



U.S. FOOD AND DRUG ADMINISTRATION  
OFFICE OF CRIMINAL INVESTIGATIONS

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**Directive Number: 22-003**

**Effective Date: 8/15/2022**

**Category: Investigative**

## **Interim Body Worn Camera Policy**

- 1. Purpose.** Executive Order (E.O.) 14074, [\*Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety\*](#), (May 25, 2022) directs the heads of federal law enforcement agencies to issue policies regarding the use of body-worn cameras (BWCs). Consistent with E.O. 14074, this Directive establishes interim policy on the use of OCI-owned BWCs by OCI special agents<sup>1</sup>. It establishes: a) general requirements for OCI's phased, incremental implementation of BWCs; b) training requirements related to BWCs; c) overarching guidance regarding the use of BWCs; and d) the storage, viewing, retention, and disclosure of BWC recordings.

It is intended to provide policy coverage during OCI's phased, incremental implementation of BWCs. As such, this Directive will expire 18 months from the date of issuance or when a decision is made by OCI to fully implement its BWC Program to all field offices, whichever occurs earlier. Before the expiration of this interim policy, OCI will issue a permanent policy based on lessons learned and other relevant information obtained during the phased, incremental implementation process.

- 2. Background.** OCI's law enforcement and public health mission is generally investigative and pre-planned rather than patrol-based and reactive. Unlike some of its federal, state, and local law enforcement partners, OCI does not conduct public patrols or routinely engage with the public in response to emergency calls. Nevertheless, OCI recognizes the importance of public trust, transparency, and accountability in situations where the use of force may reasonably be anticipated. To this end, OCI is initiating a program for the use of BWCs in pre-planned law enforcement operations (as defined in section 5.B.), as these are circumstances where the use of force may reasonably be anticipated.

BWCs can improve public trust and transparency and provide an additional layer of accountability for special agents. They can be a valuable tool to establish facts surrounding a use of force incident involving the public, which can be used to expeditiously resolve complaints made against special agents. BWC recordings can also be used as evidence for investigative and prosecutorial purposes if a special agent is threatened or assaulted during a law enforcement encounter.

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<sup>1</sup> "OCI special agent," "special agent," and "agent" are used interchangeably in this Directive and have the same meaning.

3. **Scope.** This Directive does not apply to digital or electronic media recordings from vehicle dash cameras, digital cameras, closed-circuit television, unmanned aerial systems, telecommunications devices, or any other camera sensor device. It does not replace or alter existing OCI policies or practices for the collection of evidence, conducting interviews, or operational security. Furthermore, it does not alter or replace OCI's existing policies and procedures related to consensual or non-consensual monitoring of telephonic, oral (in person), or electronic communications.
4. **Authorities/References.**
  - A. E.O. 14074, [\*Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety\*](#), 87 FR 32945 (May 25, 2022).
  - B. Title 21, United States Code (U.S.C.) § 372(e).
  - C. FDA Staff Manual Guide 1410.32, [\*Enforcement Activities\*](#), (June 4, 2010).
  - D. FDA Staff Manual Guide 1121.40, [\*Office of Criminal Investigations\*](#), (Dec. 14, 2018).
5. **Definitions.** The following definitions apply for purposes of this Directive only.
  - A. **Body Worn Camera (BWC).** A non-surveillance audio/video recording equipment combined into a single unit owned by OCI and used by special agents during pre-planned enforcement operations. Cellphones are not included in this definition and may not be used to record pre-planned enforcement operations, as defined below.
  - B. **Pre-planned enforcement operation.** A pre-planned attempt to execute an arrest warrant and/or search or seizure warrant.<sup>2</sup>
  - C. **BWC recordings.** Audio and video recordings and associated metadata recorded on OCI-owned BWCs while the special agent is engaged in a pre-planned enforcement operation.
  - D. **Secured.** The location of the pre-planned enforcement operation is reasonably believed by the lead agent to be safe and under law enforcement control; and all arrested subjects have been searched
6. **Policy.** It is the policy of OCI that special agents must use OCI-issued BWC during pre-planned enforcement operations (as defined in section 5.B.). Special agents must comply with the requirements outlined in this Directive and any supplemental guidance issued consistent with this Directive. BWC recordings may only be accessed, downloaded, used, printed, copied, emailed, posted, shared, reproduced, or otherwise disclosed to authorized OCI personnel and for official purposes only. Misuse of BWC recordings, including but not limited to improper recording, improper dissemination, or tampering with data may

