ref. VSS, 2.2.1.e);~~

~~(ii) A system functionality description (ref. VSS, 2.3);~~

~~(iii) A system security specification (ref. VSS, 2.6);~~

~~(iv) System operations procedures (ref. VSS, 2.8);~~

~~(v) System maintenance procedures (ref. VSS, 2.9);~~  
~~(vi) Personnel deployment and training requirements (ref. VSS, 2.10);~~  
~~(vii) Configuration management plan (ref. VSS, 2.11);~~  
~~(viii) System change notes (if applicable, ref. VSS, 2.13);~~  
~~(ix) A system change list, if any, of modifications currently in development;~~  
~~(x) A system usability testing report; and~~  
~~(xi) A set of procedures for county personnel on how the operating system, equipment, and application software should be optimally configured and used in a secure environment.~~

~~(2) The vendor must either file the system executables for the certified system with the National Software Reference Library (NSRL) or place the source code of an electronic voting system in escrow, which must be accessible by the secretary of state under prescribed conditions).~~

(3) All documents, or portions of documents, containing proprietary information are not subject to public disclosure. The secretary of state must agree to use proprietary information solely for the purpose of analyzing and testing the system, and to the extent permitted by law, may not use the proprietary information or disclose it to any other person or agency without the prior written consent of the applicant.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

**WAC 434-335-060 Examination of equipment.** Secretary of state staff will initiate an examination of the applicant's equipment after receiving a completed application and a working model of the equipment, documentation, and software to be reviewed.

The examination ~~((consists of a series of functional application tests designed to insure))~~ verifies that the system or equipment meets all applicable federal guidelines, and consists of a series of functional application tests designed to ensure that the system or equipment meets Washington state law and rules. The software tested shall be the approved software from the voting system test laboratory.

The examination may include an additional voting system test laboratory test at the discretion of the secretary of state. The examination shall include the set-up and conduct of ~~((two))~~ mock elections ~~((and)),~~ including a machine recount. ~~The ((voting system test laboratory shall provide to the secretary of state the voting system software they tested and, if requested, the hash codes of the software they tested.~~

~~(1) The first election must replicate an even year general election.~~

~~(2) The second election must replicate a primary, and include~~

~~the use of split precincts and precinct committee officer contests.~~

~~Both)) elections must feature at least ten precincts, with at least ten ballots in each precinct, and must test split precincts, precinct committee officer contests, partisan and nonpartisan offices, and contests that allow the voter to vote for multiple candidates. The tests must include ballots of various ballot ((codes)) styles, ((including)) and include multiple candidates, ((cumulative reports, precinct reports, and canvass reports, as detailed in the test plan provided by the secretary of state)) write-in candidates and overvoted contests.~~

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

**WAC 434-335-150 Modification of certified equipment.** After a voting system is certified, any improvements or changes to the system must be submitted to the secretary of state for ~~((approval))~~ certification. The secretary of state will determine if the modifications require ~~((a recertification of the system or))~~ state testing and a review board hearing, or if the changes may be ~~((approved))~~ certified administratively.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

**WAC 434-335-170 Application for ~~((administrative approval))~~ certification of modified voting systems or devices.** The application ~~((for review of))~~ to certify a modification of an existing certified system must include, but is not limited to, the following information:

- ~~(1) Description of the applicant((=)) ;~~
- ~~(2) Description of the equipment or software under review, the modification, and all version numbers ((and release numbers.)) ;~~
- ~~(3) All changes to the operating and maintenance manuals((= training materials, and technical and operational specifications required by the modification.~~
- ~~(4) All certification documents from all other states that have certified the equipment with the modification.)) ;~~
- ~~((+5)) (4) Reports for all tests conducted on the modification by a voting system test laboratory((= The voting system test laboratory must meet the criteria established by the election assistance commission for such agents.)) ;~~
- ~~((+6)) (5) Documentation that the modification meets all applicable federal voting equipment guidelines((=)) ;~~

~~((7))~~ (6) A complete description, in operational and technical detail, of all differences between the previously certified equipment or system and the modified equipment or system, prepared by the applicant.

