

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 Repealed by WSR 11-24-064, filed 12/6/11, effective 1/6/12.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 Repealed by WSR 11-24-064, filed 12/6/11, effective 1/6/12.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.

434-261-050 Unsigned ballot declaration or mismatched signatures. [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.] Repealed by WSR 24-07-018, filed 3/8/24, effective 5/4/24. Statutory Authority: RCW 29A.04.611.

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;

(b) A mark witnessed by two people; or

(c) A signature verified against the voter's signature in the voter registration file attesting to the ballot declaration.

(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 24-03-053, § 434-261-005, filed 1/10/24, effective 2/10/24; 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 pro-

cessing, 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 434-261-051 Standards for verifying ballot declaration signatures.

(1) This regulation, together with WAC 434-261-052 and 434-261-053, describes the process for verifying that a signature on the ballot declaration is the voter's registration signature.

(2) At each stage of the signature verification process, there is a presumption that the signature on the ballot declaration is the voter's signature.

(3) When reviewing ballot declaration signatures, staff assigned to verify signatures shall consider the following criteria:

(a) Agreement in style and general appearance, including basic construction, skill, alignment, fluency, and a general uniformity and consistency between signatures;

(b) Agreement in the proportions of individual letters, height to width, and heights of the upper to lower case letters;

(c) Irregular spacing, slants, or sizes of letters that are duplicated in both signatures;

(d) Agreement of the most distinctive, unusual traits of the signatures;

(e) The ballot declaration signature is in the same format as the voter registration signatures, such as printed, in cursive, or another form;

(f) Agreement of individual characteristics, such as how "t's" are crossed, "i's" are dotted, or loops are made on letters;

(g) Agreement of initial strokes and connecting strokes of the signature;

(h) Agreement of similar endings, such as an abrupt end, a long tail, or loop back around;

(i) Agreement of presence or absence of pen lifts;

(j) Agreement in the way names are spelled; and

(k) After considering the general traits, agreement of the most distinctive, unusual traits of the signatures.

(4) When reviewing ballot declaration signatures that appear to contain discrepancies, staff verifying signatures should accept signa-

tures if the appearance of a discrepancy can reasonably be explained by the following:

(a) A shaky signature that could be health-related or the result of aging;

(b) The voter's use of a variation of the voter's full name, such as the use of initials, including or omitting a middle name, or substituting a middle name for a first name;

(c) A change in the voter's signature over time;

(d) A signature written in haste;

(e) A signature in the voter's registration file that was written with a stylus pen or other electronic signature tool, which may result in a thick or fuzzy quality;

(f) A writing surface that was hard, soft, uneven, or unstable;

(g) The voter has a limited history of fewer than three ballots returned; and

(h) Any other reasonable factor.

(5) An agent, including someone acting under a power of attorney, cannot sign a ballot declaration on behalf of their principal.

(6) If a voter inadvertently signs another voter's ballot declaration, but elections personnel can identify the correct voter and verify that voter's signature, the signature and the ballot must be accepted for the voter that signed the ballot declaration.

(7) All staff verifying ballot declaration signatures must receive training on these signature verification standards before verifying ballot declaration signatures. They must attend the training at least once every two years. This applies to, but is not necessarily limited to, individuals performing the initial review, secondary review, and review of signatures as part of the cure process. Members of the county canvassing board are required to receive training except as exempted by RCW 29A.04.540.

(8) The canvassing board may designate the county auditor or the county auditor's staff to perform the signature verification function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of their duties.

(9) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

[Statutory Authority: RCW 29A.04.611. WSR 24-07-018, § 434-261-051, filed 3/8/24, effective 5/4/24.]

WAC 434-261-052 Initial and secondary review of ballot declaration signatures. (1) When conducting an initial review of a ballot declaration signature, the county auditor must accept the signature under the following conditions:

(a) The county auditor must accept the signature unless, considering the criteria in WAC 434-261-051 (3) and (4), the signature on the ballot envelope has multiple, significant, and obvious discrepancies from all signatures in the voter's registration record; or

(b) If the voter is unable to sign their name as they are registered to vote, the signature must be accepted so long as the voter has made a mark, symbol, or signature stamp, and the ballot declaration includes two witness signatures.

(2) If the signature is not accepted following the initial review, the ballot declaration signature must be referred to a second review.

(a) A different person who has received signature verification training under WAC 434-261-051(7) must conduct the second review of the signature.

(b) If, considering the criteria in WAC 434-261-051 (3) and (4), the second reviewer determines that there are multiple, significant, obvious discrepancies from all signatures in the voter's registration record, the voter must be notified of the process to cure the signature;

(3) The county auditor may conduct additional reviews of ballot declaration signatures that have not yet been accepted. For example, if the county auditor becomes aware of reasonable explanations that should be considered under WAC 434-261-051(4), an additional review may be appropriate.

(4) Even if the ballot declaration signature appears to match the signature in the voter registration record, and notwithstanding any other provision, a ballot may be referred to the canvassing board if there is clear, objective evidence, beyond the signature itself, that a ballot declaration signature is fraudulent. This provision is intended to apply only very rarely, such as in instances of confessed forgery or similar circumstances. A person verifying signatures may refer a ballot declaration signature to the county auditor, and, if satisfied that the standard is met, the county auditor may refer the ballot to the canvassing board. The county auditor and the canvassing board may refer the matter to law enforcement.

