

TITLE 9 NATIONAL ELECTIONS

CHAPTERS

- 1 General Provisions (§§ 101-113)**
- 2 Candidates (§§ 201-206)**
- 3 Election Officials (§§ 301-306)**
- 4 Registration (§§ 401-406)**
- 5 Procedure for Ballots (§§ 501-505)**
- 6 Procedure for Absentee Voters (§§ 601-606)**
- 7 Procedure for Conduct of National Elections (§§ 701-715)**
- 8 Procedure for Petitions and Appeals (§§ 801-805)**

Editor's note: Chapters 1 through 9 of this title were repealed in their entirety by section 1 of PL 14-76 that was signed into law by then President Joseph J. Urusemal on August 14, 2006.

CHAPTER 1
General Provisions

SECTIONS

- § 101. **Short title.**
- § 102. **Definitions.**
- § 103. **Eligible Voters.**
- § 104. **Election to be by secret ballot.**
- § 105. **General elections.**
- § 106. **Special elections.**
- § 107. **Election funding.**
- § 108. **Use of Public Property or Public Employees for Campaign Activities.**
- § 109. **Use of broadcast and print media.**
- § 110. **Affidavit to be sworn.**
- § 111. **Violations.**
- § 112. **Construction of the Act.**
- § 113. **Authority to promulgate rules and regulations.**

Editor's note: Chapter 1 of this title on General Provisions was enacted by section 2 of PL 14-76.

§ 101. Short title.

This Act shall be known and cited as the “Revised National Election Act of 2005”.

Source: PL 14-76 § 3.

Editor's note: This title was repealed in its entirety and reenacted by the provisions of PL 14-76, which was signed by President Joseph J. Urusemal on August 14, 2006.

§ 102. Definitions.

The following terms shall have the following meanings:

- (1) “Citizen” means a citizen as defined by the Constitution of the Federated States of Micronesia and title 7 of this code;
- (2) “Congress” means the Congress of the Federated States of Micronesia;
- (3) “Congressional Election District” means the district apportioned by population for which a two-year term Member is elected;
- (4) “Election Day” means the date in the Federated States of Micronesia on which National Elections are conducted in the Federated States of Micronesia without regard to the actual date at any Polling Place outside the Federated States of Micronesia;
- (5) “Member” means a two-year or four-year member of the Congress of the Federated States of Micronesia;
- (6) “Municipality” means a subdivision of a Congressional Election District;
- (7) “National Election” means any general or special election for a Member, or any national referendum on a constitutional amendment;
- (8) “National Election Director” means the person appointed in accordance with subsection 302(1) of this title;

TITLE 9 – NATIONAL ELECTIONS

- (9) “National Election Office” means the office or other locations designated by the National Election Director as a location from where official national election activities are carried out;
- (10) “National Voter Register” means the list of all Registered Voters in the Federated States of Micronesia who registered to vote with a National Election Office;
- (11) “Polling Place” means a location officially designated by the National Election Director where voters cast their ballots in a National Election, including special polling places, VAAPP polling places, mobile polling places and traveler polling places;
- (12) “Polls” may refer to two or more Polling Places, or all Polling Places generally;
- (13) “President” means the President of the Federated States of Micronesia;
- (14) “Public Property” means any land, buildings, facilities, vessels, vehicles, equipment, supplies or other resources that are owned, operated or controlled by the National Government, a State government or a municipal government, or any subdivision, agency or department thereof;
- (15) “Public Employee” means any employee of the National Government, a State government or a municipal government, or any subdivision, agency or department thereof;
- (16) “Registered Voter” means a person who has registered to vote pursuant to chapter 4 of this title;
- (17) “Resident” means a person who qualifies as a resident under the laws of the State in which the person has registered, or seeks to register, to vote;
- (18) “Signature List” means the certified list of Registered Voters in a Municipality or Congressional Election District that any person seeking to vote on Election Day must sign at their designated Polling Place before being issued a ballot;
- (19) “State” means one of the four States of the Federated States of Micronesia;
- (20) “State Election Office” means the official office or other locations designated by the State election officials or state government as a location from where official state election activities are carried out;
- (21) “State Voter Register” means the list of Registered Voters for a Congressional Election District or Municipality who registered to vote with a State Election Office;
- (22) “VAAPP” means voting at another polling place in accordance with section 604 of this title; and
- (23) “Voter Identification Card” means an identification card issued under the authority of the National Election Director to a Registered Voter that contains the Registered Voter's name, registration number, State, Congressional Election District, Municipality, date of birth, sex, signature and other identifying information, and that provides a means of indicating whether that Registered Voter has already cast a ballot in each National Election.

Source: PL 14-76 § 4.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

Editor's notes: Subsection 16 ended in a period in PL 14-76 and has been replaced with a semicolon.

§ 103. Eligible Voters.

Every Citizen of the Federated States of Micronesia is eligible to vote in a National Election if he or she has fulfilled the following requirements:

- (1) is living;

TITLE 9 – NATIONAL ELECTIONS

- (2) is 18 years of age or older on the day of the election;
- (3) is a Resident of a State;
- (4) has been a Registered Voter for at least 30 days immediately preceding Election Day;
- (5) is not currently under a judgment of mental incompetency or insanity; and
- (6) is not currently under parole, probation, or sentence for any felony for which he or she has been convicted by any court of the Federated States of Micronesia.

Source: PL 14-76 § 5.

§ 104. Election to be by secret ballot.

All National Elections shall be by secret ballot, regardless of how State or municipal elections are conducted.

Source: PL 14-76 § 6.

Cross-reference: FSM Const., art. VI, sec. 1 states in pertinent part that: “Voting shall be secret.” The provisions of the Constitution are found in Part I of this code.

§ 105. General elections.

(1) All general elections for Members shall be held biennially in each odd-numbered year on the first Tuesday following the first Monday in March; provided, that where a natural disaster or other event precludes holding the election on the foregoing date, the President may postpone the election in the affected Congressional Election District, Municipality or Polling Place until the next available date on which the natural disaster or other event will not hinder voting, excluding weekends and national holidays.

(2) When a State or municipal election is scheduled to be held concurrently with a National Election, the National Election Director shall assist in that election as requested by the State or municipal government, to the extent determined by the National Election Director and within the limits of available resources.

Source: PL 14-76 § 7.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 106. Special elections.

TITLE 9 – NATIONAL ELECTIONS

(1) Special elections shall be conducted in the same manner as general elections, except where this title sets forth a different procedure for special elections.

(2) The National Election Director shall schedule a special election to occur 50 days after receipt of notification of the need for a special election; provided, that where a natural disaster or other event precludes holding the election on the foregoing date, the President may postpone the election in the affected Congressional Election District, Municipality or Polling Place until the next available date on which the natural disaster or other event will not hinder voting, excluding weekends and national holidays.

(3) Special elections shall be declared as follows:

(a) *After election of President and Vice President.* After the election of the President and Vice President, vacancies shall be declared for the seats to which the President and Vice President were originally elected as Members. The Speaker of Congress shall make the declaration and notify the National Election Director of the vacancies.

(b) *Other vacancies—seated Congress.* Any other vacancy in the Congress shall be filled for the unexpired term by special election, except that an unexpired term of one year or less shall be filled by appointment by the Governor of the State affected. The appointee shall possess the qualifications required by section 201 of this title and shall serve only for the unexpired term. The Speaker of Congress shall make the declaration of a vacancy to be filled by special election and notify the National Election Director of the vacancy.

(c) *Other vacancies—death of a declared winner.* In case a death of a declared winner before being sworn into office, the Governor of the State affected shall notify the Speaker of Congress, who shall immediately declare a vacancy and notify the National Election Director.

(4) *Date of special election.* If the date required by this section for a special election to be held falls on a Saturday or Sunday, the election shall be held on the first Tuesday following that Saturday or Sunday. If the date required by this section for an election to be held falls on a national holiday, the election shall be held on the next available day that is not a Saturday or Sunday.

Source: PL 14-76 § 8.

Case annotations: The Section 11 constitutional provision for special elections does not mention runoff elections if there is no candidate with a majority. Nor does it state that the gubernatorial special election shall be conducted in the same manner as the gubernatorial election in Section 7, and it also does not state that it should be conducted in a manner to be prescribed by statute. If it did then, Section 142 of the Election Code, which provides that "[a]ll special elections shall be conducted in the same manner and form as a general election, except as otherwise provided in this Act," would carry great weight and might lead the court to conclude that there was a clear, non-discretionary duty to conduct a runoff. However, there are no such provisions. *Narruhn v. Chuuk State Election Comm'n*, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

When the Constitution's framers did not include provisions for runoff elections after special elections, and even if that was through oversight, the court will not insert into the Constitution a runoff provision that is not there. Accordingly, the petition for a writ of mandamus directed to the State Election Commission commanding it to hold a runoff election will be denied. *Narruhn v. Chuuk State Election Comm'n*, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

§ 107. Election funding.

Within one year prior to a general election, or 40 days prior to a special election, Congress shall appropriate a sum adequate to defray the administrative and contingent expenses of conducting National Elections as provided by this title.

TITLE 9 – NATIONAL ELECTIONS

Source: PL 14-76 § 9.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 108. Use of Public Property or Public Employees for Campaign Activities.

(1) No Public Property shall be made available, without cost, to a candidate in a National Election, or his or her supporters, for campaign activities; provided, however, that campaign materials may be displayed on Public Property without cost so long as the campaign materials do not damage or deface that property and the candidate, or his or her supporters, remove such materials prior to 12:00 a.m. on Election Day pursuant to section 705 of this title.

(2) If Public Property is made available to a candidate in a National Election, or his or her supporters, such property shall be made available on an equal basis to all opposing candidates and their supporters.

(3) Notwithstanding anything in subsections (1) and (2) of this section, no National Government vehicle shall be used by a candidate, or his or her supporters, for campaign activities.

(4) No candidate shall use the services of Public Employees for campaign activities during working hours or while such employees are conducting government business.

Source: PL 14-76 § 10.

§ 109. Use of broadcast and print media.

(1) If any broadcast or print media, either public or private, permits a candidate in a National Election, or his or her supporters, to use its facilities or publications, it shall afford access on an equal basis to all opposing candidates, or their supporters, without censorship. No obligation is imposed under this section upon any broadcast or print media to allow the use of its facilities or publications by any candidate in a National Election. Appearance by, or mention of, a candidate in any bona fide news story or interview shall not be deemed to be use of a broadcast facility or publication within the meaning of this section.

(2) All broadcast and print media carrying campaign advertisements shall clearly identify each campaign advertisement and shall indicate the candidate, or supporters of the candidate, responsible for the advertisement.

(3) No broadcast or print media shall permit use of its facilities or publications by any candidate in a National Election, or his or her supporters, on Election Day.

Source: PL 14-76 § 11.

Case annotation: To conclude that 9 F.S.M.C. 107(1) criminalizes either a candidate's conduct in submitting his campaign tape directly to a broadcast facility without previously submitting it to the national election commissioner, or to conclude that the owner and operator of the radio station faces a criminal penalty because it aired the tape would be to attribute an uncertain meaning to the statute, which might well cause candidates to steer far wider of the unlawful zone than they otherwise would, or should, in the important work of presenting their views to a public which needs to exercise its franchise in an intelligent manner. The court declines to credit such an uncertain meaning to the statute. *FSM v. Moses*, 9 FSM R. 139, 146 (Pon. 1999).

The national election director and his deputies in the four states, the national election commissioners, may have a duty to take all reasonable steps to insure that candidates have equal access to government broadcast facilities. *FSM v. Moses*, 9 FSM R. 139, 146 (Pon. 1999).

