

WSR 23-24-082

PROPOSED RULES

SECRETARY OF STATE

[Filed December 5, 2023, 11:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-090.

Title of Rule and Other Identifying Information: General elections rule updates to align with legislative updates.

Hearing Location(s): On January 9, 2024, at 1:00 p.m., at the Washington Secretary of State, Washington State Library, 6880 Capitol Boulevard S.E., Tumwater, WA 98501. When attending the hearing in person, walk into the front lobby of the Washington State Library. You will be escorted to the conference room at 12:59 p.m. to be present when the hearing begins at 1:00 p.m. If you arrive after that time, there will be a staff member available in the lobby to escort you to the conference room.

Date of Intended Adoption: January 10, 2024.

Submit Written Comments to: Dave Piersma, P.O. Box 40229, Olympia, WA 98504, email dave.piersma@sos.wa.gov, fax 360-664-4619, by January 8, 2024.

Assistance for Persons with Disabilities: Contact Dave Piersma, phone 360-902-4172, fax 360-664-4619, email dave.piersma@sos.wa.gov, by January 8, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposals is to update the election administration processes in accordance with legislative amendments.

Reasons Supporting Proposal: Consistency in operations in all county elections offices when conducting election administration processes in accordance with state law.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 29A.08.725, 29A.24.040, 29A.24.050, 29A.24.070, 29A.32.125, 29A.40.110, 29A.40.160, 29A.72.040, 29A.72.250, 29A.72.283, 29A.72.290.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Office of the secretary of the state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stuart Holmes, Olympia, 360-902-4151.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

December 1, 2023
Amanda Doyle
Chief of Staff

OTS-4856.2

AMENDATORY SECTION (Amending WSR 19-05-041, filed 2/14/19, effective 3/17/19)

WAC 434-208-060 Electronic filings. (1) In addition to those documents specified by RCW 29A.04.255, the secretary of state or the county auditor shall accept and file in his or her office electronic transmissions of the following documents:

- (a) The text of any proposed initiative, referendum, or recall measure and any accompanying documents required by law;
- (b) Any minor party or independent candidate filing material for president and vice president, except nominating petitions;
- (c) Lists of presidential electors selected by political parties or independent candidates;
- (d) Voted ballots and signed ballot declarations from service and overseas voters received no later than 8:00 p.m. on election day;
- (e) Resolutions from cities, towns, and other districts calling for a special election;
- (f) Voter registration and cancellation forms, unless the form is illegible or the signature image is poor quality, requiring the county auditor to reject the form;
- (g) Signed ballot declarations, and any accompanying materials, submitted pursuant to RCW 29A.60.165 and WAC 434-261-050; and
- (h) Requests to withdraw.

(2) If payment of a fee is required, the electronic filing is not complete until the fee is received.

(3) No initiative, referendum, recall, or other signature petitions may be filed electronically.

(4) County auditors must use best practices provided by the secretary of state for securely handling documents received by fax and email.

OTS-4855.4

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-215-040 ((Filing notification.)) Online filing—Contingency plan. ((Declarations of candidacy for legislative, court of appeals, and superior court districts located within one county must be filed with the county auditor.)) In the event of an internet outage or disruption to the office of the secretary of state's online candidate filing system, declarations of candidacy and filing fees for offices that file with the secretary of state may be received in person by any county auditor during the last two hours of the filing period. All information listed on the declaration of candidacy for these offices must be ((sent electronically)) transmitted to the secretary of state ((the same day)) as soon as practicable after the filing was accepted.

OTS-4849.1

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

WAC 434-215-065 Withdrawal of candidacy. Consistent with RCW 29A.24.131, a candidate may withdraw (~~((his or her))~~) their declaration of candidacy at any time before (~~((the close of business))~~) 5:00 p.m. on the Monday following the last day for candidates to file. The candidate must file a signed request that (~~((his or her))~~) their name not be printed on the ballot. This request to withdraw must be filed with the officer who accepted the declaration of candidacy. A request to withdraw may be filed electronically. Once filed, the withdrawal cannot be revoked. There shall be no withdrawal period for declarations of candidacy filed during special filing periods.

OTS-4850.1

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

WAC 434-230-025 Order of offices. Measures and offices must be listed in the following order, to the extent that they appear on a primary or election ballot:

- (1) Initiatives to the people;
- (2) Referendum measures;
- (3) Referendum bills;
- (4) Initiatives to the legislature and any alternate proposals;
- (5) (~~Advisory votes;~~
- ~~(6))~~ Proposed constitutional amendments (senate joint resolutions, then house joint resolutions);
- ~~((7))~~ (6) Countywide ballot measures;
- ~~((8))~~ (7) President and vice president of the United States;
- ~~((9))~~ (8) United States senator;
- ~~((10))~~ (9) United States representative;
- ~~((11))~~ (10) Governor;
- ~~((12))~~ (11) Lieutenant governor;
- ~~((13))~~ (12) Secretary of state;
- ~~((14))~~ (13) State treasurer;
- ~~((15))~~ (14) State auditor;
- ~~((16))~~ (15) Attorney general;
- ~~((17))~~ (16) Commissioner of public lands;
- ~~((18))~~ (17) Superintendent of public instruction;
- ~~((19))~~ (18) Insurance commissioner;
- ~~((20))~~ (19) State senator;
- ~~((21))~~ (20) State representative;
- ~~((22))~~ (21) County officers;
- ~~((23))~~ (22) Justices of the supreme court;
- ~~((24))~~ (23) Judges of the court of appeals;
- ~~((25))~~ (24) Judges of the superior court; and
- ~~((26))~~ (25) Judges of the district court.

