

## OSHA Directives

### CPL 2.98 - Guidelines for Case File Documentation for use with Videotapes and Audiotapes

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- **Record Type:** Instruction
  - **Directive Number:** CPL 2.98
  - **Subject:** Guidelines for Case File Documentation for use with Videotapes and Audiotapes
  - **Information Date:** 10/12/1993
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OSHA Instruction CPL 2.98

October 12, 1993

Directorate of Compliance Programs

Subject: Guidelines for Case File Documentation for Use with Videotapes and Audiotapes

**A. Purpose.** This instruction revises guidelines for case file documentation to include specific provisions for videotapes and audiotapes.

**B. Scope.** This instruction applies OSHA-wide.

#### **C. References.**

1. Occupational Safety and Health Act of 1970 (OSH Act), as amended November 5, 1990.
2. OSHA Instruction CPL 2.45B, June 15, 1989, the Field Operations Manual (FOM), and subsequent changes through CH-3, June 15, 1992.
3. OSHA Instruction CPL 2-2.20B, February 5, 1990, OSHA Technical Manual, Appendix 5-C, Video Tape Guidelines and Analysis.
4. OSHA Instruction ADM 12.4, September 29, 1986, OSHA Records Management Program.
5. OSHA Instruction ADM 12.5, November 15, 1989, OSHA Compliance Records.
6. OSHA Instruction ADM 12.8, Maintenance, Disposition, and Recall of Videotaped or Audiotaped Inspections. This instruction is currently in draft form, but will be issued soon.
7. OSHA Instruction ADM 12-7.4, April 19, 1993, Safety Fatality and Catastrophe Inspection Case File Disposition.

8. OSHA Instruction ADM 12-9.4B, February 7, 1984, Disclosure of Records Under the Freedom of Information Act (FOIA).

9. Executive Order 12600, June 23, 1987, Predisclosure Notification Procedures for Confidential Commercial Information.

**D. Action.** OSHA National Office Directors, Regional Administrators and Area Directors are to ensure that the guidelines, policies and procedures set forth in this instruction are followed.

1. This instruction supplements and supersedes, in part, guidance provided in the FOM. Parts of the FOM that are not explicitly altered remain in force.

2. Implementation of videotaping and audiotaping guidelines will continue to occur gradually, as necessary equipment is purchased and distributed to the field.

**E. Federal Agencies.** This instruction describes a change that affects Federal agencies. Executive Order 12196, Section 1-201, and 29 CFR 1960.16, maintains that Federal agencies must also follow the enforcement policy and procedures contained in this instruction.

**F. Federal Program Change.** This instruction describes a Federal program change that affects State programs. Each Regional Administrator is to:

1. Ensure that a copy of this change is promptly forwarded to each State designee, using a format consistent with the Plan Change Two-Way Memorandum in Appendix P, OSHA Instruction STP 2.22 CH-2.

2. Explain the content of this change to the State designees as requested.

3. Notify the State designees that this instruction provides guidelines for case file documentation for use with videotaping and audiotaping. Some benefits which have been derived from videotaping are discussed in G. of this instruction. OSHA encourages the use of video-taping as a method of documenting violations and of gathering evidence for inspection case files. Therefore, to establish nationwide consistency for case file documentation, State plan States that are already using videotaping as a method of case files documentation, or plan to use such method, will be encouraged to either adopt the guidelines in this instruction or use alternative guidelines that are as effective.

4. Ensure that State designees are asked to acknowledge receipt of this Federal program change in writing to the Regional Administrator as soon as the State's intention is known, but not later than 70 calendar days after the date of issuance (10 days for mailing and 60 days for response). This acknowledgment shall include a statement indicating whether the State is now using or will be using videotaping, and whether the State will adopt OSHA's guidelines or use alternative guidelines that are as effective.

5. Ensure that the State designees submit a plan supplement (if the State is using or plans to use video-taping) according to OSHA Instruction STP 2.22A, CH-3, as appropriate, following the

established schedule that is agreed upon by the State and the Regional Administrator to submit non-Field Operations Manual/OSHA Technical Manual Federal program changes.

a. If a State intends to follow OSHA's policy/procedure described in this instruction, the State must submit either a revised version adapted as appropriate to reference State law, regulations, and administrative structure, or a cover sheet describing how references in this instruction corresponds to the State's structure. The State's acknowledgment of the Plan Change Two-Way Memorandum may fulfill the plan supplement requirement if the appropriate documentation is provided.

b. Any alternative State policy/procedure must be submitted as a State plan supplement to the Region within 6 months. The State's plan supplement must identify and provide a rationale for all substantial differences from Federal policy/procedure in order for OSHA to judge whether a different State policy/procedure is as effective as a comparable Federal policy/procedure.

