



RULE-MAKING ORDER

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

Agency: Office of the Secretary of State

- Permanent Rule
 Emergency Rule

Effective date of rule:

Permanent Rules

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

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify) _____

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

- Yes No If Yes, explain:

Purpose: To protect the constitutional right of privacy to an elector's vote while conducting the audit of results on direct recording electronic voting devices (DRE's) as required by RCW 29A.60.185. Because audit results and the roll of voters who vote on DRE's are public records, the public is able to obtain records that will reveal how electors voted on the contests selected for the auditor in cases where only a few people voted on the selected DRE's and/or race. Furthermore, even if several people vote on a DRE, only one or two people may have voted on a contest if the randomly selected contest is one that encompasses only a portion of the county.

Citation of existing rules affected by this order:

Repealed:
 Amended:
 Suspended:

Statutory authority for adoption: RCW 29A.04.611

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR _____ on _____ (date).
 Describe any changes other than editing from proposed to adopted version:

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

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

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

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

Reasons for this finding:

Date adopted:

9/29/06

NAME (TYPE OR PRINT)

Steve Excell

SIGNATURE

TITLE

Assistant Secretary of State

CODE REVISER USE ONLY
STATE OF WASHINGTON
FILED

SEP 29 2006

TIME _____
WSR _____

12:20 PM
06-20-06

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

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

The number of sections adopted in order to comply with:

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

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

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

New	_____	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

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

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

AMENDATORY SECTION (Amending WSR 05-24-040, filed 11/30/05, effective 12/31/05)

WAC 434-262-105 Audit of results of votes cast on direct recording electronic device. (1) The audits required by RCW 29A.60.185 must use the same three races or issues, randomly selected by lot, for every direct recording electronic device subject to the audit and utilized in the election. If there are not three countywide races or issues on the ballot, the county must select the maximum number of contests available but no more than three contests from each of the devices randomly selected for the audit.

(2) Written procedures to perform audits of direct recording electronic devices as outlined in RCW 29A.60.185 must be promulgated by the county auditor.

(a) The procedures must provide for a process of randomly selecting by lot the direct recording electronic devices that will be audited. The pool of contests used for the random selection must only be contests that appear in all precincts in the county.

(b) The procedures for manually tabulating results must be conducted using a process that includes the following elements:

(i) A continuous paper record must be utilized in the audit; the paper record must not be cut into separate individual records; and

(ii) If a paper record indicates a ballot has been canceled, that ballot must be exempt from the audit;

(c) A county with an aggregate total of fewer than eleven votes cast on direct recording electronic devices in the 2006 primary and general elections must not conduct an audit of the voter verified paper audit trail as required by RCW 29A.60.185.

(d) In a county where more than one direct recording electronic device was used, the county must randomly select direct recording electronic devices until the aggregate total of votes cast on the devices is greater than ten votes. The devices must also be aggregated until the number of machines selected meet the minimum number of devices required by RCW 29A.60.185.

The aggregate totals of the voter verified paper audit trail results for each candidate in the selected races are subject to public disclosure.

(3) The county auditor must compare the paper records with the electronic records. The county auditor may take any necessary actions to investigate and resolve discrepancies.

(4) Prior to certification, and in time to resolve any discrepancies, the county auditor must alert the county canvassing board of discrepancies identified during the audit.