



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

## Improving Timeliness in Agency Adjudication

### Ad Hoc Committee

#### Proposed Recommendation for Plenary | December 14, 2023

1 It is often said that justice delayed is justice denied. Indeed, one rationale underlying the  
2 adjudication of many types of cases by executive branch agencies is that they can often decide  
3 them more quickly through administrative methods than the courts can through judicial methods.

4 Federal agencies adjudicate millions of cases each year, including applications for  
5 benefits and services, applications for licenses and permits, and enforcement actions against  
6 persons suspected of violating the law. Members of the public depend on the timely adjudication  
7 of their cases. Delayed adjudication, especially given the possible added time of possible judicial  
8 review, can have significant consequences, particularly for members of historically underserved  
9 communities.

10 The time it takes an agency to decide a case depends on, among other variables, the  
11 evidentiary and procedural demands of the case, the volume of cases pending before the agency,  
12 and the resources available to the agency to adjudicate cases. Many factors can affect these  
13 variables, such as the funds appropriated by Congress, which directly impact the resources that  
14 agencies can allocate to adjudication. Other factors include the establishment and expansion of  
15 programs by Congress, economic and demographic changes, trends in federal employment  
16 affecting agencies' ability to recruit and retain personnel involved in adjudication, disruptions to  
17 agency operations such as the COVID-19 pandemic, and agency organizational structures and

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18 procedures.<sup>1</sup> When delays or backlogs increase, agencies frequently face pressure from parties,  
19 representatives, Congress, the media, and others to process and decide cases more promptly.

20 Agencies rely on a wide range of procedural, organizational, personnel, technological,  
21 and other initiatives to promote timeliness and to respond to concerns about timeliness when they  
22 arise. The Administrative Conference has adopted many recommendations identifying specific  
23 methods that agencies have used or might use to improve timeliness. One of its earliest  
24 recommendations encourages agencies to collect and analyze case processing data to “develop  
25 improved techniques fitted to [their] particular needs to reduce delays” and measure the  
26 effectiveness of those techniques.<sup>2</sup> Later recommendations address options including:

- 27 • Delegation of final decisional authority subject to discretionary review by the  
28 agency head;<sup>3</sup>
- 29 • Use of precedential decision making by appellate decision makers;<sup>4</sup>
- 30 • Adoption of procedures for summary judgment<sup>5</sup> and prehearing discovery;<sup>6</sup>
- 31 • Use of a broad suite of active case management techniques;<sup>7</sup>

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<sup>1</sup> Jeremy S. Graboyes & Jennifer L. Selin, *Improving Timeliness in Agency Adjudication* (Oct. 11, 2023) (draft report to the Admin. Conf. of the U.S.).

<sup>2</sup> Admin. Conf. of the U.S., Recommendation 69-1, *Compilation of Statistics on Administrative Proceedings by Federal Departments and Agencies*, 38 Fed. Reg. 19,784 (July 23, 1973).

<sup>3</sup> Admin. Conf. of the U.S., Recommendation 68-6, *Delegation of Final Decisional Authority Subject to Discretionary Review by the Agency*, 38 Fed. Reg. 19,783 (July 23, 1973); see also Admin. Conf. of the U.S., Recommendation 2020-3, *Agency Appellate Systems*, 86 Fed. Reg. 6618 (Jan. 22, 2021); Admin. Conf. of the U.S., Recommendation 83-3, *Agency Structures for Review of Decisions of Presiding Officers Under the Administrative Procedure Act*, 48 Fed. Reg. 57,461 (Dec. 30, 1983).

<sup>4</sup> Admin. Conf. of the U.S., Recommendation 2022-4, *Precedential Decision Making in Agency Adjudication*, 88 Fed. Reg. 2312 (Jan. 13, 2023).

<sup>5</sup> Admin. Conf. of the U.S., Recommendation 70-3, *Summary Decision in Agency Adjudication*, 38 Fed. Reg. 19,785 (July 23, 1973).

<sup>6</sup> Admin. Conf. of the U.S., Recommendation 70-4, *Discovery in Agency Adjudication*, 38 Fed. Reg. 19,786 (July 23, 1973).

