

Chapter 434-261 WAC
COUNTING CENTER PROCEDURES
(Formerly chapter 434-61 WAC)

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

434-261-030 Receipt of ballots at intermediate collection station. [Statutory Authority: RCW 29A.04.611, 29A.04.530. WSR 06-02-028, § 434-261-030, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. WSR 97-21-045, recodified as § 434-261-030, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080 and 29.04.210. WSR 92-10-038, § 434-61-030, filed 5/4/92, effective 6/4/92.] Repealed by WSR 11-24-064, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630.

434-261-040 Receipt of ballots at the counting center. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. WSR 97-21-045, recodified as § 434-261-040, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080 and 29.04.210. WSR 92-10-038, § 434-61-040, filed 5/4/92, effective 6/4/92.] Repealed by WSR 11-24-064, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630.

434-261-060 Vote tallying system—A manual count of random precincts. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. WSR 97-21-045, recodified as § 434-261-060, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080 and 29.04.210. WSR 92-10-038, § 434-61-060, filed 5/4/92, effective 6/4/92.] Repealed by WSR 07-20-074, filed 10/1/07, effective 11/1/07. Statutory Authority: RCW 29A.04.611.

434-261-080 Ballot enhancement—Optical scan systems. [Statutory Authority: RCW 29.04.080 and 29.04.210. WSR 99-08-089, § 434-261-080, filed 4/6/99, effective 5/7/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. WSR 97-21-045, § 434-261-080, filed 10/13/97, effective 11/13/97.] Repealed by WSR 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.

434-261-085 Ballot enhancement—Punch card systems. [Statutory Authority: RCW 29.04.210, 29.36.150. WSR 02-07-029, § 434-261-085, filed 3/12/02, effective 4/12/02.] Repealed by WSR 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.

434-261-090 Ballot duplication. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. WSR 97-21-045, § 434-261-090, filed 10/13/97, effective 11/13/97.] Repealed by WSR 05-17-145, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.611.

434-261-105 Tabulation of ballots to be continuous—Exception. [Statutory Authority: RCW 29A.04.611. WSR 05-17-145, § 434-261-105, filed 8/19/05, effective 9/19/05.] Repealed by WSR 11-24-064, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630.

434-261-107 Daily canvassing. [Statutory Authority: RCW 29A.04.611. WSR 05-17-145, § 434-261-107, filed 8/19/05, effective 9/19/05.] Repealed by WSR 09-03-110, filed 1/21/09, effective 2/21/09. Statutory Authority: RCW 29A.04.611.

WAC 434-261-005 Definitions. (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed as part of the initial processing;

(2) "Ballot duplication" is the process of making a true copy of valid votes from a physically damaged ballot or a ballot that is unreadable or uncountable by the tabulation system onto a paper or electronic blank ballot to ensure the ballot may be correctly tabulated by the tabulation system. The original ballot may not be altered. Teams of two or more people working together must duplicate ballots according to voter intent as per WAC 434-261-086. A log of duplicated ballots must be signed by the two or more people who duplicated the ballots;

(3) "Ballot resolution" is the process of making changes on a voted electronic ballot image to ensure the ballot is tabulated according to the voter's intent. The changes must reflect the voter intent as per WAC 434-261-086 and the original ballot may not be altered. Changes must be made by teams of two or more people working together. A log of resolved ballots must be signed by the two or more people resolving the ballots;

(4) "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;

(5) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. Unreadable ballots may subsequently be counted as provided by these administrative rules;

(6) "Valid signature" on a ballot declaration for a registered voter eligible to vote in the election is:

(a) A signature verified against the voter's signature in the voter registration file attesting to the voter registration oath; or

(b) A mark witnessed by two people.

(7) "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";

(8) "Undervote" is no selections made for a race or measure;

(9) "Election observers" means those persons designated by the county political party central committee chairperson to observe the counting of ballots and related elections procedures;

(10) "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.