TITLE 9 – NATIONAL ELECTIONS

Candidates are to notify the national election commissioner twenty-four hours before their intended use of a government broadcast facility. *FSM v. Moses*, 9 FSM R. 139, 144 (Pon. 1999).

When there is no statutory requirement that a candidate submit his taped speech before it is aired and when there is no mention of criminal liability on the of the government broadcast facility should it do so, there is no probable cause to believe a crime has been committed, and the information and criminal summons should be dismissed without prejudice. *FSM v. Moses*, 9 FSM R. 139, 145 (Pon. 1999).

A court will not extrapolate a statute's allowable meaning to encompass submission of the taped speech directly to the radio station without first submitting it to the national election commissioner when the statute's only stated requirement is twenty-four hours' notice. *FSM v. Moses*, 9 FSM R. 139, 145 (Pon. 1999).

A political candidate's freedom of expression is guaranteed, as it is to all citizens, under section 1 of the FSM Constitution's Declaration of Rights. *FSM v. Moses*, 9 FSM R. 139, 146 (Pon. 1999).

§ 110. Affidavit to be sworn.

The affidavits required pursuant to this title shall be sworn to before any officer or person authorized by law, this title, or regulations issued pursuant thereto, to administer oaths, except for the affidavit accompanying absentee ballots which does not need to be witnessed.

Source: PL 14-76 § 12.

§ 111. Violations.

(1) Any person who knowingly violates any of the provisions of this title or any rules or regulations promulgated pursuant thereto, or commits any of the unlawful acts set forth herein or elsewhere in this title, for which a penalty is not otherwise provided, shall be punished by a fine not to exceed \$500, or imprisonment for not more than one year, or both.

(2) It shall be unlawful for any person, directly or indirectly, personally or through another, to knowingly commit the following acts:

(a) give, procure, promise or lend or offer to give, procure, promise or lend anything of value for the purpose of inducing or compelling a person to vote or refrain from voting for any particular person or issue, or to sign or refrain from signing a nomination petition;

(b) compel or induce a person to vote, register to vote, sign a nomination petition or run for office knowing that such person is ineligible to do so;

(c) use or attempt to use any means of force, threat, intimidation or coercion against any person for the purpose of inducing or compelling the person to vote or refrain from voting for any particular person or issue, or to sign or refrain from signing a nomination petition;

(d) use or attempt to use any means of force, threat, intimidation or coercion against any candidate so as to cause or attempt to cause the candidate to withdraw from an election;

(e) give or present false information regarding identity, citizenship, address, period of residence, or other material information, when voting or registering to vote;

(f) vote or attempt to vote more than once in the same National Election at the same or another Polling Place;

(g) destroy, mutilate, deface, falsify, forge, conceal or remove any record, register of voters, affidavit, vote return, tally sheet, ballot, or any other official National Election publication or computer programs, unless permitted to do so under this title or any rules or regulations promulgated pursuant thereto;

TITLE 9 – NATIONAL ELECTIONS

(h) fail to comply with lawful orders of election officials or obstruct election officials from performing their official duties;

(i) publish a false statement of the withdrawal of candidate for election;

(j) prior to, during or after the counting of the ballots, or prior to, during or after the final certification of the vote of any election,

(i) place anything other than a ballot in a ballot box;

(ii) add or mix a forged ballot with other ballots; or

(iii) add or mix a forged application to vote with other applications to vote;

(k) except as permitted by this title, mark a ballot or cast a vote so that it can be observed by another person, or observe another person lawfully marking a ballot or lawfully casting a vote; and

(l) without authorization of the National Election Director, print, copy, imitate, or distribute, or cause to be printed, copied, imitated, or distributed any ballot that is so substantially similar in style or content to the official ballot as to cause the likelihood of confusion with the official ballot.

(3) Anyone who commits one of the acts enumerated in subsection (2) of this section shall be guilty of a national offense and upon conviction shall be fined not more than \$2,000, or imprisoned for not more than five years, or both.

(4) Any person who, directly or indirectly, personally or through another, knowingly accepts anything of value for voting or refraining from voting for any particular person or issue, or for signing or refraining from signing a nomination petition shall be guilty of a national offense and upon conviction shall be fined not more than \$500, or imprisoned for not more than one year, or both.

(5) Notwithstanding the violations provided in this section, it shall not be unlawful for a person to provide voters with private means of transportation to and from the Polling Place on Election Day so long as no public funds are expended in providing this service.

Source: PL 14-76 § 13.

§ 112. Construction of the Act.

Election officials shall construe this title in a manner that permits all voters and candidates a fair and equal opportunity to participate in elections.

Source: PL 14-76 § 14.

§ 113. Authority to promulgate rules and regulations.

The National Election director, with the approval of the President, shall have the power to promulgate such rules and regulations as are deemed advisable to administer and carry into effect the provisions of this title in accordance with title 17 of this code.

Source: PL 14-76 § 15.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. Title 17 of this code is on Administrative Procedures.

CHAPTER 2
Candidates

SECTIONS

- § 201. Qualification of Senators.**
§ 202. Nomination of candidates.
§ 203. Withdrawal of candidates.
§ 204. Substitution of candidates.
§ 205. Congress as sole judge of its Members.
§ 206. Convening, organization, elections of President and Vice President.

Editor's note: Chapter 2 of this title on Candidates was enacted by section 16 of PL 14-76.

§ 201. Qualifications of Senators.

To be eligible for election as a Member of the Congress, a person shall:

- (1) have attained the age of 30 years by Election Day;
- (2) be a Resident of the State from which he or she is seeking election on Election Day and for at least five years prior to that date;
- (3) be a Citizen of the Federated States of Micronesia on Election Day and for at least 15 years prior to that date;
- (4) not be under a judgment of mental incompetency or insanity; and
- (5) not have been convicted of a felony by a State or National Court of the Federated States of Micronesia or its predecessor Government of the Trust Territory of the Pacific Islands.

Source: PL 14-76 § 17.

Case annotations: When a constitution establishes specific eligibility requirements for a particular constitutional office, the legislature is without power to require different qualifications and when there is no direct authority in the constitution for the legislature to establish qualifications for office in excess of those imposed by the constitution, such extra qualifications are unconstitutional. *Olap v. Chuuk State Election Comm'n*, 9 FSM R. 531, 533 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution does not, either expressly or by implication, give the Legislature any authority whatsoever, to add qualifications for persons seeking a legislative office beyond those in the Constitution. *Olap v. Chuuk State Election Comm'n*, 9 FSM R. 531, 533 (Chk. S. Ct. Tr. 2000).

It is beyond the power of the Legislature to enact a law to prohibit government employees from becoming candidates for legislative service. *Olap v. Chuuk State Election Comm'n*, 9 FSM R. 531, 534 (Chk. S. Ct. Tr. 2000).

§ 202. Nomination of candidates.

- (1) Nomination of candidates shall require submission of a nomination paper, including a petition and an affidavit, to the national election commissioner of the State concerned.
- (2) The petition shall be initiated by a candidate and shall specify whether the candidate is running for a four-year or a two-year term seat in Congress. The petition shall be signed by at least 25 qualified voters of the Congressional Election District wherein the candidate seeks election in the case of a two-year term seat, or of the State wherein the candidate seeks election in the case of a four-year term seat.

TITLE 9 – NATIONAL ELECTIONS

(3) The affidavit shall be completed and signed by the candidate and affirm that the candidate fulfills the qualifications of Senators as set forth in section 201 of this chapter.

(4) The name of any candidate shall be printed on an official ballot to be used for choosing candidates only if, at least 120 days prior to a general election or 40 days prior to a special election, a nomination paper shall have been filed in the office of the national election commissioner of the State concerned. There shall be deposited with the nomination paper a filing fee of \$100. The national election commissioner of the State concerned shall, upon receipt of the nomination paper, endorse thereon the day, hour, and minute that such nomination paper is received. Any person who is elected as a write-in candidate shall, after certification of the election results, pay a \$100 fee and submit the affidavit, but not the petition, required by this section.

Source: PL 14-76 § 18.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 203. Withdrawal of candidates.

(1) Any candidate may withdraw his or her candidacy before a general election by giving notice in writing to the national election commissioner of the State in which the candidate is seeking election to forward to the National Election Director, or directly to the National Election Director, whichever is more practical.

(2) Upon filing a nomination paper for a special election, no candidate shall be allowed to withdraw his or her candidacy.

Source: PL 14-76 § 19.

§ 204. Substitution of candidates.

(1) Where the death, disqualification or, in the case of a general election, withdrawal of a candidate, or candidates, more than 70 days before a general election or 30 days before a special election has resulted in either, no candidates or, an unopposed candidate running for a particular seat in Congress, substitute candidates may be nominated for that seat prior to 60 days before a general election, or 20 days before a special election.

(2) Where the death, disqualification or withdrawal of a candidate, or candidates, under subsection (1) of this section occurs less than 70 days before a general election or 30 days before a special election, the National Election Director shall determine whether it is feasible to conduct the National Election as scheduled, and if it is not feasible, the President shall postpone the National Election pursuant to subsection (1) of section 105 or subsection (2) of section 106 of this title.

(3) A person nominated as a substitute candidate must be nominated by petition in the same manner as the candidate who has died, withdrawn, or been disqualified.

Source: PL 14-76 § 20.

Editor's notes: The word "candidates" in the title of this section was capitalized in PL 14-76. This has been changed to lower case to be consistent with the other sections and standard code formatting.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

TITLE 9 – NATIONAL ELECTIONS

§ 205. Congress as sole judge of its Members.

The Congress shall be the sole judge of the elections, returns, and qualifications of its Members; provided, however, that in case of a tie vote in an election, the winner shall be determined in a runoff election between the candidates so tied in accordance with section 712 of this title.

Source: PL 14-76 § 21.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

Case annotations: Where there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of government, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. *Aten v. National Election Comm'r (III)*, 6 FSM R. 143, 145 (App. 1993).

While the court has statutory authority to hear appeals regarding the conduct of elections, its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and once it has seated a member unconditionally the matter is nonjusticiable. *Aten v. National Election Comm'r (III)*, 6 FSM R. 143, 145 & n.1 (App. 1993).

If Congress seats a candidate unconditionally an election contest becomes a non-justiciable political question. *Nelson v. FSM Nat'l Election Dir.*, 16 FSM R. 356, 359 (Chk. 2009).

Section 206. Convening, organization, elections of President and Vice President.

A newly elected Congress shall convene on the date its Members commence their terms of office and be organized no later than the fourth day immediately following the convening day. The President and Vice President may be elected only after the Congress is fully organized. To be eligible for the office of the President and Vice President, a Member must be a member of Congress for a four-year term, and shall also have been a resident for at least 15 years and a Citizen by birth of the Federated States of Micronesia.

Source: PL 14-76 § 22.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

CHAPTER 3
Election Officials

SECTIONS

- § 301. National election officials in general.**
§ 302. Appointment of national election officials.
§ 303. Powers and duties of the National Election Director.
§ 304. Powers and duties of national elections commissioners.
§ 305. Powers and duties of election boards.
§ 306. Powers and duties of counting and tabulation committees.

Editor's note: Chapter 3 of this title on General Provisions was enacted by section 23 of PL 14-76.

§ 301. National election officials in general.

(1) All individuals appointed, hired or otherwise assigned to perform functions pursuant to this title shall not run for elected office or otherwise participate in election campaigns during the term of their appointment.

(2) All individuals appointed, hired or otherwise assigned to perform functions pursuant to this title shall not be considered public service employees under title 52 of this code.

