REDISTRICTING UPDATE

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Redistricting basics and new developments - 2011

Q: What cities may have to redistrict?

A: A city that elects an officer (usually a member of the governing body) by voters from a distinct territorial subdivision (an electoral district, precinct, voting district, or ward) of the city. [1]

Many home rule charter cities utilize single member districts to elect some members of the governing body. *See* Article XI, Section 5, of the Texas Constitution (detailing home rule charter cities). General law cities may also have single member districts. *See* Texas Local Government Code §§ 6.001, 7.001, 8.001 and 26.021 (form of government/ aldermanic). Cities in which all elected officers are elected by at-large system do not have to redistrict.

Cities that do not have voting districts should be cognizant, however, that they are not immune to the possibility of having their at-large voting system challenged under section 2 of the Voting Rights Act ("VRA"). 42 U.S.C. § 1973; *see* pages 5-6 infra. These cities may consider examining recent census data to evaluate the risks of a lawsuit that may seek a new election system. *See Reyes v. City of Farmers Branch, Texas*, 586 F.3d 1019 (5th Cir. 2009).

Q: When should a city redistrict?

A: A city should redistrict when the identified voting districts within a city do not contain roughly the same amount of people.

A city (other than a certain city over 1 million in population)[2] is not required to redistrict by statute.

A city's population may increase or decrease over time, resulting in more or less people living in certain voting districts. This increase or decrease in population may cause the city's population to be unevenly distributed among its identified voting districts. This increase or decrease can be caused by various reasons. A city's population may change after an annexation, after a natural disaster, or naturally, by people moving in or out of a particular area within the city limits. Some of these changes may be difficult for the city to recognize, while others are easily recognizable and identifiable.

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[1] Texas Election Code § 276.006 pertains to "a territorial unit of a political subdivision from which an office of the political subdivision is elected," i.e, a voting district.

[2] *See* Texas Local Government Code § 26.044(g) (cities with populations of more than 1.5 million may have to redistrict). Texas counties are also required to redistrict ever ten years. Texas Election Code Ch. 42.

After each United States Census, census data is available to the city and can aid the city in identifying if there is an equal population in each voting district.[3] The State of Texas uses the population data from the April 1, 2010, decennial census for statewide redistricting. In accordance with Public Law 94-171, the Bureau is required to provide the states with the official census population numbers needed for redistricting, including total and voting age population by race and ethnicity for every census geographic level, by April 1, 2011.

The United States Supreme Court has established the 1 person 1 vote rule. *Wesberry v. Sanders*, 376 U.S. 1 (1964), *Reynolds v. Sims*, 377 U.S. 533 (1964), and *Baker v. Carr*, 369 U.S. 186 (1962). Voting districts should be assigned an equal number of people in each voting district, making each person's vote as equally powerful. For example, in a city with two districts, one district with 12 people and one district with 6 people, there would be a combined total population of 18. When it is time to vote, the district with 6 people would have more power in their individual vote because there are less people in their district to decide an issue or to pick a candidate. The above court cases essentially say that in this example, districts should be drawn in a way to include as close to 9 people in each district as possible. This means that each person in those districts would roughly have the same amount of voting power because there are no more or no less people in those districts to decide any one issue or to vote for a candidate.

The above example is over-simplified because in the real world, it is more difficult than to just move an exact number of people into each voting district, and there are usually more than 18 people involved. The Supreme Court recognizes these difficulties and allows a certain amount of deviation between voting districts. U.S. Const. art. I, § 2, cl. 1; *see Reynolds*, 377 U.S. 533 (1964); *see also Wesberry*, 376 U.S. 368 (1963). The general rule is that voting districts may not deviate more than 10% of the population of any other voting district within that city. *Brown v. Thomson*, 462 U.S. 835, 842 (1983). *See also White* v. *Regester*, 412 U.S. 755, 763-764 (1975) (*citing Reynolds*, U.S. 533 at 579). The permitted population for each district is + or – 5 % of the total population for the city divided by the number of voting districts. In other words, the difference between voting districts should fall in the + or – 5 % of the ideal population for each district. For a more complete examination on legal issues, *see* Nathaniel Persily, *The Law of the Census: How to Count, What to Count, Whom to Count, and Where to Count Them*, 32-3 Cardozo L. Rev. 755, 774-782 (2011). The population normally used to determine the ideal population is based on the total population (i.e. the number of people within a district) and not a certain population based on race, ethnicity, or eligibility to vote. *Lepak* v. *City of Irving*, 3:10-cv-00277-P (N.D. Tex. Sept. 27, 2010).

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[3] A political subdivision governed by a body elected from single-member districts may recognize and act on tabulations of population of a federal decennial census, for redistricting purposes, on or after the date the governor receives a report of the basic tabulations of population from the secretary of commerce under 13 U.S.C. Section 141(c). This subsection does not apply to a political subdivision that was not subject to a statute requiring certain political subdivisions, classified by population, to elect their governing bodies from single-member districts under the preceding federal census. *See* Texas Government Code § 2058.002.

In *Burns v. Richardson*, 384 U.S. 73, 91 (1966) the Court stated in no "decision has this Court suggested that the States are required to include aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of crime in the apportionment base by which their legislators are distributed and against which compliance with the Equal Protection Clause is to be measured." *Id.* at 92. When a city redistricts, it may deduct certain groups of people, such as prisoners, children, immigrants and other non-voters, from their calculation of the total population of the City. Various political subdivisions treat these groups differently. Some communities, for example, may exclude inmates from their district calculations.

With regard to the exclusion of children or other non-voters based on age, arguments have been made, however, that total population should be used for redistricting because the exclusion of persons based on age would adversely affect minorities. *See Chen* v. *City of Houston*, 206 F.3d 502 (2000), *cert. denied*, 532 U.S. 1046 (2000); *cf. Teuber* v. *State of Texas*, Case 4:11-cv-00059 (2011) (filed on February 10, 2011, where plaintiffs are alleging that the counting of undocumented immigrants in political districts illegally and unfairly affects voters in districts with smaller numbers of non-citizens. The plaintiffs are requesting that Texas count citizens only for the purpose of drawing new boundaries.)

Q: What and where information or data is available for redistricting?

A: Population, geographic, and election data is available on the web.

The Texas Legislative Council (TLC) collects and prepares data to be used for redistricting. The sources of this data, and the methodology used by the council to link the various types of data used in the redistricting database are referenced on their website at www.tlc.state.tx.us/redist/publications.html. The data is presented in three sections: population data, geographic data, and election data. The source data for the TLC site is the U.S. Census.

The U.S. Census provides redistricting data to each state of the state's entire population, as well as data on the voting age population (18 years and older) and citizenship data. This file also includes a racial breakdown of all persons for the total population and the population of persons 18 and over.[4] The data also includes geographic data and voting precincts. This information is needed in the redistricting process when your individual city is drawing its voter districts in order to comply with the VRA and to protect minority communities that may share common interests.

Generally any city or county that has a an engineering or planning department or a GIS specialist should be able to access and manipulate the census data necessary to evaluate their voting districts and draft and implement a redistricting plan.

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[4]*See generally* www2.census.gov/census_2020/01-Redistricting_File---PL_94-171/Texas/; www.census.gov/geo/www/tiger/tgrshp2010/release)schedule.html; and www.census.gov/geo/www/maps/p/10_mmap_suite/st58_cou_block.html.

Q: How does a city redistrict?

A: "Anyway you want to, anyway you've got to[5]."

A city should establish a framework to guide its redistricting and assist in its efforts to comply with applicable federal and state statutes. The first step is invariably to determine whether redistricting is necessary either due to the one man one vote rule or to minimize risk of suit under the VRA. In order to make a determination the city must collect the population information for the current voting districts. The city may use GIS mapping and software programs to analyze the data available to it through the U.S. Census.

If the governing body determines that redistricting is necessary, then the framework should expand to include timelines for completion of the redistricting process, the preparation of maps used in redistricting process, the preparation of one or more possible redistricting plans, public input and hearings on those plans, the placement of election boxes, the application for preclearance for AG approval, and the implementation of the redistricting plan. A redistricting plan must be adopted at least three months before an election. *See* Texas Local Government Code § 276.006 (a change in a boundary of a territorial unit of a political subdivision other than a county from which an office of the political subdivision is elected is not effective for an election unless the date of the order or other action adopting the boundary change in more than three months before election date).

Persons typically involved in the process may include, in addition to one or more members of the governing body, the election coordinator/voter registrar of the city, an engineer/planner or other person comfortable with GIS, and/or legal counsel.

Since any submission to the AG will require documentation of public input, a city should consider recording and transcribing meetings. A city should document the redistricting discussions, information and process.

The framework for redistricting may include general criteria to be used for redrawing district lines. General guidelines that may be used in redrawing district boundaries include *following existing boundary lines; *following other city's boundary lines; *following natural or artificial boundaries (Texas Election Code § 42.063); *following survey lines (*Id.*); or *following other identifiable and easy to describe boundary lines. It is recommended that the voting districts created be easy for citizens to identify and convenient to where they vote in their voting district. *See also* 76 Fed.Reg. 7471 (Feb. 9 2011). The city should consider artificial boundary lines (i.e., freeways, railroads and streets) and make the same considerations as it would for natural boundaries. (i.e. creeks and rivers). A city should consider avoiding splits of neighborhoods and maintaining other communities of interest. The city should consider always attempt to adopt voting districts of approximately equal size, that that are compact and contiguous. *See Id.*; Texas Local Government Code § 26.004(e) (districts must be compact and contiguous and as equal as practicable in population). If a city budgets funds (such as street funds)

[5] Apologies to Journey.

by district, then the city may want to consider putting the same amount of streets in each district.

It recommended that districts not be created to force people to new polling locations or to drive past a polling location to get to another polling location. Although a city may consider current office holders and try to avoid drawing them out of their current district, the final plan must satisfy the one-man one-vote and non-discrimination guidelines. *See Cox v. Larios*, 542 U.S. 947, 949 (2004) (Stevens, J., concurring) (holding that the drafters' of Georgia's legislative reapportionment plans for violated the one-person, one-vote principle of the Equal Protection Clause by intentionally drawing the districts in a way to allow incumbents to maintain their districts).

Finally, county election precincts are the building blocks of a redistricting plan. Each county commissioners court divides the county into county election precincts. Texas Election Code § 42.001. Generally election precincts must contain at least 100 but not more than 5,000 registered voters. *Id.*, § 42.006(a).[6] For a City over 10,000, a county election precinct may not contain more than one single-member district. Texas Election Code § 42.005(a)(6). As a practical matter, any difference in district lines between a city and county (or other political subdivision) must be filled by an election precinct. A political subdivision other than a county may establish election precincts for elections ordered by it, but an election precinct established for an election ordered by a city may not divide a county election precinct except as necessary to follow the city's boundary. Texas Election Code § 42.061. *Id.* §§ 42.005, .0051, .010

Q: Do politics play a role in redistricting?

A. It is a political process.

Factors that may affect the proposed district boundaries are occasionally political and often unexpected. More than one councilmember has urged a boundary drawn so that her parents could vote for her, or so that he would not have to listen to the complaints of a certain well-known citizen.

Q: Who approves a city's redistricting plan?

A: The city's governing body.

Each political subdivision must adopt its own redistricting plan.

A city's redistricting plan and voting districts must comply with the Voting Rights Act ("VRA"), and this compliance is enforced through litigation. 42 U.S.C. § 1973. The VRA was adopted in 1965 and extended in 1970, 1975, 1982, and by the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006. The VRA codifies the 15th Amendment's guarantee that no

[6] For counties less than 100,000 population, election precincts must contain 50 registered voters; for counties less than 50,000 voters may petition election precincts as small as 25 registered voters.

person shall be denied the right to vote on account of race or color. There are two important pieces of the VRA: Section 2 applies to every political subdivision in the United States, has no expiration date, and seeks to prohibit election–related practices and procedures that are intentionally racially discriminatory and also those that are shown to have a racially discriminatory impact. Section 2 applies to redistricting plans, at-large election systems, poll worker hiring, and voter registration procedures that discriminate on the basis of race, color, or membership in a language minority group. *See* 42 U.S.C. § 1973. The Attorney General, as well as affected private citizens, may bring suit under Section 2 to obtain court-ordered remedies for Section 2 violations.

Section 5 of the VRA applies only to certain political subdivisions, or "Covered Jurisdictions," and remains in affect until 2031. Section 5 freezes changes in election practices or procedures in the Covered Jurisdictions until the new procedures have been determined to have neither a discriminatory purpose nor effect. 42 U.S.C. § 1973c. This determination can be done after an administrative review by the United States Attorney General (the "AG"), or after a lawsuit before the United States District Court for the District of Columbia. If the proposed change to the election practices or procedures is not shown to be free of the purpose and the effect of discrimination, the AG may block implementation of the change by an objection.

The AG and private individuals that have standing may bring a Section 5 enforcement action against a Covered Jurisdiction to obtain an injunction against the use of a change affecting voting that has not been reviewed under Section 5. These cases are brought in the appropriate United States District Court in which the Section 5 violation is alleged to have occurred. The VRA requires that Section 5 enforcement actions and declaratory judgment actions under Sections 5 be heard and decided a by three-judge court. These courts are typically composed of two United States District Court judges and one United States Court of Appeals judge. Appeals from these courts go directly to the United States Supreme Court. In 2009, the City of Irving settled a lawsuit involving voter rights, costing the city $200,000 in legal fees. *See* Super Lawyers, Texas Rising Stars, Demographics and the Fight for Equality, April 2010.

Prior to implementing a proposed redistricting plan, a city that is a Covered Jurisdiction must receive administrative preclearance from the AG or obtain a declaratory judgment from a three-judge district court in the District of Columbia. "[J]urisdictions should not regard a determination of compliance with Section 5 as preventing subsequent legal challenges to that plan under other statutes by the Department of Justice or by private plaintiffs." 76 Fed.Reg 7470; 42 U.S.C. § 1973c(a); 28 C.F.R. § 51.49 (2011). The Voting Rights Act, codified as 42 U.S.C. § 1973c, specifically Section 5, requires` all jurisdictions that are "covered jurisdictions," to "preclear" any changes to voting standards, practices, or procedures before they become legally effective. Texas is a "covered jurisdiction" as defined by Section 4 of the VRA. This means that all local governments in the state, as well as the State itself, are required to preclear any voting change, including any redistricting plans. If the AG interposes an objection on the city's redistricting plan, a jurisdiction can then choose to seek a declaratory judgment on its plan. The proceeding before the three-judge federal court is *de novo* and does not

constitute an appeal of the Attorney General's determination, although the Voting Section of the Department of Justice represents the defendant United States in these cases. *See* Civil Rights Division Section 5 resource guide.

Submitting the plan to the AG is cheaper and faster, and typically the way a city would seek preclearance of its redistricting plan. The AG may interpose an objection by informing the jurisdiction of the decision no later than 60 days after a redistricting plan or voting change has been submitted. Most voting changes submitted to the AG are determined to have met the Section 5 standard. In these cases, however, the AG issues a letter stating that the AG does not interpose an objection; the AG does not approve the submittal. Since Section 5 was enacted, the AG has objected to about one percent of the voting changes that have been submitted. Political groups and individuals may participate in the preclearance process by responding to Section 5 Submissions.

Q: What information must be provided to the AG to receive preclearance of a redistricting plan?

A: A city must submit the list of items that the AG requires, in electronic format.

The AG's regulations provide that a voting change should be submitted as soon as possible after final enactment. 28 C.F.R. § 51.21. The regulations require that each submission contain certain basic information such as the ordinance embodying the redistricting change, the name of the person making the submission, and the name of the submitting authority. 28 C.F.R. § 51.27. In addition to basic information required for all submissions, the city must submit for a redistricting (1) maps showing both the new and preexisting district boundaries; (2) demographic information showing the total population and voting-age population by race and language group; and (3) a statement of the anticipated effect of the redistricting plan on protected minority groups. 28 C.F.R. §§ 51.27 and 51.28 (2011).

In addition to the required information, the regulations strongly suggest that the initial submission include certain supplemental information. Failure to include this supplemental information may result in an unnecessary delay in obtaining preclearance if the AG determines that the information is needed and requests it at a later date. The supplemental information includes: (1) the number of registered voters by race and language group in each voting precinct; (2) detailed maps showing the location of voting precincts, protected minority groups, and any geographical features that influenced the selection of boundaries; (3) election returns and voter registration data relevant to the voting strength of protected minority groups; (4) evidence of public notice of and participation by the public in the redistricting process, including the extent of participation by protected minority groups; and (5) names of protected minority group members who are familiar with the new redistricting plan. 28 C.F.R. §§ 51.27(r), 51.28.

The AG regulations also provide specifications for the electronic submission of geographic, demographic, and election data. The 2011 amendments to the regulations

substantially revised these specifications. *See* Revision of Voting Rights Procedures, 76 Fed. Reg. 21,239, 21,244 - 21,246 (April 15, 2011).

Although there is no specific format required for a submission, it should include the information listed in 28 C.F.R. § 51.27 and any supplemental information listed in a notice on the AG's website. Ensuring that the information listed in 28 C.F.R. § 51.27 is provided in the original submission will likely reduce the need for someone in the AG's office to contact the city and seek further supplementation. Following these criteria will also likely increase the likelihood of an early determination on the submission.

A city must also be aware of certain circumstances that may prevent the AG from reviewing a submission of a city's redistricting plan. Those circumstances include:

- The AG will eject a submission that fails to provide documents or a narrative "adequate to disclose to the AG the difference between the prior and proposed situation with respect to voting." 28 C.F.R. §§ 51.26(d), 51.27(a)-(c) and 51.35.

- The AG will make no determination regarding a voting change that has not been finally adopted. The AG may nevertheless make a substantive determination with regard to a change for which approval by referendum or by a state or federal court or a federal agency is required if the change is not subject to alteration in the final approving action and all other action necessary for approval has been taken. 28 C.F.R. § 51.22.

- The AG will make no determination regarding a voting change that is directly related to another known covered voting change that has been already reviewed or submitted for review. For example, the AG will not review a districting plan if it is prompted by an unsubmitted change in the method of electing the jurisdiction's governing body, change in the number of elected officials, or annexations. Similarly, no determination will be made regarding an annexation if other unprecleared boundary changes in that jurisdiction have occurred.

Redistricting also affects other areas of the voting process such as: changes affecting voting precincts, polling places, and absentee voting locations. If changes to these portions of the voting process have been finalized, the city should submit them for Section 5 review with its redistricting submission. If, however, the related voting process has been changed by a jurisdiction other than the city, then that voting process change does not need to be adopted by the city making the original submission. For example, state legislation authorizing counties to adopt voting changes ("enabling legislation") requires review under Section 5. A city's implementation of the enabled change will not be reviewed under Section 5 if the enabling legislation has not been submitted for review or already reviewed.

A city should submit a change to the voting process as soon as possible after it has been adopted by city council. Even if the implementation is months away, the submission should be done as soon as possible to accommodate any unforeseen time constraints in receiving preclearance from the AG. To the extent procedural or substantive issues

prevent a determination on the merits occurring within the initial 60-day review period, a prompt submission may allow a sufficient opportunity to resolve such issues in time for the practice (or a revised one) to be implemented as originally anticipated.

Q: What standards are used in the preclearance evaluation?

A: The AG's preclearance approval is designed to protect minority rights.

Section 5 of the VRA ensures that any change to the voting district "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c(a). "There are two necessary components to the analysis of whether a proposed redistricting plan meets the Section 5 standard. The first is a determination that the jurisdiction has met its burden of establishing that the plan was adopted free of any discriminatory purpose. The second is a determination that the jurisdiction has met its burden of establishing that the proposed plan will not have a retrogressive effect." 76 Fed.Reg. 7470. The AG reviews plans to discourage retrogression; *i.e.*, ensure that proper voting boundaries will not adversely affect a protected class. In order for the AG to determine if retrogression exists, the AG uses a benchmark to see if minority voters are worse off under the proposed district boundary plan than the last plan that received preclearance. "The 'benchmark' against which a new plan is compared is the last legally enforceable redistricting plan in force or effect." *Riley* v. *Kennedy,* 553 U.S. 406 (2008); 28 C.F.R. § 51.54(b)(1). "When a jurisdiction has received Section 5 preclearance for a new redistricting plan, or a Federal court has drawn a new plan and ordered it into effect, that plan replaces the last legally enforceable plan as the Section 5 benchmark." *McDaniel* v. *Sanchez,* 452 U.S. 130 (1981); *Texas* v. *United States,* 785 F. Supp. 201 (D.D.C. 1992); *Mississippi* v. *Smith,* 541 F. Supp. 1329, 1333 (D.D.C. 1982), appeal dismissed, 461 U.S. 912 (1983). Typically, this is the district boundary plan currently in effect for the city. The proposed plan is then scrutinized using the most recent census population and demographic data, and by applying that information to the changes that are proposed to create the new plan. In adjusting voting district boundaries, if any retrogression from the benchmark plan has occurred, the burden will then be on the city to assure the AG that as little retrogression has occurred as is reasonably practicable.

