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Expedited Procedures in the House: Variations Enacted Into Law

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Summary

Congress enacts expedited, or fast-track, procedures into law when it wants to increase the likelihood that one or both houses of Congress will vote in a timely way on a certain measure or kind of measure. These procedures are enacted as rule-making provisions of law pursuant to the constitutional power of each house to adopt its own rules. The house to which a set of expedited procedures applies may act unilaterally to waive, suspend, amend, or repeal them.

Sets of expedited procedures, as they affect the House of Representatives, can have as many as eight components. These components address the definition of the measure to which the procedures apply, the measure's introduction and its referral, its consideration in committee, the priority the measure enjoys for House floor consideration, the process of debating and amending it on the floor, and coordination with the Senate.

There are variations with respect to each of these components among the fast-track procedures now in force that can affect the legislative process in the House. Some of these variations can make it considerably more or less likely that the measures to which these procedures apply can progress through most or all stages of the House's legislative process within the time limits specified by law. For example, some expedited procedures place a time limit on House committee consideration of any measures subject to which those procedures. Such a time limit ensures that the measures cannot be kept from the House floor because the committee to which they were referred chooses not to report them. Also of particular importance is whether or not fast-track procedures permit the measures in question to be amended. Allowing any amendments to be offered to a measure creates the possibility of a disagreement with the Senate that can delay or prevent the measure's enactment.

Most sets of expedited procedures are incomplete in that they do not ensure that, if an eligible measure enjoys majority support in both houses, those majorities will be able to move the measure through the various stages of the legislative process, in committee and on the floor, and present it to the President within the time period permitted by law. However, such incomplete procedures are not necessarily defective. The House may deliberately choose to adopt fast-track procedures that preserve the usual discretion of its committees as well as the ability of its majority party leaders to control the House's floor agenda.

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The Nature and Effects of Expedited Procedures

Expedited procedures, also known as "fast-track" procedures, are enacted into law to increase the likelihood that one or both houses of Congress will vote in a timely way on a certain measure or kind of measure.[1]

These procedures are enacted into law as what are sometimes called *rule-making provisions* of law. They are given this designation because Congress enacts them pursuant to the constitutional authority of each house to write its own rules. Even though expedited procedures are included in laws, they have the same force and effect as the standing rules that either house adopts by simple House or Senate resolution to govern its own organization and procedure.[2] The house to which a set of expedited procedures applies may act unilaterally to waive, suspend, amend, or repeal them, without the concurrence of the other house or the President. The House of Representatives also may agree to a special rule, reported by the House Rules Committee, that supersedes some or all of the elements that are included in a set of expedited procedures.[3]

Most measures that Representatives and Senators introduce every two years do not survive all the stages of the legislative process, for lack of time or political support or both. This result is generally accepted as an unavoidable and desirable characteristic of how Congress does its business. From time to time, however, Congress has decided in advance that it will be important for one or both houses to have an opportunity to act within a limited period of time on a certain bill or resolution or on a certain kind of measure. In those cases, Congress has enacted special procedures that apply only to those measures and that are intended to put them on a legislative fast track–to expedite their progress through some or all of the stages of the legislative process.[4]

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[1]This report was written by Stanley Bach, formerly a Senior Specialist in the Legislative Process at CRS. Dr. Bach has since retired, but the other listed author updated the report and is available to answer questions concerning its contents.

[2]U.S. House of Representatives, *Constitution, Jefferson's Manual and Rules of the House of Representatives of the United States, 108th Congress*, 107th Cong., 2nd sess., H.Doc. 107-284 (Washington: GPO, 2003), pp. 1041-1042.

[3]See, for example, *House Rules and Manual*, pp. 1052-1053.

[4]These measures are referred to here as *eligible measures*, in that they are eligible for consideration under the expedited procedures.

These procedures are most likely to be enacted when Congress delegates to the President or another executive branch official the authority to issue a regulation or take some other action. As part of this delegation of authority, Congress may reserve the right to pass its own judgment on the proposed regulation or action by passing a joint resolution to approve or disapprove it before it takes effect. To facilitate action on such a joint resolution, Congress may write into law special procedures for considering it. However, these special expedited procedures are available only for a limited period of time. Thereafter, Congress still can pass a joint resolution of approval or disapproval, but it must do so under its regular legislative procedures.

Well-known examples of fast-track procedures are those appearing in the War Powers Act and the Trade Act of 1974, as amended. Congress also has enacted the same kinds of procedures in other circumstances in which it chose to decide in advance how it would consider certain measures. A good example of this is the expedited procedures in the Congressional Budget Act, as amended, that govern House and Senate floor consideration of budget resolutions and reconciliation bills.

