

OFFICE OF INSPECTOR GENERAL

CBP Needs to Better Plan Its Implementation of the DHS Prison Rape Elimination Act Regulations



Homeland
Security

March 31, 2016
OIG-16-51



DHS OIG HIGHLIGHTS

CBP Needs to Better Plan Its Implementation of the DHS Prison Rape Elimination Act Regulations

March 31, 2016

Why We Did This Inspection

We conducted this review to determine whether U.S. Customs and Border Protection (CBP) has implemented the Department of Homeland Security's (DHS) *Prison Rape Elimination Act of 2003* (PREA) regulations.

What We Recommend

We made five recommendations, including that CBP develop a plan to ensure completion of PREA actions, develop a budget to implement the actions, and provide clear and consistent guidance to all CBP offices.

For Further Information:

Contact our Office of Public Affairs at (202) 254-4100, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

The DHS PREA regulations set standards for CBP to prevent, detect, and respond to sexual abuse and assault. The regulations also require CBP to complete audits of holding facilities that “house detainees overnight” by July 2018. Since DHS issued its PREA regulations, CBP has taken measures, including issuing its zero-tolerance policy and designating a full-time Prevention of Sexual Assault Coordinator, to ensure its offices, stakeholders, and managers are aware of CBP’s roles and responsibilities. However, CBP’s implementation actions lack adequate planning, a budget, a component-wide policy to coordinate the efforts of all offices and personnel, and criteria to determine which facilities should be defined as overnight facilities and therefore subject to audits. Further, at the time of our review, CBP had not determined the feasibility of securing a joint PREA audit contract with U.S. Immigration and Customs Enforcement. These problems may hinder CBP’s implementation of the DHS PREA regulations and ultimately, its ability to meet PREA’s goal to prevent, detect, and respond to sexual abuse and assault.

CBP Response

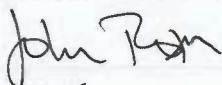
CBP concurred with four of our recommendations and is taking steps to address them. CBP did not concur with one of our recommendations. Based on CBP’s response to our draft report, we closed one recommendation. We consider three resolved and open and the remaining recommendation unresolved.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

March 31, 2016

MEMORANDUM FOR: The Honorable Gil Kerlikowske
Commissioner
U.S. Customs and Border Protection

FROM: John Roth 
Inspector General

SUBJECT: *CBP Needs to Better Plan Its Implementation of the
DHS Prison Rape Elimination Act Regulations*

For your action is our final report, *CBP Needs to Better Plan Its Implementation of the DHS Prison Rape Elimination Act Regulations*. We incorporated the formal comments provided by your office.

The report contains five recommendation aimed at improving CBP's implementation of the DHS Prison Rape Elimination Act regulations. Your office concurred with four recommendations. Based on information provided in your response to the draft report, we consider recommendation 4 open and unresolved. As prescribed by the Department of Homeland Security Directive 077-01, *Follow-Up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for the recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendation will be considered open and unresolved.

Based on the information provided in your response to the draft report, we consider recommendations 1 through 3 open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions. Recommendation 5 is resolved and closed. Please send your response or closure request to OIGInspectionsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Please call me with any questions, or your staff may contact Anne L. Richards, Assistant Inspector General for Inspections and Evaluations, at (202) 254-4100.

Background

Congress passed the *Prison Rape Elimination Act of 2003* (PREA) to establish a zero-tolerance standard for rape in U.S. prisons and make the prevention of prison rape a top priority in all prisons. In 2012, the Department of Justice (DOJ) adopted national standards to detect, prevent, and respond to prison rape. On May 17, 2012, the President directed all Federal agencies with confinement facilities not subject to DOJ's rules, including the Department of Homeland Security (DHS), to develop and implement regulations to prevent, detect, and respond to sexual abuse and assault. DHS has developed PREA regulations that U.S. Customs and Border Protection (CBP) is required to implement.

