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This policy establishes requirements and guidance for the use of body-worn cameras (BWCs) by the U.S. Department of Commerce (Commerce), Office of Inspector General (OIG), Office of Investigations (OI). It adheres to Executive Order 14074, *Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety* (May 25, 2022),¹ and Department of Justice memorandum, *Body-Worn Camera Policy* (June 7, 2021).² This policy does not govern the use of surreptitious recording devices in undercover operations or the recording of interviews.

Commerce OIG is assessing BWC solutions and resource requirements to fully implement the BWC policy. This policy will be fully implemented once OIG has assessed, resourced, acquired, and distributed BWCs, as well as appropriately trained OIG special agents (SAs) on the use of the BWC equipment. Once OIG has completed those actions, and when authorized by the Assistant Inspector General for Investigations (AIGI), agents with available cameras will employ BWCs in accordance with this policy.

19.1 Overview.

- a.) **Body-Worn Cameras.** BWCs can build public trust, transparency, and accountability when the use of force may reasonably be anticipated during certain planned law enforcement operations (for example, planned execution of search warrants or arrests). BWCs allow for accurate documentation of contacts between SAs, OIG employees, and the public, which can also help resolve any potential complaints made against an SA.
- b.) **Body-Worn Camera Recordings.** BWC recordings may be used as evidence for investigative or prosecutorial purposes if an SA is threatened or assaulted during a contact or if there is a use-of-force or critical incident. Recordings may depict things that the SA did not see or hear, and/or the SA may have heard or seen things that were not recorded by the BWC. Although the recordings depict visual information from the scene, the human eye and brain are highly likely to perceive some things in stressful situations differently than how the camera records them.
- c.) **Body-Worn Camera Program.** The headquarters (HQ) Program Manager (PM), under the direction of the HQ Special Agent in Charge (SAC), is responsible for the overall management of the BWC program. The HQ SAC and/or the HQ PM will periodically review BWC recordings to ensure the BWCs are being used in accordance with OI policy. The Cyber Crimes Unit Team Leader (CCU TL) will also periodically review recordings to ensure equipment is operating properly.

¹ Available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/05/25/executive-order-on-advancing-effective-accountable-policing-and-criminal-justice-practices-to-enhance-public-trust-and-public-safety/> (accessed August 16, 2022).

² Available at <https://www.justice.gov/dag/page/file/1402061/download> (accessed August 16, 2022).

- 19.2 Required Use of Body-Worn Cameras. SAs are required to wear and activate BWC recording equipment to record their actions during the tactical portion of all pre-planned enforcement operations. For the purposes of this policy, pre-planned enforcement operations include: (1) any pre-planned attempt to serve an arrest warrant or other pre-planned arrest, including the apprehension of fugitives sought on state and local warrants; and (2) any execution of a search or seizure warrant or order.
- 19.3 Applicability and Deviations. This policy applies to both OIG-led enforcement operations and operations led by other law enforcement agencies. When conducting enforcement operations with a partner law enforcement agency that will deploy BWCs during the operation, OIG SAs will comply with OIG policy. Prior to an operation using BWCs, the SAC overseeing the operation shall notify the AIGI of any unresolved conflicts with any partner law enforcement agency regarding BWC deployment. Any deviation from this policy must be approved, in writing, by the AIGI and documented in the applicable case file. Under exigent circumstances, an oral authorization may be given by the AIGI but must be subsequently documented.
- 19.4 Body-Worn Camera Equipment.
- a.) Body-Worn Camera Usage. SAs shall only use BWCs issued by OIG. SAs shall exercise reasonable care when using BWCs to ensure their proper functioning. SAs shall ensure BWCs are fully charged before deployment. SAs will notify the CCU TL of any equipment malfunctions as soon as possible to facilitate equipment replacement needs.
 - b.) Loss or Theft of Body-Worn Cameras. All SAs will report the loss or theft of a BWC to their immediate supervisor and the CCU TL as soon as practical but no later than 24 hours after the discovery of the loss or theft. The immediate supervisor shall notify the HQ and Operations SACs and/or the AIGI as soon as possible.
- 19.5 Use of Body-Worn Cameras.
- a.) Placement of Body-Worn Cameras. The BWC should be worn on the outside of the ballistic vest or outermost garment to ensure the best field of view. SAs should ensure the BWC is not obstructed by clothing, lanyards, accessories, and so forth. SAs should not alter tactically sound principles to accommodate the BWC's visual recording. In other words, SAs should remember to seek cover and concealment and use proper tactics to ensure their safety while wearing the BWC, even if doing so obstructs the BWC's coverage.
 - b.) Pre-Operational Planning. Once this policy is fully implemented, all SAs expected to participate in a pre-planned enforcement operation, as defined in paragraph 19.2, will be equipped with BWCs and will activate them during the tactical portion of the operation. Prior to conducting any such operation, the Assistant Special Agent in

Charge or on-scene OIG team leader will conduct a briefing regarding the planned use of BWCs, including discussing any steps that can be taken to avoid recording undercover personnel or confidential informants.

