STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

ORLENE HAWKS
DIRECTOR

December 19, 2022

The Honorable Jocelyn Benson
Secretary of State
Office of the Great Seal
Richard H. Austin Building – 1st Floor
430 W. Allegan
Lansing, MI 48909

Dear Secretary Benson:

Re: Administrative Rules – Michigan Office of Administrative Hearings and Rules
       Administrative Rules #: 2021-61 ST

The Michigan Office of Administrative Hearings and Rules received administrative rules, dated March 7, 2022 for the Department of State **"Signature Matching for Absent Voter Ballot Applications and Absent Voter Ballot Envelopes"**. We are transmitting these rules to you pursuant to the requirements of Section 46 of Act No. 306 of the Public Acts of 1969, being MCL 24.246, and paragraph 16 of Executive Order 1995-6.

Sincerely,

Michigan Office of Administrative Hearings and Rules

CERTIFICATE OF ADOPTION

(By authority conferred on the secretary of state by sections 31, 759, 761, 765, and 765a of the Michigan election law, 1954 PA 116, MCL 168.31, 168.759, 168.761, 168.765, and 168.765a)

R 168.21, R 168.22, R 168.23, R 168.24, R 168.25, and R 168.26 are added to the Michigan Administrative Code, as follows:

Date: January 4, 2022

Jocelyn Benson

Jocelyn Benson, Secretary of State

STATE OF MICHIGAN
GRETCHEN WHITMER
GOVERNOR
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
ORLENE HAWKS
DIRECTOR

LEGAL CERTIFICATION OF RULES

I certify that I have examined the attached administrative rules, dated March 7, 2022, in which the Department of State proposes to modify a portion of the Michigan Administrative Code entitled **"Signature Matching for Absent Voter Ballot Applications and Absent Voter Ballot Envelopes"** by:

♦ Adding R 168.21, R 168.22, R 168.23, R 168.24, R 168.25, and R 168.26.

The Legislative Service Bureau has approved the proposed rules as to form, classification, and arrangement.

I approve the rules as to legality pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* and Executive Order No. 2019-6. In certifying the rules as to legality, I have determined that they are within the scope of the authority of the agency, do not violate constitutional rights, and are in conformity with the requirements of the Administrative Procedures Act.

Dated: December 19, 2022

Michigan Office of Administrative Hearings and Rules

By: *Katie Wienczewski*

Katie Wienczewski,
Attorney

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CERTIFICATE OF APPROVAL

On behalf of the Legislative Service Bureau, and as required by section 45 of the

Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.245, I have examined the

proposed rules of the Department of State dated March 7, 2022, adding R 168.21, R 168.22, R

168.23, R 168.24, R 168.25, and R 168.26 of the Department's rules entitled "Signature

Matching for Absent Voter Ballot Applications and Absent Voter Ballot Envelopes." I approve

the rules as to form, classification, and arrangement.

Dated: December 19, 2022

LEGISLATIVE SERVICE BUREAU

By ——————————————————————————

Rachel M. Hughart,
Legal Counsel

DEPARTMENT OF STATE

BUREAU OF ELECTIONS

SIGNATURE MATCHING FOR ABSENT VOTER BALLOT APPLICATIONS AND
ABSENT VOTER BALLOT ENVELOPES

Filed with the secretary of state on December 19, 2022

These rules take effect immediately upon filing with the secretary of state unless adopted
under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA
306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become
effective 7 days after filing with the secretary of state.

(By authority conferred on the secretary of state by sections 31, 759, 761, 765, and
765a of the Michigan election law, 1954 PA 116, MCL 168.31, 168.759, 168.761,
168.765, and 168.765a)

R 168.21, R 168.22, R 168.23, R 168.24, R 168.25, and R 168.26 are added to the
Michigan Administrative Code, as follows:

