



# BUREAU OF CUSTOMS

MAKABAGONG ADUANA, MATATAG NA EKONOMIYA



PROFESSIONALISM

INTEGRITY

ACCOUNTABILITY

Date AUG 27 2021 **MASTER COPY**

## CUSTOMS MEMORANDUM ORDER (CMO) NO. 33-2021

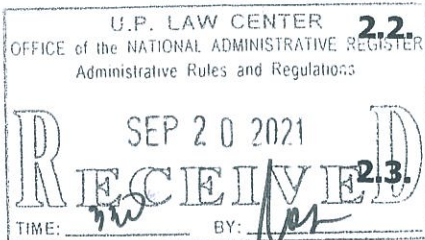
### SUBJECT: RULES ON THE USE OF BODY-WORN CAMERAS IN THE EXERCISE OF CUSTOMS POLICE AUTHORITY AND OTHER CUSTOMS OPERATIONS

**Introduction.** This Order prescribes the rules on the use of Body-Worn Camera or Alternative Recording Device by customs officials and employees exercising Police Authority and in the conduct of other customs operations in relation to Supreme Court Administrative Matter (A.M.) No. 21-06-08-SC, otherwise known as Rules on the Use of Body-Worn Cameras in the Execution of Warrants.

**Section 1. Scope and Applicability.** This Order shall govern the use of Body-Worn Camera as standard equipment in the exercise of Police Authority as defined and prescribed under Title II: Chapter 3 of Republic Act (R.A.) 10863 or the Customs Modernization and Tariff Act (CMTA) and in the conduct of other customs operations.

#### Section 2. Objectives.

**2.1.** To identify specific customs operations and enforcement actions which require the use of Body-Worn Camera or Alternative Recording Device.



**2.2.** To delineate the extent and limit on the use of Body-Worn Camera or Alternative Recording Device in customs-related exercise or operation.

**2.3.** To establish a uniform and clear guidelines on the usage, preservation, collection and retention of audio-visual Recordings generated from Body-Worn Camera or Alternative Recording Device.

**Section 3. Definition of Terms.** For purposes of this Order, the following terms are defined accordingly:

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**3.1. Alternative Recording Device** — shall refer to an electronic camera system which is not a Body-Worn Camera, that is capable of creating, generating, sending, receiving, storing, displaying, and processing audio-visual Recordings, and may be worn or used during customs operations and in the exercise of Police Authority. It may be used as a substitute for Body-Worn Cameras in case of

unavailability. To be used as a functional equivalent, it shall comply with the following minimum standard requirements:

- i. Video Resolution : 720p or higher
- ii. Frame rate : 30 frames per second
- iii. Audio : Built-in
- iv. Data and time stamping : Built-in
- v. GPS : Built-in
- vi. Battery Life : 8 hours continuous
- vii. Storage : Capable of storing 8 hours continuous audio-video footage
- viii. Low-light recording : With night mode built-in, a low lux rating and/or an infrared (IR) illuminator

In any case, the Alternative Recording Device shall be capable of capturing with reasonable clarity the events that transpired.

- 3.2. Body-Worn Camera** — shall refer to an electronic camera system designated to the Bureau's law enforcement units and other authorized customs officials for creating, generating, sending, receiving, storing, displaying, and processing audio-visual Recordings that may be worn during customs operations and in the exercise of Police Authority.<sup>1</sup>
- 3.3. Bureau** — shall refer to the Bureau of Customs.
- 3.4. Data Custodian** — shall refer to an authorized customs officer who has the sole responsibility of storing and safekeeping data recorded from Body-Worn Cameras.
- 3.5. Metadata** — shall refer to information within the recording file containing any digital identifiers that are captured as part of the actual recording, such as the recording date, time, GPS coordinates, etc.<sup>2</sup>
- 3.6. Police Authority** — shall refer to the authority granted to specific regular government employees, to effect search, seizure, and arrest in places where the authority may be exercised arising from the implementation of the CMTA and other related laws.<sup>3</sup>

<sup>1</sup> cf. Rule 1, Section 4, A.M. No. 21-06-08-SC.

<sup>2</sup> cf. Rule 1, Section 4, A.M. No. 21-06-08-SC.

<sup>3</sup> CAO No. 3-2019, Section 3.23.

