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SUBCHAPTER N—TERRITORIAL AND INSULAR REGULATIONS

PART 935—WAKE ISLAND CODE

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SOURCE: 67 FR 16999, Apr. 9, 2002, unless otherwise noted.

Subpart A—General

§ 935.1 Applicability.

(a) The local civil and criminal laws of Wake Island consist of this part and applicable provisions of the laws of the United States.

(b) For the purposes of this part, Wake Island includes Wake, Peale, and Wilkes Islands, and the appurtenant reefs, shoals, shores, bays, lagoons, keys, territorial waters, and superadjacent airspace of them.

§ 935.2 Purpose.

The purpose of this part is to provide—

(a) For the civil administration of Wake Island;

(b) Civil laws for Wake Island not otherwise provided for;

(c) Criminal laws for Wake Island not otherwise provided for; and

(d) A judicial system for Wake Island not otherwise provided for.

§ 935.3 Definitions.

In this part—

(a) *General Counsel* means the General Counsel of the Air Force or his successor in office.

(b) *Commander* means the Commander, Wake Island.

(c) *Commander, Wake Island* means the Commander of Pacific Air Forces or such subordinate commissioned officer of the Air Force to whom he may delegate his authority under this part.

(d) *He* or *his* includes both the masculine and feminine genders, unless the context implies otherwise.

(e) *Judge* includes Judges of the Wake Island Court and Court of Appeals.

§ 935.4 Effective date.

This part was originally applicable at 0000 June 25, 1972. Amendments to this part apply April 10, 2002.

Subpart B—Civil Administration Authority

§ 935.10 Designation and delegation of authority.

(a) The civil administration authority at Wake Island is vested in the Secretary of the Air Force. That authority has been delegated to the General Counsel of the Air Force with authority to redelegate all or any part of his functions, powers, and duties under this part to such officers and employees of the Air Force as he may designate, but excluding redelegation of the power to promulgate, amend, or repeal this part, or any part thereof. Such redelegation must be in writing and must be in accordance with any applicable Secretary of the Air Force Orders. Such redelegation may be further redelegated subject to such restrictions as the delegating authority may impose. A redelegation may also be made to a commissioned officer serving in another United States military service who exercises military command, but such redelegation must explicitly and specifically list the powers redelegated and shall not include the power or authority to issue permits, licenses, or other outgrants unless individually approved by the Air Force official who made the redelegation. The Commander is the agent of the Secretary, his delegate and designee when carrying out any function, power, or duty assigned under this part.

(b) The authority of the General Counsel to appoint Judges shall not be delegated.

(c) Judges and officers of the court may not redelegate their powers or authorities except as specifically noted in this part.

§ 935.11 Permits.

(a) Permits in effect on the dates specified in § 935.4 continue in effect until revoked or rescinded by the Commander. Permits issued by the Commander shall conform to the requirements of Air Force Instruction 32–9003 (Available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.). No permit or registration shall be issued under other authority that is inconsistent with this part. The Commander

may issue island permits or registration for—

(1) Businesses, including any trade, profession, calling, or occupation, and any establishment where food or beverages are prepared, offered, or sold for human consumption.

(2) Self-propelled motor vehicles, except aircraft, including attached trailers.

(3) Vehicle operators.

(4) Boats.

(5) Food handlers.

(6) Drugs, narcotics, and poisons.

(7) Construction.

(8) Burials.

(b) To the extent it is not inconsistent with this part, any permit or registration issued pursuant to Air Force directives or instructions as applicable to Wake Island shall constitute a permit or registration under this section, and no other permit or registration shall be required.

§ 935.12 Functions, powers, and duties.

The Commander may—

(a) Appoint Peace Officers;

(b) Direct the abatement of any public nuisance upon failure of any person to comply with a notice of removal;

(c) Direct sanitation and fire prevention inspections;

(d) Establish records of vital statistics;

(e) Direct the registration and inspections of motor vehicles, boats, and aircraft;

(f) Impose quarantines;

(g) Direct the impoundment and destruction of unsanitary food, fish, or beverages;

(h) Direct the evacuation of any person from a hazardous area;

(i) Commission notaries public;

(j) Establish and maintain a facility for the restraint or confinement of persons and provide for their care;

(k) Direct the removal of any person from Wake Island and prohibit his future presence on the island;

(l) Issue traffic regulations that are not inconsistent with this part, and post traffic signs;

(m) Prohibit the posting, distribution, or public display of advertisements, signs, circulars, petitions, or similar materials, soliciting, picketing, or parading in any public place or area if he determines it would interfere with public business or endanger the health and safety of persons and property on Wake Island;

(n) Perform or direct any other acts, not inconsistent with this part or applicable laws and regulations, if he considers it necessary for protection of the health or safety of persons and property on Wake Island; and

(o) Issue any order or notice necessary to implement this section. Any order or notice issued pursuant to Air Force directives and instructions as applicable to Wake Island shall constitute an order or notice issued pursuant to this section.

§ 935.13 Revocation or suspension of permits and registrations.

(a) The Commander may revoke or suspend any island permit or registration for cause, with or without notice.

(b) The holder of any revoked or suspended permit or registration may demand a personal hearing before the Commander within 30 days after the effective date of the revocation or suspension.

(c) If a hearing is demanded, it shall be granted by the Commander within 30 days of the date of demand. The applicant may appear in person and present such documentary evidence as is pertinent. The Commander shall render a decision, in writing, setting forth his reasons, within 30 days thereafter.

(d) If a hearing is not granted within 30 days, a written decision is not rendered within 30 days after a hearing, or the applicant desires to appeal a decision, he may, within 30 days after the latest of any of the foregoing dates appeal in writing to the General Counsel, whose decision shall be final.

