

Montana Secretary of State

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POST ELECTION AUDIT GUIDE

The Post Election Audit Guide is drafted to provide direction and guidance to county election administrators in the audit process. This draft is subject to change. It is available online at <https://sosmt.gov/elections/resources/>

Updated November 2024



Montana Secretary of State **Post Election Audit Guide**

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Post Election Audits – Background

The 2009 Legislature passed the “Postelection Audit Act,” effective October 1, 2009. Testifying in support of Senate Bill 155, the postelection audit bill, were the Montana Association of Clerks and Recorders, the Montana Association of Counties (MACo), AARP, the League of Women Voters, Montana Common Cause, and the Secretary of State.

This Guide, the Reconciliation Form and Report, and the sample Tally Sheet are intended to provide guidance regarding the Act. Each is an evolving document based on successful post election audit practices in other states as well as accommodating current processes in Montana election administration. The forms are updated and modified as the counties work through the post election audit process during several election cycles.

Working together on this legislation and its implementation, county Election Administrators and the Secretary of State have increased transparency and confidence in the election process while ensuring that the careful and comprehensive processes that result in open, honest, and fair elections in Montana are intact.

NEW for 2024:

- Hand count counties are no longer exempt from the Post Election Audit (PEA). The 2023 legislature passed SB-254, changing 13-17-503 MCA. Subpart 503(5)(a) removed the exemption and (6)(c) was added. The Secretary of State shall adopt rules “...for counties that do not use vote-counting machines.”
- The number of federal and statewide candidates and state-wide ballot issues has increased to two.
- The number of required precincts to be audited has increased from 5% to 10% of the county's precincts. The audit requires a minimum of two precincts per county. If a county has fewer than two precincts, then a single precinct is automatically chosen for audit.

Post Election Audit Timelines

For post-election timelines, go to the SOS Calendars page at <https://sosmt.gov/elections/calendars/>. Look for these deadlines:

- Tabulate Provisional, UOCAVA, and FWAB ballots after 3:00 pm.
- State Board of Canvassers selection of precincts, races, and ballot issues.
- Earliest date you can do the Post Election Audit (PEA) after random selections.
- Earliest date you can do the County Canvass.
- Latest date for the county to perform the PEA.
- Latest date for the county to perform the County Canvass.
- Date of Statewide Canvass.

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Post Election Audit Checklist		
Deadline (EA fills in from timelines)	Task	Completed
	The County governing body shall appoint at least three individuals to serve on the county audit committee from a list of county employees and county residents who have offered to serve on the committee. (Note: Governing body should appoint a committee to serve in the primary and general elections.)	
	The Election Administrator (EA) instructs the audit committee on how tabulation equipment counts votes.	
	Before Election Day, EA color codes each tabulator and ballot container or implements another system to match each precinct's ballots with tabulator(s).	
	EA schedules and notices county post-election audit. (Note: Use a similar process to notice a canvass or recount).	
	Counties notify the Secretary of State's Office (SOS) of any potential county recount.	
	SOS notifies counties of randomly selected precincts and contests.	
	EA prepares audit supplies, forms, guidelines, etc.	
	Conduct Audit (Open to the public):	
	1. EA checks seals on ballot containers to ensure they are intact.	
	2. EA or audit committee opens ballot containers.	
	3. EA or audit committee places ballots into stacks per the Guide, similar to the method used in a recount.	
	4. Members of the county audit committee hand count stacks of ballots and reconcile the number of ballots with the total ballots on machine tape, noting any discrepancy in the total number of ballots on the reconciliation form.	
	5. One member reads ballots (each selected contest separately).	
	6. Two members tally to ensure hand count tallies match each other.	
	7. EA records results on Reconciliation Form and Report (separate form for each contest audited).	
	8. Committee members and EA sign the Reconciliation Form and Report.	
	9. Expand audit if required.	
	10. Re-seal ballots in ballot containers.	
	Scan and email Reconciliation Form and Report to SOS.	
	Conduct official county canvass.	
	<ul style="list-style-type: none"> • Use audit results as definitive results for canvass. 	

