

Chapter 434-335 WAC

VOTING SYSTEMS

(Formerly chapter 434-333 WAC)

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434-335-080	Deposit for examination expenses. [Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-080, filed 8/29/05, effective 9/29/05.] Repealed by WSR 08-		

- 2/26/14, effective 3/29/14. Statutory Authority: RCW 29A.04.611.
- 434-335-445 The preparation of logic and accuracy test decks. [Statutory Authority: RCW 29A.04.611. WSR 08-15-052, § 434-335-445, filed 7/11/08, effective 8/11/08; WSR 08-05-120, § 434-335-445, filed 2/19/08, effective 3/21/08; WSR 06-14-048, § 434-335-445, filed 6/28/06, effective 7/29/06.] Repealed by WSR 14-06-040, filed 2/26/14, effective 3/29/14. Statutory Authority: RCW 29A.04.611.
- 434-335-450 Optical and digital scan test ballot selection—State primary and general elections. [Statutory Authority: RCW 29A.04.611. WSR 08-05-120, § 434-335-450, filed 2/19/08, effective 3/21/08; WSR 05-18-022, § 434-335-450, filed 8/29/05, effective 9/29/05.] Repealed by WSR 14-06-040, filed 2/26/14, effective 3/29/14. Statutory Authority: RCW 29A.04.611.
- 434-335-460 Optical scan read head adjustment standards and tests. [Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-460, filed 8/29/05, effective 9/29/05.] Repealed by WSR 08-05-120, filed 2/19/08, effective 3/21/08. Statutory Authority: RCW 29A.04.611.
- 434-335-470 Optical scan test ballot scan area alignment tests. [Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-470, filed 8/29/05, effective 9/29/05.] Repealed by WSR 08-05-120, filed 2/19/08, effective 3/21/08. Statutory Authority: RCW 29A.04.611.
- 434-335-480 Optical scan ballot marking code program test. [Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-480, filed 8/29/05, effective 9/29/05.] Repealed by WSR 08-05-120, filed 2/19/08, effective 3/21/08. Statutory Authority: RCW 29A.04.611.
- 434-335-490 Poll site-based optical scan ballot counter preparation and testing. [Statutory Authority: RCW 29A.04.611. WSR 08-05-120, § 434-335-490, filed 2/19/08, effective 3/21/08; WSR 05-18-022, § 434-335-490, filed 8/29/05, effective 9/29/05.] Repealed by WSR 11-24-064, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630.
- 434-335-500 Poll site-based optical scan ballot counter test notices, observers, and log of process. [Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-500, filed 8/29/05, effective 9/29/05.] Repealed by WSR 08-05-120, filed 2/19/08, effective 3/21/08. Statutory Authority: RCW 29A.04.611.
- 434-335-530 Direct recording electronic test ballot selection—State primary and general election. [Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-530, filed 8/29/05, effective 9/29/05.] Repealed by WSR 08-05-120, filed 2/19/08, effective 3/21/08. Statutory Authority: RCW 29A.04.611.
- 434-335-570 Direct recording electronic system logic and accuracy test notices, and observers. [Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-570, filed 8/29/05, effective 9/29/05.] Repealed by WSR 08-05-120, filed 2/19/08, effective 3/21/08. Statutory Authority: RCW 29A.04.611.
- 434-335-580 Poll site-based direct recording electronic voting device preparation and testing. [Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-580, filed 8/29/05, effective 9/29/05.] Repealed by WSR 08-05-120, filed 2/19/08, effective 3/21/08. Statutory Authority: RCW 29A.04.611.
- 434-335-590 Poll site-based direct recording electronic device test notices, observers, and log of process. [Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-590, filed 8/29/05, effective 9/29/05.] Repealed by WSR 08-05-120, filed 2/19/08, effective 3/21/08. Statutory Authority: RCW 29A.04.611.
- 434-335-600 Parallel monitoring test. [Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-600, filed 8/29/05, effective 9/29/05.] Repealed by WSR 06-11-042, filed 5/10/06, effective 6/10/06. Statutory Authority: RCW 29A.04.611.
- 434-335-610 Parallel monitoring test decks. [Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-610, filed 8/29/05, effective 9/29/05.] Repealed by WSR 06-11-042, filed 5/10/06, effective 6/10/06. Statutory Authority: RCW 29A.04.611.
- 434-335-620 Parallel monitoring test observers. [Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-620, filed 8/29/05, effective 9/29/05.] Repealed by WSR 06-11-042, filed 5/10/06, effective 6/10/06. Statutory Authority: RCW 29A.04.611.
- 434-335-630 Parallel monitoring test certification. [Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-630, filed 8/29/05, effective 9/29/05.] Repealed by WSR 06-11-042, filed 5/10/06, effective 6/10/06. Statutory Authority: RCW 29A.04.611.
- 434-335-640 Post election test. [Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-640, filed 8/29/05, effective 9/29/05.] Repealed by WSR 06-11-042, filed 5/10/06, effective 6/10/06. Statutory Authority: RCW 29A.04.611.

WAC 434-335-005 Broken or missing seals. If a seal is missing or broken without authority, all subsequent steps taken must be documented and included in a report to the canvassing board.

