★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

the Handbook

Chapter 8
List Maintenance

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8. List Maintenance

REFERENCE	ADDITIONAL RESOURCES
ELECT 2016 Annual List Maintenance Report *Virginia Election Data Project*	*EAC Fact Sheet: List Maintenance and NVRA* *Make Election Data Pay Off – EAC Quick Start Guide*

8.1 CHAPTER ORGANIZATION

Federal law (the National Voter Registration Act, hereafter "NVRA") requires each state to have a program that makes a reasonable effort to remove the names of ineligible voters from the official list of registered voters.[1] Virginia meets this requirement in part through the Code of Virginia §24.2-427 which requires the general registrar to cancel registrations under certain conditions.[2] These processes are called list maintenance.

This chapter seeks to equip elections officials with the background, law, and practical "how-to" in order to follow list maintenance practices that comply with federal and state laws. §8.1 defines maintenance and list data sources such as the Department of Motor Vehicles and Central Criminal Records Exchange which ELECT is required to provide general registrars. §8.2 shows the federal law underpinning Virginia's VERIS list maintenance system and introduces the topics of §8.3 and §8.4, the cancellation and confirmation programs. Last, §8.5 briefly overviews ERIC and CrossCheck, two voter list sharing programs in which Virginia participates.

8.1.1 Definition of List Maintenance

List maintenance is the process by which elections officials retain accurate and current lists of registered voters. The basic framework for list maintenance is set forth in Article 5 of Chapter 4 of Title 24.2.[3] These provisions implement NVRA (the National Voter Registration Act of 1993).[4]

The Department of Elections must promptly provide, and general registrars must act upon within **30 days**, information regarding list maintenance (deceased, moved outside locality of residence, felony conviction, adjudication of incapacity, declared noncitizen who has not timely affirmed U.S. citizenship, other disqualification provided by law).[5]

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[1] *See* the "National Voter Registration Act" 52 USC §20507(a)(4).
[2] *See* the Code of Virginia §24.2-427.
[3] §24.2-427 et seq.
[4] NVRA, 52 USC §20501 et seq.
[5] *See* the Code of Virginia §24.2-404(A)(4), "4. Require the general registrars to delete from the record of registered voters the name of any voter who (i) is deceased, (ii) is no longer qualified to vote in the county or city where he is registered due to removal of his residence, (iii) has been convicted of a felony, (iv) has been adjudicated incapacitated, (v) is known not to be a United States citizen by reason of reports from the Department of Motor Vehicles pursuant

8.1.2 ELECT Information Exchange

The Department of Elections must receive, review and provide to registrars the following information:

- a comprehensive annual list of all persons ever convicted of a felony from Virginia's Central Criminal Records Exchange (CCRE);[6]
- duplicate registrations identified from comparing other states' registration and voting information with annual reporting[7] to the General Assembly which can be found online at https://www.elections.virginia.gov/resultsreports/maintenance-reports/index.html.
- information exchanges with other state election officials.[8]

8.1.3 Restoration of Rights

Registrars also have increased responsibilities to detect and remove felons and determine restoration of rights. The Code of Virginia §24.2-427 (as amended in 2012) requires general registrars to conduct a pre-election review "within 21 to 14 days before any primary or general election".[9]

8.2 FEDERAL AND STATE LAWS GOVERNING LIST MAINTENANCE

8.2.1 National Voter Registration Act ("NVRA")

NVRA mandates that each state develop and maintain programs to ensure accurate and current voter registration rolls. These list maintenance programs are required to be **uniform, nondiscriminatory and in compliance with the Voting Rights Act**.[10] NVRA does not permit a list maintenance system to remove the name of a voter from the list because of failure to vote, to prohibit selective or discriminatory voter removal practices.

NVRA divides the required list maintenance programs into two major areas: cancellations and confirmations.

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to §24.2-410.1 or from the Department of Elections based on information received from the Systematic Alien Verification for Entitlements Program (SAVE Program) pursuant to subsection E, or (vi) is otherwise no longer qualified to vote as may be provided by law. Such action shall be taken no later than 30 days after notification from the Department. The Department shall promptly provide the information referred to in this subdivision, upon receiving it, to general registrars."

[6] *See* the Code of Virginia §24.2-409.

[7] *See* LIS Reports to the General Assembly, required as per the Code of Virginia §24.2-404 (F), report pending.

[8] *See* the Code of Virginia §24.2-409.

[9] *See* the Code of Virginia §24.2-427(B2), which states: "The general registrar shall (i) process the Department's most recent list of persons convicted of felonies within 21 to 14 days before any primary or general election, (ii) cancel the registration of any registered voter shown to have been convicted of a felony who has not provided evidence that his right to vote has been restored, and (iii) send prompt notice to the person of the cancellation of his registration. If it appears that any registered voter has made a false statement on his registration application with respect to his having been convicted of a felony, the general registrar shall report the fact to the attorney for the Commonwealth for prosecution under §24.2-1016 for a false statement made on his registration application.

[10] *See* the Voting Rights Act of 1965.