R 168.21 Definitions.
 Rule 1. As used in these rules:
   (a) "Election official" means the township, city, or county clerk or their staff
responsible for verifying signatures.
   (b) "Master card" means the master card document referenced in 761(2), 1954 PA
116, MCL 168.761, and 766(2), 1954 PA 116, MCL 168.766.
   (c) "Qualified voter file" means the voter registration database maintained by the
Secretary of State.
   (d) "Signature on file" means the signature of the voter contained in the qualified
voter file. If the qualified voter file does not contain the voter's digitized signature, the
signature of the voter contained on the master card is the signature on file. If an absent
voter ballot application signature has been compared against the signature of the voter
contained in the qualified voter file or on the master card and the absent voter ballot
application signature has been determined to agree sufficiently with the signature of the
voter contained in the qualified voter file or on the master card, the absent voter ballot
application signature is also a "signature on file" for the purpose of this ruleset. Nothing
in this ruleset shall be construed to allow an absent voter ballot application signature to
be used to validate an absent voter ballot envelope signature unless the absent voter ballot
application signature has been found to agree sufficiently with the signature of the voter
contained in the qualified voter file or on the master card.

R 168.22 Sufficient agreement of voter signature; initial presumption of
 validity; voter contact by clerk.

Rule 2. (1) In determining for purposes of section 761(2) of the Michigan election law, 1954 PA 116, MCL 168.761, or for the purposes of 766(2), 1954 PA 116, MCL 168.766, whether a voter's absent voter ballot application signature or absent voter ballot envelope signature agrees sufficiently with the voter's signature on file, an election official may determine that a signature does not agree sufficiently with the signature on file only after reviewing the absent voter ballot application signature or absent voter ballot envelope signature using the process set forth in these rules.

(2) A voter's signature should be considered invalid only if it differs in significant and obvious respects from the signature on file. Slight dissimilarities should be resolved in favor of the voter. Exact matches are not required to determine that a signature agrees sufficiently with the signature on file.

(3) If, after examining a voter's absent voter ballot application signature or absent voter ballot envelope signature using the process set forth in these rules, an election official has genuine concerns about the signature's validity, the election official may contact the voter to address those concerns prior to determining that a signature is not valid. Any efforts by the election official to contact a voter under this subsection is not notification for the purposes of R 168.25 that the absent voter ballot application signature or absent voter ballot envelope signature has been found not to agree sufficiently with the signature on file. An election official who is unable to determine that the absent voter ballot application signature or absent voter ballot envelope signature agrees sufficiently with the signature on file after contacting or attempting to contact the voter for clarification under this subsection is still bound by the notification timelines set forth in R 168.25.

R 168.23 Redeeming qualities.

Rule 3. (1) In determining whether an absent voter ballot application signature or absent voter ballot envelope signature agrees sufficiently with a signature on file, election officials shall consider whether any redeeming qualities are present. The bureau of elections shall provide examples of signatures with redeeming qualities and questionable signatures.

(2) Redeeming qualities include, but are not limited to, the following:

(a) Similar distinctive flourishes.

(b) More matching features than nonmatching features.

(c) Signature features do not match because it appears as if the voter's hand is trembling or shaking.

(d) Only part of the signature matches the signature on file, for example, if only the first letters of the first and last name match.

(e) Signature is partially printed but partially matches the signature on file.

(f) Signature is a recognized diminutive of the voter's full legal name.

(g) Signature omits a middle name, replaces a middle name with an initial, or replaces a middle initial with a name.

(h) Signature style has changed slightly from signature on file.

R 168.24 Explanations for differences in signatures.

Rule 4. (1) Elections officials shall consider the following as possible explanations for the discrepancies in signatures:

(a) Evidence of trembling or shaking in a signature could be health-related or the result of aging.

(b) The voter may have used a diminutive of their full legal name, including, but not limited to, the use of initials, or the rearrangement of components of their full legal name, such as a reversal of first and last names, use of a middle name in place of a first name, or omitting a second last name.

(c) The voter's signature style may have changed slightly over time.

(d) The signature may have been written in haste.

(e) The surface of the location where the signature was made may have been rough, soft, uneven, or unstable.

(2) In addition to the characteristics listed in R 168.23(2)(f) and (g), the elections official may also consider factors applicable to a particular voter, such as the age of the voter, the age of the signature or signatures contained in the voter's record, the possibility that the voter is disabled, the voter's primary language, and the quality of any digitized signature or signatures contained in the voter's record, and any other plausible reason given by the voter that satisfies the clerk when following up on a questionable signature.

R 168.25 Timing of signature review and notification.

Rule 5. (1) If the absent voter ballot application or the absent voter ballot envelope is received at least 6 calendar days prior to the election, the clerk must notify the voter of issues with the voter's signature by the end of the next business day following receipt of the application or ballot envelope.

