

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Planning
(DLS Control No. 20-029)**

Overview and Legal and Fiscal Impact

These regulations repeal obsolete deadlines and clarify and update existing regulations governing the population count of incarcerated individuals in State and federal correctional facilities required after each decennial census.

The regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Planning:

Census and Redistricting: Redistricting Prison Populations:
COMAR 34.05.01.01 through 04

Legal Analysis

Background

The State of Maryland is divided into 8 congressional districts and 47 General Assembly legislative districts, which are redrawn every 10 years based on the results of the decennial national census to ensure equal representation based on the concept of “one person, one vote.” Each General Assembly district elects one senator and three delegates; a district may be subdivided into three single member delegate districts or one single member district and one multimember district.

For purposes of the population count used to determine the legislative districting plan for the General Assembly and legislative districts used to elect a county’s or a municipality’s governing body, individuals incarcerated in State or federal facilities are counted as residents of their last known residence prior to incarceration. This applies if they were State residents prior to incarceration.

Summary of Regulations

The regulations repeal deadlines that are no longer applicable, make clarifying and stylistic changes, and modify existing regulations to reflect updated procedures since the last decennial census and subsequent population count.

Regulation .01 clarifies the purpose of the subtitle. The current regulation provides that the purpose of the subtitle is carry out the provisions of Chapter 67 of 2010. The regulation specifies that Chapter 67 mandates that when determining population counts for congressional and legislative redistricting, an individual incarcerated in State or federal facilities is counted at the location of the individual's last known residence prior to incarceration.

In addition to clarifying and stylistic changes to current definitions, regulation .03 defines "Correctional Services" as the Department of Public Safety and Correctional Services and "Bureau" as the Federal Bureau of Prisons. The regulation also clarifies that "geocode" means the process of establishing geographical coordinates from a postal address and that "incarcerated individual" means an individual who is detained on the date of the decennial census.

Regulation .04 requires the Department of Planning to request and receive the address of the last known residence for each incarcerated individual following the completion of each decennial census. Further, the regulation requires the department to geocode the addresses it receives. Additionally, the regulation requires the department to make a reasonable effort to correct the addresses it receives if the department is unable to geocode the address, as specified. Regulation .04 further repeals the obsolete deadline by which the department is required to count the residence of an incarcerated individual at the facility in which the individual is incarcerated if the provided address is unable to be geocoded, and the department has made reasonable efforts to correct the address. Finally, the regulation updates obsolete provisions and makes stylistic changes to the list of examples of addresses that cannot be geocoded.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 5-203, 5-301, and 5-306 of the State Finance and Procurement Article; § 2-2A-01 of the State Government Article; and § 1-1307 of the Local Government Article as statutory authority for the regulations.

More specifically, § 5-203(b) of the State Finance and Procurement Article authorizes the Secretary of Planning to adopt regulations for the department and requires the Secretary to review the regulations of all boards, commissions, divisions, and other agencies within the jurisdiction of the department, and approve, disapprove, or revise the regulations. Additionally, § 5-301 establishes the department as the principal staff agency for planning matters concerning resources and development of the State and § 5-306 requires the department to prepare population projections for the State and for each county and municipality in the State.

Section 2-2A-01 of the State Government Article requires, for purposes of creating the legislative districting plan for the General Assembly, the population count used after each decennial census to count individuals incarcerated in State or federal correctional facilities at their last known address prior to incarceration.

Section 1-1307 of the Local Government Article requires, for purposes of creating the legislative districts used to elect the governing body of a county or municipality, the population count used after each decennial census to count individuals incarcerated in State or federal correctional facilities at their last known address prior to incarceration.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

In response to suggestions from the Department of Legislative Services, staff for the department agreed to correct regulation .04 to reflect that the paragraph number “(2)” in subsection A. is new language. This analysis reflects this change.

Further, the Department of Legislative Services notified the department of relevant provisions in the Budget Reconciliation and Financing Act of 2020 concerning the population count of incarcerated individuals in State and federal correctional facilities. The department determined that the intent of the statute is captured in the proposed regulations.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations generally update and clarify provisions relating to the geocoding of incarcerated individuals’ last known addresses for redistricting purposes. The department advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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