<sup>7</sup> Admin. Conf. of the U.S., Recommendation 86-7, *Case Management as a Tool for Improving Agency Adjudication*, 51 Fed. Reg. 46,989 (Dec. 30, 1986).



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- 32 • **Implementation of electronic case management and publicly accessible online**
- 33 **processes;**<sup>8</sup>
- 34 • Establishment of quality assurance systems;<sup>9</sup>
- 35 • Development of reasonable time limits or step-by-step time goals for agency
- 36 action;<sup>10</sup>
- 37 • Use of alternative dispute resolution (ADR) techniques;<sup>11</sup>
- 38 • Use of simplified or expedited procedures in appropriate cases;<sup>12</sup>
- 39 • Use of remote hearings;<sup>13</sup>
- 40 • Aggregation of similar claims;<sup>14</sup> **and**
- 41 • Use of personnel management **strategies**;<sup>15</sup> **and**

<sup>8</sup> Admin. Conf. of the U.S., Recommendation 2023-4, *Online Processes in Agency Adjudication*, 88 Fed. Reg. 42,681 (July 3, 2023); Admin. Conf. of the U.S., Recommendation 2018-3, *Electronic Case Management in Federal Administrative Adjudication*, 83 Fed. Reg. 30,686 (June 29, 2018).

<sup>9</sup> Admin. Conf. of the U.S., Recommendation 73-3, *Quality Assurance Systems in the Adjudication of Claims of Entitlement to Benefits or Compensation*, 38 Fed. Reg. 16,840 (June 27, 1973); Admin. Conf. of the U.S., Recommendation 2021-10, *Quality Assurance Systems in Agency Adjudication*, 87 Fed. Reg. 1722 (Jan. 12, 2022).

<sup>10</sup> Recommendation 86-7, *supra* note 7, ¶ 7; Admin. Conf. of the U.S., Recommendation 78-3, *Time Limits on Agency Actions*, 43 Fed. Reg. 27,509 (June 26, 1978).

<sup>11</sup> Admin. Conf. of the U.S., Recommendation 86-3, *Agencies' Use of Alternative Means of Dispute Resolution*, 51 Fed. Reg. 25,643 (July 16, 1986); *see also* Admin. Conf. of the U.S., Recommendation 88-5, *Agency Use of Settlement Judges*, 53 Fed. Reg. 26,030 (July 11, 1988); Admin. Conf. of the U.S., Recommendation 87-5, *Arbitration in Federal Programs*, 52 Fed. Reg. 23,635 (June 24, 1987).

<sup>12</sup> Admin. Conf. of the U.S., Recommendation 90-6, *Use of Simplified Proceedings in Enforcement Actions Before the Occupational Safety and Health Review Commission*, 55 Fed. Reg. 53,271 (Dec. 28, 1990); Recommendation 86-7, *supra* note 7, ¶ 3.

<sup>13</sup> Admin. Conf. of the U.S., Recommendation 2021-4, *Virtual Hearings in Agency Adjudication*, 86 Fed. Reg. 36,083 (July 8, 2021); Admin. Conf. of the U.S., Recommendation 2014-7, *Best Practices for Using Video Teleconferencing for Hearings*, 79 Fed. Reg. 75,114 (Dec. 17, 2014); Admin. Conf. of the U.S., Recommendation 2011-4, *Agency Use of Video Hearings: Best Practices and Possibilities for Expansion*, 76 Fed. Reg. 48,795 (Aug. 9, 2011); Admin. Conf. of the U.S., Recommendation 86-7, *supra* note 7.

<sup>14</sup> Admin. Conf. of the U.S., Recommendation 2016-2, *Aggregation of Similar Claims in Agency Adjudication*, 81 Fed. Reg. 40,260 (June 21, 2016); Recommendation 86-7, *supra* note 7, ¶ 9.

<sup>15</sup> Recommendation 86-7, *supra* note 7, ¶ 1.



