§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,