PRISON RAPE ELIMINATION ACT

REGULATORY IMPACT ASSESSMENT

United States Department of Justice Final Rule

National Standards to Prevent,
Detect, and Respond to Prison Rape
Under the Prison Rape Elimination Act (PREA)
28 C.F.R. Part 115

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This Report was drafted under the auspices of the Office of Legal Policy, United States Department of Justice, with input and assistance from numerous other components of the Department of Justice, including but not limited to the Office of the Attorney General, the Office of the Deputy Attorney General, the United States Attorney's Office for the Eastern District of New York, the Civil Rights Division, the Bureau of Justice Statistics, the National Institute of Corrections, the National Institute of Justice, the Bureau of Prisons, the United States Marshals Service, the Office of Juvenile Justice and Delinquency Prevention, the Bureau of Justice Assistance, the Office of Justice Programs, and the Office of Legal Counsel. The consulting firm of Booz Allen Hamilton also contributed extensively to the analytical work that underlies this Report.

This Report may be cited as follows:

United States Dep't of Justice, Regulatory Impact Assessment for PREA Final Rule (May 17, 2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_ria.pdf.

The rule to which this Report pertains is published at Title 28, Part 115, Code of Federal Regulations. The Notice of Final Rule is available at http://www.federalregister.gov.

The main MSExcel spreadsheets that the Department used to compile the data and make the calculations set forth in this Report will be available for download under docket number OAG-131 at http://www.regulations.gov.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS **Page**

LIST OF TABLES

LIST OF TABLES **Page**

LIST OF TABLES **Page**

LIST OF TABLES **Page**

EXECUTIVE SUMMARY

This Regulatory Impact Assessment (RIA) assesses, and monetizes to the extent feasible, the benefits of combating rape and sexual abuse in America's prisons, jails, lockups, community confinement facilities (CCFs), and juvenile facilities, and the costs of full nationwide compliance with the Attorney General's national standards under the Prison Rape Elimination Act (PREA). It also summarizes the comments relating to the costs and benefits of the standards that the Department received in response to the Notice of Proposed Rulemaking (NPRM) and Initial Regulatory Impact Assessment (IRIA).

In accordance with guidance from the Office of Management and Budget (OMB), the cost estimates set forth in this RIA are the costs of full nationwide compliance with, and implementation of, the national PREA standards in all covered facilities. **We conclude that full nationwide compliance with the PREA standards, in the aggregate, would cost the correctional community approximately $6.9 billion over the period 2012-2026, or $468.5 million per year when annualized at a 7% discount rate.**

The average annualized cost per facility of compliance with the standards is approximately $55,000 for prisons, $50,000 for jails, $24,000 for CCFs, and $54,000 for juvenile facilities. For lockups, the average annualized cost per agency is estimated at $16,000.

However, as discussed in sections 2.2 and 5.1, with limited exceptions PREA does not require full nationwide compliance with the standards, nor does it enact a mechanism for the Department to direct or enforce such compliance; instead, it provides certain incentives for State (but not local or privately-operated) confinement facilities to implement them. Fiscal realities faced by confinement facilities throughout the country make it virtually certain that the total outlays by those facilities will, in the aggregate, be less than the costs calculated in this RIA.

Actual outlays incurred will depend on the specific choices that State, local, and private correctional agencies make with regard to adoption of the standards, and correspondingly on the annual cash outlays that those agencies are willing and able to make in choosing to implement the standards in their facilities. We have not endeavored in this Report to project those actual outlays.

Summary of Cost Justification Analysis

In developing the final standards under PREA, the Department was constrained by two separate and independent limitations relating to the potential costs of the standards.

The first was the requirement, set forth in Executive Order 12866, and recently reaffirmed and supplemented by Executive Order 13563, that each agency must "propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify)." Executive Order 13563 further directs agencies "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." E.O. 13563, § 1(c).

The second was the provision, set forth in the PREA statute itself, prohibiting the Attorney General from adopting any standards "that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities." 42 U.S.C. § 15607(a)(3).

In this Report, we address both sets of limitations and conclude that the final rule does not contravene either, and is in fact fully justified under both analyses.

Table ES.1: Break-even Analysis for PREA Standards, at-a-Glance[1/]

	Prisons	Jails	Lockup	CCF	Juv.	Total
Prevalence	89,688	109,181	Unk.	Unk.	10,553	209,422
Value of 1% Reduction	$ 206.4	$ 260.1	Unk.	Unk.	$ 52.4	
Value of 1 Less Victim			$ 0.25	$ 0.25		
Cost	$ 64.9	$ 163.4	$ 95.5	$ 12.8	$ 131.9	$ 468.5
Breakeven Percent	0.32%	0.64%	Unk.	Unk.	2.55%	
Breakeven No. Victims	**282**	**686**	**385**	**52**	**266**	**1,671**

With respect to the analysis called for by the Executive Orders, we undertake a break-even analysis to demonstrate that the anticipated costs of full nationwide compliance with the PREA standards are amply justified by the anticipated benefits.

Using our preferred methods of monetizing benefits (as elaborated in the text), we determine that **the total monetizable benefit to society of eliminating all prison rape and sexual abuse in the facilities covered by this regulation is at least $52 billion annually.**

We then estimate that for the costs of full nationwide compliance to break even with the monetized benefits of avoiding prison rape (as thus calculated), **the standards would have to be successful in reducing the annual number of prison sexual abuse victims by about 1,671**, for a total reduction from the baseline over fifteen years of about 25,000 victims.[2/]

The numbers in Table ES.1 reflect a wide range of abuse types, from incidents involving physical force and injury to incidents only involving ostensibly consensual touching. Of course, if the nation's confinement facilities spend less annually than full nationwide compliance is estimated to require, then the annual reduction in the number of prison sexual abuse victims that would need to be achieved in order for compliance costs to break even with benefits would be correspondingly lower.

For comparison, **the Department estimates that in 2008 more than 209,400 persons were victims of sexual abuse (all forms) in America's prisons, jails, and juvenile confinement centers.**

1/ Prevalence figures reflect our "principal" approach to determining prevalence (among three alternatives discussed in Part 3) and include all forms of sexual abuse. As explained in Part 3.6, data on prevalence lockups and CCFs is limited or unavailable; the total for prisons, jails, and juvenile centers under our principal approach is 209,422.

The "value of 1% reduction" row sets forth our estimate of the monetizable value (in millions of dollars) of the benefit of a 1% reduction from the baseline annual prevalence of sexual abuse in prisons, jails, and juvenile centers, using our preferred methodology, the victim compensation model, and taking into account the fact that many victims of prison rape are victimized multiple times. The "value of 1 less victim" row sets forth our corresponding estimate for lockups and CCFs, but sets forth the value (again in millions) of avoiding giving rise to a single victim of abuse.

Cost figures represent the cost of full nationwide compliance with all of the PREA standards, in the aggregate, in millions of dollars. "Breakeven percent," for prisons, jails, and juvenile centers, shows the total percentage reduction from the baseline annual prevalence of prison sexual abuse that the standards would have to achieve in each sector in order for their annual benefits, in monetary terms, to break even with their annual costs, again assuming full nationwide compliance. "Breakeven No. Victims" shows how many individual victims of prison sexual abuse the standards would have to be successful in preventing each year, in each sector (again taking into account the phenomenon of serial victimization), for the standards' annual benefits, in monetary terms, to break even with the annual costs of full nationwide compliance.

2/ These figures cross all facility types and all types of sexual abuse (from the most to the least severe), and take into account the fact that many victims are victimized multiple times (*i.e.*, one less victim subsumes all of the incidents of sexual abuse that victim experiences). Below, we calculate the break even figures in six different ways corresponding to different methods of calculating the baseline prevalence of prison sexual abuse and different approaches to monetizing the value of avoiding prison sexual abuse. The figures in Table ES-1 reflect our preferred approach among the six alternatives. When reflected as a range, the six approaches collectively provide that, for the costs of full nationwide compliance to break even with the monetized benefits of avoiding prison rape, the standards would have to be successful in reducing the annual number of prison sexual abuse victims by 1667-2329, for a total reduction from the baseline over fifteen years of about 25,000-35,000 victims.

We believe it reasonable to expect that the standards, if fully adopted and complied with, will achieve at least this level of reduction in the prevalence of prison sexual abuse. When one considers the non-monetized benefits of avoiding prison rape, which are considerable, the justification for the standards becomes even stronger.

With respect to the analysis that Congress required in PREA, we conclude that the costs of full nationwide compliance do not amount to "substantial additional costs" when compared to total national expenditures on correctional operations. In the most recent tabulation, **in 2008 correctional agencies nationwide spent approximately $79.5 billion on correctional operations. On the other hand, we estimate that full nationwide compliance with the final standards will cost these agencies approximately $468.5 million per year, when annualized over 15 years at a 7% discount rate, or 0.6% of total annual correctional expenditures in 2008.** The Department concludes that this does not amount to a substantial additional cost.

Identifying and Measuring the Relevant Baseline

In Part 3 of this Report, we identify and measure the baseline level of prison rape and sexual abuse that is relevant to our assessment of costs and benefits, *i.e.*, the *status quo* absent regulatory action. We estimate the annual pre-regulatory prevalence of six categories of inappropriate sexual contact in adult prisons and jails, and five different categories in juvenile facilities. These types of sexual contact are differentiated based on the existence and nature of force or threat of force, the nature and intrusiveness of the physical contact, and whether the victim experienced a low incidence or a high incidence of contact, among other factors.

Relying largely on tabulations made by the Department's Bureau of Justice Statistics (BJS) and Office of Juvenile Justice and Delinquency Prevention (OJJDP), we examine the available statistics on the prevalence of each type of inappropriate sexual contact and address a number of concerns with those statistics, including the problem of serial victimization (prevalence vs. incidence), cross-section vs. flow, underreporting of sexual victimization (false negatives), and false allegations (overreporting). We also look at difficulties in measuring the prevalence of sexual abuse in CCFs and lockups.

We present three alternatives for estimating the prevalence of sexual abuse, each relying on different assumptions to account for the possibility of underreporting (false negatives) and overreporting (false positives) of sexual abuse. Under the method that we prefer among the three alternatives, **we conclude that in 2008 more than 209,400 persons were victims of sexual abuse in America's prisons, jails, and juvenile centers. Of these, at least 78,500 were prison and jail inmates, and 4,300 were confined youth, who were victims of the most serious forms of sexual abuse, including forcible rape and other nonconsensual sexual acts involving injury, force, or high incidence.**

Estimating the Monetized Unit Benefit of Avoiding a Prison Rape or Sexual Abuse

As a number of commenters observed, placing a monetary value on an avoided sexual abuse confronts considerable methodological difficulties. One commenter remarked that "estimating the monetary 'costs' of crime is at best a fraught and imperfect effort, particularly when dealing with crimes such as sexual abuse whose principal cost is due to the pain, suffering, and quality of life diminution of the victims."

Executive Orders 13563 and 12866 nevertheless instruct agencies to measure quantifiable benefits "to the fullest extent that [they] can be usefully estimated." E.O. 12866, § 1(a), which E.O. 13563 reaffirms. Some uncertainty in such estimates is not itself sufficient reason to abandon the effort.

In Part 4.1, we estimate the monetary value of certain benefits of avoiding prison sexual abuse. Using an approach known as the willingness to pay model, we first monetize the benefit of reducing the number of prison rape victims by consulting studies that have estimated how much society is willing to pay for the reduction of various crimes, including rape, and assessing whether the conclusions of those studies would be different in the specific context of prisons.

We also use an alternative approach, known as the victim compensation or willingness to accept model, which attempts to estimate how much the average victim of prison rape would be willing to accept as compensation for injuries suffered in the assault, including intangible injuries such as pain, suffering, and diminished quality of life. To do this, we first list certain monetizable costs of prison rape to the victim (these costs translate to avoidance benefits for purposes of this analysis), such as the costs of medical and mental health care, and we add an element, drawn primarily from jury verdicts, to cover the intangible costs associated with pain and suffering. All of these costs were identified by reviewing the literature on the cost of rape generally, and then extrapolating the cost of rape in the prison environment. Although we calculate avoidance benefits on a per victim basis, we account for the fact that many victims of prison rape are victimized multiple times.

Using these two models, we derive monetized values for avoiding each of the types of inappropriate sexual contact identified in Part 3, and we do so for both juvenile and adult victims. For example, **we estimate the monetizable benefit to an adult of avoiding the highest category of prison sexual misconduct (nonconsensual sexual acts involving injury or force, or no injury or force but high incidence) as worth about $310,000 per victim using the willingness to pay model and $480,000 per victim under the victim compensation model. For juveniles, who typically experience significantly greater injury from sexual abuse than do adults, we value the corresponding category as worth $675,000 per victim.** These estimates are higher than what we described in the IRIA because of changes we made, in response to public comments, to the definitions of the different types of sexual abuse and to the methodologies for monetizing the benefit of avoiding each type.

Then, in Part 4.2, we calculate the maximum monetizable benefit to society of totally eliminating each of the types of inappropriate sexual contact identified in Part 3, by multiplying the baseline prevalence of such events (determined in Part 3) by the unit benefit of one fewer victim (determined in Part 4.1). Under our preferred approach for estimating prevalence, and using the victim compensation model, **we determine that the maximum monetizable cost to society of prison rape and sexual abuse (and correspondingly, the total maximum benefit of eliminating it) is about $46.6 billion annually for prisons and jails, and an additional $5.2 billion annually for juvenile facilities.**

It bears cautioning that the Department has not estimated in this Report the expected monetized benefit of the standards themselves but has instead opted for a break-even approach that estimates the extent to which the number of rape victims would need to be reduced (taking into account the fact that many victims are victimized multiple times) for the benefits of the standards to break even with the costs of full nationwide

compliance. This is explained in greater depth in Part 6.1.

Thus, we do not here estimate that the standards will actually yield an annual monetized benefit of $52 billion, except in the hypothetical scenario where the standards would, by themselves, lead to the complete elimination of prison rape and sexual abuse. The actual monetized benefit of the standards will certainly be less than this hypothetical figure and will depend on a number of factors, including the extent to which facilities comply with the standards, the extent to which the standards are effective in achieving their goals, and the extent to which there may continue to be incidents of sexual abuse that for whatever reason are not detected or deterred by the standards.

Non-Monetizable Benefits

"Costs and benefits" under Executive Order 12866 must "include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify but nevertheless essential to consider." E.O. 12866, § 1(a). The net benefits of regulatory action include "environmental, [and] public health and safety … advantages," as well as certain "distributive impacts" and the advancement of "equity." *Id.*

Congress predicated PREA on its conclusion, consistent with decisions by the Supreme Court, that "deliberate indifference to the substantial risk of sexual assault violates prisoners' rights under the Cruel and Unusual Punishment Clause of the Eighth Amendment." 42 U.S.C. § 15601(13). The individual rights enshrined in our Constitution express our country's deepest commitments to human dignity and equality, and American citizens place great value on knowing that their government aspires to protect those rights to their fullest extent. In thinking about the qualitative benefits that will accrue from the implementation of the final rule, these values stand paramount.

Part 4.3 concludes our assessment of the benefits of avoiding prison rape by identifying those benefits that cannot be monetized. These are some of the most important and consequential of the benefits of the final rule, and the discussion in this section describes both the nature and scale of those benefits so that they can be appropriately factored into the analysis. We examine benefits for rape victims, for inmates who are not rape victims, for families of victims, for prison administrators and staff, and for society at large. These benefits include those relating to public health and public safety, as well as economic benefits and existence value benefits. We also examine benefits to inmates in lockups and CCFs, as to which we do have little to no information relating to the baseline prevalence of sexual abuse.

Cost Analysis

Part 5 presents a detailed analysis of the costs of full compliance with the standards. As stated, **we conclude that full nationwide compliance with the PREA standards, in the aggregate, would cost the correctional community approximately $6.9 billion over the period 2012-2026, or $468.5 million per year when annualized at a 7% discount rate.**

Again, these are the estimated costs of full nationwide compliance, which will only occur if all State, local, and private confinement facilities adopt the standards contained in the final rule and then immediately and fully implement them. In this sense, the cost impact of the final rule, as represented here, is essentially theoretical—in effect treating the standards as if they were binding regulations on State and local confinement facilities.

The true cost impact (which we have not assessed here), like the true impact of the final rule on preventing, detecting, and minimizing the effects of sexual abuse, will depend on the specific choices that State, local, and private correctional agencies make with regard to adoption of the standards, and correspondingly on the annual cash outlays that those agencies are willing and able to make in choosing to implement the standards in their facilities.

In assessing the nationwide compliance costs for many of the standards, we relied on work performed by the consulting firm Booz Allen Hamilton, with which the Department contracted to undertake cost analyses, first of the standards recommended by the National Prison Rape Elimination Commission (NPREC), then of the standards proposed in the NPRM, and finally of the standards contained in the final rule. Booz Allen's initial cost analysis was based on a field study in which it surveyed 49 agencies of various types from across the country about the costs they would incur to comply with various aspects of NPREC's recommended standards.

Each of the final standards is examined in detail here to determine the full implementation costs of that standard. Where possible, we distinguish among costs applicable to prisons, jails, juvenile facilities, CCFs, and lockups.

Many of the standards are now assessed as likely having minimal to no associated compliance costs, including §§ 115.15, 115.115, 115.215, and 115.315, which, among other things, impose a general ban on cross- gender pat-down searches of female inmates in adult prisons and jails and in CCFs, and of male and female residents in juvenile facilities; and §§ 115.83, 15.283, and 115.383, which require agencies to provide medical and mental health care assessments and treatment to victims and to certain abusers. The conclusion of zero cost for these standards is predicated on a high level of baseline compliance and on the expectation that agencies will adopt the least costly means of complying with requirements when given flexibility to determine how to apply those requirements to the specific characteristics of their agencies.

On an annualized basis, the most expensive standards, by our estimate, are: §§ 115.13, 115.113, 115.213, and 115.313, which relate to staffing, supervision, and video monitoring and would impose annual compliance costs of $120 million per year if fully adopted; §§ 115.11, 115.111, 115.211, and 115.311, which establish a zero-tolerance policy and requires agencies to designate an agency- wide PREA coordinator, and would cost $110 million annually if fully adopted; the training standards (§§ 115.31-.35, 115.131-.132, 115.134, 115.231-.235, and 115.331-.335), which we estimate would cost $82 million per year if fully adopted; and the screening standards (§§ 115.41-.42, 115.141, 115.241-.242, and 115.341-.342), which would have an estimated $61 million in annual costs if there were full compliance. Together, full compliance with these four standards would cost, by our estimate, $372 million annually, or about 80% of the total for all of the standards.

Booz Allen's analyses assessed only the costs that State, local, and private agencies would incur if they adopt and implement the standards in their own facilities. Thus, Booz Allen's analyses do not include the compliance costs of those federal facilities to which the final rule applies. We supplemented the Booz Allen analyses with our own internal assessments of the costs that the two relevant Department of Justice components— the Bureau of Prisons (BOP) and the United States Marshals Service (USMS)—would incur in implementing the standards in the facilities they operate or oversee. **Together, these two DOJ**

components expect to spend approximately $1.75 million per year over fifteen years to comply with the standards.

Stringency of the PREA Standards

Executive Order 13563 calls upon agencies, "in choosing among alternative regulatory approaches," to select "those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity)." In Part 2, we address criticisms from some commenters that the proposed standards failed to maximize net benefits insofar as they failed to "regulate" at an optimally stringent level.

Specifically, the IRIA was criticized for ending its analysis with a determination that the costs of the proposed rules break even with their benefits at a relatively low level of effectiveness, without considering whether more stringent regulations in various areas may be more economically justifiable in light of their potential for even greater effectiveness.

However, as alluded to above, PREA authorizes the Department to directly procure compliance with the standards only insofar as they apply to certain federal confinement facilities. *See* 42 U.S.C. § 15607(b). For the thousands of State and local agencies and private companies that operate confinement facilities across the country, PREA provides the Department with no direct authority to mandate binding standards for their facilities.

For State agencies that receive grant funding from the Department to support their correctional operations, Congress has provided that the Department shall withhold 5% of prison-related grant funding to any State that fails to certify that it "has adopted, and is in full compliance with, the national standards." For county, municipal, and privately-run agencies that operate confinement facilities, the Act lacks any corresponding sanctions for facilities that do not adopt or comply with the standards.

Thus, due to the statutory scheme, pivotal to the effectiveness of the standards is a voluntary decision by State, county, local, and private correctional agencies to adopt the standards and to comply with them. In deciding whether to adopt these standards, agencies will of necessity conduct their own analyses of whether they can commit to adopting the standards in light of other demands on their correctional budgets.

Despite the absence of statutory authority to promulgate standards that would bind State, local, and private agencies, other consequences may flow from the issuance of national standards that could provide incentives for voluntary compliance. For example, these standards may influence the standard of care that courts will apply in considering legal and constitutional claims brought against corrections agencies and their employees arising out of allegations of sexual abuse. Moreover, agencies seeking to be accredited by the major accreditation organizations will need to comply with the standards in the final rule as those organizations adopt the standards as a condition of accreditation.

The Attorney General has concluded that, among the available alternatives, the standards in the final rule define measures and programs that, when implemented, will prove effective in accomplishing the goals of the statute while also promoting flexible decisions by the affected agencies on how to achieve compliance in a manner that works best given their unique circumstances and environments. Standards that could potentially maximize net benefits in the abstract would risk actually being less effective, either due to the failure of States and localities to

adopt them at all, or due to the damaging consequences that the full costs of compliance could have on funding available for other critical correctional programs.

1 INTRODUCTION AND SUMMARY OF PROCESS

In the Prison Rape Elimination Act of 2003 (PREA), Pub. L. No. 108-79, *codified at* 42 U.S.C. §§ 15601-15609, Congress directed the Attorney General to "publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape." 42 U.S.C. § 15607(a)(1). The statute further directed that the Attorney General "shall not establish a national standard … that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities." 42 U.S.C. § 15607(a)(3).[3] This limitation requires that the Department analyze the costs of the national standards that it adopts in its final rule.

Moreover, Executive Order 12866, *Regulatory Planning and Review*, as recently reaffirmed and supplemented by Executive Order 13563, *Improving Regulation and Regulatory Review*, requires the Department to conduct a Regulatory Impact Assessment (RIA) to assess the benefits and costs of its final rule.[4] An RIA must include an assessment of both the benefits and costs of the regulatory action, "together with, to the extent feasible, a quantification" of those benefits and costs, as well as a discussion of potentially effective and reasonably feasible alternatives. E.O. 12866, § 6 (3)(a)(C)(i) and (ii).

The Department has prepared an RIA that assesses, and monetizes to the extent feasible, the benefits of prison rape reduction and the costs of full nationwide compliance with the Attorney General's national standards.

The Department has not estimated the expected monetized benefit of the standards themselves but has instead opted for a break-even approach that estimates the baseline level of prison rape and the costs associated with such victimizations, and correspondingly the amount of rape reduction that the standards would have to be effective in achieving for the benefits of the standards to break even with the costs of full nationwide compliance. The actual monetized benefit of the standards will depend on a number of factors, including the extent to which facilities comply with the standards and the extent to which the standards are effective in achieving their goals.

Moreover, as explained more fully below, the annual costs of full nationwide compliance that are estimated in this RIA are likely to be significantly greater than the actual annual outlays of confinement facilities as they come into compliance with the standards.

The process by which the Department has assessed the benefits of prison rape reduction and the full nationwide compliance costs of the national standards contained in the final rule tracks, to a significant extent, the process by which the rule itself was developed, which is described at some length in the preamble to the Notice of Final Rule.

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[3] Congress thus insisted that PREA's aims be balanced against a sensitivity to the "budgetary circumstances" that often challenge the ability of correctional and law enforcement agencies to make major changes to their operating procedures. 42 U.S.C. § 15605(a).

[4] The Department has determined that this rule is a "significant regulatory action" under E.O. 12866, § 3(f)(1), and accordingly has submitted this rule to the Office of Management and Budget (OMB) for review. Executive Order 12866 requires Federal agencies to conduct a benefit-cost analysis for any regulation that is "economically significant"— that is, a regulation expected to have an annual impact on the economy of $100 million or more. *See* E.O. 12866, § 6(a)(3)(c); *see also* OMB, Circular A-4, at 1 (Sep. 17, 2003), available at http://www.whitehouse.gov/omb/circulars_a004_a-4/. The Department has concluded that the economic impact of its adoption of the final rule is likely to exceed this $100 million threshold, because the standards would potentially affect the management of virtually every inmate confinement facility in the nation—facilities that collectively house over 2.4 million individuals at any given time and spent more than $79.5 billion annually as of 2008. *See* BJS, *Justice Expenditure and Employment Extracts 2008*, unpublished advance estimate. The final rule, moreover, "materially alters . . . the rights and obligations of grant recipients," and "raise[s] novel legal or policy issues." E.O. 12866, §§ 3(f)(3), (4).

In brief, PREA established the National Prison Rape Elimination Commission (NPREC, or the Commission), which spent several years undertaking a comprehensive legal and factual study of the causes of prison sexual abuse and its penological, physical, mental, medical, social, and economic impacts on inmates, on government functions, and on the communities and social institutions in which confinement facilities operate.

In June 2009, the Commission forwarded to the Attorney General a lengthy report describing its findings and offering a number of recommendations to the Department as to the content of national standards. According to its report, NPREC did take a number of cost considerations into account in formulating its recommendations to the Department. However, it did not undertake to calculate the costs of any of its recommended standards, nor did it collect data from which an assessment could be made of the costs of full nationwide compliance with them.

After receiving the Commission's report, the Department published an Advance Notice of Proposed Rulemaking (ANPRM) in which it solicited public comment on the Commission's recommendations, including on the compliance costs associated with those recommendations. *See* 75 Fed. Reg. 11077 (DOJ Mar. 10, 2010). The Department received and reviewed over six hundred comments in response to the ANPRM, many of which contained data submitted by correctional agencies and other stakeholders that shed light on the costs of implementing NPREC's recommended standards.

In connection with its review of the comments submitted on the ANPRM, the Department commissioned an outside contractor, the consulting firm Booz Allen Hamilton, to undertake a cost analysis of the standards recommended by NPREC. Booz Allen selected a sample of 49 correctional agencies and facilities from across the country, of various types and characteristics,[5/] and it conducted detailed surveys, site visits, and data analyses to estimate the costs that each of these agencies or facilities would incur if they complied fully with the recommended standards.

From this sample and other data, Booz Allen was able to extrapolate the estimated national full compliance costs. Specifically, Booz Allen concluded that full national implementation of NPREC's recommended standards would total approximately $6.5 billion in upfront costs plus an additional $5.3 billion annually in ongoing costs. The details of the methodology Booz Allen used to conduct this cost analysis are set forth elsewhere in this Report. Booz Allen was not asked to evaluate or monetize the benefits of reducing the prevalence of prison rape and sexual abuse, through NPREC's recommended standards or otherwise.

The Department considered NPREC's detailed findings and recommendations, together with the comments received on the ANPRM and the Booz Allen cost analysis, and based on these materials and its own analyses and deliberations it drafted a Notice of Proposed Rulemaking (NPRM). *See* 76 Fed. Reg. 6248 (Feb. 3, 2011). The Department's proposed rule incorporated many aspects of the standards that NPREC had recommended, but for a number of proposed standards the Department's

[5/] It is important to note that Booz Allen's sample was not randomly selected, and that the sampling design was not probability-based. Given the number of jurisdictions and facilities covered under the statutes (and the final rule), the cost of collecting in-depth data, the burden imposed on willing participants in such data collections, and time constraints applicable to the regulatory process, neither a random sampling nor a truly representative sampling was possible. Instead, Booz Allen purposively and logically selected a sample of 49 different jurisdictions and facilities from different geographical regions and of different sizes (*i.e.*, average daily populations) from which in-depth data could efficiently be collected for purposes of nationwide extrapolations. We cannot specify the probability that any particular characteristic that may be possessed by a given facility has been included in Booz Allen's Phase II sample.

approach differed from what NPREC had recommended.

Accompanying the NPRM was an Initial Regulatory Impact Assessment (IRIA), which the Department made available to the public online at http://www.ojp.usdoj.gov/programs/pdfs/prea_nprm_iria.pdf. With additional input from Booz Allen regarding the monetizable costs of implementing the standards—based on analyses of the proposed rule Booz Allen conducted for the Department in the fall of 2010—this IRIA presented an assessment of both the benefits of prison rape reduction and the costs of full nationwide compliance with the proposed standards, together with a detailed discussion of its methodologies and of the data and assumptions used in the analysis.

In brief, using a break-even analysis, the IRIA concluded that full nationwide compliance with the proposed standards would generate monetizable benefits in excess of costs if it reduced the annual prevalence of prison rape by relatively small amounts. For example, with respect to prisons, a 0.6%-0.9% decrease from the baseline number of annual prison rape victims would result in the monetized benefits of the proposed standards breaking even with their ongoing full compliance costs. For jails, a 2.8%-4.2% decrease from the baseline would justify the ongoing costs of full compliance with the proposed standards.

Further, the IRIA concluded that the costs of full nationwide compliance with the proposed standards would not constitute "substantial additional costs" within the meaning of PREA.

The main findings and conclusions of the IRIA were summarized in the preamble to the NPRM, at 76 Fed. Reg. 6248, 6266-74. Included within that summary were 27 specific questions on which the Department sought public comment in relation to the IRIA and to various aspects of the break-even analysis of the proposed standards.

During the public comment period, the Department received over 1,300 comments on the NPRM from a wide assortment of individuals and organizations. Several hundred of these comments addressed the IRIA, offered answers to the 27 specific questions we asked, or otherwise discussed the costs or benefits of the proposed standards. Many of these commenters provided either empirical or anecdotal data to support their observations and suggestions.

After having closely reviewed and deliberately considered all relevant information in its possession—*e.g.*, NPREC's reports, findings, and recommendations; the public comments to the ANPRM and the NPRM, and the data contained therein; the Booz Allen studies; other data available to relevant Department components such as the Civil Rights Division, BJS, the National Institute of Justice (NIJ), OJJDP, and the National Institute of Corrections (NIC); internal cost assessments supplied by the Bureau of Prisons (BOP) and the U.S. Marshals Service (USMS); and other publicly available information—the Department has now drafted the Notice of Final Rule, which sets forth the text of the national PREA standards it is promulgating, along with an explanation of the bases for those standards.

As elaborated in the preamble to the Notice of Final Rule, the Department has made a number of changes to the standards proposed in the NPRM. As a general matter, the changes made have resulted in the standards being by and large more stringent than the proposed standards.

In preparing this Report, the Department once again drew on assistance from Booz Allen, with which it contracted in the late spring of 2011 to undertake an assessment of the compliance costs associated with full implementation of the final

rule, which at that time was in draft form. The details of the methodology Booz Allen used to conduct this cost analysis are set forth elsewhere in this Report.

For most of the standards in the final rule, Booz Allen drew on its analyses of NPREC's recommended standards and of the standards proposed in the NPRM, and it compared the standards in the final rule against the earlier iterations to identify changes that would potentially have an impact on the costs of compliance. Booz Allen then monetized the effect of those cost impacts and extrapolated nationwide estimates of the costs associated with each standard over the projected cost horizon.

For some standards, either Booz Allen or the Department chose to utilize other methodologies not tied to the earlier analyses, either because the standard was new or had been significantly changed from previous versions, or because the Department, based on comments received or its internal deliberations, determined that a different methodology would lead to a more realistic cost estimate.

The benefits analysis in this Report was undertaken within the Department, using methodologies and data described below, without assistance from Booz Allen.

A substantial number of commenters specifically addressed issues relating to the costs and benefits of the proposed rule, or to the methodologies, data, assumptions, conclusions, and estimates set forth in the IRIA. Many provided helpful responses to specific questions we asked in the NPRM with respect to benefits and costs. As with the comments as a whole, the Department carefully reviewed and considered all of the comments that pertain to costs and benefits and, where appropriate, incorporated the suggestions of commenters, as well as any data that they supplied, into the Department's assessment of the costs and benefits of the final rule.

While most of the comments the Department received in response to the NPRM are summarized in the preamble to the Notice of Final Rule, along with summaries of the Department's response to those comments, comments which relate to the IRIA or to the benefits and costs of the proposed standards are summarized and responded to in this Report.

2 STATEMENT OF THE NEED FOR REGULATORY ACTION

2.1 Statutory Basis and Need for the Final Rule[6/]

PREA states that the Attorney General "shall publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape." 42 U.S.C. § 15607(a)(1). The standards "shall be based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission …, and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider." *Id*. § 15607(a)(2), (a)(3).

Many of the evidentiary and public policy justifications for the final rule are set forth in PREA itself. In the first section of the statute, Congress set forth fifteen findings relating to the prevalence of prison rape, and its impact on society, that serve to justify not only the statute but also the ensuing regulations promulgated thereunder. *See id*. § 15601.

The preamble to the Notice of Final Rule includes additional discussion of the factual predicate for the standards, and of the public needs to which the standards are responsive. Still more discussion of the need for the regulation emerges from subsequent sections of this Report, especially section 3 (describing the prevalence of prison rape) and section 4 (analyzing the cost of prison rape to the victims and to society). As those two sections conclude, prison rape costs this country at least $52 billion a year. Suffice it to say that, given the destructive, reprehensible, and illegal nature of rape and sexual abuse in any setting, but especially in the correctional environment, strong and clear measures must be adopted.

2.2 The Stringency of the Standards

Some commenters raised the concern that the NPRM could have proposed more stringent standards and did not go far enough to address the underlying problem of prison rape. These commenters asserted that the Department had underestimated the benefits of rape prevention or overestimated the costs of full nationwide compliance with the standards. Many of the standards set forth in the final rule are now somewhat more stringent (*i.e.,* more demanding of corrections agencies) than were the standards proposed in the NPRM.

A public policy think tank expressed the view that the Department should optimize net benefits by defining the specific point at which compliance costs associated with the rule cross the statutory threshold of "substantial additional costs," and by then promulgating standards at the maximum level of stringency consistent with that cost threshold. The commenter criticized the IRIA for ending its analysis with a determination that the costs of the proposed rules break even with their benefits at a relatively low level of effectiveness, without considering whether more stringent regulations in various areas may be more economically justifiable in light of their even greater effectiveness.

A human rights advocacy organization echoed these views and argued that the Department should identify those standards that, if adopted, would have the greatest direct effect in mitigating

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[6/] The governing Executive Orders and implementing OMB guidance require that agencies begin their RIAs with a statement as to why the agency is issuing a regulation in the first place. If a regulation is required by statute or judicial directive, the RIA should clearly explain the specific authority, extent of agency discretion, and permissible regulatory instruments. *See* E.O. 12866, § 1(a) ("Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people."); OMB Circular A-4, at 4-6.

prison rape, and should then promulgate those standards unless it concludes that they would definitely impose "substantial additional costs." The commenter argued that the standards recommended by NPREC, by virtue of being more stringent than those proposed in the NPRM, would be more effective in mitigating prison rape than the proposed rules; moreover, because the IRIA did not expressly conclude that the NPREC standards would impose substantial additional costs on the corrections industry, the Department should have adopted those recommended standards without further analysis.

PREA mandates compliance with the standards, however, only insofar as they apply to certain federal confinement facilities. For the thousands of State and local agencies, and private companies, that own and operate confinement facilities across the country, PREA does not provide the Department direct authority to mandate binding standards for their facilities. Instead, the Act depends upon State and local agencies to make voluntary decisions to adopt and implement the national standards.

For State agencies that receive grant funding from the Department to support their correctional operations, Congress has provided that the Department shall withhold 5% of prison-related grant funding from any State that fails to certify that it "has adopted, and is in full compliance with, the national standards," or that alternatively fails to provide "an assurance that not less than 5 percent" of the relevant grant funding "shall be used only for the purpose of enabling the State to adopt, and achieve full compliance with, those national standards, so as to ensure that a certification [of compliance] may be submitted in future years." *Id*. § 15607(c)(2). For county, municipal, and privately-run agencies that operate confinement facilities, the Act lacks any corresponding sanctions for facilities that do not adopt or comply with the standards.[7/]

Despite the absence of statutory authority for the Department to promulgate standards that would bind State, local, and private agencies, other consequences may flow from the issuance of national standards, which could provide incentives for voluntary compliance on the part of those agencies. For example, these standards may influence the standard of care that courts will apply in considering legal and constitutional claims brought against corrections agencies and their employees arising out of allegations of sexual abuse.

Moreover, agencies seeking to be accredited by the major accreditation organizations will need to comply with the standards in the final rule as those organizations adopt the standards as a condition of accreditation.[8/] In addition, the statute requires the Attorney General each year to "publish a report listing each grantee that is not in compliance with the national standards," 42 U.S.C. § 15607(c)(3), and the prospect of appearing in such a report might induce some non-compliant agencies to work towards compliance.

Nevertheless, pivotal to the statutory scheme is a voluntary decision by State, county, local, and private correctional agencies to adopt the standards and to comply with them (or, alternatively, for States, at least to commit to expending

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[7/] A small number of States operate unified correctional systems, in which correctional facilities typically administered by counties or cities—such as jails—are operated instead by State agencies. *See* Barbara Krauth, *A Review of the Jail Function Within State Unified Corrections Systems* (Sept. 1997), available at http://static.nicic.gov/Library/014024.pdf. In such States, an assessment of whether the State is in full compliance would encompass those facilities as well.

[8/] The statute requires that organizations responsible for the accreditation of Federal, State, local, or private prisons, jails, or other penal facilities may not receive any new Federal grant funding if they fail to adopt accreditation standards consistent with the standards in the final rule. 42 U.S.C. § 15608. This provision can be expected to have some derivative effect on the response of county and other local correctional agencies to the national standards.

5% of federal prison-related grant funds to come into compliance in future years). In deciding whether to adopt these standards, agencies will of necessity conduct their own analyses of whether they can commit to adopting them in light of other demands on their correctional budgets.

Indeed, the commenters referenced above recognized as much. The human rights advocacy organization noted that "we understand the Department's desire to adopt standards that are logistically and financially feasible and that will have 'buy in' from the correctional community." Similarly, the public policy think tank noted that "people maximize utility when deciding whether or not to engage in some activity, ultimately going forward if their benefit is greater than or equal to any expected penalty. For a PREA-governed facility, the benefit of non-compliance is the income saved by not instituting DOJ-mandated standards, while the cost is the probability of detection multiplied by the actual penalty."

We cannot assume that all agencies will choose to adopt and implement these standards. Agencies assessing whether to do so may well conclude that, insofar as the standards affect their agencies, the costs *to them* outweigh the benefits *to them*, favoring a decision not to comply. A State agency might conclude, for example, that it would be cheaper and therefore preferable to forgo the 5% in grant funding than it would be to comply with the standards.

We anticipate that most agencies will not reach that conclusion, and will instead consider the benefits of prison rape prevention not only to themselves but also to the inmates in their charge and to the communities to which the agencies are accountable.

Nevertheless, we cannot ignore the straitened "budgetary circumstances" confronting many correctional agencies. Congress was acutely aware of these circumstances, 42 U.S.C. § 15605(a), and its mandate to the Department was not to make matters worse by imposing unrealistic or unachievable standards but rather to partner with those agencies in adopting and implementing policies that will yield results.

Public dollars have to come from somewhere, and in tight budgetary times State and local correctional authorities that do choose to adopt and implement the PREA standards may be tempted to cut other correctional programs vital to protecting inmates and ensuring their eventual reintegration into society.

There are ample reasons to conclude that standards which could potentially "maximize net benefits," in the theoretical manner suggested by some commenters, would risk actually being less effective in reducing the prevalence of prison rape, either due to the failure of States and localities to adopt them at all, or due to the damaging consequences that the full costs of compliance could have on funding available for other critical correctional programs.

The statute does not mandate any specific approach in developing the standards, but instead relies upon the Attorney General to exercise his independent judgment. The Attorney General has concluded that the standards in the final rule define measures and programs that, when implemented, will prove effective in accomplishing the goals of the statute while also promoting voluntary compliance decisions by the affected agencies.

3 THE BASELINE PREVALENCE OF PRISON RAPE

For purposes of regulatory analysis, a benefit is an improvement upon the *status quo* due to implementation of the promulgated rule. *See* OMB Circular A-4, at 2, 15-16. Accordingly, to quantify the benefit of the PREA standards, one needs first to establish the baseline (*status quo*) that would exist in the absence of the standards, so that changes to that baseline attributable to the standards can be identified. *Id*.

Here, the relevant baseline is the amount of sexual abuse that would occur in America's prisons, jails, lockups, juvenile centers, and CCF settings in the absence of the PREA standards.

3.1 Sources of Baseline Data

In enacting PREA, Congress noted the difficulty of assessing the prevalence of prison rape but concluded that the problem was large:

> Insufficient research has been conducted and insufficient data reported on the extent of prison rape. However, experts have conservatively estimated that at least 13 percent of the inmates in the United States have been sexually assaulted in prison. Many inmates have suffered repeated assaults. Under this estimate, nearly 200,000 inmates now incarcerated have been or will be the victims of prison rape. The total number of inmates who have been sexually assaulted in the past 20 years likely exceeds 1,000,000.

42 U.S.C. § 15601(2).

In 2003, when PREA was enacted, there were few reliable, empirical data available concerning the frequency with which inmates in this country were subjected to sexual abuse. One of the purposes of PREA was to solve this problem: Congress directed the Department's Bureau of Justice Statistics (BJS) to undertake annual comprehensive studies and statistical reviews aimed at improving the resolution and accuracy of estimates of sexual violence in prisons. *See* 42 U.S.C. §§ 15602(4), 15603.

BJS established the National Prison Rape Statistics Program, which collects data in two ways. First, BJS has conducted an annual national review of institutional records documenting allegations of sexual violence in adult and juvenile confinement facilities (the *Survey of Sexual Violence (SSV)*). To date, BJS has published the results from surveys conducted for calendar years 2004 through 2008 in adult facilities and 2004 through 2006 in juvenile facilities. The most recent surveys were published in early 2011.[9/]

The SSV was designed to measure the number of reported allegations of inmate-on-inmate and staff-on-inmate sexual misconduct and to collect detailed information on the outcomes of follow-up investigations, including whether the reported incidents were substantiated. Items in the surveys included the circumstances surrounding each alleged incident, characteristics of victims and perpetrators, the type of physical force or pressure used, victim injuries, and sanctions imposed. These surveys (which reached facilities housing more than 2.12 million inmates in 2007 and 2.17 million inmates in 2008), provide an understanding of what corrections officials know, what information is recorded, how allegations are handled, where incidents occur, and how officials respond to allegations brought to their attention.

Second, BJS also developed a national prisoner survey (the *National Inmate Survey (NIS)*) and a corresponding survey of youth in juvenile confinement facilities (the *National Survey of*

[9/] BJS, *Sexual Violence Reported by Correctional Authorities 2007-2008* (NCJ 231172) (Jan. 2011) (BJS Adult SSV 2008); BJS, *Sexual Violence Reported by Juvenile Correctional Authorities 2005-06* (NCJ 215337) (July 2008) (BJS Juv. SSV 2005-06).

Youth in Custody (NSYC)). Since 2007, these surveys have collected allegations of sexual victimization directly from victims, through computer-assisted self-interviews administered to adult inmates in prisons and jails and to youth held in juvenile facilities. These surveys were conducted on a very large scale: the most recent adult survey (2008-09) was administered to 32,029 inmates in 167 state and federal prisons nationwide, and to 48,066 inmates in 286 jails nationwide.[10/] The most recent juvenile survey (also 2008-09) was administered to 10,263 youth held in 195 facilities across the country.[11/]

Together, the two BJS surveys provide more empirical data on the level of sexual violence in America's prisons than existed when PREA was enacted in 2003.[12/] However, the statistics based on institutional reports reflect a very different (and much lower) level than do those based on inmate reports. This can be expected, because only a fraction of incidents of sexual abuse in a prison environment will typically come to the attention of correctional authorities or be reflected in institutional records.[13/] But the existence of a significant difference between the two data sets requires a choice to be made for purposes of assessing the baseline.

In estimating the baseline level of prison sexual abuse for purposes of this RIA, we rely on BJS's inmate-reported surveys, although we do incorporate substantiation data from the facility-reported surveys in order to deal with false positives, as discussed in section 3.5 below.

For present purposes, we prefer the inmate surveys over the institutional surveys for two reasons. First, as BJS itself notes in its reports of allegations compiled from institutional administrative records, "given the absence of uniform reporting, caution is necessary for accurate interpretation of the survey results. Higher or lower counts among facilities reflect variations in definitions, reporting capacities, and procedures for recording allegations as opposed to differences in the underlying incidence of sexual victimization." BJS Adult NIS 2008-09, at 2.

Second, the institution-reported data almost certainly undercount the number of actual sexual abuse victims in prison, due to underreporting by victims. As discussed in section 3.5, for a variety of reasons, many sexual abuse victims do not report their abuse to institutional managers. Indeed, of the adult respondents to the inmate

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[10/] BJS, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09* (NCJ 231169) (Aug. 2010) (BJS Adult NIS 2008-09).

[11/] BJS, *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-09* (NCJ 228416) (Jan. 2010) (BJS Juv. NSYC 2008-09).

[12/] The NIS and NSYC surveys used random samples, respectively, of (1) the adult prison and jail populations and (2) adjudicated youth held in State-operated juvenile facilities. Both studies adjusted statistically for non-response (in other words, for the selectivity of participating inmates/youth) and included measures to eliminate the possibility that non-response or selectivity factors may be correlated with sexual victimization.

BJS discovered no evidence of any association between high or low response rates and the percent of randomly sampled inmates/youth who report having been sexually victimized. Moreover, the response rates achieved in the BJS surveys are remarkably high for this subject area; no other studies have achieved such high response rates in this area. In addition, BJS's statistical adjustments take into account variations in non-response, and these are characteristics that may co-vary with reports of sexual victimization at the individual level and at the facility level. Finally, the same protocol was used in the adult facilities and in the juvenile facilities, yet response rates varied across facilities, as did reports of sexual victimization. This casts doubt on the hypothesis that victims were more likely to respond to the surveys than non-victims.

In statistical terms, BJS developed a propensity model for non-response in the NIS and the NSYC, which modeled the likelihood of participating in the survey by a series of demographic characteristics that are available for all sample inmates (both responding and non-responding). It then used the results of this model to adjust the initial sampling weights. Thus, responses from interviewed inmates were weighted to provide national-level and facility-level estimates. Each interviewed inmate was assigned an initial weight corresponding to the inverse of the probability of selection within each sampled facility. A series of adjustment factors was applied to the initial weight to minimize potential bias due to non-response and to provide national estimates. Bias occurs when the estimated prevalence is different from the actual prevalence for a given facility. In each facility, bias could result if the random sample of inmates did not accurately represent the facility population. Bias could also result if the non-respondents were different from the respondents. Post-stratification and non-response adjustments were made to the data to compensate for these two possibilities. The details of BJS's methodology for making these adjustments are set forth in BJS Adult NIS 2008-09 and BJS Juv. NSYC 2008-09.

[13/] *See infra*, notes 34 to 35 and accompanying text.

surveys, between 69% and 82% of inmates who reported sexual abuse in response to the survey stated that they had never reported an incident to correctional managers. *See* BJS Adult NIS 2008-09, at 22-23. Thus, the data drawn from institutional surveys almost certainly miss thousands of victims that the inmate surveys capture.

In the NPRM, we asked whether there are any reliable, empirical sources of data, other than the BJS studies referenced above, that would be appropriate to use in determining the baseline level of prison sexual abuse. Quite a few commenters responded that they were unaware of any alternative data sources, but some commenters did refer us to a few potential sources of additional data, generally to support an argument that prison sexual abuse is not quite as prevalent as we represented it to be in the IRIA. However, none of these cited sources proved particularly useful to our analysis or persuaded us to reconsider findings we drew from BJS data.

The study most frequently cited looked at only 1788 inmates, all male, in just seven prison facilities, all in the Midwest.[14/] The methodology of that study is questionable in several respects,[15/] and the study itself concedes that its conclusions are suspect given the relatively low participation rate (25%) among both inmates and staff surveyed.[16/]

Another article to which we were referred—a meta-analysis of previous studies on the subject—was even less useful; the article merely criticizes the methodologies and conclusions of a number of other studies (many of which are quite dated) and does not present any data or findings that are helpful to the present enterprise.[17/]

The only other study cited by commenters is quite limited in what it can contribute: a relatively small-scale study (n=322) of male California prison inmates who were surveyed only about inmate-on-inmate sexual abuse. Without opining on the methodology of this study, we do note that its conclusions as to the prevalence of prison sexual abuse in California are broadly consistent with those emerging from the BJS reports.[18/]

One State corrections agency commented that the BJS data are reliable but suggested that the SSV is a better source for determining the baseline rate of sexual victimization in correctional settings than is the NIS/NSYC, since the SSV relies on actual investigations of sexual victimization allegations, as documented on annual reports that use standardized definitions and that apply across all States. We disagree, for reasons stated above, and believe that the NIS and NSYC provide a more representative and realistic indication of prevalence than does the SSV. In the discussion

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[14/] *See* Cindy and David Struckman-Johnson, *Sexual Coercion Rates in Seven Midwestern Prison Facilities for Men*, 80 PRISON J. 379 (Dec. 2000).

[15/] For example, the study did not draw its conclusions from a random or even representative sample of prison facilities. The authors requested participation from corrections departments in fourteen states, but only four of these departments chose to participate in the study, collectively offering the authors the opportunity to survey inmates and staff in seven facilities. Thus, both the agencies and the specific facilities that participated in the study were essentially self-selected, which is not the case for BJS's studies and can be expected to produce results that cannot necessarily be extrapolated to other facilities.

[16/] *Id.* at 388 ("We cannot be sure that a sexual coercion rate reported by only 25% of the total population of inmates in a facility reflects the 'true' sexual coercion rate.").

[17/] *See* Tonisha R. Jones and Travis C. Pratt, *The Prevalence of Sexual Violence in Prison: The State of the Knowledge Base and Implications for Evidence-Based Correctional Policy Making*, 52 INT'L J. OFFENDER THERAPY & COMPARATIVE CRIMINOLOGY 280 (Sep. 2007).

[18/] *See* Valerie Jenness, Cheryl Maxson, *et al.*, *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, Report of the Univ. of Cal. Irvine Ctr. for Evidence-Based Corrections, to the Cal. Dep't of Corrections and Rehab. (CDCR) (Apr. 2007), available at http://ucicorrections.seweb.uci.edu/sites/ucicorrections.seweb.uci.edu/files/Jenness%20et%20al._PREA%20Report.pdf. The report found that 4.4% of the surveyed inmates reported experiencing sexual abuse while in a California correctional facility and 1.3% reported engaging in sexual acts that they did not define as against their will but which they would nonetheless rather not do. *Id.* at 27. These conclusions were presented with the following caveat: "The numbers presented in this section should be interpreted with caution and contemplation, especially as they move beyond the prisons from which the data used to generate them were collected and are utilized to speak to unknown parameters in the CDCR population." *Id.* at 26.

of false positives set forth below in section 3.5, however, we have incorporated into the analysis the substantiation data from the SSV to arrive at a factor to potentially compensate for false positives.

Another State corrections agency also criticized the BJS studies for failing to establish a baseline on a state-by-state basis. The NIS is not intended, however, to provide state-level estimates; such a collection would require a dramatic increase in the number of sample facilities and the number of inmates interviewed, all of which would be beyond BJS's mandate under PREA. The SSV provides state-level counts for prisons but is not designed to provide state-level estimates for jails. However, BJS cautions against making state comparisons using the data from the SSV due to variations in record keeping, definitions, counting rules, and investigation procedures, among other factors.

Finally, a State juvenile detention council referred us to a report from an audit committee of that State's legislature, which purported to criticize several aspects of the methodologies that BJS uses in conducting the NSYC. BJS's 2008-09 NSYC report contained findings suggesting that two of this State's juvenile facilities had among the highest rates of sexual victimization in the country, which triggered an investigation by the State's legislature. The ensuing audit report sought to defend the State and its employees against the BJS findings by publicly criticizing the process by which those findings were obtained.[19/] In particular, the report argued that the NSYC overstates the true level of sexual victimization in the juvenile facilities because it does not adequately account for the possibility that many of the allegations of sexual abuse in the survey responses are fabricated or exaggerated by responding youth.

A limitation of anonymous surveys such as these is that they do not involve any follow-up investigation or substantiation of reported incidents. Nevertheless, because the survey responses are anonymous and confidential and do not call upon inmates to identify the names of their abusers, an inmate's incentive to fabricate or exaggerate allegations of abuse for strategic or retaliatory purposes may be reduced. We have nevertheless attempted to compensate for this limitation here by developing a methodology for potentially adjusting the prevalence estimates to account for both false positives and false negatives, as elaborated in section 3.5 below.

We, in any event, find the specific criticisms directed towards BJS's methodology for conducting the NSYC and NIS to be without merit.[20/] BJS designed its surveys with a number of internal checks and controls built in, aimed at identifying and excluding inmates whose interview responses suggested (*e.g.*, through extreme or inconsistent response patterns) either a lack of sincerity or a lack of understanding of the questions. *See, e.g.*, BJS Adult NIS 2008-09, at 31; BJS Juv. NSYC 2008-09, at 6, 17.

[19/] Similarly, several state departments of corrections trying to make the case for lower prevalence levels argued in their comments that the NIS and NSYC studies "are not methodologically sound to be relied upon to establish baseline levels of sexual abuse."

[20/] The State juvenile detention commenter referenced above questioned the methodology that BJS uses to quality control the NSYC and to validate positive responses. According to this commenter, while BJS analyzed inconsistent response patterns in order to determine the validity of responses, the methodology was defective because it excluded juveniles with three or more inconsistent indicators, but not those with two inconsistent indicators. Moreover, the commenter argued that respondents who failed to provide sufficient information in response to the survey's follow up questions should have been excluded from the analysis along with those who provided inconsistent responses.

These criticisms are without merit. BJS's reports provide considerable detail (summarized in the text above) as to what specific procedures were used to validate positive responses and to check for extreme and inconsistent response patterns. The threshold of three or more inconsistent indicators was chosen after careful consideration, because to exclude more interviews would not have been justified given that the survey only captures allegations rather than substantiated incidents. Moreover, no study would ever base its findings on only those respondents who provide data on every item in the survey. All respondents who passed the data quality checks were included in subsequent analyses of the data. If a respondent failed to respond to a particular item in the survey, he or she was not included in the specific tabulation of that item.

In addition, both surveys use technology to address low levels of literacy, use range and logic checks to guard against reporting of unrealistic values, impose time restrictions to assist respondents having difficulty with the interview, and do not inform respondents of the questions in advance (which mitigates the possibility of collusion). Moreover, the validity of the surveys is supported by the credibility of response patterns (*e.g.*, distribution of activities) and by co-variation with other measures (*e.g.*, some facilities in "high rate" category have known history of problems).

The commenters who criticized the BJS studies fail to explain why the alleged deficiencies in the BJS methodologies would not affect all facilities, including those facilities that showed a very low level of sexual abuse. In other words, the fact that their own facilities showed a high level of sexual abuse relative to other facilities across the country has nothing to do with the methodologies that BJS uses to assess the prevalence of sexual abuse across all facilities that it surveys.

We note, finally, that none of the commenters who raised methodological criticisms of the BJS data offered any alternative sources of data as to the baseline prevalence of prison rape.

In short, the NIS and NSYC comprise the most rigorous and large-scale studies of prison rape prevalence ever undertaken, and the methodologies underlying these studies have been repeatedly peer-reviewed and endorsed by academics and experts from across the country. Indeed, one State juvenile detention agency remarked that the national surveys conducted by BJS are the *only* nationwide surveys that examine the incidence of sexual abuse in juvenile confinement facilities. An advocacy organization, meanwhile, noted that the BJS inmate and resident surveys are the most comprehensive and credible studies to date that measure the prevalence of sexual abuse behind bars.

We therefore stand behind the conclusions that BJS has drawn based on the NIS and NSYC.

3.2 Prevalence vs. Incidence

A number of comments addressed the issue of whether to focus on prevalence or incidence in measuring the baseline level of sexual abuse. Prevalence refers to the number of inmates who report having been sexually victimized one or more times during a given period while confined, whereas incidence refers to the number of discrete victimization events that take place. The distinction is consequential because a significant percentage of sexually victimized inmates reported having been victimized more than once.

For example, in the most recent BJS study of juvenile facilities, 81% of juveniles who reported youth-on-youth victimization recounted having been victimized more than once, with 32% reporting more than ten events; similarly, 88% of youth who reported staff sexual misconduct reported more than one incident, with 27% reporting more than ten. BJS Juv. NSYC 2008-09, at 12, 14.

Likewise, between one half and two thirds of adult inmates who reported sexual abuse in the prison setting claimed to have been victimized more than once. BJS Adult NIS 2008-09, at 21, 23. The frequency of multiple or serial victimization in confinement requires a choice to be made as to whether to rely on prevalence or incidence data in defining the baseline level of abuse.

BJS's institutional record reviews (the SSV) essentially measure reported incidence, since they identify the discrete number of alleged sexual abuse incidents that were reported to and investigated by correctional authorities, regardless of whether multiple allegations related to the same inmate.

By contrast, BJS's inmate surveys (the NIS and NSYC) primarily measure prevalence, since they identify the number of surveyed inmates who report having experienced one or more incidents of sexual abuse during the preceding twelve month period (or since admission to the facility, if less than 12 months). However, the inmate surveys potentially allow a type of incidence data to be extrapolated, since they ask respondents to select one of four boxes indicating whether the total number of times they have been victimized during the relevant period was 1, 2, 3-10, or 11+. For inmates who select the 3-10 box or the 11+ box, follow-up questions are asked to determine the exact number.[21/]

There are several reasons to attempt to use incidence data, if available. The statutory language suggests a preference for incidence data, repeatedly using that term both in defining BJS's data collection mandate (*see, e.g.*, 42 U.S.C. § 15603) and in enunciating the purpose of the statute (*see id*. § 15602(1)).[22/] Furthermore, an approach that relies solely on prevalence without taking into account the phenomenon of serial victimization risks understating the suffering, and the concomitant cost to society, of inmates who are repeatedly harmed by sexual predators.[23/]

Nevertheless, in the IRIA, we used prevalence data drawn from the inmate surveys without adjusting to account for multiple victimizations experienced by individual inmates.[24/] We did so for two reasons.

First and foremost, for reasons already explained, we use BJS's inmate-reported data (which primarily describe prevalence) rather than the facility-reported data. While the NIS and NSYC do ask respondents about the number of victimizations they have experienced, using these data to estimate incidence presents some difficulties. Where serial victimization occurs over a short period of time, it may be difficult to determine when one discrete incident ends and another begins. This phenomenon is exacerbated by the fact that BJS's inmate surveys ask prisoners to report their victimizations retrospectively—that is, to state whether they have been sexually victimized during the twelve months preceding the survey (or since admission to the facility, if less than twelve months).

While one would expect inmates to have a strong recollection of whether they were *ever* victimized during the preceding year, inmates who have been victimized multiple times may not accurately recall the specific number of times they were victimized during the reporting period. In fact, studies show that people have a difficult time remembering the details of discrete victimization events beyond approximately six events. Additionally, the very attempt to mentally relive or recollect each discrete event for purposes of counting them is often traumatic for victims, causing them to block out or misremember some subset of their experiences.[25/]

[21/] For youth, victims were asked directly how many times it happened.

[22/] On the other hand, elsewhere in the statute Congress defined the problem of prison rape in terms of its prevalence. *See, e.g.*, 42 U.S.C. § 15601(2) ("[A]t least 13 percent of the inmates in the United States have been sexually assaulted in prison. Many inmates have suffered repeated assaults. Under this estimate, nearly 200,000 inmates now incarcerated have been or will be the victims of prison rape. The total number of inmates who have been sexually assaulted in the past 20 years likely exceeds 1,000,000.").

[23/] *Compare* Lori A. Post *et al.*, *The Rape Tax: Tangible and Intangible Costs of Sexual Violence*, 17 J. INTERPERSONAL VIOLENCE 773, 777-79 (2002) ("[O]ur study underestimates sexual violence because we used prevalence instead of incidence. Females who have been raped or sexually assaulted are more likely to be assaulted a second time. Therefore, calculating the cost of sexual violence using incidents would produce greater numbers.").

[24/] Contrary to the views of a number of commenters, it is not, strictly speaking, true that we took no account whatsoever of serial victimization in the IRIA. To account for the problem of serial victimization in confinement settings, we multiplied the cost of rape per victim by 1.26 to reflect the average number of victimizations per victim, based on academic studies. *See* IRIA, at 19-20 n.31.

[25/] NATIONAL INST. OF JUSTICE RESEARCH REPORT, VICTIM COSTS AND CONSEQUENCES: A NEW LOOK at 2 (NCJ 155282) (Jan. 1996), *available at* www.ncjrs.gov/pdffiles/victcost.pdf.

While we received no comments on this issue from corrections agencies, several advocacy organizations criticized us for this approach. The main thrust of these comments was that using prevalence rates understates the true extent and severity of the problem, and that monetizing the costs (or avoidance benefits) of rape based on the number of individuals who have been abused without taking into account multiple points of victimization in turn understated the true cost to victims of their experience. These commenters remarked that each discrete incident of sexual abuse carries with it fiscal, health-related, and moral costs.

Having carefully considered these comments, we are not persuaded to abandon our decision to use prevalence data rather than incidence data. We recognize that this decision is likely to introduce a conservative bias into our baseline estimates, but we lack the analytical methods and data to improve on those estimates at this time, and correcting for undercounting—if we could—would only strengthen the benefit-cost justification of the standards.

We have, however, decided to make one significant adjustment to our prevalence estimates to make the consideration of serial victimization somewhat more transparent and direct. As elaborated in the next section, in our new hierarchies of sexual victimization types, we distinguish between victims who experienced a "high incidence" of abuse and those who experienced a "low incidence" of abuse. Using the survey responses to the NIS and the NSYC, we classified inmates who reported three or more victimizations as "high incidence," and those who reported two or fewer victimizations as "low incidence."

As elaborated in Part 4 below, these classifications have consequences for the monetized avoidance benefit values that we assign to the various types of sexual abuse, in the sense that high incidence victims are assigned a higher cost level than low incidence victims. We have chosen not to break down incidence classifications further than this, mainly because of the factors discussed on the preceding page (*e.g.*, the problem of impaired recall) but also to preserve analytical coherence.

3.3 Types of Sexual Victimization

3.3.1 *Adult Inmates*

Congress defined one of the purposes of PREA as to "standardize the definitions used for collecting data on the incidence of prison rape." 42 U.S.C. § 15602(5). Thus, in 2004 BJS developed standardized definitions to guide its data collection activities, and to drive efforts to unify institutional reporting procedures across the country.[26/]

BJS divides sexual victimizations reported by adult inmates into six different event categories—two for inmate-on-inmate victimizations and four for staff sexual misconduct. Inmate-on-inmate sexual victimizations are divided into "nonconsensual sexual acts" and "abusive sexual contacts only." The former refers to a broad range of serious conduct, including "unwanted contacts with another inmate … that involved oral, anal, vaginal penetration, hand jobs, and other sexual acts." BJS Adult NIS 2008-09, at 7, 32. "Abusive sexual contacts only," by contrast, refers to "unwanted contacts with another inmate … that involved touching of the inmate's buttocks, thigh, penis, breasts, or vagina in a sexual way." *Id*.

Staff sexual misconduct is divided between "unwilling activity" (incidents of unwanted sexual contacts) and "willing activity," which subsumes

[26/] BJS, *Sexual Violence Reported by Correctional Authorities 2004* (NCJ 210333).

contacts characterized by the reporting inmate as voluntary, even though all sexual contacts between inmates and staff are legally nonconsensual. *Id*. Within each of the categories of "willing" and "unwilling" contacts with staff, BJS statistics divide into "touching only" and "excluding touching." *Id.*

The BJS definitions work very well for the statistical tabulation purposes for which they were designed, but they suffer from certain limitations for our current purposes. One aim of this RIA is to assign a unit cost to various types of sexual victimization that occur in prison settings. As elaborated in Part 4 below, in order to assign a unit cost to various types of events, we need to account, at least to some extent, for the complexity of sexual victimization.

Numerous considerations factor into the cost to a victim or to society of a specific incident of sexual victimization. These include whether the event involved force or threat of force; whether the victim has been victimized once or more than once; whether the victim suffered a physical injury, and, if so, the severity of that injury; and other factors.

The BJS definitions do not fully reflect this complexity of sexual victimization. Thus, the definition of "nonconsensual sexual acts" includes a broad range of victimization events that are likely to have drastically different impacts for cost valuation purposes. This category would include, for example, both a repeated forcible gang rape involving vaginal penetration and serious physical injury, and an incident in which an inmate is pressured into rubbing a staff member's penis on a single occasion in exchange for added time in the recreation deck. Both types of "nonconsensual sexual acts" are, of course, illegal and reprehensible, and the PREA standards aim to eliminate both; but for benefit-cost evaluation purposes, the former type of event is very likely to impose greater costs upon the victim and upon society, and thus have a much greater avoidance benefit, than the latter.

Of course, there are also limits to the extent to which a benefit-cost analysis can coherently account for the full complexity of the problem analyzed without relying on some simplifying definitions and assumptions. Thus, for purposes of the IRIA, we divided sexual victimizations in prison and jail settings into four categories, which were somewhat differently calibrated from the six BJS uses in its compilations. However, numerous commenters criticized our approach to categorizing prison sex abuse victims.