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- ~~Implementation of electronic case management and publicly accessible online processes.~~<sup>16</sup>

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43  
44 These recommendations remain valuable resources for policymakers charged with  
45 promoting and improving timeliness in agency adjudication. As technologies develop,  
46 policymakers are also increasingly looking to artificial intelligence and other advanced  
47 algorithmic tools to streamline or automate time-consuming, error-prone, or resource-intensive  
48 processes.<sup>17</sup>

49 At the same time, no single method will promote timeliness at all agencies in all  
50 circumstances. Each agency has its own mission, serves different communities, adjudicates  
51 according to a distinct set of legal requirements, has different resources available to it, and faces  
52 different operational realities. Moreover, in promoting timely adjudication, agencies must remain  
53 sensitive to other values of administrative adjudication such as decisional quality, procedural  
54 fairness, consistency, transparency, customer service, and equitable treatment. Building on  
55 earlier recommendations, this Recommendation provides a general framework that agencies and  
56 Congress can use to foster an organizational culture of timeliness in agency adjudication in  
57 accord with principles of fairness, accuracy, and efficiency and **to** devise plans to address  
58 increased caseloads, delays, backlogs, and other timeliness concerns when they arise.

### RECOMMENDATION

#### Information Collection

- 59 1. Agencies should ensure their electronic or other case management systems are collecting  
60 data necessary ~~to accurately monitor and detect changes for accuracy in monitoring and~~

<sup>16</sup> Admin. Conf. of the U.S., Recommendation 2023-4, *Online Processes in Agency Adjudication*, 88 Fed. Reg. 42,681 (July 3, 2023); Admin. Conf. of the U.S., Recommendation 2018-3, *Electronic Case Management in Federal Administrative Adjudication*, 83 Fed. Reg. 30,686 (June 29, 2018).

<sup>17</sup> Cf. David Freeman Engstrom et al., Government by Algorithm: Artificial Intelligence in Federal Administrative Agencies 38, 45 (2020) (report to the Admin. Conf. of the U.S.); Admin. Conf. of the U.S., Statement #20, *Agency Use of Artificial Intelligence*, 86 Fed. Reg. 6616 (Jan. 22, 2021); see also Exec. Order No. 14,110, 88 Fed. Reg. 75,191 (Nov. 1, 2023).



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61 **detecting changes** in case processing times at all levels of their adjudication systems (e.g.,  
62 initial level, hearing level, appellate review level), identify the causes of changes in case  
63 processing times, and devise methods to promote or improve timeliness without  
64 adversely affecting decisional quality, procedural fairness, or other objectives. Agencies  
65 should identify the kinds of data or records that Congress, media representatives,  
66 researchers, or other **stakeholders interested persons** frequently request, to ensure that  
67 agency personnel responsible for responding to such requests can do so in an efficient  
68 manner. Agencies should ensure that electronic or other case management systems track  
69 the following information:

- 70 a. The number of proceedings of each type pending, commenced, and concluded  
71 during a standard reporting period (e.g., week, month, quarter, year) within and  
72 across different levels of their adjudication systems;
- 73 b. The current status of each case pending at every level of their adjudication  
74 systems; and
- 75 c. For each case, the number of days required to meet critical case processing  
76 milestones within and across different levels of their adjudication systems.

- 77 2. To meet organizational goals and **obtain information about expectations for adjudication**  
78 **timelines clarify stakeholder expectations**, agencies should communicate regularly with  
79 **interested persons within and outside the agency internal and external stakeholders**. In  
80 addition to formal engagements, agencies should provide ongoing opportunities for  
81 interested persons within and outside the agency to provide feedback and suggestions.  
82 Methods for obtaining information include:

- 83 a. **Stakeholder sSurveys of interested persons within and outside the agency;**
- 84 b. Listening sessions and other meetings;
- 85 c. Requests for information published in the *Federal Register*;
- 86 d. Online feedback forms; and
- 87 e. Use of ombuds.

