



U.S. Department of Justice

Washington, D.C. 20531

September 12, 2017

Dear Governor:

The Prison Rape Elimination Act (PREA) was passed in 2003 with unanimous support from both parties in Congress and signed into law by President George W. Bush. Eliminating prison rape remains a high priority of the U.S. Department of Justice (DOJ). Sexual abuse is a crime; it should not be the punishment for a crime. The National PREA Standards (Standards), which address both sexual abuse and sexual harassment and are found at 28 C.F.R. Part 115, took effect on August 20, 2012, and apply to federal, state, and local confinement facilities (including adult prisons and jails, juvenile facilities, lockups, and community confinement facilities).

PREA contains mandates that may affect grant funding your state¹ receives from DOJ. The statute provides that, if a governor is not able to certify to DOJ that the state is in full compliance with the Standards, the governor has the option to submit an assurance to DOJ that not less than 5 percent of certain DOJ grant funds will be either (1) used solely for the purpose of enabling the state to achieve and certify full compliance with the Standards in future years or (2) held in abeyance by DOJ pending future action by the state. See 34 U.S.C. § 30307(e)(2). If the governor is not able to certify to DOJ that the state is in full compliance with the Standards and elects not to submit an assurance to DOJ, the state will be subject to the loss of 5 percent of certain DOJ grant funds that it would otherwise receive. In Fiscal Year (FY) 2018, there will be two DOJ grant programs (or portions thereof) subject to this statutory provision. These two grant programs are administered by the Office of Justice Programs: (1) Bureau of Justice Assistance's (BJA) Edward Byrne Memorial Justice Assistance Grant Program, and (2) the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Juvenile Justice and Delinquency Prevention Act Formula Grant Program.²

To fulfill this requirement, governors must submit either a certification or an assurance to DOJ, and additional required and supporting materials, by **October 16, 2017** regarding the state's PREA compliance status from August 20, 2016 through August 19, 2017. Please note, under the PREA amendment to the Justice for All Reauthorization Act (JFARA), signed into law on December 16, 2016 (Pub. L. No. 114-324), there are important changes to the certification and assurance reporting requirements. Please see the enclosed PREA Certification and Assurance Submission Worksheet and the PREA Amendment Justice for All Reauthorization Act of 2016 Fact Sheet, available at https://www.bja.gov/publications/JFARA-Fact-Sheet_Updated-2017.03.01.pdf,

¹ In this letter, "state" refers to states, U.S. territories, and the District of Columbia.

² The PREA amendment under the Justice for All Reauthorization Act of 2016 (JFARA) exempts grant programs administered by the Office on Violence Against Women. Therefore, as of FY 2017, the Services, Training, Officers, and Prosecutors (STOP) Violence Against Women Formula Grant Program administered by the Office on Violence Against Women is no longer subject to the five percent reallocation or reduction under the PREA statute. See 34 U.S.C. § 30307(e)(1)(A).

for detailed information on the new reporting requirements, the abeyance option for states that submit an assurance, and other changes to the PREA statute.

What to Consider when Making a Certification Determination

When making a determination of whether to submit a certification of full compliance with the Standards, the following considerations and requirements apply:

- “The Governor’s certification shall apply to all facilities in the State under the operational control of the State’s executive branch, including facilities operated by private entities on behalf of the State’s executive branch.” See 28 C.F.R. § 115.501(b). **IMPORTANT:** When making a certification determination, a governor must assess compliance for **all** facilities in the state that are covered under the PREA certification/assurance process, including, but not limited to, those facilities audited during the most recent audit year.
- In determining whether the state is in full compliance, “the Governor shall consider the results of the most recent agency audits.” See 28 C.F.R. § 115.501(a).
- All confinement facilities subject to the Standards must be audited by a DOJ-certified auditor at least once every 3 years, with one-third of each facility type operated by an agency, or private organization on behalf of an agency, to be audited each year. See 28 C.F.R. § 115.401.
- Pursuant to formal guidance issued by the DOJ PREA Working Group, DOJ intends audits to be a primary, but not the only, factor in determining whether a state is in full compliance. Neither the PREA statute nor the Standards restrict the sources of information that governors may use in deciding whether to certify full compliance with the Standards.
- DOJ recognizes that in some states, sexual abuse and sexual harassment investigations are conducted by agencies that are different than the agencies that confine inmates, residents, and/or detainees. Formal guidance issued by the DOJ PREA Working Group on December 3, 2013 (See <http://www.prearesourcecenter.org/node/3278>) indicates that “To the extent that these state agencies investigate sexual abuse or sexual harassment in covered confinement facilities, compliance with the National PREA Standards by these agencies also falls within the scope of the Governor’s certification.” Therefore, in order for governors to submit a certification of full compliance, these external state investigative agencies must be fully compliant with the PREA Standards that apply to them. For additional guidance and information, refer to the attached PREA Compliance Checklist for External State Investigative Agencies: Prisons and Jails that was developed by DOJ to serve as a tool for governors and others to assess compliance with the PREA Standards by these external agencies.
- A certification applies to the timeframe covering the most recent audit year; therefore, before a certification can be submitted, all covered facilities within your state must have been in full compliance with all the Standards, including the audit Standard (28 C.F.R. § 115.401(b)), as of August 19, 2017. Only audits completed by August 19, 2017 may be considered when determining compliance with Standard 115.401(b).

Following each year’s certification/assurance deadline, DOJ engages in a standard process to review certifications submitted by each state. If DOJ identifies information as part of this review process that raises questions about or contradicts a governor’s certification submission, DOJ will send a notification detailing its findings and requesting additional information. DOJ’s certification review process is intended to assist states in supporting and maintaining full PREA compliance.

DOJ understands that your task of assessing statewide PREA compliance is not an easy one. For that reason, DOJ has developed the attached PREA Certification and Assurance Submission Worksheet and frequently asked questions (FAQ) document, which will also be made available on the PREA Resource Center website at www.prearesourcecenter.org. The worksheet and FAQs are intended to aid governors in their certification and assurance decisions by detailing what questions and issues should be considered. The worksheet will also assist in the compilation of information and documentation that will provide support for either decision.

