

WSR 24-03-153

PROPOSED RULES

SECRETARY OF STATE

[Filed January 23, 2024, 4:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-009.

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

Hearing Location(s): On March 6, 2024, 2:30 - 3:30 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 2:29 p.m. to be present when the hearing begins at 2:30 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: March 7, 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 March 5, 2024.

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

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 ensures consistency in counties throughout the state. The consistency provided by these rules should assist county election offices in accurately verifying signatures on ballots. These changes will make it easier for voters to cure any challenges that occur in the signature verification process.

Reasons Supporting Proposal: The signature verification process ensures that only valid ballots are counted in elections. The rules intend to implement consistent best practices for signature verification throughout all of the state's election offices. These changes will make it easier for voters to cure any challenges that occur in the signature verification process.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 29A.40.110, 29A.40.160, 29A.60.165, 29A.60.195.

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.

January 24, 2024
Amanda Doyle
Chief of Staff

OTS-4842.3

AMENDATORY SECTION (Amending WSR 20-14-035, filed 6/24/20, effective 7/25/20)

WAC 434-250-120 Verification of the signature and return date.

(1) A ballot shall be counted if:

(a) The voter has not already cast a ballot that has been accepted in the election;

(b) The voter signed the ballot declaration (~~(is signed)~~) with a valid signature (~~(. A valid signature may be the voter's name or a distinctive mark or symbol signed by the voter:~~

~~(i) If the voter is unable to sign their name, the voter may make a mark or symbol with two witnesses' signatures. A signature stamp accompanied by two witness signatures is an acceptable mark;~~

~~(ii) A power of attorney cannot be used as a signature for a voter.~~

~~(c) The signature has been verified by the county of current registration pursuant to WAC 434-379-020; and~~

~~(d))~~, as determined by WAC 434-261-051 through 434-261-053, or the voter has provided identification at a voting center; and

(c) The envelope is returned in one of the following methods:

(i) The envelope is postmarked not later than the day of the election and received not later than close of business the day before certification of the election. A postmark is any official mark, imprint, or application that verifies when a ballot entered the U.S. postal system. The mailing date of a ballot sent through a commercial mailing service, such as FedEx or UPS, may be considered a postmark. The postmark on the envelope is the official date of mailing. If there are (~~two~~) multiple postmarks, the (~~earlier~~) earliest postmark is the date of mailing. A hand cancellation by an agent of the U.S. Postal Service is a postmark.

If the postmark is illegible or missing, the date of the voter's signature is the date of mailing as per RCW 29A.40.110. If the postmark is illegible or missing and the voter did not include a date with their signature, county auditors may use available U.S. Postal Service tools to verify the date of mailing;

(ii) The ballot is deposited in a ballot drop box no later than 8:00 p.m. on election day; or

(iii) For service and overseas voters, the ballot is received by fax or email no later than 8:00 p.m. on election day. Only service and overseas voters can submit ballots by fax or email.

(2) Postage that includes a date, such as meter postage or a dated stamp, does not qualify as a postmark. If an envelope lacks a postmark or if the postmark is unreadable, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.110. If a ballot is from a service or overseas

voter, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.100.

(3) Consistent with WAC 434-250-080, the voter's current ballot and signed declaration shall be accepted for initial processing; ballots previously or subsequently received for the same voter are not counted nor rejected by the county canvassing board. Such ballots ~~((shall be))~~ are invalid and categorized as informational only.

(a) If the first ballot received is identical to the voter's current ballot because the voter submitted a replacement ballot, the replacement ballot shall be referred to signature verification for initial processing.

(b) If the first ballot received is suspended because of a voter registration update, the suspended ballot shall be held by the county of current registration. The county of registration may choose to manually check the suspended ballot for signature issues and send a ~~((eure))~~ signature update form, while allowing time for the current ballot to be received and accepted.

(4) ~~((The signature on the ballot declaration must be compared with the signature in the voter's voter registration file using the standards established in WAC 434-379-020. The signature on))~~ A ballot ~~((declaration))~~ may not be rejected merely because the ~~((signature))~~ ballot envelope is not dated, unless the date is necessary to validate the timeliness of the ballot. The signature on a ballot declaration may not be rejected merely because the name in the signature is a variation of the name on the voter registration record. ~~((The canvassing board may designate in writing representatives to perform this 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. Personnel shall be instructed in the signature verification process prior to actually canvassing any signatures. Local law enforcement officials may instruct those employees in techniques used to identify forgeries.))~~

(5) Only service and overseas voters are eligible to return a ballot by fax or email. For ~~((service and overseas))~~ ballots returned by fax or email from service or overseas voters, the county auditor must apply procedures to protect the secrecy of the ballot.

(a) If returned by email, the county auditor must print the email and attachments; the printed email and signed declaration page must be processed and retained like other ballot declarations, and the printed ballot must be processed and retained like other ballots. The electronic versions of the email, ballot declaration, and ballot are exempt from public disclosure in order to maintain secrecy of the ballot. Voted service and overseas ballots returned by email may be returned with multiple attachments or in multiple emails.

~~((a))~~ (b) Service and overseas ballots returned by fax or email with a missing or mismatched signature are processed as established in RCW 29A.60.165 and WAC 434-261-050.

