Concise Explanatory Statement

Rulemaking: Refusal to Certify an Election without Cause
Chapter 434-262 WAC

Public Hearing: May 26, 2026
Adoption: May 27, 2026
Effective: June 27, 2026

Table of Contents

Introduction 1
Rules Summary and Agency Reasons for Adoption 2
Rules Text 2
Rules Summary 5
Agency Reason for Adoption 5
Agency Rulemaking Authority 5
Summary of the Rulemaking Activities 5
Changes to Rule (Proposed versus Adopted) 5
Public Comment and Responses 6
Comment Period 6
Public Hearing 6
Summary of Comments Received and the Elections Division Responses 6

Introduction

The Elections Division of the Office of the Secretary of State is amending rules to create procedure in the case of a county canvassing board refusing to certify the results of an election without cause. This document will serve as the Concise Explanatory Statement (CES) for this rulemaking.

Formal comments were accepted April 2, 2026 8:00 AM through May 25, 2026 5:00 PM.

The formal CR-102 public hearing was held May 26, 2026, 10:00 AM in person at 6880 Capitol Blvd. SE, Tumwater, WA 98501.

Rules Summary and Agency Reasons for Adoption

Rules Text

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-262-010 Definitions. As used in ((~~these regulations~~)) this chapter:

(1) "Canvassing" is ((~~that~~)) the process of examining in detail a ballot, groups of ballots, election subtotals, or grand totals((~~, in order~~)) to determine the final official returns of a primary, special, or general election, and to safeguard the integrity of the election process.

(2) "County canvassing board" is ((~~that~~)) the body charged by ((~~law~~)) chapter 29A.60 RCW with the duty of canvassing ballots, ruling on the validity of questioned or challenged ballots, verifying all unofficial returns as listed in the auditor's abstract of votes, and producing the official county canvass report; it shall be composed of the county auditor, prosecuting attorney, and chair of ((~~the board of~~)) the county legislative authority, or their designated representatives, as per RCW 29A.60.140.

AMENDATORY SECTION (Amending WSR 17-12-090, filed 6/6/17, effective 7/7/17)

WAC 434-262-016 Canvassing board meeting—Emergency procedure. If a county canvassing board member cannot attend a county canvassing board meeting due to an emergency, as defined in the county canvassing board's manual, a ((~~designee~~)) designated representative may be appointed according to RCW 29A.60.140 ((~~at any time, including the day of the meeting~~)). If a designee cannot be appointed, the member may participate in the meeting remotely in accordance with RCW 42.30.230.

(1) When ballots, ballot return envelopes, the signatures on ballot declarations, and signature correction forms are considered during the meeting, the remote member must have access to an online computer application which allows viewing of ((~~ballots~~)) the considered material. Images of ballots, ballot return envelopes, the signatures on ballot declarations, and signature correction forms cannot be recorded, copied, scanned, emailed, or faxed to ((~~the member~~)) a county canvassing board member, nor can ((~~the~~)) a member record ((~~ballot images~~)) the considered material. The computer application is not required if ballots, ballot return envelopes, the signatures on ballot declarations, and signature correction forms are not considered during the meeting.

(2) As per RCW 29A.60.200, all three county canvassing board members or designees must certify ((~~an~~)) the primary or election. If a primary or an election is certified during the meeting where a member or designee is attending remotely, a copy of the certification document must be sent electronically to the remote member. The certification document must be signed in the following manner:

(a) The county canvassing board members or designees physically present at the meeting must sign the certification ((~~document~~)) documentation.

(b) A copy of the certification documentation is sent electronically to the remote member or designee.

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(c) The remote member or designee must print the signature page of the certification documentation, sign the page, and return the signed page electronically to the county canvassing board meeting location.

(d) The remote member's or designee's signed signature page is printed and attached to the certification ((~~document~~)) documentation signed by the other members of the county canvassing board, completing the certification ((~~document~~)) documentation.

(3) An emergency meeting of the county canvassing board in accordance with this section is not a valid reason to refuse certification of the primary or election.

AMENDATORY SECTION (Amending WSR 21-21-001, filed 10/6/21, effective 11/6/21)

WAC 434-262-070 Official county canvass report. (1) Upon completion of the verification of the auditor's abstract of votes and the documentation of any corrective action taken, the county canvassing board shall sign a certification that:

(a) States ((~~that~~)) the abstract is a full, true, and correct representation of the votes cast for the ((~~issues and~~)) offices and measures listed thereon;

(b) Provides the total number of registered voters and votes cast in the county;

(c) Contains the oath required by RCW 29A.60.200, signed by the county auditor and attested to by the chair of the county legislative authority or designee who administered the oath; and

(d) Shall have a space where the official seal of the county shall be attached.