- c.) Joint Operations. When conducting operations with another law enforcement agency, Commerce OIG SAs will comply with OIG's BWC policy. The on-scene Commerce OIG team leader for the enforcement operation shall discuss the use of BWCs with the other agency's team leader prior to the operation. The case agent will document these discussions on an Investigative Record Form (IRF). The SAC shall notify the AIGI if there is an unresolved conflict with the other law enforcement agency regarding Commerce OIG's intent to deploy BWCs.
- d.) Activation of Body-Worn Cameras. During enforcement operations, SAs will activate their BWC at the direction of the on-scene Commerce OIG team leader. The on-scene team leader will determine when to activate the BWCs and will ensure that each member of the team has activated the BWC prior to beginning the operation. Upon activating the BWC, the SA will state that the BWC is activated, their name, the date, and time. Additionally, while wearing a BWC pursuant to this policy, if an SA encounters an individual who is uncooperative, violent, or assaultive, or who discusses criminal conduct that in the OIG SA's judgement, consistent with his or her training and experience, could lead to use of physical or deadly force or be relevant to the investigation, the SA should activate and record with his/her BWC as soon as it is safe and practical to do so.
- e.) Deactivation of Body-Worn Cameras. During operations, SAs will deactivate their BWCs at the direction of the on-scene Commerce OIG team leader. Prior to deactivating the BWC, the SA will verbally state the date, time, and reason for the BWC's deactivation. When executing a search warrant, the team leader can authorize the team to deactivate the BWC once the location to be searched has been secured and all subjects have been searched. The on-scene Commerce OIG team leader will use their discretion to determine whether team members participating as outside cover during the execution of the warrant should continue to record. When executing an arrest warrant or arresting an individual during the execution of a search warrant, the on-scene Commerce OIG team leader may authorize the deactivation of most BWCs once they have determined the scene is secure and any arrestees are handcuffed and placed in the transport vehicle. Any OIG SAs remaining with the arrestee will keep their BWCs activated.

Exceptions. The on-scene Commerce OIG team leader may authorize OIG SAs to deactivate their BWCs if the enforcement operation is of such duration that BWCs need to be deactivated to conserve power and/or for temporary storage. An OIG SA may also deactivate their BWC at any time the agent needs to obtain emergency medical attention or needs to attend to a personal matter, such as using the restroom, that takes them away from a planned operation.

- f.) Failure to Activate Body-Worn Cameras. If SAs fail to activate the BWC, fail to record the entire contact, or interrupt the recording, the SAs shall document in a memorandum through the SAC to the AIGI, with information copy to the HQ PM, the following:
- why the recording was not made,
 - why the recording was interrupted, and/or
 - why the recording was terminated.

An intentional failure to activate the BWC or the unauthorized termination of a BWC recording may result in disciplinary action.

- g.) Restrictions on Use. SAs equipped with BWCs should be mindful of locations where recording may be considered insensitive, inappropriate, or prohibited by privacy policies. BWCs shall only be used in conjunction with official law enforcement duties and not personal activities. BWCs shall not be used to record:
- undercover operations,
 - communications with other SAs without the written permission of the AIGI,
 - personnel conducting activities involving classified information, and
 - locations where individuals have a reasonable expectation of privacy, such as a restroom or locker room, without the written permission of the AIGI.

19.6 Documenting Use of Body-Worn Cameras. Upon the conclusion of the enforcement operation, the case agent will document that a recording was made and provide a summary of the activity including:

- the names of the team members participating in the operation,
- whether or not all SAs were wearing BWCs during the operation,
- whether or not all BWCs were activated prior to the operation,
- if any BWCs malfunctioned or were inoperable during the operation, and
- if any BWC recording was interrupted or terminated during operation.

19.7 Body-Worn Camera Recordings.

- a.) Handling of Recordings. The BWC equipment and all data, images, video, and metadata captured, recorded, or otherwise produced by the equipment is the sole property of Commerce OIG. All recordings shall be treated as law enforcement

sensitive information. SAs shall not edit, alter, erase, duplicate, copy, share, or otherwise release, disclose, or distribute in any manner any BWC recording without prior written authorization from the AIGI, in consultation with the OIG Office of Counsel (OC). Unauthorized accessing, copying, or releasing files is strictly prohibited.