The primary objection, offered by a number of advocacy groups, was directed to the distinction that was drawn between our first and second categories. In the IRIA, we divided BJS's grouping of "nonconsensual sexual acts" into two event categories based on the level of coercion involved.[27/] One category, "rape involving force/threat of force," denoted incidents which result from physical force or threat of physical force—such as by physically holding down or restraining the victim, or threatening the victim with a weapon—and which contained an element of penetration, oral contact with the penis or vagina, or "hand jobs."

A separate category,"nonconsensual sexual acts involving pressure/coercion," encompassed incidents in which the perpetrator, without using force or the threat of force, pressured the inmate or made him feel that he had to participate in a nonconsensual sexual act of the same type as those in the first category. This included sexual contact procured through bribes or blackmail,

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[27/] We were are able to do this because the survey questions posed to inmates asked about the level of coercion used for the various sexual acts they reported, and BJS tabulated those responses by level of coercion. *See* BJS Adult NIS 2008-09, at 25-26, 31, 46-51, 74-81; BJS Juv. NSYC 2008-09, at 3, 9, 13, 14, 18-19, 22, 44-48.

offers of protection or special treatment or privileges, offers to settle a debt, provision of drugs, or verbal persuasion. We used both categories for staff-on-inmate as well as inmate-on-inmate nonconsensual acts.

The differentiation between these two types of "nonconsensual sexual acts" rested on an assumption that assaults involving force or threat of force were significantly more damaging than sexual acts involving pressure or coercion. Many advocacy groups took issue with this assumption. Some argued that it is not "shared by experts nor is it substantiated by the studies relied upon by the Department in its calculations." A human rights organization observed that prisons are inherently coercive environments in which there is no bright line between force, threat of force, pressure, and coercion.

Further, some noted, the criminal law definition of rape does not require the presence of force or threat thereof, instead defining rape as any nonconsensual sex committed by physical force, threat of injury, or through duress or pressure. Indeed, federal law makes it a crime for a person to cause another person in a federal prison "to engage in a sexual act by threatening or placing that other person in fear." 18 U.S.C. § 2241.

Commenters also argued that there is no evidence that forcible rape is more likely to lead to physical injury than non-forcible rape and posited that the psychological toll of being coerced into sex by another inmate or by staff was as significant as it would be if the inmate had been forcibly assaulted. According to one commenter, there is no peer-reviewed literature that seeks to identify or assess differences in the psychological impact of sexual abuse depending on whether or not force was used.

Table 1.1: Hierarchy of Sexual Victimization Types, Adult Facilities

Level	Description	Type
1	Nonconsensual Sexual Acts High—Involving Injury, Force, or High Incidence	Any
2	Nonconsensual Sexual Acts Low—Involving No Injury and No Force, and Low Incidence	Any
3	"Willing" Sex with Staff	Staff on Inmate
4	Abusive Sexual Contacts High—Involving Injury or High Incidence	Inmate on Inmate
5	Abusive Sexual Contacts Low—Involving No Injury and Low Incidence	Inmate on Inmate
6	Staff Sexual Misconduct Touching Only	Staff on Inmate
Definitions:		
	Nonconsensual Sexual Acts: unwanted contacts with another inmate or with a staff member that involved oral, anal, or vaginal penetration, or hand jobs.	
	Abusive Sexual Contacts: unwanted contacts with another inmate that only involved touching of the inmate's buttocks, thigh, penis, breasts, or vagina in a sexual way.	
	Touching Only: contacts with a staff member that only involved touching of the inmate's buttocks, thigh, penis, breasts, or vagina in a sexual way	
	High Incidence: Report of 3 or more events	
	Low Incidence: Report of 2 or fewer events.	

Whether or not force is used or threatened, one commenter argued, sex by rape "can erode self esteem, trigger depression, prompt substance abuse, and damage interpersonal and social relations, not to mention possibly trigger even more serious psychological problems such as post-traumatic stress disorder and suicide." Furthermore, a commenter suggested that the psychological impact of rape without physical force can sometimes be even greater than when force is used because the victim may be more likely to

blame himself or herself, or feel at fault for what happened.

We find that many of these comments have some force and have accordingly modified the categories that we use to characterize sexual victimization in adult facilities for purposes of our baseline calculations.

In our new hierarchy of sexual victimization events in adult facilities, we again divide BJS's "nonconsensual sexual acts" designation into two levels of severity, but not solely on the presence or absence of force or threat of force. Rather, we have adopted a more nuanced approach that places victims in the higher category if they reported (i) having been physically injured in an assault, (ii) having been subjected to force or the threat of force, *or* (iii) experiencing a high incidence (three or more events) of nonconsensual sexual acts, regardless of the level or type of coercion used. We place victims in the lower category if they (i) did not report any physical injury associated with sexual abuse, (ii) did not report any force or threat of force, *and* (iii) reported a low incidence (two or fewer episodes) of nonconsensual sexual acts. By virtue of being nonconsensual yet not the product of force or threat of force, the sexual abuse in this second category consists of abuse based on pressure, coercion, and similar phenomena.

Our new third category comprises sexual acts between staff and inmates (to the extent they involve more than mere sexual touching) that are characterized by the inmate as voluntary or consensual. For our purposes, we treat these as tantamount to nonconsensual sexual acts on the grounds that all sexual contacts between inmates and staff are legally nonconsensual, and that given the significant power differential between staff and inmate it is difficult to draw a meaningful distinction between consensual and nonconsensual sexual interactions between staff and inmates.

Despite these changes to our approach, we are unwilling to dispense completely with the distinction between sexual abuse that takes place under conditions of force or threat of force and sexual abuse that takes place using lesser forms of coercion. The prevalence estimates are based on self-reports by inmates, who were asked to describe the extent to which their sexual interaction with another inmate or with a staff member was an act of force or an act of pressure or an act of volition. While the boundaries among the three may sometimes be difficult to ascertain, and while some inmates' subjective descriptions of the level of coercion or volition may be misguided or naïve, the inmate's choice of how to describe the sexual encounter is likely to provide at least some indication of the extent of harm the inmate suffered. This, in turn, will have a bearing on the cost of the event.

The comments have persuaded us that the difference in unit avoidance benefits that we assign to forced vs. pressured vs. putatively "willing" sexual acts should not be as stark as it was in the IRIA (*see* Part 4 below), but we are not persuaded that we should ignore altogether the characterizations which the victims themselves give to their experiences. Thus, we have maintained the distinction between force and pressure as one criterion for assigning victims into the higher or lower category of nonconsensual sexual acts, but we have added two additional criteria (presence vs. absence of physical injury and high vs. low incidence) to provide a more complete and more realistic distinction between the higher and lower categories.

We have made a similar adjustment to what in the IRIA was our third category of sexual victimization. This category, "abusive sexual contacts," had the same meaning that BJS uses in its statistical compilations but was limited in the IRIA to inmate-on-inmate contacts, or "unwanted [*i.e.*, forced, coerced, or pressured] contacts with

another inmate … that [only] involved touching of the inmate's buttocks, thigh, penis, breasts, or vagina in a sexual way." We did not receive any comments on the substance of this category (as opposed to the cost we assigned to it), but we feel it prudent to divide this category, as well, into high and low categories along the lines drawn for nonconsensual sexual acts.

Thus, we distinguish between category 4, in which we place victims of abusive sexual contacts with other inmates who reported either (i) physical injury in connection with the contact, *or* (ii) high incidence (three or more events), and category 5, in which we place victims of abusive sexual contact with other inmates (i) whose allegations involve no physical injury *and* (ii) who reported low incidence (two or fewer events).

Finally, many commenters objected to the fact that our fourth IRIA category, which was labeled "willing staff sexual misconduct," included nonconsensual staff-on-inmate sexual touching. Advocacy groups objected that by characterizing nonconsensual sexual touching by staff as "willing" we failed to adequately comprehend the dynamics of coercion and volition in correctional environments.

We are persuaded by these comments to revise our approach to this category. As noted above, sexual contacts with staff that go beyond sexual touching but that the inmate has characterized as "willing" have now been included in category 3, on the grounds that it is inappropriate to characterize such contact as truly "consensual" in the prison environment. Meanwhile, contacts between inmates and staff that involve touching only, whether the inmate characterizes them as "willing" or as "nonconsensual," are being put in a new sixth category, "staff sexual misconduct touching only."

A corrections agency criticized this new category (based upon our description of it in a clarification to the IRIA published during the comment period), arguing that it amounted to an overly broad definition of sexual victimization, since it would potentially include even routine pat-down searches in the definition of sexual abuse. This is not correct. Because pat-down searches may involve the over-the-clothes touching of private areas, we include such contacts only where "unrelated to official duties or where the staff member … has the intent to abuse, arouse, or gratify sexual desire."

We have therefore established the hierarchy of sexual victimization for adult facilities that is depicted in Table 1.1. Each victim of sexual abuse is placed in only one category—namely, in the category representing the highest-level incident which the inmate reported experiencing.

3.3.2 *Juvenile Facilities*

In the IRIA, we used the same hierarchy of sexual victimization types for juvenile facilities as we did for adult facilities. While the decision to do so was not addressed or challenged by any commenters, it has become apparent since the publication of the NPRM that this approach introduced methodological anomalies that potentially compromised the accuracy of our conclusions. These anomalies arise because BJS uses somewhat different definitions and survey questions in the NSYC than it does in the NIS, making it difficult to directly map the types of events in the adult hierarchy to corresponding characterizations in the juvenile context. For this RIA, therefore, we present our findings concerning the prevalence of abuse in juvenile facilities separately from the findings for adults.

In juvenile facilities, we divide sexual conduct into three different types. "Serious Sexual Acts," our highest category for sexual victimization in

juvenile facilities, roughly corresponds to the "nonconsensual sexual acts" in the adult context, but with a slightly more expansive definition. It refers to contacts with another youth or with a staff member that involve vaginal or anal penetration, oral contact with the penis or vagina, or rubbing of the penis or vagina. The "High" version of this category includes serious sexual acts that involve injury, force, or coercion (regardless of the incidence), as well as other unwanted serious sexual acts that the youth does not describe as forced or coerced, but only if the youth reported high incidence. This last type of conduct would include, for example, serious sexual acts as part of an exchange of favors.

The second category is "'willing' sex with staff high," which refers to serious sexual acts between youth and staff which the youth describes as "willing" or consensual (with no injury, force, or coercion), if the youth described a high incidence of such acts. Given laws against statutory rape and the generally deep-seated revulsion to sexual activity between adults and children, we believe that society treats all such sexual acts as coerced or pressured, no matter how "willing" the juvenile might profess it to be, and that all such activity is harmful to both the juvenile and to society. We therefore put this conduct high in our hierarchy.

The third category is the "Low" version of "Serious Sexual Acts," which consists of sexual acts that involve no injury, no force, and no coercion where the youth reported only low incidence. For both youth-on-youth and staff-on-youth acts, this would include unwanted sexual acts of the exchange-of-favors type, while for staff-on-youth this would also include sexual acts the youth describes as "willing."

The final two types involve "other sexual acts," which are defined somewhat more broadly than the "abusive sexual contacts" in the adult context. These are differentiated between "high" and "low" versions, based on the reported incidence, and apply to both youth-on-youth and staff-on-youth conduct. Table 1.2 depicts the hierarchy of sexual victimization types that we use for juvenile facilities in this RIA.

Table 1.2: Hierarchy of Sexual Victimization Types, Juvenile Facilities

Level	Description	Type
1	Serious Sexual Acts High—involving injury, force, or coercion, regardless of incidence; otherwise, not reported by the youth as "willing," and high incidence	Any
2	"Willing" Sex With Staff High—no injury, no force, and no coercion, but high incidence	Staff on Youth
3	Serious Sexual Acts Low—no injury, no force, and no coercion, and low incidence (includes "willing" sex with staff)	Any
4	Other Sexual Acts High—involving unwanted contacts with other youth and any contact with staff, and high incidence	Any
5	Other Sexual Acts Low—involving unwanted contacts with other youth and any contact with staff, and low incidence	Any
Definitions:		
	Serious Sexual Acts: unwanted contacts with another youth or with a staff member that involve vaginal or anal penetration, oral contact with penis/vagina, or rubbing of penis/vagina.	
	"Willing" Sex with Staff: contacts with a staff member that the youth reported as "willing" or "consensual" that involve vaginal or anal penetration, oral contact with penis/vagina, or rubbing of penis/vagina.	
	Other Sexual Acts: unwanted contacts with another youth or any contact with staff that only involved kissing other parts of the body, other touching, looking at private parts, and showing of sexual pictures.	
	High Incidence: report of 3 or more events	
	Low Incidence: report of 2 or fewer events.	

3.4 Cross-Section vs. Flow

The BJS inmate and youth surveys capture data only from a sampling of inmates who happen to be in the facility on the days the surveys are administered, missing inmates who may have been in the facility during the twelve-month period covered by the surveys but who were released or transferred before the dates of the surveys. Put otherwise, the surveys take a cross-section, or snapshot, view of the prevalence of prison rape, without accounting for the flow of inmates through a facility over the period covered by the study.

This is a particular problem in jails and lockups, where many inmates remain for very short durations: *e.g.,* some 13.6 million releases from jails take place each year, after an average detention period of approximately two days.[28/] Meanwhile, the average jail inmate who participated in BJS's most recent sexual victimization survey had been in jail for only 3.4 of the 12 months prior to the survey. BJS Adult NIS 2008-09, at 31. The problem is less pronounced, but not negligible, in prisons, where inmates responding to the BJS survey had spent an average of 7.9 (for State inmates) to 9 (for federal inmates) months in the facility during the 12 months prior to the survey. The number of inmates released from prison during 2008 totaled 735,454.[29/]

Thus, relying on the figures from the BJS report without a flow adjustment would underreport the baseline prevalence. As we did for the IRIA, we computed prevalence estimates that take into account the flow of prisoners, based on BJS survey data, so that the baseline figures account for all inmates in prisons, jails, and juvenile facilities during the surveys' reporting period.

Table 1.3: Using Flow Adjustment to Estimate the Total Number of Victims in Federal and State Prisons during a 12-month Period (2008)

Level	Type	Prison Victims		Est. Releasees	Est. Total Victims
		Survey Est.	Mo. Rate		
1	NCSA High	23,709	0.202%	8,923	32,600
2	NCSA Low	8,118	0.069%	3,055	11,200
3	Willing Staff	12,628	0.108%	4,752	17,400
4	ASC High	5,254	0.045%	1,977	7,200
5	ASC Low	7,814	0.067%	2,941	10,800
6	Touch Only	6,965	0.059%	2,621	9,600
Total		64,488	0.550%	24,269	88,800

Our methodology for calculating the flow adjustment here is essentially the same as what was used for the IRIA, although the specific adjustments are somewhat different due to updated Census information and somewhat more conservative definitions and assumptions.

For prisons, as shown in Table 1.3, the total number of persons victimized among prisoners released during the 12 months prior to the BJS survey was estimated based on the average monthly victimization rate by type of victimization, multiplied by the number of prison releases, multiplied by the average exposure.[30/]

[28/] BJS, *Jail Inmates at Midyear 2008—Statistical Tables*, Table 4 (NCJ 225709); BJS, *Mortality in Local Jails 2000-2007*, table 4 (NCJ 222988); and unpublished data from the 2004 *Survey of Local Jails*. The number of releases for the 12 months ending June 30, 2008, was estimated based on the number of admissions during the last week in June multiplied by 52.14, and then rounded. Total admissions exceeded releases by approximately 5,400 during the period.

[29/] BJS, *Prisoners in 2008*, table 3 (NCJ228417).

[30/] In Table 1.3, the "Level" column corresponds to the event hierarchy levels from Table 1.1, and the "Type" column provides a description of that event—NCSA is "nonconsensual sexual activity," while "ASC" is "abusive sexual contacts." "Survey est." is the estimated number of prison rape victims based on the BJS Adult NIS 2008-09. "Mo. rate" is the average monthly victimization rate, calculated by dividing the NIS survey rate by the average exposure for state and federal prison inmates (8.044 months). The fifth column is the estimated number of releasees during the twelve-month period, calculated by multiplying the average monthly victimization rate by the average exposure time (6 months) by the total number of prisoners exposed (735,454). The final column estimates the number of adult victims of sexual

Table 1.4: Using Flow Adjustment to Estimate the Total Number of Victims in Jails during a 12-month Period (2008)

Level	Type	Jail Victims		Releasees		Est. Total Victims
		Survey Est.	Mo. Rate	Est. Daily Rate	Est. No.	
1	NCSA High	10,057	1.2930%	0.1293%	35,067	45,100
2	NCSA Low	1,972	0.2530%	0.0253%	6,874	8,800
3	Willing Staff	3,384	0.4350%	0.0435%	11,798	15,400
4	ASC High	1,866	0.2400%	0.0240%	6,508	8,400
5	ASC Low	3,197	0.4110%	0.0411%	11,146	14,300
6	Touch Only	3,579	0.4600%	0.0460%	12,479	16,100
Total		24,054	3.0920%	0.3092%	83,872	108,100

For jails, as shown in Table 1.4, the total number of victims among persons released during the 12 months prior to the survey was estimated based on the average daily victimization rate by type of victimization (adjusted to account for jail victims reporting significantly higher victimization rates during the first 3 days of detention), and then multiplied by the number of days of exposure.[31/]

For juvenile facilities, as shown in Table 1.5,[32/] we first determined the prevalence of sexual abuse among public juvenile facilities that were not included in the NSYC[33/] by multiplying the number of committed youth not sampled in the survey by the average daily rate by type of victimization, times the estimated average time served by committed youth excluded from the survey. This was then added to the total number victimized at juvenile facilities included in the survey.

The number of youth victimized during the preceding 12 months who were not included in the NSYC was then estimated by multiplying the average daily rate from the survey times the number of days of exposure for committed youth released during the preceding 12 months. The number of days of exposure was estimated by multiplying the number of releases times the

abuse in prisons by summing the NIS survey estimate and the release cohort estimate, and then rounding to the nearest 100. These numbers are not adjusted to account for the presence of youthful inmate victims.

31/ "Mo. Rate" is the number of NIS survey victims during the average exposure period (102 days), divided by the mid-year 2008 population (777,852), times 100. "Est. Daily Rate" is based on the fact that nearly a third of victims report the first victimization within the first 3 days in jail, as determined in BJS Adult NIS 2008-09. Assuming an even distribution across the first 3 days, the estimated daily rate during the first 3 day is equal to 10% of the overall survey rate. "Est. No." is based on the estimated daily rate times 13.56 million (the number of admissions in the 12 months prior to the survey) times 2 (the average length of stay per admission). "Est. Total Victims" is the sum of the NIS survey estimate plus the release cohort estimate, rounded to the nearest 100. These numbers are not adjusted to account for the presence of youthful inmate victims of sexual abuse.

32/ In Table 1.5, the "Level" column corresponds to the event hierarchy levels from Table 1.2, and the "Type" column provides a description of that event — "SSA" refers to "serious sexual acts," OSA refers to "other sexual acts," and "willing" refers to "willing sex with staff." The column "survey estimate" under "in surveyed facilities," is based on BJS Juv. NSYC 2008-09, which covered adjudicated youth in state operated juvenile facilities and in some large non-state facilities. The NSYC "Survey Rate" was calculated by dividing the number of victims in the survey by the covered population (26,551) and then multiplying by 100. The "daily rate" for "other committed youth" was calculated by dividing the survey rate by the average number of days youth had been held in the surveyed facilities (195). "Est. State" and "Est. Local" are, respectively, the number of victims among committed youth held in publicly-operated State and local facilities, calculated by multiplying the daily rate by the estimated average length of stay (172 days in other State facilities and 84 days in local facilities), times the number of committed youth held in these facilities (2,096 in other state facilities and 10,578 in local facilities). The stock estimate represents the total number of victims among committed youth in state or locally operated juvenile facilities at the time of the survey. It was calculated by summing the initial survey estimate plus the projected number held in other State and local facilities. The flow estimates represent the total number of victims among the estimated 98,700 released committed youth who had been held in State and local facilities during the 12-months prior to the survey. It was calculated by multiplying the daily rate times the estimated number of days of exposure (approximately 10.97 million days) during the 12-month period. The principal estimate ("Prin. Est.") is the sum of the stock estimate and the flow estimate, and rounded to the nearest 100.

33/ The NSYC included state-owned or operated juvenile facilities and large locally or privately-operated facilities that held adjudicated youth for at least 90 days. The survey excluded juvenile detention centers that are primarily (>75%) designed to house status offenders, pre-adjudicated youth, and other youth held for periods shorter than 90 days. It also excluded smaller (<150 youth) facilities operated by non-State entities regardless of the adjudication status of the youth detained. *See* BJS Juv. NSYC 2008-09, at 1-2, 15-16.

Table 1.5: Using Flow Adjustment to Estimate the Total Number of Victims in Juvenile Facilities during a 12-month Period (2008)

Level	Type	In Surveyed Facilities		Other Committed Youth			Total Victimized		Prin. Est.
		Survey Est.	Survey Rate	Daily Rate	Est. State	Est. Local	Stock Est.	Flow Est.	
1	SSA High	1268	4.776%	0.024%	88	218	1,574	2,686	4,300
2	Willing High	826	3.111%	0.016%	58	142	1,025	1,750	2,800
3	SSA Low	607	2.286%	0.012%	42	104	753	1,286	2,000
4	OSA High	166	0.625%	0.003%	12	28	206	352	600
5	OSA Low	274	1.032%	0.005%	19	47	340	580	900
Total		3,141	10.798%		219	539	3,899	6,654	10,600

length of stay (and adjusting for incomplete exposure for youth released in the first 5 months).

As shown in Tables 1.3-1.5, this flow adjustment increases the baseline prevalence figures, especially in jails and juvenile detention centers. For example, when accounting for annual flow, the prevalence of sexual abuse in jails in 2008 increases from 24,054 to 108,100. The prevalence in juvenile facilities increases from 3,141 to 10,600. In prisons, the prevalence increases from 64,488 victims to 88,800.

3.5 False Negatives and False Positives

The BJS inmate surveys rely solely on self-reporting of sexual abuse experiences. This introduces the risk of false negatives, or under-reporting, in that many inmates who have experienced sexual abuse may be unwilling or unable to talk about it.[34/] Whether a rape occurs inside or outside prison walls, victims are often so mentally and emotionally traumatized by their experience that they lack the wherewithal to discuss it.[35/] Other victims choose not to report the incident because doing so requires them to relive an experience that was traumatic, or because they feel shame or embarrassment about the event, or because they live in fear of retribution or retaliation from their assailant should they bring the abusive acts to light.[36/]

In gathering its data, BJS attempted to compensate for the problem of under-reporting by assuring surveyed inmates that their responses would be kept anonymous and confidential. It also used established statistical methods to adjust its results to account for inmates who were selected for interviews but who refused to participate. *See* BJS Adult NIS 2008-09, at 30. These measures are likely to have at least somewhat mitigated the problem of false

[34/] *See* Robert W. Dumond, *The Impact of Prisoner Sexual Violence: Challenges of Implementing Public Law 108-79—The Prison Rape Elimination Act of 2003*, 32 J. LEGIS. 142, 147 (2006) ("To fully understand the implications of the BJS study, one must recognize that of all categories of crime, rape and sexual violence are known to be one of the most under-reported, making an accurate assessment of its occurrence difficult.").

[35/] *See* Post, *supra* note 23, at 774 ("Rape and sexual assault have been difficult to research because an estimated 50% to 90% of rapes are not reported. The problem of under-reporting contributes to the difficulty of estimating the prevalence and incidence, as well as the cost of rape and sexual assault.").

[36/] *See, e.g.*, Dumond, *supra* note 34, at 154-55.

Table 2.1: Substantiation Rates for Allegations of Nonconsensual Sexual Acts, Inmate-on-Inmate

	Prisons	Jails	Juvenile
Substantiated	11%	13%	31%
Unsubstantiated	63%	41%	53%
Unfounded	26%	46%	16%

Table 2.2: Substantiation Rates for Allegations of Staff Sexual Misconduct

	Prisons	Jails	Juvenile
Substantiated	15%	25%	8%
Unsubstantiated	58%	39%	77%
Unfounded	27%	36%	15%

negatives: between 69% and 82% of inmates reporting sexual abuse in response to the inmate surveys claimed to have never reported an incident to correctional administrators. *See* BJS Adult NIS 2008-09, at 22-23. It is nevertheless still likely that the BJS prevalence figures fail to capture a certain percentage of victims due to under-reporting.

On the other hand, false positives are also an issue in the prison setting. Prisoners sometimes make false, spurious, or exaggerated allegations about the conduct of staff members or other inmates—whether out of spite, for strategic or retaliatory reasons, or simply for their personal amusement. BJS's data from facility surveys suggest that many allegations reported by adult inmates of staff-on-inmate sexual misconduct cannot be proven.

The SSV asks agencies to classify allegations of abuse as either "unfounded" (meaning that the investigation determined that the alleged incident did not actually occur), "unsubstantiated" (meaning that the investigation failed to yield sufficient evidence to determine one way or the other whether the alleged incident actually occurred), or "substantiated" (meaning that the agency made a finding that the event did actually occur). Tables 2.1 and 2.2[37] depict the most recent statistics on the frequency with which allegations of abuse brought to the attention of prisons, jails, and juvenile facilities were determined to fall into each category in the most recent surveys.

In the end, in estimating the overall prevalence of prison sexual abuse, BJS is essentially agnostic on the issue of false negatives and false positives:

> The NIS-2 collects only allegations of sexual victimization. Because participation in the survey is anonymous and reports are confidential, the survey does not permit any follow-up investigation or substantiation of reported incidents through review. Some allegations in the NIS-2 may be untrue. At the same time, some inmates may remain silent about sexual victimization experienced in the facility, despite efforts of survey staff to assure inmates that their responses would be kept confidential. Although the effects may be offsetting, the relative extent of under-reporting and false reporting in the NIS-2 is unknown.

BJS Adult NIS 2008-09, at 6.

Adhering to this agnostic view, we made no adjustment to the BJS statistics in the IRIA to account for the possibility of false negatives or false positives. Instead, we asked for comment as to whether there are any reliable methods for measuring the extent of under-reporting and over-reporting in connection with BJS's inmate surveys. In answering this question, quite a few state and local agency commenters expressly

[37] *Source*: BJS Adult NIS 2008-09, at 5 & Table 5; BJS Juv. NSYC 2008-09, special unpublished tabulation. For inmate-on-inmate allegations of abusive sexual contacts in prisons and jails, the figures are 17%, 61%, and 22% in prisons, and 24%, 46%, and 29% in jails. For youth-on-youth allegations of abusive sexual contacts in State juvenile facilities, the figures are 45%, 45%, and 10%, respectively.

endorsed our agnostic approach, averring that no reliable methods exist for measuring the extent of under- or over-reporting.

On the other hand, a number of agency commenters asked that we adjust the BJS statistics to account for false positives, although they did not propose a specific methodology for doing so. An association of county sheriffs commented that the baseline level of sexual abuse reported in the IRIA is unrealistic and inappropriate because prisoners exaggerate incidences of abuse in responding to the BJS surveys. Two State corrections departments complained that data for the NIS and NSYC are collected only on allegations rather than actual incidents of sexual victimization, and that because the surveys are anonymous and confidential, there is no manner in which to investigate these claims, leading to false reporting. Another agency professed that only data that were self-reported or otherwise investigated could be considered accurate. We have responded to these comments *supra* at 19.

Some agencies voiced similar concerns but actually proposed methods for addressing them. For example, a number of State correctional and juvenile justice agencies suggested estimating the extent of over-reporting by comparing reported incidents with the substantiation data from the SSV. A county sheriff suggested comparing the inmate surveys to national averages of similar crimes to obtain some validation for the assumptions concerning under- and over-reporting.

A handful of state agencies cited scholarship regarding false rape reports.[38] However, none of these studies was useful to our enterprise, as none dealt with false rape reports in the unique context of correctional environments,[39] or in the context where both the victim and the abuser remained anonymous. In addition, none of these studies offered data that would be relevant to assessing prevalence of prison rape, and several were quite dated.

On the other side of the ledger, a number of advocacy organizations urged us to compensate in the other direction, to account for the likelihood of under-reporting. One such commenter argued that, while some inmates may have fabricated their reports, it is much more likely that victims decided not to disclose their abuse. Relying on the BJS data without accounting for under-reporting, the commenter averred, would provide an overly conservative estimate of the overall number of victims.

Having carefully considered these comments, we have decided to address the issue of over-reporting and under-reporting in three alternative ways, which we refer to as the principal method, the adjusted method, and the lower bound method.

For our "principal" method, we hew to the agnostic course laid out in the IRIA—namely, to make no adjustment to the figures from the NIS and the NSYC to account for false positives or negatives. We do this because we are not convinced that there is any reliable method for measuring the true extent of under-reporting or false reporting. The data on substantiation from BJS's institution surveys do provide one potential

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[38] *See, e.g.*, Brent E. Turvey, *False Reports*, in BRENT E. TURVEY, CRIMINAL PROFILING: AN INTRODUCTION TO BEHAVIORAL EVIDENCE ANALYSIS 395-417 (3d ed. 2008); Bruce Gross, *False Rape Allegations: An Assault on Justice*, 11 ANNALS AM. J. PSYCHOTHERAPY 45 (2008); Eugene J. Kanin, *False Rape Allegations*, 23 ARCHIVES SEXUAL BEHAV. 81 (1994); Edwin J. Mikkelsen *et al.*, *False Sexual-Abuse Allegations by Children and Adolescents: Contextual Factors and Clinical Subtypes*, 46 AM. J. PSYCHOTHERAPY 556 (1992); Mark D. Everson and Barbara W. Boat, *False Allegations of Sexual Abuse by Children and Adolescents*, 28 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 230 (1989).

[39] The motivations behind false rape reports in confinement settings are most likely quite different from the circumstances prompting such reports outside of confinement, and the frequency of the phenomenon in confinement bears no relationship to its prevalence in society generally. Accordingly, extrapolating data relevant to the confinement setting from academic studies of false rape reports generally is not feasible.

method for addressing false positives. But because the incentives for inmates to make false allegations of misconduct in reports to prison authorities are far greater than their incentive to fabricate responses to a confidential survey, it is not clear to what extent the substantiation data would be helpful in pinpointing the true prevalence of prison sexual abuse.

Moreover, in the absence of a corresponding source of information to assess the extent of false negatives, it would seem overly conservative to adjust the prevalence statistics based solely on the data concerning substantiation of allegations. We believe that the internal methodological controls that BJS has incorporated into its inmate surveys to compensate for both under-reporting and false reporting (*see supra* at 19) are adequate to the task and provide an appropriate measure of prison rape prevalence for present purposes.

Nevertheless, to address the concerns of those commenters who felt that we should adjust the BJS figures to account for over- and under-reporting, we have devised two alternative methodologies—what we call our "adjusted" approach and our "lower bound" approach, respectively—that may help to define a range of prevalence estimates and clarify uncertainty in this area.

To deal with false negatives, we use alternative multipliers to reflect a range of assumptions as to the percentage of *bona fide* victims of abuse who do not disclose their victimization in the BJS inmate surveys. Of course, the true extent of false negatives can never be known, and we are unaware of any academic studies that have purported to reliably estimate it. (This is precisely why we make no adjustment for false negatives in our principal approach.)

We use relatively small multipliers of 105% (for the lower bound approach) and 115% (for the adjusted approach) to capture a share of the likely false negatives while remaining appropriately conservative under either approach. These multipliers are just assumptions meant to inform alternative models for addressing the problem of false negatives; while they do not have a specific empirical basis, we do not believe it unrealistic to assume that between 5% and 15% of victims of prison sexual abuse do not disclose the victimization in a survey response.

With regard to false positives, both approaches use the substantiation rates determined by the SSV, as depicted in Tables 2.1 and 2.2. In particular, both approaches discount the prevalence rate by applying the percentage of allegations determined to be "unfounded."[40] However, the methodologies of the two alternative approaches are quite different.

For the more complicated "adjusted" approach, we make no modifications for false positives with respect to inmates who reported an injury, on the theory that inmates who are physically injured in the course of sexual abuse (and who give details about the nature of their injuries) are less likely to fabricate allegations about their abuse and more likely to be able to substantiate their claims if required.

For inmates who did not report an injury but who were classified as "high incidence," we moved a percentage (corresponding to the percentage of unfounded allegations for that facility type and victimization type, as set forth in Tables 2.1 and 2.2) to the corresponding "low incidence" classification—on the theory that, while it may be appropriate to assume that some of the reported

[40] We have not discounted the rates by the additional percentages representing "unsubstantiated" allegations because we believe that that would result in too conservative an estimate, especially given the uncertainty as to the degree of under-reporting and the difficulty many inmates face in substantiating even *bona fide* claims of sexual abuse.

incidents were unfounded, it is unlikely that all such incidents were false.

The corresponding proportion of victims in the "low incidence" classification were then reclassified as non-victims, on the theory that if even one or two of the reported incidents are fabricated, the incidence would reduce to zero for that victim. All victim categories were then multiplied by 115% to adjust for false negatives.

For the simpler "lower bound" approach, all victim categories—regardless of whether the victims were injured or whether they reported high or low incidence—were discounted by a percentage corresponding to the percentage of unfounded allegations for that facility and victimization type, and were then multiplied by 105% to adjust for false negatives.

Neither of these alternative approaches (nor, for that matter, our principal approach) presents a perfect or foolproof method of compensating for the phenomena of false positives and false negatives, but together they conservatively but realistically depict a range of prevalence estimates that usefully informs our analysis. As shown below in Tables 3.1 to 3.3, the adjusted approach yields results that are actually very close to our unadjusted principal approach.

3.6 Issues Related to Specific Institution Types

The final limitation of the BJS baseline prevalence statistics for which we need to account in this Report has to do with the types of institutions covered by the BJS surveys. BJS's data with respect to adult prisons and jails are quite comprehensive, reflecting the massive scale of the NIS, and they provide a robust picture of the prevalence of prison rape and sexual abuse in those facilities nationwide. BJS's data with respect to juvenile facilities are somewhat more limited, since the NSYC only studies facilities that hold adjudicated youth for at least 90 days. We have nevertheless been able to extrapolate for purposes of this RIA data on the estimated prevalence of sexual abuse in public juvenile facilities not covered by the NSYC. *See supra* note 33 and accompanying text.

Although CCFs are covered by PREA, little data have to date been available on the rate of sexual victimization in these facilities. Correctional facilities are classified as community-based if 50% or more of the residents are regularly permitted to leave unaccompanied by facility staff to work or study in the community. Community-based facilities include such entities as halfway houses, residential treatment centers, restitution centers, and pre-release centers.

Despite the large number of such facilities (529 of the 1,719 state correctional facilities in 2005), they hold relatively few inmates on any single day (54,233 inmates at year end 2005, or approximately 4% of all State inmates held nationwide).[41/] As a result of their small size (an average of 102 inmates per facility) and the relatively short length of stay for most inmates while in CCFs, inmates held in these facilities have been excluded from previous PREA-related inmate surveys such as the NIS. However, a little less than half (about 42%) of CCFs are operated by State Departments of Corrections,[42/] and data on the prevalence of sexual abuse within such facilities may in some cases be subsumed within the data for the operating agency.

At the time this Report and the Notice of Final Rule were being completed, BJS was on the verge

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[41/] *See* BJS, *Census of State and Federal Correctional Facilities, 2005* (Oct. 208 NCJ 222182), appendix tables 2 and 10.

[42/] *See* BJS, 2005 *Census of State and Federal Correctional Facilities*, at 2 & App. Tbl. 2 (Oct. 2008) (NCJ 222182) (of the 529 community-based confinement facilities, 308 are privately-operated (58%), and the other 221 (42%) are operated as part of a State Department of Corrections).

of issuing its report on *Sexual Victimization Reported by former State Prisoners, 2008* (May 2012, NCJ 237363). That publication, when issued, will describe the results of the first-ever National Former Prisoner Survey (NFPS), which was conducted between January and October 2008 and surveyed over 18,500 former State prisoners about their experiences with sexual victimization during the totality of their most recent term of incarceration, including any time in a local jail, State prison, or CCF prior to final discharge. That study provides for the first time some data regarding the prevalence of sexual victimization in CCFs.

Unfortunately, the completion and publication of the NFPS occurred too close to the completion and publication of this Report and the Notice of Final Rule for the NFPS data to be useable for the present assessment.[43/]

We aware not aware of any statistics purporting to assess the prevalence of sexual abuse in lockups. An estimated 13.7 million arrests were made in 2009, and it can be assumed that a significant percentage of these arrestees passed through lockups one or more times.[44/]

Because the amount of time each person spends in a given lockup facility is brief (typically less than 24 hours), conducting a meaningful survey of lockup detainees to assess the prevalence of sexual abuse in those settings is difficult. While the short amount of time detainees usually spend in lockup facilities, together with the typical physical layout of lockups, would suggest that lockup detainees may face a lower risk of sexual abuse than inmates in other settings, we cannot ignore anecdotal evidence that sexual abuse can and sometimes does occur in lockup settings.

Furthermore, statistics indicating that 15% of sexual abuse victims in jails report having been abused by another inmate within the first 24 hours of their arrival at the jail[45/] suggest that sexual abuse can occur even in the briefest of detention stays. Nevertheless, we are currently constrained by an absence of data in determining the magnitude of that problem.

Due to the limitations in the available data, we have decided not to estimate the baseline prevalence of sexual abuse in lockups or CCFs. This adds a further conservative element to our baseline prevalence figures, in the sense of underestimating the extent of the problem.

3.7 Responses to Other Comments

A few commenters offered miscellaneous statements as to our baseline prevalence figures that are worth addressing here. Several agencies, including a county sheriff's office and a municipal corrections department, felt the assessment of baseline prevalence figures was correct but suggested that a reassessment may be in order once the standards are in place. Although BJS (together with other agencies, including NIC) will continue to study the prevalence of prison rape after the standards are in place, the possibility of such future reassessments is not relevant to the enterprise of an RIA, the purpose of which is to demonstrate the justification for promulgating the final rule as assessed prior to the time of promulgation.

Another local sheriff's office observed that the baseline calculations appeared thorough, but questioned the way in which the different types

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[43/] In addition to the data concerning CCFs, the NFPS may contain data that potentially bear on other aspects of the analysis in this section, or on the assumptions used in that analysis. As with CCFs, however, the data did not become available sufficiently in advance of the drafting of this Report to be incorporated into the analysis.

[44/] *See* Federal Bureau of Investigation, Uniform Crime Reports, *Crime in the US, 2009*, Table 29, available at http://www2.fbi.gov/ucr/cius2009/data/table_29.html.

[45/] *See* BJS Adult NIS 2008-09, at 22-23.

of victimization were defined. In both this RIA as well as in the Notice of Final Rule, and the Rule itself (at 28 C.F.R. § 115.6), we have significantly clarified the definitions of the various forms of sexual abuse and victimization events.

Finally, an advocacy organization expressed its general agreement with the methodological decisions made in determining baseline prevalence but argued that the IRIA erred in underestimating the problem of sexual abuse in confinement facilities because it failed to account for the number of youths housed in adult facilities—failing to account both for the number of victims as well as the increased costs associated with victimization at such a young age.

We agree with the commenter that the calculations of the baseline prevalence of prison rape, and the corresponding monetization of the benefits of preventing prison rape, ideally should include the youthful inmate population in some fashion. However, it is difficult to account precisely for youthful inmates in our baseline prevalence estimates, because the most recent NIS, on which the estimates for adult facilities are primarily based, did not include any youthful inmates in its sample.[46/]

Until 2005, the SSV identified the number of substantiated incidents of inmate-on-inmate sexual violence in prisons and jails in which the victim was under 18, and we have been able to disaggregate similar data from SSV responses for the years 2006-08. As is perhaps not surprising (given that the number of sexual abuse incidents actually reported to correctional authorities and subsequently substantiated is typically a small fraction of the true total prevalence), these numbers are quite small. For state prisons,[47/] the numbers during the period 2005-08 ranged from 2 to 4 incidents per year (*i.e.*, 0.9% to 2.3% of the total substantiated inmate-on-inmate sexual abuse incidents). For local jails, they ranged from 2 to 26 incidents.

Due to the smallness of these numbers, it is not easy to extrapolate reliable conclusions as to the true prevalence of sexual abuse involving youthful inmates. Indeed, after the 2005 SSV, BJS stopped separately reporting sexual abuse rates for inmates under age 18, because the sampling errors were too high.

Nevertheless, we cannot ignore the compelling evidence that sexual abuse of youthful inmates in adult prisons and jails is a significant problem. Thus, the final rule contains a provision, absent from the proposed rule, aimed at protecting youthful inmates housed in adult facilities, *see* 28 C.F.R. § 115.14. The Preamble to the Notice of Final Rule contains a detailed discussion of the grounds for that provision.

To account conservatively for youthful inmates in our prevalence estimates, we add 1% to the total in each category of sexual victimization for adult prisons and jails. This percentage is drawn from the low end of the range for prisons described above—the range of 0.9% to 2.3%, representing the ratio of substantiated incidents of inmate-on-inmate sexual abuse in adult prisons where the victim is under the age of 18. This is conservative, as the range from which it is drawn does not include staff-on-youth sexual violence, or incidents of *bona fide* sexual abuse that cannot be substantiated; nor does it reflect the arguably higher rates for jails.

[46/] NIS-3, which is currently underway, includes youthful inmates in its survey samples, but BJS's report on that survey will not be completed until the end of 2012.

[47/] Federal prisons do not confine any youthful inmates.

Table 3.1: Baseline Prevalence of Rape and Sexual Abuse, Adult Prison and Jail Facilities, by Prevalence Approach, Type of Incident, and Type of Facility, 2008

	Adult Prisons			Adult Jails		
	Principal	Adjusted	Lower Bound	Principal	Adjusted	Lower Bound
NCSA - High	32,900	33,100	25,600	45,600	43,000	26,000
NCSA—Low	11,300	11,600	8,800	8,900	7,900	5,000
"Willing" Sex with Staff	17,600	17,800	13,500	15,500	14,800	10,400
ASC- High	7,300	7,000	6,100	8,500	7,800	6,300
ASC—Low	10,900	11,200	9,000	14,400	13,600	10,700
Touching Only	9,700	9,400	7,500	16,300	14,200	10,800
TOTAL	89,700	90,100	70,500	109,200	101,300	69,200

Even using this conservative figure to estimate the number of prison and jail rape victims who are youthful inmates adds about 888 victims annually to the total number of sexual abuse victims in prisons, and 1,081 to the total for jails.[48/] We have added these victims to our prevalence totals, and as elaborated in Part 4.1 below, we have applied for these victims the higher unit avoidance benefits for juveniles.

3.8 Baseline Prevalence Matrices

Taking into account the foregoing considerations, we set forth in Tables 3.1 through 3.3 our estimates of the baseline prevalence of prison rape for purposes of our break-even analysis.[49/] For each event type and facility type, each chart lists the total number of individuals who were victimized during 2008, as adjusted to account for the flow of inmates over that period of time. Inmates who experienced more than one type of victimization during the period are included in the figures for the most serious type of victimization they reported.

Table 3.1[50/] above sets forth our prevalence estimates for adult prisons and jails using the principal, adjusted, and lower bound approaches described above. (These figures include youthful inmates housed in adult facilities.) Table 3.2 below presents the prevalence estimates for juvenile facilities. Table 3.3 presents a composite summary showing total baseline prevalence across all facilities.[51/]

[48/] Estimated by applying the figure of 1% (based on victims under age 18 in substantiated incidents reported in SSV Adult 2007-08) to the estimated number of adult victims in prison (88,800) and in jail (108,100).

[49/] As a State agency commenter urged us to do, we caution that these figures are merely estimates, and that any attempt to determine the precise prevalence of sexual abuse in confinement (or correspondingly, to assign unit avoidance costs to the different types of sexual abuse, as we do in Part 4), is fraught with difficulty.

[50/] This table includes cross-sectional number covered in BJS surveys plus the number of estimated victims released in the twelve months prior to the survey. Juvenile facilities include adjudicated/committed youth only.

[51/] The totals for our principal approach are somewhat lower than the totals reported in the IRIA (e.g., 209,400 total victims rather than 216,600) because of reliance on updated statistical data and changes in methodology described in the text.

Table 3.2: Baseline Prevalence of Sexual Abuse, Juvenile Facilities, by Estimation Method and Type of Incident, 2008

	Principal	Adjusted	Lower Bound
Serious Sexual Acts - High	4,300	4,600	3,800
"Willing" Sex With Staff—High	2,800	2,700	2,500
Serious Sexual Acts—Low	2,000	2,700	1,800
Other Sexual Acts—High	600	600	500
Other Sexual Acts—Low	900	1,000	900
Total	10,600	11,600	9,500

Table 3.3: Baseline Prevalence of Rape and Sexual Abuse, Summary Chart

	Principal Method	Adjusted	Lower Bound
Prisons	89,700	90,100	70,500
Jails	109,200	101,300	69,200
Juveniles	10,600	11,600	9,500
TOTAL	209,400	203,000	149,200

4 BENEFITS ANALYSIS

4.1 Estimating the Monetized Unit Benefit of Reducing the Prevalence of Prison Rape and Sexual Abuse

As a number of commenters observed, placing a monetary value on reducing the number of sexual abuse victim presents considerable methodological difficulties. One commenter remarked that "estimating the monetary 'costs' of crime is at best a fraught and imperfect effort, particularly when dealing with crimes such as sexual abuse whose principal cost is due to the pain, suffering, and quality of life diminution of the victims."

Executive Orders 13563 and 12866 nevertheless instruct agencies to measure quantifiable benefits "to the fullest extent that [they] can be usefully estimated." E.O. 12866, § 1(a). Some uncertainty in such estimates is not itself sufficient reason to abandon the effort.[52/] Put otherwise, "the agency's job is to exercise its expertise to make tough choices about which of the competing estimates is most plausible, and to hazard a guess as to which is correct.... Regulators by nature work under conditions of serious uncertainty, and regulation would be at an end if uncertainty alone were an excuse to ignore a congressional command." *Public Citizen v. Federal Motor Carrier Safety Admin.*, 374 F.3d 1209, 1220-21 (D.C. Cir. 2004).

Our legal system has mechanisms (*i.e.*, court verdicts and settlements), imperfect as they may be, for placing a monetary value on the pain, suffering, and physical and psychological injuries experienced by inmates who have been abused while in confinement. We also have means to estimate the average cost of the medical and mental health care, and other services, that a rape victim typically requires. Moreover, social scientists from a number of disciplines have developed data on the cost to the victim and to society of various forms of criminal victimization.

Of course, the monetary value of reducing the number of rape victims is only one dimension of the total benefits that will be achieved by the reduction in the prevalence of sexual abuse. As Executive Order 13563 observes, "[w]here appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts." Part 4.3 discusses benefits from reducing rape and sexual abuse in confinement facilities that are not readily monetizable.

4.1.1 *A Review of the Literature*

We are not aware of, and none of the commenters directed us to, any empirical studies that have attempted to place a value on rape or sexual abuse specifically in the prison setting. For this reason, we have relied primarily on studies that place a value on rape and sexual abuse generally, and we have attempted, where appropriate and feasible, to adjust their conclusions to reflect as best we can the differing circumstances posed by sexual abuse in the confinement setting.

The studies that have calculated the cost of rape to the victim and to society have generally done so using two different methodologies. Some studies, following what is known as the willingness-to-pay (WTP) model, have looked at the problem *ex ante* and have asked how much society (or a prospective victim) would be willing

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[52/] *See, e.g.*, *Chamber of Commerce of the United States v. SEC*, 412 F.3d 133, 144 (D.C. Cir. 2005) ("Uncertainty may limit what an agency can do, but it does not excuse an agency from its statutory obligation to do what it can to apprise itself—and hence the public and the Congress—of the economic consequences of a proposed regulation before it decides whether to adopt the measure.").

to pay to avert a future sexual abuse.[53] Other studies, following what is known as the victim compensation or willingness-to-accept (WTA) model, have looked at the problem *ex post* and have determined how much society would have to pay to fully compensate a victim who has already been assaulted (or correspondingly how much a victim would be willing to accept to compensate for the assault). Our analysis draws from each type of study.

OMB has directed that "in monetizing health and safety benefits, the agency should use the WTP measure (or, if appropriate, the WTA measure), rather than other alternatives (*e.g.*, avoided cost of illness or avoided lost earnings). This is because WTP and WTA attempt to capture pain and suffering and other quality-of-life effects."[54]

4.1.2 *Willingness to Pay Model*

Advocates of the WTP model assert that its ability to capture the value that society places on avoidance makes it more appropriate for a regulatory cost-benefit assessment than the victim compensation/WTA model. The primary theory behind the WTP model is that crime has an "existence value" separate and apart from its impact on its victims—it is worth something to people to know that they live in a crime-free (or crime-reduced) society. It is also worth something to people to know that their loved ones who are incarcerated, or who might face incarceration some day, are less likely to be raped during their confinement.

A 2001 study by Professor Mark Cohen and others used this method to estimate the economic value that people place on preventing various crimes, including sexual abuse. This study was based on a national survey which asked people how much they would be willing to pay in additional taxes to reduce the prevalence of various types of crime in their community by 10%; from these survey responses and other data, Cohen then extrapolated the value to society of avoiding one incident of each type of crime studied. According to Cohen, communities were willing to pay on average $237,000 in 2000 dollars (which translates to $309,585 in 2011 dollars) to prevent rape and sexual abuse.[55]

Cohen's study looked at society's willingness to pay to reduce rape in the community in general and did not specifically examine the willingness to pay to reduce rape in the prison setting. (We are unaware of any study that has used either the WTP or the WTA model to assess the cost of rape specifically in the confinement setting.) As a result, we have considered carefully whether to use these figures for purposes of this RIA.

On the one hand, Cohen's study looked to the survey respondents "to value crime reduction that affects them in some manner—whether through their own household, their families, friends, or coworkers." Cohen, *supra* note 55, at 93 n.5. This focus on reducing crime in the "community" may not translate well to the reduction of rape in prison settings, which to many members of the public may seem distant and unrelated to their lives. Thus, respondents to Cohen's survey may

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[53] *See generally* John Roman & Graham Ferrell, *Cost-Benefit Analysis for Crime Prevention: Opportunity Costs, Routine Savings, and Crime Externalities*, 14 CRIME PREV. STUDIES 68-69 (2002).

[54] OMB, Regulatory Circular A-4, at 18 ("'Opportunity cost' is the appropriate concept for valuing both benefits and costs. The principle of 'willingness-to-pay' (WTP) captures the notion of opportunity cost by measuring what individuals are willing to forgo to enjoy a particular benefit. In general, economists tend to view WTP as the most appropriate measure of opportunity cost, but an individual's 'willingness-to-accept' (WTA) compensation for not receiving the improvement can also provide a valid measure of opportunity cost. . . . WTP is generally considered to be more readily measurable. Adoption of WTP as the measure of value implies that individual preferences of the affected population should be a guiding factor in the regulatory analysis.").

[55] Mark A. Cohen *et al.*, *Willingness-to-Pay for Crime Control Programs*, 42 CRIMINOLOGY 86, 98 (2004). To convert from 2000 to 2011 dollars, we used the CPI Inflation Calculator from the Bureau of Labor Statistics, available at http://www.bls.gov/data/inflation_calculator.htm.

not have been thinking of the prison setting when formulating their willingness to pay responses. On the other hand, the number of incarcerated persons in the United States is very large (estimated at 2.4 million in prisons, jails, and juvenile facilities), and the number of people who are arrested and who pass through jail or a lockup each year is even larger (estimated at 13.4 million).[56/] Therefore, the size of the population with incarcerated "families, friends, or coworkers," who may be personally affected by the reduction in the prevalence of rape in confinement settings, may be large enough to counteract the "community" problem to some extent.

Another potential objection to extrapolating from Cohen's work to the prison setting is that some people may believe sexual abuse in confinement facilities is a less pressing problem than it is in society as a whole, and might therefore think that the value of avoiding such an assault in the confinement setting is less than the value of avoiding a similar assault in the non-confinement setting.[57/]

However, quite a few commenters, corrections agencies and advocacy organizations alike, insisted that the WTP figures should not be adjusted downwards based on some inchoate assumption that reducing rape that occurs inside of prisons is somehow worth less to society than reducing rape that takes place on the outside.

We agree with these commenters that the WTP values should not be reduced based on an assumption that society attaches a lower value to preventing harm to inmates. One of Congress's purposes in enacting PREA was to counteract the cultural tendency to take prison rape for granted; this tendency is in turn largely driven by the diminished value some in society may place on the tribulations of prisoners. Because Congress has rejected this devaluation, it is inappropriate for us to discount the value that empirical studies have placed on rape and sexual abuse simply because those studies did not deal specifically with the prison setting. Even if we wanted to attempt such a discount, in the absence of any empirical data, the amount of the diminution would be purely speculative.

One state corrections agency proposed a reduction for a different reason. Comparing what society would be willing to pay to reduce the prevalence of rape in society generally to what it would be willing to pay to reduce prison rape, this agency postulated, is "an apple-to-oranges comparison." Within the corrections context, the commenter noted, taxpayers already pay a significant amount of money to ensure that inmates are not sexually assaulted, in the form of salaries, specially-constructed housing, court oversight, etc. The commenter thus argued that, in view of the Department's calculation of the cost of specific types of victimization and the benefit that will accrue from reducing such incidents, the Department should adjust the WTP figures downwards to reflect the costs the taxpayer already pays for correctional operations.

We do not find this argument persuasive. Cohen's study asked respondents how much they would be willing to pay in taxes *over and above what they were already paying* in order to reduce the prevalence of various forms of crime in their communities, and his estimates of the unit cost of those crimes were extrapolated from the answers to these questions. Taxpayers already pay significant sums of money for public safety in their communities, yet, according to Cohen's study, they were willing to pay still more for additional crime reduction. Accordingly, there is no reason to assume that Americans would not be willing

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[56/] Extrapolated from BJS, *Jail Inmates at Midyear 2008*, Statistical Tables, available at www.bjs.gov.

[57/] *See, e.g.*, Tamar Lewin, "Little Sympathy or Remedy for Inmates Who Are Raped," N.Y. TIMES, Apr. 15, 2001, at 11.

to pay correspondingly more to reduce the prevalence of prison rape, simply because they are already expending funds to ensure that inmates are not sexually assaulted in confinement.

One organization commented that "the heightened responsibility of the government to protect people in its charge should warrant a higher 'willingness to pay' figure for people in detention than for people in free society." This commenter suggested that the Department double the WTP figures from Cohen's study to reflect this difference.

We accept the notion that sexual abuse in a prison setting has a constitutional dimension that is absent from similar events occurring in the general population. To the extent society assigns inherent value to constitutional rights and their protection, one could indeed argue that rape in the prison setting actually costs society more than it does in general terms. However, neither this commenter nor any other persuaded us that there is an empirical basis to make any specific upward adjustment of the WTP calculations to account for this constitutional dimension. Consistent with our conservative approach in valuing the benefits of avoiding prison rape, we decline the suggestion.

We asked in the NPRM whether the Department should adjust Cohen's figures to take into account the fact that in the general population the vast majority of sexual abuse victims are female, whereas in the confinement setting the victims are overwhelmingly male. We also asked whether such a difference is even relevant for purposes of using the WTP method to monetize the cost of prison sexual abuse, and we asked how (or on the basis of what empirical data) the Department would go about determining the amount of an adjustment, if appropriate.

Commenters uniformly rejected the notion that the gender of the victim should be a factor in determining WTP figures. As several advocacy organizations explained, all sexual abuse is equally unacceptable, regardless of the victim's gender, custody status, or criminal history. The Department was thus urged not to adjust the WTP figures to account for the possibility that in the general population the vast majority of sexual abuse victims are female. Several correctional and sheriff's agencies also stated that whether the victims are male or female is irrelevant to the WTP analysis.

No commenter took issue as a general matter with our reliance on the WTP valuation method, nor did any commenter criticize our use of Cohen's specific study, suggest that it was inappropriate for our analysis, or challenge his methodology, assumptions, analysis, or conclusions. Accordingly, we rely on Cohen's study, as we did in the IRIA, to approximate the avoidance value of the highest category of prison sexual abuse that we have defined in our hierarchy for adult victims (Nonconsensual Sexual Acts High) without making adjustments for the gender or incarceration status of the victims. As noted, according to Cohen, people are willing to pay on average $309,585 in 2011 dollars to prevent a rape in their community. Rounding this figure to facilitate calculations, we assign prison rape a unit avoidance value of $310,000.

4.1.3 *Victim Compensation Model*

Unlike the WTP model, the victim compensation/WTA model endeavors to identify the costs of sexual violence to the victim. These cost models usually rely on court verdicts and settlements to monetize the more intangible costs such as pain and suffering,[58/] while relying on

[58/] *But see* Cohen, *supra* note 55, at 91 ("While jury awards are one way to capture some of the intangible costs of crime that previous approaches had ignored, the method is not entirely appropriate for use in cost-benefit analysis. Conceptually, when deciding whether to fund a program, we want to know how much the public expects to benefit—hence how much they would be willing to pay. Thus, economists generally prefer *ex ante* measures

estimates for the cost of various victim services to monetize the more tangible costs such as medical and mental health care.

We have decided to supplement our WTP analysis with an additional analysis using the WTA model, for two reasons. First, Cohen's study asked people about rape and sexual abuse generally and did not define those terms or identify, as we do here, several categories of sexual victimization, each with its own definition.[59/] We have assigned the per victim value emerging from Cohen's study ($310,000) to the highest category of victimization in our event hierarchy for adults, but because we have no way of knowing what specific conception of sexual abuse respondents had in mind when Cohen surveyed them about their willingness to pay for rape reduction, the study does not provide a useful mechanism for assigning cost values to each of the specifically-defined subsidiary events in our hierarchy. Second, Cohen's study did not distinguish between adult and juvenile victims—a distinction we must make because our standards affect both youth and adults in confinement settings, and because (as elaborated below) we have reason to believe that the cost to society is higher when the victim is a juvenile.

Various studies based on the victim compensation model have attempted to calculate the monetary value of rape and sexual abuse by determining the cost to the victim of medical and mental health care, diminished quality of life, and increased risk of suicide and contracting serious infections.

One such study, published in 1993 by the Department's National Institute of Justice, put the average cost per victim at $110,000 in 1993 dollars for adult victims (which translates to $171,200 in 2011 dollars)[60/] and $125,000 in 1993 dollars for juvenile victims ($194,600 in 2011 dollars).[61/] These estimates considered immediate use of medical and mental health services, lost productivity, and permanent disability, as well as the cost of pain, suffering, fear, and lost quality of life. They also took into account the impact of multiple or serial victimization by assuming that each victim suffered an average of 1.27 assaults. Quality of life estimates were derived from the analysis of 1,106 jury awards and settlements to assault, rape, and burn survivors to compensate for pain, suffering, and lost quality of life (excluding punitive damages).

A more recent study by Prof. Ted Miller and others, commissioned by the Minnesota Department of Public Health, placed the costs at $201,865 (in 2011 dollars) per adult victim for rape and $392 for abusive sexual contact not resulting in physical injury or attempted penetration.[62/]

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of 'willingness-to-pay' (WTP) when conducting cost-benefit analysis as opposed to the *ex post* analysis of victim costs and jury awards used in previous studies.").

[59/] Respondents in Cohen's study were asked if they would be willing to vote for a proposal requiring each household in their community to pay a certain amount to be used to prevent one in ten crimes in their community. One of the crimes asked about was "rape and sexual assault." The crimes were not defined for the respondents, and no information was provided on the prevalence, risk of victimization, average tangible losses, or severity of injuries normally associated with the offense. Respondents were instead asked to respond based on their personal understanding of the crimes. *See* Cohen, *supra* note 55, at 93.

[60/] *See* NIJ VICTIM COSTS, *supra* note 25, at 16. The figures used here are those presented per victim rather than per victimization, since we have chosen to use prevalence figures rather than incidence figures: "The [per victim] figure is probably a more useful estimate, since the quality of life losses (the largest component of rape costs) are estimated from jury awards to victims (not victimizations)." *Id.* at 21. The 1993 figures were converted to 2011 dollars using the CPI Inflation Calculator of the Bureau of Labor Statistics, available at http://www.bls.gov/data/inflation_calculator.htm.

[61/] *Id.* The victim costs associated with loss of quality of life are higher for juveniles than for adults because of juveniles' longer expected lives and because of higher mental health treatment costs for juvenile victims. *See* Miller, *supra* note 62, at 10; *see also* Ted R. Miller *et al.*, *Costs of Juvenile Violence: Policy Implications*, 107 PEDIATRICS 1, 3 (Jan. 2001).

[62/] *See* Ted R. Miller *et al.*, COSTS OF SEXUAL VIOLENCE IN MINNESOTA, at 11 (Minn. Dep't Health July 2007), *available at* http://www.pire.org/documents/mn_brochure.pdf. The figures here are derived first by multiplying the figures from the authors' Table 7 (which reflect cost per victimization) by 1.26 (described as "the national estimate of the number of times an average victim is raped during the year) to yield the cost per victim (in 2005 dollars). *See id.* at 17-18. These figures were then converted from 2005 dollars to 2011 dollars,

When the victim was a juvenile, the cost was $267,460 per victim for rape.[63] The quality of life estimates were again derived from an analysis of jury awards and settlements. Table 4.1 displays the breakdown of constituent costs that Miller *et al.* identified.[64]

Because the victim compensation costs that Miller identified related to rape in the general population, we must make some adjustments to account for the differences of rape and sexual abuse in the prison context. Indeed, one commenter complained that the costs assigned to sexual abuse in Miller's article "reflect misunderstandings of prison sexual abuse."

Thus, as elaborated in the following sections, we delete cost elements that are not relevant to victims in confinement settings and adjust the remaining elements upwards or downwards to account for the fact that the impact of some of these elements may be felt differently in prison than they would in the general population.

We performed similar adjustments in the IRIA, and we asked in the NPRM whether the Department had appropriately adjusted the conclusions of Miller's studies to account for the differing circumstances posed by sexual abuse in confinement settings.

In response, an association of faith leaders commented that the Department had relied on the best available research to calculate a unit cost for rape, and had made conservative adjustments to account for confinement settings. A county sheriff expressed approval of the conclusions relating to the unit cost of prison rape.

Table 4.1: Victim Compensation Costs of Rape and Abusive Sexual Contact, per Victim in the General Population, in 2011 dollars

Cost Element	Child Rape	Adult Rape	Other Sexual Abuse
Medical Care	$1,016	$1,016	
Mental Health Care	$13,641	$2,032	
Lost Work	$5,660	$4,063	
Property Damage	$145	$145	
Suffering and Lost Quality of Life	$208,105	$171,389	
Sexually Transmitted Diseases	$1,596	$1,596	
Pregnancy	$435	$580	
Suicide Acts	$23,945	$11,900	
Substance Abuse	$6,676	$3,338	
Victim Services	$435	$145	
Criminal Justice: Investigation/Adjudication	$871	$726	
Sanctioning	$3,048	$3,048	
Perpetrator's Earning Loss	$1,887	$1,887	
Total	$267,460	$201,865	$379

4.1.3.1 Suffering and Lost Quality of Life

According to the Miller study, the largest quantifiable cost to victims of sexual abuse is pain, suffering, and loss of dignity—put otherwise, a diminution in the victim's quality of life.[65] Indeed, "the effects of sexual violence [in prison] are well-known and extremely deleterious. Victims of sexual violence undergo a destructive, catastrophic, life-changing event. They are likely to experience physical, emotional, cognitive,

using the inflation multiplier cited *supra* note 60.

[63] "Aside from murder, child sexual abuse is the most serious crime, followed by rape, child physical abuse, and arson." NIJ VICTIM COSTS, *supra* note 25, at 16.

[64] Source: Miller *et al.*, COSTS OF SEXUAL VIOLENCE IN MINNESOTA, *supra* note 62, at 11. "Sanctioning" refers to the costs of confining offenders, of providing intensive supervision, and similar expenses.

[65] *See* NIJ VICTIM COSTS, *supra* note 25, at 1, 9, 15-16.

psychological, social, and sexual problems as a result. Even one event may precipitate a life-time of pain and suffering."[66]

A handful of corrections agencies summarily suggested that Miller's estimate of the pain, suffering, and lost qualify of life associated with rape victimization is too high when applied to inmate victims. However, none of these agencies provided any explanation or evidence to support this assertion. We see no reason to assign a different value to the pain, suffering, or lost quality of life that a prison rape victim experiences compared to that suffered by a rape victim in the community.

Indeed, as one expert has written, there may be reason to assume that rape victims in prison experience even *greater* pain and suffering than victims in the community at large due to the fact that they cannot escape from their perpetrators and may fear retaliation should they report their victimization:

> In jails and prisons ... the unique structure of incarceration may result in even more debilitating effects on victims. Research has demonstrated that incarcerated victims are more often physically assaulted during attacks, and they may experience repeated assaults by multiple assailants over time. As a result, victims may experience on-going psychological trauma, terror, helplessness, and fear as the physical/sexual abuse continues.... In addition, victims experience enormous social consequences; victims routinely experience a loss of social status, and they might be more vulnerable for future attacks within the jail or prison.[67]

A human rights organization urged us to supplement our consideration of Miller's article with compensatory damages awards and settlements from actual litigation arising out of allegations of rape and sexual abuse in prisons. According to this commenter, "such damages can be seen as reflections of the monetary 'costs' society assigns to a victim's abuse." This commenter referred us to 13 groups of damages awards and settlements reached in four cases, all from the same jurisdiction and relating to the same prison facility, and argued that "the[se] damages figures suggest the Department's figures for sexual abuse err on the low side, especially for abuse that does not involve sexual intercourse or penetration."