§ 935.14 Autopsies.

The medical officer on Wake Island, or any other qualified person under his supervision, may perform autopsies upon authorization of the Commander or a Judge of the Wake Island Court.

§ 935.15 Notaries public.

(a) To the extent he considers there to be a need for such services, the Commander may commission one or more residents of Wake Island as notaries

public. The Commander of Pacific Air Forces may not redelegate this authority.

(b) A person applying for commission as a notary public must be a citizen of the United States and shall file an application, together with evidence of good character and a proposed seal in such form as the Commander requires, with a fee of $50 which shall be deposited in the Treasury as a miscellaneous receipt.

(c) Upon determining there to be a need for such a service and after such investigation as he considers necessary, the Commander may commission an applicant as a notary public. Commissions shall expire 3 years after the date thereof, and may be renewed upon application upon payment of a fee of $25.

(d) Judges and the Clerk of the Wake Island Court and the Island Attorney shall have the general powers of a notary public.

§ 935.16 Emergency authority.

During the imminence and duration of any emergency declared by him, the Commander may perform or direct any acts necessary to protect life and property.

Subpart C—Civil Law

§ 935.20 Applicable law.

Civil acts and deeds taking place on Wake Island shall be determined and adjudicated as provided in this part; and otherwise, as provided in the Act of June 15, 1950 (64 Stat. 217) (48 U.S.C. 644a), according to the laws of the United States relating to such an act or deed taking place on the high seas on board a merchant vessel or other vessel belonging to the United States.

§ 935.21 Civil rights, powers, and duties.

In any case in which the civil rights, powers, and duties of any person on Wake Island are not otherwise prescribed by the laws of the United States or this part, the civil rights, powers, and duties as they obtain under the laws of the State of Hawaii will apply to persons on Wake Island.

Subpart D—Criminal Law

§ 935.30 General.

In addition to any act made criminal in this part, any act committed on Wake Island that would be criminal if committed on board a merchant vessel or other vessel belonging to the United States is a criminal offense and shall be adjudged and punished according to the laws applicable on board those vessels on the high seas.

Subpart E—Petty Offenses

§ 935.40 Criminal offenses.

No person may on Wake Island—

(a) Sell or give an alcoholic beverage manufactured for consumption (including beer, ale, or wine) to any person who is not at least 21 years of age;

(b) Procure for, engage in, aid or abet in, or solicit for prostitution;

(c) Use any building, structure, vehicle, or public lands for the purpose of lewdness, assignation, or prostitution;

(d) Possess or display (publicly or privately) any pornographic literature, film, device, or any matter containing obscene language, that tends to corrupt morals;

(e) Make any obscene or indecent exposure of his person;

(f) Commit any disorderly, obscene, or indecent act;

(g) Commit any act of voyeurism (Peeping Tom);

(h) Enter upon any assigned residential quarters or areas immediately adjacent thereto, without permission of the assigned occupant;

(i) Discard or place any paper, debris, refuse, garbage, litter, bottle, can, human or animal waste, trash, or junk in any public place, except into a receptacle or place designated or used for that purpose;

(j) Commit any act of nuisance;

(k) With intent to provoke a breach of the peace or under such circumstances that a breach of the peace may be occasioned thereby, act in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to any other person;

(l) Be drunk in any public place;

(m) Use any profane or vulgar language in a public place;

(n) Loiter or roam about Wake Island, without any lawful purpose, at late and unusual hours of the night;

(o) Lodge or sleep in any place without the consent of the person in legal possession of that place;

(p) Grossly waste any potable water;

(q) Being a male, knowingly enter any area, building, or quarters reserved for women, except in accordance with established visiting procedures;

(r) Smoke or ignite any fire in any designated and posted ''No Smoking'' area, or in the immediate proximity of any aircraft or fueling pit;

(s) Enter any airplane parking area or ramp, unless he is on duty therein, is a passenger under appropriate supervision, or is authorized by the Commander to enter that place;

(t) Interfere or tamper with any aircraft or servicing equipment or facility, or put in motion the engine of any aircraft without the permission of its operator;

(u) Post, distribute, or publicly display advertisements, signs, circulars, petitions, or similar materials, or solicit, picket, or parade in any public place or area where prohibited by the Commander pursuant to § 935.12;

(v) Import onto or keep on Wake Island any plant or animal not indigenous to the island, other than military working dogs or a guide dog for the blind or visually-impaired accompanying its owner; or

(w) Import or bring onto or possess while on Wake Island any firearm, whether operated by air, gas, spring, or otherwise, or explosive device, including fireworks, unless owned by the United States.

Subpart F—Penalties

§ 935.50 Petty offenses.

Whoever is found guilty of a violation of any provision of subpart E of this part is subject to a fine of not more than $500 or imprisonment of not more than 6 months, or both.

§ 935.51 Motor vehicle violations.

Whoever is found guilty of a violation of subpart N of this part is subject to a fine of not more than $100, imprisonment of not more than 30 days, or suspension or revocation of his motor vehicle operator's permit, or any combination or all of these punishments.

§ 935.52 Violations of Subpart O or P of this part.

(a) Whoever is found guilty of a violation of subpart O or P of this part is subject to a fine of not more than $100, or imprisonment of not more than 30 days, or both.

(b) The penalties prescribed in paragraph (a) of this section are in addition to and do not take the place of any criminal penalty otherwise applicable and currently provided by the laws of the United States.

§ 935.53 Contempt.

A Judge may, in any civil or criminal case or proceeding, punish any person for disobedience of any order of the Court, or for any contempt committed in the presence of the Court, by a fine of not more than $100, or imprisonment of not more than 30 days, or both.