(2) The official county canvass report shall include:

(a) The certification;

(b) The auditor's abstract of votes as described in WAC 434-262-030. This report may not be subsequently amended or altered, except in the event a recount conducted pursuant to chapter 29A.64 RCW, or upon court order ((~~of the superior court~~)). The vote totals therein shall constitute the official returns of that primary or election; and

(c) If applicable, a written narrative of errors and discrepancies discovered and corrected.

(3) The certification shall be signed by all members of the county canvassing board or their designees.

(4) In the event that a member or members of the county canvassing board or their designees refuse to sign the official certification of the results of a primary or election without cause, the board member(s) must provide a written narrative with examples. The written narrative must explain why one or more members refused to certify the results of the primary or election and may also include a statement or statements from board members who would certify the results.

(5) The official county canvass report, or in lieu of the report, written narrative as to why the primary or election has not been certified, must be submitted for every primary and election ((~~must be submitted~~)) to the office of the secretary of state ((~~on the day~~)) immediately after the primary or election was certified, as per RCW 29A.60.190 and 29A.60.230.

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((~~(5)~~)) (6) Failure to certify the returns, if they can be ascertained with reasonable certainty, may be considered a violation of RCW 29A.84.720. For purposes of RCW 29A.60.200, a refusal to certify the results of a primary or election is "without cause" if the office of the secretary of state determines the reason(s) provided in the written narrative:

(a) Are not supported by the credible testimony of knowledgeable witnesses, provided under penalty of perjury;

(b) Challenge the legality of any votes without reasonable evidence of illegality; or

(c) Are based on an allegation of technical errors for which there is no meaningful evidence.

(7) The county auditor must prepare a reconciliation report for every primary and election as required by RCW 29A.60.235 and state rule, and submit the complete report as directed by the office of the secretary of state. The office of the secretary of state shall review the reconciliation report for each county auditor and work with the county auditor to resolve discrepancies. If a discrepancy is resolved, the county auditor shall submit a correct reconciliation report to the office of the secretary of state seven days following the certification of the election. The corrected report then becomes the official reconciliation report for that election. The county auditor shall post the corrected report on the county auditor website.

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Rules Summary

The amendments in this rulemaking package:

- Clarify citation references to chapter 29A.60 RCW.
- Add forms with personally identifiable information (PII) to the list of documents that cannot be recorded, copied, scanned, emailed, or faxed in case of an emergency remote canvassing board meeting.
- Clarify that emergency canvassing board meetings can be held for a primary as well as an election.
- Clarify that the need for emergency procedures for a canvassing board meeting is not a valid reason to refuse certifying the primary or election.
- Require the canvassing board member(s) who refuse to sign the official certification documentation without cause to include a narrative statement with examples explaining why.
- Allow the canvassing board member(s) who would certify the election to include a statement in the written narrative.
- Clarify that the official county canvass report must be sent to OSOS immediately after the primary or election was certified.
- Define “without cause.”

Agency Reason for Adoption

Senate Bill 5843 (2024) added a provision to RCW 29A.60.200 stating that the secretary of state may examine a county’s election materials and certify the county-level election results if the county canvassing board refuses to certify the election without cause. This rulemaking is to create administrative code detailing the procedure in such a situation.

Agency Rulemaking Authority

RCW 29A.04.611 requires the secretary of state to create administrative rules to ensure consistency in the canvassing of primaries and elections.

Summary of the Rulemaking Activities

Formal comments were accepted April 2, 2026 8:00 AM through May 25, 2026 5:00 PM. The public had the opportunity to provide formal public comment at the public hearing and by email, fax, or mail.

The CR-101 Preproposal Statements of Inquiry were filed November 22, 2024 and December 19, 2025. Informal comments were accepted until March 31, 2026, 5:00 PM.

Changes to Rule (Proposed versus Adopted)

None.

Public Comment and Responses

Comment Period

The formal comment period for this rulemaking was April 2, 2026 8:00 AM through May 25, 2026 5:00 PM. A total of zero (0) comments were received.

Public Hearing

Date: May 26, 2026
Time: 10:00 AM
Location: 6880 Capitol Blvd. SE, Tumwater, WA 98501
Attendance: Zero (0) people
Testified: Zero (0) people

Summary of Comments Received and the Elections Division Responses

No comments were received.