

INFORMATION MEMORANDUM - #94-x-92

TO: OSH Managers, Supervisors, and Field Personnel

FROM: W.M. Lybrand

DATE: February 8, 1994

SUBJECT: GUIDELINES FOR CASE FILE DOCUMENTATION FOR USE WITH VIDEOTAPES

- A. Purpose. This instruction establishes guidelines for case file documentation to include specific provisions for videotapes.
- B. Background. For several years, video cameras have been available for use 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 being 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. In some circumstances, videotape documentation may preclude the need for developing and mounting photographs, and thereby save valuable Compliance Officer and Industrial Hygienists (CO/IH) time as well as administrative time. However, videotaping will normally be used as a supplement to notes and photos.
- C. Policy.
1. OSH 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 major accidents, catastrophes, and ergonomics should always include videotaping.
  2. Other methods of documentation, such as handwritten notes and photographs, continue to be necessary and will be used along with videotaping.
  3. The CO/IH shall not videotape in security clearance areas unless the CO/IH is specifically authorized to videotape. (See the Compliance Manual, Chapter V H.1.B.).

4. The CO/IH shall mention during the opening conference that a video camera will be used to provide a visual record and that the videotape will be used in the same manner that photographs are, and have been, in OSH investigations. The CO/IH shall also advise the walkaround representatives that the video camera also records voice.

NOTE: If the employer is hesitant about permitting taping, the CO/IH must determine whether the employer is refusing to permit the inspection, and follow Compliance Manual procedures accordingly. (Chapter V – D.3.)

5. If the employer refuses to allow videotaping during an inspection, the CO/IH shall treat it as a refusal of entry and shall follow the appropriate procedures in the Compliance Manual.
6. If the CO/IH begins an inspection and then discovers that the video camera is not working, the CO/IH will continue with the inspection following standard inspection procedures. If the video camera is essential for the inspection (e.g., ergonomic inspections), the CO/IH will either ensure that a backup video camera 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 CO/IH 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).

D. Procedures. The following taping procedures shall be observed:

1. Cautions. When taping, the CO/IH shall ensure the safety of personnel in the area by the proper use of the video camera and accessories taking into consideration the following:
  - a. Since current video cameras 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 will not be reused until the case file is closed and the retention schedule for the tapes (same as for photograph negatives) has expired. See G. 4 regarding reuse.

NOTE: A single videotape will be used for each inspection.
  - 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 video camera 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.
  - 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 video lens covered.

NOTE: This is no way to be constructed as a limitation on video use in ergonomic inspections.
  - f. A notation shall be made on the appropriate DOSH-C-1As or 1AIHs showing where on the videotape the information associated with each violation is to be found. This actually 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.
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 IH 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.
- b. When videotaping construction violations, it is recommended that the CO/IH 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 CO/IH film whenever possible the specific operations/exposures related to the program that show lack of compliance (lack of labels, employer admitting to having no Material Data Safety 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 Compliance Manual, Chapter V F.4. for appropriate procedures.

4. Employees. When recording employees, the CO/IH shall abide by the following:
  - a. A specific notification of voice recordings shall be given to those employees within 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 is on the video camera is blinking, both the sound and picture are being recorded."
  - b. Videotaping will not be used to record routine employee interview statements. The CO/IH shall follow procedures in the Compliance Manual (Chapter V, F.4.f.) for obtaining written witness statements.
5. Editing and Copying. Original videotapes shall not be edited. Also, the rewrite tabs on the original cassette shall not be broken, as the tape may be reused at a later time.

6. Labeling. Labeling of inspection **video cassettes** generally shall follow the same guidelines set for photographic negatives. The company name, the CO/IH report number and the tape's subject matter shall be on the label.
  - a. The Audiovisual Office shall implement a procedure to properly identify, file, track, locate, and retrieve all inspection videos.
  - b. An entry in the case file shall note the existence of a **video cassette** associated with the inspection as well as the location of the cassette, if the location is not the case file.
  
- E. Releasibility of Material. The videotapes produced during an OSH inspection are another form of evidentiary record and will be subject to all applicable disclosure requirements.
  1. Occupational Safety and Health Review Board (OSHRB) / Court. OSH may be required by the OSHRB or a court to allow the employer or others to see and hear the entire videotape.
  2. FOIA. Videotapes taken by a CO/IH during an inspection are records under FOIA: therefore, OSH may be required to disclose information on videotapes.
    - a. Custodian. The OSHA Office, as custodian, will always keep custody of the original videotapes.
    - b. Cost. When a FOIA request is received for a videotape, the request shall be directed/forwarded to the Office of Public Information. The Public Information Office shall be advise the requester that parts of the tapes may be nondisclosable and the estimated cost of producing a "sanitized" (edited for disclosure purposes) tape will be passed on to the requester. (See Appendix A).