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<sup>2</sup> This definition excludes searches of items lawfully in OCI's possession or control, or a search to obtain digital or electronic records executed by a third party, such as an electronic service provider or custodian of electronic records.

result in disciplinary action or other legal liability.

When conducting pre-planned enforcement operations with another law enforcement agency, OCI special agents must comply with this Directive. However, if the joint pre-planned enforcement operation is under the direction and control of another law enforcement agency and that agency's policy on BWC use is substantially comparable to the requirements under this Directive, then the other agency's policy may be relied upon.

OCI will not permit the use of BWCs for the sole purpose of conducting or supporting personnel investigation or disciplinary action. Moreover, OCI supervisory special agents will not routinely or randomly view BWC recordings for the sole purpose of identifying administrative violations by special agents. However, OCI management may review BWC recorded data when there are alleged or suspected policy or administrative violations.

## **7. Requirements for Phased, Incremental Implementation.**

A. OCI will integrate the use of BWCs through a phased, incremental implementation. A phased, incremental approach will allow OCI to:

- 1) Research and test equipment and technological solutions based on best practices;
- 2) Understand operational and logistical challenges;
- 3) Develop training tailored to OCI special agents;
- 4) Identify, request, and secure funding and resources necessary for implementation;  
and
- 5) Make appropriate policy and programmatic adjustments.

B. In implementing OCI's use of BWCs, the following responsibilities are assigned:

- 1) Executive Agent.
  - a. The Chief of Investigative Services Division (Chief-ISD) will serve as the Executive Agent and oversee the implementation of the OCI's BWC program. The Chief-ISD may assign or delegate responsibilities, as appropriate.
- 2) Action Plan.
  - a. The Chief-ISD, or his or her designee, will prepare an "action plan" for implementing the BWC program consistent with the requirements outlined in this Directive.
  - b. At a minimum, the action plan will include:

- i. The proposed timeline for the full implementation of BWCs;
    - ii. The estimated cost of implementation, including the initial purchasing cost of the BWC equipment and associated technological solutions (e.g., storage and redaction), the funding and staffing resources required for storing recorded data, managing videos, disclosing copies of videos, providing training to officers, and administering the program;
    - iii. The various phases (including field offices involved) of the incremental implementation;
    - iv. The action items OCI will need to accomplish and the timeline for accomplishing each action; and
    - v. Any dependencies or challenges.
  - c. The Chief-ISD will submit the action plan to the Assistant Commissioner of OCI within 45 days of this Directive's issuance.
- 3) BWC Equipment.
  - a. The Chief-ISD, or his or her designee, will determine the type(s) of BWC equipment appropriate for use by OCI special agents and oversee the acquisition of the equipment. At a minimum, the BWC equipment must be one that captures both video and audio data, and that automatically records the date and time of the recording.
  - b. The Headquarters (HQS)-Special Agent in Charge (SAIC), or his or her designee, will provide budgetary, acquisition, and contracting support for the acquisition of the BWC equipment.
- 4) Technological Solutions.
  - a. The Chief of Information Technology Operations Branch (Chief-ITB), working with the Chief-ISD, or their designees, will determine and acquire the appropriate storage solutions for BWC recordings and appropriate software or system for redacting information contained in BWC recordings.
    - i. In making these acquisitions, OCI will take into consideration security, reliability, cost, and technical capacity, as well as compliance with Federal and FDA technological requirements and standards.
  - b. The HQS-SAIC, or his or her designee, will provide budgetary, acquisition, and contracting support for the acquisition of the technological solutions.

5) Training.

- a. The OCI National Training Coordinator will establish training on the appropriate use of BWCs and handling of BWC recordings consistent with the requirements in Section 8.

