VIRGINIA
DEPARTMENT *of* ELECTIONS

the Handbook

Chapter 13
Provisional Ballots

July 2021

13. Provisional   Ballots

REQUIRED FORMS	ADDITIONAL RESOURCES
Provisional Voter Notice (ELECT-653N) Provisional Voter Notice – Identification (ELECT-643Pr) Provisional Vote Envelope (SBE-653) Provisional Vote Envelope – ID ONLY (SBE-653ID) Precinct Provisional Ballots Log (ELECT-653LOG) Provisional Votes Pollbook (SBE-653p) ID Confirmation Statement (ELECT-643ID)	What If Reference sheet
REFERENCE Help America Vote Act (HAVA) 52 USC §21082 Help America Vote Act (HAVA) 52 USC §21083 Training Standards for Officers of Elections (SBE Policy 2010-002) Procedures for Counting Provisional Ballots (SBE Policy 2009-006) VERIS Step-by-Step: Voter History VERIS Step-by-Step: Election Results	**REGULATIONS** **1VAC20-40-10** *Definitions* **1VAC20-60-60** *Provisional Votes*

13.1   CHAPTER ORGANIZATION

In simplest terms, provisional voting represents the right of an individual, to reserve their right to vote and postpone the voter eligibility determination to a time when more perfect or complete information may be provided.[1]

Federal and state laws require polling locations to provide provisional ballots on election days to ensure that eligible Virginians have an opportunity to cast a vote. Officers of election should be trained to provide provisional ballots if a voter states but officials cannot verify that she is eligible or did not already vote, and in the rare circumstance a court extends polling hours past 7pm.

This chapter provides an overview of the proper provisional ballot procedures to be used before, during, and after Election Day. First, §13.2 discusses preparing provisional ballots for Election Day. Next, §13.3 outlines when a provisional ballot should be issued. §13.4 details the specific reasons a provisional ballot may be offered: such as, lack of acceptable ID or the voter's name missing from the pollbook. §13.5 outlines general procedures election officials should follow when issuing a provisional ballot. §13.6 discusses the provisional ballot meeting, and how the voter's eligibility to vote will be determined. §13.8 closes the chapter by outlining certain requirements regarding provisional ballot notification and voter credit.

13.2   PREPARATIONS FOR ELECTION DAY

Complete the following the Friday before Election Day:

● **Provide public notice of the date and time of the provisional ballots meeting and canvass**

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[1] *See* Sandusky County Democratic Party, 387 F.3d at 570 and Florida Democratic Party v. Hood, 342 F.Supp 1073, 1079-1080 (N.D. Fla. 2004).

Notice of the date, time, and location at which the provisional ballots meeting and the canvass will be held must be given by the electoral board at least *three working days* prior to the meeting date.[2]

- **Train officers of election**
  Hold the training session for chief and assistant chief officers of election no more than thirty but no less than three days before the election.[3] The training must include procedures that officers of election must follow to offer an eligible voter a provisional ballot.[4] All precinct chiefs and assistant chiefs must be trained to:
  - o offer provisional voting as required pursuant to state and federal law,
  - o secure additional ballots or envelopes when needed, and
  - o supply voter registration applications for each provisional voter.[5]

  Resources: You can use the *What If* reference sheet, Provisional Vote Envelope, Provisional Vote Envelope – ID ONLY, Precinct Provisional Ballots Log, and 1A Envelope to train officers of election.

- **Stock**
  Each polling place must have sufficient ballots, a provisional ballots log, provisional ballot envelopes (both regular and ID ONLY), voter registration applications, Provisional Voter Notice form (ELECT-653N), and Provisional Voter Notice – Identification forms (ELECT-643Pr).[6]

13.3   WHEN TO PROVIDE A PROVISIONAL BALLOT

The right to cast a provisional ballot is created in Section 302 of the Help America Vote Act (HAVA). Pursuant to HAVA, when an individual declares that he or she is a registered and eligible voter in a federal election, that individual "shall be permitted to cast a provisional ballot" if (1) their name does not appear on the official list of eligible voters or (2) "an election official asserts that the individual is not eligible to vote."[7]

This right to receive a provisional ballot is contingent upon only one thing (per Section 302(a) (2)), the individual's execution of a written affirmation that he or she is both a registered and eligible voter for the election at issue.[8]

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[2] *See* the Code of Virginia §2.2-3707.

[3] *See* the Code of Virginia §24.2-115.

[4] *See* State Board of Elections policy 2010-002, Training Standards for Officers of Elections.

[5] *See* the Code of Virginia 24.2-653(A).

[6] *See* the Code of Virginia §§24.2-643(B) (requiring provisional ballots and ID-ONLY provisional ballot envelopes be used at the polls) and 24.2-653(A) (requiring provisional ballots, provisional ballot envelopes, provisional ballots log, and written notice be used at the polls).

[7] *See* HAVA §302(a)).

[8] *See* Sandusky County Democratic Party v. Blackwell, 387 F.3d 565, 574 (6th Cir. 2004).

