Concise Explanatory Statement

Rulemaking: Provisional Ballot Issuance
WAC 434-261-053

Public Hearing: October 7, 2025
Adoption: October 24, 2025
Effective: November 24, 2025

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Introduction

The Elections Division of the Office of the Secretary of State is amending a rule to clarify a requirement to provide a voter with a provisional ballot. This document will serve as the Concise Explanatory Statement (CES) for this rulemaking.

Original formal comments were accepted July 22, 2025 8:00 AM through August 25, 2025 5:00 PM. A continuance was filed August 28, and formal comments were again accepted August 29, 2025 8:00 AM through October 6, 2025 5:00 PM.

The formal CR-102 public hearing was held October 7, 2025 via in person and simultaneous conference call.

Rules Summary and Agency Reasons for Adoption

Rules Summary

AMENDATORY SECTION (Amending WSR 24-12-087, filed 6/5/24, effective 7/6/24)

WAC 434-261-053 Ballot declaration signature cure process. (1) If a ballot declaration signature is not accepted following secondary review, the voter used a mark or signature stamp but did not include witnesses, or if the ballot declaration was not signed, the ballot cannot be counted until the voter cures their signature. The voter identified on the ballot return envelope must be notified as soon as practicable, but no later than three business days following receipt, that the signature on the ballot declaration does not match the signature(s) in the voter registration record. The county must notify the voter of the procedure for curing their signature by:

(a) A notice letter package sent by first class mail with a signature update form or a missing signature form. The form must include the ballot declaration required by WAC 434-230-015. The notice letter package must also include a prepaid envelope in which to return a completed signature update or missing signature form. The notice letter must:

(i) Be in substantially the same form as the sample notice letter created by the secretary of state; and

(ii) Be available in all languages required by the Department of Justice.

(b) Telephone, leaving a voicemail if the voter does not answer and voicemail is available (if the voter has provided a phone number);

(c) Text message (if the voter has opted into text message notifications); and

(d) Email, enclosing a copy of the signature cure form (if the voter has provided an email address).

(2) The voter may cure their ballot signature no later than the close of business the day before the election is certified.

If the voter has not responded to the signature cure notice by five business days before the final meeting of the canvassing board, the county auditor must attempt to notify the voter by:

(a) Telephone, leaving a voicemail if the voter does not answer and voicemail is available (if the voter has provided a phone number);

(b) Text message (if the voter has opted into text message notifications); and

(c) Email, enclosing a copy of the signature cure form (if the voter has provided an email address).

(3) A voter may cure a missing signature by:

(a) Returning a signed missing signature form. The signature on the form must be compared to the signature(s) in the voter registration record using the process described in WAC 434-261-052; or

(b) Appearing in person and signing the ballot declaration. The signature on the ballot declaration must be compared to the signature(s) in the voter registration record using the process described in WAC 434-261-052.

(4) A voter using a mark or signature stamp may cure a failure to have two witnesses attest to the ballot declaration signature by returning a missing signature form. The form must contain the voter's mark or signature stamp and the signatures of two witnesses.

(5) A voter may cure a nonmatching signature by either:

(a) Returning a signature update form or appearing in person and signing a new registration form.

(i) The signature on the form must be compared to the signature on the ballot declaration using the process described in WAC 434-261-052;

(ii) The signature on the form is saved as a new signature in the voter registration record for the current and future elections; or

(b) Providing valid secondary identity verification. The county auditor must verify the secondary identification is for the voter who signed the ballot declaration. Secondary identification may be:

(i) The last four digits of the voter's Social Security number or the voter's full driver's license, instruction permit, or state identicard number;

(ii) Photo identification, valid enrollment card of a federally recognized Indian tribe in Washington state, copy of a current utility bill or current bank statement, copy of a current government check, copy of a current paycheck, or a government document, other than a voter registration card, that shows both the name and address of the voter; or

(iii) A multifactor authentication code, from a system approved by the secretary of state, the county auditor sent to the voter's phone number or email address that has previously been provided by the voter.

If a voter successfully provides secondary identity verification and confirms, orally or in writing, that the voter in fact returned the ballot, the ballot must be accepted unless two persons who have received signature verification training under WAC 434-261-051(8) conclude beyond a reasonable doubt that a person other than the voter signed the ballot declaration. This conclusion may be based on evidence including, but not limited to, other ballots in the same election bearing the same signature.

(6) If the registered voter asserts that the signature on the ballot declaration is not the voter's signature prior to 8:00 p.m. on election day, the voter may be provided the opportunity to vote a ((~~replacement ballot~~)) provisional ballot, subject to the investigation requirements in RCW 29A.60.195.

(7) If the voter does not successfully cure their signature by close of business the day before certification of the election, the ballot must be sent to the canvassing board.

(8) A record must be kept of the process used to cure ballot envelopes with missing and mismatched signatures. The record must contain the date on which each voter was contacted, the notice was mailed, and the date on which each voter subsequently submitted a signature to cure the missing or mismatched signature.

Agency Reason for Adoption
In accordance with 52 US Code § 21082, the amendments to this section clarify that a voter who asserts the signature on a ballot declaration is not theirs prior to 8:00 PM on Election Day is entitled to vote a provisional ballot, and provisional ballots are subject to investigation as per RCW 29A.60.195.

Changes to Rule (Proposed versus Adopted)
None

Public Comment and Responses
Comment Period
The comment periods for this rulemaking were open July 22, 2025 through August 25 and August 29, 2025 through October 6. A total of two comments were received.

Public Hearing
Date: October 7, 2025
Time: 1:00 PM
Location: 243 Israel Rd. SE, Tumwater, WA 98501
Attendance: 1 person
Testified: 1 person

Summary of Comments Received and the Elections Division Responses
1. **Source**: Formal comment period prior to the public hearing
   Name: Ruth Ryan
   Comment: Election officials are required to investigate provisional ballots; please add a statement in rulemaking providing a reminder of this statutory requirement.
   Response: Upon receiving public feedback, the proposed amendment being considered will include clarification that provisional ballots are required to be investigated per RCW 29A.60.195.
2. **Source**: Formal comment period prior to the public hearing; Public hearing
   Name: Erica Engelhart
   Comment: There is nothing in state or federal law which says the voter would be ineligible to vote for declaring a signature does not belong to them. There would need to be some other reason that voters are ineligible to vote for this rule change to apply.
   If the deadline hasn't passed, and the ballot is still sealed in the envelope because of a signature challenge, why wouldn't they be able to vote a replacement ballot and have the original ballot cancelled?
   Response: The Office's reading of 52 US Code § 21082 is such that if a voter has a ballot returned and in the custody of the county auditor, they would no longer appear "on the official list of eligible voters." In this case, issuing a provisional ballot would be the appropriate avenue for the voter to sign the accompanying affidavit, allow the county

elections office time to investigate who returned the voter's ballot, and potentially refer the information to the prosecuting authority's office.