[Statutory Authority: RCW 29A.04.611. WSR 21-21-001, § 434-261-005, filed 10/6/21, effective 11/6/21. Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-005, filed 12/18/18, effective 1/18/19. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-261-005, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611, 29A.08.420, 29A.24.131, 29A.40.110, 29A.46.020, and 29A.80.041. WSR 10-14-091, § 434-261-005, filed 7/6/10, effective 8/6/10. Statutory Authority: RCW 29A.04.611. WSR 09-18-098, § 434-261-005, filed 9/1/09, effective 10/2/09; WSR 09-12-078, § 434-261-005, filed 5/29/09, effective 6/29/09; WSR 09-03-110, § 434-261-005, filed 1/21/09, effective

2/21/09; WSR 07-24-044, § 434-261-005, filed 11/30/07, effective 12/31/07; WSR 07-09-036, § 434-261-005, filed 4/11/07, effective 5/12/07; WSR 06-23-094, § 434-261-005, filed 11/15/06, effective 12/16/06; WSR 06-11-042, § 434-261-005, filed 5/10/06, effective 6/10/06; WSR 05-17-145, § 434-261-005, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.210, 29.36.150. WSR 02-07-029, § 434-261-005, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080 and 29.04.210. WSR 99-08-089, § 434-261-005, filed 4/6/99, effective 5/7/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. WSR 97-21-045, § 434-261-005, filed 10/13/97, effective 11/13/97.]

WAC 434-261-007 Broken or missing seals. If a seal is missing or broken without authority, all subsequent steps taken must be documented and included in a report to the canvassing board.

[Statutory Authority: RCW 29A.04.611. WSR 06-14-050, § 434-261-007, filed 6/28/06, effective 7/29/06.]

WAC 434-261-010 Counting center location—Direction of proceedings. The county auditor shall designate a location to serve as the counting center. If that location is other than the county auditor's office or county election office, the auditor shall include the location of the counting center in the published notice of elections. The county auditor shall be responsible for all counting center functions. Within the counting center, no person except those authorized by the county auditor may touch any ballot or ballot container, or operate a vote tallying system. The auditor shall identify either by roster or identification tag, or both, those persons so authorized. The vote tallying process shall be open to the public to the extent that public observation does not interfere with the proceedings or jeopardize the security of the ballots. The auditor shall establish local administrative rules pertaining to public observers including the media and how they may be accommodated and the necessary limitations thereto.

[Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-261-010, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. WSR 97-21-045, recodified as § 434-261-010, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080 and 29.04.210. WSR 92-10-038, § 434-61-010, filed 5/4/92, effective 6/4/92.]

WAC 434-261-020 Observers. Counting center operations shall be observed by at least one representative from each political party, if representatives have been appointed by the respective political parties and those representatives are present while the counting center is in operation.

Prior to processing ballots for a primary or election, the county auditor shall notify the major political parties in writing of the maximum number of official observers allowed to observe ballot processing and the date ballot processing begins. Where more than one observer is appointed, the political party shall designate one of the observers as supervisor. The county auditor may require observers to

receive training with respect to ballot processing procedures and the vote tallying system.

Before final assignment as observers, major political party representatives so appointed shall be reviewed by the county auditor, who may refuse to approve any person so appointed. In the event the auditor rejects a person designated, he or she shall promptly notify the political party concerned and request that a substitute observer be appointed, and shall ensure that the substitute observer is trained.

Representatives of the major political parties appointed as observers shall be identified by roster, including assigned observer stations if more than one in the counting center, and by identification tags which will indicate the observer's name and the party represented.

The counting center is under the direction of the county auditor. All observers are authorized to observe the processing of ballots for the current election as defined by WAC 434-250-110. Observers may not touch or record images of voted ballots, challenge signature check decisions, object to decisions to count or not count votes or ballots, or disrupt ballot processing. The county auditor shall provide written rules for observers. The county auditor may require an observer who does not follow the established rules to leave the counting center.

[Statutory Authority: RCW 29A.04.611. WSR 17-12-090, § 434-261-020, filed 6/6/17, effective 7/7/17. Statutory Authority: RCW 29A.04.611 and 29A.04.620. WSR 16-13-063, § 434-261-020, filed 6/13/16, effective 7/14/16. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-261-020, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.610. WSR 04-15-089, § 434-261-020, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. WSR 97-21-045, recodified as § 434-261-020, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080 and 29.04.210. WSR 92-10-038, § 434-61-020, filed 5/4/92, effective 6/4/92.]

WAC 434-261-045 Secure storage. Secure storage is a container or room that stores voted ballots and electronic data containing voted ballot images. Secure storage must employ the use of numbered seals and logs, or other security measures, that document each individual's access to the voted ballots or voted ballot images, and detect inappropriate access to the secure storage. Voted ballots and voted electronic ballot images must remain in secure storage except during processing, duplication, resolution, inspection by the canvassing board, or tabulation. Unsecured ballots must be accompanied by at least two county auditor staff at all times.