The general nature and characteristics of expedited procedures are discussed in CRS Report 98-888, *"Fast-Track" or Expedited Procedures: Their Purposes, Elements, and Implications*. That report is concerned primarily with what different sets of expedited procedures have in common, and how those common characteristics differ from the regular legislative process in the House and Senate. This complementary report focuses more on the differences among various sets of expedited procedures that have been enacted into law and remain in force. This report is concerned only with fast-track procedures affecting the House of Representatives; it does not address such procedures as they affect the legislative process in the Senate.

Components of Expedited Procedures

Not all expedited procedures are the same. Some sets of these procedures include provisions on certain subjects that other sets of fast-track procedures do not address. Even when different sets of expedited procedures address the same subject, they do not always deal with that subject in the same way. In some cases, the practical consequences of these differences are minimal. In other cases, there are important differences in how much assurance expedited procedures offer Members that they will be able to cast timely votes on whether to pass or defeat the measures to which those procedures apply.

Sets of expedited procedures can have as many as eight components, addressing the following subjects and questions (from the perspective of the House):

1. *Definition.* How does the statute define the measure or measures to which the expedited procedures apply?

2. *Introduction.* Does the statute provide for automatic, mandatory, or discretionary introduction of the measure (or each of the measures) to which the expedited procedures apply?

3. *Referral.* Does the statute govern referral of each eligible measure to committee?

4. *Committee consideration.* Does the statute ensure that the committee to which the measure is referred cannot kill it by inaction?

5. *Priority for floor consideration.* Does the statute make the measure privileged for House floor consideration?

6. *House floor debate.* Does the statute impose a time limit on how long the House may debate the measure, if and when it is called up for consideration?

7. *House floor amendments.* Does the statute bar or restrict floor amendments to the measure?

8. *Coordination with the Senate.* Does the statute include provisions governing House action on a Senate measure that the Senate passes under its corresponding expedited procedures?

There are several different ways in which expedited procedures can address each of these questions. Alternatively, fast-track procedures may fail to address one or more of these questions in any way.

Variations Enacted Into Law

We can identify varieties of expedited procedures that Congress has enacted by examining those provisions that are reprinted in the section of the *House Rules and Manual* on "'Congressional Disapproval' Provisions Contained in Public Laws."[5] This compilation includes, with several exceptions, all fast-track procedures affecting the House that have been enacted into law and that remain in force.[6] Examining how

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[5]*House Rules and Manual*, pp. 1042-1196.

[6]One exception is the fast-track procedures for acting on budget resolutions and reconciliation bills. These are included in a separate compilation of budget process provisions of law that is printed in the immediately preceding section of the *House Rules and Manual*. (However, the provisions of Title X of the Congressional Budget and Impoundment Control Act, on rescissions and deferrals, are included among the expedited procedures.) Also, the fast-track procedures of the Line Item Veto Act remain in law but are not included in the compilation because the Supreme Court has declared that act to be unconstitutional. On the other hand, the compilation reprints the expedited procedures governing plans to reorganize the executive branch, even though the legal authority to implement those procedures lapsed at the end of 1984. The House parliamentarian explains that "[t]hese provisions are carried in this compilation because other Acts have incorporated their procedures by reference." *House Rules and Manual*, p. 1049. Similarly, the compilation contains the expedited procedures in the Defense Base Closure and Realignment Act of 1990, even though the Secretary of Defense does not presently have the authority to make recommendations that could eventually be subject to those procedures. Finally, the compilation includes some expedited procedures for considering either simple

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these various procedures address each of the eight issues listed above reveals how sets of expedited procedures can and do differ, especially in the assurance they provide that a majority of Representatives can act, within the limited time available under the statute in question, on the measures that have been placed on the legislative fast track.

Definition

The first question that can arise in comparing different sets of expedited procedures is how each set of procedures identifies the bills or resolutions to which it applies. Each set of fast-track procedures is available for considering one or more specific measures or kinds of measures. Does the statute leave any ambiguity about the measures to which its expedited procedures apply?

The *House Rules and Manual* for the 108th Congress contains 48 sets of expedited procedures.[7] Half of them avoid definitional ambiguity by including in the law the exact text of each measure that can be considered under the expedited procedures the law creates. (This text usually includes one or more blanks to be filled in so as to identify the regulation or other matter to be approved or disapproved.) For example, the Pension Reform Act includes expedited procedures to consider certain resolutions, and states that, for this purpose:[8]

> 'resolution' means only a joint resolution, the matter after the resolving clauses of which is as follows: "The proposed revised schedule transmitted to Congress by the Pension Benefit Guaranty Corporation on _____ is hereby approved," the blank space therein being filled with the date on which the corporation's message proposing the rate was delivered.