8.2.2 VERIS List Maintenance: Confirmation and Cancellation

As per the Code of Virginia §24.2-404(1), list maintenance programs requirements of NVRA are managed through the Virginia Election and Registration Information System ("VERIS"). Through VERIS, it is possible to add or cancel registrants, maintain records of "Active" and "Inactive" voters, generate reports of transactions and activity, track the origin of registration applications, maintain records of confirmation mailings, and interface with other State agencies.[11]

Frequently Asked Questions about the NVRA

What if a locality receives a request from elections officials in other states for information on voter records? Registrars receiving voter registration related information from other states should refer the officials to the Department of Elections for response and coordination. You can email FOIA@elections.virginia.gov.

Can the public request copies of voter registration applications? Yes. While elections records in VERIS are exempt from the Freedom of Information Act as per §24.2-404 (B), the National Voter Registration Act (NVRA) requires each general registrar's office to provide copies of voter registration applications submitted after July 20, 2011 and other documents relating to voter registration maintenance activities, including copies of correspondence to voters including denial letters if available. **Social security numbers must be completely redacted before providing these applications for inspection.**

Can any member of the public request records? A request for voter registration applications invokes the NVRA, federal law which requires the provision of voter registration applications to any requestor, regardless of whether the requestor is a state resident. With regard to other records, you are only obligated to provide records under the Virginia Freedom of Information Act to residents of the Commonwealth.

Under the NVRA, what are the circumstances under which Virginia can remove a person's name from the voter registration rolls? Section 8 permits States to remove the name of a person from the voter registration rolls upon the request of the registrant and, as Virginia law provides, for mental incapacity or criminal conviction. The Act also requires States to conduct a general list maintenance program that makes a reasonable effort to remove ineligible persons from the voter rolls by reason of the person's death, or a change in the residence of the registrant outside of the jurisdiction.

What is "removal at the request of the registrant"? A removal at the request of the registrant under the NVRA involves first-hand information from a registrant that can originate in at least 3 ways: 1) a registrant requesting to remove his or her name from the voting registration list, 2) a registrant completing and returning a notice card indicating an address change outside the jurisdiction, or 3) a registrant submitting a new application registering to vote a second time in a new jurisdiction, and providing information regarding the registrant's prior voter registration address on the new application, which the State can use as a request to cancel or transfer his or her prior registration. **A registrant advising of a new address within the same jurisdiction, or registering to vote a second time at a new address within the same jurisdiction, should trigger an updating of the original registration, rather than its cancellation.**

8.2.2.1 Voter Confirmation Program

NVRA requires each state to conduct "regular periodic reviews", which are maintenance programs to identify voters who may have moved from their address of registration.[12] The Code of Virginia §24.2-428 implements NVRA by requiring an annual systematic review of the voter registration records to identify voters who may have moved without notifying the general registrar. This review will not immediately cancel a voter from the registration rolls, but does initiate the process for confirming residence addresses.

8.2.2.2 Voter Cancellation Program

Under the Code of Virginia §24.2-428, if a response to the "Confirmation Notice" is not received "in thirty days after it is sent to the voter, the registered voter's name shall be placed on inactive status".[13] This applies to registrants that were either identified by the general registrar, processed from data received from DMV, or identified through the National Change of Address (NCOA) match as having moved outside their locality of registration. As discussed above, voters identified as having moved *within* their locality of registration are to be sent new voter registration confirmation correspondence showing their new address and marked for confirmation if this mailing is returned.

Voters on "Inactive" status in VERIS can be returned to "Active" status by a voter initiated action. Actions such as change of address, re-registration, or voting in an election can reactivate the voter.

Voters who fail to respond to an address confirmation request and fail to take any voter initiated action for **two federal elections** will have their voter registration cancelled in the NVRA cancellation program. This cancellation function is **automated in VERIS** and occurs ***after* each November federal election**.

8.2.2.3 NVRA-Mandated Records Access

Lists of voters whose registration have been cancelled under this program are available for public inspection and copying. The general registrar must post the list at the courthouse, or have it published in a newspaper of general circulation, in the general registrar's community. The general registrar must provide a certified copy of the list to the chairman of each political party in the locality. An electoral board may approve accepting a registrar's electronic read email receipt as equivalent to a certificate of mailing to the party chair required by Virginia law.[14]

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[11] See Chapter 9 (Records Access and Retention) (providing details on what records are available for public inspection and copying).
[12] 52 USC §20507(a)(4)(B).
[13] See the Code of Virginia §24.2-428.
[14] See the Code of Virginia §24.2-428.

8.3 CANCELLATION PROGRAM

8.3.1 Deceased Voters

The name of a person who is deceased must be removed from the voter registration rolls.[15] The Code of Virginia §24.2-404.3 requires ELECT to compare the voter lists with records belonging to the Bureau of Vital Statistics and the Social Security Administration. Department of Elections complies with the requirement to match the SSA death list annually by October 1.[16] The VERIS "Hopper" and "Agency Updates" screens will reflect the new information. The following steps should be taken:

VERIS

Once the identity of a deceased individual has been matched with the information of the registered voter, cancel the voter registration using the VERIS "Hopper" or the "Change Status" screens. On the "Change Status" screen, select "Deceased" for the NVRA reason and place important supporting information in the "Comment" section.