A secure location is a room or other facility where programming and equipment used for ballot tabulation are stored. A secure location must use the same security measures as for voted ballots and voted ballot images.

Use of numbered seals requires:

- (1) A seal log that documents the numbers of the seals and the individuals applying or removing seals; and
- (2) At least two individuals present when seals are applied or removed. Both must sign the seal log.

Closing of unstaffed ballot boxes must follow WAC 434-250-100. Voted ballots and voted ballot images may only be accessed in accordance with RCW 29A.60.110 and 29A.60.125.

[Statutory Authority: RCW 29A.04.611. WSR 18-10-003, § 434-261-045, filed 4/19/18, effective 5/20/18; WSR 09-03-110, § 434-261-045, filed 1/21/09, effective 2/21/09; WSR 06-11-042, § 434-261-045, filed 5/10/06, effective 6/10/06. Statutory Authority: RCW 29A.04.611, 29A.04.530. WSR 06-02-028, § 434-261-045, filed 12/28/05, effective 1/28/06.]

WAC 434-261-050 Unsigned ballot declaration or mismatched signatures.

(1) If a voter neglects to sign a ballot declaration, signs with a mark and fails to have two witnesses attest to the signature, or signs but the signature on the ballot declaration does not match the signature on the voter registration record, the county 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 county auditor must attempt to notify the voter by telephone using information in the voter registration record.

(2) If the voter neglects to sign, or signs with a mark and fails to have two witnesses attest to the signature, the voter must either:

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

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

(3) If the signature on the declaration 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 registration form becomes the signature in the voter registration record for the current election and future elections; or

(b) Sign a signature update form that includes both the ballot declaration required by WAC 434-230-015 and the voter registration oath required by RCW 29A.08.230, and return it to the county auditor no later than the day before certification of the primary or election. The signature on the signature update form must match the signature on the returned ballot declaration. The signature provided on the signature update form becomes the signature in the voter registration record for the current election and future elections.

(4)(a) If the signature on the declaration does not match the signature on the registration record because the last name is different, the ballot may be counted as long as the first name and handwriting are clearly the same. If it appears that the voter has changed his or her name, and the information required under RCW 29A.08.440 to complete a name change is not provided or is illegible, the county auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form.

(b) If the signature on the ballot declaration does not match the signature on the registration record because the voter signed with a middle name, nickname, or initials, the ballot may be counted as long as the last name and handwriting are clearly the same.

(5) If the name on the signature does not match the printed name, and the signature on the ballot declaration does not match the signa-

ture 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 ballot declaration if:

- (a) The voter who signed the declaration can be identified;
- (b) The signature on the declaration matches the signature on the voter registration record; and
- (c) The voter who signed the declaration has not returned another ballot.

The county auditor may only count the races and measures for which the voter who signed the declaration is eligible to vote.

(6) Disposition of other ballot signature circumstances:

(a) Ballot signed by a voter's signature stamp. The county auditor shall accept the signature stamp if it is accompanied by the signatures of two witnesses. Without the witness signatures, the county auditor shall process the ballot in the same manner as an unsigned ballot.

(b) Ballot declaration signed by a different voter and that voter has already submitted a ballot. If the county auditor receives a ballot where the ballot declaration is signed with the signature of a person who has previously submitted a ballot, the county auditor shall refer the ballot to the canvassing board for rejection. If the ballot was identified by staff on or before election day, the county auditor must attempt to contact the voter to whom the ballot was issued by phone, email, or if time allows, by mail and provide the voter a replacement ballot.

(7) If it is determined that the signature on a ballot declaration does not match the signature on the registration record and, prior to 8:00 p.m. on election day, the registered voter asserts that the signature on the ballot declaration is not his or her signature, the voter may be provided the opportunity to vote a replacement ballot.

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

(9) 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 subsequently submitted a signature to cure the missing or mismatched signature. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request.

[Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-050, filed 12/18/18, effective 1/18/19. Statutory Authority: RCW 29A.04.611. WSR 12-14-074, § 434-261-050, filed 7/2/12, effective 8/2/12. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-261-050, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611, 29A.08.420, 29A.24.131, 29A.40.110, 29A.46.020, and 29A.80.041. WSR 10-14-091, § 434-261-050, filed 7/6/10, effective 8/6/10. Statutory Authority: RCW 29A.04.611. WSR 06-23-094, § 434-261-050, filed 11/15/06, effective 12/16/06; WSR 06-14-050, § 434-261-050, filed 6/28/06, effective 7/29/06; WSR 05-17-145, § 434-261-050, filed 8/19/05, effective 9/19/05.]