(3) All individuals appointed, hired or otherwise assigned to perform functions pursuant to this title shall:

- (a) respect the law;
- (b) respect human rights and equality;
- (c) respect the community, culture, customs and traditions;
- (d) build the public trust;
- (e) not participate or appear to participate in political activities;
- (f) ensure visibility and transparency for all processes;
- (g) act honestly at all times;
- (h) act with impartiality in decision-making and declare any conflicts of interest;
- (i) be professional, knowledgeable, and act with integrity;
- (j) be responsive, accurate, and decisive;
- (k) be polite, firm and efficient; and
- (l) not compromise the secrecy of the ballot.

Source: PL 14-76 § 24.

Cross-reference: Title 52 of this code is on Public Employment and contains in its chapter 1 the National Public Service System Act.

§ 302. Appointment of national election officials.

(1) *National Election Director.*

(a) The President shall appoint one National Election Director with the advice and consent of the Congress. The National Election Director shall be a Resident of a State of the Federated States of Micronesia.

(b) The National Election Director shall serve until resignation, or until removed from office upon a determination by the President that such removal is necessary. An

TITLE 9 – NATIONAL ELECTIONS

appointment of a successor shall then be made by the President with the advice and consent of the Congress.

(2) *National election commissioners.*

(a) The President shall appoint a national election commissioner for each of the four States with the advice and consent of Congress.

(b) National election commissioners shall serve for a term of four years, which term shall commence upon appointment, subject to removal by the President for cause; provided, that they shall be employed full-time and compensated pursuant to employment contracts during their four-year terms only for such period(s) of time as deemed necessary by the National Election Director for the purpose of preparing for and administering an upcoming National Election.

(c) National election commissioners shall not concurrently serve as State election commissioners; provided, however, that if any current national election commissioner is nominated to serve as a State election commissioner, he or she may continue to serve as national election commissioner until such time as a new appointment by the President becomes effective.

(d) Each national election commissioner shall be a legal Resident of the State for which he or she is appointed to serve as national election commissioner.

(3) *Election board and counting and tabulation committee members.*

(a) The national election commissioner of each State, with the approval of the National Election Director, shall appoint an election board for each Polling Place on or before January 2nd of each election year. There shall be at least two board members at each Polling Place.

(b) The national election commissioner of each State, with the approval of the National Election Director, shall appoint members of the counting and tabulation committee for each Polling Place on or before January 2nd of an election year. There shall be at least three committee members for each Polling Place.

(c) Election board and counting and tabulation committee members shall serve until the completion of the electoral process for a general or special election in a given election year, or until resignation or removal from office for cause by the National Election Director after consultation with the national election commissioner for the State concerned; provided, that they shall be compensated pursuant to employment contracts only for such period(s) of time as deemed necessary by the national election commissioner for the purpose of preparing for and administering an upcoming election.

(d) Election board and counting and tabulation committee members shall be legal Residents of the State and Congressional Election District for which they are appointed to serve.

Source: PL 14-76 § 25.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

TITLE 9 – NATIONAL ELECTIONS

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 303. Powers and duties of the National Election Director.

The National Election Director shall have responsibility for the overall supervision and administration of all National Elections, and shall perform such duties as are prescribed by law or regulation, which include, but are not limited to, the following:

- (1) to supervise and direct the four national election commissioners in their administration of all general and special elections and in the performance of their duties;
- (2) to approve the appointment by the four national election commissioners of all election board members, counting and tabulation committee members, and other temporary or permanent election staff;
- (3) to request such reports from election officials as may be required by law or regulation or as the National Election Director may deem necessary;
- (4) to review and approve all nomination papers received by the four national election commissioners pursuant to section 202 of this title;
- (5) to maintain, update and preserve the National Voter Register;
- (6) to issue and implement rules and regulations for the conduct of regular and absentee balloting in all National Elections;
- (7) not less than 20 days prior to each election, to prepare from the National Voter Register a Signature List for each Polling Place;
- (8) to certify and declare the results of all National Elections;
- (9) to review and investigate all registration and election irregularities, and any other alleged violations of this title, and where appropriate, to seek the assistance of other departments and agencies within the National Government with such investigations, provided, that in relation to assistance from the Department of Justice:
 - (a) the Secretary of Justice or an attorney employed by the Department of Justice shall not provide assistance to the National Election Director unless he or she makes a written request for legal advice, in which the scope of the legal advice sought is clearly identified;
 - (b) when providing legal advice pursuant to paragraph (9)(a) of this section, neither the Secretary of Justice nor any attorney employed by the Department of Justice shall make a decision in relation to a matter arising under this title independently of the National Election Director; and
 - (c) notwithstanding anything in this subsection, neither the Secretary of Justice nor any attorney employed by the Department of Justice shall actively participate in the conduct of a National Election, provided, that he or she may be present to observe and provide advice upon request;
- (10) upon a finding that significant election irregularities at a Polling Place have affected the outcome of the election at the Polling Place, order a recount or exclusion of the votes cast at the Polling Place, a revote at the Polling Place, or any other remedy the National Election Director deems necessary to ensure a free and fair election;
- (11) to rule on petitions alleging election irregularities pursuant to chapter 8 of this title;
- (12) to refer to the Department of Justice any case in which he or she determines that a criminal prosecution for a violation of this title may be warranted;

TITLE 9 – NATIONAL ELECTIONS

(13) to determine and prescribe forms of affidavits, applications, petitions, ballots, Signature Lists, National Voter Register, cards of instruction, poll books, tally sheets, Voter Identification Cards, and other materials required by the provisions of this title for use by candidates, boards, committees, and voters, and to supply the same to the national election commissioners, election boards and counting and tabulation committees;

(14) to list all candidates for election on the ballot for each Congressional Election District in alphabetical order by first name;

(15) to be the allottee of election funds unless otherwise provided for in the act appropriating such funds;

(16) to designate appropriate Polling Places within the Municipalities of each Congressional Election District, upon recommendations of the national election commissioners;

(17) to administer the National Election Offices and appoint and supervise the election staff of the National Election Offices; and

(18) to retain an elections advisor.

(a) The National Election Director may retain an elections advisor to provide independent legal advice in relation to any matter arising under this title including, but not limited to:

(i) the supervision and administration of National Elections;

(ii) the review and investigation of any registration and election irregularities, and any other alleged violations of this title;

(iii) any decision or determination the Election Director is required or authorized to make pursuant to this title; and

(iv) the referral, to the Department of Justice, of any case in which the Election Director determines that a criminal prosecution for a violation of this title may be warranted.

(b) An elections advisor shall not conduct criminal prosecutions on behalf of the National Government.

(c) The National Election Director shall not retain any person as an elections advisor unless he or she is licensed to practice law before the Supreme Court of the Federated States of Micronesia, is of good character, has not been convicted of a felony even if pardoned, and is not an employee of the National Government.

(d) The National Election Director shall advise the President and the Speaker of Congress in writing within 14 days of entering into any retainer agreement with an elections advisor.

Source: PL 14-76 § 26.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

Case annotation: No temporary restraining order will issue ordering the National Election Director to accept the late filing of a candidate's nomination papers even though the candidate was misadvised as to the filing deadline. *Doone v. National Election Comm'r*, 14 FSM R. 489, 493 (Chk. 2006).

When the relief sought is obtainable from the National Election Director before certification since a recount or a revote is a remedy within the National Election Director's power to order during the election contest appeal process,

TITLE 9 – NATIONAL ELECTIONS

the plaintiff cannot show irreparable harm and his motion for a temporary restraining order may be denied on that ground alone. *Nelson v. FSM Nat'l Election Dir.*, 16 FSM R. 356, 358-59 (Chk. 2009).

§ 304. Powers and duties of national election commissioners.

Subject to the authority of the National Election Director, each national election commissioner shall have responsibility for the overall supervision and administration of the election within his or her State and shall perform such duties as are prescribed by law, which include, but are not limited to the following:

- (1) to appoint, subject to the approval of the National Election Director, all election board members, counting and tabulating committee members and other temporary or permanent election staff;
- (2) to require such reports from the several election boards and counting and tabulation committees as may be required by law or regulation or as the national election commissioner may deem necessary;
- (3) to recommend to the National Election Director Polling Places within each Congressional Election District;
- (4) to receive nomination papers;
- (5) to register voters for National Elections;
- (6) to assist the National Election Director in maintaining the National Voter Register required by section 401 of this title;
- (7) to administer a National Election Office in the State and supervise the election staff of that office;
- (8) to review and investigate all registration and election irregularities, and any other alleged violations of this title, and where appropriate, to seek the assistance of other departments and agencies within the National Government with such investigations, provided, that in relation to assistance from the Department of Justice:
 - (a) the Secretary of Justice or an attorney employed by the Department of Justice shall not provide assistance to a national election commissioner unless he or she makes a written request for legal advice, in which the scope of the legal advice sought is clearly identified;
 - (b) when providing legal advice pursuant to paragraph (8)(a) of this section, neither the Secretary of Justice nor any attorney employed by the Department of Justice shall make a decision in relation to a matter arising under this title independently of the National Election Director or the relevant national election commissioner; and
 - (c) notwithstanding anything in this subsection, neither the Secretary of Justice nor any attorney employed by the Department of Justice shall actively participate in the conduct of a National Election, provided that he or she may be present to observe and provide advice upon request;
- (9) to report directly to the National Election Director; and
- (10) to perform such other duties as the National Election Director may from time to time assign.

Source: PL 14-76 § 27.

§ 305. Powers and duties of election boards.

Each election board member shall have the following powers and duties:

- (1) to perform all duties prescribed under this title or the applicable rules and regulations;
- (2) to supervise and manage the Polling Place to which the board member has been assigned;

TITLE 9 – NATIONAL ELECTIONS

- (3) to report to the national election commissioner and National Election Director any violations of this title or the applicable rules and regulations;
- (4) to report any election irregularities to the national election commissioner and National Election Director, and to assist in investigating and resolving such irregularities;
- (5) to receive, preserve, and maintain ballot boxes, locks, maps, cards of instructions, and other supplies and equipment necessary to conduct elections;
- (6) to give such instruction deemed necessary for the orderly conduct of the election;
- (7) to provide for the issuance of all notices and publications concerning elections;
- (8) to review and examine the sufficiency and validity of nomination papers and other documents where the national election commissioner or the National Election Director designates the board to act in his or her stead;
- (9) to receive and transmit all ballot boxes, locked and sealed, to the counting and tabulation committee; and
- (10) to perform such other duties as the national election commissioner or National Election Director may from time to time assign to the board member.

Source: PL 14-76 § 28.

§ 306. Powers and duties of counting and tabulation committees.

Each counting and tabulation committee member shall have the following powers and duties:

- (1) to perform all duties prescribed under this title or the applicable rules and regulations;
- (2) to conduct the counting and tabulation process for the Polling Place to which the committee member has been assigned;
- (3) to report to the national election commissioner and National Election Director any violations of this title or the applicable rules and regulations;
- (4) to report any election irregularities to the national election commissioner and National Election Director, and to assist in investigating and resolving such irregularities;
- (5) to receive, preserve, and maintain ballot boxes, locks, maps, cards of instructions, and other supplies and equipment necessary to conduct elections;
- (6) to give such instruction deemed necessary for the orderly conduct of the counting and tabulation process;
- (7) to review and examine the sufficiency and validity of any affidavits submitted along with cast ballots;
- (8) to receive and transmit all ballot boxes, locked and sealed, to the national election commissioner; and
- (9) to perform such other duties as the national election commissioner or National Election Director may from time to time assign to the committee member.

Source: PL 14-76 § 29.

Case annotations: The "two-of-three mechanism," in which three tabulators tally the votes for a particular candidate as they are read aloud, and either all three tabulators, or at least two of the three tabulators, must agree on the results for the results to be taken as correct, is not illegal, unreasonable, improper or prohibited. This mechanism will produce an accurate count for most ballot boxes. *Olter v. National Election Comm'r*, 3 FSM R. 123, 135-37 (App. 1987).

