

*The following is the Executive Summary of the rule signed by the Attorney General on May 16, 2012, which has been sent to the Federal Register for publication. The complete rule is available at [http://www.ojp.usdoj.gov/programs/pdfs/prea\\_final\\_rule.pdf](http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf).*

## **DEPARTMENT OF JUSTICE**

### **National Standards to Prevent, Detect, and Respond to Prison Rape**

#### **Executive Summary**

##### *A. Overview*

The goal of this rulemaking is to prevent, detect, and respond to sexual abuse in confinement facilities, pursuant to the Prison Rape Elimination Act of 2003. For too long, incidents of sexual abuse against incarcerated persons have not been taken as seriously as sexual abuse outside prison walls. In popular culture, prison rape is often the subject of jokes; in public discourse, it has been at times dismissed by some as an inevitable—or even deserved—consequence of criminality.

But sexual abuse is never a laughing matter, nor is it punishment for a crime. Rather, it is a crime, and it is no more tolerable when its victims have committed crimes of their own. Prison rape can have severe consequences for victims, for the security of correctional facilities, and for the safety and well-being of the communities to which nearly all incarcerated persons will eventually return.

In passing PREA, Congress noted that the nation was “largely unaware of the epidemic character of prison rape and the day-to-day horror experienced by victimized inmates.” 42 U.S.C. 15601(12). The legislation established a National Prison Rape Elimination Commission (NPREC) to “carry out a comprehensive legal and factual study of the penalogical [*sic*], physical, mental, medical, social, and economic impacts of prison rape in the United States” and to recommend to the Attorney General “national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.” 42 U.S.C. 15606(d)(1), (e)(1). The statute defines “prison” as “any confinement facility,” including jails, police lockups, and juvenile facilities, and defines “rape” to include a broad range of unwanted sexual activity. 42 U.S.C. 15609(7) & (9). After over four years of work, the NPREC released its recommended national standards in June 2009 and subsequently disbanded, pursuant to the statute.

The statute directs the Attorney General to publish a final rule adopting “national standards for the detection, prevention, reduction, and punishment of prison rape . . . 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.” 42 U.S.C. 15607(a)(1)-(2). However, the standards may not “impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities.” 42 U.S.C. 15607(a)(3).

The standards are to be immediately binding on the Federal Bureau of Prisons. 42 U.S.C. 15607(b). A State whose Governor does not certify full compliance with the standards is subject

to the loss of five percent of any Department of Justice grant funds that it would otherwise receive for prison purposes, unless the Governor submits an assurance that such five percent will be used only for the purpose of enabling the State to achieve and certify full compliance with the standards in future years. 42 U.S.C. 15607(c). The final rule specifies that the Governor's certification applies to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch.

In addition, any correctional accreditation organization that seeks Federal grants must adopt accreditation standards regarding sexual abuse that are consistent with the national standards in this final rule. 42 U.S.C. 15608.

In drafting the final rule, the Department balanced a number of competing considerations. In the current fiscal climate, governments at all levels face budgetary constraints. The Department has aimed to craft standards that will yield the maximum desired effect while minimizing the financial impact on jurisdictions. In addition, recognizing the unique characteristics of individual facilities, agencies, and inmate populations, the Department has endeavored to afford discretion and flexibility to agencies to the extent feasible.

The success of the PREA standards in combating sexual abuse in confinement facilities will depend on effective agency and facility leadership, and the development of an agency culture that prioritizes efforts to combat sexual abuse. Effective leadership and culture cannot, of course, be directly mandated by rule. Yet implementation of the standards will help foster a change in culture by institutionalizing policies and practices that bring these concerns to the fore.