The DHS PREA regulations, which became effective on May 6, 2014, set standards for components' confinement facilities. Subpart A of the regulations applies only to U.S. Immigration and Customs Enforcement (ICE) immigration detention facilities. Subpart B, which applies to both ICE and CBP, covers standards for holding facilities,¹ including supervision guidelines, detention of juveniles and detainees with disabilities, staff hiring processes, and standards for new facilities. Subpart B also includes requirements for new and modified contracts, staff training, medical care for detainees, reporting, data collection and review, investigations, and disciplinary and corrective actions.

Subpart C of the DHS PREA regulations contains requirements for comprehensive external audits of ICE and CBP detention and holding facilities, as well as corrective actions, to ensure compliance with the regulations. This subpart also mandates hiring third-party contractors to perform the PREA audits. The initial round of audits of CBP's facilities must be completed by July 2018; thereafter, low-risk facilities must be audited once every 5 years and high-risk facilities once every 3 years. According to the DHS PREA regulations, CBP will coordinate the audits with the Office for Civil Rights and Civil Liberties (CRCL) so that CRCL may provide guidance when necessary.

¹ Holding facilities contain holding cells, cell blocks, or other secure enclosures that are under the control of the agency and are used primarily for short-term confinement of recently detained individuals pending their release or transfer to or from a court, jail, prison, or other agency, or other unit of the facility or agency.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

As required by the DHS PREA regulations, on May 6, 2014, CBP issued a *Policy on Zero Tolerance of Sexual Abuse and Assault* (zero-tolerance policy). The policy affirmed CBP's commitment to adhere to the DHS PREA regulations and announced the establishment of a Prevention of Sexual Assault (PSA) Coordinator in CBP's Privacy and Diversity Office (PDO). CBP also established a PREA Working Group, which consists of representatives from various CBP offices impacted by PREA including PDO, Border Patrol, Office of Field Operations (OFO), Office of Internal Affairs (IA), Office of Air and Marine Operations, Office of Human Resources Management, and Office of Administration. In addition, the Office of Chief Counsel provides legal advice and the Office of Policy and Planning serves as a policy advisor.

The Border Patrol and OFO operate about 563 holding facilities at various ports of entry, processing centers, Border Patrol stations, and checkpoints throughout the United States. CBP can detain individuals at any time of the day or night and, on a typical day, arrests more than 1,100 individuals for violations of immigration and other laws. CBP confines these individuals in its holding facilities for the completion of their initial processing.

Results of Inspection

Since DHS issued its PREA regulations, CBP has taken measures, including issuing its zero-tolerance policy and designating a full-time PSA Coordinator, to ensure its offices, stakeholders, and managers are aware of CBP's roles and responsibilities. Although CBP continues to implement PREA provisions and work toward meeting requirements, it does not have a documented plan or strategy for implementing the DHS PREA regulations. Further, as of October 2015, its actions have generally consisted of the Border Patrol and OFO issuing policies, rather than more concrete actions, such as training staff. CBP has not established milestones and deadlines for many actions in progress, nor is it accurately tracking progress toward completing actions to implement the DHS PREA regulations. CBP also has not yet attempted to estimate the cost or amount of funding needed to implement the regulations. CBP has only established criteria for initial audits of a relatively small number of its holding facilities. Finally, at the time of our review, CBP had not fully explored whether a joint audit contract with ICE was feasible. This lack of planning may hinder CBP's implementation of the DHS PREA regulations and, ultimately, its ability to ensure it fulfills PREA's goal to prevent, detect, and respond to sexual abuse and assault.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

CBP is Not Adequately Planning or Tracking Implementation of the DHS PREA Regulations

CBP has developed a list of 98 required actions under Subpart B to implement the DHS PREA regulations and is prioritizing these actions, but it does not have a written PREA implementation plan with a timeline, including milestones and expected completion dates, for these required actions. According to officials, with more staffing and funding, they would have developed a comprehensive plan. In addition, CBP is not accurately tracking its implementation of required actions. Without a comprehensive plan and effective monitoring of its progress, CBP may have difficulty completing its required actions.