RETROGRESSION TABLE: Retrogression Analysis: District 1
2010 Voting Age Population (VAP) Comparison
Present Configuration vs. Proposed District

Proposed Map #1, Table 1 Plan	Total VAP	Black VAP	Hispanic (All Races) VAP
Present District 1	62,245	4,306 (6.9%)	16,053 (25.8)
Proposed District 1	48,817	3,749 (7.7%)	14,155 (29.0%)
Change	+ 0.8%	+ 3.2%	

The AG has published guidance concerning its analysis of the retrogressive effect of proposed redistricting plans. 27 Fed.Reg. 7470. The assistant attorney general for the civil rights division has been delegated authority by the AG, pursuant to the authority

granted under Section 5 of the VRA, to issue an objection to a redistricting plan, to withdraw an objection previously issued to a redistricting plan, and to render all substantive decisions on a city's redistricting plan. On other matters regarding submissions received by the Assistant Attorney General regarding voting changes, the authority has been delegated to the Chief of the Voting Section. Once a city's submission is received, staff members in the Voting Section are assigned to analyze the proposed changes to a city's voting districts.

The nature and extent of that analysis often involves telephone interviews with persons representing or associated with the city and members of racial or language minority groups. The depth of analysis and investigation that is done into a city's redistricting plan is directly related to the changes the city is implementing (and the complaints received by AG). The voting section reviews any communication received from the public regarding pending submissions. Public comments on submissions may be received by e-mail by e-mailing the AG. The AG may also review submissions that are already on file at the AG for your city, as well as information available from the United States Census Bureau, the Internet, or other sources. Essentially, the AG can look at any information to review your submission and to choose whether or not to object to that submission.

After the city sends its original submission to the voting section, a 60-day review period begins. If during that period, the voting section determines that the information initially provided by the city, considered together with the information obtained during the voting sections investigation, is still insufficient to enable the AG to make a determination that the proposed change does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group, the voting section's general practice is to request additional information, in writing, from the city. When the voting section receives a complete response to the request for additional information, a new 60-day period begins for the AG to make the required determination on the redistricting plan. If the AG finds that all attempts for supplemental information and compliance by the city is unsatisfactory and the redistricting plan violates section 5 of the VRA, the AG will then file an objection to the redistricting plan. *See* Civil Rights Division Home page, www.justice.gov/crt/index.php

Q: What if a significant change has affected your city that causes retrogression?

A: The redistricting plan can still receive preclearance.

A significant change may have affected your city and now any plan for redistricting may cause retrogression. In this circumstance, the city seeking preclearance of such a plan bears the burden of demonstrating that a less retrogressive plan cannot be reasonably drawn.

Q: Can a city bail out of the AG's administrative preclearance process?

A: Maybe.

The Supreme Court, in *NAMUDNO,* held that any jurisdiction currently required to make Section 5 submissions, may seek to "bailout" from coverage, if it demonstrates that during the past ten years:

- No test or device has been used within the jurisdiction for the purpose or with the effect of voting discrimination;
- All changes affecting voting have been reviewed under Section 5 prior to their implementation;
- No change affecting voting has been the subject of an objection by the AG or the denial of a Section 5 declaratory judgment from the District of Columbia district court;
- There have been no adverse judgments in lawsuits alleging voting discrimination;
- There have been no consent decrees or agreements that resulted in the abandonment of a discriminatory voting practice;
- There are no pending lawsuits that allege voting discrimination; and
- Federal examiners have not been assigned; and
- There have been no violations of the Constitution or federal, state or local laws with respect to voting discrimination unless the jurisdiction establishes that any such violations were trivial, were promptly corrected, and were not repeated.

In *Northwest Austin Mun. Utility Dist. No. One v. Holder*, 129 S. Ct. 2504, 174 L.Ed.2d 140 (2009) ("NAMUDNO"); *See also* Section 2, VRA, Section 2(b) of Pub. L. 97-205 provided that the amendment made by that section is effective on and after Aug. 5, 1984.

The AG has consistent with NAMUDNO, created a mechanism for a city to receive a bailout. *See* 28 C.F.R. § 51.4. The AG is authorized to consent to an entry of judgment granting the "bailout" if AG concludes that the jurisdiction has complied with all of the below requirements. Prior to filing a petition for the bailout, the city submits a request to the AG with supporting documentation and evidence. When the AG receives this information, they will undertake an investigation to determine whether the AG would be willing to enter into a consent decree or would oppose the "bailout" petition. If the AG determines that consent to an entry of judgment is proper, the AG will work with the city to agree on the terms of the consent decree. This consent decree will then be filed with the "bailout" petition when the litigation is actually filed and with the entry of judgment granting the "bailout."

If a city seeks a bailout, then the city must publicize that they have started the process and any proposed settlement of the action. At that time, any aggrieved party may intervene in the litigation. A ten-year recapture period is required by the statute after the declaratory judgment is granted in the city's favor. During the recapture period, the district court may reopen proceedings if the City engages in any conduct that would have prevented the jurisdiction from being bailed out originally. If this happens, the district court will then

review the evidence and determine whether to reinstate coverage under Section 5 and again require the preclearance process.

Any jurisdiction seeking additional information concerning its eligibility to obtain the requisite declaratory judgment under Section 4 should contact the Voting Section, at 800/253-3931 or:

Chief, Voting Section
Civil Rights Division, Department of Justice
950 Pennsylvania Ave., N.W.
Room 7254 NWB
Washington, DC 20530

An attorney will then contact you to further discuss the matter.

Just because the city receives preclearance, it does not receive safe harbor from litigation.

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VOTING SECTION LITIGATION

Cases Raising Claims Under Section 2 of the Voting Rights Act *

- United States v. Town of Lake Park, FL, (S.D. Fla. 2009)
- United States v. Euclid City School District Board of Education, OH, (N.D. Ohio 2008)
- United States v. Salem County and the Borough of Penns Grove, NJ, (D.N.J. 2008)
- United States v. The School Board of Osceola County, FL, (M.D. Fla. 2008)
- United States v. Georgetown County School District, et al. SC, (D.S.C. 2008)
- United States v. City of Philadelphia, PA, (E.D. Pa. 2007)
- United States v. Village of Port Chester, NY, (S.D.N.Y. 2006)
- United States v. City of Euclid, et al. OH, (N.D. Ohio 2006)
- United States v. Long County, GA, (S.D. Ga. 2006)
- United States v. City of Boston, MA, (D. Mass. 2005)
- United States v. Osceola County, FL, (M.D. Fla 2005)
- United States v. Ike Brown and Noxubee County, MS, (S.D. Miss 2005)
- United States v. Berks County, PA, (E.D. Pa. 2003)
- United States v. Osceola County, FL, (M.D. Fl. 2002)
- United States v. Alamosa County, CO, (D. Colo. 2001)
- United States v. Crockett County, TN, (W.D. Tenn. 2001)
- United States v. Charleston County, SC, (D.S.C. 2001)
- United States v. City of Hamtramck, MI, (E.D. Mich. 2000)
- United States v. Upper San Gabriel Valley Municipal Water District, CA, (C.D. Cal. 2000)
- United States v. Morgan City, LA, (W.D. La. 2000)
- Grieg v. City of St. Martinville, LA, (W.D. La. 2000)
- United States v. City of Santa Paula, CA, (C.D. Cal. 2000)
- United States v. State of South Dakota, (D.S.C. 2000)
- United States v. Roosevelt County, MT, (D. Mont. 2000)
- United States v. Town of Cicero, IL, (N.D. Ill. 2000)
- United States v. Benson County, ND, (D.N.D. 2000)
- United States v. City of Passaic, NJ, (D.N.J. 1999)
- United States v. Blaine County, MT, (D. Mont. 1999)
- United States v. Marion County, GA, (M.D. Ga. 1999)
- United States v. Passaic City and Passaic Count, NJ (D.N.J. 1999)
- United States v. Day County and Enemy Swim Sanitary District, SD, (D.S.D. 1999)
- United States v. City of Lawrence, MA, (D. Mass. 1998)
- United States v. Cibola County, NM (D. N.M. 1993)
- United States v. Sandoval County, NM (D. N.M. 1988)

Cases Raising Claims Under Section 5 of the Voting Rights Act *

- United States v. City of Calera, AL (S.D. Ala. 2008)
- United States v. Waller County, TX (S.D. Tex. 2008)
- United States v. North Harris Montgomery Community College District, TX (S.D. Tex. 2006)

Cases Raising Claims Under Section11(b) of the Voting Rights Act *

- United States v. New Black Panther Party, PA, (E.D. Pa. 2009)
- United States v. Ike Brown and Noxubee County, MS, (S.D. Miss 2005)

Cases Raising Claims Under the Language Minority Provisions of the Voting Rights Act *

- United States v. Alameda County, CA, (N.D. Cal. 2011)
- United States and Cuyahoga County, Ohio, (N.D. Ohio 2010)
- United States v. Riverside County, CA (C.D. Cal. 2010)
- United States v. Fort Bend County, TX (S.D. Tex. 2009)
- United States v. Littlefield ISD, TX, (N.D. Tex. 2007)
- United States v. Salem County and the Borough of Penns Grove, NJ, (D.N.J. 2008)
- United States v. Kane County, IL, (N.D. Ill. 2007)
- United States v. Post ISD, TX, (N.D. Tex. 2007)
- United States v. Seagraves ISD, TX, (N.D. Tex. 2007)

GENERAL INFORMATION CIVIL RIGHTS DIVISION VOTING SECTION

CONTACT

You may contact the Voting Section at Voting.Section@usdoj.gov for general information concerning the Section's activities or to make a complaint concerning a voting matter. You may also use this address to request Voting Section records under the Freedom of Information Act. If you are making such a request, the phrase "Records request" should appear in the subject line.

You may use email if you want to provide your views on a submission that is being reviewed. Please click here to learn more.

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If you are an official from a submitting authority and need to **supplement** your initial submission, please click here.

For additional information, you may call 1-800-253-3931.

MAILING ADDRESS

All mail to the Voting Section must have the full address listed below:

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530

Deliveries by overnight express service such as Airborne, DHL, Federal Express or UPS should be addressed to:

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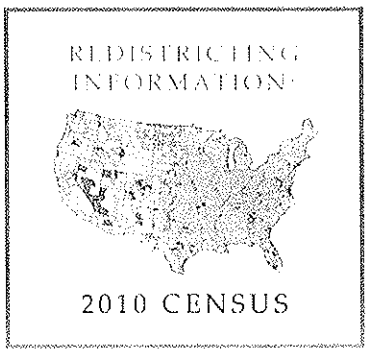
Civil Rights Division
Room 7254 - NWB
Department of Justice
1800 G St., N.W.
Washington, DC 20006



- United States v. Smyer ISD, TX, (N.D. Tex. 2007)
- United States v. City of Earth, TX, (N.D. Tex. 2007)
- United States v. Galveston County, TX, (S.D. Tex. 2007)
- United States v. City of Walnut, CA, (C.D. Cal. 2007)
- United States v. City of Philadelphia, PA, (E.D. Pa. 2006)
- United States v. City of Springfield, MA, (D. Mass. 2006)
- United States v. Brazos County, TX, (S.D. Tex. 2006)
- United States v. Cochise County, AZ, (D. Ariz. 2006)
- United States v. Hale County, TX, (N.D. Tex. 2006)
- United States v. Ector County, TX, (W.D. Tex. 2005)
- United States v. City of Boston, MA, (D. Mass. 2005)
- United States v. City of Azusa, CA (C.D. Cal. 2005)
- United States v. City of Paramount, CA (C.D. Cal. 2005)
- United States v. City of Rosemead, CA (C.D. Cal. 2005)
- United States v. Westchester County, NY (S.D.N.Y.)
- United States v. Ventura County, CA (C.D. Cal. 2004)
- United States v. Yakima County, WA (E.D. Wash. 2004)
- United States v. Suffolk County, NY (E.D.N.Y. 2004)
- United States v. San Diego County, CA (S.D. Cal. 2004)
- United States v. San Benito County, CA (N.D. Cal. 2004)
- United States v. Brentwood Union Free School District, NY (E.D.N.Y. 2003)
- United States v. Berks County, PA (E.D. Pa. 2003)
- United States v. Orange County, FL (M.D. Fla. 2002)
- United States v. City of Lawrence, MA (D. Mass. 1998)
- United States v. Passaic City and Passaic County, NJ (D. N.J. 1999)
- United States v. Bernalillo County, NM (D. N.M. 1998)
- United States v. Alameda County, CA (N.D. Cal. 1995)
- United States v. Socorro County, NM (D. N.M. 1993)
- United States v. Cibola County, NM (D. N.M. 1993)
- United States v. Metropolitan Dade County, FL (S.D. Fla. 1993)
- United States v. State of Arizona (D. Ariz. 1988)
- United States v. State of New Mexico and Sandoval County, NM (D. N.M. 1988)
- United States v. McKinley County, NM (D. N.M. 1986)
- United States v. San Juan County, UT (D. Utah 1983)
- United States v. San Juan County, NM (D. N.M. 1979)
- United States v. City and County of San Francisco, CA (N.D. Cal. 1978)

Settlements Under the Language Minority Provisions of the Voting Rights Act *

- United States and Shannon County, South Dakota, April 23, 2010
- United States and the Commonwealth of Massachusetts (on behalf of the City of Worcester, MA), September 22, 2008

Cases Raising Claims Under Section 208 of the Voting Rights Act *

- United States v. Fort Bend County, TX (S.D. Tex. 2009)
- United States v. Salem County and the Borough of Penns Grove, NJ, (D.N.J. 2008)
- United States v. Kane County, IL, (N.D. Ill. 2007)
- United States v. City of Philadelphia, PA, (E.D. Pa. 2006)
- United States v. City of Springfield, MA, (D. Mass. 2006)
- United States v. Brazos County, TX, (S.D. Tex. 2006)
- United States v. Hale County, TX (N.D. Tex. 2006)
- United States v. Berks County, PA (E.D. Pa. 2003)
- United States v. Orange County, FL (S.D. Fla. 2002)
- United States v. Miami-Dade County, FL (S.D. Fla. 2002)
- United States v. Osceola County, FL (M.D. Fla. 2002)
- United States v. Passaic County, NJ, (D.N.J. 1999) Complaint Consent Decree

Cases Raising Claims Under The National Voter Registration Act *

- United States v. State of Louisiana, (M.D. La. 2011)
- United States v. State of Rhode Island, (D.R.I. 2011)
- United States v. Cibola County, NM, (D.N.M. 2007)
- United States v. City of Philadelphia, PA, (E.D. Pa. 2007)
- United States v. State of New Jersey (D. N.J. 2006)
- United States v. State of Maine, (D. Me. 2006)
- United States v. State of Indiana, (S.D. Ind. 2006)
- United States v. State of Missouri, (W.D. Mo. 2005)
- United States v. Pulaski County, AR, (E.D. Ark. 2004)
- United States v. State of New York, (N.D.N.Y. 2004)
- United States v. State of Tennessee, (M.D. Tenn. 2002)
- United States v. City of St. Louis, MO, (E.D. Mo. 2002)
- United States v. State of New York, (E.D.N.Y. 1996)
- United States v. State of Michigan, (W.D. Mich. 1995)
- Commonwealth of Virginia v. United States, (E.D. Va 1995)
- United States v. State of Mississippi, (S.D. Miss. 1995)
- United States v. Commonwealth of Pennsylvania, (E.D. Pa. 1995)
- United States v. State of Illinois, (N.D. Ill. 1995)
- Condon v. Reno, (D.S.C. 1995)

- Wilson v. United States, (N.D. Cal 1994)

Settlements Under The National Voter Registration Act *

- The United States and the State of Illinois, Department of Human Services, December 15, 2008.
- The United States and the Arizona Department of Economic Security, May 15, 2008.

Cases Raising Claims Under The Uniformed and Overseas Citizens Absentee Voting Act *

- U.S. v. State of Illinois, (N.D. Ill. 2010)
- U.S. v. State of New York, (N.D.N.Y. 2010)
- U.S. v. State of New Mexico, (D.N.M. 2010)
- U.S. v. Territory of Guam, (D. Guam 2010)
- U.S. v. State of Wisconsin, (W.D. Wis. 2010)
- U.S. v. State of New York, (N.D.N.Y. 2009)
- U.S. v. State of Alabama, (M.D. Ala. 2008)
- U.S. v. Commonwealth of Virginia, (E.D. Va. 2008)
- U.S. v. State of Vermont, (D. Vt. 2008)
- U.S. v. State of Tennessee, (M.D. Tenn. 2008)
- U.S. v. State of Connecticut, (D. Conn. 2006)
- U.S. v. State of North Carolina, (M.D.N.C. 2006)
- U.S. v. State of Alabama, (M.D. Ala. 2006)
- U.S. v. State of Georgia, (N.D. Ga. 2004)
- U.S. v. Commonwealth of Pennsylvania, (M.D. Pa. 2004)
- U.S. v. Oklahoma, (W.D. Okla. 2002)
- U.S. v. Texas, (W.D. Tex. 2002)
- U.S. v. State of Michigan, (W.D. Mich 2000)
- U.S. v. New York City Board of Elections, (S.D.N.Y. 1998)
- U.S. v. State of Oklahoma, (W.D. Okla. 1998)
- U.S. v. State of Mississippi, (S.D. Miss. 1996)
- U.S. v. Orr, (N.D. Ill. 1995)
- U.S. v. State of New Jersey, (D.N.J. 1994)
- U.S. v. State of Michigan, (W.D. Mich. 1993)
- U.S. v. New York City Board of Elections, (S.D.N.Y. 1992)
- U.S. v. State of Delaware, (D. Del. 1992)
- U.S. v. State of Michigan, (W.D. Mich. 1992)
- U.S. v. State of New Jersey, (D.N.J. 1992)
- U.S. v. State of Wisconsin, (W.D. Wis. 1992)
- U.S. v. State of Texas, (W.D. Tex. 1991)
- U.S. v. State of Tennessee, (M.D. Tenn. 1990)
- U.S. v. State of Colorado, (D. Colo. 1990)
- U.S. v. State of Tennessee, (M.D. Tenn. 1990)
- U.S. v. State of New Jersey, (D.N.J. 1990)
- U.S. v. State of Mississippi, (S.D. Miss. 1989)
- U.S. v. State of Oklahoma, (W.D. Okla. 1988)
- U.S. v. State of Wyoming, (D. Wyo. 1988, 1989)
- U.S. v. State of Michigan, (W.D. Mich. 1988)
- U.S. v. State of Idaho, (D. Idaho 1988)
- U.S. v. Commonwealth of Pennsylvania, (M.D. Pa. 1988)

Settlements Under The Uniformed and Overseas Citizens Absentee Voting Act *

- United States and the State of Kansas, October 15, 2010
- United States and the State of Mississippi, October 15, 2010
- United States and the State of North Dakota, October 8, 2010
- United States and the State of Nevada, October 4, 2010
- United States and the District of Columbia, September 17, 2010
- United States and the State of Colorado, September 16, 2010
- United States and the State of Hawaii, September 16, 2010
- United States and the State of Alaska, September 3, 2010
- United States and the Territory of the U.S. Virgin Islands, September 2, 2010
- United States and the Commonwealth of Massachusetts, October 22, 2008

Cases Raising Claims Under The Help America Vote Act (HAVA) *

- United States v. Fort Bend County, TX (S.D. Tex. 2009)
- United States v. Bolivar County, MS, (N.D. Miss. 2008)
- United States v. Galveston County, TX, (S.D. Tex. 2007)
- United States v. Cibola County, NM, (D.N.M. 2007)
- United States v. City of Philadelphia, PA, (E.D. Pa. 2007)
- United States v. State of New Jersey, (D. N.J. 2006)
- United States v. Cochise County, AZ, (D. Ariz. 2006)

- United States v. State of Maine (D. Me. 2006)
- United States v. State of Alabama (M.D. Ala. 2006)
- United States v. New York State Board of Elections (N.D. N.Y. 2006)
- United States v. Westchester County, NY (S.D. N.Y. 2005)
- United States v. San Benito County, CA (N.D. Cal 2004)

Settlements Under The Help America Vote Act *

- The United States and the State of California, November 2, 2005.

* Please note that some of these files are in pdf format only, if you have difficulty accessing the forms because of a disability, please contact the Voting Section at 1-800-253-3931 to receive a printed copy of the form.

DEPARTMENT OF JUSTICE

Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act; Notice

AGENCY: Office of the Assistant Attorney General, Civil Rights Division, Department of Justice.

ACTION: Notice.

SUMMARY: The Attorney General has delegated responsibility and authority for determinations under Section 5 of the Voting Rights Act to the Assistant Attorney General, Civil Rights Division, who finds that, in view of recent legislation and judicial decisions, it is appropriate to issue guidance concerning the review of redistricting plans submitted to the Attorney General for review pursuant to Section 5 of the Voting Rights Act.

