

SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT AND 5 C.F.R. 1320

Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as Amended, 28 CFR Part 51

January 2007

A. Justification

1. Circumstances that make the collection of information necessary.

Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. § 1973c and the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, sec. 5, 120 Stat. 577, 580-581 (2006)), requires jurisdictions covered under Section 4(b) of the Act, 42 U.S.C. § 1973b(b), to obtain from the United States District Court for the District of Columbia – or, alternatively, from the Attorney General – preclearance of any “voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting” that is changed. The court or the Attorney General cannot grant this preclearance unless convinced 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. *Id.* The overwhelming majority of such changes are submitted to the Attorney General for preclearance (only 69 cases seeking preclearance through the court have been filed in the history of the Voting Rights Act). Affected jurisdictions have the burden of proof on these issues, *Reno v. Bossier Parish School Board*, 528 U.S. 320, 328 (2000) and 28 C.F.R. § 51.52, and provide information to the Attorney General to persuade him to grant the preclearance they need before they can implement voting changes. The Attorney General has only sixty days in which to interpose an objection to a change after receipt of a completed submission. See 42 U.S.C. § 1973c, 28 C.F.R. §§ 51.9, 51.37, 51.39 and 51.42. Subpart C of the Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as Amended, 28 C.F.R. Part 51, Contents of Submissions, is intended to give jurisdictions guidance in making submissions that will provide the Attorney General with sufficient information for decision without the inclusion of irrelevant or superfluous material and will provide that information in a readily usable format. See § 51.52 for a description of the basic legal standard. See the Appendix and §§ 51.4 through 51.8 for the geographical and temporal application of Section 5.

2. How, by whom, and for what purpose the information is to be used.

See #1.

If the Attorney General is to make determinations with respect to the thousands of voting changes that, as required by law, may be submitted to him each year, he must have information on which to base the determinations. Subpart C saves the submitting jurisdictions time and expense by indicating to them the information that would be most helpful and relevant and enables them to obtain preclearance faster than they would otherwise by providing the Attorney General information that enables his staff to complete their analyses more quickly.

3. Consideration of using information technology to reduce burden.

The Voting Section has a computerized records system and microfiche and imaging filing systems that enable staff members to locate past submissions from the same or related jurisdictions. The Section 5 Guidelines allow submitting authorities to provide certain data on magnetic media in support of their preclearance requests.

4. Efforts to identify duplication.

Under § 51.28(a) of the Section 5 Guidelines, submitting jurisdictions are advised not to provide information that is available in census publications. Under §51.26(e) submitting jurisdictions can incorporate by reference information provided in prior submissions. The Voting Section also utilizes, to the extent possible, relevant information that it has on file as a result of other enforcement efforts. Except for the Census Bureau, no government agency collects or maintains the information that is generally relevant to determinations under Section 5. Under Section 5 the Attorney General must make individual decisions with respect to thousands of separate voting changes. Each change involves unique circumstances that must be investigated, analyzed, and understood before the Attorney General can make the determination required.

5. Methods used to minimize burden on small entities.

While Section 5 does not have a significant economic impact on small entities, a large proportion of submissions are made by rural counties and other governmental entities of relatively low population. Subpart C is intended to minimize the burden on these and other affected entities. For example, § 51.26(b) contemplates the use of estimates “in lieu of more reliable statistics.” Under § 51.26(c) jurisdictions are advised that “[s]ubmissions should be no longer than is necessary for the presentation of the appropriate information and materials.” Jurisdictions are advised in § 51.26(e) to incorporate by reference information previously provided. If relevant information is not known or available, jurisdictions are informed, by §51.26(f), that they should so indicate. They are not asked to undertake special projects to obtain information that is not otherwise available to them. Under § 51.37(e), if the Attorney General obtains from another source information that he has requested from a jurisdiction, he notifies the jurisdiction that it no longer needs to provide the requested information. With respect to all but the most complicated submissions it should be possible for jurisdictions to provide the information needed by the Attorney General in order to make a determination without the employment of legal counsel or expert consultants.

6. Consequence to Federal program or policy activities if the collection were not conducted or were conducted less frequently, as well as any technical or legal obstacles to reducing burden.

With respect to the consequences of not conducting the collection, see # 1 and 2. Collecting information less frequently is not a relevant alternative, since information is not required to be provided periodically. Jurisdictions provide information only in support of specific voting changes that they have decided to make. Where jurisdictions implement voting

practices periodically or upon certain established contingencies, under § 51.14 one submission is sufficient.

7. Special circumstances.

An affected jurisdiction might need to report information more than quarterly if the jurisdiction has adopted and seeks to implement voting changes more than quarterly. See # 6. The other special circumstances listed are not applicable.

8. Consultations.

The Section 5 Guidelines were originally published for comments on May 28, 1971 (36 FR 9781). All comments received were discussed in the preamble when the final Guidelines were published on September 10, 1971 (36 FR 18186). The Section 5 preclearance requirement was among the subjects considered during hearings on Voting Rights Act extension held by both the House and Senate Judiciary Committees in 1975. Revised Guidelines were published for comments on March 21, 1980 (45 FR 18890). All comments received were again discussed in the preamble when final Guidelines were published on January 5, 1981 (46 FR 870). The Section 5 preclearance requirement was again among the subjects considered during hearings on Voting Rights Act extension held by both the House and Senate Judiciary Committees in 1981 and 1982. Revised Guidelines were published in the Federal Register for comments on May 6, 1985 (50 FR 19122). All comments received were considered and discussed in the preamble to the final Guidelines, published on January 6, 1987 (52 FR 486). The differences between Subpart C as published for comments on May 6, 1985 and as published as a Final Rule on January 6, 1987 were minor and were explained in the preamble, at 52 FR 489. A revision of Subpart C with respect to the provision of demographic data on magnetic media was published in the Federal Register for comments on March 11, 1991 (56 FR 10348). All comments received were considered and discussed in the preamble to the final Guidelines, published on October 16, 1991 (56 FR 51834).