Enhancing the Quality and Integrity of PREA Audits

Governors and other stakeholders with responsibilities under PREA should be aware of ongoing efforts underway at DOJ to increase the quality and rigor of PREA audits. DOJ has developed a PREA Audit Oversight Function that is designed to both support PREA auditors in improving their auditing skills, and hold them accountable for a high standard of audit quality and integrity. Furthermore, on August 3, 2017, DOJ released a PREA Auditor Handbook, which articulates DOJ's expectations for all DOJ-certified PREA auditors, establishes clear guidelines and requirements for auditor conduct and methodology, and enhances auditors' ability to conduct high quality, objective, transparent, comprehensive, and reliable PREA audits.

As the quality and rigor of PREA audits increase, it is important to be aware that facilities that received a finding of full compliance with no corrective action in Audit Cycle 1 may be required to go through corrective action during the second audit that occurs in Audit Cycle 2. While corrective action may be perceived as failure by confinement facilities and agencies seeking PREA compliance, DOJ views corrective action as an opportunity to enhance safety and promote a zero tolerance culture toward sexual abuse and sexual harassment. Recognizing the number and complexity of the requirements in the PREA Standards, DOJ purposefully included corrective action in the Standards to serve as a helpful tool for facilities and agencies to work in collaboration with their PREA auditor to address challenges related to sexual safety. The ultimate goal of the PREA Standards is to achieve sustained, system-wide change that keeps inmates, residents, and detainees safe from sexual abuse and sexual harassment. To accomplish this, DOJ encourages governors and other stakeholders to focus their PREA implementation efforts on achieving sexual safety and to approach corrective action as a positive opportunity to achieve long-term, meaningful change.

Submitting a Certification or Assurance

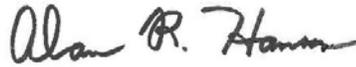
As indicated above, **October 16, 2017** is the deadline for governors to submit either a certification or assurance for Audit Year 1 of the second three-year PREA audit cycle, together with the information included in the attached PREA Certification and Assurance Submission Worksheet. These and any other supporting materials must be sent to the PREA Management Office at PREACompliance@usdoj.gov.

If the PREA Management Office does not receive a signed copy of either form or the required documentation listed in the PREA Certification and Assurance Submission Worksheet by October 16, 2017, your state will be subject to a loss of 5 percent of each of the FY 2018-covered grant funds referenced above as required under 34 U.S.C. § 30307(e)(2).

For more information about certification and assurance, including the meaning of "operational control," please see the FAQ page of the PREA Resource Center website at www.prearesourcecenter.org/faq. If you have any questions concerning PREA implementation, or the attached materials, please send inquiries to the PREA Management Office at PREACompliance@usdoj.gov. Requests for PREA implementation training or technical assistance may be directed to the PREA Resource Center at <http://www.prearesourcecenter.org/training-technical-assistance/request-for-assistance>.

DOJ looks forward to continuing to work together to implement the National PREA Standards and combat sexual abuse and sexual harassment in the Nation's confinement facilities. Thank you for your continued commitment to this important issue, and for your state's efforts to promote and support implementation of the Standards.

Sincerely,



Alan R. Hanson
Acting Assistant Attorney General
Office of Justice Programs

Attachments:

- PREA Certification Form
- PREA Assurance Form
- PREA Certification and Assurance Submission Worksheet
- Facility Audit Activity Table
- PREA Certification and Assurance Frequently Asked Questions
- PREA Compliance Checklist for External State Investigative Agencies: Prisons and Jails

cc: Governor's Criminal Justice Policy Advisors

State Administering Authorities for OJP grant programs

Adult Correctional Administrator

Juvenile Correctional Administrator

Eileen Garry
Acting Administrator
Office of Juvenile Justice and Delinquency Prevention

Tracey Trautman
Acting Director
Bureau of Justice Assistance

**Certification Regarding Adoption of and Full Compliance with
the National Standards to Prevent, Detect, and Respond to Prison Rape
2017 Governor’s Certification for Audit Year 1 of Cycle 2**

Pursuant to 34 U.S.C. § 30307(e)(2), I certify to the U.S. Department of Justice (DOJ):

As of August 19, 2017, the state¹ named below had adopted, and was in full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. Part 115.

If, after the date of signature of this certification, credible information should come to the attention of the undersigned (or his or her successor) that casts reasonable doubt on the accuracy of this certification, the same shall conduct a reassessment and determine whether this certification was accurate. If the certification is determined not to have been accurate, the undersigned or a designee will:

1. Within 15 days, notify DOJ via the email address below of the existence of the inaccuracy; and
2. Within 15 days of providing such notice,
 - a. Submit an assurance signed by the chief executive (using the form provided by DOJ) indicating that the state will either expend not less than 5 percent of its covered DOJ grant funds for FY 2018 to adopt, and achieve full compliance with, the National Prison Rape Elimination Standards (28 C.F.R. Part 115), so as to ensure that a certification may be submitted in future years or request that 5 percent of its covered DOJ grant funds for FY 2018 be held in abeyance pursuant to 34 U.S.C. § 30307(e)(2)(A)(ii)(II);
 - b. Agree to return 5 percent of its covered DOJ grant funds for FY 2018 as calculated by DOJ; or
 - c. Take other appropriate action as instructed by the awarding agency.

Signature of Chief Executive

Printed name of Chief Executive

Name of State

Date

This form must be received by the Department of Justice, PREA Management Office, by October 16, 2017. A signed, electronic version of this form may be sent to PREACompliance@usdoj.gov.

¹ In this document, “state” refers to states, U.S. territories, and the District of Columbia.

A false statement in this certification or in the grant application that it supports may be subject to criminal prosecution, including under 18 U.S.C. § 1001 and 34 U.S.C. § 10272. DOJ grants, including certifications provided in connection with such grants, are subject to review by the DOJ component that issued the grant and/or by the DOJ Office of the Inspector General.

**Assurance of Intention to Adopt and Achieve Full Compliance with
the National Standards to Prevent, Detect, and Respond to Prison Rape
2017 Governor's Assurance for Audit Year 1 of Cycle 2**

Pursuant to 34 U.S.C. § 30307(e)(2)(A)(ii), I assure the U.S. Department of Justice (DOJ) that, subject to the exception checked in Section B below (if applicable), the state¹ named below intends to adopt and achieve full compliance with the National Standards to Prevent, Detect, and Respond to Prison Rape (28 C.F.R. Part 115), so as to ensure that a certification of full compliance may be submitted in future years.

Section A. (Check **one** of the boxes below.)

1. ___ The state named below will use not less than 5 percent of its covered DOJ grant funds for FY 2018 to enable the state to adopt, and achieve full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape, so as to ensure that a certification of full compliance may be submitted in future years.

