

SUBCHAPTER F—ISLANDS UNDER NAVY JURISDICTION

PART 761—NAVAL DEFENSIVE SEA AREAS; NAVAL AIRSPACE RESERVATIONS, AREAS UNDER NAVY ADMINISTRATION, AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS

Subpart A—Introduction

- Sec.
761.1 Scope.
761.2 Background and general policy.
761.3 Authority.
761.4 Special provisions.
761.5 Definitions.

Subpart B—Criteria and Basic Controls

- 761.6 Criteria.
761.7 Basic controls.

Subpart C—Entry Authorization

- 761.8 General.
761.9 Entry Control Commanders.
761.10 Persons: Group authorizations.
761.11 Persons: Individual authorizations.
761.12 Ships: Group authorizations.
761.13 Ships: Individual authorizations.
761.14 Aircraft: Group authorizations.
761.15 Aircraft: Individual authorizations.
761.16 Notice of action.
761.17 Revocation.
761.18 Appeals.
761.19 Forms.

Subpart D—Additional Instructions

- 761.20 Additional regulations governing persons and vessels in Naval Defensive Sea Areas.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 5031, 6011, 18 U.S.C. 2152. The text of part 761 contains additional references, including Executive Orders.

SOURCE: 28 FR 13778, Dec. 18, 1963, unless otherwise noted.

Subpart A—Introduction

§ 761.1 Scope.

(a) This part provides regulations governing the entry of persons, ships, and aircraft into:

(1) Naval Defensive Sea Areas and Naval Airspace Reservations established by Executive order of the President (see § 761.3(a)).

(2) Areas placed under the Secretary of the Navy for administrative purposes by Executive order of the President (see § 761.3(b)).

(3) The Trust Territory of the Pacific Islands (see § 761.3(c)).

(b) The entry authorizations issued under the authority of this part do not supersede or eliminate the need for visas or other clearances or permits required by other law or regulation.

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10008, June 18, 1970]

§ 761.2 Background and general policy.

(a) Certain areas, due to their strategic nature or for purposes of defense, have been subjected to restrictions regarding the free entry of persons, ships, and aircraft. Free entry into the areas listed and defined in this part, and military installations contiguous to or within the boundaries of defense areas, is subject to control as provided for by Executive order or other regulation. The object of controls over entry into naval defensive sea areas, naval airspace reservations, administrative areas, and the Trust Territory of the Pacific Islands, is to provide for the protection of military installations as well as other facilities, including the personnel, property, and equipment assigned to or located therein. Persons, ships, and aircraft are excluded unless and until they qualify for admission under the applicable Executive order or regulation.

(b) The control of entry into or movement within defense areas by persons, ships, or aircraft will be exercised so as to fully protect the physical security of, and insure the full effectiveness of, bases, stations, facilities and other installations within or contiguous to defense areas. However, unnecessary interference with the free movement of persons, ships, and aircraft is to be avoided.

(c) This part will be administered so as to provide for the prompt processing of all applications and to insure uniformity of interpretation and application, insofar as changing conditions permit.

(d) In cases of doubt, the determination will be made in favor of the course of action which will best serve the interests of the United States and national defense as distinguished from the private interests of an individual or group.

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10008, June 18, 1970]

§ 761.3 Authority.

(a) *Naval Defensive Sea Areas and Naval Airspace Reservations.* By Executive orders, as amended, the President has reserved, set aside, and established the following Naval Defensive Sea Areas and Naval Airspace Reservations under the control of the Secretary of the Navy. Incorporated therein are provisions for the exercise of control by the Secretary over the entry of persons, ships, and aircraft into the areas so described. (See § 761.4(b) for delineation of areas where entry controls are suspended.)

(1) *Atlantic areas.* Guantanamo Bay Naval Defensive Sea Area; Guantanamo Bay Naval Airspace Reservation: Executive Order 8749 of May 1, 1941 (6 FR 2252; 3 CFR, 1943 Cum. Supp., p. 931).

(2) *Pacific areas.* (i) Honolulu Defensive Sea Area: Executive Order 8987 of December 20, 1941 (6 FR 6675; 3 CFR, 1943 Cum. Supp., p. 1048).

(ii) Kaneohe Bay Naval Defensive Sea Area; Kaneohe Bay Naval Airspace Reservation: Executive Order 8681 of February 14, 1941 (6 FR 1014; 3 CFR, 1943 Cum. Supp., p. 893).

(iii) Pearl Harbor Defensive Sea Area: Executive Order 8143 of May 26, 1939 (4 FR 2179; 3 CFR, 1943 Cum. Supp., p. 504).

(iv) Johnston Island Naval Defensive Sea Area; Johnston Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(v) Kingman Reef Naval Defensive Sea Area; Kingman Reef Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2,

1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(vi) Midway Island Naval Defensive Sea Area; Midway Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(vii) Wake Island Naval Defensive Sea Area; Wake Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(viii) Kiska Island Naval Defensive Sea Area; Kiska Island Naval Airspace Reservation: Executive Order 8680 of February 14, 1941 (6 FR 1014; 3 CFR 1943 Cum. Supp., p. 892) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919).

(ix) Kodiak Naval Defensive Sea Area: Executive Order 8717 of March 22, 1941 (6 FR 1621; 3 CFR, 1943 Cum. Supp., p. 915). Kodiak Naval Airspace Reservation: Executive Order 8597 of November 18, 1940 (5 FR 4559; 3 CFR, 1943 Cum. Supp., p. 837) as amended by Executive Order 9720 of May 8, 1946 (11 FR 5105; 3 CFR, 1943-1948 Comp., p. 527).

(x) Unalaska Island Naval Defensive Sea Area, Unalaska Island Naval Airspace Reservation: Executive Order 8680 of February 14, 1941 (6 FR 1014; 3 CFR, 1943 Cum. Supp., p. 892) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919). See § 761.4(d) for delineation of areas where entry controls are suspended.

(b) *Administrative areas.* By Executive orders, as amended, the President has reserved, set aside, and placed under the control and jurisdiction of the Secretary of the Navy for administrative purposes the following named areas including their appurtenant reefs and territorial waters:

(1) Johnston Island—Executive Order 6935 of December 29, 1934 as amended by Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(2) Kingman Reef—Executive Order 6935 of December 29, 1934 as amended by Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(3) Midway Island—Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(4) Sand Island—Executive Order 6935 of December 29, 1934 as amended by Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(c) *Trust Territory of the Pacific Islands*. The Trust Territory of the Pacific Islands is a strategic area administered by the United States under the provisions of a trusteeship agreement with the United Nations. Under Executive Order 11021 of May 7, 1962 (27 FR 4409; 3 CFR, 1959–1963 Comp., p. 600), the Secretary of the Interior is charged with responsibility for administration of the civil government of the Trust Territory of the Pacific Islands. Under July 1, 1963 amendment two agreements effective July 1, 1951 and July 1, 1962 between the Department of the Navy and the Department of the Interior concerning responsibility for administration of the Government of the Trust Territory, the entry of individuals, ships and aircraft into the Trust Territory (other than areas under the control of the Department of the Army (Kwajalein Atoll) and of the Defense Nuclear Agency (Eniwetok Atoll) see § 761.4) is controlled by the High Commissioner of the Trust Territory and the Department of the Navy as follows:

(1) Entry of U.S. citizens and nationals and citizens of the Trust Territory, into areas of the Trust Territory other than those areas under control of the Department of the Army and the Defense Nuclear Agency as outlined above, shall be controlled by the High Commissioner.

(2) All other persons: Applications for entry into the Trust Territory except for those areas under control of the Department of the Army or of the Defense Nuclear Agency, of all persons who are not U.S. citizens, U.S. nationals, or who are not citizens of the Trust Terri-

tory, shall be made to the High Commissioner for processing in accordance with the laws and regulations of the Trust Territory: *Provided*, That prior to the issuance of an authorization to enter the Trust Territory, the High Commissioner shall provide the Department of the Navy in all cases (with the exception of alien individuals who possess a valid U.S. visa and seek admission to the Trust Territory for a period of 30 days or less for the purpose of tourism) information on the applicants for its consideration and comment, granting thereby the Department of the Navy the right to object to the issuance of an authorization.

(3) Ships and aircraft: (i) The entry of ships and aircraft, other than U.S. public ships and aircraft, documented under either the laws of the United States or the laws of the Trust Territory into areas of the Trust Territory, excepting those areas where entry is controlled by the Department of the Army (Kwajalein Atoll) and the Defense Nuclear Agency (Eniwetok Atoll), shall be controlled solely by the High Commissioner.

(ii) Applications for entry into the Trust Territory, except for those areas under military control, of ships and aircraft not documented under the laws of the United States or the laws of the Trust Territory, shall be made to the High Commissioner for processing in accordance with the laws and regulations of the Trust Territory: *Provided*, That prior to the issuance of an authorization to enter the Trust Territory, the High Commissioner shall provide the Department of the Navy in all cases with information on the applicants for its consideration and comment, granting thereby the right of the Department of the Navy to object to the issuance of an authorization.

(d) [Reserved]

(e) *Exercise of authority*. The authority of the Secretary of the Navy to control entry of ships, planes, and persons into the areas listed is exercised through the Chief of Naval Operations and certain of his subordinates as prescribed in this part.

(f) *Penalties*. Penalties are provided by law: (1) For violations of orders or regulations governing persons or ships within the limits of defensive sea areas

Department of the Navy, DoD

§ 761.5

(62 Stat. 799; 18 U.S.C. 2152); (2) for entering military, naval or Coast Guard property for prohibited purposes or after removal or exclusion therefrom by proper authority (62 Stat. 765; 18 U.S.C. 1382); (3) for violation of regulations imposed for the protection or security of military or naval aircraft, airports, air facilities, vessels, harbors, ports, piers, waterfront facilities, bases, forts, posts, laboratories, stations, vehicles, equipment, explosives, or other property or places subject to the jurisdiction, administration, or in the custody of the Department of Defense, any department or agency of which said department or agency consists, or any officer of employee of said department or agency (sec. 21 of the Internal Security Act of 1950 (50 U.S.C. 797) and Department of Defense Directive 5200.8 of 20 August 1954 (19 FR 5446)); and (4) for knowingly and willfully making a false or misleading statement or representation in any matter within the jurisdiction of any department or agency of the United States (18 U.S.C. 1001).

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10008, June 18, 1970; 36 FR 21889, Nov. 17, 1971; 41 FR 28957, July 14, 1976]

§ 761.4 Special provisions.

(a) Entry into islands in the Kwajalein Atoll under military jurisdiction is controlled by the Department of the Army. Inquiries concerning entries into islands under military control in the Kwajalein Atoll should be directed to: National Range Commander, U.S. Army Safeguard System Command, ATTN: SSC-R, P.O. Box 1500, Huntsville, AL 35807.

(b) Entry into Eniwetok Atoll is controlled by the Defense Nuclear Agency. Inquiries concerning entries into Eniwetok Atoll should be directed to: Commander, Field Command, Defense Nuclear Agency, Kirtland Air Force Base, NM 87115.

(c) Entry into Johnston Atoll is controlled by the Defense Nuclear Agency. Inquiries concerning entries into Johnston Atoll should be directed to: Commander, Johnston Atoll (FCDNA), APO San Francisco, CA 96305.

(d) *Suspension of restrictions.* Restrictions imposed under the authority of the above cited Executive Orders on

entry into the following Naval Defensive Sea Areas and Naval Airspace Reservations and Administrative Areas have been suspended subject to reinstatement without notice at any time when the purposes of national defense may require.