It may be possible to define the content of a measure with clarity and precision but without actually presenting its text. However, failing to include the actual text of the measure may create uncertainty as to whether a specific measure does or does

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[6](...continued)
House resolutions or concurrent resolutions, the constitutional force of which may be in doubt in light of the Supreme Court's decision in *INS v. Chadha*, 462 U.S. 919 (1983). Excluded from the *House Manual* are any fast-track procedures that apply only to the Senate, not to the House.

[7]This counts each set of expedited procedures written into law and reprinted in the *House Rules and Manual*, regardless of whether the law makes those procedures applicable to one measure, one kind of measure, or several different kinds of measures. It also counts provisions of a law that make a measure or certain measures subject to a set of expedited procedures that are identified as having previously been enacted into law. Because there are different (and defensible) ways in which these procedures could be counted, not too much weight should be given to the precise numbers and percentages given in this report. For example, one law may include a single set of fast-track procedures and make them applicable to different measures that are defined in various other sections of the statute. Another law, on the other hand, may include the expedited procedures that are applicable to each of several measures, even though all those sets of procedures are identical.

[8]All references to, and quotations from, specific laws derive from the excerpts from those laws that are reprinted in the *House Rules and Manual*.

not qualify for consideration under expedited procedures. For example, the Marine Fisheries Conservation Act creates fast-track procedures for considering a "fishery agreement resolution," defined as a resolution "*the effect of which* is to prohibit the entering into force and effect of any governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a)...." (Italics added.) The potential problem arises because of the phrase "the effect of which"; that phrase could be interpreted to encompass any resolution that arguably would have the indirect effect of making it impossible, perhaps for political or economic reasons, for the United States to enter into an international fishery agreement.

Similarly, Section 204 of the Federal Land Policy and Management Act of 1976 authorizes the Secretary of the Interior to implement presidential recommendations with respect to certain public lands unless the House and Senate agree, within a 90-day period, to a concurrent resolution "indicating otherwise." The statute is silent as to what kinds of provisions in a concurrent resolution would qualify as "indicating otherwise."

Should there be disagreement as to whether a particular measure qualifies for consideration under expedited procedures, the Speaker presumably would resolve the question in ruling on a point of order or in deciding whether to recognize a Member for the purpose of invoking those procedures. The need for such determinations can be minimized by including in each law establishing expedited procedures as clear and precise a definition as possible of the measures to which those procedures are to apply.

Introduction

Most expedited procedures apply to certain measures, however defined, only if Members choose to introduce those measures. In the majority of sets of procedures found in the *House Rules and Manual*, the statute allows any Member to introduce the measure or presumes that a Member will do so.[9] Very few of the 48 sets of fast-track procedures require that a measure be introduced. One exception, Section 151 of the Trade Act of 1974, provides that bills implementing trade agreements are to be introduced (by request) by the majority and minority leaders of the House and Senate or their designees. In another exception, the nuclear non-proliferation provisions of the Atomic Energy Act (Sec. 130) mandate introduction by directing the committees of jurisdiction to report resolutions of approval or disapproval:

> Not later than forty-five days of continuous session of Congress after the date of transmittal to the Congress of any submission of the President..., the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives, shall each submit a report to its respective House on its views and recommendations respecting such Presidential

[9]Not all statutes are constructed in this way. For example, the Federal Salary Act of 1967 applies expedited procedures to a bill or joint resolution only if the measure is introduced by the majority leader of the House or Senate.

> submission together with a resolution...stating in substance that the Congress approves or disapproves such submission, as the case may be....

One reason for omitting a mandatory introduction requirement presumably is that there is no need for either or both houses to invest time in acting on a measure under expedited procedures if no Member is interested enough to introduce it voluntarily. On the other hand, requiring introduction can assure that Congress has the maximum time to consider and act on a measure under expedited procedures. When the time period available for congressional action under those procedures is triggered by an event, such as receipt of a presidential message (as in the case just quoted), requiring that the measure be introduced on the same day or the first day of session thereafter (as in the case of Section 151 of the Trade Act) leaves as much time as possible for both houses and their committees to consider it.[10]

Referral

Once a measure is introduced, it is to be referred to, and considered by, the appropriate House committee or committees. In the largest number of cases (roughly 40% of the total), expedited procedures provide for eligible measures to be referred to committee in accordance with the House's normal procedures. In other words, the Speaker is to refer these measures on the basis of committee jurisdictions as defined in the House's standing rules and as supplemented by well-established referral precedents and practices. In another one-quarter of the cases, the statutes are silent on the matter of committee referral, which arguably has the same effect: leaving the measures in question to be referred by the same means and on the basis of the same criteria applicable to all other bills and resolutions. In roughly one-third of the cases, however, fast-track procedures specifically identify the House (and often the Senate) committees to which eligible measures are to be referred.

