



**(3510-07-P)**

**U.S. DEPARTMENT OF COMMERCE**

**Bureau of the Census**

**15 CFR Part 90**

**Docket Number: 111215758-2028-01**

**RIN: 0607-AA51**

**Resumption of the Population Estimates Challenge Program and Proposed Changes to the Program**

**AGENCY: Bureau of the Census, Department of Commerce.**

**ACTION: Notice of Proposed Rulemaking and Request for Comments.**

**SUMMARY:** The Bureau of the Census (Census Bureau) is proposing to resume the Population Estimates Challenge Program in 2012 to provide eligible entities the opportunity to file requests for the review of population estimates for 2011 and subsequent years. The Census Bureau is also proposing to amend its regulations to: (1) update references to the method by which population estimates are officially released; (2) clarify when a challenge of a population estimate can be requested; (3) specify who may file a request for a population estimate challenge; (4) remove all references to the per capita income estimates program and the Office of General Revenue Sharing; (5) change the regulation title of a current program from “Procedure for Challenging Certain Population and Income Estimates” to “Procedure for Challenging Population Estimates” to reflect the removal of the per capita income estimates program; (6) revise the requirements of the challenge process; and (7) remove all references to a formal challenge process. The Census Bureau is proposing changes to the procedure for the Population Estimates Challenge Program that are intended to clarify and streamline the procedures for local units of general-purpose

government. The Census Bureau is proposing to remove the references for the per capita income estimates changes because the Census Bureau no longer produces per capita income estimates. The program that used those estimates, the General Revenue Sharing program, was eliminated for the States in 1980 and was not reauthorized for local governments after fiscal year 2000.

**DATES:** Written comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Please direct all written comments on this notice to Mr. Rodger V. Johnson, Chief, Local Government Estimates and Migration Processing Branch, Population Division, U.S. Census Bureau, Room 6H480, Mail Stop 8800, Washington, DC 20233-8800.

You also may submit comments, identified by RIN number 0607-AA51, to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. All comments received are a part of the public record. No comments will be posted to <http://www.regulations.gov> for public viewing until after the comment period has closed. Comments generally will be posted without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. The Census Bureau will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rodger V. Johnson, Chief, Local Government Estimates and Migration Processing Branch, Population Division, U.S. Census

Bureau, Room 6H480, Mail Stop 8800, Washington, DC 20233-8800, by telephone on (301) 763-2461, by FAX (301) 763-2516, or by e-mail at [rodger.v.johnson@census.gov](mailto:rodger.v.johnson@census.gov).

## **SUPPLEMENTARY INFORMATION**

### **Background**

The Census Bureau is mandated to release population estimates annually in accordance with Title 13 of the United States Code (U.S.C.). These estimates are based upon the most recent Decennial Census of Population and Housing and compiled from the most current administrative and survey data available for that purpose. As part of its authorization, the Census Bureau offers an opportunity for local units of general-purpose government (hereinafter collectively “governmental unit”) to challenge these official estimates through its Population Estimates Challenge Program. Under this program, a governmental unit may challenge their population estimate by submitting additional data to the Census Bureau for evaluation. If the additional data are accepted during the review period by the Census Bureau, resulting in an updated population estimate, the Census Bureau will provide a written notification to the governmental unit and publish the revised estimate at [www.census.gov](http://www.census.gov). If the additional data are not accepted for a revised estimate, the Census Bureau will notify the governmental unit.

Changes to the challenge process for this decade are being made based on results of evaluations of the accuracy of the Census Bureau's current methodology for producing population estimates compared with the accuracy of alternative approaches. In the previous decade, the Census Bureau modified the standard methodology to accommodate challenges by allowing housing unit-based estimates to supplant cohort-component based estimates at the

county level, and eliminating key sets of population controls generally imposed on county and subcounty estimates. The evaluations show that the challenge procedure used in the previous decade resulted in less accurate estimates of the population of governmental units. This has led the Census Bureau to revise the challenge process to no longer accept estimates developed from methods different from those used by the Census Bureau. In the revised challenge process, the Census Bureau will only accept a challenge when the evidence provided identifies the use of incorrect data, processes, or calculations in the estimates.