For all other jurisdictions, the offices in each jurisdiction shall be grouped together and listed by position number according to county auditor procedures.

OTS-4851.3

AMENDATORY SECTION (Amending WSR 22-10-041, filed 4/27/22, effective 5/28/22)

WAC 434-232-040 Information pertaining to primary-only voters, when disclosable. (1) Pursuant to RCW 29A.08.720, personally identifiable information from the voter registration record is exempt from public inspection and copying until the voter is 18 years of age, ~~((except for the purpose of processing and delivering ballots))~~ or until the person is eligible to participate in the next presidential primary, primary, or election.

(2) Pursuant to RCW 29A.40.130, ballot issuance and return information for a primary-only voter, excluding the date of birth, gender, and address, is subject to public disclosure at the time of ballot issuance by the county auditor for a presidential primary or primary that the voter is eligible to participate in.

(3) Pursuant to RCW 29A.08.170, a person who signs up to register to vote must remain as a "future voter" as defined by RCW 29A.04.070 until such time as they will be eligible to vote in the next election. The voter registration information is exempt from public inspection and copying until they are 18 years of age or until the person is eligible to participate in the next presidential primary, primary, or election. ~~((The ballot issuance and return information is exempt until they are eligible to participate in an election. When a person is eligible to participate in an election, the date of birth, gender, and address of the person is exempt from disclosure when providing ballot issuance and return information in accordance with RCW 29A.40.130 until they are 18 years of age.))~~

OTS-4847.1

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

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 bal-

lots 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; 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.

OTS-4857.1

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

WAC 434-324-090 Cancellation due to death—Process. (1) An auditor must cancel the voter registration records of a deceased voter as authorized by RCW 29A.08.510.

(2) In addition to comparing a list of deceased persons prepared by the registrar of vital statistics with voter registration records pursuant to RCW 29A.08.510, the secretary may also compare voter reg-

istration records with deceased persons' information from the Social Security Administration. Comparisons must be conducted on a monthly basis. For any potential matches identified through the registrar of vital statistics or Social Security Administration, the secretary must confirm that the dates of birth are identical. The secretary must generate a county list of matching names, identified as potentially deceased voters, and provide the names to each auditor electronically. The auditor must review the list and approve or reject the proposed cancellations. The secretary may assist the auditor with this review.

(3) The county auditor must remove a participant from the future voter program established under RCW 29A.08.170 upon receipt of documentation from Vital Statistics, Social Security Administration, official death certificate, or written confirmation from another registered voter that the participant is deceased.

OTS-4854.2

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-381-120 Deadlines. (1) Candidate statements and photographs shall be submitted to the secretary of state no later than ~~((the Friday))~~ 11 days following the last day of the filing period.

(a) A declared primary election write-in candidate may submit a statement and photograph to the secretary of state no later than the Tuesday following the primary election.

(b) An unopposed candidate on the primary ballot may submit a revised statement only when a write-in candidate for the same position files a declaration of candidacy. The revised statement must be received no later than the Tuesday following the primary election.

(2) For ballot measures, including initiatives, referenda, alternatives to initiatives to the legislature, and constitutional amendments, the following documents shall be filed with the secretary of state on or before the following deadlines:

(a) Appointments of the initial two members of committees to prepare arguments for and against measures:

(i) For an initiative to the people or referendum measure: No later than seven business days after the submission of signed petitions to the secretary of state;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, no later than seven business days after the adjournment of the regular or special session at which the legislature approved or referred the measure to the ballot;

(b) Appointment of additional members of committees to prepare arguments for and against ballot measures, no later than the date the committee submits its initial argument to the secretary of state;

(c) For arguments for or against a ballot measure:

(i) For an initiative to the people or referendum measure: No later than ~~((ten))~~ 10 business days following appointment of the initial committee members;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, no later than

((fourteen)) 14 business days following appointment of the initial committee members;

(d) Rebuttals of arguments for or against a ballot measure, no later than five business days following the transmittal of the final statement to the committees by the secretary. The secretary shall not transmit arguments to opposing committees for the purpose of rebuttals until both arguments are complete.

(3) If a ballot measure is the product of a special session of the legislature and the secretary of state determines that the deadlines set forth in subsection (2) of this section are impractical due to the timing of that special session, then the secretary of state may establish a schedule of deadlines unique to that measure.

(4) The deadlines stated in this rule are intended to promote the timely publication of the voters' pamphlet. Nothing in this rule shall preclude the secretary of state from accepting a late filing when, in the secretary's judgment, it is reasonable to do so. Once statements or arguments are submitted to the secretary, changes by the candidate or committee will not be accepted unless requested by the secretary.