As a general matter, compensatory damages awards and settlements from litigation arising out of rape may shed some light on the avoidance benefit values to assign for diminished quality of life. Indeed, this is a major reason we rely to such a great extent on Miller's monetization of the pain and suffering associated with rape, which is largely based on a compilation and analysis of jury verdicts and settlements. However, we are not aware of any published study, analogous to Miller's studies pertaining to rape victims generally, that specifically tabulates awards rendered to prison rape victims in order to monetize the cost of prison rape.

Moreover, anecdotal evidence of verdicts or settlements in individual prison rape cases does not provide a useful analogue to a comprehensive study such as the one undertaken by Miller. There is no reason to believe that the examples relating to a single facility described in the organization's comment are representative of damages awards in prison rape cases generally or even approximate average awards. More likely, those awards are, like most litigation outcomes considered in isolation, *sui generis* and reflective only of the unique facts and circumstances of specific cases.

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[66] Dumond, *supra* note 34, at 150-51.

[67] *See id.* at 154.

Miller's description of the approach he used to extrapolate monetized values for rape-related pain and suffering is instructive as to the more appropriate methodology for extrapolating pain and suffering values from jury awards:

> Since cases brought to trial are not necessarily representative of crime cases, the researchers could not apply the pain and suffering estimates directly. Instead, they estimated the functional relationship between the out-of-pocket costs of crime (lost wages and medical expenses); characteristics of the victim (age, sex, work status, etc.); and the jury's award for pain and suffering. This functional relationship was then applied to the actual distribution of crime victims in the project's data set. In this manner, the researchers were able to estimate what the average jury award for pain and suffering would be for the typical crime in the project's data set.[68/]

We therefore elect not to incorporate into the analysis in this RIA the specific damages awards cited by the commenter.

Another commenter criticized the estimates used by Miller to estimate the costs of sexual victimization, on the grounds that the analysis, which relied on jury awards and settlements from 1980-1991, was based on outdated figures. We find no merit in this criticism in the absence of any reason to believe that the "functional relationship" between the out-of-pocket costs of crime and jury awards for pain and suffering has changed in the intervening time. We are in any event unaware of any more recent relevant studies that are of the scale of Miller's or that have been cited in the academic literature as setting forth a reasonable estimate of the victim compensation costs for sexual abuse.

We therefore have chosen to use Miller's valuation of the pain, suffering, and lost quality of life attributed to rape, without adjustment, in monetizing the cost of prison rape. While a case could be made for adjusting the valuation upwards, we elect not to do so, consistent with our overall conservative approach to calculating the monetary value of the relevant benefits.

4.1.3.2 Mental Health Care

Another significant cost of sexual abuse is the cost of providing its victims with mental health care and psychological support services. Survivors of sexual abuse endure a number of mental health consequences, including but not limited to guilt, shame, fear, anxiety, and tension. Effects on male and female sexual abuse victims might include a wide range of psychiatric problems such as post-traumatic stress disorder (PTSD), anxiety, depression, exacerbation of pre-existing psychiatric disorders, and suicidal feelings. One study noted that even 17 years after an assault, 16.5% of rape victims manifest symptoms of PTSD.[69/]

Although we are not aware of any academic studies that have attempted to assess rape-associated mental health costs specifically in the prison setting, there is reason to assume that the mental health treatment costs associated with sexual abuse are substantially greater when the assault takes place in the correctional setting.

Between 30% and 40% of incarcerated individuals exhibit symptoms of mental health disorders upon intake, compared with only approximately 11% of the population as a whole.[70/] This greater prevalence means that, compared to

[68/] *See* NIJ VICTIM COSTS, *supra* note 25, at 15.

[69/] Dumond, *supra* note 34, at 150-51 (footnotes and internal quotations omitted).

[70/] *See* BJS, *Special Report: Mental Health Problems of Prison and Jail Inmates* 3 (updated 2006), *available at* bjs.ojp.usdoj.gov/content/pub/pdf/mhppji.pdf.

society as a whole a much larger portion of the inmate community is predisposed to being vulnerable to sexual abuse, and to experiencing that abuse in a psychologically debilitating manner. As Congress recognized, sexual abuse exacerbates the prevalence of mental illness in our prisons by "substantially increasing the rate of post-traumatic stress disorder, depression, [and] suicide . . . among current and former inmates." 42 U.S.C. § 15601(14)(D).

Moreover, the risk of multiple victimization is significantly greater in prison than it is in the community at large—perhaps as much as ten times greater—and the repeated trauma experienced by victims in confinement increases the costs associated with the ensuing mental health treatment. The precise rates of multiple rape victimization in the community are not known, although Miller described 1.26 as "the national estimate of the number of times an average victim [in the community] is raped during the year." *See* Miller *et al.*, COSTS OF SEXUAL VIOLENCE IN MINNESOTA, *supra* note 62, at 17-18. As shown in Table 4.2,[71] however, serial victimization in prisons, jails, and juvenile facilities is startlingly common.

In the NPRM, we asked the public whether any academic studies, data compilations, or established methodologies exist that can be used to translate mental health costs associated with sexual abuse in community settings to such costs in confinement settings. We also asked whether, in the IRIA, the Department had appropriately estimated the cost of mental health treatment associated with sexual abuse in confinement settings as twice as large as the corresponding costs in community settings.

Table 4.2: Percentage of Prison Rape Victims Reporting More than One Victimization, by Facility, Inmate, and Perpetrator Type, 2008-09

		Inmate on Inmate	Staff on Inmate
Prisons	Males	64.8%	75.1%
	Females	58.4%	67.9%
Jails	Males	64.2%	76.1%
	Females	44.2%	61.1%
Juvenile	All	81.4%	88.3%

Several state correctional agencies responded that they were unaware of any methodologies to extrapolate mental health costs in correctional settings based on community costs. One agency observed that the costs of community-based interventions and treatment services are often lower than the costs in the correctional setting, but expressed doubt that they are half the cost.

An organization that advocates on behalf of juveniles, along with an academic in the field, suggested that the multiplier for mental health costs for juveniles in detention ought to be somewhat higher than the corresponding multiplier for adults in detention, citing studies showing that the prevalence of mental illness among youth in detention is even higher than among adults, and other studies showing that the cost of mental health treatment for children is higher than for adults.[72]

An association of faith leaders commented that mental illness is significantly more prevalent in detention than it is in the community, and therefore sexual abuse in confinement generates greater costs associated with mental health than sexual abuse in the community at large. According to this commenter, because mental

[71] Source: BJS Adult NIS 2008-09, at 21, 23; BJS Juv. NSYC 2008-09, at 12, 14.

[72] *See, e.g.*, Miller, *supra* note 62, at 10 ("Adults had lower mental health costs, lost less quality of life, and had less likelihood of turning to suicide or substance abuse than children following a sexual assault.").

illness is estimated to be four to six times as prevalent in the correctional setting as in the community, a greater multiplication of costs is warranted than the doubling that the Department proposed in the IRIA.

Having considered these comments in detail, we have decided to maintain our approach for adults, but to modify our multiplier for juvenile victims. Given that the prevalence of serious pre-existing mental health issues in prisons is two to three times greater than in the population at large, and that the risk of multiple victimization is significantly greater, we use a conservative multiplier of two to translate, from the community at large to the confinement setting, the costs that Miller reported for mental health care treatment of rape victims.[73]

When taken together, the exacerbation of pre-existing mental health conditions and the phenomenon of serial victimization almost certainly increase the cost of therapeutic responses by at least 100%. Consistent with our overall conservative approach to estimating avoidance benefit values, we are nevertheless not persuaded that it would be appropriate to use a multiplier of greater than 2 absent more specific data, especially since not all victims seek mental health treatment and since some of the costs associated with mental health treatment are likely already included in the pain, suffering, and diminished quality of life category, or in the suicide or substance abuse categories.

We are, however, persuaded to use a slightly higher multiplier for mental health costs of juveniles than for adults. To be sure, the Miller study upon which we rely already assigns significantly greater mental health costs to sexually abused youth in the community than to comparable adults ($13,205 for youth vs. $1,967 for adults, *see* Table 4.1). However, the rate of multiple victimization among youth rape victims in confinement is more than 25% greater than the corresponding rate among adult prison rape victims. On the assumption that this translates to a proportionately higher cost for youth, we now use a multiplier of 2.25 for juveniles.

4.1.3.3 Suicide Acts

Associated with pain, suffering, and diminished quality of life, and also with mental health costs, is the possibility that sexual abuse in the prison environment exposes victims to an increased risk of suicide. Nearly 50% of prison rape victims contemplate suicide, and 17-19% actually attempt it.[74] A suicide attempt, successful or otherwise, has been estimated to cost an average of $227,000 in 2011 dollars.[75]

One commenter suggested that because suicide acts are more prevalent among detained populations than they are among the population as a whole,[76] Miller's estimate of the monetized value of rape-related suicide impacts should be adjusted upward in the prison context. We agree, and have used a multiplier of 1.25 for this purpose

[73] Thus, we assume here that individuals who have pre-existing mental health issues at the time of their sexual abuse are likely to incur greater marginal costs for mental health treatment secondary to their abuse (in comparison to victims without a past history of mental health issues), both because the past history is likely to exacerbate the psychological effect of the assault (*e.g.*, greater vulnerability to experiencing it as a severely traumatic event) and because the past history of mental health issues makes treatment of rape-related trauma more complex and more therapeutically time-consuming. Moreover, the greater likelihood of serial victimization in prison than in the community means that the psychological impact of rape in prison is likely to be greater than the psychological impact of rape in the community.

[74] Dumond, *supra* note 34, at 151-54.

[75] *See* Miller *et al.*, *supra* note 62, at 11. Miller estimated that an act or attempt of suicide resulting from sexual abuse costs $5,400 in medical expenses and $191,300 in quality of life losses, in 2005 dollars, over and above any medical expense and quality of life losses stemming from the sexual abuse itself. We have adjusted these 2005 dollar totals to 2011 dollars using the inflation calculator cited *supra*, note 60.

[76] BJS, *Suicide and Homicide in State Prisons and Local Jails* (NCJ 210036); BJS, *Mortality in Local Jails, 2000-2007* (NCJ 222988), Deaths in Custody: State Prison Deaths, Statistical Tables, table 3.

as a very conservative estimate of the differential impact of suicide acts.[77]

4.1.3.4 *Medical Care*

In addition to causing serious psychological harm, prison sexual abuse often has physical ramifications. A significant percentage of inmates suffer physical injury as a result of sexual abuse, especially when the assault takes place under force or threat of force.[78] Such injuries can include knife or stab wounds, broken bones, rectal tearing, chipped or broken teeth, internal injuries, bruises, cuts, scratches, loss of consciousness, and other injuries. Of all victims of sexual abuse in prisons, an estimated 20% said that they had sustained an injury—and 85% of those reported at least one serious injury.[79] These injuries produce quantifiable costs for immediate medical response and subsequent medical care.

We did not receive any comments suggesting that the values Miller assigned for the medical care component of the costs associated with rape require adjustment for confinement settings. Accordingly, we use Miller's values without adjustment.

4.1.3.5 *Sexually Transmitted Infections*

Sexual abuse in prison exposes victims to an increased risk of contracting HIV/AIDS, other sexually transmitted infections (STIs), and infectious diseases such as tuberculosis and hepatitis B and C.

The rates of STIs are much greater within confinement facilities than in the general population. For example, at the end of 2008 almost 22,000 individuals incarcerated in state and federal prisons were known to be living with HIV/AIDS, amounting to approximately 1.5% of the total prison population at that time.[80] During the same period of time, approximately 680,000 Americans were believed to be living with HIV/AIDS, amounting to approximately 0.34% of the total national population.[81] The prevalence of Hepatitis C is even higher in prisons, because of intravenous drug use prior to incarceration.[82]

These diseases are expensive to treat and are sometimes fatal. One study estimated the cost of HIV to a victim of sexual abuse as $3,493,800 in 2011 dollars.[83]

In light of the higher rate of STIs in confinement facilities, we had conservatively proposed in the IRIA to multiply by 2 the values that Miller assigned to this element of the costs of rape. Only two commenters discussed this proposal in any

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[77] Miller estimated the portion of the societal cost of rape attributable to the fact that some rape victims commit suicide. If prisoners, as a general matter, are more likely to commit suicide than are persons who are not incarcerated, it would seem to follow logically that the percentage of prison rape victims who commit suicide will be correspondingly higher than the percentage of nonincarcerated rape victims who do so. Moreover, given the fact that rape in prison is likely to have a greater traumatic effect on the victim than is rape in the community (e.g., because of the serial victimization, the inability to escape the perpetrator, the preexisting mental health challenges of the prison population), it stands to reason that the per victim cost of rape-engendered suicide will be higher in prison settings than it is in the community.

[78] *See, e.g.*, BJS Adult NIS 2008-09, at 22-23.

[79] *Id.* at 22.

[80] BJS, *Bulletin: HIV in Prisons* (updated 2010), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/hivp08.pdf.

[81] *See* Centers for Disease Control and Prevention, 21 *HIV Surveillance Report: Diagnoses of HIV Infection and AIDS in the United States and Dependent Areas, 2009*, at front cover (Feb. 2011), available at http://www.cdc.gov/hiv/surveillance/resources/reports/2009report/pdf/cover.pdf.

[82] *See, e.g.*, Theodore M. Hammett, *Sexually Transmitted Diseases and Incarceration*, 22 CURRENT OPINION IN INFECTIOUS DISEASES 77-81 (2009).

[83] *See* Miller *et al.*, *supra* note 62, at 12.

detail. An organization of religious leaders observed that the rates of HIV and other STIs in prisons and jails are estimated at 2.4 to 20 times the corresponding rates in the community, warranting an even higher multiplier than we had used.

On the other hand, a state juvenile justice agency suggested that the prevalence of STIs in juvenile facilities is lower than it is in adult facilities, and that the multiplier should be correspondingly smaller.

Consistent with our overall conservative approach to benefits estimation, we decline to use the larger multiplier proposed by the first of these commenters but instead continue to multiply by two to translate from the community to the confinement setting the costs that Miller reported for STI-related costs for rape victims. In juvenile facilities, we use a slightly lower multiplier of 1.75 to account for the somewhat lower prevalence of STIs in juvenile facilities compared to adult facilities, as proposed by the second of these commenters.

4.1.3.6 Pregnancy

Because the vast majority of rape victims outside prison confines are female, it was appropriate for Miller to include in his estimates of the cost of rape an element related to the costs of pregnancy that result from rape. However, in confinement settings, the overwhelming percentage of victims are male, and only about 5.25% of prison rapes involve male perpetrators on female victims.[84/] Thus, we reduce the cost that Miller associated with pregnancy by 90% to capture this differential in the gender of the victim and perpetrator populations.

4.1.3.7 Substance Abuse

Miller included in his estimates for the cost of rape an element for substance abuse, based on the fact that victims of sexual abuse have a higher likelihood of addiction and of illegal use of controlled substances than they would have if they had not been sexually abused.

One commenter urged us to use a higher figure than Miller used, based on the claim that active substance abuse is more prevalent among detained populations than it is outside prison walls. We consider this to be a dubious claim, even if it may well be true that inmates entering confinement are more likely to have a history of drug abuse than the population as a whole. In any event, we are not aware of any published studies or other data that would provide us with an empirical basis to apply a multiplier to this element of Miller's rape valuation, so we use his figures without adjustment.

4.1.3.8 Other Elements

In extrapolating from Miller's calculations to calculations appropriate for prison rape, we have deleted the elements of victim's lost work, property damage, and "perpetrator's earning loss while confined" as inapplicable in the prison context. One state juvenile justice agency argued that this last element, at least, should not be deleted, because the cost would still exist if the perpetrator were a staff member, or if he were a confined adult or juvenile who would experience earning loss as a result of receiving an extended sentence. However, any earning losses of this nature that the perpetrator of a prison rape is likely to experience and that are not already included in the "sanctioning" cost element are likely to be so inconsequential as to not be worth attempting to estimate.

[84/] *See* BJS Adult NIS 2008-09, at 24 Table 18.

With regard to the remaining elements of Miller's estimate of the cost of rape—victim services, costs of investigation and adjudication, and costs related to sanctioning—we had proposed using these elements without adjustment and received no comments one way or the other. We therefore proceed with our proposed approach and use Miller's values for these elements without incorporating a multiplier to translate them to the prison context.

4.1.3.9 Application to Juvenile Victims

We asked in the NPRM whether we had appropriately extrapolated from Miller's study to estimate the avoidance benefit values that apply to sexual abuse of juveniles. Several commenters, including both corrections agencies and advocacy groups, remarked that the Department's estimates of the societal cost of rape of juveniles in detention were reasonable, "based on scientific thought," and appropriately accounted for the increased costs when the victim is a minor.

On the other hand, several advocacy groups suggested that the estimates of unit avoidance benefit that we attributed to the sexual abuse of juveniles in the IRIA failed to account for the long-term mental and physical health care costs resulting from sexual abuse of juveniles.

We disagree with this criticism. Our analysis in the IRIA, like our analysis here, expressly stated that the avoidance benefit values for juveniles are greater than the corresponding values for adults, in part "because of juveniles' longer expected lives and because of higher mental health treatment costs for juvenile victims." *See supra* note 61. We have, moreover, now increased our estimates of the avoidance benefits for youth, relative to the estimates in the IRIA, based on a more nuanced analysis of the costs of rape as relevant to that population.

A state corrections agency objected that the Department provided a vague definition of putatively consensual situations. We have responded to this objection by clarifying the definitions of the various types of sexual abuse, and the manner in which putatively consensual situations involving staff-on-youth sexual conduct are treated for benefit estimation purposes.

One state juvenile justice agency offered a number of specific comments on our extrapolation from Miller's rape victim compensation study to values for the rape of youth in confinement. First, the agency objected to our decision to calculate the upper bound of the range of benefit values applicable to juveniles by multiplying the $300,000 willingness-to-pay figure for adults, drawn from Cohen's study, by 133%, which represented the approximate ratio of Miller's "child rape" valuation to his "adult rape" valuation.

We agree with this objection and have revised our analysis accordingly. We no longer attempt to extrapolate "willingness to pay" estimates for the categories in our juvenile event hierarchy by applying a multiplier to Cohen's figure. As elaborated below, we do extrapolate a benefit value for the "other sexual acts" categories in the juvenile hierarchy by multiplying the corresponding events from the adult hierarchy by a factor representing the approximate ratio of "child rape" to "adult rape," but we derive the ratio from calculations in the confinement setting rather than in the community at large, consistent with the commenter's suggestion.

The commenter also noted that comparing confined juveniles to Miller's child sample may require additional adjustments that were not considered in the IRIA. According to Miller, "adults had lower mental health costs, lost less quality of life, and had less likelihood of turning to suicide or substance abuse than children

following a sexual assault."[85] According to the commenter, however, Miller's child sample included children of all ages, whereas the vast majority of juveniles in confined settings are at least teenagers, and many are ages 16-18. Therefore, the commenter argued, the costs for confined juveniles are likely not comparable to Miller's sample that includes small children, even with the adjustments in the IRIA. Additionally, the average age of adult inmates may be lower than the adult sample in Miller's study.

Thus, the commenter suggested, the differences Miller found in costs between children and adults in the general population may not be as extreme between confined adults and confined teens. The differences between confined juveniles and confined adults in mental health, quality of life, suicide, and substance abuse costs may therefore need to be reduced.

We have considered these comments and have not found them persuasive. The basic premise of these comments is that the difference between the impact of sexual abuse of teenage victims and the impact of sexual abuse of young adults is not significant. The commenter submitted no data or published studies to support this premise, and we believe it to be wrong. Adolescents, by virtue of their youth and immaturity, are typically much more vulnerable to sexual abuse, and to being traumatized by sexually abusive experiences, than are young adults. In any event, most of the children in Miller's calculations were over age 12,[86] so we dispute the notion that his figures are not representative of the age range for confined juveniles.

The same commenter noted that the pregnancy cost should be equal for juveniles and adults since the majority of confined female juveniles are old enough to become pregnant, unlike Miller's sample, which included younger girls. Again, the majority of Miller's sample were over age 12, and in any event the likelihood of pregnancy ensuing from prison sexual abuse is so small that this adjustment would have a negligible impact on the totals.

Finally, an advocacy organization criticized the approach to juveniles that we took in the IRIA insofar as we failed to account for the number of youths housed in adult facilities. This subject is discussed *supra*, at 36. As explained there, we agree with these criticisms and have therefore applied the unit avoidance benefits that we use for juveniles to the subset of the victims in adult prisons and jails that we conservatively estimate are youthful inmates.

4.1.3.10 Multiplier for Serial Victimization

Just as we have chosen to do in this RIA, Miller assessed prevalence rather than incidence.[87] To compensate for this choice when monetizing what he called "adult rape" and "child rape," he multiplied his per-victim figures by 1.26, reflecting the number of times the average rape victim is raped during the year, according to the National Crime Victimization Survey. This multiplier was thus used to estimate the total number of incidents, and thereby to ensure that the added cost to the victim of multiple victimization is captured in the cost totals. We used the same multiplier in the IRIA.

A number of commenters suggested that we use a higher multiplier than Miller used because the rate of multiple victimization (both the percentage of victims who are victimized multiple

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[85] *See, e.g.*, Miller, *supra* note 62, at 10.

[86] *See* Miller *et al.*, *supra* note 62, at 6 (80% of children in the study were age 13-17; 20% were twelve or younger).

[87] *See* Miller *et al.*, *supra* note 62, at 6-7, 16. *See also* NIJ VICTIM COSTS, *supra* note 25, at 2-3, 15-16.

times, and the number of times that they are victimized in a year) is much higher among incarcerated persons than in the general population. Prison rape victims are often unable to avoid subsequent interactions with their assailants, and are also more likely than victims in the general population to be targeted by multiple perpetrators. *See* section 4.1.3.2 and Table 4.2.

We agree that a higher multiplier than Miller used may be warranted to capture the higher rate of serial victimization in confinement settings, at least for victims who report a high incidence, but it is important to avoid double-counting costs already included in the pain/suffering/quality of life cost element or in the mental health care component. Referring to the baseline prevalence matrices in Tables 3.1 and 3.2 (using our principal approach to estimating prevalence), we assume each victim categorized as "high incidence" experienced three incidents (and therefore use a multiplier of 3 for these victims) and each victim in other categories experienced just one incident.

Because we have defined "high incidence" as having experienced three or more events and "low incidence" as having experienced one or two events, these assumptions are very conservative. The conservatism is warranted for three reasons:

- Although victims who experienced more than three incidents likely have greater costs associated with their victimization than victims who experienced fewer than three incidents, there is no evidence that there is a one-to-one relationship between the number of incidents and the costs incurred by the victim.

- As noted in section 3.2, in many contexts in which serial victimization occurs over a relatively short period of time, it may be difficult to determine when one discrete incident ends and another begins, and moreover individuals have a very difficult time remembering the details of discrete victimization events beyond approximately six events.

- Some of the impact of serial victimization has already been captured in the above discussions of mental health care and pain and suffering, and it would not be appropriate to double count.

4.1.4 *Applying the Victim Compensation Model to the Hierarchy of Prison Rape Victimization Types*

In Table 1.1, we identified six types of victimization affecting adults, and placed them in a hierarchy according to our assessment of the relative severity of their impact on the well-being of the victims. In Table 1.2, we did the same for juvenile victims, identifying a hierarchy of five victimization types.

4.1.4.1 Adult and Juvenile Category 1: Nonconsensual Sexual Acts (High) and Serious Sexual Acts (High)

In the preceding section we discussed the adjustments that would need to be made to Miller's estimates of the cost of rape in order to make those estimates appropriate for the confinement setting, and we derived multipliers to apply to the various elements of Miller's cost estimates.

As depicted in Tables 4.3 and 4.4, the ensuing adjusted totals for Miller's "adult rape" and "child rape" categories are then appropriate to assign to the highest victimization events in our hierarchies for adults and juveniles, respectively—Nonconsensual Sexual Acts (High) for adults, and Serious Sexual Acts (High) for youth.

Table 4.3: Victim Compensation Costs of Nonconsensual Sexual Acts (High) in Adult Prisons and Jails, per Victim, in 2011 dollars[88/]

Cost Element	Miller Value	Conf. Mult.	Serial Victim Mult.	2011 $	RIA Value
Medical Care	$700	1.00	3.00	1.1518	$2,419
Mental Health Care	$1,400	2.00	3.00	1.1518	$9,675
Lost Work	$2,800	0.00	3.00	1.1518	$0
Property Damage	$100	0.00	3.00	1.1518	$0
Suffering and Lost Quality of Life	$118,100	1.00	3.00	1.1518	$408,069
STI	$1,100	2.00	3.00	1.1518	$7,602
Pregnancy	$400	0.10	3.00	1.1518	$138
Suicide Acts	$8,200	1.25	3.00	1.1518	$35,417
Substance Abuse	$2,300	1.00	3.00	1.1518	$7,947
Victim Services	$100	1.00	3.00	1.1518	$346
Inv./Adj.	$500	1.00	3.00	1.1518	$1,728
Sanctioning	$2,100	1.00	3.00	1.1518	$7,256
Earn. Loss	$1,300	0.00	3.00	1.1518	$0
Total	$139,100				$480,595

Table 4.4: Victim Compensation Costs of Serious Sexual Acts (High) in Juvenile Facilities, per Victim, in 2011 dollars

Cost Element	Miller Value	Conf. Mult.	Serial Victim Mult.	2011 $	RIA Value
Medical Care	$700	1.00	3.00	1.1518	$2,419
Mental Health Care	$9,400	2.25	3.00	1.1518	$73,079
Lost Work	$3,900	0.00	3.00	1.1518	$0
Property Damage	$100	0.00	3.00	1.1518	$0
Suffering and Lost Quality of Life	$143,400	1.00	3.00	1.1518	$495,488
STI	$1,100	1.50	3.00	1.1518	$5,701
Pregnancy	$300	0.10	3.00	1.1518	$104
Suicide Acts	$16,500	1.25	3.00	1.1518	$71,265
Substance Abuse	$4,600	1.00	3.00	1.1518	$15,894
Victim Services	$300	1.00	3.00	1.1518	$1,037
Inv./Adj.	$600	1.00	3.00	1.1518	$2,073
Sanctioning	$2,100	1.00	3.00	1.1518	$7,256
Earn. Loss	$1,300	0.00	3.00	1.1518	$0
Total	$184,300				$674,316

The adjusted total value for adults is $480,595. For purposes of estimating the monetary benefit of avoiding prison rape we round this figure to $480,000. For juveniles, the adjusted total value is $674,316, as in Table 4.4, which we round to $675,000.

4.1.4.2 Adult Category 2: Nonconsensual Sexual Acts (Low)

In the IRIA's event hierarchy, the second category was called "nonconsensual sexual acts involving pressure/coercion" and was differentiated from the top level category solely based on the type and extent of force used on the victim (*i.e.*, by the absence of force or threat of force), as described by the victim in response to the BJS surveys. In the IRIA, we did not develop an avoidance benefit value for this category of sexual abuse by independently analyzing the effect of the conduct and monetizing the cost of that effect; rather, we determined the benefit of avoiding this

[88/] Miller Value: Miller *et al.*, *supra* note 62, at 11, Table 7. Confinement Multiplier (Conf. Mult.): *see supra*, section 4.1.3, pages 42-51. Serial Victim Multiplier: *see supra* Table 4.3. Convert to 2011 Dollars (2011 $): *See supra* n. 62. RIA Value = Miller Value x Confinement Multiplier x Serial Victim Multiplier x Convert to 2011 Dollars.

category of conduct derivatively, by applying a defined percentage to the top level category.

Conservatively estimating the consequences of this category as being worth approximately one-fifth the consequences of the most serious category—on the ground that the absence of physical force would make it less likely that there would be serious injury to the victim—we assigned a value to this category equal to 20% of the value for "Rape involving injury/force/threat of force" (thus, $40,000, as 20% of $200,000, for adults, and $55,000, as $20% of $275,000, for youth). We asked in the NPRM for suggestions as to how to improve our methodology for determining the avoidance benefit value for the second category in our hierarchy.

In response, we received quite a few comments that criticized both the way we defined the second category and the way we monetized it. The primary objection, offered by a number of advocacy groups, was directed to the basis we had articulated for the division between our first and second categories. The differentiation between these two types of "nonconsensual sexual acts" rested on an assumption that assaults involving force or threat of force were significantly more damaging than sexual acts involving pressure or coercion.

Many advocacy groups took issue with this assumption. A human rights organization observed that prisons are inherently coercive environments in which there is no bright line between force, threat of force, pressure, and coercion. Commenters also argued (as noted above in section 3.3.1) that there is no evidence that forcible rape is more likely to lead to physical injury than non-forcible rape and posited that the psychological toll of being coerced into sex by another inmate or by staff was as significant as it would be if the inmate had been forcibly assaulted.

Furthermore, a commenter suggested that the psychological impact of rape without physical force can be even greater than when force is used because the victim may be more likely to blame himself or feel at fault for what happened.

As explained in section 3.3.1 above, for purposes of this RIA, and in response to comments of this nature, we have modified our event hierarchy. Corresponding with that change, we have developed a different methodology for assigning unit benefit values to the event types below level 1 in the hierarchy.

To assign a benefit value to the second category in our adult hierarchy, we no longer simply apply a percentage to the value assigned to the first category, based on a general assumption as to the likely relationship between the two. Rather, we perform the same analysis that was used to determine the values for the first level, and we make two modifications:

- We delete the cost element for medical care, based on the fact that, by definition, victims in category 2 have not suffered any physical injury.

- We make no adjustment for serial victimization, based on the fact that, by definition, victims in category 2 experienced a low incidence (fewer than three events) of victimization.

Thus, rather than assuming that victims of sexual abuse who were subjected to pressure or coercion rather than force are less likely to experience an injury (as we did in the IRIA), we distinguish the victims in the two categories based on whether they actually suffered an injury even in the absence of force, or alternatively whether they experienced many incidents of abuse or just one or two.

We believe that these modifications appropriately capture the difference between our first two categories. By definition, victims in our first category reported (i) having been physically injured in an assault, (ii) having been subjected to force or the threat of force, or (iii) experiencing a high incidence of assault (three or more events). Victims in the second category (i) did not report any physical injury associated with sexual abuse, (ii) did not report any force or threat of force, and (iii) reported a low incidence (one or two episodes) of sexual abuse. Of the elements that went into Miller's estimate of the cost of rape, medical care would not apply to the lower category because there was no physical injury, and there should be no adjustment for serial victimization in the lower category.

We also considered whether to adjust downwards the estimate for pain, suffering, and diminished quality of life, or alternatively for mental health care, to account for the potential difference in impact between (i) being subjected to force or the threat of force and (ii) being subjected to pressure or coercion.[89] As several studies have recognized, even rape involving pressure or coercion rather than force has costs to the victim:

> Perpetrators ... utilize five major psychological components to engage victims: conquest and control, revenge and retaliation, sadism and degradation, conflict and counteraction, and status and affiliation, aimed primarily at exercising control and aggression. The process is seductive and manipulative, has a significant impact on the psyche of the victim, and often contributes to feelings of guilt, shame, and humiliation.[90]

Moreover, "the intimate and complex nature of coercive sexuality itself may also contribute to feelings of guilt, shame, humiliation, confusion, and despair within victims."[91]

In the IRIA, we had nevertheless assumed that the latter category of contact was significantly less harmful to the victims' quality of life than was the former, but several comments made a convincing case that this is not true. As these comments observed, there is no peer-reviewed academic literature that seeks to identify and assess the differences in the psychological impact of sexual abuse depending on whether or not force was used.

As the commenters explained, when a perpetrator threatens a victim with dire consequences if the victim does not consent to sex, the psychological consequences of that sexual contact can sometimes be as damaging and long lasting as if the sex had been secured by physical force. A victim can be as traumatized, and as emotionally scarred, from pressure and coercion as from physical force.

Moreover, as one commenter noted, prisons are inherently coercive environments in which there is often no bright line between force, the threat of force, pressure, and coercion. Many victims of prison rape have never had a knife to their throat or been explicitly threatened with violence, but they have engaged in sexual acts against their will, believing that they had no choice.

This scenario often arises, for example, when an inmate who is owed money by another inmate offers to forgive the debt in exchange for sex. There does not have to be force or an explicit threat of force in the communication: the victim knows that if he does not agree to sex "voluntarily"

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[89] The remaining elements in the avoidance benefit calculation would appear to apply with equal force to the first and second categories. We are not aware of any data that would suggest a difference between the two categories in their impact on the cost of suicide acts, STIs, pregnancy, substance abuse, victim services, or criminal justice expenses.

[90] Dumond, *supra* note 34, at 149.

[91] *Id*. at 151-52 (citing studies).

he may be physically forced into it later. For many prisoners, the fear and intimidation are so overwhelming that they acquiesce to sexual exploitation without putting up obvious resistance. The victim's awareness of his own vulnerability is often exploited by the perpetrator, who coerces the victim into unwanted yet "unforced" sexual contact.

Table 4.5: Victim Compensation Costs of Nonconsensual Sexual Acts (Low) in Adult Prisons and Jails, per Victim, in 2011 dollars

Cost Element	Miller Value	Conf. Mult.	Serial Victim Mult.	2011 $	RIA Value
Medical Care	$700	0.00	1.00	1.1518	$0
Mental Health Care	$1,400	2.00	1.00	1.1518	$3,225
Lost Work	$2,800	0.00	1.00	1.1518	$0
Property Damage	$100	0.00	1.00	1.1518	$0
Suffering and Lost Quality of Life	$118,100	1.00	1.00	1.1518	$136,023
STI	$1,100	2.00	1.00	1.1518	$2,534
Pregnancy	$400	0.10	1.00	1.1518	$46
Suicide Acts	$8,200	1.25	1.00	1.1518	$11,806
Substance Abuse	$2,300	1.00	1.00	1.1518	$2,649
Victim Services	$100	1.00	1.00	1.1518	$115
Inv./Adj.	$500	1.00	1.00	1.1518	$576
Sanctioning	$2,100	1.00	1.00	1.1518	$2,419
Earn. Loss	$1,300	0.00	1.00	1.1518	$0
Total	$139,100				$159,392

As one commenter pointed out, many victims of prison sexual abuse are at risk of developing what has been termed "complex post-traumatic stress disorder."[92] The victim knows he cannot simply leave and cannot make the perpetrator leave. The psychological consequences of sexual victimization secured through pressure can thus be particularly grave. Feelings of impotence, rage, and constant fear are added to the trauma of sex under duress.

For these reasons, we do not downwardly adjust the elements in our second adult category pertaining to pain and suffering or to mental health care, but instead only make the two adjustments bulleted above. As depicted in Table 4.5, the ensuing value is $159,392 for Nonconsensual Sexual Acts (Low). For ease of calculations, we round this figure to $160,000.

4.1.4.3 *Adult Category 3, "Willing" Sex with Staff, and Juvenile Category 2: "Willing" Sex with Staff High*

The considerations discussed in the preceding section apply with equal force to the third category in our adult hierarchy and the second category in our juvenile hierarchy—"willing" sex with staff. Even when inmates report that they "willingly" had sexual relations with prison staff that went beyond mere sexual touching, one cannot assume that the sex was truly consensual. The power that staff members have over inmates' lives gives them the leverage to compel inmates to have sex with them even without violence. If an inmate refuses to have sex with an officer, the officer may write up a disciplinary report that may, for example, result in the prisoner's loss of visitation privileges or loss of good time credits.

As in the case with inmate-on-inmate victimization, an inmate victimized by staff cannot escape the abuser. Once the inmate has submitted to sex with a staff member, she knows there is a high likelihood the officer will victimize her again.

[92] Complex post-traumatic stress disorder is a psychological injury that results from protracted exposure to prolonged social or interpersonal trauma with lack or loss of control, disempowerment, and in the context of either captivity or entrapment, *i.e.*, the lack of a viable escape route for the victim. *See, e.g.*, JUDITH L. HERMAN, TRAUMA AND RECOVERY (New York: Basic Books 1992); Judith L. Herman, *Complex PTSD: A syndrome in survivors of prolonged and repeated trauma*, 5 J. TRAUMATIC STRESS 377 (1992).

For adults, then, we assign the same value to category 3 as we do to category 2, namely, $159,392, which we round to $160,000. The derivation of this valuation is identical to what is set forth in Table 4.5. We do not use a serial victimization multiplier here, even for victims who reported a high incidence of "willing" sex with staff, because doing so would elevate the unit cost of this category above the unit cost of category 2. We do not believe this would be appropriate, since it would not be logical for sexual activity that the inmate self-describes as "willing" to have a greater cost than sexual activity that the inmate describes as "nonconsensual."

Table 4.6: Victim Compensation Costs of "Willing" Sex with Staff (High), in Juvenile Facilities, per Victim, in 2011 dollars

Cost Element	Miller Value	Conf. Mult.	Serial Victim Mult.	2011 $	RIA Value
Medical Care	$700	0.00	3.00	1.1518	$0
Mental Health Care	$9,400	2.25	3.00	1.1518	$73,079
Lost Work	$3,900	0.00	3.00	1.1518	$0
Property Damage	$100	0.00	3.00	1.1518	$0
Suffering and Lost Quality of Life	$143,400	1.00	3.00	1.1518	$495,488
STI	$1,100	1.50	3.00	1.1518	$5,701
Pregnancy	$300	0.10	3.00	1.1518	$104
Suicide Acts	$16,500	1.25	3.00	1.1518	$71,265
Substance Abuse	$4,600	1.00	3.00	1.1518	$15,894
Victim Services	$300	1.00	3.00	1.1518	$1,037
Inv./Adj.	$600	1.00	3.00	1.1518	$2,073
Sanctioning	$2,100	1.00	3.00	1.1518	$7,256
Earning Loss	$1,300	0.00	3.00	1.1518	$0
Total	$184,300				$671,897

Regardless of the number of incidents the inmate reported having experienced, the inmate's decision to characterize the most serious of those incidents as "willing" warrants assigning a cost to category 3 that is no higher than the cost for category 2.

For juveniles, the situation is somewhat more complicated, since our hierarchy distinguishes between "willing" sex with staff with a high incidence [Category 3] and "willing" sex with staff when there is low incidence [included in Category 4 along with other "serious sexual acts" of low incidence]. The sole distinction between these two levels relates to high vs. low incidence of the sexual conduct. Unlike for adults, we view this as a meaningful distinction for juveniles because of their greater vulnerability and because of the strong societal aversion to sexual activity between adults and youth.

Because neither category involves physical injury, we eliminate the element of medical care from both categories. However, for category 3 we use the high incidence multiplier of 3. As depicted in Table 4.6, this yields a unit avoidance value for "willing" sex with staff (high) of $671,897, which we round to $672,000.

4.1.4.4 Juvenile Category 3—Serious Sexual Acts (Low)

The third category in the juvenile hierarchy contains two different species of serious sexual acts: (i) serious sexual acts, either with staff or with other youth, that the victim describes as nonconsensual, if there was no injury, no force, and no coercion (*e.g.*, sexual acts in an exchange-of-favors context), and if the youth reported a low incidence, and (ii) serious sexual acts with staff that the youth described as "willing," if the youth reported a low incidence.

For the acts in this category, we use the same template that we used in Table 4.4, with two adjustments: (i) in the absence of injury we eliminate the element for medical care, and (ii)

given the low incidence, we do not use a multiplier for serial victimization. For the reasons discussed above in sections 4.1.4.2 and 4.1.4.3, we here attribute the same values to the other elements of victim cost (including diminished quality of life) as we do for category 1 in our juvenile hierarchy.

As depicted below in Table 4.7, this approach yields a unit avoidance value for "serious sexual acts (low)" of $223,966, which we round to $225,000 to facilitate our calculations.

4.1.4.5 *Adult Categories 4-6, Abusive Sexual Contacts (High and Low) and Staff Sexual Misconduct Touching Only, and Juvenile Categories 4-5, Other Sexual Acts (High and Low)*

The remaining categories in our hierarchy of sexual victimization types for adults are "Abusive Sexual Contacts," high and low, and "Staff Sexual Misconduct Touching Only." Correspondingly, the remaining categories in the juvenile hierarchy are "Other Sexual Acts," high and low. Because victims are classified in only one category—the category reflecting the most serious event which they reported in response to the BJS survey—no victims in these categories reported any event that meets the definition of "nonconsensual sexual acts" (or, for youth, "serious sexual acts") or "'willing' sex with staff."

In the IRIA, we predicated our valuations of the corresponding categories in the event hierarchy largely on Miller's assignment, in his 2005 Minnesota study, of the value of $270 to the category of "other adult sexual assault aged 18 and older." Adjusted to 2010 dollars for the IRIA, we reported all of the lower-ranking categories in our hierarchy[93] as having a value of no more than $375 for adults and $500 for juveniles.

Table 4.7: Victim Compensation Costs of Serious Sexual Acts (Low) in Juvenile Facilities, per Victim, in 2011 dollars

Cost Element	Miller Value	Conf. Mult.	Serial Victim Mult.	2011 $	RIA Value
Medical Care	$700	0.00	1.00	1.1518	$0
Mental Health Care	$9,400	2.25	1.00	1.1518	$24,360
Lost Work	$3,900	0.00	1.00	1.1518	$0
Property Damage	$100	0.00	1.00	1.1518	$0
Suffering and Lost Quality of Life	$143,400	1.00	1.00	1.1518	$165,163
STI	$1,100	1.50	1.00	1.1518	$1,900
Pregnancy	$300	0.10	1.00	1.1518	$35
Suicide Acts	$16,500	1.25	1.00	1.1518	$23,755
Substance Abuse	$4,600	1.00	1.00	1.1518	$5,298
Victim Services	$300	1.00	1.00	1.1518	$346
Inv./Adj.	$600	1.00	1.00	1.1518	$691
Sanctioning	$2,100	1.00	1.00	0	$0
Earning Loss	$1,300	0.00	1.00	1.1518	$0
Total	$184,300				$221,547

We considered these to be very conservative estimates[94] and invited comment on whether a

[93] For adults, this included, at the time, the category we called "'willing' sex with staff," which in turn included conduct that we now classify as "Staff Sexual Misconduct Touching Only."

[94] In response to a query from the Department regarding the seemingly low cost per victim of incidents of "other sexual assault for adults over 18" (*i.e.*, sexual assault short of rape), Miller explained that for purposes of his article "other sexual assault" refers to conduct that falls well short of an attempted or completed sexual penetration. Any conduct that involved any degree of sexual aggressiveness on the part of the perpetrator was considered an attempted rape in his study and classified as such. Thus, "other sexual assault" referred only to contacts that involve sexual touching or abuse without any coercion, pressure, force, or threat of force. Victims of such assaults, in Miller's view, are unlikely to encounter any costs beyond a small diminution of quality of life due to embarrassment, humiliation, and the like. There may also be a cost associated with avoidance behaviors undertaken in response to bullying, but in Miller's view these costs are small per average

higher figure was more appropriate. We also asked if there were available methodologies, or available data from which a methodology can be developed, to assess the unit value of avoiding an "abusive sexual contact between inmates," as defined in the IRIA.

Quite a few commenters, primarily corrections agencies, stated that our estimates of the unit value for abusive sexual contacts were appropriately conservative and were calculated using scientific methods. Others claimed that it was impossible to derive a unit value for these types of contacts given that each victim would interpret and react to a situation differently. Several state agencies averred that they were unaware of any methodologies or data sets to assess the value of avoiding an "abusive sexual contact between inmates," and one stated affirmatively that no such methodology exists.

Most commenters, however, including a number of agencies, asserted that the estimates for these victimization types were too conservative and should be set higher. Advocacy groups criticized the IRIA, not only for assigning values that they considered unrealistically low but also for having ascribed the same monetary value, for adult victims, to what the IRIA labeled "willing sex with staff," to nonconsensual staff-on-inmate sexual touching, and to abusive sexual contacts between inmates.

One civil rights organization suggested that Miller's category of "other sexual assault" was meant to refer to unwanted incidents of touching, grabbing, kissing, and fondling that take place outside of prison, such as an incident where "if a client at a bar put his hand on a waitress'[s] breast or touched the buttocks of another patron." According to this commenter, it was not appropriate to use Miller's valuation of such conduct to estimate the cost of abusive sexual contacts in the prison setting, because "what may be relatively harmless albeit offensive behavior in the free world can be threatening and traumatizing in prison." This is because an offended patron can leave the bar, while a victim of abusive sexual contacts in prison cannot escape the predator.

Moreover, the commenter argued, unwanted sexual touching in prison can be terrifying, especially if a powerful inmate fondles another inmate's genitals in a way that signals predatory intent and that causes the inmate to fear an escalation of the conduct. Thus, while the non-incarcerated persons discussed in Miller's study might be "unlikely to encounter any costs beyond a small diminution of quality of life due to embarrassment, humiliation, and the like," the psychological toll on a targeted inmate trapped in close proximity to his abuser may be significantly greater.

According to another advocacy group, in trying to extrapolate costs for abusive sexual contacts, the Department grossly underestimated the harm and resulting costs of this form of abuse, well below even its other already conservative estimates. Beyond ignoring the costs to the agency and society that are not factored into the Department's analysis, the commenter wrote, the Department set a unit value for abusive sexual contact that is "dangerously low."

Another commenter, a coalition of religious leaders, argued that the values assigned by the Department for "abusive sexual contact" ignore the trauma resulting from these incidents, and the

victim, since a certain percentage of victims will have zero monetizable cost.

Regarding Miller's apparent assumption that victims of "other sexual assault" incur no costs for mental health treatment, he explained that the cost of mental health care per victim in his article was determined by first calculating the total amount spent on mental health care as a result of sexual violence and then dividing that total by the number of victims. For this purpose, all of the mental health care resulting from sexual violence was assumed to relate to actual or attempted rape, and all of that cost was assigned to that category of victim, rather than to the category of "other sexual assault."

resulting mental health costs. The commenter complained that the Department's approach also presumes that victims endured only one incident, when in fact abusive sexual contact often forms part of an ongoing and escalating pattern that results in increasing emotional harm. Moreover, according to this commenter, agencies must be required to fully investigate, adjudicate, and sanction this form of abuse, and while the costs of so doing may not rise to the level likely to be incurred for incidents requiring a full forensic medical examination, they are likely to be significant nonetheless.

In response, we observe, first, that many of these comments seem to have missed the point of our classification scheme, which is simply a way of grouping victims quite broadly for purposes of assigning costs to different types of conduct. Within each group, the victims will remain quite diverse in their individual cost impacts. For the taxonomy to be useful, we must assign an average cost to each category, rather than a cost corresponding to only the most seriously injured victims, as some commenters proposed. This is true regardless of what taxonomy is adopted, and is an inevitable consequence of lacking detailed victimization data on each incident, which prompts the need to create broad categories to reflect key distinctions in victimization levels.

Moreover, we are unpersuaded that many victims in these remaining categories of conduct are likely to incur mental health costs or to seek treatment for whatever impact these events have on their psychological well-being. By definition, the most serious event that these inmates reported involved unwanted contacts with another inmate or with a staff member that involved only touching of the buttocks, thigh, penis, breasts, or vagina in a sexual way, and that did not involve any oral, anal, or vaginal penetration, "hand jobs," or other similar sexual acts. None of the commenters has provided any evidence that the average inmate who experiences solely this sort of sexual contact, without any escalation into more serious nonconsensual acts, would experience the level of trauma likely to lead to measurable mental health costs.

Indeed, while some victims of abusive sexual contacts may well experience significant trauma as a result of the event, the majority of inmates who experience such events are likely to experience little or no measurable suffering or diminished quality of life. The average cost per victim, therefore, is relatively low.

Nevertheless, in response to the comments, we have made changes both to the hierarchies themselves and to the method for assigning costs to the various categories within the hierarchies. Our new fourth category for adults, "Abusive Sexual Contacts High," and its analogous fourth category in the juvenile hierarchy, "Other Sexual Acts High," are intended to capture the more serious incidents of the type described in some of the comments. Any inmate who experienced abusive sexual contact as the result of force or threat of force, as well as any inmate injured during such a contact and any inmate who reports a high incidence of such contacts, is put in these categories. Thus, while we do not include mental health costs, we do include an element of medical costs in light of the injury, and we also include diminished quality of life.

Table 4.8 Victim Compensation Costs of Abusive Sexual Contacts (High), in Adult Facilities, per Victim, in 2011 dollars

Cost Element	Miller Value	Conf. Mult.	Serial Victim Mult.	2011 $	RIA Value
Medical Care	$700	1.00	3.00	1.1518	$2,419
Suffering and Lost Quality of Life	$270	3.00	3.00	1.1518	$2,799
Total	$970				$5,217

As depicted in Table 4.8, to determine the monetized value for the adult category, we (1) start with Miller's figure of $270 for "Other Adult Sexual Assault," (2) apply a confinement multiplier of 3 to reflect the increased pain and suffering and lost quality of life that derives from the fact that the contact takes place in a setting where the victim cannot escape the abuser, (3) apply a multiplier of 3 to reflect the serial victimization deriving from high incidence, and then (4) convert the ensuing product into 2011 dollars. To this we then add Miller's $700 for medical costs, as adjusted for serial victimization and to convert to 2011 dollars. This yields a total of $5,217, which we here round to $5,200.

To determine the corresponding value for "Other Sexual Acts High" in the juvenile hierarchy, we multiply the value for adults by 1.4, reflecting the ratio of juvenile avoidance benefit values ($674,316) to adult values ($480,395) in Tables 4.5 and 4.6. *See* Table 4.9.

Table 4.9 Victim Compensation Costs of Other Sexual Acts (High), in Juvenile Facilities, per Victim, in 2011 dollars

	Miller Value	Juv. Mult.	Conf. Mult.	Serial Victim Mult.	2011 $	RIA Value
Medical Care	$700	1.40	1.00	3.00	1.152	$3,394
Suffering and Lost Quality of Life	$270	1.40	3.00	3.00	1.152	$3,927
Total	$970					$7,321

This process yields a figure of $7,321, which we here round to $7,300.

We follow a similar process to arrive at monetized values for the adult categories "Abusive Sexual Contacts—Low," and "Staff Sexual Misconduct Touching Only," and for the juvenile category "Other Sexual Acts Low." By definition, victims in these categories experienced at most two incidents, the most serious of which did not involve force or injury and did not progress beyond sexual touching. While some inmates in these categories may experience genuine trauma from these types of incidents, on average their pain, suffering, and diminution of life is limited to embarrassment, humiliation, and other negative, but not traumatic, reactions.

As depicted in Table 4.10, to determine the value for the adult category, we (1) start with Miller's figure of $270 for "Other Adult Sexual Assault," (2) apply a confinement multiplier of 2 (rather than 3) to reflect the increased pain and suffering and lost quality of life that derives from the fact that the contact takes place in a setting where the victim cannot escape the abuser, but nevertheless is of a less significant nature than conduct that falls in the "high" category, (3) do not apply any serial victimization multiplier since these victims claim low incidence, and (4) convert the ensuing product into 2011 dollars. We do not include any factor for medical care costs, since these victims suffer no injury.

To determine the corresponding value for "Other Sexual Acts Low" in the juvenile hierarchy, we again multiply the value for adults by 1.4. This process yields a figure of $622 for the adult category 3, and $873 for the juvenile category. We round these to $600 and $900, respectively, to facilitate computations.

Table 4.10 Victim Compensation Costs, Categories 5-6 in Adult Facilities, and Category 5 in Juvenile Facilities, per Victim, in 2011 dollars

	Miller Value	Juv. Mult.	Conf. Mult.	2011 $	RIA Value
ASC Low	$270	1.00	2.00	1.1518	$622
SSM TO	$270	1.00	2.00	1.1518	$622
OSA Low	$270	1.40	2.00	1.1518	$873

4.2 Conclusions as to Unit Benefit of Avoiding Prison Rape

Tables 5.1 and 5.2 summarize the valuations we have assigned to each event in our adult and juvenile hierarchies of victimization events. As described *supra* at 36, we have added 1% to our prevalence estimates for adult prisons and jails to account for victims who are youthful inmates. For these victims, we apply the unit avoidance values for juvenile facilities rather than those for adult facilities, as shown in Table 5.3.

Table 5.1: Unit Avoidance Values for Rape and Sexual Abuse, Adult Prison and Jail Facilities, by Victimization Type and Valuation Method

	WTP	Victim Compensation
Nonconsensual Acts—High	310,000	480,000
Nonconsensual Acts—Low		160,000
"Willing" Sex With Staff		160,000
Abusive Sexual Contacts—High		5,200
Abusive Sexual Contacts—Low		600
Staff Sexual Misconduct Touching Only		600

Table 5.2: Unit Avoidance Values for Rape and Sexual Abuse, Juvenile Facilities, by Victimization Type

	Victim Compensation
Serious Sexual Acts - High	675,000
"Willing" Sex With Staff—High	672,000
Serious Sexual Acts—Low	225,000
Other Sexual Acts—High	7,300
Other Sexual Acts—Low	900

Table 5.3: Unit Avoidance Values for Rape and Sexual Abuse, Youthful Inmates in Adult Prison and Jail Facilities, by Victimization Type

	Victim Compensation
Nonconsensual Acts—High	675,000
Nonconsensual Acts—Low	225,000
"Willing" Sex With Staff	672,000
Abusive Sexual Contacts—High	7,300
Abusive Sexual Contacts—Low	900
Staff Sexual Misconduct Touching Only	900

4.3 Total Monetized Cost to Society of Baseline Levels of Prison Rape and Sexual Abuse

Having determined the baseline prevalence of the various categories of rape and sexual abuse in prisons, jails, and juvenile facilities (in Part 3.8), and having assigned each category a dollar figure representing an estimate of the monetized avoidance value for each type of victim (in Parts 4.1 and 4.2), we are now in a position to estimate the total monetized cost to society of prison rape and sexual abuse in prisons, jails, and juvenile centers. This figure corresponds to the maximum monetizable benefit to society that would ensue if all forms of prison sexual abuse were totally eliminated.

As set forth in the tables that follow, under our principal approach to estimating prevalence, rape and sexual abuse in these sectors is estimated to cost the United States about $38.4 billion annually when using the WTP method of monetization and about $51.9 billion annually using the victim compensation model. These figures take into account only the monetizable costs of prison rape.

Using the adjusted approach, the total cost comes to $37.7 billion (under WTP) to $50.8 billion (under victim compensation) annually, while under our lower bound approach the total

cost comes to $26.9 billion (WTP) to $35.8 billion (victim compensation) annually.

It again bears cautioning that the Department has not estimated the expected monetized benefit of the standards themselves but has instead opted for a break-even approach that estimates (in Part 6) the extent to which the number of rape victims would need to be reduced (taking into account the fact that many victims are victimized multiple times) for the benefits of the standards to break even with the costs of full nationwide compliance.

Thus, we are not estimating that the standards will actually yield an annual monetized benefit of $51.9 billion, except in the hypothetical scenario where the standards would, by themselves, lead to the complete elimination of prison rape and sexual abuse. The actual monetized benefit of the standards will certainly be less than this hypothetical figure and will depend on a number of factors, including the extent to which facilities comply with the standards, and the extent to which the standards are effective in achieving their goals.

Table 6.1: Total Cost of Sexual Abuse, Across All Facilities, WTP Method,[95/] by Prevalence Approach (In Millions of Dollars)

	Principal Method	Adjusted	Lower Bound
Prisons	14,922	15,062	11,599
Jails	18,197	17,115	10,622
Juveniles	5,239	5,532	4,654
TOTAL	38,358	37,709	26,875

Table 6.2: Total Cost of Sexual Abuse, Across All Facilities, Victim Compensation Method, by Prevalence Approach (In Millions of Dollars)

	Principal Method	Adjusted	Lower Bound
Prisons	20,637	20,814	16,051
Jails	26,011	24,493	15,083
Juveniles	5,239	5,532	4,654
TOTAL	51,887	50,839	35,788

Table 6.3: Total Cost of Sexual Abuse, Adult Facilities, Principal, by Type of Incident[96/]

	Prin. Prev. (Table 3.1)	Unit Av. Benefit (Table 5.1)	Total Monetized Cost to Society (millions)
Nonconsensual Sexual Acts—High (WTP vs. WTA)	78,500	310,000	24,611
		480,000	37,820
Nonconsensual Sexual Acts—Low	20,200	160,000	3,245
"Willing" Sex With Staff	33,100	160,000	5,468
Abusive Sexual Contacts—High	15,800	5,200	83
Abusive Sexual Contacts—Low	25,300	600	15
Staff Sexual Misconduct Touching Only	26,000	600	16
TOTAL (WTP vs. WTA)	198,900		33,438
			46,647

[95/] In this Table, the total cost of rape and sexual abuse is calculated by using the WTP figure of $310,000 for nonconsensual sexual acts (high) for adult victims, and the victim compensation figures from Tables 5.1-5.3 for all other categories of conduct, including all of the categories in the juvenile hierarchy. *See supra* at 60 for explanation.

[96/] For the NSCA-High and Total rows, the upper sub-row uses the WTP valuation model while the lower sub-row reflects the victim compensation/ WTA model. The figures in the "Total Monetized Cost to Society" column do not equal the product of the "Principal Prevalence" (Prin. Prev.) and "Unit Avoidance Benefit" columns because of the adjustment made for youthful inmates in adult facilities, for which we use a higher unit avoidance benefit as discussed in the text. The formula for the total monetized cost column is as follows: (principal prevalence x 100/101 x unit avoidance benefit) + (principal prevalence x 1/101 x unit avoidance benefit for youthful inmates from Table 5.3).

Table 6.4: Total Cost of Sexual Abuse, Adult Facilities, Adjusted, by Type of Incident

	Prin. Prev. (Table 3.1)	Unit Av. Benefit (Table 5.1)	Total Monetized Cost to Society (millions)
Nonconsensual Sexual Acts—High (WTP vs. WTA)	76,100	310,000	23,883
		480,000	36,701
Nonconsensual Sexual Acts—Low	19,500	160,000	3,131
"Willing" Sex With Staff	32,600	160,000	5,368
Abusive Sexual Contacts—High	14,800	5,200	77
Abusive Sexual Contacts—Low	24,800	600	15
Staff Sexual Misconduct Touching Only	23,600	600	14
TOTAL (WTP vs. WTA)	191,400		32,488
			45,306

Table 6.5: Total Cost of Sexual Abuse, Juvenile Facilities, Principal, by Type of Incident

	Prin. Prev. (Table 3.2)	Unit Av. Benefit (Table 5.2)	Total Monetized Cost to Society (millions)
Serious Sexual Acts - High	4,300	675,000	2,903
"Willing" Sex With Staff—High	2,800	672,000	1,882
Serious Sexual Acts—Low	2,000	225,000	450
Other Sexual Acts—High	600	7,300	4
Other Sexual Acts—Low	900	900	1
TOTAL	10,600		5,239

Table 6.6: Cost of Sexual Abuse, Adult Facilities, Lower Bound, by Type of Incident

	Prin. Prev. (Table 3.1)	Unit Av. Benefit (Table 5.1)	Total Monetized Cost to Society (millions)
Nonconsensual Sexual Acts—High (WTP vs. WTA)	51,600	310,000	16,187
		480,000	24,873
Nonconsensual Sexual Acts—Low	13,800	160,000	2,223
"Willing" Sex With Staff	23,900	160,000	3,951
Abusive Sexual Contacts—High	12,400	5,200	64
Abusive Sexual Contacts—Low	19,700	600	12
Staff Sexual Misconduct Touching Only	18,300	600	11
TOTAL (WTP vs. WTA)	139,700		22,447
			31,134

Table 6.7: Cost of Sexual Abuse, Juvenile Facilities, Adjusted, by Type of Incident

	Adj. Prev. (Table 3.2)	Unit Av. Benefit (Table 5.2)	Total Monetized Cost to Society (millions)
Serious Sexual Acts - High	4,600	675,000	3,105
"Willing" Sex With Staff—High	2,700	672,000	1,814
Serious Sexual Acts—Low	2,700	225,000	608
Other Sexual Acts—High	600	7,300	4
Other Sexual Acts—Low	1,000	900	1
TOTAL	11,600		5,532

Table 6.8: Cost of Sexual Abuse, Juvenile Facilities, Lower Bound, by Type of Incident

	Lower Bound Prev. (Table 3.2)	Unit Av. Benefit (Table 5.2)	Total Monetized Cost to Society (1000s)
Serious Sexual Acts - High	3,800	675,000	2,565
"Willing" Sex With Staff—High	2,500	672,000	1,680
Serious Sexual Acts—Low	1,800	225,000	405
Other Sexual Acts—High	500	7,300	4
Other Sexual Acts—Low	900	900	1
TOTAL	9,500		4,654

4.4 Non-Monetizable Benefits of Avoiding Prison Rape

"Costs and benefits" under Executive Order 12866 must "include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify but nevertheless essential to consider." E.O. 12866, § 1(a). Benefits of regulatory action include "the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias." *Id*.

Congress predicated PREA on its conclusion—consistent with decisions by the Supreme Court—that "deliberate indifference to the substantial risk of sexual assault violates prisoners' rights under the Cruel and Unusual Punishment Clause of the Eighth Amendment." 42 U.S.C. § 15601(13).

The individual rights enshrined in our Constitution express our country's deepest commitments to human dignity and equality, and American citizens place great value on knowing that their government aspires to protect those rights to their fullest extent. In thinking about the qualitative benefits that will accrue from the implementation of the final rule, these values stand paramount.

To complete the analysis of the benefits of reducing the prevalence of prison rape, we have endeavored to identify the non-monetary benefits that will result and to provide a qualitative indication of their magnitude. We have been assisted in this endeavor by many useful comments submitted in response to the NPRM.[97/] Non-monetary benefits may accrue to rape victims themselves, to inmates who are not rape victims, to prison administrators and staff, to families of rape victims, and to society at large.

Non-quantifiable benefits for rape victims. The PREA standards will yield non-quantifiable benefits to victims even with regard to assaults that the standards do not prevent. Implementation of the standards will enhance the mental well-being of victims, by ensuring that they receive adequate treatment after an assault, which in turn will enhance their ability to re-integrate into the community and maintain stable employment upon their release from prison.[98/] Moreover, the standards will reduce their re-traumatization, together with their loss of dignity and privacy, associated with evidence collection,

[97/] In the NPRM, we asked commenters to advise us if any of the benefits we categorized as nonmonetary could in fact be quantified in some fashion. One juvenile justice agency responded that while the value of these nonmonetary benefits could potentially be tracked as the standards are implemented, attempting to quantify these benefits in a predictive model would not result in a useful estimate. A state corrections agency agreed but observed that those agencies that collect data to monitor performance measures may be able to quantify some of the non-monetary benefits through monitoring their data post-implementation of the PREA standards and then comparing or contrasting those data with data from before their implementation. Research could then assess if a causal relationship exists that can be attributed to the adherence to PREA standards.

[98/] One state agency commenter posited that the benefit to the mental well-being of inmates could potentially be determined by measuring the amount of psychotropic medications dispensed to inmates (and the cost of such medications) and by assessing levels of inmate program participation. We take no position on these suggestions except to note that we are unaware of any published studies that have endeavored to calculate or present such assessments.

investigation, and any subsequent legal proceedings that take place in connection with sexual abuse and its prosecution. Victims will also benefit from the increased likelihood that their perpetrators will be held accountable for their crimes. Finally, implementation of the standards will reduce the likelihood that victims of sexual abuse will need to break prison rules or commit infractions they might not otherwise commit, in an attempt to escape a perpetrator.

Non-quantifiable benefits for inmates who are not rape victims. In at least three different ways, the PREA standards will improve quality of life in prison for those inmates who would not experience sexual abuse even in the absence of the standards. First, the standards should reduce the collective fear among all inmates of rape and sexual abuse while incarcerated.[99] As one state corrections department noted in its comment, a general reduction in inmate anxiety regarding prison violence may significantly improve inmate morale.

Second, standards that work to reduce sexual abuse will likely reduce other forms of physical assault as well, reducing the costs of such assault and further reducing the level of fear and dread among inmates.

Third, sexual abuse often fosters a polarized prison climate, such as by exacerbating racial tensions, as Congress itself noted. *See* 42 U.S.C. § 15601(9), (14)(F). By reducing the prevalence of prison rape, the standards will help depolarize the climate and alleviate the racial tensions.

Non-quantifiable benefits for families of inmate rape victims. Families of inmates also suffer from the prevalence of sexual abuse in our prisons. The families of all inmates, whether victims or not, often fear that their incarcerated loved ones will be raped, assaulted, or abused while in prison. Moreover, if victims return home after incarceration and are unable to work due to emotional trauma, their families are affected as well. Implementation of the standards will thus improve the emotional and financial well-being, and overall quality of life, of millions of family members of current or former inmates.

Non-quantifiable benefits for prison administrators and staff. Sexual abuse in confinement facilities constitutes a failure to keep inmates safe: this breakdown often has significant ripple effects for prison employees. As Congress recognized, sexual abuse in prison "increases the levels of violence, directed at inmates and staff, within prisons." 42 U.S.C. § 15601(14)(B).