WAC 434-261-055 Returned ballot lacking verification of identity. If a voter who is provisionally registered and must still verify his or her identity as part of the registration process casts a ballot

without providing adequate identification, the ballot cannot be counted unless the voter provides adequate identification no later than the day before certification of the election.

[Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-261-055, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. WSR 07-24-044, § 434-261-055, filed 11/30/07, effective 12/31/07; WSR 07-02-100, § 434-261-055, filed 1/3/07, effective 2/3/07.]

WAC 434-261-070 Manual inspection of ballots. (1) All voting positions on voted ballots shall be manually inspected on both sides of the ballot to determine whether the ballot is readable by the vote tabulating system. The county auditor must ensure that write-in votes are tabulated according to RCW 29A.60.021, consistent with the voter's intent. Ballots must be inspected for overvotes, undervotes, and write-in votes prior to tabulation. This manual inspection is a required part of processing ballots.

(2) The state of Washington is a voter intent state. When a voter's choice or intention can be determined, that vote shall be counted. If the manual inspection process detects any physically damaged ballots, unreadable ballots which might not be correctly counted by the tabulating equipment, or marks that differ from those specified in the voting instructions, such ballots may be duplicated or resolved, if necessary, and counted according to the statewide standards on what is a vote, as provided in WAC 434-261-086. The county canvassing board may authorize the county auditor to duplicate ballots that may be unreadable or uncountable by the tabulating system. Write-in votes without a readable mark in the target area must be processed according to the statewide standards on what is a vote found in WAC 434-261-086. The county canvassing board shall make the final determination of voter intent for ballots not addressed in the statewide standards on what is a vote.

[Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-070, filed 12/18/18, effective 1/18/19. Statutory Authority: RCW 29A.04.611. WSR 17-12-090, § 434-261-070, filed 6/6/17, effective 7/7/17. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-261-070, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. WSR 07-12-032, § 434-261-070, filed 5/30/07, effective 6/30/07; WSR 06-11-042, § 434-261-070, filed 5/10/06, effective 6/10/06; WSR 05-17-145, § 434-261-070, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. WSR 04-15-089, § 434-261-070, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.210, 29.36.150. WSR 02-07-029, § 434-261-070, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. WSR 97-21-045, § 434-261-070, filed 10/13/97, effective 11/13/97.]

WAC 434-261-075 Votes on something other than a ballot. If the voter returns voting responses by mail on any form other than a ballot, the votes thereon shall be acceptable and tallied provided that:

(1) Only votes for offices or measures for which the voter is eligible are counted.

(2) The candidate or measure response position for which the voter is voting can be clearly identified.

(3) The ballot issued is not returned, or if returned, contains no marks indicating an attempt to vote it.

(4) A valid signature on a ballot declaration is received with the voting responses.

The votes accepted must then be duplicated to a ballot that can be read by the electronic voting equipment.

Votes on a ballot from a previous primary or election cannot be counted for another primary or election. These ballots must be rejected per WAC 434-262-031.

[Statutory Authority: RCW 29A.04.611 and 29A.04.620. WSR 16-13-063, § 434-261-075, filed 6/13/16, effective 7/14/16. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-261-075, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. WSR 07-12-032, § 434-261-075, filed 5/30/07, effective 6/30/07; WSR 06-14-047, § 434-261-075, filed 6/28/06, effective 7/29/06; WSR 05-17-145, § 434-261-075, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.210, 29.36.150. WSR 02-07-029, § 434-261-075, filed 3/12/02, effective 4/12/02.]

WAC 434-261-086 Statewide standards on what is a vote. (1) Pursuant to 42 U.S.C. § 15481 (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. 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 not valid votes:

(i) Obvious stray marks;

(ii) Hesitation marks;

(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 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 and another pattern of similar marks is used for candidate races.

(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 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) If a second choice is marked, it shall be counted as a valid vote. If a second choice is not marked, the race shall be considered undervoted.
- (iii) 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. 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. Changes made by the voter to wording printed on the ballot will not invalidate votes cast for that race 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 include words, circles, lines, or arrows.
- (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 more target areas marked than are allowed are overvotes. No votes for that race or issue 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. 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 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. If a write-in vote is cast for a *declared* write-in candidate using a commonly recognizable nickname or spelling variation, it shall be counted as a valid vote for that candidate.
- (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 the tabulation system.
- (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 a combination of names already on the ballot, it shall 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. 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. 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 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 ballot, that vote shall be counted if it is determined, based on the voter's registration, that he or she is eligible to vote for that office or measure.