6. Advise the State designees that OSHA implementation of videotaping and audiotaping guidelines will continue to occur gradually, as necessary equipment is purchased and made available to the field. Until the equipment becomes available, existing requirements will be used for case file documentation.

7. Inform the State designees that the Regional Administrator will provide technical advice to the State upon request.

8. Review policies, instructions and guidelines issued by the State to determine that this change has been communicated to State program personnel.

**G. Background.** Since 1988, videocameras have been available in certain Area Offices; they have been used on a pilot basis in a variety of inspections. Significant benefits have been identified because of their use.

1. In certain types of inspections, such as those involving ergonomic hazards, videotaping work as it is performed provides the best documentary evidence of the dynamics and stressors of each job. In most inspection situations, videotaping provides a convenient method of capturing visual information about particular violations, be they static or dynamic. The videotaping process also records sound, which makes it a suitable way of noting information that would otherwise have to be reduced to writing on-the-spot.

2. Videotaping has enabled some offices to reduce routine notes and other written documentation, since necessary information is recorded and available for transcription as necessary.

3. In normal circumstances, videotape documentation also precludes the need for developing and mounting photographs, and thereby saves valuable Compliance Safety and Health Officer (CSHO) and administrative time.

4. Case files have been produced that are acceptable to the Solicitor and others involved in the litigation process. Anecdotal evidence indicates that the quality of the case record may be improved by increased reliance on videotaping and subsequent transcription, since hand-written notes may, on occasion, be unclear or too abbreviated.

#### **H. Policy.**

1. OSHA encourages the use of videotaping as a method of documenting violations and of gathering evidence for inspection case files. Certain types of inspections, such as fatalities, imminent dangers, and ergonomics should always include videotaping.

2. Other methods of documentation, such as handwritten notes, audiotapings, and photographs, continue to be acceptable and are encouraged whenever they add to the quality of the evidence and whenever videotape equipment is not available.

3. The CSHO shall not videotape or audiotape in security clearance areas unless the CSHO is **specifically** authorized to videotape and/or audiotape. (See the FOM, Chapter III, B.8.)

4. The CSHO shall mention during the opening conference that a videocamera and/or an audio recorder will be used to provide a visual and/or audio record, and that the videotape and the audiotape will be used in the same manner as handwritten notes and photographs are, and have been, in OSHA investigations. The CSHO shall also advise the walkaround representatives that the videocamera also records voice.

NOTE: If the employer is hesitant about permitting taping, the CSHO must determine, in accordance with procedures in the FOM, Chapter III, D.1.d., whether the employer is refusing to permit the inspection, and follow the FOM procedures accordingly.

5. If an employer refuses to allow videotaping during an inspection, the CSHO shall treat it as a refusal of entry and shall follow the appropriate procedures in the FOM.

6. If a CSHO begins an inspection and then discovers that the videocamera is not working, the CSHO will continue with the inspection following standard inspection procedures. If the videocamera is essential for the inspection (e.g., ergonomic inspections), the CSHO will either ensure that a backup videocamera is available or reschedule the part of the inspection that requires videotaping.

7. When citing hazards observed during review of the videotape that were not discussed during the inspection or at the site closing conference, the CSHO shall advise the employer and the employee representative of the apparent violations and the applicable standard sections, and may discuss suggested correction procedures and interim methods of control (either in person or by telephone). This shall take place during a second closing conference in the same manner as that of sampling result notification. (See the FOM, Chapter III, D.9.)

**I. Procedures.** The following taping procedures shall be observed:

1. **Cautions.** When taping, the CSHO shall ensure the safety of personnel in the area by the proper use of the videocamera and accessories taking into consideration the following:

- a. Since current videocameras are **not** rated as intrinsically safe, they shall not be used in hazardous atmospheres.
- b. Cables and cords, if used, shall be deployed so as **not** to present a tripping hazard.
- c. Walkways and work areas shall be kept clear of unnecessary equipment, and all equipment shall be properly secured when working on overhead platforms or walkways to avoid dropping accessories on those below.

2. **Taping Techniques.** Basic factors that apply when taping include:

a. **Videotapes and audiotapes shall normally not be reused until the case file itself can be destroyed.** See L.4. regarding reuse.