Committee Consideration

Among the most significant elements of expedited procedures are those governing committee consideration. Under the House's regular procedures, its committees usually can choose not to act on measures referred to them; this is the case with the vast majority of introduced measures. In such cases, those measures die at the end of the Congress. A majority of the House can prevent this from happening by invoking a procedure by which it can vote to discharge a committee from further consideration of a measure that was referred to it. However, this procedure can be time consuming, is not invoked very often, and rarely has been used successfully.[11] Thus, if expedited procedures do not prevent committees from killing

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[10]In the case of the Trade Act provisions governing implementing bills, there are time limits on House and Senate committee consideration. Most other expedited procedures impose time limits on congressional consideration generally, including both committee and floor action in one or both houses, as the case may be.

[11]Measures also can come to the House floor without having been reported from committee by means of special rules, motions to suspend the rules, and unanimous consent requests. However, none of these devices is likely to be used over the objections of the committee of

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eligible measures by inaction, the procedures fail to ensure the ability of a majority of the House to vote in a timely way on passing those measures.

Roughly three-quarters of the expedited procedures in the *House Rules and Manual* prevent committees from effectively killing eligible measures by failing to act on them. These procedures generally impose a deadline for committee action and either require the committee to report the measure in question by that deadline or provide a mechanism for the committee to be discharged if it fails to report in a timely way.

The War Powers Act and the National Emergencies Act are unique in directing the House committee of jurisdiction to report the measure in question within a specified number of days (though not necessarily with a favorable recommendation) and in presuming that the committee will comply with this requirement.[12] For example, Section 6 of the War Powers Act provides for certain measures to be referred to the House Committee on International Relations (or the Senate Committee on Foreign Relations), and then directs that:

> such committee shall report one such joint resolution or bill, together with its commendations, not later than twenty-four calendar days before the expiration of the sixty-day period . . . , unless such House shall otherwise determine by the yeas and nays.

Both of these laws were enacted in the mid-1970s and are among the earliest fast-track procedures that remain in force. Many of the expedited procedures that have been enacted since then impose similar time limits on committee action, but also deal with a question that the War Powers and National Emergency Acts fail to address. What happens if the committee of jurisdiction does not report an eligible measure within the time allowed for that committee to act? Almost two-thirds of the sets of expedited procedures anticipate this possibility by providing for the committee of jurisdiction to be discharged without recourse to the difficult discharge procedures of House Rule XV.

In a few instances, committee discharge is automatic. If a committee fails to report, within a specified number of days, an eligible measure that was referred to it, that committee is automatically discharged from further consideration of the measure. For example, Section 115 of the Nuclear Waste Policy Act of 1982 provides that:

> Upon the expiration of 60 days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall be discharged from further consideration of such resolution, and such resolution shall be referred to the appropriate calendar, unless such resolution or an identical resolution was previously reported by each committee to which it was referred.

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[11](...continued)
jurisdiction.

[12]The expedited procedures of the National Emergencies Act also are incorporated by reference in the International Emergency Economic Powers Act.

A more common provision found in sets of expedited procedures is to allow the House to decide by majority vote whether to discharge a committee from further consideration of an eligible measure that the committee failed to report within the time period allowed by law. This motion may be nondebatable or it may be debatable for an hour. In either case, the motion is a privileged one, so that Members supporting the measure are able to secure a vote on whether the committee in question should be prevented from killing the measure by failing to report it.

What is perhaps more interesting is that more than one-quarter of the compiled expedited procedures do allow committee inaction to kill measures that otherwise could receive fast-track consideration. These sets of procedures do not require the committee of jurisdiction to report an eligible measure that was referred to it. Furthermore, the same procedures do not include any provisions that enable a majority of the House to remove that measure from the committee's jurisdiction and bring it to the floor for consideration.

