Collection Associated with the Final Rule:
National Standards to Prevent, Detect and Respond to Prison Rape
RIN Number 1105-AB34
New OMB PRA/ICR Control No. 1121-0352
PRA Supporting Statement

1. On June 20, 2012, the Department of Justice (Department) published a Final Rule to adopt national standards to prevent, detect, and respond to sexual abuse in confinement settings pursuant to the Prison Rape Elimination Act of 2003 (PREA) 42 U.S.C. § 15601 et seq. These national standards, which went into effect on August 20, 2012, require covered facilities to retain certain specified information relating to sexual abuse prevention planning, responsive planning, education and training, investigations; and to collect and retain certain specified information relating to allegations of sexual abuse within the facility. Covered facilities include: federal, state, and local jails, prisons, lockups, community correction facilities, and juvenile facilities, whether administered by such government or by a private organization on behalf of such government.

(a) Some of the sexual abuse incident data to be collected is already covered by an existing Department information collection titled "Survey on Sexual Violence", OMB Control No. 1121-0292. Please see §§:

Subpart A - Prisons and Jails	Subpart B - Lockups	Subpart C - Community Corrections	Subpart D - Juvenile Facilities
115.87	115.187	115.287	115.387
115.88	115.188	115.288	115.388
115.89	115.189	115.289	115.389

In particular, please see the references in 115.87(c), 115.187(c), 115.287(c), and 115.387(c) to the existing SSV collection.

(b) August 20, 2015 marked the beginning of the final year of the first three-year PREA audit cycle, and jurisdictions across the nation remain in the early stages of PREA implementation and adherence to the newly imposed recordkeeping requirements outlined in this collection. The balance of the recordkeeping requirements proposed by this rule will be an extension, without change, of a previously approved collection (OMB Control No. 1105-0095). The Department sought public comments on these new requirements as part of the Notice of Proposed Rule Making (NPRM) and as part of the previously approved collection in 2012 (OMB Control No. 1105-0095). Please see §§:

Subpart A - Prisons and Jails	Subpart B - Lockups	Subpart C - Community Corrections	Subpart D - Juvenile Facilities
115.14(b)	115.114(b)	115.214(b)	115.314(b)
115.22(c)	115.122(c)	115.222(c)	115.322(c)

115.31(d)	115.131(d)	115.231(d)	115.331(d)
115.32(c)	115.132(c)	115.232(c)	115.332(c)
115.33(e)	115.133(e)	115.233(e)	115.333(e)
115.35(c)	115.135(c)	115.235(c)	115.335(c)
115.71(h)	115.171(h)	115.271(h)	115.371(h)

2. Information designated by this rule are subject to retention by covered facilities that is not already submitted to the Department for use in compiling of the SSV. This information is used by DOJ-certified PREA auditors to verify whether or not covered facilities are in compliance with the national standards and, under certain circumstances by the Department, to verify the quality and integrity of the PREA auditors' work product.

3. Records may be kept in paper or electronic form as the facility may desire, so long as the records meet the requirements of the regulation. Information collected as part of the recordkeeping requirements under the PREA standards are generally not made available to the public, as they may contain certain personally identifiable information (PII) and personal health information (PHI). However, pursuant to standard 115.403(f), the audited agency "shall ensure that the [PREA] auditor's final report is published on the agency's website if it has one, or is otherwise made readily available to the public." Under standard 115.403(e), PREA auditors are required to redact any personally identifiable staff or inmate information in their audit reports.[1]

4. To the extent that sexual abuse incident data is already being collected and retained by facilities pursuant to the SSV, the collection and retention of that data is sufficient for the purposes of this rule. This rule does not impose collection or retention requirements that duplicate the requirements of the SSV.

The Department believes that for many of the requirements of this final rule, covered facilities already retain pertinent information for their own administrative purposes. For example, it is highly likely that many facilities subject to this rule already document matters such as: employee training, sexual abuse incidents, and investigations of sexual abuse. To the extent that facilities already maintain the records required by this rule, the records created and retained in the ordinary course of business by the jail, prison, community correction center, or juvenile facility will be sufficient to comply with this rule. The PREA final rule does not impose the requirement of maintaining duplicative records.