Subpart G—Judiciary

§ 935.60 Wake Island Judicial Authority.

(a) The judicial authority under this part is vested in the Wake Island Court and the Wake Island Court of Appeals.

(b) The Wake Island Court and the Wake Island Court of Appeals shall each have a seal approved by the General Counsel.

(c) Judges and Clerks of the Courts may administer oaths.

§ 935.61 Wake Island Court.

(a) The trial judicial authority for Wake Island is vested in the Wake Island Court.

(b) The Wake Island Court consists of one or more Judges, appointed by the General Counsel as needed. The term of a Judge shall be for one year, but he may be re-appointed. When the Wake Island Court consists of more than one Judge, the General Counsel shall designate one of the Judges as the Chief Judge who will assign matters to Judges, determine when the Court will sit individually or en banc, and prescribe rules of the Court not otherwise provided for in this Code. If there is only one Judge appointed, that Judge shall be the Chief Judge.

(c) Sessions of the Court are held on Wake Island or Hawaii at times and places designated by the Chief Judge.

§ 935.62 Island Attorney.

There is an Island Attorney, appointed by the General Counsel as needed. The Island Attorney shall serve at the pleasure of the General Counsel. The Island Attorney represents the United States in the Wake Island Court and in the Wake Island Court of Appeals.

§ 935.63 Public Defender.

There is a Public Defender, appointed by the General Counsel as needed. The Public Defender shall serve at the pleasure of the General Counsel. The Public Defender represents any person charged with an offense under this part who requests representation and who is not able to afford his own legal representation.

§ 935.64 Clerk of the Court.

There is a Clerk of the Court, who is appointed by the Chief Judge. The Clerk shall serve at the pleasure of the Chief Judge. The Clerk maintains a public docket containing such information as the Chief Judge may prescribe, administers oaths, and performs such other duties as the Court may direct. The Clerk is an officer of the Court.

§ 935.65 Jurisdiction.

(a) The Wake Island Court has jurisdiction over all offenses under this part and all actions of a civil nature, cognizable at law or in equity, where the amount in issue is not more than $1,000, exclusive of interests and costs, but not including changes of name or domestic relations matters.

(b) The United States is not subject to suit in the Court.

(c) The United States may intervene in any matter in which the Island Attorney determines it has an interest.

§ 935.66 Court of Appeals.

(a) The appellate judicial authority for Wake Island is vested in the Wake Island Court of Appeals.

(b) The Wake Island Court of Appeals consists of a Chief Judge and two Associate Judges, appointed by the General Counsel as needed. The term of a judge shall be for one year, but he may be reappointed. The Chief Judge assigns matters to Judges, determines whether the Court sits individually or en banc, and prescribes rules of the Court not otherwise provided for in this part.

(c) Sessions of the Court of Appeals are held in the National Capital Region at times and places designated by the Chief Judge. The Court may also hold sessions at Wake Island or in Hawaii.

(d) A quorum of the Court of Appeals will consist of one Judge when sitting individually and three Judges when sitting en banc.

(e) The address of the Court of Appeals is—Wake Island Court of Appeals, SAF/GC, Room 4E856, 1740 Air Force Pentagon, Washington, DC 20330–1740.

§ 935.67 Clerk of the Court of Appeals.

There is a Clerk of the Court of Appeals, who is appointed by the Chief Judge. The Clerk serves at the pleasure of the Chief Judge. The Clerk maintains a public docket containing such information as the Chief Judge may prescribe, administers oaths, and performs such other duties as the Court directs. The Clerk is an officer of the Court.

§ 935.68 Jurisdiction of the Court of Appeals.

The Court of Appeals has jurisdiction over all appeals from the Wake Island Court.

§ 935.69 Qualifications and admission to practice.

(a) No person may be appointed a Judge, Island Attorney, or Public Defender under this part who is not a member of the bar of a State, Commonwealth, or Territory of the United States or of the District of Columbia.

(b) Any person, other than an officer or employee of the Department of the Air Force, appointed as a Judge, Island Attorney, Public Defender, or to any other office under this part shall, prior to entering upon the duties of that office, take an oath, prescribed by the General Counsel, to preserve, protect, and defend the Constitution of the United States. Such oath may be administered by any officer or employee of the Department of the Air Force.

(c) Civilian officers and employees of the Department of the Air Force may be appointed as a Judge, Island Attorney, Public Defender, or Clerk, as an additional duty and to serve without additional compensation. Officers and employees of the Department of the Air Force, both civilian and military, who serve in positions designated as providing legal services to the Department and who are admitted to practice law in an active status before the highest court of a State, Commonwealth, or territory of the United States, or of the District of Columbia, and are in good standing therewith, are admitted to the Bar of the Wake Island Court and the Wake Island Court of Appeals.

(d) No person may practice law before the Wake Island Court or the Wake Island Court of Appeals who is not admitted to Bar of those courts. Any person admitted to practice law in an active status before the highest court of a State, Commonwealth, or territory of the United States, or of the District of Columbia, and in good standing therewith, may be admitted to the Bar of the Wake Island Court and the Wake Island Court of Appeals. Upon request of the applicant, the Court, on its own motion, may grant admission. A grant of admission by either court constitutes admission to practice before both courts.

Subpart H—Statute of Limitations

§ 935.70 Limitation of actions.

(a) No civil action may be filed more than 1 year after the cause of action arose.

(b) No person is liable to be tried under this part for any offense if the offense was committed more than 1 year before the date the information or citation is filed with the Clerk of the Wake Island Court.

Subpart I—Subpoenas, Wake Island Court

§ 935.80 Subpoenas.