"[T]he primary purpose of HAVA was to prevent on-the-spot denials of provisional ballots to voters deemed ineligible to vote by poll workers. Under HAVA, the only permissible requirement that may be imposed upon a would-be voter before permitting that voter to cast a provisional ballot is the affirmation contained in [42 U.S.C.] §15482(a): that the voter is a registered voter in the jurisdiction in which he or she desires to vote, and that the voter is eligible to vote in an election for federal office."[9]
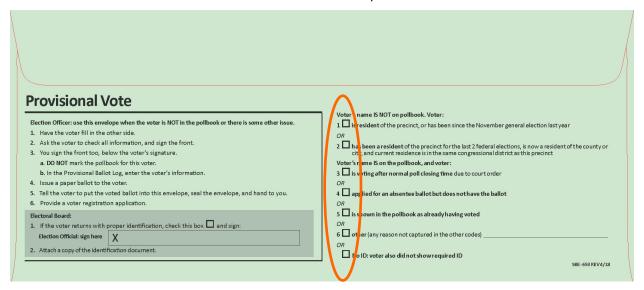
Provisional voting works only if the right to vote a provisional ballot is always available whenever a voter's eligibility is in question.[10]

13.3.1 Provisional ballots for Split Precincts

Starting July 1, 2020 any voter assigned to a split precinct who believes he was provided a ballot for the incorrect election district may request to vote a provisional ballot for the district he was assigned to by the general registrar and the district he believes is the correct election district. This option must be requested prior to casting any vote. The voter will submit a provisional ballot for both election districts. Your election officers should treat the provisional as they would any other provisional ballot. Your electoral board will make the determination as to which provisional vote is valid. The reason code for this particular provisional situation should be 6: OTHER.

13.4 HOW TO COMPLETE A PROVISIONAL BALLOT ENVELOPE

Below is an example of a provisional ballot envelope. Circled are the listed reasons for the provisional ballot being cast. The officer of election must mark the appropriate reason for issuing the ballot in order for the ballot to be considered complete.

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[9] *Supra* at 574.

[10] The U.S. Election Assistance Commission, EAC Advisory 2005-006: Provisional Voting and Identification Requirements, p. 4.

NOTE: **You can mark more than one reason**. If the person who is casting a provisional ballot for Reasons #1-6 is also missing a proper identification document, the office of election should also mark "Voter ALSO did not present required identification."[11]

13.4.1 Reasons #1 or #2 – Voter's name is NOT in pollbook or Voter says (s)he IS registered to vote in that precinct

Sometimes an officer of election may not be able to find the voter's name in the pollbook. When this occurs, the officer of election should double check the voter's name and precinct.

- **Check the voter's name**.
  - o Ask the voter for correct spelling of name or if there has been a recent name change.[12]
  - o Check for the voter's name at the end of the alphabetical section of the pollbook or on any separate listing provided by the registrar.[13]
- **Check the voter's precinct**.
  - o Check the street file records, alpha roster, electronic pollbooks, or other such materials provided to determine if the voter is in the correct precinct.
  - o If the voter is found to be in the incorrect precinct, inform the voter that the voter file indicates that they are currently registered to vote at {current address}. Advise the voter that in Virginia, a ballot will only be counted at the polling location where she is registered. However, inform the voter that they may cast a provisional ballot at the current polling location.

13.4.2 Reason # 3 – Polling Hours Extended by Court Order

A court may issue an order extending the hours the polls are to be open. If this occurs, both the general registrar and chief election officers will be made aware of the court order. **In this circumstance, any voter who was not in line when the polls would have closed (but for the court order, i.e. 7pm) must vote by a provisional ballot.**[14]

NOTE: All provisional ballots cast after the normal polling hours for Reason #3 must be kept **separate** from other ballots and recorded in a separate provisional ballots pollbook.[15] Do not record them in the regular pollbook.[16] The Provisional Ballots Log will serve as the pollbook for these ballots.[17] The officers should start a new log page and not mix these entries with those for provisional voters during normal hours.[18] You must keep these votes separate so that if a higher court reverses the order extending hours, officials will be able to determine which ballots were cast during regular hours and which ballots were cast during the extended hours.

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[11] *See What if reference sheet*.
[12] *See What if reference sheet*, §10.
[13] *See What if reference sheet*, §10.
[14] *See the Code of Virginia §24.2-653(C). See also HAVA, 52USC §21082(c)*.
[15] *See the Code of Virginia §24.2-653(C)*.
[16] *See the Code of Virginia §24.2-653(C)*.
[17] *See What if reference sheet*, §19.
[18] *See the Code of Virginia §24.2-653(C)*.