(1) All Naval Airspace Reservations, except the Guantanamo Bay Naval Airspace Reservation

(2) Honolulu Defensive Sea Area.

(3) Kiska Island Naval Defensive Sea Area.

(4) Kodiak Island Naval Defensive Sea Area.

(5) Unalaska Island Naval Defensive Sea Area.

(6) Wake Island Naval Defensive Sea Area except for entry of foreign flag ships and foreign nationals.

(7) The portion of Kaneohe Defensive Sea Area lying beyond a 500 yard buffer zone around the perimeter of the Kaneohe Marine Corps Air Station (Mokapu Peninsula) and eastward therefrom to Kapoho Point, Oahu.

(e) Suspension of restrictions on entry into a naval airspace reservation, naval defensive sea area, or naval administrative area, does not affect the authority of a commanding officer or other appropriate commander to control entry into or passage through any base, station, or other installation or area, including port or harbor facilities under Navy control.

[41 FR 28957, July 14, 1976]

§ 761.5 Definitions.

(a) *Defense area.* A naval defensive sea area, naval airspace reservation, or naval administrative area established by Executive order of the President.

(b) *Department of Defense.* The Department of Defense, including the Departments of the Army, Navy, and Air Force.

(c) *Entry authorization.* A document which authorizes a ship, aircraft, or person to enter a defense area.

(d) *Entry Control Commander.* A commander empowered to issue entry authorizations for one or more defense areas (see § 761.9).

(e) *Excluded person.* A person who does not hold a currently valid entry authorization for the area concerned and who has been notified by an Entry Control Commander that authority for

him to enter any defense area has been denied, suspended or revoked.

(f) *Foreign nationals.* Persons who are not citizens or nationals of the United States.

(g) *Military installation.* A military (Army, Navy, Air Force, Marine Corps, and/or Coast Guard) activity ashore, having a commanding officer, and located in an area having fixed boundaries, within which all persons are subject to military control and to the immediate authority of a commanding officer.

(h) *Public vessel or aircraft.* A ship or aircraft owned by or belonging to a government and not engaged in commercial activity.

(i) *Territorial sea—(1) Trust Territory.* In accordance with title 19, section 101(3), of the Trust Territory Code “* * * that part of the sea comprehended within the envelope of all arcs of circles having a radius of three marine miles drawn from all points of the barrier reef, fringing reef, or other reef system of the Trust Territory, measured from the low water line, or, in the absence of such reef system, the distance to be measured from the low water line of any island, islet, atoll, reef, or rocks within the jurisdiction of the Trust Territory.”

(2) *Other areas.* That part of the sea included within the envelope of all arcs of circles having a radius of three marine miles with centers on the low water line of the coast. For the purpose of this definition, the term “coast” includes the coasts of islands, islets, rocks, atolls, reefs and other areas of land permanently above the high water mark.

(j) *Trust Territory Registry.* Registration of a ship or aircraft in accordance with the laws of the Trust Territory.

(k) *U.S. Registry.* Registration of a ship or aircraft in accordance with the laws and regulations of the United States.

(l) *U.S. Armed Forces.* Military personnel of the Department of Defense, the Departments of the Army, Navy, Air Force, and the United States Coast Guard.

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10009, June 18, 1970; 41 FR 28958, July 14, 1976]

Subpart B—Criteria and Basic Controls

§ 761.6 Criteria.

(a) *General.* (1) Entry authorizations may be issued only after an Entry Control Commander, or a duly authorized subordinate acting in his behalf, has determined that the presence of the person, ship, or aircraft will not, under existing or reasonably foreseeable future conditions, endanger, place an undue burden upon, or otherwise jeopardize the efficiency, capability, or effectiveness of any military installation located within or contiguous to a defense area. Factors to be considered shall include, but not be limited to, the true purpose of the entry, the personal history, character and present or past associates of the individuals involved, the possible burdens or threats to the defense facilities which the presence of the ship, aircraft or the individual or individuals involved impose or might reasonably be expected to impose on the related base complex.

(2) Requests for entry authorizations will be evaluated and adjudged as to whether the entry at the time and for the purpose stated will or will not be inimical to the purposes of national defense.

(b) *Adverse.* Substantial evidence of any of the following shall preclude the granting of entry authorization except with the specific approval of the Chief of Naval Operations in each case:

(1) Prior noncompliance with entry control regulations or failure to observe terms under which any entry authorization may have been granted;¹

(2) Willfully furnishing false, incomplete, or misleading information in an application for an entry authorization;¹

(3) Advocacy of the overthrow or alteration of the Government of the United States by unconstitutional means;

(4) Commission of, or attempt or preparation to commit, an act of espionage, sabotage, sedition, or treason, or conspiring with or aiding or abetting another to commit such an act;

¹The criteria so marked are applicable only to those applications concerning entry into areas under military cognizance.

(5) Performing, or attempting to perform, duties, or otherwise acting so as to serve the interest of another government to the detriment of the United States;

(6) Deliberate unauthorized disclosure of classified defense information;

(7) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means;

(8) Serious mental irresponsibility evidenced by having been adjudged insane, or mentally irresponsible, or an incompetent, or a chronic alcoholic, or treated for serious mental or neurological disorders or for chronic alcoholism, without evidence of cure;¹

(9) Conviction of any of the following offenses under circumstances indicative of a criminal tendency potentially dangerous to the security of a strategic area containing military establishments; arson, unlawful trafficking in drugs, murder, kidnaping, blackmail, or sex offenses involving minors or perversion.

(10) Chronic alcoholism or addiction to the use of narcotic drugs without adequate evidence of rehabilitation;¹

(11) Illegal presence in the United States, its territories or possessions, having been finally subject to deportation order, or voluntary departure in lieu of deportation order, by the United States Immigration and Naturalization Service;¹

(12) Being the subject of proceedings for deportation or voluntary departure in lieu of deportation for any reasons which have not been determined in the applicant's favor;¹

(13) Conviction of larceny of property of the United States, willful injury to or destruction of property of the United States, fraudulent enlistment, impersonation of a commissioned officer of the United States or any state or territory thereof, or any offense involving moral turpitude, except offenses, which, in the jurisdiction within which the conviction was obtained, are punishable by imprisonment for not more than one year or a fine of not more than one thousand dollars.¹

(c) *Aliens.* (1) Entry of aliens for employment or residence in an area entirely within the borders of a defense area is not authorized except when such entry would serve the interests of National Defense, and then only for specified periods and under prescribed conditions.

(2) Entry of aliens for any purpose into areas over which the United States exercises sovereignty is further subject to requirements imposed by law for the obtaining of a United States visa. Naval authorization for entry into areas covered by this part will not be issued to foreign nationals for purposes, places, or periods of time in excess of those stipulated in the visa.

(3) Alien spouses and bona fide dependents of U.S. citizen employees of the United States may, if otherwise qualified, be granted entry authorization so long as the U.S. citizen sponsor or principal remains on duty or resident within the defense area.

(d) *Renewals.* Entry authorizations having been granted and utilized may be extended or renewed upon request at the expiration of the period for which the entry was originally authorized or extended, provided the justification for remaining in the area or for making a reentry meets the criteria set forth in this part. It shall be the responsibility of every applicant to depart the defense area for which entry was authorized upon expiration of the time prescribed in the authorization, unless such authorization has been extended or renewed. Failure to comply herewith will be considered as evidence of violation

¹The criteria so marked are applicable only to those applications concerning entry into areas under military cognizance.

of this part and may result in denial of future authorizations.

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971; 41 FR 28958, July 14, 1976]

§ 761.7 Basic controls.

(a) *General.* Except for such persons, ship, or aircraft as are issued an authorization to enter by an Entry Control Commander:

(1) No person, except persons aboard public vessels or aircraft of the United States, shall enter any defense area.

(2) No vessel or other craft, except public vessels of the United States shall enter any naval defensive sea area or other defense area.

(3) No aircraft, except public aircraft of the United States, shall be navigated within any naval airspace reservation of the airspace over other defense areas.

(b) *Excluded persons—(1) Entry prohibited.* Excluded persons, as defined in § 761.5(e), are prohibited from entering any defense area. In a bona fide emergency which requires an excluded person's presence in or transit through a military installation which is also a defense area, the commanding officer of the installation may grant permission to enter or transit subject to such restrictions as may be imposed by regulation or which may, in his discretion, be required.

(2) *Carrying prohibited.* Except in a bona fide emergency and after being authorized by the appropriate local authority, no vessel or aircraft, except public vessels and aircraft of the United States, shall enter into or be navigated within any defense area while carrying any excluded person, as defined in this part, as passenger, officer or crew member.

(c) *Control of violators.* No commanding officer of a military installation shall permit any ship or aircraft which has entered the limits of his command by passing through a defense area without authorization to land, except in emergency, or, if permitted to land, to disembark passengers or cargo except as authorized by the appropriate Entry Control Commander. Commanding officers will take appropriate action to apprehend violators who come within their jurisdiction and request disposi-

tion instructions from the appropriate Entry Control Commander.

(d) *Trust Territory.* An authorization from the High Commissioner is required for all persons desiring to enter the Trust Territory, except for those areas under military jurisdiction where entry is controlled by the Department of the Army (Kwajalein Atoll) and the Defense Nuclear Agency (Eniwetok Atoll).

(e) *Military areas.* Entries authorized under this Instruction do not affect the authority of a commanding officer or other appropriate commander to impose and enforce proper regulations pertaining to movement into or within naval stations or other military installations.

(f) *Waiver prohibited.* No officer of the U.S. Armed Forces, except as authorized in writing by the Chief of Naval Operations, has authority to waive the requirements of this part, and any waiver must be in writing and signed by an authorized person.

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971; 41 FR 28958, July 14, 1976]

Subpart C—Entry Authorization

§ 761.8 General.

(a) As indicated in § 761.7(a), certain persons, ships, and aircraft must be specifically authorized under the provisions of this part to enter defense areas.

(b) When entering or transiting a defense area each person, ship, or aircraft must have a valid authorization or satisfactory evidence thereof.

§ 761.9 Entry Control Commanders.

The following commanders are designated Entry Control Commanders with authority to approve or disapprove individual entry authorizations for persons, ships, or aircraft as indicated (Commander Seventeenth Coast Guard District has been designated an Entry Control Commander by the authority of the Commandant, U.S. Coast Guard and Commander, Western Area, U.S. Coast Guard);

(a) *Chief of Naval Operations.* Authorization for all persons, ships, or aircraft to enter all defense areas.

(b) *Commander in Chief, U.S. Atlantic Fleet.* Authorization for all persons, ships, or aircraft to enter defense areas in the Atlantic.

(c) *Commander in Chief, U.S. Pacific Fleet.* Authorization for all persons, ships, or aircraft to enter defense areas in the Pacific.

(d) *Commander U.S. Naval Forces Caribbean.* Authorization for all persons, ships, and aircraft to enter the Guantanamo Bay Naval Defensive Sea Area and the Guantanamo Naval Airspace Reservation. (This authority delegated to Commander U.S. Naval Base, Guantanamo Bay.)

(e) *Commander U.S. Naval Base, Guantanamo Bay.* Authorization for all persons, ships, and aircraft to enter the Guantanamo Bay Naval Defensive Sea Area and the Guantanamo Naval Airspace Reservation.

(f) *Commander Third Fleet.* Authorization for U.S. citizens and U.S. registered private vessels to enter Midway Island, Kingman Reef, Kaneohe Bay Naval Defensive Sea Area, Pearl Harbor Defensive Sea Area and Filipino workers employed by U.S. contractors to enter Wake Island.

