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, 28 CFR Part 51

September 2016

A. Justification

1. Circumstances that make the collection of information necessary.

The Voting Rights Act ("VRA") prohibits certain jurisdictions from implementing changes to voting standards, practices, or procedures without first obtaining preclearance from the Attorney General or from a federal court in two circumstances, under Sections 3 and 5 of the VRA, 52 U.S.C. 10302(c), 10304(a). In both instances these jurisdictions may not implement a voting change until establishing that the voting change has neither the purpose nor will have the effect of "denying or abridging the right to vote on account of race or color" or membership in "a language minority group." 52 U.S.C. 10302(c), 10304(a), 10303(f)(2). In 1971, the Attorney General issued Procedures for the Administration of Section 5 of the Voting Rights Act of 1965 ("Procedures"), 28 C.F.R. Part 51, and the Department of Justice has amended those Procedures on a number of occasions, most recently in 2011. These procedures govern administrative review of submissions by jurisdictions to the Attorney General under Sections 3 and 5 of the VRA.

Prior to the Supreme Court's decision in *Shelby County* v. *Holder*, 133 S. Ct. 2612 (2013), jurisdictions subject to Section 5 were identified by the coverage formula in Section 4(b) of the VRA, 52 U.S.C. 10303(b). But in *Shelby County*, the Court held that Section 4(b)'s coverage formula could "no longer be used as a basis for subjecting jurisdictions to preclearance" under Section 5. 133 S. Ct. at 2631. As a consequence, the jurisdictions identified under Section 4(b)'s coverage formula are no longer required to seek preclearance for voting changes under Section 5 of the Act. The *Shelby County* decision, however, did not address the constitutionality of the Section 5 preclearance requirement itself, and noted that Congress could enact a new coverage formula to identify those jurisdictions that would be subject to Section 5. *Ibid.* At present, Congress has not adopted a new formula, and thus no jurisdiction is currently subject to Section 5's preclearance requirement.

Despite the current status of the Section 5 preclearance mandate, the Procedures remain relevant because they also apply to the submission of voting changes to the Attorney General for preclearance under Section 3(c) of the VRA, 52 U.S.C. 10302(c). See 28 C.F.R. 51.8. The *Shelby County* decision did not affect Section 3(c), and that provision remains in force. As a result of the *Shelby County* decision, however, the number of jurisdictions that currently are subject to preclearance requirements has been substantially reduced, and hence the aggregate cost and burden of data collection are substantially lower than they were prior to the Supreme Court's ruling.

Section 3(c) authorizes a court to require a jurisdiction to submit future voting changes for preclearance if the court finds that the jurisdiction has violated the voting guarantees of the Fourteenth or Fifteenth Amendment to the United States Constitution. 52 U.S.C. 10302(c). A jurisdiction subject to a preclearance requirement under Section 3(c) may seek preclearance of proposed voting changes either from the Attorney General or from the district court that entered the order. 52 U.S.C. 10302(c); 51 C.F.R. 51.8. The substantive legal standard under Section 3(c) for reviewing new voting changes is the same as the standard under Section 5 – namely, the jurisdiction must establish that the proposed changes have neither the purpose nor effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Compare 52 U.S.C. 10302(c) with 52 U.S.C. 10304(a). Examples of jurisdictions that have been subjected to preclearance requirements by court order under Section 3(c) include the States of Arkansas (*Jeffers* v. *Clinton*, 740 F. Supp. 585 (E.D. Ark. 1990)) and New Mexico (*Sanchez* v. *Anaya*, No. 82-0067 (D.N.M. Dec. 17, 1984)), as well as twelve counties, three cities, and two school districts. The most recent order involved the City of Evergreen, Alabama (*Allen* v. *City of Evergreen*, No. 1:13-cv-00107 (S.D. Ala. Jan. 13, 2014).

The information required in a submission under Section 3(c) is identical to what has been required under Section 5. 28 C.F.R. 51.8. It follows, therefore, that information identified in the instant data collection and the necessity for the data collection remains unchanged.