13.4.3 Reason # 4 – Voter on Absentee Ballot List Appears at Regular Polling Place or Central Absentee Precinct; Voter Says Absentee Ballot Lost, not Received, or Returned Spoiled, Damaged, or Unused – On or before Election Day

Sometimes a voter's name may appear on the Absentee Ballot (AB) list. If a voter whose name is on the AB list appears at his assigned polling place or the Central Absentee Precinct (CAP), the officers of election should check the final absentee applicant list to determine whether the voter has *returned* an absentee ballot.[19] The AB list should indicate if a ballot was returned either marked or unmarked.[20]

- **If the AB list shows *no ballot returned*:**
  - On Election Day, offer the voter a provisional ballot.[21] Please note that during the early voting period, this voter could sign and complete the gold form and vote a regular ballot rather than a provisional ballot.[22]
  - Mark reason #4 on the provisional ballot envelope, which includes the required statutory statement of non-receipt or loss of the absentee ballot.
- **If the AB list shows a ballot *was returned*:**
  - If the ballot was **returned unvoted** to the electoral board or general registrar before Election Day, the voter <u>must</u> be allowed to vote a regular ballot if this information can be confirmed. If the ballot's return cannot be confirmed, the voter may only be provided with a provisional ballot.[23]
  - **If the ballot was returned with marks and/or unfit for voting to the electoral board or general registrar *before or on Election Day* the voter must be allowed to vote a regular ballot.**
    - If the ballot's return cannot be confirmed, the voter must vote a provisional ballot.[24]
  - **If the ballot was returned with marks and/or unfit for voting to the *officers of election at the correct polling place or CAP on Election Day*, the voter must be allowed to vote with a regular ballot in his or her precinct.**[25]

- The voter should provide one form of required ID, including the ELECT-643-ID statement. If ID is not provided, the checkbox stating "Voter ALSO did not present required identification" should be marked.
- The officer must ensure the voter indicates under reason # 4 whether the ballot was not received or was lost, if applicable.[26]

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[19] *See What if reference sheet*, §18.

[20] *See* the Code of Virginia §§24.2-708 (requiring general registrar to mark on the absentee list ballots returned unmarked) and 24.2-710 (requiring general registrar to mark on the absentee list ballots that were returned marked).

[21] *See* the Code of Virginia §§24.2-653.1 (voters who did not receive or lost absentee ballots), 24.2-708 (voters who did not receive or lost absentee ballots, or return of unmarked ballot cannot be confirmed), 24.2-711 (officers must apply 653.1 and 708 when voter on absentee list who has not returned an unused ballot offers to vote). *See also What if reference sheet*, §18.

[22] *See* the Code of Virginia §24.2-708(B)(1)

[23] *See* the Code of Virginia §24.2-708(A).

[24] *See* the Code of Virginia §24.2-708(C).

[25] *See* the Code of Virginia §24.2-708(C).

[26] *See What if reference sheet*, §18.

● This provisional ballot should be counted if the voter is still a qualified voter, and the local electoral board verifies the voter *did not also* have a voted absentee ballot *counted*.[27]

13.4.4 Reason # 5 – The Voter is listed in the pollbook as "Having Already Voted"

A person who attempts to vote but is listed in the pollbook as having already voted *must* be given a provisional ballot to vote if the voter insists that they have not already voted during the current election.[28]

The provisional ballot should be counted if the local electoral board concludes that the voter is eligible to have their vote counted.[29] This situation most often arises when two persons bear the same name and have the same address (i.e. Zebediah Rutherford Jackson and Zebediah Rutherford Jackson Jr.), but it does also happen in other instances. The provisional ballot should count only if:

● an officer of election is able to attest to the fact that they marked the wrong voter, AND
● no evidence exists that either person attempted to actually vote twice.

13.4.5 Reason # 6 – Other: Casting a Provisional Ballot for a Reason Not Listed

This reason is used in circumstances where an unforeseen circumstance or emergency causes either a regular ballot to be unavailable or it is not clear that the voter should be allowed to cast a regular ballot. Some of the situations that can arise include electronic pollbook failure,[30] registration equipment malfunctions, or an insufficient amount of traditional ballots.

The ballot should be counted if the voter should have been permitted to cast a regular ballot when they attempted to vote on Election Day.[31]

13.4.5.1 Electronic pollbook is inoperable or inaccessible

Provisional voting is required if electronic pollbooks become inaccessible or inoperable at a precinct, and no alternate list or pollbook is available.[32] The officers of election at the location must keep a written list of those who cast provisional ballots due to this occurrence.[33]

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[27] *See* the Code of Virginia §24.2-663 (ballots from voters who have already cast a vote in that election cannot be counted).
[28] *See* the Code of Virginia §24.2-651.1.
[29] *See* the Code of Virginia §24.2-663 (ballots from voters who have already cast a vote in that election cannot be counted).
[30] *See* the Code of Virginia §24.2-611(E).
[31] *See* the Code of Virginia §24.2-653(B).
[32] *See* the Code of Virginia §24.2-611.
[33] *See* the Code of Virginia §24.2-611(E) (discussing form of pollbooks).

13.4.6 Identification – The Voter Fails to Provide Proper ID

All persons attempting to vote in-person must present identification before being issued a regular ballot.[34] Any person failing to present acceptable ID may either sign an ID Confirmation Statement confirming their identity or must be given a provisional ballot.[35]

Proper ID includes:
- Voter confirmation documents
- Valid Virginia driver's license (expiration date may not be considered)
- Valid Virginia state ID
- Valid United States passport
- Any ID card issued by a government agency
- Valid student ID card issued by an institute of higher education located in the United States
- Valid student ID card issued by a school located in Virginia
- Valid employee photo ID card issued in the regular course of business, and
- A copy of a current utility bill, bank statement, government check, paycheck, or other government document containing the name and address of the voter.[36]

If a voter does not have any of the acceptable ID listed above, the voter may sign an ID Confirmation Form attesting to their identity. If a voter signs this form, they may vote a traditional ballot.

