

Collection Associated with the Notice of Proposed Rulemaking
Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities
RIN Number 1653-AA65
OMB Control No. 1653-NEW
PRA Supporting Statement

A. Justification

1. Explain the circumstances that make the collection of information necessary.

The *Prison Rape Elimination Act of 2003* (PREA) 42 U.S.C. § 15601 *et seq* was passed by Congress to address the concerns related to incidents of sexual abuse, assault, and rape of prisoners in Federal, State, and local prisons, as well as the lack of data available about such incidents. PREA requires that the Department of Justice (DOJ) develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape and to increase the available data and information on the incidence of prison rape.

The Department of Justice (DOJ) published its Final Rule on June 20, 2012, which set national PREA standards for DOJ facilities operated by the Bureau of Prisons and U.S. Marshals Service facilities. In the final rule, DOJ concluded that each Federal agency is accountable for and has statutory authority to regulate the operations of its own facilities, and Federal departments with confinement facilities, like DHS, should work with the Attorney General to issue rules or procedures consistent with the goals set forth in PREA.

On May 17, 2012, the same day DOJ issued its final rule, President Obama issued a Presidential Memorandum confirming the goals of PREA and directing Federal agencies with confinement facilities to propose rules or procedures necessary to satisfy the requirements of PREA within 120 days of the Memorandum. The Memorandum further expresses the Administration's conclusion that PREA encompasses all Federal confinement facilities, including those operated by executive departments and agencies other than DOJ, whether administered by the Federal Government or by an organization on behalf of the Federal Government, and that each agency is responsible for, and must be accountable for, the operations of its own confinement facilities. The President charged each agency, within the agency's own expertise, to determine how to implement the Federal laws and rules that govern its own operations, but ensuring that all agencies that operate confinement facilities adopt high standards to prevent, detect, and respond to sexual abuse and assault. The President directed all agencies with Federal confinement facilities, such as DHS, to work with the Attorney General to propose rules or procedures that will satisfy the requirements of PREA.

DHS's proposed regulation responds to and fulfills the President's directive by proposing comprehensive regulations for the detection, prevention, and reduction of sexual abuse and assault at DHS immigration detention and holding facilities. The information collection provisions within the proposed rule are new requirements which will require a new OMB Control No. DHS is seeking comment on these new requirements as part of the NPRM. Please see Section VI, G.

Table 1: ICRs and Recordkeeping

Subpart A- Immigration Detention Facilities.	Notes:
115.15(d)(e)- Limits to cross-gender viewing and searches.	(d) and (e)- Documenting pat-down, strip, and visual body cavity searches.
115.17(c)(d)- Hiring and promotion decisions.	(c) and (d)- Background check documentation.
115.22(b)- Policies to ensure investigation of allegations and appropriate agency oversight.	(b)- Documenting of reports and referrals.
115.31(c)- Staff training.	(c)- Documenting completion of training.
115.32(c)- Volunteer and contractor training.	(c)- Written confirmation of training.
115.33(c)- Detainee education.	(c)- Documenting participation in the intake orientation process.
115.34(b)- Specialized training: Investigations.	(b)- Documenting training.
115.35(c)- Specialized training: Medical and mental health care.	(c)- Agency review and approval of facility's policy and procedures.
115.43(a)- Protective custody.	(a)- Documentation of reasons for administrative segregation.
115.51(c)- Detainee Reporting.	(c)- Documentation of verbal reports.
115.61(a)- Staff reporting duties.	(a)- Agency review and approval facility's policies and procedures.
115.63(c)- Reporting to other confinement facilities.	(c)- Documentation of referral.
115.71 (c)(d)- Criminal and administrative investigation.	(c)- Documentation of each investigation. (d)- Agency review and approval of facility's policy and procedures.
115.76(b)- Disciplinary sanctions for staff.	(b)- Agency review and approval of facility's policies and procedures.
115.86(a)(b) - Sexual abuse incident reviews.	(a) Documentation through written reporting. (b) Annual review.
115.87(a)(b)- Data collection.	(a)- Maintenance of case records. (b)- Sharing data.

