

PREA Standards Comparison
Standards for Adult Prisons and Jails

NPREC STANDARD		DOJ REVISED STANDARD		Analysis	
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<i>Definitions</i>				<p>Q1: “The Department solicits comments regarding the application of this definition to those States that operate “unified systems”— i.e., States with direct authority over all adult correctional facilities, as opposed to the more common practice of jails being operated by counties, cities, or other municipalities. States that operate unified systems may be less likely to adhere to the traditional distinctions between prisons and jails, and may operate facilities that are essentially a mixture of the two. Do the respective definitions of jail and prison, and the manner in which the terms are used in the proposed standards, adequately cover facilities in States with unified systems? If not, how should the definitions or standards be modified?”</p>	
<i>Prevention Planning</i>		<i>Prevention Planning</i>			
PP-1	<p>Zero tolerance of sexual abuse The agency has a written policy mandating zero tolerance toward all forms of sexual abuse and enforces that policy by ensuring all of its facilities comply with the PREA standards. The agency</p>	115.11	<p>Zero tolerance of sexual abuse; Prison RAPE Elimination Act (PREA) Coordinator (a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency’s approach to preventing,</p>	<i>Change</i>	<p>The DOJ standard added sexual harassment to inclusions for zero tolerance policy</p> <p>The DOJ standard requires that agencies outline the approach to preventing, detecting, and responding to sexual abuse.</p>

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	employs or designates a PREA coordinator to develop, implement, and oversee agency efforts to comply with the PREA standards.		<p>detecting, and responding to such conduct.</p> <p>(b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.</p> <p>(c)The PREA coordinator shall be a full-time position in all agencies that operate facilities whose total rated capacity exceeds 1000 inmates, but may be designated as a part-time position in agencies whose total rated capacity does not exceed 1000 inmates.</p> <p>(d) An agency whose facilities have a total rated capacity exceeding 1000 inmates shall also designate a PREA coordinator for each facility, who may be full-time or part-time.</p>		<p>DOJ has defined that PREA Coordinators are an upper level person but not reporting necessarily to the head of the agency</p> <p>DOJ has revised the NPREC standard stating that PREA Coordinators are for agencies/ facilities with 1000 inmates or more. Other facilities may have coordinators that are part time.</p>
				<i>DOJ reasoning for change</i>	<p>The DOJ wanted to provide more clarity regarding the policy inclusions</p> <p>Commenters criticized the NPREC standards requiring a PREA Coordinator posed a financial burden to small facilities housing under 500 inmates. In response DOJ is only requiring full time PREA Coordinators in facilities housing over 1000 inmates.</p> <p>Commenters had concern that if the PREA Coordinator reports directly to the agency head it</p>

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					<p>would become a political position. By making it upper-level DOJ is not requiring the PREA Coordinator to report directly to the agency head.</p> <p>DOJ's intent is to tailor this requirement to the needs and capacities of agencies and facilities.</p>
				<p><i>DOJ question(s) relating to this standard</i></p>	<p><i>Q2: "Should the Department modify the full-time coordinator requirement to allow additional flexibility, such as by requiring only that PREA be the coordinator's primary responsibility, or by allowing the coordinator also to work on other related issues, such as inmate safety more generally?"</i></p>
				<p><i>Analysis</i></p>	

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PP-2	<p>Contracting with other entities for the confinement of inmates</p> <p>If public correctional agencies contract for the confinement of their inmates, they do so only with private agencies or other entities, including other government agencies, committed to eliminating sexual abuse in their facilities, as evidenced by their adoption of and compliance with the PREA standards. Any new contracts or contract renewals include the entity’s obligation to adopt and comply with the PREA standards and specify that the public agency will monitor the entity’s compliance with these standards as part of its monitoring of the entity’s performance</p>	115.12	<p>Contracting with other entities for the confinement of inmates</p> <p>(a) A public agency that contracts for the confinement of its inmates with private agencies or other entities, including other government agencies, shall include in any new contracts or contract renewals the entity’s obligation to adopt and comply with the PREA standards.</p> <p>(b) Any new contracts or contract renewals shall provide for agency contract monitoring to ensure that the contractor is complying with PREA standards.</p>	<i>Change</i>	The new DOJ standard only applies to new contracts not existing ones. The NPREC standard expands to cover existing contracts.
				<i>DOJ reasoning for change</i>	<p>Commenters expressed concern that the NPREC standard would impose too great a financial burden if facilities are required monitor entities compliance. With PREA Standards.</p> <p>To remedy this DOJ modified the standard by requiring only new contracts and renewals be monitored. This is intended to indicate that agencies are not required to conduct audits of its contract facilities but rather must include PREA as part of its routine monitoring of compliance with contractual obligations.</p>
				<i>DOJ question(s) relating to this standard</i>	Q3: “Should the final rule provide greater guidance as to how agencies should conduct such monitoring? If so, what guidance should be provided?”

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PP-3	<p>Inmate supervision Security staff provides the inmate supervision necessary to protect inmates from sexual abuse. The upper management officials responsible for reviewing critical incidents must examine areas in the facility where sexual abuse has occurred to assess whether physical barriers may have enabled the abuse, the adequacy of staffing levels in those areas during different shifts, and the need for monitoring technology to supplement security staff supervision (DC-1). When problems or needs are identified, the agency takes corrective action (DC-3).</p>	115.13	<p>Supervision and Monitoring (a) For each facility, the agency shall determine the adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. In calculating such levels, agencies shall take into consideration the physical layout of each facility, the composition of the inmate population, and any other relevant factors. (b) The facility shall also establish a plan for how to conduct staffing and, where applicable, video monitoring, in circumstances where the levels established in paragraph (a) of this section are not attained. (c) Each year, the facility shall assess, and determine whether</p>	<p><i>Change</i></p>	<p>The new DOJ standard combines NPREC standards PP-3 and PP-7</p> <p>DOJ provides some additional information about how an agency can go about assessing “staffing”</p>
				<p><i>DOJ reasoning for change</i></p>	<p>Commenters complained that NPREC standards did not offer enough guidance on levels of supervision or how compliance would be measured.</p> <p>DOJ recognizes that determining adequate staffing levels is facility-specific.</p>

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			adjustments are needed to: (1) The staffing levels established pursuant to paragraph (a) of this section; (2) Prevailing staffing patterns; and (3) The agency’s deployment of video monitoring systems and other technologies. (d) Each prison facility, and each jail facility whose rated capacity exceeds 500 inmates, shall implement a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts.		<p>DOJ believes that relying on technology (video etc) as long as there is adequate staff to monitor that technology is acceptable to reduce staffing requirements.</p> <p>DOJ does not believe it is possible to craft a formula that would set appropriate staffing levels for all populations</p> <p>DOJ measures compliance by ensuring each facility has a plan in place for adequate staffing to keep inmates safe from sexual abuse.</p>
				<p><i>DOJ question(s) relating to this standard</i></p>	<p>Q4: “Should the standard require that facilities actually provide a certain level of staffing, whether determined qualitatively, such as by reference to “adequacy,” or quantitatively, by setting forth more concrete requirements? If so, how?”</p> <p>Q5: “If a level such as “adequacy” were mandated, how would compliance be measured?”</p> <p>Q6: “Various States have</p>

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				<p><i>regulations that require correctional agencies to set or abide by minimum staffing requirements. To what extent, if any, should the standard take into account such State regulations?"</i></p> <p><i>Q7: "Some States mandate specific staff-to-resident ratios for certain types of juvenile facilities. Should the standard mandate specific ratios for juvenile facilities?"</i></p> <p><i>Q8: "If a level of staffing were mandated, should the standard allow agencies a longer time frame, such as a specified number of years, in order to reach that level? If so, what time frame would be appropriate?"</i></p> <p><i>Q9: "Should the standard require the establishment of priority posts, and if so, how should such a requirement be structured and assessed?"</i></p> <p><i>Q10: "To what extent can staffing deficiencies be addressed by</i></p>	

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				<p><i>redistributing existing staff assignments? Should the standard include additional language to encourage such redistribution?"</i></p> <p>Q11: <i>"If the Department does not mandate the provision of a certain level of staffing, are there other ways to supplement or replace the Department's proposed standard in order to foster appropriate staffing?"</i></p> <p>Q12: <i>"Should the Department mandate the use of technology to supplement sexual abuse prevention, detection, and response efforts?"</i></p> <p>Q13: <i>"Should the Department craft the standard so that compliance is measured by ensuring that the facility has developed a plan for securing technology as funds become available?"</i></p> <p>Q14: <i>"Are there other ways not mentioned above in which the Department can improve the</i></p>

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					<p><i>proposed standard?"</i></p> <p>Q15: "Should this standard mandate a minimum frequency for the conduct of such rounds, and if so, what should it be?"</p>
				<i>Analysis</i>	
PP-4	<p>Limits to cross-gender viewing and searches Except in the case of emergency, the facility prohibits cross-gender strip and visual body cavity searches. Except in the case of emergency or other extraordinary or unforeseen circumstances, the facility restricts nonmedical staff</p>	115.14	<p>Limits to cross-gender viewing and searches (a) The facility shall not conduct cross-gender strip searches or visual body cavity searches except in case of emergency or when performed by medical practitioners. (b) The facility shall document all such cross-gender searches.</p>	<i>Change</i>	<p>While the NPREC Standards prohibited all cross gender searches except in cases of emergency, the DOJ standard allows for cross gender pat searches.</p> <p>The DOJ also defined training needs in response to allowing cross gender pat searches.</p>