TITLE 9 – NATIONAL ELECTIONS

For elections, the timing provisions of the National Election Code prevail over any conflicting timing set out in the APA. *Olter v. National Election Comm'r*, 3 FSM R. 123, 129 (App. 1987).

Generally, the conduct of elections is left to the political branches of government, unless the court has powers specifically given to it by Congress contrary to that general rule. *Kony v. Mori*, 6 FSM R. 28, 29 (Chk. 1993).

CHAPTER 4
Registration

SECTIONS

- § 401. **National Voter Register.**
- § 402. **Registration required; Re-registration prohibited.**
- § 403. **Eligibility to register; Place of registration and voting.**
- § 404. **Registration procedures.**
- § 405. **Change of registration.**
- § 406. **Student registration.**

Editor's note: Chapter 4 of this title on Registration was enacted by section 30 of PL 14-76.

§ 401. National Voter Register.

(1) There shall be one unified National Voter Register for all of the Federated States of Micronesia, which shall consist of the full name, date of birth, sex, State, Congressional Election District and Municipality of residence, registration number and other identifying information that the National Election Director deems appropriate, of all Registered Voters who are currently eligible to vote.

(2) A Registered Voter shall only have one entry on the National Voter Register.

(3) The National Election Director shall be responsible for creating, maintaining and preserving the National Voter Register with the assistance of the national election commissioners.

(4) The National Voter Register shall be used to generate the Signature Lists for the various Polling Places.

(5) *Reconciling State Voter Register.*

(a) On a periodic basis, the National Election Director shall reconcile the National Voter Register with the State Voter Register thereby ensuring that all Registered Voters on the State Voter Registers are also listed on the National Voter Register.

(b) Thirty days before a National Election, the National Election Director shall perform a final reconciliation of the State and National Voter Registers before the Signature Lists are generated from the National Voter Register.

(c) When reconciling the State Voter Register with the National Voter Register, the National Election Director shall ensure that a Registered Voter has only one entry on the National Voter Register pursuant to subsection (2) of this section.

(6) The National Voter Register shall be open to public inspection at all times during normal business hours.

Source: PL 14-76 § 31.

§ 402. Registration required; Re-registration prohibited.

(1) No person shall be entitled to vote in any National Election, or to be listed upon the National Voter Register, or upon any Signature List, who fails to register to vote with the National Election Office or State Election Office at least 30 days prior to Election Day.

(2) A person having once been registered with the National Election Office or State Election Office shall not re-register, or be required to re-register, in a National Election, except:

(a) in case of change of name or residence, as specified in section 405 of this chapter;

or

TITLE 9 – NATIONAL ELECTIONS

(b) in the event voting records are lost or destroyed, the National Election Director may require the re-registration of those voters whose records are lost or destroyed.

Source: PL 14-76 § 32.

§ 403. Eligibility to register; Place of registration and voting.

(1) Every Citizen who fulfills the requirements enumerated in section 103 of this title may register to vote in the National Elections in the State, Congressional Election District and Municipality in which he or she currently resides.

(2) Except as provided in section 406 of this chapter, a person shall register to vote at a National Election Office or State Election Office in the State in which the person is a Resident. The national election commissioners, with the approval of the National Election Director, may designate other locations within a State where a person may register to vote or may conduct mobile registration drives.

(3) No person shall register to vote in National Elections in any State, Congressional Election District or Municipality other than the one in which he or she currently resides.

(4) Once a person has registered to vote in National Elections in a State and Congressional Election District, he or she shall not vote in a National Election for another State or Congressional Election District without first filing a change of registration request form and receiving written notice of approval of that request pursuant to section 405 of this chapter.

(5) Except as provided in chapter 6 of this title, no person shall vote in National Elections in any State, Congressional Election District or Municipality other than the one in which he or she currently resides; provided, however, that where there is a mistake in placing the name of a voter on the Signature List of a Polling Place in a State, Congressional Election District or Municipality in which he or she does not reside, such voter shall nevertheless be allowed to vote therein, if otherwise qualified. The election board member of the particular Polling Place where such voter has voted shall notify the national election commissioner of the affected State of the error in order that such voter shall be placed on the correct Signature List for the next National Election.

(6) If a person is a Resident of more than one State, or resides in more than one Congressional Election District, he or she may choose in which State or Congressional Election District to register to vote for National Elections, but he or she shall register to vote in only one State and Congressional Election District.

Source: PL 14-76 § 33.

§ 404. Registration procedures.

(1) A person desiring to register to vote in National Elections shall complete such applications and affidavits, take such oaths, and present such personal documentation and witnesses, as required by the rules and regulations promulgated by the National Election Director pursuant to this title.

(2) Regardless of the place of registration, all completed applications and affidavits of registration shall be transmitted to the national election commissioner of the relevant state for final approval and entry onto the National Voter Register.

(3) Every completed application or affidavit of registration shall be maintained and preserved at the National Election Office of the State of registration until such time as the Registered Voter who completed the application or affidavit is deceased or is otherwise no longer eligible to vote.

TITLE 9 – NATIONAL ELECTIONS

(4) All completed applications and affidavits of registration shall be open to public inspection during regular business hours.

(5) The National Election Director may issue Voter Identification Cards to all Registered Voters at or after the time of registration. All Voter Identification Cards shall be issued free of charge, provided that, there shall be a charge in an amount to be set out in the rules and regulations promulgated pursuant to this title for issuing a Registered Voter with a replacement Voter Identification Card. Upon issuing a Voter Identification Card to a Registered Voter, the National Election Director, or his or her designee, shall make a notation next to that Registered Voter's entry on the National Voter Register. A Registered Voter who has been issued a Voter Identification Card must present that card before being issued a ballot at his or her Polling Place.

Source: PL 14-76 § 34.

§ 405. Change of registration.

(1) Any Registered Voter who changes his or her Congressional Election District or Municipality of residency, but not his or her State of residency, or who changes his or her name after registration, must file a change of registration request form and supporting documentation, as required by the rules and regulations promulgated pursuant to this title, with the national election commissioner of his or her State.

(2) Any Registered Voter who (a) changes his or her State of residency, and (b) wishes to register to vote in National Elections in his or her new State of residency, must file a change of registration request form and supporting documentation, as required by the rules and regulations promulgated pursuant to this title, with the national election commissioner of the new State of residence.

(3) Upon receipt of a change of registration form under subsection (1) of this section, the national election commissioner shall determine whether the Registered Voter has submitted sufficient proof of his or her change in name or residency. Upon making this determination, the national election commissioner shall cause the entry on the National Voter Register for that Registered Voter to be amended in order to reflect the change in name or residency.

(4) Upon receipt of a change of registration form under subsection (2) of this section, the national election commissioner of the new State of residence shall

(a) determine whether the Registered Voter has submitted sufficient proof of his or her change in residency, and

(b) verify the voter's registration in the former State of residence with the national election commissioner of the former State of residence.

Upon verification of change in residency and of prior registration, the national election commissioner of the new State of residence shall cause the entry on the National Voter Register for that Registered Voter to be amended to reflect the change in residency, and advise the national election commissioner of the former State of residence to remove the Registered Voter from any lists maintained in that State.

(5) Upon approving a change in residency or name pursuant to subsections (3) and (4) of this section, the national election commissioner processing the request shall notify the Registered Voter of the approval in writing.

(6) Change of registration forms received by the national election commissioners less than 30 days before a National Election shall not be accepted for that election.

Source: PL 14-76 § 35.

TITLE 9 – NATIONAL ELECTIONS

§ 406. Student registration.

A Student currently enrolled at an institution of learning outside his or her State of residency shall not be required to register in person in his or her State of residency, but such student shall submit any applications, affidavits and other documentation required by the rules and regulations promulgated pursuant to this title to the national election commissioner of his or her State of residency.

Source: PL 14-76 § 36.

**CHAPTER 5
Procedure for Ballots**

SECTIONS

- § 501. Official ballots required; specimen ballots.**
- § 502. Contents of ballots.**
- § 503. Printing and distribution of ballots.**
- § 504. Amendments to ballots.**
- § 505. Packaging and sealing of ballots; record of distribution.**

Editor’s note: Chapter 5 of this title on Procedure for Ballots was enacted by section 37 of PL 14-76.

§ 501. Official ballots required; specimen ballots.

(1) All elections held in accordance with the provisions of this title shall be held by official ballot only. An official ballot is a written or printed, or partly written and partly printed, paper designated as an official ballot that contains the names of persons to be voted for and the office to be filled, or the constitutional amendments to be voted upon by referendum, and that is issued by the National Election Director.

(2) The National Election Director shall have printed two exact copies of each official ballot which is to be used in the National Election, for each Polling Place, such copies to have printed thereon, in large bold letters, and with ink of a color plainly contrasting to the color of the paper used, the word “Specimen”. Two copies of each such specimen ballot shall be forwarded to the national election commissioner of each State and the members of the election board at the same time with the official ballots, and the election board members shall post one of each specimen ballot on either side of the entrance of the Polling Place or other places plainly in sight for the general public.

Source: PL 14-76 § 38.

§ 502. Contents of ballots.

(1) A ballot for the election of a Member shall contain the names of the persons and the offices to be voted for, the State and the Congressional Election District in which the election is being held, and the term or terms of the respective offices being voted for.

(2) A ballot for a referendum on a constitutional amendment shall follow the basic guidelines established in section 703 of title 1 of this code. In addition, the referendum ballot may contain a concise, neutral statement regarding the purpose and effect of the constitutional amendment if such purpose and effect is not self-evident from the proposed amendment itself.

Source: PL 14-76 § 39.

Cross-reference: Chapter 7 of title 1 of this code is on Amendment of the Constitution. Section 703 of chapter 7 is on format of constitutional amendment.

§ 503. Printing and distribution of ballots.

(1) The ballots shall be printed by order of the National Election Director at the expense of the Federated States of Micronesia. The National Election Director shall complete the printing of the official ballots no later than 60 days before a general election, or no later than 35 days before a special

TITLE 9 – NATIONAL ELECTIONS

election. Ballots shall be consecutively numbered. Under the direction of the National Election Director, the national election commissioners shall deliver adequate numbers of ballots to each polling place.

(2) At least 65 days before a general election, and at least 40 days before a special election, the National Election Director shall print a sample ballot and shall forthwith submit copies of the same to the national election commissioners for distribution to the members of the several election boards and to the several candidates at their addresses as given on their nomination papers, and the national election commissioners and election board member shall post a copy of the same in a conspicuous place in their office or a public place.

Source: PL 14-76 § 40; PL 16-31 § 1.

§ 504. Amendments to ballots.

(1) If a candidate is disqualified, dies or, in the case of a general election, withdraws after the printing of the ballots but prior to a National Election, the national election commissioner shall cause the name of the candidate to be stricken from the ballots and in that regard, may require the services of the election board members of the Congressional Election District in which any person was a candidate and shall notify in writing such election board of the withdrawal, disqualification or death, whereupon notice thereof shall, before the opening of the Polls on election day, be posted at the Polling Place and publicly broadcasted over the radio.

(2) If a candidate withdraws his name later than 80 days before a general election, or is disqualified at any time before a National Election, and it becomes necessary, in the opinion of the National Election Director, for a reprinting of ballots or a striking out of the candidate's name by a reprint blockout, all expenses thereof, except in case of a withdrawal necessitated for medical cause and so certified by a physician, shall be a charge against the withdrawing or disqualified candidate and shall be paid by him or her within 60 days after such withdrawal or disqualification to the National Election Director.