On January 4, 2010, the Census Bureau published a final rule in the Federal Register (75 FR 44) to announce that, beginning on February 3, 2010, the Census Bureau would temporarily suspend the Population Estimates Challenge Program during the decennial census year and the following year to accommodate the taking of the 2010 Census, and indefinitely suspend the Per Capita Income Estimates Challenge Program.

In this proposed rule, the Census Bureau is proposing to resume the Population Estimates Challenge Program in 2012 to provide governmental units the opportunity to challenge population estimates for 2011 and subsequent years. The Census Bureau is also proposing to revise its regulations to: (1) update references to the method by which population estimates are officially released; (2) clarify when a challenge of a population estimate can be requested; (3) specify who may file a request for a population estimate challenge; (4) remove all references to per capita income estimates and the Office of General Revenue Sharing; (5) change the regulation title of a current program from “Procedure for Challenging Certain Population and Income Estimates” to “Procedure for Challenging Population Estimates” to reflect the removal of the per capita income estimates program; (6) revise the requirements of the challenge process;

and (7) remove all references to a formal challenge process.

These proposed changes to the regulations are intended to clarify the procedure for seeking a population estimate challenge by a governmental unit, and to make the regulations clearer by eliminating out-of-date provisions. The Census Bureau proposes in §90.6 to update references to the method by which population estimates are officially released to reflect widespread use of the Internet (rather than the Federal Register) for disseminating official demographic data. For example, if this proposal is adopted, the challenge process may be initiated after the population estimates are posted on the Internet (rather than published in the Federal Register).

Proposed §90.6 also would reduce the time period when a challenge to a population estimate may be filed from 180 days to 90 days after the release of the estimates by the Census Bureau. In the Census Bureau's judgment, 90 days are sufficient for an applicant to review the population estimate and to submit additional data to update the population estimate. This change also will ensure that, in most instances, the Census Bureau reviews and incorporates accepted data into subsequent estimates releases in a timely manner.

Proposed §90.8 would specify that the types of data that are submitted must be consistent with the criteria, standards, and regular processes the Census Bureau employs to generate the population estimate. We further specify that the Census Bureau will provide additional Web-based information describing the data that are required and how the governmental unit may contact us. Proposed §90.8 will also specify what methods can be used in the challenge process.

Proposed §90.9 would specify that the Census Bureau will work with the governmental unit to verify the data that it has submitted, evaluate the data submitted, and render its decision in writing to the governmental unit. The Census Bureau will also post the revised population estimate at <[www.census.gov](http://www.census.gov)>.

Furthermore, the Census Bureau proposes one new section (§90.5) regarding who may file a request for a challenge to a population estimate. Under the proposed new regulations, the chief executive officer or highest elected official of the requesting governmental unit would be the only individual authorized to submit such requests. This change is proposed to ensure that persons authorized by law to commit the governmental unit to a particular course of action have approved the request for a challenge prior to submission to the Census Bureau.

The Census Bureau proposes to revise all applicable sections of the Population Estimates Challenge Program regulations so that states no longer are eligible to directly participate in the Program. The Census Bureau proposes that the sub-state governmental units be the sole entity to request a challenge for the population estimates for their respective jurisdictions. Under the method employed by the Census Bureau, state level population estimates are a summary of the estimates for each county and/or statistical equivalent that comprise each state. Therefore, sub-state governmental units are the most appropriate level to request a challenge of the population estimates for their respective jurisdictions. In addition, it should be noted that the Census Bureau and the state governments have formally established and have maintained a long-term working relationship through the Federal State Cooperative for Population Estimates (FSCPE). State agencies, designated by their respective governors, work in cooperation with the Census Bureau to produce population estimates. The Census Bureau begins the process of preparing population