One State corrections department noted that by improving security protocols, the standards could also deter other types of inmate misconduct, and strengthen the institution's ability to discover and respond to such misconduct when it occurs.

Staff are at risk even when the abuser is a colleague: correctional staff who sexually abuse inmates often also engage in other security breaches; as the Department's Office of the Inspector General has noted, some have "provided contraband to prisoners, accepted bribes, lied to federal investigators, and committed other serious crimes as a result of their sexual involvement with federal prisoners."[100] Staff who are compromised due to their involvement with an inmate are more likely to neglect their responsibilities, thus imperiling their colleagues.

By reducing the level of violence against staff and inmates alike, by reducing the need and

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[99] *See, e.g.*, MARGARET T. GORDON & STEPHANIE RIGER, THE FEMALE FEAR: THE SOCIAL COST OF RAPE (1991) (discussing fear among women as a cost of rape).

[100] *See* OFFICE OF THE INSPECTOR GENERAL, EVALUATION AND INSPECTIONS DIVISION, THE DEPARTMENT OF JUSTICE'S EFFORTS TO PREVENT STAFF SEXUAL ABUSE OF FEDERAL INMATES, i (2009), *available at* www.justice.gov/oig/reports/plus/e0909.pdf.

opportunity for inmates to violate facility rules, and by diminishing the concomitant risk of insurrections and riots, the standards will make prisons a safer and better workplace, thus promoting staff retention, decreasing work-related injuries, and improving morale.[101]

As one State corrections department observed, by increasing the safety of correctional officers and promoting sound correctional practices, the standards contribute generally to the integrity of the criminal justice system. A municipal corrections department echoed this view, averring that safer environments within the facilities benefit the agency, the inmate population, the community, and the criminal justice community.

Similarly, implementation of the standards will ensure, in the long term, that fewer prison employees will be charged with felony sexual abuse crimes, as the incidence of sexual abuse declines. (To be sure, this figure may well increase in the short term due to improved efforts at detecting and investigating such crimes.) Both the personnel time lost due to these prosecutions and the stigma and negative morale engendered by them can be expected to abate as the prevalence of prison rape diminishes, enhancing quality of life in the workplace.[102]

Some commenters suggested that we also include in the list of benefits the likelihood that corrections agencies will incur lower litigation costs relating to suits arising out of sexual abuse incidents. We decline to do so. Insofar as these comments are referring to the cost of court verdicts and settlements in such cases, which would presumably be mitigated if agencies succeed in reducing over time the number of *bona fide* legal claims brought against them, it would be inappropriate to include such verdicts and settlements in this context because they constitute distributive transfers rather than true benefits.

It is true that, apart from the cost of verdicts and settlements themselves, agencies also incur other litigation expenses arising out of sexual abuse incidents, such as attorneys' fees and witness expenses. Reducing the level of such litigation expenses would be a benefit to corrections agencies (rather than a distributive transfer), but we are not persuaded that the promulgation of the standards will necessarily reduce the volume of prison sexual abuse litigation in any measurable way over time.

By making it more likely than before that incidents of sexual abuse will be discovered, reported, and investigated, by providing more post-incident support to victims of sexual abuse, and by reducing somewhat the barriers that administrative exhaustion requirements sometimes place on the ability of inmates to vindicate their constitutional rights through litigation, it may well be the case that the standards may actually increase to some extent

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[101] One corrections agency suggested that the value of improved staff retention can at least partially be monetized by assessing the reduction in costs associated with recruiting and training that ensues from lower staff attrition rates. We agree with the principle behind this suggestion: statistics show that corrections agencies experience an average of 16.2% turnover in their staff each year, which, when applied to the estimated correctional workforce of 445,000, amounts to approximately 72,000 individuals per year nationwide. *See* MTC Institute, "Correctional Officers: Strategies to Improve Retention, at 1 (2d ed. Jan. 2010), available at http://www.mtctrains.com/public/uploads/1/2010/10/CO%20Retention%202010.pdf; BJS, *Census of State and Federal Correctional Facilities, 2005*, at 4 (Oct. 2008) (NCJ 222182). While it is difficult to estimate the precise extent to which attrition rates will diminish in consequence of the final rule, any reduction is likely to have significant monetary benefit to the industry. Assuming that, on average, agencies spend $5,000 in recruiting and training for each new hire, reducing the average turnover rate from 16.2% to 16.0% would save the corrections industry approximately $4.5 million per year.

Another corrections agency observed that the reduction in stress levels among staff and inmates owing to a reduction in violence could potentially be quantified by examining changes in absenteeism and sick leave hours used. Such an examination could indeed provide data useful to monetizing some of the benefits discussed here, but it would be difficult to establish a direct link between implementation of the standards and the changes in absenteeism or sick leave. We are in any event unaware of any published studies that have undertaken such an analysis.

[102] Of course, in the short term there may be additional costs to prison authorities associated with a potential increase in prosecutions of staff as prisons adopt measures that enhance the detection and investigation of prison rape and the punishment of perpetrators. Once the level of prison rape has been reduced, however, prisons should feel the benefit of having fewer of their employees charged with felony sexual abuse crimes.

the litigation expenses agencies incur as the result of sexual abuse in their facilities.

Non-quantifiable benefits for society at large. Implementation of the PREA standards will provide numerous public health benefits for society. As noted, the standards will improve public health by reducing the incidence and spread of HIV/AIDS, of other STIs, and of infectious diseases such as tuberculosis and hepatitis B and C, among prison populations. At least 95% of prison inmates are eventually released back to their communities,[103] bringing with them any communicable diseases they contracted in confinement. Reducing the incidence of prison sexual abuse will mitigate the spread of these diseases, reducing the costs of medical treatment and mental health care for our society.

Sexual abuse in prison often leads to long-term trauma, especially if victims are not treated properly in the aftermath of their victimization. When victims return to their communities, this trauma frequently results in an inability to maintain stable employment. The standards will improve the reentry of offenders into society after their incarceration, reducing the likelihood that they will require public assistance (such as welfare, disability benefits, housing vouchers, food stamps) and other forms of governmental financial support upon their reentry.[104]

The PREA standards can be expected to yield a number of public safety benefits as well. As Congress recognized, sexual abuse in prisons "increases the risks of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape." 42 U.S.C. § 15601(14)(E). Although it is difficult to measure the precise extent of the impact, implementation of the standards will enhance public safety by reducing the likelihood that inmates released from prison and jail each year will commit violent crimes after their release. Reducing the prevalence of sexual abuse in juvenile detention settings similarly increases the likelihood that delinquent juveniles can be rehabilitated and reduces the likelihood that they will become adult criminals.[105]

Reducing recidivism could save tens of millions of dollars per year by avoiding the economic and human costs of crime, the cost of investigating and prosecuting crimes, and the considerable expense of incarceration ($22,600 per prisoner per year, or $62 per day, as of 2001).[106]

Finally, given the frequently interracial character of prison sexual abuse,[107] minimizing its prevalence will reduce interracial tensions, both within prison and, upon release of perpetrators and victims from prison, within the community at large. *See, e.g.*, 42 U.S.C. § 15601(9), (14)(F).

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[103] BJS, *Reentry Trends in the United States* 1 (2003), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/reentry.pdf.

[104] An organization of religious leaders commented that the financial benefits to families and society of preventing former inmates from being unable to work due to the emotional trauma of sexual abuse can at least partially be measured by the cost of public assistance and other forms of governmental support that victims will need upon reentry. Although we agree that this may be possible, we are not aware of any studies that have attempted to undertake such a measure. Moreover, while it may be relatively easy to determine the average cost of public assistance and government support provided to individual prisoners upon reentry into society, attempting to estimate the precise number of inmates whose ability to work after their release will be enhanced by the promulgation these standards is likely to be quite speculative.

[105] A coalition of religious leaders identified in its comment two other types of nonmonetary benefits that could ensue from adoption of the standards. First, the coalition asserted that reducing the incidence of such abhorrent acts would yield a moral benefit to society and would improve the standing of the United States in the international human rights community. Second, adopting the standards would yield unrelated benefits arising out of the improved transparency, monitoring, and community collaboration that the standards mandate. We agree that these benefits are plausible but have not included them in the text because they are somewhat more inchoate and abstract than the benefits described in this section.

[106] BJS, *Special Report: State Prison Expenditures* 1 (updated 2004), *available at* http://.bjs.ojp.usdoj.gov/content/pub/pdf/spe01.pdf.

[107] *See* BJS, *Adult NIS 2008-09*, at 4 ("[A]t least half of inmate-on-inmate sexual violence was interracial: 6% of incidents in 2006 involved a white perpetrator and non-white victim; 35%, a black perpetrator and non-black victim; and 8%, a Hispanic perpetrator and non-Hispanic victim.").

5 COST ANALYSIS

5.1 Introduction and Scope

In this Part, we assess and estimate the anticipated costs of full adoption of, and compliance with, the final rule.

An important explanation must be provided at the outset regarding the scope of our analysis. The cost estimates set forth in this section are the costs of full nationwide compliance with, and implementation of, the national standards in all covered facilities. As explained in section 2.2, however, PREA does not require full nationwide compliance, nor does it enact a mechanism for the Department to direct or enforce such compliance. Fiscal realities faced by agencies throughout the country make it virtually certain that the total costs actually incurred will in the aggregate fall well short of the full nationwide compliance costs calculated in this RIA.

The costs actually incurred will depend on the specific choices that State, local, and private correction agencies make with regard to adoption of the standards, and correspondingly on the outlays that those agencies are willing and able to make in choosing to implement the standards in their facilities. We have not endeavored to project those actual outlays.

5.2 Summary of Cost Conclusions

Table 7.2 sets forth the estimated full compliance cost of the standards, in the aggregate, broken down by facility type and by year. The total cost across all facilities for each year is also presented, as is the total cost for each facility type across the full 15-year period from 2012 to 2026 that we use in this Report.

Table 7.1: Number of Facilities Assumed to Adopt and Implement the Standards, for Cost Analysis Purposes[108/]

Type	Number of Facilities
Prisons (Federal)	117
Prisons (State)	1,190
Jails	2,860
Lockups (Police)	3,753
Lockups (Court)	2,330
Community Confinement	529
Juvenile	2,458

In accordance with OMB guidelines, we convert the total cost over fifteen years to an "annualized" figure using a 7% discount rate—the ensuing amount represents the fixed payment that

[108/] Prisons: Federal—Bureau of Prisons facility count as of August 26, 2011. State—BJS, *2005 Census of State and Federal Correctional Facilities* (NCJ 222182). Figures reflect total number of facilities as of June 30, 2005; these are the most recent numbers available. Current numbers are likely to differ due to closures, consolidations, new construction, and other factors. State prison figures include private facilities operated under contract with State correctional agencies.

Jails: BJS, 2006 *Census of Jail Facilities* (NCJ 230188). Figures reflect total number of jail jurisdictions as of March 31, 2006; these are the most recent numbers available. As of the census date, there were 2,860 jail jurisdictions (agencies) administered by local, regional, and federal correctional authorities. Most jurisdictions have authority over a single jail facility, but metropolitan jurisdictions often have authority over more than one jail facility. Collectively, the 2,860 jail jurisdictions operated 3,283 jail facilities (3,271 by local and regional jurisdictions, and 12 by BOP) as of the census date. Current numbers are likely to differ due to closures, consolidations, new construction, and other factors. These figures exclude combined prison-jail systems in Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont (which are considered prisons in this Table), but include 15 locally operated jails in Alaska.

Lockups: Is the number of agencies rather than number of facilities. BJS, *2008 Census of State and Local Law Enforcement Agencies*. Police lockups include 1,311 agencies that operate one or more police lockups containing independent, overnight facilities that are not part of a jail, and 2,442 agencies operating one or more police lockups with independent, day facilities that are not part of a jail. Court lockups are extrapolated from the number of prosecutor's offices in the United States, on the assumption that each such office corresponds to at least one courthouse structure and that each such courthouse requires a holding area. We asked in the NPRM whether there are additional sources of data as to the number of lockups that would potentially be affected by the standards but were not directed to any usable data of this nature.

CCF: BJS, *2005 Census of State and Federal Correctional Facilities* (NCJ 222182). Figures reflect total number of facilities as of June 30, 2005; these are the most recent numbers available. Includes 308 privately-operated facilities.

Juvenile: Office of Juvenile Justice and Delinquency Prevention, *2008 Juvenile Residential Facility Census*. Only includes facilities that housed juveniles as of the census date. Includes 475 state-run and 1,975 locally or privately run facilities, as of October 2008. Excludes tribal facilities.

would have to be made each year over the fifteen-year time period (akin to a mortgage payment) in order to pay off the full cumulative cost by the end of the period.[109/] As depicted in Tables 7.2 and 7.3, the annualized cost of full compliance with the aggregated standards is an estimated $468.5 million per year, or about $6.9 billion over the 15-year period. These figures do not include compliance costs for BOP and USMS, which are estimated to amount to $1.75 million annually, as set forth below in Table 14.1.

Table 7.1 above depicts the estimated number of facilities or agencies of each type which we assume, for purposes of this analysis, will adopt and comply with the standards. By dividing the cost estimates in Table 7.3 by the numbers in Table 7.1 (leaving out BOP and USMS), one can derive an approximate average annualized compliance cost per facility (or, for lockups, per agency), as depicted in Table 7.4.

Table 7.2: Estimated Annualized Cost of Full Compliance with Aggregated Standards, in Millions of Dollars, by Facility Type

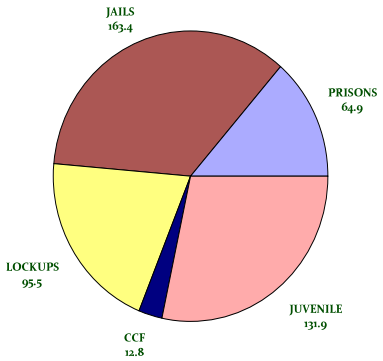

Table 7.3: Estimated Cost of Full State and Local Compliance with the PREA Standards, in the Aggregate, by Year and by Facility Type, in Millions of Dollars

Year	Prisons	Jails	Lockups	CCF	Juveniles	Total All Facilities
2012	$ 87.2	$ 254.6	$ 180.1	$ 27.8	$ 196.0	$ 745.8
2013	$ 55.2	$ 161.0	$ 122.0	$ 16.8	$ 93.3	$ 448.5
2014	$ 58.3	$ 157.9	$ 106.6	$ 14.2	$ 92.1	$ 429.2
2015	$ 59.2	$ 154.6	$ 93.7	$ 12.1	$ 94.9	$ 414.5
2016	$ 61.3	$ 153.5	$ 87.3	$ 11.1	$ 109.3	$ 422.6
2017	$ 61.5	$ 152.4	$ 83.6	$ 10.6	$ 151.9	$ 460.1
2018	$ 62.9	$ 151.3	$ 80.1	$ 10.1	$ 147.3	$ 451.8
2019	$ 63.1	$ 150.7	$ 77.5	$ 9.8	$ 144.7	$ 445.8
2020	$ 64.3	$ 150.1	$ 75.0	$ 9.4	$ 142.2	$ 441.0
2021	$ 65.7	$ 149.9	$ 73.2	$ 9.2	$ 140.4	$ 438.3
2022	$ 65.9	$ 150.1	$ 72.0	$ 9.0	$ 139.2	$ 436.2
2023	$ 67.1	$ 150.1	$ 70.8	$ 8.9	$ 138.0	$ 434.9
2024	$ 67.1	$ 149.9	$ 69.6	$ 8.7	$ 136.7	$ 432.0
2025	$ 67.9	$ 149.5	$ 68.4	$ 8.5	$ 135.5	$ 429.8
2026	$ 67.6	$ 148.8	$ 67.2	$ 8.4	$ 134.3	$ 426.3
15-yr Total	$ 974.2	$ 2,384.6	$ 1,327.3	$ 174.8	$ 1,995.8	$ 6,856.7
Present Value	$ 591.2	$ 1,488.4	$ 869.8	$ 116.6	$ 1,201.4	$ 4,267.4
Ann'l	$ 64.9	$ 163.4	$ 95.5	$ 12.8	$ 131.9	$ 468.5

Table 7.4: Estimated Average Annualized Compliance Cost Per Unit Facility, By Type

Type	Cost Per Unit Facility
Prisons	$ 54,546
Jails	$ 49,959
Lockups (per Agency)	$ 15,700
CCF	$ 24,190
Juvenile	$ 53,666

5.3 Methodology and Data Sources

5.3.1 *Booz Allen Hamilton Reports*

In preparing the analyses in this Part and in the IRIA, the Department drew partially on work performed by the consulting firm of Booz Allen.

[109/] *See* OMB Circular A-4, at 45; OMB, "Regulatory Impact Analysis: Frequently Asked Questions," Feb. 7, 2011, at 7-8, available at http://www.whitehouse.gov/sites/default/files/omb/circulars/a004/a-4_FAQ.pdf.

Booz Allen's support for the Department's cost analyses took place in four phases. Phases I and II took place in the winter and spring of 2010, respectively, as Booz Allen undertook a preliminary assessment, at the request of the Department's Bureau of Justice Assistance, of the standards that had been recommended by NPREC. Phase I assessed the cost impact of the recommended standards on a small pilot set of facilities and jurisdictions, culminating in a preliminary report dated February 23, 2010. This was superseded by Phase II, which assessed the cost impact of the recommended standards on a broader set of facilities; this phase culminated in the Booz Allen "Phase II Report," dated June 18, 2010. The Phase II Report is available at http://www.ojp.usdoj.gov/programspdfs/preacostimpactanalysis.pdf.

In conducting its Phase II analysis, Booz Allen selected a representative sampling of various types of correctional systems and facilities (including 13 state prison systems, 6 community confinement jurisdictions, 10 juvenile justice agencies, 16 jail jurisdictions, and four lockup facilities). It assembled a team of criminal and juvenile justice subject matter experts and cost estimation experts, who conducted on-site face-to-face meetings with representatives of each of the 49 selected sites.

Booz Allen's conclusions as to the cost impact of the Commission's recommended standards were drawn from the site representatives' responses at these meetings and at follow-up interviews, as well as from reviews of relevant documentation (including policy statements and staffing and facility plans), and in many cases facility tours.

The third phase of Booz Allen's support occurred in the fall of 2010, as the Department drafted proposed PREA standards for inclusion in the NPRM. In support of the IRIA, the Department commissioned Booz Allen to undertake additional analyses and to make adjustments in their data and assumptions so as to estimate the costs of full compliance with the Department's proposed standards.

In this phase, Booz Allen looked at a discrete subset of the proposed standards to assess the extent to which the cost of full compliance with those standards may have changed due to revisions in the standards from the Commission-recommended versions. These efforts focused on the three standards which had been identified in the Phase II Report as having the largest cost impact, and on 11 other standards as to which the Department had made significant changes from the Commission's recommendations.

Booz Allen conducted a detailed analysis of the cost drivers and variables underlying the Commission-recommended version of the fourteen identified standards, then (1) determined which cost drivers and variables were impacted by the Department's changes to the Commission's standards, (2) developed a set of assumptions to determine the degree to which those cost drivers and variables were impacted by the changes, and (3) developed metrics to determine a quantitative impact that could be applied consistently to each site.

Booz Allen then extrapolated an estimate of the cost of full nationwide compliance with the Department's proposed standards, using the data derived from the 49 specific sites included in its Phase II Report. For the 14 standards that were the focus of the third phase, Booz Allen used the adjusted cost figures from its supplemental analysis; for the remaining standards, Booz Allen used the cost estimates set forth in its Phase II Report, either because the Department's changes to the Commission's proposed versions of those standards were not expected to affect their cost, or because those standards were assessed to have a minimal cost impact in any event. These extrapolated estimates were set forth in the IRIA.

The Department acknowledges that a larger-scale study would perhaps have been worthwhile to support the nationwide extrapolation, but time and resource limitations made that impossible; moreover, with regard to prisons the Phase II Study included 13 State correctional departments and thereby subsumed over one quarter of the prison facilities in the country, which is a sufficiently large sample size. The Department likewise acknowledges that the Phase II participants did not necessarily constitute a random sample (although it accepts Booz Allen's characterization of the sample as "representative"), but it has compensated for this by supplementing the data from that study with other data from public comments, information provided by BOP and the USMS, and independent research.

The fourth and final phase of Booz Allen's support for the Department's cost analyses took place during the summer and fall of 2011, when the Department contracted with Booz Allen to undertake a comprehensive assessment of the compliance costs associated with full implementation of the draft final rule.

For most of the standards in the draft final rule, Booz Allen relied on its prior analyses of the Commission's recommended standards and of the standards proposed in the NPRM: using essentially the same derivative estimation methodology that it had used in the third phase, it compared the standards in the draft final rule against the earlier iterations to identify changes that would potentially have an impact on the costs of the standard. It then monetized the effect of those impacts on the specific sample sites included in the Phase II Report before extrapolating nationwide estimates for each standard over the projected fifteen-year cost horizon.

For a number of standards, including many of the standards with the largest cost impact, Booz Allen utilized other methodologies not tied to the earlier analyses, either because the standard was new or had been significantly changed from previous versions, or because the Department, based on comments received or its internal deliberations, determined that a different methodology (or a methodology based on different data) would lead to a more realistic cost estimate. The specific methodology, assumptions, and data that underlie the cost estimate for each standard are described in detail in the discussion of each standard below.

We did not rely exclusively on Booz Allen's analyses, methodologies, assumptions, or conclusions, nor did we accept all of those conclusions for purposes of this RIA. Rather, much of the analysis in this Report was developed within the Department or else reflects a collaborative process in which we worked closely with Booz Allen and substantially refined their efforts.

5.3.2 *Department of Justice Cost Estimates*

Booz Allen's analyses assessed only the costs that State, local, and private agencies would incur if they adopted and implemented the standards in their own facilities. Thus, Booz Allen's analyses did not include the compliance costs of federal facilities. We conducted our own internal assessments of the costs that the Federal Bureau of Prisons (BOP) and the United States Marshals Service (USMS) would incur in implementing the standards in the facilities they operate or oversee. The cost estimates of those two agencies are described in the discussion of the specific standards for which those agencies anticipate costs, and are summarized in Table 14.1.

5.3.3 *Other Sources of Data, and Comments on Data Sources*

In the NPRM, we asked whether there are any available sources of data relating to the compliance costs associated with the proposed standards, other than the sources that we cited and relied

upon in the IRIA (namely, the Booz Allen cost estimates and the internal Department cost assessments).

The Association of State Correctional Administrators (ASCA) gathered compliance cost information from a number of state correctional agencies across the nation and compiled them in its comment. These data were extremely helpful to our analysis, and we included them in our estimates of the cost of full compliance with the standards where appropriate.

Two advocacy organizations criticized both Booz Allen's and the Department's reliance on the cost estimates that had been provided by corrections administrators, including the estimates reflected in Booz Allen's Phase II study. While some agencies estimated how much it would cost to implement the Commission's recommended standards, the commenters observed, these anecdotal projections varied widely and were not generally reliable. According to these commenters, corrections officials charged with establishing cost estimates and ultimately defending them to their appropriators have an incentive to inflate costs and little motivation to think creatively and strategically about how to devise low-cost ways to comply with standards that are not yet in force.

These organizations suggested that to establish a valid assessment of compliance costs, the Department should not rely on the speculative estimates of corrections administrators but should instead take a structural approach that would include developing reasonable assumptions about how different facilities would comply with the regulations and estimating the total costs of compliance over the entire country, using the estimates provided by the agencies only as a robustness check.

The Department disagrees with the notion that cost estimates provided by industry sources are systematically unreliable or speculative, or that corrections officials have an incentive to inflate cost estimates; to the contrary, corrections officials have unique expertise in assessing the costs of complying with statutory or regulatory objectives. Correctional managers are typically well-motivated and well-positioned to identify low-cost solutions to problems encountered in operating and managing confinement facilities. We very much appreciate receiving the benefit of their expertise and experience.

Nevertheless, in extrapolating nationwide estimates from the Phase II Report, the Department has not relied unquestioningly on the estimates that corrections administrators provided to Booz Allen in response to its Phase II study (or provided to the Department as part of ASCA's compilation) but has subjected those estimates to rigorous analysis and validation, eliminating where appropriate estimates that seem biased, speculative, unreliable, or based on a misinterpretation of the standard, or that otherwise are significant outliers.

Second, as is evident from the discussion below of the methodologies used in estimating the cost of full nationwide compliance with specific standards, the Department has indeed developed reasonable and plausible assumptions about how different facilities would comply with the regulations, including an assumption that agencies will devise the most efficient and least costly means of complying with the standards. These assumptions are then used to drive calculations of specific estimates.

5.4 Time Horizon, Discount Rate, and Variability of Costs in the Out Years

Executive Order 13563 directs agencies "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." Moreover, OMB has suggested that, when choosing the appropriate

time horizon for estimating costs and benefits, "agencies should consider how long the regulation being analyzed is likely to have resulting effects. The time horizon begins when the regulatory action is implemented and ends when those effects are expected to cease."[110/]

While analysis should ideally include *all* future costs and benefits, a "rule of reason" is generally appropriate, and agencies are advised to consider for how long they can reasonably predict the future and then limit their analysis to this time period. Thus, if, as here, a regulation has no predetermined sunset provision, agencies have to choose the endpoint of their analysis based on a judgment about the foreseeable future.

In most cases, under OMB guidelines, a standard time period of analysis is 10 to 20 years.[111/] Here, in setting forth our cost estimates, we have chosen the midpoint of that range and thus use a fifteen-year time horizon, because we cannot reasonably predict the future beyond that time horizon.

We assume that the first full year for which the standards will be applicable is 2012, and we project costs through 2026. We present our aggregate cost estimates as annualized figures over the period 2012-2026, using a 7% discount rate, to reflect the fixed amount that one would have to pay each year in order to pay off the total amount by the end of the last year. We do not adjust our cost estimates for expected inflation over the time horizon.

For many standards, some of the associated compliance costs are one-time start-up costs while others are recurring operational costs. In the IRIA, we distinguished between these two types of costs by assuming that all one-time costs are "upfront" costs that occur in year 1 and all recurring costs are "annual ongoing" costs that occur in years 2-15 and that remain constant during that period.

In this Report, we have adopted a different, and more nuanced, approach. As explained below in the discussion of specific standards, not all one-time startup costs are expected to occur in year 1 for every standard; some recurring costs will occur in year 1 as well as in the out years; and recurring costs are not expected to remain constant in the out years for all standards.

To avoid confusion, we therefore do not fundamentally distinguish in this Report between "upfront" and "ongoing" costs in presenting our main cost estimate figures.[112/] Instead, for each of the standards (or groups of related standards) as to which we expect a significant cost impact, we have projected compliance costs for each year in the fifteen-year cost horizon, comprising both one-time and recurring costs in whatever years those costs are expected to occur. These costs are then aggregated over the full fifteen-year period, discounted to net present value, and annualized at a 7% discount rate.

As noted above, in presenting our cost estimates in the IRIA of the standards proposed in the NPRM, we projected costs as remaining constant over the period of 2013-2026. Thus, we did not adjust for the possibility that over time the cost of compliance could decrease if correctional agencies adopt new innovations that will make their compliance more efficient and less costly. As we explained in the IRIA, we did not have an informational basis at that time from which to draw plausible assumptions as to the extent to

[110/] OMB, "Regulatory Impact Analysis: Frequently Asked Questions," Feb. 7, 2011, at 4, available at http://www.whitehouse.gov/sites/default/files/omb/circulars/a004/a-4_FAQ.pdf.

[111/] *Id.*

[112/] For standards that have both one-time and recurring elements to their cost impacts, we have described those elements in the narrative description below of each standard.

which compliance costs could decrease over time due to learning or innovation.[113]/

We nevertheless invited public comment on the question whether the Department correctly assumed constancy in projecting ongoing costs in the out years, or whether it would be more appropriate to adjust the Department's projections for the possibility that the cost of compliance may decrease over time due to innovations and efficiency gains. We solicited recommendations regarding the best methodology and source of data from which valid predictions as to "learning" could be derived.

An organization of faith leaders and a legal advocacy organization responded that the compliance costs of the standards would definitely decrease over time. According to these commenters, as the standards and best practices become normalized, as the corrections culture becomes safer, as incidents of abuse are reduced, and as collateral safety concerns are addressed, the costs of implementing the standards should go down.

A public policy think tank commented that without making an adjustment to account for learning effects over time, the Department's cost estimates would likely be unrealistically high. By assigning a zero value to learning effects, the commenter argued, the Department incorrectly assumed that no learning would occur over the first fifteen years in which the rule is implemented. The commenter asserted that operational experience, adaptation to heightened regulatory standards, technological advances, and cost-driven innovations will all likely lead to efficiencies that will reduce costs. As examples, the commenter stated that correctional staff will become more efficient over time at conducting screening interviews for a history of sexual abuse, and costs attributable to video-monitoring requirements will likely decrease as technology evolves.

Unfortunately, none of these commenters provided any actual data from which plausible estimates of the precise amount of efficiency gains can be extrapolated, nor did they propose a methodology for undertaking such an extrapolation. Likewise, several other commenters from both the advocacy community and the corrections community acknowledged a possibility that compliance costs may decrease in the out years, but were unable to propose a methodology to calculate such changes.[114]/ The policy think tank urged the Department to nevertheless use its "best guess, even though imperfect, of estimated learning effects in particular areas." We are unwilling to undertake such a speculative approach.

Moreover, adjusting for future learning in the relatively aggressive fashion that this and other commenters proposed would simply lower the point at which the estimated costs of full compliance will break even with the projected benefits. As elaborated in Part 6, we view the existing break-even percentages as sufficient to justify the final rule. The think tank posits in its comment that a lower break-even percentage could serve to justify "heightened levels of regulation." But for reasons already discussed in section 2.2, we do not accept that proposition.

We do, however, acknowledge that for a small handful of the standards some account can appropriately be taken of the likelihood that, over time, the level of effort required to comply with the standard can reasonably be expected to decrease modestly over time.

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[113]/ *See* IRIA, at 60.

[114]/ Several correctional agencies asserted that, while startup costs are likely to be higher than future costs, the expense of maintaining and eventually replacing or upgrading technological systems that are only now being introduced (such as video monitoring) are unknowable. Thus, the potential for decreases in the cost of compliance is speculative at this time.

The best example of such a standard is the Zero Tolerance/PREA Coordinator standard (115.11). As discussed at length in section 5.6.11, the responsibilities of both the agency-wide PREA Coordinator and the facility-level PREA Compliance Manager can reasonably be expected to change over time, with the level of effort decreasing after the individuals have implemented the initial PREA policies and training programs and have overseen one or two audit cycles. We have therefore incorporated a fairly conservative "learning curve" (the details of which are laid out in section 5.5.11) into our analysis of the costs of that standard.

We have incorporated similarly conservative "learning curves" into our analyses of a few other standards, for which we were able to make plausible, data-driven assumptions with respect to the effect of learning or efficiency gains on the cost of complying with the standard over time. This includes the standards pertaining to staffing, supervision, and video monitoring (115.13), training (115.31-.35), and audits (115.93, 115.401-.405). For these few standards, we have not assumed constant costs in the out years, as we did in the IRIA and as we do for the majority of standards.

Apart from the notion that costs can diminish over time due to learning, innovation, and efficiency gains, another commenter observed that, for those standards which require specific actions to be taken in response to incidents of sexual abuse, the costs of compliance with the standards are essentially "sensitive to prevalence," meaning that the level of effort required to comply can be expected to decrease over time as the prevalence of sexual abuse diminishes. For these standards, the commenter recommended reducing the projections of out-year costs to reflect expectations of diminishing prevalence.

We agree with this commenter that the cost of full compliance with a few of the standards is sensitive to the prevalence of prison rape, and we have made conservative adjustments to our estimates to reflect this sensitivity. Once again, the Zero Tolerance/ PREA Coordinator standard is a good example. Among the anticipated functions of the PREA Coordinator are to coordinate sexual abuse incident reviews and to comply with the standards' document collection and reporting requirements. If the standards are effective in reducing the incidents of sexual abuse, the level of effort required to fulfill those functions will correspondingly decrease.

While we admittedly do not have a strong empirical basis from which to make specific predictions about the extent to which the standards will be effective in reducing prison rape, we consider it appropriate and conservative to assume that, if fully implemented, the standards in the final rule will succeed in reducing the prevalence of prison rape by at least 4% per year from baseline levels. For the handful of standards as to which we believe the costs are sensitive to prevalence (most notably § 115.11), we have thus discounted the costs in the out years by a conservative factor of 4% per year.[115/]

[115/] In contexts where the estimates of full nationwide compliance with certain standards derive from monetization of staff time (*e.g.*, the Zero Tolerance standard and the training standards), we have not incorporated into our estimates a rate of growth or decline in the total number of nationwide staff over the 15-year time horizon, nor did any commenter ask us to do so. Inmate-to-staff ratios have remained fairly stable over the last two decades. Based on BJS, *2005 Census of State and Federal Correctional Facilities*, table 5, and BJS, *2000 Census of State and Federal Correctional Facilities*, page vi, the inmate-to-staff ratios in State facilities were 4.6:1 in 1995; 4.6:1 in 2000; and 4.9:1 in 2005. If limited to correctional officers (supervision staff), the inmate-to-staff ratios were 2.9:1 in 1995; 3:1 in 2000; and 3.3:1 in 2005. Thus, a strong predictor of staff size is the number of inmates.

While both the number of inmates and the number of staff increased significantly from 1990 to 2005, the number of inmates has stabilized in recent years. *See* BJS, *Prisoners in 2010*, and BJS, *Jail inmates at Midyear 2010*. There is little evidence at present to suggest that the number of inmates will drop or increase significantly in the near- to mid-term, given the experience of the last three years.

For this reason, we deem it reasonable to project relative stability in the total number of staff (and specifically in the number of correctional officers), and do not consider it appropriate to extrapolate from the growth rates experienced between 1990 and 2005 to continued growth during the fifteen years beginning in 2012.

For the same reason, we have not factored into our analysis any expected trends or changes in the level of the nationwide prison population over the course of our time horizon. Of course, if the population of inmates or youth in detention decreases over time, the costs of complying with the standards ought to decrease correspondingly. However, there are simply too

5.5 Other Cost Methodology Issues

We asked in the NPRM whether other methodologies would be appropriate for conducting an assessment of the costs of compliance with the proposed standards.

One State corrections agency suggested that we predicate our assessments on costs that agencies actually incurred in the years prior to promulgation of the final rule to advance the objectives of the statute. This agency neglected to provide any such data, but in any event for purposes of this RIA we estimate only the costs that agencies would incur to comply specifically with the standards in the final rule.

Expenses incurred for reasons independent of the final rule (including those incurred before the rule became effective) are considered part of the baseline—the status quo that would occur even in the absence of the regulatory action. The costs included in this Report are limited to those costs that would be required for full nationwide compliance with the standards, and that would not be incurred but for the promulgation of the final rule. However, where pre-final-rule data shed light on the potential costs of compliance with the final rule, we included such data when available.

In a similar vein, an association of faith leaders commented that several of the standards for which major or moderate ongoing costs have been estimated (*e.g., s*creening, supervision, and training) are subject to constitutional requirements independent of PREA, such that the costs of complying with those standards should not be assumed to be solely due to the PREA standards. This comment misses the point, however, of a regulatory impact analysis. If an agency was not previously compliant with its constitutional obligations but now attempts to come into compliance by adopting and implementing the standards, the costs of that implementation are properly attributable to the standards rather than to the underlying constitutional obligation.

We also asked in the NPRM whether the Department appropriately differentiated the estimated compliance costs with regard to the different types of confinement facilities (prisons, jails, juvenile facilities, CCFs, and lockups), and if not, to what extent compliance costs should be expected to be higher or lower for one type or another.

A number of State and municipal corrections agencies responded that the Department had appropriately differentiated the estimated compliance costs with regard to the different types of confinement facilities.

One State corrections agency responded, however, that the question is pointless, because the taxpayers in any given jurisdiction will ultimately have to pay for the compliance costs incurred by all of the facilities in the jurisdiction regardless of the type. While this may be true, facilities of different types are often overseen by different agencies, each with its own budget and resources, and a comprehensive assessment of the regulatory impact of the standards should describe, as transparently and accurately as possible, how that impact differs among facility types. We have endeavored to do just that.

A county sheriff observed that standards that require segregated housing of certain inmates are likely to impact jails more than prisons because most prisons contain more than one building or housing unit whereas most jails have only one building or housing unit and would have to undertake new construction to comply with the requirement. Although we have endeavored to

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many variables affecting the size of the detained population at any given time (*e.g.*, unpredictability of crime rates and sentencing policies) to make it appropriate to project or predict any future trends in this area. No commenter suggested that we account for such trends in predicting the costs of compliance with the rule over time.

reflect this potentially differential impact in our analysis of the specific standards to which it might be relevant, we disagree that jails that have only one building or housing unit would necessarily have to build additional structures in order to segregate one group of inmates (*e.g.*, victims, vulnerable inmates, youthful inmates) from another. Such jails would generally also have the option of expanding existing structures, transferring these inmates to other facilities or jurisdictions where they would be less at risk, or protecting these inmates through other means.

A State juvenile justice agency objected that the IRIA grouped all juvenile facilities in one category and did not properly differentiate costs among the different types of juvenile facilities. The commenter urged the Department to recognize cost variations based on the size and capacity of the facility and whether it is utilized for pre-dispositional or post-dispositional placements.

For the few standards for which specific data are available as to the cost impact on different types of juvenile facilities, we have included such data in our analyses and differentiated within that category of facilities to the extent possible. In general, the nationwide cost estimates are derived from an average cost per facility and per resident, calculated based on a representative sample of facilities that included many different types, thereby ensuring that differences among types of juvenile facilities are properly accounted for.

An association of religious leaders suggested that the average cost per facility for lockups and CCFs should be lower than what the Department has estimated, since these facilities are often connected to jails and prisons that are separately obliged to comply with the standards. We agree with this suggestion in the context of CCFs and have adjusted our cost estimates to eliminate costs that would not be appropriate to include when the CCF is operated as part of a connected jail or prison facility. For example, for the estimated 42% of CCFs that are operated as part of a statewide Department of Corrections,[116/] we have not included a cost for a PREA Coordinator on the assumption that the prison agency's PREA Coordinator would also fulfill the functions of that role for the connected CCFs. We have not identified a parallel situation involving lockups that would warrant excluding some of the compliance costs associated with those facilities.

Another agency observed that each facility, regardless of type, has unique configurations, operational needs, and so forth, and thus will be impacted differently from other agencies in the costs of full compliance. This and other State agencies remarked that the variation among correctional systems (and among individual facilities within each system) is so great, particularly when local variations in economic factors (such as costs of labor, materials, and health care) and in legal precedents are taken into account, that any attempt to classify the facilities into unifying categories would be misleading.

According to these agencies, the only proper way to estimate the costs of full compliance with the final rule would be to develop a checklist of all actions and conditions that would be required for an agency to be considered compliant with the standards, to provide such a list to all affected agencies, and to call upon those agencies to estimate their cost of compliance based on that checklist and their local conditions or factors. According to these commenters, this is the only way to ensure that the estimates of full compliance costs are all based on the same vision of compliance.

Our analysis predicates estimates of full nationwide compliance costs on the average cost per facility (based on a survey of a small represen-

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[116/] *See supra* note 42.

tative sample of facilities of various types, regions, and sizes) and gives ample recognition to the fact that agencies and facilities are likely to make a great variety of choices as to how to comply with the standards. The suggestion to survey every facility that would be covered by the standards is impractical, and the notion that the Department cannot estimate the compliance costs associated with full compliance with its standards without conducting such a survey contradicts common approaches to assessing costs of proposed regulation.

5.6 Standard-by-Standard Cost Assessment

In the following discussion, we set forth our estimate of full nationwide compliance costs associated with each of the proposed standards (or groups of related standards).

5.6.11 *Zero Tolerance/PREA Coordinator (Standard 115.11, .111, .211, .311)*

This standard requires that agencies establish a written zero-tolerance policy toward sexual abuse and harassment and mandates that agencies employ or designate an agency-wide, upper-level PREA coordinator with sufficient time and authority to oversee the agency's efforts to comply with the PREA standards.

Its principal benefit derives from the change in institutional culture that a zero-tolerance policy will likely engender, and from prompting agencies to make prevention of sexual abuse a priority in decisions with regard to policy, personnel, and physical plant. The benefit of assigning a PREA coordinator is to increase the effectiveness of efforts to prevent and respond appropriately to sexual abuse.[117/]

The zero tolerance/PREA coordinator standard is the second most expensive of all of the standards (accounting for about 22.9% of the total cost for all the standards combined), but it is also one of the most complex to monetize.

Our cost estimates for this standard are not based on the estimates in the IRIA for the corresponding proposed standard, nor do they draw extensively from Booz Allen's Phase II Study of NPREC's recommended standard PP-1. Rather, for this standard we have developed a methodology from the ground up for estimating the cost of compliance.

For nonfederal facilities, we estimate the cost of full nationwide compliance with this standard, annualized over 15 years, as approximately $110 million per year. For BOP, the estimated annual compliance cost is $797,000. For USMS, the estimated annual compliance cost is $445,000.

5.6.11.1 Cost Estimating Approach

This standard calls for an upper-level PREA Coordinator (PC) with "sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all its facilities." Further, in subsections 115.11(c) (for prisons and jails) and 115.311(c) (for juvenile facilities), the standard calls for a PREA Compliance Manager (PCM) at each affected facility to coordinate that facility's efforts toward PREA compliance.

[117/] Although we are unaware of any empirical studies that have compared the existence of a zero-tolerance policy (or a PREA Coordinator position) with the prevalence of prison rape in a particular agency, the NPREC, the experts on correctional management with whom we consulted, and most commenters agreed that the existence of such a policy and the requirement for a PREA Coordinator will be very beneficial in helping to foster a culture of sexual abuse prevention in confinement facilities and thereby to mitigate the prevalence and effect of prison rape.

For quite a few of the standards (for example, standards 115.66, 115.73, and 115.86-88), much of the actual effort required to comply with the standard will presumably be undertaken by the PC or the PCM. The costs of compliance with those standards are thus essentially subsumed within the cost of standard 115.11. For this reason, and to avoid double-counting, many standards are assessed in their own sections below as having minimal to zero cost even though they will obviously require some resources to ensure compliance; this is because the cost of those resources is assigned to standard 115.11 to the extent we assume that primary responsibility for complying with the standard will lie with the PC or the PCM.

To estimate the cost of full nationwide compliance with this standard, we followed a five-step process.

In the first step, we determined how many agencies of each type will require a PC and how many facilities of each type will require a PCM. With regard to prisons, based on research conducted by the National Institute of Corrections in late 2009, nine State departments of corrections already had designated personnel on staff who were spending over 90% of their time on agency-wide efforts to prevent sexual abuse. These States were Georgia, Idaho, Montana, New Mexico, North Carolina, Oregon, Vermont, Washington, and Wisconsin. We assume that these States will not need to expend additional funds to come into compliance with the requirement to put in place a PC.[118/]

We correspondingly assume that the other 41 States plus the District of Columbia will each have to expend funds to establish a PC position if they adopt the PREA standards. This is a conservative assumption, because in all likelihood there are States of which we are not aware (and who are not included on this list) that already employ staff dedicated to some extent to agency-wide efforts to prevent sexual abuse. We assume that all 1,190 State prison facilities will require a PCM.

For jails, the vast majority of the 2,859 local and regional jail jurisdictions operate only one facility. We assume these agencies will utilize only one agency-wide PC, rather than a PCM, at their sole facility. However, given that the 2,859 jurisdictions collectively operate 3,271 jail facilities, there are approximately 412 satellite jail facilities operated by jurisdictions that have more than one facility.[119/] In these jurisdictions, we assume that the PCs will serve both as agency-wide PCs and effectively as PCMs in the specific jail facility where they work. In other words, the expectation is that if a specific facility (typically the main jail in the system) houses a PC for the jail agency, it will not also need a PCM at that same facility. Only the 412 satellite jail facilities that do not have a PC will need a PCM.

Lockup agencies are required to have a PC but not a PCM. Based on the figures in Table 7.1, we assume that 1,311 police agencies that operate lockups with overnight holding cells will require a PC. Likewise, 2,442 police and 2,330 court agencies with lockups or holding facilities that do not accommodate overnight stays would also require a PC.

For community confinement agencies, the standards again require a PC at the agency level but not a PCM at the facility level. Approximately 42% of all CCFs, however, are operated as part of a State Department of Corrections that would have its own PC.[120/] Therefore, of the 529 CCFs

[118/] It is entirely possible that additional States have joined this list since late 2009, or that even as of late 2009 there were additional States with this characteristic about which we were not aware. However, in the absence of specific information to that effect we conservatively assume that the list is limited to these nine States.

[119/] *See* BJS, 2006 *Census of Jail Facilities* (NCJ 230188).

[120/] *See supra* note 42.

potentially covered by the standards, we assume that only 308 will require a PC.

Finally, for juvenile facilities we assume that each State and the District of Columbia will have one statewide PC in its juvenile justice agency. We also assume that each of the 2,458 juvenile facilities will have its own PCM.

In the second step, we estimated the initial level of effort (LOE) that the average PC and PCM would require to accomplish their assigned tasks. To do this, we identified those compliance-related tasks emerging from the standards that we assume will typically be assigned to the PC or PCM and then estimated the LOE that would be required to complete those tasks. There will, of course, be considerable variation and creativity among agencies in how they structure the responsibilities of these positions, so our aim was merely to derive a rough approximation of the workload the typical PC or PCM may encounter.[121/] Moreover, we are only interested here in the amount of *additional* or *incremental* effort that agencies make, beyond what they are already doing, in order to comply with the specific requirements of the standards.

Thus, this step required us to develop assumptions regarding (1) the extent to which agencies already have personnel in place performing some of the tasks that the PC or PCM will perform (or substantially similar tasks), and (2) the amount of additional effort that will be required to perform those tasks which are not already being performed.

We express the ensuing LOE in terms of percentages of full-time equivalent (FTE) positions, with each FTE equating to one employee working forty hours a week for an entire work year. Table 8.1 depicts our estimates of the initial workload for the PC and PCM positions at facilities of varying types.

In developing the final rule, we have abandoned the requirement contained in the proposed rule that the PC must be a full-time position in large agencies but may be designated as part-time in agencies whose total rated capacity is less than 1000. We have replaced this with language giving agencies the flexibility to determine how to allocate the resources needed to complete the required work effort, as long as the designated individual has sufficient time and authority to do the job.

Table 8.1: Estimated Initial Level of Effort Required for PREA Coordinator and PREA Compliance Manager, as Percentage of Full-Time Equivalent Position, by Facility Type

Type/Size		PC	PCM
Prisons		75%	25%
Jails	Mega (1000+)	75%	25%
	Large (250-999)	25%	20%
	Medium (50-249)	15%	10%
	Small (<50)	5%	5%
Lockups	Overnight	15%	NA
	Day Only	5%	NA
Community Confinement		25%	NA
Juvenile		75%	25%

Given the breadth of the tasks potentially associated with these positions, we conservatively assume that in prisons and juvenile facilities fulfillment of those tasks would initially require a full-time position at the agency level, at least if agencies were operating on a clean slate. However, according to research conducted by the National Institute of Corrections, most State correctional and juvenile justice agencies already have an official in place who is performing at least

[121/] For this reason, we have not endeavored to list here the specific tasks that we assume are most likely to require effort on the part of the PC or the PCM at the typical agency, lest this be seen as a form of mandatory or universal job descriptions for these positions. We do not wish to limit the flexibility that agencies possess in how they pursue the overall goal of zero tolerance.

some of the functions and responsibilities anticipated for the PC.

For this reason, we conservatively assign an initial workload estimate of 75% of one FTE for prison and juvenile agency PCs. We expect that many agencies, especially smaller agencies, may in fact be able to accomplish the initial LOE required for a PC with less than this amount.

For jail jurisdictions, we assume that the LOE will vary considerably, depending on the size of the facility. For mega jails (*i.e.,* those with an average daily population of greater than 1000 inmates), we assume the LOE for the PC position will roughly correspond to the LOE for a prison, and we therefore assign 75% of one FTE for PCs at those agencies. For smaller jail agencies, there will be far fewer tasks for the PC to accomplish, and we have assigned correspondingly smaller levels of effort for large, medium, and small facilities. Again, this represents the additional LOE required beyond the LOE already being expended for those or similar tasks.

For community confinement agencies that require a PC, we conservatively estimate the LOE required as approximately 25% of one FTE—roughly the same as that required for a large jail.

Lockups are typically small municipally-run facilities operating independently of county correctional systems, either by police agencies or by courts. The standards applicable to lockups are less demanding than those for other facility types, and inmates typically remain in lockups for very short periods of time. Lockups that house inmates overnight can be expected to require a higher LOE for PREA compliance than lockups that confine detainees only during the day, because of the greater risk to inmates at overnight facilities, which are generally larger than non-overnight facilities. For these reasons, we assume 15% of one FTE for a PC for each lockup agency that houses detainees overnight and 5% of an FTE for those agencies that only operate during daytime hours.

Prison and juvenile detention agencies are also required by the standard to have a PCM at each facility; a PCM would also be required at each individual facility for jail agencies that operate more than one facility. For prisons and juvenile facilities settings, we conservatively estimate that at most 25% of one FTE will be sufficient to complete the initial workload of a PCM, based on our assessment of the tasks that incumbents in these positions would be called upon to fulfill. For jail agencies that operate multiple facilities, we assume that the LOE at each facility will depend on the size of the facility and assume an LOE of 25%, 15%, 10%, and 5% for mega, large, medium, and small jails, respectively.

In the third step, we projected how the LOE is likely to change over time. As discussed in section 5.4 above, we assume that the LOE for each PC and PCM will decrease over time, both due to learning and efficiency gains and because this standard is sensitive to prevalence. We therefore sequentially applied two separate adjustment curves to the LOE predictions in the out years for the PC and PCM positions.

The first is a learning curve. As policies, procedures, and documents related to PREA compliance are developed and implemented; as agencies learn new procedures, acclimate to a new regulatory environment, and adopt best practices pioneered by other agencies with which they have been in contact through industry fora; and as agencies derive experience preparing for and submitting to PREA audits, the PC and PCM jobs will undoubtedly require less time and effort than they did initially.

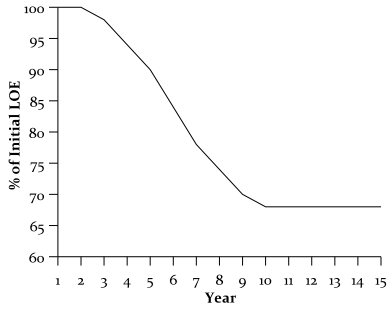
To quantitatively yet conservatively capture this diminished LOE, we assume that beginning in year 3 (the last year of the first audit cycle), the LOE required for the PC and PCM positions will

decrease slightly each year through year 10. As shown in Table 8.2, this is depicted as a 2% reduction in the PC and PCM workload in year 3, followed by incremental reductions in years 4 through 10 of 4%, 4%, 6%, 6%, 4%, 4%, and 2%.

In other words, we assume that in the first two years the required LOE will not diminish due to any learning or efficiency gains because the PC and PCM will be working to establish upfront policies and procedures for compliance with the standards.

By the third year, many such policies and procedures will be in place, the first audit cycle will be finishing, and agencies will presumably be looking for ways to accomplish the requisite tasks with fewer resources. The benefit from learning and innovation can then be expected to increase gradually each year as the PC and PCM gain experience and solidify procedures, with the peak efficiency gain occurring in around years 6 and 7, just after the end of the second audit cycle. Efficiency gains will then gradually level off until year 10 (after having gone through three cycles of the PREA audit), by which time we assume that there are no further productivity enhancements.

Table 8.2: Assumed Learning Curve for Level of Effort Required for PREA Coordinator and PREA Compliance Manager Positions, Years 1-15



We assume that facilities will generally be able to reassign personnel or add non-PREA related responsibilities to the PC and PCM positions as the LOE decreases. However, because certain aspects of the PC and PCM positions involve on-going maintenance and implementation of existing policies, and because a baseline level of effort will always be required to maintain a zero-tolerance policy, there are distinct limits both to the extent and the duration of any efficiency gains.

We also apply a sensitivity curve to the LOE. Agencies experiencing a higher level of sexual abuse can reasonably be expected to require more effort from their PC and PCMs than would agencies with fewer incidents. Thus, assuming a successful execution of the standards and the concomitant reduction in incidents, declining rates of sexual abuse ought to decrease the amount of work required of a PC and PCM.

For example, the responsibility to coordinate sexual abuse incident reviews and to comply with the standards' document collection and reporting requirements will predictably become less demanding as agencies become more successful at reducing incidents of sexual abuse.

To quantify this sensitivity to prevalence, we conservatively assume that the prevalence of sexual abuse in each agency decreases at an average rate of 4% per year, beginning in year 2, as a direct result of the changes made by the standards in the final rule. This assumption is based on the proposition, first articulated in the IRIA, that the standards could reasonably be expected to effect at least a 4% annual reduction from the baseline in the prevalence of prison sexual abuse. *See* IRIA, at 65. No commenter disputed this proposition.

As shown in Table 8.3, taking the learning curve and the sensitivity curve cumulatively yields an assumption that the LOE for the PC and PCM positions will decrease gradually over the 15-year time horizon, equaling approximately 30% of the initial LOE by year 15.

Multiplying the expected LOE figures from Table 8.3 by the initial LOE figures for each facility and position type from Table 8.1 yields the expected LOE for both the PC and PCM positions for each facility type for each year during the cost horizon. *See* Table 8.7.

In the fourth step, we monetized the LOE by multiplying the percentage of FTE at each data point by the estimated cost of the labor involved. With respect to PCs, the standard requires that the designated individual be an "upper-level" employee "with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities." We envision that this individual will at a minimum be an upper-middle manager—typically at or above the level of an associate warden.

To estimate the salary levels for PCs at agencies of various types, we examined the survey responses that the 49 agencies participating in Booz Allen's Phase II study provided with respect to the salaries and benefits they provide to their upper-middle management cadre, and from these figures we extrapolated nationwide estimates for PC compensation levels. These estimates are depicted in Table 8.4; the compensation figures include both salary and benefits. However, these are solely assumptions for cost estimation purposes and are not intended to guide agencies in determining the appropriate level of compensation for the PC position. We assume that actual compensation levels among agencies will vary widely.[122/]

The PCM at the facility is assumed to be a mid-level staff member, approximately at the level of a correctional sergeant or lieutenant. The PCM is not intended to be a policy maker but rather a local point of contact who will work with the agency's PC and the facility's management "to coordinate the facility's efforts to comply with the PREA standards." To determine a salary for purposes of monetizing the LOE for the PCM, we used information from the Bureau of Labor Statistics[123/] to determine an average salary of $55,910 for mid-level correctional positions. To this we add 20% for the value of benefits (health, retirement, etc.), arriving at total compensation of $67,092.

Table 8.3: Estimated Level of Effort Required Over Time for PREA Coordinator and PREA Compliance Manager, as Percentage of Initial Level of Effort[124/]

Year	Cumulative Learning Curve	Cumulative Sensitivity Curve	Expected LOE
1	0%	0%	100%
2	0%	4%	96%
3	2%	8%	90%
4	6%	12%	83%
5	10%	16%	76%
6	16%	20%	67%
7	22%	24%	59%
8	26%	28%	53%
9	30%	32%	48%
10	32%	36%	44%
11	32%	40%	41%
12	32%	44%	38%
13	32%	48%	35%
14	32%	52%	33%
15	32%	56%	30%

[122/] We assume that all agencies establishing new PC and PCM positions will do so by assigning new responsibilities to existing staff and will not need to take on additional staff in order to comply with this standard. We therefore do not add in any upfront costs relating to accession of new hires.

[123/] Bureau of Labor Statistics, Online Occupational Outlook Handbook, 2010-11 Edition, available at http://www.bls.gov/oco/ocos156.htm#oes_links.

[124/] If l_y and s_y, respectively, designate the cumulative learning curve and cumulative sensitivity curve in year y, and if e_y is the expected LOE in year y, then for each year y, $e_y = 1 - l_y - s_y + (l_y * s_y)$.

Both the PC compensation levels in Table 8.4 and the $67,092 figure for PCM compensation in the previous paragraph are national averages meant to serve as base compensation levels. These national averages are not meant to capture variations in compensation levels from State to State due to differences in standards of living and other economic factors.

In the fifth and final step, we multiplied the assumed compensation levels by the estimated LOE to determine the initial cost of each required PC and PCM position; this initial cost was then multiplied by the learning and sensitivity curves in Table 8.3 to determine the cost of each position in the out years.

The following tables illustrate this step by using New Jersey as an example. The numbers for prisons, jails, CCFs, and juvenile facilities in the State are based on actual census figures; the numbers for lockup agencies are extrapolated from nationwide data.[125/]

Table 8.4: Estimated Compensation Levels for Agency PREA Coordinators, by Facility Type, National Base Figures

Type	Compensation
Prisons	$ 117,984
Jails	$ 101,178
Juvenile	$ 80,553
Community Confinement	$ 78,731
Lockups	$ 101,178

Table 8.5: Estimated Initial Compliance Cost for PREA Compliance Manager Requirement, New Jersey

Type/Size	# PCM	Init. LOE	Comp. Level	Total Initial Comp.
Prisons	23	25%	$67,092	$385,779
Juvenile	49	25%	$67,092	$821,877

We made similar calculations for all of the other States and the District of Columbia to derive nationwide totals. The calculations for all of the States are displayed in Appendix 1, and the totals across all jurisdictions for each facility type are summarized in the first line of Table 8.7. As explained above, we excluded from the total the PC for the nine States that already have incumbents performing functions roughly equivalent to the required PC.

Table 8.6: Estimated Initial Compliance Cost for PREA Coordinator Requirement, N.J.

Type/Size		# PCs	Init. LOE	Comp. Level	Total Initial Comp.
Prisons		1	75%	$117,984	$88,488
Jails	Mega (1000+)	1	75%	$101,178	$607,068 (= 6 FTE)
	Large (250-999)	10	25%		
	Medium (50-249)	12	15%		
	Small (<50)	9	5%		
Lockups	Overnight	9	15%	$101,178	306,787 (= 3 FTE)
	Day Only	33	5%		
Community Confinement		2	25%	$78,731	$39,366
Juvenile		1	75%	$80,553	$60,415

[125/] Sources: BJS, *2005 Census of State and Federal Correctional Facilities;* BJS, 2006 *Census of Jail Facilities;* BJS, *2008 Census of State and Local Law Enforcement Agencies;* OJJDP, *2008 Juvenile Residential Facility Census.* For CCFs, the total number of facilities in the State (19) was determined from the census and then multiplied by 58% to exclude facilities that are presumed to be operated under the auspices of the State Department of Corrections and therefore subsumed within that agency's PC.

Table 8.7: Projected Annual and Annualized Cost of Full Compliance with Standard 115.11 (Zero Tolerance/PREA Coordinator), by Facility Type and by Year (2012-2026)

Year	Exp. LOE	Prisons	Jails	Lockups	CCF	Juvenile	Total
2012	100%	$ 20,070,165	$ 51,271,420	$ 44,037,722	$ 6,022,899	$ 44,309,168	$ 165,711,375
2013	96%	$ 19,267,358	$ 49,220,563	$ 42,276,213	$ 5,781,983	$ 42,536,802	$ 159,082,920
2014	90%	$ 18,095,261	$ 46,226,312	$ 39,704,410	$ 5,430,246	$ 39,949,146	$ 149,405,375
2015	83%	$ 16,602,040	$ 42,411,718	$ 36,428,004	$ 4,982,142	$ 36,652,544	$ 137,076,449
2016	76%	$ 15,173,045	$ 38,761,193	$ 33,292,518	$ 4,553,312	$ 33,497,731	$ 125,277,799
2017	67%	$ 13,487,151	$ 34,454,394	$ 29,593,349	$ 4,047,388	$ 29,775,761	$ 111,358,044
2018	59%	$ 11,897,594	$ 30,393,698	$ 26,105,562	$ 3,570,375	$ 26,266,475	$ 98,233,703
2019	53%	$ 10,693,384	$ 27,317,412	$ 23,463,298	$ 3,209,001	$ 23,607,925	$ 88,291,020
2020	48%	$ 9,553,399	$ 24,405,196	$ 20,961,956	$ 2,866,900	$ 21,091,164	$ 78,878,614
2021	44%	$ 8,734,536	$ 22,313,322	$ 19,165,217	$ 2,621,166	$ 19,283,350	$ 72,117,590
2022	41%	$ 8,188,627	$ 20,918,739	$ 17,967,391	$ 2,457,343	$ 18,078,141	$ 67,610,241
2023	38%	$ 7,642,719	$ 19,524,157	$ 16,769,565	$ 2,293,520	$ 16,872,931	$ 63,102,891
2024	35%	$ 7,096,810	$ 18,129,574	$ 15,571,739	$ 2,129,697	$ 15,667,722	$ 58,595,542
2025	33%	$ 6,550,902	$ 16,734,991	$ 14,373,913	$ 1,965,874	$ 14,462,513	$ 54,088,193
2026	30%	$ 6,004,993	$ 15,340,409	$ 13,176,086	$ 1,802,052	$ 13,257,303	$ 49,580,843
Total		$ 179,057,984	$ 457,423,098	$ 392,886,943	$ 53,733,900	$ 395,308,676	$ 1,478,410,600
NPV 7%		$ 121,043,250	$ 309,218,150	$ 265,591,690	$ 36,324,132	$ 267,228,782	$ 999,406,004
Annualized		$ 13,289,898	$ 33,950,491	$ 29,160,540	$ 3,988,194	$ 29,340,284	$ 109,729,407

As also noted above, while the great majority of jail jurisdictions operate just one facility, there are approximately 412 satellite jail facilities operated by jurisdictions that have more than one facility. Miami-Dade County, for example, operates a set of five jails, each of which is included in the jail facility counts for the state of Florida. Similar to prison and juvenile systems, a jail jurisdiction that manages multiple facilities will only need one PC at the agency level and PCMs at the subordinate or satellite facilities.

To account for this circumstance, we first assumed, in calculating the State-by-State total for jails, that all 3,271 jail facilities have a PC but not a PCM. We then subtracted 412 jails from the national total and added them back in, using the lower LOE and lower salary levels for PCMs.

Table 8.7 summarizes our conclusions with regard to the cost of this standard for non-federal facilities. As depicted therein, we estimate the total cost of full nationwide compliance with this standard as amounting to just under $1.5 billion over 15 years, which annualizes to approximately $109.7 million per year. The table breaks these figures down by facility type and for each year.

5.6.11.2 Cost Estimates for DOJ Facilities

Like the nine States mentioned above on page 81 whose PC costs were excluded from the national totals, BOP already has in place a PREA National Coordinator who currently spends the vast majority of her time on agency-wide efforts to prevent sexual abuse and on tasks analogous to the PC responsibilities described above. Although some of this individual's responsibilities may change or may be restructured after the publication of the final rule, BOP does not anticipate any fiscal impact from the PC requirement in § 115.11.

With regard to PCMs, BOP currently has local points of contact serving as sexual abuse prevention coordinators at each of its 117 facilities. These points of contact already fulfill many of the tasks required of PCMs, but BOP anticipates that after publication of the rule these individuals will take on additional responsibilities for which the

aggregate level of effort will, on average, amount to approximately 5% of an FTE (about 2 hours per week) per facility. (As with PCMs in State prison facilities, the actual LOE required in any given week may vary based on whether an incident has occurred, whether training or an audit is being conducted, and other factors.)

Most of BOP's sexual abuse prevention coordinators are associate wardens or department heads compensated at a GS-13 or GS-14 level. Inclusive of benefits, compensation for a GS-13 Step 5 law enforcement employee in Washington, DC, amounts to $134,202 annually.[126/] Across all institutions, the calculation is

117 x 5% x $134,202 = $785,082.

To this sum BOP adds $151,000 for a GS-11 data analyst position for the collection of data on sexual abuse incidents, plus an additional $267,000 for various functions related to ensuring compliance with the standards that BOP does not envision will necessarily be performed by the PC or by a PCM (*e.g.*, incident reviews, data review, reporting to inmates, and monitoring for retaliation). The total initial cost, then, is about $1.2 million per year.

BOP expects the LOE to diminish over time due to learning and efficiency gains, as well as sensitivity to prevalence, on the same curves that were used for State prison facilities and depicted in Table 8.3. Using those curves, and the same general methodology as depicted in Table 8.7, BOP estimates that its costs of complying with standard 115.11 over the 15-year cost horizon will total $10.7 million. Annualized at a 7% discount rate, the annual expenditure is an estimated $797,000.

USMS has recently added the title of National PREA Coordinator to an existing position. This individual is expected to initially devote approximately 33% of an FTE to completing PC tasks that USMS had not previously undertaken. Inclusive of benefits, compensation for this position amounts to $200,565 annually. Multiplying this compensation rate by the expected LOE yields an initial cost for this position of $66,855.

Although standard 115.111 does not require PCMs for lockup agencies, USMS also plans to designate a PCM in each of its 94 districts. The expected initial LOE for these individuals is 5% of one FTE (approximately two hours per week). Typically, the individuals in these positions will be compensated at a GS-12 level. Inclusive of benefits, compensation for a GS-12 Step 5 law enforcement employee in the Washington, DC, area amounts to $112,857 annually.[127/] Across all institutions, the calculation is

94 x 5% x $112,857 = $530,429.