FOR FURTHER INFORMATION CONTACT: T. Christian Herren, Jr., Chief, Voting Section, Civil Rights Division, United States Department of Justice, Washington, DC 20530, (202) 514–1416.

SUPPLEMENTARY INFORMATION: Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, requires jurisdictions identified in Section 4 of the Act to obtain a determination from either the Attorney General or the United States District Court for the District of Columbia that any change affecting voting which they seek to enforce does not have a discriminatory purpose and will not have a discriminatory effect.

Beginning in 2011, these covered jurisdictions will begin to seek review under Section 5 of the Voting Rights Act of redistricting plans based on the 2010 Census. Based on past experience, the overwhelming majority of the covered jurisdictions will submit their redistricting plans to the Attorney General. This guidance is not legally binding; rather, it is intended only to provide assistance to jurisdictions covered by the preclearance requirements of Section 5.

Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c

Following release of the 2010 Census data, the Department of Justice expects to receive several thousand submissions of redistricting plans for review pursuant to Section 5 of the Voting Rights Act. The Civil Rights Division has received numerous requests for guidance similar to that it issued prior to the 2000 Census redistricting cycle concerning the procedures and standards that will be applied during review of these redistricting plans. 67 FR 5411 (January 18, 2001). In addition, in 2006, Congress reauthorized the Section 5 review requirement and refined its definition of some substantive standards for compliance with Section 5. In view of these developments, issuing revised guidance is appropriate.

The "Procedures for the Administration of Section 5 of the Voting Rights Act," 28 CFR Part 51, provide detailed information about the Section 5 review process. Copies of these Procedures are available upon request and through the Voting Section Web site (*http://www.usdoj.gov/crt/voting*). This document is meant to provide additional guidance with regard to current issues of interest. Citations to judicial decisions are provided to assist the reader but are not intended to be comprehensive. The following discussion provides supplemental guidance concerning the following topics:

- The Scope of Section 5 Review;
- The Section 5 Benchmark;
- Analysis of Plans (discriminatory purpose and retrogressive effect);
- Alternatives to Retrogressive Plans; and
- Use of 2010 Census Data.

The Scope of Section 5 Review

Under Section 5, a covered jurisdiction has the burden of establishing that a proposed redistricting plan "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in [Section 4(f)(2) of the Act]" (i.e., membership in a language minority group defined in the Act). 42 U.S.C 1973c(a). A plan has a discriminatory effect under the statute if, when compared to the benchmark plan, the submitting jurisdiction cannot establish that it does not result in a "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer* v. *United States*, 425 U.S. 125, 141 (1976).

If the proposed redistricting plan is submitted to the Department of Justice for administrative review, and the Attorney General determines that the jurisdiction has failed to show the absence of any discriminatory purpose or retrogressive effect of denying or abridging the right to vote on account of race, color or membership in a language minority group defined in the Act, the Attorney General will interpose an objection. If, in the alternative, the jurisdiction seeks a declaratory judgment from the United States District Court for the District of Columbia, that court will utilize the identical standard to determine whether to grant the request; i.e., whether the jurisdiction has established that the plan is free from discriminatory purpose or retrogressive effect. Absent administrative preclearance from the Attorney General or a successful declaratory judgment action in the district court, the jurisdiction may not implement its proposed redistricting plan.

The Attorney General may not interpose an objection to a redistricting plan on the grounds that it violates the one-person one-vote principle, on the grounds that it violates *Shaw* v. *Reno*, 509 U.S. 630 (1993), or on the grounds that it violates Section 2 of the Voting Rights Act. The same standard applies in a declaratory judgment action. Therefore, jurisdictions should not regard a determination of compliance with Section 5 as preventing subsequent legal challenges to that plan under other statutes by the Department of Justice or by private plaintiffs. 42 U.S.C. 1973c(a); 28 CFR 51.49.

The Section 5 "Benchmark"

As noted, under Section 5, a jurisdiction's proposed redistricting plan is compared to the "benchmark" plan to determine whether the use of the new plan would result in a retrogressive effect. The "benchmark" against which a new plan is compared is the last legally enforceable redistricting plan in force or effect. *Riley* v. *Kennedy*, 553 U.S. 406 (2008); 28 CFR 51.54(b)(1). Generally, the most recent plan to have received Section 5 preclearance or to have been drawn by a Federal court is the last legally enforceable redistricting plan for Section 5 purposes. When a jurisdiction has received Section 5 preclearance for a new redistricting plan, or a Federal court has drawn a new plan and ordered it into effect, that plan replaces the last legally enforceable plan as the Section 5 benchmark. *McDaniel* v. *Sanchez*, 452 U.S. 130 (1981); *Texas* v. *United States*, 785 F. Supp. 201 (D.D.C. 1992); *Mississippi* v. *Smith*, 541 F. Supp. 1329, 1333 (D.D.C. 1982), appeal dismissed, 461 U.S. 912 (1983).

A plan found to be unconstitutional by a Federal court under the principles of *Shaw* v. *Reno* and its progeny cannot serve as the Section 5 benchmark, *Abrams* v. *Johnson*, 521 U.S. 74 (1997), and in such circumstances, the benchmark for Section 5 purposes will be the last legally enforceable plan predating the unconstitutional plan. Absent such a finding of unconstitutionality under *Shaw* by a Federal court, the last legally enforceable plan will serve as the benchmark for Section 5 review. Therefore, the question of whether the

benchmark plan is constitutional will not be considered during the Department's Section 5 review.

Analysis of Plans

As noted above, there are two necessary components to the analysis of whether a proposed redistricting plan meets the Section 5 standard. The first is a determination that the jurisdiction has met its burden of establishing that the plan was adopted free of any discriminatory purpose. The second is a determination that the jurisdiction has met its burden of establishing that the proposed plan will not have a retrogressive effect.

Discriminatory Purpose

Section 5 precludes implementation of a change affecting voting that has the purpose of denying or abridging the right to vote on account of race or color, or membership in a language minority group defined in the Act. The 2006 amendments provide that the term "purpose" in Section 5 includes "any discriminatory purpose," and is not limited to a purpose to retrogress, as was the case after the Supreme Court's decision in *Reno* v. *Bossier Parish* ("*Bossier II*), 528 U.S. 320 (2000). The Department will examine the circumstances surrounding the submitting authority's adoption of a submitted voting change, such as a redistricting plan, to determine whether direct or circumstantial evidence exists of any discriminatory purpose of denying or abridging the right to vote on account of race or color, or membership in a language minority group defined in the Act.

Direct evidence detailing a discriminatory purpose may be gleaned from the public statements of members of the adopting body or others who may have played a significant role in the process. *Busbee* v. *Smith*, 549 F. Supp. 494, 508 (D.D.C. 1982), *aff'd*, 459 U.S. 1166 (1983). The Department will also evaluate whether there are instances where the invidious element may be missing, but the underlying motivation is nonetheless intentionally discriminatory. In the *Garza* case, Judge Kozinski provided the clearest example:

> Assume you are an anglo homeowner who lives in an all-white neighborhood. Suppose, also, that you harbor no ill feelings toward minorities. Suppose further, however, that some of your neighbors persuade you that having an integrated neighborhood would lower property values and that you stand to lose a lot of money on your home. On the basis of that belief, you join a pact not to sell your house to minorities. Have you engaged in intentional racial and ethnic discrimination? Of course you have. Your personal feelings toward minorities don't matter; what matters is that you intentionally took actions calculated to keep them out of your neighborhood.

Garza and United States v. *County of Los Angeles*, 918 F.2d 763, 778 n.1 (9th Cir. 1990) (Kozinski, J., concurring and dissenting in part), *cert. denied*, 498 U.S. 1028 (1991).

In determining whether there is sufficient circumstantial evidence to conclude that the jurisdiction has not established the absence of the prohibited discriminatory purpose, the Attorney General will be guided by the Supreme Court's illustrative, but not exhaustive, list of those "subjects for proper inquiry in determining whether racially discriminatory intent existed," outlined in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 268 (1977). In that case, the Court, noting that such an undertaking presupposes a "sensitive inquiry," identified certain areas to be reviewed in making this determination: (1) The impact of the decision; (2) the historical background of the decision, particularly if it reveals a series of decisions undertaken with discriminatory intent; (3) the sequence of events leading up to the decision; (4) whether the challenged decision departs, either procedurally or substantively, from the normal practice; and (5) contemporaneous statements and viewpoints held by the decision-makers. *Id.* at 266–68.

The single fact that a jurisdiction's proposed redistricting plan does not contain the maximum possible number of districts in which minority group members are a majority of the population or have the ability to elect candidates of choice to office, does not mandate that the Attorney General interpose an objection based on a failure to demonstrate the absence of a discriminatory purpose. Rather, the Attorney General will base the determination on a review of the plan in its entirety.

Retrogressive Effect

An analysis of whether the jurisdiction has met its burden of establishing that the proposed plan would not result in a discriminatory or "retrogressive" effect starts with a basic comparison of the benchmark and proposed plans at issue, using updated census data in each. Thus, the Voting Section staff loads the boundaries of the benchmark and proposed plans into the Civil Rights Division's geographic information system [GIS]. Population data are then calculated for each district in the benchmark and the proposed plans using the most recent decennial census data.

A proposed plan is retrogressive under Section 5 if its net effect would be to reduce minority voters' "effective exercise of the electoral franchise" when compared to the benchmark plan. *Beer* v. *United States* at 141. In 2006, Congress clarified that this means the jurisdiction must establish that its proposed redistricting plan will not have the effect of "diminishing the ability of any citizens of the United States" because of race, color, or membership in a language minority group defined in the Act, "to elect their preferred candidate of choice." 42 U.S.C. 1973c(b) & (d). In analyzing redistricting plans, the Department will follow the congressional directive of ensuring that the ability of such citizens to elect their preferred candidates of choice is protected. That ability to elect either exists or it does not in any particular circumstance.

In determining whether the ability to elect exists in the benchmark plan and whether it continues in the proposed plan, the Attorney General does not rely on any predetermined or fixed demographic percentages at any point in the assessment. Rather, in the Department's view, this determination requires a functional analysis of the electoral behavior within the particular jurisdiction or election district. As noted above, census data alone may not provide sufficient indicia of electoral behavior to make the requisite determination. Circumstances, such as differing rates of electoral participation within discrete portions of a population, may impact on the ability of voters to elect candidates of choice, even if the overall demographic data show no significant change.

Although comparison of the census population of districts in the benchmark and proposed plans is the important starting point of any Section 5 analysis, additional demographic and election data in the submission is often helpful in making the requisite Section 5 determination. 28 CFR 51.28(a). For example, census population data may not reflect significant differences in group voting behavior. Therefore, election history and voting patterns within the jurisdiction, voter registration and turnout information, and other similar information are very important to an assessment of the actual effect of a redistricting plan.

The Section 5 Procedures contain the factors that the courts have considered in deciding whether or not a redistricting plan complies with Section 5. These factors include whether minority voting strength is reduced by the proposed redistricting; whether minority concentrations are fragmented

among different districts; whether minorities are overconcentrated in one or more districts; whether alternative plans satisfying the jurisdiction's legitimate governmental interests exist, and whether they were considered; whether the proposed plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries; and, whether the plan is inconsistent with the jurisdiction's stated redistricting standards. 28 CFR 51.56–59.

Alternatives to Retrogressive Plans

There may be circumstances in which the jurisdiction asserts that, because of shifts in population or other significant changes since the last redistricting (*e.g.*, residential segregation and demographic distribution of the population within the jurisdiction, the physical geography of the jurisdiction, the jurisdiction's historical redistricting practices, political boundaries, such as cities or counties, and/or state redistricting requirements), retrogression is unavoidable. In those circumstances, the submitting jurisdiction seeking preclearance of such a plan bears the burden of demonstrating that a less-retrogressive plan cannot reasonably be drawn.

In considering whether less-retrogressive alternative plans are available, the Department of Justice looks to plans that were actually considered or drawn by the submitting jurisdiction, as well as alternative plans presented or made known to the submitting jurisdiction by interested citizens or others. In addition, the Department may develop illustrative alternative plans for use in its analysis, taking into consideration the jurisdiction's redistricting principles. If it is determined that a reasonable alternative plan exists that is non-retrogressive or less retrogressive than the submitted plan, the Attorney General will interpose an objection.

Preventing retrogression under Section 5 does not require jurisdictions to violate the one-person, one-vote principle. 52 FR 488 (Jan. 6, 1987). Similarly, preventing retrogression under Section 5 does not require jurisdictions to violate *Shaw* v. *Reno* and related cases.

The one-person, one-vote issue arises most commonly where substantial demographic changes have occurred in some, but not all, parts of a jurisdiction. Generally, a plan for congressional redistricting that would require a greater overall population deviation than the submitted plan is not considered a reasonable alternative by the Department. For state legislative and local redistricting, a plan that would require significantly greater overall population deviations is not considered a reasonable alternative.

In assessing whether a less retrogressive plan can reasonably be drawn, the geographic compactness of a jurisdiction's minority population will be a factor in the Department's analysis. This analysis will include a review of the submitting jurisdiction's historical redistricting practices and district configurations to determine whether the alternative plan would (a) abandon those practices and (b) require highly unusual features to link together widely separated minority concentrations.

At the same time, compliance with Section 5 of the Voting Rights Act may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria. For example, criteria that require the jurisdiction to make the least possible change to existing district boundaries, to follow county, city, or precinct boundaries, protect incumbents, preserve partisan balance, or in some cases, require a certain level of compactness of district boundaries may need to give way to some degree to avoid retrogression. In evaluating alternative or illustrative plans, the Department of Justice relies upon plans that make the least departure from a jurisdiction's stated redistricting criteria needed to prevent retrogression.

The Use of 2010 Census Data

The most current population data are used to measure both the benchmark plan and the proposed redistricting plan. 28 CFR 51.54(b)(2) (Department of Justice considers "the conditions existing at the time of the submission."); *City of Rome* v. *United States*, 446 U.S. 156, 186 (1980) ("most current available population data" to be used for measuring effect of annexations); *Reno* v. *Bossier Parish School Board*, 528 U.S. 320, 334 (2000) ("the baseline is the status quo that is proposed to be changed: If the change 'abridges the right to vote' relative to the status quo, preclearance is denied * * *.").

For redistricting after the 2010 Census, the Department of Justice will, consistent with past practice, evaluate redistricting submissions using the 2010 Census population data released by the Bureau of the Census for redistricting pursuant to Public Law 94–171, 13 U.S.C. 141(c). Thus, our analysis of the proposed redistricting plans includes a review and assessment of the Public Law 94–171 population data, even if those data are not included in the submission or were not used by the jurisdiction in drawing the plan. The failure to use the Public Law 94–171 population data in redistricting does not, by itself, constitute a reason for interposing an objection. However, unless other population data used can be shown to be more accurate and reliable than the Public Law 94–171 data, the Attorney General will consider the Public Law 94–171 data to measure the total population and voting age population within a jurisdiction for purposes of its Section 5 analysis.

As in 2000, the 2010 Census Public Law 94–171 data will include counts of persons who have identified themselves as members of more than one racial category. This reflects the October 30, 1997, decision by the Office of Management and Budget [OMB] to incorporate multiple-race reporting into the Federal statistical system. 62 FR 58782–58790. Likewise, on March 9, 2000, OMB issued Bulletin No. 00–02 addressing "Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Enforcement." Part II of that Bulletin describes how such census responses will be allocated by Federal executive agencies for use in civil rights monitoring and enforcement.

The Department will follow both aggregation methods defined in Part II of the Bulletin. The Department's initial review of a plan will be based upon allocating any multiple-item response that includes white and one of the five other race categories identified in the response. Thus, the total numbers for "Black/African American," "Asian," "American Indian/Alaska Native," "Native Hawaiian or Other Pacific Islander" and "Some other race" reflect the total of the single-race responses and the multiple responses in which an individual selected a minority race and white race.

The Department will then move to the second step in its application of the census data to the plan by reviewing the other multiple-race category, which is comprised of all multiple-race responses consisting of more than one minority race. Where there are significant numbers of such responses, we will, as required by both the OMB guidance and judicial opinions, allocate these responses on an iterative basis to each of the component single-race categories for analysis. *Georgia* v. *Ashcroft*, 539 U.S. 461, 473, n.1 (2003).

As in the past, the Department will analyze Latino voters as a separate group for purposes of enforcement of the Voting Rights Act. If there are significant numbers of responses which

report Latino and one or more minority races (for example, Latinos who list their race as Black/African-American), those responses will be allocated alternatively to the Latino category and the minority race category.

Dated: February 3, 2011.

Thomas E. Perez,

Assistant Attorney General, Civil Rights Division.

[FR Doc. 2011–2797 Filed 2–8–11; 8:45 am]

BILLING CODE 4410–13–P

(1) The sale, distribution, and use of this device are restricted to prescription use in accordance with § 801.109 of this chapter.

(2) The labeling must include specific instructions regarding the proper placement and use of the device.

(3) The device must be demonstrated to be biocompatible.

(4) Mechanical bench testing of material strength must demonstrate that the device will withstand forces encountered during use.

(5) Safety and effectiveness data must demonstrate that the device prevents hemorrhoids in women undergoing spontaneous vaginal delivery, in addition to general controls.

Dated: April 11, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–9141 Filed 4–14–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF JUSTICE

28 CFR Parts 0 and 51

[CRT Docket No. 120; AG Order No. 3262–2011]

Revision of Voting Rights Procedures

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Final rule.

SUMMARY: The Attorney General finds it necessary to revise the Department of Justice's "Procedures for the Administration of section 5 of the Voting Rights Act of 1965." The revisions are needed to clarify the scope of section 5 review based on recent amendments to section 5, make technical clarifications and updates, and provide better guidance to covered jurisdictions and interested members of the public concerning current Department practices. Proposed revised Procedures were published for comment on June 11, 2010, and a 60-day comment period was provided.

DATES: The rule will be effective on April 15, 2011.

FOR FURTHER INFORMATION CONTACT: T. Christian Herren, Jr., Chief, Voting Section, Civil Rights Division, United States Department of Justice, Room 7254–NWB, 950 Pennsylvania Avenue, NW., Washington, DC 20530, or by telephone at (800) 253–3931.

SUPPLEMENTARY INFORMATION:

Discussion

Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, requires certain jurisdictions (listed in the Appendix) to obtain "preclearance" from either the United States District Court for the District of Columbia or the United States Attorney General before implementing any new standard, practice, or procedure that affects voting.

Procedures for the Attorney General's Administration of section 5 were first published in 1971. Proposed Procedures were published for comment on May 28, 1971 (36 FR 9781), and the final Procedures were published on September 10, 1971 (36 FR 18186). As a result of the Department's experience under the 1971 Procedures, changes mandated by the 1975 Amendments to the Voting Rights Act, and interpretations of section 5 contained in judicial decisions, proposed revised Procedures were published for comment on March 21, 1980 (45 FR 18890), and final revised Procedures were published on January 5, 1981 (46 FR 870) (corrected at 46 FR 9571, Jan. 29, 1981). As a result of further experience under the 1981 Procedures, specifically with respect to redistricting plans adopted following the 1980 Census, changes mandated by the 1982 Amendments to the Voting Rights Act, and judicial decisions in cases involving section 5, revised Procedures were published for comment on May 6, 1985 (50 FR 19122), and final revised Procedures were published on January 6, 1987 (52 FR 486).

In the twenty-four years since the previous revisions became final, the Attorney General has had further experience in the consideration of voting changes; the courts have issued a number of important decisions in cases involving section 5, and Congress enacted the 2006 amendments to the Voting Rights Act. This new revision reflects these developments.

Comments

In response to the Notice of Proposed Rulemaking ("Notice") published on June 11, 2010 (75 FR 33205), we received comments from or on behalf of two national public interest organizations, one research and educational institution, one national political organization composed of attorneys, and one individual. All comments received are available for inspection and copying at www.regulations.gov and at the Voting Section, Civil Rights Division, Department of Justice, Washington DC 20530.

The comments received expressed diverse views and were of great assistance in the preparation of these final revisions to the Procedures. The final revised Procedures reflect our consideration of the comments as well as further consideration of sections or topics that were not the subject of comments.

Section 51.2 Definitions

The purpose of the revision to the definition of "change affecting voting" or "change" is to clarify the definition of the benchmark standard, practice, or procedure. One commenter recommended we revise this section to reflect that the benchmark is the standard, practice, or procedure in force or effect at the time of the submission or the last legally enforceable standard, practice, or procedure in force or effect in the jurisdiction. We have concluded that no further revision of this section is warranted. The Voting Section's practice is to compare the proposed standard, practice, or procedure to the benchmark. Generally, the benchmark is the standard, practice, or procedure that has been: (1) Unchanged since the jurisdiction's coverage date; or (2) if changed since that date, found to comply with section 5 and "in force or effect." *Riley* v. *Kennedy,* 553 U.S. 406, 421 (2008); Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 CFR 51.54. Where there is an unsubmitted intervening change, the Attorney General will make no determination concerning the submitted change because of the prior unsubmitted change. In such instances, it is our practice to inform the jurisdiction there is a prior related change that has not been submitted and that simultaneous review is required. A standard, practice, or procedure that has been reviewed and determined to meet section 5 standards is considered to be in force or effect, even if the jurisdiction never implements the change because the change is effective as a matter of federal law and was available for use.