6) Operational Guidance.

- a. The Chief-ISD, or his or her designee, will issue supplemental guidance for special agents—consistent with this Directive and manufacturer’s operational guidelines—on proper care, operation, placement, and maintenance of BWCs. The guidance will also address circumstances where special agents fail to activate their BWC, or if the recording is interrupted.
- b. The HQS-SAIC together with the Chief-ISD, or their designees, will establish guidance for documenting the use of BWCs in reports of investigation or other agency documentation or systems.
- c. The OCI Government Information Specialist will provide appropriate guidance to ensure the retention and potential disclosure of BWC recordings is fully compliant with records retention and information disclosure-related laws, regulations, and policies.
- d. The Senior Advisor to the Assistant Commissioner will reassess this Directive before it expires and develop a permanent policy. In addition, the Senior Advisor will provide any additional policy support and coordination with the Office of Chief Counsel (OCC), as questions/issues arise.

7) Implementation.

- a. The Chief-ISD will work with the Field Office SAICs to deploy BWCs to the respective field offices.
- b. The Chief-ISD and the HQS-SAIC will work with the Field Office SAICs to communicate to special agents the goals and benefits of the BWC program and address any concerns they may have.

**8. Training.**

- A. All OCI special agents are required to undergo mandatory training before they start using BWCs. At a minimum, the training must include the following<sup>3</sup>:

- 1) The proper use, maintenance, and care of BWCs;

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<sup>3</sup> This may also include training by representatives of the vendor from which OCI purchased both the physical BWC hardware and storage solution.

- 2) Adherence to this Directive, and compliance with applicable laws and policies;
  - 3) Privacy, civil rights, and civil liberties safeguards; and
  - 4) Appropriate procedures and requirements for uploading, storing, retaining, and disclosing BWC recordings.
- B. Additional OCI personnel involved in the maintenance and disclosure of BWC recordings are required to undergo mandatory training regarding the appropriate storage, retention, tagging, redaction, and disclosure of BWC recordings.<sup>4</sup>
- C. A training record must be kept for each special agent and OCI personnel involved in BWCs.

## **9. Use of BWCs by OCI Special Agents.**

- A. Special agents must wear and activate BWCs during “pre-planned enforcement operations,” as defined in section 5.B. Special agents will ensure that their BWCs are operational prior to a pre-planned enforcement operation, including that the batteries are fully charged.
- B. Special agents may use only OCI-owned and -issued BWCs. No personally owned BWCs may be used in lieu of OCI-owned and -issued BWCs.
- C. The BWC will be placed on a visible location on the special agent’s outwear (e.g., on a vest) so that individuals can see the BWC. Special agents will ensure that the BWC is unobstructed by clothing, equipment, accessories, etc.
- D. Special agents must activate their BWCs upon approaching a subject or the location of the pre-planned enforcement operation. The lead special agent should remind special agents to activate their BWCs. However, special agents are responsible for activating their BWC regardless of the lead special agent’s notification.
- 1) Upon activating their BWC, the OCI special agent will verbally state that the body camera is activated, as well as his/her name, the date, and the time of activation.
  - 2) Special agents are encouraged to advise individuals that they are being recorded if it will not interfere with the encounter or agent safety.<sup>5</sup> However, special agents are not required to obtain consent from the subjects that are being recorded during the pre-planned enforcement operations. Additionally, special agents have no obligation to stop recording in response to an individual’s request so long as the

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<sup>4</sup> It may also include training by representatives of the vendor from which OCI purchased both the physical BWC hardware, storage solution, and/or redaction software/system.

<sup>5</sup> Knowledge that the BWC is recording may help defuse potentially confrontational situations and improve behavior from all parties.

recording is being conducted consistent with this policy.

