

**Department of Commerce**

**Bureau of the Census**

**15 CFR Part 101**

**Docket No.: 000609172-1040-03**

**RIN: 0607-AA33**

**Report of Tabulations of Population to States and Localities Pursuant to 13 U.S.C. 141(c) and Availability of Other Population Information: Revocation of Delegation of Authority**

**AGENCY: Department of Commerce.**

**ACTION: Final rule.**

**SUMMARY:** The Secretary of Commerce is issuing a final rule to revoke a delegation of authority to the Director of the Census. By that delegation the Secretary authorized the Director of the Census to make a determination regarding the methodology to be used in calculating the tabulations of population to be reported to States and localities pursuant to 13 U.S.C. 141(c). This final rule will require that this determination be made by the Secretary, and establishes an open and fair decision-making process.

**DATES:** This rule is effective [insert date of publication in the *Federal Register*].

**FOR FURTHER INFORMATION CONTACT:** Alden F. Abbott, Acting General Counsel, U.S. Department of Commerce, (202) 482-1328.

**SUPPLEMENTARY INFORMATION:**

Through the Census Act, which is codified in title 13 of the United States Code, Congress has delegated to the Secretary of Commerce its broad constitutional authority over the decennial census (see U.S. Constitution Art. I, Sec. 2, Cl.3). On October 6, 2000, the Commerce

Department issued a final rule that set forth how the Bureau of the Census will carry out its responsibilities to report tabulations of population to States and localities pursuant to the Census Act. See 65 FR 59712 (October 6, 2000). That rule established a process for the release of data to the States and codified the process by which a committee of senior career officials of the Census Bureau would advise the Director of the Census. In addition, that rule contained a delegation of authority from the Secretary to the Director of the Census to make a determination regarding the methodology to be used in calculating the tabulations of population to be reported to States and localities pursuant to 13 U.S.C. 141(c).

The October 6, 2000, final rule delegated the methodological determination to the Census Director. Reflecting the character of its responsibilities, the position of Census Director is held by a person who is appointed by the President and confirmed by the Senate. At the present time, the Deputy Director, a career civil servant, is serving as Acting Director. It is unlikely that a new Director will be nominated by the President and confirmed by the Senate prior to the time that this decision must be made. Consistent with Congress' delegation of authority specifically to the Secretary to make the decision regarding the tabulations contemplated by 13 U.S.C. 141(c), and in recognition of the accountability properly expected of the person making the methodological decisions underlying those tabulations, the Secretary has determined that, in the current circumstances, he is the appropriate official to make the final determinations concerning the tabulations of populations to be reported pursuant to 13 U.S.C. 141(c). The Secretary will continue to seek the advice of the statistical experts at the Census Bureau to inform his decision. The Secretary, in his discretion, might also seek the advice of other individuals with knowledge of this issue.

The October 6, 2000, rule further established a process for the release of data to the States to meet the requirements of 13 U.S.C. 141(c). The process in the regulation envisioned two scenarios. First, where the decision was made to use sampling to produce the tabulations of population to report to States and localities after a recommendation by the Census Bureau committee to do so, the October 6, 2000, rule incorporated the requirement of section 209(j) of Public Law No. 105-119 to also release simultaneously data prepared without the use of such statistical method. Second, the October 6, 2000, rule adopted a new requirement (not mandated by section 209(j)) that, if the decision was made to produce tabulations of population without the use of statistical adjustment notwithstanding a recommendation by the Census Bureau committee to do so, data prepared with the use of such method would be made available to the public simultaneously with the release of data prepared without the use of statistical adjustment. Not discussed in the October 6, 2000, rule was the release of data when the Census Bureau committee recommended statistical adjustment not be used and that recommendation was adopted. Because the Department can not rule out situations in which the release of data produced by statistical adjustment might be inappropriate (for instance the release of statistics with material error), the Secretary has decided to remove this section of the regulation for further study.

#### Administrative Law Requirements:

##### Executive Order 12866

This final rule has been determined to be not significant under section 3(f) of Executive Order 12866.

##### Administrative Procedure Act

Pursuant to authority at 5 U.S.C. 553(b)(A), this rule of agency organization, procedure and

practice is not subject to the requirement to provide prior notice and an opportunity for public comment. This rule of agency organization, procedure and practice is not a substantive rule subject to the requirement, in 5 U.S.C. 553(d), for a 30-day delay in effective date.

Paperwork Reduction Act

This final rule contains no new information collection requests subject to the Paperwork Reduction Act.

Regulatory Flexibility Act

Because this rule is not subject to the requirement to provide prior notice and an opportunity for public comment under 5 U.S.C. 553, or any other law, it is not subject to the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 12630

This rule does not contain policies that have takings implications.

List of Subjects in 15 CFR Part 101

Census data

Dated:



Donald L. Evans  
Secretary of Commerce

For the reasons set out in the preamble, 15 CFR Part 101 is revised to read as follows:

**PART 101 -- Release of Decennial Census Population Information**

1. The Authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 301, 13 U.S.C. 4, 13 U.S.C. 141, 13 U.S.C. 195, 15 U.S.C. 1512.

2. Section 101.1 is revised to read as follows:

**§101.1 Report of Tabulations of Population to States and Localities Pursuant to 13 U.S.C. 141(c).**

(a)(1) The Secretary of Commerce shall make the final determination regarding the methodology to be used in calculating the tabulations of population reported to States and localities pursuant to 13 U.S.C. 141(c). The determination of the Secretary will be published in the *Federal Register*.

(2) The Secretary shall not make the determination specified in paragraph (a)(1) of this section until after he or she receives the recommendation of the Director of the Census, together with the report of the Executive Steering Committee for A.C.E. Policy, in accordance with paragraph (b)(1) of this section.

(b)(1) The Executive Steering Committee for A.C.E. Policy shall prepare a written report to the Director of the Census analyzing the methodologies that may be used in making the tabulations of population reported to States and localities pursuant to 13 U.S.C. 141(c), and the factors relevant to the possible choices of methodology. The Director of the Census will forward the Executive Steering Committee for A.C.E. Policy report and his or her recommendation on methodology, if any, to the Secretary of Commerce.

(2) The recommendation of the Director of the Census, together with report of the Executive Steering Committee for A.C.E. Policy described in paragraph (b)(1) of this section, shall be released to the public at the same time it is delivered to the Secretary. This release to the public shall include, but is not limited to, posting of the report on the Bureau of the Census website and publication of the report in the *Federal Register*.

(3) The "Executive Steering Committee for A.C.E. Policy" is composed of the following employees of the Bureau of the Census:

- (i) Deputy Director and Chief Operating Officer;
- (ii) Principal Associate Director and Chief Financial Officer;
- (iii) Principal Associate Director for Programs;
- (iv) Associate Director for Decennial Census (Chair);
- (v) Assistant Director for Decennial Census;
- (vi) Associate Director for Demographic Programs;
- (vii) Associate Director for Methodology and Standards;
- (viii) Chief; Planning, Research, and Evaluation Division;
- (ix) Chief; Decennial Management Division;
- (x) Chief; Decennial Statistical Studies Division;
- (xi) Chief; Population Division; and
- (xii) Senior Mathematical Statistician.

3. Section 101.2 is removed.