Section 51.3 Delegation of Authority

The purpose of the revisions to the delegation of authority is to make technical corrections to the delegation of authority from the Attorney General to the Assistant Attorney General, and from the Chief of the Voting Section to supervisory attorneys within the Voting Section, and to conform the Procedures to other parts of Title 28. Two commenters objected to the revisions, expressing concern that the delegation of the functions of the Chief to supervisory attorneys in the Voting Section results in the delegation of section 5 legal review authority to non-politically appointed attorneys subordinate to the Section Chief.

The concerns of these commenters are unfounded. The delegation of authority in these Procedures is similar to existing delegations. For example, pursuant to the appendix to 28 CFR Part 0, Subpart J, the Chief may authorize the Deputy Chief to act on his or her behalf. Moreover, under the revised Procedures, the Chief needs the concurrence of the Assistant Attorney General, who is a presidential appointee, to designate supervisory attorneys to perform section 5 functions. Accordingly, we decline to revise the section further.

Section 51.9 Computation of Time

The purpose of the revisions to this section is to clarify that the review period commences when a submission is received by the Department officials responsible for conducting section 5 reviews and to clarify the date of the response.

One commenter objected to the commencement of the 60-day review period upon receipt of the submission by the Voting Section or the Office of the Assistant Attorney General of the Civil Rights Division as an unwarranted extension of the 60-day review period. The Federal Rules of Civil Procedure provide for the designation of a Department clerical employee to receive summonses on behalf of the Attorney General. Fed. R. Civ. P. 4(i)(1)(A)(i). Similarly, and for the same purpose of prompt and efficient routing, the Attorney General has designated both the Voting Section and the Office of the Assistant Attorney General of the Civil Rights Division as the proper recipients for section 5 submissions.

The Department has made one additional edit to this section. As set forth in the Notice and as described below, a second paragraph is being added to § 51.37 (Obtaining information from the submitting authority). To ensure consistency, the reference to § 51.37, contained in previous versions of the Procedures, is amended to § 51.37(b).

Section 51.13 Examples of Changes

The purpose of this revision is to clarify that the dissolution or merger of voting districts, de facto elimination of an elected office, and reallocations of authority to adopt or administer voting practices or procedures are all subject to section 5 review.

One commenter suggested that we add the extension of a term of office for an elected official as an example of a covered change in paragraph (i). We concluded that including this example would provide additional clarity. To the extent that the extension of an elected official's term is a discretionary change that affects the next regularly scheduled election for that office, there is no question that it constitutes a "change affecting voting" covered by section 5. Additionally, extending the term of a particular office affects the ability of voters to elect candidates of choice at regularly scheduled intervals.

The commenter also suggested that paragraph (k), which provides that changes affecting the right or ability of persons to participate in "political campaigns" are covered under section 5, be expanded to include "campaigns or other pre-election activity." We agreed that the phrase "political campaigns," without any elaboration, may carry partisan connotations not envisioned by the statute. Additionally, "political campaigns" may not include all pre-election activity related to voting, and a somewhat broader construction is consistent with the broad scope given to "changes affecting voting" covered under section 5. Such changes include any "voting qualification or prerequisite to voting or standard, practice, or procedure" related to the right to vote, 42 U.S.C. 1973(a), and the Supreme Court has recognized that voting includes "all action necessary to make a vote effective." *Allen* v. *State Board of Elections,* 393 U.S. 544, 566 (1969) (quoting 42 U.S.C. 1973l). As a result, section 5 coverage extends to "subtle, as well as the obvious," changes affecting voting. *Allen,* 393 U.S. at 565.

Using the phrase "pre-election activity," by itself, however, is too general and nebulous. As a result, we have revised the paragraph to reflect that any change affecting the right or ability of persons to participate in pre-election activity, such as political campaigns, is subject to review under section 5.

Another commenter objected to the inclusion of paragraph (l) as an example of changes affecting voting, stating that this change did not fall within the scope of section 5 coverage. A change in the voting-related authority of an official or governmental entity does alter election law and change rules governing voting. Thus, such changes meet the test of voting relatedness that is at the core of the Court's decision in *Presley* v. *Etowah County Commission,* 502 U.S. 491 (1992). In addition, a conclusion that such changes are not covered arguably would be inconsistent with the well-established rule that section 5 covers state enabling legislation that transfers authority to adopt a voting change from the state to its subjurisdictions. See *Allen* v. *State Board of Elections,* 393 U.S. 544 (1969) (holding that section 5 covered a Mississippi statute that granted county boards of supervisors the authority to change board elections from single-member districts to at-large voting).

Section 51.18 Federal Court-Ordered Changes

The purpose of the revisions to this section is to clarify the principle that section 5 review ordinarily should precede other forms of court review, that a court-ordered change that initially is not subject to section 5 may become covered through subsequent actions taken by the affected jurisdiction, and that the interim use of an covered change before it is established that such change complies with section 5 should be ordered by a court only in emergency circumstances.

One commenter opposed the changes contained in the section stating that the revisions appear to grant federal courts greater authority than the case law recognizes to implement voting changes that are subject to, but not yet reviewed under, section 5 on an emergency basis. Although that was not the intent of the revisions, we have modified § 51.18(a) to clarify that it reflects existing judicial precedent. After further consideration, we believe that, other than renumbering the paragraph as § 51.18(d), it is appropriate not to make any change to § 51.18(c) as it currently exists in the Procedures.

Section 51.28 Supplemental Contents

The proposed revision to paragraph (a) was omitted from the June 11, 2010, Notice of Proposed Rulemaking in error. The purpose of the revision is to make purely technical changes to the format in which information may be submitted to the Attorney General electronically. In addition, since the publication of the Notice, the Census Bureau has renamed the 15-character geographic identifier specified in paragraph (b); the final Procedures reflect this change in nomenclature.

Section 51.29 Communications Concerning Voting Changes

The purpose of the revisions to this section is to clarify the addresses and methods by which persons may provide written comments on section 5 submissions and to clarify the circumstances in which the Department may withhold the identity of those providing comments on section 5 submissions.

One commenter objected to the nondisclosure of the identity of an individual or entity where an assurance of confidentiality may reasonably be implied from the circumstances of the communication. The Department believes, however, that communications

where confidentiality can reasonably be implied are within the scope of information that "could reasonably be expected to disclose the identity of a confidential source." 5 U.S.C. 552(b)(7). Accordingly, this determination about confidentiality is within the scope of Section 552(b) concerning exemptions under both the Freedom of Information and the Privacy Acts.

Section 51.37 Obtaining Information From the Submitting Authority

The purpose of the revisions to this section is to clarify the procedures for the Attorney General to make oral and written requests for additional information regarding a section 5 submission.

One commenter recommended that we revise the paragraph concerning oral requests to make clear that the Attorney General reserves the authority to restart the 60-day review period upon receipt of material provided in response to the Attorney General's first such request made with respect to a submission, and that responses to an oral request do not affect the running of the 60-day period once a written request for information is made.

We declined to amend the proposed language regarding responses to an oral request because as the Procedures currently exist the Attorney General may request further information within the new 60-day period following the receipt of a response from the submitting authority to an earlier written request, but such a request shall not suspend the running the 60-day period, nor shall the Attorney General's receipt of such further information begin a new 60-day period. Moreover, § 51.39 provides that we may determine that information supplied in response to an oral request in the initial review period materially supplements the pending request such that it does extend the 60-day period.

We did conclude, however, on the basis of the comment that we received, that a reordering of the paragraphs would add clarity to the section and make it more useful.

Section 51.40 Failure To Complete Submissions

As described above, the paragraphs of § 51.37 are being reordered. To ensure consistency, the reference to § 51.37(a) in previous versions of the Procedures is amended to § 51.37(b).

Section 51.48 Decision After Reconsideration

The purpose of the revisions to this section is to clarify the manner in which the 60-day requirement applies to reconsideration requests and revise language to conform to the substantive section 5 standard in the 2006 amendments to the Act.

One commenter objected to the revisions in paragraph (a), expressing a concern that the revisions permit the Attorney General to exceed 60 days for the reconsideration of an objection. Section 51.48 provides that the 60-day reconsideration period may be extended to allow a 15-day decision period following a conference held pursuant to § 51.47. Moreover, the courts have held that when a submitting jurisdiction deems its initial submission on a reconsideration request to be inadequate and decides to supplement it, the 60-day period is commenced anew. The purpose of this interpretation is to provide the Attorney General time to give adequate consideration to materials submitted in piecemeal fashion. *City of Rome* v. *United States*, 446 U.S. 156, 171 (1980).

Section 51.50 Records Concerning Submissions

The purpose of the revision to this section is to clarify the procedures regarding access to section 5 records. One commenter opposed the changes to paragraph (b) and conveyed concerns that these changes will result in the removal of record keeping with regard to objection files.

Under paragraph (a), the Voting Section continues to maintain a section 5 file for each submission, including objection files. Accordingly, all appropriate records continue to be maintained with regard to all section 5 submissions.

Section 51.52 Basic Standard

The purpose of the revision to this section is to clarify the substantive standard so as to reflect the 2006 amendments to the Act and the manner in which the Attorney General will evaluate submissions under section 5.

One commenter suggested that paragraph (a) be amended further to reflect the fact that the Attorney General "shall apply the same standard of review," instead of "shall make the same determination," that would be made by a court in an action for a declaratory judgment under section 5. The section refers to making a "determination" as the activity that both the Attorney General and the district court undertake, *i.e.*, deciding whether the change complies with section 5, as opposed to the resulting substantive decision. Therefore, we concluded that no further revision to the paragraph is warranted.

Another commentator suggested we replace "purpose and effect" with "purpose or effect" in paragraph (c). Although we decided not to incorporate the commentator's exact change, we did decide that further refinement of the paragraph would provide more clarity. Therefore, the paragraph will reflect that in those situations where the evidence as to the purpose or effect of the change is conflicting and the Attorney General is unable to determine that the change is free of both the prohibited discriminatory purpose and effect, the Attorney General will interpose an objection. *Evers* v. *State Board of Election Commissioners*, 327 F. Supp. 640 (S.D. Miss 1971).

Section 51.54 Discriminatory Purpose and Effect

One commenter suggested various minor edits to the proposed language. We declined to make these changes. The proposed language reflects our extensive experience gained over the years in our administrative review of section 5 changes, while avoiding redundancy.

We did edit the language of paragraph (c) to reflect that the statutory language refers to a change in a standard, practice, or procedure affecting voting, not only a practice or procedure.

Section 51.57(e) Relevant Factors

One commenter suggested that we include "contemporaneous statements and viewpoints held by decision-makers" in the list of relevant factors. Such statements are an evidentiary source cited by the Court in its opinion in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 268 (1977), and therefore we have revised the section to reflect the Court's holding more completely.

Section 51.58(b)(2) Background Factors

One commenter suggested that this paragraph be revised to state that whether "election-related activities," instead of "political activities," are racially segregated or exclusionary constitutes important background information when making section 5 determinations. The proposed paragraph provided that the Attorney General will consider the "extent to which voting in the jurisdiction is racially polarized and political activities are racially segregated." Courts in cases assessing whether the constitutional guarantees afforded to persons to exercise the franchise without discrimination have been infringed have often used the words "electoral" and "political" as synonyms for each other. See, *e.g.*, *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663, 667–68

(1966); *see also Johnson* v. *Miller*, 864 F. Supp. 1354, 1386–87 (S.D. Ga. 1994) (considering a claim under section 2 of the Voting Rights Act). These terms are similarly synonymous with respect to section 5, which also concerns the ability of voters to participate in the electoral process. After careful consideration of the comment, we determined that "election-related activities" provides greater clarity than "political activities" and revised the section accordingly.

Section 51.59 Redistricting Plans

Two commenters recommended various additions or deletions to paragraph 51.59(a). Because these factors are not intended to be exhaustive, not all factors are listed. Rather, the factors that are listed are illustrative, intended to provide guidance to jurisdictions regarding redistricting plans.

Other commenters suggested we delete or revise certain previously existing factors described in the paragraph. The Attorney General has, however, repeatedly cited factors identified in the section in past objection letters. Additionally, courts have cited "traditional redistricting principles," such as preserving recognized communities of interest and maintaining political and geographical boundaries, as relevant factors in a section 5 analysis. *Colleton County Council* v. *McConnell*, 201 F. Supp. 2d 618, 647 (D.S.C. 2002) (citing *S.C. State Conference of Branches of the NAACP* v. *Riley*, 533 F. Supp. 1178, 1180 (D.S.C.), *aff'd*, 459 U.S. 1025 (1982)). *See generally Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act*, 76 FR 7470, 7472 (2011).

One commenter suggested we amend paragraph 51.59(a)(7) to focus on whether a proposed plan is inconsistent with the jurisdiction's "long-held" redistricting standards, instead of the jurisdiction's "stated standards." The commenter believes that by adding the term "long-held," jurisdictions will be discouraged from adopting ad hoc redistricting principles to insulate a redistricting plan during section 5 review. The current factors, particularly with regards to discriminatory purpose, encapsulate scenarios where a jurisdiction adopts pretextual or unusual redistricting criteria. The Procedures should not be interpreted to discourage jurisdictions from considering traditional redistricting principles such as one-person, one-vote, or maintaining natural political or geographic boundaries, even if they have not done so in the past. *Bush* v. *Vera*, 517 U.S. 952, 980–81 (1996). Therefore, we decline to revise these factors further.

Section 51.59(b) Discriminatory Purpose

Several commenters suggested this paragraph be revised in the interest of clarity. After reviewing the language, we agreed that it did not clearly reflect the relevant case law on this point and that some clarification would be helpful. We revised the paragraph accordingly.

Additional Provisions

One commenter suggested the addition of several provisions related to the substantive standards to be employed during the review of redistricting plans. The proposed revisions go beyond the scope of these Procedures.

Administrative Procedure Act

This rule amends interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice and therefore the notice requirement of 5 U.S.C. 553(b) is not mandatory. Although notice and comment was not required, we nonetheless chose to offer the proposed rule for notice and comment.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities because it applies only to governmental entities and jurisdictions that are already required by section 5 of the Voting Rights Act of 1965 to submit voting changes to the Department of Justice, and this rule does not change this requirement. It provides guidance to such entities to assist them in making the required submissions under section 5. Further, a Regulatory Flexibility Analysis was not required to be prepared for this rule because the Department of Justice was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget. The amendments made by this rule clarify the scope of section 5 review based on recent amendments to section 5, make certain technical clarifications and updates, and provide better guidance to covered jurisdictions and citizens. In many instances, the amendments describe longstanding practices of the Attorney General in his review of section 5 submissions.

Executive Order 13132—Federalism

This rule does not have federalism implications warranting the preparation of a Federalism Assessment under section 6 of Executive Order 13132 because the rule does not alter or modify the existing statutory requirements of section 5 of the Voting Rights Act imposed on the States, including units of local government or political subdivisions of the States.

Executive Order 12988—Civil Justice Reform

This document meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 28 CFR Parts 0 and 51

Administrative practice and procedure, Archives and records, Authority delegations (government agencies), Civil rights, Elections, Political committees and parties, Voting rights.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301, 28 U.S.C. 509, 510, and 42 U.S.C. 1973b, 1973c, the following amendments are made to Chapter I of Title 28 of the Code of Federal Regulations:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510.

Subpart J—Civil Rights Division

■ 2. In § 0.50, revise paragraph (h) to read as follows:

§ 0.50 General functions.

* * * * *

(h) Administration of sections 3(c) and 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973a(c), 1973c).

* * * * *

PART 51—PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965.

■ 3. The authority citation for Part 51 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, and 42 U.S.C. 1973b, 1973c.

■ 4. In § 51.1, revise paragraph (a)(1) to read as follows:

§ 51.1 Purpose.

(a) * * *

(1) A declaratory judgment is obtained from the U.S. District Court for the District of Columbia that such qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, or

* * * * *

■ 5. In § 51.2, revise the definition for "Act"; remove the definition of "Change affecting voting"; and add a new definition of "Change affecting voting or change" in alphabetical order to read as follows:

§ 51.2 Definitions.

* * * * *

Act means the Voting Rights Act of 1965, 79 Stat. 437, as amended by the Civil Rights Act of 1968, 82 Stat. 73, the Voting Rights Act Amendments of 1970, 84 Stat. 314, the District of Columbia Delegate Act, 84 Stat. 853, the Voting Rights Act Amendments of 1975, 89 Stat. 400, the Voting Rights Act Amendments of 1982, 96 Stat. 131, the Voting Rights Language Assistance Act of 1992, 106 Stat. 921, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, 120 Stat. 577, and the Act to Revise the Short Title of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, 122 Stat. 2428, 42 U.S.C. 1973 *et seq.* Section numbers, such as "section 14(c)(3)," refer to sections of the Act.

* * * * *

Change affecting voting or *change* means any voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage under section 4(b) or from the existing standard, practice, or procedure if it was subsequently altered and precleared under section 5. In assessing whether a change has a discriminatory purpose or effect, the comparison shall be with the standard, practice, or procedure in effect on the date used to determine coverage under section 4(b) or the most recent precleared standard, practice, or procedure. Some examples of changes affecting voting are given in § 51.13.

* * * * *

■ 6. Revise § 51.3 to read as follows:

§ 51.3 Delegation of authority.

The responsibility and authority for determinations under section 5 and section 3(c) have been delegated by the Attorney General to the Assistant Attorney General, Civil Rights Division. With the exception of objections and decisions following the reconsideration of objections, the Chief of the Voting Section is authorized to perform the functions of the Assistant Attorney General. With the concurrence of the Assistant Attorney General, the Chief of the Voting Section may designate supervisory attorneys in the Voting Section to perform the functions of the Chief.

■ 7. Revise § 51.5 to read as follows:

§ 51.5 Termination of coverage.

(a) *Expiration.* The requirements of section 5 will expire at the end of the twenty-five-year period following the effective date of the amendments made by the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006 (VRARA), which amendments became effective on July 27, 2006. *See* section 4(a)(8) of the VRARA.

(b) *Bailout.* Any political subunit in a covered jurisdiction or a political subdivision of a covered State, a covered jurisdiction or a political subdivision of a covered State, or a covered State may terminate the application of section 5 ("bailout") by obtaining the declaratory judgment described in section 4(a) of the Act.

■ 8. Revise § 51.6 to read as follows:

§ 51.6 Political subunits.

All political subunits within a covered jurisdiction (*e.g.*, counties, cities, school districts) that have not terminated coverage by obtaining the declaratory judgment described in section 4(a) of the Act are subject to the requirements of section 5.

■ 9. Revise § 51.9 to read as follows:

§ 51.9 Computation of time.

(a) The Attorney General shall have 60 days in which to interpose an objection to a submitted change affecting voting for which a response on the merits is appropriate (*see* § 51.35, § 51.37).

(b) The 60-day period shall commence upon receipt of a submission by the Voting Section of the Department of Justice's Civil Rights Division or upon receipt of a submission by the Office of the Assistant Attorney General, Civil Rights Division, if the submission is properly marked as specified in § 51.24(f). The 60-day period shall recommence upon the receipt in like manner of a resubmission (*see* § 51.35), information provided in response to a written request for additional information (*see* § 51.37(b)), or material, supplemental information or a related submission (*see* § 51.39).

(c) The 60-day period shall mean 60 calendar days, with the day of receipt of the submission not counted, and with the 60th day ending at 11:59 p.m. Eastern Time of that day. If the final day of the period should fall on a Saturday, Sunday, or any day designated as a holiday by the President or Congress of the United States, or any other day that is not a day of regular business for the Department of Justice, the next full business day shall be counted as the final day of the 60-day period. The date of the Attorney General's response shall be the date on which it is transmitted to the submitting authority by any reasonable means, including placing it in a postbox of the U.S. Postal Service or a private mail carrier, sending it by telefacsimile, email, or other electronic means, or delivering it in person to a representative of the submitting authority.

■ 10. In § 51.10, revise paragraph (a) to read as follows:

§ 51.10 Requirement of action for declaratory judgment or submission to the Attorney General.

* * * * *

(a) Obtain a judicial determination from the U.S. District Court for the District of Columbia that the voting change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

* * * * *

■ 11. Revise § 51.11 to read as follows:

§ 51.11 Right to bring suit.

Submission to the Attorney General does not affect the right of the

submitting authority to bring an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change affecting voting neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

■ 12. Revise § 51.12 to read as follows:

§ 51.12 Scope of requirement.

