



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Office of the Secretary of State, Elections Division

- | | |
|--|---|
| <input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 10-02-014 ; or | <input checked="" type="checkbox"/> Original Notice |
| <input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or | <input type="checkbox"/> Supplemental Notice to WSR _____ |
| <input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4). | <input type="checkbox"/> Continuance of WSR _____ |

Title of rule and other identifying information: (Describe Subject)
Voting, Ballot Processing, Ranked Choice Voting, Precinct Committee Officer elections.

Hearing location(s):
Office of the Secretary of State
Elections Division
520 Union Ave. S.E.
Olympia, WA

Date: June 8, 2010 Time: 11:00 am

Date of intended adoption: July 6, 2010
(Note: This is NOT the effective date)

Submit written comments to:

Name: Katie Blinn
Address: P.O. Box 40220
Olympia, WA 98504-0220

e-mail kblinn@secstate.wa.gov
fax (360) 586-5629 by (date) June 8, 2010

Assistance for persons with disabilities: Contact
Carolyn Berger by June 7, 2010
TTY (800) 448-4881 or (360) 902-4180

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
Clarifies the processes for special filing periods, withdrawal periods, poll voters, direct recording electronic voting devices, ballot processing, voting centers, precinct committee officer elections, and voter registration transfers. Repeals references to ranked choice voting.

Reasons supporting proposal: Clarifies election processes for voters, election administrators, candidates, and political parties.

Statutory authority for adoption: RCW 29A.04.611

Statute being implemented: RCW 29A.08.420, 29A.24.131, 29A.40.110, 29A.46.020, and 29A.80.041.

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|-----------------------------|
| Federal Law? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
- If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 30, 2010
TIME: 1:49 PM

WSR 10-10-068

DATE
April 30, 2010

NAME (type or print)
Steve Excell

SIGNATURE

TITLE Assistant Secretary of State

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization)

Office of the Secretary of State, Elections Division

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting Katie Blinn	P.O. Box 40220, Olympia, WA 98504-0220	(360) 902-4168
Implementation Katie Blinn	P.O. Box 40220, Olympia, WA 98504-0220	(360) 902-4168
Enforcement Katie Blinn	P.O. Box 40220, Olympia, WA 98504-0220	(360) 902-4168

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.

Not applicable.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No: Please explain:

Not applicable.

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

WAC 434-215-005 Filing information--Questionnaire--Compiling and dissemination. (1) Prior to March 1, 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 must use to properly conduct candidate filings for each office. The questionnaire should request, 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.

(2) If a jurisdiction fails to notify the county auditor that an office is to be filled at the general election and therefore the office is not included in the regular candidate filing period, the county auditor shall conduct a special three-day filing period for that office under the time frames established in RCW 29A.24.171 through 29A.24.191.

AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

WAC 434-215-065 Withdrawal of candidacy. Consistent with RCW 29A.24.131, a candidate may withdraw his or her declaration of candidacy at any time before the close of business on the Thursday following the last day for candidates to file under RCW 29A.24.050 by filing, with the officer with whom the declaration of candidacy was filed, a signed request that his or her name not be printed on the ballot. There shall be no withdrawal period for declarations of candidacy filed during special filing periods. The filing officer has discretion to permit the withdrawal of a filing for any elected office of a city, town, or special district at the request of the candidate at any time before a primary if the primary election ballots have not been ~~((ordered))~~ formatted. If no primary election is held for ~~((the))~~ that office, the filing officer has discretion to permit the withdrawal at any time before

the general election ballots are (~~ordered~~) formatted. If jurisdiction is located in more than one county, withdrawal of a filing may only be accepted if ballots have not been formatted in all affected counties.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-215-160 Ranked choice voting.

REPEALER

The following section of the Washington Administrative Code
is repealed:

WAC 434-230-120

Ranked choice voting.

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

WAC 434-250-030 Applications. (1) ~~((As authorized by RCW 29A.40.040, requests for status as an ongoing absentee voter must be made in writing. With the exception of county auditors who conduct primaries and elections entirely by mail, each county auditor must provide applications for requests made in writing.))~~ Each county auditor who does not conduct all elections by mail must provide a form to allow a poll voter to become an ongoing absentee voter. The form must include, but not be limited to, the following:

- (a) A space for the voter to print his or her name and the address at which he or she is registered to vote;
- (b) The address to which the ballot is to be mailed; and
- (c) A space for the voter to sign and date the application.