(p) Write-in: Vote in the wrong place. A write-in vote for a race 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.

(r) 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 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) Anything else. Voter intent on questionable marks not covered by the rules in this manual must be determined by county canvassing boards according to all applicable laws of the state of Washington and the canvassing board manual. Where more than one rule may apply, the county canvassing board has authority to determine which rule is most appropriate.

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

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

[Statutory Authority: RCW 29A.04.611. WSR 18-10-003, § 434-261-086, filed 4/19/18, effective 5/20/18; WSR 14-06-040, § 434-261-086, filed 2/26/14, effective 3/29/14; WSR 09-18-098, § 434-261-086, filed 9/1/09, effective 10/2/09; WSR 08-15-052, § 434-261-086, filed 7/11/08, effective 8/11/08; WSR 07-12-032, § 434-261-086, filed 5/30/07, effective 6/30/07.]

WAC 434-261-100 Ballot duplication procedures. (1) If a ballot is damaged, unreadable, uncountable, or unable to be resolved by the tabulation system, a team of two or more people working together must duplicate ballots to reflect the voter's intent according to WAC

434-261-086. A different team of two or more people working together must audit every duplicated ballot to verify the ballots were duplicated correctly. The voter's original ballot may not be altered. The county auditor shall tabulate the duplicate ballot.

If voter intent is not clear, the ballot must be referred to the canvassing board. When duplicating ballots, the county auditor shall take the following steps to create and maintain an audit trail of the action taken:

(a) Each original ballot and duplicate ballot must be assigned the same unique control number, with the number being marked upon the face of each ballot, to ensure that each duplicate ballot may be tied back to the original ballot;

(b) A log must be kept of the ballots duplicated, which must at least include:

(i) The control number of each original ballot and the corresponding duplicate ballot;

(ii) The initials of at least two people who participated in the duplication of each ballot; and

(iii) The total number of ballots duplicated.

Original and duplicate ballots must be kept in secure storage at all times, except during duplication, inspection by the canvassing board, or tabulation.

(2) Written procedures shall be established detailing the situations in which ballots may be duplicated. These procedures shall be included as a part of the county canvassing board manual.

(3) If a county uses an automated duplication program, only votes appearing in a human-readable form on the original ballot may be duplicated onto a machine-readable ballot. The human-readable votes on the original ballot must be compared to the votes printed on the duplicated ballot to ensure that the votes are duplicated accurately. If a human-readable version of any races or ballot pages of the original ballot are not returned or available, votes in those races may not be duplicated or counted.

[Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-100, filed 12/18/18, effective 1/18/19. Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-261-100, filed 2/26/14, effective 3/29/14; WSR 05-17-145, § 434-261-100, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. WSR 97-21-045, § 434-261-100, filed 10/13/97, effective 11/13/97.]

WAC 434-261-102 Resolving ballots on digital scan vote tallying systems. In counties tabulating ballots on a digital scan vote tallying system, two staff designated by the auditor's office must resolve each ballot identified as requiring resolution. Staff resolving ballots must have completed training on voter intent rules as outlined in WAC 434-261-086. A log of the resolutions must be printed linking staff conducting the resolutions to the ballots resolved. The log must be signed by the two staff.

[Statutory Authority: RCW 29A.04.611. WSR 18-10-003, § 434-261-102, filed 4/19/18, effective 5/20/18. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-261-102, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. WSR

06-23-094, § 434-261-102, filed 11/15/06, effective 12/16/06; WSR 06-11-042, § 434-261-102, filed 5/10/06, effective 6/10/06.]

WAC 434-261-106 Manual counting of ballots. Procedures for manual counting of ballots shall be substantially the same as a manual recount according to chapter 434-264 WAC.

[Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-261-106, filed 12/6/11, effective 1/6/12.]

WAC 434-261-108 Random check of ballot counting equipment. If a random check of up to six batches of ballots is conducted pursuant to RCW 29A.60.170 in a county that uses optical scan voting equipment, each batch must be tabulated on a different scanner if more than one scanner is used in the election. If there are more scanners used in the election than batches to be checked, then the scanners must be selected at random.

[Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-261-108, filed 2/26/14, effective 3/29/14.]

WAC 434-261-110 Election results anomalies. Precinct results, showing overvotes and undervotes, shall be inspected by the county canvassing board, or their designees, for anomalies that may indicate problems with the hardware or programming used to tabulate the votes. Anomalies may include, but are not limited to, an abnormal number of overvotes, undervotes, vote distribution, and voter turnout in any precinct, race, or jurisdiction. This inspection shall be completed within two days of the election.