- Mark the back of the application in the box provided for deceased. Include the date of death, date of deletion, and the source of the information.
- If a box is not provided, record the information on the lower right corner of the back of the application.
- Attach appropriate documentation to the back of the application or keep the documentation in a separate file.
- File the application form in the Deleted file.
- Retain and destroy application and attached documentation in compliance with the GS-01 Records Retention and Disposition Schedule.

VERIS will generate a cancellation letter expressing condolences to "The Family of" the deceased former voter. Consideration should be given to timing the mailing of the notification to allow time for grieving (about 10 days following a published death notice is appropriate).

8.3.2 Felony Conviction

The name of a person who has been convicted of a felony must be removed from the official list of registered voters.[17] General registrars have three basic responsibilities regarding felony convictions:

1. Remove names when felony information in VERIS is updated once a month and annually.
2. Review the official list of registered voters based on current information "21 to 14 days" before primary and general elections.[18]
3. Deny registration to new applicants with felony convictions for which rights have not been restored.

[15] 52 USC §20507 (a)(4)(A); §24.2-427(B).
[16] See the Code of Virginia §24.2-404.3.
[17] 52 USC §20507(a)(3)(B); §24.2-427(B).
[18] See the Code of Virginia §24.2-427.

VERIS

Each month VERIS receives updated electronic files reporting felony convictions from the Virginia State Police CCRE (Central Criminal Records Exchange).[19] In addition, reports of felony convictions by United States District Courts are entered into VERIS.[20] GRs may review citizens who have had their rights restored by the Governor by visiting: https://commonwealth.virginia.gov/judicial-system/restoration-of-rights/. The VERIS "Hopper" and "Felon Search" screens will reflect the new information. Take the following steps:

- Process all Felony Conviction potential matches through the "Hopper."
- Determine if a registered voter matches the Felony Conviction information. If so, approve the match to cancel the voter's registration. Individual voters may also be cancelled through the "Change Status" screen. On the "Change Status" screen, select "Felon" for the NVRA reason and place important supporting information in the "Comment" section.

Non-VERIS Steps for Hard-Copy Applications

- Mark the box provided for "Convicted of Felony" on the back of the application. Include the date of conviction, and the State Police SID number.
- If a box is not provided, record the information on the lower right corner on the back of the application.
- Attach appropriate documentation to the back of the application or keep the documentation in a separate file.
- File the application in the "Deleted" file.
- Retain and destroy application and attached documentation in compliance with the GS-01 Records Retention and Disposition Schedule.
- Mail the notice generated by VERIS stating the reason for removal and any comments entered when processing the cancellation. Include an Application and Instructions for Restoration of Civil Rights Form.

[19] See the Code of Virginia §19.2-389; §24.2-409.
[20] See the Code of Virginia §24.2-409.1.

Best Practice
We suggest considering the following when processing felony conviction data:
• The information concerning a felony conviction is not always accurate. Most errors can be accounted for by administrative error, wrongful felony convictions, identity theft, or felony charges that should have been reduced to misdemeanors.
• Individuals have the right to challenge the record; the Virginia State Police (804-674-2000) provides information on the procedures to challenge the record.
• You can request a criminal history search by filing a Criminal Record Name Search (Form SP-167) with the Virginia State Police. The fee for filing this request is $15.00.
• The Department of Elections will research to confirm accuracy of the conviction information upon request from the general registrar.
• Once an error has been corrected through State Police procedures, the individual will receive notification of the correction from the State Police or appropriate authority. Any person who wishes to be reinstated must provide this documentation to the general registrar.
Please note that persons convicted in other states or under federal law may have their rights restored by "other appropriate authority" determined by the law of the convicting jurisdiction. Other state laws may provide for restoration through much simpler or even automatic processes. Thus, a citizen moving to Virginia whose rights have been restored in the convicting state may register to vote in Virginia indicating restored felon status on the Virginia voter registration application.

8.3.3 Adjudicated Incapacitated

The name of a person who has been adjudicated incapacitated by a court must be removed from the lists of eligible registered voters unless the court order specifically provides voting rights.[21]

Adjudications for Incapacity can only be ordered by a Circuit Court which may recognize an order from another state. **Simple commitment to an institution for treatment does not constitute an adjudication of mental incompetence or incapacity.** The Circuit Court Clerks are required to send to Department of Elections monthly reports of all persons adjudicated incapacitated.[22] This required reporting may involve persons in other states and countries under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.[23]

Best Practice
The Department of Elections is responsible for entering relevant data into VERIS. In rare cases, the circuit clerk may forward these reports directly to your office. Please be sure to forward the reports to the Department of Elections and notify the clerk's office that the reports should be delivered to the Department of Elections. The Code of Virginia permits the Commissioner and Deputy Commissioner to determine the manner of reporting which may be electronic.