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	from viewing inmates of the opposite gender who are nude or performing bodily functions and similarly restricts cross-gender pat-down searches. Medical practitioners conduct examinations of transgender individuals to determine their genital status only in private settings and only when an individual's genital status is unknown.		(c) The facility shall 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, by accident, or when such viewing is incidental to routine cell checks. (d) The facility shall not examine a transgender inmate to determine the inmate's genital status unless the inmate's genital status is unknown. Such examination shall be conducted in private by a medical practitioner. (e) Following classification, the agency shall implement procedures to exempt from nonemergency cross-gender pat-down searches those inmates who have suffered documented prior cross-gender sexual abuse while incarcerated. (f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender inmates, in a professional and respectful manner, and in the least intrusive manner	<i>DOJ reasoning for change</i>	<p>Commenters objected to the NPREC standard on the ground that it would require agencies to hire significant numbers of male staff or to lay off a significant number of female staff. They expressed concern that adjustments to their workforce could violate Federal or state EEO laws.</p> <p>DOJ believes that the benefits of eliminating cross-gender pat searches do not justify the costs of imposing such a rule across the board.</p> <p>This standard does not apply to juvenile facilities where the NPREC Commission standard remains intact</p> <p>DOJ does not believe cross gender pat searches of inmates who have suffered cross gender sexual abuse while incarcerated should be allowed.</p> <p>DOJ is also mandating training as a cost effective approach to</p>

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			possible, consistent with security needs.		<p>combating problems that might arise during a cross gender pat search.</p> <p>The DOJ standard does adopt the NPREC standard in regard to transgender inmates.</p>
				<i>DOJ question(s) relating to this standard</i>	<i>Q16: "Should the final rule contain any additional measures regarding oversight and supervision to ensure that pat-down searches, whether cross-gender or same-gender, are conducted professionally?"</i>
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PP-5	Accommodating inmates with special needs The agency ensures that inmates who are limited English proficient (LEP), deaf, or disabled are able to report sexual abuse to staff directly, through interpretive technology, or through non-inmate interpreters. Accommodations are made to convey all written information about sexual abuse policies, including how to report sexual abuse, verbally to inmates who have limited reading skills or who are visually impaired.	115.15	Accommodating inmates with special needs (a) The agency shall ensure that inmates who are limited English proficient, deaf, or disabled are able to report sexual abuse and sexual harassment to staff directly or through other established reporting mechanisms, such as abuse hotlines, without relying on inmate interpreters, absent exigent circumstances. (b) The agency shall make accommodations to convey verbally all written information about sexual abuse policies, including how to report sexual abuse and sexual harassment, to inmates who have limited reading skills or who are visually impaired.	This standard is substantively the same.	
				<i>DOJ question(s) relating to this standard</i>	<i>Q17: "Should the final rule include a requirement that inmates with disabilities and LEP inmates be able to communicate with staff throughout the entire investigation and response process? If such a requirement is included, how should agencies ensure communication throughout the process?"</i>
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PP-6	<p>Hiring and promotion decisions The agency does not hire or promote anyone who has engaged in sexual abuse in an institutional setting or who has engaged in sexual activity in the community facilitated by force, the threat of force, or coercion. Consistent with Federal, State, and local law, the agency makes its best effort to contact all prior institutional employers for information on substantiated allegations of sexual abuse; must run criminal background checks for all applicants and employees being considered for promotion; and must examine and carefully weigh any history of criminal activity at work or in the community, including</p>	115.16	<p>Hiring and promotion decisions (a) The agency shall not hire or promote anyone who has engaged in sexual abuse in an institutional setting; who has been convicted of engaging in sexual activity in the community facilitated by force, the threat of force, or coercion; or who has been civilly or administratively adjudicated to have engaged in such activity. (b) Before hiring new employees, the agency shall: (1) Perform a criminal background check; and (2) Consistent with Federal, State, and local law, make its best effort to contact all prior institutional employers for information on substantiated allegations of sexual abuse.</p>	<i>Change</i>	The DOJ standards defined that background checks be done every 5 years.
				<i>DOJ reasoning for change</i>	Commenters expressed concern over the burden of requiring background checks for promotions. Instead the DOJ had adopted a policy requiring background checks of current employees to be done every five years.

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	convictions for domestic violence, stalking, and sex offenses. The agency also asks all applicants and employees directly about previous misconduct during interviews and reviews.		(c) The agency shall either conduct criminal background checks of current employees at least every five years or have in place a system for otherwise capturing such information for current employees. (d) The agency shall ask all applicants and employees directly about previous misconduct in written applications for hiring or promotions, in interviews for hiring or promotions, and in any interviews or written self-evaluations conducted as part of reviews of current employees. (e) Material omissions, or the provision of materially false information, shall be grounds for termination. (f) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.	<i>Analysis</i>	

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PP-7	Assessment and use of monitoring technology The agency uses video monitoring systems and other cost-effective and appropriate technology to supplement its sexual abuse prevention, detection, and response efforts. The agency assesses, at least annually, the feasibility of and need for new or additional monitoring technology and develops a plan for securing such technology.	115.17	Upgrades to facilities technology (a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect inmates from sexual abuse. (b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect inmates from sexual abuse.	<i>Change</i>	The DOJ standard is actually new.
				<i>DOJ reasoning for change</i>	The DOJ believes it is appropriate to require agencies to consider the impact of their physical and technology upgrades.
				<i>Analysis</i>	
<i>Response Planning</i>		<i>Responsive Planning</i>			
RP-1	Evidence protocol and forensic medical exams The agency follows a uniform	115.21	Evidence protocol and forensic medical exams (a) To the extent the agency is	This standard is substantively the same.	

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	evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. The protocol must be adapted from or otherwise based on the 2004 U.S. Department of Justice’s Office on Violence Against Women publication “A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,” subsequent updated editions, or similarly comprehensive and authoritative protocols developed after 2004. As part of the agency’s evidence collection protocol, all victims of inmate-on-inmate sexually abusive penetration or staff-on-inmate sexually abusive penetration are provided access to forensic medical exams performed by qualified forensic medical examiners. Forensic medical exams are provided free of charge to the victim. The facility makes available a victim advocate to accompany the victim through the forensic		responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. (b) The protocol shall be adapted from or otherwise based on the 2004 U.S. Department of Justice’s Office on Violence Against Women publication, “A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,” subsequent updated editions, or similarly comprehensive and authoritative protocols developed after 2010. (c) The agency shall offer all victims of sexual abuse access to forensic medical exams performed by qualified medical practitioners, whether onsite or at an outside facility, without financial cost, where evidentiary or medically appropriate. (d) The agency shall make available to the victim a qualified staff member or a victim advocate from a	<i>DOJ reasoning for change</i>	DOJ believes evidence collection can support or refute a claim even when penetration does not occur and evidence should be collected whenever possible Stipulates that a qualified staff member may accompany a victim in place of a community advocate
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	medical exam process.		<p>community-based organization that provides services to sexual abuse victims.</p> <p>(e) As requested by the victim, the qualified staff member or victim advocate shall accompany and support the victim through the forensic medical exam process and the investigatory process and shall provide emotional support, crisis intervention, information, and referrals.</p> <p>(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall inform the investigating entity of these policies.</p> <p>(g) The requirements of paragraphs (a) through (f) of this section shall also apply to:</p> <p>(1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in institutional settings; and</p> <p>(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in institutional settings.</p> <p>(h) For the purposes of this standard, a qualified staff member</p>		

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			shall be an individual who is employed by a facility and has received education concerning sexual assault and forensic examination issues in general.		
RP-2	<p>Agreements with outside public entities and community service providers</p> <p>The agency maintains or attempts to enter into memoranda of understanding (MOUs) or other agreements with an outside</p>	115.22	<p>Agreements with outside public entities and community service providers</p> <p>(a) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with an outside public entity or</p>	<i>Change</i>	The DOJ standard does not require MOUs with outside agency providers if the agency enables inmates to report to an internal entity that is operationally independent from the agency's chain of command (ie: an IG or ombudsman)

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	public entity or office that is able to receive and immediately forward inmate reports of sexual abuse to facility heads (RE-1). The agency also maintains or attempts to enter into MOUs or other agreements with community service providers that are able to: (1) provide inmates with confidential emotional support services related to sexual abuse and (2) help victims of sexual abuse during their transition from incarceration to the community (RE-3, MM-3). The agency maintains copies of agreements or documentation showing attempts to enter into agreements.		office that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials pursuant to § 115.51, unless the agency enables inmates to make such reports to an internal entity that is operationally independent from the agency's chain of command, such as an inspector general or ombudsperson who reports directly to the agency head. (b) The agency also shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse. (c) The agency shall maintain copies of agreements or documentation showing attempts to enter into agreements.	<i>DOJ reasoning for change</i>	Commenters expressed concern over the burden this may cause on an agency. To that end DOJ has adopted a standard which would allow for agencies to use a qualified staff member to fulfill this role as long as they have had training on sexual assault and crisis intervention. This will not apply to lock-ups. Agencies are also exempt from this standard if they allow reporting to quasi-independent offices (such as inspector generals)
				<i>DOJ question(s) relating to this standard</i>	<i>Q19: Should this standard expressly mandate that agencies attempt to enter into memoranda of understanding that provide specific assistance for LEP inmates?</i>

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		115.23	<p>Policies to ensure investigation of allegations</p> <p>(a) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are investigated by an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior, and shall publish such policy on its website.</p> <p>(b) If a separate entity is responsible for conducting criminal investigations, such website</p>	<p><i>Change</i></p>	This is a new DOJ standard.
				<i>DOJ reasoning for change</i>	The intent is that this standard replace the NPREC standard RP-3

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			<p>publication shall describe the responsibilities of both the agency and the investigating entity.</p> <p>(c) Any State entity responsible for conducting criminal or administrative investigations of sexual abuse in institutional settings shall have in place a policy governing the conduct of such investigations.</p> <p>(d) Any Department of Justice component responsible for conducting criminal or administrative investigations of sexual abuse in institutional settings shall have in place a policy governing the conduct of such investigations.</p>	<i>Analysis</i>	
RP-3	<p>Agreements with outside law enforcement agencies</p> <p>If an agency does not have the legal authority to conduct criminal investigations or has elected to permit an outside agency to conduct criminal or administrative investigations of staff or inmates, the agency</p>			DOJ did not choose to adopt this standard.	

