

in any S&R proceeding under this part concerning any act or offense described in 46 U.S.C. 7703 or 7704, even when an act or offense forming the basis of the charge in the proceeding is the same as in the State conviction. But the judgment is admissible in evidence and constitutes substantial evidence adverse to the respondent.

(c) A judgment of conviction by a Federal or State court for a violation is conclusive in the proceeding if an S&R proceeding alleges conviction for—

(1) A violation of a dangerous-drug law;

(2) An offense that would prevent the issuance or renewal of a merchant mariner's license, certificate of registry, or document; or

(3) An offense described in subparagraph 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 (23 U.S.C.S. 401, note).

(d) If the respondent participates in the scheme of a State for the expungement of convictions, and if he or she pleads *guilty* or *no contest* or, by order of the trial court, has to attend classes, contribute time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of the finding of the trial court, the Coast Guard regards him or her, for the purposes of 46 U.S.C. 7703 or 7704, as having received a conviction. The Coast Guard does not consider the conviction expunged without proof that the expungement is due to the conviction's having been in error.

(e) No respondent may challenge the jurisdiction of a Federal or State court in any proceeding under 46 U.S.C. 7703 or 7704.

§20.1309 Admissibility of respondents' criminal records and records with the Coast Guard before entry of findings and conclusions.

(a) The prior disciplinary record of the respondent is admissible when offered by him or her.

(b) The prior disciplinary record of the respondent is admissible when offered by the Coast Guard representative to impeach the credibility of evidence offered by the respondent.

(c) The use of a judgment of conviction is permissible on the terms prescribed by §20.1307.

§20.1311 Admissions by respondent.

No person may testify regarding admissions made by the respondent during an investigation under 46 CFR part 4, except to impeach the credibility of evidence offered by the respondent.

§20.1313 Medical examination of respondents.

In any proceeding in which the physical or mental condition of the respondent is relevant, the ALJ may order him or her to undergo a medical examination. Any examination ordered by the ALJ is conducted, at Federal expense, by a physician designated by the ALJ. If the respondent fails or refuses to undergo any such examination, the failure or refusal receives due weight and may be sufficient for the ALJ to infer that the results would have been adverse to the respondent.

§20.1315 Submission of prior records and evidence in aggravation or mitigation.

(a) The prior disciplinary record of the respondent comprises the following items less than 10 years old:

(1) Any written warning issued by the Coast Guard and not contested by the respondent.

(2) Final agency action by the Coast Guard on any S&R proceeding in which a sanction or consent order was entered.

(3) Any agreement for voluntary surrender entered into by the respondent.

(4) Any final judgment of conviction in Federal or State courts.

(5) Final agency action by the Coast Guard resulting in the imposition against the respondent of any civil penalty or warning in a proceeding administered by the Coast Guard under this title.

(6) Any official commendatory information concerning the respondent of which the Coast Guard representative is aware. The Coast Guard representative may offer evidence and argument in aggravation of any charge proved. The respondent may offer evidence of,

and argument on, prior maritime service, including both the record introduced by the Coast Guard representative and any commendatory evidence.

(b) The respondent may offer evidence and argument in mitigation of any charge proved.

(c) The Coast Guard representative may offer evidence and argument in rebuttal of any evidence and argument offered by the respondent in mitigation.

PART 23—DISTINCTIVE MARKINGS FOR COAST GUARD VESSELS AND AIRCRAFT

Sec.

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AUTHORITY: Secs. 638, 639, 63 Stat. 546; 14 U.S.C. 638, 639, E.O. 10707, 3 CFR, 1954-1958 Comp., p. 364.

§23.01 Basis and purpose.

(a) This subpart establishes instructions for the display of distinctive markings of Coast Guard vessels and aircraft, including Coast Guard ensign and commission pennant and Coast Guard emblem.

(b) Coast Guard vessels and aircraft are distinguished from other vessels and aircraft by an ensign; a personal flag, command pennant, or commissioned pennant, if so authorized; or other identifying insignia or marking.

[CGFR 57-35, 22 FR 6765, Aug. 22, 1957, as amended by CGFR 66-67, 31 FR 15239, Dec. 6, 1966]

§23.05 Where and when displayed.

(a) The Coast Guard Ensign is a mark of authority and is required to be displayed whenever a Coast Guard vessel takes active measures in connection with boarding, examining, seizing, stopping or heaving to of a vessel for the purposes of enforcing the laws of the United States. The distinctive markings of Coast Guard aircraft serve the same purpose.

(b) The Coast Guard Commission pennant indicates a Coast Guard cutter

under the command of a commissioned officer or commissioned warrant officer.

(c) When applicable, these distinctive marks shall be displayed, the Coast Guard Ensign at the masthead of the foremast, and the commission pennant at the after masthead. On ships having but one mast the Coast Guard Ensign and commission pennant shall be at the masthead on the same halyard. In mastless ships they shall be displayed from the most conspicuous hoist.

[CGFR 67-26, 32 FR 6576, Apr. 28, 1967]

§23.10 Coast Guard emblem.

(a) The distinctive emblem of the Coast Guard shall be as follows:

On a disc the shield of the Coat of Arms of the United States circumscribed by an annulet edged and inscribed "UNITED STATES COAST GUARD 1790" all in front of two crossed anchors.

(b) The emblem in full color is described as follows:

White anchors and white ring all outlined in medium blue (Coast Guard blue), letters and numerals medium blue (Coast Guard blue), white area within ring, shield with medium blue (Coast Guard blue) chief and 13 alternating white and red (Coast Guard red) stripes (7 white and 6 red) with narrow medium blue (Coast Guard blue) outline.

(c) The Coast Guard emblem is intended primarily for use as identification on Coast Guard ensigns, flags, pennants, vessels, aircraft, vehicles, and shore units. It may also be reproduced for use on such items as stationery, clothing, jewelry, etc.

(d) Any person who desires to reproduce the Coast Guard emblem for non-Coast Guard use must first obtain approval from the Commandant, U.S. Coast Guard, Washington, D.C. 20593.

(Sec. 6(b)(1), 80 Stat. 937; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

[CGFR 67-26, 32 FR 6577, Apr. 28, 1967, as amended by CGFR 70-95, 35 FR 12541, Aug. 6, 1970]

§23.12 Coast Guard identifying insignia.

(a) The distinctive identification insignia of the Coast Guard consists of a broad diagonal red stripe followed to the right or left by two narrow stripes, first a white stripe and then a blue