(3) The national election commissioner of the State concerned shall cause the name of the substitute candidate to be placed upon the proper ballots by reprinting, over-printing, or through the use of stamps or such other means as the national election commissioner may deem satisfactory for the purpose and may require the services of election board members who may be in the Congressional Election District in which such person is a candidate. The election board shall post a notice at the Polling Place, and make a public broadcast over the radio, of the name and office sought by any such substitute candidate.

Source: PL 14-76 § 41.

§ 505. Packaging and sealing of ballots; record of distribution.

When printed, the ballots shall be fastened together in consecutively numbered blocks of 25 each in such manner that each ballot may be detached and removed separately. The National Election Director shall forward the ballots to the national election commissioner of each State who will forward them to the members of the election board in sealed packages, which shall not be opened until the opening of the Polls on Election Day. The national election commissioners shall keep a record of the number of ballots sent to each election board, and on Election Day each election board shall confirm the total number of ballots received from the national election commissioner on their inventory sheet for the Polling Place.

TITLE 9 – NATIONAL ELECTIONS

Source: PL 14-76 § 42.

CHAPTER 6
Procedure for Absentee Voters

SECTIONS

- § 601. Absentee voting and ballots in general.**
§ 602. Voting absentee ballot by mail.
§ 603. Voting absentee ballot at a mobile Polling Place.
§ 604. Voting absentee ballot in another Congressional Election District in the State of registration.
§ 605. Voting absentee ballot at a special Polling Place.
§ 606. Voting absentee ballot prior to traveling outside the State.

Editor's note: Chapter 6 of this title on Procedure for Absentee Voters was enacted by section 43 of PL 14-76.

§ 601. Absentee voting and ballots in general.

(1) An absentee ballot is an official ballot that is authorized by this title to be voted outside of any designated Polling Place or prior to Election Day.

(2) Any Registered Voter qualified to vote in any general or special election shall be qualified as an “absentee voter” and entitled to vote according to the provisions set forth in this chapter if:

(a) he or she is confined to home or hospital by reason of illness or physical disability, or is incarcerated for a crime, as will prevent him or her from coming to the Polling Place to cast a ballot on Election Day; or

(b) he or she is prevented from coming to the Polling Place in the Congressional Election District of registration by reason of being at sea, serving in the armed forces, being obstructed by natural barrier, or being otherwise absent from the Congressional Election District of registration, making it highly impractical or extremely difficult for him or her to arrive at the Polling Place in time to cast a ballot on Election Day.

(3) An absentee voter may vote by absentee ballot in one of the following ways:

(a) by mail;

(b) by voting at a mobile Polling Place;

(c) by voting at a VAAPP Polling Place in another Congressional Election District;

(d) by voting at a special Polling Place; or

(e) by voting at a traveler Polling Place.

(4) It shall be unlawful for an absentee voter to vote using more than one method of absentee voting.

(5) Any Registered Voter wishing to vote by absentee ballot must submit a written request, using the forms specified in the rules and regulations promulgated pursuant to this title, to the national election commissioner of the State in which the voter is registered. The request shall be signed and dated by the Registered voter and shall include the following information, as well as any additional information the National Election Director may require:

(a) the voter's full and correct name and date of birth;

(b) the voter's current place of residence and mailing address;

(c) the voter's Municipality and Congressional Election District of registration;

TITLE 9 – NATIONAL ELECTIONS

(d) the voter's reasons for being absent from his or her Congressional Election District on Election Day; and

(e) the type of absentee voting the voter seeks to use.

(6) Only the Registered Voter seeking to vote by absentee ballot may submit an absentee ballot request to the national election commissioner.

Source: PL 14-76 § 44; PL 14-98 § 1.

Case annotations: By statute, absentee ballots are to be examined when received, on or before Election Day, to determine if the voter is qualified to vote absentee, and the ballot envelope deposited unopened in container, and publicly delivered to counting and tabulating committee on Election Day. *Wiliander v. Mallarme*, 7 FSM R. 152, 156-57 (App. 1995).

Where, because election officials had not processed the absentee ballots until nine and ten days after the election thus making it impossible to file a petition concerning the acceptability of those ballots within the statutory time frame of prior to certification of the results of the election or within one week of the election, whichever occurs first, the petition will still be considered timely if it is filed before certification. *Wiliander v. Mallarme*, 7 FSM R. 152, 157 (App. 1995).

A timely received absentee ballot may be rejected if the accompanying statement is insufficient, the signatures do not correspond, the procedure for marking and returning the absentee ballot has not been complied with, the voter is not a qualified elector, or the ballot envelope has been tampered with. *Wiliander v. Mallarme*, 7 FSM R. 152, 156 n.6, 159 (App. 1995).

The formalities involved in the absentee election process are intended to safeguard the electoral process from voter fraud. Therefore a regulation rejecting absentee ballots if the signature on the request form is different from the signature on the statement accompanying an absentee ballot is a reasonable exercise of the National Election Director's power to implement rules and regulations for absentee ballots. *Wiliander v. Mallarme*, 7 FSM R. 152, 160-61 (App. 1995).

Since the right to vote is personal one person's vote cannot be cast by another one person's request to vote absentee cannot be made by another. *Wiliander v. Mallarme*, 7 FSM R. 152, 160 (App. 1995).

§ 602. Voting absentee ballot by mail.

(1) Any Registered Voter who will be outside his or her State of registration on Election Day may vote absentee ballot by mail.

(2) *Deadlines for submitting requests to vote absentee ballot by mail.*

(a) In the case of a general election, the request to vote absentee ballot by mail, using the forms required by the rules and regulations promulgated pursuant to this title, must be received by the national election commissioner of the State in which the voter is registered not more than 150 days but not less than 40 days before Election Day.

(b) In the case of a special election, the request to vote absentee ballot by mail must be received by the national election commissioner of the State in which the voter is registered not more than 50 days but not less than 35 days before the day of the special election.

(c) If the absentee voter currently resides in a foreign country where the Federated States of Micronesia maintains an embassy or consulate, then a request to vote absentee ballot by mail may alternatively be sent to the embassy or consulate, which shall then forward a copy of the request to the National Election Director, or his or her designee, for verification and processing. The absentee voter shall indicate on the request form whether he or she intends to pick up his or her absentee ballot at the embassy or consulate.

TITLE 9 – NATIONAL ELECTIONS

(d) The voter is solely responsible for ensuring that the request to vote absentee ballot by mail is received by the deadline. Delayed and lost mail for absentee ballot requests shall not create any obligation of the National Election Director or the national election commissioner to provide absentee ballots at any time after the time periods set forth herein have expired.

(e) Upon receipt of a request to vote absentee ballot by mail, the name of the requester and the time and the date of receipt of the request must be recorded. The national election commissioner, shall, no later than two days from receipt of the request, act on the request and mail back to the requester an absentee ballot provided that printed ballots are already available. If printed ballots are available at the time a request is received, the name of the requestor and the time and date of receipt of the request must still be recorded, and an absentee ballot shall be mailed to the requester no later than five days after the printing of ballots has been completed. Absentee voters who have indicated on their request forms that they intend to pick up their absentee ballot at an embassy or consulate shall retrieve their ballot from the embassy or consulate. The National Election Director shall provide sufficient absentee ballots to the embassy or consulate ten days before a National election.

(f) The National Election Director, or his or her designee, shall strike out or delete the entry of the absentee voter on the Signature List for that voter's regular Polling Place. The absentee voter shall not be allowed to cast a ballot at his or her regular Polling Place on Election Day.

(3) *Marking and returning of absentee ballots by mail.*

(a) An absentee ballot by mail shall include the following parts: an official ballot, a ballot envelope, an affidavit prescribed by the National Election Director, and a covering reply envelope.

(b) The absentee voter shall mark the ballot in the usual manner provided by law and in such manner that no person can see or know how the ballot is marked. The absentee voter shall then deposit the ballot in the envelope and securely seal the same. The absentee voter shall then complete and execute the affidavit. The ballot envelope and the affidavit shall then be enclosed and sealed in the covering reply envelope.

(c) Absentee ballots and affidavits must be received by the national election commissioner of the State issuing the absentee ballot no later than the established closing hour of the Polls on Election Day. If an absentee voter resides in a foreign country where the Federated States of Micronesia maintains an embassy or consulate, and the absentee voter had submitted his or her request to vote absentee ballot to that embassy or consulate, then the absentee voter may alternatively deliver his or her absentee ballot and affidavit to that embassy or consulate. The absentee ballot and affidavit must be received by the embassy or consulate no later than the established closing hour of the Polls on Election Day.

(d) Absentee ballots received at a post office in the Federated States of Micronesia on Election Day shall be stamped with the time and date of their receipt.

(4) *Disposition of absentee ballots by mail.*

(a) Upon the receipt of an absentee ballot, the national election commissioner, or his or her appointee, shall open it, remove the ballot envelope, and examine the affidavit. If the national election commissioner or his or her appointee determines that the absentee ballot is valid, the ballot envelope shall be deposited unopened in a container retained for that purpose. The container shall be securely sealed except for an opening sufficient to permit deposit of ballot envelopes and shall be marked with the name and official title of the national election

TITLE 9 – NATIONAL ELECTIONS

commissioner, or his or her appointee, and the words, “This container holds absentee ballots and must be opened only pursuant to law.” The national election commissioner, or his or her designee, shall safely keep each container secured in the commissioner’s office until Election Day.

(b) On Election Day, the national election commissioner, or his or her designee, shall open the container, extract and segregate the ballot envelopes, and deliver such envelopes to the counting and tabulation committee. Each candidate, or his or her representative, shall have the opportunity to be present during this process.

(c) An absentee ballot may be determined to be invalid if:

- (i) the affidavit is found to be insufficient;
- (ii) the signatures on the request for the ballot and the affidavit do not correspond;
- (iii) the request for the ballot was not properly made or was untimely, as set forth in this section;
- (iv) the ballot was not returned in a timely fashion, as set forth in this section;
- (v) the ballot was returned in a bundle with other ballots;
- (vi) the voter is not qualified to vote;
- (vii) the voter is not registered to vote;
- (viii) the ballot envelope is open or has been opened and resealed; or
- (ix) the voter has already voted.

(d) The ballot envelope of an invalid absentee ballot shall not be opened and the national election commissioner or his appointee shall mark across its face “Rejected,” and write the reason for the rejection, and shall preserve the same in the manner and for the period of time required under this title for regular ballots cast in an election. At the end of this time period, the invalid absentee ballots shall be destroyed without being opened in the manner provided under this title.

Source: PL 14-76 § 45; PL 16-31 § 2.

§ 603. Voting absentee ballot at a mobile Polling Place.

(1) Registered Voters who are confined, as set forth in subsection 601(2)(a), shall be entitled to vote by absentee ballot at a mobile Polling Place.

(2) Written requests to vote at a mobile Polling Place, using the forms required by the rules and regulations promulgated pursuant to this title, must be submitted to the national election commissioner not more than 120 days before Election Day. If the absentee voter is unable to personally complete and deliver the request form to vote at a mobile Polling Place, then the absentee voter can request the assistance of a family member.

(3) Voting by absentee ballot at a mobile Polling Place shall take place either on Election Day or the day immediately preceding Election Day.

(4) Absentee voters voting at a mobile Polling Place shall vote in such manner as to ensure secrecy of ballot and to preclude tampering with the ballots of such voters and other election fraud; provided, that any voter who by reason of physical disability is unable to mark his or her ballot shall be authorized to receive assistance in the marking thereof.

TITLE 9 – NATIONAL ELECTIONS

(5) The National Election Director may require affidavits and other written statements from absentee voters voting at a mobile Polling Place and from election officials who assist these voters to vote.

Source: PL 14-76 § 46.

§ 604. Voting absentee ballot in another Congressional Election District in the State of registration.