In addition, the Assistant Attorney General, Civil Rights Division, the Chief of the Voting Section, and other Voting Section staff members frequently appear at meetings of various state and local government officials involved in the conduct of elections, including the conferences sponsored by the Federal Election Commission. In preparation for the submission of redistrictings prompted by the 1990 Census many such meetings and conferences were attended. Following enactment of the National Voter Registration Act of 1993, Voting Section staff members participated in a number of conferences, sponsored by the Federal Election Commission and others, concerning implementation of the new registration law; a main focus of the discussion was the relationship between the requirements of the NVRA and the requirements of Section 5. Similar meetings and discussions have occurred with respect to implementation of the provisions of the Help America Vote Act of 2002. Other, more informal contacts also occur frequently. In anticipation of the 2000 Census and the resulting need for redistricting, Civil Rights Division officials met with representatives of state and local governments and with representatives of civil rights organizations. In response to their concerns regarding redistricting, the Department prepared Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, as Amended, 42 U.S.C. 1973c, which was published on January 18,

2001 (66 FR 5412).

Finally, under Subpart H of the Section 5 Guidelines, any jurisdiction or interested individual or group may petition to have the Section 5 Guidelines amended.

9. Payments and gifts.

We do not provide payments or gifts to submitting jurisdictions.

10. Assurances of confidentiality provided to respondents.

The information provided by jurisdictions in support of their requests for preclearance pursuant to Section 5 is not confidential; pursuant to § 51.50(d), it is available for inspection and copying at the office of the Voting Section.

11. Additional justification for any questions of a sensitive nature.

No such information is requested or relevant.

12. Estimates of hour burden and annualized cost burden of the collection of information.

Number of respondents	10,103
Number of responses per respondent	0.74/year
Total annual responses	4,727
Hours per response	10.02
Total annual reporting burden	47,365 hours

The number of respondents is the number recorded in our computerized record system (“STAPS”) and includes jurisdictions (states, counties, cities, school districts, other special districts, courts, and political parties) that have made submissions beginning with the 1980s. The total annual responses is the number actually received during the FY 2004; this number varies from year to year, depending on the election cycle, the decennial redistricting cycle, and other factors. The hours per response is based on an analysis of the particular types of voting changes included in responses during FY 2004, and estimates based on our experience of the time required to prepare submissions of each type of change. The mix of change types varies from year to year, depending on the election cycle, the decennial redistricting cycle, and other factors.

We estimate that the average annual cost per jurisdiction is \$103.14, and that the total annual cost is \$1,042,030. These estimates are based on our estimate of a cost of \$22 per hour for preparation time for submissions, which is based on past estimates of costs and changes in the mix of change types submitted.

The burden on submitting jurisdictions will vary substantially. A jurisdiction whose only voting change during the year is moving a polling place from a school library to the gymnasium of the same school will spend five minutes in preparing a letter and will have 39 cents postage cost. A state which adopts a redistricting plan for its legislature and a new election code could

spend thousands of dollars.

As explained above (see #1 and #2), Subpart C of the Section 5 Guidelines saves both the Federal government and the affected jurisdictions substantial expense. Under Section 5, jurisdictions are required to obtain preclearance of voting changes; this duty would still exist even if 28 CFR Part 51 were removed altogether. (Jurisdictions are authorized by Section 5 to bring declaratory judgment actions in the United States District Court for the District of Columbia if they prefer that avenue to preclearance over making submissions to the Attorney General. The use of the court would greatly increase the cost of Section 5 compliance.) Subpart C enables jurisdictions to make submissions more efficiently than they would otherwise be able to do which saves them and the Federal government money.

The repeal of Section 5 would, of course, reduce expenditures. Congress, however, has made it absolutely clear that this approach to saving money should not be contemplated. Congress extended the life of Section 5 in 1970, 1975, 1982 and 2006. Pursuant to the most recent extension, in 2006, Section 5 will remain in force at least until 2031. (It should be noted, moreover, that much of this cost would not be avoidable even if Section 5 were repealed. Most of the preparation of Section 5 submissions is accomplished by election officials or other public employees whose employment would be eliminated or hours of employment reduced were Section 5 to be repealed.)

13. Cost burden.

Jurisdictions have no capital or start-up-costs; any cost burdens are reflected in #12.

14. Cost to the Federal Government.

We estimate the annual cost to the Department of Justice for the review of voting changes under Section 5 of the Voting Rights Act to be \$3,354,545. This is based on an analysis of the cost of the personnel involved (by GS level and percent of time devoted to Section 5 of the Voting Rights Act), with 34 percent of personnel cost added for fringe benefits and a prorated share of the other costs of the Voting Section (not including travel costs) added.

15. Reasons for program changes or adjustments.

Not applicable. There are no program changes or adjustments.

16. Publication.

Not applicable. Results will not be published.

17. Display of expiration date.

Not applicable. We do not seek approval not to display the expiration date for OMB approval.

18. Item 19 Exceptions.

We do not request any exceptions from the item 19 certification statement.

B. Collections of Information Employing Statistical Methods.

Not applicable. The information collection cannot and does not employ statistical methods. As noted in response to #6 above, jurisdictions provide information only in support of specific voting changes that they seek to implement. The information is therefore specific to the jurisdiction, the change at issue, and the process by which it was adopted.

PAPERWORK REDUCTION ACT CERTIFICATION

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with including paperwork regulations, statistical standards or directives, and any other information policy directives promulgated under 5 CFR 1320.9.

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Date