

U.S. Department
of Transportation

United States
Coast Guard



Commander
Eighth Coast Guard District
Hale Boggs Federal Building

501 Magazine Street
New Orleans, LA 70130-3396
Staff Symbol: (moa)
Phone: (504) 589-3043
FAX: (504) 589-4999

16722
D8(m) Policy Ltr 09-2000
12 April 2000

From: Commander, Eighth Coast Guard District
To: Distribution

Subj: LITIGATION PACKAGES FOR SUSPENSION & REVOCATION HEARINGS

1. Enclosure (1) is forwarded for your information and use.
2. Questions on this matter may be addressed to LCDR Rod Walker at (504) 589-3043.



G. D. MARSH
By direction

Encl: (1) COMDT (G-MOA-1) ltr 16722 of 17 March 2000

Dist: All Eighth District MSOs, MSU and MSDs



16722

MAR 17 2000

From: Commandant (G-MOA)
To: Commanding Officer, Coast Guard Marine Safety Office Port Arthur
Via: Commander, Eighth Coast Guard District (m) *BT Marshall 3/24/00*

Subj: LITIGATION PACKAGES FOR SUSPENSION & REVOCATION HEARINGS

1. In response to enclosure (1), G-MOA has consistently maintained that the Coast Guard has the regulatory authority to obtain analytical drug test results, or a "litigation package," from laboratories under Title 49, Code of Federal Regulations (CFR) 40.29(g)(7). If analytical results are required for a Suspension & Revocation (S&R) hearing, they should be treated just like any other evidence and a subpoena may be issued to secure their production at a hearing. Witnesses who authenticate this evidence should also be given an opportunity to file a claim for reimbursable expenses using Standard Form 1157. Because these claims are processed at the District level, this should cause no financial burden to field units.
2. This issue also illustrates another significant benefit of the new S&R procedural rules found in 33 CFR Part 20. Under the Discovery rules in Subpart F, parties are required to exchange witness lists and exhibits at least 15 days before the hearing. Typically, contested cases involving a positive drug test will focus on collection procedures or the chain of custody and not the laboratory's analysis. When a Respondent intends to contest a laboratory's analytical results, the Coast Guard will now be well aware of this before the hearing. These are the only cases in which the Investigating Officer (IO) should seek the production of a complete litigation package.
3. We have discussed this issue with the Marine Safety School staff at TRACEN Yorktown to ensure consistent guidance is given to field IOs. Please contact LCDR Gordon Loebel at (202) 267-2026 if you have any further questions.

A handwritten signature in cursive script, appearing to read "J. L. Grenier".

J. L. GRENIER
By direction

Encl: (1) Your ltr 16216 of 22 Sep 99

Copy: All District (m) Offices
TRACEN Yorktown (tmii)

U.S. Department
of Transportation

United States
Coast Guard



Commanding Officer
United States Coast Guard
Marine Safety Office Port Arthur

2875 Jimmy Johnson Blvd.
Port Arthur, TX, 77640-2099
Phone: (409) 723-6501
FAX: (409) 723-6541

MOA-1

JB
10/13

16216
22 Sep 99

From: Commanding Officer, Marine Safety Office Port Arthur
To: Commandant (G-MOA)
Via: Commander, Eighth Coast Guard District (m)

A handwritten signature in black ink, appearing to read "J. Marshall", dated "10/1/99".

Subj: LITIGATION PACKAGE GUIDANCE REQUEST FOR DRUG HEARINGS

Ref: (a) Telecom between PATMS and G-MOA on 7 Sep 99
(b) 46 CFR Part 16
(c) 49 CFR Part 40

1. My office prosecutes about 40 drug related administrative hearings against merchant mariner's credentials each year. In every case involving a hearing, my Investigating Officers are required to acquire a "litigation" package containing chemical test results and chain of custody documentation from the testing laboratory to prove their case. In the past, laboratories have been willing to provide my office with copies of the litigation package at no cost. Recently, some labs have become more aggressive about seeking reimbursement for these packages. These labs view the litigation package as "work product", which to them constitutes a charge well over the cost incurred by merely copying and collating their existing paperwork. In a recent case, a lab demanded payment of \$150 for a litigation package. Our office is not budgeted for this kind of expense; consequently, our ability to proceed with the case was threatened. Fortunately, we were able to acquire the litigation package by subpoenaing the Lab Director to personally attend the hearing with litigation package in hand. The company then offered the litigation package along with telephonic testimony in lieu of appearing in person, which has been the normal course of business for these proceedings. Although the above case worked itself out, many man-hours were expended on research and negotiation.

2. We found no written guidance to field units directing how to handle payment demands from testing laboratories for litigation packages. In addition, we are not funded to handle this potential recurring expense, about \$6,000 annually in the worst case.

3. The best guidance to date was revealed through reference (a). As a result of the conversation, it became apparent that LCDR Loebel has repeatedly fielded questions regarding litigation packages. He explained that there has been conflicting information between what Headquarters is directing and what Yorktown is training. Headquarters has directed units to develop a rapport with the laboratory in hopes of obtaining the litigation package at no cost. Then if necessary, subpoena the litigation package and site 49 CFR 40.29(g)(7), which requires labs to make copies of analytical results available to the DOT when requested. On the other hand, Yorktown teaches that paying for litigation packages can be expected in the field, and as

ENCLOSURE(1)