

CORRECTIONS

THE COMMISSIONER

Close Custody Units

Adopted Recodification with Amendments: N.J.A.C. 10A:4-10.1 as 10A:5-6.1 and 10A:5-2.28 as 1.3 and 9.3 as 3.1, Respectively

Adopted New Rules: N.J.A.C. 10A:5-2.11, 4, 8, 9, 10.1

Adopted Amendments: N.J.A.C. 10A:5-1.1, 1.3, 2.1, 2.5, 2.6, 2.8, 2.9, 5.1, 5.2, 5.3, 5.4, 5.5, 5.22, and 7.1

Adopted Repeals: N.J.A.C. 10A:4-10.2 through 10.18; and 10A:5-1.2, 1.4, 2.12 through 2.27, 2.29, 2.31, 3, 5.6 through 5.21, 5.23, and 5.24

Proposed: July 6, 2020, at 52 N.J.R. 1321(b).

Adopted: December 24, 2020, by Marcus O. Hicks Esq., Commissioner, Department of Corrections.

Filed: March 31, 2021, as R.2021 d.037, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: May 3, 2021.

Expiration Dates: April 3, 2025, N.J.A.C. 10A:4; and
September 11, 2022, N.J.A.C. 10A:5.

Summary of Public Comments and Agency Responses:

The official comment period ended September 2, 2020 and comments were received from the following individuals and organizations.

1. Tess Borden for the ACLU-NJ
2. Bonnie Kerness for American Friends Service Committee
3. Tia Ryans for AoUoN (All of Us or None)
4. Mary Beth Charters
5. Alexander Chludzinski, New Jersey State Prison
6. Sonny Corleone
7. Jamie Evanini
8. Tia Ryans for F.O.R.T.E House (Forcing Out Recidivism Through Education)
9. Alonzo Hill, New Jersey State Prison for Inmate Legal Association Inc.
10. Michael Ivester, New Jersey State Prison
11. Sherry Mullikin, Prison Advocate
12. Marygrace Murphy
13. Leslie Nelson, Edna Mahon Correctional Facility
14. Pastor J. Amos Caley for NJCAIC (NJ Campaign for Alternatives to Isolated Confinement), Salvation and Social Justice, Reformed Church of Highland Park
15. James Ofeldt, New Jersey State Prison
16. Weston Pease
17. Christine Piatek
18. Jean Ross for, POP (Member of Peoples Organization for Progress)
19. Mary Previterra
20. Beverly Railsback
21. David Thomas
22. Betsy Young

23. Kenworth Laurier, East Jersey State Prison

24. Anthony DeFazio, Northern State Prison

A summary of the timely submitted comments and the responses from the Department of Corrections (“Department” or “DOC”) follow. The comments include a number of topics, many of which are addressed by one or more commenters. The Department has grouped related comments into major topics as they appear below and provided responses to each topic. The number(s) in parentheses following each comment identifies the commenter(s) listed above.

1. COMMENT: The commenters state that the published rule proposal, relating to N.J.A.C. 10A:4, 5, 9, and 31 are the most significantly impacted chapters of Title 10A by the Isolated Confinement Restriction Act, N.J.S.A. 30:4-82.5 through 11 (the Act), but additional changes are needed. For example; N.J.A.C. 10A:8-3.5(b) and (c), regarding facility and unit-specific inmate handbooks, should be amended to include rights from the Act. (1, 3, 8, and 14)

RESPONSE: The Department agrees that the chapters of Title 10A most significantly impacted by the Act are N.J.A.C. 10A:4, 10A:5, 10A:9, and 10A:31. As to changes required at N.J.A.C. 10A:8-3.5(b) and (c), the Department must call to the attention of the commenters the fact that the actual content of the facility and unit-specific inmate handbooks is not included there. The Department has already drafted changes to the inmate handbook on discipline and is awaiting adoption of the rule actions related to implementation of the Act before publishing and distributing the updated handbooks. Following publication of the inmate handbook on discipline, the facility and unit specific handbooks will follow. No changes at N.J.A.C. 10A:8-

3.5(b) and (c) are necessary. In the interim, inmates have already been informed in writing of the proposed amendments included in the rules actions.

2. COMMENT: The commenters note that the term “administrative segregation,” which the DOC proposes to delete, also appears not only in the proposed rulemaking, but also at N.J.A.C. 10A:1-2.2 and 10A:3-5.5 and 5.7. In addition, they state that DOC has also not proposed regulatory changes to address medical isolation and facility lock-downs. (1, 3, 8, and 14)

RESPONSE: Given the significant and meaningful changes made to Chapters 4, 5, 9, and 31, the Department chose to leave the definition of administrative segregation at N.J.A.C. 10A:1-2.2 and the reference to administrative segregation at N.J.A.C. 10A:3-5.5(c)2 until readoption of those chapters or when other amendments are made, since leaving them as they currently appear will not result in confusion or non-compliance with the Act. The commenters are however, mistaken about the need to remove the words administrative segregation from N.J.A.C. 10A:3-5.7, since the only instance in which administrative segregation appears in that portion of the New Jersey Administrative Code (Code) is in the history section and not in the Code itself. The commenters are correct in saying no changes have been proposed to address medical isolation and facility lock-downs. The Act provides for the use of isolated confinement in specific instances that include medical isolation and facility lock-downs, but does not list them among the topics for which the Commissioner “shall adopt regulations,” at N.J.S.A. 30:4-82.11.a(7). Moreover, the Act itself contains limitations on their use. The use of medical isolation, as included in disease containment guidelines provided by the New Jersey Department of Health, the Centers for Disease Control, and other Federal agencies is included in DOC healthcare

Internal Management Procedures. Procedures associated with facility lock-downs are also included in Department Internal Management Procedures for security reasons.

3. COMMENT: The submissions from several commenters included complaints about the conditions of confinement, interoffice memoranda, individual inmate situations, specific correctional facilities, Department staff, and inmate adherence to existing rules. They also offered remarks regarding the likelihood that the proposed rules would be followed or disregarded by correctional facility staff. One commenter (15) submitted, as attachments, copies of inmate remedy system forms, inquiries, and grievances. (9, 10, and 15)

RESPONSE: The rulemaking provides for the submission of public comments on the rules as proposed. The Department agrees that enforcement of the changes to close custody and housing assignments, once adopted, is important. Additionally, the individualized complaints concerning such things as interoffice memoranda and conditions of confinement unrelated to the rulemaking should be addressed through the existing mechanisms. The various remarks concerning particularized situations and processes outside what was proposed for amendment are beyond the scope of the rulemaking and, therefore, will not be addressed.

4. COMMENT: The commenter recounted the content of a letter from an inmate in the Management Control Unit (M.C.U.) in 1986, and provided a copy of a document authored by American Friends Service Committee in 2015. The commenter states that the Isolated Confinement Restriction Act, N.J.S.A. 30:4-82.5, dramatically changes the way close-custody statuses and isolation may be used in New Jersey. Yet the rules that the Department of Corrections has promulgated appear to ignore the law. The commenter further states that the

M.C.U. and the new Restorative Housing Units (R.H.U.) regulations are considered torture by the United Nations as they serve to place people in concrete cages on the whim of no one knows who, and without any understandable charges and states that it is without hesitation that the commenter objects to the sham of these new regulations. (2)

RESPONSE: While the Department appreciates the inclusion of background information it can only respond in this rulemaking to comments directly related to the contents of the proposed rules. The Restorative Housing Unit is aimed at reducing the number of restrictive interventions associated with disciplinary sanctions. It provides increased inmate out-of-cell time, including the opportunity to participate in a minimum of five hours of recreation per week. In addition, the opportunity to participate in other meaningful activities will be offered and is intended to encourage socialization, education, and the kind of behavior and conduct expected in general population. Similarly, the new Temporary Administrative Housing Unit will be used when inmates must be removed from general population, but are not appropriate for other close custody units. The Department believes that these revisions make meaningful changes that align with the new law.

5. COMMENT: The commenter suggests that, at a minimum, there are 11 categories of changes to Chapter 5 that are required by the Act and may be considered “substantial” and, therefore, in “variance” with notice of proposal, such that they require public re-noticing pursuant to N.J.A.C. 1:30-6.3(a) and/or (c). It was further stated that they recognize that the DOC, and people in custody may be eager for final adoption of amended rules, but the rulemaking, as drafted, is insufficient to comply with the letter and spirit of the Act. The commenter acknowledged that the DOC has begun implementing much of the rulemaking on an interim basis and believes

people in its custody will not be prejudiced by this additional delay. To the contrary, these further changes are critical to secure their rights under the Act. The commenter urges the DOC to make the recommended changes to the rules to bring Chapter 5 in line with the Isolated Confinement Restriction Act and believes our shared goal of ensuring the DOC's close custody units comply with the Act merits the time and attention required for re-noticing this rulemaking.

(1)

RESPONSE: The Department disagrees that the rulemaking is insufficient to comply with the Act and will address each of the commenter's categories separately in the framework of the categories from all commenters. The Department has gone well beyond the requirements in the Act, and among other things, has implemented additional programming and services for the new Restorative Housing Unit, modified the Close Custody units, added a new Drug Diversion Program, as defined in a separate rulemaking, and will utilize only five to 15 days for sanctions in the Adjustment Unit when 20 are permitted, among other things. Therefore, a new notice of proposal is not necessary.

6. COMMENT: The commenter notes that her primary recommendation is that DOC withdraw the proposed rules and prepare rules that clarify and explain the "existing law (the ICRA)," that has an acceptable standard of clarity in its terms and organization, and provides proper notice to the most numerous and affected stakeholders - the people in confinement. (18)

RESPONSE: The Department acknowledges rulemakings should provide public notice as to what regulations the Department plans to alter, and how they will be changed. The Act necessitated so many rule changes that the Department broke them into four different proposals in an effort to meet the statutory requirement at N.J.S.A. 30:4-82.1 to both effectuate the statute

and explain clearly what regulations were being eliminated, moved, or created. The Department believes it met the legal standard. However, in the interest of meeting the effective date of the statute, the Department already has implemented many of the changes as explained in a memo from the Deputy Commissioner and made available to inmates in all correctional facilities.

7. COMMENT: The commenters expressed deep appreciation for the significant strides demonstrated by the Department of Corrections to move toward implementation of the Isolated Confinement Restriction Act with integrity and look forward to a re-written regulation proposal on N.J.A.C. 10A:5 that they hopefully can praise. (2, 3, 8, and 14)

RESPONSE: The Department appreciates the recognition by the commenters that efforts have indeed been made by the Department to implement the Act with integrity and calls to their attention that the proposed rules include numerous environmental enhancements and rehabilitative programs and services, including a drug diversion program, that were designed to create a more rehabilitative environment for inmates in Close Custody units. However, the Department believes that there is no need to re-write the proposed rules as assumed and refers the commenters to the Responses to Comments 1 and 2. This notice of adoption complies with N.J.A.C. 1:30-6.3(b), in so much as the only changes to the proposed rules are of a non-substantial nature or are for the purposes of clarification.

8. COMMENT: The commenters noted that the administrative units (A.U.s) appear to be implicitly considered isolated confinement and commends the DOC for limiting time in the A.U. to five to 15 days and prohibiting the assignment of vulnerable populations in the A.U. as improvements on the letter of the law. (1, 3, 8, and 14)

RESPONSE: The Department appreciates that efforts to limit use and time in the A.U. as a sanction for the most serious disciplinary infractions are recognized by the commenters and that the Department made a conscious decision not to implement the full 20 days allowed by the Act.

9. COMMENT: Concerns were expressed by the commenters that while R.H.U.s do not appear to be classified as isolated confinement, the rules need to specifically state that they are not, to ensure inmates spend no more than 20 hours per day in a cell, in accordance with the law. The commenters note that if R.H.U.s, are in fact isolated confinement and simply a renaming of administrative segregation, then the same protections and prohibitions applied in the proposed rules to A.U.s must be applied to the R.H.U.s. The commenters also suggest that more explicit protections and provisions are necessary for the R.H.U.s to define how “time out-of-cell” or “congregate interaction” will be implemented in meaningful ways and offered during daytime hours. (1, 3, 8, and 14) One of the commenters stated that the rule proposal provides insufficient guarantees for “out-of-cell” activities to comply with the Act. N.J.A.C. 10A:5-9.3(a) is not enough and requests that the Department explicitly guarantee people in the R.H.U. at least four and a half hours out of their cell or similarly confined space per day in conditions that do not severely restrict activity, movement, or social interaction. (1)

RESPONSE. The R.H.U.s are not a renaming of administrative segregation. The R.H.U. provides added opportunities for out-of-cell time and added activities and opportunities for congregate interaction and socialization. The Department informs inmates of the various out-of-cell opportunities available, but cannot be accountable for the number of hours per day an inmate is out-of-cell in instances in which inmates choose or refuse to participate. The Department cannot provide guarantees for out-of-cell activities as stated in the Response to Comment 10.

More specifically, the Department cannot force inmates to leave their cells or to participate in out-of-cell activities, cannot predict inmate behaviors or security issues that could adversely impact planned activities, and cannot provide guaranteed out-of-cell time. While the Act limits the use of isolated confinement, it does not specifically require that all inmates spend at least four and a half hours per day, every day, outside their cells.

In the spirit of cooperation and our shared goals to make these rules easily understood and effective, the Department will add the following clarifying language at N.J.A.C. 10A:5-1.1(a): Inmates housed in the M.C.U., R.H.U., P.C., or T.A.H. will not be confined in a cell or similarly confined holding or living space for approximately 20 hours or more per day with severely restricted activity, movement, or interaction.