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	maintains or attempts to enter into a written MOU or other agreement specific to investigations of sexual abuse with the law enforcement agency responsible for conducting investigations. If the agency confines inmates under the age of 18 or other inmates who fall under State and local vulnerable persons statutes, the agency maintains or attempts to enter into an MOU with the designated State or local services agency with the jurisdiction and authority to conduct investigations related to the sexual abuse of vulnerable persons within confinement facilities. When the agency already has an existing agreement or long-standing policy covering responsibilities for all criminal investigations, including sexual abuse investigations, it does not need to enter into a new agreement. The agency maintains a copy of the agreement or documentation showing attempts to enter into an			<i>DOJ reasoning for change</i>	<p>Commenters expressed concerns that this would impose significant burdens. While the DOJ does encourage agencies to have these MOUs with outside law enforcement, due to burden concerns the department does not believe that agencies should be required to do so.</p> <p>DOJ does propose standard 115.23 instead so that agencies ensure that allegations of sexual abuse or harassment are investigated by an agency with the legal authority to conduct criminal investigations.</p>
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	agreement.				
RP-4	<p>Agreements with the prosecuting authority The agency maintains or attempts to enter into a written MOU or other agreement with the authority responsible for prosecuting violations of criminal law. The agency maintains a copy of the agreement or documentation showing attempts to enter into an agreement.</p>			DOJ did not choose to adopt this standard.	
				<i>DOJ reasoning for change</i>	Commenters expressed concerns that this would impose significant burdens. While the DOJ does encourage agencies to have these MOUs with prosecuting authorities, due to burden concerns the department does not believe that agencies should be required to do so.
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<i>Training and Education</i>		<i>Training and Education</i>			

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TR-1	<p>Employee training The agency trains all employees to be able to fulfill their responsibilities under agency sexual abuse prevention, detection, and response policies and procedures; the PREA standards; and relevant Federal, State, and local law. The agency trains all employees to communicate effectively and professionally with all inmates. Additionally, the agency trains all employees on an inmate's right to be free from sexual abuse, the right of inmates and employees to be free from retaliation for reporting sexual abuse, the dynamics of sexual abuse in confinement, and the common reactions of sexual abuse victims. Current employees are educated as soon as possible following the agency's adoption of the PREA standards, and the agency provides periodic refresher information to all employees to ensure that they know the agency's most current sexual</p>	115.31	<p>Employee training (a) The agency shall train all employees who may have contact with inmates on: (1) Its zero-tolerance policy for sexual abuse and sexual harassment; (2) How to fulfill their responsibilities under agency sexual abuse prevention, detection, reporting, and response policies and procedures; (3) Inmates' right to be free from sexual abuse and sexual harassment; (4) The right of inmates and employees to be free from retaliation for reporting sexual abuse; (5) The dynamics of sexual abuse in confinement; (6) The common reactions of sexual abuse victims; (7) How to detect and respond to signs of threatened and actual sexual abuse; (8) How to avoid inappropriate relationships with inmates; and (9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, or intersex inmates.</p>	<i>Change</i>	The DOJ standard allows for electronic verification of training.
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	abuse policies and procedures. The agency maintains written documentation showing employee signatures verifying that employees understand the training they have received.		(b) Such training shall be tailored to the gender of the inmates at the employee's facility. (c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide annual refresher information to all employees to ensure that they know the agency's current sexual abuse policies and procedures. (d) The agency shall document, via employee signature or electronic verification that employees understand the training they have received.		
TR-2	Volunteer and contractor training The agency ensures that all volunteers and contractors who have contact with inmates have been trained on their	115.32	Volunteer and contractor training (a) The agency shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities	This standard is substantively the same.	

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	responsibilities under the agency's sexual abuse prevention, detection, and response policies and procedures; the PREA standards; and relevant Federal, State, and local law. The level and type of training provided to volunteers and contractors is based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates must be notified of the agency's zero-tolerance policy regarding sexual abuse. Volunteers must also be trained in how to report sexual abuse. The agency maintains written documentation showing volunteer and contractor signatures verifying that they understand the training they have received.		under the agency's sexual abuse prevention, detection, and response policies and procedures. (b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report sexual abuse. (c) The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.	<i>Analysis</i>	

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TR-3	<p>Inmate education During the intake process, staff informs inmates of the agency's zero-tolerance policy regarding sexual abuse and how to report incidents or suspicions of sexual abuse. Within a reasonably brief period of time following the intake process, the agency provides comprehensive education to inmates regarding their right to be free from sexual abuse and to be free from retaliation for reporting abuse, the dynamics of sexual abuse in confinement, the common reactions of sexual abuse victims, and agency sexual abuse response policies and procedures. Current inmates are educated as soon as possible following the agency's adoption of the PREA</p>	115.33	<p>Inmate education (a) During the intake process, staff shall inform inmates of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment. (b) Within 30 days of intake, the agency shall provide comprehensive education to inmates either in person or via video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such abuse or harassment, and regarding agency sexual abuse response policies and procedures. (c) Current inmates who have not received such education shall be educated within one year of the</p>	<i>Change</i>	The DOJ standard defines the timing in which training is to occur with inmates.
				<i>DOJ reasoning for change</i>	Commenters expressed concern regarding what a reasonably brief period of time may be. The DOJ clarified this in the standard.

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	standards, and the agency provides periodic refresher information to all inmates to ensure that they know the agency's most current sexual abuse policies and procedures. The agency provides inmate education in formats accessible to all inmates, including those who are LEP, deaf, visually impaired, or otherwise disabled as well as inmates who have limited reading skills. The agency maintains written documentation of inmate participation in these education sessions.		effective date of the PREA standards, and the agency shall provide refresher information to all inmates at least annually and whenever an inmate is transferred to a different facility, to ensure that they know the agency's current sexual abuse policies and procedures. (d) The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled as well as to inmates who have limited reading skills. (e) The agency shall maintain documentation of inmate participation in these education sessions. (f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.	<i>Analysis</i>	

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TR-4	<p>Specialized training: Investigations In addition to the general training provided to all employees (TR-1), the agency ensures that agency investigators conducting sexual abuse investigations have received comprehensive and up-to-date training in conducting such investigations in confinement settings. Specialized training must include techniques for interviewing sexual abuse victims, proper use of <i>Miranda</i>- and <i>Garrity</i>-type warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral. The agency maintains written documentation that investigators have completed the required specialized training in conducting sexual abuse investigations.</p>	115.34	<p>Specialized training: Investigations (a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings. (b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of <i>Miranda</i> and <i>Garrity</i> warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral. (c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations. (d) Any State entity or Department of Justice component that investigates sexual abuse in</p>	<i>Change</i>	This standard is substantively the same. However, the DOJ standard does apply to outside law enforcement in the case where an agency does not conduct its own investigation.
				<i>Analysis</i>	

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			confinement settings shall provide such training to its agents and investigators who conduct such investigations.		
TR-5	<p>Specialized training: Medical and mental health care The agency ensures that all full- and part-time medical and mental health care practitioners working in its facilities have been trained in how to detect and assess signs of sexual abuse and that all medical practitioners are trained in how to preserve physical evidence of sexual abuse. All medical and mental health care practitioners must be trained in how to respond effectively and professionally to victims of sexual abuse and how and to whom to report allegations or suspicions of sexual abuse. The agency maintains documentation that medical and mental health practitioners have received this</p>	115.35	<p>Specialized training: Medical and mental health care (a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in: (1) How to detect and assess signs of sexual abuse; (2) How to preserve physical evidence of sexual abuse; (3) How to respond effectively and professionally to victims of sexual abuse; and (4) How and to whom to report allegations or suspicions of sexual abuse. (b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.</p>	<i>Change</i>	This standard is substantively the same. However, the DOJ standard does state that if forensic medical exams are to be done in house by agency medical staff they have to receive appropriate training.
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	specialized training.		(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.		
<i>Screening for Risk and Abusiveness</i>		<i>Screening for Risk of Sexual Abuse and Abusiveness</i>			
SC-1	<p>Screening for risk of victimization and abusiveness All inmates are screened during intake, during the initial classification process, and at all subsequent classification reviews to assess their risk of being sexually abused by other inmates or sexually abusive toward other inmates. Employees must conduct this screening using a written screening instrument tailored to the gender of the</p>	115.41	<p>Screening for risk of victimization and abusiveness (a) All inmates shall be screened during the intake process and during the initial classification process to assess their risk of being sexually abused by other inmates or sexually abusive toward other inmates. (b) Such screening shall be conducted using an objective screening instrument, blank copies of which shall be made available to the public upon request. (c) The initial classification process shall consider, at a minimum, the</p>	<i>Change</i>	<p>The DOJ standard adds immigration status to the screening questions.</p> <p>The DOJ standard outlines that the risk assessment must be done in 30 days.</p> <p>The DOJ standard outlines times when rescreening may be necessary</p>

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	<p>population being screened. Although additional factors may be considered, particularly to account for emerging research and the agency’s own data analysis, screening instruments must contain the criteria described below. All screening instruments must be made available to the public upon request.</p> <ul style="list-style-type: none"> • At a minimum, employees use the following criteria to screen male inmates for risk of victimization: mental or physical disability, young age, slight build, first incarceration in prison or jail, nonviolent history, prior convictions for sex offenses against an adult or child, sexual orientation of gay or bisexual, gender nonconformance (e.g., transgender or intersex identity), prior sexual victimization, and 		<p>following criteria to screen inmates for risk of sexual victimization:</p> <ol style="list-style-type: none"> (1) Whether the inmate has a mental, physical, or developmental disability; (2) The age of the inmate, including whether the inmate is a juvenile; (3) The physical build of the inmate; (4) Whether the inmate has previously been incarcerated; (5) Whether the inmate’s criminal history is exclusively nonviolent; (6) Whether the inmate has prior convictions for sex offenses against an adult or child; (7) Whether the inmate is gay, lesbian, bisexual, transgender, or intersex; (8) Whether the inmate has previously experienced sexual victimization; (9) The inmate’s own perception of vulnerability; and 	<p><i>DOJ reasoning for change</i></p>	<p>By clarifying that intake screenings be done in the first 30 days the department is allowing agencies with rapid turn-over to avoid conducting full classification while ensuring that an inmate is screened appropriately upon intake.</p>
				<p><i>DOJ question(s) relating to this standard</i></p>	<p>Q22: “Should the final rule provide greater guidance regarding the required scope of the intake screening, and if so, how?”</p>

