

Department of State**Division of Publications**

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For Department of State Use Only

Sequence Number: 07-25-14
 Rule ID(s): 5777
 File Date (effective date): 7/29/14
 End Effective Date: 1/25/15

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Tennessee Department of State
Division:	Division of Elections
Contact Person:	Mark Goins, Coordinator of Elections
Address:	312 Rosa L. Parks, 7th Floor Snodgrass/TN Tower
Zip:	37243
Phone:	615-741-7956
Email:	Mark.Goins@tn.gov

Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

T.C.A. § 4-5-208 provides that an agency may adopt emergency rules if an immediate danger to the public health, safety or welfare exists, and the nature of this danger is such that the use of any other form of rulemaking authorized by this chapter would not adequately protect the public.

On August 7, 2014, Tennessee will conduct a federal primary, state primary, state general election, county general election, and in some counties, municipal general elections. In the largest county in Tennessee, voters will have as many as eighty-three (83) offices on the ballot to review. Even in the smallest county in Tennessee, voters will have as many as forty-five (45) offices on the ballot. In each of these counties and in every county in Tennessee, voters will be presented with one of the largest ballots they have seen to date. This extensive ballot will not only impact the length of time involved for voters to cast their ballot, but it will also impact the length of time to print the tally tapes from each voting machine used in the election, thereby creating a longer work day for our Election Day poll officials.

After the polls have closed, the election officials at each polling place must close the voting machines and print a voting machine tally tape which shows the total number of votes cast for each office and question, the total number of votes cast for each candidate, including write-in candidates, and for each position on a question. Pursuant to T.C.A. § 2-7-132(a), election officials must complete a duplicate tally sheet which provides the same information. Thus, this statute requires election officials to print a second voting machine tape which provides the duplicate information from the first printed tape. Additionally, Promulgated Rule 1360-02-13-.22, requires a third tally tape to be printed.

One of our smaller counties in Tennessee using the MicroVote voting system has reported that given the length of the ballot, the tally tape will be at least sixty inches (60") long, and that with tallying and printing, it will take at least twenty (20) minutes per machine to generate the three (3) voting machine tally tapes required by Rule 1360-02-13-.22. Normally, for this system, there is only one (1) printer available in each polling place and, therefore, in this county which has a polling place with six (6) voting machines, it can take up to two (2) hours after the polls have closed to tally and print the three (3) voting machine tally tapes for each machine in a polling

place. For larger counties, with larger ballots, the time to tally and print the three (3) voting machine tally tapes for each voting machine may take even longer.

T.C.A. § 2-3-201(a) requires polling places to be open for voting for a minimum of ten (10) continuous hours but no more than thirteen (13) hours. In addition to this minimum time to be open for voting, T.C.A. § 2-7-105(a) requires our election officials to meet at the polling place at least one-half (1/2) hour before the time for opening the polls for the election. Following, at a minimum a ten and a half (10 ½) hour day, our election officials must then perform the duties of closing the polling place, including the printing of the three (3) voting machine tally tapes. In several counties, election commissioners choose to be open for twelve (12) hours. For election officials who arrive one half (1/2) hour before polls open and have to remain another possible two (2) hours to print the tally tapes, at least fourteen and one half (14 ½) hours will be required of this poll official on this day.

Furthermore, because of the extensive length of the tally tape, more paper will be needed to print multiple tally tapes. The need for additional paper may impose the extra responsibility upon election officials to replace the paper needed to print three (3) tally tapes. This responsibility will require additional training and additional time for election officials who are already facing an overwhelming day.

With these facts, multiple counties have reported significant difficulty in obtaining qualified poll workers and other election officials to work on Election Day. Without a sufficient number of election officials to conduct the elections throughout the state, the ability to conduct fair, impartial and trustworthy elections will be compromised. Thus, in order to ensure that there are sufficient qualified election officials to work on Election Day so as to secure the purity of the ballot box, the Coordinator of Elections seeks to adopt emergency rules in order to eliminate the non-statutory requirement of printing the third (3rd) voting machine tally tape.