OR

2. ___ The state named below requests that 5 percent of its covered DOJ grant funds for FY 2018 be held in abeyance pursuant to 34 U.S.C. § 30307(e)(2)(A)(ii)(II).

Section B. (Check the box below **only** if it applies to your state.)

___ As of August 19, 2017, the state named below had adopted, and was in full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape insofar as those standards implicate *juvenile facilities*, as defined in 28 C.F.R. § 115.5, but was not in full compliance with one or more standards insofar as those standards implicate non-juvenile facilities. Accordingly, grants issued by the Office of Juvenile Justice and Delinquency Prevention are not subject to the required set aside of funds set forth in Section A.

If the state has checked the Section B box directly above, and after the date of signature of this assurance, credible information should come to the attention of the undersigned (or his or her successor) that casts reasonable doubt on the accuracy of the information relied upon in checking the Section B box, the same shall conduct a reassessment and determine whether this selection of such box was accurate. If the selection of the box is determined not to have been accurate, the undersigned or a designee will:

1. Within 15 days, notify DOJ, at PREACompliance@usdoj.gov of the existence of the inaccuracy; and
2. Within 15 days of providing such notice, (a) submit a revised assurance, signed by the chief executive, (b) agree to return 5 percent of its covered DOJ grant funds for FY 2018 as calculated by DOJ, or (c) take other appropriate action as instructed by the awarding agency.

Signature of Chief Executive

Printed name of Chief Executive

Name of State

Date

¹ In this document, "state" refers to states, U.S. territories, and the District of Columbia.

A false statement in this certification or in the grant application that it supports may be subject to criminal prosecution, including under 18 U.S.C. § 1001 and 34 U.S.C. § 10272. DOJ grants, including certifications provided in connection with such grants, are subject to review by the DOJ component that issued the grant and/or by the DOJ Office of the Inspector General.

PREA Certification and Assurance Submission
WORKSHEET
Governor's Certification/Assurance for Audit Year 1 of Cycle 2

The PREA amendment under the Justice for All Reauthorization Act (JFARA) of 2016 (Pub. L. No. 114-324), includes several new reporting requirements for states¹ submitting certifications and assurances, as well as additional provisions designed to enhance transparency regarding states' ongoing work to implement the PREA Standards. Prior to signing the PREA Certification or Assurance Form, carefully read the information included in this worksheet to ensure that all of the requirements and considerations for making a certification or assurance determination are addressed.

REPORTING REQUIREMENTS FOR SUBMITTING A CERTIFICATION OR ASSURANCE

In addition to submitting either a signed Certification or Assurance Form, governors must also submit the following documentation required by the PREA amendment to DOJ by **October 16, 2017**:

- 1. A list of facilities under the operational control of the executive branch of the state, including a list of those facilities that were audited during Audit Year 1 of Cycle 2.** To assist governors with fulfilling this requirement, DOJ has provided the enclosed Facility Audit Activity Table that has been prepopulated with those facilities known to be under the operational control of the executive branch in each state based on previously reported information.² Note that an electronic version of this table will be conveyed via email to governors' criminal justice policy advisors and the state administering authorities for the impacted DOJ grant programs. The electronic table can also be made available upon request by contacting the PREA Management Office at PREACompliance@usdoj.gov.

For each facility listed in the table, governors must provide information on all PREA audit activity for Audit Year 1 of Cycle 2 (August 20, 2016 – August 19, 2017), including:

- a. *Facility information.* DOJ has prepopulated each state's Facility Audit Activity Table with the facility name, facility type, parent agency, and the name of the contract entity if the facility is operated by a private entity on behalf of the state's executive branch. DOJ recognizes that the facilities under the operational control of the executive branch may vary slightly from year to year, in addition to other changes that may arise (e.g., changes to facility names or contract entities). Please document any errors identified in the table by following steps i–j below.
- b. *Audit completion date.* For audits that were completed during Audit Year 1 of Cycle 2, provide the date of completion. Pursuant to formal guidance issued by the DOJ PREA Working Group, audits are considered complete upon issuance of the interim report, or final report if there is no corrective action, or 45 days after the conclusion of the auditor's onsite visit to the facility, whichever one comes first (see www.prearesourcecenter.org/node/3228).
- c. *Onsite audit date(s).* This refers to the days that an auditor spends on site at a facility to examine the physical plant; observe correctional practices; collect and review documentation; and conduct interviews with inmates/residents/detainees, staff, and others who provide paid or volunteer services at the facility.
- d. *Corrective action.* Indicate whether or not the facility underwent corrective action in order to address areas of noncompliance identified by a PREA auditor.
- e. *Interim report date.* Provide the date that the auditor submitted an interim report to the facility/agency if applicable.
- f. *Final report date.* Provide the date that the final audit report was submitted to the facility/agency.
- g. *Auditor's final compliance determination.* Select one of three options from the dropdown menu in the table: (1) Pending, if the audit is considered complete but the facility is still undergoing corrective action and/or has yet to receive a final report with the auditor's final compliance determination; (2) Facility meets or exceeds all Standards; or (3) Facility does not meet one or more Standards.

¹ In this document, "state" refers to states, U.S. territories, and the District of Columbia.

² For states that have not previously reported this information, the Facility Audit Activity table was prepopulated based on information collected online from corrections agency websites.

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Governor's Certification/Assurance for Audit Year 1 of Cycle 2