[Statutory Authority: RCW 29A.04.611. WSR 06-14-050, § 434-335-005, filed 6/28/06, effective 7/29/06.]

STATE CERTIFICATION OF VOTING SYSTEMS

WAC 434-335-010 Certification of voting equipment. All voting systems, voting devices, and vote tallying systems must meet applicable federal standards and be certified and approved by the secretary of state before they can be used in Washington state pursuant to RCW 29A.12.020.

[Statutory Authority: RCW 29A.04.611. WSR 07-12-032, § 434-335-010, filed 5/30/07, effective 6/30/07; WSR 06-14-050, § 434-335-010, filed 6/28/06, effective 7/29/06; WSR 05-18-022, § 434-335-010, filed 8/29/05, effective 9/29/05.]

WAC 434-335-020 Voting systems review board. The voting systems review board may review voting systems for certification and make recommendations to the secretary of state based upon those reviews. The voting systems review board consists of five members, and may include independent experts in computer science or information technology, recognized experts in election administration, and representatives of the public at large. Members of the voting systems review board are appointed by the secretary of state to staggered two year terms. Appointees may be reappointed to serve more than one term. The secretary of state may appoint a new member to fill any vacancy on the board for the remainder of the unexpired term. The duties of the voting systems review board include reviewing an application for certification, as provided in WAC 434-335-090, conducting a public hearing on the application, as provided in WAC 434-335-100, and making recommendations on the application to the secretary of state, as provided in WAC 434-335-110.

[Statutory Authority: RCW 29A.04.611. WSR 09-03-110, § 434-335-020, filed 1/21/09, effective 2/21/09; WSR 05-18-022, § 434-335-020, filed 8/29/05, effective 9/29/05.]

WAC 434-335-030 Initial application for certification. Any person or corporation (applicant) owning or representing a voting system or a vote tabulating system, part of a system, equipment, materials or procedure may apply in writing to the secretary of state for certification.

(1) The application must include, but is not limited to, the following information:

(a) A description of the applicant, business address, and list of election products;

(b) A description of the equipment or software under review, the equipment or software version numbers and operating and maintenance manuals.

(2) The secretary of state may request the applicant provide additional information such as:

(a) Customer references, training materials, and technical and operational specifications;

(b) A copy of a letter from the applicant to each voting system test laboratory which authorizes the voting system test laboratory to discuss testing procedures and findings with the secretary of state.

(3) All documents, or portions of documents, containing proprietary information are not subject to public disclosure. The secretary of state must agree to use proprietary information solely for the purpose of analyzing and testing the system, and to the extent permitted by law, may not use the proprietary information or disclose it to any other person or agency without the prior written consent of the applicant.

[Statutory Authority: RCW 29A.04.611, WSR 10-03-072, § 434-335-030, filed 1/18/10, effective 2/18/10; WSR 09-03-110, § 434-335-030, filed 1/21/09, effective 2/21/09; WSR 07-24-044, § 434-335-030, filed 11/30/07, effective 12/31/07; WSR 07-20-074, § 434-335-030, filed 10/1/07, effective 11/1/07. Statutory Authority: RCW 29A.04.611, 2006 c 344. WSR 07-09-035, § 434-335-030, filed 4/11/07, effective 5/12/07. Statutory Authority: RCW 29A.04.611, WSR 05-18-022, § 434-335-030, filed 8/29/05, effective 9/29/05.]

WAC 434-335-040 Voting system requirements. (1)

No voting device or its component software may be certified by the secretary of state unless it:

(a) Secures to the voter secrecy in the act of voting;

(b) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;

(c) Correctly registers all votes cast for any and all persons and for or against any and all measures;

(d) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for President and Vice-President of the United States;

(e) Produces a machine countable and human readable paper record for each vote that may be accepted or rejected by the voter before finalizing his or her vote. The paper record of an electronic vote may not be removed from the device by the voter. If the voting device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter; and

(f) Has been tested and approved by the appropriate voting system test laboratory approved by the United States election assistance commission.

(2) No vote tabulating system may be certified by the secretary of state unless it:

(a) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;

(b) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;

(c) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each ballot measure on the ballot in that precinct;

(d) Produces precinct and cumulative totals in printed form; and

(e) Produces legislative and congressional district totals for statewide races and issues in electronic and printed form.

(2/26/14)

(3) A vote tabulating system must:

(a) Be capable of being secured with lock and seal when not in use;

(b) Be secured physically and electronically against unauthorized access;

(c) Not be connected to, or operated on, any electronic network including, but not limited to, internal office networks, the internet, or the world wide web. A network may be used as an internal, integral part of the vote tabulating system but that network must not be connected to any other network, the internet, or the world wide web; and

(d) Not use wireless communications in any way.

[Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-335-040, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611, WSR 09-03-110, § 434-335-040, filed 1/21/09, effective 2/21/09; WSR 08-15-052, § 434-335-040, filed 7/11/08, effective 8/11/08; WSR 06-11-042, § 434-335-040, filed 5/10/06, effective 6/10/06; WSR 05-18-022, § 434-335-040, filed 8/29/05, effective 9/29/05.]