Except as provided in § 51.18 (Federal court-ordered changes), the section 5 requirement applies to any change affecting voting, even though it appears to be minor or indirect, returns to a prior practice or procedure, seemingly expands voting rights, or is designed to remove the elements that caused the Attorney General to object to a prior submitted change. The scope of section 5 coverage is based on whether the generic category of changes affecting voting to which the change belongs (for example, the generic categories of changes listed in § 51.13) has the potential for discrimination. *NAACP* v. *Hampton County Election Commission*, 470 U.S. 166 (1985). The method by which a jurisdiction enacts or administers a change does not affect the requirement to comply with section 5, which applies to changes enacted or administered through the executive, legislative, or judicial branches.

■ 13. In § 51.13, revise paragraphs (e), (i), and (k) and add paragraph (l) to read as follows:

§ 51.13 Examples of changes.

* * * * *

(e) Any change in the constituency of an official or the boundaries of a voting unit (*e.g.*, through redistricting, annexation, deannexation, incorporation, dissolution, merger, reapportionment, changing to at-large elections from district elections, or changing to district elections from at-large elections).

* * * * *

(i) Any change in the term of an elective office or an elected official, or any change in the offices that are elective (*e.g.*, by shortening or extending the term of an office; changing from election to appointment; transferring authority from an elected to an appointed official that, in law or in fact, eliminates the elected official's office; or staggering the terms of offices).

* * * * *

(k) Any change affecting the right or ability of persons to participate in pre-election activities, such as political campaigns.

(l) Any change that transfers or alters the authority of any official or governmental entity regarding who may enact or seek to implement a voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting.

■ 14. Revise § 51.18 to read as follows:

§ 51.18 Federal court-ordered changes.

(a) *In general.* Changes affecting voting for which approval by a Federal court is required, or that are ordered by a Federal court, are exempt from section 5 review only where the Federal court prepared the change and the change has not been subsequently adopted or modified by the relevant governmental body. *McDaniel* v. *Sanchez*, 452 U.S. 130 (1981). (*See also* § 51.22.)

(b) *Subsequent changes.* Where a Federal court-ordered change is not itself subject to the preclearance requirement, subsequent changes necessitated by the court order but decided upon by the jurisdiction remain subject to preclearance. For example, voting precinct and polling changes made necessary by a court-ordered redistricting plan are subject to section 5 review.

(c) *Alteration in section 5 status.* Where a Federal court-ordered change at its inception is not subject to review under section 5, a subsequent action by the submitting authority demonstrating that the change reflects its policy choices (*e.g.*, adoption or ratification of the change, or implementation in a manner not explicitly authorized by the court) will render the change subject to review under section 5 with regard to any future implementation.

(d) *In emergencies.* A Federal court's authorization of the emergency interim use without preclearance of a voting change does not exempt from section 5 review any use of that practice not explicitly authorized by the court.

■ 15. Revise § 51.19 to read as follows:

§ 51.19 Request for notification concerning voting litigation.

A jurisdiction subject to the preclearance requirements of section 5 that becomes involved in any litigation concerning voting is requested to notify the Chief, Voting Section, Civil Rights Division, at the addresses, telefacsimile number, or email address specified in § 51.24. Such notification will not be considered a submission under section 5.

■ 16. In § 51.20, revise paragraphs (b) through (e) and add a new paragraph (f) to read as follows:

§ 51.20 Form of submissions.

* * * * *

(b) The Attorney General will accept certain machine readable data in the following electronic media: 3.5 inch 1.4 megabyte disk, compact disc read-only memory (CD–ROM) formatted to the ISO–9660/Joliet standard, or digital versatile disc read-only memory (DVD–ROM). Unless requested by the Attorney General, data provided on electronic media need not be provided in hard copy.

(c) All electronic media shall be clearly labeled with the following information:

(1) Submitting authority.

(2) Name, address, title, and telephone number of contact person.

(3) Date of submission cover letter.

(4) Statement identifying the voting change(s) involved in the submission.

(d) Each magnetic medium (floppy disk or tape) provided must be accompanied by a printed description of its contents, including an identification by name or location of each data file contained on the medium, a detailed record layout for each such file, a record count for each such file, and a full description of the magnetic medium format.

(e) Text documents should be provided in a standard American Standard Code for Information Interchange (ASCII) character code; documents with graphics and complex formatting should be provided in standard Portable Document Format (PDF). The label shall be affixed to each electronic medium, and the information included on the label shall also be contained in a documentation file on the electronic medium.

(f) All data files shall be provided in a delimited text file and must include a header row as the first row with a name for each field in the data set. A separate data dictionary file documenting the fields in the data set, the field separators or delimiters, and a description of each field, including whether the field is text, date, or numeric, enumerating all possible values is required; separators and delimiters should not also be used as data in the data set. Proprietary or commercial software system data files (*e.g.*, SAS, SPSS, dBase, Lotus 1–2–3) and data files containing compressed data or binary data fields will not be accepted.

■ 17. Revise § 51.21 to read as follows:

§ 51.21 Time of submissions.

Changes affecting voting should be submitted as soon as possible after they become final, except as provided in § 51.22.

■ 18. Revise § 51.22 to read as follows:

§ 51.22 Submitted changes that will not be reviewed.

(a) The Attorney General will not consider on the merits:

(1) Any proposal for a change submitted prior to final enactment or administrative decision except as provided in paragraph (b) of this section.

(2) Any submitted change directly related to another change that has not received section 5 preclearance if the Attorney General determines that the two changes cannot be substantively considered independently of one another.

(3) Any submitted change whose enforcement has ceased and been superseded by a standard, practice, or procedure that has received section 5 preclearance or that is otherwise legally enforceable under section 5.

(b) For any change requiring approval by referendum, by a State or Federal court, or by a Federal agency, the Attorney General may make a determination concerning the change prior to such approval if the change is not subject to alteration in the final approving action and if all other action necessary for approval has been taken. (*See also* § 51.18.)

■ 19. Revise § 51.23 to read as follows:

§ 51.23 Party and jurisdiction responsible for making submissions.

(a) Changes affecting voting shall be submitted by the chief legal officer or other appropriate official of the submitting authority or by any other authorized person on behalf of the submitting authority. A State, whether partially or fully covered, has authority to submit any voting change on behalf of its covered jurisdictions and political subunits. Where a State is covered as a whole, State legislation or other changes undertaken or required by the State shall be submitted by the State (except that legislation of local applicability may be submitted by political subunits). Where a State is partially covered, changes of statewide application may be submitted by the State. Submissions from the State, rather than from the individual covered jurisdictions, would serve the State's interest in at least two important respects: first, the State is better able to explain to the Attorney General the purpose and effect of voting changes it enacts than are the individual covered jurisdictions; second, a single submission of the voting change on behalf of all of the covered jurisdictions would reduce the possibility that some State acts will be legally enforceable in some parts of the State but not in others.

(b) A change effected by a political party (*see* § 51.7) may be submitted by an appropriate official of the political party.

(c) A change affecting voting that results from a State court order should be submitted by the jurisdiction or entity that is to implement or administer the change (in the manner specified by paragraphs (a) and (b) of this section).

■ 20. Revise § 51.24 to read as follows:

§ 51.24 Delivery of submissions.

(a) *Delivery by U.S. Postal Service.* Submissions sent to the Attorney General by the U.S. Postal Service, including certified mail or express mail, shall be addressed to the Chief, Voting Section, Civil Rights Division, United States Department of Justice, Room 7254–NWB, 950 Pennsylvania Avenue, NW, Washington, DC 20530.

(b) *Delivery by other carriers.* Submissions sent to the Attorney General by carriers other than the U.S. Postal Service, including by hand delivery, should be addressed or may be delivered to the Chief, Voting Section, Civil Rights Division, United States Department of Justice, Room 7254–NWB, 1800 G Street, NW, Washington, DC 20006.

(c) *Electronic submissions.* Submissions may be delivered to the Attorney General through an electronic form available on the website of the Voting Section of the Civil Rights Division at www.justice.gov/crt/voting/. Detailed instructions appear on the website. Jurisdictions should answer the questions appearing on the electronic form, and should attach documents as specified in the instructions accompanying the application.

(d) *Telefacsimile submissions.* In urgent circumstances, submissions may be delivered to the Attorney General by telefacsimile to (202) 616–9514. Submissions should not be sent to any other telefacsimile number at the Department of Justice. Submissions that are voluminous should not be sent by telefacsimile.

(e) *Email.* Submissions may not be delivered to the Attorney General by email in the first instance. However, after a submission is received by the Attorney General, a jurisdiction may supply additional information on that submission by email to vot1973c@usdoj.gov. The subject line of the email shall be identified with the Attorney General's file number for the submission (YYYY–NNNN), marked as "Additional Information," and include the name of the jurisdiction.

(f) *Special marking.* The first page of the submission, and the envelope (if any), shall be clearly marked: "Submission under Section 5 of the Voting Rights Act."

(g) The most current information on addresses for, and methods of making, section 5 submissions is available on the Voting Section website at *www.justice.gov/crt/voting/.*

■ 21. In § 51.25, revise paragraph (a) to read as follows:

§ 51.25 Withdrawal of submissions.

(a) A jurisdiction may withdraw a submission at any time prior to a final decision by the Attorney General. Notice of the withdrawal of a submission must be made in writing addressed to the Chief, Voting Section, Civil Rights Division, to be delivered at the addresses, telefacsimile number, or email address specified in § 51.24. The submission shall be deemed withdrawn upon the Attorney General's receipt of the notice.

* * * * *

■ 22. In § 51.27, revise paragraphs (a) through (d) to read as follows:

§ 51.27 Required contents.

* * * * *

(a) A copy of any ordinance, enactment, order, or regulation embodying the change affecting voting for which section 5 preclearance is being requested.

(b) A copy of any ordinance, enactment, order, or regulation embodying the voting standard, practice, or procedure that is proposed to be repealed, amended, or otherwise changed.

(c) A statement that identifies with specificity each change affecting voting for which section 5 preclearance is being requested and that explains the difference between the submitted change and the prior law or practice. If the submitted change is a special referendum election and the subject of the referendum is a proposed change affecting voting, the submission should specify whether preclearance is being requested solely for the special election or for both the special election and the proposed change to be voted on in the referendum (*see* §§ 51.16, 51.22).

(d) The name, title, mailing address, and telephone number of the person making the submission. Where available, a telefacsimile number and an email address for the person making the submission also should be provided.

* * * * *

■ 23. In § 51.28, revise paragraph (a)(5), add (a)(6), and revise paragraph (c) to read as follows:

§ 51.28 Supplemental contents.

* * * * *

(a) * * *

(5) Demographic data on electronic media that are provided in conjunction

with a redistricting plan shall be contained in an ASCII, comma delimited block equivalency import file with two fields as detailed in the following table. A separate import file shall accompany each redistricting plan:

Field No.	Description	Total length	Comments
1	PL94–171 reference number: GEOID10	15	
2	District Number	3	No leading zeroes.

(i) *Field 1:* The PL 94–171/GEOID10 reference number is the state, county, tract, and block reference numbers concatenated together and padded with leading zeroes so as to create a 15-digit character field; and

(ii) *Field 2:* The district number is a 3 digit character field with no padded leading zeroes.

Example: 482979501002099,1 482979501002100,3 482979501004301,10 482975010004305,23 482975010004302,101

(6) Demographic data on magnetic media that are provided in conjunction with a redistricting can be provided in shapefile (.shp) spatial data format.

(i) The shapefile shall include at a minimum the main file, index file, and dBASE table.

(ii) The dBASE table shall contain a row for each census block. Each census block will be identified by the state, county, tract and block identifier [GEOID10] as specified by the Bureau of Census. Each row shall identify the district assignment and relevant population for that specific row.

(iii) The shapefile should include a projection file (.prj).

(iv) The shapefile should be sent in NAD 83 geographic projection. If another projection is used, it should be described fully.

* * * * *

(c) *Annexations.* For annexations, in addition to that information specified elsewhere, the following information:

(1) The present and expected future use of the annexed land (*e.g.*, garden apartments, industrial park).

(2) An estimate of the expected population, by race and language group, when anticipated development, if any, is completed.

(3) A statement that all prior annexations (and deannexations) subject to the preclearance requirement have been submitted for review, or a statement that identifies all annexations (and deannexations) subject to the preclearance requirement that have not been submitted for review. *See* § 51.61(b).

(4) To the extent that the jurisdiction elects some or all members of its governing body from single-member districts, it should inform the Attorney General how the newly annexed territory will be incorporated into the existing election districts.

* * * * *

■ 24. In § 51.29, revise paragraphs (b) and (d) to read as follows:

§ 51.29 Communications concerning voting changes.

* * * * *

(b) Comments should be sent to the Chief, Voting Section, Civil Rights Division, at the addresses, telefacsimile number, or email address specified in § 51.24. The first page and the envelope (if any) should be marked: "Comment under section 5 of the Voting Rights Act." Comments should include, where available, the name of the jurisdiction and the Attorney General's file number (YYYY–NNNN) in the subject line.

* * * * *

(d) To the extent permitted by the Freedom of Information Act, 5 U.S.C. 552, the Attorney General shall not disclose to any person outside the Department of Justice the identity of any individual or entity providing information on a submission or the administration of section 5 where the individual or entity has requested confidentiality; an assurance of confidentiality may reasonably be implied from the circumstances of the communication; disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy under 5 U.S.C. 552; or disclosure is prohibited by any applicable provisions of federal law.

* * * * *

■ 25. Revise § 51.35 to read as follows:

§ 51.35 Disposition of inappropriate submissions and resubmissions.

(a) When the Attorney General determines that a response on the merits of a submitted change is inappropriate, the Attorney General shall notify the submitting official in writing within the 60-day period that would have commenced for a determination on the merits and shall include an explanation of the reason why a response is not appropriate.

(b) Matters that are not appropriate for a merits response include:

(1) Changes that do not affect voting (*see* § 51.13);

(2) Standards, practices, or procedures that have not been changed (*see* §§ 51.4, 51.14);

(3) Changes that previously have received preclearance;

(4) Changes that affect voting but are not subject to the requirement of section 5 (*see* § 51.18);

(5) Changes that have been superseded or for which a determination is premature (*see* §§ 51.22, 51.61(b));

(6) Submissions by jurisdictions not subject to the preclearance requirement (*see* §§ 51.4, 51.5);

(7) Submissions by an inappropriate or unauthorized party or jurisdiction (*see* § 51.23); and

(8) Deficient submissions (*see* § 51.26(d)).

(c) Following such a notification by the Attorney General, a change shall be deemed resubmitted for section 5 review upon the Attorney General's receipt of a submission or other written information that renders the change appropriate for review on the merits (such as a notification from the submitting authority that a change previously determined to be premature has been formally adopted). Notice of the resubmission of a change affecting voting will be given to interested parties registered under § 51.32.

■ 26. Revise § 51.37 to read as follows:

§ 51.37 Obtaining information from the submitting authority.

(a) *Oral requests for information.* (1) If a submission does not satisfy the requirements of § 51.27, the Attorney General may request orally any omitted information necessary for the evaluation of the submission. An oral request may be made at any time within the 60-day period, and the submitting authority should provide the requested information as promptly as possible. The oral request for information shall not suspend the running of the 60-day period, and the Attorney General will proceed to make a determination within the initial 60-day period. The Attorney General reserves the right as set forth in § 51.39, however, to commence a new 60-day period in which to make the requisite determination if the written information provided in response to such request materially supplements the submission.

(2) An oral request for information shall not limit the authority of the Attorney General to make a written request for information.

(3) The Attorney General will notify the submitting authority in writing when the 60-day period for a submission is recalculated from the Attorney General's receipt of written information provided in response to an oral request as described in § 51.37(a)(1), above.

(4) Notice of the Attorney General's receipt of written information pursuant to an oral request will be given to interested parties registered under § 51.32.

(b) *Written requests for information.* (1) If the Attorney General determines that a submission does not satisfy the requirements of § 51.27, the Attorney General may request in writing from the submitting authority any omitted information necessary for evaluation of the submission. *Branch* v. *Smith,* 538 U.S. 254 (2003); *Georgia* v. *United States,* 411 U.S. 526 (1973). This written request shall be made as promptly as possible within the original 60-day period or the new 60-day period described in § 51.39(a). The written request shall advise the jurisdiction that the submitted change remains unenforceable unless and until preclearance is obtained.

(2) A copy of the request shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(3) The Attorney General shall notify the submitting authority that a new 60-day period in which the Attorney General may interpose an objection shall commence upon the Attorney General's receipt of a response from the submitting authority that provides the information requested or states that the information is unavailable. The Attorney General can request further information in writing within the new 60-day period, but such a further request shall not suspend the running of the 60-day period, nor shall the Attorney General's receipt of such further information begin a new 60-day period.

(4) Where the response from the submitting authority neither provides the information requested nor states that such information is unavailable, the response shall not commence a new 60-day period. It is the practice of the Attorney General to notify the submitting authority that its response is incomplete and to provide such notification as soon as possible within the 60-day period that would have commenced had the response been complete. Where the response includes a portion of the available information that was requested, the Attorney General will reevaluate the submission to ascertain whether a determination on the merits may be made based upon the information provided. If a merits determination is appropriate, it is the practice of the Attorney General to make that determination within the new 60-day period that would have commenced had the response been complete. *See* § 51.40.

(5) If, after a request for further information is made pursuant to this section, the information requested by the Attorney General becomes available to the Attorney General from a source other than the submitting authority, the Attorney General shall promptly notify the submitting authority in writing, and the new 60-day period will commence the day after the information is received by the Attorney General.

(6) Notice of the written request for further information and the receipt of a response by the Attorney General will be given to interested parties registered under § 51.32.

■ 27. Revise § 51.39 to read as follows:

§ 51.39 Supplemental information and related submissions.

(a)(1) *Supplemental information.* When a submitting authority, at its own instance, provides information during the 60-day period that the Attorney General determines materially supplements a pending submission, the 60-day period for the pending submission will be recalculated from the Attorney General's receipt of the supplemental information.

(2) *Related submissions.* When the Attorney General receives related submissions during the 60-day period for a submission that cannot be independently considered, the 60-day period for the first submission shall be recalculated from the Attorney General's receipt of the last related submission.

(b) The Attorney General will notify the submitting authority in writing when the 60-day period for a submission is recalculated due to the Attorney General's receipt of supplemental information or a related submission.

(c) Notice of the Attorney General's receipt of supplemental information or a related submission will be given to interested parties registered under § 51.32.

■ 28. Revise § 51.40 to read as follows:

§ 51.40 Failure to complete submissions.

If after 60 days the submitting authority has not provided further information in response to a request made pursuant to § 51.37(b), the Attorney General, absent extenuating circumstances and consistent with the burden of proof under section 5 described in § 51.52(a) and (c), may object to the change, giving notice as specified in § 51.44.

■ 29. Revise § 51.42 to read as follows:

§ 51.42 Failure of the Attorney General to respond.

It is the practice and intention of the Attorney General to respond in writing to each submission within the 60-day period. However, the failure of the Attorney General to make a written response within the 60-day period constitutes preclearance of the submitted change, provided that a 60-day review period had commenced after receipt by the Attorney General of a complete submission that is appropriate for a response on the merits. (*See* § 51.22, § 51.27, § 51.35.)

■ 30. Revise § 51.43 to read as follows:

§ 51.43 Reexamination of decision not to object.

(a) After notification to the submitting authority of a decision not to interpose an objection to a submitted change affecting voting has been given, the Attorney General may reexamine the submission if, prior to the expiration of the 60-day period, information comes to the attention of the Attorney General that would otherwise require objection in accordance with section 5.

(b) In such circumstances, the Attorney General may by letter withdraw his decision not to interpose an objection and may by letter interpose an objection provisionally, in accordance with § 51.44, and advise the submitting authority that examination of the change in light of the newly raised issues will continue and that a final decision will be rendered as soon as possible.

■ 31. In § 51.44, revise paragraph (c) to read as follows:

§ 51.44 Notification of decision to object.

* * * * *

(c) The submitting authority shall be advised further that notwithstanding the objection it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

* * * * *

■ 32. In § 51.46, revise paragraph (a) to read as follows:

§ 51.46 Reconsideration of objection at the instance of the Attorney General.

(a) Where there appears to have been a substantial change in operative fact or relevant law, or where it appears there may have been a misinterpretation of fact or mistake in the law, an objection may be reconsidered, if it is deemed appropriate, at the instance of the Attorney General.

* * * * *

■ 33. In § 51.48, revise paragraphs (a) through (d) to read as follows:

§ 51.48 Decision after reconsideration.

(a) It is the practice of the Attorney General to notify the submitting authority of the decision to continue or withdraw an objection within a 60-day period following receipt of a reconsideration request or following notice given under § 51.46(b), except that this 60-day period shall be recommenced upon receipt of any documents or written information from the submitting authority that materially supplements the reconsideration review, irrespective of whether the submitting authority provides the documents or information at its own instance or pursuant to a request (written or oral) by the Attorney General. The 60-day reconsideration period may be extended to allow a 15-day decision period following a conference held pursuant to § 51.47. The 60-day reconsideration period shall be computed in the manner specified in § 51.9. Where the reconsideration is at the instance of the Attorney General, the first day of the period shall be the day after the notice required by § 51.46(b) is transmitted to the submitting authority. The reasons for the reconsideration decision shall be stated.

