



# ANSI Appeals Board Operating Procedures

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## **ANSI Appeals Board Operating Procedures**

### **1 Authority and scope**

There is established an ANSI Appeals Board, that reports to the Executive Committee of the ANSI Board of Directors ("Board ExCo"), to consider and decide all final appeals in accordance with procedures approved by the Executive Committee. No appeal may be heard by the ANSI Appeals Board unless brought by: (i) directly and materially interested parties; (ii) who have been or will be adversely affected by the actions or inactions of another Committee of ANSI; and (iii) who have first exhausted all other appeals available under procedures established by ANSI.

These Operating Procedures set forth the rules of procedure governing the Appeals Board and may be amended from time to time by the Executive Committee of the ANSI Board of Directors ("Board ExCo").

The Appeals Board shall consider appeals by directly and materially interested parties<sup>1</sup> that have exhausted all other appeals available to them through ANSI and who have been, or will be, adversely affected by a decision of another Committee of ANSI, whether in the form of action or inaction, in the implementation of the following ANSI procedures:

*ANSI Auditing Policy and Procedures*

*ANSI Essential Requirements: Due process requirements for American National Standards*

*ANSI Procedures for the National Adoption of ISO and IEC Standards as American National Standards*

*ANSI Procedures for U.S. Participation in the International Standards Activities of the ISO, including Annex B Criteria for the Development and Coordination of U.S. Positions in the International Standardization Activities of the ISO and IEC*

*Operating Procedures of the ANSI Board of Standards Review (BSR)*

*Operating Procedures of the ANSI Executive Standards Council (ExSC)*

*United States National Committee (USNC) of the International Electrotechnical Commission (IEC) Rules of Procedure*

The Appeals Board shall consider an appeal based on the evidence before the body of ANSI that rendered the decision from which the appeal is taken (e.g., ANSI Board of Standards Review, ANSI Executive Standards Council). The burden of persuasion shall rest with the appellant. Pending a decision by the Appeals Board, the decision from which the appeal is taken shall remain in effect, unless the Appeals Board expressly determines otherwise in accordance with section 11.2.

### **2 Membership**

The Appeals Board shall have a membership of not less than nine nor more than eighteen members. Except as otherwise delegated by the ANSI Board of Directors, the Chair of the ANSI Board of Directors shall appoint the Chair of the Appeals Board and its members subject to approval by the Executive Committee. Membership in the Institute shall be a prerequisite for participation on the Appeals Board, unless the Board of Directors specifically permits an exception. The members shall be chosen to broadly reflect the various categories of ANSI membership, to the extent practicable. Its members shall abide by the ANSI Conflict of Interest Policy and Code of Conduct. The resident counsel of ANSI, or in his or her absence, outside ANSI counsel, shall be a non-voting, ex-officio member of the Appeals Board.

### **3 Terms of membership**

Terms shall be staggered so that approximately one-third of the membership of the Appeals Board is appointed each year. Except as extended by the Chair of the Board of ANSI, members shall be appointed for a term of three years commencing on January 1, and shall be eligible for reappointment for two additional 3-year terms, for a total of three consecutive terms. A member of the Appeals Board may serve beyond the normal three-term limitation if the member is serving as chair, provided the term of chair is contiguous with the nine-year tenure as a member. The total maximum length of service under such circumstances would be twelve years.

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<sup>1</sup>"Parties" includes organizations, companies, government agencies, individuals etc.

#### **4 Qualifications**

Members shall have experience in, and be knowledgeable about, the ANSI procedures and the voluntary standards system in general and shall be chosen, to the extent practicable, so as to broadly reflect the various categories of ANSI membership.

#### **5 Vacancies**

A vacancy in the membership of the Appeals Board shall be filled for the remainder of the term by an individual appointed by the Chair of the Board of Directors of ANSI.

#### **6 Officers**

The officers of the Appeals Board shall include a Chair, who shall serve for a term of one year. The Chair shall be eligible for reelection for a maximum of three consecutive terms. A non-voting secretary of the Appeals Board shall be appointed by the President of ANSI.

