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Part IV

Department of Commerce

Bureau of the Census

15 CFR Part 101

Report of Tabulations of Population to States and Localities Pursuant to 13 U.S.C. 141(c) and Availability of Other Population Information; Proposed Rule

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 101

[Docket No.: 000609172–0172–01]

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

AGENCY: Department of Commerce.

ACTION: Proposed rule.

SUMMARY: The Department of Commerce is issuing a proposed rule setting forth how the Bureau of the Census will carry out its responsibilities to report tabulations of population to States and localities pursuant to 13 U.S.C. 141(c) and in making available certain other population information.

DATES: Comments must be submitted no later than August 4, 2000.

ADDRESSES: Comments should be sent to: John H. Thompson, Associate Director for Decennial Census, Bureau of the Census, Suitland Federal Center, Suitland and Silver Hill Roads, Building 2, Room 3586, Suitland, Maryland 20233.

FOR FURTHER INFORMATION CONTACT: John H. Thompson, (301) 457–3946.

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). The Constitution requires that decennial census data be used by the U.S. Congress for apportioning seats in the House of Representatives among the States. These data also are used for a number of other important purposes, such as establishing the boundaries for congressional and state and local legislative districts, and for the allocation of funds by federal and state agencies.

The Census Act specifies (in 13 U.S.C. 141(c)) the procedure to be followed in providing to States the reports of tabulations of population used in drawing legislative districts. (These reports of tabulations often are referred to as Public Law 94–171 data.) As detailed in Accuracy and Coverage Evaluation; Statement on the Feasibility of Using Statistical Methods to Improve the Accuracy of Census 2000 published today, the Director of the Census has informed the Secretary that the decision whether to release statistically corrected data for States to use in the redistricting process will be made prior to the statutory deadline for transmitting the tabulations. The Secretary has accepted and fully endorsed that process in a memorandum to the Director, also published today. This proposed rule establishes the framework for making that decision.

First, because this decision turns entirely on operational and methodological implementation within the expertise of the Bureau of the Census—whether the use of sampling is possible, *i.e.*, compatible with statutory and resource constraints and with other aspects of the decennial census operational plan and is expected to improve the overall accuracy of the census as discussed in Accuracy and Coverage Evaluation, the decision must be made by the experts at the Census Bureau. The proposed rule therefore endows the Director of the Census with final authority to make this determination. Review of the Director's decision by the Secretary of Commerce would at a minimum create the appearance that considerations other than those relating to statistical science were being taken into account, and could well allow the decision to be based on such irrelevant considerations. There is absolutely no role for non-scientific considerations in this process. In order to safeguard both the substance and the public credibility of this decisionmaking process, we must leave the decision to the expert judgment of the Bureau of the Census.

Second, because the public credibility of this process is critical, the proposed rule reflects a transparent process the Bureau of the Census has established. A committee composed of the distinguished senior career professionals at the Bureau of the Census will make a recommendation to the Director of the Census. That recommendation will be made public; this step is essential to ensure an open, transparent process. After considering the recommendation, the Director will make the final decision.

These procedures have their roots in approaches taken in prior decennial censuses. In 1980, the Secretary of Commerce delegated this decision to the Director of the Census (see Departmental Organizational Order 32–21 (Aug. 4, 1975) and memorandum of Secretary Klutznick dated May 12, 1980) and the Director publicly disclosed the approach he would take in deciding whether to use the statistical method known as sampling (45 FR 69366) as well as his decision not to use that method (45 FR 8287). In 1990, procedures established as the result of the settlement in *City of New York v. United States Dep't of Commerce* provided for interim decisions by the statistical experts at the Bureau of the Census and by an advisory panel appointed by the plaintiffs and defendant in the litigation, with the final decision made by the Secretary of Commerce. For the reasons stated above, it is most appropriate to delegate this decision to the statistical experts at the Census Bureau.

Third, the proposed rule addresses the release of other population data by the Bureau of the Census. In Public Law 105–119, Section 209(j), Congress established certain standards for the release of other population data in the event the Director determines that the statistical method known as sampling is used in calculating the tabulations of population reported to States and localities pursuant to 13 U.S.C. 141(c). The proposed rule provides that, in the event that the Director determines not to use the statistical method known as sampling in calculating the tabulations of population, despite a recommendation in favor of the use of that method by the committee of census professionals, the same standards shall apply to the release of that data to States and localities pursuant to 13 U.S.C. 141(c).

Administrative Law Requirements

Executive Order 12866

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule establishes a process for making a determination whether to release statistically corrected data for States to use in the redistricting. No small entity is impacted as a result of this procedural rule. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

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: June 13, 2000.

William M. Daley,

Secretary of Commerce.

For the reasons set out in the preamble, 15 CFR part 101 is proposed to be added to read as follows:

PART 101—RELEASE OF DECENNIAL CENSUS POPULATION INFORMATION

Sec.

101.1 Report of tabulations of population to States and localities pursuant to 13 U.S.C. 141(c).
101.2 Availability of other population information.

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.

§ 101.1 Report of tabulations of population to States and localities pursuant to 13 U.S.C. 141(c).

(a)(1) The Director of the Census 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 Director will be published in the **Federal Register.**

(2) All relevant authority of the Secretary of Commerce under 13 U.S.C. 141(c) and other applicable provisions of title 13 of the U.S. Code with respect to the decision to be made pursuant to paragraph (a)(1) of this section is hereby conferred upon the Director of the Census.

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

(4) The determination of the Director of the Census shall not be subject to review, reconsideration, or reversal by the Secretary of Commerce.

(b)(1) The Executive Steering Committee for A.C.E. Policy shall prepare a written report to the Director of the Census recommending the methodology to be used in making the tabulations of population reported to States and localities pursuant to 13 U.S.C. 141(c).

(2) The 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 Director of the Census. 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" (ESCAP) is composed of:

(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.

§ 101.2 Availability of other population information.

(a) When the Director of the Census determines pursuant to § 101.1(a)(1) of this part to use methodologies including the statistical method known as "sampling" to produce the tabulations of population to report to States pursuant to 13 U.S.C. 141(c), data prepared without the use of such statistical method shall be made available to the public in accordance with the standards set forth in section 209(j) of Public Law 105–119, 111 Stat. 2440, simultaneously with the issuance of the report to States.

(b) When the Director of the Census determines pursuant to § 101.1(a)(1) of this part to produce tabulations of population without the use of methodologies including the method known as sampling, for reporting to States pursuant to 13 U.S.C. 141(c) notwithstanding the Executive Steering Committee for A.C.E. Policy's recommendation to use sampling, data prepared with the use of such statistical method shall be made available to the public in accordance with the standards set forth in section 209(j) of Public Law 105–119, 111 Stat. 2440, for the release of data prepared without the use of such statistical method, simultaneously with the issuance of the report to States.

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