



GTW ASSOCIATES

ExSC\_136A\_2019

November 11, 2019

Ms. Anne Caldas, Secretary  
ANSI Executive Standard Council  
25 West 43rd Street, 4th floor  
New York, NY 10036, USA

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**RE: GTW Comments in Response to ANSI Standards Action, SAV5041, October 11, 2019, Program Oversight (“POC”) Proposed Procedure Changes**

Dear Secretary Caldas,

### **My interest in these proceedings**

I am the President of GTW Associates (“GTW”), an international standards policy consultancy. I have been active as a company member of the American National Standards Institute (“ANSI”) since 2000, serving as a member on several of its committees.<sup>1</sup> I also represent GTW Associates’ clients on the ANSI [Organizational Member Forum](#). My comments, opinions, and views expressed herein are my own and do not represent the positions or views of GTW Associates’ clients.

Previously, I served as Vice President of ANSI from 1989 to 1995. My 45-year career has been devoted to standards policy. Over these years, I have come to appreciate the importance of ANSI and the value of the ANS designation on standards. These comments are based solely on my own conviction and interest in preserving the integrity of the ANSI process, the ANSI *Essential Requirements*,<sup>2</sup> pointing out errors in the Proposed ExSC, BSR, and Appeals Board Procedures and preventing the erosion of public and government agencies’ trust and respect for the ANS designation and utility. I also believe failure to address some of these concerns could bring closer scrutiny of ANSI by regulatory agencies such as the Department of Justice (“DoJ”) and the Federal Trade Commission (“FTC”)

### **General Comments**

In developing these Comments I decided to use the format that GTW has used in the past of making a Table with three columns for each POC’s Proposed Procedures, to make comparisons side-by-side of the Current 2017 Procedures of the POCs with the Proposed Procedures for each POC. So Col. 1 is a cut and paste of the 2017 Procedures and Col. 2 is the text from the *Standards Action* Notice including **the Rev Control notes** included in *Standards Action* for **ExSC\_128\_2019** for the ANSI Executive Standards Council (“ExSC”); **ExSC\_129\_2019** for the ANSI Board of Standards Review (“BSR”); and **ExSC\_130\_2019** for the ANSI Appeals Board (“Appeals Board”). Col. 3 of each Table are my comments or observations from comparing the current Procedures with the proposed changes to those Procedures. Some of Comments are more

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<sup>1</sup> I serve on the following current ANSI committees: the [Intellectual Property Rights Policy Committee \(“IPRPC”\)](#); the [ANSI National Policy Committee \(“NPC”\)](#); the [ANSI International Policy Committee \(“IPC”\)](#); the [ANSI ISO Council \(“AIC”\)](#); the [ANSI ISO Forum \(“AIF”\)](#); the [Regional Steering committees for Asia/Pacific, Europe/Middle East, and the Americas](#); the [ANSI Conformity Assessment Policy Committee \(“CAPC”\)](#); the [Company Member Forum \(“CMF”\)](#); and the [Consumer Interest Forum \(“CIF”\)](#).

<sup>2</sup> ANSI *Essential Requirements* at [www.ansi.org/essentialrequirements](http://www.ansi.org/essentialrequirements).

minor like pointing out Typos, spelling errors, problems with the **Rev Control Comments**, or items like that, or things that are basically editorial, but several of the issues are more major and I will amplify on those in this transmittal letter. I have also included relevant **2020 By-Laws** text at the beginning of the Tables for reference and sometimes noted **2020 By-Laws Sections in Col. 3**. The file names identify which POC that file addresses.

## Specific Comments

### Rationale for Changes

The Rationale for the **Proposed Changes** provided on **page 29** of the **October 11, 2019, Standards Action** is:

#### **Updates to ANSI Executive Standards Council (ExSC), ANSI Board of Standards Review (BSR) and ANSI Appeals Board Operating Procedures to Reflect 2020 ANSI By-Laws**

However, in my review of the various Proposed Procedures I find changes that do not seem related to reflecting or alignment with the 2020 ANSI By-Laws, and a few cases where the changes do not agree with the ANSI 2020 By-Laws. Where there is lack of agreement with the 2020 ANSI By-Laws that is **noted in Col. 3**. An example of where I do not see a change flowing from the 2020 ANSI By-Laws is the change in the **Appeals Board Proposed Procedures** where the **Conformity Assessment** related documents that are currently listed in **Section 1** of the Current Procedures and the entirety of **Section 13 with its Footnote** in the Current Procedures are **DELETED**, with no statement or Rationale WHY these **DELETIONS** were made. I can find nothing in the 2020 ANSI By-Laws that would necessitate such a change. It is true that the current CAPC Policy Committee is no longer in the ANSI 2020 By-Laws nor is it replaced by a Policy Advisory Group ("PAG"), but that alone does not seem to support these **DELETIONS**. ANSI should state in its Notices the **Rationale** for every significant change when the Rationale is not covered by the **General Rationale** statement such as "*Alignment with ANSI 2020 By-Laws,*" otherwise reviewing parties have no idea why such changes are being made. There were no notes in the Rev Control portions of **ExSC\_130\_2019** either. There should always be a reason and Rationale for major changes or **DELETIONS**.

### Lack of Balance

The most major issue I see in each of the Proposed Procedures is lack of language about **BALANCE** of **MEMBERSHIP** on each of these ANSI groups that are major **DECISION-MAKING BODIES** of ANSI.

As a starting point on **BALANCE** and allowing ANSI Members **to gain ACCESS** to information I looked at the **US Standard Strategy ("USSS")** for Guidance. What I found on Page 7 is what I remembered (emphasis added):

## **III – PRINCIPLES**

It is well established in the community of nations that standards should meet societal and market needs and **should not be developed to act as barriers to trade**. In approving the World Trade Organization (WTO) Technical Barriers to Trade (TBT) Agreement, WTO members recognized that goal and established **globally accepted principles** as a framework to promote cooperation and discourage the use of standards as trade barriers. The U.S. standardization system **is based on the following set of globally accepted principles for standards development:**  
(Partial list)

#### **Transparency**

**Essential information regarding standardization activities is accessible to all interested parties.**

#### **Openness**

Participation is **open to all affected interests.**

**Impartiality**

**No one interest dominates the process or is favored over another.**

**Due Process**

Standards development **accords with due process** so that **all views are considered** and **appeals are possible.**

In addition, U.S. interests strongly agree **that the process should be:**

**Flexible**, allowing the use of **different methodologies** to meet the needs of **different technology, product, and service sectors;**

**Timely**, so that purely administrative matters do not result in a failure to meet market expectations; and

**Balanced among all affected interests.**

Thus, as I recalled **BALANCE** is a key **ANSI Principle.**

I also found mention of **OMB Circular A-119 in the USSS on page 10:**

**1** *Strengthen participation by government in development and use of voluntary consensus standards through public-private partnerships*

Government reliance on voluntary consensus standards continues to grow. Public Law 104-113, the *National Technology Transfer and Advancement Act (NTTAA)*, and the **accompanying Administrative Circular A-119 from the White House Office of Management and Budget (OMB) remain the cornerstone** at the federal level for promoting the use of voluntary consensus standards for both **regulation and procurement.**

Seeing the word **REGULATION** caused me to see what the **REGULATORS** said about **BALANCE**. I started with the **Department of Justice (“DoJ”)**. As a member of the ANSI IPRPC I recalled a letter from DoJ sent to the Chair of the IPRPC and ANSI General Counsel so I found my copy which was a contribution to an IPRPC meeting but also available on the DoJ’s Web site.

I found **BALANCE** language in the **DoJ’s March 7, 2018 letter** to the **IPRPC Chair and ANSI General Counsel** (emphasis added):

Although ANSI is not itself an SSO, it is similarly **important for ANSI to have balanced representation in its decisional bodies so that their actions are not susceptible to the outsized influence of one group or another. To achieve that balance, and to ensure that the output of the Task Group is reflective of the full range of views, the Division respectfully suggests that ANSI and the IPRPC include in the Task Group members with diverse interests in the area of standard setting.**

Principal Assistant Attorney General for Antitrust Andrew Finch Letter to ANSI VP & General Counsel, Patricia Griffin, and Chair of the ANSI IPR Policy Committee, Amy Marasco

In my search for more DoJ guidance on **BALANCE**, I searched the DoJ Web site and found a fairly recent December 7, 2018 **Speech by AAG Delrahim** (emphasis added):

**“Telegraph Road”: Incentivizing Innovation at the Intersection of Patent and Antitrust Law**  
**MAKAN DELRAHIM Assistant Attorney General Antitrust Division U.S. Department of Justice**  
**The 19th Annual Berkeley-Stanford Advanced Patent Law Institute, Palo Alto, CA December 7, 2018**

ANSI, the American National Standards Institute, publishes a set of essential requirements for due process. These safeguards are ANSI’s view of what **“the minimum acceptable” requirements are to ensure that every person or organization with a “direct and material” interest in the outcome of a standard has a right to participate** in the development of that standard.

The principles include **openness to all interested parties, a balance of interests, a lack of dominance**, the adoption of written procedures, and a formalized and impartial appeals process.

Although these **due process requirements** may not eliminate the opportunity for anticompetitive behavior within a standard-setting organization, they certainly **reduce it**.

These **safeguards** additionally ensure **a more efficient investigation by antitrust enforcers** when we have reason to suspect that the standard-setting activity may have **drifted** from a procompetitive purpose. Where the procedures are written and published, **the interests are well balanced**, and the losing side can appeal, a standard-setting organization is **very likely to have a good record of anything of concern**. This benefits **both the enforcers and the participants**, who certainly have an interest in predictability and that any antitrust concern is resolved quickly and with minimal resources.

I kept searching the DoJ site and made Google searches looking for more materials discussing the definition of **BALANCE** as related to standards development.

Digging deeper, I found an **mLex Article** published on **June 27, 2019** describing a DoJ filing in the case of **NSS vs. AMTSO**, Case No. 5:18-cv-05711-BLF, in the USDC, Northern District of California, San Jose Division, which seemed on point regarding the question of **BALANCE**.

#### **mLex Article: June 27, 2019:**

**In Brief : The US Department of Justice urged a federal court to allow NSS Labs to continue its case against a cybersecurity standards organization, saying that a federal law that shields standards bodies from antitrust suits may not apply in the case.**

The US Department of Justice urged a federal court to allow NSS Labs to continue its case against a cybersecurity standards organization, saying that a federal law that shields standards bodies from antitrust suits may not apply in the case.

In a statement of interest filed in California federal court yesterday, the DOJ said it was premature for the court to dismiss the Anti-Malware Testing Standards Organization, or AMTSO, based on the protections afforded by the Standards Development Organization Advancement Act, or SDOAA.

"The United States urges the Court to reject AMTSO's claimed exemption from per se liability on the basis of its own conclusory assertion that it qualifies as an SDO under the SDOAA," prosecutors said. "NSS alleges facts that raise serious doubt that [AMTSO] qualifies as an SDO."

NSS filed an antitrust suit against AMTSO and cybersecurity companies including Symantec, CrowdStrike and ESET, alleging they created a biased framework for evaluating products and refused to do business with third-party testing products such as NSS.

The companies moved to dismiss the complaint and US District Judge Beth Labson Freeman indicated at a May hearing that she was inclined to dismiss the allegation against AMTSO (see [here](#)).

**The DOJ said that AMTSO should bear the burden to show that it meets all of the requirements of the SDOAA, including the requirement that the standards body represent a "balance of interests" to prevent dominance by part of an industry.**

"AMTSO summarily pronounces that it satisfies the SDOAA's requirements, but it does not offer any specifics to support that claim. Indeed, to the contrary, it admits its membership is not balanced," prosecutors said. "The Court should therefore resolve the application of the SDOAA at a later stage, if AMTSO properly supports its claim that it follows procedures that qualify it for SDOAA protection."

Then I asked an attorney friend to get me the DoJ filing which is a "**STATEMENT OF INTEREST OF THE UNITED STATES**," filed on **June 26, 2019** and is attached to these GTW Comments.

In this “**Statement of Interest**” I felt I **finally found the Guidance** I was looking for from DoJ, Guidance seemed to appear on almost **every page**. I will quote some of that Guidance here, but request that the ExSC members read the entire document with some highlighting I have provided for emphasis.

**Sound bytes** (with emphasis)

The United States **enforces the federal antitrust laws and has a strong interest in the proper interpretation of the Standards Development Organization Advancement Act of 2004 (“SDOAA”)**. In particular, the United States has a significant interest in the **correct interpretation of the exemption from *per se* treatment for standards development organizations** engaging in standard setting activities.

The United States urges the Court **not to dismiss NSS’s *per se* claims** based on a **presumption that the SDOAA applies to AMTISO** without further **evidence**, because NSS’s allegations **raise a factual question** about whether the SDOAA applies to AMTISO.

**NSS alleges** that “AMTISO’s membership consists **principally of cybersecurity companies** [with] only a **small number** of companies who provide testing services...,” and thus that the **organization’s standards development process may not incorporate the “balance of interests” required by the SDOAA.**

**The SDOAA** defines an SDO as an organization that “plans, develops, establishes, or coordinates voluntary consensus standards **using procedures that incorporate the attributes of openness, balance of interests, due process, an appeals process, and consensus in a manner consistent with the Office of Management and Budget Circular Number A-119**, as revised February 10, 1998.

The SDOAA’s own legislative findings **elaborate on the attributes** outlined in the Circular and **provide further insight on their interpretation**, including **a specific reference to balance of interests: “Such principles provide for...balancing interests** so that **standards development activities are not dominated by any single group of interested persons....”**

From a practical standpoint, **the “balance of interests” requirement of the SDOAA is particularly critical** as it **gives meaning to the statute’s other required attributes of openness, due process, an appeals process, and consensus.**

**“What [parties] may not do (without exposing [themselves] to possible antitrust liability for direct injuries) is bias the process by...stacking the private standard-setting body with decision makers sharing their economic interest in restraining competition.”**

This “cross-section of an industry” **references the “balance of interests” requirement** of the SDOAA that **works to prevent dominance by a subset of the industry.**

The 2016 [OMB] Circular **defines the “balance” requirement** as: **“The standards development process should be balanced. Specifically, there should be meaningful involvement from a broad range of parties, with no single interest dominating the decision-making.”**

<sup>2</sup> This filing **focuses on the “balance of interests” requirement of the SDOAA** as an example of a clear factual dispute between the parties of a **critical issue that must be resolved prior to determining whether AMTISO qualifies as an SDO under the SDOAA.**

AMTISO is best situated **to articulate its own procedures** for reaching consensus, and **proffer evidence showing that those procedures satisfy the requirements of the SDOAA.**

Indeed, to the contrary, **it admits its membership is not balanced.**

Taken as true, a **fact-finder** could conclude that **AMTISO does not use procedures that ensure a balance of interests**, and that **AMTISO thus fails to qualify for the *per se* exemption under the SDOAA.**

Congress extended the *per se* exemption to specially qualified SDOs that present little risk of anticompetitive conduct, **with particular focus on enumerated attributes that prevent dominance by any single group of interested persons**

What impressed me the most in reading the DoJ's **STATEMENT OF INTEREST** was the number of times I read words like **BALANCE, DOMINANCE, PROCEDURES, FACTS,** and **DECISION MAKERS?**

Then I applied what I had just read to the **POC PROCEDURES** I was analyzing. The word **BALANCE** was being **REMOVED** from the **ExSC Procedures**. The word **BALANCE** was not even in the **BSR** and **Appeals Board Procedures**. Then I looked at the **FACTS** as DoJ had instructed me, did I see **DOMINANCE** by any particular **INTEREST GROUP**.