~~((A voter may request status as an ongoing absentee voter by indicating such on a standard voter registration form.))~~

(2) As authorized by RCW 29A.40.020 and 29A.40.030, requests for a single absentee ballot may be made in person, by telephone, electronically, or in writing, and may be made by a family member. With the exception of county auditors who conduct primaries and elections entirely by mail, each county auditor must provide applications for requests made in writing. The form must include, but not be limited to, the following:

- (a) A space for the voter to print his or her name and the address at which he or she is registered to vote;
- (b) The address to which the ballot is to be mailed;
- (c) A space for the voter to indicate for which election or elections the application is made; and
- (d) A space for the voter to sign and date the application.

(3) As authorized by RCW 29A.40.050, requests for a special absentee ballot must be made in writing and each county auditor must provide the applications. In addition to the requirements for a single absentee ballot, as provided in subsection (2) of this section, the form must include:

(a) A space for an overseas or service voter not registered to vote in Washington to indicate his or her last residential address in Washington; and

(b) A checkbox requesting that a single absentee ballot be forwarded as soon as possible.

The county auditor shall honor any application for a special absentee ballot that is in substantial compliance with the provisions of this section. Any application for a special absentee ballot received more than ninety days prior to a primary or general election may be either returned to the applicant with the explanation that the request is premature or held by the auditor

until the appropriate time and then processed.

(4) As authorized by RCW 29A.40.080, requests for an absentee ballot may be made by a resident of a health care facility, as defined by RCW 70.37.020(3). Each county shall provide an application form for such a registered voter to apply for a single absentee ballot by messenger on election day. The messenger may pick up the voter's absentee ballot and deliver it to the voter and return it to the county auditor's office.

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

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))~~ Require each voter who votes on a direct recording electronic voting device to sign and date the following oath, and record the information in such a manner that the ballot cannot be traced back to the voter((7)):

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

A citizen of the United States;

A legal resident of the state of Washington;

At least eighteen years old on election day;

Voting only once in this election;

Not ineligible to vote due to a felony conviction; and

Not disqualified from voting due to a court order.

It is illegal to forge a signature or cast a ballot in another person's name. 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 ten thousand dollars, or both.

(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 secured at all times, with seal logs that document each time the box is opened and by whom. Ballots must be placed into 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 secured to prevent the deposit of additional ballots.

WAC 434-250-120 Verification of the signature and postmark on ballots. (1) A ballot shall be counted only if:

~~((1))~~ (a) It is returned in the return envelope, or a similar envelope if it contains the same information (~~and signed affidavit and is approved by the auditor~~);

~~((2))~~ (b) The affidavit is signed with a valid signature in the place afforded for the signature on the envelope;

~~((3))~~ (c) The signature has been verified pursuant to WAC 434-379-020, or if the voter is unable to sign his or her name, two other persons have witnessed the voter's mark;

~~((4) It)~~ (d) The envelope is postmarked not later than the day of the election, or deposited in the auditor's office, a polling location, or a designated deposit site not later than 8:00 p.m. on election day; and

~~((5))~~ (e) The ballot is received prior to certification of the election.

(2) Postage that includes a date, such as meter postage or a dated stamp, does not qualify as a postmark. If an envelope lacks a postmark, the date to which the voter has attested on the oath determines the validity of the ballot, per RCW 29A.40.110.

(3) If a signed affidavit and ballot are returned electronically no later than 8:00 p.m. on election day and the original documents are received prior to certification of the election, the ballot may be counted even if the postmark is after election day.

(4) The signature on the return envelope, or on a copy of the return envelope, must be compared with the signature in the voter's voter registration file using the standards established in WAC 434-379-020. The signature on a return envelope may not be rejected merely because the name in the signature is a variation of the name on the voter registration record. The canvassing board may designate in writing representatives to perform this function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of his or her duties. Personnel shall be instructed in the signature verification process prior to actually canvassing any signatures. Local law enforcement officials may instruct those employees in techniques used to identify forgeries.

(5) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

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

WAC 434-250-330 County auditor's office as a voting center.

(1) For elections conducted entirely by mail, the county auditor's office must operate as a voting center starting twenty days before an election until the day of the election beginning the day that ballots are mailed to voters (~~(, excluding)~~). The county auditor's office is not required to be open as a voting center on Saturdays, Sundays, ((and)) legal holidays, or other days that the office is officially closed.

(2) If the persons providing services at the county auditor's office are not employees of the county auditor's office but are persons appointed by the county auditor, the appointees must be representatives of different major political parties and must subscribe to an oath regarding the discharge of duties.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-250-150 Ranked choice voting.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-253-330

Ranked choice voting.