2. How, by whom, and for what purpose the information is to be used

The new requirements will require covered facilities to retain certain specified information relating to sexual abuse and assault prevention planning, responsive planning, education and training, and investigations, and also to collect and retain certain specified information relating to allegations of sexual abuse and assault within the facility. The specified information is described in the proposed rule. The information collected is necessary to audit the compliance of the regulation and the incidence of sexual abuse and assault in DHS confinement facilities.

3. Extent the collection of information involves the use of technological collection techniques

There is no collection of information or no information being submitted to DHS. This is only record keeping and auditing will occur for compliance with the regulation.

4. Duplication of collection

This proposed rule does not impose any duplication. If sexual abuse and assault data is already being collected and retained at the facility for facility purposes, they may submit that data to fulfill the rule's requirements. DHS believes that a large portion of the required data is already being obtained and maintained by the facility, therefore; this rule would propose new record collection and retention requirements only for the impacted facilities that are not already collecting and retaining the required information.

5. Small Businesses

Based on presently available information, DHS is unable to state with certainty that the proposed rule, if promulgated as a final rule, would not have any effect on small entities of the type described in 5 U.S.C. 601(3). Accordingly, DHS has prepared an Initial Regulatory Flexibility Impact Analysis (IRFA) in accordance with 5 U.S.C. § 603. In the final rule DHS will determine its effect on small entities.

6. Consequences of lesser or no information collection

The timeliness and frequency of information collection from required facilities is crucial to compliance with the President's Memorandum of May 17, 2012. One purpose of PREA is to increase the available data and information on the incidence of sexual abuse and assault in confinement facilities which will be used to monitor and evaluate each facility's compliance with the DHS standards as well as the effect that the standards will have on these facilities. If there is a lesser collection or lack of collection of information, the standards will not be effectively utilized.

7. Special Circumstances that would cause information collection to be conducted in a varying manner

The information reporting and record keeping requirements imposed by the proposed regulation are annual and/or by incident. In some cases, depending on the specific regulatory requirement, certain information collections may be needed more often than quarterly or in less than 30 days after the alleged incident. Specifically, in section 115.61 the proposed rule would require staff that becomes aware of alleged sexual abuse would be required to immediately follow the reporting requirements set forth in the agency's and facility's written policies and procedures.

8. Solicitation of comments

There were no previous notices published in the *Federal Register*. Therefore, there were no previous comments.

9. Explanation of payment or gift to respondents

DHS will not provide payments or gifts to respondents for this information collection.

10. Assurance of confidentiality provided to respondents and basis for the assurance in statute, regulation, or agency policy

Under the DHS regulation, information regarding the identification of sexual assault and/or abuse victims will be held confidential under the Privacy Act, as amended, 5 U.S.C. § 522a. Sections 115.51/115.151, 115.53, 115.89/115.189 require the agency and facility to protect the confidentiality of victims. In addition, the regulation's provisions are covered under the following Systems of Records Notices (SORNs): DHS/ICE-020 DHS Internal Affairs Records, DHS/ALL-003 DHS General Training Records, and DHS/ALL-029 Civil Rights and Civil Liberties Records.

11. Justification of sensitive nature

DHS and its contracted facilities will be required to retain and report sensitive information to fulfill the requirements set forth in the DHS standards. The sensitive information would only pertain to the sexual assault or abuse incident and is necessary information to eliminate sexual abuse and assault in DHS confinement facilities.

12. Estimated hour burden of collection of information

This ICR is applicable to the 126 non-USMS contracted ICE immigration detention facilities. DHS estimates signing approximately five new contracts for facilities per year and dropping contracts with three facilities per year.

It is likely that many of these covered facilities already retain the requested information for their own administrative purposes. For example, it is highly likely that many facilities subject to this rule already document information such as: employee training, sexual abuse and/or assault incidents, and investigations of sexual abuse and/or assault. For those facilities that already maintain such records there will be no burden of recordkeeping as their current recordkeeping would be sufficient for the need of DHS. The DHS rule would not impose a requirement on facilities to maintain duplicative records. However, for the purposes of this collection of information, DHS has estimated the burden if the collection requirements are new for all 126 facilities.