For example, the Marine Fisheries Conservation Act defines an eligible measure as one that contains certain provisions and is reported by what is now the House Committee on Resources within 45 days after the House receives a certain document from the President. However, the statute does not direct the committee to report any measure within that 45-day period. Instead it simply provides that "[a]ny fishery agreement resolution *upon being reported* shall immediately be placed on the appropriate calendar." (Italics added). The statute provides no special means to take such a resolution from the custody of the committee if the committee fails to report it. This omission creates the possibility that the resolution will die at the end of the Congress without the full House having had an opportunity to vote on it.

Similarly, the Arms Export Control Act contains five identical sets of expedited procedures for considering measures to prohibit various proposed actions by the executive branch. With respect to the House, these procedures state only that:

> For the purpose of expediting the consideration and enactment of joint resolutions under this subsection [or paragraph], a motion to proceed to the consideration of any such joint resolution *after it has been reported by the appropriate committee* shall be treated as highly privileged in the House of Representatives. (Italics added.)

If the committee fails to report such a joint resolution, that measure enjoys no procedural advantage over any other measures on which committees have not acted.

Thus, a key question to ask of any expedited procedures is whether or not they give the full House an opportunity to vote on (or at least vote to consider) eligible measures without regard to whether those measures are supported by the committee(s) with jurisdiction over them. More often than not, the expedited procedures now in force provide this opportunity, but roughly one in four do not.

Priority for Floor Consideration

To ensure that the House has an opportunity to debate and vote on an eligible measure, it is necessary but not sufficient for expedited procedures to prevent that

measure from being killed by committee inaction. Those procedures also must make it possible for the measure to reach the House floor after the committee has reported it or has been discharged from considering it further.

Most bills and resolutions that House committees report cannot simply be raised on the floor for consideration at any time because those measures are not *privileged* to interrupt the House's regular daily order of business. In practice, measures reach the House floor either by unanimous consent or as privileged interruptions of this order of business. In turn, the most common way for measures to become privileged is to be called up under special rules from the Rules Committee or as part of motions to suspend the rules. If expedited procedures do not give an eligible measure priority access to the floor, that measure must rely on reaching the floor in one of these ways, just like other reported bills and resolutions. Consequently, there is a real possibility that the House may not consider the measure at all, and an even greater possibility that the House may not act on it within the deadline imposed by law.

The War Powers Act and the National Emergencies Act again are unique in providing that eligible measures reported from committee "shall become the pending business of the House in question. . . ." Instead, most fast-track procedures authorize any Member to make a privileged motion to take up an eligible measure that is no longer in the custody of a House committee. In some cases, this motion may be made as soon as the committee of jurisdiction has reported the measure or has been discharged. In others, a day or more must elapse before the motion is in order. In some cases, the motion is not debatable; in others, it is debatable for an hour. Whatever these minor differences may be, most expedited procedures enable the House, by simple majority vote, to decide whether it wishes to act on an eligible measure.[13]

The exceptions are the sets of expedited procedures that do not provide for calling up eligible measures on the House floor by majority vote. In the Nuclear Waste Policy Act, the committee of jurisdiction is discharged automatically if it fails to report an eligible measure within a specified number of days. The act then goes on to provide that "[i]t shall be in order for the Speaker to recognize a Member favoring a resolution to call up a resolution of repository siting approval after it has been on the appropriate calendar for 5 legislative days."[14] The Speaker is empowered to decide whether the House will consider such a resolution; the House cannot decide by majority vote to call it up if the Speaker does not arrange for its consideration.

The nuclear non-proliferation provisions of the Atomic Energy Act provide for motions to consider certain measures but not others. Section 130 of the act makes in order privileged and nondebatable motions to consider certain concurrent resolutions. However, the same section includes different procedures for considering certain joint resolutions. Such a joint resolution is to be considered *in the Senate*

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[13]In some instances, this privileged motion is in order only after the committee of jurisdiction has reported the measure.

[14]The expedited procedures for considering these resolutions are laid out in Section 115 of the act. Sections 135 and 146 of the same act incorporate those procedures by reference and make them applicable to other measures.

under the provisions of Section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976, which provides for a privileged motion to consider a measure to which it applies. But Section 130 does not apply these same provisions to the House. Instead, Section 130 states that:

> For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this subsection, it *shall be in order* for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this subsection which *may be* similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. (Italics added.)

In effect, this provision states only that the House Rules Committee may (or may not) do what it would be empowered to do anyway.