If a voter is designated in the pollbook with an "H" by their name, they must meet the HAVA standard for IDs.

Voters failing to show proper ID and refusing to sign the ID Confirmation Form should complete and sign the Provisional Vote Envelope –ID ONLY[37] unless there is another deficiency which would force the voter to vote provisionally. If there is another reason, the voter should fill out the normal Provisional Vote Envelope and check "Voter ALSO did not present required identification."[38]

Provisional ballots cast due to lack of ID will only be counted if the voter submits a copy of the necessary ID or a completed ID Confirmation Statement prior to noon on the third day following the election (if the third day is a holiday, the voter will have until the next business day).[39] A voter may submit the required document by USPS or commercial mail delivery, fax, e-mail, or in person.[40] The voter may also request to extend the provisional ballot meeting to the next day for up to seven calendar days for Reasons #1-6.

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[34] *See* the Code of Virginia §24.2-643(B).
[35] *See* the Code of Virginia §24.2-643(B).
[36] *See* the Code of Virginia §24.2-643(B).
[37] *See* the Code of Virginia §24.2-643. *See also What if* reference sheet, §2.
[38] *See What if* reference sheet, §4.
[39] *See* the Code of Virginia §24.2-653(B).
[40] *See* the Code of Virginia §24.2-653(B).

13.4.6.1   HAVA ID Required/ID Copy not sent with Absentee Ballot

All voters must provide proper identification if their vote is to be counted. If a voter has a HAVA ID requirement, requested an absentee ballot[41] and returns the absentee ballot but does not include a photocopy of one of the acceptable forms of IDs described above, the ballot must be treated as if it were a provisional ballot.[42]

Voters are instructed not to seal the copy of their ID inside the oath envelope containing the voted ballot. The officer should check to see if a copy of a HAVA ID is enclosed with the ballot in the B security envelope (but without fully opening the envelope or looking at the ballot).

If no HAVA ID is returned, the officers should reseal the envelopes from the voter (signing and dating the seal) and place the set in the large **1A** envelope to transmit to the electoral board.

The officers may want to attach a note to the outside of the voter's envelope stating "No HAVA ID." In this instance, the voter is not present to sign a statement; thus, the smaller Provisional Ballot Envelope with the voter's statement should not be used.

13.4.7   Voter Who has Moved

An otherwise qualified voter who moves *within* Virginia may return to *vote normally* in his or her former precinct under either of the following scenarios **unless his or her registration has been transferred or cancelled:** [43]
- The voter moved from one precinct to another within the Commonwealth since the last November general election.
- The voter moved since the second previous federal general election, and the voter moved within the same locality and within the same congressional district.[44]

NOTE: A move within the precinct does not affect the voter's ability to vote in that precinct as long as that the voter is still registered.[45]

13.5   ELECTION DAY: GENERAL PROVISIONAL BALLOT PROCEDURES

13.5.1   Required to Provide Voter Registration Application

Officers of election must offer a voter registration application to <u>each</u> voter voting provisionally.[46]

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[41] *See* HAVA, 52 USC §21083(b). *See also* the Code of Virginia §24.2-706(4).

[42] *See* HAVA, 52 USC §21083(b)(2)(B).

[43] *See* the Constitution of Virginia Art. II, §1 (allowing voters who moved from one precinct to another in Virginia to continue to vote in their old precinct as provided for by state law).

[44] *See* the Code of Virginia §24.2-401.

[45] *See* *What if* reference sheet, §6.

[46] *See* the Code of Virginia §24.2-653(A).

13.5.2 Required to Provide Official Provisional Ballot Information

The officer of election must provide certain information to each person who casts a provisional ballot.[47] A supply of Provisional Voter Notice forms (ELECT-653N) and Provisional Voter Notice – ID only forms (ELECT-643Pr) should be available at each precinct, and should be preprinted with all the required information:[48]

- That a determination of his right to vote will be made by the local electoral board;
- The time, date, and location the electoral board will meet to consider provisional ballots;
- That the voter has the right to be present at the meeting;
- The voter's right to request a one day extension of time to provide information to the board on issues other than ID and the noon Friday deadline for ID;[49] and
- The email address, fax number, and mailing address of the office which will accept ID submissions (Provisional Voter Notice – ID only).

The officer must also check the appropriate reason(s) the ballot was voted provisionally. Any voter without the required identification should be supplied with the Provisional Voter Notice – ID ONLY form.[50] This form alerts the voter to the fact their ballot will not be counted unless a copy of the required identification or competed ID Confirmation Statement is submitted to the electoral board by noon on the third day following the election, and gives detailed instructions on how to make such a submission. Refer to the Forms Warehouse *Election Management, Provisional* folder for an outline of documents.

NOTE: If the third day falls on a holiday, the voter will be given an extension until noon the next business day per Va. Code § 1-210.