**3.7. Recording** — shall refer to digital material generated as a result of using Body-Worn Cameras or Alternative Recording Devices, which contains images and audio-video footages. It shall include the copies of the material created by way of copying to portable media storage and other data repositories.<sup>4</sup>

**Section 4. Mandatory Use of Body-Worn Cameras.** The use of a body camera and recording of events shall be mandatory under the following instances:

- 4.1.** Approved controlled delivery<sup>5</sup> operation;
- 4.2.** Boarding formalities;
- 4.3.** Conduct of auction sales;
- 4.4.** Destruction or condemnation of goods, including the transport thereof to the designated facility;
- 4.5.** Electronic Tracking of Containerized Cargo (E-TRACC)-related operations, particularly the conduct of investigation upon report of violation of E-TRACC rules and regulations;
- 4.6.** Fuel marking operations;
- 4.7.** Guarding duty at customs import exit gates for containers/cargoes, if applicable;
- 4.8.** Hot pursuit;
- 4.9.** Inspection of consignees' offices;
- 4.10.** Non-intrusive examination of goods;
- 4.11.** Physical examination of goods within and/or outside of customs zone;
- 4.12.** Search of persons arriving from foreign countries;<sup>6</sup>
- 4.13.** Service of Letter of Authority;<sup>7</sup>
- 4.14.** Search of vehicles, other carriers, persons, and animals;<sup>8</sup> or

<sup>4</sup> cf. Rule 1, Section 4, A.M. No. 21-06-08-SC.

<sup>5</sup> cf. CAO No. 3-2019, Section 3.4.


<sup>6</sup> CMTA, Title II, Chapter 3, Section 223.

<sup>7</sup> CMTA, Title II, Chapter 3, Section 224.

<sup>8</sup> CMTA, Title II, Chapter 3, Section 222.

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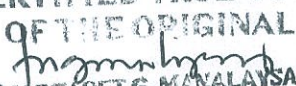
- 4.15. Search on vessels or aircrafts and persons or goods conveyed therein.<sup>9</sup>

**Section 5. Guidelines in the Use of Body-Worn Cameras.** A customs official or employee required under this Order to use a Body-Worn Camera shall abide by the following guidelines:

- 5.1. The customs official or employee shall make sure that the device is functioning properly upon its issuance to the responsible officer.
- 5.2. The Body-Worn Camera shall be attached on the uniform in an overt manner. The Body-Worn Camera shall be visible to the public;
- 5.3. The Body-Worn Camera shall be placed in a location that maximizes the camera's functionality to capture audio and video footage of the customs-related operation or activity;
- 5.4. The customs official or employee shall activate the Body-Worn Camera at the beginning or prior to a customs operation or enforcement action and shall continue until the same has been concluded. In no case shall the camera be intentionally deactivated, redirected or covered during an operation, except as provided under Section 6 of this Order;
- 5.5. As soon as the Body-Worn Camera is activated, the customs official or employee shall commence recording by facing the camera and stating the following:
- 5.5.1. Customs official or employee's name and rank;
- 5.5.2. Date and time the recording has started, or the time the recording will be turned off;
- 5.5.3. Subject of the customs operation; and
- 5.5.4. Current location of the customs operation;
- 5.6. In the event that Body-Worn Cameras or Alternative Recording Devices shall be turned off during the enforcement operation in the circumstances as provided under Section 6 of this Order, the following protocol shall be observed:

<sup>9</sup> CMTA, Title II, Chapter 3, Section 221.

- 5.6.1.** The customs official or employee shall record on camera his reason for switching off his camera before doing so; and
- 5.6.2.** The customs official or employee shall comply with the procedure stated under Section 5.5 when he resumes recording and switches on the camera.
- 5.7.** After the conclusion of the operation, the customs official or employee wearing the Body-Worn Camera shall sign off by restating the information stated in Section 5.5;
- 5.8.** In the event the recording is disrupted, the customs official or employee wearing the Body-Worn Camera shall use Alternative Recording Device and shall continue to record the event using the alternative device and comply with the procedure stated under Section 5.4 and 5.5;
- 5.9.** Upon completion of the operation, the customs official or employee shall submit the recordings to the Data Custodian within twenty-four (24) hours, including those coming from the Alternative Recording Device, together with his explanation on the cause of the disruption if applicable;
- 5.10.** The proper use of the Body-Worn Camera shall be the responsibility of the head and personnel of the unit to which the Body-Worn Camera is assigned. In this regard, they shall be responsible in maintaining and keeping the camera ready for use at all times. They shall likewise be responsible in ensuring that the data stored in the body camera are downloaded and turned over to the Data Custodian; and
- 5.11.** In the event that a Body-Worn Camera becomes unavailable due to causes beyond the control of the unit responsible for the camera, the head of the unit shall submit a report to this effect to the Commissioner within twenty-four (24) hours from the occurrence of the cause. Otherwise, the non-use of a Body-Worn Camera under circumstances where its use is required shall be deemed deliberate and the personnel involved shall be dealt with in accordance with the provisions of this Order.
- In case of unavailability, an Alternative Recording Device shall be used following the procedure provided under this Section, including the submission of explanation why the Body-Worn Camera is not available.