DHS has identified the information collections and recordkeeping requirements associated with the NPRM Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in DHS Confinement Facilities in question one of this supporting statement. Collectively, these information collections represent an estimated average of 1,379,533 responses annually, for an average annual hour burden of 118,348 hours. The table below provides a summary of DHS's estimates for these collections. The ensuing paragraphs provide a general description of each collection and the basis for the estimates.

Table 2: Information Collection and Hour Burden Summary

Function	Avg Annual Respondents	Avg Annual Responses	Time Per Response (Hours)*	Avg Annual Hour Burden	NPRM Cite
Documentation & Recordkeeping					
Strip and visual body cavity searches	500	500	0.167	83	115.15(e)
Cross-gender pat-downs	444,000	444,000	0.083	37,000	115.15(d)
Reports and referrals of allegations	50	50	0.50	25	115.22 (b), 115.51(c), 115.61 (a)
Detainee education	882,520	882,520	0.083	73,543	115.33 (c)
Administrative segregation	500	500	0.25	125	115.43 (a)
Training records	37,550	37,550	0.083	3,129	115.31(c), 115.32(c), 115.34(b), 115.35(c)
Incident reviews	50	50	2	100	115.86(a), 115.87(b)
Maintaining case records of allegations	50	50	2	100	115.87(a)
Reporting Requirements					
Reporting to other confinement facilities	50	50	0.083	4	115.63 (c)
Annual report for agency	50	50	1	50	115.86(b)
ICE Review of Facility Policies and Procedures					
Medical staff training policy	45	45	5	223	115.35(c)
Staff disciplinary policy	45	45	5	223	115.76(b)
Administrative investigation policy	45	45	5	223	115.71(c), (d)
Provide Evidence of Background Investigation					
Background Investigation Records	14,079	14,079	0.25	3,520	115.17(c), (d)
TOTAL	1,379,533	1,379,533		118,348	

*Time per response as shown is rounded to the nearest thousandth, however actual values are not rounded

Documentation & Recordkeeping

Strip and visual body cavity searches (Proposed §115.15(e))

Facilities are required to document all strip searches and visual body cavity searches. DHS estimates that 500 strip or visual body cavity searches may be conducted in an average year. Documenting the search will take approximately 10 minutes, resulting in an average annual burden of 83 hours (500 × 10 minutes).

Cross-gender pat-down searches of female detainees (Proposed §115.15(d))

Facilities are required to document all cross-gender pat-down searches. DHS estimates that 444,000 cross-gender pat-down searches of detainees may be conducted in an average year. Documenting the search will take approximately 5 minutes, resulting in an average annual burden of 37,000 hours (444,000 × 5 minutes).

Reports and referrals of allegations (Proposed §115.22(b), §115.51(c), §115.61(a))

Protocols require that staff members aware of alleged sexual abuse follow reporting requirements. In addition, protocols require the documentation and maintenance, for at least three years, of all reports and referrals of allegations of sexual abuse. In 2011 there were 50 instances of allegations that would fall under this ICR. DHS estimates that each report may require approximately 30 minutes, resulting in an annual burden of 25 hours (50 × 30 minutes).

Detainee education (Proposed §115.33(c))

Facilities are required to maintain documentation of detainee participation in the intake process orientation. DHS estimates a time burden of approximately five minutes (0.083 hours) per detainee intake orientation. DHS estimates approximately 85 percent of detainees deported in 2011 were held at facilities covered by this ICR. Detainees may move facilities a number of times while in ICE custody. DHS estimates that this results in the documentation of approximately 882,520 individual detainee intake orientations, or an average annual burden of approximately 73,543 hours (882,520 × 5 minutes).