(2) If the absent voter ballot application or the absent voter ballot envelope is received less than 5 calendar days prior to the election, an election official must review that absent voter ballot application or absent voter ballot envelope by the end of the calendar day on which the absent voter ballot application or absent voter ballot envelope was received by the clerk. If the election official determines that the voter's signature on the absent voter ballot application or absent voter ballot envelope does not agree sufficiently with the signature on file, the election official must contact the voter by the end of the calendar day on which the absent voter ballot application or absent voter ballot envelope was received by the clerk.

(3) If the absent voter ballot application or the absent voter ballot envelope is received by the clerk by 8 p.m. on the calendar day prior to an election, an election official must review the absent voter ballot application or absent voter ballot envelope before the end of the calendar day prior to the election. If the election official determines that the voter's signature on the absent voter ballot application or absent voter ballot envelope does not agree sufficiently with the signature on file, the election official must contact the voter by the end of the calendar day prior to the election.

(4) For the purposes of this rule, if the absent voter ballot application or absent voter ballot envelope comes into the physical control of the clerk's office before or during the clerk's scheduled business hours, that absent voter ballot application or absent voter ballot envelope is considered to have been received by the clerk on the day of submission. If an absent voter ballot application or absent voter ballot envelope comes

into the physical control of the clerk's office after the end of the clerk's scheduled business hours, or if the absent voter ballot application or absent voter ballot envelope comes into the physical control of the clerk's office on a day on which the clerk does not have scheduled business hours, that absent voter ballot application or absent voter ballot envelope is considered to have been received on the first subsequent day during which the clerk has scheduled business hours.

(5) If a clerk's jurisdiction maintains one or more absent voter ballot application or absent voter ballot envelope drop boxes, each drop box must be checked by an election official for any absent voter ballot applications or absent voter ballot envelopes that have been deposited prior to the end of the clerk's scheduled business hours on every day during which the clerk has scheduled business hours. The election official checking the drop box must retrieve each absent voter ballot application or absent voter ballot envelope contained in the drop box at that time. Each absent voter ballot application or absent voter ballot envelope retrieved at that time is considered to have been received by the clerk on that day. An absent voter ballot application or absent voter ballot envelope deposited in those drop boxes on a day during which the clerk does not have scheduled business hours will not be considered to have been received by the clerk until the next day on which the clerk has scheduled business hours.

(6) An absent voter ballot envelope that is collected by an election official through the procedure laid out in 764b(4) or (5), 1954 PA 116, MCL 168.764b, shall be considered received when the election official comes into physical possession of the ballot envelope.

(7) Nothing in this rule shall prevent an election official from providing notification more quickly than mandated by this rule to a voter that the voter's absent voter ballot application signature or absent voter ballot envelope signature has been determined not to agree sufficiently with the signature on file.

(8) If the absent voter ballot application or the absent voter ballot envelope is missing the voter's signature, or if the clerk determines that the voter's signature on the absent voter ballot application or on the absent voter ballot envelope does not agree sufficiently with the voter's signature on file, the clerk shall inform the voter using any and all contact information available that their absent voter ballot application or their absent voter ballot envelope is missing a signature or has a non-matching signature, and the need to cure the signature deficiency. The clerk must notify the voter by phone and email, and, in the absence of the voter's email address, by United States mail.

R 168.26 Curing signature deficiencies.

Rule 6. (1) Any of the following methods may be used to cure a missing or mismatched signature:

(a) A voter may provide a signature on the absent voter ballot application or ballot envelope with the missing or mismatched signature;

(b) A voter may complete and submit a signature cure form prescribed by the Secretary of State; or

(c) A voter may follow another form or method of curing a missing or mismatched signature as specified by the election official on their website or in the election official's office.

(2) A voter may cure a missing or mismatched signature up until the close of polls on Election Day.

(3) If a request if made by a voter, an election official may facilitate the cure of a missing or mismatched signature by making arrangements to

(a) collect a cure form; or

(b) provide the absent voter ballot application or absent voter ballot envelope missing a signature to the voter so that the voter might sign the absent voter ballot application or absent voter ballot envelope.

FILED WITH SECRETARY OF STATE

ON 12/19/22 AT 2:07 P.M.