USMS also expects to fill a GS-11 data analyst position to assist with PREA compliance, at an initial cost of $75,000 per year. USMS expects the LOE for both the PC and PCM positions (as well as the analyst position) to diminish over time due to learning and efficiency gains, as well as sensitivity to prevalence, on the same curves that were used for State prison facilities and depicted in Table 8.3. Using those curves, and the same general methodology as depicted in Table 8.7, USMS estimates that its costs of complying with standard 115.111 over the 15-year cost horizon will total $6 million. Annualized at a 7% discount rate, the annual expenditure is an estimated $445,000.

[126/] *See* Office of Personnel Management, Salary Table 2012-DCB (LEO), available at http://www.opm.gov/oca/12tables/html/dcb_leo.asp (salary for GS-13 Step 5 is $100,904). This figure is adjusted upwards by 33% to $134,202 to include benefits.

[127/] *See* Office of Personnel Management, Salary Table 2012-DCB (LEO), available at http://www.opm.gov/oca/12tables/html/dcb_leo.asp (salary for GS-12 Step 5 is $84,855). This figure is adjusted upwards by 33% to $112,857 to include benefits.

5.6.11.3 Relationship to Cost Conclusions in the IRIA, and Response to Public Comments on the Costs of 115.11

Most of the comments submitted by corrections agencies on the costs of § 115.11 related to the aspect of the proposed rule that required large agencies to employ or designate a full-time agency-wide PC. A number of these comments suggested that the requirement of a full-time PC, though potentially beneficial, could be quite expensive.

Indeed, several jurisdictions provided specific estimates of the annual cost of employing a full-time PC—these estimates ranged from $40,000 per year per position (Alabama—9 positions altogether) to $150,000 per year (New York City). Hawaii estimated the cost of the position as $70,000 per year, Nebraska at $50,000, Rhode Island at $140,000, and Maryland at $78,000 per year per position (14.5 positions altogether). Missouri went so far as to state that hiring a full-time PC is currently beyond its capabilities.

South Dakota reported that the proposed rule would have required it to employ one full-time agency-wide PC and two full-time institutional PCMs, at an initial cost of $175,185 and an ongoing cost of $160,185, both of which costs impose a significant financial burden on the State; at a time when it is cutting 10% of its budget and 40 staff members, the State claimed to be in no position to add staff to comply with an "unfunded federal mandate." On the other hand, another State correctional agency stated that it had no concerns regarding the cost of implementation or ongoing compliance with the standard.

A county sheriff that does not yet operate a facility with a rated capacity of over 1000 claimed that compliance with the proposed standard would nevertheless cost over $300,000 per year, which it reported as the cost of one full-time lieutenant; the sheriff suggested that a management analyst would be a more appropriate and cost-effective type of employee to serve in this capacity, although even that approach would impose a financial burden without funding support.

One State agency averred that it already had two upper-level individuals in place to handle agency-wide PREA coordination functions—one each for policy development and standard enforcement. This agency also noted that each of its ten facilities has a PCM in place. This agency, which is rather small, complained that the requirement of a full-time PC would require allocation of an additional FTE and divert funds from treatment, programs, and prevention. A large municipal corrections agency similarly stated that there would be significant costs in designating a PCM for each of the agency's facilities and that personnel were already on staff to fulfill the coordination tasks of a PC.

These agencies, along with others, all argued that the proposed standard should not mandate that the positions be full-time but should instead allow correctional agencies the flexibility to determine the precise role of the coordinator. For example, the PC may be allowed to take responsibility for tasks other than PREA compliance, such as inmate safety. This, the commenters said, would allow more flexibility and limit costs. Most of these agencies doubted, in any event, that the LOE required to fulfill the functions of a PC would be likely to add up to a full-time equivalent position. This is particularly true, they commented, once departmental policies and procedures are developed and implemented and appropriate monitoring mechanisms are in place.

Finally, an advocacy group acknowledged that it would be appropriate and indeed beneficial for the PC's role to be expanded to include other responsibilities (such as prison safety issues, inmate-on-inmate violence, excessive use of force

by staff), but that all such responsibilities should link in some fashion to the PREA standards, lest the responsibility to promote a zero tolerance culture within the agency be subordinated to more traditional safety and security concerns. The group agreed that limiting the requirement of a full-time PC to agencies of a certain size was a reasonable accommodation to the cost concerns voiced by some in the industry, but urged that the cut-off for the requirement be set at an average daily population of 500, rather than 1000 as in the proposed rule.

The final rule eliminates the requirement that the PC be a full-time position in agencies that operate large facilities. As revised, the standard gives corrections agencies of all sizes and types considerable flexibility with regard to the structure and content of the PC and PCM positions, including with respect to whether the position be part-time or full-time and whether the incumbents can be assigned other duties in addition to coordination of PREA compliance.

The standard requires agencies to ensure that the officials designated to serve as PCs and PCMs have "sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards." We expect that agencies will tailor their approach to these positions to their own operating environments and fiscal circumstances and will devise creative approaches to fostering, in the most cost-effective fashion, a zero-tolerance approach to sexual abuse.

One county sheriff suggested that no staff should be required to have PREA coordination as a primary duty; the only requirement should be that a procedure be in place to "conduct PREA activities," with no specific staffing requirements.

We categorically reject this suggestion. Any effective plan for achieving zero tolerance requires a dedicated and proactive managerial hand. We therefore expect PCs and PCMs to play a vital role in ensuring that the standards are effective in achieving their goal.

We do not assume that all agencies (or even all large agencies) will necessarily make these positions full-time. To the contrary, we have adopted a range of assumptions about the LOE required for each type of position, both initially and over time, and generally envision that both positions will frequently be part-time in many agencies. The assumptions that underlie our cost analysis—with respect to level of effort, compensation levels, anticipated task assignments, and others—are all consistent with the specific data that agencies provided in their comments relative to their costs of compliance with this standard.

Although the analytical methodology used here is quite different from the approach used in the IRIA, and although the standard itself has changed, the ultimate cost conclusions are not dramatically different from what was presented in that report. The IRIA assessed the cost of full compliance with the proposed rule among non-federal facilities as approximately $99 million annually, slightly less than the $110 million now reported. The costs reported by BOP and USMS for the IRIA were also not significantly different from the costs they report now.

5.6.12 *Contract Monitoring (Standard 115.12, .112, .212, .312)*

This standard has not materially changed from the version proposed in the NPRM. Public agencies that have contracts in place for the confinement of some of their inmates are still required by this standard to ensure that any new contracts or renewals impose on the contractors the same obligation to comply with the PREA standards as is required of the agencies themselves. The standard further requires that any new contracts or renewals provide for agency monitoring to ensure the contractor is complying

with the standards. The benefit of this standard derives from its assurance that the protections of the standards reach inmates in facilities operated by private, corporate, and non-profit entities in addition to inmates in facilities operated by public authorities.

In developing our cost estimates for all of the other standards, we have already included the costs that private entities (almost all of whom operate under contract with public agencies) would expend in order to comply with those standards—under the assumption that all such entities will adopt and implement the standards whether or not they are required to do so by contract. The funds expended by such entities to comply with those other standards are appropriately assigned to each respective standard, regardless of whether the private entity chooses to transfer a portion of those costs to their contracting public agency, for example in the form of higher per diem fees.

Any cost impact for this standard would therefore derive from the increased LOE required on the part of the public contracting agency to monitor the policies and procedures of their contractors, to ensure that they are complying with the PREA standards. We have already incorporated that increased LOE into our cost calculations for standards 11 (Zero Tolerance/ PREA Coordinator) and 93/401-405 (audits), under the assumptions that in most agencies the task of monitoring contracts for PREA compliance will be primarily assigned to the agency-wide PC, and that additional contract monitoring and compliance procurement will be achieved through the audit process. We therefore do not assign an additional cost to that LOE here.

Some commenters observed that as private entities that operate confinement facilities under contract with public agencies come into compliance with the PREA standards, they would have a financial incentive to try to recoup these increased costs by passing them on to the contracting agency in the form of higher annual or monthly fees. These commenters suggested that the cost of this standard would consist of the increased fees that the contractors pass on to their agencies as a result of the standards.

We reject this suggestion. While the cost of this standard, when computed locally at an individual agency or facility, appropriately includes the compliance costs that contractors will pass on to the agency in the form of higher fees, for our purposes such fees amount to distributive transfers rather than true costs. In estimating the total cost of full nationwide compliance with the aggregated standards, it does not matter for our purposes whether the costs are incurred in the first instance by a public agency or derivatively through a transfer to the agency of a cost incurred by a contractor.

5.6.13 *Supervision and Monitoring (Standard 115.13, .113, .213, .313)*

Adequate staff supervision and monitoring is essential to providing safe conditions within any correctional facility. This standard thus requires that all agencies develop and document a staffing plan at each of their facilities that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. Prisons and jails must use their best efforts to comply on a regular basis with the staffing plan and must also implement a policy and practice of unannounced supervisory rounds to identify and deter staff sexual abuse and sexual harassment. In circumstances where the staffing plan is not complied with, all facilities must document and justify any deviations from the plan. At least annually, all facilities must reassess their staffing plans in consultation with the PREA Coordinator.

In contrast to the adult standards, secure juvenile facilities must maintain minimum

security staff ratios of 1:8 during resident waking hours, and 1:16 during resident sleeping hours; these facilities have until October 1, 2017, to come into compliance with this requirement.

For jails and prisons, we estimate that full nationwide compliance with the supervision and monitoring standard will cost an estimated $800.7 million over 15 years, which annualizes to $48.4 million per year (at a 7% discount rate). For lockups and CCFs, total compliance costs over 15 years are $89.4 million, or $8.7 million annually. For juvenile facilities, where minimum staff ratios are required for secure facilities, we estimate that full nationwide compliance would cost about $1 billion over 15 years, or $62.8 million annually. In the Notice of Final Rule, the Department has solicited additional comments on the costs of the juvenile supervision standard.

The total cost of full nationwide compliance with this standard, across all facilities, is just under $2 billion over 15 years, or $120 million annually, making this the most expensive of all of the standards in terms of the costs of full nationwide compliance. This standard accounts for 25.3% of the total cost of full nationwide compliance with the standards in the aggregate.

5.6.13.1 Analysis and Methodology—Prisons and Jails (Standard 115.13)

The standard requires prisons and jails to use their "best efforts" to comply, but allows non-compliance when it is both justified (for example, due to lack of available funds) and documented. Moreover, it does not dictate any particular means of compliance but allows agencies considerable flexibility to tailor their compliance solutions to their own local circumstances.

Prisons and jails will thus vary dramatically in the way they exercise their "best efforts" to comply: Some agencies coming into compliance each year are likely to do so by investing in enhanced video monitoring technology, while others may elect to add FTE to their staff (thereby reducing the inmate-to-staff ratios), and others may choose a combination of approaches. Some may ascertain how to comply without incurring costs at all, simply by realigning their staff to different posts or by following best practices with regard to facility supervision.

The Department recognizes that most prison and jail agencies confront significant resource limitations and may have limited control over the budgets provided to them by State or local legislatures. For purposes of this Report, therefore, the Department interprets the "best efforts" requirement to mean that prisons and jails will defer any costs associated with adhering to their staffing plans or implementing the necessary video monitoring equipment until resources for such actions are made available; in the meantime, they will undertake all zero-cost options available to them to achieve compliance with the standard.

Thus, rather than assuming (unrealistically) that all prisons and jails will have the means to become fully compliant with the standard within a short period of time after the standard becomes effective, we conservatively assume that each year an additional 5% of prisons and jails will manage to obtain the necessary funding for heightened supervision or video monitoring, amounting to a gradual stream of incremental compliance aggregating to approximately 75% of facilities coming into compliance over fifteen years. For the other 25% of the facilities, we assume that they either will find a way to come into compliance without cost over the fifteen-year horizon or else that they will not be provided the requisite funds to support best efforts within that time frame.

To determine the average compliance cost for each facility or agency once it comes into compliance, and to reflect the fact that prisons and jails will likely use a combination of staffing

and video monitoring to achieve compliance, we extrapolated our cost estimates for standard 115.13 from the portions of the Booz Allen Phase II study that pertained to NPREC's recommended standards PP-3 (which dealt with supervision) and PP-7 (which dealt with upgrades to technology).

The staff supervision costs from the Phase II study included the one-time costs of bringing on board new employees needed to enhance staff-to-inmate ratios, plus recurring costs of annual cost-of-living adjusted salaries and benefits for these employees. Video monitoring costs in the study included the onetime costs of acquiring and implementing technology such as video surveillance, plus recurring costs associated with maintaining and upgrading such technology. Because of important differences between the NPREC's recommended standard and the final standard, however, the data from the Phase II study needed to be modified in order to support realistic cost estimates for 115.13.

First, we removed the outliers from the Booz Allen Phase II study and included only those cost estimates that are supported by the requirements of the final standard. That is, cost estimates provided by certain facilities or agencies participating in the study were excluded if the agencies had unique characteristics or else based their cost estimates on a liberal or unsupported interpretation of the standard. Such estimates are inappropriate for inclusion in a nationwide extrapolation because they would skew the average per facility cost based on anomalous characteristics or interpretations.

Of the 13 prison agencies that participated in the Phase II study, we removed the New York and Virginia Departments of Corrections as outliers. New York reported in response to the Phase II study that compliance with the NPREC's standard PP-7 (technology upgrades) would cost it $65.5 million per year when annualized over fifteen years. This one State's report singlehandedly accounted for over 90% of the total estimated cost of standard PP-7. New York's prisons have characteristics that are radically dissimilar from those in the rest of the country—for example, the physical plant is considerably older, making any technological retrofit for purposes of video monitoring potentially cost prohibitive.

Moreover, New York appears to have significantly overestimated the effort or cost that would be required to meet the requirements of the standard, based on an overly expansive reading of "adequate supervision": it based its response to the Phase II survey on a belief that PP-7 would have mandated video surveillance that provides "full coverage" even if staffing levels were sufficient to provide adequate supervision, and it calculated the costs of compliance based on its past efforts to install camera systems in female facilities that required extensive design work and retrofitting.

Virginia posited that compliance with PP-3 and PP-7 would cost it $11.2 million annually (when annualized over fifteen years). This estimate, however, was based on an implausible interpretation that the two standards recommended by the NPREC would require it to double or quadruple the State's existing technical surveillance coverage. In other words, even though Virginia believes it already has a sufficient level of video surveillance equipment in place, its response to Booz Allen's Phase II study attempted to use the promulgation of the PREA standards as a justification to improve the quality of the video resolution of the system.[128/]

[128/] Although we do not exclude them entirely, we also adjust the staffing cost estimates for the Arkansas and Missouri Departments of Corrections because each has features that suggest an inappropriate interpretation of the standards. Arkansas based its cost estimate in part the dubious notion that it would have to increase the salaries for all of its incumbent corrections officers by 10% in order to be able to attract the additional staff it would need to ensure that it had adequate supervision at its older facilities, where it has double cells. Missouri interpreted the requirement of "adequate supervision" to mean that it had to provide "direct supervision" of all inmates at all times, and therefore predicted that it would have to hire 924 new corrections officers.

Of the 16 jail agencies that participated in the Phase II study, we eliminated the cost estimate for this standard of Miami-Dade County, which reported compliance costs for PP-3 of $6.7 million annually and for PP-7 of $2.6 million annually (both figures annualized over fifteen years and inclusive of all five of Miami-Dade's jail facilities). Miami-Dade asserted in its response to the study that it was considerably understaffed, even though the prevalence of sexual abuse at its facilities has decreased dramatically in recent years.

With regard to video surveillance, Miami-Dade's principal cost driver was its unusual plan to construct a central monitoring center for the five jail facilities and to install cutting-edge "smart" technologies that alert staff automatically to an event. While this plan is commendable, it appears motivated by jail management considerations that go beyond the PREA standards and does not represent the type of response that we anticipate a typical jail agency will make to the standard. We therefore consider it an outlier.

Second, we adjusted the data from the Booz Allen Phase II study to reflect the fact that a number of the respondents treated adequate staff supervision and upgrades to video monitoring technology as separate and essentially redundant requirements rather than complementary means towards the same overall objective. Apparently because the NPREC's recommended standards PP-3 and PP-7 were separately enumerated and were not clearly worded to suggest complementarity, these agencies incorrectly assessed the costs of those standards in isolation: their answers to the Booz Allen survey make clear that, upon concluding that their own supervision and monitoring levels were not "adequate," they estimated the cost of rectifying this circumstance through hiring new staff and separately estimated the cost of fully remedying it through video monitoring, reporting both figures without specifying which option (or what combination of the two options) they were actually inclined to follow if given a choice.

In the final rule, we have combined the staff supervision and video-monitoring options into one standard, clarifying that agencies have discretion to choose the best strategy for assuring adequate supervision. Thus, for those agencies that provided redundant cost estimates in response to the Booz Allen Phase II study, we modified their estimates to reflect whichever of the two approaches is the less costly. This approach is appropriate insofar as it reflects the likelihood that agencies aiming to comply with the standard will typically select the most cost-effective option of doing so.

Having made these adjustments to the Phase II data, we extrapolated the estimated percentage of prisons and jails that are non-compliant with the standard and that would therefore potentially have to expend funds to come into compliance. Because all thirteen of the prison agencies that participated in the Phase II study reported costs either for enhanced staffing or for upgrades to video technology (or both), we assume for purposes of this analysis that 100% of prison agencies are non-compliant and would potentially have to expend funds to achieve compliance. This, of course, is a very conservative assumption: not only is it highly likely that many prison agencies already provide a level of supervision that is adequate for purposes of the standards (at least in some of their facilities), but it is equally likely that some agencies not in compliance may be able to achieve compliance without expending funds.

For jails, because 7 of the 16 jail jurisdictions participating in the Phase II study reported costs to comply with either PP-3 or PP-7, we assume that 44% of the 3,271 local jails nationwide (or 1,431) are not currently compliant with the standard and will potentially have to expend funds to achieve compliance.

However, as noted above, we did not assume that all non-compliant agencies and facilities will have the means to come into compliance immediately upon the effective date of the standard. Instead, we conservatively assume that each year an additional 5% of State prison agencies (*i.e.*, State Departments of Corrections) and jail facilities will manage to obtain the necessary funding for heightened supervision or video monitoring, amounting to a gradual stream of incremental compliance aggregating to approximately 75% of facilities coming into compliance over fifteen years. *See* Table 9.1.

Table 9.1: Number of Prison Agencies and Jail Facilities Assumed to Incur Costs to Comply with Supervision and Monitoring Standard, by Year

Year	% Compl.	# State DOCs Compl.	# Jails Compl.
1	5%	3	72
2	10%	5	143
3	15%	8	215
4	20%	10	286
5	25%	13	358
6	30%	15	429
7	35%	18	501
8	40%	20	572
9	45%	23	644
10	50%	26	716
11	55%	28	787
12	60%	31	859
13	65%	33	930
14	70%	36	1002
15	75%	38	1073

Next, we calculated the average compliance cost per agency (for prisons) and per facility (for jails) for each year during our time-horizon. To do this, we followed a three step process. First, we extrapolated from the Phase II data the average unit cost for video monitoring—amounting to $1,035,825 per prison agency and $79,859 per jail facility, both figures being simple averages of the cost estimates reported by agencies that reported video monitoring costs in the Phase II study and reflecting both onetime costs (*e.g.,* investments to upgrade technology) and recurring costs (*e.g.,* costs to operate and maintain the systems). Using the same method, we extrapolated the average unit cost for enhanced staffing—amounting to $9,651,022 per prison agency and $393,777 per jail facility.

Second, as shown in Table 9.2, we applied a learning curve of 1% per year to the video monitoring cost (but not the staffing cost). This is a very conservative estimate of the annual reduction in video monitoring costs that can be expected to occur over time as the result of improvements in technology, learning (*e.g.*, agencies improving their video monitoring systems over time by incorporating cost-saving innovations developed in-house or learned through consultation within the industry), and other efficiency gains. We did not apply a corresponding learning curve to staffing costs because we assume that salaries, benefits, and other personnel costs will not likely benefit from efficiency gains over time.

However, we assume that both video costs and staffing costs are sensitive to prevalence, and we adjust both types of costs to reflect this sensitivity. In other words, the standard requires agencies to ensure "adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse." A number of factors go into determining the adequacy of staffing levels and the need for video monitoring, including findings of inadequacy from courts, federal investigative agencies, auditors and oversight bodies, and the like.

Many of these factors in turn may be affected by the prevalence of sexual abuse within the facility—the higher the prevalence, the more likely that the level of supervision and monitoring will be inadequate. As prisons and jails succeed in implementing the standards and in correspondingly reducing the level of sexual abuse which takes place in their facilities, it can reasonably be assumed that the need for additional supervision and monitoring will diminish.

Table 9.2: Estimated Unit Cost for Video Monitoring and Staff Supervision, Prisons and Jails, by Year

Yr	Per Prison Agency		Per Jail	
	Video	Staffing	Video	Staffing
1	$ 1,035,825	$ 9,651,022	$ 79,859	$ 1,287,277
2	$ 984,448	$ 9,264,981	$ 75,898	$ 1,235,786
3	$ 935,619	$ 8,894,382	$ 72,133	$ 1,186,354
4	$ 889,213	$ 8,538,607	$ 68,556	$ 1,138,900
5	$ 845,108	$ 8,197,062	$ 65,155	$ 1,093,344
6	$ 803,190	$ 7,869,180	$ 61,924	$ 1,049,611
7	$ 763,352	$ 7,554,413	$ 58,852	$ 1,007,626
8	$ 725,490	$ 7,252,236	$ 55,933	$ 967,321
9	$ 689,506	$ 6,962,147	$ 53,159	$ 928,628
10	$ 655,306	$ 6,683,661	$ 50,522	$ 891,483
11	$ 622,803	$ 6,416,314	$ 48,016	$ 855,824
12	$ 591,912	$ 6,159,662	$ 45,635	$ 821,591
13	$ 562,553	$ 5,913,275	$ 43,371	$ 788,727
14	$ 534,650	$ 5,676,744	$ 41,220	$ 757,178
15	$ 508,132	$ 5,449,675	$ 39,175	$ 726,891

Thus, consistent with the approach we have taken for other standards that are sensitive to prevalence, we assume that once an agency comes into compliance with the standard, it will experience a 4% reduction in compliance costs each year during the 15-year cost horizon.

Third, we developed a weighted average unit cost that subsumes both video monitoring and enhanced staffing. This approach derives from the fact that standard 115.13 does not direct agencies to use either approach to ensuring adequate supervision but gives them the discretion to choose whatever approach is the more cost effective and makes the most sense given the specific configuration of the facility.

Table 9.3: Estimated Total Cost for Video Monitoring and Staff Supervision, Prison Agencies, by Year

Year	Ag. Compl.	Weighted Avg. Cost per Agency	Total
1	3	$ 1,698,532	$ 5,095,596
2	5	$ 1,621,412	$ 8,107,060
3	8	$ 1,547,832	$ 12,382,656
4	10	$ 1,477,627	$ 14,776,270
5	13	$ 1,410,642	$ 18,338,346
6	15	$ 1,346,728	$ 20,200,920
7	18	$ 1,285,741	$ 23,143,338
8	20	$ 1,227,547	$ 24,550,940
9	23	$ 1,172,017	$ 26,956,391
10	26	$ 1,119,027	$ 29,094,702
11	28	$ 1,068,459	$ 29,916,852
12	31	$ 1,020,201	$ 31,626,231
13	33	$ 974,148	$ 32,146,884
14	36	$ 930,197	$ 33,487,092
15	38	$ 888,251	$ 33,753,538
Total			$ 343,576,816
NPV			$ 184,730,021
Annl.			$ 20,282,363

Some agencies will rely primarily on video monitoring and others will rely mostly on staffing enhancements; still others may use a combination of approaches. Because it is impossible to predict with accuracy what specific choices agencies will

make, we extrapolate weighted averages from the Phase II data.

For example, because 12 of the 13 prison agencies in the Phase II study expressed a preference for video monitoring solutions over staffing changes, we assume that 92% of prison agencies will use video and the other 8% will rely on staffing changes. This approach yielded a weighted average compliance cost per agency (for prisons) and per facility (for jails) for each year during our time horizon, as shown in Table 9.3. In year 1, the cost per prison agency is $1,698,532, while for jails it is $79,859 per facility;[129] these unit costs decrease over the time horizon until they are approximately half of the year 1 costs by year 15.

Finally, we multiply the weighted average unit cost in each year by the total number of prison agencies and jail facilities that we assume will have undertaken the necessary effort to comply each year (and incurred the associated costs), based on our assumption of incrementally phased compliance from Table 9.1. The results are depicted in Tables 9-3 and 9-4.

This, however, does not end our analysis, for the standard requires more than enhancements to staffing rosters and video technology systems necessary to provide adequate protection against sexual abuse. It also requires agencies to develop a staffing plan and update it "whenever necessary, but no less frequently than once each year, for each facility the agency operates." We assume that for the vast majority of prisons and jails, this requirement will not result in any additional costs.

Virtually all prisons and most large jails already have internal resources and procedures in place to develop and update staffing plans, and have both the experience and the access to shared knowledge needed to comply with the requirement at no cost; any additional LOE required to adjust their existing plans to account for the requirements of the PREA standards would likely be undertaken by the PC or facility PCM and is already included within the cost of standard 115.11.

Table 9.4: Estimated Total Cost for Video Monitoring and Staff Supervision, Jail Facilities, by Year

Year	Ag. Compl.	Weighted Avg. Cost per Agency	Total
1	72	$ 79,859	$ 5,749,848
2	143	$ 75,898	$ 10,853,414
3	215	$ 72,133	$ 15,508,595
4	286	$ 68,555	$ 19,606,730
5	358	$ 65,155	$ 23,325,490
6	429	$ 61,923	$ 26,564,967
7	501	$ 58,852	$ 29,484,852
8	572	$ 55,933	$ 31,993,676
9	644	$ 53,159	$ 34,234,396
10	716	$ 50,522	$ 36,173,752
11	787	$ 48,016	$ 37,788,592
12	859	$ 45,634	$ 39,199,606
13	930	$ 43,371	$ 40,335,030
14	1002	$ 41,220	$ 41,302,440
15	1073	$ 39,175	$ 42,034,775
Total			$ 434,156,163
NPV			$234,144,466
Annl.			$ 25,707,804

On the other hand, small jails (*i.e.*, those jurisdictions with an average daily population of less than 50) are less likely to have the expertise or experience needed to build and maintain staffing plans in-house. While it is perhaps fair to assume that some small jails may be able to comply with the requirement at little to no cost, at least a fraction of these facilities will likely need

[129] All of the jails in the Phase II study favored video monitoring solutions over staffing solutions, so the weighted average for jails is the average of the video monitoring estimates provided by the participating jails.

to retain the services of outside contractors or consultants to assist, at least initially, in developing and updating staffing plans.

There are approximately 1,129 small jail jurisdictions across the country.[130/] These agencies will of course have a range of initial LOE required to build a staffing plan, but for the sake of this analysis we conservatively assume that an outside consultant would need an average of 80 hours to develop the staffing plan in the first year.

However, we project a learning curve in this area—most agencies should be able to begin developing the in-house capacity to build and modify their staffing plans by the second year of compliance, substantially reducing their need for support from an outside consultant. Indeed, we assume that small jail jurisdictions would need to hire an outside consultant for at most four years, with the LOE required from the consultant diminishing by 25% each year beginning in year 2. After four years, these jurisdictions can be expected to have developed the internal resources and procedures needed to maintain their staffing plans at no additional cost, with any LOE required for compliance with the standard incorporated into the work of the PREA Coordinator.

Thus, we assume that the consultant LOE that would need to be accounted for in our analysis will be 80 hours in year 1, 60 in year 2, 40 in year 3, 20 in year 4, and zero thereafter.

We used a nationwide average of $130 per hour for the consultant's billable rate. Assuming that half of the consultant's time is spent on-site at the facility and half in his or her own office, we added $176 for every 16 hours of work to cover lodging, meals and incidental expenses, and travel costs.

Table 9.5: Total Estimated Cost of Full Nationwide Compliance with Standard 115.13, Prisons and Jails, by Year and by Facility Type

Year	Prisons	Jails	Total
1	$ 5,095,596	$ 18,483,809	$ 23,579,405
2	$ 8,107,060	$ 20,403,885	$ 28,510,945
3	$ 12,382,656	$ 20,283,830	$ 32,666,486
4	$ 14,776,270	$ 20,800,539	$ 35,576,809
5	$ 18,338,346	$ 23,325,490	$ 41,663,836
6	$ 20,200,920	$ 26,564,967	$ 46,765,887
7	$ 23,143,338	$ 29,484,852	$ 52,628,190
8	$ 24,550,940	$ 31,993,676	$ 56,544,616
9	$ 26,956,391	$ 34,234,396	$ 61,190,787
10	$ 29,094,702	$ 36,173,752	$ 65,268,454
11	$ 29,916,852	$ 37,788,592	$ 67,705,444
12	$ 31,626,231	$ 39,199,606	$ 70,825,837
13	$ 32,146,884	$ 40,335,030	$ 72,481,914
14	$ 33,487,092	$ 41,302,440	$ 74,789,532
15	$ 33,753,538	$ 42,034,775	$ 75,788,313
Total	$ 343,576,816	$462,409,638	$805,986,454
NPV	$ 184,730,021	$259,195,880	$443,925,901
Annl.	$ 20,282,363	$ 28,458,314	$ 48,740,678

Applying these factors to the LOE assumptions described in the previous paragraph and to the 1,129 small jail jurisdictions yields a total cost over four years of $28,253,475, as shown in Table 9.6. Annualized at a 7% discount rate over the full fifteen year cost horizon yields a total annual cost of $2.75 million for this aspect of the standard.

Table 9.5 shows the estimated cost of full nationwide compliance by prisons and jails with the requirements of standard 115.13, taking into account the staffing plans, enhanced staff supervision, and video monitoring. Annualized at a 7% discount rate over 15 years, the total annual cost comes to $48.7 million.

130/ BJS, *2006 Census of Jail Facilities*, at Table 8 (Dec. 2011) (NCJ 230188).

5.6.13.2 Analysis and Methodology—Lockups and CCFs (Standards 115.113 and 115.213)

Standards 115.113, for lockups, and 115.213, for CCFs, are differently worded than the corresponding standard for prisons and jails, and in general can be described as less demanding than that standard, in cognizance of the smaller size, specific purpose, and limited resources of these facilities. While these facilities must develop a plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect residents and detainees against sexual abuse, the standards do not expressly require these facilities to implement the plan or to use "best efforts" to comply with the plan on a regular basis.

Of course, this is not intended to give license to lockups and CCFs to ignore their plans after developing them, and we fully expect that most such agencies will take steps to implement and comply with their plans to the fullest extent that their resources permit. Indeed, the standard requires that lockups and CCFs document and justify all deviations from their plan, a requirement which will encourage such facilities to implement adequate staffing.

As with prisons and jails, the standards for lockups and CCFs also require that the staffing and video monitoring plan be reviewed and updated "whenever necessary, but no less frequently than once each year." For lockups but not CCFs, there is an additional requirement that agencies provide vulnerable detainees with heightened protection against sexual abuse, "to include continuous direct sight and sound supervision, single-cell housing, or placement in a cell actively monitored on video by a staff member sufficiently proximate to intervene, unless no such option is determined to be feasible."

Because the standards for lockups and CCFs do not include an express requirement that the facilities implement the plan or use their best efforts to comply, we do not include the costs of any such implementation or best efforts (*e.g.*, the costs of hiring additional staff or investing in technology upgrades) in our estimates. Rather, we confine our estimates to the costs of building and maintaining a staffing and monitoring plan.

For this purpose, we treat lockups and CCFs as similar to small jails and use the same methodology and assumptions that we used for those facilities to estimate the cost of staffing and monitoring plans. Thus, we assume that few if any lockups and CCFs will have the expertise or experience needed to build and maintain staffing plans in-house. While some may be able to do so at little to no cost, at least a fraction of these facilities will need to retain the services of outside contractors or consultants to assist, at least initially, with the development and updating of staffing plans.

There are approximately 529 CCFs and 6083 lockup agencies across the country.[131] We conservatively assume that an outside consultant would need an average of 80 hours for a CCF and 40 hours for a lockup agency to develop the staffing plan in the first year.

As with small jails, we project a learning curve in this area to account for the fact that most CCFs and lockup agencies should begin developing the in-house capacity to build and modify their staffing plans by the second year of compliance, allowing them to phase out over four years their need for support from an outside consultant. We used the same assumptions for the cost of the consultant's time (billable rate plus travel, meals, and lodging) that we did for small jails.

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[131] *See supra* note 108

Table 9.6: Estimated Cost to Develop Staffing Plans Required by Standard 115.13, Adult Facilities, by Facility Type and By Year

Year	Small Jails	Lockups	CCFs	Total
1	$ 12,733,961	$ 34,304,997	$ 5,966,577	$ 53,005,535
2	$ 9,550,471	$ 25,728,748	$ 4,474,933	$ 39,754,152
3	$ 4,775,235	$ 12,864,374	$ 2,237,466	$ 19,877,075
4	$ 1,193,809	$ 3,216,093	$ 559,367	$ 4,969,269
5-15	$ 0	$ 0	$ 0	$ 0
Total	$ 28,253,476	$ 76,114,212	$ 13,238,343	$ 117,606,031
NPV	$ 25,051,414	$ 67,487,933	$ 11,737,997	$ 104,277,344
Annual	$ 2,750,511	$ 7,409,812	$ 1,288,769	$ 11,449,092

This methodology and these assumptions yield a total cost over four years of $13,238,342 for CCFs and $76,114,212 for lockups, as shown in Table 9.6. Annualizing at a 7% discount rate over the full fifteen year cost horizon yields a total annual cost for this aspect of the standard of $1.3 million for CCFs and $7.4 million for lockups.

5.6.13.3 Analysis and Methodology—Juvenile Facilities (Standard 115.313)

The supervision and monitoring standard for juvenile facilities (115.313) is materially identical to the standard for prisons and jails in all but two respects. First, whereas the latter standard requires prisons and jails to make their best efforts to comply with their staffing plans on a regular basis, standard 115.313 goes somewhat further, requiring juvenile agencies to "comply with the staffing plan except during limited and discrete exigent circumstances"; both versions call upon agencies to fully document any deviations from the plan.

Second, and more critically, whereas the prisons and jails standard allows agencies a great degree of flexibility as to how to provide inmates with adequate levels of protection from sexual abuse (*e.g.*, allowing agencies to choose between the options of enhanced staffing or upgrades to video technology), the juvenile standard is more specifically prescriptive, at least for the subset of juvenile facilities that are defined as "secure juvenile facilities."[132/] Such facilities are required to maintain staff ratios of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances, which must be fully documented.[133/]

The inclusion of a mandated staffing ratio for secure juvenile facilities is a significant change made from the proposed rule to the final rule. However, agencies that are not already required to maintain these minimum ratios based on requirements independent of the standards are given a grace period of more than five years, until October 1, 2017, to come into compliance.

Moreover, in the Notice of Final Rule the Department states "that further discussion is warranted regarding the aspect of this standard that requires secure juvenile facilities to maintain minimum staffing ratios during resident waking and sleeping hours" and solicits additional comments limited to this issue.

As stated in the Notice, commenters are encouraged to address any one or more of twelve enumerated issues pertaining to the standard, one of which is "the expected costs of the provision" establishing minimum staffing ratios. To that end, commenters are encouraged to address any aspect

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[132/] For instance, "a juvenile facility in which the movements and activities of individual residents may be restricted or subject to control through the use of physical barriers or intensive staff supervision. A facility that allows residents access to the community to achieve treatment or correctional objectives, such as through educational or employment programs, typically will not be considered to be a secure juvenile facility." 28 C.F.R. § 115.5.

[133/] The numerators of these ratios include only security staff. Juvenile facilities often use the term "direct care staff" in a manner that approximates the Final Rule's definition of "security staff." While the precise definition varies across jurisdictions, it is generally meant to include staff whose exclusive or primary duties include the supervision of residents.

of the assumptions, data, and methodologies used in this section to estimate the full nationwide cost of compliance with standard 115.313, and, correspondingly, to submit any data or offer any suggestions that could improve the quality or accuracy of our cost estimates or the methodologies used to arrive at those estimates.

The fundamental assumption underlying our cost estimate for this standard is that secure juvenile facilities that do not already employ enough security staff to maintain the requisite staff-to-inmate ratios may have to hire more security staff to enable compliance. To determine the number of additional employees needed to achieve the new required staffing ratios, we researched existing staff-to-resident ratios on a State-by-State basis, determined which States were non-compliant, and then calculated the number of new staff that would have to be hired in order to become compliant with the standard.

Our first step in estimating the cost of full nationwide compliance with the standard was to determine the extent to which States and localities already comply with the minimum staffing ratios that the standard requires for secure juvenile facilities.

For this purpose, we consulted State legislative and administrative codes, publicly available information regarding State and local correctional management policies and practices, the public comments submitted by State and local agencies in response to the NPRM, data from Booz Allen's Phase II study, information available to the Department's Civil Rights Division through its investigations and litigation concerning correctional practices, and data compiled by OJJDP. We also attempted to contact officials from all 50 States and the District of Columbia, as well as a number of localities, to confirm our data or to obtain additional data.

We attempted to determine for each State whether an officially mandated staffing ratio (*e.g.,* a ratio required by State statute or administrative code) applies during either daytime hours or nighttime hours for different types of State-operated or locally operated secure juvenile facilities. If we were unable to locate an official policy mandating a particular staffing ratio, we attempted to determine the actual staffing ratio used in practice. If we were able to locate an official policy mandating a particular staffing ratio in State-operated facilities, we assumed that the same mandatory ratio also applied to county and locally operated facilities in that State, unless we had specific information with respect to different policies that applied at the local level.

If we were unable to determine the actual current staffing ratio in a State or its localities, we conservatively assumed for purposes of our analysis that the State and its localities were noncompliant with the standard and that their actual ratio is equal to the lowest ratio followed in the jurisdictions for which we did have information (namely, 3:40 during the daytime, and 1:25 at night).

If our information indicated that the staffing ratios differed between State-operated facilities and the county or locally-operated facilities in that State, we averaged the ratios to arrive at an overall staffing ratio for each State, separated into daytime and nighttime shifts.

As shown in Tables 9.7 and 9.8, our analysis revealed that at least 23 States plus the District of Columbia are already in compliance by policy or practice with the minimum staffing requirement during the day, while 27 States and the District already comply with the minimum during the night. To our knowledge, 27 States are not currently in compliance with the daytime ratio, and 23 States do not comply with the nighttime ratio. For these non-compliant states, we calculated how many additional employees would

need to be hired to support the required staffing ratios.

To do this, we first determined the average daily population (ADP) of the secure juvenile facilities in the non-compliant States, based on data compiled by OJJDP on February 24, 2010. As of that date, there were an estimated 70,792 juvenile offenders in residential placement, and an estimated 46,848 of these (or about two-thirds in the total) were housed in "secure facilities."[134/]

For some States, we had information as to the total number of staff employed in the affected facilities, primarily from the responses to Booz Allen's study. After adjusting these staff totals to eliminate employees assumed not to have direct supervisory contact with youth[135/], we allocated the staff among day shifts and night shifts throughout the week by assuming that there are two day shifts and one night shift during each 24-hour period, and that twice as many staff are assigned during day shifts as at night shifts. To accommodate weekend shifts and the fact that a certain percentage of the staff will be on leave or otherwise unavailable at any given time, we assumed that during any given day shift 24% of the total security staff would be on duty, while 12% of the total security staff would be on duty during any given night shift.

Where we did not have exact information as to the number of staff employed in a given State's secure juvenile facilities, we estimated the number of security staff in the affected facilities by multiplying the ADP in each State by the daytime and nighttime staff-to-inmate ratios we had determined in the manner described above.

To determine the number of security staff that would be required for compliance with the standard, we multiplied the ADP in each State by the ratio of 1:8 for day shifts and 1:16 for night shifts. We then compared the number of estimated supervisory staff on duty during a given shift against the required number, to determine if a State currently complies with the minimum staffing ratios (a comparison we made separately for day shifts and night shifts).

If a State was non-compliant either during the day or at night, we then had to estimate how many additional employees would need to be hired to support the required staffing ratios. Because agencies are required to comply with the minimum staffing ratios around the clock, agencies that are understaffed will be required to hire multiple employees for each unit in the shortfall to ensure that there will be adequate staffing during the entire week (including weekends and periods when an employee is on leave).

Assuming that there are 112 day-shift hours and 56 night-shift hours each week, and that each full-time employee works a maximum of 40 hours per week, an agency would need a minimum of 2.8 new employees to cover each shortfall during the day shift and 1.4 new employees for each nighttime shortfall. We conservatively (but more realistically) assume, however, that the actual needs will be 3.33 and 1.67, respectively, to allow agencies the flexibility to provide coverage for

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[134/] *See* Melissa Sickmund and A. Sladky, "Special preliminary analysis of the Census of Juveniles in Residential Placement: State of facility by facility category, 2010" (National Center for Juvenile Justice, Pittsburgh, PA (2011)). The authors of the study analyzed the machine-readable data files from OJJDP's 2010 *Census of Juveniles in Residential Placement*, which compiled one-day counts (rounded to the nearest multiple of 3) of juvenile offenders younger than 21 assigned a bed in a juvenile residential placement facility (whether publicly or privately operated) as of February 24, 2010. The counts include juveniles being handled as adults but held in juvenile facilities. Adult facilities are not included, nor are federal facilities or facilities exclusively for mental health or substance abuse treatment or facilities for abused, neglected, or dependent children. Included in the definition of "secure facilities" are all facilities that categorize themselves as detention centers, long-term secure/training schools, reception diagnostic centers, and ranches, forestry camps, boot camps, farms, wilderness, and marine facilities, regardless of the actual security characteristics of individual facilities. Thus, some facilities may have categorized themselves in one of these groups even though their individual characteristics did not actually meet the standard's definition of "secure."

[135/] We assume that, on average, 85% of the total staff are supervisory staff and 15% are not. *See infra* note 165.

Table 9.7: Estimate of Additional Staff Required for Compliance with 115.313's Staffing Ratio Requirements for Juvenile Facilities, Day Shifts, by State

State	Staff Ratio (Day)	Est. ADP	Est. Curr. Staff	Req'd Staff	Comp-liant?	Add'l Staff Req'd	State	Staff Ratio (Day)	Est. ADP	Est. Curr. Staff	Req'd Staff	Comp-liant?	Add'l Staff Req'd
AL	0.125	756	95	95	YES	0	NE	0.075	426	32	53	NO	59
AK	0.100	225	20	28	NO	23	NV	0.100	663	66	83	NO	48
AZ	0.123	966	119	121	NO	6	NH	0.075	84	6	11	NO	14
AR	0.407	396	161	50	YES	0	NJ	0.125	897	112	112	YES	0
CA	0.556	9489	5272	1186	YES	0	NM	0.100	456	46	57	NO	31
CO	0.189	909	172	114	YES	0	NY	0.075	1332	100	167	NO	188
CT	0.167	195	33	24	YES	0	NC	0.075	723	54	90	NO	101
DE	0.075	192	14	24	NO	28	ND	0.075	78	6	10	NO	12
FL	0.288	1794	518	224	YES	0	OH	0.083	2235	158	279	NO	339
GA	0.138	2064	285	258	YES	0	OK	0.121	438	49	55	NO	17
HI	0.125	105	13	13	YES	0	OR	0.380	996	378	125	YES	0
ID	0.127	498	63	62	YES	0	PA	0.167	2058	343	257	YES	0
IL	0.111	654	73	82	NO	26	RI	0.075	135	10	17	NO	20
IN	0.184	1488	274	186	YES	0	SC	0.075	846	63	106	NO	121
IA	0.200	237	47	30	YES	0	SD	0.125	237	30	30	YES	0
KS	0.143	627	90	78	YES	0	TN	0.075	612	46	77	NO	87
KY	0.086	420	36	53	NO	48	TX	0.125	4614	577	577	YES	0
LA	0.146	726	90	91	NO	3	UT	0.125	531	66	66	YES	0
ME	0.075	180	14	23	NO	26	VT	0.075	27	2	3	NO	3
MD	0.135	462	63	58	YES	0	VA	0.100	1692	144	212	NO	191
MA	0.293	444	130	56	YES	0	WA	0.100	1002	100	125	NO	70
MI	0.100	1326	133	166	NO	93	WV	0.125	336	42	42	YES	0
MN	0.083	546	46	68	NO	62	WI	0.533	660	352	83	YES	0
MS	0.075	360	27	45	NO	51	WY	0.075	141	11	18	NO	20
MO	0.368	327	120	41	YES	0	DC	0.225	114	26	14	YES	0
MT	0.075	129	10	16	NO	17	TOTAL	MIN =0.075	46848	10737		YES = 34	1704

Notes: Explanations for source and methodology for calculating staff ratios, average daily population (ADP), adjusted ADP, estimated current staff, total number of staff required to meet minimum ratios required by 115.313, and number of additional staff needed for compliance are all set forth in the text. All of these data are based on the best information available to the Department as of this writing. The characterizations in this Table with respect to whether any given State is in compliance with standard 115.313 are also based on the best available information, are made solely for purposes of the cost analysis required for this RIA, and are not meant to bind any other determination, in any other context, as to whether any given State is compliant with the standard.

Table 9.8: Estimate of Additional Staff Required for Compliance with 115.313's Staffing Ratio Requirements for Juvenile Facilities, Night Shifts, by State

State	Staff Ratio (Night)	Est. ADP	Est. Curr. Staff	Req'd Staff	Comp-liant?	Add'l Staff Req'd	State	Staff Ratio (Night)	Est. ADP	Est. Curr. Staff	Req'd Staff	Comp-liant?	Add'l Staff Req'd
AL	0.083	756	63	47	YES	0	NE	0.040	426	17	27	NO	14
AK	0.050	225	10	14	NO	6	NV	0.063	663	41	41	YES	0
AZ	0.068	966	66	60	YES	0	NH	0.040	84	3	5	NO	3
AR	0.203	396	81	25	YES	0	NJ	0.063	897	56	56	YES	0
CA	0.278	9489	2636	593	YES	0	NM	0.063	456	29	29	YES	0
CO	0.095	909	86	57	YES	0	NY	0.040	1332	53	83	NO	42
CT	0.111	195	22	12	YES	0	NC	0.040	723	29	45	NO	23
DE	0.040	192	8	12	NO	6	ND	0.040	78	3	5	NO	3
FL	0.144	1794	259	112	YES	0	OH	0.040	2235	76	140	NO	90
GA	0.107	2064	222	129	YES	0	OK	0.073	438	29	27	YES	0
HI	0.063	105	7	7	YES	0	OR	0.190	996	189	62	YES	0
ID	0.004	498	2	31	NO	41	PA	0.083	2058	172	129	YES	0
IL	0.056	654	36	41	NO	7	RI	0.040	135	5	8	NO	5
IN	0.092	1488	137	93	YES	0	SC	0.040	846	34	53	NO	27
IA	0.040	237	9	15	NO	9	SD	0.063	237	15	15	YES	0
KS	0.091	627	57	39	YES	0	TN	0.040	612	24	38	NO	20
KY	0.083	420	35	26	YES	0	TX	0.054	4614	250	288	NO	54
LA	0.073	726	45	45	YES	0	UT	0.063	531	33	33	YES	0
ME	0.040	180	7	11	NO	6	VT	0.040	27	1	2	NO	2
MD	0.068	462	31	29	YES	0	VA	0.063	1692	90	106	NO	23
MA	0.146	444	65	28	YES	0	WA	0.100	1002	100	63	YES	0
MI	0.050	1326	66	83	NO	24	WV	0.063	336	21	21	YES	0
MN	0.040	546	22	34	NO	17	WI	0.067	660	44	41	YES	0
MS	0.040	360	14	23	NO	13	WY	0.040	141	6	9	NO	5
MO	0.184	327	60	20	YES	0	DC	0.100	114	11	7	YES	0
MT	0.049	129	5	8	NO	5	**TOTAL**	MIN=.04	46848	5382		YES=28	445

Notes: See Table 9.7.

absent, part-time, and in-training employees, as well as for any overlaps in shifts.

In other words, if an agency has 91 supervisory staff on duty during the day but is required to have 100, we assume that it will have to hire 30 new employees (rather than merely 9) to be able to provide sufficient staffing coverage during all day shifts over the course of a week. If it has 47 staff on duty at night but is required to have 50, we assume it will have to hire 5 employees to provide sufficient coverage 24/7.

As can be seen in Tables 9.7 and 9.8, we estimated that approximately 2,149 additional staff would be required to support full nationwide compliance.

We then calculated the one-time and recurring costs corresponding to the new hires. We estimate one-time costs per employee of $950 for such expenses as recruiting, training, uniforms, badges, and public safety supplies. We estimate the recurring costs of each added FTE as $42,600, to cover salary, benefits, overhead, and the like.[136/]

As noted above, however, agencies that are not already required to maintain these minimum ratios based on requirements independent of the standards are given a grace period of more than five years, until September 30, 2017, to come into compliance. It would thus be inappropriate to assume that all 2,149 additional staff required to support full nationwide compliance would be hired in the first year.

More likely, compliance would occur gradually over the grace period, culminating in full compliance by the fall of 2017. Thus, we assume that 0% of the additional staff required for full compliance will be hired in 2012, 5% in 2013, 7.5% in 2014, 12.5% in 2015, 25% in 2016, and the remaining 50% in 2017. These assumptions yield one-time expenses for new hires of about $102,000 in 2013, $153,000 in 2014, $255,000 in 2015, $510,000 in 2016, $1.02 million in 2017, and zero thereafter.

Salary, benefits, overhead, operations expenses, and other on-going expenses add up to $4.6 million in 2013, $11.4 million in 2014, $22.9 million in 2015, $45.8 million in 2016, and $91.5 million in 2017 and each year afterwards.

We assume that secure juvenile facilities that already maintain the required staffing ratios, as well as juvenile facilities that do not meet the definition of secure (*e.g.*, shelters and group homes), can comply with the standard's overall requirement of providing a level of supervision and monitoring adequate to protect against abuse without additional cost.

[136/] We assume base salary levels for security staff in juvenile facilities of $31,442. We adjust this to add 30% for benefits and retirement, and $1,725 for overhead and other operations expenses to arrive at a total annual compensation figure of $42,600 per new FTE.

To arrive at base salary figure, we first estimated the nationwide average introductory salary for a full-time direct care/line staff worker in State juvenile facilities. Using the State-by-State figures in the *CJCA Yearbook 2009*, we estimated this figure to be about $28,163, calculated from Figure 31 on page 33 of the *Yearbook* by assigning a salary of $20,000 to those States that reported direct care staff salaries of "less than $20,000," $25,000 to those States that reported salaries of $25,000-$30,000, $35,000 to those States that reported $30,001-$40,000, and $45,000 to those States that reported "more than $40,000." We then calculated a weighted average of these figures to arrive at a nationwide average introductory salary of $28,163.

Second, we estimated the overall mean salary for all full-time (*i.e.*, not just newly hired) direct care/line staff workers in State juvenile facilities. For this calculation, we used the mean annual wage of $34,720 for Protective Service Workers, All Other (occupational code 33-9099) from the Bureau of Labor Statistics's Occupational Employment Statistics. *See* http://bls.gov/oes/current/oes339099.htm. We used "Protective Service Workers, All Other" rather than "Correctional Officer and Jailers" (code 33-3012) both because salaries in prisons and jails tend to be higher, on average, than corresponding salaries in juvenile facilities, and because the types of jobs and industries subsumed within the "protective service workers, all other" category in general seem to us to be closer in type to security officers in juvenile facilities than do correctional officers and jailers.

Next, we took the midpoint of $28,163 and $34,720 to arrive at our base salary figure of $31,442. We think the use of this midpoint is more realistic than relying either on the introductory salaries or the mean salaries alone. It would inappropriately skew the total figures to use total average salaries, since those figures would include well-tenured staff that are compensated considerably more than new hires. Moreover, we are here calculating the cost to agencies of having to hire additional new staff to catch up to the mandatory minimum staffing ratios – once those new hires are on-board, they may encounter increases in pay over the remainder of the 15-year cost horizon, but it would not be appropriate to attribute the entirety of those salary increases to the standard itself, because a portion of those increases are likely to be the product of agency business decisions unrelated to the standards. Moreover, given the high attrition rate within the correctional community (16.2% per year on average), a significant percentage of a facility's security staff will be earning salaries at close to the introductory level at any given time.

However, we assume that small juvenile facilities (those with an ADP of less than 50), whether secure or not, will incur costs associated with building and maintaining a staffing and monitoring plan. To estimate those costs, we use the same methodology and assumptions that we used for small jails, lockups, and CCFs, as depicted in Table 9.6. Thus, we assume that few if any small juvenile facilities will have the expertise or experience needed to build and maintain staffing plans in-house. While some may be able to do so at little to no cost, at least a fraction of these facilities will need to retain the services of outside contractors or consultants to assist, at least initially, with the development and updating of staffing plans.

As reflected in the most recent data available from OJJDP, the majority of juvenile facilities in the United States are small: as of the 2008 *Juvenile Residential Facility Census*, 1962 of the 2458 juvenile facilities nationwide house fifty or fewer residents.[137] We conservatively assume that an outside consultant would need an average of 80 hours for each facility to develop the staffing plan in the first year. As with small jails, we project a learning curve in this area to account for the fact that most agencies should begin developing the in-house capacity to build and modify their staffing plans by the second year of compliance, allowing them to phase out over four years their need for support from an outside consultant. We used the same assumptions for the cost of the consultant's time (billable rate plus travel, meals, and lodging) that we did for small jails.

This methodology and these assumptions yield a total cost over four years of $55,323,495. When combined with the onetime and recurring costs associated with the new hires needed to support the staffing ratios, we estimate that full nationwide compliance with standard 115.313 would cost just over $1 billion over fifteen years. Annualized at a 7% discount rate yields a total annual cost for this aspect of the standard of $62.7 million for juvenile facilities. Again, we request comment as to the validity of our cost estimates and the methodologies, data, and assumptions used to derive them.

5.6.13.4 Cost Estimates for DOJ Facilities

Neither BOP nor USMS anticipates a need to incur costs to comply with the standard, as their current practices are consistent with the requirements of the standard. Both agencies currently have in place staffing plans and roster assignment systems that are formulated based on security and safety needs at each facility. Both similarly consider security and safety needs when using or purchasing video surveillance equipment. Sexual abuse prevention is a primary consideration for both agencies in planning and assessing the strategic use of resources.

5.6.13.5 Comparison to Conclusions of IRIA

In the IRIA, the Department did not attribute significant costs to the supervision and monitoring provisions of the NPRM. The Department's proposed standard did not mandate any particular level of staffing and did not require the use of video monitoring. We anticipated that, consistent with Booz Allen's Phase II Report, the great majority of facilities nationwide would find no compliance costs associated with the proposed standard, since most agencies assess their staffing and monitoring patterns as being adequate.

We acknowledged that some agencies might, upon conducting the required assessments, decide to undertake additional measures with regard to the supervision or monitoring of inmates, in order to adequately protect them from sexual abuse.

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[137] OJJDP, *Juvenile Residential Facility Census, 2008: Selected Findings, at* 5 (July 2011) (NCJ 231683), available at https://www.ncjrs.gov/pdffiles1/ojjdp/231683.pdf.

These additional measures could involve implementation costs. However, because the proposed standard only required assessments and did not mandate specific corrective measures, we did not attribute any such costs to the standard.

While the final standard allows agencies discretion in formulating an adequate staffing plan and technically permits non-compliance with such a plan, it places greater emphasis on the importance of providing adequate staffing than did the proposed standard. The final standard requires prisons, jails, and juvenile facilities to implement an adequate plan, utilize their best effort to comply with the plan (with the requirement for juvenile facilities even stronger than this), and document and justify any non-compliance.

A facility whose staffing plan is essentially a sham, or that fails to demonstrate a genuine commitment to making progress towards compliance with the staffing plan over time, will in general have great difficulty achieving a positive audit with regard to this standard. In addition, juvenile facilities must maintain minimum staffing ratios. As such, our calculation of the estimated costs of the supervision and monitoring standard have substantially increased.

5.6.13.6 Response to Public Comments on Costs of Standard 13

We received a wide range of comments, from both the corrections industry and the advocacy community, expressing concern regarding the IRIA's cost analysis of the proposed supervision and monitoring standard.

Some of the members of the former NPREC, together with multiple advocates, averred that the IRIA's conclusion that the standard had a zero cost impact demonstrated that the standard was "dangerously deficient" insofar as it failed to require agencies to actually provide staffing adequate to protect inmates from sexual abuse. These commenters recommended that the Department revise its proposed standard to incorporate an express requirement to implement staffing plans and where appropriate, video monitoring.

In response, the Department agrees that it is appropriate to strengthen the proposed standard. It has adopted a final rule that expressly requires each prison, jail, and juvenile facility to develop and document a staffing plan that provides for levels of staffing and, where applicable, video monitoring, adequate to protect inmates against sexual abuse. Prisons and jails must make their best efforts to comply with the staffing plan on a regular basis and must document and justify all deviations. Juvenile facilities must comply with the staffing plans (including specific staffing ratios for secure facilities) except during limited and discrete exigent circumstances, and must fully document deviations. Lockups and CCFs are not subject to the express implementation requirement but must develop and document their staffing plans.

Many in the corrections community expressed the view that a subjective "adequacy" standard would be difficult to audit and could entail untold costs if auditors required significant additions to facility staffing ratios in order to find compliance with the standard. Many commenters requested that a clearer definition of "adequacy" be adopted before a valid estimate of the standard's costs could be measured.

Various advocacy and industry groups commented that agencies would benefit from a more detailed description of the factors they must consider when conducting the staffing and technology analyses that the standard requires. Others agreed that "adequate" is a subjective term, but argued that it is nevertheless the most appropriate term to use.

The Department believes that the standard's requirement of "adequate" levels of supervision and monitoring strikes an appropriate balance between affording agencies the flexibility to tailor their compliance measures to the circumstances of their own facilities and providing a meaningful benchmark for assessing progress towards achieving the goals of the standards. The standard has been clarified by listing a number of specific factors that agencies should consider in assessing the adequacy of their supervision and monitoring.

While the final standard does not require strict adherence to the staffing plan in order to achieve compliance, an auditor will be able to review the facility's documentation of the reasons for any deviations from the plan as part of any compliance review. In addition, the agency must assess, determine, and document, at least annually, whether adjustments are needed to (1) the established staffing plan; (2) video monitoring technologies; and (3) the resources the facility has available to commit to ensure adherence to the staffing plan. These provisions give effect to the requirement of "adequacy" without compromising each agency's discretion to formulate the staffing plans most appropriate to meet each facility's needs.

Some members of the advocacy community criticized the methodology used in Booz Allen's Phase II Report and the IRIA to estimate the costs of the NPREC's recommended supervision and monitoring standards (PP-3 and PP-7) and the proposed standard 115.13. One organization questioned whether the small number of facilities participating in the Phase II Report was sufficient to extrapolate estimates of nationwide compliance with the supervision and monitoring standards, especially where at least some of those facilities were apparently uncertain as to what level of staffing would be required under the final standard.

This organization also criticized reliance on the Phase II Report on the ground that the 49 sites that participated in the study were not randomly selected but instead volunteered to participate in the study, making them unlikely representatives of the range of baseline compliance with the standards.

As discussed in detail in the preceding sections, the Department only partially based its cost assessments on data gathered in Booz Allen's Phase II study, and those data were closely scrutinized and adjusted to ensure that they were appropriate for nationwide extrapolation. The Department acknowledges that a larger-scale study would perhaps have been worthwhile, but time and resource limitations made that impossible; moreover, with regard to prisons the Phase II Study included 13 State correctional departments and thereby subsumed over one quarter of the prison facilities in the country, which is a sufficiently large sample size.

The Department likewise acknowledges that the Phase II participants did not necessarily constitute a random sample, but it has compensated for this by supplementing the data from that study with other data from public comments, information provided by BOP and the USMS, and independent research. Moreover, where we determined that a particular data point in the Phase II study constituted an anomalous or unrepresentative outlier, we excluded it from our analysis.

With regard to video monitoring, both the corrections community and advocates expressed concerns over the requirement to install and maintain surveillance technology. In general, the corrections community agreed that the use of such technology should be encouraged as good corrections policy, but argued that it should not be mandated. Agencies advocated for the right to determine the precise amount of technology they would purchase (based on fiscal ability) and

asked for additional time to comply if a mandate is imposed.

Prison and jail agencies in particular were broadly opposed to any mandate to use technology to prevent sexual abuse, stating that any such requirement would be beyond the scope of PREA, would carry a significant fiscal burden, and would preclude many of them from remaining in overall compliance with the standards. These comments, however, did not provide estimates of the specific financial burden associated with maintaining technology in accordance with the standards.

Some advocates stated that video monitoring should be required for all facilities, as this technology is essential not only to preventing sexual abuse but also for the general safety and security of inmates and staff. These advocates were concerned about the absence of a mandatory technology standard in the proposed rule, observing that prison agencies would never implement technology if allowed to determine for themselves whether it was needed, given limited budgets and competing priorities.

Other advocates opposed a mandate and argued that while technology is one way to enhance safety and supplement staff supervision, it is not a substitute for adequate staffing, and funds should not be used to upgrade technology at the expense of staffing.

The final standard does not mandate the use of technology or video monitoring but appropriately leaves it to the discretion of each agency to determine what combination of staff enhancements and technology upgrades would most effectively, and most cost-effectively, provide adequate levels of protection against abuse. Each year, agencies must assess, determine, and document whether adjustments are needed to a facility's deployment of video monitoring systems and other monitoring technologies, but agencies have the flexibility to utilize (or not utilize) technology in accordance with each facility's needs and available resources.

We disagree that when given a choice, agencies will not be likely to implement video monitoring solutions. Such solutions are often more cost-effective than staff enhancements, and agencies routinely include video surveillance technology in their physical plant designs.

Moreover, by requiring "best efforts" towards compliance by prisons and jails, the standard acknowledges that some agencies may have to defer implementation of technology upgrades until the necessary resources become available; our cost model takes this circumstance into account by assuming that agencies will gradually come into compliance with the standard over the fifteen-year cost horizon.

Finally, one commenter expressed concern that the cost estimates for this standard did not adequately account for learning over time and for diminishing costs attributable to technological innovations and advancements. We have addressed this point by incorporating conservative learning curves into several aspects of our cost analysis, to account both for innovations and advancements in video monitoring solutions and for the diminishing cost over time of preparing staffing plans for agencies that do not already have them.

5.6.14 *Youthful Inmates (Standard 115.14, .114)*

This standard requires generally that persons under the age of 18, under adult court supervision, and being detained or incarcerated in a prison, jail, ("youthful inmates") or lockup ("youthful detainees") be held separately from adult inmates.

For prisons and jails, the standard requires that youthful inmates be placed in a housing unit separate from adult inmates. For areas outside the

housing units, such as daytime programming space, the standard requires that youthful inmates either: (1) be sight-and-sound separated from adult inmates, or (2) be subject to direct staff supervision. The standard also requires that agencies make their best efforts to avoid placing youthful inmates in isolation to comply with this provision, and, in cases where an agency must place a youthful inmate in isolation, that the youth receive daily large-muscle exercise and any legally required special education services. Finally, any isolated youth shall receive access to other programming and work opportunities to the extent possible.

For lockups, the standard requires that juveniles and youthful detainees be held separately from adult inmates.

This standard recognizes that youth and adolescents held in adult facilities are at increased risk of sexual abuse by adult inmates, and may be at risk of increased psychological harm resulting from any such victimization. Accordingly, requiring separation of young inmates and adult inmates is intended to reduce opportunities for adult inmates to sexually abuse youthful inmates and detainees.

The cost of full nationwide compliance with this standard is expected to be minimal—about $16.2 million in one-time costs associated with initial implementation of the standard, which annualizes to $1.7 million per year over fifteen years at a 7% discount rate. While several jurisdictions already house some or all youthful inmates in separate facilities or housing units, or arrange for their confinement in juvenile justice facilities, other jurisdictions may potentially be required to construct or reconfigure housing units to comply with the standard.

5.6.14.1 Analysis and Methodology

To determine the cost of full nationwide compliance with the youthful inmate standard, we first examined each jurisdiction's existing statutes, regulations, management standards, practices, and policies with respect to placement requirements for youthful inmates.

For example, many States currently have legal mandates to keep some or all of their youthful inmate population separate from adult inmates in prisons, jails, or both. Other jurisdictions already have dedicated housing units or facilities that they use for youthful offenders. Still others permit the placement of youthful inmates in juvenile justice facilities until the youths attain a certain age, at which time they are transferred to an adult facility.

We used inmate census data to estimate the number of youthful inmates who are not currently subject to a separation requirement. For State prison systems, we estimate that the number of youthful inmates not currently subject to some type of separation requirement is approximately 800. For jails, we estimate that corresponding number is approximately 1,160.