- h. *Final report location.* Standard 115.403(f) provides that, “The agency shall ensure that the auditor’s final report is published on the agency’s website if it has one, or is otherwise made readily available to the public.” For agencies that have a website, provide the link for each facility audit report. If the agency does not have a website, provide information on how the audit report is made available to the public. See formal guidance issued by the DOJ PREA Working Group for additional information (www.prearesourcecenter.org/node/5262). Agencies should not remove an audit report covering an audit from the first PREA Audit Cycle from its website and replace it with an audit report for the same confinement facility conducted during the second PREA Audit Cycle. Instead, both audit reports – the one from Audit Cycle 1 and the one from Audit Cycle 2 in this example – should be published on the agency’s website if it has one, or otherwise be made readily available to the public.
- i. *Inaccurate facility information.* As described above, if any of the prepopulated facility information, including facility name, facility type, parent agency, and/or the name of the contract entity if the facility is operated by a private entity on behalf of the state’s executive branch is inaccurate, please select “Yes” from the dropdown menu in the table.
- j. *Description of inaccurate facility information.* Please briefly describe any inaccuracies identified with the prepopulated facility information provided in the table.
- 2. All final audit reports for facilities under the operational control of the executive branch that were audited during Audit Year 1 of Cycle 2.** DOJ is required to make these final audit reports available online to the public. See 34 U.S.C. § 30307(e)(2)(F). Please see the guidance below on how to submit these reports.
- 1) Save each final PREA audit report as a distinct PDF file. DOJ appreciates any assistance in making these PDF files compliant with Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)).³
 - 2) Name each final PREA audit report file as follows: “STATE_FACILITY NAME_YEAR1CYCLE2”
Only final PREA audit reports completed during Audit Year 1 of Cycle 2 (August 20, 2016 – August 19, 2017) should be submitted in order to fulfill this requirement.
As discussed above, DOJ has provided the enclosed Facility Audit Activity Table, which lists the facilities known to be under the operational control of the executive branch based on previously reported information. The facility name on your file should be consistent with the list provided by DOJ.
 - 3) Review final audit reports for any personally identifying information, except for information specifically requested in the audit reports (i.e., the facility’s chief executive officer, facility PREA compliance manager, agency chief executive officer, and agency-wide PREA coordinator); if found, remove from reports prior to sending.
- 3. A proposed schedule for completing an audit of all the facilities under the operational control of the executive branch during the following 3 audit years.** Provide a written statement describing a proposed schedule for completing an audit of all facilities in the state that are considered to be under the operational control of the executive branch, including facilities operated by private entities on behalf of the state’s executive branch, during the following 3 audit years. This information may be supplemented by or presented in a table format like the Facility Audit Activity Table. The audit years included in this requirement are:
- Audit Year 2 of Cycle 2: August 20, 2017 – August 19, 2018
 - Audit Year 3 of Cycle 2: August 20, 2018 – August 19, 2019
 - Audit Year 1 of Cycle 3: August 20, 2019 – August 19, 2020

³ For more information on creating accessible electronic documents and 508 compliance, please see <https://section508.gov/content/build/create-accessible-documents>.

**PREA Certification and Assurance Submission
WORKSHEET**
Governor's Certification/Assurance for Audit Year 1 of Cycle 2

ADDITIONAL CONSIDERATIONS FOR SUBMITTING A CERTIFICATION

The following information request applies only to governors who submit a certification of full compliance with the Standards to DOJ.

- 1. PREA Compliance of External State Investigative Agencies.** For all governors who submit a certification of full compliance to DOJ, we ask that you indicate whether any confinement facilities considered to be under the operational control of the state's executive branch, including private facilities operated on behalf of the executive branch, rely on external state investigative agencies to perform sexual abuse and sexual harassment investigations. Where such arrangements exist, DOJ requests that governors identify these external state investigative agencies and provide information regarding these agencies' compliance with the Standards. For additional information, please refer to the formal guidance issued by the DOJ PREA Working Group (<http://www.prearesourcecenter.org/node/3278>) and to the PREA Compliance Checklist for External State Investigative Agencies: Prisons and Jails attached to the correspondence issued by DOJ to all state and territorial governors on September 12, 2017.
- 2. Determination of PREA Compliance for Facilities Not Yet Audited.** DOJ requests that the governor provide a signed written statement that describes how he/she determined that facilities not yet audited in the relevant audit cycle are in full compliance with the PREA Standards.⁴ **NOTE:** DOJ does not prescribe the method or process by which a governor assesses compliance in those facilities that have not completed an audit. The governor may rely upon one or a combination of methods (e.g., mock or practice audits, individual facility assessments conducted by the agency PREA Coordinator and/or facility PREA Compliance Manager) that provide a reasonable measure of certainty regarding facility compliance with the Standards.

REPORTING REQUIREMENTS FOR SUBMITTING AN ASSURANCE

Governors who are submitting assurances must submit, in addition to the enclosed PREA Assurance Form, *all of the above requirements for governors submitting certifications or assurances*, along with the following pursuant to 34 U.S.C. § 30307(e)(2)(C):

- 1. An explanation of any barriers the state faces to completing required audits.** Provide a brief written statement describing barriers to completing audits of facilities under the operational control of the executive branch, including facilities operated by private entities on behalf of the state's executive branch.
- 2. An explanation of the state's current degree of implementation of the Standards.** Provide a brief written statement of your state's PREA implementation progress by describing, for example, facility or agency-level adoption of the PREA Standards in policy and practice, inmate/detainee/resident education related to PREA, planning, analysis, and training focused on enhancing staff support and training related to the PREA Standards, or preparation for PREA audits.

ADDITIONAL CONSIDERATIONS FOR SUBMITTING AN ASSURANCE

The following considerations apply only to governors who submit an assurance to DOJ:

When completing the Assurance Form, governors should note that if a state is in full compliance with the Standards as they apply to the juvenile facilities, and out of compliance only with regard to adult facilities, the state will not be subject to the 5 percent reduction in OJJDP Formula Grant funding.

The PREA Assurance Form allows governors to indicate whether this circumstance applies to his or her state

⁴ "The Governor's certification shall apply to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch." See 28 C.F.R. § 115.501(b).

**PREA Certification and Assurance Submission
WORKSHEET**
Governor's Certification/Assurance for Audit Year 1 of Cycle 2

CERTIFICATION AND ASSURANCE CHECKLIST AND SUBMISSION INSTRUCTIONS

1. Please review the following checklist to ensure that all requirements and considerations for submitting a certification or assurance have been addressed.