(1) Registered Voters who are outside their Congressional Election District of registration, but inside their State of registration, may vote at a VAAPP Polling Place if the following conditions are met:

- (a) the voter is present in his or her State on Election Day;
- (b) the voter is lawfully registered to vote in his or her Congressional Election District;
- (c) the voter submits to the national election commissioner of the State of registration a written VAAPP request using the forms required by the rules and regulations promulgated pursuant to this title; and
- (d) the national election commissioner of the State of registration receives the written VAAPP request at least seven days before the National Election.
- (e) Notwithstanding subsections (1)(c) or (1)(d) of this section, a voter with a valid Voter Identification Card may vote at any VAAPP Polling Place designated for his or her Congressional Election District without submitting a written request.

(2) The national election commissioner, or his or her designee, shall review all VAAPP requests for a particular Congressional Election District, and shall request that the National Election Director place on a VAAPP Signature List for that Congressional Election District all the information contained on the National Voter Register for those absentee voters who submitted valid and timely requests. No later than six days before a National Election, the national election commissioners shall post at the National Election Office in their State the VAAPP Signature List for each VAAPP Polling Place in their State.

(3) The National Election Director, or his or her designee, shall strike out or delete the entry of the absentee voter on the Signature List for that voter's regular Polling Place. The VAAPP absentee voter shall not be allowed to cast a ballot at his or her regular Polling Place on Election Day.

(4) The seven-day notice requirement in subsection (1) of this section may be waived if the following conditions are met:

- (a) in a prior National Election, the absentee voter submitted a written VAAPP request in which he or she indicated his or her desire to vote at the same VAAPP Polling Place in future National Elections until such time as the voter provides written notification to the national election commissioner that he or she wishes to resume voting at his or her regular Polling Place; or
- (b) the national election commissioner makes a finding in writing that an absentee voter was unable to give sufficient notice because of circumstances beyond his or her control, and that the waiver would not prevent compliance with any other provision of this section.

Source: PL 14-76 § 47.

§605. Voting absentee ballot at a special Polling Place.

TITLE 9 – NATIONAL ELECTIONS

(1) Registered Voters who are absent from their State of registration on Election Day may cast their votes at a special Polling Place.

(2) Not less than 60 days prior to a general election, or 45 days prior to a special election, the National Election Director shall designate the locations of the special Polling Places, provided that, there shall be one special Polling Place in Guam and one special Polling Place in Honolulu and that these shall be the only special Polling Places located outside the Federated States of Micronesia.

(3) Requests to vote absentee ballot at a special Polling Place must be in writing, using the forms required by the rules and regulations promulgated pursuant to this title, and received by the national election commissioner of the State of registration not less than 30 days prior to a general election or 20 days before a special election; provided however, no written request shall be required if in a previous National Election the absentee voter submitted a request in which he or she indicated his or her desire to vote at the same special Polling Place in future National Elections until such time as the voter provides written notification to the national election commissioner that he or she wishes to resume voting at his or her regular Polling Place. Provided, further, that a voter with a valid Voter Identification Card may vote at any special Polling Place designated for his her Congressional Election District without submitting a written request.

(4) The national election commissioner, or his or her designee, shall review all special Polling Place requests for a particular Congressional Election District, and shall request that the National Election Director place on a special Polling Place Signature List for that Congressional Election District all the information contained on the National Voter Register for those absentee voters who submitted valid and timely requests. No later than six days before a National Election, the national election commissioners shall post at the National Election Office in their State the special Polling Place Signature List for each special Polling Place in their State.

(5) The National Election Director, or his or her designee, shall review all requests to vote at a special Polling Place outside the Federated States of Micronesia, and shall place on a special Polling Place Signature List for that special Polling Place all the information contained on the National Voter Register for those absentee voters who submitted valid and timely requests. No later than 14 days before a National Election, the National Election Director, or his or her designee, shall post the special Polling Place Signature Lists for Guam and Honolulu in a publicly accessible place in each respective location to be set out in the regulations promulgated pursuant to this title.

(6) The National Election Director, or his or her designee, shall strike out or delete the entry of an absentee voter included on a special Polling Place Signature List from the Signature List for that voter's regular Polling Place. The absentee voter shall not be allowed to cast a ballot at his or her regular Polling Place on Election Day.

(7) Notwithstanding any other provision of this title, the special Polling Places located outside the Federated States of Micronesia shall remain open between 7:00 a.m. and 9:30 p.m. on Election Day.

Source: PL 14-76 § 48; PL 14-98 § 2; PL 15-2 § 1.

§ 606. Voting absentee ballot prior to traveling outside the State.

(1) Registered Voters who will be traveling outside their State of registration on Election Day may cast a ballot at a traveler Polling Place prior to their departure from the State if they meet the following conditions:

TITLE 9 – NATIONAL ELECTIONS

(a) the voter is lawfully registered to vote in his or her Congressional Election District;

(b) the voter submits in person to the national election commissioner of the State of registration a written request to cast a ballot prior to traveling outside his or her State of registration, using the forms required by the rules and regulations promulgated pursuant to this title, not more than 30 days and not less than one day before the National Election; and

(c) the voter submits proof, in the form of an airline or passenger ship ticket, of his or her travel plans.

(2) Upon meeting the conditions specified in subsection (1) of this section, the national election commissioner, or his or her designee, shall issue the traveler absentee voter the same voting materials that are issued to absentee voters by mail as specified in subsection 602(3) of this chapter. The same procedures for marking, returning, and disposition of absentee ballots by mail specified in subsection 602(3) and 602(4) of this chapter shall apply to the marking, returning and disposition of traveler absentee ballots.

(3) The National Election Director, or his or her designee, shall strike out or delete the entry of the absentee voter on the Signature List for that voter's regular Polling Place. The traveler absentee voter shall not be allowed to cast a ballot at his or her regular Polling Place on Election Day.

Source: PL 14-76 § 49.

CHAPTER 7
Procedure for
Conduct of National Elections

SECTIONS

- § 701. **Supervision of Polling Places.**
- § 702. **Equipping and supplying Polling Places.**
- § 703. **Opening and closing of Polls.**
- § 704. **Checking the register; issuing of ballots.**
- § 705. **Campaigning on Election Day.**
- § 706. **Sale or consumption of alcohol on Election Day.**
- § 707. **Poll watchers.**
- § 708. **Complaints at the Polling Place.**
- § 709. **Disposition of ballot boxes after completion of voting.**
- § 710. **Counting of ballots; Announcement of unofficial results.**
- § 711. **Certification and declaration of election results.**
- § 712. **Resolution of ties.**
- § 713. **Rejected or spoiled ballots.**
- § 714. **Write-in votes.**
- § 715. **Preservation of ballots and election materials.**

Editor's note: Chapter 7 of this title on Procedure for Conduct of National Elections was enacted by section 50 of PL 14-76.

§ 701. Supervision of Polling Places.

(1) The national election commissioner of each State shall ensure that Polling Places are properly supervised by election board members and such other election and law enforcement officials as the National Election Director or the national election commissioner shall deem necessary.

(2) Public schools and other public places shall be utilized where practicable as polling places. Rent shall not be charged or paid for the use of public places but may be charged and paid for private places, where public places are unavailable.

Source: PL 14-76 § 51.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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TITLE 9 – NATIONAL ELECTIONS

Case annotations: The National Election Commissioner has the power to establish voting precincts and designate polling places upon the recommendation of the members of the board of elections of the particular election district. *Aten v. National Election Comm'r (II)*, 6 FSM R. 74, 76-77 (App. 1993).

§ 702. Equipping and supplying Polling Places.

Each Polling Place shall be provided with the necessary number of ballot boxes, locks, official ballots, Signature Lists, pencils, envelopes, affidavits, inventory sheets, and all other necessary supplies.

Source: PL 14-76 § 52.

§ 703. Opening and closing of Polls.

(1) Except as otherwise provided in this section, at exactly 7:00 a.m. of the day of the election, a member of the board of election shall proclaim aloud at each place of election that the Polls are open and shall be kept open until 5:00 p.m., of the same day, after which time the Polls shall be closed.

(2) If, at the hour of closing, there are any voters in the Polling Place, or in line at the door, who are qualified to vote and have not been able to do so, the Polling Place shall remain open a sufficient time to enable them to vote.

(3) If an election for State office is held on the same day as a national election and the time for closing is later than 5:00 p.m., then the closing time for the State election shall prevail.

Source: PL 14-76 § 53.

Case annotations: When a state election is held on the same date as the national election and the closing time for the state poll is later than the 5:00 p.m. closing time for the national election, then the later state closing time prevails for the national election as well. The poll remains open to allow all who are waiting in line at closing time to vote. *Aten v. National Election Comm'r (II)*, 6 FSM R. 74, 79 (App. 1993).

Courts of equity are without jurisdiction to enforce purely political rights. Matters concerning the conduct of elections are usually left to the political branches and the courts generally have no jurisdiction until after the elections are held. *Election Comm'r v. Petewon*, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Generally speaking, elections are conducted and carried out and administered by the executive and legislative branches. Courts do not have a primary position in that traditional scheme. The election law states the time at which the court has the right of entertaining an appeal from the final action of the National Election Director. *Wiliander v. Siales*, 7 FSM R. 77, 79 (Chk. 1995).

§ 704. Checking the register; issuing of ballots.

(1) A person appearing at any Polling Place to vote, including absentee Polling Places specified in subsections 601(3)(b), (c), (d) and (e), shall report his or her full name to the election board members. If the person has been issued a Voter Identification Card, he or she must present that voter Identification Card to the election board members in order to vote. If the person has not been issued a Voter Identification Card, then he or she shall present other proof of identity as required under the rules and regulations promulgated pursuant to this title.

(2) An election board member shall then check the Signature List to determine whether or not the person appearing is a Registered Voter for that Congressional Election District and Municipality, and if so, shall announce the name appearing on the Signature List. Once the person's identity has been established and entry has been found on the Signature List, he or she shall sign his or her full name next to his or her entry on the Signature List. An election board member shall then issue the person an

TITLE 9 – NATIONAL ELECTIONS

official ballot, and, if the person has presented a Voter Identification Card, shall mark the person's Voter Identification Card so as to indicate that he or she has already voted in that National Election.

(3) No person shall be permitted to cast a ballot in a National Election at a Polling Place unless his or her name appears on the Signature List for that Polling Place and he or she signs the Signature List; provided, however, that a person shall be permitted to cast a ballot after signing a supplemental Signature List if:

(a) a person whose name does not appear on the Signature List but who presents a valid Voter Identification Card for that Polling Place which indicates that he or she has not yet voted in that National Election;

(b) a voter's name lawfully appears on the National Voter Registry but is not listed on the Signature List of the Polling Place in the State, Congressional Election District or Municipality in which he or she resides and has voted in at least one prior national election, and is not listed on the Signature List of any other Polling Place, or

(c) a voter's name lawfully appears on the National Voter Register and is placed on the Signature List of a Polling Place in a State, Congressional Election District or Municipality in which the voter does not reside and the voter has not applied to vote absentee ballot pursuant to chapter 6 of this title.

(4) Any election board member, poll watcher or Registered Voter may challenge the identity or eligibility to vote of any person appearing at the Polling Place to vote on Election Day in accordance with section 708 of this chapter.

(5) An election board member shall record in the official log book for the Polling Place the full name, date of birth, sex and municipality of registration of any person not allowed to cast a ballot as a result of subsections (3) or (4) of this section. The election board member shall also record in the official log book the reason for disallowing the person to vote. The person not allowed to vote shall then sign the log book next to his or her entry.

(6) The National Election Director shall establish by rules and regulations additional security measures to prevent election fraud and irregularities at the Polling Places.

Source: PL 14-76 § 54; PL 15-46 § 1.