10. COMMENT: The commenter suggests the proposed rules do not sufficiently consider the impact of the proposed rules on inmates who comply with the rules and offers the following additional language for inclusion at N.J.A.C. 10A:5: “The regulations included in this chapter and title are not applicable if the correctional facility provides inmates assigned to the Adjustment Unit and Restorative Housing Unit status with more than four hours each day outside of their cells, either in recreation, educational or therapeutic activities. For the purposes of this chapter and title, if an inmate is offered out-of-cell greater than four hours per day, the inmate will be considered to have received that that out-of-cell time, regardless of whether the inmate actually chooses to accept the offered out-of-cell time. This section shall also apply to inmates designated as a member of a vulnerable population.” (13)

RESPONSE: The Department appreciates the suggestion, especially when coupled with the concerns expressed in Comment 9 and believes that similar language should also be applicable to

the M.C.U., R.H.U., P.C., and T.A.H, but not to the A.U. The Department will recodify N.J.A.C. 10A:5-9.3 as 3.1 with changes and add new paragraph (b)1, with clarifying language similar to the commenter's suggested changes and to include the following sentence: "Whenever an inmate refuses to participate in the opportunity for out-of-cell time, the Department's obligations under the Isolated Confinement Restriction Act for out-of-cell time shall be considered fulfilled and any related confinement will be of the inmate's choosing and shall not be considered Isolated Confinement as defined at N.J.S.A. 30:4-82.5 through 11." The Department appreciates the insights and suggestions offered by the commenter.

11. COMMENT: The commenters state that the provisions for clinical examinations are not strong enough because the proposed regulations require an initial medical and mental health evaluation for placement in the A.U., they do not ensure ongoing, daily examinations, which is a vital safeguard explicit in the law. (1, 3, 8, and 14)

RESPONSE: The Department disagrees that the rules for clinical examinations are not strong enough. The rules, as proposed, provide for an initial medical and mental health evaluation immediately prior to placement in the Adjustment Unit and a personal and comprehensive medical and mental health evaluation within 24 hours, which could possibly be confusing. The Department will modify the language at N.J.A.C. 10A:5-8.1(b) to state that an inmate shall receive a personal and comprehensive healthcare evaluation conducted by a clinician prior to placement in the A.U. Since inmates may be placed in the Adjustment Unit (A.U.) for a period of five to 15 days, the rules set forth at N.J.A.C. 10A:5-1.3(g) would apply for ongoing medical and psychiatric care as it does for all close custody units. That care includes inmate requests for care, emergency and non-emergency care, as well as the availability of daily healthcare staff in

all close custody units. The commenters are also referred to the Response to Comment 58, with regards to a clarification added at N.J.A.C. 10A:5-1.3(g)4.

12. COMMENT: The commenters state that these clinical examinations are not extended to housing units that they feel verge on isolation including “Pre-Hearing Disciplinary Housing” (P.H.D.H.), “Protective Custody Unit” (P.C.U), “Emergency Confinement Unit” (E.C.U.), “Investigative Housing Unit” (I.H.U.), and “Temporary Administrative Housing Unit” (T.A.H.). (1, 3, 8, and 14)

RESPONSE: The clinical examinations noted by the commenters are not required for housing units that are not isolated confinement, including Temporary Administrative Housing and Protective Custody. The clinical examinations do apply to the other units noted by the commenters; Emergency Confinement, Pre-Hearing Disciplinary Housing, Investigative Housing, as they are isolated confinement.

While Protective Custody is not isolated confinement, the Act requires that clinical examinations be provided prior to placement in involuntary Protective Custody and the Department has provided for that. Clinical examinations are required both prior to initial placement and on an ongoing basis while in these units. In the context of this comment, the Department is responding with the rules as proposed and as updated for clarification based on other comments within this adoption notice.

Changes to the rules upon adoption for clinical examinations prior to placement are as follows:

- N.J.A.C. 10A:5-4.1(c), An inmate held in the Emergency Confinement in a State correctional facility shall receive a personal and comprehensive medical and mental

health evaluation immediately prior to placement in the Emergency Confinement by a clinician. Reports of these evaluations shall be immediately provided to the facility Administrator.

- N.J.A.C. 10A:5-5.2(k), An inmate held in involuntary Protective Custody in a State correctional facility shall receive a personal and comprehensive medical and mental health evaluation by a clinician prior to placement in involuntary protective custody. Reports of these evaluations shall be immediately provided to the facility Administrator.
- N.J.A.C. 10A:5-6.1(b), Confinement in Prehearing Disciplinary Housing, may consist of placement in the close custody unit or confinement to the inmate's room or housing unit and shall be preceded by a personal and comprehensive medical and mental health evaluation conducted by a healthcare professional prior to placement by a clinician.
- N.J.A.C. 10A:5-7.1(a)1, Placement of the inmate in I.H.U., will be reviewed within 24 hours of placement by a supervisor that was not involved in the initial placement decision. Placement in I.H.U. shall be preceded by a personal and comprehensive medical and mental health evaluation conducted by a clinician.

The rules are changed upon adoption, related to ongoing healthcare services in all close custody units as follows:

N.J.A.C. 10A:5-1.3(g), Medical and psychiatric services, shall be as follows:

3. Routine medical and psychiatric services shall be provided, equivalent to that which is provided to inmates in the general population for the M.C.U., R.H.U., "T.A.H.," and P.C.;
4. Ongoing healthcare services in other close custody units shall include daily health status examinations in accordance with N.J.S.A. 30:4-82.8.a(7); and

6. Medical and psychiatric evaluations or examinations shall be conducted outside the inmate's cell whenever possible with due consideration given to the necessary safety and security measures.

13. COMMENT: The commenters strongly urge the DOC to develop more rigorous definitions of units and specifically state, whether or not they are considered "isolated confinement" and extend the provision of initial and daily medical and mental health examinations to persons in any and all housing units that bear features aligning to the definitions of isolated confinement. (1, 3, 8, and 14)

RESPONSE: The statute defines isolated confinement to mean "confinement alone or with other inmates, for approximately 20 hours or more per day in a State correction facility with severely restricted activity, movement and social interaction." N.J.S.A. 30:4-82.7. The Department has provided for each type of housing assignment, rules related to hours with severely restricted activity, movement, and social interaction, and has made clear the availability of out-of-cell activities. In addition it has provided clarification regarding healthcare examinations in the Response to Comment 9 in the last paragraph, Comments 12 and 58, along with the rule text changes at N.J.A.C. 10A:5-1.1(a) and the related rule text changes.

14. COMMENT: The commenters suggest that the regulations for the new Restorative Housing Unit (R.H.U.) should explicitly include at least four hours out-of-cell each day and also proposes that rules for the R.H.U should include the same language for out-of-cell time that is found at N.J.A.C. 10A:5-10.1 for the new T.A.H. (4, 7, 12, and 19)

RESPONSE: The Department informs inmates of activities listing the various out-of-cell opportunities available in the R.H.U. and other appropriate close custody units in compliance with the law, but cannot be accountable for time spent out-of-cell when inmates choose or refuse to avail themselves of the ample opportunities for out-of-cell activities, services, programs, congregate activity, or socialization. The commenters are urged to also see the Response to Comments 9 and 10 and the related rule text changes.

15. COMMENT: The commenters state that “this punitive approach to corrections is entirely counterproductive and deeply damaging both to the individual and to the community he/she will ultimately return to, which is why it is so important that the regulations for the new Residential Housing Unit (R.H.U.) explicitly include at least four hours out-of-cell each day during reasonable hours. Anything short of this is akin to throwing away a life and ultimately threatening public health and safety.” (17, 20, 21, and 22)

RESPONSE: The Department agrees that rehabilitative services and programs are important components that can lead to productive behaviors especially for inmates found guilty of committing offenses while incarcerated. The Department began increasing the availability of services and programs in close custody as far back as the restrictive housing amendments to close custody rules in 2016. The new R.H.U. has been formed with the intention of further expanding those services and programs and, therefore, increasing opportunities to R.H.U. inmates. Please see the Responses to Comments 9, 10, and 15, regarding out-of-cell time. As to the comment that the out-of-cell time needs to be during reasonable hours, the Department does offer, to the extent possible, services and programs during normal business day hours. The Department, of course, would provide such opportunities during hours of staff availability using

corrections best practices with due consideration for the safety and security of other inmates, staff, and the uninterrupted safe operation of the correctional facility.

16. COMMENT: The commenter states that the maximum sanction in the R.H.U. of 365 days violates the isolated confinement restrictions in the Act and that inmates in close custody units should be allowed four hours out-of-cell per day, but are not provided that opportunity. (5 and 9)

RESPONSE: Please see the Response to Comment 15. The R.H.U. provides a range of out-of-cell opportunities that would not be available in isolated confinement. Four hours of out-of-cell time is not provided to all close custody units as some units are isolated confinement as provided for in the Act for emergency purposes, investigative reasons, and for disciplinary reasons. The commenters are referred to the rules for each close custody unit for more detailed information regarding the individual close custody units.

17. COMMENT: The commenter expressed safety concerns about violent inmates who are assigned to the M.C.U., where they commit infractions, and are sanctioned to the R.H.U. The commenter offered additional language for inclusion at N.J.A.C. 10A:5-2.11 due to the proclivity for violence exhibited by M.C.U. inmates. “Inmates assigned to the M.C.U. found guilty of a Category A or B infraction and sanctioned to the Restorative Housing Unit (R.H.U.) will serve the sanction within the M.C.U. due to the increased safety and security measures required for inmates assigned to M.C.U. All restrictions and/or opportunities available in the R.H.U. are applicable.” (6)

RESPONSE: The Department is in agreement with the safety and security concerns expressed by the commenter and with the need for a clarification in the rules for safety and security

reasons. The Department will add the recommended language at N.J.A.C. 10A:5-2.11, altering the last sentence to read as follows: All restrictions and/or opportunities available to inmates assigned to the R.H.U. will be available to inmates serving an R.H.U. sanction in the M.C.U.

18. COMMENT: The commenter makes the following three statements: 1) the Adjustment Unit (A.U.) is akin to detention, which was abolished five years ago and only increases inmate punishment; 2) there is no housing unit for members of a vulnerable population in a specific correctional facility; and 3) the process for conducting physical and mental health evaluations is not addressed. (9)

RESPONSE: The Department would like to clear up misconceptions the commenters may have by noting the following: 1) Given the significant enhancements to close custody units and inmate discipline proposed by the Department, there is a need for serious sanctions for use in instances when inmates are found guilty of the most serious disciplinary infractions and the new Adjustment Unit was defined for that purpose. The rulemaking provides a much more limited sanction of placement in the A.U. of five to 15 days, as opposed to 20 consecutive days or 30 days in a 60-day period as provided in the Act. (See N.J.S.A. 30:4-82.8.a(9). 2) The Act does not require separate housing for members of a vulnerable population. 3) The processes for conducting examinations by healthcare professionals are dictated by internal management procedures and the codes of conduct and ethics sworn to by the healthcare professionals providing services to the Department. In accordance with the Act, the Department has specified that healthcare examinations will be provided to inmates prior to their placement in certain close custody units. In addition, N.J.A.C. 10A:5-1.3(g) provides health care services on an ongoing basis in close custody units.

19. COMMENT: The commenter asks 1) Why would an inmate in R.H.U. be subject to an additional penalty of the adjustment unit and notes that there is no policy to determine the difference between the R.H.U. and A.U.; and 2) Is there any criteria that distinguishes Emergency Confinement from Temporary Close Custody (TCC)? (9)

RESPONSE: The rule does not provide for an inmate who has been sanctioned to the R.H.U. to be sanctioned to the A.U. after completing the R.H.U. sanction. It does provide for a person who has been sanctioned to the A.U. to go to the R.H.U. after completing the A.U. sanction. The Department encourages the commenter to refer to N.J.A.C. 10A:5-8.1(a) through (e) and 9.1 through 9.6 for more information about A.U. and R.H.U. sanctions. The criteria for assigning inmates to Emergency Confinement is codified at N.J.A.C. 10A:5-4.1 and the criteria for assigning inmates to the Investigative Housing Unit (I.H.U.) is set forth at N.J.A.C. 10A:5-7.1. TCC has been replaced by (I.H.U.).

20. COMMENT: The commenter notes that the only concern with the rule proposal is that, if voluntary protective custody (P.C.) is denied, there does not appear to be any avenue of appeal. The commenter feels that “a prisoner should be able to appeal that denial to a higher authority. If a Prisoner feels he or she needs protection, it is too serious to be denied without further appeal or review.” (11)

RESPONSE: It appears that the rulemaking format the Department is required to use when existing rules are amended may have caused undue confusion or concern. That format only includes those portions of the rules that are being amended or changed. The rulemaking only included changes to N.J.A.C. 10A:5-5.1(b) with respect to protective custody and indicating no

change to subsections (a) and (c). What is important to note is that N.J.A.C. 10A:5-5.1(c) provides for placement in prehearing protective custody, when necessary, to conduct an investigation in which facts, information, and documentation are gathered to support or reject the placement Protective Custody In addition, inmates may contact the Special Investigation Division (SID) if they feel threatened and in need of protection or they may file complaints and grievances using the Inmate Remedy System. The Department hopes this added information is helpful to the commenters. The Department also encourages the commenters to refer to the Response to Comment 21, in which the Department agrees to clarify the rules at N.J.A.C. 10A:5-5.1(b) and (c).