Certification Checklist

- Signed Certification Form
- Completed Facility Audit Activity Table listing all facilities under the operational control of the executive branch of the state, including a list of those facilities that were audited during Audit Year 1 of Cycle 2
- All final audit reports for facilities under the operational control of the executive branch that were audited during Audit Year 1 of Cycle 2
- A proposed schedule for completing an audit of all the facilities under the operational control of the executive branch during the following 3 audit years
- PREA Compliance of External State Investigative Agencies
- Determination of PREA Compliance for Facilities Not Yet Audited

Assurance Checklist

- Signed Assurance Form
- Completed Facility Audit Activity Table listing all facilities under the operational control of the executive branch of the state, including a list of those facilities that were audited during Audit Year 1 of Cycle 2
- All final audit reports for facilities under the operational control of the executive branch that were audited during Audit Year 1 of Cycle 2
- A proposed schedule for completing an audit of all the facilities under the operational control of the executive branch during the following 3 audit years
- An explanation of any barriers the state faces to completing required audits
- An explanation of the state's current degree of implementation of the Standards

2. Submit the above materials to the PREA Management Office at PREACompliance@usdoj.gov by **October 16, 2017**.

Include "STATE Audit Year 1 of Cycle 2 [Assurance/Certification]" in the subject line of the email and alert DOJ as to how many emails in total you will be sending (e.g., 1:3 for 1 of 3 total emails). Maximum file attachment size per email is 25MB. To reduce the number of emails, we recommend that you first compress the files into one or more zipped folders.⁵

⁵ Instructions for file compression using Windows can be found here: <https://support.microsoft.com/en-us/help/14200/windows-compress-uncompress-zip-files>

PREA Certification and Assurance Submission
FREQUENTLY ASKED QUESTIONS (FAQs)
Governor's Certification/Assurance for Audit Year 1 of Cycle 2

INTRODUCTION

The FAQs below include a combination of questions of first impression related to the PREA Standards that have been addressed by the Department of Justice (DOJ) PREA Working Group and made available on the National PREA Resource Center website as FAQs (see www.prearesourcecenter.org/frequently-asked-questions), and questions related to governors' certification and assurance submissions that have been answered by DOJ's PREA Management Office. The information below does not represent an exhaustive list of guidance that a governor should consider when making a certification or assurance determination. The FAQ page of the PREA Resource Center website lists all FAQs issued by the DOJ PREA Working Group, and is updated often with new interpretive guidance. Members of the PREA Management Office are available to answer additional questions by email at PREACompliance@usdoj.gov.

FAQS FOR A GOVERNOR'S CERTIFICATION OR ASSURANCE DETERMINATION – AUDIT YEAR 1 OF CYCLE 2

- 1** **Q:** Certifications and assurances must be submitted to DOJ by October 16, 2017. If a governor submits a certification of full compliance to DOJ, to what date does the certification apply?
- A:** Certifications of full compliance with the PREA Standards provided by the October 16, 2017 deadline apply to August 19, 2017, which was the last day of the first year of the second PREA audit cycle. The Certification Form that is due on October 16, 2017 states, "As of August 19, 2017, the state named below had adopted, and was in full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. Part 115."
- 2** **Q:** To what facilities do certifications of full compliance with the PREA standards apply?
- A:** A certification of full compliance with the PREA Standards applies to **all** facilities under the operational control of a state's¹ executive branch of government. A governor should only submit a certification of full compliance if 100 percent of the facilities under his or her operational control were in full compliance with the PREA Standards as of August 19, 2017.
- 3** **Q:** At what stage in the audit process is an audit considered complete for the purposes of meeting the requirement that one-third of an agency's facilities be completed by the end of each year in the auditing cycle?
- A:** Formal guidance issued by the DOJ PREA Working Group on August 15, 2016 states: "Starting on August 20, 2016, which is the first day of the first year of the second three year audit cycle, for the purpose of the PREA standards, the audit is considered complete upon issuance of the initial audit report or 45 days after the conclusion of the auditor's on-site visit to the facility, whichever one comes first." (See <http://www.prearesourcecenter.org/node/3228>)
- 4** **Q:** Can a PREA audit ever be considered complete on the last day of an auditor's onsite visit to a facility?
- A:** No. Once a PREA auditor completes his or her onsite visit to a facility, this initiates the post-onsite phase of the PREA audit in which the auditor reviews all evidence collected in order to make compliance determinations for each Standard. Pursuant to formal guidance issued by the DOJ PREA Working Group on August 15, 2016, auditors are required to submit an interim report, or final report if the facility is found

¹ In this document, "state" refers to states, U.S. territories, and the District of Columbia.

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FREQUENTLY ASKED QUESTIONS (FAQs)
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to be in full compliance, to the audited facility within 45 days of completion of the onsite audit (See <http://www.prearesourcecenter.org/node/3226>).

As described in FAQ #3 above, "...the audit is considered complete upon issuance of the initial audit report or 45 days after the conclusion of the auditor's on-site visit to the facility, whichever one comes first."

In addition, the onsite phase of a PREA audit is just one phase in the middle of a multi-step process that may last as long as 10 months. Depending on the auditor's compliance findings, there may be up to four phases of the PREA audit, which are explained briefly below.

- 1) **Pre-Onsite Audit Phase** – During this phase, which lasts approximately 6-8 weeks, the auditor communicates frequently with facility staff and agency leadership about the audit process, expectations and timelines, and audit logistics for all phases of the audit; works with facility staff to post notices of the upcoming audit throughout the facility to ensure that inmates have the ability to correspond with auditors in a manner that is consistent with the facility's confidential treatment of legal mail; reviews the information and documentation submitted by the facility via the Pre-Audit Questionnaire; and conducts outreach to local advocacy organizations for information relevant to PREA compliance and sexual safety at the audited facility
- 2) **Onsite Audit Phase** –The time to complete the onsite phase of the audit will vary depending on a number of factors such as facility type, population size, physical plant layout and size, facility organization, and preparedness level. During this phase, auditors conduct a thorough examination of the entire facility, observe routine activities, interview staff and inmates, residents, or detainees, and review and retain key documents maintained by the facility.
- 3) **Evidence Review and Interim Report Phase** – After the last day of the onsite portion of the audit, the auditor has 45 days to review all the evidence collected, write an interim report—or final report if there is no corrective action—and submit the report to the audited facility. The 45-day window required by DOJ to submit the audit report to the facility is reflective of the significant time and effort needed to carefully review the evidence collected for each provision of every Standard and write a professional and thorough audit report.
- 4) **Corrective Action and Final Report Phase** – The receipt of the interim report by the agency/facility initiates a 180-day corrective action period. During this phase, the auditor and facility/agency staff work collaboratively to address the areas of noncompliance that are identified in the interim report. At the conclusion of the corrective action period, the auditor has 30 days to assess the work that has been done to bring the facility into compliance with the Standards and issue a final report.

- 5 **Q:** As a result of a PREA audit, if a facility takes corrective action to come into compliance with the PREA Standards during the onsite audit phase—or during the 45 day window between the end of the onsite audit phase and the completion of the interim and/or final audit report—should this corrective action be included and described in the auditor's final report?

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- A:** Yes. Standard 115.403(d) states: “Audit reports shall describe the methodology, sampling sizes, and basis for the auditor’s conclusions with regard to each standard provision for each audited facility, and shall include recommendations for any required corrective action.”

