

**ALASKA DEPARTMENT OF LABOR  
DIVISION OF LABOR STANDARDS AND SAFETY**

AKOSH Program Directive 93-5

Date: November 1993

To: All AKOSH Compliance Staff

From: Donald G. Study, CSP, Director

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 AKOSH-wide.
- C. References. Alaska Compliance Manual as revised 11/92, 8 AAC 61.020, 8 AAC 61.060 and OSHA Instruction CPL 2.98, October 12, 1993.
- D. Action. AKOSH Chiefs and Assistant Chiefs are to ensure that the guidelines, policies and procedures set forth in this instruction are followed.
- E. Background. Since 1988, video cameras have been available in certain AKOSH 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 Alaska Attorney General 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 handwritten notes may, on occasion, be unclear or too abbreviated.

F. Policy.

1. AKOSH directs 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 AKOSH Compliance Manual, Chapter III, B.8.)
4. The CSHO shall mention during the opening 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 audiotape will be used in the same manner as handwritten notes and photographs are, and have been, in AKOSH investigations. The CSHO shall also advise the walkaround representatives that the video camera also records voice.

Note: If the employer is hesitant about permitting taping, the CSHO must determine, in accordance with procedures in the AKOSH Compliance Manual, Chapter III, D.I.d., whether the employer is refusing to permit the inspection, and follow the AKOSH Compliance Manual 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 AKOSH Compliance Manual.
6. If a CSHO begins an inspection and then discovers that the video camera is not working, the CSHO will continue with the inspection following standard inspection procedures. If the video camera is essential for the inspection (e.g., ergonomic inspections), the CSHO 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 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 AKOSH Compliance Manual, Chapter III, D.9.)

G. 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 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 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 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. 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-IBs or IBIHs 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 IB and IBIH information may be placed on the video camera as a reminder. (See Appendix A for a sample of a label checklist.)

3. Specific Inspection Concerns. For specific job operation/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 AKOSH Compliance Manual, 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 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."
  - 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 AKOSH Compliance Manual, Chapter III,D.8.d.(5).)
5. Editing and Copying. Original videotapes and audiotapes 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 Anchorage 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.

H. Releasibility of Materials. The videotapes and/or audiotapes produced during an AKOSH inspection are another form evidentiary record and will be subject to all applicable disclosure requirements.

1. Occupational Safety and Health Review Board (OSH Review Board). AKOSH may be required by the OSH Review Board to allow the employer or others to see and hear the entire videotape and/or audiotape.
2. Freedom of Information Act (FOIA). Videotapes and audiotapes taken by a CSHO during an inspection are records under FOIA; therefore, AKOSH may be required to disclose information on videotapes and/or audiotapes. (See OSHA Instruction ADM 12-9.4B.)
  - a. Custodian. The AKOSH Anchorage 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.

I. 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 8 AAC 61.060. (See the AKOSH Compliance Manual, Chapter III, D.8.e.(1)). The Director, Chiefs, Assistant Chiefs 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. Insure 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 AKOSH 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.

I. 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.



Appendix A  
Sample Label Checklist for Video Camera

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