House Floor Debate

Unlike in the Senate, measures cannot be filibustered on the House floor. In one way or another, the House can, by majority vote, control how long it chooses to debate a bill or resolution. Nonetheless, expedited procedures that provide for calling up eligible measures on the House floor typically limit how long Members can debate each of them. With only a few exceptions, this limit takes the form of a maximum number of hours that are to be available for debating a measure on the House floor. The War Powers and National Emergencies Acts, on the other hand, provide that eligible measures shall, when reported from committee, "become the pending business" of the House (or Senate) and "shall be voted on within three calendar days thereafter," without establishing minimum or maximum times for debate during that three-day period.[15]

Section 151 of the Trade Act of 1974 contains both kinds of time limits. That section limits to not more than 20 hours the House floor debate on certain trade-related bills and resolutions. The same section also states that "[a] vote on final passage of the bill or resolution shall be taken [on the House floor] on or before the close of the 15th day after the bill or resolution is reported by the committee or committees...to which it was referred, or after such committee or committees have been discharged from further consideration of the bill or resolution."[16]

It bears emphasizing that, even if time limits on debate are not included in expedited procedures, the House can, by majority vote, end debate on eligible measures, either by agreeing to a motion to order the previous question or by agreeing to a special rule from the Rules Committee that limits the time for general

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[15]The House or Senate may "otherwise determine by yeas and nays."

[16]On the other hand, Section 152 of the Act (which also is incorporated by reference in Section 153) contains one but not both limits. Section 152 limits the number of hours for House floor debate on other resolutions, but it does not require that votes on final passage take place within a specified number of days.

debate and the amending process in Committee of the Whole. Thus, the failure of some expedited procedures to include time limits on debate does not necessarily mean that measures considered under those procedures will be debated for longer than measures considered under fast-track procedures that do include such time limits.

House Floor Amendments

Expedited procedures often are designed to do more than ensure that Members of the House can vote within a limited time on passing eligible bills or resolutions. These procedures often are intended to enable *both* houses of Congress to complete the entire legislative process with respect to those measures within a fixed number of days.

For this purpose, whether or not expedited procedures prohibit amendments to eligible bills or resolutions is particularly important. If a set of fast-track procedures permits the House (or the Senate, or both) to amend an eligible measure on the floor, those procedures cannot assure that both houses will be able to complete the legislative process within a set time. This remains true even if there are limits on floor debate, ensuring that each house can vote promptly on whether to pass that measure, and even if majorities in both houses favor it. Once either house amends any measure, that action creates the likelihood of a legislative difference between the two houses that may be resolved either through an exchange of amendments or through negotiations in a conference committee. There is no way in which any expedited procedures can compel the House and Senate to reach an agreement by either means within a certain time (or at all, for that matter).

Naturally, expedited procedures that neither provide for motions to take up eligible measures on the House floor nor limit floor debate on them also do not govern whether or not those measures are subject to floor amendments. On the other hand, fast-track procedures that limit floor debate on eligible bills and resolutions almost always prohibit amendments to those measures as well.[17]

When expedited procedures do explicitly permit House floor amendments, the procedures typically impose narrow limits and strict definitions on the amendments that Members may offer. For example, Section 153 of the Trade Act of 1974 governs House floor consideration of joint resolutions disapproving certain presidential recommendations with respect to one or more countries. Section 153 also bars floor amendments to any such joint resolution, except that the prohibition "shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting a with-respect-to clause."

The only House floor amendments permitted under several other statutes are those that reverse the effect of the measure that the House is considering. Section

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[17]Among the few exceptions are the fast-track procedures of the Marine Fisheries Conservation Act and Title X of the Congressional Budget and Impoundment Control Act (in the case of rescission bills).

130 of the Atomic Energy Act governs congressional consideration of joint resolutions by which Congress can either approve or disapprove certain presidential submissions. No floor amendments are in order, except that during consideration of a joint resolution of approval, the majority leader or his designee can offer an amendment to replace "does" with "does not", thereby transforming the measure into a joint resolution of disapproval. In similar fashion, the Energy Policy and Conservation Act governs House consideration of resolutions stating that the House either "does not favor" or "does not object" to certain proposed energy actions. The only floor amendment permitted to such a resolution is an amendment in the nature of a substitute that replaces the text of the resolution with the alternate text, thereby reversing the measure's effect.

Coordination with the Senate

Even when expedited procedures bar floor amendments in both houses to concurrent or joint resolutions or to bills, they still may contain additional procedures to coordinate action between the two houses.