PREA auditors are trained and required by DOJ to document in both the interim and final reports all steps that a facility or agency takes to come into compliance with the PREA Standards, regardless of when these corrective action steps are taken by the agency or facility.

- 6 Q:** There are facilities under the operational control of the executive branch in my state that completed a PREA audit on or prior to the end of Audit Year 1 of Cycle 2 on August 19, 2017. Following completion of the audit, the facilities underwent corrective action to address areas of noncompliance identified by a PREA auditor. The facilities addressed all required corrective action; however, the final audit reports were not submitted to the audited facilities until after August 19, 2017. Can my governor still submit a certification of full compliance on October 16, 2017, which states that all confinement facilities under the operational control of the executive branch were in full compliance with the PREA standards as of August 19, 2017?

- A:** The determination of whether or not to submit a certification or an assurance to DOJ will require a case-by-case assessment of each facility that completed an audit during Audit Year 1 of Cycle 2, but required corrective action that may have spanned beyond August 19, 2017. The clearest evidence to support full compliance is a final audit report dated on or before August 19, 2017 with a finding of full compliance. However, DOJ recognizes that it is possible that a facility may have completed, and verified with the auditor, all necessary corrective action steps by August 19, 2017, but the final audit report was not submitted to the audited facility until after August 19, 2017. The governor will have to determine whether such facilities completed all corrective action and achieved full compliance as of August 19, 2017.

If a governor submits a certification of full compliance on October 16, 2017, and one or more facilities under his or her operational control completed audits during Audit Year 1 of Cycle 2 that required corrective action, but did not receive a final audit report indicating full compliance until after August 19, 2017, DOJ recommends that the governor submit a thorough written explanation that clarifies how such facilities were fully compliant with the PREA standards as of August 19, 2017. Specifically, the written explanation should describe when the corrective action was completed by the facility, as well as when and how the auditor verified compliance with the corrective action. Such a written explanation will be very helpful to DOJ in its review of certifications, and may limit the follow up questions and requests for additional information that DOJ sends to governors.

- 7 Q:** Between August 20, 2017, which was the first day of Audit Year 2 of Cycle 2, and October 16, 2017, which is the due date for certifications and assurances from governors, there are confinement facilities under the operational control of the executive branch in my state that went into corrective action. Can the governor of my state still submit a certification of full compliance on October 16, 2017, which affirms that, as of August 19, 2017, all confinement facilities under the operational control of the executive branch were in full compliance with the PREA Standards?

- A:** Corrective action periods that are initiated between August 20, 2017 and October 16, 2017 will raise questions on the part of DOJ regarding whether or not such

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confinement facilities were in full compliance with the PREA Standards as of August 19, 2017. In such cases, DOJ recommends that the governor submit a thorough written explanation that clarifies how the facility or facilities where corrective action is occurring were, in fact, in full compliance with the PREA standards on August 19, 2017. Such a written explanation will be very helpful to DOJ in its review of certifications, and may limit the follow up questions and requests for additional information that DOJ sends to governors.

8 Q: On what basis can the governor make a certification determination? Is it the audit finding alone, or should the governor base a certification determination on other evidence? If other evidence is applicable for a certification determination, what are some examples of this evidence?

A: Formal guidance issued by the DOJ PREA Working Group on February 7, 2013 states:

Pursuant to PREA Standard 115.501(a), “the Governor shall consider the results of the most recent agency audit results” in determining whether to submit a certification. DOJ intends audits to be a primary, but not the only, factor in determining compliance. For example, audit results for a particular period may show the selected one third of audited facilities in compliance; however, the governor may have determined that other facilities under his/her control are, in fact, not in compliance with the standards.

Neither the PREA Statute nor the PREA Standards restrict the sources of information governors may use in deciding whether or how to certify compliance.

9 Q: Why are PREA audits a primary, but not the only, source of information that governors shall rely on to make certifications of full compliance with the PREA Standards?

A: PREA audits are not the only source of information that governors shall rely on to make certifications because PREA compliance is fluid, and governors must monitor and account for changes in compliance that may occur after a PREA audit is completed. Even if an audit reveals that a facility is in full compliance with the PREA Standards on a given date, information may come to the attention of the governor that the facility has fallen out of compliance following the completion of the audit.

In addition, the PREA Standards require one-third of each type of facility (i.e., prisons and jails, community confinement facilities, lockups, and juvenile facilities) operated by an agency, or by a private organization on behalf of the agency, to be audited each year. As such, during the first two years of each three-year audit cycle, a governor may only have audit data from a portion of the confinement facilities under his or her operational control with which to inform his or her certification decision. It is, therefore, important for governors to have other methods for determining compliance in those facilities that have not yet been audited during the current audit cycle.

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INFORMATION ON PREA COMPLIANCE FOR EXTERNAL STATE INVESTIGATIVE AGENCIES

The PREA Standards include requirements that address agencies' responsibility for ensuring that all allegations of sexual abuse and sexual harassment are investigated. While many agencies conduct their own sexual abuse and sexual harassment investigations, some agencies rely on external state investigative agencies; therefore, it is important to be aware that these external agencies are subject to the governor's certification. Formal guidance issued by the Department of Justice (DOJ) PREA Working Group on December 3, 2013 (See <http://www.prearesourcecenter.org/node/3278>) indicates that, "To the extent that these state agencies investigate sexual abuse or sexual harassment in covered confinement facilities, compliance with the National PREA Standards by these agencies also falls within the scope of the Governor's certification."

The DOJ PREA Working Group also issued guidance on February 19, 2015 (see <http://www.prearesourcecenter.org/node/3230>) indicating that PREA auditors are not required to audit the investigative policies and practices of external state investigative agencies, but rather are responsible for assessing the policies and practices of the confining agency being audited to determine whether it has met its own obligations under the relevant Standards (see <http://www.prearesourcecenter.org/node/3229>). In light of this guidance, the checklist below was developed by the DOJ to serve as a tool for governors and other stakeholders to assess compliance with the PREA Standards by external state investigative agencies.

