

OPERATIONAL GUIDELINES FOR CONGRESSIONAL AND LEGISLATIVE REDISTRICTING

Prepared for the Montana Districting and Apportionment Commission
By Susan Byorth Fox, Research Analyst
Montana Legislative Services Division
November 2000

In addition to the mandatory and discretionary guidelines based on constitutional and statutory requirements, there are a number of operational considerations that the Montana Districting and Apportionment Commission (Commission) must consider, including the population and geographic databases to be used by staff in the preparation of redistricting plans, the aggregation and allocation of population data by race and ethnicity, the starting point, and the timeline for congressional redistricting.

POPULATION AND GEOGRAPHIC DATABASE

There is no explicit population database that the Commission is mandated by law to use. It is implied in the Montana Constitution and statutes that the federal decennial census will be used for districting and apportionment. The Montana Constitution, Article V, section 14, provides that the congressional plan is to be submitted to the Secretary of State within 90 days after the final decennial census figures are available. The federal decennial census figures are the most widely used database for redistricting, although some states have conducted their own census.

The 1990 Districting and Apportionment Commission adopted "the official, final results of the 1990 federal decennial census as the exclusive, permissible data base for population for use in developing the state legislative redistricting plan". The U.S. Bureau of the Census delivered this data in the form of P.L. 94-171 data, named after the federal legislation that required the data to be delivered to the state by April 1 in the year following the federal decennial census (13 U.S.C. 141(c)). Geographical data was also provided in the form of the TIGER/Line files or Topologically Integrated Geographic Encoding and Referencing system Line files, which provide the geographic basis for the population data.

In 1990, the Census Bureau did not "adjust" the data; however, it estimated the number of people not counted by conducting a postenumeration survey separately from the census and compared the findings. The net undercount for 1990 is the difference between how many people were actually counted in the 1990 Census (the official count) and the estimate of how many people lived in the United States at that time (the adjusted count). The United States had an overall net undercount of about 4 million people in 1990, approximately 1.6%. Montana's undercount was 2.4% of total population and 9.2% of American Indian population. The Commission did not consider any additional data that was received after receipt of the P.L. 94-171 data.

The U.S. Bureau of the Census implemented an Accuracy and Enumeration Survey for the 2000 Census that uses sampling to adjust the data for any undercount.¹ It has recently passed a federal regulation that the Director of the Bureau of the Census will make the final determination, after receiving a recommendation from the Executive Steering Committee for ACE Policy, regarding the methodology to be used in calculating the tabulations of population reported to states pursuant to 13 U.S.C. 141(c). The Director may decide to use the statistical method of "sampling" to produce the population tabulations (adjusted data) if feasible to do so or, if not feasible, to use the unadjusted data. Whichever decision is made, the data will become the P.L. 94-171 data that is reported to states for redistricting purposes pursuant to 13 U.S.C. 141(c). If the sampling method is used (adjusted data), then the data prepared without sampling (unadjusted data) must also be made available pursuant to P.L. 105-119.

As part of the preparation for redistricting, the staff have asked that both data sets be forwarded to the Commission in the event that the adjusted data set becomes the P.L. 94-171 data set reported to states.

Action Requested:

The Commission should adopt the database that it will use for geographic purposes and for population tabulations prior to the receipt of data. The TIGER/Line files are appropriate regardless of the population database chosen. The P.L. 94-171 data was used in the last round of redistricting and could be adopted for this round. This would leave the decision of using the adjusted or unadjusted population figures to the Director of the Bureau of the Census. If the Commission wishes, it could adopt the unadjusted data set regardless of whether it is produced as the P.L. 94-171 data set or the P.L. 105-119 data set. Neither decision will be without controversy and could be subject to potential litigation.

RACIAL DATA AGGREGATION and ALLOCATION

The Office of Management and Budget (OMB) announced revisions to the standards for classification of federal data on race and ethnicity in an October 30, 1997, notice. These revised standards were followed by the U.S. Bureau of the Census for Census 2000 and by other federal agencies. These standards are what guided the race and ethnicity questions on the census forms that allowed persons to identify themselves as members of one or more races. There are five minimum race categories (similar to what was used for the 1990 Census)--American Indian or Alaska Native, Asian, Black or African

¹ In Department of Commerce v. House of Representatives, 119 S. Ct. 765 (1999), the Supreme Court held that 13 U.S.C. 195 does not permit the use of sampling to produce population counts for the purposes of apportioning seats in the House of Representatives among the states. However, for other purposes, Section 195 has been interpreted by the U.S. Bureau of the Census to require the Secretary [of Commerce] to authorize the use of the statistical method known as 'sampling', *if feasible*, in carrying out the provisions of [that section of law] (emphasis added).

American, Native Hawaiian or Other Pacific Islander, and White. In addition, there are two ethnicity categories--Hispanic and Non-Hispanic. These variables can result in 126 separate categories of racial and ethnic combinations.

