

**§ 20.1309**

**33 CFR Ch. I (7-1-08 Edition)**

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**

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- 23.01 Basis and purpose.
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- 23.10 Coast Guard emblem.
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- 23.20 Coast Guard commission pennant.
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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