(g) *Commander U.S. Naval Forces, Marianas.* Authorization in conjunction with the High Commissioner, for non-U.S. citizens, ships, or aircraft documented under laws other than those of the United States or the Trust Territory to enter those portions of the Trust Territory where entry is not controlled by the Department of the Army or the Defense Nuclear Agency.

(h) *Senior naval commander in defense area.* Emergency authorization for persons, ships, or aircraft in cases of emergency or distress. In all cases the Chief of Naval Operations, and as appropriate, the Commander in Chief, U.S. Atlantic Fleet or the Commander in Chief, U.S. Pacific Fleet, and other interested commands, shall be informed immediately of the nature of the emergency, and action taken.

(i) *U.S. Coast Guard.* The U.S. Coast Guard regulates the movement of shipping within the Honolulu Harbor under the authority of Executive Orders 10173 and 10289; such shipping is considered to be under U.S. authorized supervision within the meaning of Executive Order 8987. The Commandant, Fourteenth

Naval District, as representative of the Secretary of the Navy, retains responsibility for security of the Honolulu Defensive Sea Area, as required by naval interest, and, as such, issues amplifying instructions relating to the Honolulu Defensive Sea Area.

[41 FR 28958, July 14, 1976]

§ 761.10 Persons: Group authorizations.

Persons in the following categories, except those persons who have been denied individual authorization or have had a prior authorization revoked, may enter the defense areas indicated without individual authorization:

(a) Persons aboard U.S. public vessels or aircraft entering a Naval Defensive Sea Area or a Naval Airspace Reservation.

(b) Military members of the U.S. Armed Forces or U.S. civil service employees of the Department of Defense when traveling on official orders.

(c) U.S. ambassadors, cabinet members, elected U.S. Government officers and U.S. citizen civil service employees of the U.S. Government traveling on official orders on U.S. Government business may enter defense areas as required by their orders.

(d) Dependents of military members of the U.S. Armed Forces and U.S. citizen dependents of U.S. civil service employees traveling on official orders and entering for purposes of joining a principal permanently stationed in an area covered by this part.

(e) U.S. Navy Technicians, U.S. Army Contract Technicians, or U.S. Air Force Contract Technicians, who are traveling on official (does not include invitational) travel orders on U.S. Government business, may enter defense areas as specifically required by such orders.

(f) [Reserved]

(g) Individuals on board any foreign public vessel or aircraft which has been granted diplomatic or other official U.S. Government authorization to enter an area covered by this part.

(h) Through passengers and bona fide regularly employed crew members, unless otherwise excluded, on nonpublic vessels authorized to enter areas covered by this part. This does not include an authorization to disembark at a

port contiguous to or within the areas covered in this part. Application for authorization to disembark may be submitted to an Entry Control Commander having jurisdiction over the particular port.

(i) Through passengers and bona fide regularly employed crew members, unless otherwise excluded, on nonpublic aircraft authorized to enter areas covered by this part. Such persons are subject to local regulations governing entry into or movement within military air stations or facilities. Application for authorization to disembark may be submitted to an Entry Control Commander having jurisdiction over the air facility.

(j) U.S. citizen news correspondents and photographers when properly accredited by the Department of Defense to enter areas covered by this part except that special authorization is required to enter the restricted areas listed in § 761.4(a).

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971]

§ 761.11 Persons: Individual authorizations.

(a) *Application; filing.* Applications for authorization to enter defense areas shall be filed with one of the following:

- (1) Chief of Naval Operations.
- (2) Commander in Chief, U.S. Atlantic Fleet.
- (3) Commander in Chief, U.S. Pacific Fleet.
- (4) Any Naval Sea Frontier Commander.
- (5) Any Naval Fleet or Force Commander.
- (6) Any Naval District Commandant.
- (7) Any Naval Attache. The Commander or Attache with whom the application is filed is responsible for taking such action on the application as he may be empowered to do or for forwarding the application to the nearest Entry Control Commander authorized by this part to take action thereon. Applications received in the United States and those received indicating that the applicant has resided in the United States for the major portion of ten years immediately prior to date of request will normally be forwarded to the Chief of Naval Operations for action. In all cases where the forwarding

activity has information regarding the applicant or his employer, appropriate comment and/or recommendation for disposition will be included in the forwarding letter.

(b) *Form.* (1) Applications for entry authorizations will be made on the standard form Statement of Personal History, DD 398, which is available at most military installations. In addition to the information required by the form, an entry application shall include the following additional information under Item 20, "Remarks":

21. Purpose of proposed visit: (Detailed statement including names of principal persons, firms, or establishments to be visited)
22. Proposed duration of visit:
23. Estimated date of arrival:
24. Address to which authorization should be mailed:

In the event that a DD 398 form is not available, a locally produced form containing identical information including the certification and signature of applicant and witness may be utilized.

(2) Incomplete forms will be returned for completion.

(3) When time is of the essence, emergency applications may be forwarded by message to the appropriate Entry Control Commander. Such messages shall include the following:

- (i) Name of applicant.
- (ii) Date and place of birth.
- (iii) Citizenship.
- (iv) Residence for last ten (10) years.
- (v) Employers and their addresses for last ten (10) years.
- (vi) Results of Local Agency Check, if pertinent.
- (vii) Place to be entered and date of entry.
- (viii) Purpose of entry and duration of stay.
- (ix) Comments and/or recommendations of forwarding officer as appropriate.
- (x) A statement that a completed DD 398 or appropriate substitute has been mailed prior to the sending of the message.

(c) *Processing.* The Entry Control Commander empowered to issue entry authorizations shall upon receipt of an application take the following action:

- (1) Initiate or conduct such investigation as may be required to establish

facts upon which to make a determination that the entry of the applicant at the time and for the purpose indicated is or is not in accordance with the criteria set forth in § 761.6.

(2) Request additional information from the applicant if required, or

(3) Issue an entry authorization as requested or modified as circumstances require, or

(4) Deny the request and advise the applicant of his right to appeal, or,

(5) Forward the application to the next superior in command together with a statement of the investigation conducted and the reason for forwarding and comments or recommendations as appropriate.

(d) *Authorizations.* Entry authorizations will state the purpose for which the entry is authorized and such other information and conditions as are pertinent to the particular authorization. Authorizations to enter and re-enter may be issued to resident U.S. citizens and be valid for a specified time not to exceed two years. Authorizations may be issued to U.S. citizens residing abroad and to aliens to enter and re-enter for a specified period of time required to accomplish the purpose for which the authorization was issued not to exceed one year.

[28 FR 13778, Dec. 18, 1963, as amended at 41 FR 28958, July 14, 1976]

§ 761.12 Ships: Group authorizations.

Ships or other craft in the following categories, except those ships which have been denied individual authorization or have had a prior authorization revoked, may enter the defense areas indicated without individual authorizations:

(a) U.S. Public vessels, to enter all defense areas.

(b) U.S. private vessels which are: (1) Under charter to the Department of Defense (including the Military Sealift Command), or (2) operating under a contract or charter with the Department of Defense providing for the employment of such vessels, or (3) routed by a Naval Control of Shipping Office, or (4) employed exclusively in support of and in connection with a Department of Defense construction, maintenance, or repair contract and whose crews carry individual entry clear-

ances, to enter defense areas as authorized by controlling Defense Department agency.

(c) [Reserved]

(d) Privately owned local craft, registered with and licensed by appropriate local U.S. Government authorities, and owned and operated by local inhabitants who have been granted an authorization to enter the local defense area at the discretion of the local commanders.

(e) Foreign flag ships traveling on diplomatic or other special clearance or for which special arrangements have been made under international agreements or treaties.

(f) Ships operating under a group authorization issued by the Chief of Naval Operations.

(g) Ships in distress, subject to local clearances and control by senior officer present.

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971]

§ 761.13 Ships: Individual authorizations.

(a) *Applications; form; filing.* Applications for authorization to navigate ships within the limits of defense areas shall be filed with the cognizant Entry Control Commander by letter or telegram including the following information and any additional information that may be relative to the proposed operation:

(1) Name of ship.

(2) Place of registry and registry number.

(3) Name, nationality and address of operator.

(4) Name, nationality and address of owner.

(5) Gross tonnage of ship.

(6) Nationality and numbers of officers and crew (include crewlist when practicable).

(7) Number of passengers (include list when practicable).

(8) Last port of call prior to entry into area for which clearance is requested.

(9) Purpose of visit.

(10) Proposed date of entry and estimated duration of stay.

(b) *Processing.* Authorization for single entries or for multiple entries for a period not to exceed one year may be

granted or denied by an Entry Control Commander. Authorizations for multiple entries for a period to exceed one year or for special group entries must be forwarded to the Chief of Naval Operations with appropriate comments and recommendations.

§ 761.14 Aircraft: Group authorizations.

Aircraft in the following categories, except those aircraft which have been denied individual authorization or have had a prior authorization revoked, may enter the defense areas indicated without individual authorization:

(a) U.S. public aircraft to enter all defense areas.

(b) U.S. private aircraft which are under charter to the Department of Defense (including the Military Airlift Command), or operating under a contract with the Department of Defense providing for the employment of such aircraft to overfly U.S. island positions to enter defense areas as authorized by controlling Defense Department agency. If landing at U.S. military facilities is required, see § 761.15(a).

(c) Foreign flag aircraft for which special arrangements have been made under international agreements or treaties.

(d) Aircraft operated by companies authorized to utilize naval facilities in defense areas for regular commercial activity, to enter defense areas associated therewith. For landing clearance at U.S. military facilities, see § 761.15(a).

(e) Any aircraft in distress, subject to local clearance and control by senior officer present.

[41 FR 28958, July 14, 1976]

§ 761.15 Aircraft: Individual authorizations.

(a) *Special procedures.* In addition to the entry authorization to enter or navigate within the defense area concerned, certain special procedures must be followed by aircraft:

(1) If landing at U.S. naval aviation facilities, an Aviation Facility License must be obtained, in accordance with Secretary of the Navy Instruction 3770.1B, Use of Department of the Navy aviation facilities by other than United States Department of Defense aircraft.

(2) If landing at U.S. Air Force aviation facilities, a Civil Aircraft Landing Permit must be obtained, in accordance with Department of the Airforce Regulation 55-20, Use of United States Air Force installations by other than United States Department of Defense aircraft.

(3) Foreign public aircraft must obtain diplomatic clearance or clearance under applicable special agreements or treaties.

(b) *Application; Form; Filing.* Applications for authorization to navigate aircraft within the limits of defense areas shall be made by letter or telegram addressed to the appropriate entry control commander as indicated in § 761.9 with information copies to the Chief of Naval Operations, Commander in Chief, U.S. Atlantic (or Pacific) Fleet, as appropriate, and other local commanders who are known to be concerned. Applications shall include the following:

(1) Type and serial number of aircraft (the number of aircraft in flight if a mass movement is involved), national-ity and name of registered owner.

(2) Name and rank of senior pilot.

* (3) Number in crew.

* (4) Number of passengers and whether military or civilian; include name (and rank) of distinguished passengers.

(5) Purpose of flight.

(6) Plan of flight route, including:

(i) Point of origin of flight and its destination.

(ii) Estimated date and times of arrival and departure at all airspaces covered by this part 761 including stops within the Trust Territory, when pertinent.

(7) Radio call signs of aircraft and radio frequencies available.

(8) Whether cameras are to be carried and whether they will be used.

* (9) Whether arms are to be carried.

* (10) Whether authorization to land as indicated in § 761.15(a) has been obtained.