The proposed amendment to Promulgated Rule 1360-02-13-.22 will maintain the requirement that the election officials print two (2) tapes, including pre-opening zero (000) tapes, from each voting machine and a precinct total tape. The first tape to be brought to the central election commission office with all election supplies from that polling place and the second tape, which includes the same information as the first tape, from each machine, to be posted on the wall of the polling place. The Rule would continue to require that ample opportunity shall be given to any person present to obtain the results from the paper tapes posted on the wall of the polling place.

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
1360-02-13	Electronic Voting Machines
Rule Number	Rule Title
1360-02-13-.22	Locking Machines Upon Close of Polls – Canvass and Proclamation of Votes

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Amendment
Rule Number 1360-02-13-.22

Rule Number 1360-02-13-.22 is amended by removing the requirement to print a third (3rd) tally tape and shall read as follows:

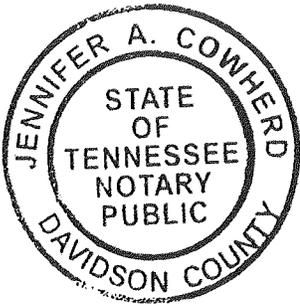
1360—02—13—.22 LOCKING MACHINES UPON CLOSE OF POLLS—CANVASS AND PROCLAMATION OF VOTES.

Upon close of the polls the judges shall, under provisions of T.C.A. § 2-7-130, lock the machines against voting and shall sign a certificate on the voting machine tally tape that each machine has been locked against voting; the number of voters as shown on the public counters; and the number registered on the protective counter. The judges shall then, in the presence of watchers and others who are present, run the election results paper tape. The judges shall give the first paper tape, including pre-opening zero (000) tape, to the precinct registrars. The second paper tape, from each machine, shall be posted on the wall of the polling place. The first results tape, including pre-opening zero (000) tape, from each machine and a precinct total tape shall be transported along with other election materials to the election commission office, or its designated location for receiving election

results. Ample opportunity shall be given to any person present to obtain the results from the paper tapes posted on the wall of the polling place.

Authority: T.C.A. § 2—11—201(c).

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.



Date: 28 July 14

Signature: Mark Goins

Name of Officer: Mark Goins

Title of Officer: Coordinator of Elections

Subscribed and sworn to before me on: July 28, 2014

Notary Public Signature: Jennifer A Cowherd

My commission expires on: 11-3-2015

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Signature]
Robert E. Cooper, Jr.
Attorney General and Reporter

7-29-14
Date

Department of State Use Only

Filed with the Department of State on: 7/29/14

Effective for: 180 *days

Effective through: 1/25/15

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

[Signature]
Tre Hargett
Secretary of State

RECEIVED
2014 JUL 29 PM 3:03
OFFICE OF
SECRETARY OF STATE

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The amendment to this rule will not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The emergency rule removes the requirement for Election Day poll officials to print a third (3rd) tally tape from each voting machine.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

This rule is promulgated pursuant to T.C.A. § 2-11-201(c) which authorizes the Coordinator of Elections to make rules and regulations as necessary to carry out the provisions of the election code.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The county election officials who must recruit and train Election Day poll officials are most directly affected by this rule. These county election officials have urged for the removal of the requirement to print a third (3rd) voting machine tally tape.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

Not applicable.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Minimal

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Mark Goins, Coordinator of Elections, Department of State.

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Mark Goins, Coordinator of Elections, Department of State.

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

Not applicable.

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shall be posted on the wall of the polling place. The first results tape, including pre-opening zero (000) tape, from each machine and a precinct total tape shall be transported along with other election materials to the election commission office, or its designated location for receiving election results. Ample opportunity shall be given to any person present to obtain the results from the paper tapes posted on the wall of the polling place.

Authority: T.C.A. § 2—11—201(c).