(b) The objection shall be withdrawn if the Attorney General is satisfied that the change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

(c) If the objection is not withdrawn, the submitting authority shall be advised that notwithstanding the objection it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

(d) An objection remains in effect until either it is specifically withdrawn by the Attorney General or a declaratory judgment with respect to the change in question is entered by the U.S. District Court for the District of Columbia.

* * * * *

■ 34. Revise § 51.50 to read as follows:

§ 51.50 Records concerning submissions.

(a) *Section 5 files.* The Attorney General shall maintain a section 5 file for each submission, containing the submission, related written materials, correspondence, memoranda, investigative reports, data provided on electronic media, notations concerning conferences with the submitting authority or any interested individual or group, and copies of letters from the Attorney General concerning the submission.

(b) *Objection letters.* The Attorney General shall maintain section 5 notification letters regarding decisions to interpose, continue, or withdraw an objection.

(c) *Computer file.* Records of all submissions and their dispositions by the Attorney General shall be electronically stored.

(d) *Copies.* The contents of the section 5 submission files in paper, microfiche, electronic, or other form shall be available for obtaining copies by the public, pursuant to written request directed to the Chief, Voting Section, Civil Rights Division, United States Department of Justice, Washington, DC. Such written request may be delivered to the addresses or telefacsimile number specified in § 51.24 or by electronic mail to *Voting.Section@usdoj.gov.* It is the Attorney General's intent and practice to expedite, to the extent possible, requests pertaining to pending submissions. Those who desire copies of information that has been provided on electronic media will be provided a copy of that information in the same form as it was received. Materials that are exempt from inspection under the Freedom of Information Act, 5 U.S.C. 552(b), may be withheld at the discretion of the Attorney General. The identity of any individual or entity that provided information to the Attorney General regarding the administration of section 5 shall be available only as provided by § 51.29(d). Applicable fees, if any, for the copying of the contents of these files are contained in the Department of Justice regulations implementing the Freedom of Information Act, 28 CFR 16.10.

■ 35. Revise § 51.52 to read as follows:

§ 51.52 Basic standard.

(a) *Surrogate for the court.* Section 5 provides for submission of a voting change to the Attorney General as an alternative to the seeking of a declaratory judgment from the U.S. District Court for the District of Columbia. Therefore, the Attorney General shall make the same determination that would be made by the court in an action for a declaratory judgment under section 5: whether the submitted change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. The burden of proof is on a submitting authority when it submits a change to the Attorney General for preclearance, as it would be if the proposed change were the subject of a declaratory judgment action in the U.S. District Court for the District of Columbia. *South Carolina* v. *Katzenbach,* 383 U.S. 301, 328, 335 (1966).

(b) *No objection.* If the Attorney General determines that the submitted change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, no objection shall be interposed to the change.

(c) *Objection.* An objection shall be interposed to a submitted change if the Attorney General is unable to determine that the change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. This includes those situations where the evidence as to the purpose or effect of the change is conflicting and the Attorney General is unable to determine that the change is free of both the prohibited discriminatory purpose and effect.

■ 36. Revise § 51.54 to read as follows:

§ 51.54 Discriminatory purpose and effect.

(a) *Discriminatory purpose.* A change affecting voting is considered to have a discriminatory purpose under section 5 if it is enacted or sought to be administered with any purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority group. The term "purpose" in section 5 includes any discriminatory purpose. 42 U.S.C. 1973c. The Attorney General's evaluation of discriminatory purpose under section 5 is guided by the analysis in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.,* 429 U.S. 252 (1977).

(b) *Discriminatory effect.* A change affecting voting is considered to have a discriminatory effect under section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (*i.e.,* will make members of such a group worse off than

they had been before the change) with respect to their effective exercise of the electoral franchise. *Beer* v. *United States*, 425 U.S. 130, 140–42 (1976).

(c) *Benchmark.* (1) In determining whether a submitted change is retrogressive the Attorney General will normally compare the submitted change to the voting standard, practice, or procedure in force or effect at the time of the submission. If the existing standard, practice, or procedure upon submission was not in effect on the jurisdiction's applicable date for coverage (specified in the Appendix) and is not otherwise legally enforceable under section 5, it cannot serve as a benchmark, and, except as provided in paragraph (c)(4) of this section, the comparison shall be with the last legally enforceable standard, practice, or procedure used by the jurisdiction.

(2) The Attorney General will make the comparison based on the conditions existing at the time of the submission.

(3) The implementation and use of an unprecleared voting change subject to section 5 review does not operate to make that unprecleared change a benchmark for any subsequent change submitted by the jurisdiction.

(4) Where at the time of submission of a change for section 5 review there exists no other lawful standard, practice, or procedure for use as a benchmark (*e.g.*, where a newly incorporated college district selects a method of election) the Attorney General's determination will necessarily center on whether the submitted change was designed or adopted for the purpose of discriminating against members of racial or language minority groups.

(d) *Protection of the ability to elect.* Any change affecting voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race, color, or membership in a language minority group to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of section 5. 42 U.S.C. 1973c.

■ 37. In § 51.55, revise paragraph (a) to read as follows:

§ 51.55 Consistency with constitutional and statutory requirements.

(a) *Consideration in general.* In making a determination under section 5, the Attorney General will consider whether the change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group in light of, and with particular attention being given to, the requirements of the 14th, 15th, and 24th Amendments to the Constitution, 42 U.S.C. 1971(a) and (b), sections 2, 4(a), 4(f)(2), 4(f)(4), 201, 203(c), and 208 of the Act, and other constitutional and statutory provisions designed to safeguard the right to vote from denial or abridgment on account of race, color, or membership in a language minority group.

* * * * *

■ 38. Revise § 51.57 to read as follows:

§ 51.57 Relevant factors.

Among the factors the Attorney General will consider in making determinations with respect to the submitted changes affecting voting are the following:

(a) The extent to which a reasonable and legitimate justification for the change exists;

(b) The extent to which the jurisdiction followed objective guidelines and fair and conventional procedures in adopting the change;

(c) The extent to which the jurisdiction afforded members of racial and language minority groups an opportunity to participate in the decision to make the change;

(d) The extent to which the jurisdiction took the concerns of members of racial and language minority groups into account in making the change; and

(e) The factors set forth in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977):

(1) Whether the impact of the official action bears more heavily on one race than another;

(2) The historical background of the decision;

(3) The specific sequence of events leading up to the decision;

(4) Whether there are departures from the normal procedural sequence;

(5) Whether there are substantive departures from the normal factors considered; and

(6) The legislative or administrative history, including contemporaneous statements made by the decision makers.

■ 39. In § 51.58, revise paragraph (b) to read as follows:

§ 51.58 Representation.

* * * * *

(b) *Background factors.* In making determinations with respect to these changes involving voting practices and procedures, the Attorney General will consider as important background information the following factors:

(1) The extent to which minorities have been denied an equal opportunity to participate meaningfully in the political process in the jurisdiction.

(2) The extent to which voting in the jurisdiction is racially polarized and election-related activities are racially segregated.

(3) The extent to which the voter registration and election participation of minority voters have been adversely affected by present or past discrimination.

■ 40. Revise § 51.59 to read as follows:

§ 51.59 Redistricting plans.

(a) *Relevant factors.* In determining whether a submitted redistricting plan has a prohibited purpose or effect the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(1) The extent to which malapportioned districts deny or abridge the right to vote of minority citizens;

(2) The extent to which minority voting strength is reduced by the proposed redistricting;

(3) The extent to which minority concentrations are fragmented among different districts;

(4) The extent to which minorities are over concentrated in one or more districts;

(5) The extent to which available alternative plans satisfying the jurisdiction's legitimate governmental interests were considered;

(6) The extent to which the plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries; and

(7) The extent to which the plan is inconsistent with the jurisdiction's stated redistricting standards.

(b) *Discriminatory purpose.* A jurisdiction's failure to adopt the maximum possible number of majority-minority districts may not be the sole basis for determining that a jurisdiction was motivated by a discriminatory purpose.

■ 41. In § 51.61, revise paragraphs (a) and (b) to read as follows:

§ 51.61 Annexations and deannexations.

(a) *Coverage.* Annexations and deannexations, even of uninhabited land, are subject to section 5 preclearance to the extent that they alter or are calculated to alter the composition of a jurisdiction's electorate. *See, e.g., City of Pleasant Grove* v. *United States*, 479 U.S. 462 (1987). In analyzing annexations and deannexations under section 5, the Attorney General considers the purpose and effect of the annexations and

deannexations only as they pertain to voting.

(b) *Section 5 review.* It is the practice of the Attorney General to review all of a jurisdiction's unprecleared annexations and deannexations together. *See City of Pleasant Grove* v. *United States*, C.A. No. 80–2589 (D.D.C. Oct. 7, 1981).

* * * * *

■ 42. Revise the Appendix to Part 51 to read as follows:

Appendix to Part 51—Jurisdictions Covered Under Section 4(b) of the Voting Rights Act, as Amended

The requirements of section 5 of the Voting Rights Act, as amended, apply in the following jurisdictions. The applicable date is the date that was used to determine coverage and the date after which changes affecting voting are subject to the preclearance requirement. Some jurisdictions, for example, Yuba County, California, are included more than once because they have been determined on more than one occasion to be covered under section 4(b).

Jurisdiction	Applicable date	Federal Register citation	
		Volume and page	Date
Alabama	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Alaska	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Arizona	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
California:			
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Merced County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Monterey County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuba County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuba County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Florida:			
Collier County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Hardee County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Hendry County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Hillsborough County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Monroe County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Georgia	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Louisiana	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Michigan:			
Allegan County:			
Clyde Township	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Saginaw County:			
Buena Vista Township	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Mississippi	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
New Hampshire:			
Cheshire County:			
Rindge Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Coos County:			
Millsfield Township	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Pinkhams Grant	Nov. 1, 1968	39 FR 16912	May 10, 1974
Stewartstown Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Stratford Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Grafton County:			
Benton Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Hillsborough County:			
Antrim Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Merrimack County:			
Boscawen Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Rockingham County:			
Newington Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Sullivan County:			
Unity Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
New York:			
Bronx County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Bronx County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Kings County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
New York County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
North Carolina:			
Anson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Beaufort County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Bertie County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Bladen County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Camden County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.
Caswell County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Chowan County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Cleveland County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Craven County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Cumberland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Edgecombe County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Franklin County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.

Jurisdiction	Applicable date	Federal Register citation	
		Volume and page	Date
Gaston County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Gates County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Granville County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Greene County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Guilford County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Halifax County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Harnett County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Hertford County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Hoke County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Jackson County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Lee County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Lenoir County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Martin County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
Nash County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Northampton County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Onslow County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Pasquotank County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Perquimans County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.
Person County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Pitt County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Robeson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Rockingham County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Scotland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Union County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Vance County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Washington County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
Wayne County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Wilson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
South Carolina	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
South Dakota:			
Shannon County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Todd County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Texas	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Virginia	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.

The following political subdivisions in States subject to statewide coverage are also covered individually:

Jurisdiction	Applicable date	Federal Register citation	
		Volume and page	Date
Arizona:			
Apache County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Apache County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Cochise County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971
Coconino County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Coconino County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Mohave County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Navajo County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Navajo County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Pima County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Pinal County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Pinal County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Santa Cruz County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuma County	Nov. 1, 1964.	31 FR 982	Jan. 25, 1966.

The Voting Section maintains a current list of those jurisdictions that have maintained successful declaratory judgments from the United States District Court for the District of Columbia pursuant to section 4 of the Act on its Web site at *http://www.justice.gov/crt/voting.*

Dated: April 8, 2011.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2011–9083 Filed 4–14–11; 8:45 am]

BILLING CODE 4410–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in May 2011. PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

DATES: Effective May 1, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Interest assumptions are also published on PBGC's Web site (*http://www.pbgc.gov*). PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for May 2011.[1]

The May 2011 interest assumptions under the benefit payments regulation will be 2.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for April 2011, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during May 2011, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 211, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
211	5–1–11	6–1–11	2.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 211, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

28 C.F.R. PART 51

(3) Nominations of candidates for either medal must be submitted no later than 120 days after notification that the Department of Justice is seeking nominations under this program for a specific calendar year. Each nomination must contain the necessary documentation establishing eligibility, must be submitted by the Governor or Chief Executive Officer, together with any comments, and should be submitted to the address published in the notice.

(4) Nominations of candidates for medals will be considered only when received from the Governor or Chief Executive Officer of a State, territory, or possession of the United States.

(5) The Young American Medals Committee will select, from nominations properly submitted, those candidates who are shown by the facts and circumstances to be eligible for the award of the medals. The Committee shall make recommendations to the Attorney General based on its evaluation of the nominees. Upon consideration of these recommendations, the Attorney General may select up to the maximum allowable recipients for each medal for the calendar year.

(g) *Presentation.* (1) The Young American Medal for Bravery and the Young American Medal for Service will be presented personally by the President of the United States to the candidates selected. These medals will be presented in the name of the President and the Congress of the United States. Presentation ceremonies shall be held at such times and places selected by the President in consultation with the Attorney General.

(2) The Young American Medals Committee will officially designate two adults (preferably the parents of the candidate) to accompany each candidate selected to the presentation ceremonies. The candidates and persons designated to accompany them will be furnished transportation and other appropriate allowances.

(3) There shall be presented to each recipient an appropriate Certificate of Commendation stating the circumstances under which the act of bravery was performed or describing the outstanding recognition for character and service, as appropriate for the medal awarded. The Certificate will bear the signature of the President of the United States and the Attorney General of the United States.

(4) There also shall be presented to each recipient of a medal, a miniature replica of the medal awarded in the form of a lapel pin.

(h) *Posthumous awards.* In cases where a medal is awarded posthumously, the Young American Medals Committee will designate the father or mother of the deceased or other suitable person to receive the medal on behalf of the deceased. The decision of the Young American Medals Committee in designating the person to receive the posthumously awarded medal, on behalf of the deceased, shall be final.

(i) *Young American Medals Committee.* The Young American Medals Committee shall be represented by the following:

(1) Director of the FBI, Chairman;

(2) Administrator of the Drug Enforcement Administration, Member;

(3) Director of the U.S. Marshals Service, Member; and

(4) Assistant Attorney General, Office of Justice Programs, Member and Executive Secretary.

(Authority: The United States Department of Justice is authorized under 42 U.S.C. 1921 *et seq.* to promulgate rules and regulations establishing medals, one for bravery and one for service. This authority was enacted by chapter 520 of Pub. L. 81-638 (August 3, 1950).)

[61 FR 49260, Sept. 19, 1996]

PART 51—PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED

Subpart A—General Provisions

Sec.

Subpart B—Procedures for Submission to the Attorney General

Subpart C—Contents of Submissions

Subpart D—Communications From Individuals and Groups

Subpart E—Processing of Submissions

Subpart F—Determinations by the Attorney General

Subpart G—Sanctions

Subpart H—Petition To Change Procedures

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

SOURCE: 52 FR 490, Jan. 6, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 51.1 Purpose.

(a) Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, prohibits the enforcement in any jurisdiction covered by section 4(b) of the Act, 42 U.S.C. 1973b(b), of any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage, until either:

(1) A declaratory judgment is obtained from the U.S. District Court for the District of Columbia that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, or

(2) It has been submitted to the Attorney General and the Attorney General has interposed no objection within a 60-day period following submission.

(b) In order to make clear the responsibilities of the Attorney General under section 5 and the interpretation of the Attorney General of the responsibility imposed on others under this section, the procedures in this part have been established to govern the administration of section 5.

§ 51.2 Definitions.

As used in this part—

Act means the Voting Rights Act of 1965, 79 Stat. 437, as amended by the Civil Rights Act of 1968, 82 Stat. 73, the Voting Rights Act Amendments of 1970, 84 Stat. 314, the District of Columbia Delegate Act, 84 Stat. 853, the Voting Rights Act Amendments of 1975, 89 Stat. 400, and the Voting Rights Act Amendments of 1982, 96 Stat. 131, 42 U.S.C. 1973 *et seq.* Section numbers, such as "section 14(c)(3)," refer to sections of the Act.

Attorney General means the Attorney General of the United States or the delegate of the Attorney General.

Change affecting voting means any voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage under section 4(b) and includes, *inter alia*, the examples given in §51.13.

Covered jurisdiction is used to refer to a State, where the determination referred to in §51.4 has been made on a statewide basis, and to a political subdivision, where the determination has not been made on a statewide basis.

Language minorities or *language minority group* is used, as defined in the Act, to refer to persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. (Sections 14(c)(3) and 203(e)). See 28 CFR part 55, Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups.

Political subdivision is used, as defined in the Act, to refer to "any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." (Section 14(c)(2)).

Preclearance is used to refer to the obtaining of the declaratory judgment described in section 5, to the failure of the Attorney General to interpose an objection pursuant to section 5, or to the withdrawal of an objection by the Attorney General pursuant to §51.48(b).

Submission is used to refer to the written presentation to the Attorney General by an appropriate official of any change affecting voting.

Submitting authority means the jurisdiction on whose behalf a submission is made.

Vote and *voting* are used, as defined in the Act, to include "all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election." (Section 14(c)(1)).

§ 51.3 Delegation of authority.

The responsibility and authority for determinations under section 5 have been delegated by the Attorney General to the Assistant Attorney General, Civil Rights Division. With the exception of objections and decisions following the reconsideration of objections, the Chief of the Voting Section is authorized to act on behalf of the Assistant Attorney General.

§ 51.4 Date used to determine coverage; list of covered jurisdictions.

(a) The requirement of section 5 takes effect upon publication in the FEDERAL REGISTER of the requisite determinations of the Director of the Census and the Attorney General under section 4(b). These determinations are not reviewable in any court. (Section 4(b)).

(b) Section 5 requires the preclearance of changes affecting voting made since the date used for the determination of coverage. For each covered jurisdiction that date is one of the following: November 1, 1964; November 1, 1968; or November 1, 1972.

(c) The appendix to this part contains a list of covered jurisdictions, together with the applicable date used to determine coverage and the FEDERAL REGISTER citation for the determination of coverage.

§ 51.5 Termination of coverage (bail-out).

A covered jurisdiction or a political subdivision of a covered State may terminate the application of section 5 (or bail out) by obtaining the declaratory judgment described in section 4(a) of the Act.

§ 51.6 Political subunits.

All political subunits within a covered jurisdiction (e.g., counties, cities, school districts) are subject to the requirement of section 5.

§ 51.7 Political parties.

Certain activities of political parties are subject to the preclearance requirement of section 5. A change affecting voting effected by a political party is subject to the preclearance requirement:

(a) If the change relates to a public electoral function of the party and

(b) If the party is acting under authority explicitly or implicitly granted by a covered jurisdiction or political subunit subject to the preclearance requirement of section 5.

For example, changes with respect to the recruitment of party members, the conduct of political campaigns, and the drafting of party platforms are not subject to the preclearance requirement. Changes with respect to the conduct of primary elections at which party nominees, delegates to party conventions, or party officials are chosen are subject to the preclearance requirement of section 5. Where appropriate the term "jurisdiction" (but not "covered jurisdiction") includes political parties.

§ 51.8 Section 3 coverage.

Under section 3(c) of the Act, a court in voting rights litigation can order as relief that a jurisdiction not subject to the preclearance requirement of section 5 preclear its voting changes by submitting them either to the court or to the Attorney General. Where a jurisdiction is required under section 3(c) to preclear its voting changes, and it elects to submit the proposed changes to the Attorney General for preclearance, the procedures in this part will apply.

§ 51.9 Computation of time.

(a) The Attorney General shall have 60 days in which to interpose an objection to a submitted change affecting voting.

(b) Except as specified in §§51.37, 51.39, and 51.42 the 60-day period shall commence upon receipt by the Department of Justice of a submission.

(c) The 60-day period shall mean 60 calendar days, with the day of receipt of the submission not counted. If the final day of the period should fall on a Saturday, Sunday, any day designated as a holiday by the President or Congress of the United States, or any other day that is not a day of regular business for the Department of Justice, the Attorney General shall have until the close of the next full business day in which to interpose an objection. The date of the Attorney General's response shall be the date on which it is mailed to the submitting authority.

§ 51.10 Requirement of action for declaratory judgment or submission to the Attorney General.

Section 5 requires that, prior to enforcement of any change affecting voting, the jurisdiction that has enacted or seeks to administer the change must either:

(a) Obtain a judicial determination from the U.S. District Court for the District of Columbia that denial or abridgment of the right to vote on account of race, color, or membership in a language minority group is not the purpose and will not be the effect of the change or

(b) Make to the Attorney General a proper submission of the change to which no objection is interposed.

It is unlawful to enforce a change affecting voting without obtaining preclearance under section 5. The obligation to obtain such preclearance is not relieved by unlawful enforcement.