NOTE: Information on those items marked with an asterisk (*) need not be reported when the aircraft will only overfly the areas covered by this part.

(c) *Processing.* Authorization for individual entries or for multiple entries for a period not to exceed three months

*See "Note" to this paragraph.

Department of the Navy, DoD

§ 761.19

may be granted by an Entry Control Commander. Authorizations for multiple entries over a period to exceed three months and applications for group authorizations must be forwarded to the Chief of Naval Operations with appropriate comments and recommendations.

[41 FR 28958, July 14, 1976]

§ 761.16 Notice of action.

All applicants will be kept advised of action being taken relative to the processing of applications. Individuals whose applications cannot be processed promptly (usually within ten working days) or whose applications must be forwarded to another office for processing will be notified of the anticipated delay and advised of the approximate time when action may be expected to be taken. Under no circumstances will a notice of disapproval include a statement of the reason therefor. Copies of all notices will be distributed to commands and Entry Control Commanders concerned. Copies of all notices of disapproval will be mailed to the Chief of Naval Operations concurrently with the mailing to the applicant.

§ 761.17 Revocation.

Entry authorizations will be revoked only by an Entry Control Commander upon being advised of the discovery of information which would have been ground for denial of the initial request. Such a revocation will be confirmed in writing to the holder of an entry authorization. No reason for revocation of the entry authorization will be given. When an entry authorization is revoked, a one-way permit will be issued as appropriate, to permit the ship, aircraft, or person to transit the defense area in order to depart from a contiguous area.

§ 761.18 Appeals.

(a) Appeals may be filed with the Entry Control Commander who issued the denial or revocation. It shall contain a complete statement of the purpose of the proposed entry and a statement of reasons why the entry should be authorized, including a showing that the entry will be consistent with the purposes of national defense.

(b) Appeal letters shall be forwarded promptly to the next superior Entry Control Commander with an endorsement setting forth the reasons for the denial or revocation and a recommendation as to the action to be taken by the superior.

(c) The superior may act on the appeal and notify the applicant of the decision, or he may forward the appeal to the next superior and notify the applicant of this referral.

[28 FR 13778, Dec. 18, 1963, as amended at 41 FR 28959, July 14, 1976]

§ 761.19 Forms.

The following forms shall be used in connection with the processing of applications for authorization to enter defense areas and for revocation of authorizations as indicated:

(a) *Application.* Statement of Personal History (Form DD 398, Stock Number 0102-004-220) may be obtained from NAVPUBFORMCEN, Building 26, 5801 Tabor Ave., Philadelphia, PA 19120.

(b) *Entry authorization.* (1) Defense Area Entry Authorization (OPNAVForm 4600-2 (Rev. 5-59) may be obtained from Office of the Chief of Naval Operations (OP-09B33), Navy Department, Washington, DC 20350.

(2) Letter or message authorization.

(c) *Disapproval of request for entry authorization.*

MY DEAR -----: Your application of ----- has been reviewed and we regret to advise you that the requested authorization for ----- to enter ----- is not granted as the entry at this time for the purpose stated is not considered to be in the interest of national defense.

The application may be resubmitted again in six months at which time it will be reconsidered in the light of then existing circumstances.

If you desire to appeal this decision, you may do so by submitting a letter to this office setting forth in full why you consider that the granting of the application would be in the interest of national defense and any other information that you believe will be of value of this person considering the appeal. Your letter will be forwarded to the appropriate authority for review and you will be advised in due course of his determination.

Sincerely yours,

(d) *Revocation of entry authorization.*

MY DEAR -----: This is to notify you that entry authorization to enter

§ 761.20

32 CFR Ch. VI (7-1-98 Edition)

_____ granted by (issuing activity) on _____ is hereby revoked effective this date.

Sincerely yours,

[41 FR 28959, July 14, 1976]

Subpart D—Additional Instructions

§ 761.20 Additional regulations governing persons and vessels in Naval Defensive Sea Areas.

(a) By virtue of the authority vested in the President by section 44 of the United States Criminal Code, as amended and reenacted in 18 U.S.C. 2152, the President has prescribed the following additional regulations in Executive Order 9275 of November 23, 1942 (7 FR 9767; 1943 Cum. Supp. p. 1227) to govern persons and vessels within the limits of defensive sea areas theretofore or thereafter established.

(1) No person shall have in his possession within the limits of any defensive sea area, any camera or other device for taking pictures, or any film, plate or other device upon or out of which a photographic imprint, negative or positive, can be made, except in the performance of official duty or employment in connection with the national defense, or when authorized pursuant to the provisions of the Act approved June 25, 1942 (Pub. L. 627, 77th Congress), as amended (50 U.S.C. App. 781-785), and the regulations promulgated thereunder (7 FR 7307; 32 CFR 765.19(b)).

(2) It shall be the duty of the master or officer in charge of any vessel to take custody of and safeguard all cameras or other devices for taking pictures, or film, plate or other device upon or out of which a photographic imprint, positive or negative, can be made, the possession of which is prohibited by Executive Order 9275, from any person, prior to the time any vessel enters any defensive sea area or upon the boarding by any person of any vessel while within a defensive sea area, and to retain custody thereof until such vessel is outside the defensive sea area or the person is about to disembark.

(3) There shall be prominently displayed on board all vessels, except public war vessels of the United States manned by personnel in the naval service, a printed notice containing the

regulations prescribed in Executive Order 9275.

(4) Any person violating section 1 of Executive Order 9275 (restated in paragraph (a)(1) of this section) shall be liable to prosecution as provided in section 44 of the Criminal Code as amended and reenacted in 18 U.S.C. 2152.

(b) The regulations stated in paragraph (a) of this section are not a limitation on prosecution under any other statute that may have been violated by acts or omissions prohibited by Executive Order 9275.

PART 762—MIDWAY ISLANDS CODE

Subpart A—General

- Sec.
762.1 Applicability.
762.3 Purpose.
762.4 Scope.

Subpart B—Executive Authority; Authorized Powers; Emergency Authority

- 762.6 Executive authority; duration.
762.8 Authorized functions, powers, and duties.
762.10 Emergency authority.

Subpart C—Criminal Law; Petty Offenses; Penalties

- 762.15 General.
762.16 Adoption of certain criminal provisions of the Hawaii Revised Statutes.
762.17 Conflicts of laws.
762.18 Time limitations.
762.19 Petty offenses; general.
762.20 Breach of the peace offenses.
762.22 Offenses against property.
762.24 Moral offenses.
762.26 Alcoholic beverages offenses.
762.28 Vehicle offenses.
762.30 Weapons offenses.
762.32 Offenses against the environment.
762.34 Miscellaneous offenses.
762.35 Attempt.
762.40 Penalties for petty offenses.
762.42 Penalties for motor vehicle violations.
762.44 Contempt.

Subpart D—Midway Islands Court; Rules of Criminal Procedure

- 762.50 Establishment; members; sessions.
762.52 Attorney for the United States.
762.54 Criminal jurisdiction.
762.55 Venue.
762.56 Rules of criminal procedure.
762.58 Release prior to trial and bail.

Department of the Navy, DoD

§ 762.4

- 762.62 Information.
- 762.64 Motions and pleas.
- 762.66 Trial.
- 762.68 Sentence.
- 762.70 Subpoenas.
- 762.72 Appeals.
- 762.74 New trial.

Subpart E—Warrants; Arrests; Special Procedures

- 762.80 Warrants.
- 762.82 Arrests.
- 762.84 Citation in place of arrest.
- 762.86 Abatement of nuisance.

Subpart F—Registration and Permit Regulations

- 762.90 Registration of certain property.
- 762.92 Permits.
- 762.94 Expiration of permits.
- 762.96 Revocation or suspension of permits.

Subpart G—Civil Small Claims Law

- 762.100 Applicable law and jurisdiction over small claims.
- 762.102 Small claims procedure; complaint and service.
- 762.104 Time limitations.
- 762.106 Costs and fees; waiver.
- 762.108 Set-off or counterclaim; pleading; retention of jurisdiction.
- 762.109 Jury trial; demand.
- 762.110 Pre-trial settlement.
- 762.112 Trial.
- 762.114 Judgments.
- 762.116 Award of costs.
- 762.118 No appeal.
- 762.120 Judgment creditors and remedies.
- 762.126 Parties.
- 762.128 Forms and public information.

Subpart H—Savings Clause

- 762.130 Severability of subparts, sections, paragraphs, or provisions.

AUTHORITY: Sec. 48, Pub. L. 86-624, 74 Stat. 424; 3 U.S.C. 301; E.O. 11048, 3 CFR 1959-1963 Comp., p. 632 (1962).

SOURCE: 41 FR 29672, July 19, 1976, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 762 appear at 51 FR 22283, June 19, 1986.

Subpart A—General

§ 762.1 Applicability.

(a) The local criminal and civil laws of the Midway Islands consist of this part, the provisions of the laws of the State of Hawaii adopted pursuant to § 762.16(a) and § 762.112(a), applicable provisions of the laws of the United

States, and those laws made applicable under the special maritime jurisdiction contained in the Act of June 15, 1950 (ch. 253, 64 Stat. 217).

(b) For the purposes of this part, the Midway Islands include all public lands on, and all territorial waters and the contiguous zone adjacent to or surrounding, the Midway Islands, Hawaiian Group, between the parallels of 28°5' and 28°25' North Latitude, and between the meridians of 177°10' and 177°30' West Longitude, as were placed under the jurisdiction and control of the Navy Department by the provisions of Executive Order No. 199-A of January 20, 1903, as superseded by Executive Order No. 11048 of September 5, 1962.

§ 762.3 Purpose.

The purpose of this part 762 is to provide:

(a) For the civil administration of the Midway Islands;

(b) For vesting powers and duties in appropriate officers of the United States for the civil administration of the Midway Islands, including judicial and executive functions;

(c) Certain criminal provisions applicable to the Midway Islands not otherwise provided for, and penalties for their violations;

(d) A judicial system for the Midway Islands not otherwise provided for; and

(e) Certain civil laws for the Midway Islands not otherwise provided for.

§ 762.4 Scope.

(a) This part is applicable to all civilian and nonmilitary persons, and to all military personnel for matters involving civil administration, civil law, or criminal offenses not otherwise covered by the Uniform Code of Military Justice, while such persons are on the Midway Islands.

(b) In no event shall the provisions of this part supersede federal law, or the Uniform Code of Military Justice, nor shall the provisions of this part derogate the inherent or delegated authority, responsibility, and powers of the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, under U.S. Navy Regulations, 1973, the Uniform Code of

§ 762.6

Military Justice, other pertinent Navy directives, and federal law.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

Subpart B—Executive Authority; Authorized Powers; Emergency Authority

§ 762.6 Executive authority; duration.

The executive authority at the Midway Islands is vested in the Secretary of the Navy. The Officer-in-Charge, U.S. Naval Air Facility, Midway Island, is the agent of the Secretary or his designee in carrying out any function, power, or duty under this part 762. The Officer-in-Charge's authority commences upon his assumption of command of U.S. Naval Air Facility, Midway Island, and continues until he is relieved of that command by replacement. In the event of the absence, disability, or death of the Officer-in-Charge, the Acting Commanding Officer of U.S. Naval Air Facility, Midway Island, is vested with the authority prescribed in this part for the Officer-in-Charge and shall remain so vested until the return, recovery, or replacement of the Officer-in-Charge.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.8 Authorized functions, powers, and duties.