WAC 434-335-050 Closing an incomplete application. Upon receipt of an application, the secretary of state examines the application for completeness. If the application is not complete, the secretary of state must notify the applicant in writing of the information required to complete the application. Notification must occur within thirty days of receipt of the application. If all requested information is not received within thirty days of the written notification, the secretary of state deems the application closed. Closure of an application does not prevent the applicant from submitting a new application to the secretary of state.

[Statutory Authority: RCW 29A.04.611, WSR 05-18-022, § 434-335-050, filed 8/29/05, effective 9/29/05.]

WAC 434-335-060 Examination of equipment. Secretary of state staff will initiate an examination of the applicant's equipment after receiving a completed application and a working model of the equipment, documentation, and software to be reviewed.

The examination verifies that the system or equipment meets all applicable federal guidelines, and consists of a series of functional application tests designed to ensure that the system or equipment meets Washington state law and rules. The software tested shall be the approved software from the voting system test laboratory.

The examination may include an additional voting system test laboratory test at the discretion of the secretary of state. The examination shall include the set-up and conduct of mock elections, including a machine recount. The elections must feature at least ten precincts, with at least ten ballots in each precinct, and must test split precincts, partisan and non-partisan offices, and contests that allow the voter to vote for multiple candidates. The tests must include ballots of various ballot styles, and include multiple candidates, write-in candidates and overvoted contests.

[Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-335-060, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611, WSR 10-03-072, § 434-335-060, filed 1/18/10, effective 2/18/10; WSR 09-03-110, § 434-335-060, filed 1/21/09, effective 2/21/09; WSR 07-24-044, § 434-335-060, filed 11/30/07, effective 12/31/07; WSR 05-18-022, § 434-335-060, filed 8/29/05, effective 9/29/05.]

WAC 434-335-070 Additional information and equipment required. The vendor shall provide a working model of the equipment under review for the duration of the examination.

[Statutory Authority: RCW 29A.04.611. WSR 08-05-120, § 434-335-070, filed 2/19/08, effective 3/21/08; WSR 05-18-022, § 434-335-070, filed 8/29/05, effective 9/29/05.]

WAC 434-335-090 Voting systems review board evaluation. The voting systems review board evaluation must include, but is not limited to:

- (1) A review of statutory requirements;
- (2) A review of applicable federal standards;
- (3) A review of the approved qualification test results released directly to the secretary of state by the federally approved voting system test laboratory;
- (4) If applicable, a review of reports or other materials from prior hearings on the proposed system, procedure, or modification, either in whole or in part;
- (5) A review of the report produced by the secretary of state upon completion of the examination of the voting system;
- (6) If applicable, a review of any procedures manuals, guidelines, or other materials issued for use with the system;
- (7) A review of any effect the application will have on the security of the voting system;
- (8) A review of any effect the application will have on the accuracy of the voting system;
- (9) A review of any effect the application will have on the ease and convenience with which voters use the system;
- (10) A review of any effect the application will have on the timeliness of vote reporting; and
- (11) A review of any effect the application will have on the overall efficiency of the voting system.

[Statutory Authority: RCW 29A.04.611. WSR 09-03-110, § 434-335-090, filed 1/21/09, effective 2/21/09; WSR 08-05-120, § 434-335-090, filed 2/19/08, effective 3/21/08.]

WAC 434-335-100 Public hearing. The voting systems review board must conduct a public hearing, scheduled at the convenience of the secretary of state and voting systems review board. At the public hearing, the applicant may demonstrate the equipment and explain its function. The applicant must be available to answer questions from the voting systems review board and the public. The applicant may be asked to submit answers in writing if the voting systems review board is not satisfied with the completeness of answers given at the hearing.

[Statutory Authority: RCW 29A.04.611. WSR 09-03-110, § 434-335-100, filed 1/21/09, effective 2/21/09; WSR 05-18-022, § 434-335-100, filed 8/29/05, effective 9/29/05.]

WAC 434-335-110 Voting systems review board report. Following the review and public hearing, the voting systems review board may recommend for or against certification of the voting system under review. The board may also recommend that certification be contingent upon fulfillment of specific conditions or procedures with the purchase or use of the voting system in this state.

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[Statutory Authority: RCW 29A.04.611. WSR 09-03-110, § 434-335-110, filed 1/21/09, effective 2/21/09; WSR 05-18-022, § 434-335-110, filed 8/29/05, effective 9/29/05.]

WAC 434-335-120 Certification may be conditioned. Certification of a voting system may be contingent upon fulfillment of additional conditions or procedures.

[Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-120, filed 8/29/05, effective 9/29/05.]

WAC 434-335-130 Issuance of certification. Based on the examination of the voting system and the recommendations of the secretary of state staff and the voting systems review board, the secretary of state may issue a certification of the system if the secretary of state determines that the system meets all requirements for certification. The certification must include any conditions or procedures that the secretary of state deems necessary for the system to comply with Washington state law and practice. The secretary of state must notify all county auditors of the certification within thirty days.

[Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-130, filed 8/29/05, effective 9/29/05.]

WAC 434-335-140 Failure to meet certification requirements. If the secretary of state determines that the voting system fails to meet any of the requirements for certification, the applicant must be notified and allowed thirty days to submit another version of the voting system for examination and testing.