Administrative segregation (Proposed §115.43(a))

Protocols require that facilities document detailed reasons for the placement of an individual in administrative segregation. DHS estimates that there may be 500 instances of administrative segregation in an average year. Documenting the reasons and results of review of administrative segregation status will take approximately 15 minutes, resulting in an average annual burden of 125 hours (500 × 15 minutes).

Training records (Proposed §115.31(c), §115.32(c), §115.34(b), §115.35(c))

Facilities are required to document that staff that may have contact with immigration facility detainees have completed required training. In addition, facilities must also maintain written confirmation that contractors and volunteers who may have contact with immigration detention facility detainees have completed required training. DHS assumes training for all staff, contractors, and volunteers will happen annually.

Facilities must also maintain written documentation verifying that specialized training has been provided to investigators and medical and mental healthcare staff. DHS assumes specialized training will happen once initially.

DHS estimates there are approximately 31,900 staff, contractors and volunteers that would be subject to the annual training requirements in the first year. In addition, DHS estimates approximately 4,400 staff would require specialized training initially. Subsequent years include growth and turnover, , resulting in 37,550 average annual number of training records requiring documentation for the three years covered by this ICR. DHS estimates it takes approximately 5 minutes to file each of the training records, resulting in an average annual burden of 3,129 hours ($37,550 \times 5$ minutes).

Incident reviews (Proposed §115.86(a), §115.87(b))

For each allegation reported, facilities are required to prepare a written report recommending whether the investigation indicates that a change in policy or practice could better prevent, detect, or respond to sexual abuse, document reasons if the policy or practice is not adopted, and forward the report to the agency Prevention of Sexual Abuse Coordinator (PSAC). In 2011 there were 50 instances of allegations that would fall under this ICR. DHS estimates that each report may require approximately 2 hours, resulting in an annual burden of 100 hours (50 × 2 hours).

Maintaining case records of allegations (Proposed §115.87(a))

Facilities are required to maintain all case records associated with claims of sexual abuse. This may include incident reports, investigative reports, offender information, etc. DHS estimates this may take a facility PSA compliance manager (PSACM) on average, approximately 2 hours for each allegation as some cases will require more records management than others. DHS estimates that maintaining these records will result in an annual burden of 100 hours (50 × 2 hours).

Reporting Requirements

Reporting to other confinement facilities (Proposed §115.63(c))

Protocols require that facilities document that staff receiving an allegation that a detainee was abused while confined at another facility notified the facility where the alleged abuse occurred. In 2011 there were 50 instances of allegations that would fall under this ICR. DHS does not keep record of the number of allegations made at facilities other than the one where the alleged abuse occurred. If each occurred at a different facility, then the proposed provision would require 50 instances of documentation. Documenting the notification will take approximately 5 minutes, resulting in an average annual burden of 4 hours (50 × 5 minutes). This duty is also likely to be performed by a correctional officer or jailer or first line supervisor.

Annual report for agency (Proposed §115.86(b))

Facilities are required to conduct an annual review of all sexual abuse investigations and resulting incident reviews and provide ICE PSA Coordinator the results and findings. Historically, most agencies have not had allegations of sexual abuse or assault. Because of the requirement to submit a report to the PSAC for each allegation, DHS does not believe this would be much of an additional burden to facilities. DHS assumes this may take each facility with a reported allegation 1 hour to update a previous report into the annual report or consolidate previous reports into an annual report. This would not be a burden for facilities without any allegations to report in a given year. Again using the 50 allegations in 2011 to estimate the burden for this requirement in the future, DHS estimates the average annual burden for this information collection requirement is 50 hours (50 × 1 hour).

ICE Review of Facility Policies and Procedures

Medical staff training policy (Proposed §115.35(c))

Facilities are required to submit to ICE for review the facility's policy and procedures to ensure that facility medical staff is trained in procedures for examining and treating victims of sexual abuse. DHS assumes that all facilities have staff that perform these functions. DHS estimates this would take facilities approximately five hours to complete.