[21] 52 USC §20507(a)(3)(B); Va. Code §24.2-427(B); 64.2-2000.
[22] See the Code of Virginia §24.2-410.
[23] See the Code of Virginia §64.2-2001 *et seq.*

VERIS

The VERIS "Hopper" and "Mentally Incapacitated" screens will reflect the information entered by ELECT. The following steps should be taken:

- Process all potential matches through the "Hopper" that appear for the locality. The general registrar must determine if a registered voter matches the adjudication information. If so, approve the match to cancel the voter's registration. Individual voters may also be cancelled through the "Change Status" screen. On the "Change Status" screen, select "Mentally Incapacitated" as the NVRA reason and place important supporting information in the "Comment" section.

Non-VERIS Steps for Hard-Copy Applications

- Mark the box provided for "Adjudicated Incapacitated" on the back of the application. Include the date of the adjudication and the Circuit Court case number.
- If a box is not provided, record the information on the lower right corner on the back of the application.
- Attach appropriate documentation to the back of the application or keep the documentation in a separate file.
- File the application in the Deleted file.
- Retain and destroy application and attached documentation in compliance with the GS-1 Records Retention and Disposition Schedule.
- Mail the notice of cancellation generated by VERIS, stating the reason for removal and any comments entered when processing the cancellation.

A legal representative of a person under an adjudication of incapacity may petition the circuit court to make provision for voting rights. If the order is silent regarding voting rights, the person is disqualified from voting.

8.3.4 Personal Request

Anyone who wishes to cancel their voter registration for personal reasons may submit a signed written request either by mail, fax or in person.[24] Within 10 days of receiving a notice of cancellation, the general registrar must send correspondence confirming the voter's removal. The following steps should be taken:

[24] *See* 52 USC §20507(d)(1)(A); *see also* the Code of Virginia §24.2-427(A), which states that "Any registered voter may cancel his registration and have his name removed from the central registration records by signing an authorization for cancellation and mailing or otherwise submitting the signed authorization to the general registrar. When submitted by any means other than when notarized or in person, such cancellation must be made at least 22 days prior to an election in order to be valid in that election. The general registrar shall acknowledge receipt of the authorization and advise the voter in person or by first-class mail that his registration has been canceled within 10 days of receipt of such authorization."

- Process a "Personal Request" cancellation using the VERIS "Change Status" screen. Select "Per Choice" as the reason to cancel the voter. Place important supporting information in the "Comment" section. Cancelling a voter's record through VERIS will automatically generate the required correspondence, which must be sent within ten (10) days of receipt of the request for cancellation.

Law Note

To cancel registration during the twenty-two (22) days before an election, the voter must make the request in person at the registrar's office, or submit a written notarized request.[25] Voters who mail a personal request cancellation notice during the twenty-two (22) days before an election may not be cancelled for that election unless the mailed request is notarized.[26]

The Code of Virginia §24.2-427(A) states that "Any registered voter may cancel his registration and have his name removed from the central registration records by signing an authorization for cancellation and mailing or otherwise submitting the signed authorization to the general registrar." Cancel "at least 22 days prior to an election in order to be valid in that election." The general registrar shall acknowledge receipt of the authorization and advise the voter … that his registration has been canceled within 10 days of receipt of such authorization.

Non-VERIS Steps for Hard-Copy Applications

- Mark the box provided for "Personal Request" on the back of the application.
- If a box is not provided, record the information in the lower right corner on the back of the application.
- Attach the documentation for the removal to the back of the application form or keep this information in a separate file.
- File the application in the Deleted file.
- Retain and destroy application and attached documentation in compliance with the GS-1 Records Retention and Disposition Schedule.
- Mail the notice of cancellation generated by VERIS, stating the reason for removal and any comments entered when processing the cancellation.

8.3.5 Error

A general registrar on occasion may need to cancel voter registrations in VERIS to correct administrative error. Administrative corrections that do not actually cancel a voter do not require notice. When making corrections, please note the following types of cancellations:

- If, after approving registration, the general registrar discovers evidence of ineligibility such as omission of citizenship or a felony conviction without restoration and, if confirmation of registration has not been sent, the registrar may cancel a voter and re-enter the information correctly using the following steps:
  - Delete the voter using the VERIS "Change Status" screen. Select cancel for the reason of "Registrar Error," or "Ineligible." Important supporting information can be entered in the "Comment" section.

[25] See the Code of Virginia §24.2-427.
[26] *Id.*

- Re-enter the voter's information into VERIS and deny for the appropriate reason. This action will automatically generate the required correspondence to be sent to the voter listing the reason(s) for the denial.

Non-VERIS Steps for Hard-Copy Applications

- Mark the box provided for "Denied" on the back of the application.
- If a box is not provided, record the information on the lower right corner on the back of the application.
- Attach the documentation for the removal to the back of the application form or keep this information in a separate file.
- File the application in the "Denied" file.
- Retain and destroy application and attached documentation in compliance with the GS-01 Records Retention and Disposition Schedule.
- Mail the notice of denial generated by VERIS, stating the reason(s) for removal and any comments entered when processing the cancellation/denial.