As shown in **Col. 3 for the ExSC Procedures**, what I found was the **current ExSC** does have, for example, **3 members from the CMF, 3 from GMF** (or 4 if NIST which is also an ASD accredited in October 1984 is included, **but NIST as an ASD could be classified as an ASD/OMF interest category**), and **2 Standards Advisors with Consumer Interests** (but non-voting and thus **not really DECISION MAKERS**). But the rest **are all ASDs or OMF Sponsored, a total of 13**, thus the **FACTS** show that ExSC is **not really that Balanced: 3 CMF, 3 GMF, 2 non-voting CIF, and 13 from ASDs/OMF**. And a **CURRENT RULE** in the Current **PROCEDURES** that states **NO MORE THAN SIX** from any Interest Category. It caused me to wonder **what DoJ might see**. Then looked at membership make up and sponsors for the **Appeals Board** and the **BSR**. **ONLY ONE from CMF** on the Appeals Board, all the rest are **ASDs/OMF!** I wondered if it could **get worse** than that and I looked at BSR make up on the ANSI Web site and it was **100% of the BSR DECISIONS MAKERS from ASDs/OMF**. And **EVERY LEADERSHIP** position on the **3 POCs** was held by **an ASD sponsored individual**. Thus, I feel **ANSI has issues in these proposed revisions that take the word BALANCED out of the only Procedures that contain it! BALANCED should be ADDED to all the Procedures and enforced.**

Then I saw a **PaAR** article dated **April 16, 2009** that **hinted** at what DoJ may be seeing at ANSI.



## DoJ may be interested in enforcement against ANSI – DoJ official

16 April 2019 | 21:29 EDT

- If opportunity arises, DoJ may pursue enforcement against ANSI – Finch
- More DoJ, FTC convergence on IP under Trump than Obama – Ohlhausen
- FTC taking on more issues from hearings series than ever before – Ohlhausen

The Department of Justice (DoJ) may be interested in utilizing its enforcement powers after extensive policy assessments of the American National Standards Institute (ANSI), said Andrew Finch, the principal deputy assistant attorney general.

The DoJ would be interested in pursuing enforcement opportunities it may get in this context, said Finch, declining to comment any further, during the panel, 'The Antitrust-IP Interface in the Trump Administration,' at the 2019 American Bar Association-Intellectual Property Law Annual Meeting on Friday [12 April] in Arlington, Virginia.

## Other more Major Concerns

### Nominations

Some of the other more major issues GTW sees in the Proposed Procedures is how **VOTING MEMBERS** (or the DoJ **DECISIONS MAKERS**) are chosen.

First a **Voting Member** might stay on one of these POCs **for 9 YEARS**. (The POTUS only gets a max of 8 years.) Then the new nominations process has **NEW VOTING MEMBER nominations** come from the Current Voting Members and as already shown *supra*, the Current Voting Member slots are **DOMINATED by ASD/OMF individuals**. Without a forced BALANCE RULE and limits on the number of individuals from any one category that is actually **ENFORCED**, I wonder who the Current Voting members will nominate? There is a limit of 6 today for ExSC but without enforcement it seems to have crept up to **THIRTEEN** .—more than double the limit of SIX. Looks like “in-bred” voting membership as well as Leadership slots and this should be remedied to satisfy those **ANSI Principles, OMB A-119 attributes, and SDOAA type requirements**.

### **Access to Information**

We have ANSI Principles already discussed that speak of certain attributes

#### **Transparency**

**Essential information** regarding standardization activities **is accessible to all interested parties**.

#### **Openness**

Participation is **open to all affected interests**.

#### **Due Process**

Standards development **accords with due process** so that **all views are considered** and **appeals are possible**.

**Timely**, so that purely administrative matters do not result in a failure to meet market expectations;

These are basically the same points GTW made in comments it filed when the Appeals sections of all the POC Procedures were out for Public Comment. The Problem is the ExSC apparently did not understand the ANSI Principles and how they relate to an interested party getting **NOTICE** of “**Essential Information**” such as the fact that the ExSC has made some **decision or interpretation** that could affect that party or that **an Appeal has been filed**. If **NOTICE** is provided then **TRANSPARENCY** requires **ACCESS** to the documents such as an Appeal Brief or Response Statement so that the individual can read it, and decide if they want to file what is allowed under the Procedures, a “Non-Party Letter of Support” (“LoS”), and then a **TIMELY Process** to allow that LoS to be filed. Three things are needed, **NOTICE, ACCESS** to the information, and **TIMELY Process to file a LoS**. **These were all points raised in its prior comments on the LoS issue so I am attaching them again in hopes the ExSC reads them with understanding this time.**

**GTW Associates Comments on Program Oversight Committee's ("POC") Proposed Procedures to align with new ANSI 2020 By-Laws. Comments due Nov 11.**

**2020 By-Laws Excerpts**

**ARTICLE IV  
Committees of ANSI**

**Section 4.01 Committees of ANSI.** As described in this Article IV, there are established within ANSI, **Program Oversight Committees** and International Relations Committees reporting to the Executive Committee, which shall discharge the responsibilities set forth in this Article. The **Board may create additional Program Oversight Committees**, International Relations Committees and other Committees of ANSI from time to time, and each such Committee shall report to the Executive Committee and discharge the responsibilities established by the Board.

**Section 4.01.1 Responsibilities of Committee Members Generally.** The members of any and all Committees of ANSI shall, in that capacity, act as fiduciaries to ANSI and shall act in the best interest of ANSI. **The members of all Committees of ANSI shall also abide by ANSI's Conflict of Interest and Related Party Transaction Policy, as well as, the ANSI Code of Conduct.** All Committees of ANSI shall operate in accordance with **Operating Procedures approved by the Executive Committee.**

**Section 4.02 ANSI Program Oversight Committees Generally.** Each **Program Oversight Committee** shall have the exclusive authority to render decisions with regard to issues arising in the ANSI program it is charged to oversee, subject only to any possible further appeal pursuant to the applicable appeals procedures.

**Section 4.02.1 Membership.** Except as otherwise delegated by the Board, **members of all ANSI Program Oversight Committees** shall be **appointed by the Chair of the Board** with the approval of the Board. **In making these appointments, the Chair of the Board shall endeavor to ensure representation of all membership categories concerned with the activities of the Program Oversight Committee.** Membership in ANSI by the entity with which the Member is affiliated shall be a prerequisite for participation in any ANSI Program Oversight Committee unless the Executive Committee specifically permits otherwise. **Membership in all ANSI Program Oversight Committees, however, shall be by the individual, not the entity with which such person is affiliated.** Except as may be extended by the Board, each such **appointment shall be** for a term of **three full years** with no person serving more than **three full consecutive terms.**

**Section 4.02.2 Committee Officers.** Except as otherwise delegated by the Board, for each **Program Oversight Committee**, the **Board Chair shall appoint the Chair of the Committee** subject to approval by the Board. The Chair, and such other officers authorized by the Committee's operating procedures, shall serve for a term of two years and shall be eligible to serve for a maximum of two full consecutive two-year terms. A staff member of ANSI designated by the President shall serve as a non-voting secretary of each **ANSI Program Oversight Committee.**

**Section 4.02.3 Subcommittees and Task Forces.** Each **ANSI Program Oversight Committee** may establish such additional subcommittees and task forces as are considered desirable to accomplish its mission. Subcommittees shall have a defined scope as approved by the relevant **Program Oversight Committee**, and shall be charged with making recommendations to such **Program Oversight Committees.**

**Section 4.03 Executive Standards Council (ExSC).** The **ExSC, a Program Oversight Committee**, shall be **responsible for** developing and promulgating **procedures and criteria** utilized in the national and international standards development activities of ANSI and for other duties that may be delegated to it by the Board. The **functions** of the ExSC **shall include but not be limited to:**

1. **Developing and promulgating procedures and criteria for:** (i) the **accreditation and auditing** of standards developers; and (ii) the **coordination, development, approval and withdrawal of standards as American National Standards, including the Essential Requirements (and any successor or related documents);**
2. **Developing and promulgating procedures and criteria for the oversight of U.S. Technical Advisory Groups ("TAGs") to ISO, including the International Procedures (or any successor or related document); and**

3. **Overseeing** all aspects of and **making determinations** relating to ANSI's standards developer accreditation, audit, and **audited designator programs**, as well as, the accreditation of U.S. TAGs to ISO, including appeals of such decisions.

The **ExSC shall exercise exclusive responsibility for the terms of the Essential Requirements** and International Procedures, **including ANSI's Patent Policy, subject only to ExCo and/or Board approval**. The ExSC, in its discretion, may solicit input from other Committees of ANSI, Membership Forums or **Policy Advisory Groups** from time to time when **interpreting or considering revisions to the ANSI Essential Requirements** and International Procedures.

**EXSC** (Text highlighted in **GREEN** in the Current Procedures is TEXT shown as DELETED in the Proposed Procedures, and either **EXPLICITLY** shown as DELETED in the Rev Control PDF that was in *Standards Action*, or from inspection of Current text with Proposed text.) Also note there are other Revisions to Procedures approved by the ExSC that are pending before the NPC and further changes are stated to be still announced in 2019. Any **YELLOW** highlights are just for emphasis.

ExSC Current Procedures 2017	Proposed Revisions ExSC_128_2019	GTW Comments
<p><b>Operating Procedures of the ANSI Executive Standards Council Introduction</b> The American National Standards Institute (ANSI) serves as the national coordinator of voluntary standardization activities in the United States. Through ANSI, organizations concerned with standards activities may cooperate in establishing, improving, and recognizing American National Standards based on a consensus of directly and materially affected persons, to the end that such activities remain dynamically responsive to national needs; that duplication of work and conflict of requirements are avoided; and that individual enterprise and initiative are encouraged.</p> <p>The Executive Standards Council (ExSC) was established by the Board of Directors of ANSI with responsibilities that apply to both American National Standards and to U.S. participation in those international standards activities in which ANSI participates.</p> <p><b>The major responsibility of the ExSC is to coordinate the overall national and international standardization activities of the Institute. This includes:</b></p> <p>a) <b>Developing and maintaining the criteria and procedures for the development and coordination of American National Standards and for the development and coordination of U.S. positions in international standards activities and for auditing such activity;</b></p> <p>b) <b>Establishing and supervising such groups as are needed to plan and coordinate the development of American National Standards and to determine U.S. positions in international standards activities;</b></p> <p>The Board of Standards Review (BSR) of ANSI has been delegated the responsibility for approval and withdrawal of standards as American National Standards, acting in accordance with criteria established by the ExSC.</p>	<p><b>Operating Procedures of the ANSI Executive Standards Council Introduction</b> The American National Standards Institute (ANSI) serves as the national coordinator of voluntary standardization activities in the United States. Through ANSI, organizations concerned with standards activities may cooperate in establishing, improving, and recognizing American National Standards based on a consensus of directly and materially affected persons, to the end that such activities remain dynamically responsive to national needs; that duplication of work and conflict of requirements are avoided; and that individual enterprise and initiative are encouraged.</p> <p>The Executive Standards Council (ExSC) was established by the Board of Directors of ANSI with responsibilities that apply to both American National Standards and to U.S. participation in those international standards activities in which ANSI participates. <u>The ExSC shall have exclusive authority to render decisions with regard to issues arising within the ANSI programs it is charged to oversee, subject only to any possible further appeal pursuant to applicable appeals procedures. The ExSC reports to the Executive Committee of the ANSI Board of Directors ("Board Executive Committee").</u></p> <p><b>1 Responsibilities and Functions</b></p> <p><u>The ExSC, a Program Oversight Committee, shall be responsible for developing and promulgating procedures and criteria utilized in the national and international standards development activities of ANSI and for other duties that may be delegated to it by the Board. The functions of the ExSC shall include but not be limited to:</u></p> <p>a) <u>Developing and promulgating procedures and criteria for: (i) the accreditation and auditing of standards developers, and (ii) the coordination, development, approval and withdrawal of standards as American National Standards, including the Essential Requirements (and any successor or related documents);</u></p> <p>b) <u>Developing and promulgating procedures and criteria for the oversight of U.S. Technical Advisory Groups ("TAGs") to ISO, including the International Procedures (or any successor or related document); and</u></p> <p>c) <u>Overseeing all aspects of and making determinations relating to ANSI's standards developer accreditation, audit, and audited designator programs, as well as, the accreditation of U.S. TAGs to ISO, including appeals of such decisions.</u></p> <p><u>The ExSC shall exercise exclusive responsibility for the terms of the Essential Requirements and International Procedures, including ANSI's Patent Policy, subject only to ExCo and/or Board approval. The ExSC, in its discretion, may solicit input from other Committees of ANSI, Membership Forums or Policy Advisory Groups from time to time when interpreting or considering revisions to the ANSI Essential Requirements and International Procedures.</u></p> <p><u>The Board of Standards Review (BSR) of ANSI has been delegated the responsibility for approval and withdrawal of standards as American National Standards, acting in accordance with criteria established by the ExSC.</u></p> <div data-bbox="414 1396 1039 1522" style="border: 1px solid black; padding: 5px;"> <p><b>Commented [AC2]:</b> Although shown as new text, some of this text existed in another form in the prior edition of these procedures. In addition, the text shown is excerpted from the 2020 ANSI By-Laws.</p> </div> <div data-bbox="414 1564 1039 1921" style="border: 1px solid black; padding: 5px;"> <p><b>Deleted:</b> The major responsibility of the ExSC is to coordinate the overall national and international standardization activities of the Institute. This includes:¶</p> <p>¶</p> <p>&lt;#&gt;Developing and maintaining the criteria and procedures for the development and coordination of American National Standards and for the development and coordination of U.S. positions in international standards activities and for auditing such activity;¶</p> <p>&lt;#&gt;Establishing and supervising such groups as are needed to plan and coordinate the development of American National Standards and to determine U.S. positions in international standards activities.¶</p> <p>¶</p> </div>	<p>Revisions shown are <u>relocated text</u> and <u>new text</u> to align with the <b>ANSI 2020 By-Laws</b>.</p> <p>There is <b>inconsistent use</b> of quotation marks throughout the Procedures for defined terms like <b>ExSC, BSR</b>, etc. Sometimes <u>defined terms</u> are shown <u>with</u> quote marks (e.g., <b>"Board Executive Committee," "TAGs"</b> and other times <u>without</u> quote marks (e.g., <b>ExSC, BSR</b>). A Style issue but format for defined terms <u>should be consistent</u> in the same document.</p> <p>For consistency with other uses by ANSI and because it is the name of a publication, the words <b>"ANSI Essential Requirements"</b> should be shown <u>italicized</u>, i.e., <i>ANSI Essential Requirements</i> wherever used.</p> <p>Since the ExSC is <b>replacing</b> the IPRPC with respect to the ANSI Patent Policy in that the IPRPAG is now merely an <b>ADVISORY GROUP</b> and the <b>voting members</b> of the ExSC will now <b>control decision making with respect to Patent Policy language</b>, it seems <b>appropriate that the Financial Disclosure Rules that the ANSI Executive Committee imposed on IPRPC voting members now be added to ExSC voting members for the same reasons that they were imposed on IPRPC Voting Members and the same Super Majority type voting rules apply as current used in the IPRPC.</b></p>

#### 1 Membership and officers

The requirements for membership and the officers of the ExSC are provided in the ANSI Constitution and By-Laws. In addition, the ExSC shall be composed of representatives of organizational members, company members, governmental members, members of the Consumer Interest Council, and members-at-large. An attempt shall be made to have at least two members, with a maximum of six members, in each category. The ExSC shall strive to a balance of representation among categories to the extent possible. However, in no case shall the membership of the ExSC be greater than 21.

Members should, to the extent possible, represent the broadest interests of all standards developers and/or users. Next in order of priority, members should represent their assigned interest category (i.e., Organization Member, Company Member, Government Member, Consumer Interest Council, member-at-large) rather than their employer's specific interests. A member assigned to the member-at-large category may be drawn from another category. No organization shall have a vested right to membership, including an unexpired vacancy.

#### 2 ExSC Membership and Membership Rights

The requirements for membership and the officers of the ExSC are provided in the ANSI By-Laws. The members of the ExSC shall, in that capacity, act as fiduciaries to ANSI and shall act in the best interest of ANSI. The members of the ExSC 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.