~~((b) Only service and overseas voters are eligible to return a ballot electronically.))~~

(6) For ~~((electronic))~~ faxed or emailed ballots received from voters who are not service or overseas voters the county auditor must:

~~((i))~~ (a) Contact the voter immediately if a ~~((fax*))~~ faxed or ~~((email))~~ emailed ballot is received to notify the voter that they must return their ballot by mail or ballot drop box.

~~((ii))~~ (b) Count only the ballot received by mail or ballot drop box if the voter returns both ~~((an electronic))~~ a faxed or emailed ballot and a ballot by mail or ballot drop box.

~~((iii))~~ (c) Send the ~~((electronic))~~ faxed or emailed ballot to the canvassing board for rejection if the voter did not return a ballot by mail or ballot drop box.

~~((6))~~ (7) 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.

OTS-4846.1

REPEALER

The following section of the Washington Administrative Code is repealed:

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

OTS-4827.4

NEW SECTION

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 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 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.

NEW SECTION

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.

NEW SECTION

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.

OTS-4845.1

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-264-010 Recount. (1) A recount is the process for retabulating the votes, including write-ins, for a specific office or issue on all valid ballots cast in a primary or election.

(2) All questions of voter registration, voter qualification, and voter intent previously considered during the original count shall not be reconsidered during a recount. If a ballot has been duplicated in accordance with WAC 434-261-005, the duplicate shall be counted.

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

(4) Prior to beginning the recount, the county auditor shall exercise due diligence to confirm that all returned ballots have been identified and reconciled, and that no ballots have been erroneously omitted from the original count.

~~((4))~~ (5) If any ballots or votes are discovered during the recount process that were erroneously not counted or canvassed during the original count or during a previous recount, the ballots shall be presented to the county canvassing board in accordance with RCW 29A.60.050, and the county canvassing board shall determine whether such ballots are to be included in the recount.

OTS-4843.3

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

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 two voted ballots are returned together:~~

~~(i) If the two ballots are returned with only one valid signature on the ballot declaration, the races and measures voted the same on both ballots may be counted once;~~

~~(ii) If the two ballots are returned with two valid signatures on the ballot declaration, both ballots may be counted in their entirety;~~

~~(iii) If two ballots are returned with one valid signature on the ballot declaration, one voted ballot and one blank ballot without marked votes, the voted ballot may be counted in its entirety.~~

~~(b))~~ 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;

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

~~((d))~~ (c) Where the voter has overvoted;

~~((e))~~ (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 signature did not match the voter registration signature or the signature was missing and the voter did not cure the signature by close of business the day before the election was certified.

OTS-4841.2

AMENDATORY SECTION (Amending WSR 19-12-115, filed 6/5/19, effective 7/6/19)

WAC 434-262-032 Provisional ballots—Disposition. Upon receipt of the provisional ballot, including provisional ballots from other counties or states, the county auditor must investigate the circumstances surrounding the provisional ballot prior to certification of the primary or election. A voted ballot received from an unregistered voter, other than a service, overseas, or conditionally registered voter, is considered a provisional ballot. A provisional ballot cannot be counted unless the voter's name, signature and the date of birth, if available, matches a voter registration record. Once the provisional ballot has been investigated, disposition of the ballot is as follows:

(1) If the voter was previously registered ~~((and))~~, their voter registration was later canceled, and the auditor determines that the

cancellation was in error, the voter's registration must be immediately restored and the provisional ballot counted.

(2) If the voter was previously registered (~~and~~), their voter registration was later canceled, and the auditor determines that the cancellation was not in error, register the voter and count the ballot.

(3) If a registered voter has voted a ballot for a previous address, the auditor must ensure that only those votes for the positions and measures for which the voter was eligible to vote are counted.

(4) If the voter is registered in another county, the auditor shall immediately forward the ballot to the elections official for the jurisdiction in which the voter is registered. The provisional ballot must be forwarded within seven calendar days after a primary or special election and (~~fourteen~~) 14 calendar days after a general election, and as soon as possible if past that date.

(5) If the voter voted a regular ballot and a provisional ballot, the provisional ballot is not counted if the regular ballot has already been counted. The regular ballot is not counted if the provisional ballot has already been counted.

(6) If the voter voted a provisional ballot because (~~he or she~~) the voter failed to produce identification at a voting center, the ballot is counted if the signature on the envelope matches the signature in the voter registration record, using the standards and processes set forth in WAC 434-261-051 through 434-261-053.

(7) If the voter voted a provisional ballot because the voter is provisionally registered and the voter's registration record is still flagged as requiring verification of identity, the provisional ballot is not counted.

(8) Provisional ballots voted for reasons not covered by this section or state statute must be determined by the county canvassing board.

OTS-4844.1

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

WAC 434-324-111 Voluntary cancellation of voter registration. A voter may cancel their own voter registration by submitting a signed written notification to the auditor for the county in which the voter is registered to vote. Prior to cancellation of such a registration record, the auditor must ensure the signature on the notification matches the signature in the voter registration file by utilizing criteria outlined in WAC (~~434-379-020~~) 434-261-051. A county auditor may not process a voluntary cancellation between the deadline in RCW 29A.08.140 for updating a registration and certification of the primary or election.

A participant in the future voter program established under RCW 29A.08.170 may be removed from the program by submitting a signed written notification to the auditor for the county in which they live. The auditor shall process the notification in the same manner as other voluntary cancellations.