21. COMMENT: The commenter suggests that the Department modify N.J.A.C. 10A:5-5.1(b) to better match the requirements at N.J.S.A. 30:4-82.8.d(4)(a). The commenter also suggests that the provisions for placement in voluntary protective custody must include language stating that there is reasonable cause to believe that confinement is necessary to prevent reasonably foreseeable harm; and when an inmate makes an informed voluntary request for protective custody, the correctional facility shall bear the burden of establishing a basis for refusing the request. (1)

RESPONSE: N.J.A.C. 10A:5-5.1(b) sets forth that voluntary requests for placement in Protective Custody must be made in writing on the Voluntary Protective Custody Consent form and submitted to the Custody Supervisor indicating the reasons for requesting Protective Custody.

The commenter is correct in noting that this section does not explicitly state that the administrator must have reasonable cause to believe that confinement is necessary to prevent

reasonably foreseeable harm or that when an inmate makes an informed voluntary request for protective custody, the correctional facility shall bear the burden of establishing a basis for refusing the request. The rule does delineate the reasons for denying a voluntary placement, which are that the administrator, or designee, cannot verify the inmate's reasons, the reasons are deemed frivolous, or that the administrator, or designee, have made a determination that the conditions forming the basis for the voluntary placement have abated or no longer exist. All of the required determinations for denial imply, they are reached following an investigation of the request. To avoid confusion, the Department will provide clarification by adding a new second sentence at N.J.A.C. 10A:5-5.1(b), containing the added requirements and modify the last sentence to specify the administrator, or designee, will base their findings on an initial investigation and the Department will update N.J.A.C. 10A:5-5.1(c) to indicate an in-depth investigation will be conducted.

22. COMMENT: The commenter suggests that the Department modify the rules to ensure people in protective custody receive opportunities similar to those provided in general population for activities, movement, and social interaction, consistent with their safety and the safety of others, and consistent with N.J.S.A. 30:4-82.8.d(4)(c). (1)

RESPONSE: Inmates in Protective Custody are provided with opportunities for out-of-cell activities as indicated at N.J.A.C. 10A:5-3.1 that takes into consideration the risk or threat of harm, as well as inmate refusals to participate in the opportunity for out-of-cell time.

23. COMMENT: The commenter offered the following clarification for use in the rules when identifying an inmate as transgender as it relates to persons having completed gender

reassignment surgery. “For the purpose of this section, the term transgender shall include only those persons who have not undergone gender reassignment surgery to alter their genitalia.

Persons who have completed gender reassignment surgery shall be considered to be a member of the gender to which the surgery has assigned such inmate.” (13)

RESPONSE: The Department appreciates the suggestion and will include the clarifying language in a future rule action when the term transgender is added to the definitions at N.J.A.C. 10A:1-2.2, if deemed necessary.

24. COMMENT: The commenter offered additional language for inclusion in the rules regarding release of members of a vulnerable population from R.H.U. to general population, when such release could negatively impact inmates in general population, and suggested alternative placement, such as in the R.H.U. or a mental health treatment unit. (13)

RESPONSE: Inmates found to have mental illnesses requiring treatment will be assigned to appropriate mental health units or facilities. The RHU is to be used only for Category A and B disciplinary infractions and not for inmates with mental health considerations.

25. COMMENT: The commenter states that the Adjustment Unit mirrors the defunct Disciplinary Detention that was repealed in 2016. The purpose of the Act was to limit the use of isolated confinement, but instead the DOC proposes to increase its use and blatantly violate the law. (15 and 16)

RESPONSE: The new A.U. was formed in order to balance the relaxing of rules and close custody units with the need for appropriate sanctions when inmates are found guilty of the most serious infractions. The Department disagrees that the A.U. is in violation of the law, as the

Department has chosen not to use the 20 days of confinement permitted under the law, but instead has limited the sanction to allow for only five to 15 days.

26. COMMENT: The commenter states that the rulemaking changes all references to Administrative Segregation to Restorative Housing Unit (R.H.U.) with almost identical text, while not changing the rules of Administrative Segregation. (15 and 16)

RESPONSE: The rules associated with Administrative Segregation have been repealed. It must be noted that the R.H.U. may contain some rules that are similar to those of the repealed Administrative Segregation, with respect to Special Administrative Review Committee (S.A.R.C.) reviews and environmental amenities, but it also provides for out-of-cell time in compliance with the Act. That time out-of-cell includes improvements and enhanced opportunities for inmate participation in activities, congregate interactions, and socialization.

27. COMMENT: The commenter states that the NJDOC's rulemaking attempts to violate the Act at N.J.A.C. 10A:5-1.3(m), regarding exercise and recreation and a limit of five hours per week. (1, 15, and 16) In addition, one of the commenters recommends revising proposed N.J.A.C. 10A:5-1.3(m) and/or related paragraphs to increase the five hours per week for isolated confinement units to something closer to 28 hours. Proposed N.J.A.C. 10A:5-1.3(m) should be also amended to clarify that when "exercise is not permitted," other opportunities will be provided in its place. (1)

RESPONSE: N.J.A.C. 10A:5-1.3(m) sets forth that all close custody units will be provided with at least five hours of recreation per week. The provision is not intended to include all of the out-of-cell activity opportunities afforded to inmates, in particular, close custody units, but to set a

minimum amount of recreation for all close custody units and, therefore, is not in violation of the Act. The Department disagrees with the need to amend N.J.A.C. 10A:5-1.3(m), as it does not believe 28 hours of recreation per week should be required or is required by the Act.

28. COMMENT: The commenter applauds the Department's efforts in reducing isolated confinement. (23)

RESPONSE: The Department appreciates the comment.

29. COMMENT: The commenter stated that the first sentence at N.J.A.C. 10A:5-8.1(a) presents a problem in that it states that an inmate may be placed in the Adjustment Unit (A.U.) for a period of five to 15 days with a finding of guilt for any offense in Category A and that includes an offense for "attempting to commit, aiding another person to commit or making plans to commit any Category A or B offense" (see N.J.A.C. 10A:4-4.1(a)1xiv). The commenter states that Category B offenses are not subject to an A.U. sanction with this exception. (23)

RESPONSE: In general, the commenter is somewhat correct; however, what was not considered in the comment is that N.J.A.C. 10A:4-5.1(d) provides for repeat offenses to be sanctioned at the next higher level. The imposition of A.U. sanctions must meet very specific criteria and Category B offenses will not.

30. COMMENT: With respect to N.J.A.C. 10A:5-1.3(g), the commenter states that the rulemaking specifies that routine medical and psychiatric services shall be provided, equivalent to that which is provided to inmates in the general population for the M.C.U., R.H.U., and P.C.,

but no specification for equivalent services is made for the Emergency Confinement Unit, Investigative Housing Unit, and Temporary Housing Unit. (22)

RESPONSE: Prior to placement in the Emergency Confinement Unit, Investigative Housing Unit healthcare examinations are provided, as specified at N.J.A.C. 10A:5-4.1 and 7.1, and routine or ongoing healthcare according to N.J.A.C. 10A:5-1.3(g), as applicable. It appears the Department may have overlooked the fact that while the Temporary Administrative Housing Unit (T.A.H.) is intended for short periods, not to exceed 72 hours for the provision of healthcare, should be included in the rules. For that reason, the Department will add T.A.H. to the list of units that will be provided with routine medical and psychiatric services, equivalent to that which is provided to inmates in the general population at N.J.A.C. 10A:5-1.3(g)3.

31. COMMENT: In reference to N.J.A.C. 10A:5-1.3(l), the commenter states that the rulemaking specifies that correspondence, visiting, or telephone calling opportunities shall be available to inmates in the M.C.U., Investigative Housing Unit (I.H.U.), Restorative Housing Unit (R.H.U.), and Protective Custody units, but shall be provided in accordance with any special precautions as deemed necessary or appropriate by the Administrator; however, no specification for these privileges is made for the Emergency Confinement Unit, and Temporary Housing Unit. The commenter further states that opportunities for correspondence, especially legal correspondence should be made available to inmates in those units. (23)

RESPONSE: The Department appreciates the commenter pointing out that the privileges mentioned at N.J.A.C. 10A:5-1.3(l) include the I.H.U., which is incorrect. Access to the same privileges is set forth at N.J.A.C. 10A:5-7.1(e), therefore, the Department will remove the duplicate reference to I.H.U. at N.J.A.C. 10A:5-1.3(l) upon adoption. Access to correspondence,

visiting, or telephone calling opportunities are not available to inmates in short-term units, such as Emergency Confinement and the Temporary Housing Unit because they are utilized for 24 hours and 72 hours, respectively, while MCU, RHU, and Protective Custody are more long-term units where those privileges are available. The rules for inmate access to legal services are set forth at N.J.A.C. 10A:6 and in the inmate handbook and will not be repeated at N.J.A.C. 10A:4 or 10A:5.

32. COMMENT: The commenter feels that the language proposed at N.J.A.C. 10A:5-1.3(p)4 is unfair, since it specifies that inmates in close custody units who are participating in formal school (not independent study) shall be entitled to earn work credits and special program credits, but shall not receive pay. The commenter notes that it is unfair since all inmates have to pay for hygiene items, stamps, telephone calls, and other items. (23)

RESPONSE: The Department refers the commenter to N.J.A.C. 10A:13-1.4 and 3.1 for additional information regarding inmate job assignments and compensation. Other sections of the administrative rules that are not part of this rulemaking, as well as the inmate handbook, contain details regarding adding funds to inmate accounts, phone calls, stamps, and commissary, as well as assistance available to indigent inmates that may be helpful to the commenter.

33. COMMENT: The commenter states that it is concerning that N.J.A.C. 10A:5-1.3, provides “rules common to all close custody units,” and appears to treat the individual units alike. Indeed, the previous provisions for the M.C.U. seem simply to have been substituted to apply to all close custody units. Accordingly, subsections (a) through (s) must be modified to ensure that any provisions that restrict activity, movement, or social interaction apply only to people in isolated

confinement units. We, therefore, propose that N.J.A.C. 10A:5-1.3(k)1 and 1.3(p) should be modified, such that people not in isolated confinement can access the law library in person, rather than through an inmate paralegal, and work opportunities, as appropriate. (23)

RESPONSE: The commenter is partially correct with regard to the rules common to all close custody units included at N.J.A.C. 10A:5-1.3. Numerous sections in Chapter 5 previously contained the same, or very similar, rules for each of the close custody units. The Department proposed in this rulemaking to repeal N.J.A.C. 10A:5-2.12 through 2.29 and 5.6 through 5.21 and replace those sections with new N.J.A.C. 10A:5-1.3. At the same time, the Department proposed to make consistent amendments across the close custody units environmental conditions and considerations, whenever possible. For example, the rulemaking includes increasing showers in all close custody units to three times per week and maintaining the same conditions across the close custody units for ventilation, sanitation, food, correspondence, exercise, recreation, etc. These environmental conditions and considerations do not increase restrictions on activity, movement, or social interaction at N.J.A.C. 10A:5-1.3.

Given that the Act does not require that the Department only apply any provisions that restrict activity, movement, or social interaction to people in isolated confinement units, the Department disagrees that N.J.A.C. 10A:5-1.3(a) through (s) must be modified. Inmates assigned to close custody units are assigned to specific units that fulfill the criteria and the limitations set forth at N.J.A.C. 10A:5-2.1 through 10.1 and that may restrict activity, movement, or social interaction within the confines of the Act. The Department also disagrees that N.J.A.C. 10A:5-1.3(k)1 and (p) should be modified, such that people not in isolated confinement can access the law library in person, rather than through inmate paralegals, and work opportunities, as appropriate. Close custody units are used when inmates are found guilty of the most serious

disciplinary infractions, are a threat to themselves or others, or are a threat to the safe and secure operation of the correctional facility, or their safety is at risk by others. Thus, the safety concerns are inconsistent with in-person access to the law library and work assignments. However, the Department agrees with the need for the ability to access legal information, which is why inmate paralegals will assist inmates in close custody units.

34. COMMENT: The commenter states that review by the administrator one week after an inmate is deprived of any usually authorized item or activity at N.J.A.C. 10A:5-1.3(s)3 seems long and should, instead, be reviewed by the administrator as soon as practicable. (23)

RESPONSE: N.J.A.C. 10A:5-1.3(s) is not a new rule, but is a rule relocated from N.J.A.C. 10A:5-2.27, 3.18, and 5.19 with one significant improvement. The original rule at N.J.A.C. 10A:5-5.19 did not include review or return of items or activities by a supervisor or the administrator, as provided at N.J.A.C. 10A:5-2.27 and 3.18. It must also be noted that the items or activities are removed whenever, in the judgment of the custody staff member in charge, there is imminent danger that an inmate will destroy property, clothing, or any items usually permitted in the cell, or injure self or other persons, including both other inmates and custody staff members. Under such conditions, waiting one week for review by the Administrator is just and prudent when considering the potential danger described in the rule.

35. COMMENT: At N.J.A.C. 10A:5-4.1(b), the commenter notes that there are three criteria listed for placement in the Emergency Confinement Unit (E.C.U.) and the second and third criteria should be removed since the Act sets forth only one criteria for E.C.U. placement. (23)

RESPONSE: In addition to the specific criteria set forth in the Act for Emergency Confinement, the Act also specifies limitations on the use of isolated confinement at N.J.S.A. 30:4-82.8.a(4) that must be considered when emergency confinement is necessary and accounts for the added criteria set forth at N.J.A.C. 10A:5-4.1(b)2. The commenter is urged to see the Response to Comment 52 in regards to the third criteria, as well as the changes upon adoption.