- If, after approving the registration and mailing correspondence confirming registration, the general registrar discovers evidence of ineligibility such as a felony without restoration, then the regular cancellation process under §24.2-427 must be followed. This requires the general registrar to mail notice of cancellation and the right of appeal to the voter. Follow these steps:
  - Remove the voter using the VERIS "Change Status" screen. Select "Registrar Error," or "Ineligible" as the reason to cancel the voter. Important supporting information can be entered in the "Comment" section.
  - Notate the back of the application "Error Deleted."
  - File the application in the "Deleted" file.
  - Attach appropriate documentation to the back of the application or keep the documentation in a separate file.
  - Retain and destroy application and attached documentation in compliance with the GS-1 Records Retention and Disposition Schedule.
  - Mail the notice of cancellation generated by VERIS, stating the reason for removal and any comments entered when processing the cancellation
- If, after approving the registration and mailing the confirmation correspondence, the general registrar discovers information warranting inquiry as to residence, then the general registrar may request an address confirmation mailing or initiate the hearing procedure.[27] Cancellation by the general registrar after a hearing is appealable to the circuit court.[28] The general registrar's refusal to cancel can also be appealed by any qualified voter of the locality.

[27] See the Code of Virginia §24.2-429.
[28] See the Code of Virginia §24.2-430.

Law Note

"Any person whose registration was cancelled in accordance with the decision of the general registrar pursuant to §24.2-429, shall have the right of appeal, as provided in §24.2-422, to the circuit court of the county or city in which he offers to register. Any qualified voter of the county or city shall have the same right of appeal from the decision of the general registrar refusing to cancel the registration of any person alleged to be improperly registered." The Code of Virginia §24.2-430.

8.3.6 Voter Now Registered in Another State

Voter registration in Virginia must be cancelled when the general registrar receives a notice signed by the voter or from a voter registration official of another state that the voter has registered in that other state.[29] These notices require the following actions:

- Process all Out-of-State cancellations on the "Change Status" screen. Select the "Out of State" box and place important supporting information in the "Comment" section.

Non-VERIS Steps for Hard-Copy Applications

- Notate the back of the application out-of-state.
- Attach appropriate documentation to the back of the application or keep the documentation in a separate file.
- File the application in the "Deleted" file.
- Retain and destroy application and attached documentation in compliance with the GS-01 Records Retention and Disposition Schedule.
- Mail the notice of cancellation generated by VERIS, stating the reason for removal and any comments entered when processing the cancellation.

8.3.7 Non-Citizen

Each month the Department of Motor Vehicles (DMV) is required to furnish to Department of Elections a complete list of all persons who have indicated that they are not a United States citizen to DMV.[30] The Department of Elections will transmit that information to the appropriate general registrar. When notification is received, the following steps should be taken.[31]

- The general registrar is required to mail a notice of pending cancellation to each registered voter identified by DMV as a non-citizen. The voter is given 14 days from the date the notice was mailed to return a signed statement affirming citizenship.
- VERIS will automatically cancel the registration of any voter who does not respond to the notice within 21 days.
- Non-citizen cancellations are processed through the "Hopper." Determine if a registered voter matches the non-citizen information provided by the Department of Elections. If so, use "Cancel Voter" to approve the match and cancel the voter's registration. Individual voters may also be cancelled through the "Change Status"

[29] *See* 52 USC §20507(a)(4); *See* the Code of Virginia §24.2-427 (B).
[30] *See* the Code of Virginia §24.2-410.1 (B).
[31] *See* the Code of Virginia §24.2-427 (B)(1).

screen. On the "Change Status" screen, select "Declared Non-Citizen" for the reason and place important supporting information in the "Comment" section.

Non-VERIS Steps for Hard-Copy Applications

- Notate the reason for the cancellation on the back of the application.
- Attach appropriate documentation to the back of the application or keep the documentation in a separate file.
- Retain and destroy the application and attached documentation in compliance with the GS-01 Records Retention and Disposition Schedule.
- Mail the notice of cancellation generated by VERIS, stating the reason for removal and any comments entered when processing the cancellation.

8.4 CONFIRMATION PROGRAM

8.4.1 Why Request Confirmation

Several factors can trigger the requirement to request a voter confirm his or her registration. These are discussed below, and include the U.S. Postal Service's "National Change of Address" program analysis, a notification of out of state activity reported by the Department of Motor Vehicles, or a discrepancy noted in a voter address.

Please note that cancellation may incidentally result from this process if the voter fails to respond to a confirmation request or take other specified action for two general federal elections.[32]

Cancellations under any list maintenance program must be made no later than 90 days before the date of the next federal primary or general election.[33]

8.4.1.1 U.S. Postal Service's "National Change of Address"

Many states, including Virginia, use the U.S. Postal Service's National Change of Address ("NCOA") program to systematically analyze their voter registration records.[34] At least once a year, the Department of Elections uses the information in the NCOA database registry to match the voter registration addresses of all "Active" registrants in VERIS with USPS addresses. Any voter whose residence address listed in VERIS does not match the address listed with USPS is scheduled to be sent by "forwardable" mail a "Confirmation Notice" to confirm his/her residence address information.

8.4.1.2 DMV Notification of Out-of-State

Several other activities provide reasons to request a confirmation notice be sent to a voter in addition to the NCOA postal match confirmation process. One such reason is notification that the voter has relocated.