CBP uses an Excel spreadsheet, the Compliance Matrix Tracker, to track its implementation of the DHS PREA regulations. The spreadsheet includes information, which PDO staff members in coordination with relevant CBP components, manually update on required actions, due dates, and status. Figure 1 shows a portion of the tracker. The tracker does not include a column for tracking completion dates and, with few exceptions, does not contain expected completion dates. The tracker also does not accurately reflect the implementation status of actions. In August 2015, we analyzed 31 required actions shown as completed (without dates) and found CBP had not actually completed 10 of these actions.² For example, the tracker indicated that CBP's sexual abuse data was available online, as required by the DHS PREA regulations, but when we requested the web address for the information, CBP officials told us this requirement had, in fact, not been completed. We also noted that some required actions shown as completed in the tracker needed further action and should be considered in progress.

² On October 7, 2015, CBP changed the status of 1 of the 31 requirements from "completed" to "in progress." As of the same date, the tracker showed CBP had completed 72 of 98 required actions under Subpart B.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Figure 1: Screenshot of CBP’s Compliance Matrix Tracker

A	B	C	D	E
Regulation Section	Regulatory Requirement	CBP Actions Required	Due Date	Status
Subpart B—Standards for DHS Holding Facilities Coverage				
§ 115.110 Coverage of DHS holding facilities.	This subpart B covers all DHS holding facilities. Standards found in subpart A of this part are not applicable to DHS facilities except ICE immigration detention facilities.	N/A	N/A	N/A
Prevention Planning				
79 CFR § 115.111 - Zero tolerance of sexual abuse; Prevention of Sexual Assault Coordinator.	Prevention of Sexual Assault Coordinator. (a) The agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and outlining the agency’s approach to preventing, detecting, and responding to such conduct.	CBP Policy on Zero Tolerance of Sexual Abuse and Assault (ZTP) (issued May 2014; reissued March 11, 2015); In Progress: Reissue with every new CBP Commissioner	May-14	Completed
	(b) The agency shall employ or designate an upper-level, agency-wide PSA Coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with these standards in all of its holding facilities.	CBP Hired	Feb-15	Completed
76 CFR § 115.112 Contracting with non-DHS entities for the confinement of detainees.	(a) An agency that contracts for the confinement of detainees in holding facilities operated by non-DHS private or public agencies or other entities, including other government agencies, shall include in any new contracts, contract renewals, or substantive contract modifications the entity’s obligation to adopt and comply with these standards.	Completed --ZH26 PREA Clause in Contract Language & Acquisition Alert (PREA Clause inserted in Section H for all new contracts, contract renewals, or substantive contract modifications above the micro-purchase threshold (& purchase cards for up to \$3K) (Nov 2014); Additionally, CBP took position - along with ICE and in coordination with DHS - that when we contract through riders on USMS contracts, those facilities are subject to the DOJ PREA regulations and therefore DHS PREA does not set forth requirements on those facilities.		Completed
	(b) Any new contracts, contract renewals, or substantive contract modifications shall provide for agency contract monitoring to ensure that the contractor is complying with these standards.	See Above		
	(c) To the extent an agency contracts for confinement of holding facility detainees, all rules in this subpart that apply to the agency shall apply to the contractor, and all rules that apply to staff or employees shall apply to contractor staff.	See Above		Completed
76 CFR § 115.113 Detainees	(a) The agency shall ensure that each facility maintains sufficient supervision.	Completed - USRP and OEO PREA	USRP & OEO	Completed

Source: CBP’s Privacy and Diversity Office

CBP Has Not Developed a Budget for Implementing the DHS PREA Regulations

CBP has not determined the cost of implementing the DHS PREA regulations, prepared a budget, or requested funding. When asked, CBP could only provide rough estimates of costs incurred by PDO. According to one official, CBP was hoping to reallocate funds to cover the cost of implementing the regulations, but has since determined it cannot, particularly for the costs associated with the holding facility audits. Yet, budgeting is not included on the PSA Coordinator’s list of PREA Implementation Priorities.