We believe that the majority of States and localities that do not already impose a separation requirement can achieve compliance with this standard at negligible cost by rebalancing unit designations within a facility, or by transferring youthful inmates or adult inmates to other facilities operated by the same agency. We assume, moreover, that agencies whose ADP is less than 120% of their rated capacity would (at the agency level) have sufficient aggregate

capacity to establish a centralized, segregated housing unit through such internal transfers.[138]

Alternatively, these agencies could, at minimal cost, (1) enter into cooperative or intergovernmental agreements with neighboring jurisdictions or other adult agencies for the common placement of youthful inmates, or (2) enter into cooperative or intergovernmental agreements with juvenile justice agencies for temporary placement of this population. The agencies housing unsegregated youthful inmates that would have these options house approximately 1,325 of the 1,960 youthful inmates at issue.[139]

Using data provided by the California Legislative Analyst's Office, we estimate that the average cost to an agency to transfer a youthful inmate to another facility or agency is $508, which includes transportation costs ($97), testing/ reception/assignment costs ($261), and administrative/paperwork expenses ($150).

The estimated aggregate cost for transferring 1,325 youthful inmates is, therefore, $674,000. These are one-time costs: we assume that once the initial population of youthful inmates has been transferred to other facilities, youthful inmates entering the system in the future can be designated in the first instance to the centralized facility.

The transfer of inmates from one facility to another will result in a higher population in one facility, resulting in higher maintenance and supervision costs at that facility. However, our analysis assumes that such costs are offset by a proportional decrease in inmates (and hence costs) for the facilities that are releasing the inmates. The total number of youthful inmates within each State remains unchanged.

Four prison and three jail agencies that collectively house the other 635 youthful inmates currently maintain ADPs far in excess (more than 120%) of their rated capacity. For these agencies, rebalancing unit designations within an existing facility or transferring inmates to other agency-operated facilities may not be practicable options for complying with this standard. More likely, these agencies may need to construct new facilities or housing units (or physically reconfigure existing physical plants) to achieve compliance.

To estimate the cost of such enhanced housing capacity, we assume that each youthful inmate in this category would require the construction of 105 square feet (70 square feet of living space, plus 35 square feet of corridor or common space needed to join a new unit to the main structure). We further assume that each square foot of construction would cost, on average, $233, to include construction labor and materials, contractor fees, and architect fees.[140] The cost of building sufficient capacity to accommodate 635 youthful inmates is approximately $15.5 million (634 x 105 x $233). This, again, is a one-time cost: we assume that once the housing unit has been established youthful inmates entering the system in the future can be designated there in the first instance.

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[138] We chose the 120% threshold under the assumption that the "rated capacity" for most facilities can be exceeded with minimal modifications. In addition, a State with greater than 100% ADP/rated capacity could still have facilities operating at less than 100% capacity (*e.g.*, there is likely sufficient space at one facility to dedicate a segregated housing unit without having to build additional space).

[139] All of the youthful inmates except for those in Alaska, Delaware, Illinois, or Nebraska prisons, and those in Louisiana, Pennsylvania, and Virginia jails.

[140] Reed Construction, an information resource for the architectural, engineering and construction industries in North America, gives a cost estimation approach for construction of jails nationwide. This estimate assumes labor to be union labor and recognizes the difference in building costs based on market conditions and specificity of location. Specific to our approach for this standard, our estimate assumes a "face brick with concrete block backup/steel frame." The total cost of construction and materials per square foot is $178.03. To this, we add contractor fees of $44.51 (this includes general contractor, overhead, and profit) and architect fees of $10.68. This yields a total of $233.21 per square foot. *See* http://www.reedconstructiondata.com/ rsmeans/models/jail/.

The total one-time costs, then, amount to $16.2 million. Annualized over fifteen years at a 7% discount rate, the annual cost is $1,662,540.

5.6.14.2 Response to Public Comments on Cost of Youthful Inmate Standard

In the NPRM, we asked whether "the final rule [should] include a standard that governs the placement of juveniles in adult facilities?" Only one State agency response indicated that a standard governing placement of juveniles in adult facilities would impose substantial additional costs on jurisdictions, but that agency did not elaborate on the basis for this view or attempt to quantify the magnitude of the costs. The Department recognizes that some jurisdictions, particularly those operating well over their rated capacity, may incur costs in order to comply with this provision. However, the standard provides significant flexibility in how a State may achieve compliance and, as discussed above, is not expected to contribute markedly to the overall costs of full compliance with the rule.

5.6.15 *Cross-Gender Viewing and Searches (Standards 115.15, .115, .215, .315)*

Absent exigent circumstances, this standard prohibits cross-gender strip searches and body cavity searches; prohibits all cross-gender pat-down searches in juvenile facilities; and, in a new requirement not contained in the NPRM, includes a ban on cross-gender pat-down searches of females in adult facilities.[141/] The standard also requires agencies to train security staff in conducting professional and respectful cross-gender pat-down searches and searches of transgender and intersex inmates. The standard requires that each facility implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in the case of emergency or when such viewing is incidental to routine cell checks.

The benefits from this standard are increased emphasis on professionalism, diminished sexualization of confinement facilities, and an enhanced respect for inmates' legitimate privacy interests in avoiding unnecessary cross-gender viewing and touching of their bodies. In light of the fact that staff sexual abuse is often cross-gender, the standard also deters, and may prevent, staff sexual abuse of juveniles and adult female inmates, by prohibiting the intimate cross-gender touching of clothed bodies that occurs during a pat-down search. Finally, the ban on cross-gender pat-down searches of adult females will potentially mitigate any risk of re-traumatization to female inmates, who have a higher likelihood than do male inmates of having experienced sexual abuse in the past.

We assess this standard as having a negligible cost for full nationwide compliance. As a threshold matter, we do not anticipate any measurable costs associated with the aspects of this standard unrelated to the ban on cross-gender pat-down searches.

On the other hand, at certain facilities, costs could potentially arise from the need to have more staff available of the same gender as the inmates being subjected to a pat-down search. For example, if a facility concludes that it does not have enough female officers to ensure that one can always be available whenever a female inmate needs to be subjected to a pat-down search, it may decide that it needs to arrange for additional female staff in order to comply with the standard.

[141/] The ban only applies in prisons, jails, and CCFs, not in lockups.

However, the standard allows adult facilities at least three years to come into compliance with the pat-down search restriction; adult facilities with a rated capacity of less than 50 inmates are provided five years in which to implement the ban. The expectation is that agencies will leverage the delayed effective date of this standard to lower or even eliminate compliance costs, by gradually incorporating the requirements of the ban on cross-gender pat-down searches of female inmates into their staffing plans and hiring decisions and by taking advantage of expected attrition and staff turnover to realign the gender breakdown of their staff rosters.

Because the adult and juvenile standards differ in material respects, we used different methodologies to assess the costs for each part of the standard.

5.6.15.1 Analysis and Methodology—Adult Facilities

In estimating the cost of full nationwide compliance with this standard at adult confinement facilities, we assume the following:

1. Any cost impact related to the cross-gender pat-down search ban would be felt only in all-female institutions.

Of course, facilities that house only men would not be affected at all by the standard. Moreover, as a general matter, facilities that house both men and women should be able to effect compliance simply by internally realigning their staffs (*e.g.*, transferring some correctional officers to other shifts or to other housing units) to ensure that there are enough female correctional officers available during each shift in female housing units to guarantee availability of female officers when pat-down searches of female inmates are required.

To our knowledge, there are no adult mixed-gender confinement facilities in the United States that employ only male correctional officers; to the contrary, nationwide the percentage of female officers compared to the percentage of male officers (26% to 74% in prisons, 28% to 72% in jails) is much higher than the percentage of female inmates compared to that of male inmates (7% to 93% in prisons, 12% to 88% in jails).[142/]

To be sure, at some facilities internal realignments of the sort contemplated here may be complicated by rules or agreements governing bidding for and selection of posts, shifts, and the like, but given the three-to-five-year period allowed for compliance, we expect that the great majority of mixed-gender facilities will be able to accomplish, without costs, any realignments necessary to ensure availability of female staff adequate to comply with the ban.

2. At all-female facilities, we assume that an impact would only arise if the facility determines that the female to male ratio of its correctional staff is too low to ensure the constant availability of adequate numbers of female officers at each shift so as to ensure that pat-down searches of female inmates can always be conducted by female officers absent exigent circumstances.

3. We further assume that any all-female facilities that make such a determination will endeavor to come into compliance with the standard using the lowest-cost option available. For many agencies, this could entail adding one (for jails) or two (for prisons) female officers to each shift at each all-female correctional facility.

At most facilities, such an addition should be sufficient to enable compliance with the ban. We

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[142/] Gender distribution of prison staff is for state prisons only and is from BJS, 2005 *Census of State and Federal Correctional Facilities*, App. Table 12. For jails, the gender distribution is from BJS, 1999 *Census of Jails*, Table 13. These data are somewhat dated, albeit the most recent available; the likelihood is that the current percentage of female staff among jails is somewhat higher than the rates in 1999. Gender distribution of inmates is from BJS, *Prisoners in 2010*, App. Tables 2 and 3, and BJS, *Jail Inmates at Midyear, 2010—Statistical Tables*, Table 6.

assume that jails would require fewer additional female staff per shift than prisons because of their more centralized layouts and staff configurations. For example, jails, more than prisons, typically have the option of establishing a 24/7 security post, which could serve as a centralized and consistent location for conducting pat-down searches.

In some cases (at least for State prison agencies), the addition of one or two female officers to each shift at each all-female facility could potentially be accomplished by transferring or relocating female staff from one facility in the State to another (the availability of such an option may depend on local considerations such as distance between facilities, collective bargaining agreements, and the parameters of applicable employment discrimination laws), in order to change the gender balance of the staff at the two facilities. Otherwise, we assume that some agencies may actually need to hire new female staff so that one to two female officers can be added to each shift.

However, we expect that agencies will integrate any such new hires into their overall staffing plans and take advantage of staff turnover to the maximum extent possible, by hiring female employees to replace departing male officers.[143] When this is not possible, we assume that any FTE added to support the hiring of female officers will be temporary, and will be phased out over some years as normal attrition leads to the departure of male officers who are not replaced.

4. Finally, we assume that at adult facilities the average overall staff turnover rate is 16.2% per year,[144] and that the turnover rate by gender tracks the gender distribution within the facilities. Thus, because prison staff are, on average, 26% female and 74% male, we assume that each year 11.7% (*i.e.*, 74% x 16.2%) of the corrections officers depart and are male, while 4.4% of the officers depart and are female.

With these assumptions in place, our methodology for adult prisons proceeded as follows. Based on data collected by the National Institute of Corrections, there are currently 26 States with formal policies that ban male officers from subjecting female inmates to pat-down searches.[145] Another nine States do not engage in cross-gender pat-down searches of female inmates in practice, although they do not have a formal policy banning such searches.[146] *See* Table 11.1.

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[143] Most facilities will be able to implement the requirement that only female staff perform pat-down searches of female inmates in a minimally intrusive way that has only a *de minimis* effect on employment opportunities for prison employees. *See, e.g.*, *Tipler v. Douglas Cnty.*, 482 F.3d 1023, 1025-27 (8th Cir. 2007) (temporary reassignments with no effect on promotional opportunities had a *de minimis* effect); *Robino v. Iranon*, 145 F.3d 1109, 1110-11 (9th Cir. 1998) (restricting six out of 41 guard positions to women had a *de minimis* effect); *Tharp v. Iowa Dep't of Corr.*, 68 F.3d 223, 226 (8th Cir. 1995) (*en banc*) (holding that prison employer's reasonable gender-based job assignment policy, particularly a policy that is favorable to the protected class of women employees, will be upheld if it imposes only a minimal restriction on other prison employees, and therefore "bona fide occupational qualification" (BFOQ) analysis is unnecessary).

As discussed in the Notice of Final Rule, if a correctional facility cannot implement the standards in a manner that imposes no more than a *de minimis* impact on employment opportunities for either sex, it must undertake an individualized assessment of its particular policies and practices and the particular circumstances and history of its inmates to determine whether altering or reserving job duties or opportunities to one sex would justify a BFOQ defense with respect to each particular employment position or opportunity potentially affected by the agency's implementation of the standards. 42 U.S.C. 2000e-2(e)(1).

It is important to note that the standard prohibiting cross-gender pat-down searches of female inmates does not, in and of itself, create or establish a BFOQ defense to claims of sex discrimination in employment. However, female preference sex-based employment assignments in confinement facilities can meet the BFOQ standard if such assignments are reasonably necessary to the normal operation of the particular facilities at which they are used. *See Jordan v. Gardner*, 986 F.2d 1521, 1526 (9th Cir. 1993) (*en banc*) (striking down cross-gender pat-downs of female prisoners as unconstitutional "infliction of pain" where there was evidence that a high percentage of the female inmate population had a history of traumatic sexual abuse by men and were being re-traumatized by the cross-gender pat-down searches); *Everson v. Michigan Dep't of Corr.*, 391 F.3d 737, 747-61 (6th Cir. 2004); *Torres v. Wisconsin Dep't of Health & Human Servs.*, 859 F.2d 1523, 1530-32 (7th Cir. 1988).

[144] *See* MTC Institute, *supra* note 101, at 1.

[145] These are AL, AR, CA, CO, DE, FL, IN, KY, LA, ME, MD, MA, MI, MN, MS, MO, NY, ND, OH, SD, TN, TX, VT, VA, WA, and WY.

[146] These are AK, GA, HI, ID, OR, RI, SC, UT, and WV. For these nine States, we assume that compliance with the standard simply entails instituting a formal policy that memorializes current practice, an act that should not carry with it any significant costs. We therefore treat these nine States as compliant with the standard.

We assume that these 35 States are already in compliance with the standard in their adult female prison facilities.

The remaining fifteen States have a total of 21 all-female prison facilities.[147] We conservatively assume that each facility has five workshifts each week,[148] and that each facility will decide to add two female officers to each workshift (which we presume is the maximum step required to come into compliance). We further assume, again conservatively, that the addition of these female officers will be accomplished entirely through new hires rather than through transfers among facilities, such that a total of 210 female corrections officers would need to be added to staff rosters of these facilities. We further assume that the affected prison systems will come into compliance over the three years before the standard mandates compliance. Therefore, these eleven agencies would have to add a total of 70 female officers to their staffs in each of the first three years.

In the absence of specific information as to the current gender breakdown of correctional staff at these 21 facilities, we have extrapolated an estimated breakdown from national statistics. Nationwide, the 1,190 State prisons employ approximately 264,233 correctional officers, of whom at least 26% are female.[149] Because 21 is 1.76% of 1,190, we estimate that the 21 all-female prisons collectively employ about 4,663 corrections officers (or 1.76% of 264,233). We assume, moreover, that collectively these all-female facilities lose 755 correctional officers per year (16.2% x 4,663), of whom about 562 (or 74% of 755) are male. Over three years, an estimated 1,686 male officers can be assumed to depart from these all female prisons.

To add two female officers to each shift, then, these 21 prison facilities would have to replace 210 of the 1,686 departed male employees (or 12.5%) with new female officers during the three years before the cross-gender ban becomes effective, assuming that departing female officers are replaced by other female hires.

We see this as easily achievable and unlikely to result in costs for any of the affected facilities. When one considers that most of these agencies are already likely to have sufficient female officers available on at least some of their shifts, and further that some of these agencies may potentially be able to rebalance the staff gender ratios at their female facilities without requiring new hires simply by transferring or relocating employees between facilities in close proximity to one another, any cost impact is even smaller.[150]

BOP expects to be able to comply with the standard at its prison facilities using existing staff without needing any new hires. However, in keeping with our conservative approach, we have conducted an alternative analysis that follows the same general approach for BOP prison facilities as for State prisons.

BOP has 7 all-female prisons, which collectively employ 705 corrections officers, of whom 246 (or 35%) are female. We assume that 16.2% of the officers, or 114, will depart each year, and that 74 of these will be male. Assuming that BOP would need to add two female officers to each workshift at each facility (an extremely conservative assumption), a maximum of 70 new female officers would be needed, or 23 in each of the

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[147] These are CT (1 all-female prison facility), KS (1), MT (1), NE (1), NV (1), NH (1), NJ (1), NC (7), OK (2), PA (2), and WI (3). AZ, IL, IA, and NM have no all-female prisons.

[148] *See supra* at 102.

[149] BJS, *2005 Census of State and Federal Correctional Facilities.*

[150] The size of each particular facility and its workforce, and the percentage of employment opportunities that may be affected or limited to members of one sex, may determine whether there is more than a *de minimis* impact on employment opportunities requiring a BFOQ analysis under Title VII. *See supra* note 143.

three years before the cross-gender ban becomes a requirement. BOP would thus have to replace 23 out of 74 (31%) departing male officers with a female officer each year for three years. If such a course of action were to be necessary, BOP expects to be able to accomplish this without cost.[151]

With respect to jails, the best available data indicate that 2,779 of the 3,271 state and local jail facilities are authorized to house both males and females, while only 32 jail facilities are all-female.[152] Of these, seven have either a rated capacity or an average daily population of less than 50 and are assumed for purposes of this analysis to be small jails (meaning that they have five years to come into compliance, rather than 3). The other 25 all-female jails have a capacity or ADP greater than 50 and therefore fall into the three-year grace period.

Thus, we assume that a mere 1.26% of the approximately 1,979 large jails in the United States are all-female.[153] Applying this ratio to the estimated 141,600 officers who are believed to work in large jails, we estimate that in total about 1,788 correctional officers work in all-female jails. Of these, an estimated 290 depart each year, of which an estimated 208 are male (in jails, an estimated 72% of corrections officers are male).[154] If each of the 25 large all-female jails were to decide to hire one additional female officer per shift (again, a very conservative assumption), a maximum of 125 new female officers would be required, or 42 per year over the three-year grace period.

This means that, during the three-year grace period, each jail would have to replace 42 of the 208 departing male officers (20%) with female officers each year to accomplish the necessary rebalancing.

Table 10.1 shows the similar calculations that apply to small jails and to CCFs, all of which are presumed to have a rated capacity of less than 50 and are therefore eligible for the five-year grace period.

As shown in the Table, the percentages of departing male employees who would have to be replaced with female employees each year during the grace period in order to obtain the maximum level of additional female staff that could conceivably be required under this standard ought to be achievable in both federal and State prisons. Jails and CCFs may need to be somewhat more aggressive in adding female staff than prisons, and in particular may need to temporarily add FTE that will be phased out through attrition over a period of time somewhat longer than the grace period, but again the figures in Table 10.1 conservatively assume zero baseline compliance with the pat-down search ban among jails and

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[151] In three of BOP's women's facilities (Alderson, Bryan, and Carswell), the gender breakdown of staff is actually very close to 50/50, and it is unlikely that any additional female staff would be required at any of these facilities. At best, BOP might require additional female staff at the other four women's facilities (Danbury, Dublin, Tallahassee, and Waseca), at which the percentage of female corrections officers ranges from 26 to 29%. If the analysis is confined to these four facilities, there are a total of 455 officers, of whom 125 are female. Annually, one would expect 74 departures, of which 53 would be male. Assuming 40 female positions would have to be added (13 per year for three years), BOP could accomplish this feat by replacing 13 out of 53 (24%) departing male officers with female officers each year for three years.

[152] *See* BJS, 2006 *Census of Jail Facilities* (NCJ 230188). Twenty-five of these jails are located in States whose prisons, are assumed to be compliant with the ban on cross-gender pat-down searches of female inmates, by virtue either of existing official policies or of current practices and procedures. It is possible that local jails in these States are similarly compliant with the standard, especially in those States where the pat-down search ban is memorialized in State statute. However, because we do not have specific data confirming the policies, practices, and procedures in these 25 jails, we conservatively assume for purposes of this analysis that none of them is currently in compliance.

[153] The 2,859 State and local jail jurisdictions to which the standards apply collectively operate 3,271 facilities, or an average of 1.14 facilities per jurisdiction. Of the 2,859 jail jurisdictions, 1,129 have a total rated capacity or ADP of less than 50, while 1,730 operate one or more facilities that collectively house more than 50 inmates. *See* BJS, 2006 *Census of Jail Facilities*, at Table 8. Assuming that the same ratio of small to large for jail jurisdictions roughly applies to jail facilities, approximately 1,979 facilities would have a total rated capacity or ADP of greater than 50.

[154] BJS, 2006 *Census of Jail Facilities* (NCJ 230188).

CCFs and also assume that compliance will be achieved through maximum new hiring.[155]

5.6.15.2 Analysis and Methodology—Juvenile Facilities

With regard to juvenile facilities, as with the NPRM and the NPREC's recommended standards, the final standard contains a complete ban on cross-gender searches absent exigent circumstances. While many juvenile facilities across the country already comply with such a ban, and other facilities can achieve compliance through internal reorganization and policy changes, we assume that some juvenile agencies may need to adjust the gender ratios of their staff at certain facilities to become compliant. Unlike adult facilities, juvenile facilities do not have a grace period for compliance.

According to the best available data, State juvenile agencies employed 33,664 direct care staff members in 2008, of which 13,540 (or 42%) were female and 18,678 (or 58%) were male.[156] Conversely, the resident population is overwhelmingly male, with 50,176 male residents (87% of the total) and 7,313 female youth (13% of the total).[157]

Thus, we can assume that juvenile facilities will have no difficulty implementing the ban on cross-gender pat-down searches insofar as it relates to female residents, as all are likely to have more than sufficient female staff to effectuate a ban. On the other hand, some agencies with only male residents may conclude that they do not have enough male staff on board to ensure that male residents are only subjected to pat-down searches by male staff.[158]

Table 10.1: Compliance Cost Analysis for Ban on Cross-Gender Pat-Down Searches of Female Inmates in Adult Facilities[159]

	State Prisons	BOP	Large Jails	Small Jails	CCFs
Facilities	1190	117	1979	1292	529
All Female	21	7	25	7	62
% All-Fem	1.8%	6.0%	1.3%	0.5%	11.7%
Total Staff	264233	14165	141594	92405	15847
% Fem Staff	25.5%	34.9%	28.2%	28.2%	25.5%
Est Staff @ All-Fem Fac	4663	705	1789	501	1857
Est Ann Attrition	755	114	290	81	301
Est Male Attrition	562	74	208	58	224
Add Fem Req'd	210	70	125	35	310
Yrs to Comply	3	3	3	5	5
Add Fem/Yr	70	23	42	7	62
% M to F Turnover/yr	12.4%	30.9%	20.2%	12.0%	27.7%

[155] A facility's ability to reserve positions that open through attrition for female applicants without undergoing a BFOQ inquiry may depend, as noted above, on the size of the facility. *See supra* note 143.

[156] *See* Edward J. Loughran, Kim Godfrey, *et al.*, CJCA YEARBOOK 2009: A NATIONAL PERSPECTIVE OF JUVENILE CORRECTIONS, at 32 (Council of Juv. Corr. Admin. Oct. 2009) ("*CJCA Yearbook*").

[157] OJJDP, *2010 Census of Juveniles in Residential Placement*, available at http://www.ojjdp.gov/ojstatbb/ezacjrp/. The totals include all adjudicated youth wherever housed.

[158] In juvenile facilities, "approximately 95% of all youth reporting staff sexual misconduct said they had been victimized by female facility staff. Among the estimated 2,730 adjudicated youths who had been victimized, 92% were males reporting sexual activity with female staff; an additional 2.5% were males reporting sexual activity with both female and male staff." BJS Juv. NSYC 2008-09.

[159] All figures for BOP are actual tallies rather than extrapolated estimates. Division between large and small jails is extrapolated based on assumption that 39% of jail facilities have rated capacity of less than 50. The sources for the number of all-female facilities and of numbers of total staff and female staff are BJS, *Census of State and Federal Correctional Facilities 2005* (NCJ 222182 Oct. 2008), at Tables 12 and 13, and BJS, 2006 *Census of Jail Facilities* (NCJ 230188). Percentage of female staff at CCFs is assumed to be the same as for prisons. For all but BOP, "Est. Staff @ All Fem Fac" is % All Fem times Total Staff. Estimated total attrition rate is 16.2% per year. *See* MTC Institute, *supra* note 101, at 1. Est. attrition is rate times Est Staff @ All Fem Fac and estimates the total number of officers estimated to depart each year. Add Fem Req'd is the number of additional female officers that would be required if the agency decided to add two female officers at each shift at each facility in order to comply with the standard; it is All-Female times 10, assuming five shifts at each facility. % M to F Turnover/yr is the percentage of departing male officers that would need to be replaced with female officers for each year during the grace period in order to accomplish the staffing addition.

To the extent that facilities reaching such a conclusion determine that additional male staff are required, we assume that they will attempt to acquire such staff using the available options that have the lowest cost and the lowest litigation risk and are therefore most practical.

Thus, rather than adding FTE positions to their staff rosters to accommodate permanent new hires of male employees, or alternatively laying off incumbent female employees to replace them with male hires, we assume that agencies will generally comply with this standard by (1) availing themselves of opportunities presented by ordinary attrition and staff turnover to effect any gender realignment of their staffs, and (2) reassigning staff within or between facilities to ensure that each shift at each facility has the gender balance needed to allow compliance with the standard.[160/] The cost of this second option primarily relates to the costs of relocating personnel.

During Booz Allen's Phase II study, agencies reported that the primary hurdle to compliance with a total ban on cross-gender searches was the gender imbalance between the composition of their staff and the resident population. Based on data received from that study and additional information reported during the NPRM public comment period, we know the status of 17 States with regard to whether they comply with a complete ban on cross-gender pat-down searches in juvenile facilities. We do not have information on the status of compliance in the other 33 States and therefore extrapolate our conclusions from the 17 States for which there are data.

Of the 17 States for which there are data, 13 are compliant with the standard and 4 are not. In the 13 compliant States, the average staff-to-resident spread (*i.e.,* the percentage of residents who are male minus the percentage of staff who are male) is 35 percentage points. For the 4 non-compliant states, the average staff-to-resident spread is virtually the same—37 percentage points.

These data indicate that the gender imbalance between the composition of a facility's staff and its resident population is not as significant an impediment to compliance with a two-way ban on cross-gender pat-down searches as some of the participants in the Phase II study suggested. It would also support a conclusion that the non-compliant States ought to be able to come into compliance with the standard at little to no cost, and without even having to change the gender balance of their existing staffs, simply by reassigning personnel as needed to make compliance possible. Indeed, this circumstance suggests that there are ample lessons, practices, and procedures that ought to be readily transferable from compliant to non-compliant States.[161/]

However, data on staff-to-inmate spreads are only available at the aggregate State level and do not necessarily shed light on specific facility demographics or on any variability that may exist within all-male institutions in the non-compliant States. In these institutions a few more male officers might be required, since only male officers can conduct pat-down searches in all-male facilities. If this is the case, however, we assume that the number of additional male officers required per facility will be very small (since on average staffs are already half male), and that agencies will avail themselves of ordinary attrition to achieve any rebalancing of the gender composition of their staff at any given facility.

Indeed, in the four non-compliant States mentioned above, total staff in juvenile facilities is 9,169, of which 4,687 (51%) are female.

[160/] As with adult female confinement facilities, the size of the facility's workforce and the nature of the affected positions may determine whether only a *de minimis* impact on employment opportunities will result from such realignments or reassignments. *See supra* note 143.

[161/] We envision that the PREA Resource Center will facilitate such transfers through training programs and technical assistance.

Assuming 16.2% annual attrition at these facilities, an estimated 759 female employees will leave in the first year of the standards. If agencies decide that some of these positions (likely just a small handful) need to be flipped from female to male in order to effectuate the ban in all-male facilities, it seems reasonable to assume that they can do so without cost.

All juvenile facilities will be required to prepare a staffing plan in accordance with standard 115.313. Facilities can be expected to incorporate into these plans the prohibition of cross -gender pat-down searches, and its impact on staff realignments. The resulting efforts are likely to have an additional mitigating effect on the total cost estimate of this standard, as they may highlight other low-cost or no-cost solutions unique to a facility's environment.

5.6.15.3 Comparison to Conclusions of IRIA

The NPRM did not estimate any significant costs with regard to adult facilities because the proposed standard permitted all cross-gender pat searches in adult facilities. In contrast, the NPREC's recommended standard (PP-4) required a full ban on all cross-gender pat-downs in all facilities, "[e]xcept in the case of emergency or other extraordinary or unforeseen circumstances." Therefore, our cost estimates for this standard are not based on the cost estimates in the IRIA for the corresponding proposed standard, nor do they draw extensively from Booz Allen's Phase II study of NPREC's recommended standard PP-4.

Booz Allen assessed the NPREC's version of this standard as having the largest ongoing cost impact of all the recommended standards. The impact derived from the fact that a number of facilities interpreted the prohibition of all cross-gender pat-down searches as requiring them either to hire significant numbers of additional male staff or to lay off significant numbers of female staff, due to their overwhelmingly male inmate populations and substantial percentage of female staff. In addition, many agencies expressed concern that the necessary adjustments to their workforce would expose them to liability for violating federal or state equal employment opportunity laws.

As discussed above, we have found that many adult prisons and jails already restrict cross-gender pat-down searches of female inmates. The final rule provides facilities three years to come into compliance (five years for small facilities); we believe that agencies will leverage the staff turnover that can normally be expected to occur during this grace period to achieve whatever staff realignments are needed to achieve compliance.

With regard to juvenile facilities, the final standard substantively is very similar to the proposed standard. The cost assessment in the IRIA was negligible, based on juvenile facilities' tendency to conduct pat-down searches less frequently and the fact that many juvenile facilities already ban cross-gender pat-down searches absent exigent circumstances. As discussed above, we here estimate that the cost impact of the final standard remains negligible, as juvenile facilities, like their adult counterparts, will take advantage of expected attrition to achieve whatever minor staff realignments need to occur for compliance to be achieved.

5.6.15.4 Response to Public Comments on Costs of Standard 15

Most of the comments submitted by correctional agencies with regard to the proposed standard did not raise significant cost concerns, given that the proposed standard permitted cross-gender pat-down searches for all adult inmates.

However, the comments did include some discussion of the costs of the NPREC's recommended ban on all cross-gender pat-down

searches. A number of agencies expressed concern that such a ban would require them either to hire significant numbers of additional male staff or to lay off significant numbers of female staff, due to their overwhelmingly male inmate population and substantial percentage of female staff, and they worried that such employment actions could expose them to liability for violating federal or state EEO laws.

As discussed above, the Department assumes that most agencies will not be required to add any permanent FTEs or terminate any incumbent employees in order to implement the standard. Most agencies can implement the standard simply by revising practice and policy; reallocating staff within a facility; transferring staff between proximate facilities; or utilizing the three-to-five-year grace period and regular staff attrition to hire staff necessary to fulfill specific agency needs. Furthermore, as discussed in detail in the Notice of Final Rule, the Department believes the final standard can and should be implemented in accordance with federal and state EEO laws.

Some agencies expressed concern regarding increased costs associated with training staff to conduct professional pat-down searches. We address training at some length below in section 5.6.31. The Department of Justice has established the National Resource Center for the Elimination of Prison Rape, or PREA Resource Center (PRC), a clearinghouse that will serve as a national training and technical assistance center.[162/] The PRC will develop training materials to help agencies meet the requirements of this standard, and agencies will be able to benefit from these resources at no cost in implementing their own training programs.

The Department invited public comment as to whether the limitations in the standard on cross-gender viewing, separate from the restrictions on cross-gender pat-down searches, might impose costs. In particular, we recognized that these limitations might require some facilities to undertake retrofitting, or to construct privacy panels.

Several commenters from the corrections community believed there would be some cost associated with the limitations on cross-gender viewing, but the comments differed as to the significance of such cost. One State agency claimed that any restriction on basic security practices would incur litigation costs. Others attributed different degrees of cost to construction. The American Jail Association stated that there could be significant costs in jurisdictions with a high number of female correctional officers. Other agencies expressed concern that the limitation on cross-gender inmate viewing could negatively impact the career prospects of female officers by preventing them from conducting supervisory rounds.

The Department believes that the limitation on cross-gender viewing can be implemented through practical changes to facility operations without having a negative impact on security or female officers' employment opportunities, and without adding significant costs. In the final standard, the Department includes a requirement that staff of the opposite gender announce their presence when entering an inmate housing unit. This addition may reduce the need for facilities to install privacy panels, while better protecting inmate privacy. We do not believe this will infringe on facility security, as inmates are generally aware when an officer enters the unit,

[162/] The PRC will serve as a national source for online and direct support, training, technical assistance, and research to assist adult and juvenile corrections, detention, and law enforcement professionals in combating sexual abuse in confinement. Focusing on areas such as prevention strategies, improved reporting and detection, investigation, prosecution, and victim-centered responses, the PRC will identify promising programs and practices that have been implemented around the country and demonstrate models for keeping inmates safe from sexual abuse. It will offer a full library, webinars, and other online resources on its website, and will provide direct assistance in the field through skilled and experienced training and technical assistance providers. The Department also funds the National Center for Youth in Custody, which will partner closely with the PRC to assist facilities in addressing sexual safety for youth.

and this announcement will only reveal the officer's gender.

5.6.16 *Inmates with Disabilities/LEP Inmates (Standards 115.16, .116, .216, .316)*

This standard requires agencies to make accommodations to ensure equal access to all aspects of their efforts to prevent, detect, and respond to sexual abuse and sexual harassment for inmates with disabilities and inmates who have limited English proficiency (LEP). The primary change from the version proposed in the NPRM is the clarification that equal access must be provided for all aspects of PREA-related services; the proposed standard was limited to disabled and LEP inmates' ability to report sexual abuse and sexual harassment to staff and to the conveyance to such inmates of all written information about sexual abuse policies.

In the IRIA, we assessed the cost impact of the proposed standard as being rather minimal, based on Booz Allen's Phase II study: given the high degree of baseline compliance among the 49 agencies that participated in that study, costs of compliance with this standard collectively amounted for those agencies to a mere $47,000 annually. Extrapolated nationwide, however, the proposed standard is estimated to cost about $29.3 million annually if fully adopted. This cost impact primarily affects lockups, which account for $28.5 million of the annual costs, and to a lesser extent jails, which account for the remaining $800,000. Prisons, juvenile facilities, and CCFs are expected to have negligible compliance cost impact.

The primary cost driver is the mandate to ensure that all inmates are able to communicate effectively and directly with staff, which in some cases may require costs associated with ensuring that sign-language and foreign language interpreters are available.

We do not view the changes that the Department made to this standard from the proposed to final versions as being likely to materially affect compliance costs. If an agency undertakes efforts to ensure that disabled and LEP inmates have the means to directly report sexual abuse and sexual harassment to staff, those efforts are likely to be equally effective at ensuring the availability to these inmates of other types of PREA-related services, even without expenditure of additional funds.

One State corrections agency asserted in its comment that the addition of staff to aid in its compliance with this standard could be cost prohibitive insofar as bilingual pay for staff has been eliminated due to current economic constraints.

While some agencies may incur extra costs, our general assessment is that compliance with this standard ought to have a minimal cost impact in comparison to the overall budgets of most agencies, and further that compliance with this standard is critical to ensuring that the benefits of the standards (and particularly the ability to communicate directly and effectively with staff) inure to the entire population in confinement, including those who, by virtue of disabilities or LEP, are among the most vulnerable.

BOP already largely complies with this standard. It therefore does not estimate any costs associated with this standard; however, compliance at some facilities may require additional contracts for interpreting services, which will vary by location, duration, and nature of services required. USMS may also require additional services and equipment in order to comply with this standard, and the cost of those services would vary by location and situation.

5.6.17 *Hiring and Promotion Decisions (Standard 115.17, .117, .217, .317)*

This standard prohibits agencies from hiring or promoting any employee or contractor who may have contact with inmates and who has engaged in prior sexual abuse in a confinement facility, or who has been criminally convicted of engaging in (or civilly or administratively adjudicated to have committed) forcible sexual activity in the community. This prohibition is effectuated through a requirement of a criminal background records check on all new hires (and a corresponding requirement to contact prior institutional employers for relevant information), and a similar obligation to conduct checks of incumbent employees and contractors at least once every five years.

The final standard differs from the proposed standard in four primary ways—it now encompasses contractors as well as employees; it covers only those employees and contractors who may have contact with inmates; a history of sexual harassment has been added to the list of background events for which a check is required; and it now includes a continuing, affirmative duty on the part of employees to disclose prior misconduct. The primary benefit of this standard comes from limiting the risk that employees of correctional and detention facilities may bring to the workplace a history of behavior suggestive of a propensity to engage in sexual abuse or sexual harassment.

The main cost driver for this standard is the cost of conducting criminal background records checks on affected individuals. While one state juvenile detention agency suggested in its comment that the average cost of such a check is currently $30,[163] we believe that the higher figure of $50 per check is more consistent with current practices.

The latest available data show approximately 717,000 correctional employees nationwide.[164] The percentage of corrections employees whose positions do not bring them into contact with inmates (and who therefore would not be subject to the background check requirement) is approximately 15%,[165] meaning that approximately 121,890 (*i.e.*, 20% of 85% of 717,000) incumbent employees would be subject to a background check each year.

In addition, assuming that the total annual attrition among correctional staff (and correspondingly the number of new hires who would be subject to an initial background check) is 16.2%,[166] about 98,731 new employees each year would be subject to an initial background check. Thus, approximately 220,621 employees each year would be subject to a background check, yielding a total annual cost of about $11 million.

Neither BOP nor USMS estimate any cost in connection with this standard, which is consistent with their current practice.

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[163] This agency estimated a total cost to comply with this standard as $38,940 per year based on annual checks of 1,298 employees.

[164] The number of employees is based on the *2005 Census of State and Federal Correctional Facilities*, *2006 Census of Jail Facilities*, and the Council of Juvenile Correctional Administrators' *Yearbook, 2010*. A total count was estimated to account for employees in 6 participating states that did not provide staff counts; the number of employees in 2 states (IA and VT) could not be estimated. Otherwise, federal, state and local staff counts include full-time, part-time, payroll, non-payroll, and contract staff. Community volunteers were excluded.

[165] *See* BJS, *2005 Census of State and Federal Correctional Facilities*, at Table 4. Of the occupational categories set forth in Table 4, we deem "clerical/maintenance" (12% of the total) as having no direct care responsibilities. This category includes "typists, secretaries, record clerks, janitors, cooks, and groundskeepers." We also deemed a portion of the "educational" (3%) and "other" (7%) categories to be outside the direct care cohort, leading to a conclusion that approximately 15% of all staff have direct care responsibilities.

[166] *See* MTC Institute, *supra* note 101, at 1.

5.6.18 *Upgrades to Facilities and Technologies (Standards 115.18, .118, .218, .318)*

This standard requires agencies to take into account how best to combat sexual abuse when designing or expanding facilities and when installing or updating video monitoring systems or other technology.[167] The standard has not changed from the version proposed in the NPRM.

The benefits of the standard derive from the requirement that agencies undertake a focused assessment of their technology when designing or expanding facilities, with the prevention and detection of sexual abuse specifically in mind, so that deficiencies can be identified and corrective measures incorporated into the facilities' plans.

The Department believes that most agencies already consider the effects of design, acquisition, expansion, and upgrading of technological systems on their ability to protect inmates from *all* destabilizing activities, including sexual abuse, and that they already consider how technology may enhance their abilities to protect inmates from these same activities. The additional marginal cost of such consideration for agencies that do not currently do so is expected to be negligible.

The Booz Allen Phase II Report assessed the cost of the approximately corresponding standard recommended by NPREC, standard PP-7, as accounting for 96% of all upfront costs associated with implementation of the recommended standards, largely due to the requirement for agencies to utilize video monitoring systems and other technology to eliminate sexual abuse. This requirement would engender significant investment costs associated with procuring and installing monitoring technology; there would also be costs in the out years associated with maintaining such systems.

The Department has eliminated the requirement of using video monitoring systems, replacing it with a new standard requiring consideration of sexual abuse prevention when agencies otherwise undertake capital improvements. Thus, as compared with the Commission's recommended PP-7, all upfront and ongoing costs associated with requiring video monitoring have been eliminated.[168]

Some agencies may, upon conducting the assessments required by this standard, decide to undertake additional measures with regard to installation or upgrading of video monitoring technology. Some of these measures may involve implementation costs. However, because this standard only requires assessments and does not mandate specific corrective measures, we do not attribute any such costs to this standard. Moreover, we have no way of anticipating the decisions that agencies would make in light of the findings of these assessments.

5.6.21 *Responsive Planning (Standards 115.21-.22, .121-.122, .221-.222, .321-.322)*

These two standards relate to the obligation to investigate all allegations of sexual abuse and to collect and preserve relevant evidence. Standard 21/121/221/321 directs a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions; it requires agencies to offer victims of sexual abuse access to forensic medical examinations conducted by qualified professionals and mandates efforts to provide qualified victim advocates.

[167] Standards 115.13, .113, .213, and .313 also require facilities to annually assess, and determine whether adjustments are needed to, their deployment of video monitoring systems and other technologies.

[168] BOP and USMS identify no cost associated with this standard, observing that the cost of an assessment is minimal.

Standard 22/122/222/322[169] requires agencies to complete an administrative or criminal investigation for all allegations of sexual abuse and sexual harassment, and to have a policy in place for the conduct of such investigations.

The versions of these two standards in the final rule do not differ from the proposed standards in any way that is likely to impact the associated compliance costs; for both standards, the changes are primarily of a clarifying nature, with additional provisions in 21/121/221/321 relating to specialized training, as well as the addition of sexual harassment as a covered event.

The primary cost driver behind standard 21/121/221/321 is the requirement for agencies to make available a victim advocate during the medical examination process following a sexual abuse. This requirement might result in an agency having to hire a new employee or develop and maintain a memorandum of understanding.

We estimate that this standard is likely to have a relatively minimal cost impact, because the majority of prisons and jails already provide a victim advocate through arrangements with local hospital Sexual Assault Nurse Examiner (SANE) programs. Likewise, the requirement that agencies offer all victims of sexual abuse access to forensic medical examinations without financial cost to the victim ought to have a minimal cost impact given the extent to which agencies already offer such examinations to victims.

Booz Allen's Phase II study suggests that some agencies could experience a measurable cost impact to comply with this standard. Among the 49 agencies that participated in the Phase II study, costs associated with the Commission's corresponding RP-1 standard were estimated to amount to about $1.4 million annually.

In revising this standard from the Commission's version, the Department ameliorated this cost impact by specifying that the victim advocate can either be "a qualified agency staff member," or a "qualified community-based organization staff member," or an advocate from a rape crisis center.[170] A "qualified staff member" of an agency or community-based organization is defined as an individual who has been screened for appropriateness to serve in the role and who has received education concerning sexual abuse and forensic examination issues in general. The final standard thus clarifies that an existing employee (or employee of a community-based organization) with appropriate education can fulfill this role, thus reducing the burden on the facility while ensuring support for the victim.

For facilities that elect to train and then rely on their own staff to provide victim advocate services, the Department estimates that providing specialized training to "qualified staff members" will require approximately eight hours per year of staff time at each facility where the training is conducted. Some advocacy groups commented that this estimate was too low, but our research demonstrates that it fairly accounts for the amount of additional training that will be incrementally required over training that is already provided.

Several agencies suggested in their comments that this standard would require additional costs to be incurred for training of investigators and access to community-based victim advocates. Most of these agencies indicated that it is not possible at this time to quantify the precise magnitude of such costs, which might depend on which community provider was used. One jail agency from a large metropolitan area estimated that it would cost it approximately $100,000 per

[169] This standard was numbered 23/123/223/323 in the proposed rule.

[170] The Department also eliminated the requirement of a victim advocate altogether in lockup settings.

year to employ and train a qualified agency victim advocate.

We have incorporated the assumptions and data from these comments into our analysis, on the basis of which we estimate that full nationwide compliance with this standard would cost about $11.4 million per year, including $3.3 million for prisons, $6.4 million for jails, and $1.6 million for juvenile facilities. We estimate the cost for CCFs and lockups to be negligible.

BOP anticipates that it will generally be able to find no-cost or low-cost means of complying with the standard, such as by relying on other agencies to ensure proper evidence protocols. It also plans to rely on other entities, such as rape crisis centers, to provide victim advocate services, a process which requires about 20 hours of staff time (valued at $800 total) to negotiate and settle on each memorandum of understanding. In the alternative, if BOP needs to rely on its own staff to serve as victim advocates, it estimates that it will cost it $37,120 per year to implement standard 115.21 at each of its 116 facilities.

USMS assigns no cost to 115.121; because the Marshals do not hold primary jurisdiction for the investigation of prisoners in custody, they do not foresee needing to provide training to their personnel in evidence protocol. USMS already pays for prisoner medical examinations.

With regard to standard 115.22/122/222/322, we expect the total cost of full nationwide compliance with the standard to be minimal—on the order of $900,000 annually for all prisons combined and an additional $200,000 annually for all CCFs combined, or $1.1 million per year total.

The standard simply mandates that each agency complete an administrative or criminal investigation for all allegations of sexual abuse and sexual harassment, and that it have in place policies to ensure that allegations of sexual abuse or sexual harassment are investigated by an agency with the legal authority to conduct criminal investigations.[171/] The policy must be published on the agency's website, and, if a separate entity is responsible for criminal investigations, the website must delineate the responsibilities of the agency and the investigating entity. Any costs associated with this standard are likely to be related to developing such a policy; moreover, some agencies may incur costs due to the increased number of investigations that could result from designating an investigative entity.

Neither BOP nor USMS is expected to incur any costs as a result of this standard, which is consistent with their existing policy.

5.6.31 *Training (Standards 115.31-.35, .131-.135, .231-.235, .331-.335)*

The success of any zero-tolerance regime depends to a large extent on a robust and effective training program that reaches all stakeholders. Such a training program serves as a critical tool for promoting within the agency an institutional culture of zero tolerance for sexual abuse. The standards in the final rule likewise impose multifaceted training requirements as a core component of preventing, detecting, and responding to sexual abuse. They require that agencies train all employees who may have contact with inmates (including non-sworn officers and administrative assistants), as well as all contractors and volunteers. They must also provide education to inmates and offenders, and ensure that specialized training is provided to investigators and the medical and mental health care staff.

Although many correctional agencies already include various aspects of sexual abuse prevention

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[171/] We lack firm data on the extent to which agencies may already have such policies in place, and no commenter provided us with such data.

within their existing training curricula, we expect that most agencies will have to do at least some work, and some will have to do significant work, to conform their training programs to the requirements of standards 115.31-.35. For this reason, the training standards, as a group, are likely to be among the most expensive, amounting to $81.8 million per year, or approximately 17.1% of the total cost of full nationwide compliance with all of the standards.

5.6.31.1 Analysis and Methodology

5.6.31.1.1 In general

Training costs include three components: (i) the cost of designing and developing the training curriculum and materials; (ii) the cost of presenting or delivering the training materials; and (iii) the work effort required to attend training sessions.

With regard to the first category, we expect the cost of curriculum development to be negligible for all types of training required by the standards. Part of the PRC's mandate is to coordinate and develop most PREA training materials and to make them available to confinement facilities nationwide. We expect agencies will use these established training materials rather than seek to develop their own, and we have therefore assigned zero to the first category of training costs. We acknowledge, however, that some facilities may choose to tailor the general training materials provided by the PRC to their local circumstances and practices.

With regard to the second category, we assume that each site will incur some cost for training delivery. (The PRC anticipates delivering training programs directly only to a small set of demonstration sites.) However, this cost will in most cases be small: the PRC plans to develop Internet broadband or closed-circuit television (CCTV) video streams, or, alternatively, static video training modules available on DVDs or through download from its national training and technical assistance website.

To the extent training delivery requires a live facilitator, we assume that such a function will generally be the responsibility of the agency PC or the facility PCM (such that the work effort associated with such delivery is already subsumed within the cost of standard 115.11). However, in some cases (especially for more specialized training) it may be necessary for agencies to hire instructors from outside the facility to deliver training programs.

Moreover, we assume that the training materials will be available in a downloadable, electronic format, leaving the costs to print and distribute materials (pamphlets, posters, tri- folds, handouts, etc.) as the responsibility of the facility.

The great majority of the costs associated with training are therefore in the third category, which generally comprises the number of hours of required training times the number of trainees times the cost per hour of labor. From this product we have subtracted the costs of any training that agencies are already providing that essentially complies with the requirements of standards 115.31-.35. We include only the cost of additional training efforts agencies will undertake to come into compliance with the standards, including the value of any training that agencies forgo in order to enable PREA training.

To estimate costs for the training standards, we first extrapolated nationwide figures from the results of Booz Allen's Phase II study and then modified those data to reflect the assumptions of our methodology.

In the Phase II study, several sites reported a cost attributed to pre-existing PREA training or to significant sexual abuse training that is close to the objective of the PREA standards. With a

few exceptions, we do not have sufficiently specific data on the content of the current training practices of these sites to assume that they are fully compliant with the training standards. Therefore, we assume for this analysis that the full range of PREA training is not being delivered and that current practices will change as a result of the final rule. We assume such sites will incur additional PREA-related training costs equal to 40% of their current expenditures. This approach attempts to reflect a conservative marginal cost of PREA training above and beyond what agencies are currently providing.

Moreover, we have removed from the Phase II data "outlier" costs that were far above the average range of responses and that suggested that the site had misinterpreted the training standards. We have also adjusted the Booz Allen data to reflect a number of specific assumptions for each of the five training standards, as discussed in the following sections.

5.6.31.1.2 Standard 115.31

Standard 115.31 requires training on ten enumerated topics for all employees[172] who may have contact with inmates,[173] with such training tailored to the gender of the inmates at the employee's facility. The standard requires employee training on four different occasions:

- all current employees who have not received such training previously must receive initial PREA training within one year of the effective date of the standards;
- all new hires must receive PREA training;
- an employee must receive additional training upon reassignment from a facility that houses only male inmates to one that houses only female inmates, or vice versa; and
- all employees must receive refresher training every two years to ensure that they know the agency's current sexual abuse and sexual harassment policies.

Based on the data collected by Booz Allen and submitted by the commenters, a high percentage of prisons and a large majority of juvenile facilities appear to be largely compliant with this standard already, having implemented training in PREA practices, policies, and procedures even before promulgation of the final rule. Jails, CCFs, and lockups, on the other hand, appear on average to require more work to become fully compliant.

In calculating the resources associated with the initial PREA training for current employees, we assume the following:

- The training will require 4-8 hours per staff member (based on responses to Booz Allen's Phase II study).
- The training will take place in year 1.
- Employee time to receive training is assumed to be during normal work hours, with no overtime pay.
- In extrapolating from the Phase II study, we assume 80% of materials and delivery costs reported by the participants are labor hours required to develop materials (which we have excluded from the total), and the other 20% is the cost of printing training materials (which we have included).

With respect to the initial PREA training for new hires, we assume the following:

[172] For lockups, standard 115.131 also requires training for volunteers.

[173] For lockups, standard 115.131 articulates the training goal in broader terms before listing seven subjects for training. The juvenile standard, 115.331, enumerates eleven training topics, several of which are worded differently than the topics for adults.

- Using an annual attrition rate for corrections staff of 16.2%,[174] the new hire training cost for each year is assumed to be 16.2% of the cost of the initial training for current employees.

With respect to refresher training for employees, as well as for employees transferred to facilities with a population of a different gender, we assume the following:

- Refresher training is every two years and takes one hour for delivery. (Costs were adjusted from Phase II sites that reported refresher training for longer durations or higher frequencies.)
- Standard 115.131 does not require refresher training for lockups; therefore all reported costs for such training have been removed.
- We assume that the supplemental training given to employees transferred between facilities of different gender populations will essentially replace the refresher training for those employees during the biennial cycle in question and will therefore not increase training costs for the affected employees.
- We assume that employees are allocated a maximum amount of training hours per year (*e.g.*, 40). Therefore, the cost estimates in this analysis monetize the value of the PREA training each staff person will receive either in terms of the PREA training itself (if added to the curriculum without replacing existing training) or the training that the employee forgoes in the event that PREA training displaces existing training. This assumes that all current training has a value equal to the level of effort (wages and benefits) contributed.
- In the intervening years in which an employee does not receive refresher training, the standard requires the agency to provide refresher information (*e.g.*, in the form of a pamphlet) on current sexual abuse and sexual harassment policies. We assume that the cost to deliver this refresher information is negligible.

5.6.31.1.3 Standard 115.32

Standard 115.32 requires agencies to ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse and sexual harassment policies and procedures.[175] The standard does not specify any specific level or type of training but allows agencies to tailor training to the nature of the services provided and the level of contact with inmates. At the very least, all inmates and contractors who have inmate contact are to be notified of the agency's zero-tolerance policy and informed how to report sexual abuse incidents. There is no requirement for refresher training.

In adjusting the Booz Allen Phase II data in connection with a nationwide extrapolation of the estimated compliance costs, we have made the following assumptions:

- There are no labor costs associated with delivery of training to contractors or volunteers, on the assumptions that the training will be delivered either (i) simultaneously with training delivered to employees, or (ii) through electronic means (*e.g.,* video or Internet delivery), or (iii) by the PC or PCM as part of his or her regular duties (the costs of which are already included under standard 115.11).

[174] *See* MTC Institute, *supra* note 101, at 1.

[175] For lockups, standard 115.132 requires that agencies inform contractors and any inmates who work in the lockup of the agency's zero-tolerance policy.

- There are no costs associated with development of materials or curricula, as agencies will rely on the PRC.
- There are no costs associated with the time spent by volunteers attending training, since by definition volunteers are not compensated for their time.
- There are no costs associated with providing training for employees working at contract confinement facilities, since it is assumed that the entities operating those facilities under contract with corrections agencies will provide training to their own employees pursuant to their independent obligations under the standards (*i.e.,* the costs would already be included in the costs of 115.31).

Thus, the costs for this standard would be limited to (i) the costs of the time spent in training by contractors who work directly in the agency's facility (*e.g.,* a contract food service worker or medical provider), as opposed to those who work at contract facilities; and (ii) the costs of printing and distributing materials to volunteers and contractors. These are primarily one-time costs, since there is no obligation to provide refresher training and the main costs will relate to providing training to incumbent contract employees and volunteers.

Because there is regular attrition and turnover among both volunteers and contractors, a recurring cost arises due to the need to provide training to new "hires" over time among contractors and volunteers. To calculate this recurring cost, we multiply the one-time cost by 16.2%, on the assumption that contractors and volunteers experience the same attrition rate as employees.[176/]

[176/] We assume that the requirement to be "notified of the agency's zero-tolerance policy" will not result in a cost impact.

5.6.31.1.4 Standard 115.33

Standard 115.33/.233/.333 requires agencies to educate inmates and residents about their zero-tolerance policies (including the inmates' right to be free of sexual abuse, sexual harassment, and retaliation) and how to report incidents or suspicions of sexual abuse or sexual harassment. Preliminary information must be provided at intake, with comprehensive education to follow (either in person or via video) within 30 days of intake (10 days at juvenile facilities).[177/] Initial education must be provided to current inmates within one year of the effective date of the standards, with additional training provided upon transfer to a different facility, if that facility's policies are different.[178/] Agencies must provide this inmate education in formats accessible to all inmates, including those who are disabled or LEP, and shall also ensure that key information is continuously and readily available or visible to inmates through posters, handbooks, or other written formats.[179/]

We expect the costs of standards 115.33, 233, and 333 to be negligible. First, we expect most agencies will rely on the PRC to develop the relevant inmate education materials, including any videos, posters, handouts, and the like. There will likely be a small cost at some facilities associated with printing these materials and other production costs, and some agencies may choose to supplement the PRC materials with their own locally-produced materials (or, alternatively, tailor the PRC materials to local conditions).

[177/] There is no requirement of post-intake comprehensive education at CCFs.

[178/] CCFs must provide refresher information whenever a resident is transferred, regardless of whether the policies are different at the new facility.

[179/] There is no corresponding requirement for lockups. However, standard 115.132(a) requires lockups to notify all detainees of their zero-tolerance policy during the intake process.

For example, many agencies will need to revise or update their inmate handbooks to include education about PREA. However, these are likely to be one-time costs of small magnitude; after the education materials are initially established, we expect that agencies will simply work any additional revisions, updates, or reprinting into their ongoing overall process of inmate education.

Moreover, since inmate training is mostly delivered through handbooks, pamphlets, or video (and rarely, if ever, direct classroom settings), it is assumed that no additional time will be required to supervise intake training sessions; we therefore attribute no cost to delivery labor hours.

5.6.31.1.5 Standards 115.34/35

Standard 115.34/.134/.234/.334 directs agencies to ensure that personnel involved in conducting sexual abuse investigations receive specialized training in how to conduct such investigations in confinement settings, including techniques for interviewing sexual abuse victims, evidence collection, and the criteria and evidence required to substantiate a case. This standard has not changed from the version proposed in the NPRM.

Correspondingly, standard 115.35/.235/.335 directs agencies to ensure that all full-time and part-time medical and mental health care practitioners who work regularly in their facilities receive specialized training in prison sexual abuse detection, assessment, reporting, response, and evidence preservation, as well as in the conduct of forensic medical examinations if appropriate.

Compliance costs for these standards are attributable to the time required for investigators and medical and mental health care practitioners to receive specialized training. Estimates of this time are derived from the Booz Allen Phase II study. Many of the participants in that study reported a zero cost impact, but some reported a cost for outside technical training that was not available in-house due to the specificity of the standards(although again we assume the PRC will develop the majority of training modules and materials). Most of the costs are one-time, and relate to the need to train all investigators and medical and mental health care practitioners in year one. There is also an ongoing cost due to attrition (we again assume an annual attrition rate of 16.2%); there is no cost attributed to refresher training, as that is not required in the standards.

5.6.31.2 Cost Conclusions

Following these adjustments to the Booz Allen data, we derived an average cost by standard and by facility type for those facilities that need to incur costs to come into compliance with the standard, as depicted in Tables 11.1 (one time) and 11.2 (recurring), by calculating the average of reported costs and excluding sites that did not report any cost.

Table 11.1: Average One-Time Training Costs Per Unit for Facilities Expected to Incur Costs, by Facility Type and By Standard[180/]

Standard	Prisons	Jails	Lockups	CCF	Juvenile
115.31	$ 0	$ 33,177	$ 7,454	$ 18,744	$ 95,000
115.32	$ 0	$ 7,190	$ 800	$ 528	$ 21,516
115.33	$ 0	$ 0	$ 0	$ 0	$ 0
115.34	$ 19,418	$ 10,946	$ 0	$ 8,624	$ 30,406
115.35	$ 59,700	$ 7,416	$ 0	$ 0	$ 30,706
Total	$ 79,118	$ 58,729	$ 8,254	$ 27,896	$ 177,628

Next, we attributed these average costs only to those sites anticipated to incur costs. Based on the Phase II study, we estimated the percentage of facilities that would incur costs to comply with the final standards. These percentages are depicted in Table 11.3.

[180/] The Unit is per facility for prisons, CCFs, and juvenile centers, per jurisdiction for jails, and per agency for lockups.

Table 11.2: Average Recurring Training Costs Per Unit for Facilities Expected to Incur Costs, by Facility Type and By Standard[181/]

Standard	Prisons	Jails	Lockups	CCF	Juvenile
115.31	$ 200	$ 7,855	$ 1,208	$ 13,308	$ 27,390
115.32	$ 0	$ 1,329	$ 130	$ 85	$ 3,550
115.33	$ 0	$ 0	$ 0	$ 0	$ 0
115.34	$ 3,146	$ 1,773	$ 0	$ 1,397	$ 4,926
115.35	$ 9,671	$ 1,214	$ 0	$ 0	$ 4,974
Total	$ 13,017	$ 12,171	$ 1,338	$ 14,790	$ 40,840

Table 11.3: Estimated Percentage of Facilities Impacted by Training Standards, by Facility Type and By Standard

Standard	Type	Prisons	Jails	Lockup	CCF	Juv.
115.31	One Time	0.0%	31.3%	100.0%	66.7%	10.0%
	Recurring	7.7%	56.3%	100.0%	66.7%	10.0%
115.32	One Time	0.0%	50.0%	50.0%	16.7%	30.0%
	Recurring	0.0%	43.8%	50.0%	16.7%	30.0%
115.34	One Time	30.8%	56.3%	0.0%	50.0%	40.0%
	Recurring	30.8%	56.3%	0.0%	50.0%	40.0%
115.35	One Time	30.8%	56.3%	0.0%	0.0%	40.0%
	Recurring	30.8%	56.3%	0.0%	0.0%	40.0%

The percentages in Table 11.3 are then multiplied by the total number of facilities of each type and then by the average training cost per facility expected to incur costs (from Tables 11.1 and 11.2) to extrapolate a nationwide estimate of one-time and recurring training costs for each standard. These are shown in Table 11.4.

Finally, we have projected these costs over the 15-year cost horizon, using our customary 7% discount rate to arrive at present value and annualized estimates over that time period. For this purpose, we assume that the recurring costs will remain constant in the out years.[182/] Because the bulk of the cost relates to the monetized time that staff spend in PREA training, and because we expect the scope of that training to remain stable over time, we do not incorporate a learning curve.[183/] Nor do we believe an adjustment is appropriate to account for sensitivity to prevalence; we expect agencies to conduct the requisite training regardless of the prevalence of sexual abuse in their specific facilities.

Based on the foregoing methodology, and as depicted in Tables 11.5 and 11.6, we project the annualized cost of full nationwide compliance with the training standards collectively as approximately $81.8 million annually, or just over $1 billion over the full 15-year cost horizon.

[181/] The row for standard 115.31 includes recurring costs related to refresher training as well as those related to initial training of annual new hires. Refresher training alone is estimated to cost $200 per unit for prisons, $4,035 for jails, $12,000 for juvenile centers, $10,272 for CCFs, and $1,208 for lockups.

As noted above, standard 115.31 requires refresher training to be provided every two years. Other alternatives that the Department considered were requirements for refresher training annually or every three years. If the requirement were annual, the recurring unit cost for refresher training for standard 115.31 would increase to $400 for prisons, $8,069 for jails, $24,000 for juvenile centers, and $20,573 for CCFs (no change for lockups). If the requirement were once every three years, the corresponding figures would decrease to $133, $2,690, $8,000, and $6,845, respectively. We believe that refresher training every two years most cost-effectively advances the goal of fostering a culture of zero tolerance for sexual abuse, relative to more or less frequent alternatives.

[182/] Based on the requirement that refresher training be provided once every two years, we estimate the annualized cost of that requirement, on a nationwide basis, as approximately $20.4 million per year. As noted above, we considered and rejected alternative formulations of the rule which would have required refresher training annually (at a total annualized cost of $33.5 million) and every three years ($16 million).

[183/] Potential efficiencies in the delivery of training through video streaming or other technology have already been incorporated into our cost estimates.

Table 11.4: Estimated One-Time and Recurring Costs of Full Compliance with Training Standards, Nationwide, by Facility Type and By Standard, in Thousands of Dollars[184/]

	Pris.	Jails	Lockup	CCF	Juv.	Total
Facilities	1190	2859	6082	529	2458	13118
31 1-time	$ 0	$ 29,642	$ 45,334	$ 6,610	$ 23,351	$ 104,937
31 Recur.	$ 18	$ 12,632	$ 7,344	$ 4,693	$ 6,732	$ 31,419
32 1-time	$ 0	$ 10,278	$ 2,433	$ 47	$ 15,866	$ 28,624
32 Recur.	$ 0	$ 1,662	$ 394	$ 7	$ 2,618	$ 4,681
34 1-time	$ 7,110	$ 17,603	$ 0	$ 2,281	$ 29,895	$ 56,889
34 Recur.	$ 1,152	$ 2,851	$ 0	$ 370	$ 4,843	$ 9,216
35 1-time	$ 21,859	$ 11,926	$ 0	$ 0	$ 30,190	$ 63,975
35 Recur.	$ 3,541	$ 1,952	$ 0	$ 0	$ 4,890	$ 10,383
Total	$ 33,681	$ 88,547	$ 55,505	$ 14,008	$ 118,386	$ 310,124

Table 11.5: Total Estimated Cost of Full Nationwide Compliance with Training Standards (31-35), by Facility Type and by Year, in Thousands of Dollars[185/]

Year	Prison	Jails	Lock.	CCF	Juv	Total
1	28969	69449	47767	8938	99302	254425
2-15	4711	19098	7738	5070	19083	55702
Total	99639	355924	163841	84992	385561	1089957
NPV	69984	238851	115121	54533	266620	745111
Ann.	7684	26225	12640	5987	29273	81809

Table 11.6: Total Estimated Cost of Full Nationwide Compliance with Training Standards (31-35), by Standard and by Year, in Thousands of Dollars

Year	31	32	33	34	35	Total
1	104937	28623	0	56889	63976	254425
2-15	31421	4682	0	9216	10383	55702
Total	576245	98849	0	195129	219734	1089957
NPV	384248	69391	0	137106	154366	745111
Ann.	42188	7619	0	15054	16948	81809

5.6.31.3 Cost Estimates for DOJ Facilities

BOP does not anticipate incurring any additional costs for employee training (115.31), volunteer and contractor training (115.32), or inmate education (115.33). BOP currently gives extensive training on sexual abuse prevention to all its employees, volunteers, and contract staff. BOP intends to comply with these standards by incorporating materials and lesson plans from the PRC into existing training programs for new and incumbent staff. With regard to inmate education, BOP will comply by using existing inmate handbooks, training sessions, and unit team meetings.

With regard to specialized training for investigators (115.34), BOP foresees a one-time expense of $42,440, consisting of $5,000 for an outside instructor and eight hours of staff time (valued at $40/hour) to attend training for one staff member from each of BOP's 117 institutions. Similarly, with respect to specialized training for medical personnel (115.35), BOP foresees a one-time expenditure of $62,000, consisting of $32,000 to develop the training program and $30,000 for three hours of staff time to attend training for approximately 250 staff from across the BOP system.

