



U.S. Department of Justice

Washington, D.C. 20531

September 9, 2016

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) because sexual abuse is a crime, and 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 DOJ, state, and local confinement facilities (including adult prisons and jails, juvenile facilities, lockups, and community confinement facilities).

As you may know, 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 used solely for the purpose of enabling the state to achieve and certify full compliance with the Standards in future years. See 42 U.S.C. § 15607(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) 2017, it is anticipated that there will be three DOJ grant programs (or portions thereof) subject to this statutory provision. Two grant programs are administered by the Office of Justice Programs: (1) BJA's 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. The third grant program is administered by the Office on Violence Against Women (OVW): the Services, Training, Officers, and Prosecutors (STOP) Violence Against Women Formula Grant Program.

To fulfill this requirement, governors must submit either a certification or an assurance to DOJ, and any supporting materials, by **October 15, 2016** regarding the state's PREA compliance status from August 20, 2015 through August 19, 2016. Details regarding important changes to the certification/assurance timeline and what information to consider when making a certification determination are described below.

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

Important Changes to the Timeline for a Governor to provide DOJ with a Certification or Assurance

In previous years, the deadline for the submission of PREA certifications and assurances was May 15; however, this date is incongruent with the audit year, which is established in the Standards to end on August 19 each year. This incongruity required governors to submit a certification or an assurance prior to the end of the audit year based on incomplete audit data.

In order to streamline these processes and address the challenges and concerns voiced to DOJ by governors and others who have responsibilities related to PREA, DOJ implemented an amended timeline in 2016 for governors to provide DOJ with a certification or assurance. Beginning in 2016, the due date for certification and assurance submissions will occur at the beginning of the federal fiscal year that follows the completion of each audit year. **In order to implement this timeline change, 2016 is a transition year when governors are making two certification and/or assurance submissions.**

- **2016 Governor's Re-Certification/Assurance for Audit Year 2.** For the first submission in 2016, governors were asked to provide a certification or assurance to DOJ for Audit Year 2 (August 20, 2014 – August 19, 2015) of Audit Cycle 1. This submission provided states with a second opportunity to provide DOJ with a certification or assurance for Audit Year 2, but with the significant benefit of having a full audit year of audit data. This submission—the first in 2016, but the second focused on Audit Year 2—impacted FY 2016 DOJ grant awards. This submission was due on March 31, 2016.
- **2016 Governor's Certification/Assurance for Audit Year 3.** For the second submission in 2016, governors are asked to provide a certification or assurance to DOJ for Audit Year 3 (August 20, 2015 – August 19, 2016) of Audit Cycle 1, and these submissions will impact FY 2017 grant funds. **This second submission is due on October 15, 2016.**

Attached is a diagram illustrating the above changes to the PREA certification/assurance timeline.

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. **IMPORTANT:** In order to submit a certification of full compliance for Audit Year 3 of the first three-year audit cycle, **all** facilities under the operational

control of the state's executive branch, including facilities operated by private entities on behalf of the executive branch, must have **completed** an audit and achieved **full compliance** on or before August 19, 2016.

- 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 as of August 19, 2016. Because August 19, 2016 represents the end of the first three-year audit cycle, before a certification can be submitted, a state must have had at least one PREA audit completed for each facility operated by the agency or by a private organization on behalf of an agency. 28 C.F.R. § 115.401(a). Only audits completed by August 19 may be considered when determining compliance with the audit standard (28 C.F.R. § 115.401).

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 compliance 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.

Looking Ahead to Audit Year 1 of the Second PREA Audit Cycle

Transitioning into the second PREA audit cycle, 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 is currently developing a PREA Audit Quality 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. DOJ is currently developing a PREA Auditor Handbook. The purpose of the handbook will be to articulate DOJ's expectations for all DOJ-certified PREA auditors, establish clear guidelines and requirements for auditor conduct and methodology, and enhance auditors' ability to conduct high quality, objective, transparent, comprehensive, and reliable PREA audits. In addition, DOJ is currently pilot testing an Auditor Peer Review Program. This program will examine audit reports and the audit documentation collected by auditors to determine whether auditors' compliance findings are supported by sufficient evidence. The outcomes of the Auditor Peer Review Program will assist DOJ with increasing the quality of audits and guide efforts to support auditors through continuing education opportunities and technical assistance.