36. COMMENT: The commenter states that at N.J.A.C. 10A:5-6.1(f), there is a provision that time spent in Prehearing Disciplinary Housing (P.H.D.H.) shall be credited to any subsequent Restorative Housing Unit sanction imposed, but does not contain a provision for subsequent Adjustment Unit (A.U.) sanction imposed and that added provision should be included in the new rules. (1, 13, and 23) A commenter also suggests crediting time spent in the I.H.U. in a similar manner. (1)

RESPONSE: The rules proposed were intentional with respect to the I.H.U. because it is used in emergency situations and the Department will not provide credit for time spent in the I.H.U.

The credit for time in P.H.D.H. was proposed for credit towards an R.H.U. sanction only in the rulemaking. The Department feels it should also be applied to the A.U. only in instances in which both an A.U. plus an R.H.U. sanction is imposed. The Department will update the rule at N.J.A.C. 10A:5-6.1(f) to clarify the manner in which the Department will apply the credit for time spent in P.H.D.H. by adding the following language at the end of the sentence: “when a sanction in the AU is not also imposed. When both A.U. and R.H.U. sanctions are imposed, any time spent in Prehearing Disciplinary Housing shall be credited only to the A.U. sanction.”

37. COMMENT: The commenter states that none of the criteria listed for placement in the Investigative Housing Unit (I.H.U.) meets the criteria for isolated confinement in the Act and N.J.A.C. 10A:5-7.1(b) should be removed. Furthermore, the commenter suggests that the circumstances addressed for placement in the E.C.U. and Prehearing Disciplinary Housing are the same as the criteria for placement in the I.H.U., which is more reason to remove the I.H.U. (23)

RESPONSE: The provisions in the Act, at N.J.S.A. 30:4-82.8.d(2), provide for placement in Emergency Confinement (E.C) for no more than 24 hours for reducing a substantial risk of imminent serious harm to the inmate or others, as evidenced by recent conduct. An inmate may be placed in Prehearing Disciplinary Housing (P.H.D.H.) for up to 72 hours in those instances where it appears necessary to remove or isolate the inmate from the general population until an investigation into the inmate's alleged misconduct can be completed and a disciplinary hearing can be conducted. The Investigative Housing Unit (I.H.U.) is used for confinement of an inmate for up to 72 hours pending investigation of a disciplinary offense, as specified at N.J.S.A. 30:4-82.9, when an inmate's presence in general population poses a danger to the inmate, staff, other inmates, or the public. In summary, E.C. is used in emergency circumstances but is not used for investigative purposes. Both P.H.D.H. and I.H.U. are used for investigation for disciplinary reasons for up to 72 hours but placement in I.H.U. also involves the inmate posing a danger to others and the alleged commitment of very specific types of disciplinary offenses. In order to provide added clarity, the Department will add the following sentence at the beginning of N.J.A.C. 10A:5-7.1(b): "When an inmate's presence in general population poses a danger to the inmate, staff, other inmates, or the public the inmate may be considered for placement in the I.H.U. In making this determination, the facility administrator shall consider the seriousness of

the alleged offense, including whether the offense involved violence or escape or posed a threat to institutional safety by encouraging others to engage in misconduct; or the facility administrator has granted approval in an emergency situation.” The sentence will be followed by a reference to see N.J.S.A. 30:4-82.9.a and adding the word additional before the word criteria in the original sentence.

38. COMMENT: The commenter states that the proposed rules set forth that inmate participation in out-of-cell services and activities is voluntary at N.J.A.C. 10A:4-5.1 and that refusal to participate will not be subject to disciplinary sanction, but will result in an advisement or report to the Special Segregation Review Committee (S.A.R.C.), which the commenter feels unfairly allows for adverse consequences when inmates opt not to participate in out-of-cell activities. (23)

RESPONSE: Inmates will not be sanctioned further for opting not to participate in out-of-cell activities. The Special Segregation Review Committee (S.A.R.C.) takes into consideration inmate participation in out-of-cell activities, among many other things, when conducting reviews of the status and behavior of inmates assigned to the Restorative Housing Units (R.H.U.). The programs and services offered in the R.H.U. are intended to be rehabilitative and assist inmates found guilty of the more serious disciplinary infractions to better adapt to expected behaviors in general population. Inmates who demonstrate a willingness to modify behavior could potentially be considered for early release from the R.H.U.

39. COMMENT: The commenter identified the need for a small upgrade at N.J.A.C. 10A:5-8.1 that should be corrected to read “An inmate may be placed in the Adjustment Unit” as the word “be” is missing. (24)

RESPONSE: The proposed rules appearing in the New Jersey Register does not contain the omission indicated by the commenter.

40. COMMENT: The commenter requests that additional requirements be added to the proposed rules for the Management Control Unit (M.C.U.), Protective Custody (P.C.), and the Restorative Housing Unit (R.H.U.) at N.J.A.C. 10A:5-2, 5, and 9 to document congregate activity opportunities proposed and individuals’ refusals to leave their cells, as well as update the proposed rules to set forth that the time out of lock will occur at reasonable hours to ensure people can make use of it and, therefore, not during the night hours/shifts, for example, approximately 11:00 P.M. through 6:00 A.M. (1)

RESPONSE: The Act does not require the Department to document: 1) congregate activity opportunities; 2) inmate refusals to leave their cells; or 3) provide out-of-cell time at any particular time. The Department believes it is not necessary to include this level of detail in the rules at N.J.A.C. 10A:5, as preferred, and practicable opportunities may vary and provision of opportunities is predicated on safety and security considerations.

41. COMMENT: One commenter requests that the Department change the proposed R.H.U. rules at N.J.A.C. 10A:5-9.3(b), (c), and (d) regarding “disruptive” or “inappropriate or disrespectful behavior,” “failure to follow rules,” or “minor infractions that demonstrate a resistance to comply with expected behaviors.” The commenter suggests amending N.J.A.C.

10A:5-9.3(b) to state that such behavior will not result in the revocation of the daily guaranteed out of lock time in the R.H.U., unless such behavior results in a disciplinary sanction of A.U. time. (1) Another commenter suggests the rule at N.J.A.C. 10A:5-9.3(b) should be removed. (18)

RESPONSE: Because inmates are assigned to the R.H.U. only upon a finding of guilt for the most serious infractions set forth at N.J.A.C. 10A:4-4.1, the Department declines to change or delete N.J.A.C. 10A:5-9.3(b), (c), or (d). Unfortunately, ignoring or minimizing the disruptive or disrespectful behaviors has a tendency to lead to magnification of the behavior over time. The potential loss of out-of-cell time is intended to underline that the inmate has to find other ways to conduct themselves. The commenter uses the term “out of lock” in the context of “... because being in a cell is not a necessary condition of isolated confinement. A person out of their cell but still in a similarly confined space will also be in conditions of isolation.” This term is not used in the Act, and the Department declines to use the term, as it is not sufficiently defined. When “out of lock” is used by the commenter in this, and other comments, the Department will respond based on the terminology used in the Act and appearing in the rulemaking, which is “out-of-cell.”

42. COMMENT: The commenter requests that the Department modify N.J.A.C. 10A:5-9.6(e), (f), and/or (h) to permit the person to submit written or oral statement, to the Special Administrative Review Committee (S.A.R.C.) at the 60-day reviews as to the reasons for release from the R.H.U. and to appeal a denial of release to the facility administrator. (1)

RESPONSE: S.A.R.C. reviews are not hearings for disciplinary infractions; they are R.H.U. progress reviews that are conducted following placement of an inmate in the R.H.U. with a finding of guilt for the most serious of infractions. Inmates were given the opportunity to participate and appeal the disciplinary hearing prior to adjudication of the disciplinary changes. The purpose of the S.A.R.C. reviews is to track the inmate progress while in the R.H.U., and if the S.A.R.C. review finds the inmate has made significant progress as indicated by custody and program reports, early release from the R.H.U. may be considered by the committee. It must be noted that early release from the R.H.U. is not a right following adjudication of the disciplinary change(s). If inmates feel they should be released from the R.H.U. before the end of the sanction they also have the option of submitting a request or inquiry via the Inmate Remedy System process as described in the inmate handbook.

43. COMMENT: The commenter states that protective custody - whether voluntary or involuntary - is not an exception to time limits in the Act, meaning either that a person may only be in protective custody for 20 consecutive days if the conditions amount to isolation, or that the conditions must be changed such that the person is not in isolation, or both. N.J.S.A. 30:4-82.8.a(9). If the DOC wishes to retain protective custody in excess of 20 consecutive days, Chapter 5 requires extensive additions to ensure, at least as of the 21st day, that conditions do not amount to isolation. In addition, no matter the number of days a person is in protective custody, the rulemaking must be modified to ensure people in protective custody receive similar opportunities for activities, movement, and social interaction, consistent with their safety and the safety of others, as are people in the general population of the facility. N.J.S.A. 30:4-82.8.d(4)(c). (1)

RESPONSE: The Department agrees that protective custody is not isolated confinement and asks the commenter to see the Response to Comment 10 for further information, as well as the changes upon adoption.

44. COMMENT: At N.J.A.C. 10A:5-5.2(j), the commenter suggests that the Department include a requirement of an explicit statement by the facility administrator that less restrictive interventions were considered before placement in involuntary protective custody was authorized, specifically including transfer to the general population of another institution or to a special-purpose housing unit for inmates who face similar threats. N.J.S.A. 30:4-82.8.d(4)(f). (1)

RESPONSE: The decision by the administrator to place an inmate in involuntary Protective Custody (P.C.) is based on the circumstances presented by the evidence and findings of the hearing. If a less restrictive intervention or transfer to another correctional facility would mitigate the threat, then good corrections practice dictates that those alternatives are preferable by the Department. Since the commenter does not find that inclusion of transfer to another correctional facility is implicit in the phrase “a less restrictive intervention would not be sufficient to prevent the harm” at N.J.A.C. 10A:5-5.2(j), the Department agrees to modify the rule to add the phrase “or transfer to another correctional facility” to the rule. In addition, the Department appreciates the insights and the suggestion offered, and refers them to see the changes upon adoption.

45. COMMENT: The commenter states that if a person remains in protective custody in non-isolation conditions beyond the 20th day, it is suggested that the rules, at N.J.A.C. 10A:5-5.4, be modified to provide more frequent substantive reviews. Although N.J.A.C. 10A:5-5.4(a)

establishes 30-day Institutional Classification Committee reviews, such reviews are not sufficiently substantive for a close custody term that could be indefinite, and the annual in-person hearings described at N.J.A.C. 10A:5-5.4(b) and (d) are too infrequent. Instead, it was suggested that the Department should align the hearing cycle with the 60-day period contemplated for the R.H.U. at N.J.A.C. 10A:5-9.6(e), or more frequently, if deemed necessary.

(1)

RESPONSE: The Department proposed to combine N.J.A.C. 10A:5-5.4(a) and (b), since the review requirements for both voluntary and involuntary protective custody are the same pursuant to the Act, which results in replacing annual or yearly reviews with reviews every 30 days, as required in the Act at N.J.S.A. 30:4-82.8.a(4). It is unclear why the commenter suggests aligning the reviews with the R.H.U. 60-day “hearing” cycle, as hearings are not conducted in R.H.U. There are reviews, but they are conducted less frequently than they are in Protective Custody. The Department declines to modify the rule because the suggested changes do not comply with N.J.S.A. 30:4-82.8.a(4).

46. COMMENT: The commenter states that because the I.H.U. is proposed as an isolated confinement unit but does not fall into one of enumerated exceptions for isolated confinement for non-disciplinary reasons at N.J.S.A. 30:4-82.8.a(2) and d, the I.H.U. must either be limited to investigation related to potential disciplinary offenses by that person, or it must be eliminated. The commenter suggests that N.J.A.C. 10A:5-1.2 and 7.1(b)3 violates the Act because it is not one of the three enumerated exceptions for the non-disciplinary use of isolation at N.J.S.A. 30:4-82.8.a(2) and d(1), (3), and (4). Accordingly, the commenter recommends that modifications to the rulemaking be made to clarify that the I.H.U. will be used only pending investigation of a

disciplinary offense and at N.J.A.C. 10A:5-1.2. The commenter states that the Department should explain the distinct use of the I.H.U. and add criteria that separates it from P.H.D.H. In addition, the DOC should also modify the requirements at N.J.A.C. 10A:5-7.1, 7.2, and 3 to comply with N.J.S.A. 30:4-82.9; and delete N.J.A.C. 10A:5-7.1(b)3 as it is an impermissible non-disciplinary purpose. In addition, the commenter states that the rules at N.J.A.C. 10A:5-7 for the I.H.U. also must include the following:

- N.J.A.C. 10A:5-7.1(b)1 and 2, which describe “reasonable suspicion” are not addressed by the rulemaking, and must be modified to reflect clear and convincing evidence and the final decision of the administrator.
- N.J.A.C. 10A:5-7.1(b) must also be modified to provide that I.H.U. placement pending investigation of a disciplinary offense is only permissible when the inmate’s presence in the general population poses a danger to the inmate, staff, other inmates, or the public. In making this determination, the facility administrator shall consider the seriousness of the alleged offense, including whether the offense involved violence or escape or posed a threat to institutional safety by encouraging others to engage in misconduct; or the facility administrator has granted approval in an emergency situation, as set forth at N.J.S.A. 30:4-82.9.a. (1)

RESPONSE: The I.H.U. is used for investigation of the most serious disciplinary offenses (or asterisked offenses) as stated at N.J.A.C. 10A:5-7.1(b)1 and 2, in keeping with the Act at N.J.S.A. 30:4-82.9. In response to the first bullet point, the Department will provide the necessary clarification by replacing “reasonable suspicion” at N.J.A.C. 10A:5-7.1(b)1 and 2, with “clear and convincing evidence” and adding new N.J.A.C. 10A:5-7.1(b)4, setting forth that the final decision to place an inmate in the I.H.U. shall be made by the administrator or designee.