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**Performance Goals and Standards**

- 88 3. Agencies should adopt organizational performance goals that encourage and provide  
89 clear expectations for timeliness. Performance goals may take several forms, including  
90 goals contained in agency strategic plans, rules establishing time limits for concluding  
91 cases, or policies instituting step-by-step time goals. In developing organizational  
92 performance goals for timeliness, agencies should:
- 93 a. Use the information described in Paragraphs 1 and 2 to develop goals that are  
94 reasonable and objective;
  - 95 b. Encourage interested persons within and outside the agency to participate in the  
96 development of such goals; and
  - 97 c. Periodically reevaluate such goals to ensure they (i) continue to be reasonable;  
98 (ii) encourage and provide clear expectations for timeliness; and (iii) do not  
99 adversely affect decisional quality or the fairness or integrity of proceedings.
- 100 4. When agencies ~~consider use~~ timeliness or productivity ~~measures~~ in appraising the  
101 performance of employees, as defined in 5 U.S.C. § 4301, and members of the Senior  
102 Executive Service, and in setting timeliness or productivity expectations for  
103 administrative law judges, who are not subject to performance appraisals, ~~they agencies~~  
104 should:
- 105 a. Use the information described in Paragraphs 1 and 2 to develop ~~measures or~~  
106 ~~expectations~~ that are reasonable and objective and provide clear expectations for  
107 timeliness;
  - 108 b. Encourage interested persons within and outside the agency, including employees  
109 to whom the measures ~~or expectations~~ apply, to participate in the development of  
110 such measures ~~or expectations~~;
  - 111 c. Ensure measures ~~or expectations~~ reflect tasks within the control of individual  
112 employees;
  - 113 d. Ensure measures ~~or expectations~~ take into account the range of case types and  
114 tasks performed by individual employees as well as resources (e.g., staff support,  
115 technology) at their disposal;



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- 116 e. For employees who decide cases, ensure measures **or expectations** do not
- 117 ~~inadvertently~~ lead them to decide cases in a particular way;
- 118 f. For all employees, ensure measures **or expectations** do not ~~inadvertently~~ lead
- 119 them to take actions that would adversely affect decisional quality or the fairness
- 120 or integrity of proceedings; and
- 121 g. Periodically reevaluate such measures **or expectations**.

**Commented [CA3]:** Proposed Amendment from Council #3  
(see parallel amendment at line 118)

**Commented [CA4]:** Proposed Amendment from Council #3  
(see parallel amendment at line 117)

**Organizational, Procedural, Technological, and Case Management Techniques**

122 The Administrative Conference has adopted many recommendations, listed in the Preamble,  
123 that identify organizational, procedural, technological, and case management techniques that  
124 agencies should use, in appropriate circumstances, to promote timeliness in adjudication or  
125 respond to increased caseloads, delays, backlogs, and other timeliness concerns. Agencies  
126 should also implement the following best practices, as appropriate.

- 127 5. Agencies should narrow disputes and resolve cases at the **lowestearliest** possible level of
- 128 their adjudication systems and, at each level, ~~through use~~ the least time- and resource-
- 129 intensive processes available and appropriate to the circumstances, such as informal
- 130 prehearing procedures, alternative dispute resolution, streamlined procedures, or decision
- 131 making on the written record.
- 132 6. As appropriate, agencies should adopt procedures for: (i) resolving multiple cases in a
- 133 single proceeding, such as the aggregation of similar claims; or (ii) resolving recurring
- 134 legal or factual issues, such as precedential decision making or substantive rulemaking.
- 135 7. Agencies should adopt processes for screening cases at intake to: (i) resolve procedural
- 136 issues as early as possible; (ii) identify cases that may be appropriate for less time- and
- 137 resource-intensive processes, such as those **describedlisted** in Paragraphs 5 and 6; (iii)
- 138 identify cases that can be resolved quickly because they are legally and factually
- 139 straightforward; and (iv) identify cases that should be prioritized or expedited.
- 140 8. Agencies should adopt procedures that standardize the allocation of tasks among
- 141 adjudicators, managers, **and staff attorneys, and legal and** paralegal support staff.