Each month VERIS receives an updated electronic file from DMV of persons who have surrendered their Virginia driver's license indicating relocation to another state. VERIS will automatically search for any potential matches of registered voters in the electronic file from DMV. The potential matches will appear in the VERIS "Hopper" for the locality. After reviewing the record, the general registrar may select the record that is a match. This will initiate a request for a "Confirmation Notice" to be sent to the voter.

8.4.1.3 Address Discrepancy

Another reason to request confirmation of a voter's address is the indication of an address discrepancy. General registrars can request a confirmation notice be sent to a registrant based upon reliable information indicating that the registrant has moved. This includes official mail returned as undeliverable or an address on a candidate petition that differs from the address of voter registration. The general registrar may also request a confirmation, but should do so only if information warranting inquiry as to residence is discovered.

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[32] See the Code of Virginia §24.2-428.2.
[33] 52 USC §20507(C)(2)(A).
[34] See the Code of Virginia §24.2-428 (defining Virginia's procedures).

Frequently Asked Questions

What if the USPS NCOA information shows that the voter ***moved within the same locality?*** Registrars should transfer the voter to the new precinct when necessary and mail a new voter registration confirmation correspondence. If the mailing is returned as undeliverable, mark the voter record for confirmation.

What if the USPS NCOA data shows that the voter ***moved within the Commonwealth but different locality?*** The general registrar should forward that information to the general registrar of that locality.

8.4.2 ELECT's Confirmation Mailing

The Department of Elections initiates an annual "Confirmation Mailing" using the information in VERIS from the NCOA postal match and general registrar confirmation requests.[35] The steps of the "Confirmation Mailing" process are as follows:

- The program provides a data file for each identified registrant whose address does not match the United States Postal Service address.
- The data file is imported into VERIS and "Confirmation Mailing" is recorded in the registrant's record. The data file is sent to the mail vendor. (The data file will also include registrants who were marked for confirmation mailing by the general registrar). The mail vendor prepares and mails the Confirmation Notice to registrants.
- The Confirmation Notice contains a return, postage paid card and instructions for completing the card. The notices are sent by forwardable mail and must provide the voter an opportunity to confirm or change their information.
- Responses to Confirmation Notices are entered into VERIS. The general registrar can use the response information to update the voter's address information, send the voter's information to another Virginia locality, cancel the registration of a voter who has moved outside Virginia, or any other action necessary to update the registration list.
- Confirmation programs are available for public inspection and copying.[36] Registrars can request reports by accessing the VERIS Reports Library.[37]

- VERIS generates two Confirmation Notice Reports: 1) a list of all voters to whom a Confirmation Notice was sent; and 2) a list of voters to whom a Confirmation Notice was not sent.

[35] 52 USC §20507(c)(B).
[36] See the Code of Virginia §24.2-444(B).
[37] See Chapter 9 Records Access and Retention for details on records available for public inspection.

8.4.3 VERIS: How to Obtain List of Voters Whose Record was Cancelled

To obtain the listing of all voters whose record was cancelled, select the Cancelled–Other report from the VERIS Reports Library. You should use a date range to identify voters cancelled during a certain time frame such as 1/15/15 – 1/19/15. VERIS will generate a report containing public information authorized in §24.2-444. You should print four (4) copies of this report for distribution as follows:

- One (1) copy must be posted at the courthouse or published in a newspaper of general circulation in your locality;
- Two (2) copies must be certified by you and delivered or mailed, obtaining a certificate of mailing, to the chair of each political party in your locality; and
- One (1) copy is for your records and available for public inspection and copying under Va. Code §24.2-444(B).

Law Notes

"The Department shall provide to each general registrar, for each precinct in his county or city, lists of registered voters for inspection. The lists shall contain the name, address, year of birth, gender and all election districts applicable to each registered voter. The lists shall be opened to public inspection at the office of the general registrar when the office is open for business. … The Department shall provide to each general registrar lists of persons denied registration for public inspection. Such lists may be provided electronically through the Virginia voter registration system and produced in whole or in part upon a request for public inspection." The Code of Virginia §24.2-444.

8.4.4 Return of Registered Voter to Active Status

Pursuant to the Code of Virginia §24.2-428.2, general registrars return to active status registered voters who were placed on inactive status if the voter "notifies the general registrar of a change of address", "responds to a confirmation notice with information that the voter continues to reside at the registration address", "votes or attempts to vote" in a primary, special or general election or "transfers his registration to another county or city within the Commonwealth".

8.4.5 Cancellation/Removal Due to Inactivity

ELECT runs list maintenance process to identify voters whose registration should be cancelled under the Code of Virginia §24.2-428.2: "If the registered voter fails to take such action on or before the day of the second general election for federal office after the voter was placed on inactive status, the general registrar shall cancel the person's voter registration." ELECT's process cancels the voter registration record of those voters whose registration record has been in an "Inactive" status for two (2) successive general elections for federal office.

8.5 NATIONWIDE INFORMATION EXCHANGES

When a voter moves out of state and registers to vote in their new state, the voter should indicate to the new state that they were previously registered in Virginia. The new state should then notify Virginia that the voter wants to cancel their Virginia voter registration. This process is extremely slow, relies on self-reporting by voters and other states, and it is prone to errors.