The Officer-in-Charge may, personally or through his staff:

- (a) Issue citations for violations of subpart C of this part;
- (b) Abate any public nuisance upon the failure of the person concerned to comply with a removal notice;
- (c) Make sanitation and fire-prevention inspections;
- (d) Perform marriages, and maintain records of vital statistics, including birth, marriage, and death certificates;
- (e) Inspect vehicles, including bicycles, for roadworthiness, and boats for seaworthiness;
- (f) Confiscate property used in committing a crime;
- (g) Investigate accidents and suspected crimes;
- (h) Move unlawfully parked vehicles, boats, or aircraft;

32 CFR Ch. VI (7-1-98 Edition)

(i) Take possession of lost or abandoned property and dispose of it under the provisions of 10 U.S.C. 2575 and applicable Navy directives;

(j) Delay or restrict the departure of any aircraft for reasonable cause;

(k) Impose quarantines;

(l) Impound and destroy unsanitary food, fish, or beverages;

(m) Evacuate any person from a hazardous area;

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

(o) Remove any person from the Midway Islands for cause;

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

(q) Perform any other acts, not inconsistent with this part or other applicable laws or regulations, that he considers necessary for protecting the health and safety of persons and property on the Midway Islands; and

(r) Issue any order or notice necessary to implement this section.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.10 Emergency authority.

During the imminence and duration of any emergency, the Officer-in-Charge may perform any acts necessary to protect life and property.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

Subpart C—Criminal Law; Petty Offenses; Penalties

§ 762.15 General.

In addition to any act made criminal in this part, any act committed on Midway Islands which would be a violation of the laws of the United States; or of the provisions of title 37, "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified; or any act committed on the Midway Islands 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 punished, respectively, according to this part; the laws of the United States; title 37, "Hawaii Revised Statutes," as it now appears or as it may be

amended or recodified; or according to the laws applicable on board United States vessels on the high seas. [The Act of June 15, 1950 (ch. 253, 64 Stat. 217).]

§762.16 Adoption of certain criminal provisions of the Hawaii Revised Statutes.

(a) *Offenses adopted.* Whoever on the Midway Islands is guilty of any act or omission, which, although not made punishable by an enactment of Congress or under §§762.20 through 762.39, would be punishable if committed within the State of Hawaii by the laws thereof at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(b) *Jurisdiction over such offenses.* The United States District Court for the District of Hawaii shall have jurisdiction to try all such offenses except those which are subject, under title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified, to a penalty of imprisonment for six months or less or a fine of not more than \$500 or both. Those offenses falling within the above-stated exception shall be tried in the Midway Islands Court.

§762.17 Conflicts of laws.

In no event shall the provisions of this part supersede the Uniform Code of Military Justice when the latter is applicable. Any adopted provisions of title 37, "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified, which duplicate or conflict with any other provisions of this part shall be of no effect.

§762.18 Time limitations.

(a) A prosecution for any petty offense under this part must be commenced within two years after it is committed.

(b) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(c) A prosecution is commenced either when an information is filed, or

when an arrest warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay.

(d) The period of limitation does not run:

(1) During any time when the accused is absent from the Midway Islands or has no reasonably ascertainable place of abode or work within the Midway Islands, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years; or

(2) During any time when a prosecution against the accused for the same conduct is pending in the Midway Islands Court.

(e) Except those offenses which are subject, under title 37 of the "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified, to a penalty of imprisonment for six months or less or a fine of not more than \$500, or both, offenses charged and treated under §762.16 (a) and (b), shall be subject to the appropriate time-limitation rules set forth in section 108, title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified.

§762.19 Petty offenses; general.

All offenses contained in §§762.20 through 762.39 and those offenses adopted under §762.16(a), as they now appear or as they may be amended or recodified, which are subject, under title 37, "Hawaii Revised Statutes," to a penalty of imprisonment for six months or less or a fine of not more than \$500, or both, shall be termed "Petty Offenses" and subject to the penalties set forth in §§762.40 through 762.49.

§762.20 Breach of the peace offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) With intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, to engage in fighting, threatening, or other violent or tumultuous behavior; or to make unreasonable noise or offensively coarse utterances, gestures, or displays, or address abusive language to

any person present; or to create a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit;

(b) Having no legal privilege to do so, knowingly or recklessly to obstruct any roadway, alley, runway, private driveway, or public passage, or interfere with or unreasonably delay any emergency vehicle or equipment or authorized vehicle, boat, vessel, or plane, or any peace officer, fireman, or other public official engaged in or attempting to discharge any lawful duty or office, whether alone or with others. "Obstruction" as used in this paragraph means rendering impassable without unreasonable inconvenience or hazard;

(c) When in a gathering, to refuse to obey a reasonable request or order by a peace officer, fireman, or other public official to move;

(1) To prevent an obstruction of any public road or passage;

(2) To maintain public safety by dispersing those gathered in dangerous proximity to a public hazard. An order to move under this paragraph addressed to a person whose speech or other lawful behavior attracts an obstructing audience, is not reasonable if the obstruction can be readily remedied by police control;

(d) To be substantially intoxicated on any street, road, beach, theater, club, or other public place from the voluntary use of intoxicating liquor, drugs, or other substance. As used in this paragraph, "substantially intoxicated" is defined as an actual and considerable disturbance of mental or physical capacities;

(e) With intent to arouse or gratify sexual desire of any other person, to expose one's genitals to a person to whom one is not married under circumstances in which one's conduct is likely to cause affront or alarm; or

(f) Who is a minor under the age of 18 years, except a person in the military, to loiter about or otherwise be on any street, road, beach or other public place or in any theater, club, or other facility between the hours of 12:00 midnight and 5:30 a.m. unless accompanied by an adult over the age of 21 years and with the express permission of such minor's parent or legal guardian; and for

any parent, guardian, or other person having the legal care, custody, or control of any minor under the age of 18 years, except a person in the military, to allow or permit such minor to violate this ordinance.

§ 762.22 Offenses against property.

It shall be unlawful for any person, while on the Midway Islands:

(a) To loiter, prowl, or wander upon or near the assigned living quarters and adjacent property of another without lawful purpose, or, while being upon or near the assigned living quarters and adjacent property of another, to peek in any door or window of any inhabited building or structure located thereon without lawful purpose;

(b) To enter upon any assigned residential quarter or areas immediately adjacent thereto, without permission of the assigned occupant;

(c) Who is a male to enter any area, building, or quarter reserved for women, except in accordance with established visiting procedures;

(d) Who is a female to enter any area, building, or quarter reserved for men, except in accordance with established visiting procedures;

(e) To enter or remain in, without lawful purpose, any office building, warehouse, plant, theater, club, school, or other building after normal operating hours for that building;

(f) To enter or remain in any area or building designated and posted as "restricted" unless authorized by proper authority to be there; or

(g) To steal any services or property of a value of less than \$50 belonging to or property of another.

§ 762.24 Moral offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To engage in prostitution. "Prostitution" means the giving or receiving of the body for sexual intercourse for hire or for indiscriminate sexual intercourse with or without hire; or

(b) To do any lewd act in a public place which is likely to be observed by others who would be affronted or alarmed. "Lewd Act" includes any indecent or obscene act.

§ 762.26 Alcoholic beverages offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To sell any alcoholic beverages to any person who, because of age, would be prohibited from purchasing that beverage in a civilian establishment in Hawaii. It shall not be unlawful, however, for persons authorized to sell alcoholic beverages to sell beer with an alcoholic content of not more than 3.2 percent by weight to military personnel regardless of age; or

(b) To present or have in his possession any fraudulent evidence of age for the purpose of obtaining alcoholic beverages in violation of § 762.26(a).

§ 762.28 Vehicle offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To operate or use intentionally any automobile, truck, bicycle, motorcycle or other vehicle, aircraft, or boat or other vessel, for any purpose, without consent of the owner thereof or his authorized agent;

(b) To operate any bicycle that has not been properly registered with the Security Department, U.S. Naval Air Facility, Midway Island, within one week after entering U.S. Naval Air Facility, Midway Island, with such bicycle, or within 72 hours after ownership or possession thereof has been obtained on the Midway Islands.

(c) To operate any automobile, truck, bicycle, motorcycle or other vehicle, aircraft, or boat or other vessel, without due regard for safety of others;

(d) To operate any automobile, truck, bicycle, motorcycle, or other vehicle and disregard or disobey any traffic regulation, sign, or marking erected, inscribed, or placed by competent authority on the Midway Islands, including, but not limited to, "Stop," "Yield," "Speed," and "No Parking" signs;

(e) To operate a United States Government vehicle without holding a current United States Government operator's license for that type of vehicle;

(f) To operate a privately owned automobile, truck, motorcycle, or like motor vehicle without holding a valid operator's license from some State or territory of the United States;

(g) To operate any automobile, truck, bicycle, motorcycle, or other vehicle, aircraft, or boat or other vessel, or other means of conveyance while under the influence of alcoholic beverages, narcotic drugs, central nervous system stimulants, hallucinogenic drugs or barbiturates; or

(h) To exceed the speed limit for automobiles, trucks, bicycles, motorcycles, or other vehicles. Unless otherwise posted, the speed limit throughout the Midway Islands is 15 miles per hour.

§ 762.30 Weapons offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) Other than a security patrolman or shore patrolman or other duly appointed official in the performance of an official duty, to carry a concealed pistol or other concealed firearm, or a concealed knife with a blade more than four inches long or with a blade capable of being opened by a mechanical device, commonly known as a switch-blade knife; or

(b) Without proper authority, to keep or use in any place any dangerous weapons including rifles, shotguns, pistols, airguns, CO₂ guns, pellet guns, and BB guns.

§ 762.32 Offenses against the environment.

It shall be unlawful for any person, while on the Midway Islands:

(a) Knowingly to place, throw, drop, or allow to drop any litter on any property or in any waters or beach. "Litter" means rubbish, refuse, and debris of whatever kind or description, whether or not it is of value;

(b) To grossly waste potable water; or

(c) To remove, injure, or destroy any wild bird, egg, or seal, or for any owner of a dog or other pet to allow knowingly such dog or other pet to remove, injure, or destroy any wild bird, egg, or seal, or for the parent or legal guardian of any minor child to allow knowingly such minor child to remove, injure, or destroy any wild bird, egg, or seal.

§ 762.34 Miscellaneous offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To engage in a trade, business, or other commercial activity on Midway Islands without first obtaining written permission from the Officer-in-Charge, U.S. Naval Air Facility, Midway Island;

(b) To smoke or ignite any fire in any designated and posted "No Smoking" area, or in the immediate proximity of any aircraft, fueling pit, or ordnance or pyrotechnic storage areas;

(c) Knowingly to report or cause to be reported to the Security Department, Fire Department, or any official thereof, or to any other public official, or willfully to activate, or cause to be activated, any alarm, that an emergency exists, knowing that such report or alarm is false. "Emergency," as used herein, includes any condition which results, or could result, in the response of a public official in an emergency vehicle, or any condition which jeopardizes, or could jeopardize, public lives or safety, or results or could result in the evacuation of an area, building, structure, vehicle, aircraft, or boat or other vessel, or any other place by its occupants; or

(d) Intentionally to report to any shore patrolman, security patrolman, fireman, officer of the day, junior officer of the day, or other public official authorized to issue a warrant of arrest or make an arrest, that a crime has been committed, or make any oral or written statement to any of the above officials concerning a crime or alleged crime or other matter, knowing such report or statement to be false.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.35 Attempt.

(a) A person is guilty of attempt to commit a crime if he commits an act, done with the specific intent to commit an offense, amounting to more than mere preparation and tending, even though failing, to effect its commission.

