

Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities

OMB Control No. 1653-0051
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 required 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.

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, 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 expressed 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 finalize rules or procedures to satisfy the requirements of PREA.

On March 7, 2014, DHS published a final rule titled *Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities* (79 FR 13100) that finalized regulations for the detection, prevention, and reduction of sexual abuse and assault at DHS immigration detention and holding facilities. In compliance with PREA, the regulatory requirements included data collection provisions, as shown in Table 1.

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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

Covered facilities must retain certain specified information relating to sexual abuse and assault prevention planning, responsive planning, education and training, and investigations, and to collect and retain certain specified information relating to allegations of sexual abuse and assault within the facility. The information collected is necessary to monitor the incidence of sexual abuse and assault in DHS confinement facilities, in compliance with PREA.

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

ICE some of the collection areas require paper documentation so in those cases, information technology methods cannot be used in this collection.ques when possible, and understandsencourages facilities to use electronic collection techni

4. Duplication of collection

This Information Collection Request (ICR) does not impose any duplication of collection.

5. Small Businesses

This information collection does not disproportionately impact small businesses or other small entities.

6. Consequences of lesser or no information collection

The timeliness and frequency of information collected from required facilities is crucial to compliance with PREA. 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 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 are annual and/or by incident. In some cases, depending on the specific regulatory requirement, 5168certain 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. These requirements are consistent with PREA.

8. Solicitation of comments

On May 14, 2020, Immigration and Customs Enforcement (ICE) published a notice in the **Federal Register** at 85 FR 28971, soliciting public review and comment for a 60 day period on the proposed extension of this information collection. ICE received no public comments. On July 20, 2020, ICE published a follow up notice in the **Federal Register** at 85 FR 43865, soliciting public review and comment for an additional 30 day period on the proposed extension of the approval of this-s information collection.

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

Information regarding the identification of sexual assault and/or abuse victims is confidential under applicable law and policy. 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 provisions are covered under the following Systems of Records Notices (SORNs): DHS/ALL-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 are required to retain and report sensitive information. The sensitive information only pertains 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 signs approximately five new contracts for facilities per year.

Table 2: Information Collection and Hour Burden Summary

Function	Avg Annual Respondents	Avg Annual Responses	Time Per Response (Hours)	Avg Annual Hour Burden	Average Loaded Wage Rate	Cost of Burden
Documentation & Recordkeeping						
Strip and visual body cavity searches	500	500	0.167	83	\$42.11	\$3,495
Cross-gender pat-downs	444,000	444,000	0.083	37,000	\$42.11	\$1,558,070
Reports and referrals of allegations	368	368	0.5	184	\$42.11	\$7,748
Detainee education	883,000	883,000	0.083	73,583	\$42.11	\$3,098,580
Administrative segregation	3,000	3,000	0.25	750	\$42.11	\$31,583
Training records	40,000	40,000	0.083	3,333	\$42.11	\$140,353
Incident reviews	368	368	2	736	\$42.11	\$30,993
Maintaining case records of allegations	368	368	2	736	\$42.11	\$30,993
Reporting Requirements						
Reporting to other confinement facilities	368	368	0.083	31	\$42.11	\$1,305
Annual report for agency	126	126	1	126	\$42.11	\$5,306
Provide Evidence of Background Investigation						
Background Investigation Records	5,168	5,168	0.25	1,292	\$42.11	\$54,406

TOTAL INDUSTRY BURDEN	1,377,266	1,377,266		117,854		\$4,962,832
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*Time per response as shown is rounded to the nearest thousandth, however actual minute values are not rounded. Values may not sum due to rounding.

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 are conducted in an average year. Documenting the search takes 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 are conducted in an average year. Documenting the search takes 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 five years, of all reports and referrals of allegations of sexual abuse. There was an average of 368 allegations annually from 2017-2019. DHS estimates that each report requires 30 minutes, resulting in an annual burden of 184 hours (368 × 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 five minutes (0.083 hours) per detainee intake orientation. DHS estimates 85 percent of detainees deported are 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 883,000 individual detainee intake orientations, or an average annual burden of 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 there are 3,000 instances of administrative segregation in an average year. Documenting the reasons and results of review of administrative segregation status takes 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 have contact with immigration detention facility detainees have completed required training. Training for all staff, contractors, and volunteers occurs biannually. Facilities must maintain documentation verifying that specialized training has been provided to investigators and medical and mental healthcare staff.

DHS estimates there are 40,000 average annual number of training records requiring documentation for the three years covered by this ICR. DHS estimates it takes 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 368 annual allegations from 2017-2019. DHS estimates that each report requires 2 hours, resulting in an annual burden of 736 hours (368 × 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 includes incident reports, investigative reports, offender information, etc. DHS estimates this takes a facility PSA compliance manager (PSACM) on average, 2 hours for each allegation as some cases require more records management than others. DHS estimates that maintaining these records results in an annual burden of 736 hours (368 × 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 notify the facility where the alleged abuse occurred. There was an average of 368 annual allegations from 2017-2019. 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 there are an average of 368 instances of documentation annually. Documenting the notification will take approximately 5 minutes, resulting in an average annual burden of 31 hours (368 × 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 update a previous report into the annual report or consolidate previous reports into an annual report, whereas facilities without allegations prepare a negative report, which takes much less time. Historically, most agencies have not had allegations of sexual abuse or assault. Therefore, DHS assumes this takes each facility, on average, 1 hour to prepare the report. There are 126 facilities. DHS estimates the average annual burden for this annual report requirement is 126 hours (126 × 1 hour).