Case annotation: The National Election Commissioner's failure to send out any absentee ballots until eleven days before the election instead of the at least 30 days prior to an election provided for by 9 F.S.M.C. 704(1) is not in substantial compliance with the procedures required by the statute and was a direct violation of a mandatory statute enacted by Congress. *Braiel v. National Election Dir.*, 9 FSM R. 133, 136 (App. 1999).

§ 705. Campaigning on Election Day.

(1) No campaigning shall occur from 12:00 a.m. until the close of the Polls on Election Day. All campaign materials shall be removed by candidates, or their supporters, from Public Property prior to 12:00 a.m. on Election Day.

(2) No candidate or candidate supporter shall provide free or discounted food, drinks or other items of value, or free or discounted services, other than private transportation services, to voters on Election Day.

(3) No candidate shall be allowed within 100 feet of any Polling Place except for the purpose of casting his ballot.

Source: PL 14-76 § 55.

§ 706. Sale or consumption of alcohol on Election Day.

No alcoholic beverages shall be sold, consumed in public or otherwise provided to any person during Election Day while the Polls are open.

Source: PL 14-76 § 56.

§ 707. Poll watchers.

Each candidate shall be entitled to have not more than two poll watchers at each Polling Place.

Source: PL 14-76 § 57.

§ 708. Complaints at the Polling Place.

(1) Any person may file an oral or written complaint of any election irregularity with a member of the election board present at the Polling Place.

(2) The board member shall give any individual against whom the complaint is made time to present witnesses and an explanation, if any, but in no event shall time be granted so as to prevent the election board from making a decision prior to the time for the closing of the Polls.

(3) The complainant, or the individual against whom the complaint is made, may appeal the decision of the election board to the national election commissioner of the State concerned. The national election commissioner shall, as soon as possible, examine the findings of the election board and may hear witnesses if he or she deems it necessary. The national election commissioner shall render a decision prior to the time of the closing of the Polls or as soon as practicable thereafter.

(4) The aggrieved party may appeal the decision of the national election commissioner to the National Election Director in accordance with section 802 of this title.

(5) An election board member shall record in the official log book for the Polling Place the name, date of birth, sex and municipality of registration of the person making the complaint and the person against whom the complaint is made. The election board member shall also record in the log book the basis of the complaint and any decision reached by the election board. In addition, the complainant, the individual against whom the complaint was made, any witnesses, board members or poll watchers may write their comments regarding the complaint or the election board's decision in the log book.

(6) The National Election Director shall promulgate rules and regulations on how to resolve, in a timely manner, complaints at a Polling Place.

Source: PL 14-76 § 58.

§ 709. Disposition of ballot boxes after completion of voting.

After all voting is completed, all ballot boxes shall be secured and locked. The locked boxes and all other supplies provided to the Polling Places by the national election commissioner shall be collected by election officials and delivered to the national election commissioner of the State concerned, or his or her designee, by the most expeditious means available. Election officials shall certify to said national election commissioner that the ballots so delivered were cast in accordance with provisions of this title.

Source: PL 14-76 § 59.

TITLE 9 – NATIONAL ELECTIONS

§ 710. Counting of ballots; Announcement of unofficial results.

(1) The National Election Director, upon the recommendation of the national election commissioner of the relevant State, shall establish counting and tabulation committees in each State. Each counting and tabulation committee shall be composed of not less than three members.

(2) Each counting and tabulation committee shall publicly count and tally all votes cast and determine the acceptability thereof, provided, however, that no persons other than members of the counting and tabulation committee, the candidate, the candidate's poll watcher, and such other election or law enforcement officials as the National Election Director or the national election commissioner shall deem necessary, shall be permitted within 100 feet of the counting and tabulation of ballots.

(3) The counting and tabulation of ballots cast shall begin upon receipt of the ballot box, if such activity is centralized, or upon the close of the Polling Place, if such activity is decentralized.

(4) Public announcement of the unofficial results of the counting and tabulation of the ballots by each counting and tabulation committee shall be made by the national election commissioner in the manner set forth in regulations promulgated pursuant to this title.

Source: PL 14-76 § 60.

Case annotations: The "two-of-three mechanism," in which three tabulators tally the votes for a particular candidate as they are read aloud, and either all three tabulators, or at least two of the three tabulators, must agree on the results for the results to be taken as correct, is not illegal, unreasonable, improper or prohibited. This mechanism will produce an accurate count for most ballot boxes. *Olter v. National Election Comm'r*, 3 FSM R. 123, 135-37 (App. 1987).

For elections, the timing provisions of the National Election Code prevail over any conflicting timing set out in the APA. *Olter v. National Election Comm'r*, 3 FSM R. 123, 129 (App. 1987).

Generally, the conduct of elections is left to the political branches of government, unless the court has powers specifically given to it by Congress contrary to that general rule. *Kony v. Mori*, 6 FSM R. 28, 29 (Chk. 1993).

§ 711. Certification and declaration of election results.

(1) Upon completion of the counting and tabulation of election results by the national election commissioners, and no later than three days after the unofficial election results of all four States have been received by the National Election Director, the National Election Director shall certify the election results and shall declare as the winning candidates for the Congress of the Federated States of Micronesia the candidates receiving the plurality of votes in each Congressional Election District.

(2) Upon certification and declaration of the results, the National Election Director shall immediately provide to all election candidates notice of such certification in the most practical and expeditious manner available.

(3) In the case where there is an irregularity preventing certification of the results in any Congressional Election District, the results from such district shall be delayed until such irregularity is resolved, but the results from the other Congressional Election Districts shall be certified and declared in accordance with this section.

Source: PL 14-76 § 61.

§ 712. Resolution of ties.

After all votes have been tabulated by the national election commissioner and his or her designees and certified to by the National Election Director, if two or more candidates shall have

TITLE 9 – NATIONAL ELECTIONS

received an equal number of votes, such tie shall be resolved by a runoff election between those candidates held within 30 days. The candidate receiving the plurality of votes in the runoff shall be declared the winner by the National Election Director, and the result shall be certified under the procedures of section 711 of this chapter.

Source: PL 14-76 § 62.

§ 713. Rejected or spoiled ballots.

(1) All ballots which have been declared invalid due to defacement or other irregularity shall be sorted and a notation placed upon them indicating that they are rejected ballots. Upon completion of the counting of the ballots, the rejected ballots shall be placed in the ballot box and returned by the counting and tabulating committee to the national election commissioner with the validly cast ballots.

(2) Two or more markings in one voting square or a mark made partly within and partly without a voting square or space does not make a ballot void.

(3) Any voter who spoils a ballot may return it to a member of the election board and receive another in its place. He shall be given one ballot at a time; provided, that the number of ballots given him is not to exceed three in all.

(4) A ballot shall not be rejected for any technical error which does not render it impossible to determine the voter's choice, even though the ballot is soiled or partially defaced.

(5) If for any reason a ballot is imperfectly marked and it is impossible to determine the voter's choice for any office or issue, his or her ballot shall not be counted for that office or issue, but the rest of his or her ballot, if properly marked, shall be counted.

Source: PL 14-76 § 63.

§ 714. Write-in Votes.

Write-in votes may be used in National Elections. Any name written upon a ballot shall be counted as a vote for the person whose name is so written for the office under which it is written.

Source: PL 14-76 § 64.

§ 715. Preservation of ballots and election materials.

All cast, unused, rejected and spoiled ballots, and all official forms used by the election boards, the counting and tabulation committees and other election officials shall be preserved and secured in a safe location to be determined by the National Election Director and national election commissioners until the time periods for challenging an election result under chapter 8 of this title have expired, or such later date if so ordered by the Appellate Division of the Supreme Court of the Federated States of Micronesia. All ballots, and any other official forms the National Election Director specifies through rules and regulations promulgated pursuant to this title, shall thereafter be promptly destroyed.

Source: PL 14-76 § 65.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

CHAPTER 8
Procedure for Petitions and Appeals

SECTIONS

- § 801. Petitions for recount, revote or challenging acceptability of votes.**
§ 802. Filing time frames.
§ 803. Standard of proof.
§ 804. Denial of petition; Appeal to Supreme Court.
§ 805. Approval of petition; Notice of recount or revote.

Editor's note: Chapter 8 of this title on Procedure for Petitions and Appeals was enacted by section 66 of PL 14-76.

§ 801. Petitions for recount, revote or challenging acceptability of votes.

(1) A petition for a recount may be filed by any candidate who believes that there was fraud or error committed in the canvassing, casting or return of votes in a National Election.

(2) If a candidate believes that there was fraud or error committed in the canvassing, casting or return of votes in a National Election which cannot be corrected by recount, a candidate may petition for a revote, either in a Congressional Election District as a whole, or in the portion thereof where the fraud or error took place.

(3) Any other petition challenging the acceptability of a vote or votes may be filed by any Registered Voter who believes that there was fraud or error committed in the canvassing, casting or return of votes in a National Election. A petition under this subsection shall include a petition by a candidate challenging a decision of the National Election Director made under subsection 303(10) of this title.

(4) A petition under subsections (1), (2) or (3) of this section shall be filed with the National Election Director. Such petition shall contain:

- (a) a statement of the nature, location and extent of the election fraud or error that forms the basis of the petition;
- (b) a statement of the form of relief the petitioner seeks;
- (c) a list of election records and witnesses that will establish the existence of election error or fraud, specifying how each record or official listed is relevant to allegations contained in the petition; and
- (d) affidavits, documents and any other evidence in support of the petition.

Source: PL 14-76 § 67.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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TITLE 9 – NATIONAL ELECTIONS

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

Case annotations: The only explicit right to suffrage found in the FSM Constitution is the right to "vote in national elections." So an alleged denial of a right to suffrage in a Chuuk state election would be the denial of a right under the Chuuk Constitution's suffrage provisions, and not a denial of FSM constitutional right to suffrage. *Ueda v. Chuuk State Election Comm'n*, 16 FSM R. 395, 397 (Chk. 2009).

A claim of denial of the right to suffrage in a state election because no revote was ordered is not a claim arising under the national constitution or law. *Ueda v. Chuuk State Election Comm'n*, 16 FSM R. 395, 397 (Chk. 2009).

When the constitutional issues the plaintiffs raise are either a part of an election contest over which the court has no jurisdiction or are hypothetical, abstract, or academic, the court lacks jurisdiction over the case. *Ueda v. Chuuk State Election Comm'n*, 16 FSM R. 395, 398 (Chk. 2009).

A petition presented to the National Election Director must contain a) a statement of the nature, location and extent of the election fraud or error that forms the basis of the petition; b) a statement of the form of relief the petitioner seeks; c) a list of election records and witnesses that will establish the existence of election error or fraud, specifying how each record or official listed is relevant to the petition's allegations; and d) affidavits, documents and any other evidence in support of the petition. *Nelson v. FSM Nat'l Election Dir.*, 16 FSM R. 414, 420 (App. 2009).

To interpret 9 F.S.M.C. 904, the FSM Supreme Court should apply a two prong test. The first prong is whether there is a "substantial question or fraud or error" and the second prong is whether there is "substantial possibility that the outcome would be affected by a recount." *Olter v. National Election Comm'r*, 3 FSM R. 123, 136-37 (App. 1987).

§ 802. Filing time frames.

(1) A petition for a recount or revote must be filed within one week after the National Election Director certifies the results of the National Election in the Congressional Election District or State concerned.

(2) Any other petition challenging the acceptability of a vote or votes must be filed before the National Election Director certifies the results of the National Election in the Congressional Election District or State concerned, or within one week of Election Day, whichever occurs first, provided that if a petition could not have been filed within one week of Election Day as a result of a delayed action or decision of the National Election Director or a national election commissioner, then the petition shall be filed prior to certification of the election result for the relevant National Election District or State.

