I cannot make it this Friday. I have a few small comments to the recommendations in the report.

Feel free to circulate in advance or at the meeting.

I will be able to attend the April 11th meeting, but will have to leave by 3.

Alan

Rec 1 - change "would" to "could" - would is to high a barrier.
I would beware of extremely broad severability clauses because they are disregarded as boiler plate. If the agency really can figure out what it wants to save and what it is willing to let go, this can be an effective technique.

Rec 7 - The Judicial Conference does not itself develop rules or practices on briefing. Most of these cases would go to the courts of appeals and so the appellate rules committee would be the one to take a first look at the question. District courts sometimes get these questions, but their procedures (especially under Rule 59 for reconsideration) are quite easily adopted to this approach.

I am not opposed to this idea, but I have never seen anything like this in a rule, which is all that the committee issues. I do not think that the standing example is very helpful b/c everyone knows what the standing issue is likely to be. Also, the bigger problem is with word limits on briefs, not schedules as such. In my view it is not just the government whose briefs would be improved with a greater focus of remedies.

To me, the big problem is that it is often premature to talk about more precise remedies until the parties know what the court has found to be problematic or worse. I would not require the agency of the petitioner to brief remedial issues in the main briefs. Perhaps a rule could provide something along these lines: "when a court sets aside a portion of an agency decision (rule), the court should consider seeking supplemental briefing on what relief is appropriate in light of its ruling." The agency could then ask that the decision below be affirmed, but if not, the parties should be asked to submit supplemental briefing on the issue of remedy under Rule ___.