Additionally, these results shall be used in the reconciliation process required in RCW 29A.60.235.

[Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-261-110, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. WSR 05-17-145, § 434-261-110, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29A.04.610. WSR 05-06-035 and 05-08-065, § 434-261-110, filed 2/25/05 and 3/31/05, effective 3/28/05 and 5/1/05.]

WAC 434-261-112 Direct recording electronic voting devices (DREs). Votes recorded on DREs must be uploaded into the ballot tabulation program or duplicated onto paper ballots. The upload or duplication may take place after election day. DRE data storage must remain in secure storage before and after tabulation.

[Statutory Authority: RCW 29A.04.611. WSR 17-12-090, § 434-261-112, filed 6/6/17, effective 7/7/17.]

POST-ELECTION DAY RISK-LIMITING AUDITS

WAC 434-261-114 Definitions. As used in this rule, unless stated otherwise:

(1) "Audit board" means a team of two people assigned to review voter choices on ballots selected for audit.

(2) "Ballot comparison audit" means a type of risk-limiting audit in which the audit board examines and reports voter markings for a designated contest (or contests) on randomly selected ballots, then compares them to the corresponding cast vote records until the audit results reflect with a strong amount of certainty that the reported tabulation outcome is correct.

(3) "Ballot manifest" means a document that indicates how the ballots are organized and stored, including identification of each batch of ballots by the voting system batch number, as well as the number of ballots in each batch.

(4) "Ballot polling audit" means a type of risk-limiting audit in which the audit board examines and reports voter markings for a designated contest on ballots selected randomly until the audit results reflect with a strong amount of certainty that the reported tabulation outcome is correct.

(5) "Cast vote record" or "CVR" means a record of all voter markings produced by a single voter on a ballot card, presented in electronic form, and is defined as a ballot in accordance with RCW 29A.04.008.

(6) "Reported tabulation outcome" means the presumed winning and losing candidates or voting choices of a ballot contest as reflected in preliminary results.

(7) "Unofficial results" means the tabulation results produced by the voting system at a specific point in time that will be used for comparison during the audit process.

(8) "Risk limit" means the largest statistical probability that an incorrect reported tabulation outcome is not detected in a risk-limiting audit.

(9) "Risk-limiting audit" or "RLA" means a post-election audit of votes on paper ballots and voter-verifiable paper audit trail (VVPAT) records that makes use of statistical principles and methods, is designed to limit the risk of certifying an incorrect election outcome, and is conducted in accordance with RCW 29A.60.185.

(10) "Risk-limiting audit tool" or "RLA tool" means the software and user interfaces provided by the secretary of state in order to conduct the risk-limiting audit.

(11) "Target contest" means a contest selected by the secretary of state or county auditor for a risk-limiting audit that will determine whether the risk limit has been met.

[Statutory Authority: RCW 29A.04.611. WSR 22-12-035, § 434-261-114, filed 5/25/22, effective 6/25/22. Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-114, filed 12/18/18, effective 1/18/19.]

WAC 434-261-115 Post-election audits. If the county auditor chooses to conduct a post-election risk-limiting audit under RCW 29A.60.185, the auditor must use one of the types of audits listed in RCW 29A.60.185.

[Statutory Authority: RCW 29A.04.611. WSR 22-12-035, § 434-261-115, filed 5/25/22, effective 6/25/22. Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-115, filed 12/18/18, effective 1/18/19.]

WAC 434-261-116 Preparing for a risk-limiting audit. (1) At least 45 days before a primary or election, a county intending to conduct a risk-limiting audit must notify the secretary of state. This notification must include information about the districts and offices to be included in the audit.

(2) After receiving notice from a county of the intent to conduct a risk-limiting audit and no later than 30 days before the primary or election, the secretary of state will establish and publish the risk limit(s) that will apply in risk-limiting audits for that election. The secretary of state may establish different risk limits for ballot comparison audits and ballot polling audits, and for audits of state-wide and county contests. In ballot comparison audits, the risk limit will not exceed five percent for statewide contests, and 10 percent for county contests.

(3) Observers are allowed in the same manner as RCW 29A.60.170 and WAC 434-261-020.

(4) The county must maintain an accurate ballot manifest in a form approved by the secretary of state and independent of the voting system.