[52 FR 490, Jan. 6, 1987; 52 FR 2648, Jan. 23, 1987]

§ 51.11 Right to bring suit.

Submission to the Attorney General does not affect the right of the submitting authority to bring an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change affecting voting does not have the prohibited discriminatory purpose or effect.

§ 51.12 Scope of requirement.

Any change affecting voting, even though it appears to be minor or indirect, returns to a prior practice or procedure, ostensibly expands voting rights, or is designed to remove the elements that caused objection by the Attorney General to a prior submitted change, must meet the section 5 preclearance requirement.

§ 51.13 Examples of changes.

Changes affecting voting include, but are not limited to, the following examples:

(a) Any change in qualifications or eligibility for voting.

(b) Any change concerning registration, balloting, and the counting of votes and any change concerning publicity for or assistance in registration or voting.

(c) Any change with respect to the use of a language other than English in any aspect of the electoral process.

(d) Any change in the boundaries of voting precincts or in the location of polling places.

(e) Any change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, deannexation, incorporation, reapportionment, changing to at-large elections from district elections, or changing to district elections from at-large elections).

(f) Any change in the method of determining the outcome of an election (e.g., by requiring a majority vote for election or the use of a designated post or place system).

(g) Any change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices.

(h) Any change in the eligibility and qualification procedures for independent candidates.

(i) Any change in the term of an elective office or an elected official or in the offices that are elective (e.g., by shortening the term of an office, changing from election to appointment or staggering the terms of offices).

(j) Any change affecting the necessity of or methods for offering issues and propositions for approval by referendum.

(k) Any change affecting the right or ability of persons to participate in political campaigns which is effected by a jurisdiction subject to the requirement of section 5.

§ 51.14 Recurrent practices.

Where a jurisdiction implements a practice or procedure periodically or upon certain established contingencies, a change occurs:

(a) The first time such a practice or procedure is implemented by the jurisdiction,

(b) When the manner in which such a practice or procedure is implemented by the jurisdiction is changed, or

(c) When the rules for determining when such a practice or procedure will be implemented are changed.

The failure of the Attorney General to object to a recurrent practice or procedure constitutes preclearance of the future use of the practice or procedure if its recurrent nature is clearly stated or described in the submission or is expressly recognized in the final response of the Attorney General on the merits of the submission.

§ 51.15 Enabling legislation and contingent or nonuniform requirements.

(a) With respect to legislation (1) that enables or permits the State or its political subunits to institute a voting change or (2) that requires or enables the State or its political sub-units to institute a voting change upon some future event or if they satisfy certain

criteria, the failure of the Attorney General to interpose an objection does not exempt from the preclearance requirement the implementation of the particular voting change that is enabled, permitted, or required, unless that implementation is explicitly included and described in the submission of such parent legislation.

(b) For example, such legislation includes—

(1) Legislation authorizing counties, cities, school districts, or agencies or officials of the State to institute any of the changes described in § 51.13,

(2) Legislation requiring a political subunit that chooses a certain form of government to follow specified election procedures,

(3) Legislation requiring or authorizing political subunits of a certain size or a certain location to institute specified changes,

(4) Legislation requiring a political subunit to follow certain practices or procedures unless the subunit's charter or ordinances specify to the contrary.

§ 51.16 Distinction between changes in procedure and changes in substance.

The failure of the Attorney General to interpose an objection to a procedure for instituting a change affecting voting does not exempt the substantive change from the preclearance requirement. For example, if the procedure for the approval of an annexation is changed from city council approval to approval in a referendum, the preclearance of the new procedure does not exempt an annexation accomplished under the new procedure from the preclearance requirement.

§ 51.17 Special elections.

(a) The conduct of a special election (e.g., an election to fill a vacancy; an initiative, referendum, or recall election; or a bond issue election) is subject to the preclearance requirement to the extent that the jurisdiction makes changes in the practices or procedures to be followed.

(b) Any discretionary setting of the date for a special election or scheduling of events leading up to or following a special election is subject to the preclearance requirement.

(c) A jurisdiction conducting a referendum election to ratify a change in a practice or procedure that affects voting may submit the change to be voted on at the same time that it submits any changes involved in the conduct of the referendum election. A jurisdiction wishing to receive preclearance for the change to be ratified should state clearly that such preclearance is being requested. See § 51.22 of this part.

§ 51.18 Court-ordered changes.

(a) *In general.* Changes affecting voting that are ordered by a Federal court are subject to the preclearance requirement of section 5 to the extent that they reflect the policy choices of the submitting authority.

(b) *Subsequent changes.* Where a court-ordered change is not itself subject to the preclearance requirement, subsequent changes necessitated by the court order but decided upon by the jurisdiction remain subject to preclearance. For example, voting precinct and polling place changes made necessary by a court-ordered redistricting plan are subject to section 5 review.

(c) *In emergencies.* A Federal court's authorization of the emergency interim use without preclearance of a voting change does not exempt from section 5 review any use of the practice not explicitly authorized by the court.

§ 51.19 Request for notification concerning voting litigation.

A jurisdiction subject to the preclearance requirement of section 5 that becomes involved in any litigation concerning voting is requested promptly to notify the Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035-6128. Such notification will not be considered a submission under section 5.

[52 FR 490, Jan. 6, 1987, as amended by Order 1214-87, 52 FR 33409, Sept. 3, 1987]

Subpart B—Procedures for Submission to the Attorney General

§ 51.20 Form of submissions.

(a) Submissions may be made in letter or any other written form.

(b) The Attorney General will accept certain machine readable data in the following forms of magnetic media: 3½" 1.4 megabyte MS-DOS formatted diskettes; 5¼" 1.2 megabyte MS-DOS formatted floppy disks; nine-track tape (1600/6250 BPI). Unless requested by the Attorney General, data provided on magnetic media need not be provided in hard copy.

(c) All magnetic media shall be clearly labelled with the following information:

(1) Submitting authority.

(2) Name, address, title, and telephone number of contact person.

(3) Date of submission cover letter.

(4) Statement identifying the voting change(s) involved in the submission.

The label shall be affixed to each magnetic medium, and the information included on the label shall also be contained in a documentation file on the magnetic medium. If the information identified above is provided as a disk operating system (DOS) file, it shall be formatted in a standard American Standard Code for Information Interchange (ASCII) character code, with a line feed or carriage return control character starting in position 80. If the information identified above is provided other than as DOS files, it shall be formatted as ASCII text (or Extended Binary Coded Decimal Interchange Code (EBCDIC) if IBM standard labels are used), 80 byte fixed record length, blocked in a multiple of 80 with a blocksize no larger than 32 kilobytes, and with no carriage return or line feed.

(d) Each magnetic medium (floppy disk or tape) provided must be accompanied by a printed description of its contents, including an identification by name and/or location of each data file that is contained on the medium, a detailed record layout for each such file, a record count for each such file, and a full description of the magnetic medium format.

(e) All data files shall be provided in a fixed record-length format using alphanumeric ASCII values. The first 50 records of each such file shall be printed on hard copy and shall be attached to the printed description of the file. Proprietary and/or commercial software system data files (e.g. SAS, SPSS, dBase, Lotus 1-2-3) and data files containing compressed data or binary data fields will not be accepted. Nine-track tapes shall be clearly marked with printed labels to indicate their density, and manner of labelling (ANSI, IBM, or unlabelled). The printed label shall also include the record count, the record length, the blocksize, the dataset name (DSN) if it is a labelled tape, and the file number of each file on the tape.

[52 FR 490, Jan. 6, 1987, as amended by Order No. 1536-91, 56 FR 51836, Oct. 16, 1991]

§ 51.21 Time of submissions.

Changes affecting voting should be submitted as soon as possible after they become final.

§ 51.22 Premature submissions.

The Attorney General will not consider on the merits:

(a) Any proposal for a change affecting voting submitted prior to final enactment or administrative decision or

(b) Any proposed change which has a direct bearing on another change affecting voting which has not received section 5 preclearance.

However, with respect to a change for which approval by referendum, a State or Federal court or a Federal agency is required, the Attorney General may make a determination concerning the change prior to such approval if the change is not subject to alteration in the final approving action and if all other action necessary for approval has been taken.

§ 51.23 Party and jurisdiction responsible for making submissions.

(a) Changes affecting voting shall be submitted by the chief legal officer or other appropriate official of the submitting authority or by any other authorized person on behalf of the submitting authority. When one or more counties or other political subunits

within a State will be affected, the State may make a submission on their behalf. Where a State is covered as a whole, State legislation (except legislation of local applicability) or other changes undertaken or required by the State shall be submitted by the State.

(b) A change effected by a political party (see § 51.7) may be submitted by an appropriate official of the political party.

§ 51.24 Address for submissions.

(a) *Delivery by U.S. Postal Service.* Submissions sent to the Attorney General via the U.S. Postal Service shall be addressed to the Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035-6128.

(b) *Delivery by other means.* Submissions sent to the Attorney General by carriers *other than* the U.S. Postal Service should be addressed or may be delivered to the Chief, Voting Section, Civil Rights Division, Department of Justice, 320 First Street, NW., room 818A, Washington, DC 20001.

(c) *Special marking.* The envelope and first page of the submission shall be clearly marked: Submission under section 5 of the Voting Rights Act.

[Order 1214-87, 52 FR 33409, Sept. 3, 1987, as amended by Order No. 1793-93, 58 FR 51225, Oct. 1, 1993]

§ 51.25 Withdrawal of submissions.

(a) A jurisdiction may withdraw a submission at any time prior to a final decision by the Attorney General. Notice of the withdrawal of a submission must be made in writing, addressed to the Chief, Voting Section, as specified in § 51.24 of this part. The submission shall be deemed withdrawn upon receipt of the notice.

(b) Notice of withdrawals will be given to interested parties registered under § 51.32.

[52 FR 490, Jan. 6, 1987, as amended by Order 1214-87, 52 FR 33409, Sept. 3, 1987]

Subpart C—Contents of Submissions

§ 51.26 General.

(a) The source of any information contained in a submission should be identified.

(b) Where an estimate is provided in lieu of more reliable statistics, the submission should identify the name, position, and qualifications of the person responsible for the estimate and should briefly describe the basis for the estimate.

(c) Submissions should be no longer than is necessary for the presentation of the appropriate information and materials.

(d) The Attorney General will not accept for review any submission that fails to describe the subject change in sufficient particularity to satisfy the minimum requirements of § 51.27(c).

(e) A submitting authority that desires the Attorney General to consider any information supplied as part of an earlier submission may incorporate such information by reference by stating the date and subject matter of the earlier submission and identifying the relevant information.

(f) Where information requested by this subpart is relevant but not known or available, or is not applicable, the submission should so state.

(g) The following Office of Management and Budget control number under the Paperwork Reduction Act applies to the collection of information requirements contained in these Procedures: OMB No. 1190-0001 (expires February 28, 1994). See 5 CFR 1320.13.

[52 FR 490, Jan. 6, 1987, as amended by Order No. 1284-88, 53 FR 25327, July 6, 1988; Order No. 1498-91, 56 FR 26032, June 6, 1991]

§ 51.27 Required contents.

Each submission should contain the following information or documents to enable the Attorney General to make the required determination pursuant to section 5 with respect to the submitted change affecting voting:

(a) A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting.

(b) A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed.

(c) If the change affecting voting either is not readily apparent on the face of the documents provided under paragraphs (a) and (b) of this section or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

(d) The name, title, address, and telephone number of the person making the submission.

(e) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

(f) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

(g) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).

(h) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

(i) The date of adoption of the change affecting voting.

(j) The date on which the change is to take effect.

(k) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

(l) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

(m) A statement of the reasons for the change.

(n) A statement of the anticipated effect of the change on members of racial or language minority groups.

(o) A statement identifying any past or pending litigation concerning the change or related voting practices.

(p) A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

(q) For redistrictings and annexations: the items listed under §51.28 (a)(1) and (b)(1); for annexations only: the items listed under §51.28(c)(3).

(r) Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in §51.28 and is most likely to be needed with respect to redistrictings, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type. When such information is required, but not provided, the Attorney General shall notify the submitting authority in the manner provided in §51.37.

§51.28 Supplemental contents.

Review by the Attorney General will be facilitated if the following information, where pertinent, is provided in addition to that required by §51.27.

(a) *Demographic information.* (1) Total and voting age population of the affected area before and after the change, by race and language group. If such information is contained in publications of the U.S. Bureau of the Census, reference to the appropriate volume and table is sufficient.

(2) The number of registered voters for the affected area by voting precinct before and after the change, by race and language group.

(3) Any estimates of population, by race and language group, made in connection with the adoption of the change.

(4) Demographic data provided on magnetic media shall be based upon the Bureau of the Census Public Law 94-171 file unique block identity code of state, county, tract, and block.

(5) Demographic data on magnetic media that are provided in conjunction with a redistricting shall be contained in a table of equivalencies giving the census block to district assignments in the following format:

(i) Each census block record (including those with zero population) will be followed by one or more additional fields indicating the district assignment for the census block in one or more plans.

(ii) All district assignments in the plan fields shall be right justified and blank filled if the assignment is less than four characters.

(iii) The file structure shall be as follows:

Field	PL 94-171 reference name	Length	Data type
State	STATEFP	2	Numeric.
County	CNTY	3	Numeric.
Tract	TRACT/BNA	6	Alpha/Numeric.
Block	BLCK	4	Alpha/Numeric.
Plan 1 District	User supplied	4	Alpha/Numeric.
Plan 2 District	User supplied	4	Alpha/Numeric.
Plan 3 District, etc.			
Plan n District	User supplied	4	Alpha/Numeric.

(iv) State and county shall be identified using the Federal Information Processing Standards (FIPS-55) code.

(v) Census tracts shall be left justified, and census blocks shall be left justified and blank filled if less than four characters.

(vi) Unused plan fields shall be blank filled.

(vii) In addition to the information identified in § 51.20 (c) through (e), the documentation file accompanying the block level equivalency file shall contain the following information:

(A) The file structure.

(B) The total number of plans.

(C) For each plan field, an identification of the plan (e.g., state senate, congressional, county board, city council, school board) and its status or nature (e.g., plan currently in effect, adopted plan, alternative plan and sponsors).

(D) The number of districts in each plan field.

(E) Whether the plan field contains a complete or partial plan.

(F) Any additional information the jurisdiction deems relevant such as bill number, date of adoption, etc., and a listing of any modifications the submitting authority has made that alter the structure of the TIGER/line geographic file.

(b) *Maps.* Where any change is made that revises the constituency that elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or that changes voting precinct boundaries, polling place locations, or voter registration sites, maps in duplicate of the area to be affected, containing the following information:

(1) The prior and new boundaries of the voting unit or units.

(2) The prior and new boundaries of voting precincts.

(3) The location of racial and language minority groups.

(4) Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units.

(5) The location of prior and new polling places.

(6) The location of prior and new voter registration sites.

(c) *Annexations.* For annexations, in addition to that information specified elsewhere, the following information:

(1) The present and expected future use of the annexed land (e.g., garden apartments, industrial park).

(2) An estimate of the expected population, by race and language group, when anticipated development, if any, is completed.

(3) A statement that all prior annexations subject to the preclearance requirement have been submitted for review, or a statement that identifies all annexations subject to the preclearance requirement that have not been submitted for review. See § 51.61(b).

(d) *Election returns.* Where a change may affect the electoral influence of a racial or language minority group, returns of primary and general elections conducted by or in the jurisdiction, containing the following information:

(1) The name of each candidate.

(2) The race or language group of each candidate, if known.

(3) The position sought by each candidate.

(4) The number of votes received by each candidate, by voting precinct.

(5) The outcome of each contest.

(6) The number of registered voters, by race and language group, for each voting precinct for which election returns are furnished. Information with respect to elections held during the last ten years will normally be sufficient.

(7) Election related data containing any of the information described above that are provided on magnetic media shall conform to the requirements of § 51.20 (b) through (e). Election related data that cannot be accurately presented in terms of census blocks may be identified by county and by precinct.

(e) *Language usage.* Where a change is made affecting the use of the language of a language minority group in the electoral process, information that will enable the Attorney General to determine whether the change is consistent with the minority language requirements of the Act. The Attorney General's interpretation of the minority language requirements of the Act is contained in Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 CFR part 55.

(f) *Publicity and participation.* For submissions involving controversial or potentially controversial changes, evidence of public notice, of the opportunity for the public to be heard, and of the opportunity for interested parties to participate in the decision to adopt the proposed change and an account of the extent to which such participation, especially by minority group members, in fact took place. Examples of materials demonstrating public notice or participation include:

(1) Copies of newspaper articles discussing the proposed change.

(2) Copies of public notices that describe the proposed change and invite public comment or participation in hearings and statements regarding where such public notices appeared (e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups).

(3) Minutes or accounts of public hearings concerning the proposed change.

(4) Statements, speeches, and other public communications concerning the proposed change.

(5) Copies of comments from the general public.

(6) Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.

(g) *Availability of the submission.* (1) Copies of public notices that announce the submission to the Attorney General, inform the public that a complete duplicate copy of the submission is available for public inspection (e.g., at the county courthouse) and invite comments for the consideration of the Attorney General and statements regarding where such public notices appeared.

(2) Information demonstrating that the submitting authority, where a submission contains magnetic media, made the magnetic media available to be copied or, if so requested, made a hard copy of the data contained on the magnetic media available to be copied.

(h) *Minority group contacts.* For submissions from jurisdictions having a significant minority population, the names, addresses, telephone numbers, and organizational affiliation (if any) of racial or language minority group members residing in the jurisdiction who can be expected to be familiar with the proposed change or who have been active in the political process.

[52 FR 490, Jan. 6, 1987, as amended by Order No. 1536-91, 56 FR 51836, Oct. 16, 1991]

Subpart D—Communications From Individuals and Groups

§ 51.29 Communications concerning voting changes.

Any individual or group may send to the Attorney General information concerning a change affecting voting in a jurisdiction to which section 5 applies.

(a) Communications may be in the form of a letter stating the name, address, and telephone number of the individual or group, describing the alleged change affecting voting and setting forth evidence regarding whether

the change has or does not have a discriminatory purpose or effect, or simply bringing to the attention of the Attorney General the fact that a voting change has occurred.

(b) The communications should be mailed to the Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035-6128. The envelope and first page should be marked: Comment under section 5 of the Voting Rights Act.

(c) Comments by individuals or groups concerning any change affecting voting may be sent at any time; however, individuals and groups are encouraged to comment as soon as they learn of the change.

(d) Department of Justice officials and employees shall comply with the request of any individual that his or her identity not be disclosed to any person outside the Department, to the extent permitted by the Freedom of Information Act, 5 U.S.C. 552. In addition, whenever it appears to the Attorney General that disclosure of the identity of an individual who provided information regarding a change affecting voting "would constitute a clearly unwarranted invasion of personal privacy" under 5 U.S.C. 552(b)(6), the identity of the individual shall not be disclosed to any person outside the Department.

(e) When an individual or group desires the Attorney General to consider information that was supplied in connection with an earlier submission, it is not necessary to resubmit the information but merely to identify the earlier submission and the relevant information.

[52 FR 490, Jan. 6, 1987, as amended by Order 1214-87, 52 FR 33409, Sept. 3, 1987]

§ 51.30 Action on communications from individuals or groups.

(a) If there has already been a submission received of the change affecting voting brought to the attention of the Attorney General by an individual or group, any evidence from the individual or group shall be considered along with the materials submitted and materials resulting from any investigation.

(b) If such a submission has not been received, the Attorney General shall advise the appropriate jurisdiction of the requirement of section 5 with respect to the change in question.

§ 51.31 Communications concerning voting suits.

Individuals and groups are urged to notify the Chief, Voting Section, Civil Rights Division, of litigation concerning voting in jurisdictions subject to the requirement of section 5.

§ 51.32 Establishment and maintenance of registry of interested individuals and groups.

The Attorney General shall establish and maintain a Registry of Interested Individuals and Groups, which shall contain the name and address of any individual or group that wishes to receive notice of section 5 submissions. Information relating to this registry and to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a *et seq.*, is contained in JUSTICE/CRT-004. 48 FR 5334 (Feb. 4, 1983).

Subpart E—Processing of Submissions

§ 51.33 Notice to registrants concerning submissions.

Weekly notice of submissions that have been received will be given to the individuals and groups who have registered for this purpose under § 51.32. Such notice will also be given when section 5 declaratory judgment actions are filed or decided.

§ 51.34 Expedited consideration.

(a) When a submitting authority is required under State law or local ordinance or otherwise finds it necessary to implement a change within the 60-day period following submission, it may request that the submission be given expedited consideration. The submission should explain why such consideration is needed and provide the date by which a determination is required.

(b) Jurisdictions should endeavor to plan for changes in advance so that expedited consideration will not be required and should not routinely request such consideration. When a submitting authority demonstrates good cause for expedited consideration the Attorney General will attempt to make a decision by the date requested. However, the Attorney General cannot guarantee that such consideration can be given.

