

budsman, Department of Corrections"; and in definition "Non-permissible property" inserted "any item addressed to or received by an inmate from or someone or someplace that is not an authorized source of sale," deleted "or" following "through the mail" and substituted "an authorized" for "a".

Amended by R.2008 d.266, effective September 2, 2008.

See: 40 N.J.R. 2647(a), 40 N.J.R. 5040(a).

Added definition "Office of Community Programs".

Amended by R.2009 d.86, effective March 16, 2009.

See: 40 N.J.R. 6732(a), 41 N.J.R. 1250(a).

In paragraph 2 of definition "Constant observation", inserted "uninterrupted surveillance by one staff member of up to four inmates".

Amended by R.2009 d.272, effective September 8, 2009.

See: 41 N.J.R. 2202(a), 41 N.J.R. 3301(b).

Added definition "Responsible health authority".

In definition "Shift Commander", substituted "a supervisory rank who has been designated by the Administrator or designee as being" for "the rank of Sergeant or higher".

Amended by R.2009 d.320, effective October 19, 2009.

See: 41 N.J.R. 2607(a), 41 N.J.R. 3936(a).

Amended by R.2010 d.054, effective April 5, 2010.

See: 41 N.J.R. 4663(a), 42 N.J.R. 721(a).

Added definition "Prehearing Protective Custody".

Amended by R.2010 d.006, effective April 19, 2010.

See: 41 N.J.R. 4395(a), 42 N.J.R. 792(b).

In definition "Canine search", inserted ", objects".

Administrative change.

See: 43 N.J.R. 1344(a).

Amended by R.2011 d.277, effective November 7, 2011.

See: 43 N.J.R. 1562(a), 43 N.J.R. 3024(a).

Rewrote definition "Security threat group".

Amended by R.2013 d.006, effective January 7, 2013.

See: 44 N.J.R. 957(a), 45 N.J.R. 34(b).

Added definitions "Experimentation" and "Research".

Amended by R.2014 d.027, effective February 3, 2014.

See: 45 N.J.R. 13(a), 46 N.J.R. 297(a).

Substituted definition "Administrative segregation" for definition "Administrative Segregation"; and in definition "Administrative segregation", substituted "means" for "shall mean", inserted "of a correctional facility", and deleted "long-term" preceding "close".

Amended by R.2015 d.191, effective December 7, 2015.

See: 47 N.J.R. 1863(a), 47 N.J.R. 3028(a).

In definition "Electronic communication device", inserted a comma following "transmitting" twice, following "image", and following "visual", and inserted the last sentence; and rewrote definition "Inmate Remedy System".

Petition for Rulemaking.

See: 48 N.J.R. 2078(b).

#### Case Notes

Regulation which classifies inmates who do not have any funds in their account and who cannot work, but are able to receive funds from outside sources as "nonindigent," thus requiring them to use funds from outside sources for payment of legal photocopying and medical care, did not violate equal protection clause. *Robinson v. Fauver*, D.N.J.1996, 932 F.Supp. 639.

In an inmate's appeal of disciplinary action arising from a fight he was involved in, the appellate court rejected the Department of Correction's blanket policy of keeping confidential all security camera videotapes in order to preclude inmates from learning camera angles, locations, or blind spots, and directed the Department to develop a record on remand regarding the need for confidentiality of the particular videotape. *Robles v. New Jersey Dept. of Corrections*, 388 N.J. Super. 516, 909 A.2d 755, 2006 N.J. Super. LEXIS 295 (App.Div. 2006).

#### 10A:1-2.3 Chief Executive Officer

Pursuant to N.J.S.A. 30:1B-1 et seq., the Chief Executive Officer of the Department of Corrections is the Commissioner of Corrections.

#### 10A:1-2.4 Rulemaking, policy and procedure making and exemption authority

(a) The Commissioner, pursuant to N.J.S.A. 30:1B-1 et seq., is authorized to formulate, adopt, issue, promulgate, relax and exempt rules and regulations for the administration of correctional facilities, community programs and operational units within the Department of Corrections.

(b) The Commissioner is authorized to determine all matters of policy and procedure in order to regulate the operational issues associated with the administration of correctional facilities, community programs and operational units and to formulate, modify, relax, and exempt such policies, procedures and regulations when necessary, so that same can function safely and effectively within the Department of Corrections.

(c) The Commissioner may exempt a correctional facility, community program or operational unit from adherence to a rule or may relax certain requirements of a rule for good cause shown in a particular situation or in instances when strict compliance with a rule or all of its requirements would result in:

1. An undue hardship, unfairness or injustice;
2. An inability to meet a therapeutic, rehabilitative or medical need;
3. A security risk or imminent peril to the overall management, safe or orderly operation of a correctional facility, community program or operational unit;
4. An inability to utilize existing technology or apply technological innovations in order to meet penological objectives;
5. An inability to meet an operational need to ensure management effectiveness and efficiency; or
6. An inability to reasonably meet a time period requirement.

Amended by R.1992 d.269, effective July 6, 1992.

See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Revised (c).

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

Rewrote (c).