In the spirit of cooperation, and as a demonstration of the Department's commitment to implement the Act with integrity, the Department will also include the clarifying language included in the commenter's second bullet point in the comment to the beginning of N.J.A.C. 10A:5-7.1(b). The Department appreciates the insights and suggestion offered and asks commenters to please see changes upon adoption.

47. COMMENT: The commenter recommends incorporating the I.H.U.'s disciplinary purposes into the P.H.D.H. or else clarifying that the I.H.U. is to be used for investigation of potential disciplinary offenses as described at existing N.J.A.C. 10A:5-7.1(b)1 and 2, whereas P.H.D.H. is to be used after a disciplinary charge has already been written, but pending a disciplinary hearing. (1)

RESPONSE: One of the criteria for placement in the I.H.U. is that such confinement must be of an emergent nature to protect the inmate, staff, general public, and/or the security and control of the correctional facility as set forth at N.J.A.C. 10A:5-7.1(b)3. That criteria, however, is not applicable to P.H.D.H. In order to mitigate any confusion between the purpose of the I.H.U. and P.H.D.H., the Department will modify N.J.A.C. 10A:5-7.1(b)1 and 2 to specify that I.H.U. is to be used for investigation of potential disciplinary offenses. The purpose of P.H.D.H., however, clearly states that it is used "in those instances where it appears necessary to remove or isolate the inmate from the general population until an investigation into the inmate's alleged misconduct can be completed and a disciplinary hearing can be held" at N.J.A.C. 10A:5-6.1(a). The Department appreciates the insights and suggestion offered.

48. COMMENT: The commenter states that it is unclear why the rule proposed at N.J.A.C. 10A:5-1.3(p)3 provides that inmates in the I.H.U. shall be reassigned to cell sanitation and shall be able to earn work time credits and pay for this status. If people in the I.H.U. are provided work opportunities, the DOC should consider whether assignments, other than cell sanitation, are appropriate. Otherwise, the correlation between I.H.U. and cell sanitation, a presumably undesirable work assignment, is unclear. (1)

RESPONSE: Since it is possible that inmates assigned to I.H.U. may be released and not charged with an offense based on the findings of the investigation into a serious disciplinary offense, the Department does not want to jeopardize the inmate's ability to earn wages during the investigation as most inmates in close custody units are not afforded the privilege of jobs outside of the cell and earning wages. The only job available within the confines of a cell is cell sanitation.

49. COMMENT: The commenter suggests that N.J.A.C. 10A:5-6.1 must also be modified to read: "Placement of the inmate in P.H.D.H. will be reviewed within 24 hours of placement by a supervisor that was not involved in the initial placement decision." N.J.S.A. 30:4-82.9.b. (1)

RESPONSE: The Department agrees with the commenter and will add the following new sentence at the end of N.J.A.C. 10A:5-6.1(e): "In all cases, placement of the inmate in P.H.D.H. shall be reviewed within 24 hours of placement by a supervisor that was not involved in the initial placement decision." The Department appreciates the insights and suggestion offered.

50. COMMENT: The commenter states that the proposed rules, at N.J.A.C. 10A:5-4.1(b)3, must be deleted as it is an improper purpose for emergency confinement, as contemplated by the

Act. Emergency confinement should not be used “when there is clear and convincing evidence that the inmate has committed a violation of a prohibited act listed at N.J.A.C. 10A:4-4.” A five- to 15-day period in the A.U. is the period of isolation the DOC has determined is necessary for disciplinary sanctions, and it has made it available only for Category A offenses. The provision at N.J.A.C. 10A:5-4.1(b)3 effectively allows a sanction of one day in the A.U., under the guise of E.C., for any category of offense. The DOC has put forward no reason to justify this, and the commenter suggests there is not one. In line with the Act, E.C. should be available for the categories of N.J.A.C. 10A:5-4.1(b)1 and 2 only. N.J.S.A. 30:4-82.8.d(2). (1)

RESPONSE: The Department never contemplated use of E.C. for a single day for any category of offense as a disguised A.U. sanction. The primary distinction between the A.U. and EC is that inmates are sanctioned to the A.U. with a finding of guilt for a Category A prohibited act and can only be placed in the EC for 24 hours in emergency situations involving disciplinary matters when also inmates present an emergency situation by posing a substantial threat to the safety of others, of damage to, or destruction of property, or of interrupting the operation of a State facility. More succinctly, an inmate can be placed in EC prior to a disciplinary hearing when they create an emergency situation. The Department disagrees with the commenter’s reading of the statute in relation to Emergency Confinement. It is necessary for disciplinary reasons and will not eliminate N.J.A.C. 10A:5-4.1(b)3. It is necessary to take into consideration N.J.S.A. 30:4-82.8.a(8) in conjunction with N.J.S.A. 30:4-82.8.d(1), (3), and (4). N.J.S.A. 30:4-82.8.a(8) states that isolated confinement cannot be used for non-disciplinary reasons except as noted at N.J.S.A. 30:4-82.8.d(1), (3), and (4). Please note that Emergency Confinement appears at N.J.S.A. 30:4-82.8.d.(2) and Emergency Confinement, therefore, must be for disciplinary reasons. For this reason, N.J.A.C. 10A:5-4.1(b)1 and 3 must be included in the rules.

51. COMMENT: The commenters suggest that the definition and use of the M.C.U. is not permissible according to the Act and isolated confinement can only be used for disciplinary reasons or for facility lockdowns in the case of non-disciplinary reasons. The commenters also note that the rule reads that “an inmate may be assigned if the inmate poses a substantial threat to the safety of others, of damage to, or destruction of property, or of interrupting the operation of a State facility.” As the Act reads, this (the M.C.U.) then becomes a violation of the law. We are asking that the Department of Corrections eliminate the Management Control Unit completely (1, 2, 3, 4, and 18)

RESPONSE: The Department disagrees with the commenters’ assertions that the M.C.U. is in violation of the Act since it provides for the confinement of an inmate when there is reasonable cause to believe that the inmate would create a substantial risk of serious harm to himself, herself, or another, including, but not limited to, a correctional police officer or other employee or volunteer in the facility, as evidenced by recent threats or conduct, and a less restrictive intervention would be insufficient to reduce this risk as described at N.J.S.A. 30:4-82.8.a(1). The components of this cross-reference are included, as the conclusions that shall be reached by the Management Control Unit Review Committee (M.C.U.R.C.) as set forth at N.J.A.C. 10A:5-2.5, in order to assign an inmate to the M.C.U. It also appears that the commenter has not taken into consideration the fact that opportunities for out-of-cell activities have been in place for inmates assigned to the M.C.U. for some time. It must be noted that many inmates in the M.C.U. either choose, or refuse, to leave their cells even though the Department provides ample opportunity for out-of-cell activities. In such instances, any related confinement is of the inmate’s choosing and cannot be considered as isolated confinement imposed by the

Department. The Department refers commenters to the Response to Comment 22 and changes upon adoption at N.J.A.C. 10A:5-3.1.

52. COMMENT: The commenter suggests that the Management Control Units (M.C.U.s) are not sufficiently addressed in the rulemaking and they have historically (and are currently) used as isolated confinement housing, under the definitions of the new law. Either the Department of Corrections must specify the new regulations governing M.C.U.s that disallow it to be considered isolated confinement, or the restrictions, limitations, prohibitions, and protections governing the use of isolation must apply to persons placed in M.C.U.s. (2)

RESPONSE: The Department disagrees that the M.C.U.s are used as isolated confinement housing. The M.C.U. must utilize a secure control program for housing of inmates that pose a substantial risk or threat to other inmates and DOC staff, a substantial risk or threat of damage or the destruction to property, or a substantial risk or threat of interrupting of the correctional facility operation. The ongoing risk or threat posed by the individual is assessed regularly based on the inmate's criminal and disciplinary history, staff and professional reports, and the successful participation in, or completion of, relevant program activities. These housing units include opportunities for participation in out-of-cell activities and increasing congregate interactions commensurate with improved inmate adaptation and the demonstration of behaviors expected in general population. See also, the Response to Comment 51.

53. COMMENT: The commenter states that the DOC must either eliminate the M.C.U. because it is not a permissible purpose for isolation under the Act, or it must significantly restructure the M.C.U., so that it no longer amounts to isolation in practice. The Act is clear that isolated

confinement may only be used for disciplinary reasons and identifies specific non-disciplinary reasons permissible at N.J.S.A. 30:4-82.8.a(2) and d(1), (3), and (4). Since the M.C.U. is not to be used for disciplinary purposes this is clearly not a permissible purpose for isolated confinement under the Act. (1)

RESPONSE: The M.C.U. is not used for disciplinary purposes but when “there is reasonable cause to believe that the inmate would create a substantial risk of serious harm to himself or another, including, but not limited to, a correctional police officer or other employee or volunteer in the facility, as evidenced by recent threats or conduct, and a less restrictive intervention would be insufficient to reduce this risk,” as set forth at N.J.S.A. 30:4-82.8.a(1).

54. COMMENT: If the DOC chooses to retain the M.C.U., it must restructure it so that it does not constitute isolation, which would require substantial modification to the rulemaking and the commenter recommends the following changes: 1) change the name so that it is clear the unit will no longer operate as those in DOC custody have known it; 2) out of lock time should be provided under conditions that do not severely restrict activity, movement, or social interaction. N.J.S.A. 30:4-82.7; 3) revise N.J.A.C. 10A:5-1.3 to ensure any special privileges contemplated for the R.H.U. are also available for the M.C.U. and the educational programs described at proposed N.J.A.C. 10A:5-1.3(n) to include M.C.U.; 4) clarify N.J.A.C. 10A:5-2.11 so that disciplinary action for a person in M.C.U. shall not result in the revocation of the daily guaranteed out of lock time, unless such behavior results in a disciplinary sanction of A.U. time; and 5) delete or clarify the last sentence of N.J.A.C. 10A:5-2.11 to explain such assignment to R.H.U. or A.U. would only be upon a finding of guilt and the imposition of a specific

disciplinary sanction(s) pursuant to N.J.A.C. 10A:4 and “an institutional desire to continue special restriction of the inmate’s privileges” is impermissible. (1)

RESPONSE: The Department does not find sufficient justification for the recommended changes as follows; 1) there is no tangible benefit to changing the name of the M.C.U. at this time; 2) out-of-cell time is provided based on inmate custody status and the appropriate safety and security considerations; 3) out-of-cell activities in the M.C.U. are based on the factors included in item 2; however, if an inmate is serving R.H.U. time within the M.C.U. related activity, opportunities will be made available; 4) please see the Response to Comment 40 as the Act does not require the Department to provide guarantees in these rules; and 5) please see the Response to Comment 17.

55. COMMENT: The commenter notes that the DOC has not proposed changing N.J.A.C. 10A:5-2.6(a) and if the M.C.U. is not eliminated, the commenter suggests changing the existing 90-day review hearings in that provision to “every 60 days, or more frequently if deemed necessary by the committee.” See proposed N.J.A.C. 10A:5-9.6(e). This time period would align with reviews in the R.H.U., which is also a longer-term close custody unit not intended for isolation. (1)

RESPONSE: The Act does not require any timeline for M.C.U.R.C. reviews; however, the Department points out that the second sentence at N.J.A.C. 10A:5-2.6(a) specifies that a formal review of each inmate in the M.C.U. shall be made at least every 90 days. In addition, at N.J.A.C. 10A:5-2.6(g), the rule sets forth that any member of the M.C.U.R.C. may request a review for an inmate in the M.C.U. earlier than previously scheduled.

56. COMMENT: The commenter states that the provision at N.J.A.C. 10A:5-1.3(g) for “medical and psychiatric services” for close custody units – effectively as-needed or as-requested by the individual - is insufficient to comply with the Act. At N.J.S.A. 30:4-82.8.a(7), the Act requires that a clinician conduct a mental health and physical health status examination for any person in isolated confinement on a daily basis, in a confidential setting outside of the cell, whenever possible. The commenter also states that the rulemaking is entirely silent as to examinations following initial placement and this requirement for a daily examination should be added to every subchapter concerning isolated confinement, except for emergency confinement, since that is limited to confinement for 24 hours. The commenter further states that the new provisions should also explicitly prohibit an evaluation conducted when the person is inside their cell and the clinician is outside the door, because such an arrangement not only fails to provide the “confidential setting” required by the Act but also renders impossible a meaningful mental health and physical health examination. (1)

RESPONSE: The Department refers the commenter to the Responses to Comments 11 and 12.

