



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: These rules change the requirement for jurisdiction questionnaires to be sent out only in the year the local jurisdiction is scheduled to elect officers, clarify the requirement for providing sample ballots at the county auditor's office or on the county auditor's website, create a definition for overvote and undervote, clarify required information for the county auditor's abstract of votes, clarify a ballot may be rejected where the voter validly transferred out of the county, clarify in a manual recount the two manual counts are compared to each other, clarify when voter registration applicants who fail the identification check are sent letters of notification, clarify county requirements on acceptance testing of voting systems and equipment, change reference from Federal Election Commission to Election Assistance Commission, and repeal language that is obsolete.

Citation of existing rules affected by this order:

Repealed:

Amended: 434-215-005, 434-230-010, 434-261-005, 434-262-030, 434-262-031, 434-264-110, 434-324-045, 434-324-075, 434-335-240, 434-335-250

Suspended:

Statutory authority for adoption: RCW 29A.04.611

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 09-01-051 on April 10, 2009 (date).

Describe any changes other than editing from proposed to adopted version: A change was made to proposed WAC 434-335-240, to clarify wording regarding hardware functional tests. This change was necessary to minimize confusion.

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:

Date adopted: May 29, 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: May 29, 2009

TIME: 4:20 PM

WSR 09-12-078

**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:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____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

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending WSR 07-09-035, filed 4/11/07, effective 5/12/07)

WAC 434-215-005 Filing information--Questionnaire--Compiling and dissemination. Prior to March 1 (~~of each year~~), the county auditor shall send a questionnaire to the administrative authority of each local jurisdiction for which the auditor is the candidate filing officer subject to the provisions of RCW 29A.04.321 and 29A.04.330. The questionnaire must be sent in the year the local jurisdiction is scheduled to elect officers. The purpose of the questionnaire shall be to confirm information which the auditor (~~may disseminate to the public regarding the filing for elective offices~~) must use to properly conduct candidate filings for each office. The questionnaire should request, (~~as~~) at a minimum, confirmation of offices to be filled at the general election that year, the name of the incumbent, and the annual salary for the position at the time of the filing period. Responses should be received prior to April 1 of that year so that the filing information can be compiled and disseminated to the public at least two weeks prior to the candidate filing period.

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

WAC 434-230-010 Sample ballots. Sample ballots shall be available at least fifteen days prior to an election. A printed copy must be made available through the office of the county auditor. A sample ballot may be published on the county auditor's web site. Sample paper ballots shall be printed in substantially the same form as official ballots (~~(, but shall be a different color than the official ballot)~~). Sample ballots shall be printed in a manner that makes them easily distinguishable from the official ballot. (~~(Sample ballots shall be available at least fifteen days prior to an election. Such sample ballots shall be made available through the office of the county auditor and at least one shall be available at all polling places on election day.)~~)

At any primary or election when a local voters' pamphlet is published which contains a full sample ballot, a separate sample ballot need not be (~~(printed)~~) produced.

Counties with populations of over five hundred thousand may produce more than one sample ballot for a primary or election, each of which lists a portion of the offices and issues to be voted on at that election. Sample ballots may be printed by region or area (e.g., legislative district, municipal, or other district boundary) of the county, provided that all offices and issues to be voted upon at the election appear on at least one of the various sample ballots (~~(printed for such county)~~). Each regional sample ballot shall contain all offices and issues to be voted upon within that region. A given office or issue may appear on more than one sample ballot, provided it is to be voted upon within that region. Sample ballots shall be made available and distributed to each (~~(polling place and to other locations within the appropriate region or area)~~) voting center.

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

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 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.