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	<p>the inmate’s own perception of vulnerability.</p> <ul style="list-style-type: none"> • At a minimum, employees use the following criteria to screen male inmates for risk of being sexually abusive: prior acts of sexual abuse and prior convictions for violent offenses. • At a minimum, employees use the following criteria to screen female inmates for risk of sexual victimization: prior sexual victimization and the inmate’s own perception of vulnerability. • At a minimum, employees use the following criteria to screen female inmates for risk of being sexually abusive: prior acts of sexual abuse. 		<p>(10) Whether the inmate is detained solely on civil immigration charges.</p> <p>(d) The initial classification process shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in screening inmates for risk of being sexually abusive.</p> <p>(e) An agency shall conduct such initial classification within 30 days of the inmate’s confinement.</p> <p>(f) Inmates shall be rescreened when warranted due to a referral, request, or incident of sexual victimization. Inmates may not be disciplined for refusing to answer particular questions or for not disclosing complete information.</p> <p>(g) The agency shall implement appropriate controls on the dissemination of responses to screening questions within the facility in order to ensure that sensitive information is not exploited to the inmate’s detriment by staff or other inmates.</p>	<i>Analysis</i>	

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SC-2	<p>Use of screening information Employees use information from the risk screening (SC-1) to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive. The facility makes individualized determinations about how to ensure the safety of each inmate. Lesbian, gay, bisexual, transgender, or other gender-nonconforming inmates are not placed in particular facilities, units, or wings solely on the basis of their sexual orientation, genital status, or gender identity. Inmates at high risk for sexual victimization may be placed in segregated housing only as a last resort and then only until an alternative means of separation from likely abusers can be arranged. To the extent possible, risk of sexual victimization should not limit access to programs, education, and work</p>	115.42	<p>Use of screening information (a) The agency shall use information from the risk screening to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive. (b) The agency shall make individualized determinations about how to ensure the safety of each inmate. (c) 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, the agency shall 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. (d) Placement and programming assignments for such an inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate. (e) Such inmate's own views with</p>	<i>Change</i>	<p>The DOJ standard does not include the NPREC ban on assigning inmates to particular units based on sexual orientation or gender identity.</p> <p>The DOJ standard stipulates that transgender and intersex inmates should receive individual assessments and reassessments twice a year.</p>
				<i>Analysis</i>	

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	opportunities.		respect to his or her own safety shall be given serious consideration.		
		115.43	<p>Protective custody</p> <p>(a) Inmates at high risk for sexual victimization may be placed in involuntary segregated housing only after an assessment of all available alternatives has been made, and then only until an alternative means of separation from likely abusers can be arranged.</p> <p>(b) Inmates placed in segregated housing for this purpose shall have access to programs, education, and work opportunities to the extent possible.</p> <p>(c) The agency shall not ordinarily assign such an inmate to segregated</p>	<p><i>Change</i></p>	<p>This is a new DOJ standard.</p>
				<p><i>DOJ reasoning for change</i></p>	<p>DOJ wanted to expand on the use of protective custody discussed under NPREC SC-2.</p> <p>DOJ recognizes while protective custody may be necessary to ensure safety, it can also deter reporting. This standard attempts to balance these concerns</p>

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			<p>housing involuntarily for a period exceeding 90 days.</p> <p>(d) If an extension is necessary, the agency shall clearly document:</p> <p>(1) The basis for the agency's concern for the inmate's safety; and</p> <p>(2) The reason why no alternative means of separation can be arranged.</p> <p>(e) Every 90 days, the agency shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.</p>	<i>Analysis</i>	
<i>Reporting</i>		<i>Reporting</i>			
RE-1	<p>Inmate reporting</p> <p>The facility provides multiple internal ways for inmates to report easily, privately, and securely sexual abuse, retaliation by other inmates or staff for reporting sexual abuse, and staff</p>	115.51	<p>Inmate reporting</p> <p>(a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment,</p>	<i>Change</i>	The DOJ standard does not include the NPREC the provisions for an inmate's request for confidentiality in third party reporting.

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	neglect or violation of responsibilities that may have contributed to an incident of sexual abuse. The facility also provides at least one way for inmates to report the abuse to an outside public entity or office not affiliated with the agency that has agreed to receive reports and forward them to the facility head (RP-2), except when an inmate requests confidentiality. Staff accepts reports made verbally, in writing, anonymously, and from third parties and immediately puts into writing any verbal reports.		and staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse. (b) Pursuant to § 115.22, the agency shall also make its best efforts to provide at least one way for inmates to report abuse or harassment to an outside governmental entity that is not affiliated with the agency or that is operationally independent from agency leadership, such as an inspector general or ombudsperson, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials. (c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports. (d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.	<i>DOJ reasoning for change</i>	Commenters expressed concern that a public entity would be required to ignore reports of criminal activity if an inmate requested confidentiality. DOJ eliminated this exception
				<i>DOJ question(s) relating to this standard</i>	Q23: “Should the final rule mandate that agencies provide inmates with the option of making a similarly restricted report to an outside public entity? To what extent, if any, would such an option conflict with applicable State or local law?”
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RE-2	<p>Exhaustion of administrative remedies Under agency policy, an inmate has exhausted his or her administrative remedies with regard to a claim of sexual abuse either (1) when the agency makes a final decision on the merits of the report of abuse (regardless of whether the report was made by the inmate, made by a third party, or forwarded from an outside official or office) or (2) when 90 days have passed since the report was made, whichever occurs sooner. A report of sexual abuse triggers the 90-day exhaustion period regardless of the length of time that has passed between the abuse and the report. An inmate seeking immediate protection from imminent sexual abuse will be deemed to have exhausted his or her administrative remedies 48 hours after notifying any agency staff member of his or her need for protection.</p>	115.52	<p>Exhaustion of administrative remedies (a)(1) The agency shall provide an inmate a minimum of 20 days following the occurrence of an alleged incident of sexual abuse to file a grievance regarding such incident. (2) The agency shall grant an extension of no less than 90 days from the deadline for filing such a grievance when the inmate provides documentation, such as from a medical or mental health provider or counselor, that filing a grievance within the normal time limit was or would likely be impractical, whether due to physical or psychological trauma arising out of an incident of sexual abuse, the inmate having been held for periods of time outside of the facility, or other circumstances indicating impracticality. Such an extension shall be afforded retroactively to an inmate whose grievance is filed subsequent to the normal filing deadline.</p>	<i>Change</i>	The DOJ standard defines the exhaustion process further and extends timeframes.
				<i>DOJ reasoning for change</i>	<p>Commenters raised concerns about the legality of NPREC standards regarding exhaustion requirements. DOJ balanced legitimate agency concerns with inmate’s appropriate access to the legal process.</p> <p>DOJ feels the immanent harm proposal by the NPREC is unworkable and will allow for immediate access to the courts thus allowing for the filing of frivolous claims.</p> <p>Instead agencies will have to establish emergency reporting procedures.</p>

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			<p>(b)(1) The agency shall issue a final agency decision on the merits of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.</p> <p>(2) Computation of the 90-day time period shall not include time consumed by inmates in appealing any adverse ruling.</p> <p>(3) An agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision.</p> <p>(4) The agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.</p> <p>I(1) Whenever an agency is notified of an allegation that an inmate has been sexually abused, other than by notification from another inmate, it shall consider such notification as a grievance or request for informal resolution submitted on behalf of the alleged inmate victim for purposes of initiating the agency administrative remedy process.</p> <p>(2) The agency shall inform the alleged victim that a grievance or</p>	<p><i>DOJ question(s) relating to this standard</i></p>	<p>Q24: “Because the Department’s proposed standard addressing administrative remedies differs significantly from the Commission’s draft, the Department specifically encourages comments on all aspects of this proposed standard.”</p>
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			<p>request for informal resolution has been submitted on his or her behalf and shall process it under the agency's normal procedures unless the alleged victim expressly requests that it not be processed. The agency shall document any such request.</p> <p>(3) The agency may require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.</p> <p>(4) The agency shall also establish procedures to allow the parent or legal guardian of a juvenile to file a grievance regarding allegations of sexual abuse, including appeals, on behalf of such juvenile.</p> <p>(d)(1) An agency shall establish procedures for the filing of an emergency grievance where an inmate is subject to a substantial risk of imminent sexual abuse.</p> <p>(2) After receiving such an emergency grievance, the agency shall immediately forward it to a level of review at which corrective action may be taken, provide an initial response within 48 hours, and a final agency decision within five calendar days.</p>		

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			(3) The agency may opt not to take such actions if it determines that no emergency exists, in which case it may either: <ul style="list-style-type: none"> (5) Process the grievance as a normal grievance; or (ii) Return the grievance to the inmate, and require the inmate to follow the agency's normal grievance procedures. (4) The agency shall provide a written explanation of why the grievance does not qualify as an emergency. (5) An agency may discipline an inmate for intentionally filing an emergency grievance where no emergency exists.		
RE-3	Inmate access to outside confidential support services In addition to providing on-site mental health care services, the facility provides inmates with access to outside victim advocates	115.53	Inmate access to outside confidential support services (a) In addition to providing onsite mental health care services, the facility shall provide inmates with access to outside victim advocates	<i>Change</i>	The DOJ standard allows for monitoring of inmate access to outside resources.