[184/] For source and calculation method of number of facilities per type, *see supra* note 108. For each data point, the cost (in thousands) is calculated by multiplying the number of facilities by the corresponding percentage from Table 11.3 by the corresponding average cost per facility, from Tables 11.1 and 11.2. No cost is listed for Standard 115.33 because the cost of inmate education is assumed to be negligible.

[185/] Costs in year 1 include both one-time and recurring costs. Costs in years 2-15 are expected to remain constant. NPV and annualization are calculated using a 7% discount rate.

We assume there will also be an ongoing expense to provide training to new staff. Taking these two standards together, BOP anticipates a total training expense over 15 years of approximately $256,000, which annualizes (at a 7% rate) to $20,442 per year.

For the USMS, complying with standard 115.131 would entail two hours of online PREA training for about 5,000 operational personnel, including guards and detention enforcement officers. Valued at $40 per hour, this amounts to an initial cost of $400,000, with a recurring expense in the out years to account for training of new staff. USMS does not envision any costs in developing or delivering the training, as it expects to use online training modules developed by the PRC.

To comply with standard 115.132, USMS plans to display PREA-related posters in areas that are viewed by attorneys and detainees. USMS envisions a one-time startup cost of $5,000, plus an additional $3000 each year for replacement and update of the posters.

Finally, with respect to standard 115.134, USMS has eight detention management inspectors who will require specialized training in investigative methods. Each will require approximately eight hours of staff time to attend the training, for a total one-time cost of $2,560, recurring as needed to account for turnover.

Taking the training standards together, USMS anticipates a total training expense over 15 years of $1,366,000, which annualizes (at a 7% rate) to $103,343 per year.

5.6.31.4 Response to Public Comments on the Costs of the Training Standards

A State juvenile detention agency asserted that the training standards would impose the majority of the costs associated with its compliance with the PREA standards. This agency estimated that training the staff at all of the juvenile detention centers in the State would cost approximately $119,200 annually, calculated using an average hourly wage of $20, times four hours of training per year for each of 1,298 employees. This estimate is generally consistent with the cost estimation approach we have adopted above, except that it does not take into account the revision of the proposed rule to require employee refresher training every two years rather than annually.

The same agency offered an estimate of $15,360 to comply with standard 115.334, which requires specialized training for medical and mental health professionals. This estimate assumes that wages for medical and mental health staff average $40/hr, and that eight hours of specialized training would be needed for each such person. Again, these estimates are consistent with the cost estimation approach set forth above.

Several commenters suggested that every hour of training will require overtime compensation at time-and-a-half rates, on the ground that agencies are already providing all the training that they are capable of providing within a forty-hour workweek and that the only way they could add still more training would be to keep workers overtime so that they can attend the PREA training. These commenters thus claimed that every hour of instruction would cost an agency roughly $2,550.

For reasons already stated, we disagree. We assume that agencies will not typically use overtime pay to conduct PREA training but will make every effort to hold such training during the regular work week. In other words, we accept the commenters' proposition that many corrections employees are allocated a maximum amount of training hours per year (*e.g.*, 40), and our analysis monetizes the value of the PREA training each staff person will receive either in terms of the cost

of the PREA training itself (if added to the curriculum without replacing existing training) or as the value of the training that the employee forgoes in the event that PREA training displaces existing training.

The estimate provided by these commenters also does not take into account the baseline level of compliance (*i.e.*, we are estimating *marginal* cost, not total cost), nor does it include the fact that refresher staff training now only needs to be provided every two years.

In the NPRM, we asked whether the requirement in §§ 115.31, 115.231, and 115.331 that agencies train staff on how to communicate effectively and professionally with lesbian, gay, bisexual, transgender, or intersex (LGBTI) residents would lead to additional costs for confinement facilities, over and above the costs of other training requirements in the standards.

Quite a few agencies and one advocacy group responded that the costs of complying with the LGBTI sensitivity and communication training program would be negligible, assuming that curriculum materials and modules would come from external sources (such as the PRC). One State corrections agency commented that it currently spends $27,000 per year on sexual abuse training and that it did not believe any of the training requirements in the standards, including the LGBTI requirement, would raise those costs. Another agency averred that its staff already receives extensive training upon hiring and receives a mandatory annual training. The agency further suggested that any additional training requirements could be incorporated into the existing training structure, and any costs relating to curriculum modification would be minimal.

On the other hand, one agency said that the requirement of LGBTI training would require retooling of both pre-service and in-service training curriculums as well as potential expansion of backgrounding protocols. Several agencies expressed the view that the LGBTI training requirement would lead to additional costs, but they did not provide a detailed explanation of why this would be the case or what the magnitude of such costs would be. One agency postulated that for every additional training requirement, agencies must train a trainer and pay other employees to cover those who are in training.

However, as noted above we assume most of the training required by the standards will not require a live facilitator. The cost of paying employees to cover those who are in training is captured by our monetization of time spent in training.

A State juvenile justice agency expressed concerns over the costs of providing specialized training for communicating with LGBTI residents, which it estimated to be over $155,000 for its agency. The agency recommended that the standard be modified to require training for new hires during initial orientation or within a period of time from date of hire.

This recommendation is broadly consistent with the text of the standard, which as noted also includes training for incumbent employees and facility transferees, as well as recurring refresher training.

Another agency suggested that because the standard is ambiguous on how to measure effective communication, plaintiffs will argue that any training is inadequate, increasing the cost of defending facilities in litigation.

We believe that compliance with the standard is capable of being verified and audited. In any event, the possibility of litigation costs arising from a challenge to an agency's allegedly non-compliant training programs is not an appropriate

element to consider in estimating the costs of complying with the standard.

5.6.41 *Screening for Risk of Victimization and Abusiveness, and Protective Custody (Standards 115.41-.43, .141, .241-.242, .341-.342)*

Standard 115.41/141/241/341 imposes a requirement that inmates be assessed, at intake and at certain other specified times, for their risk of being sexually abused by, or sexually abusive towards, other inmates; the standard also describes how the screening should be conducted and what factors it should consider.

Standard 115.42/242/342 correspondingly describes the uses to which corrections agencies may put the information obtained in the course of such assessments, such as in making decisions on placement, classification, programming, and housing for inmates. Standard 115.43 imposes limits on the use of involuntary segregated housing or other protective custody to separate inmates at high risk for sexual victimization from likely abusers.

The final rule includes a number of changes to each of these standards. For 41/141/241/341, we have simplified the required intake process by combining the initial intake screening with the subsequent classification screening and specifying that this initial screening take place within 72 hours of arrival at a facility, with a reassessment no later than 30 days later; we have added a requirement for additional screening when transferred to another facility; we have added a screening requirement for lockups; and we have added some clarifying language.

For 42/242/342, the primary changes relate to LGBTI inmates—*e.g.,* the opportunity to place such inmates in dedicated LGBTI-specific units is restricted. We have also imposed restrictions on the use of isolation as a means to combat sexual abuse in juvenile facilities. For 43, we have clarified the circumstances under which protective custody may be used, have required a review of such assignments every 30 days, and have required documentation of any opportunities limited as a result of protective custody.

We have assessed the compliance costs of these three standards taken as a unit, since the standards overlap and interact in a way that would make disaggregation impractical. The principal cost drivers for these standards relate to (i) one-time modifications of existing screening tools, or one-time design and implementation of new tools or procedures where they do not already exist, and (ii) recurring personnel costs associated with the level of effort required to conduct the enhanced screening required by the standard.[186/]

We assume that agencies currently demonstrate varying degrees of baseline compliance with these standards, such that some will require modest modifications with little or no costs and others will require significant modifications, depending on the state of their classification process and the gap between that process and what is required in these standards.

Based on the Booz Allen Phase II study, we assume that most agencies already utilize a formal screening process, but that many will need to update their screening instruments to include PREA-related questions because they fall short of meeting all the criteria in the standard. However, some agencies that do not currently conduct any form of screening for risk of victimization and abusiveness will require greater upfront costs to

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[186/] One of the juvenile agencies that participated in Booz Allen's Phase II cost analysis, the Idaho Department of Juvenile Corrections, also reported a significant cost for the corresponding version of this standard recommended by NPREC (standard AP-1), relating to construction needed for additional beds for youth offenders with a history of sexual offending. We view costs of this type as not being relevant to this standard or appropriate for inclusion as a cost of compliance therewith because they do not pertain to the development or implementation of a screening instrument. We have therefore excluded these constructions costs in extrapolating from the Phase II cost analysis to a nationwide total estimate.

establish appropriate screening tools and procedures.

In both cases, we expect that agencies will be able to substantially reduce the impact of these one-time costs by relying on tools and materials made available by the PREA Resource Center. For this reason, in extrapolating nationwide estimates from the one-time costs reported by the agencies that participated in Booz Allen's Phase II study, we have reduced the extrapolated total by half to reflect a very conservative estimate of the level of assistance agencies can expect to receive from the PRC in modifying or designing their screening tools.

With regard to the increased level of effort (LOE) required to screen all offenders (*e.g.,* additional personnel to manage and execute screening),[187/] a commenter suggested that this would be an appropriate standard for which to incorporate a learning curve to reflect the diminishing LOE over time as agencies use technology or other innovations to improve the efficiency of their screening processes.

To the extent the costs of compliance with this standard are recurring personnel costs related to the LOE required to manage a PREA screening process, we consider it reasonable to assume that the LOE will gradually decrease over time. However, because we do not have data that would allow us to make specific predictions about the extent of efficiency gains over time in the screening context, we believe that the more conservative approach would be not to include a learning curve for this standard.

We estimate the costs of these standards by extrapolating from the results of the Booz Allen Phase II study to derive nationwide estimates. As shown in Table 12.1, we conclude that full nationwide compliance with these standards will cost approximately $60.6 million annually across all facility types. This amounts to about one-eighth of the total costs of full nationwide compliance with all of the standards combined.

Table 12.1: Estimated Cost of Full Nationwide Compliance with Standards 115.41/42/43 (Screening), in Thousands of Dollars

Year	Prison	Jails	Lock.	CCF	Juv.	Total
2012	8,465	42,463	15,208	533	899	67,568
2013 to 2026	7,453	36,442	15,208	0	663	59,765
Total	112,803	552,651	228,113	533	10,172	904,274
NPV	68,824	337,540	138,509	498	6,254	551,625
Ann.	7,556	37,060	15,207	55	687	60,565

BOP estimates an initial cost of $4800 to develop and disseminate a new screening instrument pursuant to standard 115.41, which it estimates will take approximately 120 hours of staff time; at a 7% discount rate, this annualizes to $493 over a fifteen-year period. Standard 115.42 would not impose additional costs on BOP, as it already has procedures in place to use the information it obtains in the course of its screening assessments to make decisions on placement, classification, programming, and housing for inmates, and the new PREA screening instrument, once developed, will not require adjustments to those procedures.

Compliance with standard 115.141 will not require USMS to expend additional funds, beyond the minimal expense required to update its policies.

[187/] We do not envision ongoing costs of this nature for CCFs.

5.6.51 *Inmate Reporting, Inmate Access to Outside Confidential Support Services, Third-Party Reporting (Standards 115.51, .53, .54, .151, .154, .251, .253, .254, .351, .353, .354)*

Standards 115.51, .53, and .54 collectively relate to the reporting of sexual abuse (whether by inmates or by third parties) and to the provision of confidential support services for inmate victims of sexual abuse.

We estimate that standards 115.51 and 115.54 will have negligible to zero cost. Standard 115.51 directs agencies to provide multiple ways for inmates to privately report sexual abuse and sexual harassment, retaliation, and staff neglect or violation of duty; it also requires agencies to provide at least one way for inmates to report abuse or harassment to a public or private entity outside of the agency that is able to receive and forward reports of sexual abuse to agency officials while allowing the inmate to remain anonymous upon request. The standard also requires agencies to provide a method for staff to privately report sexual abuse and harassment.

Correspondingly, standard 115.54 calls upon agencies to establish a method to receive third-party reports of sexual abuse and harassment and to distribute information on how to report abuse or harassment on behalf of an inmate.

None of the agencies that participated in Booz Allen's Phase II study reported a meaningful cost in connection with either of these two standards, and none of the comments we received suggested that any costs would be incurred. Our expectation is that agencies will be able to comply with these two standards without cost by modifying internal practices and procedures and leveraging existing technologies to facilitate reporting both within and without the institution.

Standard 115.53, on the other hand, may have a cost associated with compliance, although we expect that cost to be minimal. This standard (which does not apply to lockups) calls upon agencies to provide inmates with access to outside victim advocates (such as national victim advocacy or rape crisis organizations) who can provide, as confidentially as possible, emotional support services related to sexual abuse. The primary cost associated with this standard relates to the obligation to maintain or attempt to enter into memoranda of understanding with community service providers.

The Department has not materially changed this standard from that recommended by the Commission, aside from combining the Commission's RE-3 and RP-2 into one standard. Therefore, the Phase II data corresponding to those two recommended standards can be used without modification to extrapolate nationwide estimates of the costs of full compliance with 115.53. When discounted at 7% and annualized, that extrapolation yields a total annual cost of $5.6 million for prisons, $522,000 for jails, $663,000 for CCFs, and $25,000 for juvenile facilities, for a total across all facilities of $6.8 million. The total cost over the full 15-year time horizon is just under $100 million.

With respect to DOJ facilities, BOP expects no costs to comply with standards 115.51 and 115.54, which are consistent with existing BOP policy concerning mechanisms for reporting sexual abuse by inmates and by third parties. BOP intends to use other DOJ components or other no-cost options to comply with the requirement concerning outside reporting mechanisms. For standard 115.53, BOP will attempt to enter into no-cost MOUs to comply with the standard. However, it estimates that it could take up to 20 hours to negotiate and finalize an MOU at each of its facilities. If such resources are necessary, it could cost up to $92,800 as a one-time expense to establish the relevant MOUs; at a 7% discount

rate, this annualizes to $9,522 over a fifteen-year period.

USMS does not anticipate any costs to comply with these standards.

5.6.52 *Exhaustion of Administrative Remedies (Standards 115.52, .252, .352)*

Standard 115.52 relates to exhaustion of administrative remedies, and the final standard is significantly different both from the version proposed in the NPRM and from the version recommended by the NPREC.

In broad terms, the standard requires the loosening of administrative exhaustion requirements insofar as they apply to grievances alleging sexual abuse. For example, the standard requires that agencies (1) allow inmates to file such grievances without a time limit, (2) not mandate efforts at informal resolution prior to the filing of a grievance alleging sexual abuse, (3) provide that inmates not be required to submit their grievances to staff members who are the subject of the complaint, and (4) allow grievances to be filed on behalf of inmates by third parties, subject to the facility's right to demand that the victim inmate adopt and personally pursue the administrative remedy request as a condition of its processing.

We believe the cost of complying with this standard will be negligible. One agency that participated in Booz Allen's Phase II study did project an increased level of effort to comply with the NPREC's recommended version of the standard, which it understood to give agencies at most 90 days to investigate a report of sexual abuse and render a final agency decision. The agency construed this provision as requiring the hiring of an additional grievance officer (at a cost of $105,000 per year) to help meet a shortened deadline. However, the final standard at least ameliorates and potentially eliminates any cost impact of this sort, for it specifies that the 90 days excludes any time consumed by inmates during the course of an administrative appeal and further allows an agency to claim an extension of time to respond, up to 70 days, if the normal 90-day time period for response is insufficient to make an appropriate decision.

Some agencies that participated in the Phase II study attributed costs to the provision in the Commission's recommended version of the standard that would have allowed inmates to bypass the grievance process altogether and go directly to federal court if they allege that they are at a substantial risk of imminent sexual abuse. We have eliminated such costs from our analysis because the final rule has modified the provision to still require an administrative remedy process, albeit an abbreviated one, if an inmate alleges such a risk. Because most agencies already permit an abbreviated exhaustion process when an inmate alleges a substantial risk of imminent harm, this aspect of our final standard does not add costs.

A few other agencies that participated in the Phase II study cited costs to comply with this standard which they attributed to potential conflicts between the Commission's recommended version of the standard and the requirements of the Prison Litigation Reform Act (PLRA). Even assuming such conflicts could be demonstrated (and, for the reasons elaborated in the Notice of Final Rule, they cannot be), they would be irrelevant to the cost analysis. The question of whether a provision of the final rule violates a statute has no bearing on whether that provision imposes costs.

The great majority of agencies who commented on this standard averred that the costs of complying would be negligible or zero.

A few agencies, however, identified categories of costs that they believed they would incur to

comply with this standard. Several agencies, for example, speculated that they would need to add staff to manage and process the additional grievances they anticipated receiving after adoption of 115.52, and that this would be cost prohibitive.

However, none of these agencies offered any data to support or quantify their speculation. Moreover, given the requirement in the standards that agencies fully investigate and track all allegations of sexual abuse of which they become aware, the likelihood that additional resources might be required to process the requests for administrative remedy that may accompany such allegations is notional.

Another agency claimed that the requirement that agencies issue a final decision within five calendar days of receiving an emergency grievance (*i.e.,* a grievance where an inmate alleges that he is subject to a substantial risk of imminent sexual abuse) would create the need for additional personnel.

We disagree. Most agencies with administrative remedy regimes already have mechanisms by which inmates in emergency situations can quickly present their grievances to an appropriate official and receive a prompt response; there has been no showing that the five-day limit for an agency response in the sexual abuse context would materially affect the resources that agencies already make available for such emergency grievance procedures.

Moreover, in most situations, agencies will already be equipped to quickly determine whether or not an inmate actually faces a substantial risk of imminent sexual abuse and decide whether emergency action in response to such a grievance is warranted. If the agency determines that an emergency situation does not exist, it will simply issue its decision and terminate the grievance without a significant investment of time. If, on the other hand, it concludes that a true emergency is presented, the agency will presumably be well-motivated to respond to the situation as quickly as possible, and the five-day response deadline ought not result in additional costs.

Some commenters suggested that this standard could impose costs due to the possibility that some meritorious lawsuits alleging sexual abuse, which otherwise would have been dismissed, would now survive a motion to dismiss and therefore need to be settled or tried on the merits. In other words, valid claims which previously would have resulted in zero cost impact to agencies (regarding judgments and settlements) might now result in cost.

However, it is not appropriate to include within the cost estimates for standard 115.52 the costs of judgments or settlements that agencies pay to victims to compensate them for sexual abuse, for two reasons. First, these payments are distributive transfers rather than true costs, in that they are "monetary payments from one group to another that do not affect total resources available to society" and are therefore not appropriate for inclusion in estimates of the benefits and costs of a regulation.[188/]

Second, the funds paid out in such judgments or settlements are expenditures that are ultimately "caused" not by the issuance of the final rule but rather by the underlying conduct of the prison staff that led to the lawsuit. The only event "caused" by the issuance of the final rule itself is the fact that the actors who committed the sexual abuse were not able to escape liability for their actions as easily as they might have been able to before.

Moreover, even if it were appropriate to include such judgments and settlements in the

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[188/] OMB Circular A-4, at 38.

cost estimates, any attempt to estimate their magnitude, either individually or collectively, or to predict how many new ("but for") judgments and settlements would be proximately engendered by the change to the exhaustion requirements would be purely speculative.

Some commenters argued, nevertheless, that apart from the costs of paying settlements and judgments themselves, agencies will incur greater litigation costs as the result of the changes to the exhaustion standard. In particular, some commenters speculated that loosening the exhaustion requirements for sexual abuse claims would likely lead to an increase in frivolous litigation.[189/]

Even if such an increase could somehow be demonstrated, however, we are not persuaded that it would measurably affect what agencies spend to defend against prisoner litigation. For even when lawsuits filed in federal court are putatively barred by the PLRA's exhaustion requirements, they still must generally be litigated to some extent and still engender litigation costs—although much of that cost may be directed to "meta-litigation" over the question whether or not the inmate exhausted his administrative remedies, rather than to litigation of the merits of the underlying claim. Whether the applicable exhaustion requirements are strict or permissive, agencies will have to spend money to defend myriad inmate suits of all varieties, including those relating to sexual abuse allegations.

It is true that compliance with the final standard may require suits to be defended on the merits more frequently by virtue of the looser exhaustion requirements mandated by the standard. In part, this means that some litigation costs would simply shift from meta-litigation to litigation on the merits. In cases that end up actually going to trial, this shift could entail a significant increase in litigation costs.

But to the extent the litigation is predicated on a *bona fide* claim, we view it as inappropriate to attribute any increased litigation costs along these lines to the promulgation of the standards themselves rather than to the underlying conduct that led to the litigation. Moreover, experience suggests that the great majority of cases (and at least the arguably meritorious ones) are more likely to be settled than tried, a circumstance that ought to reduce any marginal increase in the cost of litigation.

In sum, any litigation costs that can be shown to be causally related to the standard's loosening of the exhaustion standard for sexual abuse grievances (and therefore potentially appropriate for inclusion in the cost estimate for standard 115.52) are likely to be minimal if not entirely speculative. We therefore assess the exhaustion of administrative remedies standards as having negligible compliance cost.

5.6.61 *Official Response Following an Inmate Report (Standards 115.61-.68, .161-.167, .261-.267, .361-.368)*

These standards set forth a number of measures that agencies and their employees are expected to take in response to knowledge, suspicion, or information regarding an incident of: sexual abuse or sexual harassment that occurred in a facility; retaliation against inmates or staff who reported such an incident; or neglect

[189/] One agency observed that the version of the standard proposed in the NPRM was ambiguous as to whether inmates alleging sexual abuse would be required to pursue remedies at every level of the administrative process in order to exhaust. Because of this ambiguity, the agency said, more frivolous actions will make it to the courts, requiring the expenditure of additional resources to defend grievance decisions. The final rule has revised the standard to eliminate any such ambiguity. It clarifies that exhaustion of administrative remedies includes exhaustion at every level of the process (except for the informal resolution process), including administrative appeals. Indeed, the final standard provides that when a third party submits a grievance on behalf of an inmate, the agency may require as a condition of processing the grievance that the alleged victim personally pursue any subsequent steps in the administrative remedy process.

or violation of responsibilities by staff that may have contributed to an incident.

We estimate that no cost will be required to comply with any of these standards. Several of the standards simply impose reporting or planning requirements (*e.g.*, 115.61, 115.63, 115.65), while others impose an obligation to protect threatened or abused inmates and to collect and preserve relevant evidence (*e.g.*, 115.62, 115.64, 115.66, 115.67, 115.68).

To the extent any of these obligations require a level of effort to comply, the value of that effort has already been subsumed within the cost of other standards, most notably standards 115.11 (PREA Coordinator), 115.21 (evidence protocol), and 115.71 (investigations).

Indeed, of the 49 agencies that participated in Booz Allen's Phase II study, only one reported any costs associated with the corresponding standards recommended by NPREC, and we have eliminated that one agency's cost estimate from our analysis as an outlier, as it appears based on an overly expansive interpretation of the Commission's standard OR-5 (incorporated with revisions into standard 115.67).[190/] That standard, in its final form, requires agencies to adopt policies that help ensure inmates who report incidents of sexual abuse are properly monitored and protected afterwards, including but not limited to providing information in training sessions, enforcing strict reporting policies, imposing strong disciplinary sanctions for retaliation, making housing changes or transfers for inmate victims or abusers, removing alleged staff or inmate abusers from contact with victims, and providing emotional support services for inmates or staff who fear retaliation. We believe that most if not all agencies will be able to comply with these requirements at little to no cost.

The Department has modified sections 115.65, 115.265, and 115.365 (now 115.67, 115.267, and 115.367) to require agencies to continue past the initial 90-day period their monitoring of residents or staff who report sexual abuse or who cooperate with an investigation, if the initial monitoring indicates a continuing need for monitoring or for protection against retaliation. We are aware of no data suggesting that this requirement is likely to impose additional costs.

In their comments, two State corrections agencies suggested that the official response standards would increase their staff costs excessively given the large number of allegations they receive. However, neither agency quantified its costs or convincingly demonstrated that there would be significant costs to comply with these standards over and above the costs of complying with other standards requiring a level of effort, such as standards 115.11 and 115.71.

We do not anticipate that either BOP or USMS will incur costs to comply with any of these standards.

5.6.71 *Investigations (Standards 115.71-.73, .171-.172, .271-.273, .371-.373)*

Standard 115.71 contains a number of provisions governing how agencies should conduct administrative and criminal investigations into allegations of sexual abuse and sexual harassment. Standard 115.72 defines the evidentiary burden of proof for substantiating allegations of sexual abuse. Standard 115.73 imposes certain obligations on agencies with respect to reporting the results of investigations to inmate victims.

[190/] The agency reported an expected upfront cost of $500,000 attributed to the need to develop a computerized system to permit central office monitoring of inmate victims and witnesses. While such an approach is laudable and likely to be effective, it goes well beyond the requirements of standard 115.67.

Based on the Booz Allen Phase II cost study, we estimate that full nationwide compliance with these standards will impose modest cost. The study demonstrated a high level of baseline compliance with Standard 115.71, as the great majority of participants already followed investigative policies consistent with the standard.

A few participants in the study did report costs in connection with this standard, either for additional staff to conduct more frequent investigations (which were expected to increase in volume as a result of more reports being brought to the attention of prison authorities), or to ensure that investigations are conducted properly and thoroughly.

Extrapolating from these Phase II data to a nationwide cost figure, we estimate that full compliance with standard 115.71 will cost approximately $364 million over 15 years, which annualizes (at 7%) to $24.2 million per year. This breaks down to $2.4 million per year for prisons, $18.6 million per year for jails, and $3.2 million per year for juvenile facilities.

The remaining two standards relate to the burden of proof and to notification practices, respectively. Based on the Phase II study, we estimate these two standards to have negligible associated compliance costs. Moreover, any level of effort associated with the notification requirement is assumed to be already included within the cost of standard 115.11.

We do not anticipate that either BOP or USMS will incur any costs to comply with these standards. We did not receive any cost-related comments on any of these standards in response to the NPRM.

5.6.76 *Discipline (Standards 115.76-.78, .176-.178, .276-.278, .376-.378)*

Standards 115.76 to .78 provide direction to agencies with regard to their policies for disciplining staff, contractors, volunteers, and inmates who are found to have engaged in sexual abuse or sexual harassment. We view these provisions as having negligible to non-existent cost, as none of the agencies in the Booz Allen Phase II study reported a cost associated with these standards, no commenter suggested the presence of a cost, and neither BOP nor USMS estimates any additional costs associated with this standard.

5.6.81 *Medical and Mental Health Care (115.81-.83, .182, .282-.283, .381-.383)*

Standard 115.81 requires that if an intake screening indicates that an inmate has experienced prior sexual victimization (or, in the case of prison inmates, has perpetrated sexual abuse), the inmate shall be offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

Standard 115.82, meanwhile, requires agencies to provide inmate victims of sexual abuse unimpeded access to emergency medical treatment and crisis intervention services at no cost to the inmate, including timely information about and timely access to emergency contraception and prophylaxis for sexually transmitted infections.

Compliance with these two standards ought to have negligible to non-existent cost, since neither the offer of a practitioner follow-up meeting nor access to emergency medical treatment ought to result in a measurable additional cost to the agency beyond costs currently expended don medical care. The vast majority of agencies already provide medical and

mental health treatment of this nature, and none of the agencies that participated in the Phase II study reported any costs associated with these two standards. Both BOP and USMS estimate no costs to comply with these two standards,[191] and we received no comments suggesting the presence of costs.

Standard 115.83 pertains to ongoing medical and mental health care for sexual abuse victims and, in some cases, abusers. It provides in the main that facilities shall offer medical and mental health evaluations and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility, all without cost to the victim. The standard also requires agencies to offer tests for STIs as medically appropriate, as well as pregnancy tests and pregnancy-related medical services to inmate victims of sexually abusive vaginal penetration while incarcerated. Additionally, prisons shall attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers and offer treatment when deemed appropriate by practitioners.

In the Booz Allen Phase II study, a number of agencies reported significant costs associated with this standard. All of these costs related to the obligation to provide ongoing mental health care to abusers and were based on the cost of hiring contract practitioners to provide such care.

However, for purposes of this Report we eliminate all of these estimates from our analysis, for the following reasons: (i) the only agencies that reported costs of these types were jails, but the requirement to offer care to abusers applies only to prisons and not to jails; (ii) all of these agencies assumed that there would be an obligation to provide mental health care to all sex offenders regardless of whether their actions took place during or prior to their term of imprisonment, whereas the rule only requires evaluation of known inmate-on-inmate abusers; and (iii) all of these agencies assumed that the obligation to provide ongoing care for abusers would extend for the entire duration of their incarceration, whereas the standard only requires agencies to "attempt to conduct a mental health evaluation" and to "offer treatment when deemed appropriate by mental health practitioners."

None of the agencies in Booz Allen's Phase II study reported any costs associated with the other aspects of this standard, and none of the prisons in that study reported any costs in connection with offering mental health treatment to known inmate on inmate abusers. BOP does not anticipate any costs in connection with its compliance.

Several county sheriffs commented that the IRIA's cost analysis of the proposed version of this standard failed to adequately appreciate the differences between prisons and jails and argued that the compliance cost for jails would be significantly higher than the corresponding cost for prisons. These commenters argued that prison facilities typically have counseling and mental health professionals on staff to provide care for victims of sexual abuse, while local jails do not; thus, jails would have to contract with outside agencies to provide victim counseling services required by the standard. This obligation would be costly, because, the sheriffs asserted, victims typically only stay in the jail approximately 7 to 14 days.

However, as noted above, Booz Allen's Phase II study did not disclose any difference between prisons and jails with regard to § 115.83's requirement of mental health care for sexual abuse victims: both the prisons and the jails in the study reported zero cost to comply with that aspect of

[191] Standard 115.81 does not have a version that applies to lockups. Standard 115.182 does apply to lockups, but its requirements are much more general and less stringent than the corresponding requirements for prisons, jails, CCFs, and juvenile facilities.

the standard. In particular, due to the short stay inmates typically have in local jails, there are inherent limits to the amount of care such facilities can provide to abuse victims (and correspondingly to the cost of such care); in most cases, the care will be limited to an initial mental health evaluation along with "treatment plans … [and] referrals for continued care following [the inmate's] transfer to, or placement in, other facilities, or their release from custody."

The commenter offered no evidence that local jails are typically less equipped than prisons are to provide such evaluations, plans, and referrals, and we are aware of no data demonstrating this point.

5.6.86 *Data Collection and Review (115.86-.89, .186-.189, .286-.289, .386-.389)*

We estimate that the four standards pertaining to data collection and review will have negligible to zero compliance costs. For the first three of these standards—sexual abuse incident reviews (115.86), data collection (115.87), and data review for corrective action (115.88)—the primary cost driver is the level of effort required to collect and review data concerning sexual abuse incidents within the facility or agency. However, we assume that at most agencies the primary responsibility for undertaking the data collection and review will rest with the agency PC as assisted by the facility PCMs, and we have already incorporated the monetization of that effort into the cost estimate for standard 115.11.

Meanwhile, the fourth standard—data storage, publication, and destruction (115.89)—relates to agency policies regarding the retention and public dissemination of sexual abuse data. Booz Allen's Phase II study found this standard to have a negligible to non-existent cost.

5.3.93 *Audits (115.93, .401-.405)*

5.3.93.1 Analysis and Methodology—Corrections Industry Costs

To determine the cost of full nationwide compliance with the audit standards, we first calculate the total number of auditors that will be required to audit one-third of all facilities each year. This is a four-step process.

First, we determine the number of prisons, jail jurisdictions, overnight lockups,[192/] CCFs, and juvenile facilities in each State and the District of Columbia. These figures are listed in Appendix 2, and are drawn from the most recent BJS and OJJDP statistics. As shown there, and replicated in part in Table 7.1, the total number of facilities nationwide is 1,190 State prisons, 2,859 non-federal jail jurisdictions, 1,311 overnight lockup agencies, 529 CCFs, and 2,458 juvenile facilities. Because each facility only needs to be audited once every three years, we divide these numbers by 3 to determine the number of facilities of each type to be audited each year. Nationwide, there would be 2,782 audits each year, assuming full compliance.

Second, we develop assumptions regarding the level of effort (LOE) that will be required for each audit. These assumptions are derived from the responses to Booz Allen's Phase II study and are generally consistent with the data provided to the Department in the comments responsive to the NPRM.

For each audit, we assume a certain number of days to actually conduct the audit on-site, and an additional number of days for administrative functions associated with the audit (*e.g.,* research, review of documents, correspondence, drafting

[192/] Under standard 115.193, lockup agencies need not audit facilities "that are not utilized to house detainees overnight."

and editing the audit report). The number of days is meant to be a national average, and each agency and facility may experience longer or shorter audit times depending on a variety of local circumstances.[193] Table 13.1 sets forth our assumptions as to the average number of audit days and administrative days that we expect will likely be required in connection with PREA audits of various types of facilities.

Table 13.1: Audit LOE Assumptions

Type	Audit Days	Admin Days
Prison	4	4
Jails	3	3
Lockup	1	1
CCF	2	2
Juvenile	2	2

Third, we multiply the figures in Table 13.1 by the number of audits of each type of facility that would be required in each State to determine the total number of audit days that would be required each year in that State. For example, California, with 87 prisons, 65 jail jurisdictions, an estimated 174 overnight lockup agencies, 13 CCFs, and 215 juvenile facilities, would require 232 audit days for prisons (87 ÷ 3 x 8), 130 for jails (65 ÷ 3 x 6), 116 for lockups (174 ÷ 3 x 2), 17 for CCFs (13 ÷ 3 x 4), and 287 for juvenile facilities (215 ÷ 3 x 4), for a total of 782 audit days per year.

Fourth, we convert these audit days into full-time equivalent positions by dividing the number of audit days by 220 and rounding to the nearest 0.25 FTE. This conversion assumes that one FTE can cover roughly 220 work days in a calendar year and allows us to assess the total number of full-time-equivalent auditors that would be required to perform the necessary audits. In California, for example, the total required would be 3.5 FTE of auditors. Nationwide, we estimate that a pool of 66 FTE auditors, spread across the fifty States, will be sufficient to meet the workload demanded of this standard. *See* Appendix 2. Of course, the actual number of individuals performing PREA audit functions is likely to be much larger than this, as many if not most PREA auditors are likely to be part-time.

The cost of the auditors' efforts consists of salary, overhead, and travel costs. We assume an average auditor salary of $81,779 per FTE, derived by calculating the average salary for a mid-grade position taken from Booz Allen's Phase II study. Overhead, including computers and IT equipment, is estimated to be approximately 5% of the base salary, or an average of $4,500. We assume that auditors will typically deliver their services as independent consultants, and we therefore exclude medical insurance, retirement, and office infrastructure from overhead.

Travel costs include lodging, meals and incidental expenses (M&IE), and local travel for each day that auditors spend on-site (*i.e.,* audit days but not administrative days), using the amounts the federal government pays for travel by federal employees in each State. We do not include any airfare cost, since we assume that in the vast majority of circumstances auditors will be able to travel to the facilities by ground.

[193] One of our points of reference for the time required to conduct a PREA audit comes from our Civil Rights Division's (CRT) extensive experience conducting protection-from-harm investigations and protection-from-harm consent decree compliance verification inspections with expert consultants for various size facilities. For a medium-sized facility, CRT generally calculates three days for pre-tour document review, post-tour document review, and report writing. In CRT's experience, a facility of that size typically requires approximately an additional three to four days for on-site inspections. CRT's protection-from-harm experts typically perform all the duties enumerated in the PREA auditing standards, but look at a somewhat broader subject matter, including such areas as sexual abuse, violence, disciplinary systems, behavior management systems, use of force, use of restraints, screening and housing classifications, isolation and segregation, commissary, inmate handbooks, and grievance procedures. Moreover, the bulk of all facilities to which the PREA standards would potentially apply are smaller than the average facilities that CRT investigates.

These calculations yield a total auditor cost of $6.9 million per year, as shown in Appendix 2.

For purposes of this analysis, we assume that the auditing cost per agency will remain essentially constant over the 15-year cost horizon, and correspondingly that the LOE required to audit one-third of each agency's facilities each year will not change markedly over time.

We acknowledge, however, three factors that could potentially cause a given agency's auditing costs to vary over the years. First, there is the possibility that the number of facilities that will require an audit each year may change as agencies open new facilities or close others. Second, it is possible that the LOE required for each audit may decrease somewhat over time due to learning, innovation, and technological adaptations on the part of auditors. Third, it is possible that at least some PREA auditors will also perform accreditation audits for organizations such as the American Correctional Association (ACA), and that by combining audits conducted for multiple purposes there could be significant efficiencies and economies of scale, in addition to reduced overhead and travel expenses.

However, at this juncture we have too little data on the magnitude of these possibilities to frame reliable assumptions as to the extent to which any of them may reduce the costs of PREA audits over time. We therefore do not incorporate any of these possibilities into our cost estimates but instead assume constant cost over the 15-year time horizon. Hence, our cost estimates for this standard are conservative.

5.3.93.2 Analysis and Methodology—DOJ Costs

The Department's costs to comply with this standard fall into two categories: (1) BOP's costs related to audits of its facilities;[194/] and (2) costs related to the development and issuance of an audit instrument.

BOP estimates the costs of auditing its facilities using the same general assumptions and methodology used above for State and local systems. BOP operates or oversees 117 prisons, 12 detention centers (equivalent to jails), and approximately 200 contractor-operated residential reentry centers (the equivalent of CCFs) that would be subject to a triennial audit.

Assuming that the number of audit and administrative days for each type of facility corresponds to the estimates set forth in Table 13.1 (*i.e.*, 8 total days for prisons, 6 for detention centers, and 4 for RRCs), BOP's system would require an estimated 3 FTE auditors to meet the LOE required to audit one-third of its facilities each year. Assuming salary plus overhead of $86,279 per FTE, and $176 per day for lodging, mileage, and M&IE for each of 301 audit days per year, the total annual audit cost for BOP facilities is an estimated $311,872.

Standard 115.401(d) provides that "the Department of Justice shall develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit." The Department anticipates that the PRC will play a significant role in developing the audit instrument. It is possible that the Department may also need to retain the services of one or more consultants to help build an audit instrument. Although the precise scope of work required for such a project is not yet known, we estimate a maximum one-time expense of $300,000 in year 1 to fund a contract to provide consultancy services, over and above the work of the PRC, related to the development of an audit instrument.

[194/] USMS does not operate any lockup facilities that house detainees overnight. Because standard 115.193 does not require audits for daytime-only lockup facilities, USMS has no auditing obligations under the standard.

This annualizes over 15 years (at a 7% discount rate) to about $31,000 per year.

5.3.93.3 *Response to Comments on Costs of Audit Standard*

Several State and local corrections agencies expressed concern about the potential for unduly burdensome costs relating to compliance audits, and some suggested that a requirement for such audits could amount to an unfunded or underfunded mandate.

On the other hand, a number of advocacy organizations asserted that the expenses associated with triennial audits are reasonable and well within the PREA statutory limitation that precludes the Department from adopting any standards that would impose substantial additional costs. According to these agencies, quality auditing will substantially increase the likelihood that significant reductions in prison rape will occur, resulting in substantial savings to the agencies that will yield a net benefit by implementation of these auditing standards.

We agree with the assertions of the advocacy organizations and reject the assertion from agencies that compliance with the audit requirements will result in unduly burdensome costs. As noted above, we estimate the total cost of compliance with the audit requirements to amount to $6.9 million per year; divided by the 2,782 audits expected each year on average, the average audit cost per facility is a mere $2,481. We believe that this does not represent an undue burden. And because adoption of the standards at the State and local level requires independent decisions by government agencies at those levels, nothing in the audit standards amounts to an unfunded or underfunded mandate.

An anonymous commenter suggested that the cost of complying with the audit requirements would mostly depend on who does the auditing: if an agency is allowed to self-audit, it would cost the equivalent of a mere 10 to 12 hours of administrative wages annually for each facility, whereas if an outside auditor were required, costs would be substantial. Similarly, a number of State corrections departments objected to the requirement that auditors be independent of the State corrections agency, arguing that this requirement would lead to unreasonable costs.

While we agree that the requirement of outside auditors may result in compliance audits being more expensive than if inside auditors were allowed, the added cost is more than justified by the added benefit: independent audits conducted by personnel from outside the agency are more likely to be objective and perceived as impartial, and therefore to result in overall compliance with the standards and in detection of violations.

Pursuant to standard 115.402(a), auditors may be a part of, or authorized by, a State or local government (*e.g.*, may be part of an inspector general's, State auditor's, or ombudsmen's office that is external to the correctional agency), as long as the auditor is not part of or under the authority of the corrections agency. To the extent State and local agencies are able to utilize public auditors of this nature rather than contracting for private auditors, they could potentially mitigate their costs to some extent.

Utah's state corrections department, however, noted that this standard would disqualify the department's internal audit bureau from conducting such audits, and that neither Utah's auditor's office nor its legislative auditor's office has the staff or funding to carry out the audits required under this standard. Utah would therefore need a significant amount of funding to contract for these auditing services, and its budget is not sufficient to implement this standard.

While we sympathize with the fiscal plight facing this and many other State corrections

departments, we believe the concerns expressed in the comment are overstated: by our calculation, Utah, which has only two State prison facilities, would require at most one prison audit per year, at an annual cost of just $3,552. The total annual auditing cost across all facility types in Utah is a mere $76,183.

A few agencies suggested that PREA audits should be combined with accreditation audits conducted by ACA for the purposes of cost savings. On the other hand, several advocacy groups acknowledged the potential for cost savings but argued that such a combined audit would be potentially problematic insofar as it would not adequately or accurately focus on the PREA standards. Moreover, one corrections agency observed that the prohibition on auditing entities receiving financial compensation from the agency in the three prior years (except to the extent that payment was made for PREA audits) may preclude combining the ACA audit process with the PREA audit process.

We take no issue on this last observation and note that whether and when prior service as an auditor for ACA accreditation purposes might disqualify a putative PREA auditor will be resolved as the Department works out the details of the auditor certification process. In the meantime, for purposes of this analysis we have assumed that ACA audits and PREA audits will not be combined, although we have not ruled out the possibility that such combinations, if they occur in the future, might reduce the ongoing cost of complying with the audit standards.

A number of States provided specific estimates of how much they believed it would cost them to comply with the audit requirement. These estimates were developed based on the proposed version of the audit standards contained in the NPRM, which did not specify a particular interval at which audits would be conducted and also did not specify the content or process of audits. As a result, most of these estimates are based on assumptions that are not consistent with the text of the final rule and are of limited usefulness to our cost analysis.

Most of these estimates overstate the anticipated cost of compliance with the audit standards. For example, Oregon's prison agency estimated that PREA audits would cost it $16,000 per facility; we estimate that the cost of triennial PREA audits of the nine prisons in that State (three per year) will amount to a total of $11,381 annually. Michigan estimated $10,291 per audit; we estimate a total of $71,053 for 17 prison audits in that State per year. New Mexico estimated triennial audits of its prisons would cost approximately $10,800 per facility, based on an assumption that each audit would require 128 hours of effort. We estimate that that State would have to spend approximately $13,424 per year to comply with the audit requirement as to all 8 of its prison facilities (two to three per year).

As noted above, our estimate of the LOE required for each prison audit is 64 hours. Missouri estimated that PREA audits of its prisons would cost $10,291 per facility; we estimate, on the other hand, that triennial audits of Missouri's 22 prisons (7 to 8 per year) would cost a total of $30,548 per year. Virginia's Department of Juvenile Justice estimated that PREA audits of juvenile residential facilities in that State would require 200 hours of effort for each audit, for a total cost of $8,186 per facility, plus lodging, meals, and travel expenses. Our estimate, on the other hand, is that triennial audits of Virginia's 61 juvenile facilities (20 per year) would cost that State approximately $38,929 per year.

Arizona's Department of Juvenile Corrections (ADJC), meanwhile, estimated that each audit of a juvenile facility in that State would require 6-8 days' effort, for a cost of $12,000 to $15,000 per audit, not including additional discussion after the release of the findings and follow-up discussions

to assure that deficiencies are addressed, the expenses increase depending on the extent of the follow up. The Department observed that, while this cost may not seem great when compared to the benefit of preventing sexual abuse, the reality for most agencies, like ADJC, is that budgetary reductions are not likely to be reversed in the foreseeable future, and that dollars are already stretched to the limit. According to ADJC, whatever monies are expended on these audits will, paradoxically, likely result in reduced ability to pay for the staffing, programs or electronic equipment necessary to achieve PREA's purpose.

Again, while we sympathize with this agency's situation, we believe the comment overstates the estimated cost of compliance with the PREA audit requirements; by our estimate, the cost of triennial audits of Arizona's 40 juvenile facilities amounts to approximately $27,149 total per year. We do not view that as an excessive or unduly burdensome cost given the importance of comprehensive audits to the success of the standards as a whole.

Finally, New York estimated that triennial PREA audits of its 63 prison facilities would cost the State approximately $165,000 per year; our estimate is that the annual cost would be about half that—approximately $84,538. Texas estimated that comprehensive triennial PREA audits of that State's 111 prisons would cost approximately $500,000; our estimate, at $141,073, is about one-third that total.

One State's comment underestimated the expected cost of PREA compliance audits. The California Department of Corrections and Rehabilitation, whose estimate seems to have been predicated on an assumption that the audits can be completed using internal agency auditors, estimated a total annual cost of $46,040 for a five-person team to spend one week evaluating each of that State's prison facilities and to write a plan for securing new technology. Our estimate is that a triennial compliant audit of California's 87 prison facilities would cost that State approximately $110,043 per year.

5.4 Conclusions as to Compliance Costs

As summarized in section 5.2 and depicted in Tables 7.2 and 7.3, the annualized cost of full compliance with the aggregated standards is an estimated $468.5 million per year. The tables on the following pages break down this total in a number of different permutations, showing the constituent elements of our estimates of the nationwide compliance costs associated with the Department's proposed standards. In these tables, we set forth our estimate of the cost of full nationwide compliance for each standard (or group of related standards), for each facility type, and in each year during our 15-year cost horizon.

A public policy think tank suggested in its comments that the Department should overcome alleged shortcomings in the Booz Allen Phase II study (for example, small sample size, and the assumed lack of generalizability of the data from agencies that participated in the study) by examining the cost effectiveness of methods employed in facilities that already demonstrate high levels of compliance with the proposed standards. As the commenter explained, data from facilities that are already in compliance with the standards, if accompanied by documentation of costs required to implement the standards, would provide a concrete measure to guide estimates of costs going forward.

This comment, however, wrongly assumes that the Booz Allen Phase II study did not generate useable data with respect to the cost effectiveness of methods employed in facilities that already demonstrate high levels of compliance with the data; to the contrary, much of the Booz Allen study was aimed precisely at documenting the costs required to implement the standards.

Of course, larger sample sizes and more extensive data sources are always helpful in ensuring that extrapolated estimates are representative of the true nationwide picture. For this reason, when corrections agencies or other commenters have provided data relating to their specific compliance costs, we have incorporated those data into our analysis to supplement the Booz Allen Phase II data. We have likewise incorporated, where relevant, supplemental data found in publicly available sources. We reject the suggestion, however, that in the absence of such data the sample sizes in the Booz Allen Phase II study are too small to be generalizable to nationwide estimates.

In any event, the figures in the preceding sections and in the charts on the following pages do not include compliance costs for BOP, USMS, and other DOJ components. Those are set forth below, in Table 14.1. Together, DOJ components expect to spend approximately $1.75 million per year to comply with the standards.

Table 14.1: Estimated Cost of Compliance with PREA Standards for DOJ Entities, by Standard, Annualized Over 2012-2026 at 7% Discount Rate

Standard	BOP	USMS	Other
115.11 Zero Tolerance	$ 797,000	$ 445,000	$ 0
115.21 Evidence Protocol	$ 37,000	$ 0	$ 0
115.31-.35 Training	$ 20,000	$ 103,000	$ 0
115.41 Screening	$ 500	$ 0	$ 0
115.53 Inmate Reporting	$ 9,500	$ 0	$ 0
115.93/402-405 Audits	$ 312,000	$ 0	$ 31,000
Total	**$ 1,176,000**	**$ 548,000**	**$ 31,000**

Table 14.2: Estimated Cost of Full Nationwide Compliance with PREA Standards, Prisons, by Standard and by Year, in Thousands of Dollars

Year	115.11	115.13	115.14	115.16	115.17	115.21-.22	Training	115.41-.42	115.51, .53	115.52	115.71	Audits	Total
2012	$ 20,070	$ 5,096	$ 4,027	$ 5	$ 1,568	$ 4,244	$ 33,681	$ 8,465	$ 5,752	$ 286	$ 2,442	$ 1,605	$ 180,142
2013	$ 19,267	$ 8,107	$ 0	$ 5	$ 1,568	$ 4,199	$ 4,711	$ 7,453	$ 5,603	$ 282	$ 2,398	$ 1,605	$ 122,037
2014	$ 18,095	$ 12,383	$ 0	$ 5	$ 1,568	$ 4,199	$ 4,711	$ 7,453	$ 5,603	$ 282	$ 2,398	$ 1,605	$ 106,601
2015	$ 16,602	$ 14,776	$ 0	$ 5	$ 1,568	$ 4,199	$ 4,711	$ 7,453	$ 5,603	$ 282	$ 2,398	$ 1,605	$ 93,676
2016	$ 15,173	$ 18,338	$ 0	$ 5	$ 1,568	$ 4,199	$ 4,711	$ 7,453	$ 5,603	$ 282	$ 2,398	$ 1,605	$ 87,325
2017	$ 13,487	$ 20,201	$ 0	$ 5	$ 1,568	$ 4,199	$ 4,711	$ 7,453	$ 5,603	$ 282	$ 2,398	$ 1,605	$ 83,626
2018	$ 11,898	$ 23,143	$ 0	$ 5	$ 1,568	$ 4,199	$ 4,711	$ 7,453	$ 5,603	$ 282	$ 2,398	$ 1,605	$ 80,138
2019	$ 10,693	$ 24,551	$ 0	$ 5	$ 1,568	$ 4,199	$ 4,711	$ 7,453	$ 5,603	$ 282	$ 2,398	$ 1,605	$ 77,495
2020	$ 9,553	$ 26,956	$ 0	$ 5	$ 1,568	$ 4,199	$ 4,711	$ 7,453	$ 5,603	$ 282	$ 2,398	$ 1,605	$ 74,994
2021	$ 8,735	$ 29,095	$ 0	$ 5	$ 1,568	$ 4,199	$ 4,711	$ 7,453	$ 5,603	$ 282	$ 2,398	$ 1,605	$ 73,197
2022	$ 8,189	$ 29,917	$ 0	$ 5	$ 1,568	$ 4,199	$ 4,711	$ 7,453	$ 5,603	$ 282	$ 2,398	$ 1,605	$ 72,000
2023	$ 7,643	$ 31,626	$ 0	$ 5	$ 1,568	$ 4,199	$ 4,711	$ 7,453	$ 5,603	$ 282	$ 2,398	$ 1,605	$ 70,802
2024	$ 7,097	$ 32,147	$ 0	$ 5	$ 1,568	$ 4,199	$ 4,711	$ 7,453	$ 5,603	$ 282	$ 2,398	$ 1,605	$ 69,604
2025	$ 6,551	$ 33,487	$ 0	$ 5	$ 1,568	$ 4,199	$ 4,711	$ 7,453	$ 5,603	$ 282	$ 2,398	$ 1,605	$ 68,406
2026	$ 6,005	$ 33,754	$ 0	$ 5	$ 1,568	$ 4,199	$ 4,711	$ 7,453	$ 5,603	$ 282	$ 2,398	$ 1,605	$ 67,208
Total	**$ 179,058**	**$ 343,577**	**$ 4,027**	**$ 74**	**$ 23,513**	**$ 63,037**	**$ 99,639**	**$ 112,802**	**$ 84,188**	**$ 4,234**	**$ 36,013**	**$ 24,068**	**$ 1,327,251**
NPV	**$ 121,043**	**$ 184,730**	**$ 3,763**	**$ 45**	**$ 14,277**	**$ 38,290**	**$ 69,984**	**$ 68,824**	**$ 51,167**	**$ 2,572**	**$ 21,882**	**$ 14,614**	**$ 869,842**
Ann.	**$ 13,290**	**$ 20,282**	**$ 413**	**$ 5**	**$ 1,568**	**$ 4,204**	**$ 7,684**	**$ 7,557**	**$ 5,618**	**$ 282**	**$ 2,402**	**$ 1,605**	**$ 95,504**

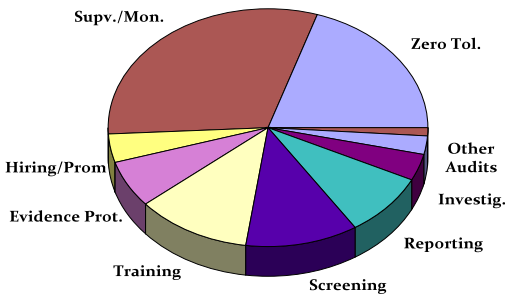


Table 14.3: Estimated Cost of Full Nationwide Compliance with PREA Standards, Jails, by Standard and by Year, in Thousands of Dollars

Year	115.11	115.13	115.14	115.16	115.17	115.21-.22	Training	115.41-.42	115.51, .53	115.52	115.71	Audits	Total
2012	$ 51,271	$ 18,484	$ 12,176	$ 766	$ 3,838	$ 6,509	$ 88,548	$ 42,463	$ 5,087	$ 3,874	$ 18,697	$ 2,873	$ 254,587
2013	$ 49,221	$ 20,404	-	$ 766	$ 3,838	$ 6,398	$ 19,098	$ 36,442	-	$ 3,406	$ 18,600	$ 2,873	$ 161,046
2014	$ 46,226	$ 20,284	-	$ 766	$ 3,838	$ 6,398	$ 19,098	$ 36,442	-	$ 3,406	$ 18,600	$ 2,873	$ 157,932
2015	$ 42,412	$ 20,801	-	$ 766	$ 3,838	$ 6,398	$ 19,098	$ 36,442	-	$ 3,406	$ 18,600	$ 2,873	$ 154,634
2016	$ 38,761	$ 23,325	-	$ 766	$ 3,838	$ 6,398	$ 19,098	$ 36,442	-	$ 3,406	$ 18,600	$ 2,873	$ 153,508
2017	$ 34,454	$ 26,565	-	$ 766	$ 3,838	$ 6,398	$ 19,098	$ 36,442	-	$ 3,406	$ 18,600	$ 2,873	$ 152,441
2018	$ 30,394	$ 29,485	-	$ 766	$ 3,838	$ 6,398	$ 19,098	$ 36,442	-	$ 3,406	$ 18,600	$ 2,873	$ 151,300
2019	$ 27,317	$ 31,994	-	$ 766	$ 3,838	$ 6,398	$ 19,098	$ 36,442	-	$ 3,406	$ 18,600	$ 2,873	$ 150,733
2020	$ 24,405	$ 34,234	-	$ 766	$ 3,838	$ 6,398	$ 19,098	$ 36,442	-	$ 3,406	$ 18,600	$ 2,873	$ 150,061
2021	$ 22,313	$ 36,174	-	$ 766	$ 3,838	$ 6,398	$ 19,098	$ 36,442	-	$ 3,406	$ 18,600	$ 2,873	$ 149,909
2022	$ 20,919	$ 37,789	-	$ 766	$ 3,838	$ 6,398	$ 19,098	$ 36,442	-	$ 3,406	$ 18,600	$ 2,873	$ 150,129
2023	$ 19,524	$ 39,200	-	$ 766	$ 3,838	$ 6,398	$ 19,098	$ 36,442	-	$ 3,406	$ 18,600	$ 2,873	$ 150,146
2024	$ 18,130	$ 40,335	-	$ 766	$ 3,838	$ 6,398	$ 19,098	$ 36,442	-	$ 3,406	$ 18,600	$ 2,873	$ 149,886
2025	$ 16,735	$ 41,302	-	$ 766	$ 3,838	$ 6,398	$ 19,098	$ 36,442	-	$ 3,406	$ 18,600	$ 2,873	$ 149,459
2026	$ 15,340	$ 42,035	-	$ 766	$ 3,838	$ 6,398	$ 19,098	$ 36,442	-	$ 3,406	$ 18,600	$ 2,873	$ 148,797
Total	**$ 457,423**	**$ 462,410**	**$ 12,176**	**$ 11,492**	**$ 57,566**	**$ 96,077**	**$ 355,924**	**$ 552,654**	**$ 5,087**	**$ 51,557**	**$ 279,101**	**$ 43,102**	**$ 2,384,569**
NPV	**$ 309,218**	**$ 259,196**	**$ 11,379**	**$ 6,978**	**$ 34,953**	**$ 58,374**	**$ 238,851**	**$ 337,540**	**$ 4,754**	**$ 31,458**	**$ 169,501**	**$ 26,172**	**$ 1,488,374**
Ann.	**$ 33,950**	**$ 28,458**	**$ 1,249**	**$ 766**	**$ 3,838**	**$ 6,409**	**$ 26,225**	**$ 37,060**	**$ 522**	**$ 3,454**	**$ 18,610**	**$ 2,873**	**$ 163,416**

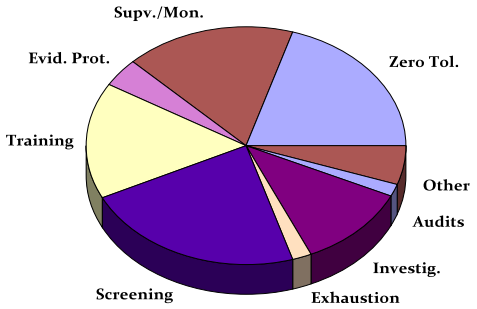


Table 14.4: Estimated Cost of Full Nationwide Compliance with PREA Standards, Lockups, by Standard and by Year, in Thousands of Dollars

Year	115.111	115.113	115.116	115.117	Training	115.141-.142	Audits	Total
2012	$ 44,038	$ 34,305	$ 28,514	$ 2,136	$ 55,505	$ 15,208	$ 437	$180,142
2013	$ 42,276	$ 25,729	$ 28,514	$ 2,136	$ 7,738	$ 15,208	$ 437	$122,037
2014	$ 39,704	$ 12,864	$ 28,514	$ 2,136	$ 7,738	$ 15,208	$ 437	$106,601
2015	$ 36,428	$ 3,216	$ 28,514	$ 2,136	$ 7,738	$ 15,208	$ 437	$93,676
2016	$ 33,293	-	$ 28,514	$ 2,136	$ 7,738	$ 15,208	$ 437	$87,325
2017	$ 29,593	-	$ 28,514	$ 2,136	$ 7,738	$ 15,208	$ 437	$83,626
2018	$ 26,106	-	$ 28,514	$ 2,136	$ 7,738	$ 15,208	$ 437	$80,138
2019	$ 23,463	-	$ 28,514	$ 2,136	$ 7,738	$ 15,208	$ 437	$77,495
2020	$ 20,962	-	$ 28,514	$ 2,136	$ 7,738	$ 15,208	$ 437	$74,994
2021	$ 19,165	-	$ 28,514	$ 2,136	$ 7,738	$ 15,208	$ 437	$73,197
2022	$ 17,967	-	$ 28,514	$ 2,136	$ 7,738	$ 15,208	$ 437	$72,000
2023	$ 16,770	-	$ 28,514	$ 2,136	$ 7,738	$ 15,208	$ 437	$70,802
2024	$ 15,572	-	$ 28,514	$ 2,136	$ 7,738	$ 15,208	$ 437	$69,604
2025	$ 14,374	-	$ 28,514	$ 2,136	$ 7,738	$ 15,208	$ 437	$68,406
2026	$ 13,176	-	$ 28,514	$ 2,136	$ 7,738	$ 15,208	$ 437	$67,208
Total	**$ 392,887**	**$ 76,114**	**$ 427,711**	**$ 32,034**	**$ 163,841**	**$ 228,113**	**$ 6,551**	**$1,327,251**
NPV	**$ 265,592**	**$ 67,488**	**$ 259,704**	**$ 19,451**	**$ 115,122**	**$ 138,509**	**$ 3,978**	**$869,842**
Ann.	**$ 29,161**	**$ 7,410**	**$ 28,514**	**$ 2,136**	**$ 12,640**	**$ 15,208**	**$ 437**	**$95,504**

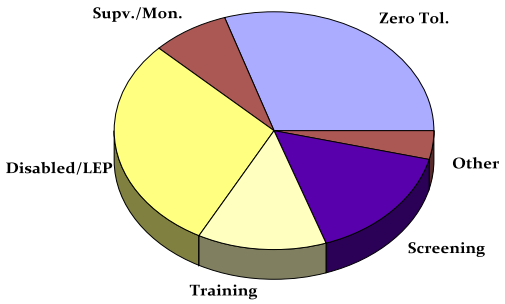


Table 14.5: Estimated Cost of Full Nationwide Compliance with PREA Standards, CCFs, by Standard and by Year, in Thousands of Dollars

Year	115.211	115.213	115.216	115.217	115.221-.22	Training	115.241-.242	115.251, .253	Audits	Total
2012	$ 6,023	$ 5,967	$ 13	$ 281	$ 199	$ 14,008	$ 267	$ 690	$ 361	$ 27,807
2013	$ 5,782	$ 4,475	$ 0	$ 281	$ 198	$ 5,070	$ 0	$ 660	$ 361	$ 16,828
2014	$ 5,430	$ 2,237	$ 0	$ 281	$ 198	$ 5,070	$ 0	$ 660	$ 361	$ 14,238
2015	$ 4,982	$ 559	$ 0	$ 281	$ 198	$ 5,070	$ 0	$ 660	$ 361	$ 12,112
2016	$ 4,553	$ 0	$ 0	$ 281	$ 198	$ 5,070	$ 0	$ 660	$ 361	$ 11,124
2017	$ 4,047	$ 0	$ 0	$ 281	$ 198	$ 5,070	$ 0	$ 660	$ 361	$ 10,618
2018	$ 3,570	$ 0	$ 0	$ 281	$ 198	$ 5,070	$ 0	$ 660	$ 361	$ 10,141
2019	$ 3,209	$ 0	$ 0	$ 281	$ 198	$ 5,070	$ 0	$ 660	$ 361	$ 9,780
2020	$ 2,867	$ 0	$ 0	$ 281	$ 198	$ 5,070	$ 0	$ 660	$ 361	$ 9,438
2021	$ 2,621	$ 0	$ 0	$ 281	$ 198	$ 5,070	$ 0	$ 660	$ 361	$ 9,192
2022	$ 2,457	$ 0	$ 0	$ 281	$ 198	$ 5,070	$ 0	$ 660	$ 361	$ 9,028
2023	$ 2,294	$ 0	$ 0	$ 281	$ 198	$ 5,070	$ 0	$ 660	$ 361	$ 8,864
2024	$ 2,130	$ 0	$ 0	$ 281	$ 198	$ 5,070	$ 0	$ 660	$ 361	$ 8,700
2025	$ 1,966	$ 0	$ 0	$ 281	$ 198	$ 5,070	$ 0	$ 660	$ 361	$ 8,537
2026	$ 1,802	$ 0	$ 0	$ 281	$ 198	$ 5,070	$ 0	$ 660	$ 361	$ 8,373
Total	**$ 53,734**	**$ 13,238**	**$ 13**	**$ 4,219**	**$ 2,973**	**$ 84,992**	**$ 267**	**$ 9,935**	**$ 5,412**	**$ 174,782**
NPV	**$ 36,324**	**$ 11,738**	**$ 12**	**$ 2,562**	**$ 1,805**	**$ 54,533**	**$ 249**	**$ 6,042**	**$ 3,286**	**$ 116,551**
Ann.	**$ 3,988**	**$ 1,289**	**$ 1**	**$ 281**	**$ 198**	**$ 5,987**	**$ 27**	**$ 663**	**$ 361**	**$ 12,797**

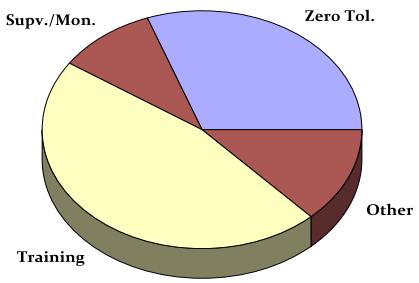


Table 14.6: Estimated Cost of Full Nationwide Compliance with PREA Standards, Juvenile Facilities, by Standard and by Year, in Thousands of Dollars

Year	115.311	115.313	115.317	115.321-.322	Training	115.341-.342	115.351, .353	115.352	115.371	Audits	Total
2012	$ 44,309	$ 22,129	$ 3,209	$ 1,850	$ 118,386	$ 899	$ 246	$ 3	$ 3,291	$ 1,661	$ 195,984
2013	$ 42,537	$ 21,276	$ 3,209	$ 1,679	$ 19,084	$ 662	$ 0	$ 0	$ 3,237	$ 1,661	$ 93,346
2014	$ 39,949	$ 22,661	$ 3,209	$ 1,679	$ 19,084	$ 662	$ 0	$ 0	$ 3,237	$ 1,661	$ 92,143
2015	$ 36,653	$ 28,674	$ 3,209	$ 1,679	$ 19,084	$ 662	$ 0	$ 0	$ 3,237	$ 1,661	$ 94,860
2016	$ 33,498	$ 46,284	$ 3,209	$ 1,679	$ 19,084	$ 662	$ 0	$ 0	$ 3,237	$ 1,661	$ 109,315
2017	$ 29,776	$ 92,568	$ 3,209	$ 1,679	$ 19,084	$ 662	$ 0	$ 0	$ 3,237	$ 1,661	$ 151,877
2018	$ 26,266	$ 91,547	$ 3,209	$ 1,679	$ 19,084	$ 662	$ 0	$ 0	$ 3,237	$ 1,661	$ 147,347
2019	$ 23,608	$ 91,547	$ 3,209	$ 1,679	$ 19,084	$ 662	$ 0	$ 0	$ 3,237	$ 1,661	$ 144,688
2020	$ 21,091	$ 91,547	$ 3,209	$ 1,679	$ 19,084	$ 662	$ 0	$ 0	$ 3,237	$ 1,661	$ 142,171
2021	$ 19,283	$ 91,547	$ 3,209	$ 1,679	$ 19,084	$ 662	$ 0	$ 0	$ 3,237	$ 1,661	$ 140,363
2022	$ 18,078	$ 91,547	$ 3,209	$ 1,679	$ 19,084	$ 662	$ 0	$ 0	$ 3,237	$ 1,661	$ 139,158
2023	$ 16,873	$ 91,547	$ 3,209	$ 1,679	$ 19,084	$ 662	$ 0	$ 0	$ 3,237	$ 1,661	$ 137,953
2024	$ 15,668	$ 91,547	$ 3,209	$ 1,679	$ 19,084	$ 662	$ 0	$ 0	$ 3,237	$ 1,661	$ 136,748
2025	$ 14,463	$ 91,547	$ 3,209	$ 1,679	$ 19,084	$ 662	$ 0	$ 0	$ 3,237	$ 1,661	$ 135,543
2026	$ 13,257	$ 91,547	$ 3,209	$ 1,679	$ 19,084	$ 662	$ 0	$ 0	$ 3,237	$ 1,661	$ 134,337
Total	**$ 395,309**	**$ 1,057,520**	**$ 48,134**	**$ 25,356**	**$ 385,561**	**$ 10,172**	**$ 246**	**$ 3**	**$ 48,616**	**$ 24,916**	**$ 1,995,833**
NPV	**$ 267,229**	**$ 571,763**	**$ 29,227**	**$ 15,452**	**$ 266,620**	**$ 6,254**	**$ 230**	**$ 3**	**$ 29,537**	**$ 15,129**	**$ 1,201,443**
Ann.	**$ 29,340**	**$ 62,776**	**$ 3,209**	**$ 1,697**	**$ 29,273**	**$ 687**	**$ 25**	**$ 0**	**$ 3,243**	**$ 1,661**	**$ 131,912**

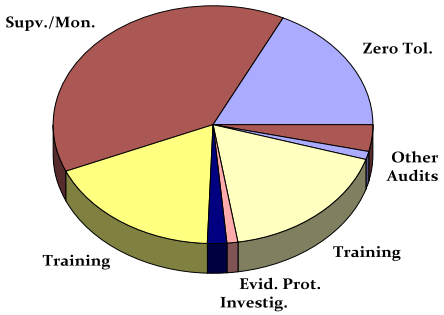
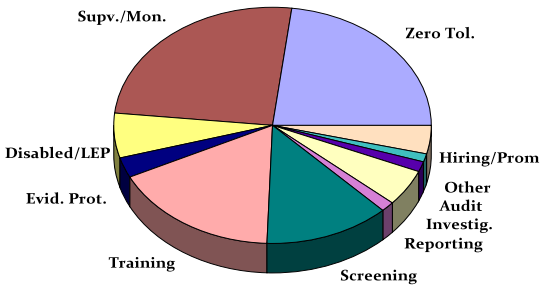


Table 14.7: Estimated Cost of Full Nationwide Compliance with PREA Standards, Total Across All Facility Types, by Standard and by Year, in Thousands of Dollars

Year	115.11	115.13	115.14	115.16	115.17	115.21-.22	Training	115.41-.42	115.51, .53	115.52	115.71	Audits	Total
2012	$ 165,711	$ 85,980	$ 16,202	$ 29,298	$ 11,031	$ 12,803	$ 310,128	$ 67,302	$ 11,774	$ 4,163	$ 24,431	$ 6,937	$ 745,760
2013	$ 159,083	$ 79,991	$ 0	$ 29,285	$ 11,031	$ 12,474	$ 55,702	$ 59,765	$ 6,263	$ 3,688	$ 24,236	$ 6,937	$ 448,454
2014	$ 149,405	$ 70,430	$ 0	$ 29,285	$ 11,031	$ 12,474	$ 55,702	$ 59,765	$ 6,263	$ 3,688	$ 24,236	$ 6,937	$ 429,215
2015	$ 137,076	$ 68,027	$ 0	$ 29,285	$ 11,031	$ 12,474	$ 55,702	$ 59,765	$ 6,263	$ 3,688	$ 24,236	$ 6,937	$ 414,484
2016	$ 125,278	$ 87,948	$ 0	$ 29,285	$ 11,031	$ 12,474	$ 55,702	$ 59,765	$ 6,263	$ 3,688	$ 24,236	$ 6,937	$ 422,606
2017	$ 111,358	$ 139,334	$ 0	$ 29,285	$ 11,031	$ 12,474	$ 55,702	$ 59,765	$ 6,263	$ 3,688	$ 24,236	$ 6,937	$ 460,073
2018	$ 98,234	$ 144,176	$ 0	$ 29,285	$ 11,031	$ 12,474	$ 55,702	$ 59,765	$ 6,263	$ 3,688	$ 24,236	$ 6,937	$ 451,790
2019	$ 88,291	$ 148,092	$ 0	$ 29,285	$ 11,031	$ 12,474	$ 55,702	$ 59,765	$ 6,263	$ 3,688	$ 24,236	$ 6,937	$ 445,763
2020	$ 78,879	$ 152,738	$ 0	$ 29,285	$ 11,031	$ 12,474	$ 55,702	$ 59,765	$ 6,263	$ 3,688	$ 24,236	$ 6,937	$ 440,997
2021	$ 72,118	$ 156,816	$ 0	$ 29,285	$ 11,031	$ 12,474	$ 55,702	$ 59,765	$ 6,263	$ 3,688	$ 24,236	$ 6,937	$ 438,314
2022	$ 67,610	$ 159,253	$ 0	$ 29,285	$ 11,031	$ 12,474	$ 55,702	$ 59,765	$ 6,263	$ 3,688	$ 24,236	$ 6,937	$ 436,244
2023	$ 63,103	$ 162,373	$ 0	$ 29,285	$ 11,031	$ 12,474	$ 55,702	$ 59,765	$ 6,263	$ 3,688	$ 24,236	$ 6,937	$ 434,857
2024	$ 58,596	$ 164,029	$ 0	$ 29,285	$ 11,031	$ 12,474	$ 55,702	$ 59,765	$ 6,263	$ 3,688	$ 24,236	$ 6,937	$ 432,005
2025	$ 54,088	$ 166,337	$ 0	$ 29,285	$ 11,031	$ 12,474	$ 55,702	$ 59,765	$ 6,263	$ 3,688	$ 24,236	$ 6,937	$ 429,806
2026	$ 49,581	$ 167,336	$ 0	$ 29,285	$ 11,031	$ 12,474	$ 55,702	$ 59,765	$ 6,263	$ 3,688	$ 24,236	$ 6,937	$ 426,297
Total	**$ 1,478,411**	**$ 1,952,859**	**$ 16,202**	**$ 439,290**	**$ 165,466**	**$ 187,442**	**$ 1,089,957**	**$ 904,007**	**$ 99,455**	**$ 55,794**	**$ 363,731**	**$ 104,049**	**$ 6,856,664**
NPV	**$ 999,406**	**$ 1,094,915**	**$ 15,142**	**$ 266,738**	**$ 100,470**	**$ 113,921**	**$ 745,111**	**$ 551,376**	**$ 62,193**	**$ 34,034**	**$ 220,919**	**$ 63,178**	**$ 4,267,403**
Ann.	**$ 109,729**	**$ 120,216**	**$ 1,663**	**$ 29,286**	**$ 11,031**	**$ 12,508**	**$ 81,809**	**$ 60,538**	**$ 6,828**	**$ 3,737**	**$ 24,256**	**$ 6,937**	**$ 468,538**



6 COST JUSTIFICATION ANALYSIS

This Part analyzes the cost justification of the proposed standards. First, we conduct a break-even analysis, which demonstrates that the costs of full nationwide compliance with the PREA standards are justified by the anticipated benefits accruing from reductions in the prevalence of prison rape. As shown below in section 6.1, we estimate that for the costs of full nationwide compliance to break even with the monetized benefits of avoiding prison rape, the standards would have to be successful in reducing the number of annual prison sexual abuse victims (across all facility types) by between 1667 and 2329 per year, for a total reduction from the baseline over the course of the 15-year cost horizon of between 25,000 and 35,000 victims. The number of actual incidents of sexual abuse that would have to be avoided for the costs and benefits to break even would be higher, since our estimates presuppose that many victims are victimized multiple times.