Provide Evidence of Background Investigations

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

Before hiring new staff that have contact with detainees or enlisting the services of any contractor that has contact with detainees, background investigations/checks are conducted in accordance with the applicable statement of work. The type of facility determines whether ICE conducts the background investigations/checks or if the facilities are required to provide written documentation showing the detailed elements and the conclusion of the background investigations/checks. The time to document a background investigation is estimated at 15 minutes per individual.

DHS estimates there are approximately 5,168 new staff or contractors each year. Background investigation documentation requirements result in an average annual burden of approximately 1,292 hours ($5,168 \times 0.25$).

Estimated total annual cost of burden to respondents

The estimated annual cost burden for all respondents is \$4,962,832. This estimate is based on the total annual reporting burden hours (117,854) x the average loaded wage rate (\$42.11).

The average hourly wage rate \$28.91 is furnished by the Bureau of Labor Statistics (BLS) collection of data from employers in all industry sectors in metropolitan and nonmetropolitan areas from all states and the District of Columbia. DHS used the hourly wage rate of a First-Line Supervisors of Office and Administrative Support Workers as an average rate for the individuals that would complete the tasks. See May 2019 National Occupational Employment and Wage Estimates United States https://www.bls.gov/oes/2019/may/oes_nat.htm. The fully loaded wage rate, \$42.11, is calculated using the percent of wages and salaries to total compensation, found in the BLS Employer cost per hour worked for employee compensation and costs as a percent for total compensation: Civilian worker, by major occupational and industry group, all workers, <https://www.bls.gov/news.release/ecec.t01.htm>. Wages and salaries are 68.65 percent of total compensation. $\$42.11 = (\$28.91 / 0.6865)$.

- 13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**

There are no recordkeeping, capital, start-up, or maintenance costs associated with this information collection.

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

DHS estimates the total cost to the Federal Government associated with the information collections identified in this request is \$5,883 annually.

Table 3: Federal Government Cost Summary

Function	Avg Annual Respondents	Avg Annual Responses	Time Per Response (Hours)	Avg Annual Hour Burden	Average Loaded Wage Rate	Cost of Burden
ICE Review of Facility Policies and Procedures						
Medical staff training policy	5	5	5	25	\$78.44	\$1,961
Staff disciplinary policy	5	5	5	25	\$78.44	\$1,961
Administrative investigation policy	5	5	5	25	\$78.44	\$1,961
TOTAL GOVERNMENT BURDEN	15	15		75		\$5,883

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 takes facilities five hours to complete. This is a one-time requirement in the first year a facility becomes an ICE immigration detention facility. DHS estimates an average of 5 facilities are required to develop and submit this policy each year, for an average annual burden of 25 hours (5 × 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 takes facilities five hours to complete. This is a one-time requirement in the first year a facility becomes an ICE immigration detention facility. DHS estimates an average of 5 facilities are required to develop and submit this policy each year, for an average annual burden of 25 hours (5 × 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 takes facilities five hours to complete. This is a one-time requirement in the first year a facility becomes an ICE immigration detention facility. DHS estimates an average of 5 facilities are required to develop and submit this policy each year, for an average annual burden of 25 hours (5 × 5 hours).

Government Costs

The review of policies and procedures is done by personnel analogous to a government employee at the grade level of a General Schedule (GS) 13, Step 5 level. The base hourly wage rate for a GS-13, Step 5 government employee is \$53.85.¹ The fully loaded wage rate, \$78.44, is calculated using the same BLS percent of wages and salaries to total compensation of 68.65 percent ($\$53.85 / .6865 = \78.44). DHS estimates it costs ICE \$1,961 (25 hours x \$78.44) in an average year to review the medical staff training policies, \$1,961 (25 hours x \$78.44) to review staff disciplinary policies, and \$1,961 (25 hours x \$78.44) to review administrative investigation policies.

15. Reasons for program changes or adjustments

¹ The GS-13, Step 5 hourly wage is taken from the Office of Personnel Management (OPM) Salary Table 2019-DCB, for the locality pay area of Washington-Baltimore-Northern Virginia, Effective January 2019, found at: https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB_h.pdf.

DHS estimates an annual decrease of 7,798 responses (from 1,385,064 to 1,377,266) and a corresponding decrease of 1,467 burden hours (from 119,321 to 117,854). The changes reflected in this ICR are attributed to DHS using more up-to-date response data from fiscal years 2017-2019 to revise the estimate of the average annual responses.

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

The data from sections 115.88, 115.89, 115.93 is published on agency websites for informational purposes only. The data from sections 115.88, 115.89 is 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

This collection involves a variety of documents, most of which are produced by the facilities, and are not typically forms, so displaying the OMB expiration date would be too onerous for the facilities to place on the collection documents .

18. Explanation of each exception to the certification statement

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