estimates by updating population information from the most recent decennial census with information found in the annual administrative records of Federal and state agencies. The Federal agencies provide tax records, Medicare records, and some vital statistics and group quarters information. The FSCPE agencies supply vital statistics and information about group quarters like college dorms or prisons. The Census Bureau combines census base data, administrative records, and selected survey data to produce current population estimates consistent with the last decennial census counts. Moreover, the Census Bureau's governmental unit estimates are provided to the FSCPE agencies in preliminary form for review and comment to resolve data processing issues identified during that period. For the purposes of this program, the District of Columbia is treated as a statistical equivalent of a county and, therefore, eligible to participate.

In addition, existing §§ 90.9 through 90.18 are proposed to be deleted. In the Census Bureau's judgment, these sections no longer are needed, as the proposed Population Estimates Challenge Program would not include a formal challenge process. This change is consistent with the procedures advanced in proposed §90.8 and §90.9 to specify the required data and to verify that data are accurate and complete before the Census Bureau reviews the data and renders its decision on whether or not to update the population estimate. Discontinuing the formal process removes a redundant procedure and, therefore, enables the Census Bureau to render a more timely decision during the review and update process. The Census Bureau proposes to eliminate all references to the per capita income estimates program and the General Revenue Sharing Program from its regulations at 15 CFR 90 because the Census Bureau no longer produces per capita income estimates. The Census Bureau generated the per capita income estimates for the

General Revenue Sharing Program, pursuant to Section 109(a) of the State and Local Fiscal Assistance Act of 1972 (Pub. L. No. 92-512, § 109(a), 86 Stat. 919, 929 (1972)). The General Revenue Sharing Program was eliminated for the States in 1980 under the State and Local Fiscal Assistance Act Amendments of 1980 (Pub. L. No. 96-604, § 2, 94 Stat. 3516 (1980)), and was not reauthorized for local governments after fiscal year 2000 (See Pub. L. No. 103-322, § 31001, 108 Stat. 1796, 1859 (1994)). Due to the discontinuation of the General Revenue Sharing Program, the Census Bureau no longer needs to generate and publish per capita income estimates. In order to avoid any confusion regarding the status of the per capita income estimates program, the Census Bureau proposes to eliminate all references to per capita income from the regulations. The Census Bureau also is proposing to change the titling of the program to reflect the fact that the Census Bureau no longer generates per capita income estimates previously mandated by law.

The Census Bureau also is proposing minor technical changes to the regulations, such as a change to the numbering of sections and heading titles to reconcile the changes proposed in this rule. The following chart reflects the proposed renumbering of sections and revisions to heading titles, with new and revised sections noted in parentheses, for the public’s convenience:

<b>Current</b>	<b>Proposed</b>
PART 90 PROCEDURE FOR CHALLENGING CERTAIN POPULATION AND INCOME ESTIMATES	PART 90 PROCEDURE FOR CHALLENGING POPULATION ESTIMATES
90.1 Scope and applicability.	90.1 Scope and applicability.
90.2 Policy of the Census Bureau.	90.2 Policy of the Census Bureau.
90.3 Definitions.	90.3 Definitions.

90.4 General.	90.4 General.
---	(New) 90.5 Who may file a challenge.
90.5 When an informal challenge may be filed.	90.6 When a challenge may be filed.
90.6 Where to file challenge.	(Revised) 90.7 Where to file a challenge.
90.7 Evidence required.	(Revised) 90.8 Evidence required.
90.8 Review of challenge.	(Revised) 90.9 Review of challenge.
90.9 When formal procedure may be invoked.	(Deleted)
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90.10 Form of formal challenge and time limit for filing.	(Deleted)
90.11 Appointment of hearing officer.	(Deleted)
90.12 Qualifications of hearing officer.	(Deleted)
90.13 Offer of hearing.	(Deleted)
90.14 Hearing.	(Deleted)
90.15 Decision by Director.	(Deleted)
90.16 Notification of adjustment.	(Deleted)
90.17 Timing for hearing and decision.	(Deleted)
90.18 Representation.	(Deleted)

## Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a

substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that this proposed rule will not have a significant impact on a substantial number of small entities.