(a) A Judge or the Clerk of the Court shall issue subpoenas for the attendance of witnesses. The subpoena must include the name of the Court and the title, if any, of the proceeding; and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The Clerk may issue a subpoena for a party requesting it, setting forth the name of the witness subpoenaed.

(b) A Judge or the Clerk may also issue a subpoena commanding the person to whom it is directed to produce the books, papers, documents, or other objects designated therein. The Court may direct that books, papers, documents, or other objects designated in the subpoena be produced before the Court at a time before the trial or before the time when they are to be offered into evidence. It may, upon their production, allow the books, papers, documents, or objects or portions thereof to be inspected by the parties and their representatives.

(c) Any peace officer or any other person who is not a party and who is at least 18 years of age may serve a subpoena. Service of a subpoena shall be made by delivering a copy thereof to the person named.

(d) The Clerk of the Court shall assess and collect a witness fee of $40 for each subpoena requested by any party other than the United States, which shall be tendered to the witness as his witness fee together with service of the subpoena. Witnesses subpoenaed by the Island Attorney shall be entitled to a fee of $40 upon presentment of a proper claim therefor on the United States. No duly summoned witness may refuse, decline, or fail to appear or disobey a subpoena on the ground that the witness fee was not tendered or received.

(e) Upon a showing that the evidence is necessary to meet the ends of justice and that the defendant is indigent, the Public Defender may request the Court to direct the Island Attorney to obtain the issuance of a subpoena on behalf of a defendant in a criminal case. Witnesses so called on behalf of the defendant shall be entitled to the same witness fees as witnesses requested by the Island Attorney.

(f) Subpoenas may be credited only to persons or things on Wake Island.

(g) No person who is being held on Wake Island because of immigration status shall be entitled to a witness

fee, but shall nevertheless be subject to subpoena like any other person.

Subpart J—Civil Actions

§ 935.90 General.

(a) The Federal Rules of Civil Procedure (28 U.S.C.) apply to civil actions in the Court to the extent the presiding Judge considers them applicable under the circumstances.

(b) There is one form of action called the ''Civil Action.''

(c) Except as otherwise provided for in this part, there is no trial by jury.

(d) A civil action begins with the filing of a complaint with the Court. The form of the complaint is as follows except as it may be modified to conform as appropriate to the particular action:

IN THE WAKE ISLAND COURT

[Civil Action No. ___]
_____ (*Plaintiff*) vs. _____, (*Defendant*)

Complaint

_____ plaintiff alleges that the defendant is indebted to plaintiff in the sum of $___ that plaintiff has demanded payment of said sum; that defendant has refused to pay; that defendant resides at _____ on Wake Island; that plaintiff resides at _____.

§ 935.91 Summons.

Upon the filing of a complaint, a Judge or Clerk of the Court shall issue a summons in the following form and deliver it for service to a peace officer or other person specifically designated by the Court to serve it:

IN THE WAKE ISLAND COURT

[Civil Action No. ___]
_____ (*Plaintiff*), vs. _____ (*Defendant*)

Summons

To the above-named defendant:

You are hereby directed to appear and answer the attached cause at _____ on _____ day of ___ 20—, at _____ -.M. and to have with you all books, papers, and witnesses needed by you to establish any defense you have to said claim.

You are further notified that in case you do not appear, judgment will be given against you, for the amount of said claim, together with cost of this suit and the service of this order.

Dated: _____, 20 _____. (Clerk, Wake Island Court) _____

§ 935.92 Service of complaint.

(a) A peace officer or other person designated by the Court to make service shall serve the summons and a copy of the complaint at Wake Island upon the defendant personally, or by leaving them at his usual place of abode with any adult residing or employed there.

(b) In the case of a corporation, partnership, joint stock company, trading association, or other unincorporated association, service may be made at Wake Island by delivering a copy of the summons and complaint to any of its officers, a managing or general agent, or any other agent authorized by appointment or by law to receive service.

§ 935.93 Delivery of summons to plaintiff.

The Clerk of the Court shall promptly provide a copy of the summons to the plaintiff, together with notice that if the plaintiff fails to appear at the Court at the time set for the trial, the case will be dismissed. The trial shall be set at a date that will allow each party at least 7 days, after the pleadings are closed, to prepare.

§ 935.94 Answer.

(a) The defendant may, at his election, file an answer to the complaint.

(b) The defendant may file a counterclaim, setoff, or any reasonable affirmative defense.

(c) If the defendant elects to file a counterclaim, setoff, or affirmative defense, the Court shall promptly send a copy of it to the plaintiff.

§ 935.95 Proceedings; record; judgment.

(a) The presiding Judge is responsible for the making of an appropriate record of each civil action.

(b) All persons shall give their testimony under oath or affirmation. The Chief Judge shall prescribe the oath and affirmation that may be administered by any Judge or the Clerk of the Court.

(c) Each party may present witnesses and other forms of evidence. In addition, the presiding Judge may informally investigate any controversy, in or out of the Court, if the evidence obtained as a result is adequately disclosed to all parties. Witnesses, books,

papers, documents, or other objects may be subpoenaed as provided for in § 935.80 for criminal cases.

(d) The Court may issue its judgment in writing or orally from the bench. However, if an appeal is taken from the judgment, the presiding Judge shall, within 10 days after it is filed, file a memorandum of decision as a part of the record. The Judge shall place in the memorandum findings of fact, conclusions of law, and any comments that he considers will be helpful to a thorough understanding and just determination of the case on appeal.

§ 935.96 Execution of judgment.