(5) The county must secure and maintain in sealed ballot containers all tabulated ballots in the batches and order they are scanned. The county must maintain and document uninterrupted chain-of-custody for each ballot storage container.

(6) No later than the sixth day after election day, the county must pause or finish tabulating all ballots cast by voters registered in the county received and ready for counting. The results produced at this time constitute the unofficial results to be used in the risk-limiting audit. The county may, but is not required to, include in the unofficial results any provisional ballots that have been verified and accepted on or before the sixth day after election day. Immediately after producing the unofficial results, and to the extent permitted by its voting system, the county must also generate and preserve:

(a) An unofficial results report, showing overvotes, undervotes, and the number of valid write-in votes, if conducting a ballot polling audit; or

(b) A cast vote record export, if conducting a ballot comparison audit.

(7) Counties conducting a ballot comparison audit must verify that the number of individual cast vote records in its cast vote record export equals the aggregate number of ballot cards reflected in the county's ballot manifest at the time the unofficial results are produced.

(8) Copies of cast vote records used during the risk-limiting audit will be destroyed no later than 10 days following county certification.

(9) No later than 5:00 p.m. on the sixth day after election day, each county conducting a ballot comparison audit must submit as directed by the secretary of state:

(a) Its verified ballot manifest; and

(b) Its verified cast vote record export.

The secretary of state may direct counties to submit additional materials as required to conduct the risk-limiting audit.

(10) No later than 5:00 p.m. on the sixth day after election day, each county conducting a ballot polling audit must submit as directed by the secretary of state:

(a) Its verified ballot manifest; and

(b) Its unofficial results report, showing overvotes, undervotes, and the number of valid write-in votes.

The secretary of state may direct counties to submit additional materials as required to conduct the risk-limiting audit.

(11) The secretary of state will convene a public meeting on the seventh day after election day to establish a random seed for use with the risk-limiting audit tool's pseudorandom number generator.

The seed is a number consisting of at least 20 digits, and each digit will be selected in order by sequential rolls of a 10-sided die. The secretary of state will designate individuals to take turns rolling the die. The secretary of state will publish online the random seed after it is established.

(12) No later than 5:00 p.m. on the Friday after election day, the secretary of state will create a list of potential statewide contests using the criteria in (a) through (e) of this subsection, and then select by lot a statewide contest from that list. The secretary of state will also create for each county a list of potential contests wholly contained within that county using the criteria in (a) through (e) of this subsection, and select a contest by lot for each county from that list. These will be considered the target contests for the risk-limiting audit. The secretary of state will publish online a complete list of all target contests.

The secretary of state will consider at least the following factors in selecting the potential target contests:

(a) Contests that contain two or more positions/candidates;

(b) The geographical scope of the contests;

(c) The number of ballots counted in the contests;

(d) The closeness of the reported tabulation outcome of the contests; and

(e) The ability of the county staff to complete the audit before the canvass deadline.

(13) In addition to the randomly selected contest(s) and in coordination with the secretary of state's office, counties may choose to conduct a risk-limiting audit of a congressional or legislative district if all counties represented by the district agree to participate.

(14) The risk-limiting audit tool will randomly select the individual ballots to audit. The risk-limiting audit tool will use a pseudorandom number generator with the seed established under this section to identify individual ballots as reflected in the county ballot manifests. No later than the seventh day after election day, the secretary of state will notify each county of the randomly selected ballots that each county must audit.

[Statutory Authority: RCW 29A.04.611. WSR 22-12-035, § 434-261-116, filed 5/25/22, effective 6/25/22; WSR 19-19-033, § 434-261-116, filed 9/11/19, effective 10/12/19. Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-116, filed 12/18/18, effective 1/18/19.]

WAC 434-261-117 Conducting a risk-limiting audit. County elections staff must locate and retrieve each randomly selected ballot from the appropriate storage container. This process may be observed according to WAC 434-261-020. County elections staff must verify that the seals on the appropriate storage containers are those recorded on the applicable chain-of-custody logs.

(1) The county auditor will determine the number of audit boards needed to perform the audit and assign two people to each audit board. The audit board(s) will review each randomly selected paper ballot and report voter markings or choices in the designated contests using the risk-limiting audit tool or other means specified by the secretary of state. The audit board(s) must complete the audit of all ballots randomly selected for audit within two business days to allow time for additional ballots to be included if a discrepancy is identified in accordance with RCW 29A.60.185(3).