57. COMMENT: The commenter notes that N.J.S.A. 30:4-82.8.a(3) clearly requires “a personal and comprehensive medical and mental health examination conducted by a clinician” prior to placement in any isolated confinement, except for a facility lockdown. Bearing this in mind, the commenter notes that the provisions set forth at N.J.A.C. 10A:5-4.1(c), 5.1(k), 6.1, 7.1(a)1, and 8.1(b) regarding placement in the E.C., involuntary protective custody, A.U., and P.H.D.H. provide for an initial medical and mental health evaluation immediately prior to placement and a personal and comprehensive medical and mental health evaluation within 24 hours. The commenter states these provisions are not in compliance with the Act and must be modified to

provide a personal and comprehensive medical and mental health evaluation prior to placement not within 24 hours. (1)

RESPONSE: Please see the Responses to Comments 11 and 12 and the changes upon adoption.

58. COMMENT: The commenter notes that the Act requires initial procedures and reviews that provide timely, fair, and meaningful opportunities for the person to contest their isolated confinement. Such hearings and reviews, with their associated rights, must occur for every placement in isolation, except for a facility-wide lockdown, including in the A.U., E.C., P.H.D.H., I.H.U., any M.C.U. time served in conditions of isolation. The commenter noted that they will submit separate comments regarding hearings in connection with the rulemaking proposed to address changes required at N.J.A.C. 10A:4, Inmate Discipline. (1)

RESPONSE: The Department acknowledges that the Act requires initial procedures and reviews that provide timely, fair, and meaningful opportunities for the person to contest their isolated confinement at N.J.S.A. 30:4-82.8.a(4), and also specifies that an initial hearing be provided within 72 hours of placement, absent exigent circumstances. It should be noted that the M.C.U. prehearing and appeal processes appear at N.J.A.C. 10A:5-2.8 and were amended in the rulemaking to include the 72-hour hearing requirement. Placement in the A.U. is preceded by a disciplinary hearing and information concerning appeals is provided at the time of the hearing. Confinement in the E.C.U. by definition is for emergency safety reasons and is limited to 24 hours, therefore, the hearing requirement is not applicable to the E.C.U. Confinement in the I.H.U. is limited to 72 hours and the hearing requirement also is not applicable. Inmates are held in P.H.D.H. until an investigation into the inmate's alleged misconduct can be completed and a disciplinary hearing can be held.

59. COMMENT: The commenter states that the Act prohibits a person from being held in isolated confinement during the final 180 days of the person's term of incarceration, unless it is necessary for the safety of the inmate, staff, other inmates, or the public. N.J.S.A. 30:4-82.8.a(14). The commenter notes that the DOC proposes including the prohibition for release from isolated confinement during the final 180 days of incarceration only in connection with non-congregate protective custody only at N.J.A.C. 10A:5-5.5(d). The commenter further states that the Act justifies no such limitation and that this prohibition must be included in the rules regarding close custody units that amount to isolation, including the A.U., E.C., P.H.D.H., and I.H.U. (1)

RESPONSE: It is the Department's experience that there is only one scenario in which an inmate would be held in a restricted close custody unit within 180 days of release and that is in connection with non-congregate protective custody which is for protection and safety by definition. All other restricted confinements would involve serious disciplinary charges that could involve criminal charges. DOC has policies in place to prepare all inmates for release and holding inmates in isolation during the final 180 days is not permitted.

60. COMMENT: As specified at N.J.S.A. 30:4-82.11, the commenter states that DOC's proposed regulations must also include the following additional statutory requirements:

- training of disciplinary staff and all staff working with inmates in isolated confinement and that this training includes assistance from appropriate professionals to periodically train all staff working with inmates in isolated confinement;

- identification of developmental disabilities, and the symptoms of mental illness, including trauma disorders, and methods of safe responses to people in distress;
- monitoring of compliance with all rules governing cells, units, and other places where inmates are placed in isolated confinement; and
- posting on the Department of Corrections’ official website quarterly reports on the use of isolated confinement. (1)

RESPONSE: As a government entity, the Department of Corrections can utilize a number of forms to address the statutory requirements, such as post orders, internal management procedures, etc. While the items listed in the comment are not included in this rulemaking, they have been included within internal management procedures in compliance with N.J.S.A. 30:4-82.11. In fact, the Department has not only put the required training in place, and upgraded systems and processes to produce and post required reports on the Department website, Central Office Headquarters is overseeing the mechanisms necessary to monitor compliance.

61. COMMENT: The commenter states that the proposed rules:

- create several new categories of “close custody” units: pre-hearing disciplinary housing units, adjustment units, but fail to prescribe standards or procedures for admission to these close custody units;
- use inconsistent language: for example, separation into adjustment units, segregation into emergency confinement, removal into an investigative housing unit, assignment to a management control unit, removal into a restorative housing unit;
- the criteria for confinement in the Emergency Confinement Unit at N.J.A.C. 10A:5-1.2 is confusing as to which standard can authorize emergency confinement; and

- the standards at N.J.A.C. 10A:5-4.1 (E.C.) go beyond the permissible standard in the Act. (18)

RESPONSE: The Department utilizes rules to establish criteria for determination as to when an inmate should be moved from general population to a close custody unit. (The details concerning the steps required in actually moving someone are included in Department Internal Management Procedures.) The Department acknowledges that the language used in the rulemaking describing inmate movement from general population to a Close Custody Unit does vary. But the Department believes it is written in a manner that is easily readable as required at N.J.A.C. 1:30-2.1(a). The definition of Emergency Confinement (E.C.) at N.J.A.C. 10A:5-1.2 is identical to the definition provided in the Act and definitions are not intended to include criteria for assignment. N.J.A.C. 10A:5-4.1 applies one of the circumstances permitted for isolated confinement, in this case, emergency confinement, as well as the other isolated confinement restrictions set forth in the Act. The Department refers the commenters to the Response to Comment 50.

62. COMMENT: The commenter states that the proposed rules use: 1) inconsistent terms to refer to conduct that violates institutional rules, such as infraction or offense; or ambiguous terms left to interpretations by staff, such as group demonstration, conduct that disrupts, inappropriate or disrespectful conduct, and psychiatric disturbance; 2) unnecessary and confusing duplications, for example, “Temporary Housing Unit,” credit for time in P.H.D.H.; and 3) ambiguous language in proposed standards that implicate liberty interests, such as at N.J.A.C. 10A:5-8.1(a)2 or 9.1, medical or mental health professional determination whether an inmate is “not appropriate” for placement in the A.U. or an R.H.U. (18)

RESPONSE: The Department believes that words and phrases, such as infraction, offense, group demonstration, conduct that disrupts, inappropriate or disrespectful conduct, and psychiatric disturbance are sufficiently plain language and, therefore, meet the requirements at N.J.A.C. 1:30-2.1(a). As to the second bullet point in the comment, it is unclear what confusing duplications the commenters refers to, since the Temporary Administrative Housing Unit (N.J.A.C. 10A:5-10.1) makes no reference to credit for time served in P.H.D.H. The Department utilized rules to establish decision-making criteria to determine if an inmate is appropriate for placement as referred to at N.J.A.C. 10A:5-8.1(a)2 and 9.1. That decision-making criteria based on medically sound decision-making processes, as determined by a trained healthcare professional, and is included in internal management procedures.

63. COMMENT: The commenter suggests that because the proposed rules do not address the “isolated confinement” status of any of the “close custody” units, it leaves the opportunity for improper discretion to interpret key provisions in the law, thereby failing to ensure compliance with the Act or protect inmates from harm as it does not:

- ensure implementation of the strict admission standard for isolated confinement units, which protects inmates;
- protect vulnerable inmates from being placed in isolated confinement, as required by the Act;
- ensure the medical and due process “legal” procedures required by the Act be utilized;
- protect inmates from remaining in isolated confinement for periods of time not permitted by the Act; and

- protect inmates from the statutory requirements for reviews of their medical and legal status in isolated confinement. (18)

RESPONSE: The required protections for members of a vulnerable population, the timeframe restrictions associated with isolated confinement, the required healthcare examinations and evaluations are incorporated in the criteria for placement and confinement in each of the Close Custody Units, as required. Therefore, the lack of labeling some of the units as isolated confinement does not equate to compliance failures because the prescribed protections and restrictions have been applied by the Department in the proposed rules.

64. COMMENT: The commenter notes that the newly created R.H.U.s are presented without time constraints or limitations on repeated confinements. What is needed, instead, is a transitional unit with increased liberty, programs, and privileges, thereby offering people in State care and custody meaningful opportunities to change. The rules should also not only ensure that prisoners are out of their cells for four or more hours per day, but that they are required to spend much more time out of their cells and that treatment and rehabilitation programs, embodied in individualized case plans developed by the inmate and supervised multi-disciplinary teams take the place of locked cells. (18)

RESPONSE: The R.H.U. provides for inmates found guilty of disciplinary infractions to be afforded the opportunity to participate in meaningful activities intended to encourage socialization, education, and the kind of behavior and conduct expected in general population. Because individualized case plans are not required by the Act and rules for repeat occurrences of specific infractions are included at N.J.A.C. 10A:4-5.1, they will not be addressed further in this rulemaking.

65. COMMENT: The commenter suggests the Department add a new section stating, in detail, that the rules are intended to clarify and explain the provisions of the Isolated Confinement Restrictions Act. (18)

RESPONSE: The suggestion to add language of this nature is not applicable to N.J.A.C. 10A:5, Close Custody Units, as these rules have been amended to comply with the provisions and restrictions of the Act, but the rules are considerably broader than the Act. Such a statement could, for example, infer that the R.H.U. and the drug diversion program that are voluntarily proposed by the Department are provisions or requirements of the Act, when they are not. Such a statement could also infer that the rules at N.J.A.C. 10A:5 exist only because of the Act; when they do not.

66. COMMENT: The commenter suggests changing the word “the” to the word “a” in each and every subsection that sets forth rules for the individual close custody units. (18)

RESPONSE: The Department views this suggestion as a cosmetic change and a personal preference of the commenters, no change will be made.

67. COMMENT: At N.J.A.C. 10A:5-1.2, which sets forth definitions pertinent to the chapter, the commenter suggests the Department add the definition of Close Custody Unit, add definitions for isolated confinement and less restrictive intervention, and add criteria for placement into the R.H.U. to the unit definition. (18)

RESPONSE: The current definition of Close Custody Unit appears at N.J.A.C. 10A:1-2.2 since it is used throughout the various chapters of Title 10A. The definition at N.J.A.C. 10A:1-2.2 is

identical to the definition proposed by the commenters and the Department feels there is no need for the suggested duplication. A definition of isolated confinement is not necessary because it is in the Act. There is no need for a definition of less restrictive intervention as it is not used in these rules and is applicable to the imposition of disciplinary sanctions, which is not included in this rulemaking. The definitions do not include criteria for placement because that criteria is included in each of the subchapters associated with each individual Close Custody unit.

68. COMMENT: In numerous instances throughout N.J.A.C. 10A:5, the commenter suggests inserting the following language:

- isolated confinement unit;
- consistent with the Act;
- inmates who have been found guilty; and
- provide specific programs and treatment in an individualized case plan, developed by the inmate and a supervised interdisciplinary treatment team. (18)

RESPONSE: The commenters are referred to the Responses to Comments 9 and 67 for the first two bullet points. The addition of language related to a finding of guilt is used as necessary in Chapter 5 but is more applicable to Chapter 4, Inmate Discipline. There are no requirements in the Act to provide specific programs and treatment or an individualized case plan developed by the inmate and a supervised interdisciplinary treatment team as referred to in bullet four of the comment.

69. COMMENT: The commenter suggests modifying the definition of the I.H.U., but provides no rationale for the change. (18)

RESPONSE: The Department does not see that the suggestion provides added clarity and may only be a personal preference.

70. COMMENT: The commenter suggests replacing the phrase removal from general population with the words confine from general population within the definition of the R.H.U. (18)

RESPONSE: The Department does not believe that the suggestion provides added clarity and therefore has determined not to make the change.

71. COMMENT: The commenter suggests expanding the scope of "Special Administrative Review Committee (S.A.R.C.)" in the definition and at N.J.A.C. 10A:5-9.6(c), by expanding the membership by four voting members from other disciplines, including social work, nursing, mental health, rehabilitation, and administration; by including that S.A.R.C. reviews and meetings shall be at least every 30 days; and expanding S.A.R.C. reviews to include all inmates in all "isolated confinement" and close custody units. The commenters further propose deletion of the language at N.J.A.C. 10A:5-9.6(d). (18)

RESPONSE: The suggested changes are unrelated to the Act and outside the scope of this rulemaking. The Department also feels that expansion of S.A.R.C. reviews to include all inmates in all close custody units every 30 days is contrary to the purpose and function of the S.A.R.C. The committee is intended to review assignment of inmates in the R.H.U., which can involve longer sanctions than other units and provides for reviews every 60 days or as frequently as is necessary, as set forth at N.J.A.C. 10A:5-9.6(d).

72. COMMENT: At N.J.A.C. 10A:5-1.3, the commenter suggests the following:

- set authorization requirements by specific custody officer ranks;
- change direct or standing order to direct order;
- add the qualifying language that cells and property of inmates subject to searches in these units shall be left in the condition in which they were presented, except for contraband removed pursuant to seizure regulations;
- add the phrase “or other mental health services” following the words psychiatric care;
- change the phrase “an emotional or psychiatric disturbance” to “mental health problem”;
- add the words “without limitation because of inmate financial limitations” to the rule concerning the provision of clothing issued by the facility; and
- modify the rule regarding recreational opportunities substituting the words “consistent with custodial considerations” for “law” and add a requirement for certification by the administrator in instances of inclement weather. (18)

RESPONSE: The Department disagrees with the suggested changes since they are not required by the Act, and would not add any benefit.