- b.) Records Retention. All BWC recordings shall be maintained in accordance with Commerce OIG's investigative records schedule.
- c.) Saving Recordings. Upon the conclusion of the enforcement operation, BWC recordings will be saved as soon as possible, usually within 24 hours, and digitally stored in a secure location in accordance with OIG Office of Chief Information Officer-mandated procedures (for example, an OIG-controlled IT system or cloud storage). Each recording file shall contain the date and time of the recording, BWC identifier, and assigned SA. A BWC audit log will be created, detailing the history of every recording. If the BWC software creates an audit log, this log will be included and considered the official audit log.
- d.) Recording of Significant Incidents. If a use-of-force incident or other significant activity occurs during an operation, the SA or on-scene team leader will notify the SAC of the recorded altercation or significant incident as soon as possible. Any associated BWC recordings will be retained as directed by the AIGI, in consultation with OC, and maintained in accordance with the Commerce OIG's investigative records schedule.
- e.) Recordings as Evidence. If the BWC recording is deemed evidence, the CCU TL will create an evidence disc containing the recording from the enforcement operation and enter it into evidence. The CCU TL will complete an IRF and Evidence Custody Document, detailing the transfer of data from the BWC or digital storage location to the evidence disk, as well as the chain of custody. If needed, a working copy of the BWC recording may be provided to the case agent, with approval from the AIGI.
- f.) Deleting Portions of Recordings. Except where noted elsewhere in this policy, any request to delete a portion or portions of BWC recordings (for example, accidental recording) must be submitted in writing, reviewed by OC, and approved by the AIGI. The request must be made in a memorandum and must state the reason(s) for deleting the recording. The approved memorandum will be provided to the HQ SAC and HQ PM. The recording will be deleted only after the SAC receives the approved memorandum. The HQ PM will maintain all requests and final decision memorandums.
- g.) Recordings for Training. Recordings associated with normal training exercises (that is, where no injuries occurred) will be deleted after the appropriate instructor reviews the recordings for teachable scenarios and confirms it is acceptable to

delete the recording. If a teachable scenario is found, the instructor may ask all visible personnel for permission to use the video for training purposes or redact faces and/or voices. Unredacted BWC recordings of training scenarios will be deleted after all changes are made.

- h.) Access and Review of Recordings. All accesses to stored BWC recordings will be recorded in the audit log to ensure that only authorized users are accessing the data for legitimate and authorized purposes. This information may be discoverable and could be requested by the prosecution or the defense during court proceedings. Audit trail logs shall be reviewable by the HQ PM and HQ SAC. Any requests to review BWC recordings must be made in a memorandum to the HQ SAC. The memorandum must state the reason(s) for the request to review the recording.
- i.) Permitted Reviews of Recordings.
 - i.) An OIG SA may access BWC recordings when necessary to perform the essential functions of their job, including such review necessary to draft an IRF describing an operation.
 - ii.) All agent-involved shootings or other uses of force (including deadly force) should be treated as being under criminal investigation unless and until the applicable federal, state, or local prosecution office(s) has declined prosecution. The involved OIG SA(s) and any other OIG SAs who witnessed the shooting or use of force shall not be permitted to view his/her BWC recording without the concurrence of the assigned prosecutor.
 - iii.) OIG personnel conducting internal investigations may review BWC recordings in connection with such investigations, with the written approval of the AIGI, in consultation with OC.
 - iv.) BWC recordings may be used for training purposes. Access to those recordings will be coordinated through the HQ PM. When necessary, the HQ PM, in consultation with OC, will obtain the written permission of any OIG personnel whose recordings or images are depicted in any training videos.
 - v.) To the extent that BWC recordings are the subject of a Freedom of Information Act request or needed as a part of OC's legal representation of the agency, OC attorneys may review BWC recordings.
- j.) Prohibited Reviews of Recordings. Supervisors may not review BWC recordings solely for conducting performance appraisals. However, supervisors may view BWC recordings to conduct after-action debriefs and for training purposes, as described previously.
- k.) Requests for Records. In all circumstances, BWC recordings shall be treated as law enforcement sensitive information, the premature disclosure of which could

reasonably be expected to interfere with enforcement proceedings. BWC recordings will also be treated as potential evidence in a federal investigation subject to applicable federal laws, rules, and policies concerning any such disclosure and therefore deemed privileged, absent appropriate redaction prior to disclosure. All requests for OIG BWC recordings unrelated to a pending OIG criminal investigation or case will be forwarded to OC, which is responsible for responding to such requests. Nothing in this policy shall be deemed to provide a right of public access to BWC recordings. OIG BWC recordings are controlled by, and the property of, the OIG and will be retained and managed by the OIG.

- 19.8 Expedited Public Release of OIG Body-Worn Camera Recording(s). If OIG BWC recording(s) depict conduct resulting in serious bodily injury or death of another, the OIG shall notify the relevant United States Attorney's Office (USAO) as early as possible if it desires to publicly release the BWC recording(s). The OIG and the relevant USAO will expeditiously review the recording(s) and provide official concurrence with public release as soon as practical, unless there are specific and compelling circumstances justifying an objection to public release that cannot be resolved by redaction or other means. Upon official concurrence, the OIG may immediately release the recording(s) with any agreed-upon redactions, giving as much advance notice as possible to the USAO as to the time and manner of its release.
- 19.9 Required Training in the Use of Body-Worn Cameras. All SAs must complete an approved training program to ensure the proper use and operation of the BWC, as well as compliance with privacy and civil liberties laws. Additional training will be provided at periodic intervals to ensure the SA's continued proficiency in the use of BWCs. To ensure operational readiness and proficiency in the use of BWCs, the HQ PM and CCU TL will keep abreast of significant changes in technological capabilities, privacy, and civil liberties laws by attending training and maintaining liaison and/or working with other federal law enforcement agencies that use the technology on a regular basis.