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(b) A specific answer shall be one of the following:

(1) Deny;

(2) No contest; or

(3) Admit.

(c) For purposes of proceedings under this part, an admission or *no contest* answer is sufficient to support a finding of *proved* by the Administrative Law Judge.

(d) When the hearing is conducted *in absentia,* the Administrative Law Judge enters a denial to all charges and specifications.

[CGD 82–002, 50 FR 32184, Aug. 9, 1985, as amended by CGD 97–057, 62 FR 51042, Sept. 30, 1997]

§5.529 Opening statement of investigating officer.

(a) If a denial is entered, the investigating officer makes a brief statement outlining the matters expected to be proved.

(b) If the respondent admits the truth of the charges and specifications or answers *no contest,* the opening statement of the investigating officer shall contain a summary of the evidence upon which the charges and specifications are based.

§5.531 Opening statement by or on behalf of the respondent.

The respondent or the respondent's counsel is afforded an opportunity to state what is intended to be established. This may be waived or deferred at the option of the respondent.

§5.533 Presentation of case where there is an admission or no contest answer.

(a) If the respondent admits to any charge and specification or answers *no contest,* evidence in mitigation may be presented, and the investigating officer may present a prima facie case and evidence in aggravation even in those cases where revocation is mandatory.

(b) Should the respondent's presentation be inconsistent with an admission or answer of *no contest,* the Administrative Law Judge will reject the answer, enter a denial and continue with the hearing.

§5.535 Witnesses.

(a) All witnesses are sworn, duly examined, and may be cross examined. A witness on the stand may be questioned at any time by the Administrative Law Judge.

(b) The person who calls a witness shall begin direct examination by identifying the witness.

(c) Witnesses may be called to establish matters of aggravation or matters of mitigation.

(d) Any witness may have the benefit and advice of personal counsel, but such counsel shall not otherwise participate in the hearing.

(e) Any attempt to coerce or induce a witness to testify falsely is an offense under federal law which may be punishable by fine or imprisonment or both. (See 18 U.S.C. 1505.)

(f) Upon motion by the investigating officer or respondent, the Administrative Law Judge may order that testimony of a witness be taken by telephone conference call, when testimony would otherwise be taken by deposition. The telephone conference will be arranged so that all participants can listen to and speak to each other in the hearing of the Administrative Law Judge. The Administrative Law Judge insures that all participants in the telephone conference are properly identified to allow a proper record to be made by the reporter. Participants shall speak clearly and avoid extraneous conversation. Telephone conferences are governed by the procedural rules and decorum observed during in-person proceedings.

(g) A witness may be subpoenaed to testify by telephone conference. The subpoena in such instances is issued under the procedures in subpart F.

§5.537 Evidence.

(a) In these proceedings, strict adherence to the rules of evidence is not required. However, the Federal Rules of Evidence, as amended, shall be the primary guide for evidentiary matters, where applicable.

(b) Rules 410, 606, 706, and 1101 of the Federal Rules of Evidence shall not be applicable to these proceedings.

(c) In conducting a hearing the Administrative Law Judge will extend reasonable latitude to the respondent

who does not have professional counsel to represent him. Investigating officers and counsel should be required to conform to rules of evidence to a greater degree than respondents without counsel.

[CGD 82–002, 50 FR 32184, Aug. 9, 1985, as amended by CGD 97–057, 62 FR 51042, Sept. 30, 1997]

§ 5.539 Burden of proof.

The investigating officer has the burden of proof.

§ 5.541 Official notice by Commandant and Administrative Law Judge.

(a) In addition to other rules providing for judicial notice, the Commandant and the Administrative Law Judges will consider the following without requiring the investigating officer or the respondent to submit them in evidence:

(1) *Federal Law.* The Constitution; Congressional Acts, Resolutions, Records, Journals and Committee Reports; Decisions of Federal Courts; Executive Orders and Proclamations; and rules, regulations, orders and notices published in the FEDERAL REGISTER.

(2) *State law.* The Constitution and public laws of each State.

(3) *Governmental organizations.* The organization, territorial limitations, officers, departments, and general administration of the Government of the United States, its States, territories, possessions and the Commonwealth of Puerto Rico.

(4) *Commandant's decisions.* The Commandant's decisions in all appeal and review cases under this part. (See § 5.65.)

(b) Matters officially noticed by the Commandant or the Administrative Law Judge are specified on the record. The investigating officer and the respondent shall be afforded an opportunity, on the record, to rebut such matters.

§ 5.543 Certification of extracts from shipping articles, logbooks, etc.

(a) In addition to other rules providing for authentication and certification, extracts from records in the custody of the Coast Guard, shipping articles, and logbooks, may be identified and authenticated by certification of an investigating officer or custodian of such records, or by any commissioned officer of the Coast Guard.

(b) Certification must include a statement that the certifying individual has seen the original and compared the copy with it and found it to be a true copy. The individual so certifying shall sign name, rank or title, and duty station.

§ 5.545 Weight of entries from logbooks.

(a) An entry in an official logbook of a vessel concerning an offense enumerated in 46 U.S.C. 11501, made in substantial compliance with the procedural requirements of 46 U.S.C. 11502, is admissible in evidence and constitutes prima facie evidence of the facts recited.

(b) An entry in any logbook kept on a vessel may be admitted into evidence as an exception to the hearsay rule, under the Federal Rules of Evidence, as a record of a regularly conducted activity.

(c) An entry in any logbook made in compliance with the procedural requirements of 46 U.S.C. 11502 may be given added weight by the Administrative Law Judge.

§ 5.547 Use of judgment of conviction.

(a) A judgment of conviction by a Federal court is conclusive in proceedings under this part concerning incidents described in 46 U.S.C. 7703, where acts or offenses forming the basis of the charges in the Federal court are the same.

(b) Where the acts involved in a judgment of conviction of a State court are the same as those involved in proceedings under this part concerning incidents described in 46 U.S.C. 7703, the judgment of conviction is not conclusive of the issues decided. However, such judgment of conviction is admissible in evidence and constitutes substantial evidence adverse to the respondent.

(c) The judgment of conviction for a dangerous drug law violation by a Federal or State court is conclusive in proceedings under this part. If as part of a state expungement scheme the respondent pleads guilty or no contest or is required by the court to attend