

WSR 24-10-116
PROPOSED RULES
SECRETARY OF STATE
[Filed May 1, 2024, 11:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-091.

Title of Rule and Other Identifying Information: Ballot declaration signature verification standards.

Hearing Location(s): On June 4, 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 12:55 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: June 5, 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 June 3, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Dave Piersma, phone 360-902-4172, fax 360-664-4619, email dave.piersma@sos.wa.gov, by June 3, 2024, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update the process and standards for verifying ballot declaration signatures in a manner that reduces and ensures consistency in counties throughout the state. The rule is expected to result in fewer mistaken rejections of valid ballots.

Reasons Supporting Proposal: The signature verification process ensures that only valid ballots are counted in elections. At times, valid ballots are not accepted because the signatures do not appear to match. The reason for the adoption of this rule is to ensure that valid ballots are not mistakenly rejected while also ensuring that the signature verification process prevents the acceptance of invalid ballots, expand outreach to voters if their provided signature does not match the signature on record, and update procedures for accepting or challenging a ballot declaration signature.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 29A.60.165, 29A.40.110.

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

Name of Proponent: Office of the secretary of 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.

May 1, 2024
Amanda Doyle
Chief of Staff

OTS-5396.1

AMENDATORY SECTION (Amending WSR 24-03-053, filed 1/10/24, effective 2/10/24)

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~~) or 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 forms and cancellation (~~forms~~) material(s), unless the form or material(s) is illegible or the signature image is poor quality, requiring the county auditor to reject the form or material(s);
- (g) Signed ballot declarations, and any accompanying materials, submitted pursuant to RCW 29A.60.165 and WAC (~~434-261-050~~) 434-261-053; and
- (h) Requests to withdraw a declaration of candidacy.

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

(3) No initiative, nominating petition, 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-5398.2

AMENDATORY SECTION (Amending WSR 24-07-018, filed 3/8/24, effective 5/4/24)

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)) same as the signature(s) in the voter registration ((signature)) record.

(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, characters, or symbols, height to width, and heights of the upper to lower case letters, characters, or symbols;

(c) Irregular spacing, slants, or sizes of letters, characters, or symbols 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 signature(s) in the voter registration ((signatures)) record, such as in printed((, -in)) or cursive, various languages, pictorial, symbol, 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, characters, or symbols;

(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) If it appears the voter has changed their name, and the information required under RCW 29A.08.440 to complete a name change is not provided or legible, the county auditor shall send the voter a change of name form or voter registration form under RCW 29A.08.440 and direct the voter to complete the form.

(5) When reviewing ballot declaration signatures that appear to contain ((diserepancies)) a discrepancy, staff verifying signatures should accept signatures 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)) record 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))~~ (6) An agent, including someone acting under a power of attorney, cannot sign a ballot declaration on behalf of their principal.

~~((6))~~ (7) 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 provided signature matches the signature(s) in the voter registration record and verify that the voter who signed the ballot declaration has not returned another ballot, the signature and the ballot must be accepted for the voter (~~(that)~~) who signed the ballot declaration. The county auditor may only count the races and measures for which the voter who signed the declaration is eligible to vote. If the voter who signed the ballot declaration has previously submitted a ballot, the county auditor shall refer the ballot(s) received after the initially received ballot to the canvassing board. 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, text message, or, if time allows, by mail, and provide the voter a replacement ballot.

~~((7))~~ (8) 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. The county auditor shall publish on its website the names of all canvassing board members who received training on the statewide standards for signature verification and the date(s) on which the training was completed. The website shall be updated at least 18 days before the next election with the canvassing board members' training date(s).

~~((8))~~ (9) 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))~~ (10) 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.

AMENDATORY SECTION (Amending WSR 24-07-018, 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)~~) the signature(s) in the (~~(voter's)) voter 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))~~) (8) 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)~~) the signature(s) in the (~~(voter's)~~) voter 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))~~) (5), an additional review may be appropriate.

(4) Even if the ballot declaration signature appears to match the (~~(signature)~~) signature(s) 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.

AMENDATORY SECTION (Amending WSR 24-07-018, 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, that the signature on the ballot declaration does not match the signature(s) in the voter registration record. The county must notify the voter 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 form(~~s~~) 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~~) Telephone, leaving a voicemail if the voter does not answer and voicemail is available (if the voter has provided a phone number);

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

(d) Email, enclosing a copy of the signature cure form (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.

If the voter has not responded to the signature cure notice by five business days before the final meeting of the canvassing board, the county auditor must attempt to notify the voter by:

(a) Telephone, leaving a voicemail if the voter does not answer and voicemail is available (if the voter has provided a phone number);

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

(c) Email, enclosing a copy of the signature cure form (if the voter has provided an email address).

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

(4) A voter using a mark or signature stamp 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 or signature stamp 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)~~), instruction permit, or state (~~(identity card)~~) identocard 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)~~) (8) 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)~~) be provided the opportunity to vote a replacement 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.

OTS-5397.2

AMENDATORY SECTION (Amending WSR 24-07-018, filed 3/8/24, effective 5/4/24)

WAC 434-262-031 Rejection of ballots or parts of ballots. (1) The disposition of provisional ballots is governed by WAC 434-262-032. The county canvassing board must reject any ballot cast by a voter who was not qualified to vote, or for other reasons required by law or administrative rule. A log must be kept of all voted ballots rejected, and must be included in the minutes of each county canvassing board meeting.

(2) Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

(a) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent consistent with WAC 434-261-086;

(b) Where the voter has voted for candidates or issues for whom the voter is not entitled to vote;

(c) Where the voter has overvoted;

(d) Where the ballot was created for a prior election;

(e) Where a ballot was submitted with a fraudulent signature; and

(f) Where the ballot declaration signature did not match the signature(s) in the voter registration ((signature)) record, or the signature was missing and the voter did not cure the signature by close of business the day before the election was certified.

(3) If a voter's ballot is rejected in two consecutive primaries, presidential primaries, special elections, or elections due to a mismatched signature, the auditor must contact the voter by:

(a) A notice sent by first class mail with a signature update form and request that the voter update the signature for their voter registration record. The form must include the voter declaration required by RCW 29A.08.230 (subject to the March 15, 2024, Consent Decree entered in *Washington State Alliance for Retired Americans v. Hobbs, et al.*, W.D.WA. Case No. 3-23-CV-06014-TMC). The package must include a prepaid envelope in which to return a completed signature update 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) Telephone, leaving a voicemail if the voter does not answer and voicemail is available (if the voter provided a phone number);

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

(d) Email, enclosing a copy of the signature update form (if the voter has provided an email address).