

**From:** [Scott Cooper](#)  
**To:** [Emily Bremer](#)  
**Subject:** FW: Invitation to Small Business Regulatory Roundtable on "Incorporation By Reference" - Wednesday, May 9th at 2:00 p.m.  
**Date:** Tuesday, April 24, 2012 5:36:45 PM

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Dear Emily,

Small world. I found this in my in-box when I returned this afternoon. And (of course) SBA puts their event in the context of the ACUS work...

I appreciate having the opportunity to sit down with you and Paul in such a collaborative manner to discuss pathways forward. I very much hope that I can be helpful here.

Looking forward to the 1<sup>st</sup>. And once again, you-all (and you in particular) are at the epicenter of an important issue and an exciting opportunity to advance critical USG policy.

Best  
Scott

**From:** Lundegren, Bruce E. [mailto:[Bruce.Lundegren@sba.gov](mailto:Bruce.Lundegren@sba.gov)]

**Sent:** Tuesday, April 24, 2012 1:35 PM

**To:** Lundegren, Bruce E.

**Subject:** Invitation to Small Business Regulatory Roundtable on "Incorporation By Reference" - Wednesday, May 9th at 2:00 p.m.

Dear Small Business Representatives:

As you may know, the Administrative Conference of the United States (ACUS) recently adopted a "Recommendation" on the issue of "Incorporation By Reference" (see, <http://www.acus.gov/acus-recommendations/incorporation-by-reference/>). Incorporation By Reference refers to federal agencies adopting private consensus standards published elsewhere into their federal regulations. The National Technology Transfer Act Advancement Act (NTTAA) (see, <http://standards.gov/nttaa.cfm>) encourages federal agencies to use Incorporation By Reference, and the Office of Management and Budget (OMB) has issued implementing guidance in the form of OMB Circular A-119 (see, [http://www.whitehouse.gov/omb/circulars\\_a119](http://www.whitehouse.gov/omb/circulars_a119)), which addresses a number of important issues associated with this practice.

During ACUS' discussion of Incorporation By Reference, one of the key issues considered was that of standard setting bodies changing a fee for access to their standards (which are frequently copyrighted materials), even when these standards are being incorporated into federal regulation. Office of Federal Register regulations require that materials incorporated by reference be "reasonable available" to the public, although that term is not defined.

Following the adoption of ACUS' Recommendation on Incorporation By Reference, a group of legal scholars associated with ACUS, concerned about the public "having to pay to know what the law is," petitioned the Office of the Federal Register to define the term "reasonably available." The Office of Federal Register published the petition for public comment in the Federal Register on February 27, 2012 (see, <http://www.gpo.gov/fdsys/pkg/FR-2012-02->

[27/pdf/2012-4399.pdf](#)) , and subsequently extended the comment period until June 1, 2012 (see, <http://www.gpo.gov/fdsys/pkg/FR-2012-02-27/pdf/2012-4399.pdf>).

Incorporation By Reference is a potentially valuable tool for federal agencies to reduce the time and effort needed to engage in rulemaking. However, there are potential concerns with the practice beyond the issue of “reasonably available,” such as whether the standard setting processes themselves are sufficiently representative, open, and transparent. **As such, the Office of Advocacy will host a Small Business Roundtable on Wednesday, May 9, 2012 from 2:00 p.m. until 4:00 p.m. to discuss the issue of Incorporation By Reference and its potential impact on small business.** Advocacy is particularly interested in obtaining small business input on how standard setting bodies operate, whether small business interests are adequately represented, and whether small business is somehow disadvantaged when private standards are incorporated into federal regulations by reference. Advocacy’s Small Business Roundtable will be held in the **Eisenhower (2nd Floor) Conference Room here at the SBA Office of Advocacy, 409 Third Street, SW, Washington, DC**, so please mark your calendars. We are especially in hearing from small business representatives who participate in these standard setting bodies to obtain their input.

If you would like to attend the Small Business Roundtable on Incorporation By Reference on May 9th, **please RSVP to me by reply email.** (A call in option will also be available upon request.) A final Agenda for the Roundtable will be developed and circulated prior to the meeting.

We hope to see you on May 9th. Please feel free to contact me if you have any questions or require additional information.

Bruce

Bruce E. Lundegren | Assistant Chief Counsel | Office of Advocacy |

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