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	for emotional support services related to sexual abuse. The facility provides such access by giving inmates the current mailing addresses and telephone numbers, including toll-free hotline numbers, of local, State, and/or national victim advocacy or rape crisis organizations and enabling reasonable communication between inmates and these organizations. The facility ensures that communications with such advocates are private, confidential, and privileged, to the extent allowable by Federal, State, and local law. The facility informs inmates, prior to giving them access, of the extent to which such communications will be private, confidential, and/or privileged.		for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and by enabling reasonable communication between inmates and these organizations, as confidential as possible, consistent with agency security needs. (b) The facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored.	<i>DOJ reasoning for change</i>	Commenters were concerned about the inmates access to outside support services without monitoring. DOJ rectified this by only allowing access as far as law would allow. DOJ also specified that contact only be as confidential as possible as weighed against the agencies security needs.
				<i>Analysis</i>	
RE-4	Third-party reporting The facility receives and investigates all third-party reports	115.54	Third-party reporting The facility shall establish a method to receive third-party reports of	<i>Change</i>	The DOJ standard does not require notification to a third party regarding the outcome of an investigation.

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	of sexual abuse (IN-1). At the conclusion of the investigation, the facility notifies in writing the third-party individual who reported the abuse and the inmate named in the third-party report of the outcome of the investigation. The facility distributes publicly information on how to report sexual abuse on behalf of an inmate.		sexual abuse and shall distribute publicly information on how to report sexual abuse on behalf of an inmate.	<i>Analysis</i>	
<i>Official Response</i>		<i>Official Response Following an Inmate Report</i>			
OR-1	Staff and facility head reporting duties All staff members are required to report immediately and according to agency policy any knowledge, suspicion, or information they receive regarding an incident of sexual abuse that occurred in an institutional setting; retaliation against inmates or staff who	115.61	Staff and agency reporting duties (a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse that occurred in an institutional setting; retaliation against inmates or staff who reported abuse; and any staff	<i>Change</i>	The DOJ standard adds that the facility is required to report abuse to the facility's investigators

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	<p>reported abuse; and any staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or retaliation. Apart from reporting to designated supervisors or officials, staff must not reveal any information related to a sexual abuse report to anyone other than those who need to know, as specified in agency policy, to make treatment, investigation, and other security and management decisions. Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners are required to report sexual abuse and must inform inmates of their duty to report at the initiation of services. If the victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the facility head must report the allegation to the designated State or local services agency under applicable mandatory reporting laws.</p>		<p>neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or retaliation. (b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than those who need to know, as specified in agency policy, to make treatment, investigation, and other security and management decisions. (c) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph (a) of this section and to inform inmates of the practitioner’s duty to report at the initiation of services. (d) If the victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws. (e) The facility shall report all</p>	<i>Analysis</i>	

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			allegations of sexual abuse, including third-party and anonymous reports, to the facility's designated investigators.		
OR-2	Reporting to other confinement facilities When the facility receives an allegation that an inmate was sexually abused while confined at another facility, the head of the facility where the report was made notifies in writing the head of the facility where the alleged abuse occurred. The head of the facility where the alleged abuse occurred ensures the allegation is investigated.	115.62	Reporting to other confinement facilities (a) Within 14 days of receiving an allegation that an inmate was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify in writing the head of the facility or appropriate central office of the agency where the alleged abuse occurred. (b) The facility head or central office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.	<i>Change</i>	The DOJ standard defines the timeframe for reporting.
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OR-3	Staff first responder duties Upon learning that an inmate was sexually abused within a time period that still allows for the collection of physical evidence, the first security staff member to respond to the report is required to (1) separate the alleged victim and abuser; (2) seal and preserve any crime scene(s); and (3) instruct the victim not to take any actions that could destroy physical evidence, including washing, brushing his or her teeth, changing his or her clothes, urinating, defecating, smoking, drinking, or eating. If the first staff responder is a non-security staff member, he or she is required to instruct the victim not to take any actions that could destroy physical evidence and then notify security staff.	115.63	Staff first responder duties (a) Upon learning that an inmate was sexually abused within a time period that still allows for the collection of physical evidence, the first security staff member to respond to the report shall be required to: (1) Separate the alleged victim and abuser; (2) Seal and preserve any crime scene; and (3) Request the victim not to take any actions that could destroy physical evidence, including washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating. (b) If the first staff responder is not a security staff member, the responder shall be required to request the victim not to take any actions that could destroy physical evidence, and then notify security staff.	This standard is substantively the same.	
				<i>Analysis</i>	
OR-4	Coordinated response All actions taken in response to an incident of sexual abuse are	115.64	Coordinated response The facility shall coordinate actions taken in response to an incident of	This standard is substantively the same.	

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	coordinated among staff first responders, medical and mental health practitioners, investigators, and facility leadership. The facility's coordinated response ensures that victims receive all necessary immediate and ongoing medical, mental health, and support services and that investigators are able to obtain usable evidence to substantiate allegations and hold perpetrators accountable.		sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.	<i>DOJ question(s) relating to this standard</i>	Q25: "Does this standard provide sufficient guidance as to how compliance would be measured? If not, how should it be revised?"
				<i>Analysis</i>	
OR-5	Agency protection against retaliation The agency protects all inmates and staff who report sexual abuse or cooperate with sexual abuse investigations from retaliation by other inmates or staff. The agency employs multiple protection measures, including housing changes or transfers for inmate victims or abusers,	115.65	Agency protection against retaliation (a) The agency shall protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff. (b) The agency shall employ multiple protection measures,	<i>Change</i>	The DOJ standard adds the following language: The agency shall not enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff abusers from contact with victims pending an investigation.

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	removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or cooperating with investigations. The agency monitors the conduct and/or treatment of inmates or staff who have reported sexual abuse or cooperated with investigations, including any inmate disciplinary reports, housing, or program changes, for at least 90 days following their report or cooperation to see if there are changes that may suggest possible retaliation by inmates or staff. The agency discusses any changes with the appropriate inmate or staff member as part of its efforts to determine if retaliation is taking place and, when confirmed, immediately takes steps to protect the inmate or staff member.		including housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations. (c) The agency shall monitor the conduct and treatment of inmates or staff who have reported sexual abuse or cooperated with investigations, including any inmate disciplinary reports, housing, or program changes, for at least 90 days following their report or cooperation, to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need. (d) The agency shall not enter into or renew any collective bargaining agreement or other agreement that limits the agency’s ability to remove	<i>DOJ reasoning for change</i>	DOJ wanted to build on the suggestion from NPREC
				<i>DOJ question(s) relating to this standard</i>	Q26: “Should the standard be further refined to provide additional guidance regarding when continuing monitoring is warranted, or is the current language sufficient?”
				<i>Analysis</i>	

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			alleged staff abusers from contact with victims pending an investigation.		
		115.66	Post allegation protective custody Any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.	<i>Change</i>	This is a new DOJ standard.
				<i>DOJ reasoning for change</i>	DOJ saw a need to clarify the use of protective custody
				<i>Analysis</i>	
<i>Investigations</i>		<i>Investigations</i>			
IN-1	Duty to investigate The facility investigates all allegations of sexual abuse, including third-party and anonymous reports, and notifies victims and/or other complainants in writing of			DOJ did not choose to adopt this standard.	
				<i>DOJ reasoning for change</i>	Notification requirements under the NPREC standard have been replaced by DOJ standard 115.73

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	investigation outcomes and any disciplinary or criminal sanctions, regardless of the source of the allegation. All investigations are carried through to completion, regardless of whether the alleged abuser or victim remains at the facility.			<i>Analysis</i>	
IN-2	<p>Criminal and administrative agency investigations Agency investigations into allegations of sexual abuse are prompt, thorough, objective, and conducted by investigators who have received special training in sexual abuse investigations (TR-4). When outside agencies investigate sexual abuse, the facility has a duty to keep abreast of the investigation and cooperate with outside investigators (RP-3). Investigations include the following elements:</p> <ul style="list-style-type: none"> • Investigations are initiated and completed within the timeframes established by the highest-ranking facility official, and the 	115.71	<p>Criminal and administrative agency investigations (a) When the agency conducts its own investigations into allegations of sexual abuse, it shall do so promptly, thoroughly, and objectively, using investigators who have received special training in sexual abuse investigations pursuant to § 115.34, and shall investigate all allegations of sexual abuse, including third-party and anonymous reports. (b) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and</p>	<i>Change</i>	<p>DOJ added the following to the standard:</p> <p>(h) The agency shall retain such investigative records for as long as the alleged abuser is incarcerated or employed by the agency, plus five years. (i) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation. (j) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements. (k) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.</p>

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	<p>highest-ranking official approves the final investigative report.</p> <ul style="list-style-type: none"> • Investigators gather direct and circumstantial evidence, including physical and DNA evidence when available; interview alleged victims, suspected perpetrators, and witnesses; and review prior complaints and reports of sexual abuse involving the suspected perpetrator. • When the quality of evidence appears to support criminal prosecution, prosecutors are contacted to determine whether compelled interviews may be an obstacle for subsequent criminal 		<p>witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.</p> <p>(c) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.</p> <p>(d) The credibility of a victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff.</p> <p>(e) Administrative investigations:</p>		

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	<p>prosecution.</p> <ul style="list-style-type: none"> • Investigative findings are based on an analysis of the evidence gathered and a determination of its probative value. • The credibility of a victim, suspect, or witness is assessed on an individual basis and is not determined by the person’s status as inmate or staff. • Investigations include an effort to determine whether staff negligence or collusion enabled the abuse to occur. • Administrative investigations are documented in written reports that include a description of the physical and testimonial evidence and the reasoning behind credibility assessments. • Criminal investigations are documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and provides a proposed list of exhibits. • Substantiated allegations of conduct that appears to be criminal are referred for 		<p>(1) Shall include an effort to determine whether staff actions or failures to act facilitated the abuse; and</p> <p>(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative findings.</p> <p>(f) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.</p> <p>(g) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.</p> <p>(h) The agency shall retain such investigative records for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.</p> <p>(i) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an</p>	<i>Analysis</i>	

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	prosecution.		investigation. (j) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements. (k) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.		
IN-3	Evidence standard for administrative investigations Allegations of sexual abuse are substantiated if supported by a preponderance of the evidence.	115.72	Evidentiary standard for administrative investigations The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse are substantiated.	This standard is substantively the same.	
				<i>Analysis</i>	