(b) It shall be unlawful for any person, while on the Midway Islands to attempt to violate any section of subpart C, including all offenses adopted from title 37, "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified. Any person convicted of an attempt to commit an of-

fense shall be subject to the same appropriate penalties authorized under §§ 762.40 through 762.49 for the commission of the offense attempted, except that attempts of all offenses adopted under § 762.16, except those which are subject, under title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified, to a penalty of imprisonment of six months or less or a fine of not more than \$500, shall be punished as directed by appropriate sections of title 37, "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified.

§ 762.40 Penalties for petty offenses.

Whoever is found guilty of a violation of any petty offense under this subpart, other than § 762.28 (b) through (h), is subject to a fine of not more than \$500 or imprisonment for not more than six months, or both.

§ 762.42 Penalties for motor vehicle violations.

Whoever is found guilty of a violation of any one of § 762.28 (b) through (h), is subject to a fine of not more than \$100, imprisonment of not more than 30 days, or suspension or revocation of his privilege to drive a motor vehicle aboard U.S. Naval Air Facility, Midway Island, or any combination of, or all of, these punishments.

§ 762.44 Contempt.

Judges of the Midway Islands Court may, in any 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 D—Midway Islands Court;
Rules of Criminal Procedure**

§ 762.50 Establishment; members; sessions.

(a) There is created a "Midway Islands Court" which is vested with the judicial authority provided in this part 762. The court shall consist of such Navy judge advocates as are designated by the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, or such other command as may be designated

by the Commander in Chief, U.S. Pacific Fleet. In the absence of an appointment to the contrary, the most senior in date of rank of those appointed shall act as senior judge.

(b) The Senior Judge shall appoint someone under his authority to act as Clerk of the Court who will be responsible for maintaining a public docket containing such information as the Senior Judge may prescribe.

(c) Sessions of the court are held on the Midway Islands at times and places designated by the Senior Judge.

(d) Normally, not more than one judge shall be required to hear any individual case.

[41 FR 29672, July 19, 1986, as amended at 51 FR 22283, June 19, 1986]

§ 762.52 Attorney for the United States.

The Senior Judge may appoint any judge advocate or attorney to represent the United States in any criminal case in the Midway Islands Court or on appeal to the Commander, U.S. Naval Base, Pearl Harbor or such other command as may be designated by the Commander in Chief, U.S. Pacific Fleet.

§ 762.54 Criminal jurisdiction.

The Midway Islands Court has jurisdiction over all petty offenses and other minor violations of this part. The United States District Court for the District of Hawaii shall have jurisdiction over all other offenses adopted under § 762.16, over offenses against the laws of the United States, and over those offenses committed within the special maritime jurisdiction contained in the Act of June 15, 1950 (chapter 253, 64 Stat. 217).

§ 762.55 Venue.

Trial of all offenses under the jurisdiction of the Midway Islands Court shall be had at the U.S. Naval Air Facility, Midway Island; trial of all other offenses shall be in the United States District Court for the District of Hawaii.

§ 762.56 Rules of criminal procedure.

(a) Sections 762.56 through 762.79 govern the procedure in criminal proceedings in the Midway Islands Court. They

shall be construed to ensure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expenses and delay.

(b) The judge of the court who presides at any trial or other criminal proceeding is responsible for the making of an appropriate record of the proceeding.

§ 762.58 Release prior to trial and bail.

(a) The release of any person arrested on the Midway Islands for a violation of this part shall be in accordance with 18 U.S.C. 3146 as it now appears or as it may be amended or recodified.

(b) When an offense has been charged by a citation issued by a security patrolman, shore patrolman, or other duly designated peace officer or the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, bail shall be set in the amount prescribed by the Senior Judge for the violation. The bail shall be paid in cash to the Clerk of the Court. The bail may be forfeited by the accused and the proceedings thereby terminated in the case of a violation of § 762.28 that does not involve a moving vehicle collision or intoxication while driving, or with permission of the court in the case of any other offense charged by citation pursuant to § 762.84.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.62 Information.

(a) Any petty offense may be prosecuted by a written information signed by the attorney charged with prosecuting the case. If, however, 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 the information. Offenses against the laws of the United States, offenses committed against the laws made applicable by the Act of June 15, 1950 (chapter 253, 64 Stat. 217), and offenses adopted under § 762.16, except those which are subject, under title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified, to a penalty of imprisonment for six months or less or a fine of not more than \$500, or both, shall be referred to the United States Attorney, Hawaii, for appropriate disposition.

(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.

§ 762.64 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. If he cannot afford counsel or is unable to procure counsel after reasonable efforts have been expended, the court shall advise him of his right to have counsel appointed, and shall appoint a judge advocate or other lawyer counsel for the accused unless the accused shall have made a voluntary and intelligent waiver of his right to counsel.

(c) When both sides are ready for arraignment, or when the court determines that both sides have had adequate opportunity 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 at its discretion refuse to accept a plea of guilty, and may not accept a plea without first determining that the plea is made voluntarily and 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.

(g) Nothing contained in this subpart shall be construed to diminish any additional rights afforded military personnel under the Uniform Code of Military Justice.

§ 762.66 Trial.

(a) If the accused pleads not guilty or if a plea of guilty is not accepted by the court and a consequent plea of not guilty entered, the accused is entitled to a trial on the charges in accordance with the procedures prescribed in the Rules of Criminal Procedure for the United States District Courts, 18 U.S.C., except as otherwise provided in this part. There is no trial by jury for petty offenses.

(b) All persons shall give their testimony under oath or affirmation. The Senior 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.

§ 762.68 Sentence.

(a) If the court accepts a plea of guilty to any charge or charges, it shall make a finding of guilty on that charge.

(b) After a finding of guilty is made, either by virtue of an accepted plea of

guilty or as the verdict of the court after trial, the court:

(1) May delay sentencing pending receipt of any presentencing report ordered by it;

(2) Shall, before imposing sentence, hear such statements, whether written or oral, by the prosecution and defense, if any, in regards to mitigation, extenuation, previous good character of the accused, matters in aggravation, and permissible evidence of bad character of the accused. In this regard, the accused or his counsel may introduce any reasonable statement he wishes in mitigation or extenuation or any evidence of previous good character. The prosecution may introduce evidence in aggravation including prior federal, state, or Midway Islands convictions. The prosecution may introduce evidence of previous bad character only if the accused has introduced evidence of previous good character; and

(3) Shall thereafter impose any lawful sentence, including, a suspended or partially suspended sentence; revocation or suspension of any Midway Islands automobile, truck, motorcycle, or other motor vehicle, or boat or other vessel permit in cases involving violations of § 762 28; or placement of accused on probation.

§ 762.70 Subpoenas.

(a) 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 shall issue a subpoena to a party requesting it, setting forth the name of the witness subpoenaed.

(b) 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, and documents 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 in 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) This section shall in no way be construed to limit federal subpoena powers, laws, or rules.

§ 762.72 Appeals.

(a) The defendant in any criminal case may appeal from any judgment of the Midway Islands Court to the Commander, U.S. Naval Base, Pearl Harbor, or such other command as may be designated by the Commander in Chief, U.S. Pacific Fleet, by filing a notice of appeal with the Senior Judge, and serving a copy on the attorney or judge advocate who represented the United States at trial.

(b) The notice must be served and filed within 15 days after the judgment of the Midway Islands Court.

(c) Upon receiving a notice of appeal, with proof of service on the attorney or judge advocate who represented the United States at trial, the Senior Judge shall forward the record of the case to the Commander, U.S. Naval Base, Pearl Harbor.

(d) The appellant must serve and file a memorandum with the Commander, U.S. Naval Base, Pearl Harbor, within 10 days after filing notice of appeal setting forth the grounds for appeal. The attorney or judge advocate who represented the United States at trial may file a reply memorandum within 10 days thereafter.

(e) The Commander, U.S. Naval Base, Pearl Harbor, may affirm, dismiss, or modify the order of the court, or exercise any of the other powers of the court. The judgment of the Commander, U.S. Naval Base, Pearl Harbor, is final.

(f) Cases tried in the United States District Court for the District of Hawaii shall be subject to federal laws and rules applicable to appeals.

§ 762.74 New trial.

A judge of the 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 a new trial or vacation of judgment is made.

Subpart E—Warrants; Arrests; Special Procedures

§ 762.80 Warrants.

(a) *Arrest warrants.* (1) Any judge of the Midway Islands Court may 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. Probable cause, as used herein, means that there exist facts which are sufficient to lead a reasonably prudent and cautious man to a natural conclusion that the person to be arrested committed the offense for which he is to be arrested. The issuing officer shall:

(i) 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;

(ii) Sign the warrant;

(iii) Describe in the warrant the offense charged;

(iv) Issue the warrant to a security patrolman, shore patrolman, or other duly designated peace officer for execution; and

(v) Place in the warrant a command that the person charged with the offense be arrested and brought before him.

(2) Each person making an arrest on the Midway Islands shall take the arrested person, without unnecessary delay, before the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, or a judge of the Midway Islands Court, as appropriate.

(3) The official before whom an arrested person is brought shall inform him of the complaint against him. The official shall also advise the arrested person that he has the right to remain silent and make no statement; that any statement made, whether oral or written, may be used against him, that he has the right to consult with a lawyer and to have a lawyer with him during questioning and to seek advice be-

fore answering any questions; that he may employ civilian counsel of his own choice and at his own expense; that if he cannot afford a lawyer, or is a service member, the court will appoint one for him if he so desires; and that, if he decides to answer questions, he has the right to stop answering at any time and terminate the interrogation. Before any security patrolman, shore patrolman, or other duly designated peace officer questions any person arrested, he must advise the arrested person of his rights, as set forth above, whether such questioning occurs before or after the arrested person is brought before the appropriate official as designated above in this section. No warnings need be given, however, prior to general on-the-scene questioning or identification inquiries.

(b) *Search warrants.* (1) Any judge of the Midway Islands Court may issue a warrant for search and seizure, if, after dispassionate and impartial consideration of all evidence, information, and circumstances involved, probable cause is deemed to exist. Probable cause, as used herein, means reliable information that would lead a reasonably prudent and cautious man to a natural belief that:

(i) An offense probably is about to be, is being, or has been committed;

(ii) Specific fruits or instrumentalities of the crime, contraband, or evidence exist; and

(iii) Such fruits, instrumentalities, contraband, or evidence are probably in a certain place.

(2) If, after considering all information, the judge shall decide to issue a search warrant, such warrant shall specifically include the following information:

(i) The time and date the warrant was requested;

(ii) The name and capacity of the person, official, security patrolman, shore patrolman, or other duly designated peace officer requesting the warrant;

(iii) The name and address of the person(s) suspected and the specific offense(s) of which he is suspected;

(iv) The address, place, or structure which is to be searched;

(v) The general nature of the items intended to be seized;

(vi) The information presented or reasons for suspecting the suspected person(s) in general; and

(vii) An authorization to search the described place for the property specified and, if the property is found there, to seize it, followed by the date, time, capacity, and signature of the judge issuing such warrant.

(3) A search warrant must be executed and returned to the issuing authority within five days after date of issuance. A search warrant executed within the five-day period shall be deemed to have been timely executed and no further showing of timeliness need be made.

(4) Security patrolmen, shore patrolmen, and other duly designated peace officers or other designated personnel conducting searches shall do so in accordance with the issued warrant.