[Statutory Authority: RCW 29A.04.611. WSR 09-03-110, § 434-335-140, filed 1/21/09, effective 2/21/09; WSR 05-18-022, § 434-335-140, filed 8/29/05, effective 9/29/05.]

WAC 434-335-150 Modification of certified equipment. After a voting system is certified, any improvements or changes to the system must be submitted to the secretary of state for certification. The secretary of state will determine if the modifications require state testing and a review board hearing, or if the changes may be certified administratively.

[Statutory Authority: RCW 29A.04.611. WSR 10-03-072, § 434-335-150, filed 1/18/10, effective 2/18/10; WSR 05-18-022, § 434-335-150, filed 8/29/05, effective 9/29/05.]

WAC 434-335-160 Modification of certified equipment, guidelines for administrative approval. The secretary of state may approve an application for modification of certified equipment administratively if the modification does not:

- (1) Materially affect the lawful conduct, accuracy, efficiency, capacity or security of elections;
- (2) Materially and adversely affect the convenience to the voter of the elections process; or
- (3) Otherwise result in significant modification to existing procedures used in Washington by extending the equipment's functionality.

A modification approved administratively does not require examination or review by the voting systems review board.

[Statutory Authority: RCW 29A.04.611. WSR 09-03-110, § 434-335-160, filed 1/21/09, effective 2/21/09; WSR 05-18-022, § 434-335-160, filed 8/29/05, effective 9/29/05.]

WAC 434-335-170 Application for certification of modified voting systems or devices. The application to certify a modification of an existing certified system must include, but is not limited to, the following information:

- (1) Description of the applicant;
- (2) Description of the equipment or software under review, the modification, and all version numbers;
- (3) All changes to the operating and maintenance manuals;
- (4) Reports for all tests conducted on the modification by a voting system test laboratory;
- (5) Documentation that the modification meets all applicable federal voting equipment guidelines;
- (6) A complete description, in operational and technical detail, of all differences between the previously certified equipment or system and the modified equipment or system, prepared by the applicant.

[Statutory Authority: RCW 29A.04.611. WSR 10-03-072, § 434-335-170, filed 1/18/10, effective 2/18/10; WSR 09-03-110, § 434-335-170, filed 1/21/09, effective 2/21/09; WSR 05-18-022, § 434-335-170, filed 8/29/05, effective 9/29/05.]

WAC 434-335-180 Recertification of modified voting systems or devices. If the system, or its components, is found to be sufficiently modified under the guidelines of WAC 434-335-160 that it requires an examination of the equipment by the voting systems review board and a public hearing, the secretary of state must notify the applicant in writing that the applicant must initiate the certification process outlined in WAC 434-335-030 through 434-335-130.

[Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-180, filed 8/29/05, effective 9/29/05.]

WAC 434-335-190 Restricted period. No modification, change, or other alteration to voting or vote tabulating system, equipment, or component may be installed in a county between June 15th and November 30th of the same year without permission from the secretary of state. Such permission must be specific to the change and to the county making the change.

[Statutory Authority: RCW 29A.04.611. WSR 07-20-074, § 434-335-190, filed 10/1/07, effective 11/1/07. Statutory Authority: RCW 29A.04.611, 2006 c 344. WSR 07-09-035, § 434-335-190, filed 4/11/07, effective 5/12/07. Statutory Authority: RCW 29A.04.611. WSR 06-11-042, § 434-335-190, filed 5/10/06, effective 6/10/06; WSR 05-18-022, § 434-335-190, filed 8/29/05, effective 9/29/05.]

WAC 434-335-210 Application information for emergency approval. A county auditor may apply in writing to the secretary of state for emergency approval of a modification of an existing certified system. The application must include a complete description of the modification that is required and an explanation of why failure to modify the system materially affects the lawful conduct, efficiency, accuracy, or security of the upcoming election. The application must also explain why the emergency cannot be adequately remedied with procedural processes.

[Statutory Authority: RCW 29A.04.611. WSR 09-03-110, § 434-335-210, filed 1/21/09, effective 2/21/09; WSR 05-18-022, § 434-335-210, filed 8/29/05, effective 9/29/05.]

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WAC 434-335-212 Emergency approval. Emergency approval for a modification of an existing voting or vote tabulating system or equipment may be obtained from the secretary of state if failure to modify the system could materially affect the lawful conduct, efficiency, accuracy, or security of an upcoming election.

If, after reviewing the application, the secretary of state determines that an emergency exists, the examination and testing of the proposed modification is expedited to meet the needs of the upcoming election. The secretary of state develops a test plan and audit procedures to ensure the modified system does not adversely affect the lawful conduct, efficiency, accuracy, or security of the upcoming elections. The secretary of state may consult with the voting systems review board. The requirement that the modification be certified by a voting system test laboratory is waived for an emergency approval. An emergency approval of a modification must state the time period it is in effect.

[Statutory Authority: RCW 29A.04.611. WSR 09-03-110, § 434-335-212, filed 1/21/09, effective 2/21/09; WSR 05-18-022, § 434-335-212, filed 8/29/05, effective 9/29/05.]

WAC 434-335-214 Public notice of emergency approval. The secretary of state must notify all county auditors of the emergency approval within five days of approving the application. Such notice shall also be posted to a public forum such as the secretary of state's web site.

