

**From:** George Willingmyre  
**To:** Emily Bremer; Scott Rafferty  
**Sent:** Tuesday, November 01, 2011 1:59 PM  
**Subject:** Incorporation by Reference

Hello Scott and Emily. GTW Associates is an International Standards and Trade Policy consultancy. [www.gtwassociates.com](http://www.gtwassociates.com) Previously I was VP of ANSI in Washington

Congratulations on a comprehensive review of incorporation by reference issues as documented in your report at <http://www.acus.gov/research/the-conference-current-projects/incorporation-by-reference/>

I assembled a page a while back <http://www.gtwassociates.com/alerts/copyright.htm> predicting court challenges to the public posting of copyrighted codes and standards incorporated in codes and regulations at <https://public.resource.org/>. The court challenge never materialized because the SDOs may have lost an important precedent.

The text in recommendation 8 and 16 in the document at <http://www.acus.gov/wp-content/uploads/downloads/2011/10/Managers-Amendment-to-IBR-Rec-10-27-11.pdf> seems to propose to limit incorporation by reference to mandatory regulations. It is my experience that incorporation by reference currently also proves valuable in guidance documents. I am confident you would find many current examples of incorporation by reference of non mandatory guidance by regulatory agencies. I do not see that incorporation by reference for non mandatory guidance purposes specifically addressed in your recommendations. Perhaps my concern is mistaken. But if you have not included non mandatory uses of incorporation by reference (for guidance material for example) this is an issue that should be addressed before it is too late to include it,

See for example for further background GTW comments to OMB in Jan 2006 at <http://www.gtwassociates.com/alerts/GTWcommentsonOMBGuideance.htm> GTW response to public request for comments on federal Regulatory review in March 2009 [http://www.reginfo.gov/public/jsp/EO/fedRegReview/GTW\\_Associates\\_comments.pdf](http://www.reginfo.gov/public/jsp/EO/fedRegReview/GTW_Associates_comments.pdf) and GTW comments on Effectiveness of Federal Agency Participation in Standardization in Select Technology Sectors for National Science and Technology Council Subcommittee on Standardization March 2011 [http://standards.gov/upload/84\\_GTW-Associates.pdf](http://standards.gov/upload/84_GTW-Associates.pdf)

I have added you both to the distribution of an occasional newsletter of global standards policy news.

Please let me know how I may be of further assistance

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