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Preparing for Hand Count for the Audit

- Based on applicable deadlines, the county Election Administrator shall determine the date, time, and place of the hand count and provide notification as is provided for any public meeting.
- The Election Administrator should give the post election audit committee a **tutorial** on how the vote tabulating equipment counts and reports votes in preparation for the hand count.
 - The Election Administrator should also provide each audit committee member instructions on hand counting ballots.
 - Instructions on hand count procedures can be found in the Election Handbook provided by the Secretary of State. **Note:** *Not all hand count procedures specified in the Election Handbook apply to the post election audit hand count.*
- Before beginning service, the audit committee members shall take and subscribe to the official oath prescribed by the Montana constitution. They may administer the oath to each other. The county Election Administrator serves as the county audit committee's secretary.
 - The county audit committee breaks the seal on the container(s) containing the ballots to be counted. **Note:** *the county Election Administrator, in the presence of at least one other person, may break the seals prior to the meeting of the county audit committee if preliminary preparation of the ballots is necessary to prepare for the hand count. The ballots should be resealed after preliminary preparation is complete.* The seal-breaking process must be open to the public.
 - Observers may examine the seals prior to, during, and after the breaking of the seals to make certain they have not been broken or tampered with.
- Absentee ballots that are centrally counted must be separated by precinct for the audit. The Election Administrator may separate the absentee ballots but must ensure the process of separating them is open to the public.
- Each tabulator(s), tabulator(s) results tape, and ballot container should be color-coded or otherwise marked so that each precinct's results and ballots can be tied to the associated tabulator(s) that tabulated them.
- The audit shall be open to the public and must be conducted in public view without the use of tabulating equipment.
- Observers may not be permitted to touch ballots unless specifically allowed by the Election Administrator or interfere in any way with the hand count.

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Hand Count Process

- The post election audit will be conducted similarly to a recount, except that:
 - Provisions in law that allow votes in a recount to be changed based on the recount board's judgment of the voter's intent do not apply to the post election audit hand count.
- See pages 11 and 12 for comparisons between post election audits and recounts.
- The county Election Administrator assembles all ballot containers, forms, and supplies necessary for the hand count.
- Ballots should be separated in stacks similar to the way ballots are separated for a recount.
- **The following process is followed for each precinct and contest being audited, with a separate form being completed for each precinct and contest that is subject to the audit:**
 - After the ballots are separated into appropriate stacks, the county audit committee shall hand count each ballot, with one member reading the votes and two members marking the tallies. See COUNTING HAND-COUNT BALLOTS in the Election Handbook.
 - **Note:** *the county audit board is not permitted to see the tabulator results until the hand count is completed.*
 - When the ballots for a particular contest have been hand counted, the two members tallying shall compare their totals.
 - If the two tallies match, that number shall be posted on the Reconciliation Form and Report.
 - **If the two hand count tallies do not match each other, the ballots must be counted again until the hand count tallies match.**
 - **This process is repeated for each precinct and contest being audited, with a separate form being completed for each precinct and contest subject to the audit.**

NEW: Hand Count County Process

- The process is the same as above until the hand count is compared to the tabulator. Instead of comparing the hand count to the tabulator results, they are compared to the original hand count unofficial results. The audit committee also needs to follow the same hand count rules / procedures that were followed during the original hand count.
- Hand count counties using this guide should substitute guidance given comparing audit results to tabulator results or machine count to mean comparing the audit hand-count with the original hand-count.

Accounting for Overvotes and Undervotes

- An **overvote** occurs when an elector marks more than the allowable choices for a particular contest that is subject to the post election audit.
- An **undervote** occurs when the elector does not mark any choice for a contest that is subject to the post election audit.
- Each apparently overvoted and undervoted ballot must be examined to confirm whether the machine correctly processed the vote as it is programmed to do. (Such examination, if already conducted by election judges, may not need to be conducted by the county audit committee.)