13.5.3 How-to Guide for Provisional Vote Envelope and Ballot

Any provisional voter must provide an acceptable ID or sign an ID Confirmation Statement.[51] A voter casting a provisional ballot under Reason 1-6 who also does not provide an acceptable ID or sign an ID Confirmation Statement should have their provisional ballot marked, "Voter ALSO did not provide qualified identification."

For both the Provisional Vote Envelope and the Provisional Vote Envelope – ID ONLY the officer of election fills in the number/name of the precinct in the top right corner, then gives this envelope to the voter and explains that the voter must enter all required information on the front of the envelope. The officer must verify that the voter has provided all information requested and have the voter fill in any missing information. The officer should request that the voter complete the envelope front before giving the ballot to the voter.[52]
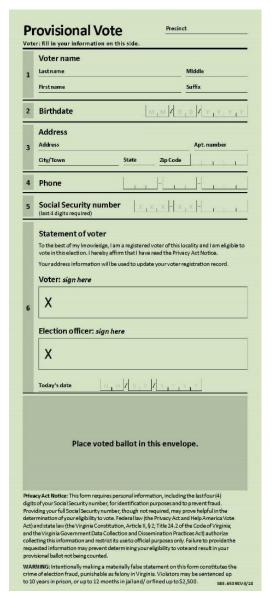
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[47] *See* HAVA, 52 USC §21082(a)(5)(A). *See* also the Code of Virginia §24.2-653(A).
[48] *See* the Code of Virginia §24.2-653(B).
[49] *See* the Code of Virginia §24.2-653(A).
[50] *See* the Code of Virginia §24.2-643(B).
[51] *See* the Code of Virginia §24.2-653(A).
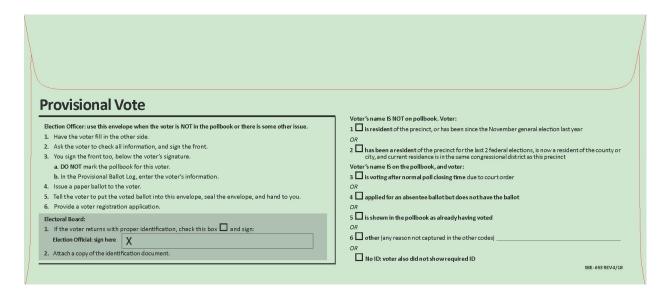[52] *See* *What if* reference sheet, §12.

Next, the officer of election gives the provisional vote envelope and the ballot (or ballot set) to the voter, instructs the voter to place the voted ballot(s) inside the envelope, seal the envelope and return the sealed envelope to the officer.[53]

When the voter returns the sealed envelope to the officer, the officer must read the statement on the back of the provisional vote envelope to the voter and have the voter check the appropriate reason(s) the voter is casting a provisional ballot. After the statement is read, the voter must sign the envelope. The officer also must sign and date the envelope.[54]

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[53] *See* the Code of Virginia §24.2-653(A). *See also* *What if reference sheet*, §12.
[54] *See What if reference sheet*, §10.

Provisional Vote

Election Officer: use this envelope when the voter is NOT in the pollbook or there is some other issue.

1. Have the voter fill in the other side.
2. Ask the voter to check all information, and sign the front.
3. You sign the front too, below the voter's signature.
   a. DO NOT mark the pollbook for this voter.
   b. In the Provisional Ballot Log, enter the voter's information.
4. Issue a paper ballot to the voter.
5. Tell the voter to put the voted ballot into this envelope, seal the envelope, and hand to you.
6. Provide a voter registration application.

Electoral Board:
1. If the voter returns with proper identification, check this box ☐ and sign:
   Election Official: sign here X
2. Attach a copy of the identification document.

Voter's name IS NOT on pollbook. Voter:
1. ☐ is resident of the precinct, or has been since the November general election last year
   OR
2. ☐ has been a resident of the precinct for the last 2 federal elections, is now a resident of the county or city, and current residence is in the same congressional district as this precinct

Voter's name IS on the pollbook, and voter:
3. ☐ is voting after normal poll closing time due to court order
   OR
4. ☐ applied for an absentee ballot but does not have the ballot
   OR
5. ☐ is shown in the pollbook as already having voted
   OR
6. ☐ other (any reason not captured in the other codes) _____
   OR
   ☐ No ID: voter also did not show required ID

SBE-653 REV 4/18

Regulation Note

1VAC20-60-60: Provisional Votes. The general registrar or electoral board may, but is not required to, attempt to contact people who voted provisionally in order to remind them that they have until noon on the third day following the election to provide a copy of the required identification.

13.5.4 Precinct Provisional Ballot Log

The officer of election must complete the Precinct Provisional Ballots Log, available from ELECT, with all the requested information, marking the box under the number(s) corresponding to the reason(s) the provisional ballot was issued.[55]

If the voter provides additional information, you can include specifics such as the below:
- the person said he or she submitted an application at a DMV location, or submitted a change of address to the registrar's office;
- the date the voter submitted a registration application and method by which submitted; and
- any other information the registrar requests to help research the voter's registration status.[56]

If the voter claims to have submitted an application at a DMV or other NVRA designated agency, the officers should include the agency name, location, and the voter's estimate of the date of submission to enable ELECT to look up the voter's record. If the voter has a receipt for his or her registration from the DMV or the agency, that should also be noted.