This rule requires new record collection and retention requirements only to the extent that the information is not already collected and retained by facilities for use in the SSV or already collected and retained by facilities as part of their regular administrative processes.

[1] Standard 115.403(e) states that "Auditors shall redact any personally identifiable inmate or staff information from their reports, but shall provide such information to the agency upon request, and may provide such information to the Department of Justice."

5. The PREA rule does not affect any small businesses, only units of government. The Unfunded Mandates Reform act and 5 U.S.C. 601(5) define "small governmental jurisdiction" generally as rural jurisdictions, those with populations under 50,000, and areas of limited revenue. This rule applies to states and to levels of government within states that operate covered prisons, jails, lockups, community correction and juvenile facilities. Some of the units of government covered by the record retention requirements of this rule will likely be "small governmental jurisdictions." The Department believes that the PREA record retention requirements build on record retention requirements that covered facilities already likely have for their own administrative purposes. For example, in opinion of the Department, it is likely that facilities covered by the PREA rule already document searches of inmates because the facilities would want to track who was searched, under what circumstances (*i.e.,* suspicious behavior or random), and the result of the search (*i.e.,* contraband found or not found.). Further, while the Department does not possess direct knowledge of the clerical processes that facilities covered by PREA use to document such information for the facilities' own purposes, it is probable that compliance with the record retention requirements of PREA could be readily achieved by facilities adapting and expanding their own current processes. For example, a small, low-tech facility may be able to document cross-gender searches merely by adding another check box or signature line to an already-existing form the facility uses to document inmate searches. Alternatively, a large, high-tech institution may be able to document cross-gender searches by minor reprogramming of its electronic records system. However, at the present time, the Department is unable to determine whether the record retention requirements of this rule will have significant impact on a substantial number of small entities.

6. As discussed in the rule, the recordkeeping and reporting requirements are designed to provide information to PREA auditors to verify whether or not covered facilities – prisons and jails, community confinement facilities, juvenile facilities, and lockups – are in compliance with the national PREA standards. If the information in this collection were not retained by the covered facilities, it would be more difficult (perhaps impossible) for a PREA auditor to verify compliance.

7. The information reporting requirements imposed by the existing SSV are annual. To the extent that this rule increases the scope of information reporting, the frequency will also be annual.

The record keeping requirements of the PREA rule are based on incidents of sexual abuse, which could occur more frequently than quarterly. Covered facilities are required to maintain sexual abuse incident-based data for ten years, unless federal, state, or local law requires otherwise.

8. On July 28, 2015 a 60 Day Federal Register Notice was published at 80 FR 44996. There were no comments received. (OR if there were pertinent comments, state, "## comments were received and responded to" Consultations outside of Justice concerning

the SSV are described in the supporting statement that accompanied the submission of that collection to OMB for review (OMB Control No. 1121-0292).

9. There is no payment or gift to staff in Federal or State prisons, jails, lockups, community corrections facilities, or juvenile facilities.

10. Insofar as the information is maintained by Federal agencies (e.g., BOP, USMS), information regarding the identity of victims of sexual abuse may be protected by the Privacy Act, 5 USC 552a. BOP has determined it will use existing systems of recordkeeping to track PREA information. This will be re-evaluated on an ongoing basis to determine whether a new system of recordkeeping would assist with future reporting requirements.

In addition, sections 115.53, 115.153, 115.253, and 115.353 of the rule require that agencies provide inmates access to outside victim advocacy organizations and that such communications be "as confidential as possible consistent with agency security needs." Finally, there are several additional PREA standards that require covered facilities and agencies to protect and safeguard sensitive information (e.g., standard 115.41(i) requires agencies to appropriately safeguard sensitive information obtained during the inmate screening process).

11. Pursuant to the authority of the Prison Rape Elimination Act, the Department is requiring covered facilities to retain and report certain highly sensitive information. The purpose of the recordkeeping and reporting requirements is to eliminate sexual abuse in prisons and other covered facilities. The PREA information collection only collects information from institutions, not from victims or inmates. The only record retention provisions of the rule that involve "sensitive" information are 115.71 / 115.171 / 115.271 / 115.371. "The agency shall retain such investigative records for as long as the alleged abuser is incarcerated or employed by the agency, plus five years."

