

PROGRAM DIRECTIVE

Program Directive A-207
Issued April 5, 1994
Revised February 19, 1998

- SUBJECT:** Inspection Criteria: Videotapes and Audio Tapes Case File Documentation Guidelines.
- PURPOSE:** This instruction revises guidelines for case file documentation to include specific provisions for videotapes and audio tapes.
- SCOPE:** This instruction applies OR-OSHA-wide.
- REFERENCES:**
- A. Occupational Safety and Health Act of 1970 (OSH Act), as amended November 5, 1990.
 - B. Field Compliance Manual (FCM).
 - C. SOP 17.
 - D. SOP 25.
 - E. AVD (440-2110-A).
 - F. Public Records Policy.
- ACTION:** Administrator, managers and supervisors are to ensure that the guidelines, policies and procedures set forth in this instruction are followed.
- A. This instruction supplements and supersedes, in part, guidance provided in the FCM. Parts of the FCM that are not explicitly altered remain in force.
 - B. Implementation of videotaping and audio taping guidelines will continue to occur gradually, as necessary equipment is purchased and distributed to the field.
- BACKGROUND:** Since 1990, video cameras have been available in certain Field Offices; they have been used on a pilot basis in a variety of inspections. Significant benefits have been identified because of their use.

- A. 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 situation, 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.
- B. Videotaping has enabled some offices to reduce routine notes and other written documentation, since necessary information is recorded and available for transcription as necessary.
- C. In normal circumstances, videotape documentation also precludes the need for developing and mounting photographs, and thereby saves valuable Safety Compliance Officer and Health Compliance Officer (SCO/HCO) and administrative time.
- D. Case files have been produced that are acceptable to the Department of Justice (DOJ) 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.

POLICY:

- A. OR-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.
- B. Other methods of documentation, such as handwritten notes, audio tapings, and photographs, continue to be acceptable and are encouraged whenever videotape equipment is not available.
- C. The SCO/HCO shall not videotape or audio tape in security clearance areas unless the SCO/HCO is **specifically** authorized to videotape and/or audio tape. (See the FCM, Chapter 3, B.8.)
- D. The SCO/HCO shall mention during the open conference that a video camera and/or an audio recorder will be used to provide a visual and/or audio record, and that the videotape and the audio tape will be used in the same manner as handwritten notes and photographs are, and have been, in OR-OSHA investigations. The SCO/HCO shall also advise the walkaround representatives that the video camera also records voices.

NOTE: If the employer is hesitant about permitting taping,

the SCO/HCO must determine, in accordance with procedures in the FCM, Chapter 3, D.1.d., whether the employer is refusing to permit the inspection, and follow the FCM procedures accordingly.

- E. If an employer refuses to allow videotaping during an inspection, the SCO/HCO shall follow the appropriate procedures in the FCM.
- F. If a SCO/HCO begins an inspection and then discovers that the video camera is not working, the SCO/HCO will continue with the inspection following standard inspection procedures. If the video camera is essential for the inspection (e.g., ergonomic inspections), the SCO/HCO will either ensure that a backup video camera is available or reschedule the part of the inspection that requires videotaping.
- G. When citing hazards observed during review of the videotape that were not discussed during the inspection or at the site closing conference, the SCO/HCO 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 FCM, Chapter 3, D.10.)

PROCEDURES: The following taping procedures shall be observed:

- A. Cautions. When taping, the SCO/HCO shall ensure the safety of personnel in the area by the proper use of the video camera and accessories taking into consideration the following:
 - 1. Since current video cameras are **not** rated as intrinsically safe, they shall not be used in hazardous atmospheres.
 - 2. Cables and cords, if used, shall be deployed so as **not** to present a tripping hazard.
 - 3. 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.
- B. Taping Techniques. Basic factors that apply when taping include:
 - 1. **Videotapes and audio tapes shall normally not be reused until the citation has become a final order.** See

(10)D. regarding reuse.

2. The video lens can be covered to record on audio the employer's name, establishment location, exposure information, and instance description.
3. The date/time feature of the video camera shall **always** be checked immediately before the opening conference to see that it is correct.
4. 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.
5. 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.

6. A notation may be made on the appropriate AVD (440-2110-A) 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.
7. 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.
8. A label checklist with prompts for required AVD information may be placed on the video camera as a reminder. (See Appendix A for a sample of a label checklist.)