Except as otherwise delegated by the Board, members of the ExSC shall be nominated by ExSC voting members and appointed by the Chair of the Board with the approval of the Board. In making these appointments, the Chair of the Board shall endeavor to ensure representation of all membership categories concerned with the activities of the ExSC. In no case shall the voting membership of the ExSC be greater than 21. Membership in ANSI by the

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entity with which the Member is affiliated shall be a prerequisite for participation in the ExSC unless the Board specifically permits otherwise. Membership in the ExSC, however, shall be by the individual, not the entity with which such person is affiliated.

Members should, to the extent possible, represent the broadest interests of all standards developers and/or users. Next in order of priority, members should represent their assigned interest category (i.e., Organization Member, Company Member, Government Member, Consumer Interest Council, member-at-large) rather than their employer's specific interests. A member assigned to the member-at-large category may be drawn from another category. No organization shall have a vested right to membership, including an unexpired vacancy. Except as may be extended by the Board, each new member appointment shall be for a term of three full years with no person serving more than three full consecutive terms.

#### 3. Member Participation

Repeated failure to return ballots or attend meetings shall be considered as a lack of interest. When a member fails repeatedly to return ballots before the close of the ballot period, or attend meetings, the Secretary shall place the matter before the ExSC. The ExSC may request the Chair of the Board of Directors to remove such individual from his or her assignment.

**Commented [AC3]:** Moved from another section

#### 4. Officers

The Chair of the ANSI Board of Directors shall appoint the Chair of the ExSC subject to approval by the Board. The ExSC Chair and Vice Chair shall serve for a term of two years and shall be eligible to serve for a maximum of two full consecutive two-year terms. Except as may be extended by the Board, each appointment of a member to the ExSC shall be for a term of three full years with no person serving more than three full consecutive terms.

A staff member of ANSI designated by the President shall serve as a non-voting secretary of the ANSI ExSC.

**Deleted:** In addition, the ExSC shall be composed of representatives of organizational members, company members, governmental members, members of the Consumer Interest Council, and members-at-large. An attempt shall be made to have at least two members, with a maximum of six members, in each category. The ExSC shall strive to a balance of representation among categories to the extent possible. However, in no case shall the membership of the ExSC be greater than 21.¶

¶  
Members should, to the extent possible, represent the broadest interests of all standards developers and/or users. Next in order of priority, members should represent their assigned interest category (i.e., Organization Member, Company Member, Government Member, Consumer Interest Council, member-at-large) rather than their employer's specific interests. A member assigned to the member-at-large category may be drawn from another category. No organization shall have a vested right to membership, including an unexpired vacancy.¶

Editorial but the DELETION of the "1" in the Section number was not shown in ExSC\_128\_2019.

The language in this Membership Section is very troubling since ExSC members can be on the ExSC for NINE years with three, 3-year terms and this Section creates an "in-bred" organization where ONLY the current voting members of the ExSC decide through nominations who will be added to the ExSC thus creating an imbalance of interests and domination by likeminded interests, nominating others with similar interests.

And just having REPRESENTATION is not adequate since a single person can be claimed to REPRESENT an Interest category. What equity, fairness and DOJ advice to ANSI mandates is a BALANCE OF INTERESTS!

"i.e.," as an abbreviation of a foreign language term and should be italicized (i.e., "i.e."). The term "Consumer Interest Council" is incorrect and such a Council is not contained in the 2020 ANSI By-Laws, and the term is dated. It should be changed to the correct name: "Consumer Interest Forum" or the word "Council" could be deleted so it would just read "Consumer Interest."

The current Operating Procedures of the ExSC state that membership of the ExSC should be BALANCED. GTW believes BALANCE is an essential ANSI Principle of Standards Development, Governance, and Oversight, and included in OMB A-119 and the SDOAA.

The current language is:  
"the ExSC shall be composed of representatives of organizational members, company members, governmental members, members of the Consumer Interest Council, and members-at-large. An attempt shall be made to have at least two members, with a maximum of six members, in each category. The ExSC shall strive to a balance of representation among categories to the extent possible. However, in no case shall the membership of the ExSC be greater than 21.

Members should, to the extent possible, represent the broadest

interests of all standards developers and/or users. Next in order of priority, members should represent their assigned interest category (i.e., Organization Member, Company Member, Government Member, Consumer Interest Council, member-at-large) rather than their employer's specific interests. A member assigned to the member-at-large category may be drawn from another category. No organization shall have a vested right to membership, including an unexpired vacancy. (emphasis added)

**GTW does not support the DELETION of this language** (but it should be corrected to show **CIF** and **not CIC**) **since this is the part of the Current Procedures dealing with BALANCE.** And the current ExSC does have, for example, **3 members** from the **CMF**, **3 from GMF** (or 4 if NIST which is also an ASD accredited in October 1984 is included, but NIST as an ASD could be classified as an ASD/OMF interest category), and **2 Standards Advisors** with Consumer Interests. **But the rest are all ASDs or OMF Sponsors, total of 13,** thus ExSC **not really that Balanced.** **.3 CMF, 3 GMF, 2 non-voting CIF, and 13 from ASDs/OMF.** Current Procedures state **NO MORE THAN SIX** from and Interest Category.

The new text in Section 5 added about new nominees names receiving a plurality of votes cast being submitted to the **“Executive Committee of the Board for final appointment”** is **NOT in alignment with the ANSI 2020 By-Laws** which provide in **By-Laws Section 4.02.1** that appointment is by the **Chair of the Board** with **approval of the Board** and thus **needs correction** to agree with the **By-Laws**.

The new Section 2 of the Proposed ExSC Operating Procedures is in alignment with the **ANSI 2020 By-Laws** by correctly showing appointment by **Chair of the Board** with approval of the Board (**and not by the Executive Committee of the Board**).

**Section 5 standing alone is misleading and incorrect** when it states: **“Recommendations for ExSC membership shall be open to any reasonable source.”** Or that they may be requested from committees, forums and advisory groups, **when**

## 2 Nominations and elections

The Chair of the ExSC shall appoint, before February 1 of each year, a Nominating Committee of not less than three (3) members from among the members of the Council to serve until December 31. By majority vote, on or before September 15 of each year, this committee shall nominate the following:

- Candidates to serve as Chair and Vice-Chair of the Council for the following year;
- Members of its Executive Committee;
- Members of the ExSC (to fill vacancies and expired terms).

By October 1 of each year, the Secretary of the ExSC shall forward to the members of the Council the report of the Nominating Committee. Other nominations may be made to the Institute by petition, signed by at least five (5) members of the Council, prior to **November 1** of each year. **On or about November 15**, the Secretary of the ExSC shall mail to each member of the Council a ballot containing the names of all nominees, those submitted by the Nominating Committee being so indicated. All ballots returned to the Institute by the closing date, December 15, shall be counted, and the nominees receiving a plurality of the votes cast shall be **elected**.

Recommendations for ExSC membership shall be open to any reasonable source. Recommendations shall be requested from appropriate ANSI **councils and boards**. All recommendations shall be

## 5. Nominations and Elections

Recommendations for ExSC membership shall be open to any reasonable source. Recommendations may be requested from appropriate ANSI **committees, forums and advisory groups**. All recommendations shall be referred to the ExSC Nominating Committee for consideration.

The Chair of the ExSC shall appoint, before February 1 of each year, a Nominating Committee of not less than three (3) members from among the members of the Council to serve until December 31. By majority vote, on or before September 15 of each year, this committee shall nominate the following:

- Candidates to serve as Chair and Vice-Chair of the Council for the following year **if the term of the current Chair or Vice Chair is due to expire**;
- Members of its Executive Committee;
- Members of the ExSC (to fill vacancies and expired terms).

By October 1 of each year, the Secretary of the ExSC shall forward to the members of the Council the report of the Nominating Committee. Other nominations may be made to the Institute by petition, signed by at least five (5) members of the Council, prior to **September 1** of each year. **Thereafter, the Secretary of the ExSC shall mail to each member of the Council a ballot containing the names of all nominees, those submitted by the Nominating Committee being so indicated. All ballots returned to the Institute by the closing date, shall be counted, and the names of the nominees receiving a plurality of the votes cast shall be submitted to the Executive Committee of the Board for final appointment.**

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<p>referred to the Nominating Committee for consideration.</p>		<p><b>Section 2 limits new member nominations coming from ONLY current ExSC voting members.</b></p>
<p><b>3 Executive Committee</b> The Executive Committee shall be responsible for those activities assigned to it by the ExSC. The Chair and Vice-Chair of the ExSC shall occupy the same positions on the Executive Committee. In addition, there shall be at least three (3) members elected by the ExSC for one-year terms. At any meeting of the Executive Committee, a majority of the members shall constitute a quorum.</p>	<p><b>6 Executive Committee</b> The Executive Committee of the ExSC shall be responsible for those activities assigned to it by the ExSC. The Chair and Vice-Chair of the ExSC shall occupy the same positions on the Executive Committee. In addition, there shall be at least three (3) members elected by the ExSC for one-year terms. At any meeting of the Executive Committee, a majority of the members shall constitute a quorum.</p>	<p>Editorial, except the <b>DELETIONS of the “3”</b> in the Section number and the <b>“c”</b> were not shown in <b>ExSC_128_2019</b>.</p>
<p><b>4 Standards Advisors</b> The ExSC may appoint individuals or groups to serve as standards advisors, each of whom would have competence in one or more technical areas of standards development, application and coordination. Standards advisors will be called on to advise the ExSC, other ANSI boards or councils, and ANSI staff with regard to matters of coordination, harmonization, standards needs, etc. Advisors shall not be responsible for making decisions in standards issues, but shall serve, rather, as information sources.</p> <p>Standards advisors are appointed by the ExSC on the basis of individual or collective qualifications including experience, technical competence, impartiality, diplomatic abilities, knowledge of the voluntary consensus system, etc. Standards advisors shall be appointed for a term to be determined by the ExSC.</p>	<p><b>7 Standards Advisors</b> The ExSC may appoint individuals or groups to serve as standards advisors, each of whom would have competence in one or more technical areas of standards development, application and coordination. Standards advisors will be called on to advise the ExSC, other ANSI boards or councils, and ANSI staff with regard to matters of coordination, harmonization, standards needs, etc. Advisors shall not be responsible for making decisions in standards issues, but shall serve, rather, as information sources.</p> <p>Standards advisors are appointed by the ExSC on the basis of individual or collective qualifications including experience, technical competence, impartiality, diplomatic abilities, knowledge of the voluntary consensus system, etc. Standards advisors shall be appointed for a term to be determined by the ExSC.</p> <p><b>Deleted: a</b></p>	<p>Editorial, except the <b>DELETION of the “4”</b> in the Section number was not shown in <b>ExSC_128_2019</b>.</p> <p><b>It is assumed that as now, Standards Advisors are not voting members of the ExSC but this should be made explicit in the Procedures.</b></p>
<p><b>5 Other committees and boards</b> See the <b>ANSI Constitution and By-laws</b>.</p> <p><b>6 Responsibilities and functions</b> See the <b>ANSI Constitution and By-laws</b>.</p>	<p><b>8 Other Subcommittees and Task Forces</b> The ExSC may establish such additional subcommittees and task forces as are considered desirable to accomplish its mission. Subcommittees shall have a defined scope as approved by the ExSC, and shall be charged with making recommendations to the ExSC.</p> <p><b>Deleted: boards</b></p> <p><b>Deleted: See the ANSI Constitution and By-laws,¶</b></p> <p><b>9 Responsibilities and Functions</b> See the <b>ANSI By-laws</b>.</p> <p><b>Deleted: f</b></p> <p><b>Deleted: Constituion and</b></p>	<p>Editorial, except the <b>DELETION of the “5”</b> in the Section number was not shown in <b>ExSC_128_2019</b>.</p> <p>Editorial, except the <b>DELETION of the “6”</b> in the Section number was not shown in <b>ExSC_128_2019</b>.</p>
<p><b>7 Additional responsibilities</b> In addition to the responsibilities provided in Section 6, the ExSC shall:</p> <p>a) Act on applications for accreditation from standards developers and U.S. TAGs to ISO;</p> <p>b) Establish a mechanism to enable standards developers to provide ANSI with information with respect to their standards activities and standards publications, to be added to a data bank of standards information;</p> <p>c) Determine policies and practices for the designation and numbering of standards approved as American National Standards;</p> <p>d) Receive reports and act, as necessary, on recommendations presented by other councils or boards;</p> <p>e) Act, as necessary, on recommendations or appeals presented by resident counsel on the basis of legal considerations; and</p> <p>f) Implement and oversee the ANSI Standards Developers Audit Program including the review and approval of audit reports and any necessary action based on the audit findings.</p>	<p><b>10 Additional Responsibilities</b> In addition to the responsibilities set forth in the <b>ANSI By-laws</b>, the ExSC shall act, as necessary, on recommendations or appeals presented by resident counsel on the basis of legal considerations.</p> <p><b>Commented [AC4]:</b> Other text moved and replaced by section 1</p> <p><b>Deleted: 9</b></p> <p><b>Deleted: r</b></p> <p><b>Formatted:</b> No bullets or numbering</p> <p><b>Deleted:  </b></p> <p><b>Deleted: :</b></p> <p><b>Deleted: ¶</b></p> <p>¶ Act on applications for accreditation from standards developers and U.S. TAGs to ISO.¶ Establish a mechanism to enable standards developers to provide ANSI with information with respect to their standards activities and standards publications, to be added to a data bank of standards information.¶ Determine policies and practices for the designation and numbering of standards approved as American National Standards.¶ Receive reports and act, as necessary, on recommendations presented by other councils or boards.</p> <p><b>Deleted: ¶</b></p> <p><b>Deleted: ; and</b></p> <p><b>Deleted: &lt;#&gt;</b>Implement and oversee the ANSI Standards Developers Audit Program including the review and approval of audit reports and any necessary action based on the audit findings.¶</p>	<p>Some Text moved and replaced by new Section 1, and Text was deleted.</p> <p>Editorial, except the <b>DELETION of the “7”</b> in the Section number was not shown in <b>ExSC_128_2019</b>, which incorrectly showed a <b>DELETION of a “9.”</b></p> <p>The new added word <b>“By-laws”</b> should be corrected to align with <b>ANSI 2020 By-Laws</b> and other appearances of the term by changing it to <b>“By-Laws”</b> with a capital <b>“L.”</b></p>