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		115.73	<p>Reporting to Inmates</p> <p>(a) Following an investigation into an inmate’s allegation that he or she suffered sexual abuse in an agency facility, the agency shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.</p> <p>(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.</p> <p>© Following an inmate’s allegation that a staff member has committed sexual abuse, the agency shall subsequently inform the inmate whenever:</p> <p>(1) The staff member is no longer posted within the inmate’s unit;</p> <p>(2) The staff member is no longer employed at the facility;</p> <p>(3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or</p> <p>(4) The agency learns that the staff member has been convicted on a charge related to sexual abuse</p>	<p><i>Change</i></p>	<p>This is a new DOJ standard.</p>
				<p><i>DOJ reasoning for change</i></p>	<p>This standard was proposed to strike a balance between staff member privacy and the inmate’s right to know the outcome of an investigation while protecting the security of both.</p>
				<p><i>Analysis</i></p>	

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			within the facility. This requirement shall not apply to allegations that have been determined to be unfounded.		
<i>Discipline</i>		<i>Discipline</i>			
DI-1	<p>Disciplinary sanctions for staff Staff is subject to disciplinary sanctions up to and including termination when staff has violated agency sexual abuse policies. The presumptive disciplinary sanction for staff members who have engaged in sexually abusive contact or penetration is termination. This presumption does not limit agency discretion to impose termination for other sexual abuse policy violations. All terminations for violations of agency sexual abuse policies are to be reported to law enforcement agencies and any relevant licensing bodies.</p>	115.76	<p>Disciplinary sanctions for staff (a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies. (b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual touching. (c) Sanctions shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories. (d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been</p>	<p><i>Change</i></p> <p>The DOJ standard limits the NPREC standard by not requiring a report to law enforcement if the conduct was clearly not criminal</p>	
				<p><i>Analysis</i></p>	

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			terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.		
DI-2	<p>Disciplinary sanctions for inmates Inmates are subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative ruling that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse. Sanctions are commensurate with the nature and circumstances of the abuse committed, the inmate’s disciplinary history, and the sanctions meted out for comparable offenses by other inmates with similar histories.</p>	115.77	<p>Disciplinary sanctions for inmates (a) Inmates shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse. (b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate’s disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories. (c) The disciplinary process shall</p>	<i>Change</i>	<p>The DOJ standard made 4 changes to the NPREC standard they are:</p> <p>No requirement for therapy</p> <p>Does not permit disciplining inmates for sex with staff without a finding that the staff member did not consent to such contact</p> <p>Inmates may not be punished for good faith allegations</p> <p>Agencies must not consider consensual sexual contact between inmates as sexual abuse</p>

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	The disciplinary process must consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed. Possible sanctions also include interventions designed to address and correct underlying reasons or motivation for the abuse, such as requiring the offending inmate to participate in therapy, counseling, or other programs.		<p>consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.</p> <p>(d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending inmate to participate in such interventions as a condition of access to programming or other benefits.</p> <p>(e) The agency may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.</p> <p>(f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.</p>	<i>Analysis</i>	

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			(g) Any prohibition on inmate-on-inmate sexual activity shall not consider consensual sexual activity to constitute sexual abuse.		
<i>Medical and Mental Health</i>		<i>Medical and Mental Care</i>			
MM-1	Medical and mental health screenings—history of sexual abuse Qualified medical or mental health practitioners ask inmates about prior sexual victimization and abusiveness during medical and mental health reception and intake screenings. If an inmate discloses prior sexual victimization or abusiveness,	115.81	Medical and mental health screenings; history of sexual abuse (a) All prisons shall ask inmates about prior sexual victimization and abusiveness during intake or classification screenings. (b) If a prison inmate discloses prior sexual victimization or abusiveness, whether it occurred in an institutional setting or in the	<i>Change</i>	The DOJ standard does not specify that medical or mental health staff have to conduct the screening however, if there is a reported sexual abuse incident the standard does require follow up in 14 days by medical/ mental health

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	whether it occurred in an institutional setting or in the community, during a medical or mental health reception or intake screening, the practitioner provides the appropriate referral for treatment, based on his or her professional judgment. Any information related to sexual victimization or abusiveness that occurred in an institutional setting must be strictly limited to medical and mental health practitioners and other staff, as required by agency policy and Federal, State, or local law, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments. Medical and mental health practitioners must obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.		community, staff shall ensure that the inmate is offered a follow-up reception with a medical or mental health practitioner within 14 days of the intake screening. (c) All jails shall ask inmates about prior sexual victimization during the intake process or classification screenings. (d) If a jail inmate discloses prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up reception with a medical or mental health practitioner within 14 days of the intake screening. (e) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as required by agency policy and Federal, State, or local law, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program	<i>DOJ reasoning for change</i>	Commenters felt was too costly to require mental health practitioners to do this DOJ standard does not specify who conducts the screening
				<i>Analysis</i>	

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			assignments. (f) Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.		
MM-2	Access to emergency medical and mental health services Victims of sexual abuse have timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment. Treatment services must be provided free of charge to the victim and regardless of whether the victim names the abuser. If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first	115.82	Access to emergency medical and mental health services (a) Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment. (b) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser. (c) If no qualified medical or mental health practitioners are on duty at	<i>Change</i>	The DOJ added the following language to this standard: Inmate victims of sexual abuse while incarcerated shall be offered timely information about and access to all pregnancy-related medical services that are lawful in the community and sexually transmitted infections prophylaxis, where appropriate.
				<i>DOJ question(s) relating to this standard</i>	<i>Q27: “Does the standard that requires known inmate abusers to receive a mental health evaluation within 60 days of learning the abuse has occurred provide adequate guidance regarding the scope of treatment that subsequently must be offered</i>

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	responders take preliminary steps to protect the victim (OR-3) and immediately notify the appropriate medical and mental health practitioners.		the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.63 and shall immediately notify the appropriate medical and mental health practitioners. (d) Inmate victims of sexual abuse while incarcerated shall be offered timely information about and access to all pregnancy-related medical services that are lawful in the community and sexually transmitted infections prophylaxis, where appropriate.		<i>to such abusers? If not, how should it be revised?"</i>
				<i>Analysis</i>	
MM-3	Ongoing medical and mental health care for sexual abuse victims and abusers The facility provides ongoing medical and/or mental health evaluation and treatment to all known victims of sexual abuse. The evaluation and treatment of	115.83	Ongoing medical and mental health care for sexual abuse victims and abusers (a) The facility shall offer ongoing medical and mental health evaluation and treatment to all inmates who, during their present term of incarceration, have been	<i>Change</i>	DOJ is expanding on two NPREC suggestions: (1) pregnancy tests must be provided and (2) there must be access to STI prophylaxis.

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	sexual abuse victims must include appropriate follow-up services, treatment plans, and, when necessary, referrals for continued care following their release from custody. The level of medical and mental health care provided to inmate victims must match the community level of care generally accepted by the medical and mental health professional communities. The facility conducts a mental health evaluation of all known abusers and provides treatment, as deemed necessary by qualified mental health practitioners.		<p>victimized by sexual abuse.</p> <p>(b) The evaluation and treatment of sexual abuse victims shall include appropriate follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.</p> <p>(c) The facility shall provide inmate victims of sexual abuse with medical and mental health services consistent with the community level of care.</p> <p>(d) All prisons shall conduct a mental health evaluation of all known inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by qualified mental health practitioners.</p> <p>(e) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.</p> <p>(f) If pregnancy results, such victims shall receive timely information about and access to all pregnancy-related medical services that are lawful in the community.</p>	<i>Analysis</i>	

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<i>Data Collection and Review</i>		<i>Data Collection and Review</i>			
DC-1	<p>Sexual abuse incident reviews The facility treats all instances of sexual abuse as critical incidents to be examined by a team of upper management officials, with input from line supervisors, investigators, and medical/mental health practitioners. The review team evaluates each incident of sexual abuse to identify any policy, training, or other issues related to the incident that indicate a need to change policy or practice to better prevent, detect, and/or respond to incidents of sexual abuse. The review team also considers whether incidents were motivated by racial or other group dynamics</p>	115.86	<p>Sexual abuse incident reviews (a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. (b) The review team shall include upper management officials, with input from line supervisors, investigators, and medical or mental health practitioners. (c) The review team shall: (1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;</p>	<i>Change</i>	<p>The DOJ standard does not require a review after unfounded allegations.</p> <p>The DOJ standard added the following areas for review:</p> <p>Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;</p> <p>Assess the adequacy of staffing levels in that area during different shifts;</p> <p>Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff</p>

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	at the facility. When incidents are determined to be motivated by racial or other group dynamics, upper management officials immediately notify the agency head and begin taking steps to rectify those underlying problems. The sexual abuse incident review takes place at the conclusion of every sexual abuse investigation, unless the allegation was determined to be unfounded. The review team prepares a report of its findings and recommendations for improvement and submits it to the facility head.		(2) Consider whether the incident or allegation was motivated or otherwise caused by the perpetrator or victim’s race, ethnicity, sexual orientation, gang affiliation, or other group dynamics at the facility; (3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse; (4) Assess the adequacy of staffing levels in that area during different shifts; (5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and (6) Prepare a report of its findings and any recommendations for improvement and submit such report to the facility head and PREA coordinator, if any.		
				<i>Analysis</i>	

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DC-2	<p>Data collection The agency collects accurate, uniform data for every reported incident of sexual abuse using a standardized instrument and set of definitions. The agency aggregates the incident-based sexual abuse data at least annually. The incident-based data collected includes, at a minimum, the data necessary to answer all questions from the most recent version of the BJS Survey on Sexual Violence. Data are obtained from multiple sources, including reports, investigation files, and sexual abuse incident reviews. The agency also obtains incident-based and aggregated data from every facility with which it contracts for the confinement of its inmates.</p>	115.87	<p>Data collection (a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions. (b) The agency shall aggregate the incident-based sexual abuse data at least annually. (c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice’s Bureau of Justice Statistics. (d) The agency shall collect data from multiple sources, including reports, investigation files, and sexual abuse incident reviews. (e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates. (f) Upon request, the agency shall provide all such data from the previous year to the Department of</p>	<i>Change</i>	The Department is requiring reporting of data to them on June 30 each year.
				<i>Analysis</i>	