All four facility types covered by the PREA Standards include requirements for external state investigative agencies that conduct sexual abuse and sexual harassment investigations in confinement facilities: Prisons and Jails (§115.21, §115.22, §115.34, and §115.71); Lockups (§115.121, §115.122, §115.134, §115.171, and §115.178); Community Confinement Facilities (§115.221, §115.222, §115.234, and §115.271); and Juvenile Facilities (§115.321, §115.322, §115.334, and §115.371). In order for governors to submit a certification of full compliance, external state investigative agencies must be fully compliant with the PREA Standards that apply to them. If there are confinement facilities in a state¹ that are considered to be under the operational control of the executive branch, including private facilities operated on behalf of the executive branch, and they rely on external state investigative agencies to perform sexual abuse and sexual harassment investigations, DOJ encourages governors to complete this compliance checklist for each external agency prior to making a certification determination.

NOTE: The following checklist applies to the Prisons and Jail Standards only. Checklists for lockups, community confinement facilities, and juvenile facilities are not yet available; however, agencies are encouraged to use the checklist developed for Prisons and Jails as a model for the types of information that should be considered when making a compliance determination.

¹ In this document, "state" refers to states, U.S. territories, and the District of Columbia.

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PRISONS AND JAIL STANDARDS: COMPLIANCE CHECKLIST INSTRUCTIONS

As stated above, there are four Prisons and Jail Standards (§115.21, §115.22, §115.34, and §115.71) with which external state investigative agencies must comply. Each Standard is provided below, followed by a series of compliance questions with yes/no responses and a list of corroborating documentation. When responding to each question, the respondent should consult the list of corroborating documentation to ensure that each response is sufficiently supported by the identified documentation. A “yes” response indicates that the agency is in compliance with a particular provision. A “no” response indicates that the agency is out of compliance with a provision and, therefore, does not meet the Standard.

At the end of the guiding compliance questions, there is an opportunity to list the total yes and no responses for each Standard, as well as an overall compliance determination of “Exceeds Standard,” “Meets Standard,” or “Does Not Meet Standard.” A finding of “Meets Standard” may only be selected if all responses are “yes.”

§ 115.21 Evidence protocol and forensic medical examinations	
Relevant Standard Language	<ul style="list-style-type: none"> (a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. (b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice’s Office on Violence Against Women publication, “A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,” or similarly comprehensive and authoritative protocols developed after 2011. (c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs. (d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.

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§ 115.21 Evidence protocol and forensic medical examinations		
	<p>(e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.</p> <p>(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.</p> <p>(g) The requirements of paragraphs (a) through (f) of this section shall also apply to:</p> <p style="padding-left: 20px;">(1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in prisons or jails; and</p> <p style="padding-left: 20px;">(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails.</p> <p>(h) For the purposes of this section, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.</p>	
Guiding Compliance Questions for § 115.21	1. The STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT is responsible for conducting (administrative or criminal) investigations of allegations of sexual abuse (including inmate-on-inmate sexual abuse or staff-on-inmate sexual abuse).	YES or NO
	2. When conducting an investigation of allegations of sexual abuse, the STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT follows a uniform evidence protocol. <i>IF YES, RESPOND TO QUESTIONS (a)-(c) BELOW.</i>	YES or NO
	(a) The protocol maximizes the potential for obtaining usable physical evidence for administrative proceedings.	YES or NO
	(b) The protocol is developmentally appropriate for youth.	YES, NO, or Not Applicable
	(c) The protocol, as appropriate, was adapted from or otherwise based on the most recent edition of the DOJ's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011. <i>If NO, list the source that was used to develop the protocol:</i>	YES or NO

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	3. The STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT offers all inmate victims who experience sexual abuse access to forensic medical examinations, where evidentiarily or medically appropriate.	YES or NO
	4. Forensic medical examinations are offered without financial cost to the victim.	YES or NO
	5. Where possible, examinations are conducted by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs). <i>If examinations are not always conducted by SAFEs or SANEs, describe why not and by whom they are conducted:</i> _____	YES or NO
	6. When SANEs or SAFEs are not available, a qualified medical practitioner performs forensic medical examinations.	YES or NO
	7. The facility documents efforts to provide SANEs or SAFEs.	YES or NO
	8. In the past 12 months, list the total number of:	
	• Forensic medical exams conducted:	_____
	• Forensic medical exams performed by SANEs/SAFEs:	_____
	• Forensic medical exams performed by a qualified medical practitioner:	_____
	9. The STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT attempts to make a victim advocate from a rape crisis center available to the victim.	YES or NO
	(a) If YES , these efforts are documented.	YES or NO
	10. If and when a rape crisis center is not available to provide victim advocate services, the STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT provides a qualified staff member from a community-based organization or a qualified agency staff member.	YES or NO
	11. If requested by the victim, a victim advocate, a qualified agency staff member, or a qualified community-based organization staff member accompanies and supports the victim through the forensic medical examination process and investigatory interviews, and provides emotional support, crisis intervention, information, and referrals.	YES or NO

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§ 115.21 Evidence protocol and forensic medical examinations	
Corroborating Documentation for § 115.21	<p>Uniform Evidence Protocol followed by the STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT must be reviewed for compliance.</p> <p>If the source of the protocol is other than the DOJ's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," then the alternative source must be reviewed for appropriateness.</p> <p>Documentation of efforts to provide SANES/SAFEs.</p> <p>Corroborating documentation from the forensic medical exam provider that services were free to the victim/otherwise paid for by the agency or governmental entity responsible.</p> <p>Documentation to corroborate that all inmate victims of sexual abuse have access to forensic medical examinations, where evidentiarily or medically appropriate.</p> <p>Any available documentation that delineates responsibilities of outside medical and mental health practitioners.</p> <p>Documentation of agreements with a rape crisis center for victim advocacy services or documentation of efforts to obtain an agreement.</p> <p>Documentation of agreements with a community-based organization to provide victim advocacy services.</p> <p>Documentation of staff member qualifications if agency staff are used to provide victim advocacy services.</p> <p>Agreement/MOU between the correctional agency and the STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT that conducts sexual abuse and/or sexual harassment investigations for the agency.</p>
Summary of Compliance Determination for § 115.21	<p>Summary of responses to compliance questions for Standard 115.21:</p> <p style="padding-left: 40px;">Total number of "yes" responses: _____</p> <p style="padding-left: 40px;">Total number of "no" responses: _____</p> <p>Based on the responses to the questions above and a review of the relevant documentation, select the appropriate finding for Standard 115.21 below:</p> <p style="padding-left: 20px;"><input type="checkbox"/> Exceeds Standard</p> <p style="padding-left: 20px;"><input type="checkbox"/> Meets Standard</p> <p style="padding-left: 20px;"><input type="checkbox"/> Does Not Meet Standard</p>