The Precinct Provisional Ballots Log must be placed inside the #1A Envelope (if separate log sheets were used for a court-ordered extension of polling hours, those should be placed in the #1B Envelope) so that the registrar can use this information to research the claim made by the

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[55] See *What if* reference sheet, §10.
[56] See *What if* reference sheet, §10.

person offering the provisional ballot. This log will also be used in the days following the election by the electoral board to track the determination of all provisional ballots offered in the locality.

Provisional Ballot Log
Precinct:
Election Date:
Election Type:
Locality:

Place in Envelope 1A

What to do at the end of the day
Enter the total number of Provisional Vote envelopes for each reason code.

				Totals
Voter's name **IS NOT** on pollbook. Voter:	1	**is a resident** of the precinct, or has been since the November general election last year		
	2	**has been a resident** of the precinct for the last 2 federal elections, is now a resident of the county or city, and current residence is in the same congressional district as this precinct		
Voter's name **IS** on the pollbook, and voter:	3	**is voting after normal poll closing time** due to court order		
	4	**applied for an absentee ballot, but does not have the ballot**		
	5	**is shown in the pollbook as already having voted**		
	6	**Other** (any reason not captured in the other codes)		
	No ID	**voter did not show required ID**		

What to do during the day
Copy information from the Provisional Vote envelopes below

1
Voter name
Last name_____ Middle_____
First name_____ Suffix_____
Address _____
City/town_____, State___ Zip code |_|_|_|_|_|
Birth year only — — — — Phone number (___)-___-___-___-___
SSN# last 4 — — — — Reason code 1 2 3 4 5 6 No ID
Notes
Registrar use only
Was this vote counted? YES NO
Why not?

2
Voter name
Last name_____ Middle_____
First name_____ Suffix_____
Address _____
City/town_____, State___ Zip code |_|_|_|_|_|
Birth year only — — — — Phone number (___)-___-___-___-___
SSN# last 4 — — — — Reason code 1 2 3 4 5 6 No ID
Notes
Registrar use only
Was this vote counted? YES NO
Why not?

3
Voter name
Last name_____ Middle_____
First name_____ Suffix_____
SSN# last 4 — — — — Reason code 1 2 3 4 5 6 No ID
Notes

Page _____ of _____

If polling hours were extended by court order

After the polls close and the provisional ballot envelopes are removed by the officers from the emergency ballot box, two officers of election representing different parties must complete this process:

- Two officers, one from each party, should separate any provisional ballots with Reason #3 checked (other reasons may also be checked); one stack of envelopes should have reason #3 checked on *all* the envelopes, and one stack should *not* have Reason #3 checked on any.

- Count the number of sealed Provisional Votes (green envelopes) cast during normal hours (i.e. Reason #3 is NOT checked on any of the envelopes) and place in the 1A envelope.

- o   Officers of election may want to place a rubber band around those ballots cast in the Provisional Vote Envelope – ID ONLY to separate them. These ballots require no further investigation by the registrar.

- Put the Precinct Provisional Ballot Log for the provisional ballots cast during normal hours in the 1A envelope.

- Enter the number of green envelopes with ballots cast during normal hours on Line 1 on the back of the 1A envelope ("NONE" may be entered if applicable OR officers may be instructed to complete the Officer Certification to Reuse Empty Provisional Ballot Envelope 1A).

- Sign the certification on the back of the 1A envelope (TWO OFFICERS).

- Seal the 1A envelope with a label, signing and dating the label (TWO OFFICERS).

If polling hours were extended by court order, TWO OFFICERS representing different parties must repeat the above procedures to count the green envelopes with Reason #3 checked (other reasons may also be checked); put those envelopes and the Precinct Provisional Ballots Log for the provisional ballots cast *after* normal hours in the 1B envelope; complete, sign, and seal the 1B envelope.

13.6 ELECTORAL BOARD'S PROVISIONAL BALLOT MEETING

13.6.1 When to Meet

The electoral board is required to meet at the circuit clerk's or general registrar's office on the day after the election at or before 5:00 p.m.[57] ELECT recommends that the meeting begin by noon on the day after the election to determine the qualifications of persons who cast provisional votes before beginning the canvass. The time selected must be included in the required Provisional Voter Notice form (ELECT-653N) and Provisional Voter Notice – Identification (ELECT-643Pr) form given to each provisional voter at the polls.[58]

13.6.2 Where to Meet

The electoral board must hold the meeting "at the clerk's or general registrar's office of the [locality] for which they are appointed" and they "may adjourn to another room of sufficient size in a public building."[59] You must clearly provide the address of the location selected in the required Provisional Voter Notice given to each provisional voter at the polls.[60]

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[57] *See* *What if* reference sheet, §10.
[58] *See* the Code of Virginia §24.2-653(B).
[59] *See* the Code of Virginia §24.2-671.
[60] *See* the Code of Virginia §24.2-653(B).

13.6.3 Who Must Attend

All members of the electoral board should be present for this meeting and the canvass of the election. In the event one member is unable to attend, two members constitute a quorum[61] and may proceed to determine the qualifications of persons who cast provisional votes.