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 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 15, 2016** is the deadline for governors to submit either a certification or assurance for Audit Year 3 of the first three-year PREA audit cycle, together with the attached PREA Certification and Assurance Submission Worksheet. The PREA Certification or Assurance Form, information completed as part of the PREA Certification and Assurance Submission Worksheet, and any other supporting materials can be sent to:

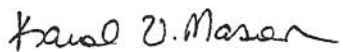
PREA Management Office
Bureau of Justice Assistance
U.S. Department of Justice
810 Seventh Street NW
Washington, D.C., 20531

Executed forms and all supporting materials may also be emailed to PREACompliance@usdoj.gov. If the PREA Management Office (PMO) does not receive a signed copy of either form by October 15, 2016, your state will be subject to a loss of 5 percent of each of the FY 2017-covered grant funds referenced above as required under 42 U.S.C. § 15607(e)(2).

For more information about the certification and assurance, including the meaning of “operational control,” please see the FAQ page of the PRC website at www.prearesourcecenter.org/faq. If you have any questions concerning the amended PREA certification/assurance timeline, PREA implementation, or the attached materials, please send inquiries to the PMO at PREACompliance@usdoj.gov. Requests for PREA implementation training or technical assistance may be directed to the PRC 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,



Karol Mason
Assistant Attorney General
Office of Justice Programs



Bea Hanson
Principal Deputy Director
Office on Violence Against Women

Attachments:

- PREA Certification Form
- PREA Assurance Form
- PREA Certification/Assurance Timeline Transition Diagram
- PREA Certification and Assurance Submission Worksheet
- PREA Certification and Assurance Frequently Asked Questions
- PREA Compliance Checklist for External State Investigative Agencies: Prisons and Jails

cc: State Administering Authorities for OJP and OVW grant programs

Governors’ Criminal Justice Policy Advisors

Robert L. Listenbee
Administrator
Office of Juvenile Justice and Delinquency Prevention

Denise E. O’Donnell
Director
Bureau of Justice Assistance

**Certification Regarding Adoption of and Full Compliance with
the National Standards to Prevent, Detect, and Respond to Prison Rape
2016 Governor's Certification for Audit Year 3 of Cycle 1**

Pursuant to 42 U.S.C. §15607(e)(2), I certify to the U.S. Department of Justice (DOJ):

As of August 19, 2016, 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 expend not less than 5 percent of its covered DOJ grant funds for FY 2017 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;
 - b. Agree to return 5 percent of its covered DOJ grant funds for FY 2017 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 15, 2016. 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 42 U.S.C. § 3795a. 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 to Utilize Department of Justice Grants to Achieve Full Compliance with
the National Standards to Prevent, Detect, and Respond to Prison Rape
2016 Governor's Assurance for Audit Year 3 of Cycle 1**

Pursuant to 42 U.S.C. §15607(e)(2), I assure the U.S. Department of Justice (DOJ) that, subject to the exceptions checked below (if applicable), the state¹ named below will use not less than 5 percent of its covered DOJ grant funds for FY 2017 to enable the state 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.

Check the boxes below **only** if they apply to your state. (Note: in many cases, neither box will apply)

1. ___ As of August 19, 2016, 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, insofar as those standards implicate juvenile facilities, as defined in 28 C.F.R. Part 115, 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 for PREA purposes and shall not be used for purposes of the above assurance.

2. ___ As of August 19, 2016, the state named below had adopted, and was in full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape, 28 CFR Part 115, except to the extent that full compliance would require new construction. Accordingly, grants issued by the Office on Violence Against Women are not subject to the required set aside of funds for PREA purposes and shall not be used for the purposes of the above assurance.