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 responding to FOIA requests, the following usually will be deleted or obscured from the tape:
  - a. Visual and audio identifications of employees who the CO/IH talked to and employee statements.
2. 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 CO/IH on the walkaround; and
  - (c) The number of employees exposed.

F. Confidentiality. Videotapes must receive the same treatment with regard to the protection of trade secrets, and other confidential commercial information as photographs and other records. Provision for the confidentiality of trade secrets is set forth in the South Carolina Rules and Regulations, Chapter 71, Article I, Subarticle XI. Managers, supervisors and COs/IHs must adhere to the following:

1. Ensure that any video cassette that contains confidential information, which the employer has identified as such, is properly labeled and the videotape footage is distinctly identified to assist in the FOIA exemption editing.
2. Ensure that any videotape footage that may contain trade secrets or other confidential business information is not released without appropriate clearances with or without references to the FOIA.

G. Storage, Disposition, Security, and Reuse.

1. Video tapes are not to be exposed to excessive heat or cold, or brought within the vicinity of a strong magnetic field.
2. Refer to OSH Retention Policy and Schedule for photographic negatives for disposition and recall procedures for video.
3. Security of videotapes shall be maintained in the same manner as that of paper files with appropriate labeling to forestall release of confidential information.

4. Videotapes may be reused after the file's retention period has expired (including any FOIA retention requirements).

NOTE: 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.

H. Effective Date:

This memorandum is effective immediately and shall remain in effect until cancelled or superseded.

## APPENDIX A

### S.C. DEPARTMENT OF LABOR, LICENSING, AND REGULATION

#### **Freedom of Information Act (FOIA) Requests**

1. All FOIA requests will be forwarded to the FOIA coordinator in the Office of Public Information for processing.
2. FOIA request will be handled in accordance with the S.C. Freedom of Information Act and agency regulations and policies on disclosure of Information.
3. Non-agency employees will not be allowed unsupervised access to agency premises or record files unless approved by the Public Information Office.
4. The FOIA coordinator will request information from a division employee regarding a FOIA request. This includes but is not limited to researching files, pulling archived materials, copying information, reproducing photographs, developing a computer program or running an existing computer program and making records available for review.
5. Generally, FOIA requests will be handled in the course of regular office routine, with employees processing requests as time and job functions permit. However, the agency and its employees will provide a response to each FOIA request within the legally mandated fifteen business days (excluding Saturdays, Sundays, and legal holidays).
6. If information requested under the FOIA is determined to be non-releasable, the Public Information Office will provide written notification of that determination and the reasons thereof within the legal mandate fifteen business days (excluding Saturdays, Sundays, and legal holidays).
7. If a review of records is requested, those records will be pulled and made available in a convenient location. While records are under review, Office of Public Information staff will remain with the individual making the FOIA request.
8. Occasionally, FOIA requests shall be designated as high priority and employees will expedite their response to them as quickly as possible. It will be the responsibility of the Public Information Office to determine which FOIA requests require high priority.
9. All FOIA requests will be date stamped upon their receipt. If the request is received at the division or other unit of the agency, it will be date stamped at that location and immediately redirected to the FOIA Coordinator in the Office of Public Information where it will be date stamped also.
10. All FOIA requests and responses must be in writing.
11. The FOIA coordinator will maintain a log for registering the name of requestor, date of receipt of request, date information was mailed, summary of information released to the requestor and a summary of information released to requestor and a summary of information withheld.
12. An FOIA request will be answered without charge when the request requires minimal employee time and photocopying expense (fifteen pages or less), and when the request will benefit the public interest.

13. For requests which require more than minimal employee time and/or photocopying, etc., a reasonable charge will be assessed the person requesting the information. FOIA requests which involve computer programs/runs will be assessed a reasonable charge based on the amount of employee and computer time required. Archival requests will be assessed reproduction fees based on the amount of employee time required to locate requested information.

Reproduction charges will be levied as follows: photocopies, 15 cents per copy; microfiche, 20 cents per copy; agency black and white photographs, \$2.25 per photograph; all other photographs (color prints, videotapes, etc.) actual cost incurred by agency to reproduce same. A research and retrieval fee of \$5.00 will be added to the charges for each FOIA requests processed.

14. Any individual making a FOIA request which will result in a charge will be notified in advance of the approximate cost for providing that information; notification and acceptance of charges may be verbal or in writing.

15. Payment in full or part of the FOIA request may be required by the agency prior to the release of any records. Requests for payment in advance shall be in writing.

16. Upon releasing the records, the FOIA coordinator will advise the requestor of the exact cost for providing the information. Notification of exact charges and method of payment shall be in writing.

17. Payment of FOIA request will be made payable to the S.C. Department of Labor, Licensing, and Regulation. Checks/money orders will be forwarded to the Office of Public Information.

18. Charges may be waived or levied at the discretion of the Public Information Office.

19. News media, members of the General Assembly, and other state and federal agencies will not be charged for information or records released under the FOIA.

20. Charges will not be levied for making records accessible for review.