Reconciliation of Hand Count and Machine Count

- The post election audit will be conducted similarly to a recount, except that provisions in the law that allow votes in a recount to be changed based on the recount board's judgment of the intent of the voter do not apply to the post election audit hand count and therefore are not part of the reconciliation.
- The county audit board and county Election Administrator will compare the original vote count from the tabulator and the hand count. If the hand count results differ from the tabulator results, the audit board and Election Administrator will analyze the ballots to determine if the reason(s) for the difference can be identified, similar to the process in a recount.
- The hand count results shall be entered into the form provided. Any difference between the hand count and the tabulator count must be explained to the best of the audit board and the Election Administrator's abilities on the form provided or attached sheets if necessary.

Classification and Handling of Discrepancies

Below are three general causes of discrepancies between the machine counts and the manual counts during a recount or audit. If election judges did not already identify and resolve each discrepancy on election day, the county audit committee must carefully consider the reason for each discrepancy.

1. ***Voter error:*** Voters might mark ballots incorrectly or may not follow the directions given. Because the purpose of the post election audit is to determine if the machine counted the votes correctly, the audit committee should be instructed to count votes in a manner consistent with how a tabulator machine would count votes.
2. ***Administrative or election official error:*** Administrative errors can happen on a busy election day and be identified later. Again, the purpose of the audit is to determine if the machine processed the votes correctly. An administrative or election official error that is discovered is an explainable difference and will not affect the discrepancy percentage.
3. ***Voting system error:*** Machine errors are most likely technology-specific. Tabulating machines may be miscalibrated, counts stored on memory cards may be corrupted, or software bugs could theoretically cause some ballots to be misinterpreted, either systematically or randomly. Voting system errors such as these would most likely be caught during the pre-election or election day test and be resolved, or if not resolved, the equipment in question would not be used.
4. ***For Hand Count counties*** – there may be differences interpreting the vote and voter intent on the ballot. The audit hand count should attempt to replicate the same methods and interpretation used by the original hand count board.

When handling discrepancies, the following general actions are appropriate:

1. **Resolution and/or reporting** of discrepancies;
2. **Verification** of whether the contests involved have been called correctly through expanded manual counts if required by law and
3. **Investigation and correction** of systematic hardware, software, and procedural problems. However, any correction of hardware or software can be made only within the timeframe specified in [13-17-509](#), MCA.

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Completing the Reconciliation Form and Report

The Form has been provided in an Excel worksheet with seven tabs: Candidate Example, Ballot Issue Example, Federal Office, Statewide Office, Legislative Office, Statewide Ballot Issue, and an Optional Grand Total Sheet for Multiple Precincts/Machines.

The county Election Administrator will enter the following information on the form:

- Information in Gray Sections at the top left of the spreadsheet
(Reminder: The county audit board is not permitted to see the tabulator results until the hand count is completed.)
- Column A: Candidate Names or Ballot Issue # or Type of Votes
- Column B: Hand Count Audit Tally
- Column C: Machine Tally (Filled in by Election Administrator after Hand Count Tally.)
- Column E: Difference (Hand Tally Minus Machine Count Tally)
- Column F: Number of Explainable Differences (Administrative or Election Official Error)
- Column G: Explainable Difference Reasons
- Column H: Unexplained Difference (Column F Subtracted from Column E). In this column, the form will calculate whether the hand count is over or under the machine count and by how many votes.
- Column I: Other Comments/Explanations
- The totals and the calculation of what constitutes 0.5% or five ballots, whichever is greater, are embedded formulas at the bottom of the spreadsheet under the heading "Analysis." The Analysis section formula will calculate and indicate whether any unexplainable difference will result in the machine(s) involved being set aside to be examined and three additional precincts being audited. (The form includes instructions on how to calculate the .5% discrepancy threshold if the form is filled out by hand rather than through computer data entry.)
- *Please note that if, for example, one candidate receives 10 **more** votes in the hand count than in the machine count, and another candidate in the same precinct receives 5 **less** votes in the hand count than in the machine count, and the reasons are unexplained, the spreadsheet should reflect that the unexplained difference is 15 votes.*
- A separate form must be filed with the Secretary of State for each precinct and for each of the contests that are audited. The report must be filed as soon as possible and by no later than the deadline for submitting the official county canvass to the Secretary of State.