The Chair of the Appeals Board shall appoint, before September 1 of the year in which an election is to be held, a nominating committee of not less than three persons from among the members of the Appeals Board. This committee shall nominate, on or before October 1 of the same year, a candidate to serve as Chair of the Appeals Board. On or about October 1 of each year, the secretary of the Appeals Board shall forward to the members of the Appeals Board the report of the nominating committee. Other nominations may be made to ANSI by petition, signed by at least five members of the Appeals Board, prior to November 1. By November 15, the secretary of the Appeals Board shall mail to each member of the Appeals Board a ballot containing the names of all nominees, with those submitted by the nominating committee being so indicated. The name of the member receiving a plurality of the votes cast by December 1 shall be submitted to the Chair of the ANSI Board of Directors for appointment subject to approval by the ANSI Executive Committee of the Board of Directors.

#### **7 Duties of members**

Each member of the Appeals Board shall consider and respond to matters placed before the Appeals Board in a manner consistent with these procedures and the ANSI procedures. Members of the Appeals Board that have a poor record of performance in these duties shall be subject to removal by the Chair of the Board of Directors upon consent of the Board of Directors.

The Appeals Board members are the members themselves, not the entity with which they are affiliated. The requirements for membership and the officers of the Appeals Board are provided in the *ANSI By-Laws*. The members of the Appeals Board shall, in that capacity, act in good faith and as fiduciaries to ANSI and shall act in the best interest of ANSI when making decisions on behalf of ANSI. However, if Appeals Board voting members believe their duties to their employer or another third party conflict in any way with those of ANSI, they may simply recuse themselves from decision making on behalf of ANSI as detailed in Section 8 below. The members of the Appeals Board shall also abide by ANSI's Conflict of Interest and Related Party Transaction Policy, as well as, the ANSI Code of Conduct and these Operating Procedures.

#### **8 Conflict of interest**

In addition to complying with ANSI's Conflict of Interest Policy, a member of the ANSI Appeals Board shall act at all times in a manner that promotes confidence in the integrity and impartiality of ANSI's processes and procedures and should avoid a conflict of interest or the appearance of a conflict of interest in connection with all ANSI Appeals Board activities. A conflict of interest can arise from involvement by an ANSI Appeals Board member with the subject matter of a dispute under consideration by the ANSI Appeals Board or from any relationship between the ANSI Appeals Board member and a party to an action before the ANSI Appeals Board, whether past or present, that reasonably raises a question of an Appeals Board member's impartiality.

Typically a potential conflict of interest arises when a member of the ANSI Appeals Board participated in activities integral to the particular issue under review or that person is employed by, or a member of the governing body of, the relevant standards developer or other entity as applicable. Similarly, a conflict of interest usually does not exist by virtue of the fact that a member of the ANSI Appeals Board participated in the development of standards by a particular standards developer or is a member of that standards developer.

If a directly and materially interested and adversely affected party (such as a standards developer or a possible appellant) asserts that it believes that a member of the Appeals Board has a conflict of interest, that party is required to state the reason(s) for its belief. That information shall then be forwarded to the member of the Appeals Board identified as having a possible conflict for that person's response. If that committee member disagrees with the assertion, then the Chair of the Appeals Board shall make a final determination as to whether a conflict of interest exists.

Members of the ANSI Appeals Board who are disqualified from a particular discussion shall not participate in the deliberations or decisions.

## **9 Meetings and hearings**

Meetings of the Appeals Board shall be called as necessary to conduct its business, including the holding of hearings on appeals. All appeals shall be heard by a panel composed of not less than five members of the Appeals Board. In the event that five members cannot be found to hear a particular appeal due to disqualifications or other reasons, the Chair of the Board shall appoint additional panel members who shall be persons experienced with and knowledgeable about the appeals process. Such appointments shall be with the concurrence of all parties to the appeal. ANSI's resident counsel or, in his or her absence, outside counsel, or both, shall be present at all appeal hearings. A quorum at a meeting in which an appeals hearing is not held shall consist of the presence of a majority of members. If a quorum is not present at any meeting where business other than an appeals hearing is considered, copies of all written information given to members attending the meeting and the recommendations of those members present shall be submitted to qualified members not attending, inviting their votes by letter ballot.