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 voting changes that are submitted to her under Section 3(c), she must have information on which to base the determinations. Subpart C of the Procedures saves the submitting jurisdictions time and expense by indicating the information that would be most helpful and relevant. It also enables them to obtain the requisite determination more quickly than would otherwise be the case by providing the Attorney General's staff with the specific information necessary to complete the analyses efficiently.

The information that must be submitted under Subpart C of the Procedures includes a description of both the proposed voting change and that which is currently in place (the benchmark practice); the identity of the entity making the change; the purpose for the change; the date of adoption; the jurisdiction's view as to the anticipated effect, if any, of the change on the ability of minority citizens within the jurisdiction to participate effectively in the electoral process; and contact information for the person making the submission. In most instances, this basic information, set forth in 28 C.F.R 51.27, is sufficient for the Attorney General to assess the impact of the change on the ability of minority citizens to participate effectively in the electoral process by comparing the proposed change to the benchmark and by reviewing the adoption or enactment process under the relevant case law.

Some submitted changes, such as redistricting plans, are more complex and require additional information about the benchmark and proposed practices, such as demographic and/or electoral data and maps, as well as information about the process by which the jurisdiction

adopted the change, before a determination can be made. This supplemental information is identified in 28 C.F.R. 51.28.

3. Consideration of using information technology to reduce burden.

The Voting Section has a computerized records and imaging filing system that enables staff members to locate past submissions from the same or related jurisdictions. The Procedures also allow submitting authorities to provide certain data in electronic format.

4. Efforts to identify duplication.

The Procedures, at 28 C.F.R. 51.28(a), advise submitting jurisdictions not to provide information that is available in census publications. Under 28 C.F.R. 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 federal government agency collects or maintains the information that is generally relevant to preclearance determinations. The Attorney General must make an individual decision with respect to each submitted voting change. 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.

Although the preclearance requirement does not have a significant economic impact on small entities, Subpart C is intended to minimize the burden on these and other affected entities. For example, 28 C.F.R. 51.26(b) contemplates the use of estimates "in lieu of more reliable statistics." Section 51.26(c) advises jurisdictions that "[s]ubmissions should be no longer than is necessary for the presentation of the appropriate information and materials." Pursuant to 28 C.F.R. 51.26(e), jurisdictions can incorporate by reference information previously provided. Section 51.26(f) relieves a jurisdiction of the responsibility to provide relevant information if it is not known or available. Jurisdictions are not asked to undertake special projects to obtain information that is not otherwise available to them. Under 28 C.F.R. 51.37(b)(5), if the Department obtains information requested from a jurisdiction from another source, the Attorney General notifies the jurisdiction that it no longer needs to provide the requested information. With respect to all but the most complicated submissions, jurisdictions should be able to assemble and provide all the information needed by the Attorney General 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 because information is required to be provided only in support of specific voting changes that jurisdictions have decided to make. Where jurisdictions implement voting practices periodically or upon certain established

contingencies, those practices can be reviewed as a recurrent practice, which requires only one submission establishing the practice. 28 C.F.R. 51.14

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 Procedures were originally published for comment on May 28, 1971 (36 FR 9781). All comments received were discussed in the preamble when the final Procedures were published on September 10, 1971 (36 FR 18186). The preclearance requirement was among the subjects considered during hearings on the Voting Rights Act extension held by both the House and Senate Judiciary Committees in 1975. Revised Procedures were published for comment on March 21, 1980 (45 FR 18890). All comments received were again discussed in the preamble when final Procedures were published on January 5, 1981 (46 FR 870).

The preclearance requirement was again among the subjects considered during hearings on the Voting Rights Act extension held by both the House and Senate Judiciary Committees in 1981 and 1982. Proposed revisions to the Procedures were published in the Federal Register for comment on May 6, 1985 (50 FR 19122). All comments received were considered and discussed in the preamble to the final Procedures, published on January 6, 1987 (52 FR 486). The differences between Subpart C as published for comment 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 comment on March 11, 1991 (56 FR 10348). All comments received were considered and discussed in the preamble to the final Procedures, published on October 16, 1991 (56 FR 51834).