<p><b>8 Meetings</b> Meetings may be called by the Chair or the Executive Committee, or shall be called by the Secretary on petition of fifty percent of the membership.</p> <p>At any meeting of the ExSC the presence of a majority of the current voting membership (i.e., the authorized voting membership reduced by vacancies) shall constitute a quorum.</p>	<p><b>11 Meetings</b> Meetings may be called by the Chair or the ExSC Executive Committee, or shall be called by the Secretary on petition of fifty percent of the membership.</p> <p>At any meeting of the ExSC the presence of a majority of the current voting membership (i.e., the authorized voting membership reduced by vacancies) shall constitute a quorum.</p>	<p>Editorial, except the <b>DELETION of the "8"</b> in the Section number was not shown in <b>ExSC_128_2019</b>.</p>
<p><b>9 Authorization of ExSC Letter Ballots</b> The ExSC, in session, or the Chair of the ExSC may authorize the Secretary to distribute letter ballots.</p>	<p><b>12 Authorization of ExSC Letter Ballots</b> The ExSC, in session, or the Chair of the ExSC may authorize the Secretary to distribute letter ballots.</p>	<p>Editorial, except the <b>DELETIONS of the "9"</b> in the Section number, and the <b>"l"</b> and <b>"b"</b> were not shown in <b>ExSC_128_2019</b>.</p>
<p><b>10 Voting</b> Each member of the ExSC shall exercise his or her voting privilege within such prescribed time limits as may be established.</p>	<p><b>13 Voting</b> Each member of the ExSC shall exercise his or her voting privilege within such prescribed time limits as may be established.</p>	<p>Editorial, except the <b>DELETION of the "0"</b> in the Section number was not shown in <b>ExSC_128_2019</b>.</p>
<p><b>11 Voting Period</b> Letter ballots shall be closed on the twentieth (20th) working day following the date of issue, or when all ballots are received, unless otherwise authorized by the Chair. When a negative vote is cast, the ballot shall remain open until the procedure of section 14 is completed.</p>	<p><b>13 Voting Period</b> Letter ballots shall be closed on the twentieth (20<sup>th</sup>) working day following the date of issue, or when all ballots are received, unless otherwise authorized by the Chair. When a negative vote is cast, the ballot shall remain open until the procedure of section 14 is completed.</p> <p><b>Deleted: p</b></p>	<p>Editorial, except the <b>DELETION of the "1"</b> in the Section number was not shown in <b>ExSC_128_2019</b>.</p>
<p><b>12 Conflict of Interest</b> A member of the ExSC 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 ExSC activities. A conflict of interest can arise from involvement by an ExSC member with the subject matter of a dispute under consideration by the ExSC or from any relationship between the ExSC member and a party to an action before the ExSC, whether past or present, that reasonably raises a question of an ExSC member's impartiality.</p> <p>Typically a potential conflict of interest arises when a member of the ExSC 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 committee participated in the development of standards by a particular standards developer or is a member of that standards developer.</p> <p>If a materially affected party (such as a standards developer or a possible appellant) asserts that it believes that a member of the ExSC has a conflict of interest, that materially affected party is required to state the reason(s) for its belief. That information shall then be forwarded to the member of the ExSC identified as having a possible conflict for that person's response. If that committee member disagrees with the assertion, then the Chairman of the ExSC shall make a final determination as to whether a conflict of interest exists.</p> <p>Members of the ExSC who are disqualified from a particular discussion shall not participate in the deliberations or decisions.</p>	<p><b>14 Conflict of Interest</b> <u>In addition to complying with ANSI's Conflict of Interest Policy, a member of the ExSC shall act at all times in a manner that promotes confidence in the integrity and impartiality of ANSI's processes and procedures and should</u></p> <p><b>Deleted: A</b></p> <p>avoid a conflict of interest or the appearance of a conflict of interest in connection with all ExSC activities. A conflict of interest can arise from involvement by an ExSC member with the subject matter of a dispute under consideration by the ExSC or from any relationship between the ExSC member and a party to an action before the ExSC, whether past or present, that reasonably raises a question of an ExSC member's impartiality.</p> <p>Typically a potential conflict of interest arises when a member of the ExSC 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 committee participated in the development of standards by a particular standards developer or is a member of that standards developer.</p> <p>If a materially affected party (such as a standards developer or a possible appellant) asserts that it believes that a member of the ExSC has a conflict of interest, that materially affected party is required to state the reason(s) for its belief. That information shall then be forwarded to the member of the ExSC identified as having a possible conflict for that person's response. If that committee member disagrees with the assertion, then the Chairman of the ExSC shall make a final determination as to whether a conflict of interest exists.</p> <p>Members of the ExSC who are disqualified from a particular discussion shall not participate in the deliberations or decisions.</p>	<p>Editorial, except the <b>DELETION of the "2"</b> in the Section number was not shown in <b>ExSC_128_2019</b>.</p>
<p><b>13 Confidentiality</b> The results of all letter ballots shall remain confidential to the ExSC until the ballot has been closed.</p>	<p><b>15 Confidentiality</b> The results of all letter ballots shall remain confidential to the ExSC until the ballot has been closed</p> <p><b>Deleted: 3</b></p>	<p>Editorial</p>

<p><b>14 Disposition of views and objections</b> The Secretary shall forward the views and objections of ExSC members to the Chair. The Chair shall determine whether the expressed views and objections shall be considered by correspondence or at a meeting. Comments or objections from ExSC members that require response by an entity outside of the ExSC shall be forwarded to the outside entity without specific identification of the ExSC member.</p> <p>An effort to resolve all expressed objections shall be made, and each objector shall be advised of the disposition of the objection and the reasons therefor.</p> <p>Unresolved objections shall be reported to the ExSC members in order to afford all members an opportunity to respond to them or to reaffirm or change their votes within fifteen working days.</p>	<p><b>16. Disposition of Views and Objections</b> The Secretary shall forward the views and objections of ExSC members to the Chair. The Chair shall determine whether the expressed views and objections shall be considered by correspondence or at a meeting. Comments or objections from ExSC members that require response by an entity outside of the ExSC shall be forwarded to the outside entity without specific identification of the ExSC member.</p> <p>An effort to resolve all expressed objections shall be made, and each objector shall be advised of the disposition of the objection and the reasons therefor.</p> <p>Unresolved objections shall be reported to the ExSC members in order to afford all members an opportunity to respond to them or to reaffirm or change their votes within fifteen working days.</p> <p><b>Deleted: 4</b></p>	<p>Editorial</p>
<p><b>15 Report of letter ballot results</b> When the letter ballot has been closed, the Secretary shall report the results to the ExSC and to others concerned.</p>	<p><b>17. Report of Letter Ballot Results</b> When the letter ballot has been closed, the Secretary shall report the results to the ExSC and to others concerned.</p> <p><b>Deleted: 5</b> <b>Deleted: l</b> <b>Deleted: b</b> <b>Deleted: r</b></p>	<p>Editorial</p>
<p><b>16 Voting Requirements</b> The following actions shall require approval by two-thirds (2/3) of the current ExSC voting membership in a letter ballot:</p> <ul style="list-style-type: none"> <li>a) Establishment or disbandment of an ExSC committee and approval of the scope and membership of such a body;</li> <li>b) Accreditation of standards developers or U.S. TAGs to ISO;</li> <li>c) Procedures for the development and coordination of American National Standards and for the criteria for the development and coordination of U.S. positions in the International Standardization Activities of the ISO and IEC;</li> <li>d) Proposed amendments to these Operating Procedures; and</li> <li>e) All other actions by letter ballot, unless otherwise specified, shall be by simple majority vote of the current ExSC voting membership.</li> </ul> <p>Except for hearings of appeals by the ExSC, action at a meeting at which a quorum is present may be taken by the lesser of the following alternate requirements:</p> <ul style="list-style-type: none"> <li>a) Simple majority of the current voting membership;</li> <li>b) Two-thirds of those voting members present.</li> </ul>	<p><b>18. Voting Requirements</b> The following actions shall require approval by two-thirds (2/3) of the current ExSC voting membership in a letter ballot:</p> <p><b>Deleted: 6</b> <b>Deleted: r</b></p>	<p>Editorial</p>
<p><b>17 ExSC hearing of appeals</b> <b>17.1 Right to appeal</b> All directly and materially affected persons<sup>1</sup> have the right to appeal actions or inactions of the ExSC or its designee. Conclusion of the appeals process at the standards developer, or U.S. TAG, as the case may be, is not a precondition for filing an appeal with the ExSC of an organization's continuing accreditation status. Complaints concerning ANSI Audited Designators are governed by section 18 of these procedures and complaints concerning ANSI-Accredited U.S. TAGs to ISO are governed by section 19 of these procedures.</p> <p>In connection with a new accreditation or reaccreditation<sup>2</sup> action, ANSI will notify those (if any) on record at ANSI who have objected to the action during the formal ANSI public review period,</p>	<p><b>Commented [ACS]:</b> Revisions approved by the ExSC to be submitted to the NPC in November 2019, not displayed in this document,</p>	<p><b>No revisions</b> to this Section proposed in <b>ExSC_128_2019</b> apparently since earlier changes were approved by the ExSC and <b>are to be submitted to the NPC for its November 2019 meeting.</b></p> <p><b>There may need to be changes to the text of the Proposed ExSC Procedures in this version since the item submitted to the NPC for its November 8, 2019 Meeting may not be in alignment with the ANSI 2020 By-Laws. And the NPC did not vote to approve those</b></p>

of the right to appeal. Any other party wishing to appeal such an action may do so in accordance with these procedures, but will not be given notice by ANSI and must file as a separate appellant in order to preserve standing to appeal to the ANSI Appeals Board.

The ExSC may also hear appeals remanded or referred to the ExSC by the ANSI Appeals Board. Hearing of appeals by the ExSC shall be handled by a panel of at least five ExSC voting members established for each appeal. If five members of the ExSC are not available to serve on the panel, the Chair or the Vice Chair of the ExSC may appoint one or more additional panel members who shall be persons knowledgeable about the ANSI Essential Requirements: Due process requirements for American National Standards (ANSI Essential Requirements) or the ANSI International Procedures, as applicable, and the standards development process. Such appointment(s) of non-ExSC members shall be with the concurrence of all parties to the appeal. A majority of the members of the panel shall be members of the ExSC.

Pending a decision by the ExSC panel, the original decision of the ExSC shall remain in effect unless the ExSC determines otherwise. No party to an appeal may communicate with any unrecused member of the ANSI ExSC on the subject of the appeal while the matter is pending. All communications shall be directed to the secretary of the ANSI ExSC.

<sup>1</sup> "Persons" includes organizations, companies, government agencies, individuals etc.  
<sup>2</sup> A "reaccreditation" action is the approval of revised procedures submitted by an ANSI-Accredited Standards Developer.

**17 ExSC hearing of appeals**

**17.1 Right to appeal**  
 All directly and materially affected persons<sup>1</sup> have the right to appeal actions or inactions of the ExSC or its designee. Conclusion of the appeals process at the standards developer, or U.S. TAG, as the case may be, is not a precondition for filing an appeal with the ExSC of an organization's continuing accreditation status. Complaints concerning ANSI Audited Designators are governed by section 18 of these procedures and complaints concerning ANSI-Accredited U.S. TAGs to ISO are governed by section 19 of these procedures.

In connection with a new accreditation or reaccreditation<sup>2</sup> action, ANSI will notify those (if any) on record at ANSI who have objected to the action during the formal ANSI public review period, of the right to appeal. Any other party wishing to appeal such an action may do so in accordance with these procedures, but will not be given notice by ANSI and must file as a separate appellant in order to preserve standing to appeal to the ANSI Appeals Board.

The ExSC may also hear appeals remanded or referred to the ExSC by the ANSI Appeals Board. Hearing of appeals by the ExSC shall be handled by a panel of at least five ExSC voting members established for each appeal. If five members of the ExSC are not available to serve on the panel, the Chair or the Vice Chair of the ExSC may appoint one or more additional panel members who shall be persons knowledgeable about the ANSI Essential Requirements: Due process requirements for American National Standards (ANSI Essential Requirements) or the ANSI International Procedures, as applicable, and the standards development process. Such appointment(s) of non-ExSC members shall be with the concurrence of all parties to the appeal. A majority of the members of the panel shall be members of the ExSC.

Pending a decision by the ExSC panel, the original decision of the ExSC shall remain in effect unless the ExSC determines otherwise. No party to an appeal may communicate with any unrecused member of the ANSI ExSC on the subject of the appeal while the matter is pending. All communications shall be directed to the secretary of the ANSI ExSC.

<sup>1</sup> "Persons" includes organizations, companies, government agencies, individuals etc.  
<sup>2</sup> A "reaccreditation" action is the approval of revised procedures submitted by an ANSI-Accredited Standards Developer.

**changes at its November 2019 Meeting. After a long discussion the NPC Chair requested NPC members to submit their concerns to the ExSC but did not specify a due date.**

**17.2 Appeal**  
 All appeals shall be made in writing. Appeals and the required filing fee shall be directed to the secretary of the ANSI ExSC on or before midnight Eastern time of the due date. The filing fee may be waived or reduced only upon sufficient evidence of hardship.

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 directly supports appellant's position and upon which appellant relies; and
- f) the specific relief sought by appellant from the ExSC.

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

Unless otherwise instructed by the secretary of the ExSC, the appeal shall be sent via electronic means (with one complete hard copy mailed to ANSI) within fifteen (15) working days following the date of the decision that is the subject of the appeal or at any time with respect to an inaction by the ExSC or an appeal of an organization's continuing status as an

**17.2 Appeal**  
 All appeals shall be made in writing. Appeals and the required filing fee shall be directed to the secretary of the ANSI ExSC on or before midnight Eastern time of the due date. The filing fee may be waived or reduced only upon sufficient evidence of hardship.

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- 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 directly supports appellant's position and upon which appellant relies; and
- f) the specific relief sought by appellant from the ExSC.

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

Unless otherwise instructed by the secretary of the ExSC, the appeal shall be sent via electronic means (with one complete hard copy mailed to ANSI) within fifteen (15) working days following the date of the decision that is the subject of the appeal or at any time with respect to an inaction by the ExSC or an appeal of an organization's continuing status as an ANSI-Accredited Standards Developer or ANSI-Accredited U.S. TAG Administrator to ISO. 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 ExSC, within the fifteen (15) working day deadline or the appellant shall forfeit the right to appeal. Extensions of time to submit an appeal may be granted at the discretion of the Chair of the ExSC, or, if the Chair is unavailable, the Vice Chair of the ExSC or the secretary of the ExSC. No supplemental filing prior to the forthcoming hearing shall be permitted without a showing of good cause.

No revisions to this Section proposed in ExSC\_128\_2019.

<p>ANSI-Accredited Standards Developer or ANSI-Accredited U.S. TAG Administrator to ISO. 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 ExSC, within the fifteen (15) working day deadline or the appellant shall forfeit the right to appeal. Extensions of time to submit an appeal may be granted at the discretion of the Chair of the ExSC, or, if the Chair is unavailable, the Vice Chair of the ExSC or the secretary of the ExSC. No supplemental filing prior to the forthcoming hearing shall be permitted without a showing of good cause.</p>		
<p><b>17.3 Response</b> The appeal shall be distributed by the secretary of the ExSC to the potential respondent (the party who must respond to the appeal) to allow them the opportunity to respond. Thereafter, this party shall have fifteen (15) working days to submit their response to the appeal on or before midnight Eastern time of the due date.</p> <p>The response shall include:</p> <ul style="list-style-type: none"> <li>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; and</li> <li>b) relevant evidence that directly supports respondent's position and upon which respondent relies.</li> </ul> <p>The brief response (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger. The secretary of the ExSC shall have discretion to extend this limit for good cause shown.</p> <p>The response shall be distributed by the secretary of the ExSC to ExSC 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.</p> <p>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 noted. Such request must be directed to the secretary of the ExSC within the fifteen (15) working day deadline or the respondent shall forfeit the right to respond. Upon receipt of the response it shall be provided to the appellant for information only. No reply to the response prior to the forthcoming hearing shall be permitted without a showing of good cause. Extensions of time to submit a response may be granted at the discretion of the Chair of the ExSC, or, if the Chair is unavailable, the Vice Chair of the ExSC or the secretary of the ExSC.</p>	<p><b>17.3 Response</b> The appeal shall be distributed by the secretary of the ExSC to the potential respondent (the party who must respond to the appeal) to allow them the opportunity to respond. Thereafter, this party shall have fifteen (15) working days to submit their response to the appeal on or before midnight Eastern time of the due date.</p> <p>The response shall include:</p> <ul style="list-style-type: none"> <li>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; and</li> <li>b) relevant evidence that directly supports respondent's position and upon which respondent relies.</li> </ul> <p>The brief response (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger. The secretary of the ExSC shall have discretion to extend this limit for good cause shown.</p> <p>The response shall be distributed by the secretary of the ExSC to ExSC 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.</p> <p>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 noted. Such request must be directed to the secretary of the ExSC within the fifteen (15) working day deadline or the respondent shall forfeit the right to respond. Upon receipt of the response it shall be provided to the appellant for information only. No reply to the response prior to the forthcoming hearing shall be permitted without a showing of good cause. Extensions of time to submit a response may be granted at the discretion of the Chair of the ExSC, or, if the Chair is unavailable, the Vice Chair of the ExSC or the secretary of the ExSC.</p>	<p>No revisions to this Section proposed in <b>ExSC_128_2019</b>.</p>
<p><b>17.4 Letters of support by non-parties to the appeal</b> A person or organization that is not a party to the appeal may submit a letter of support for a position taken by the appellant or respondent to the appeal by contacting that party and requesting that such a letter be included in that party's formal appeals brief or response. 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, and may address procedural issues only. Letters not meeting the requirements of this section will not be accepted without the approval of the ExSC Chair or Vice Chair. Submitters of such letters do</p>	<p><b>17.4 Letters of support by non-parties to the appeal</b> A person or organization that is not a party to the appeal may submit a letter of support for a position taken by the appellant or respondent to the appeal by contacting that party and requesting that such a letter be included in that party's formal appeals brief or response.</p> <p>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, and may address procedural issues only. Letters not meeting the requirements of this section will not be accepted without the approval of the ExSC Chair or Vice Chair. Submitters 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.</p>	<p>No revisions to this Section proposed in <b>ExSC_128_2019</b>.</p>

