

Elections Division
Office of the Secretary of State
Emergency Rulemaking
September 2, 2010

Implementation of the federal Military and Overseas Voter Empowerment (MOVE) Act

Summary of rule changes:

- The procedures for processing electronically returned ballots are clarified:
 - Ballots returned electronically must be received no later than 8:00 p.m. of Election Day.
 - Hard copies must be received before the election is certified.
 - Consistent with the rule on replacement ballots, the first ballot and affidavit received are processed and counted.
 - Ballots returned electronically no later than 8:00 p.m. are timely even if the post mark on hard copies is after Election Day.
- The WAC addressing electronic filings that are not accepted, 434-208-070, is combined into the general WAC on electronic filings, 434-208-060.
- Definitions of Service Voter and Overseas Voter are updated in WAC to reflect 2009 changes in the RCW definitions.
- When a military or overseas voter is registered at the County Auditor's office because the voter provided an incomplete residential address, the current requirement to cancel the registration before the next Primary or election is repealed. There is concern that the existing requirement does not comply with state and federal requirements for canceling a registration.
- A County Auditor must offer a military or overseas voter the option of receiving blank ballots by email or postal mail.
- A County Auditor must issue a ballot by mail, email or fax as specifically requested by the voter. The Auditor does not have to send a ballot by mail if it is issued by email or fax.
- Ballot materials must include, on something that the voter can keep after the ballot is voted and returned:
 - Mailing address, phone number, fax number, email address, and website of the County Auditor.
 - Instructions on how to confirm that the voted ballot has been received.
- The websites for the Secretary of State and each County Auditor's Office must include the listed services and contact information.

Contact information

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RULE-MAKING ORDER

CR-103E (May 2009)
(Implements RCW 34.05.360)

Agency: Office of the Secretary of State, Elections Division

Emergency Rule Only

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: The purpose of these rule changes is to implement the federal MOVE Act, the Military and Overseas Voter Empowerment Act. This legislation takes effect after the 2010 Primary Election but before the 2010 General Election.

Citation of existing rules affected by this order:

Repealed: 434-208-070
 Amended: 434-208-060, 434-235-010, 434-235-020, 434-235-030, and 434-235-040.
 Suspended:

Statutory authority for adoption: RCW 29A.04.611

Other authority :

EMERGENCY RULE

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.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding:

The federal MOVE Act passed Congress in October 2009 and takes effect for the 2010 General Election. These rules could not be adopted earlier in the year because they did not apply for the August 2010 Primary.

Date adopted: September 2, 2010

NAME (TYPE OR PRINT)

Steve Excell

SIGNATURE

TITLE

Assistant Secretary of State

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 02, 2010

TIME: 10:56 AM

WSR 10-19-006

(COMPLETE REVERSE SIDE)

**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	<u>1</u>	Amended	<u>4</u>	Repealed	<u>1</u>
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	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	<u>1</u>	Amended	<u>5</u>	Repealed	<u>1</u>
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

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:

~~((1))~~ (a) The text of any proposed initiative, referendum, or recall measure and any accompanying documents required by law;

~~((2))~~ (b) Any minor party or independent candidate filing material for president and vice-president, except nominating petitions;

~~((3))~~ (c) Lists of presidential electors selected by political parties or independent candidates;

~~((4))~~ (d) Voted ballots ~~(, provided the voter agrees to waive the secrecy of his or her ballot)~~ and signed affidavits received no later than 8:00 p.m. on election day, as long as hard copies are received prior to certification of the election. Consistent with WAC 434-250-080, it is the first ballot and affidavit received that may be processed and counted. Voted ballots received electronically no later than 8:00 p.m. on election day are timely even if the postmark on the return envelope is after election day;

~~((5))~~ (e) Resolutions from cities, towns, and other districts calling for a special election; and

~~((6))~~ (f) Voter registration forms.

(2) If payment of a fee is required, acceptance of an electronic filing is conditional until the fee is received.

(3) If the original document must be signed, acceptance of an electronic filing is conditional until receipt of the original document. Except for mail ballots, the original document must be received no later than seven calendar days after receipt of the electronic filing.

(4) No initiative, referendum, or recall petition signatures may be filed electronically.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-208-070 Electronic filings not accepted.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-235-010 Scope. (1) This chapter implements the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Sec. 1973ff, and the provisions for service and overseas voters in Title 29A RCW.

(2) Uniformed service voter is defined in 42 U.S.C. Sec. 1973ff-6(1) as:

(a) A member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(b) A member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(c) A spouse or dependent who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

(3) Service voter is defined in RCW 29A.04.163 as any elector of the state of Washington who:

(a) Is a member of the armed forces under 42 U.S.C. Sec. 1973ff-6 while in active service;

(b) Is a member of a reserve component of the armed forces;

(c) Is a student or member of the faculty at a United States military academy;

~~((c))~~ (d) Is a member of the merchant marine of the United States ~~((~~

~~is a program participant as defined in RCW 40.24.020))~~; or

(e) Is a member of a religious group or welfare agency officially attached to and serving with the armed forces of the United States.