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

WAC 434-262-030 County auditor's abstract of votes. No later than the fifteenth day following any primary or special election and the twenty-first day following any general election the county canvassing board shall meet and canvass all ballots. Upon completion of this canvass, the board shall direct the county auditor to prepare the auditor's abstract of votes as defined by WAC 434-262-010. The reconciliation of absentee and vote by mail ballots must include documentation that the number of ballots counted plus the number of ballots rejected is equal to the number of ballots received. In addition, county auditors must provide any additional information necessary to explain variances between the number of ballots counted compared to the number of ballots received and credited. (~~(The oaths and the reconciliation report must be substantially similar to the following:)~~) The certification reports established in RCW 29A.60.235(1) must be included with the abstract of votes and must be submitted at the time of the county certification.

((STRICKEN GRAPHIC _____))

Oath of County Auditor or Supervisor of Elections

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I solemnly swear that the returns of the (insert election) held on (insert date), in _____ County, State of Washington, have been in no way altered and that they are the same as when they were deposited in my office.

County Auditor or Supervisor of Elections

Subscribed and sworn to me this ___ day of (insert month, year).

Chairman, County Legislative Authority

Certification Reconciliation Report
_____ Election
(insert date)

County _____
Date of Completion _____

NOTE: Address confidentiality program participants must be included with service voters.

Registration

Total number of active registered voters in all precincts _____
Total number of inactive registered voters in all precincts _____
Total registered voters in all precincts _____

Total absentee ballots counted (includes absentee, VBM, federal write-in, overseas, out of state, and service ballots) _____
Total poll site ballots counted (includes poll site and provisional ballots) _____
Total Ballots counted _____

Absentee and VBM Ballots

The total number of absentee/VBM ballots originally issued _____
The total number of absentee/VBM ballots received _____
The total number of absentee/VBM ballots rejected _____
The total number of absentee/VBM ballots counted _____

STRICKEN GRAPHIC))

((STRICKEN GRAPHIC _____))

Federal Write-In Ballots

The total number of federal write-in ballots counted _____

Out-of-State, Overseas, and Service Voters

The total number of out-of-state, overseas, and service voters' ballots issued _____

The total number of out-of-state, overseas, and service voters' ballots received _____

The total number of out-of-state, overseas, and service voters' ballots rejected _____

The total number of out-of-state, overseas, and service voters' ballots counted _____

Provisional Ballots

The total number of provisional ballots issued (by this county) _____

The total number of provisional ballots rejected (includes sending to other counties) _____

The total number of provisional ballots received from other counties _____

The total number of provisional ballots counted _____

Certification of the Canvassing Board

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

The undersigned officers designated by law as constituting the Canvassing Board for the County of _____, State of Washington, hereby certify that this is a full, true and correct copy of the Abstract of Votes including the cumulative results, precinct results, and a reconciliation report of votes cast at the (insert election) held on (insert date), in _____ County, State of Washington, and that the following are the true and reconciled numbers of voters and votes counted.

Witness our hands and official seal this _____ day of (insert month, year).

County Auditor or Supervisor of Elections

Chairman, County Legislative Authority

County Prosecuting Attorney

(STRICKEN GRAPHIC))

WAC 434-262-031 Rejection of ballots or parts of ballots.

(1) The disposition of provisional ballots is governed by WAC 434-253-047. The county canvassing board must reject any ballot cast by a voter who was not qualified to vote, or for other reasons required by law or administrative rule. A log must be kept of all voted ballots rejected, and must be included in the minutes of each county canvassing board meeting.

(2) Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

(a) Where a voter has already voted one ballot;

(b) Where two voted ballots are contained within a returned mail ballot envelope containing only one valid signature under the affidavit, unless both ballots are voted identically, in which case one ballot will be counted. If there are two valid signatures under the affidavit, both ballots must be counted;

(c) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent consistent with WAC 434-261-086;

(d) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;

(e) Where the voter has (~~voted for more candidates for an office than are permissible~~) overvoted;

(f) Where the voter validly transferred out of the county.

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

WAC 434-264-110 Manual recount--Process. The counting board may only count the responses for one race or measure at a time. The following process to count the ballots shall be used during a recount.

(1) Each counting board shall be given the ballots one precinct or batch at a time. The results from the original count shall not be given with the ballots. The precinct or batch number must be made available to any observers.