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

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 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.

(9) "Seal log" is a log documenting each time a numbered seal is attached or removed from a ballot container. The log must include the seal number, date, and identifying information of persons attaching or removing the seal. Following certification of the election, the seal log must include documentation as to why the seal was removed from a ballot container.

WAC 434-261-050 Unsigned oath or mismatched signatures. (1)

If a voter neglects to sign the oath on an absentee or provisional ballot envelope, signs the oath with a mark and fails to have two witnesses attest to the signature, or signs the ballot envelope but the signature on the envelope does not match the signature on the voter registration record, the auditor shall notify the voter by first class mail of the correct procedures for curing the signature. If the ballot is received during the last three business days before the final meeting of the canvassing board, or the voter has been notified by first class mail and has not responded by the last three business days before the final meeting of the canvassing board, the auditor must attempt to notify the voter by telephone using information in the voter registration record.

(2) If the voter neglects to sign the oath on an absentee or provisional ballot envelope, or signs the oath with a mark and fails to have two witnesses attest to the signature, the voter must either:

(a) Appear in person and sign the affidavit no later than the day before certification of the primary or election; or

(b) Sign a copy of the affidavit provided by the auditor, or mark the affidavit in front of two witnesses, and return it to the auditor no later than the day before certification of the primary or election.

(3) If the signature on the oath of an absentee or provisional ballot envelope does not match the signature on the voter registration record, the voter must either:

(a) Appear in person and sign a new registration form no later than the day before certification of the primary or election. The updated signature provided on the new registration form becomes the signature on the voter registration record for the current election and future elections; or

(b) Sign a copy of the affidavit provided by the auditor, and provide a photocopy of a valid government or tribal identification that includes the voter's current signature. The signature on the affidavit must match the signature on the identification, and both of those signatures must match the signature on the ballot envelope. The voter must return the signed affidavit and identification to the auditor no later than the day before certification of the primary or election. The county auditor may also send the voter a new registration form to update the signature on the voter registration record for future elections; or

(c) Sign a copy of the affidavit provided by the auditor in front of two witnesses who attest to the signature. The signature on the affidavit must match the signature on the ballot envelope. The voter must return the signed affidavit to the auditor no later than the day before certification of the primary or election. The county auditor may also send the voter a new registration form to update the signature on the voter registration record for future

elections.

(4) If the signature on an absentee or provisional ballot envelope does not match the signature on the registration record because the name is different, the ballot may be counted as long as the handwriting is clearly the same. The auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form. If the signature on an absentee or provisional ballot envelope does not match the signature on the registration record because the voter used initials or a common nickname, the ballot may be counted as long as the surname and handwriting are clearly the same.

(5) If the name on the signature does not match the name printed on the absentee ballot envelope, and the signature on the absentee ballot envelope does not match the signature on the voter registration record, because the ballot was signed by another registered voter, the ballot may be counted for the registered voter who actually signed the envelope if:

(a) The voter who signed the envelope can be identified;

(b) The voter who signed the envelope is registered at the same address as the voter to whom the envelope was issued;

(c) The signature on the envelope matches the signature on the voter registration record; and

(d) The voter who signed the envelope has not returned another ballot.

(6) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

~~((+6))~~ (7) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter signed the envelope, a copy of the envelope, a new registration form, or a change-of-name form. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request.

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

WAC 434-262-075 Election of political party precinct committee officers. (1) Candidates for precinct committee officer file and appear on the ballot as members of a major political party. The election of political party precinct committee officers is not conducted according to a top two primary established by chapter 2, Laws of 2005 (Initiative 872). Candidates must make a public declaration of party affiliation in the form of a precinct committee officer declaration of candidacy. Write-in votes cast for an individual who has not filed a write-in declaration of candidacy shall not be counted. The candidate of each political party who receives the most votes in the August primary election is declared elected.

(2) RCW 29A.80.051 includes a requirement that, to be declared elected, a candidate for precinct committee officer must receive at least ten percent of the number of votes cast for a candidate of the same party who received the most votes in the precinct. This requirement for election is not in effect because candidates for public office do not represent a political party.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-262-210 Ranked choice voting.

NEW SECTION

WAC 434-324-076 Voter registration updates. If a voter submits a registration transfer to a new county by the statutory deadline, but the voter's previous county issues the voter a ballot before the transfer is processed and the voter votes the ballot issued by the previous county, the previous county must treat the voted ballot as if it is a provisional ballot and forward it to the voter's new county.