[Statutory Authority: RCW 29A.04.611. WSR 09-03-110, § 434-335-214, filed 1/21/09, effective 2/21/09; WSR 05-18-022, § 434-335-214, filed 8/29/05, effective 9/29/05.]

WAC 434-335-220 Final approval. Pursuant to WAC 434-335-150, the applicant must submit to the secretary of state a modification that incorporates a permanent fix to the problem covered by the emergency approval. The modification must be submitted in time to be approved under the normal modification application procedures provided in WAC 434-335-150 through 434-335-180.

[Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-220, filed 8/29/05, effective 9/29/05.]

WAC 434-335-230 Judicial review of agency action. Any of the following decisions entered pursuant to this chapter are final decisions of the secretary of state as to which no further review by the agency is available, subject to judicial review pursuant to chapter 34.05 RCW:

- (1) The issuance or denial of certification pursuant to WAC 434-335-130;
- (2) The issuance or denial of administrative approval of a modification pursuant to WAC 434-335-160;
- (3) The issuance or denial of recertification of a modified system or component pursuant to WAC 434-335-180 and 434-335-220.

[Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-230, filed 8/29/05, effective 9/29/05.]

WAC 434-335-240 Acceptance testing of voting systems and equipment. Whenever a county auditor acquires a new system or an upgrade to an existing system that has been certified by the secretary of state, the county must perform acceptance tests of the equipment before it may be used to

count votes at any election. The equipment must operate correctly, pass all tests, and be substantially the same as the equipment certified by the secretary of state. The minimum testing standards are described as follows:

(1) The model number, version number, release number, and any other number, name or description that identifies the product must be the same as the identifying numbers for the product already certified by the secretary of state.

(2) The county must receive all manuals and training necessary for the proper operation of the system.

(3) For new hardware or hardware upgrades, the county must test the functionality of the hardware to verify the hardware works as designed. The test must include operating the hardware and submitting it to a series of assessments that determine the hardware works, performs, and functions as intended.

Acceptance testing and installation of the equipment may occur only between December 1st and September 15th of each year.

[Statutory Authority: RCW 29A.04.611. WSR 10-03-072, § 434-335-240, filed 1/18/10, effective 2/18/10; WSR 09-12-078, § 434-335-240, filed 5/29/09, effective 6/29/09; WSR 05-18-022, § 434-335-240, filed 8/29/05, effective 9/29/05.]

WAC 434-335-250 Inclusion of the Election Assistance Commission standards for voting equipment. The Election Assistance Commission standards concerning voting systems and software escrow are hereby included by reference, except where otherwise modified by these rules and the *Revised Code of Washington*.

[Statutory Authority: RCW 29A.04.611. WSR 09-12-078, § 434-335-250, filed 5/29/09, effective 6/29/09; WSR 09-03-110, § 434-335-250, filed 1/21/09, effective 2/21/09; WSR 05-18-022, § 434-335-250, filed 8/29/05, effective 9/29/05.]

WAC 434-335-260 Decertification of voting systems and vote tabulating systems. (1) The secretary of state may decertify a voting system or vote tabulating system or any component thereof and withdraw authority for its future use or sale in Washington if, at any time after certification the secretary of state determines that:

(a) The system or component fails to meet the standards set forth in applicable federal guidelines or state statutes or rules;

(b) The system or component was materially misrepresented in the certification application; or

(c) The applicant has installed unauthorized modifications to the certified software or hardware.

(2) The secretary of state must provide written notice of intent to decertify to the original applicant or its successor, if known, to all county auditors, and to the public. The notice must specify the reasons why the certification of the system may be rescinded. The applicant or successor or any county auditor may, within thirty days after the issuance of the notice, file with the secretary of state a written explanation as to why the system or component should not be decertified. The secretary of state may extend or shorten the time for filing of a written explanation for good cause. After reviewing the explanation, the secretary of state may either discontinue the decertification process, in which case the system or component remains certified, or schedule a public hearing pursu-

ant to subsection (3) of this section. If no explanation is timely filed, the secretary of state may either discontinue the decertification process or issue a final order pursuant to subsection (4) of this section.

(3) A decertification proceeding shall constitute an adjudicative proceeding pursuant to chapter 34.05 RCW.

(a) The secretary of state adopts the model rules of procedure as set forth in chapter 10-08 WAC, except as they may be inconsistent with this chapter. The proceeding may be conducted as an emergency adjudicative proceeding pursuant to RCW 34.05.479 if the secretary of state finds that immediate action is required to preserve the integrity of the electoral process.

(b) The secretary of state shall designate the presiding officer.

(c) The certification remains valid pending resolution of the administrative proceeding, unless the secretary of state finds, following notice and opportunity for written or oral input, which may be expedited, that the public interest requires that the decertification should take effect on a temporary basis pending hearing.

(d) The argument in favor of decertification may be presented by an employee of the secretary of state or by an assistant attorney general. Other parties may be represented by a certified election administrator or by any person permitted to appear by WAC 434-180-560.