The OMB has worked closely with agencies responsible for monitoring and enforcing civil rights laws and has developed guidelines for aggregation and allocation of the multiple-race responses for use in civil rights monitoring and enforcement. These guidelines were published in a March 9, 2000, release, OMB Bulletin No. 00-02. It is intended to provide consistency across agencies that enforce civil rights laws and does not preclude use of more detailed information. It also does not involve methods that require fractional or double counting of individuals or arbitrary allocation of responses to one minority group versus another.

The aggregation and allocation guidance document is attached. Initial aggregation compiled according to this guidance would result in a person being counted in one of the five single-race categories, one of the four double-race categories, any other combination that represents more than 1% of the population in a jurisdiction, or the balance of individuals reporting more than one race. Any category of less than 1% would be allocated as described below.

Because Montana's minority population is small, numerous categories will undoubtedly fall beneath the 1% threshold. For any category that exceeds 1%, the allocation guideline can be applied. The allocation guideline is intended for federal agencies for use in civil rights monitoring and enforcement, which is perhaps a more stringent standard than the Commission may need to initially apply, but it provides a standard that could be used for purposes of litigation, if necessary, has been based on input from the U.S. Department of Justice, and will be used in enforcing Sections 2 and 5 of the Voting Rights Act of 1965.

For purposes of determining compliance with the mandatory criteria of protection of minority voting rights, the Commission could allocate the categories of responses for more than one race as suggested in the bulletin:

- (1) if the category combines responses including one minority race and White, the responses would be allocated to the minority race; or
- (2) if there are responses that include two or more minority races, the Commission would analyze the patterns based on alternative allocations to each of the minority groups.²

The original database will remain intact, and more detailed analysis can be accomplished throughout the course of redistricting. If adopted, the aggregation and guidelines described above would assist staff in

²In the event that public testimony raises an objection, staff can be directed to try alternate plans to address the race or ethnic combination under discussion.

providing more manageable numbers to assist Commission members in addressing the variable of race and ethnicity in their application of all of the mandatory criteria and applicable discretionary criteria.

Action Requested:

Staff recommends that the Commission adopt the above operational guideline based on the OMB Bulletin No. 00-02. It will provide a systematic method by which to aggregate and allocate its race and ethnicity data for the 2000 Census database, it is based on extensive work between the federal agencies, and no alternative methods have been discovered or offered at this time.

This Commission guideline can be adopted as an initial approach with which to analyze the data when it is received by April 1, 2001. This Commission guideline may be amended once the actual data is received or if new information is provided, and the actual response categories may be reviewed for further determination of appropriate aggregation and allocation. The Commission should apply the chosen method to all districts consistently, and if analysis is changed during the course of redistricting, it should be retroactively applied to any tentatively adopted districts for reanalysis, which may require changing district lines.

STARTING POINT

In the round of redistricting accomplished in 1974, the Commission began its work in the northeastern corner of the state. In 1980 and in 1990, the Commission began its work in the northwestern corner of the state.

Concern has always been raised about the ripple effect and the potential of redistricting "oneself into a corner". The "ripple effect" will be felt regardless of where the Commission begins its work and will be felt most acutely in eastern Montana, where population loss has been the greatest, and in the areas of the state that have received the bulk of the population gains. If the Commission follows the procedure of the last Commission in tentatively adopting districts with the understanding that an area may need to be revisited and if the Commission uses the population deviation allowance of plus or minus 5% from the ideal population in a balanced manner, then both of these concerns can be mitigated.

Action requested:

As an operational concern, it would be most helpful to staff in developing a work plan and schedule for the period between June 2001 and January 2003 if a starting point is chosen. The point could be one of the geographical "corners" of the state as in the past, an urban or rural starting point, or any other possible point, as long as one starting point is selected and guidance provided on the geographical direction in which to proceed.

TIMELINE

The President will be informed of the resident populations for each state by December 31, 2000. Within 3 weeks, the Governor will be informed by the House of Representatives of the results of reapportioning. The census population data for redistricting is not expected until sometime between February 12, 2001, and March 21, 2001, during the 2001 regular session of the Legislature.³ The Commission is required to file its final congressional redistricting plan within 90 days from the receipt of the official census data. It is required to hold a public hearing on the plan.

Action Requested:

Staff proposes that the Commission tentatively set a public hearing date on the congressional plan between May 14, 2001, and June 15, 2001. The actual 90-day count will rule, but these dates should provide ample time for staff to prepare alternate plans if, in fact, Montana receives a second seat. If Montana does not receive a second seat, a short hearing can be held on the single-seat plan and the Commission could immediately file the plan at the Secretary of State's office.

Following congressional redistricting, staff will prepare a more detailed timeline for legislative redistricting over the June 2001 to January 2003 time period for consideration by the Commission.

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³ P.L. 94-171 requires the U.S. Bureau of the Census to report selected census tabulations to the states by April 1 of the year following the census year. The Census Bureau has scheduled completion of the release of redistricting data to the states by March 21, 2001 (Census Bureau website, FAQ 5/25/99).

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Published By



Legislative Services Division

PO Box 201706
Helena, MT 59620-1706
PHONE: (406) 444-3064
FAX: (406) 444-3036
<http://leg.mt.gov/>