73. COMMENT: The commenter suggests adding language regarding the impacts isolated confinement may have on inmates, changing the phrase “close custody units” to the phrase “in these units” in all of the 20 places it appears, and also modifying the provision of R.H.U. services and programming to be applicable to all isolated confinement and all close custody units. (18).

RESPONSE: While it is important to know and understand the impacts isolated confinement may have on inmates, and the Act addresses those impacts, N.J.A.C. 10A:5-1.3 contains rules

common to all close custody units. The suggested change to replace references to close custody units with the words in these units does not seem to provide greater clarity to the 20 or more references noted by the commenter and the suggestion that the services and programming opportunities available in the R.H.U. are not applicable to all close custody units, therefore, the Department has determined not to make the changes.

74. COMMENT: At N.J.A.C. 10A:5-4.1, Emergency Confinement Unit, the commenter suggests that the Department add the words “in serious harm” following “risk” at N.J.A.C. 10A:5-4.1(a), change the words “belief to cause” to the words “believe that” at N.J.A.C. 10A:5-4.1(b)1 and delete N.J.A.C. 10A:5-4.1(b)2 and 3. (18)

RESPONSE: The Department does not believe that the suggestion provides added clarity and, therefore, has determined not to make the changes.

75. COMMENT: The commenter suggests the following language changes at N.J.A.C. 10A:5-6.1, or as otherwise noted:

- change the words “to remove or isolate the inmate from the general population” to “remove from or isolate the inmate in the general population”;
- change the words “housing unit” to “existing housing cell or unit”;
- change the words “safety and security” to “safety or security” throughout N.J.A.C. 10A:5-6.1(c);
- change the phrase “an unauthorized gathering or group demonstration” to “conduct in concert with others, which is likely to harm persons or property or threaten the safety or

security of the correctional facility,” and remove the words “in such conduct” at the end of the sentence at N.J.A.C. 10A:5-6.1(c)4; and

- add the phrase “in the reasonably foreseeable future” at the end of N.J.A.C. 10A:5-6.1(a) and (b)1 and 2 and 7.1(b)1, 2, and 3. (18)

RESPONSE: The suggested word substitutions in the first four bullet points do not provide clarity and, therefore, the Department has determined not to make the changes. Lastly, adding the phrase “in the reasonably foreseeable future” to the rules at N.J.A.C. 10A:5-6.1 or 7.1 is not required by the Act, and will not be done.

76. COMMENT: At N.J.A.C. 10A:5-7.1, regarding placement in the Investigative Housing Unit (I.H.U.), the commenter suggests that the Department change the words “emergency” and “emergent” to “significant” throughout the section, add the words “from harm” following “public” at N.J.A.C. 10A:5-7.1(e), and add language describing that the Correction Major will determine the disposition and protection of the inmates personal property. (18)

RESPONSE: The suggested modifications are not required by the Act and the Department does not believe they provide clarity to the rule, therefore, has determined not to make the changes.

77. COMMENT: At N.J.A.C. 10A:5-7.1(e), the commenter suggests adding “privileges” prior to “and services.” (18)

RESPONSE: The Department appreciates the commenters’ diligence and suggestions at N.J.A.C. 10A:5-7.1(e) and 8.1(d) and will make the changes, as suggested by the commenters.

78. COMMENT: At N.J.A.C. 10A:5-8.1, placement in the Adjustment Unit (A.U.), the commenter suggests the following changes:

- add a new introductory description of the unit to include language that the unit affords inmates the opportunity to participate in authorized out-of-cell activities;
- add “only” and “only on the basis of” to the first sentence of the subsection as proposed by the Department;
- add “to within acceptable limits” following the restrictive provision that a less restrictive intervention would be insufficient to reduce risk; and
- add “conditions” to the list of items to be included in the monthly report. (18)

RESPONSE: All of the suggested modifications are not required by the Act and the Department does not believe that the suggestions provide added clarity, therefore, the Department has determined not to make the changes.

79. COMMENT: The commenter suggests adding the following language to the end of the sentence at N.J.A.C. 10A:5-8.1(d), “the inmate may not be prohibited from contacting an attorney or having reasonable phone contact with next of kin.” (18)

RESPONSE: Telephone privileges will be determined by the Correction Major, or designee, based on the rules found in the correctional facilities unit specific handbook, which includes rules based on N.J.A.C. 10A:8-3 and 10A:18-8. The suggested modifications are not required by the Act, do not provide clarity to the rulemaking, and the rationale for the suggested changes has not been provided by the commenters.

80. COMMENT: At N.J.A.C. 10A:5-9.1, Criteria for assigning inmates to the Restorative Housing Unit (R.H.U.), the commenter suggests the following:

- add the definition of the R.H.U.;
- change “assignment” to “confinement” at N.J.A.C. 10A:5-9.1(a) and 9.2;
- provide examples of healthcare professionals at N.J.A.C. 10A:5-9.1(a);
- significantly modify N.J.A.C. 10A:5-9.2 and condense language into the subparagraph that is included elsewhere in the subsection;
- modify the description of out-of-cell activities and substitute “chaplaincy” with “religious”; and
- replace “an advisement or report” with “documented” at N.J.A.C. 10A:5-9.3(b) and (d) and change “reported” to “documented” at N.J.A.C. 10A:5-9.3(c). (18)

RESPONSE: The Department notes that the definitions of each of the individual close custody units appear at N.J.A.C. 10A:5-1.2 and that the subparagraphs have been designed to provide for ease of use of the rules. The suggested modifications in the last two bullets do not provide clarity to the rule and the rationale for the suggested changes has not been provided by the commenters, therefore, the Department will not make the changes.

81. COMMENT: When referring to providing information about all infractions, along with all custody and program reports, the commenter suggests removing the following from N.J.A.C. 10A:5-9.4(d); “provided to S.A.R.C., so the committee can make a proper determination when reviewing inmate progress in the R.H.U.” and replacing it with “documented and addressed, consistent with the purposes of the R.H.U.” (18)

RESPONSE: The Department notes that the S.A.R.C. provides a specified due process review to inmates in the R.H.U. and the suggested language does not.

82. COMMENT: The commenter suggests adding the words “the inmate’s positive adjustment in the prison” as an additional item to the list to be considered by the Institutional Classification Committee (I.C.C.) at N.J.A.C. 10A:5-9.5(a). (18)

RESPONSE: Assignment to the R.H.U. occurs upon a finding of guilt for a disciplinary infraction and N.J.A.C. 10A:5-9.1(a)3 requires that the inmates’ previous disciplinary record be taken into consideration. The Department feels that a review of the inmate’s previous disciplinary history is one measure of an inmate’s adjustment to prison.

83. COMMENT: At N.J.A.C. 10A:5-9.5(a), the commenter suggests that the relevant factors considered by the Institutional Classification Committee (I.C.C.) should be changed to add new language stating that “the inmate’s positive adjustment in the prison” will be considered by the I.C.C. and that the I.C.C. will also consider “whether other available less restrictive interventions or dispositions would be adequate to maintain the inmate's behavior within acceptable limits.” (18)

RESPONSE: The Department disagrees. N.J.A.C. 10A:5-9.5(a) lists the factors taken into consideration by the I.C.C when an R.H.U. sanction is imposed by a disciplinary hearing officer (DHO). R.H.U. sanctions are imposed for infractions of the most serious nature and generally require changing or regulating inmate behavior to an acceptable level not maintaining inmate behavior, as suggested by the commenters. Considering an inmate’s “positive adjustment to prison” is not generally possible when reviewing behaviors that result in R.H.U. sanctions.

84. COMMENT: At N.J.A.C. 10A:5-9.5(b) and (c), the commenter suggests that the Department add the following new language:

(b) An inmate confined in an R.H.U., who is charged with a subsequent infraction may not be sanctioned to repetitive R.H.U confinement without the recommendation of the Administrator and the approval of the Deputy Director of Operations, after a review of whether less restrictive interventions or more effective interventions and services would be sufficient to address the conditions and circumstances which resulted in the subsequent infraction.

(c) Inmates charged with consecutive R.H.U confinement sanctions shall be assigned an attorney to represent them at the subsequent disciplinary hearing. (18)

RESPONSE: Imposing sanctions and disciplinary hearings are not a part of this rulemaking. Disciplinary hearings and the imposition of disciplinary sanctions are addressed at N.J.A.C. 10A:4-4.1, 5.1, and 9.12.

85. COMMENT: At N.J.A.C. 10A:5-9.6(f), the commenter suggests adding a requirement that the S.A.R.C. shall notify inmates of their reviews and they shall be able to attend, on request, unless their presence would pose a risk of serious harm. (18)

RESPONSE: It should be noted that S.A.R.C. reviews are not disciplinary hearings and involve review of inmate adjustment and as such the Committee determines when inmate presence is necessary.

86. COMMENT: The commenter suggests replacing “add to the inmate's mental decompensation” with “harm the inmate's physical or mental health” at N.J.A.C. 10A:5-9.6(g)5. (18)

RESPONSE: The language proposed by the Department is specific and has been designed for inclusion in the rules by healthcare professionals working for the Department and the commenters’ suggested language is very general and likely difficult to identify.

87. COMMENT: At N.J.A.C. 10A:5-9.6(g), the commenter suggests adding a requirement that the S.A.R.C. shall forward a copy of the written advisement provided to the inmate when the S.A.R.C. determines not to release the inmate from the R.H.U to the inmate’s attorney. (18)

RESPONSE: This is not a requirement of the Act and unrelated to the Act; therefore, it will not be addressed in this rulemaking.

88. COMMENT: The commenter suggests eliminating the “Temporary Housing Unit.” (18)

RESPONSE: The commenters have not provided an explanation or rationale for the elimination of the Temporary Administrative Housing Unit (T.A.H.) and the Department cannot discern any benefit to the change, therefore, the Department will take no action in response to this comment.

89. The commenter states that N.J.A.C. 10A:5-1.3(p)4 conflicts with N.J.A.C. 10A:9-5.2(f) with respect to earning work credits. (24)

RESPONSE: The Department agrees. N.J.A.C. 10A:9-5.2(f) states that work credits shall not be awarded to Restorative Housing Unit inmates and N.J.A.C. 10A:5-1.3(p)4 states that inmates in close custody units who are participating in formal school (not independent study) shall be

entitled to earn work credits and special program credits, but shall not receive pay. The conflict is caused by an issue with N.J.A.C. 10A:5-1.3(p)4, as it should state that inmates in protective custody, instead of inmates in close custody units. This Department will replace the term “close custody” with “protective custody” at N.J.A.C. 10A:5-1.3(p)4 upon adoption. This is clearly the intent of the paragraph as subsection (p) specifically references Protective Custody.

Summary of Agency-Initiated Changes:

The Department will make the following changes upon adoption:

1. In order to better match the language in the Act, the Department will replace references to Emergency Confinement Unit with Emergency Confinement and change E.C.U. with E.C. at N.J.A.C. 10A:5-1.1 and 4.1.

2. The Department will replace the term “healthcare professional” with “clinician” at N.J.A.C. 10A:5-6.1(b) and 7.1(a)1.

Federal Standards Statement

The adopted new rules, amendments, recodifications, and repeals are promulgated under the authority of the rulemaking requirements of the Department of Corrections as established at N.J.S.A. 30:1B-6 and 30:1B-10. They are not subject to any Federal statutes, requirements, or standards; therefore, a Federal standards analysis is not required.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisk ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

10A:5-1.1 Purpose

(a) The purpose of this chapter is to establish rules for close custody units, including the Pre-Hearing Disciplinary Housing Unit (P.H.D.H), Management Control Unit (M.C.U.), Restorative Housing Unit (R.H.U.), Adjustment Unit (A.U.), Protective Custody Unit (P.C.), Emergency Confinement ***[Unit]*** (***[ECU]* *E.C.***), Investigative Housing Unit (I.H.U.), and Temporary Administrative Housing Unit ***(T.A.H.)***.

(b) Inmates housed in the M.C.U., R.H.U., P.C., or T.A.H. will not be confined in a cell or similarly confined holding or living space for approximately 20 hours or more per day with severely restricted activity, movement, or interaction.

10A:5-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

...

“Emergency ***[confinement]* *Confinement***” means the segregation of an inmate in a correctional facility when there is reasonable cause to believe that this segregation is necessary for reducing a substantial risk of imminent serious harm to the inmate or others, as evidenced by recent conduct.

10A:5-1.3 Rules common to all close custody units:

(a)-(f) (No change from proposal.)

(g) Medical and psychiatric services shall be as follows:

1.-2. (No change from proposal.)

3. Routine medical and psychiatric services shall be provided, equivalent to that which is provided to inmates in the general population for the M.C.U., R.H.U., ***T.A.H.,*** and P.C.;
[and]

4. *Ongoing healthcare services in other close custody units shall include daily health status examinations in accordance with N.J.S.A. 30:4-82.8.a(7);

[4.]* *5. Whenever it appears that an inmate is suffering from an emotional or psychiatric disturbance, arrangements shall be made for a psychiatric or psychological evaluation. See N.J.A.C. 10A:5-4.1 and 6.1 for rules specific to emergency housing and pre-hearing disciplinary housing***[.]**; and***

6. Medical and psychiatric evaluations or examinations shall be conducted outside the inmate's cell, whenever possible, with due consideration given to the necessary safety and security measures.