(a) If, after 60 days after the date of entry of judgment (or such other period as the Court may prescribe), the judgment debtor has not satisfied the judgment, the judgment creditor may apply to the Court for grant of execution on the property of the judgment debtor.

(b) Upon a writ issued by the Court, any peace officer may levy execution on any property of the judgment debtor except—

(1) His wearing apparel up to a total of $300 in value;

(2) His beds, bedding, household furniture and furnishings, stove, and cooking utensils, up to a total of $300 in value; and

(3) Mechanics tools and implements of the debtor's trade up to a total of $200 in value.

(c) Within 60 days after levy of execution, a peace officer shall sell the seized property at public sale and shall pay the proceeds to the Clerk of the Court. The Clerk shall apply the proceeds as follows:

(1) First, to the reasonable costs of execution and sale and court costs.

(2) Second, to the judgment.

(3) Third, the residue (if any) to the debtor.

(d) In any case in which property has been seized under a writ of execution, but not yet sold, the property seized shall be released upon payment of the judgment, court costs, and the costs of execution.

§ 935.97 Garnishment.

(a) If a judgment debtor fails to satisfy a judgment in full within 60 days after the entry of judgment (or such other period as the Court may prescribe), the Court may, upon the application of the judgment creditor issue a writ of garnishment directed to any person having money or property in his possession belonging to the judgment debtor or owing money to the judgment debtor. The following are exempt from judgment:

(1) Ninety percent of so much of the gross wages as does not exceed $200 due to the judgment debtor from his employer.

(2) Eighty percent of so much of the gross wages as exceeds $200 but does not exceed $500 due to the judgment debtor from his employer.

(3) Fifty percent of so much of the gross wages as exceeds $500 due to the judgment debtor from his employer.

(b) The writ of garnishment shall be served on the judgment debtor and the garnishee and shall direct the garnishee to pay or deliver from the money or property owing to the judgment debtor such money or property as the Court may prescribe.

(c) The garnished amount shall be paid to the Clerk of the Court, who shall apply it as follows:

(1) First, to satisfy the costs of garnishment and court costs.

(2) Second, to satisfy the judgment.

(3) Third, the residue (if any) to the judgment debtor.

(d) Funds of the debtor held by the United States are not subject to garnishment.

Subpart K—Criminal Actions

§ 935.100 Bail.

(a) A person who is arrested on Wake Island for any violation of this part is entitled to be released on bail in an amount set by a Judge or Clerk of the Court, which may not exceed the maximum fine for the offense charged. If the defendant fails to appear for arraignment, trial or sentence, or otherwise breaches any condition of bail, the Court may direct a forfeiture of the whole or part of the bail and may on motion after notice to the surety or sureties, if any, enter a judgment for the amount of the forfeiture.

(b) The Chief Judge of the Wake Island Court may prescribe a schedule of bail for any offense under this part

which the defendant may elect to post and forfeit without trial, in which case the Court shall enter a verdict of guilty and direct forfeiture of the bail.

(c) Bail will be deposited in cash with the Clerk of the Court.

§ 935.101 Seizure of property.

Any property seized in connection with an alleged offense (unless the property is perishable) is retained pending trial in accordance with the orders of the Court. The property must be produced in Court, if practicable. At the termination of the trial, the Court shall restore the property or the funds resulting from the sale of the property to the owner, or make such other proper order as may be required and incorporate its order in the record of the case. Any item used in the commission of the offense, may, upon order of the Court, be forfeited to the United States. All contraband, which includes any item that is illegal for the owner to possess, shall be forfeited to the United States; such forfeiture shall not relieve the owner from whom the item was taken from any costs or liability for the proper disposal of such item.

§ 935.102 Information.

(a) Any offense may be prosecuted by a written information signed by the Island Attorney. However, if the offense is one for which issue of a citation is authorized by this part and a citation for the offense has been issued, the citation serves as an information.

(b) A copy of the information shall be delivered to the accused, or his counsel, as soon as practicable after it is filed.

(c) Each count of an information may charge one offense only and must be particularized sufficiently to identify the place, the time, and the subject matter of the alleged offense. It shall refer to the provision of law under which the offense is charged, but any error in this reference or its omission may be corrected by leave of Court at any time before sentence and is not grounds for reversal of a conviction if the error or omission did not mislead the accused to his prejudice.

§ 935.103 Motions and pleas.

(a) Upon motion of the accused at any time after filing of the information or copy of citation, the Court may order the prosecutor to allow the accused to inspect and copy or photograph designated books, papers, documents, or tangible objects obtained from or belonging to the accused, or obtained from others by seizure or process, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable.

(b) When the Court is satisfied that it has jurisdiction to try the accused as charged, it shall require the accused to identify himself and state whether or not he has counsel. If he has no counsel, but desires counsel, the Court shall give him a reasonable opportunity to procure counsel.

(c) When both sides are ready for arraignment, or when the Court determines that both sides have had adequate opportunities to prepare for arraignment, the Court shall read the charges to the accused, explain them (if necessary), and, after the reading or stating of each charge in Court, ask the accused whether he pleads ''guilty'' or ''not guilty''. The Court shall enter in the record of the case the plea made to each charge.

(d) The accused may plead ''guilty'' to any or all of the charges against him, except that the Court may in its discretion refuse to accept a plea of guilty, and may not accept a plea without first determining that the plea is made voluntarily with understanding of the nature of the charge.

(e) The accused may plead ''not guilty'' to any or all of the charges against him. The Court shall enter a plea of not guilty if the answer of the accused to any charge is such that it does not clearly amount to a plea of guilty or not guilty.

(f) The accused may, at any stage of the trial, with the consent of the Court, change a plea of not guilty to one of guilty. The Court shall then proceed as if the accused had originally pleaded guilty.