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**Section 6. Circumstances Where Use of Body-Worn Cameras or Alternative Recording Devices May Be Turned Off.** Body-Worn Cameras or Alternative Recording Devices shall be turned off during the enforcement operation in the following circumstances:<sup>10</sup>

- 6.1. Communications between customs officials and employees unrelated to the customs operations or enforcement actions;
- 6.2. Encounters with undercover officers or confidential informants;
- 6.3. When customs officials and employees are on break or otherwise engaged in personal or non-work-related activities;
- 6.4. Inside restrooms, locker rooms, or other places where there is a similar expectation of privacy, and there is no legal reason to be present unless the premises is covered by the search warrant;
- 6.5. In locations where individuals have a reasonable expectation of privacy such as in residences, unless the recording is being made pursuant to a valid arrest or search warrant of the individuals or locations;
- 6.6. Strip or body cavity searches when such is necessary;
- 6.7. Conduct of tactical planning before conducting the enforcement operation;
- 6.8. Privileged communications between the subject of recordings and other individuals, such as attorneys, members of the clergy, peer support counselors, and medical professionals; or
- 6.9. Such other circumstances as may be provided by the court, in case of court-issued search warrant on dwelling place<sup>11</sup> which is part of constitutional privilege and where the dignity of an individual may outweigh the public necessity for recording.

**Section 7. Effect of Failure to Observe the Requirements for Body-Worn Cameras.** A customs official or employee who fails to use a Body-Worn Camera as required under this order, without reasonable grounds, or intentionally interferes with the Body-Worn Cameras' ability to accurately capture audio and video Recordings of the arrest, or otherwise manipulates such Recording during or after the arrest shall be liable for criminal, civil and administrative offenses.

<sup>10</sup> cf. Rule 4, Section 10, A.M. No. 21-06-08-SC.

<sup>11</sup> CMTA, Title II, Chapter 3, Section 220.

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Liability shall not apply if the Body-Worn Camera was not activated due to malfunction and the customs officer was not aware of the malfunction prior to the incident, provided, that the customs officer submits an explanation as provided under Section 5.7 of this Order. Failure to timely file the explanation may render the customs official or employee liable.<sup>12</sup>

**Section 8. Downloading and Preservation of Recorded Data.** Downloading of the data from the Body-Worn Cameras or Alternative Recording Devices for safekeeping shall be done within twenty-four (24) hours from the time of their recording by the Data Custodian or his or her authorized representative.

To ensure that no tampering is done during the downloading process, the customs official or employee may allow a third person to witness the downloading of the recordings from the cameras prior to safekeeping.

In case of Alternative Recording Devices, the Data Custodian shall be assigned a separate server for the transfer of files, ensuring that the file formats are compatible and integrity of the recorded data is intact.

**Section 9. Retention Period.** Recordings captured by said Body-Worn Camera or Alternative Recording Device are subject to a retention period of forty-five (45) days from its recording date, after which time the same are permanently deleted. Such period is, however, extendible for a longer time, upon request by an interested party to the recording when such recording is material to an investigation being conducted by the proper authorities or case filed/pending before a court of competent jurisdiction or a government or regulatory agency, or upon instruction of the Commissioner.

**Section 10. Custody of and Access to Recordings.** The Data Custodian shall retain and have custody of the Recordings including its Metadata, if applicable, and he or she shall ensure the security, confidentiality, and integrity of the data. The Data Custodian or any other person in custody of the recording shall allow access of the footage to the following:<sup>13</sup>

- 10.1. Any person who is a subject of the Recording or his or her duly authorized counsel;
- 10.2. Any person who has a legitimate interest in the subject of the Recording or his or her duly authorized counsel;
- 10.3. Authorized officials of the Bureau;
- 10.4. When access to the footage is mandatorily required by law or by a valid order of a court of competent jurisdiction or of a government or regulatory agency.

<sup>12</sup> cf. Rule 2, Section 5, A.M. No. 21-06-08-SC.

<sup>13</sup> cf. Rule 4, Section 3, A.M. No. 21-06-08-SC.