Notably, the standards are generally not outcome-based, but rather focus on policies and procedures. While performance-based standards generally give regulated parties the flexibility to achieve regulatory objectives in the most cost-effective way, it is difficult to employ such standards effectively to combat sexual abuse in confinement facilities, where significant barriers exist to the reporting and investigating of such incidents. An increase in incidents reported to facility administrators might reflect increased abuse, or it might just reflect inmates' increased willingness to *report* abuse, due to the facility's success at assuring inmates that reporting will yield positive outcomes and not result in retaliation. Likewise, an increase in substantiated incidents could mean either that a facility is failing to protect inmates, or else simply that it has improved its effectiveness at investigating allegations. For these reasons, the standards generally aim to inculcate policies and procedures that will reduce and ameliorate bad outcomes, recognizing that one possible consequence of improved performance is that evidence of more incidents will come to light.

The standards are not intended to define the contours of constitutionally required conditions of confinement. Accordingly, compliance with the standards does not establish a safe harbor with regard to otherwise constitutionally deficient conditions involving inmate sexual abuse. Furthermore, while the standards aim to include a variety of best practices, they do not incorporate every promising avenue of combating sexual abuse, due to the need to adopt national standards applicable to a wide range of facilities, while taking costs into consideration. The

standards consist of policies and practices that are attainable by all affected agencies, recognizing that agencies can, and some currently do, exceed the standards in a variety of ways. The Department applauds such efforts, encourages agencies to adopt or continue best practices that exceed the standards, and intends to support further the identification and adoption of innovative methods to protect inmates from harm. As described in the Background section, the Department is continuing its efforts to fund training, technical assistance, and other support for agencies, including through a National Resource Center for the Elimination of Prison Rape.

Because the purposes and operations of various types of confinement facilities differ significantly, there are four distinct sets of standards, each corresponding to a different type of facility: Adult prisons and jails (§§ 115.11–.93); lockups (§§ 115.111–.193); community confinement facilities (§§ 115.211–.293); and juvenile facilities (§§ 115.311–.393). The standards also include unified sections on definitions (§§ 115.5–.6) and on audits and State compliance (§§ 115.401–.405, 115.501).<sup>1</sup>

The standards contained in this final rule apply to facilities operated by, or on behalf of, State and local governments and the Department of Justice. However, in contrast to the proposed rule, the final rule concludes that PREA encompasses all Federal confinement facilities. Given their statutory authorities to regulate conditions of detention, other Federal departments with confinement facilities (including but not limited to the Department of Homeland Security) will work with the Attorney General to issue rules or procedures that will satisfy the requirements of PREA. 42 U.S.C. 15607(a)(2).

## *B. Summary of Major Provisions*

This summary of the major provisions of the standards does not include every single aspect of the standards, nor does it capture all distinctions drawn in the standards on the basis of facility type or size. Agencies that are covered by each set of standards should read them in full rather than rely exclusively on this summary.

*General Prevention Planning.* To ensure that preventing sexual abuse receives appropriate attention, the standards require that each agency and facility designate a PREA point person with sufficient time and authority to coordinate compliance efforts. Facilities may not hire or promote persons who have committed sexual abuse in an institutional setting or who have been adjudicated to have done so in the community, and must perform background checks on prospective and current employees, unless a system is in place to capture such information for current employees. A public agency that contracts for the confinement of its inmates with outside entities must include in any new contracts or contract renewals the entity's obligation to adopt and comply with the PREA standards.

---

<sup>1</sup>The standards themselves refer to persons confined in prisons and jails as “inmates,” persons confined in lockups as “detainees,” and persons confined in juvenile facilities or community confinement facilities as “residents.” For simplicity, however, the discussion and explanation of the standards refer collectively to all such persons as “inmates” except where specifically discussing lockups, juvenile facilities, or community confinement facilities.

*Supervision and Monitoring.* The standards require each facility to develop and document a staffing plan, taking into account a set of specified factors, that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. The staffing standard further requires all agencies to annually assess, determine, and document whether adjustments are needed to the staffing levels or deployment of monitoring technologies.

Due to the great variation across facilities in terms of size, physical layout, and composition of the inmate population, it would be impractical to require a specified level of staffing. Likewise, mandating a subjective standard such as “adequate staffing” would be extremely difficult to measure. Instead, the final standard requires that prisons and jails use their best efforts to comply with the staffing plan on a regular basis and document and justify any deviations. Given that staffing increases often depend on budget approval from an external legislative or other governmental entity, this revision is designed to support proper staffing without discouraging agencies from attempting to comply with the PREA standards due to financial concerns.