“Not Acceptable” Results

- If the formula indicates that the results are “Not Acceptable,” the audit board and Election Administrator will **analyze the ballots** to determine if the reason(s) for the difference can be identified. If this analysis does not identify why there is a difference, the same ballots may be hand counted a second time. If the second hand count results in “Not Acceptable” status, the tabulation machine(s) must be removed from service until further review of the machine(s), and an additional three precincts must be hand counted. (The additional three precincts will have been randomly selected and provided by the Secretary of State to the Election Administrator at the same time as the random selection of the original precincts.) If the expanded hand count results in a “Not Acceptable” status, the tabulation machine(s) in the expanded audit must also be removed from service until further review of the machine(s).
- The Reconciliation Form and Report must be signed by all county audit committee members and the Election Administrator. One copy is sent to the Secretary of State, and one copy is posted in the place of auditing.

“Acceptable” Results

If the formula indicates that the results are “Acceptable,” the Reconciliation and Report Form must be signed by all county audit committee members and the Election Administrator. One copy is sent to the Secretary of State, and one copy is posted in the place of auditing.

Comparison of Post Election Audits and Recounts

Activity	Post Election Audits	Recounts
Initiated by petition or tie vote	No	Yes
Required in each voting system tabulator county after each federal primary election and federal general election	Yes	No
Can include local offices*	Yes	Yes
Requires at least three individuals to count and tally the votes	Yes	Yes
Occurs before the county canvass	Yes	No
The Secretary of State reimburses each county for any costs incurred	Yes	No
Requires ballots to be tied to the specific machine or machines that counted them	Yes	No
Requires changing vote totals if hand count reveals <u>voter intent</u> that the machine could not determine	No*	Yes
Requires changing vote totals if machine error or administrative or election official error caused machine totals to be incorrect	Yes*	Yes
Results affect the official county canvass	Yes	Yes
Report of results must be sent to the Secretary of State	Yes	Yes**

*The purpose of the Post Election Audit is to determine if the machine counted the votes correctly; therefore, the audit committee should be instructed to count votes consistent with how a tabulator machine is designed to count votes.

**Recount results are only sent to the SOS if the race was for a statewide or state-district office (including legislative) or a statewide ballot issue.

Changing Vote Totals in Post Election Audits and Recounts

Example	Changes Vote Total in Post Election Audit**	Changes County Canvass Vote Total in Recount
Voter fills in oval too lightly for machine to read, although the human eye can determine intent.	No*	Yes
The voter makes a clear written statement of the voter's intent to vote for (or not vote for) a candidate or make a choice on a ballot issue.	No*	Yes
Voter otherwise marks ovals not according to instructions but consistently throughout the ballot.	No*	Yes
Administrative or election official error discovered.	Yes	Yes
Machine hardware error discovered.	Yes	Yes
Machine software error discovered.	Yes	Yes
Machine tampering discovered.	Yes	Yes

*Because the purpose of the Post Election Audit is to determine if the machine counted the votes correctly, the audit committee should be instructed to count votes consistent with how a tabulator machine is designed to count votes. Votes that a tabulator machine would not pick up are not counted in the post-election audit, except in cases of machine error or administrative or election official error.

**For Hand Count Counties – the purpose of the audit is to determine if the original hand count board was counting and interpreting ballots correctly according to the hand-count statute and guidance found in the Election Administrator Handbook.

Post Election Audit Frequently Asked Questions

1) What does a “random sample audit” mean?

- A) "Random-sample audit," also called a Post Election Audit (PEA), means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in [13-17-503](#) and [13-17-510](#), MCA.

2) When is the random audit conducted? May the audit be conducted on the same day as the county canvass?

- A) The random audit is conducted after the unofficial results are available to the public and before the official county canvass. See the timeline at the beginning of the Guide.

The audit **cannot** be conducted on the same day as the county canvass. It must be completed at least one day before the official county canvass.

3) Are some counties exempt? What ballots are not included in the audit?

- A) Changes to [13-17-503\(5\)](#), MCA, require all counties to conduct a post election audit. (Note: Hand count counties are no longer exempt.)

Also, if a candidate race (except races for precinct committee representative) or a ballot issue has a tie or a total **within the margins for a recount without a court order**, the county is exempt from having to conduct a post election audit.