- 3) Once a BWC is activated, OCI special agents must record the activities until the location is “secured” as determined by the lead special agent on the scene. See section 5.D. for definition of secured.
  - 4) Special agents will deactivate their BWCs at the direction of the lead special agent when the location is secured. Before deactivation, the special agent will verbally state that the BWC is being deactivated and state the date and time of deactivation.
- E. If special agents fail to activate their BWC, or if the recording is interrupted, they must provide a statement detailing why they failed to activate the BWC or why the recording was interrupted consistent with the guidance provided by the Chief-ISD for documenting such instances.
- F. If there are unanticipated interactions with the public or other exigent circumstances, such as contentious or violent interactions that could lead to the use of force, special agents will, if and when it is safe to do so, reactivate their BWC either before, during, or after a pre-planned enforcement operation.
- G. BWCs may not be used to record the following circumstances and/or locations:
- 1) Any situation that does not fall within the definition of a pre-planned enforcement operation (see section 5.B.);
  - 2) Encounters with undercover personnel; confidential informants, confidential sources, or cooperating defendants;
  - 3) On-scene witness interviews conducted before, during, or after the pre-planned enforcement operation;
  - 4) Employee assessments, except for use in the training environment as part of student/instructor feedback process;
  - 5) Any non-enforcement activities, such as actions and conversations with coworkers when not actively engaged in a pre-planned enforcement operation;
  - 6) Privileged communications (e.g., communications with OCC).
- H. Special agents should generally avoid recording in places where individuals have a reasonable expectation of privacy, including but not limited to restrooms, locker rooms, and non-essential areas of a home once a scene is secured.

## **10. Storage and Retention of BWC Recordings.**

- A. All BWC recordings will be stored and preserved on a designated OCI-approved system or media that is designed for the storage of sensitive law enforcement data. BWC recordings may not be stored on any devices or systems not designated for such storage.
- B. Among other things, the storage solution must have the capability to accurately document user login credentials and maintain audit logs for each user and access to the BWC recordings. The storage mechanism will also have capability to restrict access and viewing of BWCs recordings to those authorized personnel only, maintain chain of custody, and safeguards against tampering.
- C. OCI personnel must ensure that all BWC recordings are moved to storage in accordance with the timelines and procedures prescribed by the Chief-ISD.
- D. All BWC recordings made pursuant to this policy are deemed federal records of FDA/OCI records pursuant to the Federal Records Act, and, as such, must be handled consistent with appropriate records retention schedules.<sup>6</sup>
- E. BWC recording must be marked appropriately (e.g., date, time, case number, officer name, etc.) for storage and tracking purposes, including for potential litigation, investigation, and/or for purposes of Freedom of Information (FOIA) requests.
- F. If a hard copy of the BWC recordings is created to aid in an investigation, prosecution, or another sanctioned purpose, the footage must be safeguarded and destroyed appropriately. It is the responsibility of those using the BWC recording to ensure safeguarding, appropriate labeling, destruction, and accountability of the disc, desktop, thumb drive, or any other portable storage device.

## **11. Viewing of BWC Recordings.**

- A. Special agents are permitted to review their own BWC recordings before writing reports, including those concerning a use of force incident.<sup>7</sup> The purpose of using BWC recordings in writing reports is to maximize the accuracy of the report—not to replace independent recollection and perception of an event. Importantly, images and sounds captured on a BWC may differ in some respects from what human eyes and ears perceive during an event, especially in an inherently stressful situation such as law-enforcement activity. A special agent may also see and/or hear additional aspects of an event than those captured by a BWC.

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<sup>6</sup> OCI, in coordination with relevant agency records management officials, will ensure that appropriate records retention schedules are in place for records generated using BWCs.

<sup>7</sup> Section 13(c) of E.O. 14074 directs the Attorney General and the Secretary of Health and Human Services (HHS) to assess the advantages and disadvantages of officer review of BWC recordings before the completion of initial reports or interviews concerning a use of force incident and issue best practices. OCI may adjust this policy, as needed, when those best practices are issued.



- B. Supervisory special agents, special agents in the Office of Internal Affairs (OIA), and other special agents, as authorized by their SAIC, may review BWC recordings in the following instances:
  - 1) To complete authorized actions in an investigation, including preparation of official reports;
  - 2) Prior to courtroom testimonies or for courtroom presentations; or the potential thereof;
  - 3) In preparation for administrative investigations/interviews; or
  - 4) For training purposes (with personally identifiable information redacted).
- C. BWC recordings will not be routinely or randomly viewed by supervisors or OCI personnel for the sole purpose of identifying policy violations and/or disciplining special agents. However, OCI management may review BWC recorded data in connection with suspected administrative or policy violations.

