08 NCAC 09.0107  **RECOUNT OF OPTICAL SCAN BALLOTS**

(a)  In the first recount conducted by the county board of elections in accordance with G.S. 163-182.7, all ballots that were originally counted by the optical scan equipment shall be counted again by the optical scan equipment producing another machine count. A "machine count" total is a ballot count produced by a voting system that uses machines. All ballots that were rejected for tabulation purposes by the machines - commonly called "outstacked" or center bin ballots - shall be recounted by a bi-partisan team of four in accordance with 08 NCAC 09.0106(f).

(b)  When the first recount, including absentee and provisional ballot recount totals, has been completed, the board of elections shall determine if a second recount is necessary as follows:

1. Determine whether the first recount produces a change in the winner in accordance with the following:
   - (A) If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount, by hand and eye, of all ballots; and
   - (B) If the apparent winner after the initial balloting remains the apparent winner after the first recount, the county board shall proceed according to Subparagraph (2) of this Paragraph;

2. Determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount in accordance with the following:
   - (A) If the machine totals from the initial balloting and the first recount are the same, no second recount is necessary; and
   - (B) If the machine totals from the initial balloting and the first recount are not the same, the county board shall proceed according to Subparagraph (3) of this Paragraph;

3. Determine if the discrepancy in the machine total between the initial balloting and the first recount can be reconciled. The county board shall examine all outstacked or center bin ballots from the first recount, determine how each ballot shall be counted according to Rule 0106(c) of this Section, and reconcile the count with the machine count on the initial balloting in accordance with the following:
   - (A) If this reconciliation produces the same machine total for the first recount as the machine total in the initial balloting, no second recount is necessary; and
   - (B) If the reconciliation produces a different machine total for the first recount than the machine total in the initial balloting, the losing candidate is entitled to demand a second recount, by hand-to-eye, of all ballots.

**History Note:**  
Authority G.S. 163-22; 163-182.7;  
Temporary Adoption Eff. April 15, 2002;  
Eff. August 1, 2004;  