

1) I am strongly in agreement with Alan Morrison's first comment. The failure of the present draft frankly to recognize the cost side of retrospective reviews and relate them to an agency's overall rulemaking budget may be good politics in today's world, but it will undercut the persuasiveness of the recommendations to the agencies whose behavior it hopes to influence, that will be experiencing these costs.

2) I propose adding at the end of the third paragraph of the preamble the following sentences (subject to modifications of style and citation). "Later in 2011, the Conference added Recommendation 2011-5, 'Incorporation by Reference,' responding in part to a general failure of agencies to revisit voluntary consensus standards they had earlier converted into legal obligations; roughly two thirds of the approximately 10,000 standards then incorporated as legal obligations had not been revisited in over fifteen years, although frequently revised by the responsible standards organization. The Conference made six detailed recommendations for reviewing and updating incorporated standards, including a recommendation to Congress (Recommendation 11) that may have broader utility."

3) The fifth paragraph to the preamble is particularly striking for its one-sided failure to recognize the costs of regulatory lookback. Rather than encouraging, as it does, creation of a "high-level enforcement mechanism," a more balanced approach might suggest integration of regulatory lookback into each agency's annual regulatory plan, permitting frank consideration at the highest levels of the agency, and between the agency and the White House, of the manner in which agency regulatory resources will best be expended in the current period.

4. Recommendation 1 might then read, on the order of

As a means of capturing the value of retrospective review within the general framework of agency rulemaking effort, agency regulatory plans as currently provided for in Section 4 of Executive Order 12866 should integrate plans for retrospective review with those for new rulemaking, striking an appropriate balance in the allocation of agency resources.

5. Add to Recommendation 5 the following sentence,

In particular, agencies should implement recommendations 6 to 10 of ACUS Recommendation 2011-5, in respect of regulations in which they have incorporated by reference as legal

obligations voluntary consensus standards adopted by non-governmental organizations, whenever those standards have been revised by their adopting organizations.