Amended by R.2010 d.057, effective April 19, 2010.

See: 41 N.J.R. 4395(a), 42 N.J.R. 792(b).

Section was "Rulemaking and exemption authority". In (a), substituted a comma for "and" preceding "promulgate" and inserted ", relax and exempt"; rewrote (b); in the introductory paragraph of (c), inserted "may relax" and "for good cause shown in a particular situation or"; in (c)1, inserted ", unfairness or injustice"; in (c)2, deleted "or" at the end; in (c)3, inserted "or imminent peril" and substituted a semicolon for a period at the end; and added (c)4 and (c)5.

Amended by R.2011 d.022, effective January 18, 2011.

See: 42 N.J.R. 2194(a), 43 N.J.R. 188(a).

In (c)4, deleted "or" from the end; added new (c)5; and recodified former (c)5 as (c)6.

**10A:1-2.5 Expiration of rule exemptions**

(a) All rule exemptions shall expire two years from the date of approval by the Commissioner.

(b) A rule exemption may be terminated prior to its expiration date when:

1. The special circumstances making the rule exemption necessary no longer exist; or
2. The Commissioner no longer approves the rule exemption.

(c) A rule exemption may be extended beyond its expiration date when:

1. The Administrator or Unit Supervisor reapplies for the rule exemption; and
2. The approval of the Commissioner is given for an extension of the rule exemption.

(d) A correctional facility, community program or operational unit shall return to compliance with the New Jersey Administrative Code when rule exemptions terminate or expire.

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

In (c)1, substituted "Administrator" for "Superintendent".

**10A:1-2.6 Effective dates of adopted and exempted rules**

(a) Unless otherwise noted in the New Jersey Register, an adopted rule is effective on the date of its publication in the New Jersey Register.

(b) The effective date of a rule exemption shall be the date of the Commissioner's signature on Form 911 Request for Rule Exemption.

**10A:1-2.7 Procedure for requesting rule exemptions**

(a) Requests for rule exemptions may be submitted by staff or committees to the Administrator for review.

(b) Requests for rule exemptions may be submitted by inmates or inmate groups to the Institutional Classification Committee (I.C.C.) for review. The I.C.C. shall review and submit inmate requests for rule exemptions to the Administrator along with recommendations for approval or disapproval. Such requests for rule exemptions must:

1. Be in writing;
2. Be legible and intelligible;
3. Contain the full name and address of the inmate or inmate group;
4. Contain the N.J.A.C. 10A citation of the rule for which the exemption is made; and
5. Include a clear and concise statement summarizing the substance of the rule exemption, why the suggestion is being requested and a summary of reasons for the exemption.

(c) Requests for rule exemptions may be submitted by staff members, individually or as a group, utilizing and submitting Form 911 to the community program supervisor or operational unit supervisor for review.

(d) The Administrator, community program supervisor or operational unit supervisor shall review and determine, based on the criteria in N.J.A.C. 10A:1-2.4(c), whether to submit requests for rule exemptions to the appropriate Assistant Commissioner and the Commissioner for consideration.

(e) If the Administrator, community program supervisor or operational unit supervisor approves a request for rule exemption, the designated sections of Form 911 Request for Rule Exemption shall be completed in duplicate, signed and submitted to the appropriate Assistant Commissioner.

(f) The Assistant Commissioner shall review Form 911 Request for Rule Exemption and determine whether to approve or disapprove the request, based on the criteria in N.J.A.C. 10A:1-2.4(c). If the Assistant Commissioner approves the request, the designated section of Form 911 shall be signed, dated and submitted to the Commissioner for review. If the Assistant Commissioner disapproves the request, the designated section of Form 911 shall be signed, dated and returned to the correctional facility Administrator, the community program supervisor or operational unit supervisor.

(g) The Commissioner shall review Form 911 Request for Rule Exemption, submitted by an Assistant Commissioner and determine whether to authorize a rule exemption, based on the criteria in N.J.A.C. 10A:1-2.4(c). The Commissioner shall approve or disapprove a rule exemption by signing and dating the designated section on Form 911 and returning it to the Assistant Commissioner.

(h) The Assistant Commissioner shall be responsible for notifying the Administrator, the community program supervisor or operational unit supervisor of the Commissioner's approval or disapproval of requests for rule exemptions.

Amended by R.1992 d.269, effective July 6, 1992.

See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Revised (d)-(h).

Administrative Correction in (e) and (f).

See: 24 N.J.R. 4390(a).

Administrative Change.

See: 25 N.J.R. 4105(a).

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

Substituted "Administrator" for "Superintendent" throughout.

Amended by R.2010 d.057, effective April 19, 2010.

See: 41 N.J.R. 4395(a), 42 N.J.R. 792(b).

In the introductory paragraph of (b), inserted the last sentence; added (b)1 through (b)5; and in (c), inserted "utilizing and submitting Form 911".

**10A:1-2.8 Forms**

(a) The following form related to Administration, Organization and Management is available by accessing the Department of Corrections computer network (DOCNet). Interested individuals who do not have access to DOCNet may obtain