<p>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.</p>		
<p><b>17.5 Hearing</b> The secretary of the ExSC shall establish a panel to hear the appeal, subject to applicable conflict of interest procedures.</p> <p>A hearing date for an appeal shall be set by the secretary of the ExSC 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. Panel members shall receive copies of the appeals record at least fifteen (15) working days prior to the date of the appeals hearing. The name and affiliation of all speakers and any observers must be provided to the secretary of the ExSC in advance of the hearing.</p> <p>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.</p> <p>Should any party at interest not be present at the hearing, the decision of the ExSC panel shall be based on the presentations made by the parties that are present at the hearing in addition to the written submissions on record.</p>	<p><b>17.5 Hearing</b> The secretary of the ExSC shall establish a panel to hear the appeal, subject to applicable conflict of interest procedures.</p> <p>A hearing date for an appeal shall be set by the secretary of the ExSC 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. Panel members shall receive copies of the appeals record at least fifteen (15) working days prior to the date of the appeals hearing. The name and affiliation of all speakers and any observers must be provided to the secretary of the ExSC in advance of the hearing.</p> <p>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.</p> <p>Should any party at interest not be present at the hearing, the decision of the ExSC panel shall be based on the presentations made by the parties that are present at the hearing in addition to the written submissions on record.</p>	<p>No revisions to this Section proposed in <b>ExSC_128_2019</b>.</p>
<p><b>17.6 Decision</b> Decisions of ExSC appeals panels shall require a majority vote of the panel, shall represent the decision of the ExSC, and shall be provided to the ExSC for their information. Notice of a decision reached by the ExSC appeals panel shall be sent by the secretary to the parties within fifteen (15) working days, unless an extension is authorized by the Chair of the ExSC, or, if the Chair is unavailable, by the Vice Chair. The decision shall specify the outcome of the appeal, and shall be accompanied by an explanation of the reasons for such outcome, and the specific relief granted, if any. The outcome of the appeal shall be announced in <i>Standards Action</i>.</p>	<p><b>17.6 Decision</b> Decisions of ExSC appeals panels shall require a majority vote of the panel, shall represent the decision of the ExSC, and shall be provided to the ExSC for their information. Notice of a decision reached by the ExSC appeals panel shall be sent by the secretary to the parties within fifteen (15) working days, unless an extension is authorized by the Chair of the ExSC, or, if the Chair is unavailable, by the Vice Chair. The decision shall specify the outcome of the appeal, and shall be accompanied by an explanation of the reasons for such outcome, and the specific relief granted, if any. The outcome of the appeal shall be announced in <i>Standards Action</i>.</p>	<p>No revisions to this Section proposed in <b>ExSC_128_2019</b>.</p>
<p><b>18 ExSC Consideration of Complaints against ANSI Audited Designators</b> If a formal complaint<sup>3</sup> is lodged against an Audited Designator, and said complaint relates to whether or not the developer should remain ANSI-accredited or retain the status of Audited Designator, the Executive Committee of the ExSC, in their discretion, shall determine whether such a complaint should be processed in accordance with (a) through (f) below or clause 17 <i>ExSC hearing of appeals of the Operating Procedures of the ANSI Executive Standards Council</i>.</p> <p>All complaints shall be made in writing. Complaints and the required filing fee shall be directed to the secretary of the ANSI ExSC on or before midnight Eastern time of the due date. The filing fee may be waived or reduced only upon sufficient evidence of hardship.</p>	<p><b>18 ExSC Consideration of Complaints against ANSI Audited Designators</b> If a formal complaint<sup>3</sup> is lodged against an Audited Designator, and said complaint relates to whether or not the developer should remain ANSI-accredited or retain the status of Audited Designator, the Executive Committee of the ExSC, in their discretion, shall determine whether such a complaint should be processed in accordance with (a) through (f) below or clause 17 <i>ExSC hearing of appeals of the Operating Procedures of the ANSI Executive Standards Council</i>.</p> <p>All complaints shall be made in writing. Complaints and the required filing fee shall be directed to the secretary of the ANSI ExSC on or before midnight Eastern time of the due date. The filing fee may be waived or reduced only upon sufficient evidence of hardship.</p> <p>If a formal complaint is lodged against an Audited Designator and the ExSC Executive Committee has decided not to implement clause 17, and if (i) the complaint relates to one or more specific approved American National Standards and (ii) the complainant has completed the appeals process(es) available at the Audited Designator, the ExSC shall handle the complaint in accordance with (a) through (f) below.</p> <p>(a) Upon receipt of a formal complaint, the ExSC shall review the complaint. 1) If the complaint has not been submitted to ANSI (i) within 30 days after the complainant completed the appeals process(es) and received the final determination of the complainant's appeal at the Audited Designator or (ii) otherwise within a reasonable time of the challenged action of the Audited Designator, the ExSC shall, unless there are compelling circumstances, dismiss the complaint. 2) If the complaint does not (i) specifically allege that the Audited Designator violated any of its accredited procedures and that any related appeals decision issued by the Audited Designator was clearly erroneous, and (ii) provide sufficient substantiation of facts to support such allegations to establish a <i>prima facie</i> case, the ExSC shall dismiss the complaint. 3) If the complaint is technical in nature or relates to the content of a standard, the ExSC shall dismiss the complaint.</p>	<p>No revisions to this Section proposed in <b>ExSC_128_2019</b>.</p>

If a formal complaint is lodged against an Audited Designator and the ExSC Executive Committee has decided not to implement clause 17, and if (i) the complaint relates to one or more specific approved American National Standards and (ii) the complainant has completed the appeals process(es) available at the Audited Designator, the ExSC shall handle the complaint in accordance with (a) through (f) below.

(a) Upon receipt of a formal complaint, the ExSC shall review the complaint.

1) If the complaint has not been submitted to ANSI (i) within 30 days after the complainant completed the appeals process(es) and received the final determination of the complainant's appeal at the Audited Designator or (ii) otherwise within a reasonable time of the challenged action of the Audited Designator, the ExSC shall, unless there are compelling circumstances, dismiss the complaint.

2) If the complaint does not (i) specifically allege that the Audited Designator violated any of its accredited procedures and that any related appeals decision issued by the Audited Designator was clearly erroneous, and (ii) provide sufficient substantiation of facts to support such allegations to establish a *prima facie* case, the ExSC shall dismiss the complaint.

3) If the complaint is technical in nature or relates to the content of a standard, the ExSC shall dismiss the complaint.

(b) If the complaint is not dismissed pursuant to (a), the ExSC shall send a copy of the complaint to the Audited Designator and request a response to the allegations in the complaint. The ExSC, in its discretion, may ask the Audited Designator either for a general response or, if the ExSC is concerned with only certain of the allegations raised in the complaint, it may request a more limited response only to those areas of concern.

(c) Upon receipt of the response from the Audited Designator, the ExSC shall do one of the following:

1) If it determines that the complaint and the response taken together do not support a claim that the Audited Designator has violated its procedures, it shall dismiss the complaint.

2) If it determines that the complaint raises issues that merit further review, it shall refer the complaint with any special instructions to the audit team at the next regularly scheduled audit or take other appropriate action such as the scheduling of a hearing.

3) If it determines that substantial and material reasons exist indicating immediate action may be necessary, it shall order an audit for cause or take other appropriate action such as initiating the withdrawal of accreditation or of the developer's Audited Designator status.

(d) Any audit for cause shall be limited in scope to that which is necessary to reasonably investigate the complaint. Such audits, where appropriate, may be handled remotely, rather than through an on-site visit.

(e) Following any audit for cause, the Audited Designator shall receive a copy of the audit report and shall have the opportunity to provide a written response to the audit report. The results of any audit for cause and the response of the Audited Designator shall be reviewed by the ExSC, who shall determine what

(b) If the complaint is not dismissed pursuant to (a), the ExSC shall send a copy of the complaint to the Audited Designator and request a response to the allegations in the complaint. The ExSC, in its discretion, may ask the Audited Designator either for a general response or, if the ExSC is concerned with only certain of the allegations raised in the complaint, it may request a more limited response only to those areas of concern.

(c) Upon receipt of the response from the Audited Designator, the ExSC shall do one of the following:

1) If it determines that the complaint and the response taken together do not support a claim that the Audited Designator has violated its procedures, it shall dismiss the complaint.

2) If it determines that the complaint raises issues that merit further review, it shall refer the complaint with any special instructions to the audit team at the next regularly scheduled audit or take other appropriate action such as the scheduling of a hearing.

3) If it determines that substantial and material reasons exist indicating immediate action may be necessary, it shall order an audit for cause or take other appropriate action such as initiating the withdrawal of accreditation or of the developer's Audited Designator status.

(d) Any audit for cause shall be limited in scope to that which is necessary to reasonably investigate the complaint. Such audits, where appropriate, may be handled remotely, rather than through an on-site visit.

(e) Following any audit for cause, the Audited Designator shall receive a copy of the audit report and shall have the opportunity to provide a written response to the audit report. The results of any audit for cause and the response of the Audited Designator shall be reviewed by the ExSC, who shall determine what additional action, if any, shall be taken.

(f) The standards developer shall have full notice and an opportunity to be heard before the ExSC implements any adverse action against the standards developer.

(g) The ExSC's final action may be appealed to the ANSI Appeals Board.

<p>additional action, if any, shall be taken.</p> <p>(f) The standards developer shall have full notice and an opportunity to be heard before the ExSC implements any adverse action against the standards developer.</p> <p>(g) The ExSC's final action may be appealed to the ANSI Appeals Board.</p>	<p style="text-align: center;">_____</p> <p style="text-align: center;"><sup>3</sup> See section 17 for filing specifications.</p>	
<p><sup>3</sup> See section 17 for filing specifications.</p> <p><b>19 ExSC Consideration of Complaints against ANSI-Accredited U.S. TAGs to ISO</b></p> <p>If a formal complaint<sup>4</sup> is lodged against an ANSI-Accredited U.S. TAG to ISO (U.S. TAG), the Executive Committee of the ExSC, in its discretion, shall determine whether such a complaint shall be processed in accordance with (a) through (f) below or clause 17 <i>ExSC hearing of appeals of the Operating Procedures of the ANSI Executive Standards Council</i>.</p> <p>All complaints shall be made in writing. Complaints and the required filing fee shall be directed to the secretary of the ANSI ExSC on or before midnight Eastern time of the due date. The filing fee may be waived or reduced only upon sufficient evidence of hardship.</p> <p>If a formal complaint is lodged against an ANSI-Accredited U.S. TAG to ISO (U.S. TAG), and if the complainant has completed the appeals process(es) available at the U.S. TAG and the ExSC Executive Committee has decided not to implement clause 17, the ExSC shall handle the complaint as follows:</p> <p>(a) Upon receipt of a formal complaint, the ExSC shall review the complaint.</p> <p>1) If the complaint has not been brought within a reasonable time of the challenged action of the U.S. TAG, the ExSC shall, unless there are compelling circumstances, dismiss the complaint.</p> <p>2) If the Complaint is technical in nature or relates to the content of a standard and does not allege and provide substantiation of facts constituting a violation of any procedures under which the U.S. TAG is accredited to operate, the ExSC shall dismiss the complaint.</p> <p>(b) If the Complaint is not dismissed pursuant to (a), the ExSC shall send a copy of the complaint to the U.S. TAG Administrator and request a response to the allegations in the complaint. The ExSC, in its discretion, may ask the TAG Administrator either for a general response or, if it is concerned with only certain of the allegations raised in the complaint, it may request a more limited response only to those areas of concern.</p> <p>(c) Upon receipt of the response from the U.S. TAG, the ExSC shall do one of the following:</p> <p>1) if it determines that the complaint and the response taken together do not support a claim that the U.S. TAG has violated its procedures, it shall dismiss the complaint;</p> <p>2) if it determines that the complaint and the response taken together raise issues that merit further review, it shall take appropriate action such as schedule a hearing or order an audit for cause.</p> <p>(d) Any audit for cause shall be limited in scope to that which is necessary to reasonably investigate the complaint. Such audits, where appropriate, may be handled remotely, rather than through an on-site visit.</p> <p>(e) Following any audit for cause, the U.S. TAG Administrator shall receive a copy of the audit report and shall have the opportunity to provide a written response to the audit report. The results of any audit for cause and the response of the U.S. TAG shall be</p>	<p><sup>3</sup> See section 17 for filing specifications.</p> <p><b>19 ExSC Consideration of Complaints against ANSI-Accredited U.S. TAGs to ISO</b></p> <p>If a formal complaint<sup>4</sup> is lodged against an ANSI-Accredited U.S. TAG to ISO (U.S. TAG), the Executive Committee of the ExSC, in its discretion, shall determine whether such a complaint shall be processed in accordance with (a) through (f) below or clause 17 <i>ExSC hearing of appeals of the Operating Procedures of the ANSI Executive Standards Council</i>.</p> <p>All complaints shall be made in writing. Complaints and the required filing fee shall be directed to the secretary of the ANSI ExSC on or before midnight Eastern time of the due date. The filing fee may be waived or reduced only upon sufficient evidence of hardship.</p> <p>If a formal complaint is lodged against an ANSI-Accredited U.S. TAG to ISO (U.S. TAG), and if the complainant has completed the appeals process(es) available at the U.S. TAG and the ExSC Executive Committee has decided not to implement clause 17, the ExSC shall handle the complaint as follows:</p> <p>(a) Upon receipt of a formal complaint, the ExSC shall review the complaint.</p> <p>1) If the complaint has not been brought within a reasonable time of the challenged action of the U.S. TAG, the ExSC shall, unless there are compelling circumstances, dismiss the complaint.</p> <p>2) If the Complaint is technical in nature or relates to the content of a standard and does not allege and provide substantiation of facts constituting a violation of any procedures under which the U.S. TAG is accredited to operate, the ExSC shall dismiss the complaint.</p> <p>(b) If the Complaint is not dismissed pursuant to (a), the ExSC shall send a copy of the complaint to the U.S. TAG Administrator and request a response to the allegations in the complaint. The ExSC, in its discretion, may ask the TAG Administrator either for a general response or, if it is concerned with only certain of the allegations raised in the complaint, it may request a more limited response only to those areas of concern.</p> <p>(c) Upon receipt of the response from the U.S. TAG, the ExSC shall do one of the following:</p> <p>1) if it determines that the complaint and the response taken together do not support a claim that the U.S. TAG has violated its procedures, it shall dismiss the complaint;</p> <p>2) if it determines that the complaint and the response taken together raise issues that merit further review, it shall take appropriate action such as schedule a hearing or order an audit for cause.</p> <p>(d) Any audit for cause shall be limited in scope to that which is necessary to reasonably investigate the complaint. Such audits, where appropriate, may be handled remotely, rather than through an on-site visit.</p> <p>(e) Following any audit for cause, the U.S. TAG Administrator shall receive a copy of the audit report and shall have the opportunity to provide a written response to the audit report. The results of any audit for cause and the response of the U.S. TAG shall be</p> <p>(f) The ExSC's final action may be appealed to the ANSI Appeals Board.</p>	<p>No revisions to this Section proposed in <b>ExSC_128_2019</b>.</p>