- o Should the secretary of the electoral board be unable to attend the meeting, the two remaining Board members must decide who will serve as "acting secretary."[62] Please see Chapter 2 (Local Electoral Boards) for more information.

- o All official documents related to processing provisional votes and the canvass must be signed by the Secretary or acting Secretary and all other present board members. Only those members of the board present during the entire process are required to legally sign any official document.

● The general registrar must appear at the meeting with the pollbooks used at all precincts (having picked them up from the clerk of circuit court if applicable).[63]

13.6.4 Who is Permitted to Attend

The provisional ballot meeting is a closed session; thus, only the following individuals are permitted to attend:
● Persons who cast provisional ballots who wish to present evidence or request a one day extension.
● Legal counsel and representatives of the person who cast the provisional ballot.
● One authorized representative of each political party or independent candidate in a general or special election or one authorized representative of each candidate in a primary election who is a qualified voter of the locality must be allowed to attend the provisional meeting but cannot participate in the process. Each such representative must present a written statement signed by the county or city party chair, the independent candidate, or the primary candidate as appropriate. Such chair or candidate may serve as his or her own representative, and may not be asked to submit a written statement authorizing himself or herself.[64] If the representative presents the required documentation, the general registrar must permit them to observe the meeting.
● Appropriate staff and legal counsel of the electoral board.[65]

13.6.5 The Meeting

The provisional ballot meeting is a "meeting" of the electoral board; thus, the Virginia Freedom of Information Act applies. As previously stated, these meetings are "closed" and closed meeting procedures and requirements[66] should be followed closely by the electoral board members and general registrar.[67]

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[61] *See* the Code of Virginia §24.2-107.
[62] *See* the Code of Virginia §24.2-106.
[63] *See* the Code of Virginia §24.2-653(B).
[64] *See* the Code of Virginia §24.2-653(B).
[65] *See* the Code of Virginia §24.2-653(B).
[66] *See* the Code of Virginia §2.2-3712.
[67] *See* the Code of Virginia §2.2-3700 et seq.

- Prior to beginning the meeting, the electoral board should have the #1A (and, if used, the #1B) provisional votes envelopes for **all** precincts.
- A provisional voter may ask that the meeting be extended to the next day (for up to three work days for ID provisional voters and seven calendar days for Reason #1-6 provisional voters) to provide evidence or information. The electoral board may grant an extension that it deems reasonable to determine the status of the provisional vote.[68]
- If the provisional ballots meeting is adjourned, the canvass may still proceed on schedule. **The canvass cannot be completed until the provisional ballots meeting is totally completed and adjourned.**

13.7 DETERMINE THE QUALIFICATION OF ALL PROVISIONAL VOTERS BEFORE OPENING ANY INDIVIDUAL ENVELOPES

To protect voter privacy, the local electoral board should determine the eligibility of all provisional voters before opening any of the provisional ballot envelopes.

- The electoral board should open, one precinct at a time, the #1A envelope (and, if used, the #1B envelope) marked "provisional votes." The local electoral board has the discretion to make a determination as to whether a voter is eligible under Virginia law. The local electoral board should proceed to determine the qualifications, one by one, without opening the green envelopes, of each person who cast a ballot in a green provisional ballot envelope.
  o The first qualification is that the person be registered to vote.
  o Second, the person must have been legally eligible to vote in the precinct in which the vote was cast.[69]

The general registrar should provide any information available to determine if the voter casting a provisional ballot was legally eligible to vote in the precinct and submitted a copy of a valid ID if required.

NOTE: The electoral board or general registrar must keep a detailed list of the provisional ballots counted and not counted for two reasons:

1. The general registrar must notify, in writing, those voters whose provisional ballots were not counted, giving the reason the provisional ballot was not counted.[70]
2. This information will be entered into VERIS in order to apply voting credit for the counted ballots and generate appropriate correspondence.

The registrar should mark the original Precinct Provisional Ballots Log to indicate if the ballot was counted and the reason for the determination. The registrar should also make and retain a copy of the ballot log for records. The *original* Precinct Provisional Ballots Log must be returned to the 1A (and if used the 1B) envelope, to be sealed and stored in the clerk's office.[71]

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[68] *See* the Code of Virginia §24.2-653(B).
[69] *See* the Code of Virginia §24.2-653(B).
[70] *See* the Code of Virginia §24.2-653(B). See also HAVA, 52 USC §21082(a)(5)(A).
[71] *See* the Code of Virginia §24.2-653(B).

13.7.1 Person Determined Not Qualified

For persons determined not qualified to have their votes counted, the following steps should be taken:

1. The green envelope must remain sealed.[72]

2. Mark the ballot as disqualified across the front of the unopened green envelope and explain why the ballot has been disqualified (for example: no record of registration found, registered after deadline, not qualified (felon, etc.), not legally eligible to vote in precinct, voter did not provide required ID).

3. Return the voter's sealed, green envelope to the 1A (or 1B, if used) envelope for that precinct marked "provisional votes."

4. Note on the 1A (or 1B) envelope the number of green envelopes for disqualified persons remaining at the conclusion of the determination for that precinct.