If the state has checked Box 1 and/or 2, 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 Box 1 and/or 2, the same shall conduct a reassessment and determine whether this selection of such box(es) was accurate. If the selection of one or both boxes 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 a revised assurance, signed by the chief executive;
 - b. Agree to return 5 percent of its covered DOJ grant funds for FY 2017 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 15, 2016. 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.

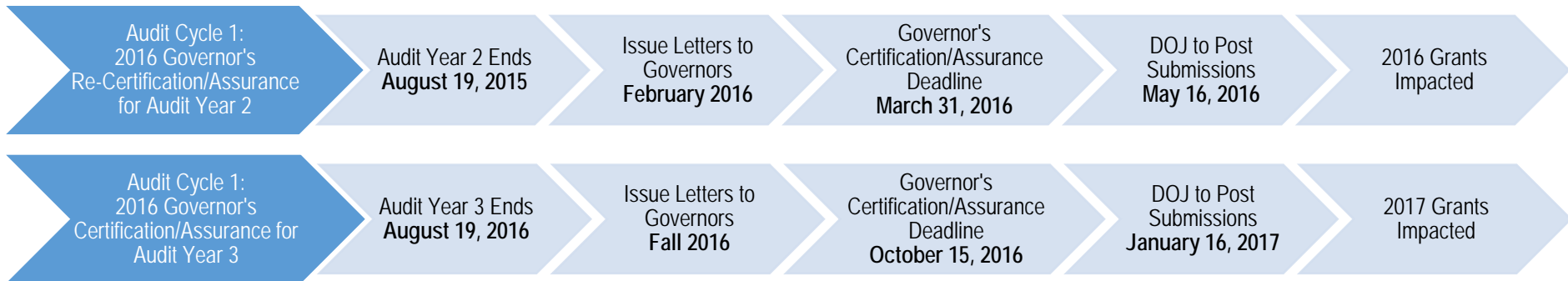
A false statement in this certification or in the grant application that it supports may be subject to criminal prosecution, including under 18 U.S.C. § 1001 and 42 U.S.C. § 3795a. DOJ grants, including certifications provided in connection with such grants, are subject to review by the DOJ component that issued the grant and/or by the DOJ Office of the Inspector General.

PREA Certification/Assurance Timeline Transition

PREA Certification/Assurance Timeline: 2014-2015



PREA Certification/Assurance Timeline: 2016 Transition



PREA Certification and Assurance Submission
WORKSHEET
Governor's Certification/Assurance for Audit Year 3 of Cycle 1

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.

CONSIDERATIONS FOR SUBMITTING A CERTIFICATION OR ASSURANCE

In addition to submitting either a signed Certification or Assurance Form by October 15, 2016, provide the following supporting information:

1. **Facility Audit Activity.** Provide a list of all confinement facilities in the state¹ 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. The list should also include information on all PREA audit activity to date for each facility, including:
 - a. *Facility type.* Provide the facility type (jails and prisons, community confinement facilities, lockups, and juvenile facilities) for each facility listed.
 - b. *Agency.* Provide the responsible agency name for each facility.
 - c. *Audit status.* Indicate whether the audit is: 1) Scheduled, 2) In progress, 3) Complete, or 4) None if no audit is currently scheduled. For guidance on how to determine when an audit is considered complete, please see the formal guidance issued by the DOJ PREA Working Group located on the PREA Resource Center website (<http://www.prearesourcecenter.org/node/3228>).
 - d. *Audit completion date.* If the audit has been completed, use the PREA Working Group guidance referenced above to determine the date of completion.
 - e. *Audit year.* Provide the audit year in which the audit was considered complete.
 - f. *Audit cycle.* List the PREA audit cycle in which the audit was considered complete. The PREA Standards established a three-year audit cycle beginning on August 20, 2013. Please note that the second three-year PREA audit cycle commenced on August 20, 2016.
 - g. *Onsite audit date(s).* This refers to the days that the 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. If the onsite portion of the audit is scheduled, but has not yet been completed, provide the anticipated date(s) of the onsite audit.
 - h. *Corrective action.* Indicate whether or not the facility underwent corrective action in order to address areas of noncompliance identified by a PREA auditor.
 - i. *Final report date.* Provide the date that the final audit report was submitted to the facility/agency.
 - j. *Auditor's final compliance determination.* This field applies to those facilities that have completed an audit and the auditor has submitted a final audit report. A finding of full compliance means that a DOJ-certified PREA auditor determines that a facility meets or exceeds every provision of every Standard. A facility found to be out of compliance means there was a finding of "Does Not Meet Standard" with one or more Standards.
 - k. *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." Where PREA audit reports are posted to the agency 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.