§ 935.104 Sentence after a plea of guilty.

If the Court accepts a plea of guilty to any charge or charges, it shall make a finding of guilty on that charge. Before imposing sentence, the Court shall hear such statements for the prosecution and defense, if any, as it requires to enable it to determine the sentence to be imposed. The accused or his counsel may make any reasonable statement he wishes in mitigation or of previous good character. The prosecution may introduce evidence in aggravation, or of bad character if the accused has introduced evidence of good character. The Court shall then impose any lawful sentence that it considers proper.

§ 935.105 Trial.

(a) If the accused pleads not guilty, he is entitled to a trial on the charges in accordance with procedures prescribed in the Rules of Criminal Procedure for the U.S. District Courts (18 U.S.C.), except as otherwise provided for in this part, to the extent the Court considers practicable and necessary to the ends of justice. There is no trial by jury.

(b) All persons shall give their testimony under oath or affirmation. The Chief Judge shall prescribe the oath and affirmation that may be administered by any Judge or the Clerk of the Court.

(c) Upon completion of the trial, the Court shall enter a judgment consisting of a finding or findings and sentence or sentences, or discharge of the accused.

(d) The Court may suspend any sentence imposed, may order the revocation of any Island automobile permit in motor vehicle cases, and may place the accused on probation. It may delay sentencing pending the receipt of any presentencing report ordered by it.

Subpart L—Appeals and New Trials

§ 935.110 Appeals.

(a) Any party to an action may, within 15 days after judgment, appeal an interlocutory order, issue of law, or judgment, except that an acquittal may not be appealed, by filing a notice of appeal with the Clerk of the Wake Island Court and serving a copy on the opposing party. Judgment is stayed while the appeal is pending.

(b) Upon receiving a notice of appeal with proof of service on the opposing party, the Clerk shall forward the record of the action to the Wake Island Court of Appeals.

(c) The appellant shall serve on the opposing party and file a memorandum setting forth his grounds of appeal with the Wake Island Court of Appeals within 15 days after the date of the judgment. The appellee may serve and file a reply memorandum within 15 days thereafter. An appeal and the reply shall be deemed to be filed when deposited in the U.S. mail with proper postage affixed, addressed to the Clerk, Wake Island Court of Appeals, at his address in Washington, DC. The period for filing an appeal may be waived by the Court of Appeals when the interests of justice so require.

(d) The Court of Appeals may proceed to judgment on the record, or, if the Court considers that the interests of justice so require, grant a hearing.

(e) The decision of the Court of Appeals shall be in writing and based on the record prepared by the Wake Island Court, on the proceedings before the Court of Appeals, if any be had, and on any memoranda that are filed. If the Court of Appeals considers the record incomplete, the case may be remanded to the Wake Island Court for further proceedings.

(f) The decision of the Court of Appeals is final.

§ 935.111 New trial.

A Judge of the Wake Island Court may order a new trial as required in the interest of justice, or vacate any judgment and enter a new one, on motion made within a reasonable time after discovery by the moving party of matters constituting the grounds upon which the motion for new trial or vacation of judgment is made.

Subpart M—Peace Officers

§ 935.120 Authority.

Peace officers—

(a) Have the authority of a sheriff at common law;

(b) May serve any process on Wake Island that is allowed to be served under a Federal or State law; the officer serving the process shall execute any required affidavit of service;

(c) May conduct sanitation or fire prevention inspections;

(d) May inspect motor vehicles, boats, and aircraft;

(e) May confiscate property used in the commission of a crime;

(f) May deputize any member of the Air Force serving on active duty or civilian employee of the Department of the Air Force to serve as a peace officer;

(g) May investigate accidents and suspected crimes;

(h) May direct vehicular or pedestrian traffic;

(i) May remove and impound abandoned or unlawfully parked vehicles, boats, or aircraft, or vehicles, boats, or aircraft interfering with fire control apparatus or ambulances;

(j) May take possession of property lost, abandoned, or of unknown ownership;

(k) May enforce quarantines;

(l) May impound and destroy food, fish, or beverages found unsanitary;

(m) May be armed;

(n) May exercise custody over persons in arrest or confinement;

(o) May issue citations for violations of this part; and

(p) May make arrests, as provided for in § 935.122.

§ 935.121 Qualifications of peace officers.

Any person appointed as a peace officer must be a citizen of the United States and have attained the age of 18 years. The following persons, while on Wake Island on official business, shall be deemed peace officers: special agents of the Air Force Office of Special Investigations, members of the Air Force Security Forces, agents of the Federal Bureau of Investigation, United States marshals and their deputies, officers and agents of the United States Secret Service, agents of the United States Bureau of Alcohol, Tobacco, and Firearms, agents of the United States Customs Service, and agents of the United States Immigration and Naturalization Service.

§ 935.122 Arrests.

(a) Any person may make an arrest on Wake Island, without a warrant, for any crime (including a petty offense) that is committed in his presence.

(b) Any peace officer may, without a warrant, arrest any person on Wake Island who violates any provision of this part or commits a crime that is not a violation of this part, in his presence, or that he reasonably believes that person to have committed.

(c) In making an arrest, a peace officer must display a warrant, if he has one, or otherwise clearly advise the person arrested of the violation alleged, and thereafter require him to submit and be taken before the appropriate official on Wake Island.

(d) In making an arrest, a peace officer may use only the degree of force needed to effect submission, and may remove any weapon in the possession of the person arrested.

(e) A peace officer may, whenever necessary to enter any building, vehicle, or aircraft to execute a warrant of arrest, force an entry after verbal warning.