The Code of Virginia §24.2-404.4 requires ELECT to attempt to establish a data sharing relationship with the neighboring states to maintain the accuracy of the voter registration list. ELECT meets and surpasses this requirement by participating in national data sharing agreements promoted by the Presidential Commission on Election Administration that results in acquiring registered voter data for a total of 34 states for use in list maintenance activities.

8.5.1 Electronic Registration Information Center (ERIC)

ELECT participates in the Electronic Registration Information Center (ERIC) and started sharing data with this program on a regular basis in January 2014. States participating in ERIC during the reporting period include Alaska, Delaware, Missouri, Pennsylvania, Washington D.C., Alabama, Illinois Nevada, Rhode Island, West Virginia, Arizona, Louisiana, New Mexico, Utah, Wisconsin, Colorado, Maryland, Ohio, Virginia, Connecticut, Minnesota, Oregon, and Washington.

In 2016, 37,803 voters were identified as potentially having registered in one of the other states after their last date of activity in Virginia. Voters identified in these two programs were entered into the confirmation process provided for in the National Voter Registration Act (NVRA) and in the Code of Virginia §24.2-428 and received a confirmation mailer at their Virginia address. In addition, ELECT sent a cancellation request mailer to their out-of-state address. This project is reflective of Virginia's role as a national leader in effective list maintenance programs. The out-of-state mailer project is expected to reach voters sooner after they move allowing the voter to cancel their registration immediately without having to wait for the routine confirmation process.

Membership in ERIC also requires ELECT to reach out to voters identified as having incorrect information and to individuals who are not yet registered to vote, but appear to be eligible.

8.5.2 The Interstate Voter Registration Crosscheck Program (Crosscheck)

ELECT participates in the Interstate Voter Registration Crosscheck Program (Crosscheck) run by the State of Kansas. Each January, the participating states share their voter registration lists and receive back a list of potential duplicate registrations. In January 2016, 25 states shared approximately 98,725,000 records. The timing for receiving the initial data from Crosscheck varies in any given year, from as early as February to as late as April. Participating states in 2016 included Alabama, Arizona, Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New York, North Carolina, Ohio, Oklahoma, South Dakota, and Tennessee. As a result of this match, ELECT identified 73,798 registered voters who were potentially registered in one of the other states after their last date of activity in Virginia.

VERIS Index

Use this index to locate the VERIS related information in this chapter

Cancellation Program

- See section 8.3

VERIS: How to Obtain List of Voters Whose Record was Cancelled

- See section 8.4.3.

VERIS Step-by-Steps

- Prohibited List Maintenance explains how to enter and expire prohibited records.
- Hopper Processing and Information explains how to process the prohibited records in the hopper.
- Voter Registration Status Change explains how to process a personal request to change the status of voter registration information.
- Voter Correspondence shows how to send letters to voters identified as non-citizens.
- NCOA (National Change of Address) explains USPS's NCOA program.
- NVRA List Maintenance explains maintaining voter lists in accordance with the National Voter Registration Act of 1993 (NVRA).

For further assistance, contact VERIS help at verishelp@elections.virginia.gov

APPENDIX A
GUIDANCE *PROJECT VOTE*

To: General Registrars

From: Don Palmer, Secretary, State Board of Elections

Re: Compliance with *Project Vote* Decision and Court-Approved Agreement

Date: April 3, 2013

The recent *Project Vote* decision involving public disclosure requirements of the National Voter Registration Act (NVRA) provides public access (inspection and/or copying) to individual voter registration applications, excluding the applicant's social security number and residence street addresses of protected voters. The decision also requires production of other documents relating to voter registration, including correspondence to registered voters (excluding, of course, the protected information noted above). The federal court recently entered a consent decree that concluded the litigation.

As required by the court order and because NVRA does not specify a deadline or procedures for responding, SBE has outlined the following recommended guidance and procedures for compliance. Some basic parameters:

What documents are required for inspection and disclosure? Are there exemptions?

- The *Project Vote* decision requires you to make available for inspection and, where available, photocopying at a reasonable cost, completed voter registration applications and other documents relating to voter registration maintenance activities. This may include copies of correspondence to voters such as denial letters, if available.
- Yes, there are exempted applications:
    - As per the court order, the disclosure requirement only applies to voter registration applications that were submitted since July 20, 2011.
    - According to the NVRA, you are not permitted to produce voter registration applications that reveal the identity of the voter registration agency through which any particular voter is registered. Accordingly, applications that were submitted at the Department of Motor Vehicles should be withheld. If applications submitted through other NVRA-designated agencies (see list in Va. Code § 24.2-411.2) reveal the particular agency where the individual registered, then those should also be withheld.
- Similar to FOIA requests, NVRA requests do not require you to create a record that does not already exist.

Am I required or permitted to redact information from the documents produced for inspection and/or photocopying?