All hearings shall be open to representatives of directly and materially interested parties, except that the number of representatives of any one interest group may be limited at the discretion of the Chair. The Appeals Board may call an executive session before, during the course of, or following an appeal hearing to consider its action on a specific appeal.

## **10 Voting**

At an appeals hearing, decisions of the Appeals Board shall be based on a majority vote of all members in attendance. At a meeting in which an appeals hearing is not held, where a quorum exists, decisions of the Appeals Board shall be based on a majority vote of all members in attendance. If a quorum does not exist at a meeting or hearing, the Appeals Board decision shall be based on a majority vote which includes all qualified members at the meeting, together with the vote of qualified members not present at the hearing, taken by letter ballot.

To determine the existence of a *prima facie* case, the decision shall be based on a majority vote of the Appeals Board members, not counting abstentions.

## **11 Appeals process**

### **11.1 Appeal**

All appeals shall be made in writing. Appeals and the required filing fee shall be directed to the secretary of the Appeals Board on or before midnight Eastern time of the due date. The filing fee may be waived or reduced only upon sufficient evidence of hardship. Except in a matter involving extraordinary circumstances, the Appeals Board shall only consider an appeal from a final decision of the ANSI body from which the appeal is taken. A refusal by an ANSI body to decide a matter within its jurisdiction, or undue delay by such body in reaching a decision, shall constitute "extraordinary circumstances."

The appeal shall be comprised of a brief statement of the matter and the reason(s) why the appellant believes the decision is in error. Specifically, the appeal should include as appropriate:

- a) a copy of the decision from which the appeal is taken;
- b) an explanation of the issue and the procedural history;
- c) arguments that explain why appellant believes the decision was in error;
- d) references to the provision(s) of the ANSI procedures upon which appellant relies;

- e) relevant evidence that is both part of the record before the ANSI body from which the appeal is taken and directly supports appellant's position and upon which appellant relies<sup>2</sup>;
- f) letters of support for the appeal, if any, per section 11.5; and
- g) the specific relief sought by appellant from the Appeals Board.

The brief appeal statement (exclusive of exhibits and table of contents) shall not be more than 30 pages, double-spaced, 12 point font or larger. The secretary of the Appeals Board shall have discretion to extend this limit for good cause shown.

All parties filing or responding to appeals or authoring letters of support must be clearly identified, and contact information provided, at the time of filing. Anonymous filings will not be accepted.

Unless otherwise instructed by the secretary of the Appeals Board, the appeal shall be sent via electronic means (with one complete hard copy mailed to ANSI) within fifteen (15) working days following receipt by the appellant of the final decision that is the subject of the appeal. If the appellant is unable to provide the required appeals materials within the fifteen (15) working day deadline, an extension may be requested, with the grounds for such request noted. Such request must be directed to the secretary of the Appeals Board within the fifteen (15) working day deadline or the appellant shall forfeit the right to appeal. Extensions of time to submit an appeal statement may be granted at the discretion of the Chair of the Appeals Board, or, if the Chair is unavailable, the secretary of the Appeals Board.

The appeal filed with the Appeals Board, together with the record of the appeal before the body of ANSI that rendered the decision from which the appeal is taken, shall be distributed by letter ballot by the secretary of the Appeals Board to Appeals Board members, subject to applicable conflict of interest procedures, and to the parties to the decision under appeal for their information. No party to an appeal may communicate with any unrecused member of the Appeals Board on the subject of the appeal while the matter is pending. All communications shall be directed to the secretary of the ANSI Appeals Board.

### **11.2 Request to stay a decision pending the conclusion of an appeal**

In the event that a party to a duly filed appeal or complaint wishes to request a stay of the decision at issue pending the conclusion of the review process, these procedures apply. The party requesting the stay will be allowed to submit a one-page statement to succinctly explain the extraordinary basis for the request and the other party, if it opposes, will also be allowed to submit a one-page statement to succinctly explain why the Appeals Board should not grant the request.

