§ 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.

[Order 3262–2011, 76 FR 21243, Apr. 15, 2011]

§ 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.

[Order 3262–2011, 76 FR 21244, Apr. 15, 2011]

§ 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, dissolution, merger, 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 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).

(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 preelection 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.

[52 FR 490, Jan. 6, 1987, as amended by Order 3262–2011, 76 FR 21244, Apr. 15, 2011]

§ 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 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