CBP Does Not Have Component-wide Policies on Data Collection and Investigation

Although CBP has issued policies to implement a number of DHS PREA regulations, the policies do not specifically address investigation and data collection requirements. Additionally, offices in CBP continue to rely on their own previously issued PREA policy memos, which include inconsistent



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

reporting instructions. As a result, CBP may not be able to ensure all allegations are reported, investigated, or referred to appropriate authorities.

Following release of the component-wide zero-tolerance policy, CBP offices, including the Border Patrol, OFO, and IA, issued their own policies for preventing, detecting, and responding to sexual abuse and assaults. These individual policies sometimes differ from the zero-tolerance policy. For example, although CBP's zero-tolerance policy mandates immediately reporting all allegations of sexual abuse and assault to both the CBP Commissioner's Situation Room and the Joint Intake Center,³ neither the Border Patrol's policy nor OFO's policy requires reporting to both entities. Instead, these policies list the Joint Intake Center as one of eight choices for receiving reports. These inconsistent instructions could result in delays and gaps in the reporting process.

The individual policies also hamper coordination among CBP offices in implementing some DHS PREA regulations. Various CBP offices, including the Border Patrol, OFO, IA, the Commissioner's Situation Room, and PDO, share responsibility for implementing regulations related to sexual abuse investigation, reporting, and data collection. None of the individual policies includes procedures for further processing of reported allegations, nor do they name the office responsible for investigation or referral. Without a component-wide policy establishing the roles and responsibilities of the offices involved, CBP may not be able to ensure all allegations are reported, investigated, or referred to appropriate authorities.

CBP Has Not Determined Which Holding Facilities Should be Defined as Overnight Facilities and Subject to Comprehensive Audits

According to the DHS PREA regulations, holding facilities that "house detainees overnight" must undergo a comprehensive PREA audit by July 2018 to ensure compliance with PREA. Because CBP detains individuals any time of the day or night, it is having difficulty determining which of its approximately 563 holding facilities should be defined as "overnight" facilities and therefore subject to external audits.

At the time of our review, CBP had decided it would not define how the term "overnight" applies to its facilities until after a first cycle of PREA audits, which are slated to begin early 2016. According to one official, CBP needs to be more

³ The Joint Intake Center is the central clearing house for receiving, processing, and tracking allegations of misconduct involving CBP and ICE personnel and contractors.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

informed before establishing criteria and parameters. CBP has developed its own criteria to select facilities for this first cycle of PREA audits:

- High-volume holding facilities or facilities with a high volume of detainees based on “apprehensions” and “adverse actions”
- Holding facilities with a high volume of Unaccompanied Alien Children (UAC), including apprehended UAC and UAC in custody for more than 72 hours
- Facilities where there have been allegations of sexual abuse or assault

OFO identified 21 ports of entry and the Border Patrol identified 21 stations that fit at least one of these criteria. Therefore, CBP plans to have 42 CBP facilities audited in the first cycle.

We are uncertain how CBP will use information from these audits to determine which of its approximately 521 remaining facilities will need to be audited. In addition, if CBP determines after the July 2018 deadline that additional holding facilities need to be audited, it may not meet the regulatory deadline.

Coordination with ICE on a Potential Joint Audit Contract

CBP and ICE might benefit from using a joint contract to audit their detention and holding facilities. At the time of our review, ICE and CBP had collaborated, but had not taken any official measures to determine whether a joint contract is feasible. A joint contract could potentially save costs, streamline the procurement process, and secure a pool of competent DHS-specific PREA auditors. A joint effort would also be in line with DHS’ Unity of Effort initiative.⁴

Recommendations

We recommend that the Commissioner, U.S. Customs and Border Protection:

Recommendation 1: Develop a formal plan for moving forward to ensure completion of remaining actions needed to implement PREA regulations, including reviewing actions already claimed to be completed, to ensure the implementation status is accurate.

