

**From:** [Scott Cooper](#)  
**To:** [Emily Bremer](#)  
**Subject:** FW: IBR and the Market for Standards  
**Date:** Wednesday, November 23, 2011 9:10:09 AM

---

Dear Emily,

I am pulling in some responses to your question (and thanks for your due diligence on this!)

I know you have already heard from NFPA and ASTM. Here is a response from ASME

Best  
Scott

Scott Cooper

Vice President  
Government Relations and Public Policy  
American National Standards Institute  
1899 L St, NW, 11th Floor  
Washington, DC 20036  
Office: 202-331-3610  
Cell: 413-687-1788  
[scooper@ansi.org](mailto:scooper@ansi.org)

---

ASME publishes standards that are used by many commercial entities - including manufacturers, owners, operators, inspectors and insurance companies – not solely because they have been incorporated by reference, but because they serve as “industry best practice.” For example, while certain parts of ASME’s B30 standards on cranes and hoists are referenced by OSHA as requirements, they also include non-enforceable recommendations that allow for users to exercise discretion based on their specific operations.

**From:** Emily Bremer [<mailto:ebremer@acus.gov>]  
**Sent:** Tuesday, November 22, 2011 11:43 AM  
**To:** Scott Cooper  
**Subject:** IBR and the Market for Standards

Scott,

As we move towards our Plenary session, at which the proposed incorporation by reference recommendation will be debated, we are having some internal discussions about the market for and use of standards. These discussions were spurred by comments and proposed amendments received from one of our senior fellows, Professor Peter Strauss of Columbia Law School. These comments and proposed amendments are available here:

[http://www.acus.gov/wp-content/uploads/downloads/2011/11/Peter\\_Strauss\\_Combined\\_Comment\\_and\\_ProposedLanguage.pdf](http://www.acus.gov/wp-content/uploads/downloads/2011/11/Peter_Strauss_Combined_Comment_and_ProposedLanguage.pdf)

One key point in our discussions is that the market for a standard may be bigger than just the community of those who are required by federal regulations to comply with it. Can you think of an example of standard that is incorporated by reference in a federal regulation, but is often sold to and used by folks who are not subject to the regulation? Any help would be appreciated!

If you have any questions or want to chat about this, please give me a call. I'll be in all week, except for Thursday, and will be in the office all next week, too.

Thank you!

Emily Schleicher Bremer | Attorney Advisor



ADMINISTRATIVE CONFERENCE  
OF THE UNITED STATES

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES  
1120 20th St., NW Suite 706 South . Washington, DC 20036  
(202) 480-2086 . [ebremer@acus.gov](mailto:ebremer@acus.gov) . [www.acus.gov](http://www.acus.gov)