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

**WAC 434-335-240 Acceptance testing of voting systems and equipment.** Whenever a county auditor acquires a new system or an upgrade to an existing system that has been certified by the secretary of state, the county must perform acceptance tests of the equipment before it may be used to count votes at any election. The equipment must operate correctly, pass all tests, and be substantially the same as the equipment certified by the secretary of state. The minimum testing standards are described as follows:

(1) The model number, version number, release number, and any other number, name or description that identifies the product must be the same as the identifying numbers for the product already certified by the secretary of state.

(2) The county must receive all manuals and training necessary for the proper operation of the system.

(3) For new hardware or hardware upgrades, the county must test the functionality of the hardware to verify the hardware works as designed. The test must include operating the hardware and submitting it to a series of assessments that determine the hardware works, performs, and functions as intended.

Acceptance testing and installation of the equipment may occur only between December 1st and September 15th of each year.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

**WAC 434-335-510 Definitions.** "Calibration" is the touch screen setting on ~~((a disability access))~~ an accessible voting unit with touch screen capability that controls the target area.

"Direct recording electronic device" is a device that electronically records a voter's ~~((responses electronically))~~ choices.

"Electronic ballot marker" is a device that physically marks a voter's ~~((responses))~~ choices on a preprinted paper ballot.

"Target area" is ~~((the))~~ each area on the ballot ~~((face that records the voter's choice))~~ where the voter's choices are recorded.

"Touch screen" is a type of computer interface on a voting device that allows the voter to (~~select~~) make a choice by touching the screen.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

**WAC 434-335-520 Logic and accuracy (~~test plan preparation--Disability access~~) testing of accessible voting units.** (1) (~~The test plan used for the official logic and accuracy test for disability access units must be prepared by the county in the same manner as for optical and digital scan ballots.~~) The (~~official testing~~) logic and accuracy test of accessible voting units must be completed before (~~a disability access unit~~) they may be used for marking or casting ballots. Counties must complete the testing to have in-person (~~disability access~~) accessible voting available starting twenty days before the day of a primary or election.

(2) This test serves as the official logic and accuracy test (~~of poll site based optical scan ballot counters~~). A log must be created during the test, recording the time of each test, the precinct numbers, the seal number, the machine number, and the initials of each person testing the system. The log must be included in the official logic and accuracy test materials. This process is open to observation and subject to all notices and observers pursuant to WAC 434-335-290 and 434-335-320.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

**WAC 434-335-550 Direct recording electronic target area tests.** Each county employing a direct recording electronic (~~balloting system~~) voting device must conduct a test to confirm that the target area indicated on each ballot face is programmed correctly. If the direct recording electronic device is going to be employed as an electronic ballot marker, the county must follow the requirements of WAC 434-335-560. Otherwise, the county must test all ballot styles on at least one device to ensure that the programming is correctly counting and accumulating every office, measure, and selection by the voter.

AMENDATORY SECTION (Amending WSR 02-02-067, filed 12/28/01, effective 1/28/02)

**WAC 434-381-170 Statement and argument format.** (1)  
Statements or arguments submitted for inclusion in the voters pamphlet shall not exceed the word limit set by statute.

(a) Arguments for or against measures may contain up to four headings used to highlight major points in the argument and will ~~((not))~~ count toward the maximum word count set for arguments;

(b) The ~~((initial))~~ four headings may not exceed fifteen words for each heading;

~~(c) ((Additional headings may be used after the initial four headings in an argument, which will count toward the maximum word count of the argument;~~

~~(d))~~ Photographs or charts may be used in candidate statements or arguments substituting fifty words from the statement or argument for each square inch used by the photograph or chart. This subsection does not apply to the photographs submitted pursuant to WAC 434-381-130 (size and quality of photographs).

(2) Statements and arguments submitted to the secretary of state shall be printed in a format that in the opinion of the secretary will provide the best reproduction.

(a) Statements and arguments will be typeset in a standard font without the use of boldface or underlining;

(b) Italics may be used to add emphasis to statements or arguments;

(c) Argument headings will be typeset ~~((entirely))~~ in boldface ~~((capital))~~ letters.