⁴ According to an April 22, 2014 memo from Secretary Johnson, *Strengthening Departmental Unity of Effort*, various components must have “better traceability between strategic objectives, budgeting, acquisition decisions, operational planning, and mission execution, in order to improve both Departmental cohesiveness and operational effectiveness.”



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Recommendation 2: Develop a budget for CBP's implementation of the DHS PREA regulations.

Recommendation 3: Update PREA policies to provide clear and consistent guidance and issue a component-wide policy to coordinate implementation efforts among all offices and personnel.

Recommendation 4: Determine, no later than July 2017, which holding facilities should be defined as overnight facilities, determine whether additional holding facilities should be audited, and ensure these facilities are audited by the July 2018 deadline.

Recommendation 5: Coordinate with ICE to determine whether a joint PREA audit contract is feasible for both CBP and ICE.

Management Comments and OIG Analysis

CBP concurred with four of the five recommendations and is taking steps to address them. CBP did not concur with one of the five recommendations. Appendix B contains a copy of CBP's management comments in their entirety. We also received and incorporated technical comments as appropriate. Based on CBP's response to our draft report, we closed Recommendation 5. We consider Recommendations 1, 2, and 3 to be resolved and open. Recommendation 4 is unresolved.

CBP Response to Recommendation 1: CBP concurred with the recommendation. CBP stated that it will develop a formal implementation plan to better track implementation of the DHS PREA regulations. CBP said that the implementation plan will establish a timeline with milestones and expected completion dates. CBP estimated that the formal implementation plan would be completed by May 31, 2016.

OIG Analysis: CBP's planned action is responsive to the recommendation. We consider the recommendation resolved and open. We will close this recommendation upon receipt of an acceptable formal implementation plan.

CBP Response to Recommendation 2: CBP concurred with the recommendation. CBP stated that it will prepare a budget for its implementation of the DHS PREA regulations. CBP said that the budget will identify the determined costs of implementing the regulations, to include mechanisms for improved monitoring of CBP's execution, program and staffing plan, and PREA audits. CBP said that the budget will be added to CBP's



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

implementation plan as a priority and estimated it would be completed by June 30, 2016.

OIG Analysis: CBP's planned action is responsive to the recommendation. We consider the recommendation resolved and open. We will close this recommendation upon receipt of an acceptable budget document.

CBP Response to Recommendation 3: CBP concurred with the recommendation. CBP stated that, in October 2015, it issued its Standards on Transport, Escort, Detention, and Search with component-wide, clear, and consistent guidance governing CBP's interactions with detained individuals. CBP also said it will issue a Sexual Abuse and Assault Prevention and Response (SAAPR) directive to ensure all allegations of sexual abuse and assault are promptly reported and investigated and specifically address CBP's data collection, reporting, audit, and compliance requirements. CBP estimated the SAAPR would be issued by August 31, 2016.

OIG Analysis: CBP's planned action is responsive to the recommendation. We consider the recommendation resolved and open. We will close this recommendation upon receipt and review of the issued SAAPR directive.

CBP Response to Recommendation 4: CBP did not concur with the recommendation. CBP said that it is executing the DHS PREA regulatory requirements for auditing of CBP holding facilities, but disagrees that CBP should define holding facilities as "overnight." According to CBP, it detains individuals for the shortest time necessary to process, release, repatriate, or transfer without distinction between day and night. CBP further stated that defining what constitutes "overnight" for audit purposes is not required by the regulations and is not instructive for CBP because applying this definition would not account for CBP's mission and operations. Finally, CBP said it had established criteria for identifying which holding facilities would be audited pursuant to the DHS PREA regulations.