(4) Overseas voter is defined in 42 U.S.C. Sec. 1973ff-6(5) as:

(a) An absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(b) A person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(c) A person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(5) Overseas voter is defined in RCW 29A.04.109 as any elector of the state of Washington outside the territorial limits of the United States ~~((or the District of Columbia))~~.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

WAC 434-235-020 Voter registration. (1) A uniformed, service, or overseas voter may register to vote by providing:

(a) A voter registration application issued by the state of Washington;

(b) A federal post card application issued by the federal voting assistance program;

(c) A federal write-in absentee ballot issued by the federal voting assistance program;

(d) A national mail voter registration form issued by the election assistance commission; or

(e) An absentee ballot with a valid signature on the return envelope oath.

(2) Pursuant to RCW 29A.40.010, a uniformed, service, or overseas voter does not have to be registered in order to request an absentee ballot. Consequently, a uniformed, service, or overseas voter may request a ballot and be registered after the registration deadlines of RCW 29A.08.140 have passed.

(a) If the voter is not currently registered, the county auditor must register the voter immediately. The voter must be flagged in the voter registration system (~~((accordingly))~~) as a service or overseas voter.

(b) A uniformed, service, or overseas voter must use his or her most recent residential address in Washington, or the most recent residential address in Washington of a family member.

(c) If the county auditor is unable to precinct the voter due to a missing or incomplete residential address on the application, the county auditor must attempt to contact the voter to clarify the application. If, in the judgment of the county auditor, there is insufficient time to correct the application before the next election or primary, the county auditor must issue the absentee ballot as if the voter had listed the county auditor's office as his or her residence. A special precinct for this purpose may be created. Upon its return, the ballot must be referred to the county canvassing board. The only offices and issues that may be tabulated are those common to the entire county and congressional races based on the precinct encompassing the auditor's office. (~~((Such registrations are only valid for the primary or election for which the ballot was issued. If the actual precinct is not determined before the next primary or election, the registration must be canceled.))~~)

(d) A voter who registers to vote by signing the return envelope of the absentee ballot is not required to provide a driver's license number, Social Security number or other form of identification as required in RCW 29A.08.107.

(3) The county auditor must offer a uniformed, service, or

overseas voter the option of receiving blank ballots by e-mail or postal mail. This requirement is satisfied if the uniformed, service, or overseas voter registers on an application that offers electronic ballot delivery as an option, or if the voter expresses a preference when registering, updating a registration, or requesting a ballot. The county auditor must attempt to contact the voter by phone, e-mail, postal mail, or other means. If the voter does not indicate a preference or does not respond, the county auditor must send ballots by postal mail.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

WAC 434-235-030 Absentee voting. (1) A uniformed, service, or overseas voter may request or return an absentee ballot by:

- (a) Any manner authorized by WAC 434-250-030;
- (b) A federal post card application issued by the federal voting assistance program; or
- (c) A federal write-in absentee ballot issued by the federal voting assistance program.

(2) Pursuant to RCW 29A.40.070, absentee ballots issued to registered uniformed, service, or overseas voters must be mailed at least thirty days prior to the election or primary. Requests for absentee ballots received after that day must be processed immediately.

(3) The county auditor (~~((may))~~ must issue an absentee ballot by mail, e-mail, or fax~~((, or other means as))~~ if specifically requested by the voter. A ballot does not have to be mailed if it is e-mailed or faxed to the voter. If an e-mail is returned as undeliverable and the voter has not provided an alternate e-mail address, then the ballot must be sent by postal mail.

(4) ~~((Pursuant to RCW 29A.40.061, the county auditor shall provide the appropriate web site information with the absentee ballot.))~~ Ballot materials must include the mailing address, phone number, fax number, e-mail address, and web site of the county auditor's office to enable a voter to contact the elections office for additional information about the election. Ballot materials must include instructions on how to confirm that the voted ballot has been received by the elections office. This information must be provided in a format that the voter can keep after the voted ballot has been returned.

(5) If the county auditor is unable to issue an absentee ballot due to insufficient information, the county auditor must attempt to contact the voter to clarify the request. If the county auditor is unable to obtain sufficient information to issue the absentee ballot, the county auditor must attempt to notify the voter of the reason that the ballot was not issued.

(6) Pursuant to RCW 29A.40.150, return envelopes must be printed to indicate that they may be returned postage-free.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-235-040 Processing absentee ballots. (1) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of a federal write-in absentee ballot or a special absentee ballot if the intention of the voter can be ascertained.

~~(2) ((The absentee ballots referred to in this section must be received prior to certification of the election or primary.))~~ The date on the envelope associated with the voter's signature, rather than the postmark on the envelope, determines the validity of the ballot. The signature on the oath must be dated no later than election day. ~~((An absentee ballot returned electronically is invalid until the original is received.))~~

~~(3) Voted ballots returned by fax or e-mail must meet the requirements of RCW 29A.40.150 and WAC 434-208-060.~~

(4) The county auditor must provide statistics on voting by uniformed, service and overseas voters in the certification report required by RCW 29A.60.235 and in response to requests by the federal election assistance commission.

NEW SECTION

WAC 434-235-050 On-line information. The secretary of state and each county auditor must provide information on-line that includes, at a minimum, how to:

- (1) Register to vote using a paper or on-line application;
- (2) Confirm a registration;
- (3) Request a ballot or replacement ballot;
- (4) Update a residential address or mailing address;
- (5) Contact the elections office by phone, fax, e-mail, mailing address, and physical address;
- (6) Find information about the next election;
- (7) Confirm via phone, e-mail or web site that a voted ballot has been received; and
- (8) Find election results.