

VOSH PROGRAM DIRECTIVE: 02-053C

ISSUED: 15 August 2011

Subject **Procedures for Photographs, Audio and Video Recordings Taken During VOSH Inspections or Investigations.**

Purpose This Directive revises guidelines/procedures for VOSH case file documentation to include specific provisions and procedures for photographs and audio and video recordings taken during inspection or investigation.

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

Scope This directive applies to all VOSH personnel.

Reference OSHA Instruction CPL 02-00-098 (12 October 1993).

Cancellation VOSH Program Directive 02-053B (01 September 1994).

Action Directors and Supervisors shall ensure that the guidelines, policies and procedures set forth in this Directive are complied with by VOSH Personnel.

Effective Date 15 August 2011

Expiration Date Not Applicable.

Courtney M. Malveaux
Commissioner

Distribution: Commissioner of Labor and Industry
Assistant Commissioner - Programs
VOSH Directors and Managers
Legal Support & IMIS Staffs

Cooperative Programs Director & Manager
VOSH Compliance & Cooperative Programs Staffs
OSHA Regional III & Norfolk Area Offices

I. Policy

1. VOSH strongly encourages the use of photographs as a method of documenting violations. In addition, audio and in certain circumstances video if available, may be used whenever the CSHO determines their use would add to the quality and gathering of the evidence for inspection case files. Significant benefits have been identified because of their use. Certain types of inspections, such as fatalities, imminent dangers, ergonomic and programmed, should always include photographs.
2. During an inspection, photographing the work as it is performed provides the best documentary evidence of the dynamics and stressors of each job. In most inspection situations, it provides a convenient method of capturing visual information about particular violations, be they static or dynamic. The use of audio recording by the CSHO, if desired, provides a suitable way of noting information that would otherwise have to be reduced to writing on-the-spot.
3. Other methods of documentation, such as handwritten notes or audio recordings, continue to be acceptable and are encouraged.
4. All photographed conditions on construction and industrial sites used to support alleged violations are to become a part of the original case file.
5. The CSHO shall not take photographs or record audio or video in security clearance areas unless the CSHO is specifically authorized to do so. (*See VOSH FOM*).
6. The CSHO shall mention during the opening conference if an audio or video recording will be used to provide a record of the conference, and that any such recordings will be used in the same manner as handwritten notes and photographs are, and have been, in VOSH investigations. The CSHO shall also advise the walkaround representatives if their digital camera is used in a video mode to also record voice.
7. The taking of photographs or the use of video may be essential to conducting the inspection. If an employer absolutely refuses to allow the CSHO to photograph, or record audio or video (if necessary) during an inspection, the CSHO shall treat it as a refusal of entry and shall follow the appropriate procedures in the VOSH FOM.
8. If, instead of a complete refusal, the employer is hesitant or unsure about permitting such photographs, audio or video recordings, the CSHO shall determine whether the employer is refusing to permit the inspection. This determination shall be in accordance with procedures in the VOSH FOM.
9. If a CSHO begins an inspection and then discovers that the camera is not working, the CSHO will continue with the inspection following standard inspection procedures. If the camera is essential for the inspection (e.g., ergonomic issues), the CSHO will either ensure that a backup camera is available or reschedule the part of the inspection that requires photographing.
10. When citing hazards observed during review of the photographs 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 a sampling result notification. (*Refer to VOSH FOM*).

II. Procedures.

The following procedures shall be observed:

1. The CSHO shall ensure the safety of personnel in the area by the proper use of the equipment and accessories taking into consideration the following:
 - a. Since available cameras and recorders in use by VOSH are not specifically rated as intrinsically safe, they shall not be used in hazardous atmospheres.
 - b. Any 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. Basic techniques that apply when conducting an inspection:
 - a. The date/time feature of the camera, if so equipped, shall always be checked immediately before beginning the inspection to see that it is correct and to assure that it is superimposed on the image(s).
 - b. Do not "stage" employee exposure to hazards (*do not re-enact*). Only actual employee exposures should be photographed. Demonstrations, which do not endanger the participants, may be photographed or videoed, as necessary, to illustrate procedures or practices. Demonstrations shall be marked and identified as such in photos.
 - c. A notation shall be made on the appropriate VOSH-1Bs showing where in the case file the photographs associated with each violation is to be found.
 - d. When photographing a work area that is wider than the camera's wide angle field of view:
 1. Use multiple overlapping photographs to provide a full overview of the particular area of inspection; then,
 2. Take close-up shots of the operation in question in subsequent photographs; include a position of reference (labeled aisle, beam, door, etc.); and finally,
 3. Focus on photographing the hazard/employee exposure so that such photographs will support any cited alleged violations.
 - e. In the case of audio recording, there shall be no dubbing-in of the voice narration on the original recording as this could be considered "editing" and have legal consequences. However, in the case of video, appropriate factual voice narration may accompany the video or be added at the end of the video as long as it is clear on the video when the additions were made.
 - f. A label checklist with prompts for required VOSH-1B information may be placed on the camera as a reminder. (*See Appendix A for a sample of a label checklist.*)