We believe it reasonable to expect that when fully adopted and implemented, the standards will achieve at least this level of reduction in the prevalence of prison sexual abuse. When one considers the non-monetized benefits of avoiding prison rape, the break-even thresholds become much lower.

Second, we perform the analysis that Congress required in PREA, namely, a comparison of the costs of full compliance against total expenditures on correctional operations nationwide, which demonstrates that the former do not amount to "substantial additional costs" *vis à vis* the latter. As shown below in section 6.2, in the most recent tabulation correctional agencies nationwide spent approximately $79.5 billion annually on correctional operations. We estimate that full nationwide compliance with the PREA standards would cost these agencies approximately $468.5 million per year, when annualized over 15 years at a 7% discount rate. The ratio of this amount to the totality of correctional expenditures is 0.6%. We conclude below that this does not amount to a substantial additional cost.

Third, we compare the standards in the final rule against other available alternatives to demonstrate that the standards are cost/benefit justified in comparison to other options.

6.1 Break-even Analysis

To determine whether the costs of the PREA standards are justified in light of their anticipated benefits, we conduct a break-even analysis. A break-even analysis first determines how effectively the standards would have to accomplish their goal—*viz*., what percentage reduction (or numerical reduction) from the baseline in the average annual prevalence of prison rape and sexual abuse would have to ensue from the standards' promulgation—in order for the costs and monetized benefits to break even. Then it asks whether it is reasonable and plausible to assume that the standards will be as effective as needed to break even.

We approach our break-even analysis in two stages: the first for prisons, jails, and juvenile facilities, and second for lockups and CCFs.

6.1.1 *Prisons, Jails, Juvenile*

In Tables 6.1 and 6.2 above, we depicted our six separate approaches to calculating the total cost of prison sexual abuse in prisons, jails, and juvenile facilities (*i.e.,* applying the willingness-to-pay and victim compensation models to each of our three approaches for estimating prevalence—principal, adjusted, and lower bound).

These were essentially estimates of the monetized benefit of eliminating prison sexual abuse, and they ranged from $26.9 billion to $51.9 billion. In Table 7.2, meanwhile, we presented the

total estimated cost of full compliance with the standards, annualized over 15 years, for each facility type including prisons (for which the annual cost came to $65.8 million), jails ($165.7 million), and juvenile facilities ($133.6 million).

To calculate the break-even thresholds for these three facility types, we first divide the cost by the benefit to derive the percentage reduction from the baseline prevalence of sexual abuse that would have to ensue for the costs to break even with the monetized benefits. We then multiply this percentage by the baseline prevalence to estimate the amount by which the total number of individual victims that would need to be reduced each year (in comparison to the baseline estimate) to achieve cost-benefit equilibrium.

Tables 15.1 to 15.4 show the calculations for prisons, jails, and juvenile facilities using our six approaches to estimating the monetized cost of prison rape avoidance. The break-even points are presented both as percentages of the baseline prevalence (ranging from 0.7% to 1.4% for the three types of facilities taken together) and as numbers of fewer victims each year compared to baseline levels (ranging from 1439 to 2000).

For purposes of this break-even analysis, we assume that the costs and benefits of reducing prison rape are linear, at least within the range relevant to the present analysis. It may well be that the marginal cost of procuring an additional 1% reduction in prison rape increases as more and more rape is reduced.

However, we are unaware of any data showing precisely how the marginal cost of rape reduction is likely to change once various benchmarks of reduction have been achieved, and no commenter offered us such data in response to our specific question in the NPRM. For this reason, and because our estimates show that the ongoing compliance costs associated with the proposed standards break even with the monetary benefits when the prevalence of prison rape is reduced by at most 1.4% from the baseline level, we believe it to be appropriate to assume linear benefits and costs, at least within the range relevant to the analysis.

Table 15.1: Break-Even Calculations for Prisons, Using Alternative Benefit Valuation and Prevalence Estimation Models[195/]

Model		Prev.	Benefit	Cost	BE %	BE #
WTA	Prin.	89,700	$20,637	$64,910	0.31%	282
	Adj.	90,100	$20,814	$64,910	0.31%	281
	LB	70,500	$16,051	$64,910	0.40%	285
WTP	Prin.	89,700	$14,922	$64,910	0.44%	390
	Adj.	90,100	$15,062	$64,910	0.43%	388
	LB	70,500	$11,599	$64,910	0.56%	395

Table 15.2: Break-Even Calculations for Jails, Using Alternative Benefit Valuation and Prevalence Estimation Models

Model		Prev.	Benefit	Cost	BE %	BE #
WTA	Prin.	109,200	$26,011	$163,416	0.63%	686
	Adj.	101,300	$24,493	$163,416	0.67%	676
	LB	69,200	$15,084	$163,416	1.08%	750
WTP	Prin.	109,200	$18,197	$163,416	0.90%	981
	Adj.	101,300	$17,115	$163,416	0.95%	967
	LB	69,200	$10,622	$163,416	1.54%	1065

[195/] "Model" refers to the method used to estimate prevalence and to calculate unit avoidance benefits. "Prin." refers to principal prevalence approach, "adj." refers to adjusted approach, and "LB" refers to the lower bound approach. Prevalence figures ("Prev." column) are from Table 3.3. "Benefit" column shows the total monetized cost of sexual abuse (all categories), in millions of dollars, from Tables 6.1 and 6.2; these figures essentially set forth the monetized benefit of avoiding or eliminating prison sexual abuse. "Cost" column is drawn from Tables 7.2 and 16.2. "BE %" column shows the annual percentage reduction in the baseline prevalence of all forms of prison sexual abuse that would have to ensue for the monetized benefits of the standards to break even with the costs of full compliance; it is calculated by dividing "cost" by (1000 x "benefit"). "BE #" multiplies "BE %" by "Prev." to derive an approximate amount by which the number of prison rape victims would have to be reduced each year (relative to the baseline) for the costs and monetized benefits to break even.

Table 15.3: Break-Even Calculations for Juvenile Facilities, Using Alternative Benefit Valuation and Prevalence Estimation Models

Model		Prev.	Benefit	Cost	BE %	BE #
WTA	Prin.	10,600	$5,239	$131,912	2.52%	267
	Adj.	11,700	$5,532	$131,912	2.38%	279
	LB	9,500	$4,654	$131,912	2.83%	269
WTP	Prin.	10,600	$5,239	$131,912	2.52%	267
	Adj.	11,700	$5,532	$131,912	2.38%	279
	LB	9,500	$4,654	$131,912	2.83%	269

Table 15.4: Break-Even Calculations for Prisons, Jails, and Juvenile Facilities Combined, Using Alternative Benefit Valuation and Prevalence Estimation Models

Model		Prev.	Benefit	Cost	BE %	BE #
WTA	Prin.	209,400	$51,886	$360,237	0.69%	1454
	Adj.	203,100	$50,839	$360,237	0.71%	1439
	LB	149,200	$35,789	$360,237	1.01%	1502
WTP	Prin.	209,400	$38,357	$360,237	0.94%	1967
	Adj.	203,100	$37,709	$360,237	0.96%	1940
	LB	149,200	$26,875	$360,237	1.34%	2000

6.1.2 *Lockups, CCFs*

For reasons stated in Part 3.6, we were unable to estimate the prevalence of sexual abuse in the lockup or CCF settings, or correspondingly to estimate the total cost to society of sexual abuse that occurs in those settings. Accordingly, we must estimate the break-even thresholds for the standards affecting these facilities using a different method from the one used for prisons, jails, and juvenile facilities.

We do know that there are at least six thousand lockup agencies in the United States whose facilities will be covered by the lockup standards, and that just under a quarter of these agencies have facilities that house some detainees overnight. An estimated 13.7 million arrests were made in the United States in 2009, and it can be assumed that a significant percentage of the arrestees passed through lockups one or more times.[196] By including lockups as one of the types of confinement facility to which the standards apply, the final rule will almost certainly avoid the sexual victimization of some unknown percentage of lockup detainees, with each such avoided victimization providing significant benefits to society.

Similarly, while the prevalence of sexual abuse in CCFs is not precisely known (at least not based on information available in time to be included in this analysis), at least 529 such facilities are known to be covered by the CCF standards in the final rule. Because inmates in these facilities are typically at liberty for part of each day—with greater opportunities than prison inmates have to escape from, or report, their abusers—we assume the prevalence of sexual abuse in these types of facilities is less than the corresponding rates in more secure detention settings.

An additional factor is that many inmates incarcerated in CCF settings are at the end of their terms of confinement and presumably are strongly predisposed to behave lawfully and appropriately so as not to endanger their looming release. Nevertheless, we again cannot ignore the anecdotal evidence that sexual abuse can and sometimes does occur in CCF settings.[197] And by including such facilities within the ambit of the standards, the final rule will almost certainly avoid the sexual victimization of some CCF inmates. Each such avoided victimization benefits society.

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[196] *See* Federal Bureau of Investigation, Uniform Crime Reports, *Crime in the United States, 2009*, table 29, available at http://www2.fbi.gov/ucr/cius2009/data/table_29.html.

[197] This anecdotal evidence is confirmed by BJS's forthcoming report on Sexual Victimization Reported by Former State Prisoners, 2008 (May 2012 NCJ 237363). *See supra* section 3.6.

To determine the break-even thresholds for lockups and CCFs, we must first estimate a cost per victim of sexual abuse in lockups and CCFs. To do this, we simply calculate a weighted average cost per victim for sexual abuse in adult prisons and jails, using the same distribution of victimization types for lockups and CCFs that we use for prisons and jails.

Table 15.5: Break-Even Estimates for Lockups, Using Alternative Benefit Valuation and Prevalence Estimation Models

Model		Benefit per Victim	Cost	BE #
WTA	Prin.	$247,760	$95,504,010	385
	Adj.	$250,347	$95,504,010	381
	LB	$239,889	$95,504,010	398
WTP	Prin.	$183,159	$95,504,010	521
	Adj.	$185,691	$95,504,010	514
	LB	$180,148	$95,504,010	530

Table 15.6: Break-Even Estimates for CCFs, Using Alternative Benefit Valuation and Prevalence Estimation Models

Model		Benefit per Victim	Cost	BE #
WTA	Prin.	$247,760	$12,796,677	52
	Adj.	$250,347	$12,796,677	51
	LB	$239,889	$12,796,677	53
WTP	Prin.	$183,159	$12,796,677	70
	Adj.	$185,691	$12,796,677	69
	LB	$180,148	$12,796,677	71

Thus, for example, under the principal prevalence estimation approach and the victim compensation model, we divide $51.9 billion by 209,400 (from Table 6.3, "Total" row) to yield an average cost per adult victim of $247,760. We can then divide this into the total annualized cost estimates for lockups and CCFs to estimate the amount by which the number of individual victims in these settings (but not the percentage reduction from the baseline prevalence) would have to be reduced each year for the monetized benefits of the standards to break even with their costs as they relate to these facilities. These estimates are depicted below in Tables 15.5 and 15.6.

We caution, however, that this approach is not without difficulties, since it assumes that the distribution of the different types of sexual victimization is the same in lockups and CCFs as it is in prisons and jails, which may or may not be a fair assumption. This approach, moreover, is unable to account for the complexity of sexual victimization, in the manner set forth for prisons, jails, and juvenile facilities in Part 3.

Nevertheless, this approach appears to be the best available given the lack of specific data regarding the prevalence of sexual abuse in lockups and CCFs, and it ought to offer at least some general insight into how successful the standards would need to be in the lockup and CCF settings in order for the costs incurred in those settings to be justified by the corresponding benefits.

6.1.3 *Break-Even Analysis Conclusions, and Discussion of Public Comments*

Table 15.7 draws from Tables 15.1 to 15.6 to set forth our estimates of the reduction in the number of individual victims nationwide that would have to be achieved each year in each of the five confinement settings (and in total) for the monetized benefits of these standards to break even with their costs, using each of our six methods of estimating unit avoidance benefits. Because we include lockups and CCFs in this tabulation, we are constrained to depict the break-even thresholds in terms of numbers of victims rather than percentage reductions from the baseline. Moreover, as already noted, the number of actual incidents of sexual abuse that would have to be avoided for the costs and benefits to break

even would be higher than is reflected in these estimates, which presuppose that many victims are victimized multiple times.

Given the figures in this table, a total reduction from the baseline over the course of the 15-year cost horizon of between 25,000 and 35,000 victims per year would be required for the benefits of the standards to break even with the costs of full nationwide compliance. We believe it entirely plausible and reasonable to expect that the standards, if fully adopted and complied with, will achieve at least this relatively modest reduction in the prevalence of sexual abuse.

Table 15.7: Break-Even Estimates for All Facility Types, Using Alternative Benefit Valuation and Prevalence Estimation Models

Model		Pris.	Jail	Lock.	CCF	Juv	Total
WTA	Prin.	282	686	385	52	266	1671
	Adj.	281	676	381	51	278	1667
	LB	285	750	398	53	269	1755
WTP	Prin.	390	981	521	70	266	2228
	Adj.	388	967	514	69	278	2216
	LB	395	1,064	530	71	269	2329

Moreover, these break-even estimations only take into account the monetized benefits of avoiding prison sexual abuse. As elaborated in section 4.4, preventing prison sexual abuse carries with it considerable non-monetizable benefits, as well. Any true cost-benefit analysis of the standards must take these non-monetizable benefits into account to the extent possible. When one factors these additional benefits into the analysis, the break-even points diminish substantially.

A number of commenters addressed the break-even analysis in our IRIA. For instance, a policy think-tank criticized the analysis for overestimating costs and underestimating benefits, and suggested that an analysis that would lead to lower break-even thresholds would support more stringent levels of regulation. In section 2.2, we have already considered and rejected this latter suggestion.

The think-tank's comments also offered three specific criticisms of the break-even analysis in the IRIA. First, it questioned the lack of accounting for the effects of learning and innovation over time; we addressed this criticism in section 5.4. Second, the commenter suggested that we had underestimated the value of unquantifiable benefits. However, by virtue of the very fact that they are unquantifiable, the true value of such benefits cannot be estimated, so it is not clear how they could be underestimated. In any event, we have discussed the nature and magnitude of these unquantifiable benefits in some detail in section 4.4, and have repeatedly stated that accounting for those benefits will reduce the break-even thresholds that emerge from using the monetized benefits.

Third, the think-tank criticized the break-even analysis in the IRIA for failing to include benefits that would result from reducing sexual abuse in lockups and CCFs. According to the commenter, the analysis in the IRIA incorporated the costs but not the benefits of reducing sexual abuse in two of the five types of facilities to which the rule would apply. We agree with this criticism, and in the preceding section we have attempted to estimate the break-even thresholds for lockups and CCFs using an estimated cost per victim extrapolated from the statistics for adult prisons and jails.

We asked in the NPRM whether the expectations as to the effectiveness of the proposed standards that were set forth in the IRIA's break-even analysis[198/] were reasonable. We also asked

[198/] The IRIA concluded that a 2.06%-3.13% reduction in the baseline prevalence of prison sexual abuse would be required for the ongoing costs of the standards to break even with the monetized benefits.

whether there are any available data from which reasonable predictions can be made as to the extent to which the proposed standards would be effective in reducing the prevalence of rape and sexual abuse in prisons.

Quite a few commenters, including both corrections agencies and advocacy groups, affirmatively responded that the Department's predictions as to the effectiveness of the standards in reducing prison sexual abuse were reasonable.

Several advocacy groups responded that the assumptions the Department made in the IRIA in estimating the benefits of preventing sexual abuse were extremely conservative. By erring on the side of great caution in its projections of those benefits, these groups averred, and then showing that they would still outweigh costs even if the regulations saved only three percent of all victims per year, the Department's analysis makes clear that, even with additional costs, the standards would result in substantial s1avings.

We agree. In this RIA we have continued to use conservative assumptions in estimating the monetized benefits of avoiding prison sexual abuse and correspondingly liberal assumptions in estimating the costs of full nationwide compliance. Even so, our analysis above demonstrates that the standards would need to be only modestly effective for the costs to break even with the monetized benefits.

A State juvenile justice agency averred that there are no known data from which reasonable predictions may be made as to the precise effectiveness of the standards in reducing prison rape. While this may be true, neither this commenter nor any other cited data suggesting that it would be unreasonable or implausible to assume the standards would not have even the modest level of effectiveness for the costs to break even with the benefits in accordance with our analysis.

One State agency appropriately observed that it would continue to look to data from the Department's *Survey of Sexual Violence* to determine if measurable results have in fact been achieved over time. Because there will have to be actual data to measure results so as to support funding decisions at the local level, this agency suggested that BJS conduct additional surveys of facilities, inmates, and offenders to generate the needed data.

We agree in general with these observations but do not believe they affect our break-even analysis for purposes of the final rule. BJS is continuously reassessing its data collection programs and methodologies, and it will continue to publish reports containing data from which on-going assessments of the effectiveness of the standards can presumably be made.

Finally, one State corrections agency questioned the validity of our break-even analysis on the ground that there is no reliable estimate of the baseline level of sexual abuse. We disagree with this proposition: as set forth at length in Part 3, at least for prisons, jails, and juvenile there are ample data from which a detailed picture of baseline prevalence can be developed.

The agency went on to comment that many State governments are in fiscal turmoil at this time, with some rethinking their operations and others redesigning their delivery of services to fulfill their core responsibilities while achieving better results. The agency noted that it is reducing its budget by 10% for the second year in a row, and that in the current environment, the likely costs associated with the proposed standards far outweigh the benefits of a modest reduction in the incidence of sexual abuse.

We understand and sympathize with the straitened fiscal circumstances that many confinement facilities face, and have designed flexibility into the standards in a number of places.

We have also sought to maximize the benefit of the standards in part by setting their stringency at a level calculated to promote voluntary decisions to adopt them, and PREA itself contemplates the possibility that States who adopt the standards may phase in full compliance over a number of years. That said, however, we do not believe that the existence of such "fiscal turmoil" is directly relevant to the break-even analysis or to the cost-benefit justification of the standards.[199/]

6.2 Substantial Cost Analysis

In addition to the regulatory impact assessment required by Executive Order 12866, we conduct the cost assessment mandated by the statute itself, comparing the expected compliance costs against the total amounts spent in the United States on correctional operations.

In this section, we discuss and define the statutory phrase "substantial additional costs." We estimate that the total nationwide expenditures on correctional operations in 2008 was $79.5 billion. Because the estimated cost of total nationwide compliance with the PREA standards (annualized over 15 years at a 7% discount rate) is expected to amount to $468.5 million annually—or 0.6% of the total—we conclude that the "additional costs" imposed by the PREA standards are not "substantial" within the meaning of the statute.

Congress insisted that PREA's goal of eliminating prison rape be balanced against the "budgetary circumstances" that often challenge the ability of correctional and law enforcement agencies to make major changes to their operating procedures. 42 U.S.C. § 15605(a). In mandating national standards, Congress thus directed the Attorney General not to adopt any standards "that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities." 42 U.S.C. § 15607(a)(3). To apply this phrase, we must first ascertain its meaning.

"Additional" clearly means more, "compared to the costs presently expended by ... prison authorities." But the term "substantial" is not defined in the statute, nor does PREA specify what percentage of costs presently expended by prisons constitutes a "substantial" addition.

A number of agency commenters suggested that "substantial additional costs" should be considered in a vacuum—that is, in the absolute rather than in comparison to some other figure such as the total nationwide correctional costs. In other words, regardless of the ratio they bear to total nationwide correctional costs, compliance costs should be deemed substantial if their magnitude makes them unrealistic given the current fiscal circumstances that correctional agencies face. We have rejected this suggestion because it is not only inconsistent with the general use of "substantial" as a comparative term but is also inconsistent with the plain language of the statute, which requires that the compliance costs be compared against total correctional expenditures.

In a letter to former members of NPREC, a former staffer for the Senate Judiciary Committee who worked on developing the PREA legislation[200/] noted that "before introducing the bill, the

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[199/] We acknowledge that an analysis of the deadweight losses imposed by higher State and local taxes needed to cover federal regulatory requirements is sometimes included in regulatory impact assessments. Such an analysis was not included here because it would be a very complex undertaking and because it would be virtually impossible to predict the extent to which State and local jurisdictions would raise taxes to comply with the standards, in the absence of strong (for State jurisdictions) or any (for local jurisdictions) statutory provisions to procure or promote compliance.

[200/] The legislative history of PREA contains only two mentions of the "substantial costs" provision, and neither sheds light on its meaning. First, the cost estimate that was prepared by the Congressional Budget Office for the House version of PREA, H.R.1707, states the following:

> This bill would direct the Attorney General to adopt national standards for the prevention of prison rape. Though the language specifies that those standards may not place substantial

sponsors of PREA changed the language of Section [15607](a)(3) from 'significant additional costs' (as originally drafted) to 'substantial additional costs.'"[201] A number of advocacy group commenters, as well as NPREC itself in its comment responsive to the NPRM, cited this letter as useful in discerning the extent to which Congress intended to limit the Attorney General's discretion to issue PREA standards based on cost considerations.

However, the fact that the sponsors of a piece of legislation revised its language prior to introducing the bill does not bear on how the remaining members of Congress construed the legislation when they voted to enact it. Moreover, terms like "substantial" and "significant" do not articulate a bright-line threshold. There is no set dollar amount or percentage at which costs suddenly and obviously go from "significant" to "substantial." While the word "substantial" does not have a single dictionary definition,[202] it generally refers to costs that are "considerable," "large," burdensome, and not minor. *Toyota Motor Mfg. Ky., Inc. v. Williams*, 534 U.S. 184, 196-97 (2002).

NPREC and other commenters have nevertheless urged the Department to interpret the phrase "substantial additional costs" in accordance with two basic principles. First, they argue that the Department should discount from its calculations any costs necessary to bring a particular facility into compliance with its Eighth Amendment obligations and should only subsume within "substantial additional costs" those expenses which the standards impose over and above this level. According to this argument, because Congress intended that PREA promote, not weaken, enforcement of inmates' constitutional rights to safe conditions of confinement, any application of 42 U.S.C. § 15607(a)(3) should consider only those additional costs that a proposed national standard would impose on constitutionally compliant prisons and jails.

Second, they argue that "substantial additional cost" should be assessed on a per standard rather than an aggregate basis. In other words, only a national standard that would, *on its own*, impose 'substantial additional costs' in relation to total current correctional expenditures should be deemed prohibited under PREA.

A sound exercise of the Attorney General's interpretive discretion need not adopt either suggestion, and we elect not to do so. The first argument is in tension with the plain language of the statute and is in any event simply too difficult to apply in practice. The final standards are not intended to establish constitutionally required conditions of confinement, and compliance with the final standards does not establish a safe harbor

> additional costs on federal, State, or local prison authorities, CBO has no basis for estimating what those standards might be or what costs State and local governments would face in complying with them.

HOUSE JUD. COMM. REP. ON H.R. 1707 (PRISON RAPE REDUCTION ACT OF 2003), H.R. Rep. No. 108-219, at 16 (2003). This statement provides no insight as to the meaning of "substantial." Second, in the House Judiciary Committee Report's section-by-section analysis of the bill, what eventually became 42 U.S.C. § 15607(a)(3) was explained as follows:

> The Attorney General is required to establish a rule adopting national standards based on recommendations of the Commission, but shall not establish national standards that would impose substantial increases in costs for Federal, State, or local authorities. The Attorney General shall transmit the final rule to the governor of each State.

Id. at 20. Again, the statement gives no insight as to the meaning of "substantial."

[201] Letter from Robert E. Toone to Hon. Reggie B. Walton *et al.*, April 15, 2010, at 2 ("Toone Letter") *attached to* Submission of National Prison Rape Elimination Commission in response to NPRM, Docket No. OAG-131 ("NPREC Comment").

[202] *See Victor v. Nebraska*, 511 U.S. 1, 19-20 (1994) (noting the different definitions of "substantial"); *Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455, 474-75 (D.C. Cir. 1998) (explaining that "substantial" "has a host of much vaguer dictionary meanings, ranging from 'non seeming imaginary' to 'considerable in amount'" and finding the term "substantial" to be "simply too ambiguous to compel the 'plain meaning' claimed by the litigant"). The American Heritage Dictionary defines "substantial" as "considerable in importance, value, degree, amount, or extent." AMERICAN HERITAGE DICTIONARY (4th ed. 2000).

from otherwise constitutionally deficient conditions regarding inmate sexual abuse. The final standards are intended to establish a minimum national standard for protecting inmates from institutional sexual abuse.

Moreover, the standards will apply to more than 13,000 facilities across the country, operated by thousands of jurisdictions and entities. It is simply not possible to determine which (or how many) facilities are "constitutionally compliant" and which are not, in part because constitutional non-compliance often becomes apparent only after the fact—that is, after a violation.

Nor is it possible to calculate what subset of the total cost of compliance with the standards is directed towards bringing facilities into compliance with the constitution and what subset constitutes expenditures over and above the constitutional minimum. If the definition of "constitutionally non-compliant" is a facility at which a prison rape occurred, and if the funds spent to bring the facility into constitutional compliance are the funds spent to prevent further rapes, then no amount of funds spent in prisons where rapes occurred could ever be "substantial" while even minimal expenditures in facilities where rapes did not occur could be "substantial."

The question of whether the impact of the standards should be assessed in the aggregate or individually is a closer one. The statute does use the singular in stating that "the Attorney General shall not establish *a national standard* under this section that would impose substantial additional costs …." 42 U.S.C. § 15607(a)(3). This statutory language tends to support the position taken by some commenters that the standards should be disaggregated for the substantial cost analysis.

However, Congress's principal aim in limiting the cost burden on State and local governments was the protection of inmates from prison rape: Congress understood that State and local authorities are more likely to adopt measures to prevent prison rape if the total cost of those measures is reasonably within their means.

On the other hand, if the total cost of the measures appears onerous, some jurisdictions may simply refuse to adopt them, or else adopt them but transfer funds away from other critical correctional expenditures. In either event, inmates would be left exposed and vulnerable. Given Congress's concern that the total effect of the standards not be so burdensome on State and local governments as to make the statute self-defeating, it seems unlikely that Congress intended to bar the Attorney General from imposing one extremely expensive standard while permitting myriad smaller requirements that, when added together, would be just as expensive.

Congress, after all, directed the Attorney General in the same statute "to assist those States in ensuring that budgetary circumstances (such as reduced State and local spending on prisons) do not compromise efforts to protect inmates (particularly from prison rape)." 42 U.S.C. § 15605(a). We therefore believe that measuring "substantial additional costs" in terms of the aggregate cost of all of the standards in comparison to total national expenditures on corrections is the better reading of the statute.

Another commenter suggested that, for purposes of assessing whether the proposed PREA standards impose substantial additional costs, the Department should look at net costs (*i.e.*, costs net of benefits) rather than gross or absolute costs.

However, this suggestion is not consistent with Congress's intention that the Department account for the real-world budget constraints of cash-strapped correctional agencies, many of which could have great difficulty covering the out-of-pocket expenses associated with implementing rape-prevention standards even if the theoretical net cost of those standards is zero or negative.

While some of the benefits of avoiding rape discussed in Part 4 above would inure to the agencies—for example, reduced medical expenses—most would not (*e.g.,* they would benefit victims or other inmates), and the net effect on the agencies will involve positive costs even if the net cost to society is less than zero.

If section 15607(a)(3) simply foreclosed the Attorney General from establishing national standards that impose "substantial additional costs," one could well argue that "substantiality" should be determined by comparing costs with benefits. Section 15607(a)(3) goes on to specify, however, that costs cannot be substantial "compared to the costs presently expended by Federal, State, and local prison authorities." This statutory language would seem to defeat the argument that a comparison between costs and anticipated benefits is relevant to the statutory analysis under PREA.

We do not believe that such an assertive interpretation of the statute is necessary, for as shown below, even when one looks at gross or absolute costs the proposed PREA standards are justified from a "no substantial additional costs" point of view. Moreover, the rejection of the net cost approach for purposes of the "substantial cost" analysis of course does not mean that cost-benefit analysis is irrelevant to the Department's choice of standards to implement PREA. Quite the contrary—for as seen in the previous sections of this Report, separate and apart from the requirements of PREA the Department has independent obligations under Executive Order 12866 to demonstrate that its proposed standards are benefit-cost justified.

We thus interpret "substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities" as costs that impose considerable, large, unexpected, and unreasonable burdens on those authorities in a given year, in comparison to the total amount spent by correctional authorities nationwide.

While we do not deem it necessary to identify a specific ratio for purposes of defining the term,[203] we observe that the first half of the comparator—the total costs imposed on Federal, State, and local prison authorities collectively, as the result of complying with the standards taken as a whole—is calculated in Part 5 above and is depicted in Tables 7.2 and 16.2-16.7 above: it amounts to $468.5 million annually (based on 15-year annualization at a 7% discount rate).

The second half of the comparator—the total annual expenditures of Federal, State, and local prison authorities on corrections—is available from BJS, and amounts to $79.5 billion in 2008 (the most recent year for which figures are available).[204] Unfortunately, these latter figures are not broken down by facility type, so we are left to compare the total cost figures across all facility types against the total correctional expenditures. That ratio amounts to 0.6%.

Given the smallness of this percentage, we conclude that the standards cannot arguably be said to impose considerable, large, unexpected, or unreasonable cost burdens on correctional

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[203] We reject the suggestion of a policy think-tank and a human rights organization in their respective comments that the Department identify a specific threshold ratio at which compliance costs become "substantial" in relation to total correctional expenditures nationwide—*i.e.,* a monetary threshold at which the rule is no longer justified. Identifying such a threshold is impractical and potentially arbitrary, and it is neither required nor warranted by the statute. It is also unnecessary as long as the costs of full nationwide compliance with the standards cannot arguably be construed as "substantial additional costs" under any reasonable definition, as is the case here. These commenters essentially suggested that after defining this threshold of substantiality, the Department should promulgate standards at a level of stringency that would impose costs up to but not exceeding that threshold. For reasons stated in section 2.2, we reject that suggestion.

[204] BJS, Justice Expenditure and Employment Extracts 2007, "Table 1: percent distribution of expenditure for the justice system by type of government, fiscal year 2007" (Sep. 20, 2010), available at http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2315 (last checked March 14, 2012); BJS, Direct Expenditures by Criminal Justice Function, 1982-2006, in *Justice Expenditure and Employment Extracts*, available at http://bjs.ojp.usdoj.gov/content/glance/ tables/exptyptab.cfm.

authorities in any given year. Using the language of the statute, the standards do not impose "substantial additional costs compared to the costs … expended by Federal, State, and local prison authorities." 42 U.S.C. § 15607(a)(3).

6.3 Alternative Comparison Analysis

OMB guidelines require that the RIA contain a discussion of a range of potentially effective and reasonably feasible regulatory alternatives, together with an assessment of their direct costs and benefits and their ancillary benefits and countervailing risks.[205/] Typically, agencies identify one set of alternatives that is more stringent than the one adopted and a second set that is less stringent.

In setting forth detailed information in this Report breaking down the anticipated compliance costs by facility type, by standard, and by year, the Department has essentially provided information about a myriad of alternatives: any given standard could theoretically be modified by eliminating its application to one or more facility types (or to facilities of a specific size), by delaying the date by which compliance must be achieved, or by eliminating it altogether.

Moreover, in developing the individual standards, the Department considered a wide range of alternative approaches, all of which are discussed in the Notice of Final Rule, and many of which are also addressed in this Report. Such changes would potentially reduce the costs of the standards as a whole but would also be likely to affect their overall effectiveness. This disaggregation and modification approach yields literally thousands of possible permutations, each of which is at least potentially a viable alternative to the final rule.

OMB guidelines do not require agencies to conduct cost-benefit analyses of all such viable alternatives, and any attempt to do so would be both unwieldy and cost prohibitive. Typically, agencies identify two significant alternatives to the rule promulgated—one more stringent, one less so—on which they focus their alternative comparison analysis.

The most obvious sets of alternatives to the standards in the final rule are the standards recommended by the Commission, and those proposed in the NPRM. The Commission's recommended standards are more stringent than the Department's final rule insofar as they, for example, mandate video monitoring for all facilities, ban cross-gender pat searches for inmates of both genders, and require ongoing mental health care for all inmate abusers.

Meanwhile, the Department's final rule is, taken as a whole, by and large more stringent than the proposed standards in the NPRM, insofar as it has expanded the scope of the PREA Coordinator requirement, has imposed a ban on cross-gender pat searches of female inmates, has added a standard to protect youthful inmates, and has tightened and expanded a number of other requirements.

Table 16.1 shows the estimated costs of full nationwide compliance with the final rule, with the standards proposed in the NPRM, and with the standards recommended by the NPREC, all based on annualized costs over 15 years at a 7% discount rate.

The costs and benefits of both the Commission's recommended standards and of the standards proposed in the NPRM were analyzed at length in the IRIA. That discussion will not be repeated here.

Suffice it to say that we conclude that the costs of the standards in the final rule, taken as a whole,

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[205/] *See* OMB Circular A-4, at 2-3, 7-9, 26.

are less than both alternatives—including the rather less stringent alternative presented in the NPRM. In other words, compared to the proposed standards, the final standards are more cost effective in that they are likely to be more effective in preventing sexual abuse than the proposed standards were, while costing less to implement.

Table 16.1: Comparison of Projected Nationwide Upfront and Ongoing Costs, Final Rule vs. NPRM vs. Commission Recommendations, in Thousands of Annualized Dollars

	NPREC	NPRM	Final Rule
Prisons	$ 1,018,301	$ 53,318	$ 64,910
Jails	$ 2,278,566	$ 332,106	$ 163,416
Lockups	$ 2,246,775	$ 72,914	$ 95,504
CCF	$ 235,884	$ 2,147	$ 12,797
Juv.	$ 188,215	$ 50,002	$ 131,912
Total	$ 5,967,741	$ 510,487	$ 468,539

The final standards are also more balanced in their impact on the different facility types—the proposed standards disproportionately affected jails, while the final standards affect prisons, jails, and juvenile facilities relatively evenly on a unit basis. Compared to the proposed standards, the final standards are more costly for prisons, lockups, CCFs, and juvenile facilities, but substantially less costly for jails.

A number of commenters urged us to adopt alternatives to the standards that are even more stringent than the standards in the final rule—for example, the Commission's recommended standards. The argument was that the effectiveness of the standards in combating prison sexual abuse would be enhanced by greater stringency, even if it meant greater compliance costs that nonetheless did not amount to "substantial additional costs."

We addressed this argument is section 2.2. As set forth there, we are not persuaded that making the standards more stringent would make them more effective if increased stringency leads to increased costs. It may in fact have the opposite effect if agencies find the cost of compliance so prohibitive as to remove any incentive to adopt them. The Commission's recommended standards fall in this category, and the Attorney General has exercised his independent judgment to reject them, except insofar as they are incorporated into the final standards.

6.4 Conclusion

The final rule represents the most comprehensive initiative ever undertaken to combat the phenomenon of rape and sexual abuse in America's confinement facilities.

In fashioning the rule, the Department has hewn closely to the Congressional mandate to develop standards that are forceful and effective in enhancing the prevention, detection, and response to prison rape, without hardening the already straitened fiscal circumstances confronting many agencies. Given the need for widespread adoption of the standards in order for them to be fully effective, the Department has maintained the compliance costs associated with the standards at a level that will promote voluntary decisions by agencies to implement them. Thus, the standards will become effective by being cost effective.

This Report demonstrates that the Department has struck the right balance and has promulgated standards whose benefits manifestly outweigh their costs. The standards are justified from the point of view of break-even analysis, even when the substantial nonmonetary benefits of avoiding prison rape are left out of the analysis. The standards are also justified when compared to the compliance costs that would be associated with the Commission's recommended standards. Among the range of alternatives available to the Department, the standards represent the option most likely to maximize net benefits.

Appendix 1:
Analysis of Estimated Initial Cost of Compliance with Standard 115.11's PREA Coordinator and PREA Compliance Manager Requirements, By State

TABLE A1.1: ESTIMATED INITIAL COMPLIANCE COST FOR STANDARD 115.11'S PREA COORDINATOR REQUIREMENT, STATE-BY-

	PRISONS	JAILS							JUVENILE	CCF		LOCKUPS				
	PC Salary x LOE of 0.75FTE	*LOE= .05FTE*	*LOE=.15FTE*	*LOE= .25FTE*	*LOE=.75FTE*			*PC Salary x LOE*	*PC Salary x LOE of .75 FTE*	*58% of CCFs in State*	*PC Salary x LOE of .25 FTE*	*NB: LOE=.15 FTE*	*NB: LOE = .05 FTE*			
State	PC Initial Cost	No. Small (ADP 1-49)	No. Med (50-249)	No. Large (250-999)	No. Mega (1000+)	Total FTEs for PCs	PC Salary	PC Initial Cost	PC Initial Cost	CCF Agencies with PCs	PC Initial Cost	Facilities Housing Overnight	Facilities Housing Day	Total FTEs for PCs	PC Salary	PC Initial Cost
AL	$ 88,488	77	50	12	2	16	$101,178	$1,618,848	$60,414	9	$177,144	16	59	5	$101,178	$545,651
AK	$ 88,488	15	0	0	0	1	$101,178	$101,178	$60,414	3	$59,048	2	9	1	$101,178	$80,246
AZ	$ 88,488	2	12	12	4	8	$101,178	$809,424	$60,414	3	$59,048	51	187	17	$101,178	$1,728,658
AR	$ 88,488	55	23	5	0	7	$101,178	$708,246	$60,414	3	$59,048	7	24	2	$101,178	$220,704
CA	$ 88,488	22	32	36	40	45	$101,178	$4,553,010	$60,414	8	$157,461	88	321	29	$101,178	$2,959,697
CO	$ 88,488	29	21	6	6	11	$101,178	$1,112,958	$60,414	16	$314,923	15	53	5	$101,178	$491,421
CT	$ 88,488	0	0	0	0	0	$101,178	$0	$60,414	16	$314,923	7	24	2	$101,178	$225,352
DE	$ 88,488	0	0	0	0	0	$101,178	$0	$60,414	2	$39,365	3	13	1	$101,178	$117,000
DC	$ 88,488	8	35	29	30	35	$101,178	$3,541,230	$60,414	23	$452,702	68	248	23	$101,178	$2,292,434
FL	$ 88,488	62	94	30	7	30	$101,178	$3,035,340	$60,414	16	$314,923	48	176	16	$101,178	$1,620,234
GA*		0	0	0	0	0	$101,178	$0	$60,414	1	$19,683	3	10	1	$101,178	$96,497
HI	$ 88,488	27	9	4	0	4	$101,178	$404,712	$60,414	3	$59,048	4	15	1	$101,178	$136,458
ID*		50	29	14	1	11	$101,178	$1,112,958	$60,414	6	$118,096	69	253	23	$101,178	$2,332,611
IL	$ 88,488	15	61	19	0	15	$101,178	$1,517,670	$60,414	3	$59,048	19	69	6	$101,178	$632,996
IN	$ 88,488	77	13	4	0	7	$101,178	$708,246	$60,414	13	$255,875	4	14	1	$101,178	$131,053
IA	$ 88,488	66	28	3	1	9	$101,178	$910,602	$60,414	2	$39,365	17	62	6	$101,178	$575,523
KS	$ 88,488	12	45	19	2	14	$101,178	$1,416,492	$60,414	6	$118,096	32	117	11	$101,178	$1,082,222
KY	$ 88,488	37	36	31	11	23	$101,178	$2,327,094	$60,414	5	$98,413	34	124	11	$101,178	$1,148,271
LA	$ 88,488	6	8	1	0	2	$101,178	$202,356	$60,414	1	$19,683	2	6	1	$101,178	$55,671
ME	$ 88,488	0	14	10	6	9	$101,178	$910,602	$60,414	4	$78,731	13	48	4	$101,178	$446,308
MD	$ 88,488	2	2	8	10	10	$101,178	$1,011,780	$60,414	2	$39,365	14	49	4	$101,178	$454,703
MA	$ 88,488	21	52	15	5	16	$101,178	$1,618,848	$60,414	6	$118,096	72	262	24	$101,178	$2,418,983
MI	$ 88,488	40	35	3	0	8	$101,178	$809,424	$60,414	3	$59,048	17	60	5	$101,178	$555,704
MN	$ 88,488	78	44	6	0	12	$101,178	$1,214,136	$60,414	1	$19,683	12	45	4	$101,178	$411,572
MS	$ 88,488	31	39	19	0	12	$101,178	$1,214,136	$60,414	3	$59,048	11	41	4	$101,178	$376,944
MO	$ 88,488	32	5	3	0	3	$101,178	$303,534	$60,414	3	$59,048	2	9	1	$101,178	$81,615
MT*		51	10	2	0	5	$101,178	$505,890	$60,414	1	$19,683	3	12	1	$101,178	$111,631
NE	$ 88,488	10	9	1	2	4	$101,178	$404,712	$60,414	3	$59,048	8	28	3	$101,178	$256,196
NV	$ 88,488	1	6	3	0	2	$101,178	$202,356	$60,414	2	$39,365	2	7	1	$101,178	$62,265
NH	$ 88,488	0	5	12	8	10	$101,178	$1,011,780	$60,414	11	$216,509	19	69	6	$101,178	$634,942
NJ	$ 88,488	9	12	10	1	6	$101,178	$607,068	$60,414	2	$39,365	9	33	3	$101,178	$306,787
NM*		9	43	16	6	15	$101,178	$1,517,670	$60,414	8	$157,461	100	362	33	$101,178	$3,342,767
NY	$ 88,488	26	61	15	2	16	$101,178	$1,618,848	$60,414	9	$177,144	58	210	19	$101,178	$1,940,534
NC*		15	7	0	0	2	$101,178	$202,356	$60,414	2	$39,365	1	4	0	$101,178	$34,015
ND	$ 88,488	28	57	16	3	16	$101,178	$1,618,848	$60,414	15	$295,240	69	250	23	$101,178	$2,310,559
OH	$ 88,488	50	39	2	2	10	$101,178	$1,011,780	$60,414	16	$314,923	10	37	3	$101,178	$345,378
OK	$ 88,488	11	19	5	1	5	$101,178	$505,890	$60,414	3	$59,048	7	26	2	$101,178	$235,982
OR*		6	34	26	11	20	$101,178	$2,023,560	$60,414	14	$275,557	37	135	12	$101,178	$1,241,525
PA	$ 88,488	0	0	0	0	0	$101,178	$0	$60,414	0	$0	2	6	1	$101,178	$56,896
RI	$ 88,488	7	30	12	3	10	$101,178	$1,011,780	$60,414	6	$118,096	13	48	4	$101,178	$440,542
SC	$ 88,488	23	4	2	0	2	$101,178	$202,356	$60,414	2	$39,365	2	6	1	$101,178	$51,600
SD	$ 88,488	26	65	15	3	17	$101,178	$1,720,026	$60,414	2	$39,365	26	95	9	$101,178	$873,193
TN	$ 88,488	126	88	36	16	41	$101,178	$4,148,298	$60,414	12	$236,192	239	871	79	$101,178	$8,042,436
TX	$ 88,488	6	16	4	2	5	$101,178	$505,890	$60,414	3	$59,048	7	26	2	$101,178	$242,828
UT	$ 88,488	0	0	0	0	0	$101,178	$0	$60,414	1	$19,683	1	4	0	$101,178	$33,403
VT*		6	33	28	11	21	$101,178	$2,124,738	$60,414	7	$137,779	28	103	9	$101,178	$952,142
VA	$ 88,488	30	20	11	3	10	$101,178	$1,011,780	$60,414	10	$196,827	14	50	5	$101,178	$457,370
WA*		1	1	11	0	3	$101,178	$303,534	$60,414	3	$59,048	4	16	1	$101,178	$146,907
WV	$ 88,488	20	40	17	0	11	$101,178	$1,112,958	$60,414	8	$157,461	15	56	5	$101,178	$515,419
WI*		12	9	1	0	2	$101,178	$202,356	$60,414	2	$39,365	2	6	1	$101,178	$55,888
WY	$ 88,488	0	0	0	6	5	$101,178	$505,890	$60,414	3	$59,048	4	14	1	$101,178	$127,990
Total	**$ 3,716,490**	**1040**	**1326**	**662**	**243**	**3271**	**$101,178**	**$55,243,185**	**$3,081,134**	**306**	**$6,022,899**	**1,311**	**4,772**	**435**	**$101,178**	**$44,037,722**
		Jails Needing PCM Rather than PC				412		$6,924,404								
		Adjusted Total for Jails				**2859**		**$48,318,781**								

FOR NOTES, SOURCES, AND EXPLANATIONS, SEE SECTION 5.6.11. STATES WITH ASTERISKS AND IN ORANGE ALREADY HAVE DESIGNATED PERSONNEL ON STAFF WHO ARE SPENDING OVER 90% OF THEIR TIME ON AGENCY-WIDE EFFORTS TO PREVENT SEXUAL ABUSE IN PRISONS AND ARE THEREFORE ASSUMED TO NOT NEED A PC. SALARY FIGURES ARE FROM TABLE 8.4 AND INCLUDE BOTH SALARY AND BENEFITS; "SOL" STANDS FOR STANDARD OF LIVING AND IS MEANT TO CAPTURE VARIATIONS IN COMPENSATION LEVELS FROM STATE TO STATE DUE TO DIFFERENCES IN STANDARDS OF LIVING AND OTHER ECONOMIC FACTORS. SOURCE OF SOL IS OFFICE OF PERSONNEL

TABLE A1.2: ESTIMATED INITIAL COMPLIANCE COST FOR STANDARD 115.11'S PREA COMPLIANCE MANAGER

	PRISONS		JAILS			JUVENILE	
	PC Salary x No. Facilities x LOE of 0.25FTE				*PCM Salary x No. Facilities x Weighted Avg LOE*		*PCM Salary x No. Facilities x LOE of .25 FTE*
State	**No. of Facilities Requiring PCM**	**PCM Initial Cost**	**Total Facilities Req'g PCMs**	**PCM Salary**	**PCM Initial Cost**	**No. of Facilities Requiring PCM**	**PCM Initial Cost**
AL	18	$ 301,914	STATE-BY-STATE DATA NOT AVAILABLE			56	$939,288
AK	15	$ 251,595				18	$301,914
AZ	15	$ 251,595				40	$670,920
AR	21	$ 352,233				32	$536,736
CA	87	$ 1,459,251				215	$3,606,195
CO	31	$ 519,963				56	$939,288
CT	21	$ 352,233				12	$201,276
DE	8	$ 134,184				7	$117,411
DC	0	$ -				10	$167,730
FL	69	$ 1,157,337				118	$1,979,214
GA	60	$ -				40	$670,920
HI	8	$ 134,184				8	$134,184
ID	9	$ -				28	$469,644
IL	34	$ 570,282				42	$704,466
IN	18	$ 301,914				76	$1,274,748
IA	9	$ 150,957				66	$1,107,018
KS	10	$ 167,730				41	$687,693
KY	15	$ 251,595				39	$654,147
LA	14	$ 234,822				43	$721,239
ME	5	$ 83,865				7	$117,411
MD	22	$ 369,006				35	$587,055
MA	13	$ 218,049				58	$972,834
MI	52	$ 872,196				82	$1,375,386
MN	13	$ 218,049				76	$1,274,748
MS	29	$ 486,417				16	$268,368
MO	22	$ 369,006				68	$1,140,564
MT	6	$ -				16	$268,368
NE	7	$ 117,411				16	$268,368
NV	16	$ 268,368				23	$385,779
NH	5	$ 83,865				8	$134,184
NJ	23	$ 385,779				49	$821,877
NM	8	$ -				19	$318,687
NY	63	$ 1,056,699				169	$2,834,637
NC	73	$ -				52	$872,196
ND	4	$ 67,092				9	$150,957
OH	34	$ 570,282				87	$1,459,251
OK	26	$ 436,098				46	$771,558
OR	9	$ -				47	$788,331
PA	28	$ 469,644				152	$2,549,496
RI	7	$ 117,411				10	$167,730
SC	22	$ 369,006				33	$553,509
SD	3	$ 50,319				23	$385,779
TN	15	$ 251,595				48	$805,104
TX	111	$ 1,861,803				109	$1,828,257
UT	2	$ 33,546				35	$587,055
VT	8	$ -				4	$67,092
VA	47	$ 788,331				61	$1,023,153
WA	14	$ -				37	$620,601
WV	10	$ 167,730				26	$436,098
WI	28	$ -				69	$1,157,337
WY	3	$ 50,319				21	$352,233
Total	**1,190**	**$ 16,353,675**	**412**	**$67,092**	**$2,952,639**	**2,458**	**$41,228,034**

FOR NOTES, SOURCES, AND EXPLANATIONS, SEE SECTION 5.6.11.

Appendix 2:
Analysis of Number of Confinement Facilities Subject to Audit, and Cost of Compliance with Audit Requirements, By State

TABLE A2.1: NUMBER OF FACILITIES SUBJECT TO AUDIT IN EACH STATE

State	Prisons	Jails	C.C.	Juvenile	Lock-ups (overnight facilities)
AL	18	136	15	56	24
AK	15	15	6	18	4
AZ	15	15	6	40	34
AR	21	81	5	32	14
CA	87	65	13	215	174
CO	31	52	27	56	21
CT	21	0	28	12	19
DE	8	0	4	7	7
DC	0	1	5	10	0
FL	69	67	40	118	88
GA	60	164	27	40	53
HI	8	0	2	8	4
ID	9	38	6	28	6
IL	34	90	10	42	46
IN	18	90	5	76	24
IA	9	93	22	66	10
KS	10	94	3	41	10
KY	15	75	10	39	15
LA	14	83	9	43	21
ME	5	15	2	7	2
MD	22	24	7	35	23
MA	13	13	4	58	10
MI	52	81	10	82	51
MN	13	71	5	76	10
MS	29	118	2	16	17
MO	22	85	6	68	32
MT	6	40	5	16	3
NE	7	62	2	16	4
NV	16	20	6	23	12
NH	5	10	3	8	2
NJ	23	21	19	49	26
NM	8	32	3	19	7
NY	63	58	14	169	65
NC	73	94	15	52	39
ND	4	22	4	9	1
OH	34	91	25	87	46
OK	26	93	27	46	26
OR	9	32	6	47	13
PA	28	63	24	152	44
RI	7	0	0	10	3
SC	22	45	11	33	23
SD	3	28	3	23	4
TN	15	94	4	48	20
TX	111	237	21	109	167
UT	2	26	5	35	6
VT	8	0	1	4	2
VA	47	65	12	61	32
WA	14	56	18	37	16
WV	10	12	5	26	4
WI	28	70	13	69	23
WY	3	22	4	21	1
TOTAL	1,190	2,859	529	2,458	1,311

FOR NOTES AND SOURCES SEE TABLE 7.1 AND SECTION 5.6.93

TABLE A2.2: ESTIMATED TOTAL ANNUAL AUDITOR COST, BY STATE

State	# of Facilities Audited/Yr	Prison audit days	Jail audit days	CCF audit days	Juv audit days	Lockup audit days	Total Audit Days	Auditors Required	Annual Salary Plus Overhead	Annual Lodging Travel	Total Annual Auditor Cost
AL	83	48	272	20	75	16	430	2.00	$ 172,558	$ 37,878	$ 210,436
AK	19	40	30	8	24	3	105	0.50	$ 43,140	$ 9,224	$ 52,364
AZ	37	40	30	8	53	22	154	0.75	$ 64,709	$ 13,525	$ 78,234
AR	51	56	162	7	43	9	277	1.25	$ 107,849	$ 24,359	$ 132,208
CA	185	232	130	17	287	116	782	3.50	$ 301,977	$ 68,787	$ 370,763
CO	62	83	104	36	75	14	312	1.50	$ 129,419	$ 27,413	$ 156,832
CT	27	56	0	37	16	13	122	0.75	$ 64,709	$ 10,760	$ 75,469
DE	9	21	0	5	9	5	41	0.25	$ 21,570	$ 3,574	$ 25,144
DC	5	0	2	7	13	0	22	0.13	$ 10,785	$ 1,954	$ 12,739
FL	127	184	134	53	157	59	588	2.75	$ 237,267	$ 51,715	$ 288,982
GA	115	160	328	36	53	35	613	2.75	$ 237,267	$ 53,908	$ 291,176
HI	7	21	0	3	11	3	37	0.25	$ 21,570	$ 3,287	$ 24,857
ID	29	24	76	8	37	4	149	0.75	$ 64,709	$ 13,147	$ 77,856
IL	74	91	180	13	56	30	370	1.75	$ 150,988	$ 32,595	$ 183,583
IN	71	48	180	7	101	16	352	1.75	$ 150,988	$ 30,958	$ 181,946
IA	67	24	186	29	88	7	334	1.50	$ 129,419	$ 29,413	$ 158,831
KS	53	27	188	4	55	6	280	1.25	$ 107,849	$ 24,621	$ 132,469
KY	51	40	150	13	52	10	265	1.25	$ 107,849	$ 23,363	$ 131,212
LA	57	37	166	12	57	14	287	1.50	$ 129,419	$ 25,213	$ 154,631
ME	10	13	30	3	9	1	57	0.25	$ 21,570	$ 4,987	$ 26,557
MD	37	59	48	9	47	15	178	1.00	$ 86,279	$ 15,669	$ 101,948
MA	33	35	26	5	77	7	150	0.75	$ 64,709	$ 13,228	$ 77,937
MI	92	139	162	13	109	34	457	2.25	$ 194,128	$ 40,252	$ 234,380
MN	58	35	142	7	101	7	291	1.50	$ 129,419	$ 25,630	$ 155,049
MS	61	77	236	3	21	12	349	1.75	$ 150,988	$ 30,701	$ 181,690
MO	71	59	170	8	91	22	349	1.75	$ 150,988	$ 30,706	$ 181,695
MT	23	16	80	7	21	2	126	0.75	$ 64,709	$ 11,101	$ 75,810
NE	30	19	124	3	21	3	170	0.75	$ 64,709	$ 14,928	$ 79,638
NV	26	43	40	8	31	8	129	0.75	$ 64,709	$ 11,379	$ 76,089
NH	9	13	20	4	11	2	50	0.25	$ 21,570	$ 4,366	$ 25,936
NJ	46	61	42	25	65	18	212	1.00	$ 86,279	$ 18,612	$ 104,891
NM	23	21	64	4	25	5	120	0.75	$ 64,709	$ 10,521	$ 75,230
NY	123	168	116	19	225	43	571	2.75	$ 237,267	$ 50,288	$ 287,555
NC	91	195	188	20	69	26	498	2.25	$ 194,128	$ 43,825	$ 237,953
ND	13	11	44	5	12	1	73	0.50	$ 43,140	$ 6,420	$ 49,560
OH	94	91	182	33	116	30	452	2.00	$ 172,558	$ 39,814	$ 212,372
OK	73	69	186	36	61	17	370	1.75	$ 150,988	$ 32,541	$ 183,529
OR	36	24	64	8	63	9	168	0.75	$ 64,709	$ 14,744	$ 79,453
PA	104	75	126	32	203	29	465	2.25	$ 194,128	$ 40,899	$ 235,027
RI	7	19	0	0	13	2	34	0.25	$ 21,570	$ 3,020	$ 24,590
SC	45	59	90	15	44	15	223	1.00	$ 86,279	$ 19,595	$ 105,874
SD	20	8	56	4	31	2	101	0.50	$ 43,140	$ 8,889	$ 52,029
TN	60	40	188	5	64	13	311	1.50	$ 129,419	$ 27,332	$ 156,751
TX	215	296	474	28	145	111	1,055	4.75	$ 409,825	$ 92,807	$ 502,632
UT	25	5	52	7	47	4	114	0.75	$ 64,709	$ 10,066	$ 74,775
VT	5	21	0	1	5	1	29	0.25	$ 21,570	$ 2,560	$ 24,129
VA	72	125	130	16	81	21	374	1.75	$ 150,988	$ 32,920	$ 183,908
WA	47	37	112	24	49	11	234	1.25	$ 107,849	$ 20,561	$ 128,410
WV	19	27	24	7	35	3	95	0.50	$ 43,140	$ 8,331	$ 51,471
WI	68	75	140	17	92	15	339	1.50	$ 129,419	$ 29,840	$ 159,259
WY	17	8	44	5	28	1	86	0.50	$ 43,140	$ 7,594	$ 50,734
TOTAL	**2,782**	**3,173**	**5,718**	**705**	**3,277**	**874**	**13,748**	**66**	**$ 112,290**	**$ 23,722**	**$ 6,936,593**