- a) The requestor shall contact the Secretary to request implementation of this process.
- b) The requestor will be allowed one week to submit a one-page statement in support of its request.
- c) The one-page request will be provided to the other party(ies), which will in turn be allowed one week to submit a one-page response. (The one-page request/response shall be single spaced and 12 point font or larger.)
- d) Both documents will be provided to the Appeals Board via an expedited ballot.
- e) The secretary will issue a written decision to both parties on behalf of the Appeals Board.

### **11.3 Appeals Board initial review**

The Appeals Board shall determine by letter ballot whether the appellant has established a *prima facie* case that the decision appealed from was clearly erroneous. If the Appeals Board determines that a *prima facie* case has not been established, the secretary will so notify the appellant and the parties to the decision under appeal, in writing and the appeal will be dismissed thereby exhausting all appeals available through ANSI.

If the Appeals Board determines that a *prima facie* case has been established, it may either remand the matter for further consideration by the ANSI body from which the appeal was taken or set a date for a hearing at which further arguments will be received. If the Appeals Board chooses to set a hearing, the secretary of the Appeals Board will so notify all parties to the appeal that a hearing will be scheduled. No supplemental filing by the

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<sup>2</sup> If appropriate and persuasive evidence is presented that was not before the ANSI body that made the decision from which the appeal is taken, the Appeals Board may remand the case back to the ANSI body for review and determination of action to be taken. In such circumstances, the Appeals Board shall determine whether the decision being appealed shall remain in effect.

appellant prior to the forthcoming hearing shall be permitted without a showing of good cause and the express permission of the Appeals Board Chair.

#### **11.4 Response**

If the respondent(s) receives an Appeals Board determination that a *prima facie* case has been established and that a hearing will be scheduled, the respondent shall have fifteen (15) working days to submit a brief statement in response to the appeal on or before midnight Eastern time of the due date, if they so desire. Unless otherwise instructed by the secretary of the Appeals Board, the response shall be sent via electronic means (with one complete hard copy mailed to ANSI) within fifteen (15) working days following receipt by the respondent of the Appeals Board determination.

If the respondent is unable to provide the required response within fifteen (15) working days, an extension may be requested, with the grounds for such request noted. Such request must be directed to the secretary of the Appeals Board within the fifteen (15) working day deadline or the respondent shall forfeit the right to respond. Extensions of time to submit a response may be granted at the discretion of the Chair of the Appeals Board, or, if the Chair is unavailable, the secretary of the Appeals Board.

The response shall include:

- a) the reasons why respondent believes the decision under appeal was correct and a reference to the provisions in the ANSI procedures upon which the respondent relies;
- b) relevant evidence that directly supports respondent's position and upon which respondent relies; and
- c) letters of support for the response, if any, per section 11.5.

The brief response (exclusive of exhibits and table of contents) shall not be more than 30 pages, double-spaced, 12 point font or larger. The secretary of the Appeals Board shall have discretion to extend this limit for good cause shown.

The response shall be distributed by the secretary of the Appeals Board to Appeals Board members, subject to applicable conflict of interest procedures, and to the appellant. No supplemental filing prior to the forthcoming hearing shall be permitted without a showing of good cause.

Panel members shall receive copies of the appeals record at least fifteen (15) working days prior to the date of the appeals hearing.

#### **11.5 Letters of support by non-parties to the appeal**

The Appellant, as part of its appeal, may submit letters of support by persons or organizations not parties to the appeal. If the Appeals Board determines that a *prima facie* case has been established and a hearing will be held, the Respondent, as part of its response, may also submit letters of support by persons or organizations not parties to the appeal. All such party-supporting letters shall be clearly marked as such, may not include new evidence, may not exceed three single-space pages in length, 12 point font or larger, must address procedural issues only and must be filed by the respective deadline of the supported Appellant or Respondent for filing its appeal/response. Letters not meeting the requirements of this section will not be accepted without the approval of the Appeals Board Chair. Authors of such letters do not have any special standing with respect to ANSI's appeals processes, are not considered parties to the appeal and do not have the right to address the adjudicating body at the hearing on the matter.