To understand the potential problem these additional procedures address, imagine a set of expedited procedures that provides maximum periods of time for committee consideration and then for floor action in each house on a joint resolution of disapproval. Assume that the House passes H.J.Res. 1 under these procedures shortly before the end of the period permitted by law for Congress to enact the joint resolution with the benefit of expedited procedures. If the Senate passes S.J.Res. 1 at about the same time, both houses will have passed *identical* resolutions, but the two houses will not have passed the *same* resolution. Therefore, the legislative process remains incomplete. When the House receives S.J.Res. 1 from the Senate, there may not be enough time remaining for the House to use the fast-track procedures to consider the Senate measure both in committee and on the House floor.

Many sets of expedited procedures do not address this potential problem.[18] In some instances, however, there are procedures providing that, if the House receives a Senate joint or concurrent resolution before the House passes its own corresponding measure, the House is to continue considering its own measure but then is to vote instead on final passage of the Senate measure. For example, Section 115 of the Nuclear Waste Policy Act of 1982 provides in part:

> If the House receives from the Senate a resolution of repository siting approval with respect to any site, then the following procedures shall apply:
>
> (A) The resolution of the Senate with respect to such site shall not be referred to a committee.
>
> (B) With respect to the resolution of the House with respect to such site–

[18] In some cases, the issue would not arise because the expedited procedures apply only to House resolutions (or Senate resolutions), even though the effect of adopting those resolutions may be questionable in light of the Supreme Court's decision in the *Chadha* case mentioned earlier.

> (i) the procedure with respect to that or any other resolutions of the House with respect to such site shall be the same as if no resolution from the Senate with respect to such site had been received; but
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> (ii) on any vote on final passage of a resolution of the House with respect to such site, a resolution from the Senate with respect to such site where the text is identical shall be automatically substituted for the resolution of the House.

Only the War Powers Act and the National Emergencies Act, enacted in the 1970s,[19] include expedited procedures that attempt to deal with the potential delays and procedural problems attributable to substantive differences between House and Senate versions of the same measure. The War Powers Act contains provisions very similar to the following paragraph of the National Emergencies Act:

> In the case of any disagreement between the two Houses of Congress with respect to a joint resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such joint resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

The goal of this paragraph is to expedite appointment of conferees, deliberations of the conference committee, and House and Senate floor consideration of the resulting conference report. However, these procedures leave many questions unanswered. For example, what constitutes prompt appointment of conferees, and do these procedures in any way nullify Senators' rights to debate the motions that the Senate must adopt before it can appoint its conferees? Furthermore, this paragraph is silent on what is to happen if House and Senate conferees cannot reach an agreement within 48 hours after being appointed and file a report in disagreement. In other words, this paragraph demonstrates the difficulty–and ultimately, the impossibility–of compelling the House and Senate to resolve a substantive policy agreement, much less to do so quickly.

Complete and Incomplete Procedures

One useful way to summarize this analysis is to distinguish between *complete* and *incomplete* sets of expedited procedures. As defined here, a complete set of procedures ensures that, if an eligible bill or resolution enjoys majority support in both houses, those majorities will be able to move the measure through the various

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[19]And the International Emergency Economic Powers Act, which incorporates the procedures contained in the National Emergencies Act.

stages of the legislative process, in committee and on the floor, and present it to the President within the time period permitted by the statute.

To meet these requirements, a complete set of expedited procedures:

1. requires the committee (or committees) to which the measure is referred in either house to report it within a fixed number of days or be discharged (either automatically or by simple majority vote) from considering it further;

2. allows the measure to be called up (again, either automatically or by simple majority vote) for immediate or prompt floor consideration in both houses;

3. limits the time available for debating the measure on the floor of either house;

4. bars any amendments to the measure in either house; and

5. includes the kind of provision, quoted above, for a final House vote on a Senate measure (or a final Senate vote on a House measure).

To minimize uncertainty, it also is useful, though not essential, for the expedited procedures to include the exact text (with blanks to be filled in) of the measures to which the procedures are to apply.

If expedited procedures lack one or more of these provisions, they leave open the possibility of delay in the legislative process that can prevent the process from being completed within the time permitted by law. Of course, that process can continue to completion after the statutory time period elapses, but not with the benefit of fast-track consideration. Furthermore, most expedited procedures have been enacted to facilitate congressional consideration of resolutions to disapprove executive branch actions, which generally may take effect as soon as the stipulated time period ends. Thus, disapproving such an action at a later date involves the added difficulty of requiring Congress to reverse or nullify some action that already has taken place or some decision that already has begun to be implemented.