(c) Notice of the request for expedited consideration will be given to interested parties registered under § 51.32.

§ 51.35 Disposition of inappropriate submissions.

The Attorney General will make no response on the merits with respect to an inappropriate submission but will notify the submitting authority of the inappropriateness of the submission. Such notification will be made as promptly as possible and no later than the 60th day following receipt and will include an explanation of the inappropriateness of the submission. Inappropriate submissions include the submission of changes that do not affect voting (see, e.g., § 51.13), the submission of standards, practices, or procedures that have not been changed (see, e.g., §§ 51.4, 51.14), the submission of changes that affect voting but are not subject to the requirement of section 5 (see, e.g., § 51.18), premature submissions (see §§ 51.22, 51.61(b)), submissions by jurisdictions not subject to the preclearance requirement (see §§ 51.4, 51.5), and deficient submissions (see § 51.26(d)).

§ 51.36 Release of information concerning submissions.

The Attorney General shall have the discretion to call to the attention of the submitting authority or any interested individual or group information or comments related to a submission.

§ 51.37 Obtaining information from the submitting authority.

(a) If a submission does not satisfy the requirements of § 51.27, the Attorney General may request from the submitting authority any omitted information considered necessary for the evaluation of the submission. The request shall be made by letter and shall be made within the 60-day period and as promptly as possible after receipt of the original submission. See also § 51.26(d).

(b) A copy of the request shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(c) The Attorney General shall notify the submitting authority that a new 60-day period in which the Attorney General may interpose an objection shall commence upon the receipt of a response from the submitting authority that provides the information requested or states that the information is unavailable. The Attorney General can request further information within the new 60-day period, but such a further request shall not suspend the running of the 60-day period, nor shall the receipt of a response to such a request operate to begin a new 60-day period.

(d) The receipt of a response from the submitting authority that neither provides the information requested nor states that such information is unavailable shall not commence a new 60-day period. It is the practice of the Attorney General to notify the submitting authority that its response is inadequate and to provide such notification as soon as possible after the receipt of the inadequate response.

(e) If, after a request for further information is made pursuant to this section, the information requested becomes available to the Attorney General from a source other than the submitting authority, the Attorney General shall promptly notify the submitting authority by letter, and the 60-day period will commence upon the date of such notification.

(f) Notice of the request for and receipt of further information will be given to interested parties registered under § 51.32.

§ 51.38 Obtaining information from others.

(a) The Attorney General may at any time request relevant information from governmental jurisdictions and from interested groups and individuals and may conduct any investigation or

other inquiry that is deemed appropriate in making a determination.

(b) If a submission does not contain evidence of adequate notice to the public, and the Attorney General believes that such notice is essential to a determination, steps will be taken by the Attorney General to provide public notice sufficent to invite interested or affected persons to provide evidence as to the presence or absence of a discriminatory purpose or effect. The submitting authority shall be advised when any such steps are taken.

§ 51.39 Supplementary submissions.

(a) When a submitting authority provides documents and written information materially supplementing a submission (or a request for reconsideration of an objection) for evaluation as if part of its original submission, or, before the expiration of the 60-day period, makes a second submission such that the two submissions cannot be independently considered, the 60-day period for the original submission will be calculated from the receipt of the supplementary information or from the second submission.

(b) The Attorney General will notify the submitting authority when the 60-day period for a submission is recalculated from the receipt of supplementary information or from the receipt of a second related submission.

(c) Notice of the receipt of supplementary information will be given to interested parties registered under § 51.32.

§ 51.40 Failure to complete submissions.

If after 60 days the submitting authority has not provided further information in response to a request made pursuant to § 51.37(a), the Attorney General, absent extenuating circumstances and consistent with the burden of proof under section 5 described in § 51.52 (a) and (c), may object to the change, giving notice as specified in § 51.44.

§ 51.41 Notification of decision not to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose no objection to a submitted change affecting voting.

(b) The notification shall state that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change.

(c) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

§ 51.42 Failure of the Attorney General to respond.

It is the practice and intention of the Attorney General to respond to each submission within the 60-day period. However, the failure of the Attorney General to make a written response within the 60-day period constitutes preclearance of the submitted change, provided the submission is addressed as specified in § 51.24 and is appropriate for a response on the merits as described in § 51.35.

§ 51.43 Reexamination of decision not to object.

After notification to the submitting authority of a decision to interpose no objection to a submitted change affecting voting has been given, the Attorney General may reexamine the submission if, prior to the expiration of the 60-day period, information indicating the possibility of the prohibited discriminatory purpose or effect is received. In this event, the Attorney General may interpose an objection provisionally and advise the submitting authority that examination of the change in light of the newly raised issues will continue and that a final decision will be rendered as soon as possible.

§ 51.44 Notification of decision to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose an objection. The reasons for the decision shall be stated.

(b) The submitting authority shall be advised that the Attorney General will reconsider an objection upon a request by the submitting authority.

(c) The submitting authority shall be advised further that notwithstanding the objecton it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited discriminatory purpose or effect.

(d) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(e) Notice of the decision to interpose an objection will be given to interested parties registered under § 51.32.

§ 51.45 Request for reconsideration.

(a) The submitting authority may at any time request the Attorney General to reconsider an objection.

(b) Requests may be in letter or any other written form and should contain relevant information or legal argument.

(c) Notice of the request will be given to any party who commented on the submission or requested notice of the Attorney General's action thereon and to interested parties registered under § 51.32. In appropriate cases the Attorney General may request the submitting authority to give local public notice of the request.

§ 51.46 Reconsideration of objection at the instance of the Attorney General.

(a) Where there appears to have been a substantial change in operative fact or relevant law, an objection may be reconsidered, if it is deemed appropriate, at the instance of the Attorney General.

(b) Notice of such a decision to reconsider shall be given to the submitting authority, to any party who commented on the submission or requested notice of the Attorney General's action thereon, and to interested parties registered under § 51.32, and the Attorney General shall decide whether to withdraw or to continue the objection only after such persons have had a reasonable opportunity to comment.

§ 51.47 Conference.

(a) A submitting authority that has requested reconsideration of an objection pursuant to § 51.45 may request a conference to produce information or legal argument in support of reconsideration.

(b) Such a conference shall be held at a location determined by the Attorney General and shall be conducted in an informal manner.

(c) When a submitting authority requests such a conference, individuals or groups that commented on the change prior to the Attorney General's objection or that seek to participate in response to any notice of a request for reconsideration shall be notified and given the opportunity to confer.

(d) The Attorney General shall have the discretion to hold separate meetings to confer with the submitting authority and other interested groups or individuals.

(e) Such conferences will be open to the public or to the press only at the discretion of the Attorney General and with the agreement of the participating parties.

§ 51.48 Decision after reconsideration.

(a) The Attorney General shall within the 60-day period following the receipt of a reconsideration request or following notice given under § 51.46(b) notify the submitting authority of the decision to continue or withdraw the objection, provided that the Attorney General shall have at least 15 days following any conference that is held in which to decide. (See also § 51.39(a).) The reasons for the decision shall be stated.

(b) The objection shall be withdrawn if the Attorney General is satisfied that the change does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group.

(c) If the objection is not withdrawn, the submitting authority shall be advised that notwithstanding the objection it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited purpose or effect.

(d) An objection remains in effect until either it is withdrawn by the Attorney General or a declaratory judgment with respect to the change in question is entered by the U.S. District Court for the District of Columbia.

(e) A copy of the notification shall be sent to any party who has commented on the submission or reconsideration or has requested notice of the Attorney General's action thereon.

(f) Notice of the decision after reconsideration will be given to interested parties registered under § 51.32.

§ 51.49 Absence of judicial review.

The decision of the Attorney General not to object to a submitted change or to withdraw an objection is not reviewable. The preclearance by the Attorney General of a voting change does not constitute the certification that the voting change satisfies any other requirement of the law beyond that of section 5, and, as stated in section 5, "(n)either an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure."

§ 51.50 Records concerning submissions.

(a) Section 5 files: The Attorney General shall maintain a section 5 file for each submission, containing the submission, related written materials, correspondence, memoranda, investigative reports, data provided on magnetic media, notations concerning conferences with the submitting authority or any interested individual or group, and copies of letters from the Attorney General concerning the submission.

(b) Objection files: Brief summaries regarding each submission and the general findings of the Department of Justice investigation and decision concerning it will be prepared when a decision to interpose, continue, or withdraw an objection is made. Files of these summaries, arranged by jurisdiction and by the date upon which such decision is made, will be maintained.

(c) Computer file: Records of all submissions and of their dispositions by the Attorney General shall be electronically stored and periodically retrieved in the form of computer printouts.

(d) The contents of the files in paper or microfiche form described in paragraphs (a) through (c) of this section shall be available for inspection and copying by the public during normal business hours at the Voting Section, Civil Rights Division, Department of Justice, Washington, DC. Those who desire to inspect information that has been provided on magnetic media will be provided a copy of that information in the same form as it was received. Materials that are exempt from inspection under the Freedom of Information Act, 5 U.S.C. 552(b), may be withheld at the discretion of the Attorney Gereral. Communications from individuals who have requested confidentiality or with respect to whom the Attorney General has determined that confidentiality is appropriate under § 51.29(d) shall be available only as provided by § 51.29(d). Applicable fees, if any, for the copying of the contents of these files are contained in the Department of Justice regulations implementing the Freedom of Information Act, 28 CFR 16.10.

[52 FR 490, Jan. 6, 1987; 52 FR 2648, Jan. 23, 1987, as amended by Order No. 1536-91, 56 FR 51837, Oct. 16, 1991]

Subpart F—Determinations by the Attorney General

§ 51.51 Purpose of the subpart.

The purpose of this subpart is to inform submitting authorities and other interested parties of the factors that the Attorney General considers relevant and of the standards by which the Attorney General will be guided in making substantive determinations under section 5 and in defending section 5 declaratory judgment actions.

§ 51.52 Basic standard.

(a) *Surrogate for the court.* Section 5 provides for submission of a voting change to the Attorney General as an alternative to the seeking of a declaratory judgment from the U.S. District Court for the District of Columbia.

Therefore, the Attorney General shall make the same determination that would be made by the court in an action for a declaratory judgment under section 5: Whether the submitted change has the purpose or will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. The burden of proof is on a submitting authority when it submits a change to the Attorney General for preclearance, as it would be if the proposed change were the subject of a declaratory judgment action in the U.S. District Court for the District of Columbia. See *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328, 335 (1966).

(b) *No objection.* If the Attorney General determines that the submitted change does not have the prohibited purpose or effect, no objection shall be interposed to the change.

(c) *Objection.* An objection shall be interposed to a submitted change if the Attorney General is unable to determine that the change is free of discriminatory purpose and effect. This includes those situations where the evidence as to the purpose or effect of the change is conflicting and the Attorney General is unable to determine that the change is free of discriminatory purpose and effect.

§ 51.53 Information considered.

The Attorney General shall base a determination on a review of material presented by the submitting authority, relevant information provided by individuals or groups, and the results of any investigation conducted by the Department of Justice.

§ 51.54 Discriminatory effect.

(a) *Retrogression.* A change affecting voting is considered to have a discriminatory effect under section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively. See *Beer* v. *United States*, 425 U.S. 130, 140-42 (1976).

(b) *Benchmark.* (1) In determining whether a submitted change is retrogressive the Attorney General will normally compare the submitted change to the voting practice or procedure in effect at the time of the submission. If the existing practice or procedure upon submission was not in effect on the jurisdiction's applicable date for coverage (specified in the appendix) and is not otherwise legally enforceable under section 5, it cannot serve as a benchmark, and, except as provided in paragraph (b)(4) of this section, the comparison shall be with the last legally enforceable practice or procedure used by the jurisdiction.

(2) The Attorney General will make the comparison based on the conditions existing at the time of the submission.

(3) The implementation and use of an unprecleared voting change subject to section 5 review under § 51.18(a) does not operate to make that unprecleared change a benchmark for any subsequent change submitted by the jurisdiction. See § 51.18(c).

(4) Where at the time of submission of a change for section 5 review there exists no other lawful practice or procedure for use as a benchmark (e.g., where a newly incorporated college district selects a method of election) the Attorney General's preclearance determination will necessarily center on whether the submitted change was designed or adopted for the purpose of discriminating against members of racial or language minority groups.

§ 51.55 Consistency with constitutional and statutory requirements.

(a) *Consideration in general.* In making a determination the Attorney General will consider whether the change is free of discriminatory purpose and retrogressive effect in light of, and with particular attention being given to, the requirements of the 14th, 15th, and 24th amendments to the Constitution, 42 U.S.C. 1971(a) and (b), sections 2, 4(a), 4(f)(2), 4(f)(4), 201, 203(c), and 208 of the Act, and other constitutional and statutory provisions designed to safeguard the right to vote from denial or abridgment on account of race, color, or membership in a language minority group.

(b) *Section 2.* Preclearance under section 5 of a voting change will not preclude any legal action under section 2

by the Attorney General if implementation of the change demonstrates that such action is appropriate.

[52 FR 490, Jan. 6, 1987, as amended at 63 FR 24109, May 1, 1998]

§ 51.56 Guidance from the courts.

In making determinations the Attorney General will be guided by the relevant decisions of the Supreme Court of the United States and of other Federal courts.

§ 51.57 Relevant factors.

Among the factors the Attorney General will consider in making determinations with respect to the submitted changes affecting voting are the following:

(a) The extent to which a reasonable and legitimate justification for the change exists.

(b) The extent to which the jurisdiction followed objective guidelines and fair and conventional procedures in adopting the change.

(c) The extent to which the jurisdiction afforded members of racial and language minority groups an opportunity to participate in the decision to make the change.

(d) The extent to which the jurisdiction took the concerns of members of racial and language minority groups into account in making the change.

§ 51.58 Representation.

(a) *Introduction.* This section and the sections that follow set forth factors—in addition to those set forth above—that the Attorney General considers in reviewing redistrictings (see § 51.59), changes in electoral systems (see § 51.60), and annexations (see § 51.61).

(b) *Background factors.* In making determinations with respect to these changes involving voting practices and procedures, the Attorney General will consider as important background information the following factors:

(1) The extent to which minorities have been denied an equal opportunity to participate meaningfully in the political process in the jurisdiction.

(2) The extent to which minorities have been denied an equal opportunity to influence elections and the decision-making of elected officials in the jurisdiction.

(3) The extent to which voting in the jurisdiction is racially polarized and political activities are racially segregated.

(4) The extent to which the voter registration and election participation of minority voters have been adversely affected by present or past discrimination.

§ 51.59 Redistrictings.

In determining whether a submitted redistricting plan has the prohibited purpose or effect the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(a) The extent to which malapportioned districts deny or abridge the right to vote of minority citizens.

(b) The extent to which minority voting strength is reduced by the proposed redistricting.

(c) The extent to which minority concentrations are fragmented among different districts.

(d) The extent to which minorities are overconcentrated in one or more districts.

(e) The extent to which available alternative plans satisfying the jurisdiction's legitimate governmental interests were considered.

(f) The extent to which the plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries.

(g) The extent to which the plan is inconsistent with the jurisdiction's stated redistricting standards.

§ 51.60 Changes in electoral systems.

In making determinations with respect to changes in electoral systems (e.g., changes to or from the use of at-large elections, changes in the size of elected bodies) the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(a) The extent to which minority voting strength is reduced by the proposed change.

(b) The extent to which minority concentrations are submerged into larger electoral units.

(c) The extent to which available alternative systems satisfying the jurisdiction's legitimate governmental interests were considered.

§ 51.61 Annexations.

(a) *Coverage.* Annexations, even of uninhabited land, are subject to section 5 preclearance to the extent that they alter or are calculated to alter the composition of a jurisdiction's electorate. In analyzing annexations under section 5, the Attorney General only considers the purpose and effect of the annexation as it pertains to voting.

(b) *Section 5 review.* It is the practice of the Attorney General to review all of a jurisdiction's unprecleared annexations together. See *City of Pleasant Grove* v. *United States*, C.A. No. 80-2589 (D.D.C. Oct. 7, 1981).

(c) *Relevant factors.* In making determinations with respect to annexations, the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(1) The extent to which a jurisdiction's annexations reflect the purpose or have the effect of excluding minorities while including other similarly situated persons.

(2) The extent to which the annexations reduce a jurisdiction's minority population percentage, either at the time of the submission or, in view of the intended use, for the reasonably foreseeable future.

(3) Whether the electoral system to be used in the jurisdiction fails fairly to reflect minority voting strength as it exists in the post-annexation jurisdiction. See *City of Richmond* v. *United States*, 422 U.S. 358, 367-72 (1975).

[52 FR 490, Jan. 6, 1987; 52 FR 2648, Jan. 23, 1987]

Subpart G—Sanctions

§ 51.62 Enforcement by the Attorney General.

(a) The Attorney General is authorized to bring civil actions for appropriate relief against violations of the Act's provisions, including section 5. See section 12(d).

(b) Certain violations of section 5 may be subject to criminal sanctions. See section 12(a) and (c).

§ 51.63 Enforcement by private parties.

Private parties have standing to enforce section 5.

§ 51.64 Bar to termination of coverage (bailout).

(a) Section 4(a) of the Act sets out the requirements for the termination of coverage (bailout) under section 5. See § 51.5. Among the requirements for bailout is compliance with section 5, as described in section 4(a), during the ten years preceding the filing of the bailout action and during its pendency.

(b) In defending bailout actions, the Attorney General will not consider as a bar to bailout under section 4(a)(1)(E) a section 5 objection to a submitted voting standard, practice, or procedure if the objection was subsequently withdrawn on the basis of a determination by the Attorney General that it had originally been interposed as a result of the Attorney General's misinterpretation of fact or mistake in the law, or if the unmodified voting standard, practice, or procedure that was the subject of the objection received section 5 preclearance by means of a declaratory judgment from the U.S. District Court for the District of Columbia.

(c) Notice will be given to interested parties registered under § 51.32 when bailout actions are filed or decided.

Subpart H—Petition To Change Procedures

§ 51.65 Who may petition.

Any jurisdiction or interested individual or group may petition to have these procedural guidelines amended.

§ 51.66 Form of petition.

A petition under this subpart may be made by informal letter and shall state the name, address, and telephone number of the petitioner, the change requested, and the reasons for the change.

§ 51.67 Disposition of petition.

The Attorney General shall promptly consider and dispose of a petition under this subpart and give notice of the disposition, accompanied by a simple statement of the reasons, to the petitioner.

APPENDIX TO PART 51—JURISDICTIONS COVERED UNDER SECTION 4(b) OF THE VOTING RIGHTS ACT, AS AMENDED

The preclearance requirement of section 5 of the Voting Rights Act, as amended, applies in the following jurisdictions. The applicable date is the date that was used to determine coverage and the date after which changes affecting voting are subject to the preclearance requirement.

Some jurisdictions, for example, Yuba County, California, are included more than once because they have been determined on more than one occasion to be covered under section 4(b).

Jurisdiction	Applicable Date	FEDERAL REGISTER citation	
		Volume and page	Date
Alabama	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Alaska	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Arizona	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
California:			
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23. 1975.
Merced County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Monterey County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuba County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuba County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Florida:			
Collier County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Hardee County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Hendry County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Hillsborough County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Monroe County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Georgia	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Louisiana	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Michigan:			
Allegan County:			
Clyde Township	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Saginaw County:			
Buena Vista Township	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Mississippi	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
New Hampshire:			
Cheshire County:			
Rindge Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Coos County:			
Millsfield Township	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Pinkhams Grant	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Stewartstown Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Stratford Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Grafton County:			
Benton Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Hillsborough County:			
Antrim Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Merrimack County:			
Boscawen Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Rockingham County:			
Newington Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Sullivan County:			
Unity Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
New York:			
Bronx County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Bronx County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Kings County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
New York County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
North Carolina:			
Anson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Beaufort County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Bertie County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Bladen County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Camden County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.

Jurisdiction	Applicable Date	Federal Register citation	
		Volume and page	Date
Caswell County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Chowan County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Cleveland County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Craven County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Cumberland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Edgecombe County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Franklin County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Gaston County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Gates County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Granville County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Greene County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Guilford County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Halifax County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Harnett County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Hertford County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Hoke County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Jackson County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Lee County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Lenoir County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Martin County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
Nash County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Northampton County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Onslow County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Pasquotank County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Perquimans County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.
Person County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Pitt County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Robeson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Rockingham County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Scotland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Union County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Vance County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Washington County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
Wayne County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Wilson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
South Carolina	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
South Dakota:			
Shannon County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Todd County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Texas	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Virginia	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.

The following political subdivisions in States subject to statewide coverage are also covered individually:

Jurisdiction	Applicable date	Federal Register citation	
		Volume and page	Date
Arizona:			
Apache County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Apache County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975
Cochise County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Coconino County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Coconino County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Mohave County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Navajo County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Navajo County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Pima County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Pinal County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Pinal County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Santa Cruz County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuma County	Nov. 1, 1964	31 FR 982	Jan. 25, 1966.