Also, ballots are not included in the audit if they were not able to be processed by a vote tabulating machine and were not resolved because the ballot appeared to have at least one overvote, appeared to be blank, was in a condition that prevented it from being processed by a vote tabulating machine or contained a mark, error, or omission that prevented its processing by a vote tabulating machine.

4) How many precincts are chosen, and what races are chosen?

- A) Pursuant to 13-17-503, MCA, at least 10% of the precincts in each county, or a minimum of two precincts in each county, shall be audited, whichever is greater. If there is only one precinct, that precinct is automatically selected. The state board of canvassers shall utilize current official precinct information provided by the counties to the Secretary of State to determine the number of precincts to be audited per county. Three additional precincts, or as many as possible up to three, in each county will be selected in case a discrepancy in vote tallies occurs that necessitates further auditing.

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If there are no statewide ballot issues, these are not included in the audit.

Races will not be audited if they include a retention election for a judicial candidate or a race in which a candidate is unopposed.

5) Are there administrative rules associated with the process?

- A) Yes. See ARM [44.3.1719](#) (Post Election Audit Process for a Federal Election).

6) When and how are the members of the county audit committee chosen?

- A) The county audit committee is composed of at least three members, all of whom are appointed by the county governing body. The members appointed prior to the primary election should, at that time, be appointed to serve the entire federal election cycle.

The audit committee appointees are chosen from a list of county employees (this list can include county elected and appointed officials and employees of the county election office) and/or county residents who have offered to serve on the committee, except for election judges who served in the election, a person employed by the vote tabulating machine vendor, or a person who performed maintenance on the vote tabulating machines subject to the audit.

The appointed members are not required to be registered voters, but they must be residents of the county where the post election audit is being conducted.

7) What additional requirements are there for the county audit committee?

- A) Before beginning service, the audit committee members shall take and subscribe the official oath prescribed by the Montana constitution. The audit committee members may administer the oath to each other.

The county election administrator shall serve as the secretary to the county audit committee.

It is recommended that the county Election Administrator train the audit committee members on how the vote tabulating equipment counts ballots and on the hand count process.

8) Who chooses the precincts and races to be audited, and how is this done?

- A) See ARM [44.3.1719\(1\)](#).

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- 9) **Is the selection process, as well as the manual audits, open to the public?**
- A) Yes.
- 10) **How does the state board of canvassers make its random choices?**
- A) By using ten-sided dice.
- 11) **How does the state board of canvassers make notifications of the selections?**
- A) By directing the Secretary of State to notify each county Election Administrator of the selections and making a list of the selections available electronically.
- 12) **Once the counties are notified, how long do they have to conduct the manual audits?**
- A) See the timetable at the beginning of the Guide.
- 13) **How is the manual audit conducted? What are the differences between a manual audit and a manual recount? When do the vote totals change as a result of the manual audit?**
- A) The process is similar to a manual recount, although there are a few notable differences. See page 7 of this Guide for the manual audit process and pages 11 and 12 for applicable manual audit and manual recount comparison charts.
- 14) **What machine totals are used for the post election audit?**
- A) The final totals after any provisional/FWAB ballots are counted the Monday after election day (this rolls to the Tuesday after election day if Monday is a holiday) are always used except in cases in which the provisional/FWAB ballots are not machine-counted.
- 15) **What is the process for comparing the post election audit counts against the voting machine counts?**
- A) During or after the post election audit, the machine counts are inputted into the applicable section of the Post Election Audit Reconciliation Form and Report. The post election audit hand counts are then compared to the machine counts. If the numbers are below the discrepancy threshold, the results are certified to the county Election Administrator and the Secretary of State.