#### **11.6 Hearing**

A hearing date for an appeal shall be set by the secretary of the Appeals Board after consultation with the Chair. However, a later date may be scheduled if mutually agreeable to the participants in the hearing. All parties shall be given at least fifteen (15) working days notice of the hearing date. The name and affiliation of all speakers and any observers must be provided to the secretary of the Appeals Board in advance of the hearing.

At the hearing, the appellant's position shall be presented first, followed by the respondent. Each side is then allowed to respond until their total allotted time is exhausted. A half hour total, for the initial presentation and subsequent responses, is allotted for each side, with a limit of three speakers per side. Additional time is allotted for a question and answer session directed by the panel. At the hearing, speakers are not permitted to make

assertions about facts or issues not in the record. The hearing may not be recorded in any way. At the close of the question and answer period, the appeals panel shall go into executive (closed) session for the purpose of arriving at a decision.

Should any party at interest not be present at the hearing, the decision of the Appeals Board shall be based on the presentations made by the parties that are present at the hearing in addition to the written submissions on record.

## **12 Appeals Board Decisions in General**

Decisions of Appeals Board panels shall require a majority vote of the panel, shall represent the decision of the Appeals Board, and shall be provided to all Appeals Board members for their information. Except as noted in Section 13, in deciding an appeal, the Appeals Board has a broad range of remedial options, including dismissing, affirming, reversing and/or remanding (in whole or in part) and will fashion an appropriate remedy depending upon its findings and the stage of the appeal.

A decision reached by an Appeals Board panel following an initial review (see section 11.3) and in response to a staff-issued Letter Ballot regarding whether a *prima facie* case has been made that the decision appealed from was clearly erroneous is ordinarily sent by the secretary to the parties within fifteen (15) working days of the close of the Letter Ballot. If the Appeals Board's finding is that no *prima facie* case has been established, the decision ordinarily states only that that a *prima facie* case has not been made by the appellant and that the appeal is dismissed. If the Appeals Board's finding is that a *prima facie* case has been established, the Appeals Board will either remand the case with instructions to the ANSI body that issued the decision from which the appeal is taken or set a date for a hearing.

A decision reached by an Appeals Board panel after an appeals hearing, is ordinarily sent by the secretary to the parties within fifteen (15) working days of the hearing. The decision specifies the outcome of the appeal, the reasons for such outcome, and the specific relief granted, if any.

The outcome of all decisions reached by Appeals Board panels shall be announced in *Standards Action*.

## **13 Reconsideration**

Any party to an appeal for which a hearing was held may request reconsideration of an Appeals Board decision by sending a written request, not to exceed 10 pages in length, double-spaced, 12 point font or larger, to the secretary of the Appeals Board within ten (10) working days after notification of the Appeals Board decision. The opposing party will have ten (10) working days to file a reply, subject to the same page and format restrictions. The secretary of the Appeals Board shall have discretion to extend this limit for good cause shown.

The Appeals Board may entertain a request for reconsideration based upon claims of a mistake, oversight or error in the decision or any other like reason justifying relief from the implementation of the decision.

Once a decision on reconsideration is issued, no further requests for reconsideration will be accepted.

## **14 Accessibility of appeals decisions**

A copy of the appeals decision shall be made available upon request.

## **15 Informal settlement**

ANSI encourages settlement of disputes at any time if the settlement is consistent with the objectives of the ANSI procedures. Any settlement (to which the parties agree in writing) that is consistent with ANSI procedures, or an agreement to withdraw the appeal, will terminate the appeals process. If the settlement leads to a substantive change in a standard, the change shall be processed in accordance with the *ANSI Essential Requirements: Due process requirements for American National Standards*.

## **16 Amendments**

The ANSI Board of Directors' Executive Committee may make changes to these operating procedures at any time after consultation with or upon recommendation of the Appeals Board and the Executive Standards Council.