(3) The winning candidate shall have one week to respond to the petition.

(4) The National Election Director shall have 14 days to decide whether to approve the petition.

Source: PL 14-76 § 68.

Case annotation: The court lacks jurisdiction to hear an election appeal filed too soon because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames in 9 F.S.M.C. 902 have been adhered to. Such an appeal is therefore dismissed as premature (unripe). *Wiliander v. National Election Dir.*, 13 FSM R. 199, 204 (App. 2005).

The time frames established by statute for election petitions to the National Election Director are short. A candidate must be vigilant in asserting his rights to petition. *Wiliander v. Mallarme*, 7 FSM R. 152, 157 (App. 1995).

Where no action, or words, or silence of the National Election Director prior to the appellant's initial petition misled the appellant into untimely filing his petition after certification it does not give rise to an estoppel. The Director's

TITLE 9 – NATIONAL ELECTIONS

later failure to raise the issue of untimeliness until his denial of the petition was appealed to the Supreme Court does not give rise to an estoppel. *Wiliander v. Mallarme*, 7 FSM R. 152, 157-58 (App. 1995).

Deadlines set by statute are generally jurisdictional. If the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. This applies equally to the National Election Director as a member of an administrative agency (executive branch) hearing an appeal as it does to a court hearing an appeal from an administrative agency. Thus the Director cannot extend statutory time frames set by Congress. When the Director had not rendered his decision within the statutorily-prescribed time limit it must be considered a denial of the petition, and the petitioner could then have filed his appeal in the Supreme Court. *Wiliander v. Mallarme*, 7 FSM R. 152, 158 (App. 1995).

Congress intended that the election appeal process be timely and expeditious. This is especially important in a year in which the newly elected Congress selects the President and Vice President of the nation from among its members. *Wiliander v. Mallarme*, 7 FSM R. 152, 161 (App. 1995).

When an election contestant's shifting allegations of irregularities (the allegations shifted from misreporting or tampering with the reported results to double-voting) and his later exhibits could have been an appropriate basis for a post-certification petition to the National Election Director, but instead of filing the required post-certification petition, the contestant filed a court appeal, the court cannot conduct a meaningful appellate review in such a manner and therefore cannot consider them because these issues and exhibits would, if allowed, come before the court without the benefit of the National Election Director's reasoned review and decision. *Nelson v. FSM Nat'l Election Dir.*, 16 FSM R. 414, 420-21 (App. 2009).

If an election contestant's appeal is considered as only a claim challenging the acceptability of votes, the five-day time frame to appeal the National Election Commissioner's denial of that claim would start then even though a recount was pending because an FSM Supreme Court appellate division decision may have the effect of disallowing challenged votes but shall not halt or delay balloting or counting and tabulating. *Nelson v. FSM Nat'l Election Dir.*, 16 FSM R. 414, 421 (App. 2009).

A candidate's only appeal from the certification of an election or the declaration of the winning candidate is to file a petition with the National Election Director within seven days of the certification, and, if the candidate is still aggrieved after the National Election Director's decision on the post-certification petition, then he or she may appeal to the FSM Supreme Court appellate division. The Election Code does not authorize an appeal of a certification of election directly to the FSM Supreme Court. *Nelson v. FSM Nat'l Election Dir.*, 16 FSM R. 414, 421-22 (App. 2009).

An election appeal filed too soon will be dismissed as premature (unripe) because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames have been adhered to. *Nelson v. FSM Nat'l Election Dir.*, 16 FSM R. 414, 422 (App. 2009).

§ 803. Standard of proof.

(1) The National Election Director shall grant a petition for a recount where he or she determines that the petitioner has shown by a preponderance of the evidence that there is a substantial question of fraud or error and that there is a substantial possibility that the outcome of the election would be affected by a recount.

(2) The National Election Director shall grant a petition for a revote where he or she determines that the petitioner has shown by a preponderance of the evidence that it is more likely than not that the fraud or error complained of could have resulted in the election of a candidate who would not have won had the fraud or error not occurred.

(3) The National Election Director shall grant any other petition challenging the acceptability of a vote or votes where he or she determines that the petitioner has shown by preponderance of the evidence that fraud or error occurred in the canvassing, casting or return of votes in a National Election, and that the relief sought is a reasonable and equitable means of remedying such fraud or error.

TITLE 9 – NATIONAL ELECTIONS

(4) Notwithstanding subsection (1) of this section, a petition for a recount must be granted if the difference between the number of votes cast for the winning candidate and the next highest candidate is one-half of one percent or less of the total votes cast for all of the candidates for that particular seat.

Source: PL 14-76 § 69.

§ 804. Denial of petition; Appeal to Supreme Court.

(1) If the National Election Director decides to grant or deny a petition, he or she shall record the reasons for such decision in writing and provide a copy to the petitioner, and where the petitioner is a losing candidate, to the winning candidate, by the most expeditious means practicable.

(2) Except with regard to a decision to provide a recount, a petitioner, or where the petitioner is a losing candidate, the winning candidate, may, within five days after receipt of the decision of the National Election Director granting or denying the petition, appeal the decision to the Appellate Division of the Supreme Court of the Federated States of Micronesia. The Appellate Division of the Supreme Court shall review the appeal to determine if the decision by the National Election Director was:

- (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (b) in excess of statutory jurisdiction, authority, or limitations, or a denial of legal right;
- (c) without substantial compliance with the procedures required by law; or
- (d) unwarranted by the facts.

(3) If the Appellate Division of the Supreme Court decides in favor of a recount or a revote, the National Election Director shall be so notified and shall proceed as provided in section 805 of this title.

(4) A decision of the Appellate Division of the Supreme Court may have the effect of disallowing challenged votes but shall not halt or delay balloting or counting and tabulating.

Source: PL 14-76 § 70.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

Case annotations: The court lacks jurisdiction to hear an election appeal filed too soon because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames in 9 F.S.M.C. 902 have been adhered to. Such an appeal is therefore dismissed as premature (unripe). *Wiliander v. National Election Dir.*, 13 FSM R. 199, 204 (App. 2005).

If the possibility of double voting is alleged the burden is on the appellant to show that it occurred. *Aten v. National Election Comm'r (II)*, 6 FSM R. 74, 78 (App. 1993).

When the National Election Commissioner's decision concerning election irregularities is appealed to the FSM Supreme Court, the appellate division must decide whether the National Election Commissioner's decision is proper, and if not, whether the irregularities complained of could have resulted in the election of a candidate who would not have won had the irregularities not occurred. *Aten v. National Election Comm'r (II)*, 6 FSM R. 74, 81 (App. 1993).

§ 805. Approval of petition; Notice of recount or revote.

TITLE 9 – NATIONAL ELECTIONS

(1) If the National Election Director grants a recount or a revote, or if so ordered by the Supreme Court pursuant to section 804 of this title, he or she shall cause notice of the recount or revote to be given in an appropriate manner.

(2) A recount shall be held by the counting and tabulating committee within ten days after the decision of the National Election Director or order by the Supreme Court. The counting and tabulating committee shall make certificates of such determination under oath showing the result of the election and what persons were declared elected to fill office, one of which shall be filed with the National Election Director, one with each election board concerned, and one with the person filing the petition for recount.

(3) A revote shall occur as soon as practicable but in no event more than 30 days after a decision by the National Election Director or order by the Supreme Court. The national election commissioner shall report the results of the revote to the National Election Director and the candidates.

(4) The person receiving the greatest number of votes shall be deemed to have been elected, but if two or more candidates shall receive an equal number of votes for the office, the tie vote shall be resolved in accordance with section 712 of this title.

Source: PL 14-76 § 71.

Case annotations: Where election irregularities cannot be corrected by a recount, the election, in whole or in part, can be set aside and done over only if it is more likely than not that the irregularities complained of could have, not necessarily would have, resulted in the election of a candidate who would not have won had the irregularities not occurred. *Aten v. National Election Comm'r (II)*, 6 FSM R. 74, 82 (App. 1993).

While the court has statutory authority to hear appeals regarding the conduct of elections, its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and once it has seated a member unconditionally the matter is nonjusticiable. *Aten v. National Election Comm'r (III)*, 6 FSM R. 143, 145 & n.1 (App. 1993).

The time frame for an aggrieved candidate to seek a revote is the same as that to seek a recount. It must be filed within one week of certification of the election results. The winning candidate has one week to respond to the petition. The National Election Director then has 10 days to decide whether to approve the petition. If he decides not to approve the petition, he must record the reasons for the decision. *Wiliander v. National Election Dir.*, 13 FSM R. 199, 203 (App. 2005).

When election irregularities cannot be corrected by recount, a candidate may petition for an election to be set aside and done over, either in a district as a whole or in the part where the irregularities took place. The procedures for the filing a revote petition, action thereon, and appeal of its denial are the same as those for a recount petition. *Wiliander v. National Election Dir.*, 13 FSM R. 199, 203 n.3 (App. 2005).

Assuming that, as a result of the revote, that the candidate seeking to enjoin the revote is not declared the winning candidate (an assumption that the court cannot make), he still has all the avenues provided by the statutory provisions governing election contests, and once the administrative remedies before the National Election Director have run their course, a candidate still aggrieved may, at that time, seek relief from the FSM Supreme Court appellate division. Since this is an adequate alternative remedy, the candidate cannot show irreparable harm. *Asugar v. Edward*, 13 FSM R. 209, 212-13 (Chk. 2005).

The court, in an election contest, would be extremely hesitant to grant the relief of nullification of all of the votes cast in a ballot box and a declaration that the election contestant was then the winner because that would disenfranchise the many qualified voters who properly cast their ballots in that ballot box in good faith. If there had been proven illegal votes in sufficient number that the ballot box result was cast in doubt, the court would have been inclined to consider ordering the election done over as a less drastic and more equitable and democratic remedy. The statute explicitly gives the court the power to order a recount during trial, but does not specifically grant the

TITLE 9 – NATIONAL ELECTIONS

power to order a revote or to nullify a ballot box. The powers to effect remedies for irregularities that likely could have affected an election's outcome appear to be implied or inherent in the Election Commission's powers and thus in the court's powers in review of the Commission's election contest decisions. *Samuel v. Chuuk State Election Comm'n*, 14 FSM R. 591, 596-97 (Chk. S. Ct. App. 2007).

Provisions for challenging the acceptability of votes apply to individual or particular votes and not to an entire polling place. The only proper remedies when the reliability of an entire polling place result is in question, are either a recount or a revote, depending on the particular circumstances. *Nelson v. FSM Nat'l Election Dir.*, 16 FSM R. 414, 421 (App. 2009).

The court will decline to order the exclusion of all votes at a polling place, thus disenfranchising many qualified and innocent voters and possibly altering the will of the electorate and the election results. Only a recount or a revote would be proper in such cases. *Nelson v. FSM Nat'l Election Dir.*, 16 FSM R. 414, 421 (App. 2009).

The right to contest an election is not a common law right. Elections belong to the political branch of the government, and are beyond the control of the judicial power. *David v. Uman Election Comm'r*, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

The jurisdiction of courts exercising general equity powers does not include election contests, unless it is so provided expressly or impliedly by the constitution or by statute. *David v. Uman Election Comm'r*, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

It is a general rule that courts of equity have no inherent power to try contested elections, notwithstanding fraud on the part of the election officers. *David v. Uman Election Comm'r*, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

Constitutions and statutes of most jurisdictions provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. *David v. Uman Election Comm'r*, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

Election contests are purely statutory, and the courts have no inherent power to determine election contests, the determination of such contests being a judicial function only when and to the extent that the determination is authorized by statute. *David v. Uman Election Comm'r*, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).