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- 142 9. Agencies should review and update as necessary their Human Capital Operating Plans  
143 (5 C.F.R. pt. 250) to ensure their hiring and position management needs are properly  
144 aligned with their operational goals for adjudication.
- 145 10. Agencies should automate ~~using artificial intelligence, for example~~ routine tasks that  
146 do not require a significant exercise of discretion when automation will not adversely  
147 affect quality or program integrity. Such tasks may include receiving filings and  
148 evidence, establishing new case files, associating records with case files, de-duplicating  
149 records, assigning cases to agency personnel for action, screening cases as described in  
150 Paragraph 7, and generating and releasing standardized correspondence.
- 151 11. Agencies should outsource routine tasks that do not require a significant exercise of  
152 discretion—such as transcription, scanning records, or mailing correspondence—when it  
153 would be more efficient and cost-effective for a contractor to perform them ~~and there are~~  
154 ~~no legal or policy reasons to assign the tasks to agency personnel (e.g., restrictions on~~  
155 ~~access to sensitive personal information or confidential national security information).~~
- 156 12. Agencies should adopt rules and policies that reflect best practices for case management,  
157 including evidentiary development, motions practice, intervention, extensions of time,  
158 decision writing, and methods for encouraging prompt action and discouraging undue  
159 delay by parties. At the same time, agencies should ensure that adjudicators, managers,  
160 and support staff have sufficient flexibility to manage individual cases fairly, accurately,  
161 and efficiently, and test alternative case management techniques that may reveal new best  
162 practices. Agencies should periodically reevaluate such rules and policies, using the  
163 information described in Paragraphs 1 and 2, to ensure they continue to reflect best  
164 practices for case management and provide relevant personnel with sufficient flexibility  
165 to manage individual cases and test alternative case management techniques.
- 166 13. Agencies should establish organizational units, supervisory structures, and central and  
167 field operations that reinforce timeliness and facilitate appropriate communication among  
168 agency personnel involved in adjudication at all levels of an adjudication system.
- 169 14. Agencies should update public websites and electronic case management systems so that  
170 they are able to handle the volume of current and future cases efficiently and effectively.

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**Strategic Planning**

- 171 15. Agencies should engage in evidence-based and transparent strategic planning to  
172 anticipate and address concerns about timeliness, including increased caseloads, delays,  
173 and backlogs. In undertaking such strategic planning, agencies should:
- 174 a. Use the information described in Paragraphs 1 and 2 to identify case processing  
175 trends such as geographical or temporal variations in case intake or case  
176 processing times, assess the causes of timeliness concerns, and identify points at  
177 all levels of their adjudication systems that are causing delays;
  - 178 b. Review previous efforts to address timeliness concerns to understand what  
179 initiatives have been attempted and which have been effective;
  - 180 c. Consider a wide range of options for improving timeliness in the adjudication  
181 process without adversely affecting decisional quality, procedural fairness,  
182 program integrity, or other objectives. Options may include organizational,  
183 procedural, technological, case management, and other techniques, including  
184 those identified in previous Conference recommendations and Paragraphs 5–14;
  - 185 d. Engage in candid discussions with adjudicators, managers, and support staff at all  
186 levels of their adjudication systems, as well as interested persons outside the  
187 agency, regarding the benefits, costs, and risks associated with different options  
188 for improving timeliness;
  - 189 e. Develop proposed plans for addressing timeliness concerns, and solicit feedback  
190 on the plan from interested persons within and outside of the agency;
  - 191 f. Consider pilot studies and demonstration projects before implementing  
192 interventions broadly to test the effectiveness of different interventions and  
193 identify unintended consequences; and
  - 194 g. Designate a senior official responsible for coordinating the activities described in  
195 this Paragraph.



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**Communication, Coordination, and Collaboration**