**Section 11. Prohibition on the Use of Body-Worn Cameras or Alternative Recording Device.** The use of Body-Worn Camera or Alternative Recording Device is prohibited in the following instances:

- 11.1. Where the use of the Body-Worn Camera or Alternative Recording Device violates the right to speech and expression, to association, to religion, or any other fundamental rights;
- 11.2. Where the Body-Worn Camera or Alternative Recording Device is used to record events unrelated to an investigation, enforcement operation, special police operation, or other customs operations listed under Section 4 of this Order;
- 11.3. Where the use of the Body-Worn Camera or Alternative Recording Device violates Republic Act No. 10088, otherwise known as Anti-Camcording Act of 2010; Republic Act No. 9995, otherwise known as Anti-Photo and Video Voyeurism Act of 2009; and other similar laws regulating the use of cameras and other recording devices.

**Section 12. Redaction of Personal Identifiers in Special Circumstances.**

When sensitive information and images appear in the Recordings, such as those incidents where minors are involved, or those involving national interest or national security, it shall be the duty of the Data Custodian or his or her authorized representative to redact such information, images, and other personal identifiers of the person appearing in the Recordings for his or her protection. Any person redacting information pursuant to this Section shall ensure that other incidents relevant to the exercise of the mandate of the Bureau shall remain in the Recordings.<sup>14</sup>

In case of redaction of personal identifiers in the Recordings pursuant to the above paragraph, both the unredacted and redacted file shall be kept by the Data Custodian, however, the unredacted file shall only be accessible by authorized officials of the Bureau or upon valid order of a court of competent jurisdiction. The fact of redaction of personal identifiers appearing in the recording whenever applicable shall be stated in a report, including the special circumstance/s justifying such redaction and the details redacted.<sup>15</sup>

**Section 13. Non-Disclosure of Recordings.** No customs official or employee may publicly disclose, release, or share Body-Worn Camera or Alternative Recording Device video footage for personal gain, or where such disclosure, release, or sharing is not in any way related to customs operations and/or enforcement action of the Bureau as listed under Section 4 of this Order.

<sup>14</sup> cf. Rule 4, Section 4, A.M. No. 21-06-08-SC.

<sup>15</sup> cf. Rule 2, Section 4, A.M. No. 21-06-08-SC.

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**Section 14. Privacy Rights.** The data privacy rights of every person as espoused under Republic Act No. 10173, otherwise known as Data Privacy Act of 2012, shall be respected, provided that the exercise of such rights does not fall under the exception provided under Section 4(e) of the same law.

**Section 15. Privacy Notice.** Except in cases of hot pursuit and service of Letter of Authority, sufficient notification informing the general public that a Body-Worn Camera or Alternative Recording Device is being used in the vicinity where customs Police Authority is being exercised shall be placed in conspicuous places or in the Bureau's official website.

**Section 16. Privacy Notification.** When a Letter of Authority is being served, the customs official or employee wearing the Body-Worn Camera or Alternative Recording Device shall, as early as practicable, notify the lawful occupants of the premises to be searched that the service of the Letter of Authority is being recorded and that they are conducting the inspection and visitation pursuant to the Letter of Authority issued by the Commissioner.<sup>16</sup>

In case of apprehension pursuant to a hot pursuit, the customs official or employee wearing the Body-Worn Camera or Alternative Recording Device shall, as early as practicable, notify the person to be apprehended and the other subjects of the recording that the apprehension is being recorded and the cause of their apprehension.<sup>17</sup>

**Section 17. Administrative Liability.** Any act in violation or failure to comply with this Order shall be a ground for administrative liability.

The administrative penalty arising from this Order shall be without prejudice to other criminal, administrative, or civil liability that may arise pursuant to the provisions of the applicable law violated.

**Section 18. Repealing Clause.** All orders, memoranda, circulars, and issuances inconsistent herewith are hereby repealed and/or modified accordingly.

**Section 19. Separability Clause.** If any part or provision of this Order is later declared invalid or illegal, the remaining portion shall remain valid and enforceable.

**Section 20. Effectivity.** This Order shall take effect on OCT 01 2021.

<sup>16</sup> cf. Rule 3, Section 4, A.M. No. 21-06-08-SC.

<sup>17</sup> cf. Rule 2, Section 2, A.M. No. 21-06-08-SC.

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The Office of National Administrative Registrar (ONAR) of the UP Law Center shall be provided three (3) certified copies of this Order.



**REY LEONARDO B. GUERRERO**

Commissioner

AUG 27 2021



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