NOTE: A single videotape may be used for more than one inspection, **but only if** the case files of all of the inspections on the videotape have the same retention period.

b. The video lens can be covered to record on audio the employer's name, establishment location, exposure information, and instance description.

c. The date/time feature of the videocamera shall **always** be checked immediately before the opening conference to see that it is correct.

d. Do not "stage" employee exposure to hazards (do not re-enact). Only actual employee exposures should be videotaped. Demonstrations, which do not endanger the participants, may be taped as necessary to illustrate procedures or practices. Demonstrations shall be identified as such on the videotape.

e. When videotaping, pan the area slowly, then close in on the operation; include a position of reference (labeled aisle, beam, door, etc.). Take a 5-to-10 second exposure shot, focusing on the hazard/employee exposed, then continue narrating information detailing employee exposure into the camera with or without the video lens covered.

NOTE: This in no way is to be construed as a limitation on video use in ergonomic inspections.

f. A notation shall be made on the appropriate OSHA-1Bs or 1BIHs showing where on the videotape the information associated with each violation is to be found. This usually can be done by using the time of day that is superimposed on the videotape as a position counter.

g. After a videotape has been shot, there shall be no dubbing-in of the voice narration since this could be considered "editing" and have legal consequences. Appropriate factual voice narration

may, however, accompany the video or be added at the end of the videotape as long as it is clear on the videotape when the additions were made.

h. A label checklist with prompts for required OSHA-1B and 1BIH information may be placed on the videocamera as a reminder. (See Appendix A for a sample of a label checklist.)

**3. Specific Inspection Concerns.** For specific job operations/exposures the following applies:

a. When sampling for health violations such as noise and air contaminants, it is recommended that the CSHO videotape employees with sampling equipment and sources of exposure, film the sources of exposure, and pan the local area slowly for location of ventilation systems or other control measures. If the inspection is a health referral, the CSHO should identify as much of the areas/operations and contaminants as possible.

b. When videotaping construction violations, it is recommended that the CSHO film any apparent violations noted from public areas before entry onto the site. Panning the area may be useful to show multi-employer exposures before the employees disperse.

c. When videotaping program violations such as lockout/tagout and hazard communication, it is recommended that the CSHO film whenever possible the specific operations/exposures related to the program that show lack of compliance (lack of labels, employer admitting having no Material Safety Data Sheets, employer describing violative lockout/tagout or confined space procedures, filming violative lockout/tagout procedures, employees saying they have not seen their exposure or medical records).

NOTE: When there are employee statements, the issue of confidentiality must always be considered. Care must be taken to protect the confidentiality and privacy of the employee. See the FOM, Chapter III, D.8.d.(5) for appropriate procedures.

**4. Employees.** When recording employees, the CSHO shall abide by the following:

a. A **specific** notification of voice recordings shall be given to those employees within the audio range of the videocamera. Examples of a specific notification would be: "I will be videotaping your work and also taping what you say." or "While the red light on the videocamera is blinking, both the sound and picture are being recorded."

b. Interview statements may be videotaped or audiotaped, **with the consent of the person being interviewed**. The statement shall be reduced to writing in egregious, fatality/catastrophe, willful, repeated, failure to abate, and other significant cases so that it may be signed. CSHOs are encouraged to produce a written statement for correction and signature as soon as possible, identifying the transcriber. (See the FOM, Chapter III,D.8.d.(5).)

**5. Editing and Copying.** Original videotapes and audio-tapes shall **not** be edited. To prevent any accidental erasing of the original tape during copying, the rewrite tab on the original cassette

may be broken before any copying is done. If, however the rewrite tab is broken the videotape will not be able to be reused. (See J.2.c., for FOIA considerations.)

**6. Labeling.** Labeling of inspection video and audio cassettes generally shall follow the guidelines set forth in OSHA Instruction ADM 12.5, Appendix D, E.1.a.(20)(c):

- a. As needed, each Area Office shall implement a procedure to properly identify, file, track, locate, and retrieve all inspection video and audio cassettes.
- b. An entry in the case file diary shall note the existence of a video or an audio cassette associated with the inspection as well as the location of the cassette, if the location is not the case file. The outside of the case file should also identify the existence of a video and/or audio tape.

**J. Releasability of Materials.** The videotapes and/or audiotapes produced during an OSHA inspection are another form of evidentiary record and will be subject to all applicable disclosure requirements.

**1. Occupational Safety and Health Review Commission (OSHRC)/Court.** OSHA may be required by the OSHRC or a court to allow the employer or others to see and hear the entire videotape and/or audiotape.