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- 16) What happens in relation to the county canvass if there is an unexplainable discrepancy?**
- A) If there is an unexplainable discrepancy, the random sample audit results are the definitive record for the canvass for the precinct(s) involved, and those results are certified to the county Election Administrator and the Secretary of State.
- 17) What is the threshold for an unacceptable discrepancy?**
- A) The threshold for an unacceptable discrepancy is met if the random-sample audit results in a discrepancy of more than .5% of total ballots cast or five ballots, whichever is greater.
- 18) What happens to the vote tabulating machine(s) involved if there is an unacceptable discrepancy of more than .5% or five ballots, whichever is greater?**
- A) The vote tabulating machine(s) involved in the unacceptable discrepancy in that county may not be used in another election until:
- a. The machine(s) have been examined and tested by a computer software expert in consultation with a voting system vendor and
 - b. The machine(s) are approved for subsequent use by the Secretary of State.
- If there is an unacceptable discrepancy after hand counting the ballots a second time, contact the Secretary of State, who will arrange for a computer software expert to work with the equipment vendor to examine and test the machine(s) in question.
- 19) Are additional precincts audited if there is an unacceptable discrepancy of more than .5% or five ballots, whichever is greater?**
- A) Yes. If there is an unacceptable discrepancy, at least three additional precincts within the county must be audited for the office or ballot issue in question. If the county has fewer than three additional precincts, all remaining precincts must be audited.
- 20) Are all the state's vote tabulating machines of the same type subject to examination if one fails an audit?**
- A) The machine is subject to examination by a computer software expert in consultation with a voting system vendor. The machine(s) that counted the ballots involved in the failed audit are subject to examination, but not all the machines in the state, nor all machines of the same type.

21) Can the Canvass board order a recount?

- A) Yes. Under [13-15-403\(4\)](#) MCA, if during a canvass the board finds an error in a precinct or precincts affecting the accuracy of vote totals, the board immediately may petition for a recount of the votes cast in the precinct or precincts or for an inspection of ballots as provided by law. A post-election audit finding of an unacceptable discrepancy can be evidence of an error affecting the accuracy of the vote totals.

22) How are the costs of the post election audit reimbursed?

- A) The Secretary of State shall reimburse each county for costs incurred in the post election audit.

However, a vendor who supplies a vote tabulating machine purchased after October 1, 2009, that fails an audit due to software or machine defects or vendor employee error shall pay the costs incurred to audit the vote tabulating machine in the affected county. These provisions must be reflected in the contract for the purchase of a vote tabulating machine.

23) How long are the ballots kept after a federal election?

- A) See [13-1-303](#), MCA.

23) What are some best practices for Post Election Audits?

- A) About one week after each federal election, the Secretary of State emails the list of precincts, candidates, and ballot issues to county election officials, following the random selection of each of these by the state canvass board.

Be sure to audit each race and each precinct selected.

If you use multiple vote tabulators to count your ballots, make sure that the ballot containers into which the tabulated ballots are deposited are clearly marked to indicate which machine tabulator counted the ballots. The reason for this is if your counts are off, you can determine which tabulator was affected and remove it from service, rather than having to remove all your tabulators from service.

The canvass and the post election audit are each required to be open to the public.

You can save time and money by providing notice of the time and place of the Post Election Audit using the same method and at the same time that you provide notice of your canvass. The audit and canvass must be public, and the date, time, and location should be published or posted as any public meeting is.

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24) What are some best practices for Post Election Audits from the perspective of county Election Administrators?

- A) Below are a few suggestions from county election officials:
- 1) Appoint post election audit committee members who have accounting and/or bookkeeping skills, since these individuals are highly familiar with numbers and with reconciling apparent discrepancies between totals;
 - 2) Ask potential post election audit committee members whether they will be able to commit to both the primary and the general elections, especially since many potential members may travel south for the winter;
 - 3) Contact high schools to recruit potential members and also ask retired election judges and members of service clubs;
 - 4) Appoint more than the number of members seemingly necessary to account for members who are not able to attend and to make the audit proceed more quickly;
 - 5) Maintain a designated, secure area for the voted ballots in order to easily access them for the audit;
 - 6) Send out this Guide to Post Election Audit committee members in advance of the audit, and ask members to read the Guide and contact the county Election Administrator with questions;
 - 7) Prepare the Reconciliation Form and Report and Tallying Sheet(s) as soon as the Secretary of State emails the precincts and races chosen so the forms are filled out and ready for the audit.
 - 8) For a Primary election, plan to have separate counting areas, one for each set of party ballots;
 - 9) Supply colored tabs for any ballots for which the voter's intent is questionable and check these ballots first if there is an apparent discrepancy.