The “best efforts” language encourages agencies to compose the most appropriate staffing plan for each facility without incentivizing agencies to set the bar artificially low in order to avoid non-compliance. But if the facility’s plan is plainly deficient on its face, the facility is not in compliance with this standard even if it adheres to its plan.

In addition, the standards contained in the final rule require that supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment.

*Staffing of Juvenile Facilities.* The standards set minimum staffing levels for certain juvenile facilities. As discussed in greater detail in the appropriate section below, the Department seeks additional comment on this aspect of the standards, and may make changes if warranted in light of public comments received. Specifically, the standards require secure juvenile facilities—*i.e.*, those that do not allow residents access to the community—to maintain minimum security staff ratios of 1:8 during resident waking hours, and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances; deviations from the staffing plan in such circumstances must be documented. Because increasing staffing levels takes time and money, this requirement does not go into effect until October 2017 except for facilities that are already obligated by law, regulation, or judicial consent decree to maintain at least 1:8 and 1:16 ratios.

*Juveniles in Adult Facilities.* The final rule, unlike the proposed rule and the NPREC’s recommended standards, contains a standard that governs the placement of juveniles in adult facilities. The standard applies only to persons under the age of 18 who are under adult court supervision and incarcerated or detained in a prison, jail, or lockup. Such persons are, for the purposes of this standard, referred to as “youthful inmates” (or, in lockups, “youthful detainees”). By contrast, youth in the juvenile justice system are already protected by the Juvenile Justice and Delinquency Prevention Act (JJDP), 42 U.S.C. 5601 *et seq.*, which provides formula grants to States conditioned on (subject to minimal exceptions) separating juveniles from adults in secure facilities and removing juveniles from adult jails and lockups.

This standard imposes three requirements. First, no inmate under 18 may be placed in a housing unit where contact will occur with adult inmates in a common space, shower area, or sleeping quarters. Second, outside of housing units, agencies must either maintain “sight and sound separation”—*i.e.*, preventing adult inmates from seeing or communicating with youth—or provide direct staff supervision when the two are together. Third, agencies must make their best efforts to avoid placing youthful inmates in isolation to comply with this provision and, absent exigent circumstances, must afford them daily large-muscle exercise and any legally required special education services, and must provide them access to other programs and work opportunities to the extent possible.

While some commenters asserted that, in addition to increasing risk of victimization, confining youth in adult facilities impedes access to age-appropriate programming and services and may actually increase recidivism, the Department is cognizant that its mandate in promulgating these standards extends only to preventing, detecting, and responding to sexual abuse in confinement facilities. In addition, imposing a general prohibition on the placement of youth in adult facilities, or disallowing such placements unless a court finds that the youth has been violent or disruptive in a juvenile facility, would necessarily require a fundamental restructuring of existing State laws that permit or require such placement. Given the current state of knowledge regarding youth in adult facilities, and the availability of more narrowly tailored approaches to protecting youth, the Department has decided not to impose a complete ban at this time through the PREA standards. The Department has supported, however, congressional efforts to amend the JJDP A to extend its jail removal requirements to apply to youth under adult criminal court jurisdiction awaiting trial, unless a court specifically finds that it is in the interest of justice to incarcerate the youth in an adult facility.

*Cross-Gender Searches and Viewing.* In a change from the proposed standards, the final standards include a phased-in ban on cross-gender pat-down searches of female inmates in adult prisons, jails, and community confinement facilities absent exigent circumstances—which is currently the policy in most State prison systems. However, female inmates’ access to programming and out-of-cell opportunities must not be restricted to comply with this provision.

For juvenile facilities, however, the final standards, like the proposed standards, prohibit cross-gender pat-down searches of both female and male residents. And for all facilities, the standards prohibit cross-gender strip searches and visual body cavity searches except in exigent circumstances or when performed by medical practitioners, in which case the searches must be documented.