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

**PREA Certification and Assurance Submission
WORKSHEET**
Governor's Certification/Assurance for Audit Year 3 of Cycle 1

Facility Audit Activity Example

PREA Audits of Facilities Under the Operational Control of the Executive Branch in [STATE NAME]											
Facility Name	Facility Type	Agency	Audit Status	Audit Year	Audit Cycle	Audit Completion Date	Onsite Audit Date(s)	Corrective Action Required? (Y/N)	Final Report Date	Final Compliance Determination	Link to Final Report
EXAMPLE 1	Prison	Agency A	Completed	Year 2	Cycle 1	10/4/2014	9/1/2014 – 9/4/2014	Yes	1/22/2015	Full Compliance	exampleagencyA/PREAreports.gov
EXAMPLE 2	Juvenile Facility	Agency B	Completed	Year 2	Cycle 1	12/16/2014	11/8/2014 – 11/11/2014	Yes	2/11/2015	Full Compliance	exampleagencyB/PREAreports.gov
EXAMPLE 3	Community Confinement	Agency A	Completed	Year 3	Cycle 1	11/6/2015	10/5/2015 – 10/7/2015	Yes	2/18/2016	Full Compliance	exampleagencyA/PREAreports.gov

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 9, 2016.

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 legal restrictions on the uses of the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Juvenile Justice and Delinquency Prevention Act Formula Grant Program and the Office on Violence Against Women: the Services, Training, Officers, and Prosecutors (STOP) Violence Against Women Formula Grant Program may make them unavailable to the state for addressing certain areas of noncompliance with the PREA Standards.

- **OJJDP Formula Grant Funds.** 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, it could not lawfully spend OJJDP Formula Grant funds to come into compliance. Because it would be impossible to use this money to come into compliance, the state would not be subject to the 5 percent reduction in OJJDP Formula Grant funding.
- **STOP Grant Funds.** STOP Grant funds are limited in that they cannot be used for new construction, even if that is necessary to bring a state into full compliance with the Standards. If a state is in full compliance except for a deficiency that requires new construction, it could not lawfully spend STOP Grant funding to come into compliance, and the state, therefore, would not be subject to the 5 percent reduction in STOP Grant funds.

The PREA Assurance Form allows governors to indicate whether either or both of these circumstances apply to the state.

PREA Certification and Assurance Submission
FREQUENTLY ASKED QUESTIONS (FAQs)
Governor's Certification/Assurance for Audit Year 3 of Cycle 1

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 (PWG) and made available on the National PREA Resource Center (PRC) 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 (PMO). 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 PRC website lists all FAQs issued by the DOJ PWG, and is updated often with new interpretive guidance. Members of the PMO team are available to answer additional questions; please email the PMO at PREACompliance@usdoj.gov.

FAQs FOR A GOVERNOR'S CERTIFICATION OR ASSURANCE DETERMINATION – AUDIT YEAR 3 OF CYCLE 1

- 1 Q:** Certifications and assurances must be submitted to DOJ by October 15, 2016. 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 15, 2016 deadline apply to August 19, 2016, which was the last day of the third year of the first PREA audit cycle. The Certification Form that is due on October 15, 2016 states, "As of August 19, 2016, 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, 2016.
- 3 Q:** What are an agency's auditing requirements for the third and final year of the first three-year PREA audit cycle, which ended on August 19, 2016?

A: In order to be in full compliance with the PREA Auditing Standards (See 28 C.F.R. § 115.401), an agency must have completed audits of **all** of its confinement facilities by August 19, 2016.