(f) A peace officer may force an entry into any building, vehicle, or aircraft whenever—

(1) It appears necessary to prevent serious injury to persons or damage to property and time does not permit the obtaining of a warrant;

(2) To effect an arrest when in hot pursuit; or

(3) To prevent the commission of a crime which he reasonably believes is being committed or is about to be committed.

§ 935.123 Warrants.

Any Judge may issue or direct the Clerk to issue a warrant for arrest if, upon complaint, it appears that there is probable cause to believe an offense has been committed and that the person named in the warrant has committed it. If a Judge is not available, the warrant may be issued by the Clerk and executed, but any such warrant shall be thereafter approved or quashed by the first available Judge. The issuing officer shall—

(a) Place the name of the person charged with the offense in the warrant, or if his name is not known, any name or description by which he can be identified with reasonable certainty;

(b) Describe in the warrant the offense charged;

(c) Place in the warrant a command that the person charged with the offense be arrested and brought before the Wake Island Court;

(d) Sign the warrant; and

(e) Issue the warrant to a peace officer for execution.

§ 935.124 Release from custody.

The Chief Judge may authorize the Clerk to issue pro forma orders of the Court discharging any person from custody, with or without bail, pending trial, whenever further restraint is not required for protection of persons or property on Wake Island. Persons not so discharged shall be brought before a Judge or U.S. Magistrate as soon as a Judge or Magistrate is available. Judges may discharge defendants from custody, with or without bail or upon recognizance, or continue custody pending trial as the interests of justice and public safety require.

§ 935.125 Citation in place of arrest.

In any case in which a peace officer may make an arrest without a warrant, he may issue and serve a citation if he considers that the public interest does not require an arrest. The citation must briefly describe the offense charged and direct the accused to appear before the Wake Island Court at a designated time and place.

Subpart N—Motor Vehicle Code

§ 935.130 Applicability.

This subpart applies to self-propelled motor vehicles (except aircraft), including attached trailers.

§ 935.131 Right-hand side of the road.

Each person driving a motor vehicle on Wake Island shall drive on the right-hand side of the road, except where necessary to pass or on streets where a sign declaring one-way traffic is posted.

§ 935.132 Speed limits.

Each person operating a motor vehicle on Wake Island shall operate it at a speed—

(a) That is reasonable, safe, and proper, considering time of day, road and weather conditions, the kind of motor vehicle, and the proximity to persons or buildings, or both; and

(b) That does not exceed 40 miles an hour or such lesser speed limit as may be posted.

§ 935.133 Right-of-way.

(a) A pedestrian has the right-of-way over vehicular traffic when in the vicinity of a building, school, or residential area.

(b) In any case in which two motor vehicles have arrived at an uncontrolled intersection at the same time, the vehicle on the right has the right-of-way.

(c) If the driver of a motor vehicle enters an intersection with the intent of making a left turn, he shall yield the right-of-way to any other motor vehicle that has previously entered the intersection or is within hazardous proximity.

(d) When being overtaken by another motor vehicle, the driver of the slower vehicle shall move it to the right to allow safe passing.

(e) The driver of a motor vehicle shall yield the right-of-way to emergency vehicles on an emergency run.

§ 935.134 Arm signals.

(a) Any person operating a motor vehicle and making a turn or coming to a stop shall signal the turn or stop in accordance with this section.

(b) A signal for a turn or stop is made by fully extending the left arm as follows:

(1) Left turn—extend left arm horizontally.

(2) Right turn—extend left arm upward.

(3) Stop or decrease speed—extend left arm downward.

(c) A signal light or other device may be used in place of an arm signal prescribed in paragraph (b) of this section if it is visible and intelligible.

§ 935.135 Turns.

(a) Each person making a right turn in a motor vehicle shall make the approach and turn as close as practicable to the right-hand curb or road edge.

(b) Each person making a left turn in a motor vehicle shall make the approach and turn immediately to the right of the center of the road, except that on multi-lane roads of one-way traffic flow he may make the turn only from the left lane.

(c) No person may make a U-turn in a motor vehicle if he cannot be seen by the driver of any approaching vehicle within a distance of 500 feet.

(d) No person may place a vehicle in motion from a stopped position, or change from or merge into a lane of traffic, until he can safely make that movement.

§ 935.136 General operating rules.

No person may, while on Wake Island—

(a) Operate a motor vehicle in a careless or reckless manner;

(b) Operate or occupy a motor vehicle while he is under the influence of a drug or intoxicant;

(c) Consume an alcoholic beverage (including beer, ale, or wine) while he is in a motor vehicle;

(d) Operate a motor vehicle that is overloaded or is carrying more passengers than it was designed to carry;

(e) Ride on the running board, step, or outside of the body of a moving motor vehicle;

(f) Ride a moving motor vehicle with his arm or leg protruding, except when using the left arm to signal a turn;

(g) Operate a motor vehicle in a speed contest or drag race;

(h) Park a motor vehicle for a period longer than the posted time limit;

(i) Stop, park, or operate a motor vehicle in a manner that impedes or blocks traffic;

(j) Park a motor vehicle in an unposted area, except adjacent to the right-hand curb or edge of the road;

(k) Park a motor vehicle in a reserved or restricted parking area that is not assigned to him;

(l) Sound the horn of a motor vehicle, except as a warning signal;

(m) Operate a tracked or cleated vehicle in a manner that damages a paved or compacted surface;

(n) Operate any motor vehicle contrary to a posted traffic sign;

(o) Operate a motor vehicle as to follow any other vehicle closer than is safe under the circumstances;

(p) Operate a motor vehicle off of established roads, or in a cross-country manner, except when necessary in conducting business;

(q) Operate a motor vehicle at night or when raining on the traveled part of a street or road, without using operating headlights; or

(r) Operate a motor vehicle without each passenger wearing a safety belt; this shall not apply to military combat vehicles designed and fabricated without safety belts.