- Yes, registrars must redact the following "confidential information":
  - Social security numbers from all copies of registration applications inspected or produced pursuant to a request under NVRA.
  - All residence street addresses of any individual that provides a post office box address in lieu of his/her street address pursuant to § 24.2-418(B) of the Va. Code. These are commonly known as "protected voters."
- Please note that these redaction requirements apply to registration applications made available for inspection **and** those photocopied for disclosure to the requesting party:
  - For the inspection process, you may photocopy the application card and redact the protected information prior to the inspection or, alternatively, establish an inspection process in your office to temporarily redact the social security number with a temporary label or removable sticker prior to the individual inspection by the requester. Each office will need to establish an inspection process that includes the time, place, and manner in which your office has the time and personnel to provide redacted applications (temporarily or otherwise) to a requester to personally inspect.

May I charge for production?

- Yes, you may charge reasonable costs for photocopying only. You may not charge for simply making the documents available for inspection. You may require payment before providing the copies. The issue of specific costs is admittedly a gray area of the law so you must be able to articulate why your costs for photocopying are reasonable and how you came to determine that cost analysis. One example of calculating costs for photocopying may be the FOIA schedule/calculations that your office uses. Costs may differ from locality to locality depending on the personnel and resources available in your office and the timing of the request.
- **You may not charge for costs simply related to making the applications available for inspection unless agreed to by the requester as a timelier and more efficient means to disclose the information.**

How long do I have to respond to a request under NVRA?

- While NVRA does not mandate a specific response time, SBE's recommendation is that requests should be acknowledged within ten (10) working days with an estimate of the cost and timeframe for producing the documents or an estimate on the process and timeframe for making the applications available for individual inspection or photocopying. SBE recommends you comply with the request within twenty (20) working days after receiving the request, if possible.
- NVRA only requires photocopying where available. If you are unable to produce photocopies of the applications due to the high volume of work in your office, lack of personnel or the photocopier being unavailable, you are not required to produce photocopies until you are able.

- If there is a request to inspect a large or voluminous number of applications, you should estimate the number of days necessary for your office to provide the redacted photocopies or to allow temporarily redacted original applications to be reviewed in an inspection process at your office. You may offer alternatives to the inspection process to a requester that include the cost of photocopying and redacting as a more efficient way to respond to their request; however, the requester may request the physical in-person inspection process.

- Requesters should include their name and sufficient information for you to contact the requester and must reasonably describe the records the individual is requesting.

Additional Information:

Alternative Sources of Registration Data: When receiving a request you may wish to communicate to the requester that he/she may be eligible to view/inspect the list of registered voters and persons denied registration in your office or obtain a copy of the list of registered voters from SBE. For individuals interested in obtaining a copy of the list of registered voters, you can direct them to SBE.

Voluminous Requests and Disputes: If a request involves an extraordinary volume or lengthy search or requests the documents be produced more quickly than is possible, you should make reasonable efforts to reach an agreement with the requester concerning the production of the applications requested. Neither the court order nor the NVRA outlines specifics of how to respond to these types of requests. While you may suggest a mechanism to more timely and efficiently provide a large number of photocopies and redacted applications to the requester, if the requester requests the inspection of applications at your office, you will need to establish:

1. An inspection process that temporarily redacts confidential information from the application for personal inspection in your office; or

2. A mechanism to copy and redact the applications for inspection at your own cost. While SBE is available for consultation, you should consult your attorney if you are unable to reach an agreement to explore what options are available to you.

Optional Notice Guidelines: Please also see the sample notice below that may be helpful in explaining to individuals the specifics of the NVRA disclosure requirements as dictated in the *Project Vote* decision.

These are not FOIA Requests: Please note that document requests under the NVRA are not the same as FOIA requests. Accordingly, the Virginia FOIA provisions that limit its eligibility to in-state requesters only do not apply. Accordingly, these disclosure provisions are available to both Virginians and non-Virginian requesters.

Citations:

USC §1973gg-6(i),

(i) Public disclosure of voter registration activities

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) of this section are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

Consent Decree: A copy of the consent decree was attached to email transmitting this guidance.

Link to Project Vote Decision: https://www.ca4.uscourts.gov/opinions/Published/111809.p.pdf

Sample Public Notice:

National Voter Registration Act Requests

Under the National Voter Registration Act (NVRA), a federal law, you may request access to voter registration applications held by this office submitted since July 20, 2011. Social security numbers and residence street addresses of any individual that provides a post office box address in lieu of his street address pursuant to § 24.2-418(B) of the Va. Code must be redacted. If you seek this information, your request must include your name and sufficient information for us to contact you, and must reasonably describe the records you are requesting and whether you are seeking disclosure of photocopies of the application(s) or are seeking visual inspection of the application(s) at the general registrar office. We will acknowledge response to your request within ten (10) days and attempt to produce the requested disclosure documents within twenty (20) working days of your request.
Before submitting a request, check with the General Registrar to see if the information you seek may be available through an inspection of the list of registered voters or denials or for a request for a list of registered voters with the State Board of Elections.
Our office will charge _____ per page for copying applications. Our office may require payment before providing the copies. If charges are estimated to exceed $_____, or if you have other unpaid charges, we may require payment in advance before proceeding with the document request. Payment is required before copies will be provided. If charges are estimated to exceed $_____, or you have other unpaid charges, we may require payment in advance before proceeding. Please submit requests by mail, fax or e-mail to: _____