Standard 115.401(a) states: "During the three-year period starting on August 20, 2013, and during each three-year period thereafter, the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once."

Additionally, as stated in the September 9, 2016 letter from the Office of Justice Programs Assistant Attorney General, Karol Mason, and Office on Violence Against Women Principal Deputy Director, Bea Hanson, in order to submit a certification of full compliance for Audit Year 3 of the first three-year audit cycle, **all** facilities under the operational control of the state's executive branch, including facilities operated by private entities on behalf of the executive branch, must have **completed** an audit and achieved **full compliance** on or before August 19, 2016.

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

PREA Certification and Assurance Submission

FREQUENTLY ASKED QUESTIONS (FAQs)

Governor's Certification/Assurance for Audit Year 3 of Cycle 1

- 4 **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 PWG on June 20, 2014 states: "For the purpose of the PREA Standards, the audit is considered complete upon issuance of the initial audit report or 30 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>)
- 5 **Q:** Can a PREA audit ever be considered complete on the last day of an auditor's on-site visit to a facility?
- A:** No. Once a PREA auditor completes his or her on-site 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 DOJ PWG guidance issued on April 23, 2014, auditors are required to submit an interim report, or final report if the facility is found to be in full compliance, to the audited facility within 30 days of completion of the onsite audit (See <http://www.prearesourcecenter.org/node/3226>).

As described in FAQ #4 above, formal guidance issued by the DOJ PWG on June 20, 2014 states that "For the purposes of meeting the requirement in the PREA Standards that one-third of an agency's facilities be completed by the end of each year within every three-year auditing cycle, a PREA audit is considered complete upon issuance of the initial audit report or 30 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 six 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 works with facility staff to post notices of the upcoming audit throughout the facility. These notices include the auditor's name and contact information, where correspondence from both inmates, residents, or detainees, and facility staff can be sent. During this phase, the auditor also provides the Pre-Audit Questionnaire (PAQ) to the facility. The PAQ includes requests from the auditor for relevant facility/agency policies and procedures, and other documentation. During the Pre-Onsite Audit Phase, the auditor communicates frequently with the facility staff and agency leaders about the audit, expectations, and what will happen during the Onsite Phase of the audit.
- 2) **Onsite Audit Phase** – The length of this phase varies based on the size and layout of the facility, and the number of inmates, residents, or detainees. It includes a thorough review of the physical plant of the facility by the auditor, and extensive interviews of inmates, residents, or detainees, as well as facility staff members, agency leaders, and other stakeholders, such as contractors and volunteers, who work in the facility. The Onsite Audit Phase also includes additional reviews of documentation by the auditor, such as facility personnel files and sexual abuse investigation files. While policies and procedures are a critical information source in the context of PREA audits, the information collected by the auditor from observations made during the review of the physical plant of the facility, and from interviews of inmates, residents,

PREA Certification and Assurance Submission

FREQUENTLY ASKED QUESTIONS (FAQs)

Governor's Certification/Assurance for Audit Year 3 of Cycle 1

or detainees, from staff members, and from others are equally important in evaluating compliance with the PREA Standards.

- 3) **Evidence Review and Interim Report Phase** – Immediately following the Onsite portion of the PREA audit, the auditor has 30 days to write an interim report and deliver it to the agency and facility. The interim report includes areas of compliance and non-compliance, and describes the process the auditor used to assess information collected during documentation reviews, interviews, and the review of the physical plant to arrive at compliance determinations.
- 4) **Corrective Action Phase** – The receipt of the interim report by the agency and facility initiates a 180-day corrective action period. During this phase, the auditor and facility and agency staff members work collaboratively to address the areas of non-compliance that are identified in the interim report.
- 5) **Final Report Phase** – At the conclusion of the Corrective Action Phase, 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.

Audit Appeal Phase – Once the final audit report is submitted, the agency has 90 days to initiate an appeal of the findings to DOJ. DOJ then determines whether or not there is cause for a re-audit of the questioned/disputed audit findings.

- 6 **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 30 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?

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.