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			Justice no later than June 30.		
DC-3	<p>Data review for corrective action The agency reviews, analyzes, and uses all sexual abuse data, including incident-based and aggregated data, to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training. Using these data, the agency identifies problem areas, including any racial dynamics underpinning patterns of sexual abuse, takes corrective action on an ongoing basis, and, at least annually, prepares a report of its findings and corrective actions for each facility as well as the agency as a whole. The annual report also includes a comparison of the current year's data and corrective actions with those from prior</p>	115.88	<p>Data review for corrective action (a) The agency shall review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including: (1) Identifying problem areas; (2) Taking corrective action on an ongoing basis; and (3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole. (b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.</p>	<i>Change</i>	The DOJ standard does not require agencies to make its report available to the legislative body
				<i>Analysis</i>	

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	years and provides an assessment of the agency's progress in addressing sexual abuse. The agency's report is approved by the agency head, submitted to the appropriate legislative body, and made readily available to the public through its Web site or, if it does not have one, through other means. The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but it must indicate the nature of the material redacted.		(c) The agency's report shall be approved by the agency head and made readily available to the public through its website or, if it does not have one, through other means. (d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.		
DC-4	Data storage, publication, and destruction The agency ensures that the collected sexual abuse data are properly stored, securely retained, and protected. The agency makes all aggregated sexual abuse data, from facilities under its direct control and those with which it contracts, readily available to the public at least annually through its Web site or, if it does not have one, through	115.89	Data storage, publication, and destruction (a) The agency shall ensure that data collected pursuant to § 115.87 are securely retained. (b) The agency shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website or, if it does not have one, through other means.	This standard is substantively the same.	
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	other means. Before making aggregated sexual abuse data publicly available, the agency removes all personal identifiers from the data. The agency maintains sexual abuse data for at least 10 years after the date of its initial collection unless Federal, State, or local law allows for the disposal of official information in less than 10 years.		(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers. (d) The agency shall maintain sexual abuse data for at least 10 years after the date of its initial collection unless Federal, State, or local law requires otherwise.		
<i>Audits</i>		<i>Audits</i>			
AU-1	Audits of standards The public agency ensures that all of its facilities, including contract facilities, are audited to measure compliance with the PREA standards. Audits must be conducted at least every three years by independent and qualified auditors. The public or contracted agency allows the auditor to enter and tour	115.93	Audits of standards (a) An audit shall be considered independent if it is conducted by: (1) A correctional monitoring body that is not part of the agency but that is part of, or authorized by, the relevant State or local government; (2) An auditing entity that is within the agency but separate from its normal chain of command, such as an inspector general or	<i>Change</i>	The DOJ did not define how often audits would be conducted DOJ further defined what an audit may entail

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	facilities, review documents, and interview staff and inmates, as deemed appropriate by the auditor, to conduct comprehensive audits. The public agency ensures that the report of the auditor’s findings and the public or contracted agency’s plan for corrective action (DC-3) are published on the appropriate agency’s Web site if it has one or are otherwise made readily available to the public.		ombudsperson who reports directly to the agency head or to the agency’s governing board; or (3) Other outside individuals with relevant experience. (b) No audit may be conducted by an auditor who has received financial compensation from the agency being audited within the three years prior to the agency’s retention of the auditor. (c) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency’s retention of the auditor, with the exception of contracting for subsequent audits. (d) All auditors shall be certified by the Department of Justice to conduct such audits, and shall be re-certified every three years. (e) The Department of Justice shall prescribe methods governing the conduct of such audits, including provisions for reasonable inspections of facilities, review of documents, and interviews of staff and inmates. The Department of Justice also shall prescribe the	<i>DOJ reasoning for change</i>	DOJ believes further discussion of this is necessary. Frequency is of concern and the DOJ is proposing three possibilities: (1) triennial audits for all covered facilities; (2) random sampling; or (3) implement an audit system based on information indicating concern at a particular facility
				<i>DOJ question(s) relating to this standard</i>	Q28: “Should audits be conducted at set intervals, or should audits be conducted only for cause, based upon a reason to believe that a particular facility or agency is materially out of compliance with the standards? If the latter, how should such a for-cause determination be structured?” Q29: “If audits are conducted for cause, what entity should be authorized to determine that there is reason to believe an audit is appropriate, and then to call for an audit to be conducted? What would be the appropriate

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			<p>minimum qualifications for auditors.</p> <p>(f) The agency shall enable the auditor to enter and tour facilities, review documents, and interview staff and inmates to conduct a comprehensive audit.</p> <p>(g) The agency shall ensure that the auditor’s final report is published on the agency’s website if it has one or is otherwise made readily available to the public.</p>		<p><i>standard to trigger such an audit requirement?”</i></p> <p>Q30: <i>“Should all facilities be audited or should random sampling be allowed for some or all categories of facilities in order to reduce burdens while ensuring that all facilities could be subject to an audit?”</i></p> <p>Q31: <i>“Is there a better approach to audits other than the approaches discussed above?”</i></p> <p>Q32: <i>“To what extent, if any, should agencies be able to combine a PREA audit with an audit performed by an accrediting body or with other types of audits?”</i></p> <p>Q33: <i>“To what extent, if any, should the wording of any of the substantive standards be revised in order to facilitate a determination of whether a jurisdiction is in compliance with that standard?”</i></p>

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					<p>Q34: “How should “full compliance” be defined in keeping with the considerations set forth in the above discussion?”</p> <p>Q35: “To what extent, if any, should audits bear on determining whether a State is in full compliance with PREA?”</p>
				Analysis	
	<i>Immigration Facilities: Supplemental Standards</i>			Change	<p>DOJ has chosen not to adopt these standards for the following reasons:</p> <ol style="list-style-type: none"> 1. Immigration detainees are sometimes detained in

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				<p>federal, state or local facilities</p> <p>2. The DOJ assumes that things such as training and MOUs with community agencies will serve immigration detainees and therefore supplemental standards are not needed</p> <p>3. ICE has standards and policies addressing sexual abuse</p> <p style="text-align: center;"><i>Analysis</i></p>
ID-1	<p>Supplement to RP-2: Agreements with outside public entities and community service providers</p> <p>Any facility that houses immigration detainees maintains or attempts to enter into memoranda of understanding (MOUs) or other agreements with one or more local or, if not available, national organizations that provide legal advocacy and confidential emotional support services for immigrant victims of crime (RE-3, MM-3). The agency maintains copies of</p>			

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	agreements or documentation showing attempts to enter into agreements.			
ID-2	<p>Supplement to TR-1, TR-4, and TR-5: Employee training and specialized training of investigators and medical and mental health care</p> <p>Any facility that holds immigration detainees provides special additional training to employees, including medical and mental health practitioners and investigators. This additional training includes the following topics: cultural sensitivity toward diverse understandings of acceptable and unacceptable sexual behavior, appropriate terms and concepts to use when discussing sex and sexual abuse with a culturally diverse population, sensitivity and awareness regarding past trauma that may have been experienced by immigration detainees, and knowledge of all existing</p>			

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	resources for immigration detainees both inside and outside the facility that provide treatment and counseling for trauma and legal advocacy for victims.			
ID-3	Supplement to TR-3: Inmate education Sexual abuse education (TR-3) for immigration detainees is provided at a time and in a manner that is separate from information provided about their immigration cases, in detainees' own languages and in terms that are culturally appropriate, and is conducted by a qualified individual with experience communicating about these issues with a diverse population.			\
ID-4	Detainee handbook Every detainee is provided with an ICE Detainee Handbook upon admission to the facility, and a replacement is provided whenever a detainee's handbook is lost or damaged. The Detainee			\

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	Handbook contains notice of the agency's zero-tolerance policy toward sexual abuse and contains all the agency's policies related to sexual abuse, including information about how to report an incident of sexual abuse and the detainees' rights and responsibilities related to sexual abuse. The Detainee Handbook will inform immigration detainees how to contact organizations in the community that provide sexual abuse counseling and legal advocacy for detainee victims of sexual abuse. The Detainee Handbook will also inform detainees how to contact the Office for Civil Rights and Civil Liberties, the Office of the Inspector General (OIG) for the Department of Homeland Security (DHS), and diplomatic or consular personnel.			
ID-5	Supplement to SC-1: Screening for risk of victimization and abusiveness The facility makes every			\

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	reasonable effort to obtain institutional and criminal records of immigration detainees in its custody prior to screening for risk of victimization and abusiveness. Screening of immigration detainees is conducted by employees who are culturally competent.			
ID-6	Supplement to SC-2: Use of screening information Any facility that houses both inmates and immigration detainees houses all immigration detainees separately from other inmates in the facility and provides heightened protection for immigration detainees who are identified as particularly vulnerable to sexual abuse by other detainees through the screening process (SC-1). To the extent possible, immigration detainees have full access to programs, education, and work opportunities.			