The standards also require facilities to 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 exigent circumstances or when such viewing is incidental to routine cell checks. In addition, facilities must require staff of the opposite gender to announce their presence when entering an inmate housing unit.

*Training and Education.* Proper training is essential to combating sexual abuse in correctional facilities. The standards require staff training on key topics related to preventing,

detecting, and responding to sexual abuse. Investigators and medical practitioners will receive training tailored to their specific roles.

Inmates, too, must understand a facility's policies and procedures in order to know that they will be kept safe and that the facility will not tolerate their committing sexual abuse. The standards require that facilities explain their zero-tolerance policy regarding sexual abuse and sexual harassment educate inmates on how to report any such incidents.

*Screening.* The standards require that inmates be screened for risk of being sexually abused or sexually abusive and that screening information be used to inform housing, bed, work, education, and program assignments. The goal is to keep inmates at high risk of victimization away from those at high risk of committing abuse. However, facilities may not simply place victims in segregated housing against their will unless a determination has been made that there is no available alternative means of separation, and even then only under specified conditions and with periodic reassessment.

*Reporting.* The standards require that agencies provide at least two internal reporting avenues, and at least one way to report abuse to a public or private entity or office that is not part of the agency and that can allow inmates to remain anonymous upon request. An agency must also provide a way for third parties to report such abuse on behalf of an inmate.

In addition, agencies are required to provide inmates with access to outside victim advocates for emotional support services related to sexual abuse, by giving inmates contact information for local, State, or national victim advocacy or rape crisis organizations and by enabling reasonable communication between inmates and these organizations, with as much confidentiality as possible.

*Responsive Planning.* The standards require facilities to prepare a written plan to coordinate actions taken among staff first responders, medical and mental health practitioners, investigators, and facility leadership in response to an incident of sexual abuse. Upon learning of an allegation of abuse, staff must separate the alleged victim and abuser and take steps to preserve evidence.

The standards also require agencies to develop policies to prevent and detect any retaliation against persons who report sexual abuse or who cooperate with investigations. Allegations must be investigated properly, thoroughly, and objectively, and documented correspondingly, and must be deemed substantiated if supported by a preponderance of the evidence. No agency may require an inmate to submit to a polygraph examination as a condition for proceeding with an investigation. Nor may an agency enter into or renew any agreement that limits its ability to remove alleged staff abusers from contact with inmates pending an investigation or disciplinary determination.

*Investigations.* Investigations are required to follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. The agency must offer victims no-cost access to forensic medical examinations where evidentiarily or medically appropriate. In addition, the agency must attempt

to make available a victim advocate from a rape crisis center. If that option is not available, the agency must provide such services through either (1) qualified staff from other community-based organizations or (2) a qualified agency staff member.

*Discipline.* The standards require that staff be subject to discipline for violating agency policies regarding sexual abuse, with termination the presumptive discipline for actually engaging in sexual abuse. Terminations or resignations linked to violating such policies are to be reported to law enforcement (unless the conduct was clearly not criminal) and to relevant licensing bodies.

Inmates also will be subject to disciplinary action for committing sexual abuse. Where an inmate is found to have engaged in sexual contact with a staff member, the inmate may be disciplined only where the staff member did not consent. Where two inmates have engaged in sexual contact, the agency may (as the final rule clarifies) impose discipline for violating any agency policy against such contact, but may deem such activity to constitute sexual abuse only if it determines that the activity was not consensual. In other words, upon encountering two inmates engaging in sexual activity, the agency cannot simply assume that both have committed sexual abuse.

*Medical and Mental Health Care.* The standards require that facilities provide timely, unimpeded access to emergency medical treatment and crisis intervention services, whose nature and scope are determined by practitioners according to their professional judgment. Inmate victims of sexual abuse while incarcerated must be offered timely information about, and timely access to, emergency contraception and sexually transmitted infections prophylaxis, where medically appropriate. Where relevant, inmate victims must also receive comprehensive information about, and timely access to, all lawful pregnancy-related medical services. In addition, facilities are required to offer a follow-up meeting if the initial screening at intake indicates that the inmate has experienced or perpetrated sexual abuse.