12. The Department estimates that, if all 13,119 covered facilities nationwide were to fully comply with all of the PREA standards, the new burden hours associated with the staff time that would be required to collect and maintain the information and records required by the standards would be approximately 1.16 million in the first year of full compliance, or about 89 hours per facility. As stated above, August 20, 2015 marked the beginning of the final year of the first three-year PREA audit cycle, and there is evidence that many states are still working towards full compliance with the PREA standards. In FY 2014, the first year Governors were required by statute to certify compliance with the PREA standards, submit an assurance that they would use not less than 5% of certain DOJ grant funds to come into compliance in the future, or accept a 5% reduction in certain DOJ grant funds , only two jurisdictions (4%) submitted certifications of full compliance. Although the number of jurisdictions submitting certifications of full compliance in FY 2015 increased to 11 (20%), the majority of jurisdictions[2] either submitted an assurance or elected to submit neither a certification nor an assurance.

[2] A total of 35 states, 4 territories, and the District of Columbia submitted an assurance, while 4 states and 1 territory submitted neither a certification nor an assurance.

Recognizing that PREA implementation and compliance with the recordkeeping requirements are still in the early phase of development in covered facilities across the nation, the burden estimate proposed in this collection is an extension, without change, of a previously approved collection (OMB Control No. 1105-0095). The burden is expected to diminish over time as facilities institutionalize the recordkeeping and reporting requirements and find more efficient ways of collecting, maintaining, and reporting the required information; however, additional time is needed for many jurisdictions to institutionalize the requirements of the PREA standards and come into full compliance. Projected burden hours for 36 months following the initiation of this collection are appended as part of this package. As facilities begin to develop more efficient ways of complying with the PREA reporting and recordkeeping requirements, the burden hours associated with this collection may decrease to just under 159,000. This reduced burden estimate was originally provided as part of the previously approved collection (OMB Control No. 1105-0095) and translates to approximately 13 hours per facility.

13. The Department estimates that there will be no capital, operating, or maintenance costs associated with the collections in the final rule. DOJ believes that all of the burden is associated with the staff time to collect the information, and that time burden is estimated in question 12. The Department believes that for many of the requirements of this proposed rule, covered facilities already retain for their own administrative purposes pertinent information. For example, it is highly likely that many facilities subject to this rule already document matters such as: employee training, sexual abuse incidents, and investigations of sexual abuse. To the extent that facilities already maintain the records required by this rule, the records created and retained in the ordinary course of business by the jail, prison, community confinement facility, lockup, or juvenile facility will be sufficient to comply with this rule. The PREA final rule does not impose the requirement of maintaining duplicative records.

14. The cost to the Federal Government for the collection, processing and dissemination of SSV data as approved by OMB in Collection No. 1121-0092 is set forth in the Supporting Statement for that collection. As reflected in the chart below, the cost to the Federal Government of collecting, processing, and disseminating any information beyond that collected by the SSV is approximately $300,000 initially, and $101,000 annually thereafter.

DOJ Component	CFR cite	Item	Cost	Totals
BOP	115.52	Staff time to process and document third party notifications on 150 cases per year	$ 5,700/yr	
	115.86	Sexual Abuse Incident Reviews -- 300 allegations per year	$456,000/yr	
	115.87	Data collection	$151,000/yr	
	115.88-89	Data review, storage, publication, destruction	$ 9,120/yr	
				$621,820/yr

USMS				
	115.186	Sexual Abuse Incident Reviews -- 10 incidents per year	$ 16,000/yr	
	115.187	Data collection	$ 75,000/yr	
	115.188	Data review,	$ 10,000/yr	
	115.189	Data storage, publication, and destruction	$300,000 (one time startup)	
TOTAL				$300,000 startup + $101,000/yr ongoing

15. SSV data is collected pursuant to the existing Collection No. 1121-0092. Other information collected or retained pursuant to the PREA rule will constitute an extension, without change, of a previously approved collection (OMB Control No. 1105-0095).

16. The information retained by covered facilities pursuant to the requirements of this collection will not be published.

17. There is no form associated with this recordkeeping requirement for this information collection.

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