



RULE-MAKING ORDER

SR-103 (June 2004) (Implements RCW 34.05.360)

Agency: WA State Department of Agriculture

- Permanent Rule
 Emergency Rule

Effective date of rule:

Effective date of rule:

Permanent Rules

Emergency Rules

- 31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

- Immediately upon filing.
 Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: Revises the Department's emergency procedural rule which outlines for affected parties how ballots received in elections for advisory votes, marketing order referenda, and board member selection will be handled if the eligible voter did not sign and date the ballot mailing envelope as part of the certification process specified on the envelope.

Citation of existing rules affected by this order:

Repealed:
 Amended:
 Suspended:

Statutory authority for adoption: RCW 15.65.047 and RCW 15.66.055

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR _____ on _____ (date).

Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The Department is responsible for administering elections for advisory votes, marketing order referenda, and commodity commission board member selection. It received a request for a recount in an election where certain ballots were received without the Certificate of Eligibility having been completed by the voter. The Department did not have procedural rules to address how those ballots should be handled and whether they should be included in a recount of ballots. The Department adopted Emergency Rule WSR# 05-01-031 on December 3, 2004 to specify how the ballots contained in unsigned ballots envelopes could be validated by the voter. However, the Department has revised its emergency rule following the December 14, 2004 Washington Supreme Court decision in *McDonald v. Reed* that clarified the meaning of the word "recount" to mean the process of retabulating only those ballots that had been previously counted. This rule is adopted to specify how the Department will handle uncertified ballots beginning as of the effective date of this rule and supercedes Emergency Rule WSR# 05-01-031 adopted on December 3, 2004.

Date adopted:

12/20/04

NAME (TYPE OR PRINT)

Valoria H. Loveland

SIGNATURE

Mary C. Martin-Lovejoy for

TITLE

Director

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
 STATE OF WASHINGTON
 FILED

DEC 20 2004

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TIME _____ AM/PM
 WSR# 05-01-160

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

NEW SECTION

16-07-001 Unsigned ballot envelopes: advisory votes, referenda, and board member elections. The director of the department of agriculture is responsible for administering elections for advisory votes, marketing order referenda and board member selection as required in chapters 15.65, 15.66, 15.24, 15.28, 15.44, 15.88, and 16.67 RCW.

(1) The Department will mail ballots to those eligible to vote in each election according to the terms of the applicable statute or marketing order. Each voter will be provided an official ballot, instructions for voting, a security envelope and a return ballot-mailing envelope with a "Certificate of Eligibility" (certification) printed on the reverse side of the envelope.

(2) After casting its vote in the election, an eligible voter must place the ballot in the security envelope. The security envelope is then to be placed in the ballot-mailing return envelope with the certification on the reverse side. To validate its ballot, the voter is required to complete, sign and date the certification.

(3) In the event a ballot is submitted to the Department and the certification is not signed and dated in accordance with the instructions contained on the outside of the ballot-mailing return envelope or the ballot is returned in a different envelope without a certification, the Department shall process the ballot and the ballot-mailing return envelope as follows, if the Department is able to ascertain the identity of the eligible voter from the envelope:

(a) The Department will not open the ballot-mailing return envelope, but will make a copy of the reverse side of the ballot-mailing return envelope with the printed certification. The original ballot-mailing return envelope will be held by the Department.

(b) The Department will provide the eligible voter with a copy of the ballot-mailing return envelope with the certification and require the voter to sign the copy of the certification and mail it back to the Department so that it is received not later than the date specified in the correspondence accompanying the certification.

(c) The Department shall advise the voter about the correct procedures for completing the unsigned certification and that, in order for the ballot to be counted, the voter must sign the copy of the certification, and mail it back to the Department so that it does not arrive later than the specified date.

(d) The eligible voter must sign, date and return the certification to the Department within fourteen (14) calendar days from the United States mail date stamp for the voter's ballot to be validated.

(e) If Department does not receive the signed certification with the requested information within the specified timeframe, the original ballot-mailing envelope will not be opened nor will the ballot it contains be counted. The unopened ballot-mailing envelope will be set aside and retained in accordance with the appropriate records retention schedule.

(4) A record shall be kept of the date on which the Department mailed a copy of the certification to the eligible voter, the date on which the voter signed the certification and the date that the Department received the certification. That record will be retained in accordance with applicable records retention schedules for ballots.

(5) Only validated ballots will be included in a ballot count.

(6) This rule applies to elections and run-offs required by statute that are conducted after the effective date of this rule. However, subsections (3) and (4) do not apply in an election once any election ballots have been counted or in a run-off election once any run-off election ballots have been counted.

(7) This rule does not apply if the recount period specified in the applicable statute has expired.