

From: [C.Jay Coles](#)
To: [MDOS-Elections-PublicComment](#)
Subject: Comments on Proposed Electronic Ballot Return Draft Rules
Date: Monday, May 12, 2025 5:01:07 PM
Attachments: [MI draft IV rules letter VV.pdf](#)

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Please see our comments attached.

C.Jay Coles Deputy Director of Legislative Affairs (he/him)

ccoles@verifiedvoting.org • [760.804.8683](tel:760.804.8683) ext. 705

verifiedvoting.org





May 12, 2025

The Honorable Jocelyn Benson
Secretary of State
State of Michigan
430 W. Allegan Street
Richard H. Austin Building - 4th Floor
Lansing, MI 48918
via email

Dear Secretary Benson,

On behalf of Verified Voting, I submit these comments on the proposed draft rules for the electronic return of voted ballots as specified in MCL 168.759a(17). Verified Voting is a nonpartisan nonprofit organization whose mission is to strengthen democracy for all voters by promoting the responsible use of technology in elections. Since our founding in 2004 by computer scientists, we have acted on the belief that the integrity and strength of our democracy rely on citizens' trust that each vote is counted as cast. With this in mind we oppose allowing voted ballots to be returned electronically through insecure means.

Four federal government agencies have concluded in a recent risk assessment that electronic ballot return is "High" risk, even with security safeguards and cyber precautions in place. The agencies warn that electronic ballot return "faces significant security risks to the confidentiality, integrity, and availability of voted ballots," and that these risks can "ultimately affect the tabulation and results and can occur at scale," and explicitly recommends paper ballots.¹ The risk assessment was issued by the Federal Bureau of Investigation (FBI), the Department of Homeland Security's Cybersecurity Infrastructure Security Agency (CISA), the U.S. Elections Assistance Commission (EAC) and the National Institute for Standards and Technology (NIST).

Below are comments on specific sections of the proposed draft rules:

"R 168.102 Electronic delivery of ballots.

Rule 2. (1) Ballots must be transmitted through the portal to all eligible voters requesting to receive their ballot electronically.

(2) The portal may allow for delivery of ballots electronically to UOCAVA voters who are ineligible to return their ballots electronically but who request electronic delivery.

(3) Unless a different delivery preference is indicated, a voter who provides their email address on their absentee ballot application is presumed to request electronic delivery."

¹ U.S. Cybersecurity and Infrastructure Security Agency, Federal Bureau of Investigation, National Institute of Standards and Technology and the U.S. Election Assistance Commission, Risk Management for Electronic Ballot Delivery, Marking, and Return 1 (2020), available at https://www.cisa.gov/sites/default/files/2024-02/Final_Risk_Management_for_Electronic-Ballot_05082020_508c.pdf.

The current draft lacks clarity regarding the scope of application of the provision. It is ambiguous whether the provision applies exclusively to “eligible voters” authorized to utilize electronic returns or extends to all Michigan voters submitting applications for absentee ballots. It is reasonably assumed that many voters completing the absentee ballot application, available at <https://www.michigan.gov/sos/-/media/Project/Websites/sos/Elections/Election-Forms/Absent-Voter-Ballot-Application-Fillable.pdf>, anticipate their email address to be utilized for communication purposes, rather than for the transmission of ballots. In the event that voters do not expect to receive ballots via email or neglect to keep their email address updated, there is a potential risk of loss of their ballots. Should voters anticipate receipt of a physical ballot and encounter difficulties in printing an electronic copy, voters might be disenfranchised as a result.

“R 168.109 Confidential voter information.

Rule 9. In the same manner as information protected under section 509gg of the act, MCL 168.509gg, and the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, the clerk shall maintain the confidentiality of a voter’s United States Department of Defense verified electronic signature by taking all reasonable steps to prevent its disclosure.”

The proposed measure concerning the confidentiality of digital signatures is illogical. While maintaining the secrecy of traditional signatures aids in the prevention of forgery, this rationale does not apply to digital signatures. Due to their intrinsic nature, digital signatures allow for independent verification without compromising their security. In fact, public disclosure of digital signatures is advisable to enable third-party validation of proper verification.

“R 168.111 Public inspection of portal prohibited.

Rule 11. (1) Except as provided in subrule (3) of this rule, only verified users of the portal may view the portal and any data in the portal.

(2) Except as provided in subrule (3) of this rule, verified users shall not provide access to the portal or any of its data to another individual who is not a verified user.