#### *Number of Small Entities.*

This proposed rule, if implemented, would impact only governmental units, some of which may be considered a small entity under the RFA. The RFA defines "small entity" as a small business, small organization, or small governmental jurisdiction. Specifically, the RFA defines "small governmental jurisdiction" as the government of a city, county, town, school district, or special district with a population of less than 50,000. Using this criterion, the Census Bureau estimates that around 37,000 small governmental jurisdictions would be impacted by this rulemaking.

#### *Economic Impact*

The Census Bureau does not anticipate any economic impact as a result of this proposed rule. This rulemaking intends to resume the implementation of the Population Estimates Challenge Program in 2012 to provide eligible entities the opportunity to file a challenge to population estimates for 2011 and subsequent years, and to implement changes to clarify the procedure to challenge population estimates for local units of general-purpose government.

There are no direct costs imposed on governmental entities (units) that wish to initiate a challenge under the Population Estimates Challenge Program. In addition, the Census Bureau also is proposing to amend its regulations to remove all references to per capita income estimates. The Census Bureau is proposing the change to remove per capita income because the Census Bureau no longer produces per capita income estimates. The program that used those estimates, the General Revenue Sharing program, was eliminated for the States in 1980 and not reauthorized for local governments after fiscal year 2000.

### **Executive Orders**

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

### **Paperwork Reduction Act**

This notice of proposed rulemaking does not contain a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C., Chapter 35. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

## List of Subjects

### 15 CFR Part 90

Administrative practice and procedure, Census data, Population census, Statistics.

For the reasons stated in the preamble, the Census Bureau proposes to amend

15 CFR Part 90 to read as follows:

1. The authority citation for Part 90 continues to read as follows:

**Authority:** 13 U.S.C. 4 and 181.

2. Lift the stay on Part 90 published at 75 FR 46, Jan. 4, 2010.

3. Revise 15 CFR Part 90 in its entirety to read as follows:

### **PART 90 PROCEDURE FOR CHALLENGING POPULATION ESTIMATES**

#### Section

90.1 Scope and applicability.

90.2 Policy of the Census Bureau.

90.3 Definitions.

90.4 General.

90.5 Who may file a challenge.

90.6 When a challenge may be filed.

90.7 Where to file a challenge.

90.8 Evidence required.

90.9 Review of challenge.

Authority: 13 U.S.C. 4 and 181.

Source: 44 FR 20647, Apr. 6, 1979, unless otherwise noted.

### **§90.1 Scope and applicability.**

Between decennial censuses, the Census Bureau annually prepares statistical estimates of the number of people residing in states and their governmental units. In general, these estimates are developed by updating the population counts produced in the most recent decennial census with demographic components of change data and/or other indicators of population change. These rules prescribe the administrative procedure available to governmental units to request a challenge to the most current of these estimates.

### **§90.2 Policy of the Census Bureau.**

It is the policy of the Census Bureau to provide the most accurate population estimates possible given the constraints of time, money, and available statistical techniques. It is also the policy of the Census Bureau to provide governmental units the opportunity to seek a review and provide additional data to these estimates and to present evidence relating to the accuracy of the estimates.

### **§90.3 Definitions.**

As used in this part (except where the context clearly indicates otherwise) the following definitions shall apply:

(a) Census Bureau means the U.S. Census Bureau, Department of Commerce.

(b) Population Estimates Challenge means, in accordance with this part, the process a governmental unit may use to provide additional input data for the Census Bureau's population estimate and the submission of substantive documentation in support thereof.

