

CHAPTER 7
Procedure for
Conduct of National Elections

SECTIONS

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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.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

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/>.

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 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 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.

§ 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 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.