This would be a one-time requirement in the first year a facility becomes an ICE immigration detention facility. In year 1, DHS estimates 126 facilities would be required to develop and submit this policy, and 5 additional facilities in both years 2 and 3. DHS estimates 45 facilities in an average year of this ICR for an average annual burden of 223 hours (45 × 5 hours).

Staff disciplinary policies (Proposed §115.76(b))

Facilities are required to submit to ICE for review the facility's policy and procedures regarding disciplinary or adverse actions for staff. DHS estimates this would take facilities approximately five hours to complete.

This would be a one-time requirement in the first year a facility becomes an ICE immigration detention facility. In year 1, DHS estimates 126 facilities would be required to develop and submit this policy, and 5 additional facilities in both years 2 and 3. DHS estimates 45 facilities in an average year of this ICR for an average annual burden of 223 hours (45 × 5 hours).

Administrative investigation policies (Proposed §115.71(c),(d))

Facilities are required to submit to ICE for review the facility's policy and procedures for coordination and conduct of internal administration investigations with the assigned criminal investigative entity to ensure non-interference with criminal investigations. DHS estimates this would take facilities approximately five hours to complete.

This would be a one-time requirement in the first year a facility becomes an ICE immigration detention facility. In year 1, DHS estimates 126 facilities would be required to develop and submit this policy, and 5 additional facilities in both years 2 and 3. DHS estimates 45 facilities in an average year of this ICR for an average annual burden of 223 hours (45 × 5 hours).

Provide Evidence of Background Investigations

Background Investigations (Proposed §115.17(c),(d))

Before hiring new staff that may have contact with detainees or enlisting the services of any contract that may have contact with detainees, facilities are required to conduct a background investigation. Facilities are required to provide written documentation showing the detailed elements and the conclusion of the background checks. The time to document a background investigation is estimated at 15 minutes per individual.

DHS estimates background investigations are required of 31,900 individuals. In the first year, DHS expects facilities to document the background investigations of these individuals. In subsequent years, documentation would only be required of any new staff or contractors, or approximately 5,168 individuals. Over the three year period covered by this analysis, this equates to 14,079 individuals in an average year ((31,900 + 5,168 + 5,168)/3). Background investigation documentation requirements result in an average annual burden of approximately 3,520 hours (14,079 × 0.25).

13. Estimated total annual cost of burden to respondents or record keepers

Separate from the hour burden estimates provided in question 12, facilities will not incur other costs resulting from this collection of information. ICE is establishing a new ICR for these information collections and recordkeeping requirements as a part of the proposed rulemaking. Because these facilities are currently undertaking much, if not all, of the burden estimated for this ICR as required by the standards agreed upon in facility contracts with ICE, DHS does not believe facilities should require any additional resources for the ICR.

14. Total capital and start-up cost

Total operation and maintenance and purchase of services cost

DHS estimates the total cost to the Federal Government associated with the information collections identified in this request amount to approximately \$33,600 annually.

Table 3: Federal Government Cost Summary

Respondent Category	Average Annual Cost (\$thou)
Review of medical staff training policy	\$11.2
Review of staff disciplinary policy	\$11.2
Review of administrative investigation policy	\$11.2
TOTAL	\$33.6

Review of policies

DHS estimates it will cost ICE approximately \$11,200 in an average year covered by this ICR to review the medical staff training policies, \$11,200 to review staff disciplinary policies, and \$11,200 to review administrative investigation policies.

15. Reasons for program changes or adjustments

The proposed DHS national sexual abuse and assault standards rule would create a new information collection.

16. Collections of information that will be published-outline plans for tabulation and publication

The data from sections 115.88, 115.89, 115.93 will be published on agency websites for informational purposes only. The data from sections 115.88, 115.89 will be redacted of any personal information before it is posted on websites for public viewing.

17. Reasons for expiration date for OMB approval would be inappropriate

There are no additional instructions for these collections. The requirements related to the collections are in the proposed rule text and are explained in the preamble to the rule. The rule text should be specific enough for the facilities to know what reports they need to complete.

18. Explanation of each exception to the certification statement

There are no exceptions to the Paperwork Reduction Act Certification for this information collection.