(5) Any property seized as a result of a search or in connection with an alleged offense (unless property is highly perishable) is to be retained in a secure place pending trial in accordance with the orders of the court. All seized property shall be securely tagged with the following information:

(i) Date seized;

(ii) Property searched and location of seized article(s) when so seized;

(iii) Person ordering search and warrant number;

(iv) Signatures of person searching and witness; and

(v) Place where property is now located and names and addresses of any persons who have had custody thereof prior to deposit in the secure place required by this paragraph. A complete chain of custody record is to be kept.

(6) 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.

(c) *Sanitation and fire prevention inspection.* (1) Any judge of the Midway Islands Court may issue a warrant to inspect property on the Midway Islands for purposes of maintaining sanitation and fire prevention.

(2) Such warrant shall indicate:

(i) The time and date the warrant was requested;

(ii) The name and capacity of the person requesting the warrant;

(iii) Property description or address of place or structure to be inspected;

(iv) General purpose of inspection;

(v) Date and time inspection intended to be made; and

(vi) An authorization to inspect the described place for the purpose specified, followed by the date, time, capacity, and signature of judge issuing the warrant.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.82 Arrests.

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

(b) Any security patrolman, shore patrolman, or other duly designated peace officer may, without a warrant, arrest any person on the Midway Islands who violates any provision of this part 762 or commits a crime that is a violation of the laws of the United States or the laws made applicable to the Midway Islands under the Act of June 15, 1950 (chapter 253, 64 Stat. 217), in his presence, or that he has probable cause to believe that person to have committed.

(c) In making an arrest, a security patrolman, shore patrolman, or other duly designated 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 the Midway Islands.

(d) In making an arrest, a security patrolman, shore patrolman, or other duly designated 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 security patrolman, shore patrolman, or other duly designated peace officer may, whenever necessary to enter any building, vehicle, aircraft, or vessel to execute a warrant of arrest, force an entry after verbal warning.

§ 762.84

(f) A security patrolman, shore patrolman, or other duly designated peace officer may force an entry into any building, vehicle, aircraft, or vessel 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.

§ 762.84 Citation in place of arrest.

In any case in which a security patrolman, shore patrolman, or other duly designated peace officer may make an arrest without a warrant, he may, under such limitations as the Officer-in-Charge may impose, issue and serve a citation, or serve a citation issued by the Officer-in-Charge, on a person in place of arresting him if the officer 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 Midway Islands Court at a designated time and place.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.86 Abatement of nuisance.

Whenever the Officer-in-Charge determines that, on any premises on the Midway Islands, a condition exists that is unsanitary or hazardous, that may be injurious to the public, or is otherwise a nuisance, he may order the condition abated. If the legal custodian of the premises concerned does not take action to abate the nuisance within 30 days after the order is issued, the Officer-in-Charge may enter on the premises and abate the nuisance for, and at the expense of, the custodian.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

32 CFR Ch. VI (7-1-98 Edition)

Subpart F—Registration and Permit Regulations

§ 762.90 Registration of certain property.

(a) Each person who has custody of any of the following on the Midway Islands shall register it with the Officer-in-Charge:

(1) A privately owned motor vehicle;

(2) A privately owned boat;

(3) An animal;

(4) Any device, weapon, or instrument designed for inflicting bodily injury, including a gun, pistol, or other firearm operated by air, gas, spring, or otherwise;

(5) Any narcotic or dangerous drug not obtained on prescription, and all poisons other than commonly used household poisons or toxic substances; or

(6) Any known explosive.

(b) Each person who obtains custody of an article described in paragraphs (a)(4), (5), or (6) 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.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.92 Permits.

Subject to reasonable restrictions and conditions that he considers appropriate, the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, may require a Midway Islands permit for the following:

(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 discharge of explosives or fireworks or of firearms, guns, or pistol operated by air, gas, spring, or otherwise, or any other weapon;

(e) 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;

(f) Keeping or maintaining any animal, including dogs;

(g) All vehicles (including bicycles), and operators thereof, except aircraft. The operator of a vehicle shall display his permit or permit number on the vehicle in a place and manner prescribed by the Officer-in-Charge;

(h) Boats and boat operators. The operator of a boat or other vessel shall display his permit or permit number on or in the vessel in a place and manner prescribed by the Officer-in-Charge;

(i) Food handlers;

(j) Drugs and narcotics not obtained on prescription, and poisons other than commonly used household poisons or toxic substances; or

(k) Building construction.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.94 Expiration of permits.

(a) Each Midway Islands permit expires on the earliest of the following dates:

(1) Two years after the date it is issued;

(2) The date specified on the permit;

(3) In the case of a motor vehicle, boat, or other vessel, or firearm, the date its custody is transferred to any person other than the holder of the permit therefor; or

(4) The date it is revoked by the Officer-in-Charge.

(b) Notwithstanding paragraph (a)(1) of this section, the Officer-in-Charge may issue a permit for a period longer than two years to coincide with the terms of any agreement between the Department of the Navy and the permit holder, applicable to the Midway Islands.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.96 Revocation or suspension of permits.

(a) The Officer-in-Charge may, after notifying the holder of a Midway Islands permit and giving him an opportunity to be heard, order the permit suspended or revoked for cause, including:

(1) Lack of physical fitness required to hold the permit;

(2) Lack of roadworthiness of a vehicle, or of seaworthiness of a boat or other vessel;

(3) Lack of need for the permit;

(4) Breach of any term or condition of the permit; or

(5) Conviction for violation of any regulation of this part where the violation is related to activities conducted under the permit.

(b) In any case in which he determines that an emergency exists requiring immediate action, the Officer-in-Charge may issue an order of suspension or revocation, effective immediately, without notice. However, the permit holder may, within 10 days after the suspension or revocation, request a hearing. If he so requests a hearing, he is entitled to it. The emergency order is not stayed pending hearing.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

Subpart G—Civil Small Claims Law

§ 762.100 Applicable law and jurisdiction over small claims.

(a) The Midway Islands Court shall have jurisdiction over civil cases for the recovery of money only where the amount claimed does not exceed \$500 exclusive of the interest and costs except as provided by § 762.108.

(b) The court's jurisdiction is further limited in that no such claim cognizable under paragraph (a) of this section shall be within the court's jurisdiction unless:

(1) The claim arises or has arisen on the Midway Islands;

(2) All plaintiffs and all defendants reside, at the time of trial, on the Midway Islands; and

(3) The claim does not fall within the special maritime jurisdiction under the Act of June 15, 1950 (Chapter 253, 64 Stat. 217).

§ 762.102

32 CFR Ch. VI (7-1-98 Edition)

(c) Actions shall be commenced and maintained in the Midway Islands Court under the procedures set out below and conducted in such a manner as to do substantial justice and equity between the parties. When acting on such actions, the court shall be termed the Small Claims Court.

§ 762.102 Small claims procedure; complaint and service.

(a) Actions shall be commenced in the court by the filing of a statement of claim, in concise form and free of technicalities. All claims shall be verified by the claimant, whether as a party plaintiff or counterclaimant, or by his agent, by oath or affirmation in the form herein provided, or its equivalent. The Clerk of the Court shall, at the request of an individual, prepare the statement of claim and other papers required to be filed in an action in the court, but his services shall not be available to a corporation, partnership, or association, or to any individual proprietorship in the preparation of the statements or other papers. A copy of the statement of claim and verification shall be made a part of the notice to be served upon the defendant named therein. The mode of service shall be by personal service, by registered mail, or by certified mail with return receipt.

(b) When notice is to be served by registered mail or by certified mail, the clerk shall enclose a copy of the statement of claim, verification, and notice in an envelope addressed to the defendant, prepay the postage with funds obtained from plaintiff, and mail the papers forthwith, noting on the records the day and hour of mailing. When the receipt is returned with the signature thereon of the party to whom addressed, the clerk shall attach it to the original statement of claim, and it shall constitute prima facie evidence of personal service upon the defendant.

(c) When notice is served personally, the server shall make proof of service by affidavit sworn to before the Clerk of the Court or before any notary public, showing the time and place of the service.

(d) The actual cost of service shall be taxable as costs.

(e) The statement of claim, verification, and notice shall be in the following or equivalent form:

IN THE MIDWAY ISLANDS SMALL CLAIMS COURT

(Plaintiff)

(Address)

vs.

(Defendant)

STATEMENT OF CLAIMS

(Here the claimant, whether as party plaintiff or counterclaimant, or at his request the clerk, will insert a concise statement of the plaintiff's claim, and the original, to be filed with the clerk, may, if action is on a contract, express or implied, be verified by the plaintiff or his agent, as follows:

THE MIDWAY ISLANDS SS

----- being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by defendant to claimant, whether as party plaintiff or counterclaimant, exclusive of all set-offs and just grounds of defense.)

[Plaintiff (or agent)]

Subscribed and sworn to before me this
day of -----, 19-----.

Clerk (or notary public)

NOTICE

To: -----
Defendant

Home address

Business address

You are hereby notified that -----
has made a claim and is
requesting judgment against you in the sum
of ----- dollars (\$-----), as
shown by the foregoing statement. The court
will hold a hearing upon this claim on
----- at ----- m. in the Small
Claims Court at -----.

(Address of court)

You are required to be present at the hearing in order to avoid judgment by default.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

Department of the Navy, DoD

§ 762.112

If you wish to have witnesses summoned, see clerk at once for assistance.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

(Seal)

Clerk of the Court
Midway Islands Courts

(f) The foregoing verification entitles the plaintiff to a judgment by default, without further proof, upon failure of defendant to appear, if the claim of the plaintiff is for a liquidated amount. If the amount is unliquidated, the plaintiff shall be required to present proof of his claim.

(g) The clerk shall furnish the plaintiff with a notice of the day and hour set for the hearing. The hearing shall not be less than 15 days nor more than 30 days from the date of the filing of the action unless a continuance is granted by the judge for good cause shown. All actions filed in the court shall be made returnable therein.

§ 762.104 Time limitations.

All claims must be commenced as set out in § 762.102, within two years after the claim arises. A claim for money arises when it is due, owing, and unpaid.

§ 762.106 Costs and fees; waiver.

The fee for issuing summons and copies, trial, judgment, and satisfaction in an action in the Small Claims Court shall be not more than \$5. Other fees shall be as the court prescribes. The judge may waive the prepayment of costs or the payment of costs accruing during the action upon the sworn statement of the plaintiff or upon other satisfactory evidence of his inability to pay the costs. When costs are so waived the notation to be made on the records of the court shall be "Prepayment of costs waived" or "Costs waived." The terms "pauper" or "in forma pauperis" may not be employed in the court. If a party fails to pay accrued costs, though able to do so, the judge may deny him the right to file a new case in the court while the costs remain unpaid, and likewise deny him

the right to proceed further in any case pending in the court.

§ 762.108 Set-off or counterclaim; pleading; retention of jurisdiction.

If the defendant, in an action in the Small Claims Court, asserts a set-off or counterclaim, the judge may require a formal and concise plea of set-off to be filed, or may waive the requirement. If the plaintiff requires time to prepare his defense against the counterclaim or set-off, the judge may continue the case for that purpose. When the set-off or counterclaim is for more than the jurisdictional limit of the Small Claims Court, as provided by § 762.100, but is for less than \$1000, the action shall remain in the Small Claims Court and be tried therein in its entirety. No set-off or counterclaim for an amount greater than \$1000 may be asserted in the Small Claims Court.

§ 762.109 Jury trial; demand.

In a case filed or pending in the Midway Islands Court under § 762.100 in which a party entitled to a trial by jury under amendment VII, United States Constitution, files a demand therefor, the case shall be assigned to and tried in the United States District Court for the District of Hawaii under the procedure provided for jury trials in that court.