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ID-7	<p>Supplement to RE-1: Inmate reporting The agency provides immigration detainees with access to telephones with free, preprogrammed numbers to ICE’s Office for Civil Rights and Civil Liberties and the DHS OIG. In addition, the agency must provide immigration detainees with a list of phone numbers for diplomatic or consular personnel from their countries of citizenship and access to telephones to contact such personnel.</p>			
ID-8	<p>Supplement to RE-3: Inmate access to outside confidential support services All immigration detainees have access to outside victim advocates who have experience working with immigration detainees or immigrant victims of crime for emotional support services related to sexual abuse. The facility provides such access by giving immigration detainees the current mailing addresses and telephone numbers, including</p>			

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	toll-free hotline numbers, of local, State, and/or national organizations that provide these services and enabling reasonable communication between immigration detainees and these organizations. The facility ensures that communications with such advocates is private, confidential, and privileged to the extent allowable by Federal, State, and local law. The facility informs immigration detainees, prior to giving them access, of the extent to which such communications will be private, confidential, and/or privileged.			
ID-9	Protection of detainee victims and witnesses ICE never removes from the country or transfers to another facility immigration detainees who report sexual abuse before the investigation of that abuse is completed, except at the detainee victim's request. ICE considers releasing detainees who are victims of or witnesses to abuse and monitoring them in the community to protect them from			

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	retaliation or further abuse during the course of the investigation.			
ID-10	<p>Supplement to MM-3: Ongoing medical and mental health care for sexual abuse victims and abusers</p> <p>All immigration detainees are counseled about the immigration consequences of a positive HIV test at the time they are offered HIV testing.</p>			
ID-11	<p>Supplement to DC-2: Data collection</p> <p>The facility collects additional data whenever an immigration detainee is the victim or perpetrator of an incident of sexual abuse in custody. The additional incident-based data collected indicate whether the victim and/or perpetrator was an immigration detainee, his or her status at the initiation of the investigation, and his or her status at the conclusion of the investigation.</p>			

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NPREC STANDARD		DOJ REVISED STANDARD		Analysis
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<i>Immigration Family Facilities: Supplemental Standards</i>				
IDFF-1	<p>Screening of immigration detainees in family facilities (This standard <i>replaces</i> rather than supplements SC-1 and SC-2)</p> <p>Family facilities develop screening criteria to identify those families and family members who may be at risk of being sexually victimized that will not lead to the separation of families. Housing, program, educational, and work assignments are made in a manner that protects families and in all cases prioritizes keeping families together.</p>			
IDFF-2	<p>Reporting of sexual abuse in family facilities</p> <p>The facility provides parents with the ability to report sexual abuse in a manner that is confidential from their children. The facility also provides children with the ability to report abuse by a parent confidentially to staff.</p>			

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IDFF-3	<p>Investigations in family facilities Parents are questioned confidentially by investigators about any incident of sexual abuse, away from their children. A parent or parents are present when a child is questioned by investigators about any incident of sexual abuse, unless (1) the child has alleged abuse by the parent or (2) staff suspects abuse by the parent. The decision to exclude a parent from an interview based on staff suspicion of abuse by that parent is always made by a qualified mental health practitioner.</p>			
IDFF-4	<p>Access to medical and mental health care in family facilities All family members are offered mental health counseling (as required in MM-2 and MM-3) when one family member is a victim of sexual abuse in the facility. Following an incident of</p>			

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NPREC STANDARD		DOJ REVISED STANDARD		Analysis
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	sexual abuse, parents and adult family members are examined confidentially by medical and mental health practitioners and away from children. Following an incident of sexual abuse, a parent or parents are allowed to be present during all medical and mental health examinations of a minor child, unless (1) that child has alleged sexual abuse by the parent or (2) staff suspects abuse by the parent. The decision to exclude a parent from an examination based on staff suspicion of abuse by that parent is always made by a qualified mental health practitioner. In the event that a child is sexually abused, a qualified mental health practitioner interviews the child to determine whether either parent was present or aware of the abuse and whether the parent or parents were threatened in connection with the abuse.			

Other Questions:

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Juveniles in Adult Facilities:

Q36: *“Should the final rule include a standard that governs the placement of juveniles in adult facilities?”*

Q37: *“If so, what should the standard require, and how should it interact with the current JJDPa requirements and penalties mentioned above?”*

Data Collection and Accuracy of Statistics:

Q38: *“Has the Department appropriately determined the baseline level of sexual abuse in correctional settings for purposes of assessing the benefit and cost of the proposed PREA standards?”*

Q39: *“Are there any reliable, empirical sources of data, other than the BJS studies referenced in the IRIA, that would be appropriate to use in determining the baseline level of prison sexual abuse? If so, please cite such sources and explain whether and why they should be used to supplement or replace the BJS data.”*

Q40: *“Are there reliable methods for measuring the extent of underreporting and over-reporting in connection with BJS’s inmate surveys?”*

Q41: *“Are there sources of data that would allow the Department to assess the prevalence of sexual abuse in lockups and community confinement facilities? If so, please supply such data. In the absence of such data, are there available methodologies for including sexual abuse in such settings in the overall estimate of baseline prevalence?”*

Cost:

Q42: *“Has the Department appropriately adjusted the conclusions of studies on the value of rape and sexual abuse generally to account for the differing circumstances posed by sexual abuse in confinement settings?”*

Q43: *“Are there any academic studies, data compilations, or established methodologies that can be used to extrapolate from mental health costs associated with sexual abuse appropriately estimated that the cost of mental health treatment associated with sexual abuse in confinement settings is twice as large as the corresponding costs in community settings?”*

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Q44: *“Has the Department correctly identified the quantifiable costs of rape and sexual abuse? Are there other costs of rape and sexual abuse that are capable of quantification, but are not included in the Department’s analysis?”*

Q45: *“Should the Department adjust the “willingness to pay” figures on which it relies (developed by Professor Mark Cohen for purposes of valuing the benefit to society of an community settings to such costs in confinement settings? Has the Department avoided rape¹⁰) to account for the possibility 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 incident in the confinement setting is less than the value of avoiding a similar incident in the non-confinement setting? Likewise, should the Department adjust these 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? Are such differences even relevant for purposes of using the contingent valuation method to monetize the cost of an incident of sexual abuse? If either adjustment were appropriate, how (or on the basis of what empirical data) would the Department go about determining the amount of the adjustment?”*

Q46: *“Has the Department appropriately accounted for the increased costs to the victim and to society when the victim is a juvenile? Why or why not?”*

Q47: *“Are there available methodologies, or available data from which a methodology can be developed, to assess the unit value of avoiding a nonconsensual sexual act involving pressure or coercion? If so, please supply them. Is the Department’s estimate of this unit value (i.e., 20% of the value of a forcible rape) appropriately conservative?”*

Q48: *“Are there 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? If so, please supply them. Is the Department’s estimate of this unit value (i.e., \$375 for adult inmates and \$500 for juveniles) appropriately conservative? Would a higher figure be more appropriate? Why or why not?”*

Q49: *“Are there any additional nonmonetary benefits of implementing the PREA standards not mentioned in the IRIA?”*

Q50: *“Are any of the nonmonetary benefits set forth in the IRIA actually capable of quantification? If so, are there available methodologies for quantifying such benefits or sources of data from which such quantification can be drawn?”*

Q51: *“Are there available sources of data relating to the compliance costs associated with the proposed standards, other than the sources cited and relied upon in the IRIA? If so, please provide them.”*

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Q52: “Are there available data as to the number of lockups that will be affected by the proposed standards, the number of individuals who are detained in lockups on an annual basis, and/or the anticipated compliance costs for lockups? If so, please provide them.”

Q53: “Are there available data as to the number of community confinement facilities that will be affected by the proposed standards, the number of individuals who reside or are detained in such facilities on an annual basis, or the anticipated compliance costs for community confinement facilities? If so, please provide them.”

Q54: “Has the Department appropriately differentiated the estimated compliance costs with regard to the different types of confinement facilities (prisons, jails, juvenile facilities, community confinement facilities, and lockups)? If not, why and to what extent should compliance costs be expected to be higher or lower for one type or another?”

Q55: “Are there additional methodologies for conducting an assessment of the costs of compliance with the proposed standards? If so, please propose them.”

Q56: “With respect to §§ 115.12, 115.112, 115.212, and 115.312, are there other methods of estimating the extent to which contract renewals and renegotiations over the 15-year period will lead to costs for agencies that adopt the proposed standards?”

Q57: “Do agencies expect to incur costs associated with proposed §§ 115.13, 115.113, 115.213, and 115.313, notwithstanding the fact that it does not mandate any particular level of staffing or the use of video monitoring? Why or why not? If so, what are the potential cost implications of this standard under various alternative scenarios concerning staffing mandates or video monitoring mandates? What decisions do agencies anticipate making in light of the assessments called for by this standard, and what will it cost to implement those decisions?”

Q58: “With respect to §§ 115.14, 115.114, 115.214, and 115.314, will the limitations on cross-gender viewing (and any associated retrofitting and construction of privacy panels) impose any costs on agencies? If so, please provide any data from which a cost estimate can be developed for such measures.”

Q59: “Will 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 residents lead to additional costs for correctional facilities, over and above the costs of other training requirements in the standards? If so, please provide any data from which a cost estimate can be developed for such training.”

Q60: “Has the Department accounted for all of the costs associated with §§ 115.52, 115.252, and 115.352, dealing with exhaustion of

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administrative remedies? If not, what additional costs might be incurred, and what data exist from which an estimate of those costs can be developed?”

Q61: “Is there any basis at this juncture to estimate the compliance costs associated with §§ 115.93, 115.193, 115.293, and 115.393, pertaining to audits? How much do agencies anticipate compliance with this standard is likely to cost on a per-facility basis, under various assumptions as to the type and frequency or breadth of audits?”

Q62: “Has the Department used the correct assumptions (in particular the assumption of constant cost) in projecting ongoing costs in the out years? Should it adjust its projections for the possibility that the cost of compliance may decrease over time as correctional agencies adopt new innovations that will make their compliance more efficient? If such an adjustment is appropriate, please propose a methodology for doing so and a source of data from which valid predictions as to “learning” can be derived.”

Q63: “Are there any data showing how the marginal cost of rape reduction is likely to change once various benchmarks of reduction have been achieved? If not, is it appropriate for the Department to assume, for purposes of its breakeven analysis, that the costs and benefits of reducing prison rape are linear, at least within the range relevant to the analysis? Why or why not?”

Q64: “Are the expectations as to the effectiveness of the proposed standards that are subsumed within the breakeven analysis (e.g., 0.7%-1.7% reduction in baseline prevalence needed to justify startup costs and 2.06%-3.13% reduction required for ongoing costs) reasonable? Why or why not? Are there available data from which reasonable predictions can be made as to the extent to which these proposed standards will be effective in reducing the prevalence of rape and sexual abuse in prisons? If so, please supply them.”