<p>reviewed by the ExSC, who shall determine what additional action, if any, shall be taken. The U.S. TAG shall have full notice and an opportunity to be heard before the ExSC implements any adverse action against the U.S. TAG. (f) The ExSC's final action may be appealed to the ANSI Appeals Board.</p> <p><sup>4</sup> See section 17 for filing specifications.</p>	<p><sup>4</sup> See section 17 for filing specifications.</p>	
<p><b>20 Accessibility of documentation and decisions</b> A copy of the record on appeal (i.e., appeals-related documents submitted by the parties to the appeal for consideration by the ExSC, including party-supporting letters) shall be made available to any directly and materially affected person upon request. The costs associated with providing such documents shall be borne by the person seeking them</p>	<p><b>20 Accessibility of documentation and decisions</b> A copy of the record on appeal (i.e., appeals-related documents submitted by the parties to the appeal for consideration by the ExSC, including party-supporting letters) shall be made available to any directly and materially affected person upon request. The costs associated with providing such documents shall be borne by the person seeking them.</p> <p><b>Commented [AC6]:</b> Revisions approved by the ExSC to be submitted to the NPC in November 2019, not displayed in this document.</p>	<p><b>Section 20</b> Changes are pending before the NPC for its November 2019 meeting and are <b>not included in ExSC_128_2019.</b></p> <p>There may need to be changes to the text of the <b>Proposed Procedures</b> in this version since the item submitted to the NPC for its November 8, 2019 Meeting may not be in alignment with the <b>ANSI 2020 By-Laws.</b> And the NPC did not vote to approve those changes at its November 2019 Meeting. After a long discussion the NPC Chair requested NPC members to submit their concerns to the ExSC but did not specify a due date.</p>
<p><b>21 Appeal of ExSC actions</b> In accordance with the <i>ANSI Appeals Board Operating Procedures</i>, an appeal from a final appeal or complaint decision of the ExSC may be filed with the Appeals Board by the appellant or respondent to the ExSC appeal or complaint at issue.</p>	<p><b>21 Appeal of ExSC Actions</b> In accordance with the <i>ANSI Appeals Board Operating Procedures</i>, an appeal from a final appeal or complaint decision of the ExSC may be filed with the Appeals Board by the appellant or respondent to the ExSC appeal or complaint at issue.</p> <p><b>Deleted: a</b></p>	<p>Editorial</p>
<p><b>22 Informal settlement</b> 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 <i>ANSI Essential Requirements: Due process requirements for American National Standards.</i></p>	<p><b>22 Informal Settlement</b> 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 <i>ANSI Essential Requirements: Due process requirements for American National Standards.</i></p> <p><b>Deleted: s</b></p>	<p>Editorial</p>
<p><b>23 Member participation</b> Repeated failure to return ballots or attend meetings shall be considered as a lack of interest. When a member fails repeatedly to return ballots before the close of the ballot period, or attend meetings, the Secretary shall place the matter before the ExSC. The ExSC may request the Chair of the Board of Directors to remove such individual from his or her assignment.</p>	<p><b>23 Amendments</b> The <i>Executive Committee of the Board</i> may make changes to these operating procedures at any time after consultation with or upon recommendation of the ExSC.</p> <p><b>Deleted: 23 Member Participation¶</b> Members are expected to participate actively by fulfilling attendance, voting, correspondence, and other obligations. Members are expected to participate in good faith and in accordance with professional standards, respectful of the rules of the ExSC and the authority given to the Officers of the ExSC as well as to the ExSC Membership, to act on behalf of ANSI. ¶ Repeated failure to return ballots or attend meetings shall be considered as a lack of interest. When a member fails repeatedly to return ballots before the close of the ballot period, or attend meetings, the Secretary shall place the matter before the ExSC. The ExSC may request the Chair of the Board of Directors to remove such individual from his or her assignment. ¶</p>	<p>The <b>first paragraph</b> shown as <b>DELETED</b> under <b>23 Member Pparticipation</b> (sic) <b>does not appear</b> in the current 2017 version of the <b>ExSC Operating Procedures</b> in that <b>Section.</b></p>
<p><b>24 Parliamentary procedure</b> On questions of parliamentary procedure not covered in these <i>Procedures, Robert's Rules of Order</i> (latest edition) shall prevail.</p>	<p><b>Deleted: 24 Parliamentary procedure¶</b> On questions of parliamentary procedure not covered in these <i>Procedures, Robert's Rules of Order</i> (latest edition) shall prevail. ¶</p>	<p>Parliamentary Procedures were deleted in the <b>2020 By-Laws</b>, so an appropriate deletion.</p>
<p><b>25 Amendments</b> The National Policy Committee (NPC) may make changes to these operating procedures at any time after consultation with or upon recommendation of the ExSC.</p>		<p>There is <b>no information</b> about <b>Section 25 Amendments</b> in <b>ExSC_128_2019.</b> To be aligned with the <b>2020 By-Laws</b> changes in <b>Section 25</b> would need changes since ExSC does</p>

		not report to the NPC which no longer <u>exists</u> in the <b>2020 By-Laws</b> , or shown as <b>DELETED</b> since <b>Amendments</b> are now covered in the <b>revised Section 23</b> .
<p><b>Annex A</b></p> <p>Note: this text was previously contained in the 2002 edition of the <i>ANSI Procedures for the Development and Coordination of American National Standards</i>. It was not included in the <i>ANSI Essential Requirements: Due process requirements for American National Standards</i>, issued in 2003. The reason for its exclusion from the <i>ANSI Essential Requirements</i> is that ANSI no longer distinguishes among types of accreditations. This said, ANSI-accredited standards committees exist and the ANSI Executive Standards Council (ExSC) believes that it would be useful to make publicly available the following procedures that the ExSC will apply to the unique relationship between the secretariat and the consensus body that constitute an accredited standards committee. This text is revised as shown below in the 2012 edition.</p> <p><b>Annex A: Change in Secretariat-Consensus Body Relationship within an ANSI-Accredited Standards Committee (ASC)</b></p> <p>In the case of an ANSI-accredited standards committee, the secretariat and the consensus body shall jointly hold the accreditation. If a change in the entity that serves as the secretariat is sought by both the consensus body and the secretariat and the new secretariat agrees to use the ASC's existing procedures, then the following shall apply:</p> <p><b>Commented [AC7]:</b> Proposed deletion to be announced for public comment in 2019</p> <p><b>REST OF ANNEX A NOT COPIED</b></p>	<p style="text-align: center;">Annex A   -----</p> <p>Note: this text was previously contained in the 2002 edition of the <i>ANSI Procedures for the Development and Coordination of American National Standards</i>. It was not included in the <i>ANSI Essential Requirements: Due process requirements for American National Standards</i>, issued in 2003. The reason for its exclusion from the <i>ANSI Essential Requirements</i> is that ANSI no longer distinguishes among types of accreditations. This said, ANSI-accredited standards committees exist and the ANSI Executive Standards Council (ExSC) believes that it would be useful to make publicly available the following procedures that the ExSC will apply to the unique relationship between the secretariat and the consensus body that constitute an accredited standards committee. This text is revised as shown below in the 2012 edition.</p> <p style="text-align: center;"><b>Annex A: Change in Secretariat-Consensus Body Relationship within an ANSI-Accredited Standards Committee (ASC)</b></p> <p>In the case of an ANSI-accredited standards committee, the secretariat and the consensus body shall jointly hold the accreditation. If a change in the entity that serves as the secretariat is sought by both the consensus body and the secretariat and the new secretariat agrees to use the ASC's existing procedures, then the following shall apply:</p> <p><b>Commented [AC7]:</b> Proposed deletion to be announced for public comment in 2019</p>	<p>The proposed Deletion of <b>Annex A</b> mentioned in <b>Comment AC7</b> has recently been announced in <i>Standards Action</i> on <b>October 25, 2019</b>, with <b>Public Comments due November 25, 2019</b>.</p>

**GTW Comments on Program Oversight Committee's ("POC") Proposed Procedures to align with new ANSI 2020 By-Laws. Comments due Nov 11.**

**2020 By-Laws Excerpts**

**ARTICLE IV  
Committees of ANSI**

**Section 4.01 Committees of ANSI.** As described in this Article IV, there are established within ANSI, **Program Oversight Committees** and International Relations Committees reporting to the Executive Committee, which shall discharge the responsibilities set forth in this Article. The **Board may create additional Program Oversight Committees**, International Relations Committees and other Committees of ANSI from time to time, and each such Committee shall report to the Executive Committee and discharge the responsibilities established by the Board.

**Section 4.01.1 Responsibilities of Committee Members Generally.** The members of any and all **Committees of ANSI** shall, in that capacity, **act as fiduciaries to ANSI** and shall act in the best interest of ANSI. **The members of all Committees of ANSI shall also abide by ANSI's Conflict of Interest and Related Party Transaction Policy, as well as, the ANSI Code of Conduct.** All Committees of ANSI shall operate in accordance with **Operating Procedures** approved by the Executive Committee.

**Section 4.02 ANSI Program Oversight Committees Generally.** Each **Program Oversight Committee** shall have the exclusive authority to render decisions with regard to issues arising in the ANSI program it is charged to oversee, subject only to any possible further appeal pursuant to the applicable appeals procedures.

**Section 4.02.1 Membership.** Except as otherwise delegated by the Board, **members of all ANSI Program Oversight Committees** shall be **appointed by the Chair of the Board** with the **approval of the Board.** **In making these appointments, the Chair of the Board shall endeavor to ensure representation of all membership categories concerned with the activities of the Program Oversight Committee.** Membership in ANSI by the entity with which the Member is affiliated shall be a prerequisite for participation in any **ANSI Program Oversight Committee** unless the Executive Committee specifically permits otherwise. **Membership in all ANSI Program Oversight Committees, however, shall be by the individual, not the entity with which such person is affiliated.** Except as may be extended by the Board, each such appointment shall be for a term of **three full years** with no person serving more than three full consecutive terms.

**Section 4.02.2 Committee Officers.** Except as otherwise delegated by the Board, for each **Program Oversight Committee**, the Board Chair shall appoint the Chair of the Committee subject to approval by the Board. **The Chair, and such other officers authorized by the Committee's operating procedures, shall serve for a term of two years and shall be eligible to serve for a maximum of two full consecutive two-year terms.** A staff member of ANSI designated by the President shall serve as a non-voting secretary of each **ANSI Program Oversight Committee.**

**Section 4.02.3 Subcommittees and Task Forces.** **Each ANSI Program Oversight Committee may establish such additional subcommittees and task forces** as are considered desirable to accomplish its mission. Subcommittees shall have a defined scope as approved by the relevant **Program Oversight Committee**, and shall be charged with making recommendations to such **Program Oversight Committees.**

....

**Section 4.04 The Board of Standards Review ("BSR").** Except in the case of audited designators, **the BSR, a Program Oversight Committees** shall be responsible for the approval and withdrawal of American National Standards, and for such other duties that may be delegated to it by the Board. The functions of the BSR shall include, but not be limited to, **determining whether standards submitted to ANSI for approval or withdrawal as American National Standards meet the requirements of the Essential Requirements and acting on requests for approval, reaffirmation, revision and withdrawal of American National Standards, including appeals of such decisions.**

**BSR** (Text highlighted in **GREEN** in the Current Procedures is TEXT shown as DELETED in the Proposed Procedures, and either **EXPLICITLY** shown as DELETED in the Rev Control PDF that was in *Standards Action*, or from inspection of Current text with Proposed text.) Any **YELLOW** highlights are just for emphasis.

BSR Current Procedures 2017	Proposed BSR Revisions ExSC_129_2019	GTW Comments
<p><b>Foreword</b>  <b>[Most Text from 2017 omitted here for brevity. Only last paragraph of Foreword shown.]</b>            The edition of these procedures issued in January 2003 includes a clarification to the appeals process that explicitly states that extension requests are an option for both parties to an appeal. In addition, references to the <i>ANSI Procedures for the Development and Coordination of American National Standards</i> are replaced with references to the <i>ANSI Essential Requirements: Due process requirements for American National Standards</i>, which replaces the former document as of January 2003. The 2005 edition includes a clarification to the appeals process. The 2007 edition includes a clarification concerning the BSR's numerical voting requirements. The 2009 edition includes an updated conflict of interest provision. The 2017 edition includes an updated appeals process.</p>	<p>The edition of these procedures issued in January 2003 includes a clarification to the appeals process that explicitly states that extension requests are an option for both parties to an appeal. In addition, references to the <i>ANSI Procedures for the Development and Coordination of American National Standards</i> are replaced with references to the <i>ANSI Essential Requirements: Due process requirements for American National Standards</i>, which replaces the former document as of January 2003. The 2005 edition includes a clarification to the appeals process. The 2007 edition includes a clarification concerning the BSR's numerical voting requirements. The 2009 edition includes an updated conflict of interest provision. The 2017 edition includes an updated appeals process.</p> <p><b>Commented [AC1]:</b> Update and edit for January 2020 edition</p>	<p>There should be <b>Public Notice and Comments on ALL changes to POC Operating Procedures</b> not just a <b>NOTE</b> saying <b>"Update and edit for January 2020 edition"</b> implying <b>ANSI Staff will be making changes</b> without having gone thru the <b>Notice and Comment process</b>. <b>Transparency and Due Process require all changes to be put out for Public Comment</b></p>
<p><b>Operating Procedures of the ANSI Board of Standards Review</b>  <b>1 Authority and Responsibilities</b>  <b>The BSR shall be responsible for approval and withdrawal of American National Standards and for other responsibilities that may be delegated to it by the Board of Directors. The responsibilities of the BSR shall include, but not be limited to:</b>  <b>a) implementing procedures for the approval and withdrawal of standards as American National Standards and adjudicating questions or conflicts that develop in the standards approval procedures;</b>  <b>b) as appropriate, administratively approving standards that (i) have been submitted by accredited standards developers that have certified compliance with ANSI approved procedures and (ii) have no unresolved objections thereto; and</b>  <b>c) determining whether standards with unresolved objections on record that are submitted to the Institute for approval or withdrawal as American National Standards meet the requirements of the Institute, and acting on all requests for approval, reaffirmation, revision and withdrawal of American National Standards.</b></p> <p><b>The BSR shall not be responsible for, and these Procedures shall not govern, the approval, revision, reaffirmation, or withdrawal of an American National Standard that has been approved by an Audited Designator.</b></p>	<p><b>Operating Procedures of the ANSI Board of Standards Review</b></p> <p><b>1 Responsibilities and Functions</b></p> <p>[The ANSI Board of Standards Review (BSR) shall have the exclusive authority to render decisions with regard to issues it is charged to oversee, subject only to any possible further appeal pursuant to the applicable appeals procedures.]</p> <p>Except in the case of ANSI Audited Designators, the ANSI Board of Standards Review (BSR), a Program Oversight Committee, shall be responsible for the approval and withdrawal of American National Standards, and for such other duties that may be delegated to it by the Board. The functions of the BSR shall include, but not be limited to, determining whether standards submitted to ANSI for approval or withdrawal as American National Standards meet the requirements of the ANSI Essential Requirements: Due process requirements for American National Standards (Essential Requirements) and acting on requests for approval, reaffirmation, revision and withdrawal of American National Standards, including appeals of such decisions.]</p> <p><b>Deleted: Authority and r</b></p> <p><b>Commented [AC2]:</b> The text shown is excerpted from the 2020 ANSI By-Laws.</p> <p><b>Deleted:</b> The BSR shall be responsible for approval and withdrawal of American National Standards and for other responsibilities that may be delegated to it by the Board of Directors,</p> <p><b>Deleted:</b> The responsibilities of the BSR shall include, but not be limited to:¶      ¶ implementing procedures for the approval and withdrawal of standards as American National Standards and adjudicating questions or conflicts that develop in the standards approval procedures;¶      ¶ as appropriate, administratively approving standards that (i) have been submitted by accredited standards developers that have certified compliance with ANSI- approved accredited procedures and (ii) have no unresolved objections thereto; and¶      ¶ determining whether standards with unresolved objections on record that are submitted to the Institute for approval or withdrawal as American National Standards meet the requirements of the Institute, and acting on all requests for approval, reaffirmation, revision and withdrawal of American National Standards.¶</p> <p>¶ The BSR shall not be responsible for, and these Procedures shall not govern, the approval, revision, reaffirmation, or withdrawal of an American National Standard that has been approved by an Audited Designator.</p>	<p>Similar to GTW's Comment on <b>Proposed ExSC Procedures ANSI Essential Requirements</b> should be <i>italicized</i> since it is the name of a <b>Publication</b> and for consistency with other ANSI references to the ANSI ER.</p> <p>To avoid confusion about which <b>"Board"</b> is being referenced, suggest the end of the 1<sup>st</sup> sentence of the 2<sup>nd</sup> paragraph read: "... <b>delegated to it by the ANSI Board of Directors.</b>"</p>