OIG Analysis: Although we understand that CBP does not confine individuals in its holding facilities for any longer than necessary, according to current CBP policy, individuals can be confined for up to 72 hours. An individual confined for that length of time would, of course, have to be confined overnight. So that we can work with CBP to resolve this recommendation, we ask CBP to provide data on the number of individuals confined at each of its holding facilities for fiscal years 2012 through 2015. Included in this data should be a breakdown of the length of stay for each individual confined.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

CBP Response to Recommendation 5: CBP concurred with the recommendation. CBP said it has discussed this with ICE officials, and these officials are drafting a solicitation to procure PREA auditing services that could be used to support the auditing requirements of other Federal agencies, including CBP.

OIG Analysis: CBP's action is responsive to the recommendation. We consider the recommendation resolved and closed.

Objective, Scope, and Methodology

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. We conducted this review to determine whether CBP has implemented PREA requirements.

We interviewed CBP staff from the Privacy and Diversity Office; the Office of the Commissioner; and the PREA Working Group, which included representatives from the Office of Chief Counsel, Border Patrol, OFO, Office of Air and Marine, and IA. In addition, we interviewed DHS staff from CRCL. We obtained and reviewed numerous policies and policy memos. We analyzed CBP's Compliance Matrix Tracker to determine its accuracy. We also analyzed Title 6 of the Code of Federal Regulations, Part 115, DHS regulations setting standards to prevent, detect, and respond to sexual abuse and assault in DHS confinement facilities.

We conducted this review under the authority of the *Inspector General Act of 1978*, as amended, and according to the Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency.

The Office of Inspections and Evaluations major contributors to this report are John D. Shiffer, Chief Inspector; Wayne A. Ekblad, Supervisory Inspector; Connie Tan, Senior Auditor; Glenn Stewart, Inspector; Marissa Weinshel, Program Analyst; Joanne Howard, Assistant Counsel; Kelly Herberger, Communications Analyst; and LaDana Crowell, Independent Report Referencer.



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Department of Homeland Security

Appendix A
CBP Comments to the Draft Report


MAR 8 2016

U.S. Department of Homeland Security
Washington, DC 20229



**U.S. Customs and
Border Protection**

MEMORANDUM FOR: Anne L. Richards
Assistant Inspector General
Office of Inspections and Evaluations

FROM: Sean M. Mildrew 
Chief Accountability Officer

SUBJECT: Response to OIG Draft Report: "CBP Needs to Better Plan its
Implementation of the DHS Prison Rape Elimination Act
Regulations" (Project No.
15-121-ISP-CBP)

Thank you for the opportunity to review and comment on this draft report. The U.S. Customs and Border Protection (CBP) appreciates the Office of Inspector General's (OIG) work in planning and conducting its inspection, and issuing this report.

CBP is pleased to note the OIG's recognition of the actions CBP has taken thus far to implement the Department of Homeland Security (DHS) "Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities," codified at 6 C.F.R. Part 115 of the Prison Rape Elimination Act (PREA) Regulations; including issuing CBP's zero-tolerance policy and designating a full-time agency-wide Prevention of Sexual Assault Coordinator. Although not mentioned in the draft report, it is important to note that CBP has also accomplished the following:

- issued training and briefings explaining the roles and responsibilities under the DHS PREA Regulations to the Office of Field Operations, Office of Professional Responsibility (formerly known as Internal Affairs), Air and Marine Office, and U.S. Border Patrol Headquarters (HQ) and field personnel;
- designated HQ and field PREA coordinators to ensure agency compliance and implementation;
- established coordinated reporting efforts both internal to the DHS and with external government partners;
- conducted reviews of all allegations of sexual abuse and assault made since the implementation of the Regulations; and
- incorporated appropriate DHS PREA Regulations' requirements in its Self-Inspection Program worksheets.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

CBP Response to OIG Draft Report - CBP Needs to Better Plan its Implementation of the DHS Prison Rape Elimination Act Regulations (Project No. 15-121-ISP-CBP)
Page 2

The draft report contained five recommendations, four with which CBP concurs and one with which it non-concurs. Specifically, OIG recommended that the Commissioner, CBP:

Recommendation 1: Develop a formal plan for moving forward to ensure completion of remaining actions needed to implement PREA regulations, including reviewing actions already claimed to be completed, to ensure the implementation status is accurate.