(4) The presiding officer or secretary shall enter an order specifying the system or component at issue, whether or not it is decertified, the effective date of any decertification, and explain the basis for the decision. The effective date of decertification shall not be less than five days after the entry of the order, but may be delayed to any reasonable date. An order issued by the secretary pursuant to subsection (2) of this section is a final order. An order issued by the presiding officer is regarded as an initial order unless the secretary of state, assistant secretary of state, deputy secretary of state, or director of elections presides, in which case the decision of the presiding officer shall be final and no further review is available within the agency.

[Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-260, filed 8/29/05, effective 9/29/05.]

LOGIC AND ACCURACY TESTS

WAC 434-335-270 Definition of official logic and accuracy test. As used in this chapter, "official logic and accuracy test" means the test performed in accordance with RCW 29A.12.130.

[Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-335-270, filed 2/26/14, effective 3/29/14; WSR 08-05-120, § 434-335-270, filed 2/19/08, effective 3/21/08; WSR 05-18-022, § 434-335-270, filed 8/29/05, effective 9/29/05.]

WAC 434-335-275 Pretest. The county auditor must pretest all programming and tabulation equipment to be used in the primary or election prior to the official logic and accuracy test.

[Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-335-275, filed 2/26/14, effective 3/29/14.]

WAC 434-335-280 Logic and accuracy test conduct.

The county must provide adequate personnel to properly operate the ballot tabulation system. Whenever possible, the system shall be operated during the test by the same person or persons who will be responsible for operating the system on election day. The official logic and accuracy test shall be conducted as follows:

(1) Every ballot tabulator and scanner to be used in the primary or election shall be tested. Digital scan test decks shall be scanned during the official logic and accuracy test.

(2) Undervotes recorded by a digital scan system shall be auto-resolved. Some undervotes may be manually resolved to demonstrate the process.

(3) Optical scan tabulators shall be set to out-stack blank ballots, overvotes, and write-in votes.

(4) A printout of the test results shall be produced and compared to the expected test results. If the test results do not match the expected test results, the reason for the discrepancy must be satisfactorily determined and corrections made, if necessary.

(5) The upload of results to the secretary of state's office shall be tested and verified.

[Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-335-280, filed 2/26/14, effective 3/29/14; WSR 05-18-022, § 434-335-280, filed 8/29/05, effective 9/29/05.]

WAC 434-335-290 Logic and accuracy test observers. The official logic and accuracy test must be observed by at least one representative of each major political party, if representatives have been appointed by the parties and are present at the test. The party observers must be instructed as election observers by the county auditor. The official logic and accuracy test must be open to candidates, the press, and the public. If any observer hinders or disturbs the logic and accuracy test process, the observer may be removed from the test area. An observer who has been removed from a logic and accuracy test may also be barred from future tests. The absence of observers may not delay or stop the test from being conducted.

[Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-290, filed 8/29/05, effective 9/29/05.]

WAC 434-335-300 Logic and accuracy testing of vote tabulation systems. At least three days before each state primary or general election, the office of the secretary of state shall observe the official logic and accuracy test of the vote tabulation system prepared by the county auditor. The test must verify that the system will correctly count the votes cast for all candidates and all measures appearing on the ballot.

[Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-335-300, filed 2/26/14, effective 3/29/14; WSR 08-05-120, § 434-335-300, filed 2/19/08, effective 3/21/08; WSR 05-18-022, § 434-335-300, filed 8/29/05, effective 9/29/05.]

WAC 434-335-310 Procedures for conducting an emergency logic and accuracy test. If the official logic and accuracy test cannot be completed at the scheduled time and place, an emergency test must be scheduled by the county auditor. The emergency test must be conducted and properly completed prior to processing any official ballots through the vote tabulation system. If a representative of the office of the

secretary of state is unable to attend the emergency test, the county auditor and another member of the county canvassing board or their designated representative must observe the test and certify the results. Observers and notification must be provided pursuant to WAC 434-335-290 and 434-335-320.

[Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-335-310, filed 2/26/14, effective 3/29/14; WSR 08-05-120, § 434-335-310, filed 2/19/08, effective 3/21/08; WSR 05-18-022, § 434-335-310, filed 8/29/05, effective 9/29/05.]

WAC 434-335-320 Scheduling the logic and accuracy test—State primary and general election. The office of the secretary of state must contact each county auditor at least forty-five days before a state primary or general election to schedule the official logic and accuracy test. After the test has been scheduled, the county auditor shall notify the parties, press, public, and candidates of the date and time of the test.

[Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-335-320, filed 2/26/14, effective 3/29/14; WSR 08-05-120, § 434-335-320, filed 2/19/08, effective 3/21/08; WSR 06-14-048, § 434-335-320, filed 6/28/06, effective 7/29/06; WSR 05-18-022, § 434-335-320, filed 8/29/05, effective 9/29/05.]

WAC 434-335-323 Preparing the logic and accuracy test. (1) Each county shall prepare a matrix of the test pattern used to mark the test deck of ballots for the official logic and accuracy test. The matrix shall consist of a spreadsheet listing the number of votes cast for each candidate and responses for and against each measure in each precinct or ballot style. The matrix shall include:

(a) For every precinct or ballot style, the first response position of every race or measure marked so the total votes cast for the first candidate of a race or the first response to a measure equals the total number of precincts or ballot styles being tested;

(b) Two votes for the second response position, three votes for the third response position, four votes for the fourth response position, etc.;

(c) For each tabulator's test deck:

(i) One write-in vote;

(ii) One overvoted race;

(iii) One blank ballot; and

(iv) At least one of each type of ballot to be used during the election including ballots on demand, alternative language ballots, electronically marked ballots, and electronically duplicated ballots.