(c) Director means Director of the Census Bureau, or an individual designated by the Director to perform under this part.

(d) Population estimate means a statistically developed calculation of the number of people living in a governmental unit to update the preceding census or earlier estimate.

(e) A governmental unit means the government of a county, municipality, township, incorporated place, or other minor civil division, which is a unit of general-purpose government below the State.

(f) For the purposes of this program, an eligible governmental unit includes the District of Columbia.

### **§90.4 General.**

This part provides a procedure for a governmental unit to request a challenge of a population

estimate of the Census Bureau. The Census Bureau, upon receipt of the appropriate documentation, will attempt to resolve the estimate with the governmental unit.

**§90.5 Who may file a challenge.**

A request for a challenge of a population estimate generated by the Census Bureau may be filed only by the chief executive officer or highest elected official of a governmental unit.

**§90.6 When a challenge may be filed.**

(a) A request for a challenge to a population estimate may be filed any time up to 90 days after the release of the estimate by the Census Bureau. Publication by the Census Bureau on its Web site ([www.census.gov](http://www.census.gov)) shall constitute release. Documentation requesting a challenge of any estimate may also be filed any time up to 90 days from the date the Census Bureau, on its own initiative, revises that estimate.

(b) If, however, a governmental unit has a sufficiently meritorious reason for not filing in a timely manner, the Census Bureau has the discretion to accept the late request.

[50 FR 28768, July 16, 1985]

**§90.7 Where to file a challenge.**

A request for a population estimate challenge must be prepared in writing by the governmental unit and filed with the Chief, Population Division, Census Bureau, Room 5H174, Mail Stop 8800, Washington, D.C. 20233. The governmental unit must designate a contact person who can be reached by telephone during normal business hours should questions arise

with regard to the submitted materials.

**§90.8 Evidence required.**

The governmental unit shall provide whatever evidence it has relevant to the request at the time of filing. The Census Bureau may request further evidence when necessary. The evidence submitted must be consistent with the criteria, standards, and regular processes the Census Bureau employs to generate the population estimate. The Census Bureau has revised the challenge process to no longer accept estimates developed from methods different from those used by the Census Bureau. In the revised challenge process, the Census Bureau will only accept a challenge when the evidence provided identifies the use of incorrect data, processes, or calculations in the estimates.

For counties and statistical equivalents, the Census Bureau uses a cohort component of change method to produce population estimates. Each year, the components of change are updated. These components include births, deaths, migration, and change in the group quarters population. The Census Bureau will consider a challenge based on additional information on one or more of the components of change or about the group quarters population in a locality.

For minor civil divisions and incorporated places, the Census Bureau uses a housing unit method to distribute the county population. The components in this method include housing units, occupancy rates, and persons per household plus an estimate of the population in group quarters. The Census Bureau will consider a challenge based on data related to changes in an area's housing stock, such as data on demolitions, building permits, or mobile home placements. The Census Bureau will also consider a challenge based on additional information about the group quarters population in a locality.

The Census Bureau will also provide a guide on its Web site as a reference for governmental units to use in developing their data as evidence to support a challenge to the population estimate. In addition, a governmental unit may address any additional questions by contacting the Census Bureau at the address provided in §90.7 of this part.

**§90.9 Review of challenge.**

The Chief, Population Division, Census Bureau, or the Chief's designee shall review the evidence provided with the request for the population estimate challenge, shall work with the governmental unit to verify the data provided by the governmental unit, and evaluate the data to resolve the issues raised by the governmental unit. Thereafter, the Census Bureau shall respond in writing with a decision to accept or deny the challenge. In the event that the Census Bureau finds that the population estimate should be updated, it will also post the revised estimate on the Census Bureau's Web site ([www.census.gov](http://www.census.gov)).

August 3, 2012  
Date

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Robert M. Groves  
Director  
Bureau of the Census