§ 935.137 Operating requirements.

Each person operating a motor vehicle on Wake Island shall—

(a) Turn off the highbeam headlights of his vehicle when approaching an oncoming vehicle at night; and

(b) Comply with any special traffic instructions given by an authorized person.

§ 935.138 Motor bus operation.

Each person operating a motor bus on Wake Island shall—

(a) Keep its doors closed while the bus is moving with passengers on board; and

(b) Refuse to allow any person to board or alight the bus while it is moving.

§ 935.139 Motor vehicle operator qualifications.

(a) No person may operate a privately owned motor vehicle on Wake Island unless he has an island operator's permit.

(b) The Commander may issue an operator's permit to any person who is at least 18 years of age and satisfactorily demonstrates safe-driving knowledge, ability, and physical fitness.

(c) No person may operate, on Wake Island, a motor vehicle owned by the United States unless he holds a current operator's permit issued by the United States.

(d) Each person operating a motor vehicle on Wake Island shall present his operator's permit to any peace officer, for inspection, upon request.

§ 935.140 Motor vehicle maintenance and equipment.

(a) Each person who has custody of a motor vehicle on Wake Island shall present that vehicle for periodic safety inspection, as required by the Commander.

(b) No person may operate a motor vehicle on Wake Island unless it is in a condition that the Commander considers to be safe and operable.

(c) No person may operate a motor vehicle on Wake Island unless it is equipped with an adequate and properly functioning—

(1) Horn;

(2) Wiper, for any windshield;

(3) Rear vision mirror;

(4) Headlights and taillights;

(5) Brakes;

(6) Muffler;

(7) Spark or ignition noise suppressors; and

(8) Safety belts.

(d) No person may operate a motor vehicle on Wake Island if that vehicle is equipped with a straight exhaust or muffler cutoff.

Subpart O—Registration and Island Permits

§ 935.150 Registration.

(a) Each person who has custody of any of the following on Wake Island shall register it with the Commander.

(1) A privately owned motor vehicle.

(2) A privately owned boat.

(3) An indigenous animal, military working dog, or guide dog for the blind or visually-impaired accompanying its owner.

(4) A narcotic or dangerous drug or any poison.

(b) Each person who obtains custody of an article described in paragraph (a)(4) of this section shall register it immediately upon obtaining custody. Each person who obtains custody of any other article described in paragraph (a) of this section shall register it within 10 days after obtaining custody.

§ 935.151 Island permit for boat and vehicle.

(a) No person may use a privately owned motor vehicle or boat on Wake Island unless he has an island permit for it.

(b) The operator of a motor vehicle shall display its registration number on the vehicle in a place and manner prescribed by the Commander.

§ 935.152 Activities for which permit is required.

No person may engage in any of the following on Wake Island unless he has an island permit:

(a) Any business, commercial, or recreational activity conducted for profit, including a trade, profession, calling, or occupation, or an establishment where food or beverage is prepared, offered, or sold for human consumption (except for personal or family use).

(b) The practice of any medical profession, including dentistry, surgery, osteopathy, and chiropractic.

(c) The erection of any structure or sign, including a major alteration or enlargement of an existing structure.

(d) The burial of any human or animal remains, except that fish and bait scrap may be buried at beaches where fishing is permitted, without obtaining a permit.

(e) Keeping or maintaining an indigenous animal.

(f) Importing, storing, generating, or disposing of hazardous materials.

(g) Importing of solid wastes and importing, storing, generating, treating, or disposing of hazardous wastes, as they are defined in the Solid Waste Disposal Act, as amended, 42 U.S.C. 6901 *et seq.*, and its implementing regulations (40 CFR chapter I).

Subpart P—Public Safety

§ 935.160 Emergency requirements and restrictions.

In the event of any fire, crash, search and rescue, natural disaster, national peril, radiological hazard, or other calamitous emergency—

(a) No person may impede or hamper any officer or employee of the United States or any other person who has emergency authority;

(b) No unauthorized persons may congregate at the scene of the emergency; and

(c) Each person present shall promptly obey the instructions, signals, or alarms of any peace officer, fire or crash crew, or other authorized person, and any orders of the Commander.

§ 935.161 Fire hazards.

(a) Each person engaged in a business or other activity on Wake Island shall, at his expense, provide and maintain (in an accessible location) fire extinguishers of the type, capacity, and quantity satisfactory for protecting life and property in the areas under that person's control.

(b) To minimize fire hazards, no person may store any waste or flammable fluids or materials except in a manner and at a place prescribed by the Commander.

§ 935.162 Use of special areas.

The Commander may regulate the use of designated or posted areas on Wake Island, as follows:

(a) Restricted areas—which no person may enter without permission.

(b) Prohibited activities areas—in which no person may engage in any activity that is specifically prohibited.

(c) Special purpose areas-in which no person may engage in any activity other than that for which the area is reserved.

§ 935.163 Unexploded ordnance material.

Any person who discovers any unexploded ordnance material on Wake Island shall refrain from tampering with it and shall immediately report its site to the Commander.

§ 935.164 Boat operations.

The operator of each boat used at Wake Island shall conform to the limitations on its operations as the Commander may prescribe in the public interest.

§ 935.165 Floating objects.

No person may anchor, moor, or beach any boat, barge, or other floating object on Wake Island in any location or manner other than as prescribed by the Commander.

SUBCHAPTER O—SPECIAL INVESTIGATION [RESERVED]
SUBCHAPTERS P–S [RESERVED]