## **12. Disclosure/Dissemination.**

- A. The release of BWC recordings is subject to all applicable laws, regulations, and FDA policies, including but not limited to FOIA, as amended, 5 U.S.C. § 552, the Privacy Act of 1974, as amended, 5 U.S.C. § 552a, and applicable FDA regulations, including 21 C.F.R. Part 20. Nothing in this policy shall be deemed to provide a right of public access to BWC recordings.
- B. OCI will consider requests by members of the public, including the media, to release BWC recordings, on a case-by-case basis to determine if release is appropriate under applicable laws, including those related to law enforcement materials (e.g., FOIA, Privacy Act, and applicable FDA regulations).
  - 1) The OCI office receiving request for release of BWC recording(s) will immediately notify the Chief-ISD, or his or her designee.
  - 2) The Chief-ISD, or his or her designee, will coordinate with the appropriate FDA/OCI Government Information Specialist, OIA, and OCC to determine whether the disclosure of such BWC recording(s) is appropriate and what (if any) redactions and/or withholdings are required prior to the release.
  - 3) If release to the public is appropriate, the Chief-ISD, or his or her designee, will ensure that appropriate redactions (and/or withholding portions of the BWC recording) are applied before release. The Chief-ISD, or his or her designee, will consult and coordinate the timing and manner of release with the relevant FDA offices (e.g., OIA, OCC, and Office of External Affairs), the U.S. Attorney's

Office, and other partner law enforcement agencies with personnel depicted in the BWC recording.

- 4) OCI recognizes the need to expedite the review and consideration for public release of BWC recordings that depict conduct resulting in serious bodily injury or death of any individual.
  - i. In such cases, OCI will complete the review process at the earliest possible time consistent with applicable laws and policies.
  - ii. Whenever possible, OCI will expedite the public release of the BWC recordings in such cases consistent with applicable federal laws, taking into consideration the need to promote transparency and accountability, the duty to protect the privacy rights of persons depicted in the footage, and any need to protect ongoing law enforcement operations.
- C. OCI may provide an unredacted copy of a BWC recording to a U.S. Attorney's Office, a Main Justice DOJ component, other partner law enforcement agencies<sup>8</sup>, or other parties as part of on-going litigation, as permitted under FDA regulations. The Chief of Investigative Services Division will assess requests for disclosure for the above purposes, and will consult with the OCC as necessary.
- D. Unauthorized release of BWC recorded data may compromise ongoing criminal investigations or violate the privacy and civil rights of those recorded. Accessing, viewing, copying, forwarding, or releasing any BWC recorded data other than for official use is strictly prohibited. Any unauthorized access, use or release of recorded data, or other violations of confidentiality laws may result in disciplinary action or other legal liability.

**13. Auditing Storage and Access.**

- A. The Chief-ISD, or his or her designee, together with the HQS-SAIC, or his or her designee, must conduct random, semi-annual audits of stored BWC recordings to ensure that the equipment is operational and that special agents and other OCI personnel are complying with policy and procedures.

**14. Attachments.** N/A

**15. Questions.** Questions related to this Directive should be addressed to the Chief-ISD.

**16. No Private Right Statement.** This is an internal policy of OCI. It is not intended to and does not create any rights, privileges, or benefits, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

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<sup>8</sup> Examples include other law enforcement agencies who jointly participated in a pre-planned enforcement operation with OCI, or HHS Office of Inspector General when conducting an investigation into potential OCI agent misconduct.

**Catherine A. Hermsen -S** Digitally signed by  
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 Assistant Commissioner  
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Status (I, R, CC)	Date Approved	Location of Change History	Contact	Approving Official
Initial	8/11/2022	N/A	Dan Burke	Catherine Hermsen

\*I=Initial issuance

\*\*R=Revision

\*\*\*CC=Certified current after the 3-year periodic review without any changes.