<p>The functions, duties, and responsibilities of the BSR shall be further defined in these operating procedures.</p>	<p><b>Commented [AC3]:</b> Although shown as new text, some of this text existed in another form in the prior edition of these procedures. In addition, some of the text shown is excerpted from the 2020 By-Laws.</p> <p><b>Deleted:</b> The functions, duties, and responsibilities of the BSR shall be further defined in these operating procedures.¶</p>	
<p><b>2 Membership and officers</b> <b>2.1 Membership</b></p> <p>Membership in the Institute shall be a pre-requisite for participation on the BSR unless the Board of Directors specifically permits an interested party to participate without becoming a member of the Institute. Each such appointment shall be for a term of three full years with no person serving more than three full consecutive terms. A member of the BSR may serve beyond the normal three-term limitation if the member is serving as chair or vice-chair, provided the term of chair or vice-chair is contiguous with the nine-year tenure as a member. The total maximum length of service under such circumstances would be twelve years. All membership terms shall commence on January 1.</p> <p>The BSR shall be composed of not less than nine nor more than eighteen members. Vacancies in membership shall be filled for the remainder of the term by the chair, with the approval of the Board of Directors.</p> <p>The members of the BSR shall serve as individuals, not as members or representatives of any organization. The principal qualifications for membership shall be competence and the ability to render impartial judgment in the approval or withdrawal of American National Standards, based on consideration of evidence of meeting criteria set forth in these procedures.</p>	<p><b>2 Membership Rights</b></p> <p>The requirements for membership and the officers of the BSR are provided in the <i>ANSI By-Laws</i>. The members of the BSR shall, in that capacity, act as fiduciaries to ANSI and shall act in the best interest of ANSI. The members of the BSR shall also abide by ANSI's Conflict of Interest and Related Party Transaction Policy, as well as the ANSI Code of Conduct. The BSR shall operate in accordance with Operating Procedures approved by the Executive Committee of the ANSI Board of Directors ("Board Executive Committee").</p> <p>Except as otherwise delegated by the ANSI Board of Directors, members of the BSR shall be nominated by BSR voting members and appointed by the Chair of the ANSI Board of Directors, with the approval of the ANSI Board of Directors. In making these appointments, the Chair of the Board shall endeavor to ensure representation of all membership categories concerned with the activities of the BSR.</p> <p>The BSR shall strive for a membership of between nine and eighteen members. Membership in ANSI by the entity with which the Member is affiliated shall be a prerequisite for participation in the BSR unless the Board Executive Committee specifically permits otherwise. Membership in the BSR, however, shall be by the individual, not the entity with which such person is affiliated.</p> <p>Except as may be extended by the Board, each new member appointment shall be for a term of three full years with no person serving more than three full consecutive terms.</p> <p>A staff member of ANSI designated by the President shall serve as a non-voting secretary of the BSR.</p> <p><b>Deleted: and Officers</b></p> <p><b>Deleted: 2.1 Membership¶</b></p> <p><b>Deleted: A staff member of ANSI designated by the President¶</b></p> <p><b>Deleted:</b> The BSR shall be composed of not less than nine nor more than eighteen members. Vacancies in membership shall be filled for the remainder of the term by the chair, with the approval of the Board of Directors.¶</p> <p>¶</p> <p>The members of the BSR shall serve as individuals, not as members or representatives of any organization.</p>	<p>After deletion of the text from the current 2017 BSR Operating Procedures that is indicated in ExSC 129_2019 to be <b>DELETED, a significant amount of the current Section 2.1 remains but is not shown as remaining in ExSC 129_2019.</b></p> <p>If the Rev Control Comment to "Delete 2.1 Membership" meant more than just the title text but the <b>entirety</b> of Section 2.1 then all text in that Section would need to appear in the Deleted Bubble. This could <b>not</b> be the intent since then the Bubble stating <b>Deletion</b> of the text: "The BSR shall be ..." would <b>not</b> have been necessary.</p> <p>The Rev Control Bubble that states <b>DELETION</b> of the text "A staff member ANSI designated by the President" <b>makes no sense</b> since that text <b>does not appear</b> in this Section in the Current 2017 BSR Operating Procedures.</p> <p>But that text <b>DOES Appear</b> as part of the <b>NEW text</b> inserted in Section 2 "Membership Rights" in ExSC_129_2019.</p> <p>The Proposed Procedures should be modified to add the word "<b>BALANCE</b>" as a requirement for the membership of the BSR to <b>supplement</b> the language from the By-Laws about "endeavor[ing] to ensure representation of <b>all membership categories</b> concerned with the activities of the Program Oversight Committee."</p> <p><b>GTW submits all membership categories are interested in ensuring that the ANSI Essential Requirements have been followed before a standard can be designated an ANS.</b> However, in looking at the current composition of the BSR on the ANSI Web site, <b>all 13 BSR members are sponsored by ASDs</b>, which are in the OMF Category, including NIST which was accredited by ANSI as an ASD in October 1984.</p> <p>This section also has the same "in-bred" nominations process as shown in the ExSC Proposed Procedures and that should be changed in all 3 sets of Procedures. They all need <b>BALANCE</b> and a more Open Process to get nominated to the POC. There should be a <b>BALANCE of all interest categories</b> as the DOJ</p>

		<p>has consistently advised ANSI. And as set forth in OMB A-119 and used in the SDOAA.</p>
<p><b>2.2 Member Participation</b> Each member of the BSR shall exercise his or her voting responsibility within such prescribed time limits as may be established. When a member fails repeatedly to return ballots before the close of the ballot period, or to attend meetings, the secretary shall place the matter before the BSR. The BSR may request the chairman of the Board of Directors to remove such an individual from his or her assignment.</p>	<p><b>2.2 Member Participation</b> Each member of the BSR shall exercise his or her voting responsibility within such prescribed time limits as may be established. When a member fails repeatedly to return ballots before the close of the ballot period, or to attend meetings, the secretary shall place the matter before the BSR. The BSR may request the Chair of the ANSI Board of Directors to remove such an individual from his or her assignment.</p> <p><b>Deleted: p</b></p>	<p>Editorial</p>
<p><b>2.3 Officers</b> The officers of the BSR shall be a chair and vice-chair who shall each serve for a term of one calendar year or until a successor takes office. Each officer shall be eligible for reelection, but he/she may serve not more than three consecutive terms.</p> <p>In the event of the absence of the chairperson, the vice-chairperson shall act in his or her stead. A non-voting secretary shall be appointed by the President of ANSI.</p> <p>The chairperson of the BSR shall appoint before September 1 of each year a nominating committee of not less than three persons from among the members of the Board. This committee shall nominate, on or before October 1 of the same year, candidates for the following year to serve as chair and vice-chair of the Board. On or about October 1 of each year, the secretary of the BSR shall forward to the members of the Board the report of the nominating committee. Other nominations may be made to ANSI by petition, signed by at least five members of the Board, prior to November 1 of each year. By November 15, the secretary of the BSR shall mail to each member of the Board, a ballot containing the names of all nominees, with those submitted by the nominating committee being so indicated. Those receiving a plurality of the votes cast by December 1 shall be declared elected.</p>	<p><b>2.3 Officers</b> The officers of the BSR shall be a Chair and Vice-Chair. The Chair of the ANSI Board of Directors shall appoint the Chair of the BSR subject to approval by the ANSI Board of Directors. The BSR Chair and Vice Chair shall serve for a term of two years and shall be eligible to serve for a maximum of two full consecutive two-year terms. Except as may be extended by the Board, each appointment of a member to the ExSC shall be for a term of three full years with no person serving more than three full consecutive terms.</p> <p>In the event of the absence of the Chair, the Vice-Chair shall act in their stead.</p> <p><b>Deleted:</b> The officers of the BSR shall be a chair and vice-chair who shall each serve for a term of one calendar year or until a successor takes office. Each officer shall be eligible for reelection, but he/she may serve not more than three consecutive terms.</p> <p><b>Deleted:</b> c</p> <p><b>Deleted:</b> person</p> <p><b>Deleted:</b> v</p> <p><b>Deleted:</b> c</p> <p><b>Deleted:</b> person</p> <p><b>Deleted:</b> his or her</p> <p><b>2.4 Nominations and Elections</b></p> <p>Recommendations for BSR membership shall be open to any reasonable source. Recommendations may be requested from appropriate ANSI committees, forums and advisory groups. All recommendations shall be referred to the BSR Nominating Committee for consideration.</p> <p>The Chair of the BSR shall appoint, before February 1 of each year, a Nominating Committee of not less than three (3) members from among the members of the BSR to serve until December 31. By majority vote, on or before September 15 of each year, this committee shall nominate the following:</p> <p>a) Candidates to serve as Chair and Vice-Chair of the BSR if the current Chair or Vice Chair term is due to expire, and</p> <p>b) Members of the BSR (to fill vacancies and expired terms)</p> <p>By October 1 of each year, the Secretary of the BSR shall forward to the members of the BSR the report of the Nominating Committee. Other nominations may be made to the Institute by petition, signed by at least five (5) members of the BSR, prior to September 1 of each year. Thereafter, the Secretary of the BSR shall mail to each member of the BSR a ballot containing the names of all nominees, those submitted by the Nominating Committee being so indicated. All ballots returned to the Institute by the closing date, shall be counted, and the names of the nominees receiving a plurality of the votes cast shall be submitted to the Board Executive Committee for final appointment.</p> <p><b>Deleted:</b> ;</p>	<p>This proposed revision to Section 2.3 of the BSR Operating Procedures makes <b>no sense</b> at all.</p> <p>Why are appointments of members of the ExSC mentioned in the BSR Procedures?</p> <p>Text that is marked for <b>DELETION</b> in the Rev Control Bubble stating <b>DELETED</b>: "The officers of the BSR shall be a chair and vice-chair ..." is <b>NOT</b> shown as deleted in <b>ExSC_129_2019</b> nor <b>underscored as NEW TEXT</b>, except the Capital letters of "C", "V", and "C" in the Officer titles.</p> <p>And text in the <b>Current Section 2.3</b> about a <b>non-voting secretary</b> and the nominations process is <b>not</b> stated as <b>DELETED TEXT</b> but does not appear in the <b>Proposed Section 2.3</b>.</p> <p>The <b>Nominations text</b> from <b>Current Section 2.3</b> should be shown as <b>deleted</b> since a <b>new Section 2.4</b> dealing with <b>Nominations IS</b> being proposed.</p> <p><b>New Section 2.4</b> is <b>NOT</b> in alignment with the <b>ANSI 2020 By-Laws</b> since <b>final appointment</b> of members of the BSR is <b>NOT done</b> by the Board Executive Committee but in accordance with <b>By-Laws Section 4.02.1</b> is done by the <b>Chair of the Board with approval by the Board</b>.</p> <p>And the text about <b>Nominations for Membership coming from any reasonable source</b> (just like the <b>ExSC Proposed Procedures</b>) is in conflict with <b>Section 2</b> which states nominations can <b>only come from voting BSR Members</b>.</p> <p>The <b>DELETION</b> of the semicolon in Rev Control <b>does not make sense</b> since there is no such semicolon in the Current BSR Operating Procedures to be deleted.</p>

<p><b>3 Meetings</b> The <b>Chairperson</b> of the BSR shall call meetings as is necessary to conduct the business of the <b>board</b>, including hearings.</p>	<p><b>3 Meetings</b> The <b>Chair</b> of the BSR shall call meetings as is necessary to conduct the business of the <b>BSR</b>, including hearings.</p> <div style="border: 1px solid black; padding: 5px;"> <p><del>Deleted: f</del></p> <p><del>Deleted: c</del></p> <p><del>Deleted: perso</del></p> <p><del>Deleted: n</del></p> <p><del>Deleted: board</del></p> </div>	<p>Editorial</p>
<p><b>4 Approval and withdrawal of American National Standards</b> Approval of standards as American National Standards is delegated to the BSR by the ANSI Board of Directors. The criteria for approval and withdrawal of American National Standards are provided in the <i>ANSI Essential Requirements: Due process requirements for American National Standards (ANSI Essential Requirements)</i>.</p> <p>Notice of the BSR's final action on all standards shall be published in <i>Standards Action</i>.</p>	<p><b>4 Approval and withdrawal of American National Standards</b> Approval of standards as American National Standards is delegated to the BSR by the ANSI Board of Directors. The criteria for approval and withdrawal of American National Standards are provided in the <i>ANSI Essential Requirements: Due process requirements for American National Standards (ANSI Essential Requirements)</i>.</p> <p>Notice of the BSR's final action on all standards shall be published in <i>Standards Action</i>.</p>	
<p><b>5 Voting requirements</b> <b>5.1 Actions on the Approval or Withdrawal of American National Standards</b> Except as otherwise provided for in these procedures, actions on the approval or withdrawal of American National Standards shall require an affirmative vote by letter ballot or at a meeting of at least two-thirds of the BSR members voting or present, after first excluding both abstentions and negative votes submitted via letter ballot without any explanatory comments provided that the number of BSR members voting, excluding abstentions, is at least a majority of the Board. An abstention shall be required when a member is associated with a standard in such a way as to introduce the possibility of conflict of interest. Otherwise, all BSR members are required to return affirmative or negative ballots.</p>	<p><b>5 Voting requirements</b> <b>5.1 Actions on the Approval or Withdrawal of American National Standards</b> Except as otherwise provided for in these procedures, actions on the approval or withdrawal of American National Standards shall require an affirmative vote by letter ballot or at a meeting of at least two-thirds of the BSR members voting or present, after first excluding both abstentions and negative votes submitted via letter ballot without any explanatory comments provided that the number of BSR members voting, excluding abstentions, is at least a majority of the Board. An abstention shall be required when a member is associated with a standard in such a way as to introduce the possibility of conflict of interest. Otherwise, all BSR members are required to return affirmative or negative ballots.</p>	
<p><b>5.2 Negative Votes and Recirculation</b> Negative votes submitted via letter ballot shall be accompanied by explanatory comments. Any negative vote that is not accompanied by explanatory comments shall be treated in the same manner as an abstention.</p> <p>Prior to a letter ballot closing, all negative votes with explanatory comments shall either be (a) circulated to the BSR via letter ballot (the "recirculation ballot") or (b) discussed at the next regularly scheduled BSR meeting if such meeting is within two weeks of the date on which the recirculation ballot would have been distributed. The purpose of the recirculation ballot or the discussion at the meeting is to give the BSR members an opportunity to review the comments accompanying any negative votes and change their vote if they deem it appropriate before the letter ballot is closed.</p> <p>If the final result of a recirculation ballot would be the disapproval of a standard, the ballot will remain open through the next BSR meeting at which time a discussion of the negative votes with comments shall be held. BSR members present at the meeting shall cast the final vote.</p>	<p><b>5.2 Negative Votes and Recirculation</b> Negative votes submitted via letter ballot shall be accompanied by explanatory comments. Any negative vote that is not accompanied by explanatory comments shall be treated in the same manner as an abstention.</p> <p>Prior to a letter ballot closing, all negative votes with explanatory comments shall either be (a) circulated to the BSR via letter ballot (the "recirculation ballot") or (b) discussed at the next regularly scheduled BSR meeting if such meeting is within two weeks of the date on which the recirculation ballot would have been distributed. The purpose of the recirculation ballot or the discussion at the meeting is to give the BSR members an opportunity to review the comments accompanying any negative votes and change their vote if they deem it appropriate before the letter ballot is closed.</p> <p>If the final result of a recirculation ballot would be the disapproval of a standard, the ballot will remain open through the next BSR meeting at which time a discussion of the negative votes with comments shall be held. BSR members present at the meeting shall cast the final vote.</p>	