13.7.2 Person Determined Qualified

One provisional vote pollbook is used for the city or county (and one for each town if town elections were held). The pollbook should be marked with the name of the city or county (or town) and the words "provisional votes." Voters who have been determined qualified, should be marked in the provisional votes pollbook.[73]

- For the purpose of VERIS information entry for provisional voter turnout, localities split by congressional districts in statewide or federal elections should count provisional ballots by congressional district; there should be one provisional ballots pollbook and one ballot box for each congressional district.[74]

- **Special Procedures for Provisional Voting Reason #3**: The 1B envelopes should have been used if polling place hours were extended by court order. If the court order has not been overturned when the provisional ballots are otherwise ready to be counted, the provisional ballots counted from the 1B envelope must be entered in a **separate pollbook** marked with the county, city or town name (and congressional district if split) and "votes cast after normal voting hours." Votes cast after normal voting hours (after-hours ballots) must be kept separate and cannot be mixed with ballots cast during normal voting hours.[75] Ballots cast during normal voting hours should be completed first. The electoral board should both verify that the ballot box is empty and seal the counted ballots cast during normal voting hours for delivery to the clerk (below), before beginning to count the ballots cast after normal voting hours.

NOTE: The general registrar, working with ELECT, may search the DMV or NVRA agency record to determine if the provisional voter has any records pertaining to registration.

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[72] *See* the Code of Virginia §24.2-653(B).
[73] *See* the Code of Virginia §24.2-653(B).
[74] VERIS Step-by-Step: Election Results, pg. 22
[75] *See* the Code of Virginia §24.2-653(C).

If proof is presented that indicates the person submitted an application or attempted to register or change their registration at the DMV or another NVRA agency *prior* to the close of books, the voter submitted a completed application at the polls on election day, and the registrar determines from that application that the voter was qualified to vote in that precinct, the **provisional ballot must be counted by the electoral board**.

13.7.2.1 *Steps for Qualified Provisional Ballots*

1. Open the green envelope of the voter determined to be qualified.
2. Place the ballot in the appropriate ballot box without any further inspection than to assure that only a single ballot or ballot set has been cast and that the ballot is a genuine ballot, without looking at the printed inside of the ballot.[76]
3. Place the *opened, empty* green envelopes for each precinct in the 1A (or 1B, if used) envelope for that precinct.
4. Note on the envelope the number of green envelopes contained therein for persons determined to be qualified.

13.8 NOTIFICATION AND VOTER CREDIT

After the determination of all provisional ballots by the electoral board, the registrar must enter all provisional ballot information into VERIS election night reporting (and for individual voters) in order to apply voting credit and issue correspondence to voters whose provisional ballots were not counted. The registrar must enter a reason in VERIS for changing vote totals after election night.

13.8.1 Enter Results for Provisional Votes

General registrars must enter two separate numbers related to provisional ballots: the number of qualified provisional votes cast and the total number of provisional votes cast.

The number of provisional votes that were determined qualified must be entered as a separate "Provisional Votes" precinct. The registrar must enter the provisional votes by entering the total votes for each candidate in the "Provisional Votes" precinct.

The total number of provisional ballots cast is the number of provisional votes determined qualified combined with the number of provisional votes that were rejected, or determined not qualified. This number is the total Provisional Turnout and must be reported in the Provisional Turnout screen. If the locality is split by congressional districts, the provisional votes counted and cast must be entered by congressional district for statewide and federal offices.

13.8.2 Enter Individual Voter Information

A provisional voter may have an inactive status, cancelled registration, or not be in VERIS at all. The registrar must search and manually add information regarding the provisional ballots in VERIS for each provisional voter. Refer to *VERIS Step-by-Step Voter History* for more information on modifying voter history.

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[76] *See* the Code of Virginia §24.2-653(B).

A voter with a provisional ballot that was counted should have his/her voting credit added. **A voter with a provisional ballot that was not counted must have the reason for this determination entered in VERIS to produce the appropriate required correspondence for mailing**.[77] For persons already registered, VERIS will automatically generate letters when their record is updated to indicate the provisional ballot was not counted. For persons not registered who have not completed a registration application, the notification letter should include a voter registration application and inform the person that if they wish to be eligible to vote in future elections, they must complete the application and return it in the pre-addressed envelope provided before the close of the books for the next election in the county or city.

For a provisional voter with a cancelled registration, the registrar must reinstate the individual's voting registration, enter the provisional voting information, and change any relevant information.

A voter who did not submit an application or the application submitted was incomplete should have a voter registration application included in his/her mailing. To add information regarding non-registrants, the registrar should add the non-registered individual's information under "Non-Registrant Provisional" in VERIS.

Refer to VERIS Step-by-Step Voter History for more information on modifying voter history.

VERIS Index

Use this index to find the VERIS related information in this chapter by clicking on the page number and section.

Entering Provisional Voter Turnout

See section 13.7.2.

Notification and Voter Credit

See section 13.8.

Entering Individual Information

See section 13.8.2.

For further assistance, contact VERIS help

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[77] *See* the Code of Virginia §24.2-653(B).