(2) The audit board(s) must interpret voter markings on ballots selected for audit in accordance with WAC 434-261-086. If the audit board members cannot unanimously agree on the voter's intent, they must indicate the inability to agree in the appropriate contest in the risk-limiting audit tool's audit board user interface, or other means specified by the secretary of state.

(3) In order to maintain voter privacy, the secretary of state will review the results of the audit as presented by the risk-limiting audit tool, and post the summary results of the audit online.

(4) If there is a discrepancy in a target contest that exceeds the risk limit, the risk-limiting audit will continue until the risk limit for the target contest is met or until a full hand count results.

The secretary of state may order a full hand recount of a target contest at the secretary's discretion if that decision would be more efficient than multiple iterations of risk-limiting audit processes.

(5) Each audit board participating in a risk-limiting audit must sign, date, and submit to the secretary of state a report of the results of the risk-limiting audit on the approved form within two business days. The report must include any discrepancies found.

[Statutory Authority: RCW 29A.04.611. WSR 22-12-035, § 434-261-117, filed 5/25/22, effective 6/25/22. Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-117, filed 12/18/18, effective 1/18/19.]

WAC 434-261-118 Risk-limiting audit reports. At the conclusion of a risk-limiting audit, the county auditor must segregate and seal the materials used during the post-election audit, including copies of all tabulation reports, the audited ballots, and a copy of the audit board report. These materials must be returned to secure storage with the ballots from that election and are subject to the same retention period as the materials for that election.

[Statutory Authority: RCW 29A.04.611. WSR 22-12-035, § 434-261-118, filed 5/25/22, effective 6/25/22. Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-118, filed 12/18/18, effective 1/18/19.]

WAC 434-261-119 Removal of risk-limiting audit board members.

The county auditor may remove from the audit board any persons who indicate to the county auditor that they cannot or do not wish to serve as audit board members, and/or who, in the judgment of the county auditor, lack the ability to properly serve as audit board members.

[Statutory Authority: RCW 29A.04.611, WSR 22-12-035, § 434-261-119, filed 5/25/22, effective 6/25/22. Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-119, filed 12/18/18, effective 1/18/19.]

WAC 434-261-120 Referral of questionable ballots to canvassing board.

Whenever counting center personnel has a question about the validity of a ballot or the votes contained on the ballot that they are unable to resolve, the ballot shall be forwarded to the canvassing board for review. The facts giving rise to the question of validity must be noted.

Ballots being held for determination of validity or voter's intent shall be provided the same security as regular voted ballots and shall be kept in a secure area when not being processed.

[Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-261-120, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. WSR 06-23-094, § 434-261-120, filed 11/15/06, effective 12/16/06; WSR 05-17-145, § 434-261-120, filed 8/19/05, effective 9/19/05.]

WAC 434-261-125 Free access system for provisional ballots. (1)

Each county shall establish a free access system, as required by the Help America Vote Act, 42 U.S.C. sec. 15482 (a) (5), and RCW 29A.60.195 for provisional ballot voters.

(2) The free access system must employ measures to ensure that access is free of cost to the voter and restricted to the individual who cast the ballot, and that the voter's personal information is secure and confidential.

(3) For provisional ballots sent to other counties in the state, the free access system must provide the voter with information as to where the ballot was sent and how to find out if the ballot was counted in that county.

(4) For ballots received from another county, the free access system must provide the voter with information as to whether the ballot was counted and, if not, why. The county may send instructions to the voter on how to access the information.

(5) Provisional ballot disposition information must be available on a county's free access system no later than one week following certification of the election.

[Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-261-125, filed 12/6/11, effective 1/6/12.]

WAC 434-261-130 Opening ballot container.

Whenever it is determined there is a need to open all containers to conduct a mandatory or requested recount, or when such action is directed by court order, the

containers shall be opened and the security of the ballots verified only by those persons designated to do so, in writing, by the canvassing board.

[Statutory Authority: RCW 29A.04.611. WSR 05-17-145, § 434-261-130, filed 8/19/05, effective 9/19/05.]

WAC 434-261-140 Precertification procedures. Prior to certifying the election, the county auditor shall exercise due diligence to confirm that all returned ballots have been received, processed, and reconciled, and that no ballots have been untabulated erroneously. Due diligence may include:

- (1) Rechecking all ballot deposit sites; and
- (2) Rechecking ballot storage containers in the ballot processing area, ballot tabulation area, canvassing board area, and vault.

[Statutory Authority: RCW 29A.04.611. WSR 12-14-074, § 434-261-140, filed 7/2/12, effective 8/2/12.]