- 196 16. Agencies should **enhance facilitate** communication between components involved in their  
197 adjudication systems and other components that carry out functions necessary for timely  
198 adjudication, such as those that oversee information technology, human resources, budget  
199 planning, office space, and procurement.
- 200 17. Agencies should coordinate, **as appropriate,** with the President, **when required,** and with  
201 Congress by providing information on recommended legislative changes and  
202 appropriations that would promote timeliness generally or address ongoing timeliness  
203 concerns.
- 204 18. Agencies should partner with federal entities such as the Chief Information Officers  
205 Council, the U.S. Digital Service, the General Services Administration, and the Office of  
206 Personnel Management to develop and implement best practices for leveraging  
207 information technology, human capital, and other resources to promote or improve  
208 timeliness.
- 209 19. **Unless precluded by law,** **Agencies** should share information with each other about their  
210 experiences with and practices for promoting timeliness generally and addressing  
211 ongoing timeliness concerns. The Office of the Chair of the Administrative Conference  
212 should provide for the interchange of such information, as authorized by 5 U.S.C. §  
213 594(2).
- 214 20. Agencies should **develop institutionalize** partnerships with relevant legal service  
215 providers, other nongovernmental organizations, and state and local government agencies  
216 that advocate for or provide assistance to individuals who participate as parties in agency  
217 adjudications.
- 218 **21.** Agencies should make informational materials available to adjudicators, managers, **staff**  
219 **attorneys, and legal and** paralegal support staff. **Agencies should and** conduct regular

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220 training sessions for such personnel on best practices for fair, accurate, and efficient case  
221 management.

**Communication and Transparency**

222 ~~21-22.~~ Agencies should provide parties and representatives with resources to help them  
223 navigate their adjudication systems, understand procedural alternatives that may expedite  
224 decision making in appropriate cases, and learn about best practices for efficient and  
225 effective advocacy before the agency. Such resources may include informational  
226 materials (e.g., documents written in plain language and available in languages other than  
227 English, short videos, decision trees, and visualizations), navigator programs, and  
228 counseling for self-represented parties.

229 ~~22-23.~~ As early as possible and at key points throughout the adjudication process,  
230 agencies should provide self-represented parties with plain-language materials informing  
231 them of: (i) their right to be represented by an attorney or qualified nonlawyer legal  
232 service provider; (ii) the potential benefits of representation; and (iii) options for  
233 obtaining representation.

234 ~~23-24.~~ Agencies should publicly identify those case management priorities and  
235 procedures that have been adopted to improve timeliness and may result in parties' cases  
236 being identified for aggregation, expedition, or similar alternative techniques.

237 ~~24-25.~~ Agencies should publicly disclose average processing times and aggregate  
238 processing data for claims pending, commenced, and concluded during a standard  
239 reporting period; any deadlines or processing goals for adjudicating cases; and  
240 information about the agency's plans for and progress in addressing timeliness concerns.

241 Agencies should consider whether and to what extent they should disclose such  
242 information with respect to agency subcomponents.

243 ~~25-26.~~ When agencies consider timeliness or productivity in appraising the performance  
244 of employees, as defined in 5 U.S.C. § 4301, and members of the Senior Executive  
245 Service, and when they set timeliness or productivity expectations for administrative law  
246 judges, who are not subject to performance appraisals, they should disclose such

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247 measures publicly and explain how they were developed. For employees who are subject  
248 to performance appraisal, agencies should disclose publicly: (i) how they use such  
249 measures to appraise employees, and (ii) whether employees are eligible for incentive  
250 awards based on timeliness or productivity.

**Consideration for Congress**

251 ~~26-27.~~ Congress ordinarily should not impose statutory time limits on agency  
252 adjudication. If Congress does consider imposing time limits on adjudication by a  
253 particular agency, it should first seek information from the agency and stakeholders. If  
254 Congress does decide to impose time limits, it should do so only after determining that  
255 the benefits of such limits outweigh the costs. If Congress then decides time limits are  
256 necessary or warranted, it should require agencies to adopt reasonable time limits or, in  
257 rare circumstances, impose such limits itself. In setting any statutory time limits,  
258 Congress If Congress decides that time limits on particular agency adjudications are  
259 needed, it should:

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- 260 a. Recognize that preexisting statutory or regulatory frameworks or special  
261 circumstances (e.g., a sudden substantial increase in an agency’s caseload or the  
262 complexity of the issues in a particular case) may justify an agency’s failure to  
263 conclude a case within the proposed statutory time limit;
- 264 b. State expressly what should occur if the agency does not meet its statutory  
265 deadline; and
- 266 c. State expressly whether affected persons may or may not enforce the time limit  
267 through judicial action and, if so, the nature of the relief available for this  
268 purpose.