The preclearance requirement was again among the subjects considered during hearings on the Voting Rights Act held by both the House and Senate Judiciary Committees in 2005 and 2006. Proposed revisions to the Procedures were published in the Federal Register for comment on June 11, 2010 (75 FR 33205). All comments received were considered and discussed in the preamble to the final Procedures, published on April 15, 2011 (76 FR 21239). The differences between Subpart C as published for comment on June 11, 2010, and as published as a Final Rule on April 15, 2011, were explained in the preamble at 76 FR 21239-42.

As part of its preparations for the review of redistricting plans following the release of the 2010 Census, the Department prepared Guidance Concerning Redistricting under Section 5 of the Voting Rights Act, which was published on February 9, 2011 (76 FR 7470). The Department had prepared and published a similar document during the previous redistricting cycle.

In addition, the Assistant Attorney General for the Civil Rights Division, the Chief of the Voting Section, and other Voting Section staff members have appeared at meetings of various

state and local government officials involved in the conduct of elections, including the conferences sponsored by the United States Election Assistance Commission, National Conference of State Legislatures, National Association of State Election Directors, National Association of Secretaries of State, National Association of County Officials and the Election Center. Other, more informal, contacts have also occurred.

Finally, under Subpart H of the Procedures, any jurisdiction or interested individual or group may petition to have the Procedures 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 preclearance requests is not confidential; pursuant to 28 C.F.R 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.

The *Shelby County* decision has significantly decreased the number of jurisdictions currently making preclearance submissions, removing those jurisdictions previously identified by the coverage formula under Section 4(b) and leaving only those jurisdictions that are subject to preclearance under a court order issued under Section 3(c) of the VRA. Consequently, *Shelby County* has resulted in a substantial decrease in both the total number of respondents as well as the annualized cost burden of the collection below:

Number of respondents	3
Number of responses per respondent	0.3/year
Total annual responses	1
Hours per response	3
Total annual reporting burden	3.0 hours

The number of respondents is the total number of jurisdictions currently subject to an order under Section 3(c). The total of annual responses reported here is the number of submissions of voting changes actually received by the Department during FY 2016. As in the past, this number of submissions varied 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 2016, and estimates based on our experience of the time required to prepare submissions of each type of change. The total number of voting changes, as well as the types of voting changes, submitted for review to the

Attorney General has varied from year to year, depending on the election cycle, the decennial redistricting cycle, and other factors.

We estimate that, for FY 2016, the average annual cost per jurisdiction was $27.50 and the total annual cost was $82.50. This estimate is based on our estimate of a cost of $27.50 per hour for preparation time for submissions, which is based on past estimates of costs.

The burden on submitting jurisdictions will vary substantially depending on the type of voting change being proposed. For example, a jurisdiction proposing to move a polling place from the local library to the courthouse should be able to quickly and inexpensively prepare and submit its preclearance request. A state that adopts a redistricting plan for its legislature or congressional delegation would spend considerably more time and money in seeking preclearance.

As explained above (see #1 and #2), Subpart C saves both the Federal government and the affected jurisdictions substantial expense. Jurisdictions covered under Section 3(c) are required to comply with the substantive non-discrimination requirements before they can implement changes affecting voting; this duty would still exist even if 28 C.F.R. Part 51 were removed altogether. The decision not to provide guidance as to the necessary information needed for submissions would greatly increase the cost of compliance for both covered jurisdictions and the Federal government. 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.

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 that the annual cost to the Department of Justice for the review of voting changes was $571 for FY 2016. This estimate is based on the cost of the personnel involved (by GS level and percent of time devoted to administrative review activities under 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.

Unless and until Congress devises a revised coverage formula, such as that which existed in Section 4(b), to designate jurisdictions subject to Section 5, the Attorney General will receive submissions only from those jurisdictions covered by an order under Section 3(c) of the Act. At the same time, however, we note that such a requirement is one of general applicability and the number of respondents is subject to change, either by additional court orders under Section 3(c) or by congressional action adopting a revised formula under Section 4(b).

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.

Robert S. Berman
Deputy Chief
Voting Section
Civil Rights Division

09/26/2016
Date