(h)–(k) (No change from proposal.)

(l) Correspondence, visiting, or telephone calling opportunities shall be available to inmates in the M.C.U., ***[Investigative Housing Unit (I.H.U.),]** Restorative Housing Unit (R.H.U.), and Protective Custody units, but shall be provided in accordance with any special precautions***,*** as deemed necessary or appropriate by the Administrator.

1.-2. (No change from proposal.)

(m)-(o) (No change from proposal.)

(p) Work opportunities shall be provided to inmates in Protective Custody (P.C.) in keeping with appropriate security considerations.-

1.-3. (No change from proposal.)

4. Inmates in *[close custody units]* **Protective Custody*** who are participating in formal school (not independent study) shall be entitled to earn work credits and special program credits, but shall not receive pay.

(q)-(s) (No change from proposal.)

10A:5-2.8 Prehearing, initial placement hearing, and appeal of initial placement hearing

(a) The inmate may be placed in Prehearing M.C.U. by order of an Administrator or designee utilizing an authorization for prehearing M.C.U. form when there is reasonable evidence that, if the inmate remains in general population, there is an immediate threat to the safety of others or of interrupting the safe, secure, and orderly operation of the correctional facility.

1.-3. (No change from proposal.)

4. In all cases where an inmate is placed in Prehearing M.C.U., the chairperson of the M.C.U.R.C. shall review the authorization form, which shall be forwarded to the chairperson by the next full business day of placement into the Prehearing M.C.U., and determine, based on the criteria set forth *[in]* **at*** (a) above, if there is reasonable evidence to hold the inmate in the M.C.U. The chairperson shall then communicate the determination to the Administrator or designee within 24 hours. The chairperson shall be granted access to whatever evidence the chairperson deems necessary to make a recommendation.

(b)-(c) (No change from proposal.)

10A:5-2.11 Disciplinary action within the Management Control Unit (M.C.U.)

Except in the case of a termination of contact visits sanction as established at N.J.A.C.

10A:4-5.1(c), no special restriction of privilege on disciplinary grounds, such as denial of outside

recreation or of work opportunities, may be continued in M.C.U. for longer than 30 days. If, in the judgment of the Disciplinary Hearing Officer/Adjustment Committee, there are special custodial reasons for desiring to continue special restriction of the inmate's privileges for longer than 30 days, the Disciplinary Hearing Officer/Adjustment Committee shall recommend *[assignment to administrative segregation to the Institutional Classification Committee (I.C.C.)].* ***extending the restrictions for the approval by the Administrator, or designee.**

Inmates assigned to the M.C.U. found guilty of a Category A or B infraction and sanctioned to the Restorative Housing Unit (R.H.U.) will serve the sanction within the M.C.U. due to the increased safety and security measures required for inmates assigned to M.C.U. All restrictions and/or opportunities available in the R.H.U. are applicable.*

SUBCHAPTER 3. *[(RESERVED)]* ***OUT-OF-CELL ACTIVITIES IN CLOSE CUSTODY UNITS***

10A:5-[9.3]****3.1*** Out-of-cell activities ***in Close Custody Units***

(a) Inmates housed in *[R.H.U.]* ***the Management Control Unit (M.C.U.), Restorative Housing Unit (R.H.U.), Protective Custody (P.C.), and Temporary Administrative Housing Unit (T.A.H.)*** shall have meaningful opportunities to participate in out-of-cell activities, *[social interaction, and]* ***including recreation, services, and*** programs of a *[social, educational,]* chaplaincy, substance abuse, or addiction nature. *[Additionally, inmates shall be afforded the opportunity to participate in congregate interaction above and beyond the five hours of recreation per week required at N.J.A.C. 10A:5-1.3(n).]* ***For safety and security reasons, opportunities for social interaction and congregate activities will be based on custody**

status, the risk or threat of harm to themselves or others, the destruction of property, and the safe and secure operation of the correctional facility.*

(b) Inmate participation in out-of-cell services and activities is voluntary and refusal to participate will not be subject to disciplinary sanction as set forth at N.J.A.C. 10A:4-5.1, but will result in an advisement or report to the ***housing unit review committee, such as the Management Control Unit Review Committee (M.C.U.R.C.),* Special Segregation Review Committee (S.A.R.C.)*, or Institutional Classification Committee (I.C.C.), as applicable*.**

***1. Whenever an inmate refuses to participate in the opportunity for out-of-cell time, the Department's obligations under the Isolated Confinement Restriction Act for out-of-cell time shall be considered fulfilled and any related confinement will be of the inmate's choosing and shall not be considered Isolated Confinement, as defined at N.J.S.A. 30:4-82.5 through 11. ***

(c) Inmate behavior while participating in out-of-cell services and activities shall be monitored by staff and reported to ***[S.A.R.C]* *the unit specific review committee, as appropriate*.**

(d) Disruptive inmate behavior shall result in removal of the inmate from the out-of-cell service or activity and an advisement or report to ***[S.A.R.C]* *the unit specific review committee*.**

Any behavior rising to a disciplinary infraction will be addressed through the disciplinary process set forth at N.J.A.C. 10A:4-4.1 and 5.1.

SUBCHAPTER 4. EMERGENCY CONFINEMENT *[UNIT]*

10A:5-4.1 Emergency Confinement *[Unit]*

(a) An inmate may be placed in *[the]* Emergency Confinement *[Unit]* for a period not to exceed 24 hours when the Administrator^{*},^{*} or designee^{*},^{*} determines that it is necessary to reduce a substantial risk to the inmate or others, or as evidenced by recent conduct.

(b) Criteria for placement in *[the]* Emergency Confinement *[Unit]* are:

1. - 3. (No change from proposal.)

(c) An inmate held in *[the]* Emergency Confinement *[Unit]* in a State correctional facility shall receive *[an initial]* **a personal and comprehensive** medical and mental health evaluation immediately prior to placement in *[the]* Emergency Confinement *[Unit]* and a personal and comprehensive medical and mental health evaluation shall be conducted by a member of the medical staff within 24 hours] **by a clinician**^{*}. Reports of these evaluations shall be immediately provided to the facility Administrator.

(d) An inmate shall not be placed in *[the]* Emergency Confinement *[Unit]* for non-disciplinary reasons.

(e) An inmate shall not be placed in *[the]* Emergency Confinement *[Unit]* if the inmate is a member of a vulnerable population.

10A:5-5.1 Assignment to Prehearing Protective Custody or admission to a Protective Custody Unit

(a) (No change.)

(b) If an inmate voluntarily requests placement in Protective Custody, he or she shall complete, sign, and submit to the appropriate Custody Supervisor a voluntary protective custody consent **form** indicating the reasons for requesting Protective Custody. **The Administrator must have reasonable cause to believe that confinement in Protective Custody is necessary to**

prevent reasonably foreseeable harm and when an inmate makes an informed voluntary request for Protective Custody, the correctional facility shall bear the burden of establishing a basis for refusing the request.* If ***through initial investigation,*** the inmate's reasons cannot be verified, are deemed to be frivolous by the Administrator^{*,*} or designee, or if the conditions forming the basis for the voluntary placement ***are found to*** have abated or ***are found to*** no longer exist, placement in Protective Custody may be denied or the inmate may be released from Protective Custody.

(c) Prehearing Protective Custody shall be used when necessary in order to conduct an ***in depth*** investigation. In all cases of inmate voluntary and involuntary placement in Prehearing Protective Custody, the Administrator^{*,*} or designee^{*,*} shall gather facts, information^{*,*} and available documentation to support or reject the placement and shall order such additional investigation as is deemed necessary for a clear understanding of the case. Prehearing Protective Custody may consist of confinement to the inmate's cell or placement into a secure Close Custody Unit.

10A:5-5.2 Hearing procedure for involuntary placement in a Protective Custody Unit

(a)-(i) (No change from proposal.)

(j) The inmate may be placed in involuntary Protective Custody only when there is clear and convincing evidence that confinement is necessary to prevent reasonably foreseeable harm and a less restrictive intervention ***or transfer to another correctional facility*** would not be sufficient to prevent the harm (N.J.S.A. 30:4-82.8.d(4)(b)).

(k) An inmate held in involuntary Protective Custody in a State correctional facility shall receive ***[an initial]* *a personal and comprehensive*** medical and mental health evaluation

[immediately] ***by a clinician*** prior to placement in involuntary *[protective custody and a personal and comprehensive medical and mental health evaluation within 24 hours]*

Protective Custody. Reports of these evaluations shall be immediately provided to the facility Administrator.

10A:5-6.1 Confinement in Prehearing Disciplinary Housing

(a) (No change from proposal.)

(b) Confinement in Prehearing Disciplinary Housing may consist of placement in the close custody unit or confinement to the inmate's room or housing unit and shall be preceded by a personal ***and comprehensive medical and mental health*** evaluation *[by a healthcare professional]* ***conducted prior to placement by a clinician***.

(c)-(d) (No change from proposal.)

(e) Where possible, an Administrator, Associate Administrator, Assistant Superintendent, or a Correction Major shall review and approve or disapprove a request to place an inmate in Prehearing Disciplinary Housing. ***In all cases, placement of the inmate in Prehearing Disciplinary Housing shall be reviewed within 24 hours of placement by a supervisor who was not involved in the initial placement decision.***

(f) Any time spent in Prehearing Disciplinary Housing shall be credited to any subsequent Restorative Housing Unit (R.H.U.) sanction imposed[.]* ***when a sanction in the A.U. is not also imposed. When both A.U. and R.H.U. sanctions are imposed, any time spent in Prehearing Disciplinary Housing shall be credited only to the A.U. sanction.***

SUBCHAPTER 7. *[TEMPORARY CLOSE CUSTODY]* ***Investigative Housing Unit***

10A:5-7.1 Placement in the Investigative Housing Unit (I.H.U.)

(a) An inmate may be placed in the I.H.U. for a period not to exceed 72 hours unless exceptional circumstances, such as, but not limited to, other information received or other clear and convincing evidence found warrant extension of this time period.

1. Placement of the inmate in I.H.U. will be reviewed within 24 hours of placement by a supervisor that was not involved in the initial placement decision. Placement in I.H.U. shall be preceded by *[an]* ***a personal and comprehensive medical and mental health*** evaluation ***conducted*** by a *[healthcare professional]* ***clinician***.

2. (No change from proposal.)

(b) *[Criteria]* ***When an inmate's presence in general population poses a danger to the inmate, staff, other inmates, or the public, the inmate may be considered for placement in the I.H.U. In making this determination, the facility Administrator shall consider the seriousness of the alleged offense, including whether the offense involved violence or escape or posed a threat to institutional safety by encouraging others to engage in misconduct; or the facility Administrator has granted approval in an emergency situation. (See N.J.S.A. 30:4-82.9.a). Additional criteria*** for placement of an inmate in the Investigative Housing Unit (I.H.U.) and status are:

1. *[Reasonable suspicion]* ***Clear and convincing evidence*** exists to indicate that the inmate is engaged in, or is planning a serious violation (asterisked offenses under N.J.A.C. 10A:4-4.1(a)) of correctional facility rules, on which disciplinary action is considered premature;

2. *[Reasonable suspicion]* ***Clear and convincing evidence*** exists to indicate that the inmate is in possession of, or plans to obtain, contraband, which may pose a danger to the inmate or others; *[and/or]*

3. Any other emergency reason, which, in the opinion of the Administrator, or designee, requires Investigative Housing Unit (I.H.U.) confinement to protect the inmate, staff, general public, and/or the security and control of the correctional facility*.[.]* **;** **and/or**

4. The final decision to place an inmate in the I.H.U. shall be made by the Administrator, or designee.*

(c) (No change from proposal.)

(d) Release from the Investigative Housing Unit (I.H.U.) may be ordered only by the Administrator*,* or designee.

(e) In consideration of the reason for an inmate's placement in the Investigative Housing Unit (I.H.U.), a Correction Major*,* or designee*,* shall determine the personal property and other *[services]* ***privileges***, such as, but not limited to, visits and telephone calls, which the inmate may be afforded while in the Investigative Housing Unit (I.H.U.).

10A:5-8.1 Placement in the Adjustment Unit (A.U.)

(a) An inmate may be placed ***in*** the Adjustment Unit (A.U.) for a period of five to 15 days with a finding of guilt for any offense in Category A when there is reasonable cause to believe that the inmate would create a substantial risk of serious harm to himself, herself, or another, including, but not limited to, a correctional police officer, other employee, or volunteer in the facility, as evidenced by recent threats or conduct, and a less restrictive intervention would be insufficient to reduce this risk (see N.J.A.C 10A:4-4.1) unless:

1.-2. (No change from proposal.)

(b) An inmate held in the Adjustment Unit in a State correctional facility shall receive *[an initial medical and mental health]* ***a personal and comprehensive medical and mental health*** evaluation *[immediately]* ***conducted by a healthcare professional*** prior to placement in the Adjustment Unit *[and a personal and comprehensive medical and mental health evaluation within 24 hours]*. Reports of these evaluations shall be immediately provided to the facility administrator.

(c) (No change from proposal.)

(d) In consideration of the reason for an inmate's placement in the Adjustment Unit (A.U.), a Correction Major*,* or designee*,* shall determine the personal property and other *[services]* ***privileges***, such as, but not limited to, visits and telephone calls, which the inmate may be afforded while in the A.U.

(e) (No change from proposal.)

10A:5-9.3 (Reserved)