(3) As used in this rule, any individual assisting an eligible voter who requires assistance to vote their ballot as allowed under section 764a of the act, MCL 168.764a, may access and view the portal as necessary to assist the voter.”

No regulation prohibits voters from allowing others to view or even complete, up to the point of signature, their paper-based absentee ballots. This provision appears to treat users of the portal disparately, potentially infringing upon equal protection. Furthermore, it poses a risk of disenfranchising military voters if their access is restricted to computers shared with others.

“R 168.113 Portal administration.

Rule 13. The department shall maintain the portal for electronic return of absent voter ballots by eligible voters and utilize security features determined appropriate by the secretary of state or the department of technology, management, and budget to prevent unauthorized access to data or information and to ensure that a user attempting to access the portal is an individual.”

Our concern lies not with unauthorized access to data or information, as voters have already relinquished their privacy to utilize the system. Rather, we are focused on preventing unauthorized voting or modification of ballots. The current rule lacks explicit requirements for

safeguarding ballots against manipulation or substitution, whether through client-side malware, in-network attacks, or attacks on the portal server.

“R 168.114 Construction.

Rule 14. These rules must be liberally construed in favor of voters’ rights and not be read to limit participation in the electronic return program if access to additional voters is authorized by future statute or court order.”

This approach seems ill-advised. Should a future legislative amendment or judicial mandate expand the program's scope, the associated security risks would be substantially altered, necessitating revised rulemaking to ensure adequate protective measures. Notably, the current regulations permit the substitution of "electronic return identity verification" with an alternative to a Common Access Card, potentially resulting in significant disparities in security levels.

At a time when election security and public confidence are under relentless attack, Michigan should not rely on insecure technology for voters that produces unprovable election results. We urge you to pause efforts on the implementation of the electronic return of voted ballots. The security risks associated with this policy are simply too great for effective implementation. We would welcome the opportunity to provide you further information about the technical aspects and severe inherent risks of electronic ballot return.

Sincerely,

C.Jay Coles
Deputy Director of Legislative Affairs

From: [Lisa Lawitzke](#)
To: [Boes, Alessa \(MDOS\)](#); [Bill Zaagman](#); [Jody Hansen](#); [MDOS-Elections-PublicComment](#)
Subject: Re: Draft Electronic Return of Absent Voter Ballots by Eligible Voters Rules
Date: Monday, March 24, 2025 7:23:08 PM
Attachments: [image002.png](#)
[Electronic Return Rules Draft LML comments.docx](#)

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Nice to meet you, Alessa! I'm a little late to this party, but I've attached the doc with my added comments. I'll also get that May public hearing on my calendar if I'm available that day!

Lisa

On Mon, Mar 24, 2025 at 9:19 AM Boes, Alessa (MDOS) <BoesA@michigan.gov> wrote:

Thanks for letting me know, Heather. Best wishes in your next endeavor!

And hello, nice to electronically meet you, Lisa and Jody.

Alessa

From: Bouck, Heather <hbouck@mt-pleasant.org>
Sent: Monday, March 24, 2025 9:17 AM
To: Boes, Alessa (MDOS) <BoesA@michigan.gov>; Bill Zaagman <zaagman.w@gcsionline.com>; Lisa Lawitzke <saberpunk@gmail.com>; Jody Hansen <clerk@allendale-twp.org>
Cc: MDOS-Elections-PublicComment <MDOS-Elections-PublicComment@michigan.gov>
Subject: RE: Draft Electronic Return of Absent Voter Ballots by Eligible Voters Rules

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DEPARTMENT OF STATE

BUREAU OF ELECTIONS

ELECTRONIC RETURN OF ABSENT VOTER BALLOTS BY ELIGIBLE VOTERS

Filed with the secretary of state on

These rules become effective immediately after 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 section 759a of the Michigan election law, 1954 PA 116, MCL 168.759a)

R 168.101, R 168.102, R 168.103, R 168.104, R 168.105, R 168.106, R 168.107, R 168.108, R 168.109, R 168.110, R 168.111, R 168.112, R 168.113, and R 168.114 are added to the Michigan Administrative Code, as follows:

R 168.101 Definitions.