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§ 115.22 Policies to ensure referrals of allegations for investigations		
Relevant Standard Language	<p>(a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.</p> <p>(b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy on its website or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.</p> <p>(c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity.</p> <p>(d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.</p> <p>(e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.</p>	
Guiding Compliance Questions for § 115.22	The STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails has in a place a policy governing the conduct of such investigations.	YES or NO
Corroborating Documentation for § 115.22	STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT's policy governing investigations of sexual abuse or sexual harassment in prisons or jails.	
Summary of Compliance Determination for § 115.22	<p>Summary of response to the compliance question for Standard 115.22:</p> <p>Total number of "yes" responses: _____</p> <p>Total number of "no" responses: _____</p> <p>Based on the response to the question above and a review of the relevant documentation, select the appropriate finding for Standard 115.22 below:</p> <p><input type="checkbox"/> Exceeds Standard</p> <p><input type="checkbox"/> Meets Standard</p> <p><input type="checkbox"/> Does Not Meet Standard</p>	

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§ 115.34 Specialized training: Investigations		
Relevant Standard Language	<p>(a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.</p> <p>(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.</p> <p>(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.</p> <p>(d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.</p>	
Guiding Compliance Questions for § 115.34	1. STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT policy requires that investigators are trained in conducting sexual abuse investigations in confinement settings.	YES or NO
	2. The specialized training in sexual abuse investigations in confinement settings includes techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.	YES or NO
	3. The STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT maintains documentation showing that investigators have completed the required specialized training.	YES or NO
Corroborating Documentation for § 115.34	STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT training policy.	
	STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT training curriculum.	
	STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT training records/logs of investigative staff.	
	Documentation that STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT investigators have completed required specialized training.	
Summary of Compliance Determination for § 115.34	<p>Summary of responses to compliance questions for Standard 115.34:</p> <p style="padding-left: 40px;">Total number of “yes” responses: _____</p> <p style="padding-left: 40px;">Total number of “no” responses: _____</p> <p>Based on the responses to the questions above and a review of the relevant documentation, select the appropriate finding for Standard 115.34 below:</p>	

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§ 115.71 Criminal and administrative agency investigations	
	<input type="checkbox"/> Exceeds Standard <input type="checkbox"/> Meets Standard <input type="checkbox"/> Does Not Meet Standard

§ 115.71 Criminal and administrative agency investigations	
Relevant Standard Language	<p>(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.</p> <p>(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.34.</p> <p>(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.</p> <p>(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.</p> <p>(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.</p> <p>(f) Administrative investigations:</p> <ol style="list-style-type: none"> (1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and (2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings. <p>(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.</p> <p>(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.</p> <p>(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.</p>

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§ 115.71 Criminal and administrative agency investigations		
	<p>(j) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.</p> <p>(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.</p> <p>(l) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.</p>	
Guiding Compliance Questions for § 115.71	1. When a STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT investigates allegations of sexual abuse and sexual harassment in confinement, it does so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.	YES or NO
	2. When the STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT investigates allegations of sexual abuse in confinement, it uses investigators who have received special training in sexual abuse investigations pursuant to § 115.34.	YES or NO
	3. When the STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT investigates allegations of sexual abuse in confinement, the investigators gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data.	YES or NO
	4. When the STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT investigates allegations of sexual abuse in confinement, the investigators interview alleged victims, suspected perpetrators, and witnesses; and review prior complaints and reports of sexual abuse involving the suspected perpetrator.	YES or NO
	5. When the STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT investigates allegations of sexual abuse in confinement and the quality of evidence appears to support criminal prosecution, the investigating body conducts compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.	YES or NO
	6. When the STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT investigates allegations of sexual abuse in confinement, the credibility of an alleged victim, suspect, or witness is assessed on an individual basis and not determined by the person's status as inmate or staff.	YES or NO

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§ 115.71 Criminal and administrative agency investigations		
	7. When the STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT investigates allegations of sexual abuse in confinement, the investigators do not require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.	YES or NO
	8. When the STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT conducts administrative investigations into allegations of sexual abuse in confinement, those investigations: (a) Include an effort to determine whether staff actions or failures to act contributed to the abuse.	YES or NO
	(b) Are documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.	YES or NO
	9. When the STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT conducts criminal investigations into allegations of sexual abuse in confinement, those investigations are documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.	YES or NO
	10. When the STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT investigates allegations of sexual abuse in confinement, substantiated allegations of conduct that appears to be criminal are referred for prosecution.	YES or NO
	11. The STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT retains all written reports pertaining to the administrative or criminal investigation of alleged sexual abuse or sexual harassment for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.	YES or NO
	12. When the STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT investigates allegations of sexual abuse in confinement, the departure of the alleged abuser or victim from the employment or control of the facility or agency where the abuse took place does not provide a basis for terminating an investigation.	YES or NO
	13. The number of substantiated allegations of conduct that appear to be criminal that were referred for prosecution since August 20, 2012, or since the last PREA audit, whichever is later:	_____
Corroborating Documentation for § 115.71	STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT policy related to criminal and administrative investigations.	
	STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT investigative records/reports for allegations of sexual abuse or sexual harassment in confinement.	

PREA Certification and Assurance Submission
COMPLIANCE CHECKLIST FOR EXTERNAL STATE INVESTIGATIVE AGENCIES: PRISONS & JAILS
Governor's Certification/Assurance for Audit Year 1 of Cycle 2

§ 115.71 Criminal and administrative agency investigations	
	STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT training records.
	STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT investigative reports, record retention schedule, and copies of case records detailing allegations of sexual abuse in confinement.
	Cases involving substantiated allegations of sexual abuse in confinement following an investigation conducted by a STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT, and documentation indicating that they were referred for prosecution.
Summary of Compliance Determination for § 115.71	<p>Summary of responses to compliance questions for Standard 115.71:</p> <p style="padding-left: 20px;">Total number of “yes” responses: _____</p> <p style="padding-left: 20px;">Total number of “no” responses: _____</p> <p>Based on the responses to the questions above and a review of the relevant documentation, select the appropriate finding for Standard 115.71 below:</p> <p style="padding-left: 20px;"><input type="checkbox"/> Exceeds Standard</p> <p style="padding-left: 20px;"><input type="checkbox"/> Meets Standard</p> <p style="padding-left: 20px;"><input type="checkbox"/> Does Not Meet Standard</p>