(5) The county auditor may conduct the initial signature review by using an automated verification system approved by the secretary of state. If a signature is not accepted by the automated verification system, the county auditor must manually use the process described in this section.

(6) If two ballots are returned in one return envelope, ballots may be accepted in the following manner. In all other circumstances, the ballots must be referred to the canvassing board for rejection.

(a) If there is only one valid signature on the ballot declaration and the races and measures voted are the same on both ballots, the races and measures voted the same on both ballots may be counted once;

(b) If there are two valid signatures on the ballot declaration, both ballots may be counted in their entirety; or

(c) If there is one valid signature on the ballot declaration and the envelope contains one voted ballot and one blank ballot without marked votes, the voted ballot may be counted in its entirety.

[Statutory Authority: RCW 29A.04.611. WSR 24-07-018, § 434-261-052, filed 3/8/24, effective 5/4/24.]

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, 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 forms 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) Phone (if the voter has provided a phone number);

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

(d) Email (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.

(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 voter's signature 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 voter's signature in the voter registration record using the process described in WAC 434-261-052.

(4) A voter using a mark 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 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 number or state identity card 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(7) 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 vote a provisional ballot.

(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.

[Statutory Authority: RCW 29A.04.611. WSR 24-07-018, § 434-261-053, filed 3/8/24, effective 5/4/24.]

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 sim-

ilar 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) "Random seed" means a number string consisting of at least 20 digits, with each digit selected in order by sequential rolls of a 10-sided die.

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

(8) "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.

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

(10) "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.

(11) "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.

(12) "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 23-20-040, § 434-261-114, filed 9/27/23, effective 10/28/23; 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 Risk-limiting audits for county races and measures.

(1) 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.

(2) At least 45 days prior to a primary or election, a county intending to conduct a risk-limiting audit must notify the secretary of state.

(3) After receiving notice from a county of the intent to conduct a risk-limiting audit and no later than 30 days prior to 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 federal, state, and county contests. In ballot comparison audits, the risk limit will not exceed five percent for federal and state contests, and 10 percent for county contests.

(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) 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.

(6) The county must maintain and document uninterrupted chain-of-custody for each ballot storage container.

(7) If no risk-limiting audit is called for by the secretary of state, the county auditor may choose the date and time of the risk-limiting audit, in coordination with the secretary of state, to begin no later than two days prior to county certification.

Each county conducting a county-level risk-limiting audit must submit as directed by the secretary of state:

- (a) The verified ballot manifest; and
- (b) Either:

- (i) The verified cast vote record export, if conducting a ballot comparison audit; or
- (ii) The unofficial results report, showing overvotes, undervotes and the number of valid write-in votes, if conducting a ballot polling audit.

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

(8) If no statewide office appears on the ballot, no later than 5:00 p.m. on the Friday after election day, the county auditor will create a list of potential contests wholly contained within that county using the criteria in (a) through (e) of this subsection, and then randomly select a contest from that list. This will be considered the target contest for the risk-limiting audit. The county auditor will inform the secretary of state which contest has been chosen, and the secretary of state will publish online a complete list of all target contests.

The county auditor 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.

(9) 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 shared district if all counties represented by the district agree to participate.

(10) No later than 5:00 p.m. on the Friday after election day, the secretary of state will hold a public event to establish a random seed for use with the risk-limiting audit tool. The secretary of state will publish online the random seed after it is established.

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

[Statutory Authority: RCW 29A.04.611. WSR 23-20-040, § 434-261-115, filed 9/27/23, effective 10/28/23; 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 Risk-limiting audits for state races and measures. (1) At least 45 days prior to a primary or election, the secretary of state may call for a risk-limiting audit of an office that files with the secretary of state and/or a state measure. The secretary of state shall determine the date and time of the risk-limiting audit.

(2) No later than 30 days prior to 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 federal, state, and county contests. In ballot comparison audits, the risk limit will not ex-

ceed five percent for federal and state contests, and 10 percent for county contests.

(3) Counties involved in the audit must maintain an accurate ballot manifest in a form approved by the secretary of state and independent of the voting system.

(4) For a ballot comparison audit, counties 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.

(5) Counties must maintain and document uninterrupted chain-of-custody for each ballot storage container.

(6) No later than 5:00 p.m. on the day prior to the risk-limiting audit, each county must pause or finish tabulating all ballots cast by voters registered in the county received and ready for counting, and submit as directed by the secretary of state:

(a) The verified ballot manifest; and

(b) Either:

(i) The verified cast vote record export, if conducting a ballot comparison audit; or

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

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

(7) 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.

(8) The county auditor may choose to conduct a risk-limiting audit of the county contest selected in subsection (7) of this section or use another audit method listed in RCW 29A.60.185 to satisfy the audit requirement for their county.

(9) No later than 5:00 p.m. on the Friday after election day, the secretary of state will hold a public event to establish a random seed for use with the risk-limiting audit tool. The secretary of state will publish online the random seed after it is established.

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

[Statutory Authority: RCW 29A.04.611. WSR 23-20-040, § 434-261-116, filed 9/27/23, effective 10/28/23; 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, 52 U.S.C. § 21082 (a) (5) (B), 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. WSR 23-15-018, § 434-261-125, filed 7/7/23, effective 8/7/23. 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.]