By these standards, most of the expedited procedures included in the *House Rules and Manual* are incomplete. Few of the sets of procedures in the *Manual* include the last two of the five elements listed above: a total ban on amendments and a mechanism to expedite House action on an eligible Senate measure. If we set aside the latter element as being useful but perhaps less essential than the other four, roughly a third of the procedures qualify as complete.

Although most expedited procedures are incomplete by the criteria used here, that is not to say that those procedures are necessarily defective. Although it is possible that some elements are missing from these procedures because of oversights in drafting, it is far more likely that these omissions represent intentional policy decisions made by members.

For example, the House may decide deliberately to accord the same deference to the judgments of its committees regarding measures eligible for fast-track

consideration as it does regarding all other measures. If so, the House may provide for an eligible measure to receive expedited consideration on the House floor *only if* it has been reported by the committee to which it was referred. As previously discussed, for example, the Arms Export Control Act makes eligible measures privileged for House floor action only after being reported by the appropriate committee.[20] As noted earlier, the Marine Fisheries Conservation Act defines an eligible measure as one that has a stated effect *and* that has been reported by the appropriate House (or Senate) committee.

In addition, concerns about the House's floor schedule, as well as the agendas of its committees, can lead the House to prefer sets of fast-track procedures that are incomplete.

Complete sets of expedited procedures can effectively force eligible measures onto committees' agendas, regardless of other demands on the committees' time and attention. Procedures to discharge House committees, either automatically or by majority vote if they fail to report eligible measures, give committees an incentive to consider and report those measures, whether favorably or otherwise. This incentive is even greater if an eligible measure is given priority for House floor action, whether the committee reported it or was discharged from considering it further. If a committee recognizes that the House may consider an eligible measure, regardless of the committee's opinion or action, the committee is likely to at least review the bill or resolution carefully so that the committee and its members are prepared for the floor debate on that measure.

Furthermore, complete sets of fast-track procedures provide for the House to consider each eligible measure on the floor at times that are largely beyond the control of the majority party leadership. The date on which an eligible measure can be called up for floor consideration depends on three factors: (1) the date of the triggering event, which usually is determined by the executive branch and which marks the start of the period allowed for congressional action under the expedited procedures; (2) the length of time permitted under the statute for committee action; and (3) when a Member makes the privileged motion to call up the measure for House floor consideration.

The regular procedures of the House give the majority party leadership, acting through the Speaker or the Rules Committee, dominant control over the House's floor schedule, in regard to both what measures the House considers and when it considers them. Complete expedited procedures can intrude substantially on that authority and discretion. Majority party leaders have little or no control over when an eligible measure becomes available for floor action; and, in most cases, any Member then can move that the House consider it.[21]

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[20]This leaves open the possibility that the committee could report an eligible measure either unfavorably or without recommendation. However, a committee has little incentive to do so unless it confronts the prospect of automatic discharge or discharge by majority vote if it fails to report the measure at all.

[21]The House can defeat this motion, but only after time has been consumed on the floor and (continued...)

From the perspective of the majority party leadership, this diminution of its control over the floor agenda may not be a significant problem if a set of expedited procedures applies only to one bill or resolution. On the other hand, consider the potential impact of the Congressional Review Act, 1996 law that established a mechanism for Congress to disapprove a wide array of proposed federal regulations. Because of the number of regulations covered by this act, the process of acting on the corresponding joint resolutions of disapproval could significantly intrude on the agendas of the House and its committees, and on the capacity of the House's majority party leaders, in committee and on the floor, to manage those agendas. Perhaps it was for this reason that the 1996 law includes only very incomplete expedited procedures that do not impose deadlines for committee action or provide for committee discharge, and that do not give eligible measures priority access to the House floor for consideration.

There is a final point, mentioned at the beginning of this report, to consider when evaluating the implications of expedited procedures for the House: these procedures only have as much force and effect as the House chooses to give them at any point in time. As rule-making provisions enacted into law, fast-track procedures have as much weight as the House's standing rules, but no more. The House may decide at any time to set aside certain expedited procedures, either temporarily or permanently. Most important, the Rules Committee always is free to report a special rule for considering a measure on the House floor that supersedes the fast-track procedures under which that measure otherwise could be considered. The House then decides whether it prefers to consider the measure under the statutory procedures or under the alternate procedures recommended by its Rules Committee, in collaboration with its majority party leaders.

Especially as they affect House floor action, therefore, expedited procedures are procedures for the House to follow unless it prefers to adopt some other procedures instead. The variations in expedited procedures that the House has enacted into law govern the House only to the extent that the House wishes to be governed by them.

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[21](...continued)
Members have had to take positions on the issue.