Response: Concur. CBP Privacy and Diversity Office (PDO) has already begun the process to ensure completion of the remaining actions needed to implement the DHS PREA Regulations. CBP will develop a formal implementation plan to better track the implementation of the Regulations. The implementation plan will establish a timeline with milestones and expected completion dates. Estimated Completion Date (ECD): May 31, 2016

Recommendation 2: Develop a budget for CBP's implementation of the DHS PREA Regulations.

Response: Concur. CBP/PDO in collaboration with CBP/Office of Administration (OA) will prepare a budget for CBP's implementation of the DHS PREA Regulations. The budget will identify the determined cost of implementing the Regulations, to include mechanisms for improved monitoring of CBP's execution, program and staffing plan, and PREA Audits. The budget will be added to CBP's implementation plan as a priority. ECD: June 30, 2016.

Recommendation 3: Update PREA policies to provide clear and consistent guidance and issue a component-wide policy to coordinate implementation efforts among all offices and personnel.

Response: Concur. In October 2015, CBP issued its Standards on Transport, Escort, Detention, and Search (TEDS) providing agency-wide clear and consistent guidance governing CBP's interaction with detained individuals, which included relevant requirements set forth in the DHS PREA Regulations. Additionally, CBP will issue a Sexual Abuse and Assault Prevention and Response (SAAPR) directive to ensure all allegations of sexual abuse and assault are promptly reported and investigated, and specifically address CBP's data collection, reporting, audit and compliance requirements. ECD: August 31, 2016

Recommendation 4: Determine, no later than July 2017, which holding facilities should be defined as overnight facilities, determine whether additional holding facilities should be audited, and ensure these facilities are audited by the July 2018 deadline.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

CBP Response to OIG Draft Report - CBP Needs to Better Plan its Implementation of the DHS Prison Rape Elimination Act Regulations (Project No. 15-121-ISP-CBP)
Page 3

Response: Nonconcur. CBP is executing the DHS PREA regulatory requirements regarding auditing of CBP holding facilities, but disagrees that CBP should define holding facilities as “overnight.” CBP detains individuals for the shortest time necessary to process, release, repatriate or transfer without distinction between day and night. Requiring CBP to define what constitutes “overnight” for audit purposes is not required by regulations and is not instructive for CBP, as its application would not account for CBP’s mission and operations. For purposes of determining which CBP holding facilities will be audited pursuant with 6 C.F.R. § 115.193, CBP established criteria to better identify holding facilities to be audited.

Beginning in July 2017, CBP will conduct an inaugural reevaluation of CBP’s criteria used to identify holding facilities for audit under the PREA regulations to confirm the criteria comports with the regulations. This review to determine if the criteria needs to be adjusted will consider: 1) the results of FY 2017 audits and PREA-related Self-Inspection Program activities; and 2) CBP PREA Working Group and other inputs, as appropriate. Once the criteria is reviewed CBP will take appropriate action to ensure accomplishment of required audits by the end of July 2018. ECD: July 31, 2017.

Recommendation 5: Coordinate with ICE to determine whether a joint PREA audit contract is feasible for both CBP and ICE.

Response: Concur. CBP/OA/Procurement Directorate and CBP/PDO has engaged in discussions with U.S. Immigration and Customs Enforcement officials, who are in the process of drafting a solicitation to procure PREA auditing services that could be used to support the auditing requirements of other federal agencies, including CBP. CBP requests that OIG consider this recommendation resolved and closed.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover.

If you have questions or require additional information please contact me at (202) 344-1992 or have a member of your staff contact Ms. Kathryn Dapkins, Component Audit Liaison, Management Inspections Division at (202) 325-7732.



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Appendix B
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