§ 762.110 Pre-trial settlement.

On the return day specified by § 762.102(g), or at such later time as the judge sets, the trial shall be had. Immediately prior to the trial of a case, the judge shall make an earnest effort to settle the controversy by conciliation. If no settlement is effected, the judge shall proceed with the hearing on the merits pursuant to § 762.112.

§ 762.112 Trial.

(a) The parties and witnesses shall be sworn. In any case in which the civil rights, powers, and duties of any person on the Midway Islands are not otherwise prescribed by the laws of the United States or the laws made applicable under the Act of June 1950 (chapter 253, 64 Stat. 217), the judge shall conduct the trial in such manner as to

do substantial justice between the parties according to the rules of substantive law, as contained in the "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified, and Hawaii case law. In this regard, the judge is not bound by statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions related to privileged communications.

(b) If the defendant fails to appear, judgment shall be entered for the plaintiff by default as provided by § 762.102(f), or under rules of court, or on ex parte proof. If the plaintiff fails to appear, the action may be dismissed for want of prosecution, or a nonsuit may be ordered, or defendant may proceed to trial on the merits, or have default judgment entered in his favor on any counterclaim filed in the manner provided herein for a plaintiff, or the case may be continued or returned to the files for further proceedings on a later date, as the judge directs. If both parties fail to appear, the judge may return the case to the files, or order the action dismissed for want of prosecution or make any other disposition thereof as justice requires.

(c) Notwithstanding any provision of law requiring the licensing of practitioners, any person may, with the approval of the court, appear on behalf of himself or another in the Small Claims Court. The services of an unlicensed person appearing under this paragraph shall be without compensation, either by way of direct fee, contingent fee, or otherwise.

(d) The judge of the court who presides at any trial is responsible for the making of an appropriate record of the proceeding.

§ 762.114 Judgments.

After trial, the judge may immediately render his decision and enter judgment or take the case under submission. In all cases, the judge should render a decision and enter appropriate judgment within 20 days after the close of the trial.

§ 762.116 Award of costs.

In any action pursuant to this subpart the award of costs is in the discretion of the court, which may include

therein the reasonable cost of bonds and undertakings, and other reasonable expenses incident to the action, incurred by either party. No attorneys' fees or commissions shall be allowed or awarded by any judgment of the Small Claims Court.

§ 762.118 No appeal.

There shall be no appeal from a judgment of the court, but the court may alter or set aside any judgment upon application of either party after review of the record.

§ 762.120 Judgment creditors and remedies.

(a) After any final judgment is rendered by the court, the judgment debtor or concerned may deposit the sum adjudged owed with the court for payment of the claim, pay the judgment creditor directly, or make such other fair and reasonable agreement for payment or settlement of the claim with the judgment creditor. Payment, in full or by agreement or settlement between the parties after final judgment has been rendered, shall satisfy the judgment and extinguish the claim.

(b) If voluntary payment is not made by the judgment debtor after final judgment is rendered, in an action pursuant to §§ 762.100 through 762.113, the judge shall, upon motion of the party obtaining judgment, order the appearance of the party against whom the judgment has been entered, but not more often than once each week for four consecutive weeks, for oral examination under oath as to his financial status and his ability to pay the judgment, and the judge shall make such supplementary orders as seems just and proper to effectuate the payment of the judgment upon reasonable terms.

(c) Any final judgment of the Small Claims Court shall upon order of the court become a statutory lien upon any and all personal property owned by the judgment debtor concerned and located on the Midway Islands. Such lien may be enforced by attachment, levy, judicial sale, or as the court may otherwise direct.

§ 762.126 Parties.

Wherever the term party or parties appears herein, or any reference is made to individuals desiring to present a claim, then such term or terms of reference shall mean and include a party defendant having a counterclaim, offset, or crossclaim to present in the action.

§ 762.128 Forms and public information.

The Midway Islands Court shall cause to be published an information booklet or sheet describing, in language readily understandable by a layman, the procedures of the Small Claims Court, the remedies available upon judgment in the Small Claims Court, and such other information as will facilitate the utilization of the small claims procedure; and shall also cause to be made and printed such standardized forms as may be utilized throughout the small claims procedure prior to, upon, and after judgment.

Subpart H—Savings Clause

§ 762.130 Severability of subparts, sections, paragraphs, or provisions.

In the event that any subpart, section, paragraph, or provision of this part shall be declared unconstitutional or superseded by applicable federal legislation, the remainder shall nevertheless remain valid and shall be applied so as to be consistent with such constitutional provisions or overriding legislation.

PART 763—RULES GOVERNING PUBLIC ACCESS

Subpart A—Entry Regulations for Kaho’olawe Island, Hawaii

- Sec.
- 763.1 Purpose.
- 763.2 Definition.
- 763.3 Background.
- 763.4 Entry restrictions.
- 763.5 Entry procedures.
- 763.6 Violations.

AUTHORITY: 50 U.S.C. 797; DOD Dir. 5200.8 of August 20, 1954; 5 U.S.C. 301; 10 U.S.C. 6011, 32 CFR 700.702; 32 CFR 700.714; E.O. No. 10436, 3 CFR 1949–1953 Comp. p. 930, (1958).

SOURCE: 47 FR 27553, June 25, 1982, unless otherwise noted.

Subpart A—Entry Regulations for Kaho’olawe Island, Hawaii

§ 763.1 Purpose.

The purpose of this subpart is to promulgate regulations for entry to Kaho’olawe Island, Hawaii, and its adjacent waters.

§ 763.2 Definition.

For the purpose of this subpart, Kaho’olawe Island includes that portion reserved for naval purposes by Executive Order No. 10436 of February 20, 1953.

§ 763.3 Background.

(a) Kaho’olawe Island is used by the armed forces of the United States as a training area including bombing and gunnery training ranges under authority granted by Executive Order No. 10436. Training operations frequently involve the use of live ordnance, creating an obvious danger to persons on or near the island. Moreover, a large amount of unexploded ordnance is present on Kaho’olawe Island and in adjacent waters.

(b) Individuals who enter the island of Kaho’olawe without authority expose themselves to extremely hazardous conditions. In addition, the presence of unauthorized persons on Kaho’olawe Island or in adjacent waters is likely to interfere with the use of the island for military training. Accordingly, it is necessary to prohibit entry to Kaho’olawe Island except under the controlled circumstances set forth in this subpart.

§ 763.4 Entry restrictions.

(a) Entry by any person upon Kaho’olawe Island for any purpose is prohibited without advance authorization from Commander Naval Base. This prohibition applies to all areas of Kaho’olawe Island reserved for naval purposes by Executive Order 10436.

(b) Entry by any person into the restricted waters adjacent to Kaho’olawe Island for any purpose is prohibited without advance authorization from

Commander Naval Base. This prohibition applies to all waters described in 33 CFR 204.223(4).

[47 FR 27553, June 25, 1982, as amended at 52 FR 20074, May 29, 1987]

§ 763.5 Entry procedures.

(a) It is the policy of the Commander Naval Base to authorize, in accordance with the spirit of the American Indian Religious Freedom Act (1978), reasonable access to Kaho'olawe Island during periods when it is not used for military training. However, because there are bombs and other explosives on and under the surface and in the waters of the island, and because there are significant archaeological resources thereon (in 1981, the island was placed on the National Register of Historical Places as an Archaeological District), Navy representatives accompany each island visitation to safeguard both the visitor(s) and the island's archaeological resources. In this regard, in order to ensure the safety of visitors to the island and its archaeological resources, persons and organizations wishing access to Kaho'olawe Island must comply with the following appropriate procedures: Civilians (except authorized U.S. and State representatives) must:

(1) Request, in writing, access authorization from Commander Naval Base (Code 01K), Pearl Harbor, Hawaii 96860, at least 15 days prior to the access requested, providing therein confirmed access plans (including the exact number of visitors, time, and location of access, designation of person in charge, and any other pertinent information); and

(2) Submit to Commander Naval Base (at the aforementioned address) properly endorsed Standard Liability Release Form (obtainable from Commander Naval Base), for each access participant, at least five (5) days prior to the requested access.

(b) In evaluating each request, the factors just enumerated will be weighed against training commitments, safety requirements, special projects, and the amount and cost of military supervision necessitated by a granting of the request. Requests for entry will be considered on an individual basis. If a request is granted, the permission to enter Kaho'olawe Island

authorizes one visit only, and shall not be construed as authorization for more than one entry unless the authorization itself specifically states otherwise. Moreover, entry pursuant to advance consent, which is not in accordance with the terms and conditions permitted by Commander Naval Base, shall be deemed a violation of this subpart.

(c) For safety reasons, it is not Commander Naval Base policy to permit children below the age of 15 access to Kaho'olawe Island.

(d) The following safety regulations are applicable to visitors to Kaho'olawe Island:

(1) All visitors to the island are required to execute and submit a waiver of government liability form to a designated Navy representative prior to arrival at the island.

(2) Visitors to the island will be escorted by Navy designated Explosive Ordnance Disposal (EOD) technicians to ensure that they stay on cleared paths, avoid impact areas, and do not touch high explosives. For visitor safety, the directions of the military escorts must be followed.

(3) No person will interfere with any EOD escort in the performance of his duties.

(4) Any actual or suspected ordnance found by a visitor shall be reported to the Special Assistant for Kaho'olawe as soon as possible. If he is not in the vicinity, a description and location of the ordnance should be provided to the nearest EOD technician. Everyone, other than EOD personnel, shall remain clear of any ordnance found.

(5) Only the qualified EOD technicians shall touch, examine, remove, attempt to remove, handle either directly or indirectly, or detonate any ordnance, whether found on the surface, beneath the surface or in the waters surrounding Kaho'olawe.

(6) Any proposed hike and procession route shall be provided to the Special Assistant for Kaho'olawe (or his designated representative) for approval and escort coordination at least twenty-four hours in advance of the planned event. Deviation from approved routes will not be allowed. Proposed campsites for overnight hikes shall be similarly provided to, and approved by, the

Department of the Navy, DoD

§ 763.6

Special Assistant for Kaho'olawe or his designated representative.

(7) No person shall move about the island after sunset unless a bonafide emergency situation arises. The senior Naval officer present shall be immediately notified in case of such emergency.

(8) No person shall commit any offense proscribed by either Federal law or the State of Hawaii Penal Code, as incorporated under the Federal Assimilative Crimes Act, while on the island of Kaho'olawe. Any individual who violates any provisions of these penal codes may be prosecuted by the Federal Government and/or barred from any future access to Kaho'olawe.

(9) No person shall deface, alter, remove, spoil, or destroy any archeological object, feature, or site on the island.

(10) Children shall remain with their parents at all times while on the island.

(11) Visitors are responsible for removing their own trash from the island.

(12) Individuals failing to abide by these safety guidelines will be precluded from future visitations.

[47 FR 27553, June 25, 1982, as amended at 52 FR 20074, May 29, 1987; 52 FR 45455, Nov. 30, 1987]

§ 763.6 Violations.

(a) Any person who violates this subpart is subject to prosecution under 18 U.S.C. 1382, which provides in relevant part:

Whoever * * * goes upon any * * * naval * * * reservation * * * for any purpose prohibited by law or lawful regulation * * * shall be fined not more than \$500 or imprisoned not more than six months, or both.

(b) Additionally, persons who violate this Subpart are subject to prosecution under the Internal Security Act of 1950 (50 U.S.C. 797), violations of which may result in a maximum penalty of imprisonment for one year, or a fine of \$5,000 or both.