

Collection Associated with the Final Rule
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 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 rule are new requirements which will require a new OMB Control No.

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)- Other 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 investigations.	(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.
115.89(d) - Data storage, publication, and destruction	(d) - 10-year data maintenance requirement.

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 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 rule does not impose any duplication of collection. 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 establish 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 rule will not have any effect on small entities of the type described in 5 U.S.C. 601(3). Accordingly, DHS has prepared a Final Regulatory Flexibility Impact Analysis in accordance with 5 U.S.C. § 604.

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 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 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. In addition, sections 115.89(d) and 115.189(d) require the agency to maintain sexual abuse data collected pursuant to sections 115.87 and 115.187, respectively, for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise. This data storage requirement generally would exceed a three-year period.

8. Solicitation of comments

DHS published the proposed rule on December 19, 2012 at 77 FR 75300. During the public comment period, DHS received a total of more than 1,700 comments. However, only a portion of those comments were related to the Paperwork Reduction Act (PRA), i.e., public burden, record-keeping, etc.

Public comments on the proposed rule led to several PRA-related changes. These are:

- Sections 115.86 and 115.186: Immigration detention facilities now must conclude incident reviews within 30 days of the completion of the investigation. In addition, if immigration detention facilities have not had any reports of sexual abuse during the annual reporting period, then they must prepare a negative report and provide it to the facility administrator, Field Office Director or his or her designee, and the agency PSA Coordinator. In the case of holding facilities, the agency must ordinarily perform its review within 30 days of receiving the investigation results from the investigative authority.

Docket #	Commenter Name/Group	Links to comment
Conclusion of incident review within 30 days of investigation completion.		
0098	American Immigration Lawyers Association	http://www.regulations.gov/#!documentDetail;D=ICEB-2012-0003-0098
0107	Jamie Fellner, Human Rights Watch	http://www.regulations.gov/#!documentDetail;D=ICEB-2012-0003-0107
0142	Brenda V. Smith, The Former National Prison Rape Elimination Commission	http://www.regulations.gov/#!documentDetail;D=ICEB-2012-0003-0142
0144	Carlos Holguin, Center for Human Rights & Constitutional Law, et al	http://www.regulations.gov/#!documentDetail;D=ICEB-2012-0003-0144
0150	National Center for Transgender Equality et al. Signatories include: American Civil Liberties Union (ACLU), Human Rights Campaign, Immigration Equality, Lambda Legal, National Center for Lesbian Rights, National Center for Transgender Equality, National Gay and Lesbian Task Force, Sylvia Rivera Law Project, Transgender Law Center	http://www.regulations.gov/#!documentDetail;D=ICEB-2012-0003-0150
0153	Thomas M Susman, American Bar Association	http://www.regulations.gov/#!documentDetail;D=ICEB-2012-0003-0153
0154	Nicole de la Torre, Children and Youth Organizations	http://www.regulations.gov/#!documentDetail;D=ICEB-2012-0003-0154
Preparation of negative report		
0139	Alexis Perlmutter, National Immigrant Justice Center	http://www.regulations.gov/#!documentDetail;D=ICEB-2012-0003-0139

- Sections 115.89 and 115.189: The agency now must maintain sexual abuse data collected pursuant to sections 115.87 and 115.187 for at least 10 years after the date of the initial collection, unless Federal, State, or local law requires otherwise.

Docket #	Commenter Name/Group	Links to comment
0107	Jamie Fellner, Human Rights Watch	http://www.regulations.gov/#!documentDetail;D=ICEB-2012-0003-0107
0142	Brenda V. Smith, The Former National Prison Rape Elimination Commission	http://www.regulations.gov/#!documentDetail;D=ICEB-2012-0003-0142

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 final rule in question one of this supporting statement. Collectively, these information collections represent an estimated average of 1,385,063 responses annually, for an average annual hour burden of 119,321 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	Final Rule 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	56	56	0.50	28	115.22 (b), 115.51(c), 115.61 (a)
Detainee education	883,000	883,000	0.083	73,583	115.33 (c)
Administrative segregation	3,000	3,000	0.25	750	115.43 (a)
Training records	40,000	40,000	0.083	3,333	115.31(c), 115.32(c), 115.34(b), 115.35(c)
Incident reviews	56	56	2	112	115.86(a), 115.87(b)
Maintaining case records of allegations	56	56	2	112	115.87(a)
Reporting Requirements					
Reporting to other confinement facilities	56	56	0.083	5	115.63 (c)
Annual report for agency	126	126	1	126	115.86(b), (c)
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	,1,385,063	1,385,063		119,321	

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

Documentation & Recordkeeping

Strip and visual body cavity searches (§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 (§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 (§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. There was an average of 56 allegations annually from 2010-2012 that would fall under this ICR. DHS estimates that each report may require approximately 30 minutes, resulting in an annual burden of 28 hours (56 × 30 minutes).

Detainee education (§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 883,000 individual detainee intake orientations, or an average annual burden of approximately 73,583 hours (883,000 × 5 minutes).

Administrative segregation (§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 3,000 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 750 hours (3,000 × 15 minutes).

Training records (§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 other 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 37,840 staff, other 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 approximately 40,000 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 3,333 hours (40,000 × 5 minutes).

Incident reviews (§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). There was an average of 56 annual allegations from 2010 - 2012 that would fall under this ICR. DHS estimates that each report may require approximately 2 hours, resulting in an annual burden of 112 hours (56 × 2 hours).

Maintaining case records of allegations (§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 112 hours (56 × 2 hours).

Reporting Requirements

Reporting to other confinement facilities (§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. There was an average of 56 annual allegations from 2010 - 2012 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 56 instances of documentation. Documenting the notification will take approximately 5 minutes, resulting in an average annual burden of 5 hours (56 × 5 minutes).

Annual report for agency (§115.86(b), (c))

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. If the facility has not had any reports of sexual abuse during the annual reporting period, then the facility must prepare a negative report. Facilities with allegations would update a previous report into the annual report or consolidate previous reports into an annual report, whereas facilities without allegations would prepare a negative report, taking much less time. Historically, most agencies have not had allegations of sexual abuse or assault. Therefore, DHS assumes this may take each facility, on average, 1 hour to prepare the report. There are 126 facilities covered by this PRA. DHS estimates the average annual burden for this information collection requirement is 126 hours (126×1 hour).

ICE Review of Facility Policies and Procedures

Medical staff training policy (§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 (§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 (§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 (§115.17(c),(d))

Before hiring new staff that may have contact with detainees or enlisting the services of any contractor 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 $(14,079 \times 0.25)$.

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 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 \$35,700 annually.

Table 3: Federal Government Cost Summary

Respondent Category	Average Annual Cost (\$thousand)
Review of medical staff training policy	\$11.9
Review of staff disciplinary policy	\$11.9
Review of administrative investigation policy	\$11.9
TOTAL	\$35.7

Review of policies

DHS estimates it will cost ICE approximately \$11,900 in an average year covered by this ICR to review the medical staff training policies, \$11,900 to review staff disciplinary policies, and \$11,900 to review administrative investigation policies.

15. Reasons for program changes or adjustments

The DHS national sexual abuse and assault standards final 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 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. However, in addition, ICE will revise the 2012 Sexual Abuse and Assault Prevention and Intervention (SAAPI) Directive, which is a public document, to provide additional detail. ICE further will provide added information to immigration detention facilities through the supporting documents to the contract modifications by which the standards will become binding on facilities.

18. Explanation of each exception to the certification statement

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