Rule 1. (1) As used in these rules:

- (a) “Act” means the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.
- (b) “Clerk” means a city or township clerk, the clerk’s deputy clerk, or a sworn member of the clerk’s staff, including appointed election inspectors, assisting with the electronic return program.
- (c) “Data” means verifying information about the voter’s identity, the voted ballot, timestamps, notifications sent from the portal, and any other record or information.
- (d) “Department” means the Michigan Department of State.
- (e) “Electronic return program” means use of the portal to both electronically receive ballots and electronically return voted ballots.
- (f) “Eligible voter” means “eligible member” as defined in Section 759a(17) of the act, MCL 168.759a, and any other individual authorized by statute or court order to electronically return a voted ballot.
- (g) “Portal” means the secure online system used to electronically send ballots, ballot instructions, and required certification to a voter and used to electronically return to the clerk voted ballots and signed certifications from eligible voters.
- (h) “Proof of identity” means the United States Department of Defense verified electronic signature as defined in Section 18a of the act, MCL 168.18a, or any other form of identity verification authorized by statute or court order for purposes of electronic return.
- (i) “Secretary of state’s duly authorized agent” includes the Bureau of Elections, other necessary department staff, county clerks or their designees, and relevant department of technology, management, and budget staff as determined by the Director of Elections.
- (j) “UOCAVA voter” means an absent uniformed services voter or overseas voter who receives specified registration and absentee voting protections under the federal uniformed and overseas citizens absentee voting act, the military and overseas empowerment act, and corresponding state law provisions under the act.

(k) “Verified user” means a clerk or a clerk’s designee responsible for electronically delivering ballots and receiving ballots through the portal, an authorized agent of the secretary of state, or a voter authorized to electronically receive or electronically receive and return a ballot by law.

(2) Unless otherwise defined in these rules, a term defined in the act has the same meaning when used in these rules.

R 168.102 Electronic delivery of ballots.

Rule 2. (1) Ballots must be transmitted through the portal to all eligible voters requesting to receive their ballot electronically.

(2) The portal may allow for delivery of ballots electronically to voters who are ineligible to return their ballots electronically but who request electronic delivery.

(3) In addition to an explicit request for electronic delivery, a voter who provides their email address on their absentee ballot application is presumed to request electronic delivery.

R 168.103 Clerk and administrator access to portal and identity verification.

Rule 3. (1) Clerks who have voters that may access the portal will also have access to the portal and must complete the security verification required by the department to enter the portal.

(2) The secretary of state’s duly authorized agents will have access to the portal and must complete the security verification required by the department to enter the portal.

(3) The secretary of state’s duly authorized agents may allow access to the portal’s vendor, as specified by the executed contract.

R 168.104 Clerk responsibility to deliver ballots.

Rule 4. (1) All ballots must be transmitted at least 45 days before an election through the portal to every eligible voter who requested electronic delivery of their ballot.

(2) All ballots must be transmitted at least 45 days before an election through the portal to every UOCAVA voter who is able to receive a ballot through the portal and requested electronic delivery of their ballot.

(3) If the clerk does not electronically transmit the ballots to every voter identified under subrules (1) and (2) at least 45 days before an election, the Bureau of Elections may designate an authorized agent of the secretary of state to transmit the ballot to the voter.

(4) The reporting requirements under section 759a of the act, MCL 168.759a, apply to ballots that are electronically transmitted to voters using the portal.

(5) Delivery of ballots to additional voters authorized under a future statutory change or court order is governed by the authorizing legal authority.

R 168.105 Participation in electronic return.

Rule 5. (1) To participate in the electronic return program, an eligible voter must elect to electronically receive their ballot and sign the voter application with their proof of identity, as provided below:

(a) If the eligible voter is using the Federal Post Card Application, include the proof of identity as indicated in the state-specific instructions.

(b) If the eligible voter is using the Michigan Absent Voter Ballot Application, include the proof of identity as indicated on the application.

(c) If the eligible voter does not sign their absentee voter ballot application with their proof of identity, they may still participate in the electronic return program if the proof of identity is

provided to their clerk not later than 2 p.m. on the Saturday before the election as specified in Section 759a(10) of the act, MCL 168.759a.

(d) As authorized under a future statutory change or court order.

(2) The waiver of the Constitutional right to a secret ballot contemplated by section 759a(8) of the act, MCL 168.759a, applies to voters who participate in the electronic return program to the extent that the secrecy of the absent voter ballot may be compromised during the duplication process.

R 168.106 Voter access to the portal; electronic return of ballot.

