AMENDATORY SECTION (Amending WSR 18-10-003, filed 4/19/18, effective 5/20/18)

WAC 434-261-086 Statewide standards on what is a vote. (1) Pursuant to ((~~42~~)) 52 U.S.C. § ((~~15481~~)) 21081 (a)(6) and *Bush v. Gore*, 531 U.S. 98 (2000), the following standards determine whether irregular marks on a ballot constitute a valid vote that may be counted.

(a) Target area, defined for the purpose of this subsection as the designated area on a ballot in each office or measure's response area where the voter records their choice. Any marks made in the target area shall be counted as valid votes, with the exceptions below.

Any marks made outside of the target area shall be valid only if they form a pattern of similar marks as outlined in (b) of this subsection((~~,~~)) or qualify as written instructions in (e) of this subsection. Marks that trace or outline the target area are not valid votes unless they form a pattern of similar marks as outlined in (b) of this subsection.

The following marks in the target area are exceptions ((~~that are~~)) and not valid votes:

(i) Obvious stray marks;

(ii) Hesitation marks, defined for the purpose of this subsection as a mark similar to resting a pen in the target area or other minimal distinct mark with only incidental movement;

(iii) Parts of written notes; and

(iv) Corrected votes, as described in (c) and (e) of this subsection.

(b) Pattern of similar marks. Marks made outside of the target area shall be counted as valid votes as long as those marks form a pattern of similar marks. All ((~~races and issues~~)) offices and measures for which the voter has indicated a choice outside the target area must have a similar mark.

(i) Marks made outside of the target area may be counted as valid votes even if one pattern of similar marks is used on one page of the ballot and another pattern of similar marks is used on another page of the ballot.

(ii) Marks made outside of the target area shall be counted as valid votes if one pattern of similar marks is used for ((~~measures~~)) offices and another pattern of similar marks is used for ((~~candidate races~~)) measures.

(iii) If some marks are in the target area and some are not, but the same type of mark is used, all such marks shall be counted as valid votes.

(iv) If the marks strike through candidate names or ballot measure responses in a pattern of similar marks throughout the ballot, all such marks shall be counted as valid votes.

(v) A mark outside the target area on a ballot that contains only one ((~~race~~)) office or measure is not required to form a pattern.

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

((~~(ii)~~)) (i) If a second choice is marked, ((~~it~~)) the second choice shall be counted as a valid vote. If a second choice is not marked, the ((~~race~~)) office or measure shall be ((~~considered undervoted~~)) counted as an undervote.

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

(d) Not a correction.

(i) If the voter has both marked a choice correctly and placed an 'X' in the same target area, but has not marked a second target, it shall be counted as a valid vote.

(ii) Changes made by the voter to wording printed on the ballot will not invalidate votes cast for that ((~~race~~)) office or measure.

(e) Written instructions. If the voter has attempted to vote or correct a vote by providing written instruction regarding ((~~his or her~~)) intent, it shall be counted as the voter instructed. Written instructions ((~~can~~)) may include words, circles, lines, or arrows. Written instructions may supplement a pattern of votes established under (b) of this subsection and can be used to indicate the voter's intent.

(f) Identifying marks. Marks identifying the voter, such as initials, signatures, or addresses do not disqualify a ballot.

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

(h) Write-in: Blank target area. For the purpose of this subsection, a name is any letter, number, linguistic character, or combination thereof. If a name is written on a write-in line, it shall be counted as a valid write-in vote regardless of whether the corresponding target area is marked.

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

(j) Write-in: Name variations.

(i) If a write-in vote is cast for a declared ((~~write-in~~)) candidate using a commonly recognizable ((~~nickname~~)) name diminutive or spelling variation, it shall be counted as a valid vote for that candidate. No attempt to vote for a candidate shall be rejected due to the misspelling of a candidate's name, unless it is impossible to clearly determine the voter's intent.

(ii) If the voter's intent cannot be determined based on their spelling of the name, the vote shall be counted as a valid vote for the name as written.

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

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

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

(n) Write-in: Candidate and write-in response area.

(i) If a candidate's target area is marked, the write-in target area is also marked, and something other than that candidate's name is written in the write-in response area, it shall be counted as an overvote and not a valid vote for any candidate.

(ii) If a candidate's target area is marked and the write-in target area is not marked, it shall be counted as a valid vote for the marked candidate. ((~~If the voter's intent cannot be ascertained, the ballot shall be referred to the canvassing board.~~))

(o) Write-in: Not eligible. A write-in vote for ((~~a race~~)) an office not appearing on the voter's ballot shall not be counted.

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

(p) Write-in: Vote in the wrong place. A write-in vote for ((~~a race~~)) an office appearing elsewhere on the ballot shall be counted as a valid vote, as long as all other requirements are fulfilled and the office, position number, and political party, if applicable, are clearly indicated.

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

(r) Messy marks: Between two target areas. If the voter marks the space between two target areas and does not provide written instruction as to their intent, the office or measure in question shall be counted as an undervote, unless the mark follows a pattern as described in (b) of this subsection and the voter's intent can clearly be determined.

(s) Messy marks: Marking multiple target areas.

(i) A mark extending past one target area into another or multiple target areas shall be counted for the name or response's target area most completely filled in, unless the voter's intent cannot clearly be determined.

(ii) If the voter's intent cannot clearly be determined, the office or measure shall be counted as an overvote.

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

Exception: On a federal write-in absentee ballot (FWAB) in which the voter has not written in a candidate's name but has written in the name of a political party, the written instructions may be counted as a vote if the canvassing board can ((~~discern~~)) clearly determine that a candidate's party preference is consistent with the voter's instructions. The canvassing board shall not count the instructions as a vote if no candidate's party preference is consistent with the voter's instructions, or if multiple candidates' party preferences are consistent with the voters' instructions.

((~~(s)~~)) (u) Anything else. Voter intent on questionable marks not covered by the ((~~rules in this manual~~)) standards in this rule must be determined by the county canvassing ((~~boards~~)) board according to all applicable laws of the state of Washington and the canvassing board manual.

Where more than one ((~~rule~~)) standard may apply, the county canvassing board has authority to determine which ((~~rule~~)) standard is most appropriate.

(2) The office of the secretary of state shall publish an illustrated version of these standards ((~~in~~)) with examples from each ((~~optical scan and digital scan~~)) voting system used in the state. The office of the secretary of state shall distribute the illustrated version to each county canvassing board and ((~~post it~~)) publish the illustrated version on ((~~the~~)) its website.

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