3. For specific inspection concerns regarding 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 photograph employees with sampling equipment and sources of exposure, record the sources of exposure, and photograph the area 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 photographing construction violations, it is recommended that the CSHO also photograph any apparent violations noted from public areas before entry onto the site. Panning the area with overlapping shots may be useful to show multi-employer exposures before the employees disperse.
 - c. When photographing or otherwise documenting or recording program violations, such as lockout/tagout and hazard communication, it is recommended that the CSHO include, whenever possible, the specific operations and exposures related to the program that show lack of compliance. This would include: lack of labels, employer admitting to having no Material Safety Data Sheets (MSDS), employer describing violative lockout/tagout or confined space procedures, filming violative lockout/tagout procedures, and employees stating they have not seen their exposure or medical records).
4. A specific notification that a recording is being made shall be given to those employees within the audio range of the recorder or video camera. Examples of a specific notification would be: "I will be audio or video recording your work and also what you say."
5. Interview statements may be recorded with the consent of the person being interviewed. The consent shall be obtained at the beginning of the recording. CSHOs are encouraged to produce a written statement for correction and signature as soon as possible, identifying the transcriber. (*Refer to the VOSH FOM*). Original audio or video recordings shall not be edited.
6. All digital files created in connection with the inspection, including those that have been printed and added to the case file to support violations, shall be transferred to a compact disc (CD), marked with the inspection number, placed in a protective sleeve with the CSHO ID, and included in the case file.

III. **Releasability**

Releasability of such digital photos or other recordings produced during a VOSH inspection are another form of evidentiary record and will be subject to all applicable disclosure requirements.

1. Court. VOSH may be required by a court to allow the employer or others to see photos and portions of a video and/or hear audio recordings.
2. FOIA. All film or digital records (photograph, audio or video) taken by a CSHO during an inspection are records under FOIA; therefore, VOSH may be required to disclose some information on such recordings.
 - a. Custodian. Following completion of case file preparation, a copy of all photograph, audio and video files relating to the inspection shall be placed in the completed case file.
 - b. Cost. When a FOIA request is received for a file containing audio or video recordings, the

requester shall be informed by the Division of Legal Support that parts of the recording may be nondisclosable and the estimated cost of producing a "sanitized" (edited for disclosure purposes) tape will be passed on to the FOIA requester.

NOTE: Determine if the FOIA requester is willing to bear the duplication costs, which include direct costs and may also include a charge for time expended by agency personnel to review and edit the recordings for release.

- c. FOIA editing procedures shall be in accordance with the Division of Legal Support FOIA process and procedures.

IV. Confidentiality

Confidentiality of all digital photographs, audio or video records must receive the same treatment with regard to the protection of trade secrets, private financial information, and other confidential commercial information as other records. Provision for the confidentiality of trade secrets is set forth in §40.1-51.4:1 of the *Code of Virginia* (See also the FOM and ARM). Directors, supervisors and CSHOs must adhere to the following:

1. Ensure that any photographs, audio or video records that contain confidential information, which the employer has identified as such, is properly labeled and, in the case of audio and video records, are distinctly identified to assist in the FOIA exemption editing.
2. Ensure that any photographs, audio or video records 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, all photographs, audio or video records used in the case file may be used for VOSH internal training purposes, if express written permission has been obtained from the employer and from all persons (other than a CSHO), whose voice or image 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 CDs must still be retained for the appropriate disposition period.

V. Storage, Duplication, Disposition, and Security.

1. All photo, video and audio files taken as part of the inspection process, as well as those used in the preparation of the case file to support alleged violations, shall be transferred to the Compact Disc (CD) for that case. Upon completion of all other preparations of the case file, the CD shall be added to, and become part of, the case file.
2. Security of all digital still photographs, audio and/or video recordings as well as any non-digital photographs shall be maintained in the same manner as that of paper files with appropriate labeling to forestall release of confidential or trade secret information.

Appendix A

Sample Label Checklist for Camera

1. Equipment Abatement Information & Time
2. Location Employer Knowledge
3. Measurements Additional Information
4. Exposed Employees - Injuries
5. Frequency - Near Misses
6. Duration of Exposure - Miscellaneous