**2. FOIA.** Videotapes and audiotapes taken by a CSHO during an inspection are records under FOIA; therefore, OSHA may be required to disclose information on videotapes and/or audiotapes. (See OSHA Instruction ADM 12-9.4B.)

a. **Custodian.** The OSHA Area Office, as custodian, will always keep custody of the original videotapes and audiotapes. If it becomes necessary to send any tape to the Solicitor, only a **copy** of the tape shall be sent.

b. **Cost.** When a FOIA request is received for a file containing a videotape or an audiotape, the requester shall be informed that parts of the tape may be nondisclosable and the estimated cost of producing a "sanitized" (edited for disclosure purposes) tape will be passed on to the requester.

NOTE #1: Find out if the requester is willing to bear the duplication costs, which includes direct costs and may also include a charge for time expended by agency personnel to review and edit the tape for release.

NOTE #2: The requesters may be advised that they may submit their own videotape to minimize cost. If a requester chooses to submit a videotape, it must be new and the seal unbroken.

c. **FOIA Editing.** The following procedures shall be followed:

(1) In addition to retaining the original tape, a **copy** of the sanitized videotape or audiotape shall be retained in the file, or its filing location referenced in the file for future use.

(2) In responding to FOIA requests, the following usually will **be deleted or obscured** from the tape:

- (a) Opinions of the CSHO, including CSHO's conclusions, evaluations of the employer's safety and health program, and any nonfactual comments;
- (b) Visual and audio identifications of employees who the CSHO talked to, and any employee telephone number and/or address; and
- (c) Employee statements/interviews. (To assist in FOIA editing these can be put on a separate videotape or audiotape from that of the walkaround footage).

(3) In responding to FOIA requests, the following usually will **not be deleted** from the tape:

- (a) Names of **injured** employees, which is factual information;
- (b) Names of the employee and the employer representatives who accompany the CSHO on the walkaround; and
- (c) The number of employees exposed.

**K. Confidentiality.** Videotapes and audiotapes must receive the same treatment with regard to the protection of trade secrets, private financial information, and other confidential commercial information as photographs and other records. Provision for the confidentiality of trade secrets is set forth in Section 15 of the OSH Act. Also, Executive Order 12600, Section 2, sets forth the definition of confidential commercial information which includes trade secrets. (See the FOM, Chapter III, D.8.e.(1).) Area Directors, supervisors, and CSHOs must adhere to the following:

1. Ensure that any video cassette or audio cassette that contains confidential information, which the employer has identified as such, is properly **labeled** and the videotape or the audiotape footage is distinctly identified to assist in the FOIA exemption editing.
2. Ensure that any videotape or audiotape footage that may contain trade secrets or other confidential business information is not released without appropriate clearances with or without reference to the FOIA.
3. After the citation has become a final order, audiotapes and videotapes may be used for OSHA training purposes in the private and public sector, if express written permission has been obtained from the employer and from any person (other than a CSHO), whose voice or picture has been recorded and would be identifiable. In addition, appropriate editing shall be done to protect the confidentiality of employees if required.

NOTE: The original audiotapes and videotapes must still be retained for the appropriate disposition period.



## **L. Storage, Disposition, Security, and Reuse.**

1. Video and audio tapes are not to be exposed to excessive heat or cold, or brought within the vicinity of a strong magnetic field.
2. Refer to OSHA Instructions ADM 12.8 and ADM 12-7.4 for detailed maintenance requirements and for disposition and recall procedures of files containing video or audio tapes.
3. Security of videotapes and/or audiotapes shall be maintained in the same manner as that of paper files with appropriate labeling to forestall release of confidential information. (See OSHA Instruction ADM 12.4.)
4. Audiotapes and videotapes may be reused (except in fatality/catastrophe cases) only if no citation was issued and the statute of limitations for issuance has passed, or after the file's retention period has expired (including any FOIA retention requirements).

NOTE #1: The National Archives and Records Administration (NARA) has increased the disposition period for fatality/catastrophe cases from 10 years to permanent (forever).

NOTE #2: If tapes are to be reused, they shall be erased completely before reuse to ensure that the integrity of the video and the audio records are not violated.

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DISTRIBUTION: National, Regional, and Area Offices All Compliance Officers State Designees NIOSH Regional Program Directors 7(c)(1) Project Managers

## **Appendix A**

### **Sample Label Checklist for Video Camera**

Equipment Abatement Information & Time Location Employer Knowledge Measurements  
Additional Information Exposed Employees - Injuries Frequency - Near Misses Duration of  
Exposure - Miscellaneous

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