- 7 **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 3 of Cycle 1 on August 19, 2016. 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, 2016. Can my governor still submit a certification of full compliance on October 15, 2016, 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, 2016?

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 3 of Cycle 1, but required corrective action that may have spanned beyond August 19, 2016. The clearest evidence to support full compliance is a final audit report dated on or before August 19, 2016 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, 2016, but the final audit report was not submitted to the

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audited facility until after August 19, 2016. The governor will have to determine whether such facilities completed all corrective action and achieved full compliance as of August 19, 2016.

If a governor submits a certification of full compliance on October 15, 2016, and one or more facilities under his or her operational control completed audits during Audit Year 3 of Cycle 1 that required corrective action, but did not receive a final audit report indicating full compliance until after August 19, 2016, 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, 2016. 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.

- 8 Q:** Between August 20, 2016, which was the first day of Audit Year 1 of Cycle 2, and October 15, 2016, which is the due date for certifications and assurances from governors, there were 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 15, 2016, which affirms that, as of August 19, 2016, 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, 2016 and October 15, 2016 will raise questions on the part of DOJ regarding whether or not such confinement facilities were in full compliance with the PREA Standards as of August 19, 2016. 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, 2016. 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.
- 9 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 interpretive guidance issued by the DOJ PWG 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.

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10 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 had 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: 40px;">(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: 40px;">(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
	<p>(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.</p> <p><i>If NO, list the source that was used to develop the protocol:</i></p> <p>_____</p>	YES or NO

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§ 115.21 Evidence protocol and forensic medical examinations		
	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 <u>YES</u> , 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	Uniform Evidence Protocol followed by the STATE ENTITY OR DEPARTMENT OF JUSTICE COMPONENT must be reviewed for compliance.
	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.
	Documentation of efforts to provide SANES/SAFEs.
	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.
	Documentation to corroborate that all inmate victims of sexual abuse have access to forensic medical examinations, where evidentiarily or medically appropriate.
	Any available documentation that delineates responsibilities of outside medical and mental health practitioners.
	Documentation of agreements with a rape crisis center for victim advocacy services or documentation of efforts to obtain an agreement.
	Documentation of agreements with a community-based organization to provide victim advocacy services.
	Documentation of staff member qualifications if agency staff are used to provide victim advocacy services.
	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.
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: 40px;"><input type="checkbox"/> Exceeds Standard</p> <p style="padding-left: 40px;"><input type="checkbox"/> Meets Standard</p> <p style="padding-left: 40px;"><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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§ 115.34 Specialized training: 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:	YES or NO
	(a) Include an effort to determine whether staff actions or failures to act contributed to the abuse.	
	(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.	

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§ 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: 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 115.71 below:</p> <p style="padding-left: 40px;"><input type="checkbox"/> Exceeds Standard</p> <p style="padding-left: 40px;"><input type="checkbox"/> Meets Standard</p> <p style="padding-left: 40px;"><input type="checkbox"/> Does Not Meet Standard</p>

FACILITY AUDIT ACTIMTY EXAMPLE

PREA Audits of Facilities Under the Operational Control of the Executive Branch in [STATE/JURISDICTION NAME]

Facility Name	Facility Type	Agency	Audit Status	Audit Year	Audit Cycle	Audit Completion Date	Onsite Audit Date(s)	Corrective Action Required? (Y/N)	Final Report Date	Final Compliance Determination	Link to Final Report
EXAMPLE 1	Prison	Agency A	Complete	Year 2	Cycle 1	10/4/2014	9/1/2014 – 9/4/2014	Yes	1/22/2015	Full Compliance	exampleagencyA/PREAreports.gov
EXAMPLE 2	Juvenile Facility	Agency B	Complete	Year 2	Cycle 1	12/16/2014	11/8/2014 – 11/11/2014	Yes	2/11/2015	Full Compliance	exampleagencyB/PREAreports.gov
EXAMPLE 3	Community Confinement	Agency A	Complete	Year 3	Cycle 1	11/6/2015	10/5/2015 –	Yes	2/18/2016	Full Compliance	exampleagencyA/PREAreports.gov