*Grievances.* If an agency has a grievance process for inmates who allege sexual abuse, the agency may not impose a time limit on when an inmate may submit a grievance regarding such allegations. To be sure, a grievance system cannot be the only method—and should not be the primary method—for inmates to report abuse. As noted above, agencies must provide multiple internal ways to report abuse, as well as access to an external reporting channel.

This standard exists only because the Prison Litigation Reform Act, 42 U.S.C. 1997e, requires that inmates exhaust any available administrative remedies as a prerequisite to filing suit under Federal law with respect to the conditions of their confinement. The final standard contains a variety of other provisions aimed at ensuring that grievance procedures that cover sexual abuse provide inmates with a full and fair opportunity to preserve their ability to seek judicial review, without imposing undue burdens on agencies or facilities. However, agencies that exempt sexual abuse allegations from their remedial schemes are exempt from this standard, because their inmates may proceed directly to court.

*Audits.* The final rule resolves an issue left undecided in the proposed rule by including standards that require that agencies ensure that each of their facilities is audited once every three

years. Audits must be conducted by: (1) a member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government); (2) a member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or (3) other outside individuals with relevant experience. Thus, the final standards differ from the proposed standards in that audits may not be conducted by an internal inspector general or ombudsperson who reports directly to the agency head or to the agency's governing board.

The Department will develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit. All auditors must be certified by the Department, pursuant to procedures, including training requirements, to be issued subsequently.

*Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI) and Gender Nonconforming Inmates.* The standards account in various ways for the particular vulnerabilities of inmates who are LGBTI or whose appearance or manner does not conform to traditional gender expectations. The standards require training in effective and professional communication with LGBTI and gender nonconforming inmates and require the screening process to consider whether the inmate is, or is perceived to be, LGBTI or gender nonconforming. The standards also require that post-incident reviews consider whether the incident was motivated by LGBTI identification, status, or perceived status.

In addition, in a change from the proposed rule, the final standards do not allow placement of LGBTI inmates in dedicated facilities, units, or wings in adult prisons, jails, or community confinement facilities solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates. As in the proposed standards, such placement is not allowed at all in juvenile facilities.

The standards impose a complete ban on searching or physically examining a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. Agencies must train security staff in conducting professional and respectful cross-gender pat-down searches and searches of transgender and intersex inmates.

In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, an agency may not simply assign the inmate to a facility based on genital status. Rather, the agency must consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems, giving serious consideration to the inmate's own views regarding his or her own safety. In addition, transgender and intersex inmates must be given the opportunity to shower separately from other inmates.

*Inmates with Disabilities and Limited English Proficient (LEP) Inmates.* The standards require agencies to develop methods to ensure effective communication with inmates who are deaf or hard of hearing, those who are blind or have low vision, and those who have intellectual, psychiatric, or speech disabilities. Agencies also must take reasonable steps to ensure



meaningful access to all aspects of the agency’s efforts to prevent, detect, and respond to sexual abuse and sexual harassment to inmates who are LEP. Agencies may not rely on inmate interpreters or readers except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate’s safety, the performance of first-response duties, or an investigation.

*C. Costs and Benefits*

The anticipated costs of full nationwide compliance with the final rule, as well as the benefits of reducing the prevalence of prison rape, are discussed at length in the Regulatory Impact Assessment (RIA), which is available at [http://www.ojp.usdoj.gov/programs/pdfs/prea\\_ria.pdf](http://www.ojp.usdoj.gov/programs/pdfs/prea_ria.pdf) and is summarized below in section IV, entitled “Executive Orders 13563 and 12866 - Regulatory Planning and Review.” As shown in Table 1, the Department estimates that the costs of these standards to all covered facilities, assuming full nationwide compliance, would be approximately \$6.9 billion over the period 2012-2026, or \$468.5 million per year when annualized at a 7 percent 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 community confinement facilities, and \$54,000 for juvenile facilities. For lockups, the average annualized cost per agency is estimated at \$16,000.

