



## **Recommendation 78-3**

### **Time Limits on Agency Actions**

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(Adopted June 8-9, 1978)

Eliminating undue delay in administrative procedures has long been a public concern. Congress addressed the problem in general terms in the Administrative Procedure Act in 1946. Section 6(a) of the original Act required each agency to conclude any matter presented to it "with reasonable dispatch." Section 10(e)(A) of the Act authorized a reviewing court to enforce this command by compelling agency action "unlawfully withheld or unreasonably delayed." Although these two sections (now codified as section 555(b) and section 706(1) of title 5) contain enforceable prohibitions against unlawful or unreasonable delay, they have contributed little to the reduction of delay. Because what constitutes unlawful or unreasonable delay is not readily ascertainable, courts have afforded relief from administrative dilatoriness only occasionally and in egregious cases. Courts have also recognized that the present statutory provisions are too general to deprive agencies of the broad discretion they need to allocate limited resources among competing demands for official attention.

Frustration over the inability of agencies and courts to speed the course of administrative proceedings has occasionally led Congress to adopt a somewhat mechanistic approach to the problem. In recent years Congress has with increasing frequency enacted statutory provisions that require particular agencies to complete adjudicatory or rulemaking proceedings within prescribed periods of time. In these instances, the statutory limits are stated in terms of specific numbers of days or months; the statutes also identify the categories of agency proceedings that are subject to the prescribed schedules. Congress evidently expects that if it establishes a deadline for agency action, the affected agency will meet that deadline, or will at the least complete its assigned statutory duty more promptly than it would otherwise have done.

Congressional expectations that statutory time limits would be effective have remained largely unfulfilled. There has been a substantial degree of noncompliance with all the statutory time limits studied. Agency officials often view statutory timetables as unrealistically rigid demands that disregard the agency's need to adjust to changing circumstances. Practical experience at diverse agencies lends support to this appraisal.



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Statutory time limits tend to undermine an agency's ability to establish priorities and to control the course of its proceedings. Such limits also enable outside interests to impose their priorities on an agency through suit or threat of suit to enforce them. When asked to enforce statutory time limits, courts have recognized that an agency's observance of the prescribed limits may conflict with other requirements of law (e.g., the right of interested persons or parties to a full and fair hearing) or with the requirements of sound decisionmaking. Judges have, therefore, treated the enforcement of statutory time limits as a matter lying within their own equitable discretion despite the precisely measured language of the statutes.

A recent task force study for the Senate Committee on Governmental Affairs<sup>1</sup> has concluded that particularized timetables or deadlines established by individual agencies to govern their own proceedings can be useful tools for reducing delays and are preferable to seemingly more rigid legislative prescriptions. This finding fully accords with those of the study underlying the present recommendation of the Administrative Conference.

### **Recommendation**

1. Reasonable timetables or deadlines can help reduce administrative delay. Generally, it is preferable that such limits be established by the agencies themselves, rather than by statute.

2. Before determining to impose statutory time limits for the conduct of agency proceedings, Congress should give due consideration to the alternative of requiring the agency itself to establish timetables or guidelines for the prompt disposition of various types of proceedings conducted by it. It may also require that significant departure from agency adopted timetables be explained in current status reports.

3. Whether or not required to do so by statute, each agency should adopt time limits or guidelines for the prompt disposition of its adjudicatory and rulemaking actions, either by announcing schedules for particular agency proceedings or by adopting regulations that contain general timetables for dealing with categories of the agency's proceedings.

4. Congress ordinarily should not impose statutory time limits on an agency's adjudicatory proceedings. Statutory time limits may be appropriate, however, when the

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<sup>1</sup> Senate Committee on Governmental Affairs, 95th Cong., 1st sess., IV Study on Federal Regulation: Delay in the Regulatory Process, 132-52 (1977).



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beneficial effect of agency adjudication is directly related to its timeliness, as may be true in certain licensing cases or in clearance of proposed private activity where a delayed decision would deprive both the applicant and the public at large of substantial benefit. If Congress does enact time limits, for cases of any type, it should recognize that special circumstances (such as a sudden substantial increase in caseload, or complexity of the issues raised in a particular proceeding, or the presence of compelling public interest considerations) may justify an agency's failure to act within a predetermined time. Statutes fixing limits within which agency adjudication must be completed should ordinarily require that an agency's departure from the legislative timetable be explained in current status reports to affected persons or in a report to Congress.

5. Congress ordinarily should not impose statutory time limits on rulemaking proceedings. Purely as a practical matter, modern rulemaking proceedings are too complex and varied, and involve too many stages, to permit fixing unyielding time frames for agency decisionmaking. Strict time limits, moreover, may foreclose the use of procedural techniques that can be valuable in enhancing the degree of public participation and insuring completeness of information.<sup>2</sup> Congress should therefore enact statutory time limits applicable to rulemaking only when it can be relatively specific about what it expects the agency to do, and when it intends the agency to have relatively little discretion in doing it. Congress may appropriately indicate by statute the time within which an agency should respond to individual requests to commence rulemaking, but it should avoid combining that time limit with a restriction on the discretion the agency otherwise enjoys to commence or not commence proceedings and to establish priorities for its rulemaking activities.

6. If Congress does impose a statutory time limit on agency decisionmaking, whether in adjudicatory or rulemaking matters, it should be attentive to the need for revision. A time limit considered desirable at the outset may prove to have been unrealistic because it was based on incomplete information. If realistic at the time of enactment, the limit may cease to be so with the passage of time. Statutes imposing time limits therefore should provide for periodic reconsideration by the Congress or grant the agency authority to revise the limits under standards established by the Congress.

7. If a statutory time limit is imposed, Congress should expressly state whether affected persons may enforce the time limit through judicial action and, if so, the nature of the relief available for this purpose. In cases where the time limit is intended only as a norm by which the

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<sup>2</sup> See, for example, Administrative Conference Recommendations 76-3, 72-5 and 77-3.



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agency's performance is to be measured, a requirement that the agency report deviations from the time limit to Congress may be a desirable means of assuring oversight of its performance.

### **Citations:**

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