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

1. When sampling for health violations such as noise and air contaminants, it is recommended that the SCO/HCO 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 SCO/HCO should identify as much of the area/operations and contaminants as possible.
2. When videotaping construction violations, it is recommended that the SCO/HCO 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.
3. When videotaping program violations such as lockout/tagout and hazard communication, it is recommended that the SCO/HCO 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 FCM, Chapter 3, D.9.d.(3) for appropriate procedures.

D. Employees. When recording employees, the SCO/HCO should abide by the following:

1. A **specific** notification of voice recordings may be given to those employees within the audio range of the video camera. 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 video camera is blinking, both the sound and picture are being recorded."
2. Interview statements may be videotaped or audio taped, **with the consent of the person being interviewed.** The

statement may be reduced to writing in egregious, fatality/catastrophe, willful, repeated, failure to abate, and other significant cases so that it may be signed. SCO/HCOs are encouraged to produce a written statement for correction and signature as soon as possible, identifying the transcriber. (See the FCM, Chapter 3, D.9.d.(5).)

- E. 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. (Public Records Policy (PRP))
- F. Labeling. Labeling of inspection video and audio cassettes generally shall follow the guidelines set forth in SOP 25:
 - 1. As needed, each Field Office shall implement a procedure to properly identify, file, track, locate, and retrieve all inspection video and audio cassettes.
 - 2. 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.

RELEASABILITY OF MATERIALS: The videotapes and/or audio tapes produced during an OR-OSHA inspection are another form of evidentiary record and will be subject to all applicable disclosure requirements.

- A. Workers' Compensation Hearings Division (WCHD). OR-OSHA may be required by the WCHD or a court to allow the employer or others to see and hear the entire videotape and/or audio tape.
- B. Public Records Policy (PRP). Videotapes and audio tapes taken by a SCO/HCO during an inspection are records under PRP; therefore, OR-OSHA may be required to disclose information on videotapes and/or audio tapes. (See SOP 25.)
 - 1. Custodian. The Field Office, as custodian, will always keep custody of the original videotapes and audio tapes. If it becomes necessary to send any tape to the Department of Justice (DOJ), only a **copy** of the tape shall be sent.
 - 2. Cost. When a PRP request is received for a file containing a videotape or an audio tape, 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.

3. PRP Editing. The following procedures should be followed:
 - a. In addition to retaining the original tape, a **copy** of the sanitized videotape or audio tape may be retained in the file, or its filing location referenced in the file for future use.
 - b. In responding to PRP requests, the following may **be deleted or obscured** from the tape:
 - (1) The identity of any complainant.
 - (2) All information obtained by OR-OSHA which contains, or might reveal, any trade secret referred to in section 1905, title 18, United States Code.

CONFIDENTIALITY:

Videotapes and audio tapes 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 (Public Records Policy ORS Chapter 192). (See SOP 17.) Administrator, Managers, supervisors, and SCOs/HCOs must adhere to the following:

- A. 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 audio tape footage is distinctly identified to assist in the PRP exemption editing.
- B. Ensure that any videotape or audio tape footage that may contain

trade secrets or other confidential business information is **not** released without appropriate clearances with or without reference to the PRP.

- C. After the citation has become a final order, audio tapes and videotapes may be used for internal training purposes. In addition, OR-OSHA may use them for 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 SCO/HCO), 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 audio tapes and videotapes must still be retained for the appropriate disposition period.

**STORAGE,
DISPOSITION,
SECURITY,
AND REUSE:**

- A. Video and audio tapes are not to be exposed to excessive heat or cold, or brought within the vicinity of a strong magnetic field.
- B. Refer to SOP 25 for detailed maintenance requirements and for disposition and recall procedures of files containing video or audio tapes.
- C. Security of videotapes and/or audio tapes shall be maintained in the same manner as that of paper files with appropriate labeling to forestall release of confidential information. (See SOP 25.)
- D. Audio tapes 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.

NOTE 1: 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.

NOTE 2: If original and confidential tapes are prepared, at least one of each tape shall be retained. All other copies should be reused after the case file is closed.

**EFFECTIVE
DATE:**

This directive is effective immediately and will remain in effect until cancelled or superseded.

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