**Table 1: 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
<b>15-yr Total</b>	<b>\$974.2</b>	<b>\$2,384.6</b>	<b>\$1,327.3</b>	<b>\$174.8</b>	<b>\$1,995.8</b>	<b>\$6,856.7</b>
Present Value	\$591.2	\$1,488.4	\$869.8	\$116.6	\$1,201.4	\$4,267.4
Annual	\$64.9	\$163.4	\$95.5	\$12.8	\$131.9	\$468.5

However, these figures are potentially misleading. PREA does not require State and local facilities to comply with the Department's standards, nor does it enact a mechanism for the Department to direct or enforce such compliance; instead, the statute provides certain incentives for such confinement facilities to implement the standards. Fiscal realities faced by confinement facilities throughout the country make it virtually certain that the total actual outlays by those facilities will, in the aggregate, be less than the full nationwide compliance costs calculated in the RIA. Actual outlays incurred will depend on the specific choices that State and local correctional agencies make with regard to adoption of the standards, and correspondingly on the annual expenditures that those agencies are willing and able to make in choosing to implement the standards in their facilities. The Department has not endeavored in the RIA to project those actual outlays.

With respect to benefits, the RIA conducts what is known as a "break-even analysis," by first estimating the monetary value of preventing various types of prison sexual abuse (from incidents involving violence to inappropriate touching) and then, using those values, calculating the reduction in the annual number of victims that would need to occur for the benefits of the rule to equal the cost of full nationwide compliance.

This analysis begins by estimating the current levels of sexual abuse in covered facilities. The RIA concludes that in 2008 more than 209,400 persons were victims of sexual abuse in prisons, jails, and juvenile facilities, of which at least 78,500 prison and jail inmates and 4,300 youth in juvenile facilities were victims of the most serious forms of sexual abuse, including forcible rape and other nonconsensual sexual acts involving injury, force, or high incidence.

Next, the RIA estimates how much monetary benefit (to the victim and to society) accrues from reducing the annual number of victims of prison rape. This is, of course, an imperfect endeavor, given the inherent difficulty in assigning a dollar figure to the cost of such an event. Executive Order 13563 states that agencies "may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts." Each of these values is relevant here, including human dignity, which is offended by acts of sexual violence. While recognizing the limits of monetary measures and the difficulty of translation into dollar equivalents, the RIA extrapolates from the existing economic and criminological literature regarding rape in the community. On the basis of such extrapolations, it finds that 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) is worth \$310,000 to \$480,000 per victim; for juveniles, who typically experience significantly greater injury from sexual abuse than do adults, the corresponding category is assessed as worth \$675,000 per victim. Lesser forms of sexual abuse have correspondingly lower avoidance benefit values. The RIA thus determines 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.

The RIA concludes that the break-even point would be reached if the standards reduced the annual number of victims of prison rape by 1,671 from the baseline levels, which is less than 1 percent of the total number of victims in prisons, jails, and juvenile facilities. The Department

believes it reasonable to expect that the standards, if fully adopted and complied with, would achieve at least this level of reduction in the prevalence of sexual abuse, and thus the benefits of the rule justify the costs of full nationwide compliance.

As noted, this analysis inevitably excludes benefits that are not monetizable, but still must be included in a cost-benefit analysis. These include the values of equity, human dignity, and fairness. Such non-quantifiable benefits will be received by victims who receive proper treatment after an assault; such treatment will in turn enhance their ability to re-integrate into the community and maintain stable employment upon their release from prison. Furthermore, making prisons safer will increase the general well-being and morale of staff and inmates alike. Finally, non-quantifiable benefits will accrue to society at large, by ensuring that inmates re-entering the community are less traumatized and better equipped to support their community. Thus, the true break-even level would likely be lower and perhaps significantly lower than 1,671, if it were possible to account for these non-quantifiable benefits.