(d) For all responses within a race or measure, including write-ins, unique results. Additional ballots must be added to the test deck in the following circumstances:

(i) Within a race or measure, more than one response has the same results;

(ii) A candidate appears in two different races on the same ballot; and

(iii) More than one measure appears on a ballot within the same jurisdiction and each has the same response position names. For example, if two measures with "yes" and "no" response names appear for the same jurisdiction, the test results shall be unique between the two measures.

(2) A copy of the county's test matrix and a sample ballot shall be sent to the office of the secretary of state by the fourteenth day prior to the official logic and accuracy test. The office of the secretary of state shall review the provided

matrix to determine if it is prepared in accordance with this section.

(3) The county auditor shall produce a test deck of ballots based on the test matrix to be used in the official logic and accuracy test.

[Statutory Authority: RCW 29A.04.611, WSR 14-06-040, § 434-335-323, filed 2/26/14, effective 3/29/14.]

WAC 434-335-325 Exception to logic and accuracy test pattern. A county auditor may file an exception request with the secretary of state to modify the test pattern provided in WAC 434-335-323. The county auditor must provide a description of the modification in detail, a sample test matrix, and the reasons for an exception. The exception request must be filed with the secretary of state no later than July 1st. The secretary of state must accept or reject the request in writing within thirty days. Accepted test patterns may be used in all future elections.

[Statutory Authority: RCW 29A.04.611, WSR 14-06-040, § 434-335-325, filed 2/26/14, effective 3/29/14.]

WAC 434-335-330 Logic and accuracy test certification. (1) The official logic and accuracy test shall be certified by the county auditor or deputy, the secretary of state representative, and any political party observers for a state primary or general election in accordance with RCW 29A.12.130. Additionally, the county auditor must verify in writing that the version numbers for all software, firmware, and hardware of the voting system used have not changed from the certified versions.

(2) The county auditor shall provide the secretary of state representative copies of the following documents:

- (a) Test results;
- (b) A zero report;
- (c) Signed verification of the version numbers;
- (d) Signed certification of the official logic and accuracy test;

(e) A test log of:

(i) The number of accessible voting units to be used in the primary or election; and

(ii) The electronic duplication system, if electronic duplication will be used in the primary or election; and

(f) Any other documentation requested by the secretary of state representative in advance of the official test.

(3) Copies of the certification documents must be retained by the secretary of state and the county auditor. All test results, test ballots, the signed certification, and a copy of the tabulation programming or the actual tabulation equipment must be kept in secure storage until the day of the primary or election. The secure storage must use numbered seals and logs that will detect any inappropriate access.

(4) If, for any reason, changes are made to the ballot counting programming after the official logic and accuracy test, an emergency logic and accuracy test must be conducted pursuant to WAC 434-335-310.

[Statutory Authority: RCW 29A.04.611, WSR 14-06-040, § 434-335-330, filed 2/26/14, effective 3/29/14; WSR 08-05-120, § 434-335-330, filed 2/19/08, effective 3/21/08; WSR 06-14-048, § 434-335-330, filed 6/28/06, effective 7/29/06; WSR 05-18-022, § 434-335-330, filed 8/29/05, effective 9/29/05.]

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WAC 434-335-335 Other primaries and elections.

For a primary or election that is not a state primary or election, the county auditor must conduct the official logic and accuracy test in the same manner as though it is a state primary or election.

[Statutory Authority: RCW 29A.04.611, WSR 14-06-040, § 434-335-335, filed 2/26/14, effective 3/29/14.]

ELECTRONIC VOTING SYSTEMS

WAC 434-335-510 Definitions. "Calibration" is the touch screen setting on an accessible voting unit with touch screen capability that controls the target area.

"Direct recording electronic device" is a device that electronically records a voter's choices.

"Electronic ballot marker" is a device that physically marks a voter's choices on a preprinted paper ballot.

"Target area" is each area on the ballot where the voter's choices are recorded.

"Touch screen" is a type of computer interface on a voting device that allows the voter to make a choice by touching the screen.

[Statutory Authority: RCW 29A.04.611, WSR 10-03-072, § 434-335-510, filed 1/18/10, effective 2/18/10; WSR 08-05-120, § 434-335-510, filed 2/19/08, effective 3/21/08; WSR 05-18-022, § 434-335-510, filed 8/29/05, effective 9/29/05.]

WAC 434-335-520 Logic and accuracy testing of accessible voting units. (1) The logic and accuracy test of accessible voting units must be completed before they may be used for marking or casting ballots. Counties must complete the testing to have in-person accessible voting available starting eighteen days before the day of a primary or election.

(2) This test serves as the official logic and accuracy test. A log must be created during the test, recording the time of each test, the precinct numbers, the seal number, the machine number, and the initials of each person testing the system. The log must be included in the official logic and accuracy test materials. This process is open to observation and subject to all notices and observers pursuant to WAC 434-335-290 and 434-335-320.

[Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630, WSR 11-24-064, § 434-335-520, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611, WSR 10-03-072, § 434-335-520, filed 1/18/10, effective 2/18/10; WSR 08-05-120, § 434-335-520, filed 2/19/08, effective 3/21/08; WSR 06-14-048, § 434-335-520, filed 6/28/06, effective 7/29/06; WSR 05-18-022, § 434-335-520, filed 8/29/05, effective 9/29/05.]

WAC 434-335-540 Touch screen calibration adjustment standards and tests. Prior to each state primary and election, the calibration settings of each device using touch screen technology must be tested to ensure that the target areas are functioning within system standards.

[Statutory Authority: RCW 29A.04.611, WSR 08-05-120, § 434-335-540, filed 2/19/08, effective 3/21/08; WSR 05-18-022, § 434-335-540, filed 8/29/05, effective 9/29/05.]

WAC 434-335-550 Direct recording electronic target area tests. Each county employing a direct recording electronic voting device must conduct a test to confirm that the target area indicated on each ballot face is programmed correctly. If the direct recording electronic device is going to be

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employed as an electronic ballot marker, the county must follow the requirements of WAC 434-335-560. Otherwise, the county must test all ballot styles on at least one device to ensure that the programming is correctly counting and accumulating every office, measure, and selection by the voter.

[Statutory Authority: RCW 29A.04.611. WSR 10-03-072, § 434-335-550, filed 1/18/10, effective 2/18/10; WSR 08-05-120, § 434-335-550, filed 2/19/08, effective 3/21/08; WSR 05-18-022, § 434-335-550, filed 8/29/05, effective 9/29/05.]

WAC 434-335-560 Electronic ballot marker test.

Each county employing an electronic ballot marker must conduct a test to confirm the target area indicated on each ballot face is programmed correctly. The county must test all ballot styles on at least one device to ensure the programming is correctly marking the target area for every office, measure, and selection by the voter.

[Statutory Authority: RCW 29A.04.611. WSR 08-05-120, § 434-335-560, filed 2/19/08, effective 3/21/08; WSR 05-18-022, § 434-335-560, filed 8/29/05, effective 9/29/05.]

AUTOMATED SIGNATURE VERIFICATION SYSTEMS

WAC 434-335-605 Initial application for approval.

Any vendor requesting approval of an automated signature verification system for use with a specific election management system must complete and submit an application to the secretary of state. The secretary of state shall coordinate its review of the system with the vendor and the participating county.

[Statutory Authority: RCW 29A.04.611. WSR 09-03-110, § 434-335-605, filed 1/21/09, effective 2/21/09; WSR 07-12-032, § 434-335-605, filed 5/30/07, effective 6/30/07.]

WAC 434-335-615 Examination of signature verification system. Prior to its use or purchase by any Washington county, an automated signature verification system must be reviewed and approved by the secretary of state for use with that county's particular election management system.

Prior to approval, an automated signature verification system must:

- (1) Be able to integrate with the election management system in use by the test county and the ballot accountability processes implemented by the county;
- (2) Have variable levels of confidence which the county may adjust and set to the level as subscribed by the secretary of state in the system's approval report; and
- (3) Provide a setting that must not accept a signature that an election worker with required signature training should not accept.

[Statutory Authority: RCW 29A.04.611. WSR 07-12-032, § 434-335-615, filed 5/30/07, effective 6/30/07.]

WAC 434-335-625 Signature verification system acceptance testing. An agreement by a county auditor to purchase a signature verification system is subject to that system passing an acceptance test that demonstrates the system is operating as it was when it was approved by the secretary of state. The minimum acceptance test standards are listed below.

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(1) The version number of the signature verification software must be the same as the version number of the software approved by the secretary of state. Any hardware must be the same model number and contain the same version of firmware that is certified by the secretary of state.

(2) The county auditor must receive all training and manuals necessary for the proper operation of the system.

(3) The county auditor must perform a series of tests to verify that the software is not accepting signatures that the county auditor's trained signature verification personnel would not accept. The test should include the county auditor's own signature envelopes, and be run against the county auditor's election management system signatures.

(4) The county auditor must perform a series of tests to verify the system integrates with the county election management system and ballot accountability processes.

(5) The county auditor must include the secretary of state where the signature verification system is being integrated with an election management system that has not been previously approved for that system.

(6) When participation by the secretary of state is not required under these rules, the county auditor must certify the results of the acceptance tests to the secretary of state. The certification must include version numbers of hardware, software and firmware installed and tested and ballot accountability procedures which incorporate the signature verification system.

[Statutory Authority: RCW 29A.04.611. WSR 07-12-032, § 434-335-625, filed 5/30/07, effective 6/30/07.]

WAC 434-335-635 Signature verification system approval report. No more than fourteen days following the approval of an automated signature verification system, the secretary of state must issue a written approval report that specifies the approved use of the system and conditions of its use. The approval must include the prescribed setting for the confidence level for either accepting or rejecting signatures. Signature verification systems are only approved for use with election management systems included in the approval report.

[Statutory Authority: RCW 29A.04.611. WSR 07-12-032, § 434-335-635, filed 5/30/07, effective 6/30/07.]