Rule 6. (1) All eligible voters who have elected to electronically receive their ballot will be able to access the portal when their ballot is available and will receive an email notification when their ballot is ready.

(2) UOCAVA voters who are not eligible voters but who may receive their ballot electronically through the portal will receive an email notification when their ballot is ready and will be instructed to print their ballot and return it by mail.

(3) Eligible voters will be instructed to vote their ballot in the portal and electronically return the ballot. To electronically return a voted ballot, the eligible voter will be required to sign the certification with their proof of identity to verify their identity.

(4) Eligible voters will receive email notifications from the portal reminding them to vote their ballot and return it before the close of polls in the time zone where they are registered to vote.

(5) Eligible voters must return their ballot through the portal by the close of polls in the time zone where they are registered to vote for their ballot to be considered timely received.

(6) Eligible voters will receive email notifications from the portal upon the occurrence of any of the events in section 764c(2) of the act, MCL 168.764c, in satisfaction of that section's requirements.

(7) Any other voter who becomes eligible under a future statutory change or court order will be instructed to submit required proof of identity on the certification to electronically return their ballot according to the law and will receive all required email notifications.

R 168.107 Voter identity verification for electronic return program.

Rule 7. (1) The identity of an eligible voter is verified at the following times:

(a) When the eligible voter completes and submits an absent voter ballot application. The absent voter ballot application includes both the eligible voter's signature on file and the eligible voter's proof of identity. When the eligible voter is an eligible member, the proof of identity included is the eligible voter's United States Department of Defense verified electronic signature.

(b) When the eligible voter completes the certification that is submitted with their voted ballot to electronically return the ballot. The certification is completed by attaching the eligible voter's proof of identity.

(2) The identity of any additional voter who is authorized to participate in the electronic return program under a future statutory change or court order will be verified as required by law.

R 168.108 Clerk verification of voter identity on electronically returned ballots; processing of electronically returned ballots.

Rule 8. (1) The clerk must comply with absent voter ballot return timelines and procedures set forth by sections 765 and 765a of the act, MCL 168.765 and MCL 168.765a, as much as

practicable. The proof of identity on the certification included with an electronically returned ballot shall be substituted for the signature on an absent voter ballot return envelope.

(2) The clerk must examine the proof of identity included on the certification and verify that the proof of identity matches the proof of identity on the voter's absent voter ballot application.

(3) If the proof of identity does not match, the clerk must reject the ballot, notify the voter, and provide instructions on how to cure, following as near as is practicable the provisions of section 766a of the act, MCL 168.766a.

(4) If the proof of identity is verified by matching it to the proof of identity submitted on the voter's absent voter ballot application, the clerk must accept the ballot.

(5) Accepted ballots must be tabulated as provided under section 759a(7) of the act, MCL 168.759a.

(6) Normal ballot storage and retention procedures apply.

R 168.109 Confidential voter information.

Rule 9. In the same manner as information protected under Section 509gg of the act, MCL 168.509gg, and the freedom of information act, 1976 PA 442, MCL 15.231 to MCL 15.246, the clerk must maintain the confidentiality of a voter's United States Department of Defense verified electronic signature by taking all reasonable steps to prevent its disclosure.

R 168.110 Data retention.

Rule 10. All data in the portal will be retained if required in accordance with the State of Michigan Records Retention and Disposal Schedule.

R 168.111 Public inspection of portal prohibited.

Rule 11. (1) Except as provided in subrule (3), only verified users of the portal may view the portal and any data in the portal.

(2) Except as provided in subrule (3), verified users must not provide access to the portal or any of its data to any other individual who is not a verified user.

(3) For purposes of this rule, any individual assisting an eligible voter who requires assistance to vote their ballot may access and view the portal as necessary to assist the voter.

R 168.112 Absent voter procedures.

Rule 12. Except where superseded by these rules, the procedures provided for absent voters in the act also apply to absent voters who participate in the electronic return program.

R 168.113 Portal administration.

Rule 13. The department must maintain the portal for electronic return of absent voter ballots by eligible voters and utilize security features determined appropriate by the secretary of state or the department of technology, management, and budget to prevent unauthorized access to data or information and to ensure that a person attempting to use the portal is an individual.

R 168.114 Construction.

Rule 14. These rules shall be liberally construed in favor of voters' rights and shall not be read to limit participation in the electronic return program if access to additional voters is authorized by future statute or court order.