

CHAPTER 6

Procedure for Absentee Voters

SECTIONS

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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;
- (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.

(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 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.

(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.

(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:

(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.