(2) The ballots shall be sorted into separate stacks for each of the candidates or side of a ballot measure. Additional stacks may be created for overvotes, undervotes, and write-ins.

(3) Each stack of ballots must be manually counted at least twice to confirm the number of votes in each stack. The results of the manual count shall not be shared until both persons have counted the ballots.

(4) Individual tallies for each stack shall be compared. If the manual counts match, the results shall be reported to the designated staff person and the results shall be compared to the results (~~(of the original count)~~) previously certified.

(5) If the two manual counts do not match, the ballots shall be counted by the same counting board one more time. If the manual counts still do not match, the discrepancy must be reported to the designated staff person and the ballots referred to another counting board.

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

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 notice that includes a postage prepaid, preaddressed form by which the applicant may verify or send information. The identity verification notice must ~~((be in substantially the following form))~~ include:

~~((Dear Voter:~~

~~/date/~~

~~Thank you for submitting a voter registration application. Because we were unable to verify your identity based on the information you provided, you are now provisionally registered to vote.~~

~~Federal law requires that you provide identification either before or when you vote. **If you fail to provide identification, your ballot will not be counted.**~~

Please provide one of the following:

- ~~The number on your Washington driver's license or state ID card: _____~~
~~Your name and date of birth as it appears on your driver's license or state ID card:~~

First M.I. Last date of birth
- ~~The last four digits of your Social Security number: _____~~
~~Your name and date of birth as maintained by the Social Security Administration:~~

First M.I. Last date of birth
- A copy of one of the following:
 - Valid photo identification;
 - A valid enrollment card of a federally recognized tribe in Washington;
 - A current utility bill;
 - A current bank statement;
 - A current government check;
 - A current paycheck; or
 - A government document, other than a voter registration card, that shows both your name and address.

Please provide this documentation as soon possible. **If it is not provided, your ballot will not be counted.**

If you have any questions, please feel free to contact the ___ County Auditor's Office at ___.)

(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 (~~absentee~~) 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 06-14-050, filed 6/28/06, effective 7/29/06)

WAC 434-324-075 Timelines for new and transfer registrations.

(1) In order to be in effect for an upcoming primary, special, or general election, a registered voter must transfer his or her

registration record by mail or in person no later than thirty days prior to the primary, special, or general election. A registered voter may transfer his or her registration record within the county or to another county by completing and submitting a new application for voter registration. (~~Upon receipt, the auditor must process the application for voter registration in the same manner as all other applications for voter registration pursuant to WAC 434-324-010.~~)

(2) In order to vote in an upcoming primary, special, or general election, a person who is not registered to vote in Washington must register:

(a) By mail no later than thirty days prior to the primary, special, or general election; or

(b) In person at the county auditor's office no later than fifteen days before the primary, special, or general election. A person who registers under this subsection will be issued an absentee ballot for the upcoming primary, special, or general election.

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

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 ~~((a vote tabulating system, the))~~ new hardware or hardware upgrades, the county must ~~((perform a series of functional and programming tests that test all functions of the system. The tests must include processing a substantial number of test ballots of various ballot codes, including split precincts, multiple candidates, precinct committee officer races, cumulative reports, precinct reports, canvass reports, and any other tests the county auditor finds necessary.~~

~~((4) The county auditor must certify the results of the acceptance tests to the secretary of state, which must include version numbers of the hardware, software, and firmware installed and tested))~~ 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.

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

WAC 434-335-250 Inclusion of the ~~((Federal))~~ Election Assistance Commission standards for voting equipment. The ~~((2002 Federal))~~ Election Assistance Commission standards concerning voting systems and software escrow are hereby included by reference, except where otherwise modified by these rules and the *Revised Code of Washington*. ~~((After January 1, 2006, in order for a modification of a system that was previously certified according~~

~~to the 1990 Federal Election Commission voting system standards to be administratively approved, the entire voting system must be tested and approved according to the 2002 standards.)~~)