<p><b>5.3 Conflict of Interest</b>  <b>A</b> member of the BSR 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 BSR activities. A conflict of interest can arise from involvement by a BSR member with the subject matter of a dispute under consideration by the BSR or from any relationship between the BSR member and a party to an action before the BSR, whether past or present, that reasonably raises a question of a BSR member's impartiality.</p> <p>Typically a potential conflict of interest arises when a member of the BSR participated in the development of the standard under review or that person is employed by, or a member of the governing body of, the relevant standards developer. Similarly, a conflict of interest usually does not exist by virtue of the fact that a member of the BSR participated in the development of other standards by the same standards developer or is a member of that standards developer.</p> <p>If a materially affected party (such as a standards developer or a possible appellant) asserts that it believes that a member of the BSR has a conflict of interest, that materially affected party is required to state the reason(s) for its belief. That information shall then be forwarded to the member of the BSR identified as having a possible conflict for that person's response. If that committee member disagrees with the assertion, then the Chair of the BSR shall make a final determination as to whether a conflict of interest exists.</p> <p>Members of the BSR who are disqualified from a particular discussion shall not participate in the deliberations or decisions.</p>	<p><b>5.3 Conflict of Interest</b>  In addition to complying with ANSI's Conflict of Interest Policy, a member of the BSR 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 BSR activities. A conflict of interest can arise from involvement by a BSR member with the subject matter of a dispute under consideration by the BSR or from any relationship between the BSR member and a party to an action before the BSR, whether past or present, that reasonably raises a question of a BSR member's impartiality.</p> <p>Typically a potential conflict of interest arises when a member of the BSR participated in the development of the standard under review or that person is employed by, or a member of the governing body of, the relevant standards developer. Similarly, a conflict of interest usually does not exist by virtue of the fact that a member of the BSR participated in the development of other standards by the same standards developer or is a member of that standards developer.</p> <p>If a materially affected party (such as a standards developer or a possible appellant) asserts that it believes that a member of the BSR has a conflict of interest, that materially affected party is required to state the reason(s) for its belief. That information shall then be forwarded to the member of the BSR identified as having a possible conflict for that person's response. If that committee member disagrees with the assertion, then the Chair of the BSR shall make a final determination as to whether a conflict of interest exists.</p> <p>Members of the BSR who are disqualified from a particular discussion shall not participate in the deliberations or decisions.</p> <div style="border: 1px solid black; padding: 2px; width: fit-content;">Deleted: A</div>	
<p><b>5.4 Request to Discuss a Letter Ballot at a Meeting</b>  Any BSR member may request that a letter ballot be discussed at the next Board meeting provided that he or she casts a ballot and plans to attend and participate in the discussion. A request to discuss a letter ballot at a meeting shall not cause the letter ballot to remain open unless the letter ballot satisfies the relevant criteria in section 5.2 above.</p>	<p><b>5.4 Request to Discuss a Letter Ballot at a Meeting</b>  Any BSR member may request that a letter ballot be discussed at the next Board meeting provided that he or she casts a ballot and plans to attend and participate in the discussion. A request to discuss a letter ballot at a meeting shall not cause the letter ballot to remain open unless the letter ballot satisfies the relevant criteria in section 5.2 above.</p>	
<p><b>5.5 Actions of the BSR Requiring Less Than a 2/3 Vote and Quorum</b>  Unless otherwise specified, actions of the BSR that do not involve the approval or withdrawal of American National Standards shall require an affirmative vote of:</p> <ul style="list-style-type: none"> <li>• a majority of those voting at a meeting at which a quorum is present; or</li> <li>• a majority of those voting by letter ballot, excluding not returned letter ballots, provided that a majority of the BSR members return affirmative or negative ballots.</li> </ul> <p>A quorum at a meeting shall consist of the presence of a majority of the members.</p>	<p><b>5.5 Actions of the BSR Requiring Less Than a 2/3 Vote and Quorum</b>  Unless otherwise specified, actions of the BSR that do not involve the approval or withdrawal of American National Standards shall require an affirmative vote of:</p> <ul style="list-style-type: none"> <li>• a majority of those voting at a meeting at which a quorum is present; or</li> <li>• a majority of those voting by letter ballot, excluding not returned letter ballots, provided that a majority of the BSR-members return affirmative or negative ballots.</li> </ul> <p>A quorum at a meeting shall consist of the presence of a majority of the members.</p>	
<p><b>6 Public Review Listing in Standards Action and Formal Submittal Processing</b>  Proposals for new American National Standards and proposals to revise, reaffirm, or withdraw approval of existing American National Standards shall be transmitted to the secretary of the BSR for listing in <i>Standards Action</i> in order to provide an opportunity for public comment.</p>	<p><b>6 Public Review Listing in Standards Action and Formal Submittal Processing</b>  Proposals for new American National Standards and proposals to revise, reaffirm, or withdraw approval of existing American National Standards shall be transmitted to the secretary of the BSR for listing in <i>Standards Action</i> in order to provide an opportunity for public comment.</p> <p>Such a listing may be requested at any stage in the development of the proposal at the option of the standards developer and may be concurrent with the final balloting.</p>	

<p>Such a listing may be requested at any stage in the development of the proposal at the option of the standards developer and may be concurrent with the final balloting.</p>		
<p><b>6.1 Staff responsibilities: public review announcements</b> The secretary of the BSR shall, within twenty (20) working days of receipt of the request, process a BSR-8 submittal to initiate a public comment period in <i>Standards Action</i>.</p>	<p><b>6.1 Staff responsibilities: public review announcements</b> The secretary of the BSR shall, within twenty (20) working days of receipt of the request, process a BSR-8 submittal to initiate a public comment period in <i>Standards Action</i>.</p>	
<p><b>6.2 Staff responsibilities: processing formal standard submittals</b> When a proposal is submitted to the secretary of the BSR for approval, the secretary shall complete the following steps: a) determine whether objections have been filed and/or reported in accordance with the submitter's accredited procedures; b) if no objections to the standard have been filed and the developer has submitted the requisite certification, the BSR may administratively approve the standard and so notify the accredited developer within 10 business days; or c) if outstanding objections are reported or on file, within 20 working days after receipt of the submittal, determine whether sufficient evidence of compliance with clause 4 has been provided for BSR consideration and decision; d) if evidence of compliance with clause 4 is incomplete, request that the submitter provide the necessary information as promptly as possible.</p>	<p><b>6.2 Staff responsibilities: processing formal standard submittals</b> When a proposal is submitted to the secretary of the BSR for approval, the secretary shall complete the following steps: a) determine whether objections have been filed and/or reported in accordance with the submitter's accredited procedures; b) if no objections to the standard have been filed and the developer has submitted the requisite certification, the BSR may administratively approve the standard and so notify the accredited developer within 10 business days; or c) if outstanding objections are reported or on file, within 20 working days after receipt of the submittal, determine whether sufficient evidence of compliance with clause 4 has been provided for BSR consideration and decision; d) if evidence of compliance with clause 4 is incomplete, request that the submitter provide the necessary information as promptly as possible.</p>	
<p><b>6.3 Notification of approval</b> When a proposal is approved by the BSR, the secretary of the BSR shall notify: a) the submitter; and b) those (if any) on record at ANSI who have objected to approval by ANSI and who have completed the appeals process at the developer level.  Notice of action on approval shall also be published in <i>Standards Action</i> and the standard shall be listed in the <i>Catalog of American National Standards</i>.</p>	<p><b>6.3 Notification of approval</b> When a proposal is approved by the BSR, the secretary of the BSR shall notify: a) the submitter; and b) those (if any) on record at ANSI who have objected to approval by ANSI and who have completed the appeals process at the developer level.  Notice of action on approval shall also be published in <i>Standards Action</i> and the standard shall be listed in the <i>Catalog of American National Standards</i>.</p>	
<p><b>6.4 Notification of denial of approval</b> When approval of a proposal is denied by the BSR, the secretary of the BSR shall notify: a) the submitter; and b) those (if any) on record at ANSI who have objected to approval by ANSI and who have completed the appeals process at the developer level.  Notice that the proposal was not approved shall be published in <i>Standards Action</i>.</p>	<p><b>6.4 Notification of denial of approval</b> When approval of a proposal is denied by the BSR, the secretary of the BSR shall notify: a) the submitter; and b) those (if any) on record at ANSI who have objected to approval by ANSI and who have completed the appeals process at the developer level.  Notice that the proposal was not approved shall be published in <i>Standards Action</i>.</p>	
<p><b>7 Appeal of action on American National Standards</b> <b>7.1 Right to appeal</b> All directly and materially affected persons<sup>1</sup> who completed the appeals process at the standards developer level and whose position is included in the BSR documentation may appeal to the BSR a prior BSR decision regarding the approval or withdrawal of an American National Standard. The appeal shall be based on procedural criteria (see clause 4). The BSR will not render decisions on the relative merits of technical matters, but it shall consider whether due process was afforded technical concerns. The burden of persuasion shall rest with the appellant.  The BSR may also hear appeals remanded or referred to the BSR by</p>	<p><b>7 Appeal of action on American National Standards</b> <b>7.1 Right to appeal</b> All directly and materially affected persons<sup>1</sup> who completed the appeals process at the standards developer level and whose position is included in the BSR documentation may appeal to the BSR a prior BSR decision regarding the approval or withdrawal of an American National Standard. The appeal shall be based on procedural criteria (see clause 4). The BSR will not render decisions on the relative merits of technical matters, but it shall consider whether due process was afforded technical concerns. The burden of persuasion shall rest with the appellant.  The BSR may also hear appeals remanded or referred to the BSR by the ANSI Appeals Board. Pending a decision by the BSR, the original decision of the BSR shall remain in effect unless the BSR determines otherwise. No party to an appeal may communicate with any unrecused member of the ANSI BSR on the subject of the appeal while the matter is pending. All communications shall be directed to the secretary of the ANSI BSR.  <sup>1</sup> "Persons" includes organizations, companies, government agencies, individuals etc.  <b>Commented [AC4]:</b> Revisions approved by the ExSC to be submitted to the NPC in November 2019, not displayed in this document.</p>	<p>There may need to be changes to the text of the <b>Proposed Procedures</b> in this version since the item submitted to the NPC for its November 8, 2019 Meeting may not be in alignment with the <b>ANSI 2020 By-Laws</b>. <b>And the NPC did not vote to approve those changes</b> at its November 2019 Meeting. <b>After a long discussion the NPC Chair requested NPC members to submit their concerns to the ExSC but did not specify a due date.</b></p>

<p>the ANSI Appeals Board. Pending a decision by the BSR, the original decision of the BSR shall remain in effect unless the BSR determines otherwise. No party to an appeal may communicate with any unrecused member of the ANSI BSR on the subject of the appeal while the matter is pending. All communications shall be directed to the secretary of the ANSI BSR.</p> <hr/> <p><sup>1</sup> "Persons" includes organizations, companies, government agencies, individuals etc.</p>		
<p><b>7.2 Appeal</b>  All appeals shall be made in writing. Appeals and the required filing fee shall be directed to the secretary of the ANSI BSR on or before midnight Eastern time of the due date. The filing fee may be waived or reduced only upon sufficient evidence of hardship.</p> <p>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:</p> <p>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 directly supports appellant's position and upon which appellant relies; and  f) the specific relief sought by appellant from the BSR.</p> <p>The brief appeal statement (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger. The secretary of the BSR shall have discretion to extend this limit for good cause shown.</p> <p>Unless otherwise instructed by the secretary of the BSR, the appeal shall be sent via electronic means (with one complete hard copy mailed to ANSI) within fifteen (15) working days following the date of the 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 BSR, within the fifteen (15) working day deadline or the appellant shall forfeit the right to appeal. No supplemental filing prior to the forthcoming hearing shall be permitted without a showing of good cause.</p>	<p><b>7.2 Appeal</b>  All appeals shall be made in writing. Appeals and the required filing fee shall be directed to the secretary of the ANSI BSR on or before midnight Eastern time of the due date. The filing fee may be waived or reduced only upon sufficient evidence of hardship.</p> <p>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:</p> <p>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 directly supports appellant's position and upon which appellant relies; and  f) the specific relief sought by appellant from the BSR.</p> <p>The brief appeal statement (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger. The secretary of the BSR shall have discretion to extend this limit for good cause shown.</p> <p>Unless otherwise instructed by the secretary of the BSR, the appeal shall be sent via electronic means (with one complete hard copy mailed to ANSI) within fifteen (15) working days following the date of the 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 BSR, within the fifteen (15) working day deadline or the appellant shall forfeit the right to appeal. No supplemental filing prior to the forthcoming hearing shall be permitted without a showing of good cause.</p>	

<p><b>7.3 Response</b> The appeal shall be distributed by the secretary of the BSR to the potential respondent (the party who must respond to the appeal) to allow them the opportunity to respond, if they so desire. Thereafter, this party shall have fifteen (15) working days to submit their response to the appeal on or before midnight Eastern time of the due date.</p> <p>The response shall include:</p> <p>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; and</p> <p>b) relevant evidence that directly supports respondent's position and upon which respondent relies.</p> <p>The brief response (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger. The secretary of the BSR shall have discretion to extend this limit for good cause shown.</p> <p>The response shall be distributed by the secretary of the BSR to BSR 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.</p> <p>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 noted. Such request must be directed to the secretary of the BSR 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 BSR, or, if the Chair is unavailable, the Vice Chair of the BSR or the secretary of the BSR.</p>	<p><b>7.3 Response</b> The appeal shall be distributed by the secretary of the BSR to the potential respondent (the party who must respond to the appeal) to allow them the opportunity to respond, if they so desire. Thereafter, this party shall have fifteen (15) working days to submit their response to the appeal on or before midnight Eastern time of the due date.</p> <p>The response shall include:</p> <p>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; and</p> <p>b) relevant evidence that directly supports respondent's position and upon which respondent relies.</p> <p>The brief response (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger. The secretary of the BSR shall have discretion to extend this limit for good cause shown.</p> <p>The response shall be distributed by the secretary of the BSR to BSR 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.</p> <p>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 noted. Such request must be directed to the secretary of the BSR 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 BSR, or, if the Chair is unavailable, the Vice Chair of the BSR or the secretary of the BSR.</p>	
<p><b>7.4 Letters of support by non-parties to the appeal</b> A person or organization that is not a party to the appeal may submit a letter of support for a position taken by the appellant or respondent to the appeal by contacting that party and requesting that such a letter be included in that party's formal appeals brief or response. 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, and may address procedural issues only. Letters not meeting the requirements of this section will not be accepted without the approval of the BSR Chair or Vice Chair. Submitters 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.</p>	<p><b>7.4 Letters of support by non-parties to the appeal</b> A person or organization that is not a party to the appeal may submit a letter of support for a position taken by the appellant or respondent to the appeal by contacting that party and requesting that such a letter be included in that party's formal appeals brief or response. 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, and may address procedural issues only. Letters not meeting the requirements of this section will not be accepted without the approval of the BSR Chair or Vice Chair. Submitters 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.</p>	<p><b>Non-Parties need NOTICE of an Appeal, ACCESS to Appeals Briefs and Responses, and a TIMELY PROCESS to file a Letter of Support (LoS) in time for the Hearing. Without these changes the right to file a LoS is a hollow and empty right.</b></p>

<p><b>7.5 Hearing</b> The secretary of the BSR shall establish a panel consisting of at least five BSR members to hear the appeal, subject to applicable conflict of interest procedures. If five members of the BSR are not available to serve on the panel, the Chair or the Vice Chair of the BSR may appoint one or more additional panel members who shall be persons knowledgeable about the <i>ANSI Essential Requirements: Due process requirements for American National Standards (ANSI Essential Requirements)</i> and the standards development process. Such appointment(s) of non-BSR members shall be with the concurrence of all parties to the appeal. A majority of the members of the panel shall be members of the BSR.</p> <p>A hearing date for an appeal shall be set by the secretary of the BSR 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. BSR panel members shall receive copies of the appeals record at least fifteen (15) working days prior to the date of the appeals hearing. The name and affiliation of all speakers and any observers must be provided to the secretary of the BSR in advance of the hearing.</p> <p>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.</p> <p>Should any party at interest not be present at the hearing, the decision of the BSR panel shall be based on the presentations made by the parties that are present at the hearing in addition to the written submissions on record.</p>	<p><b>7.5 Hearing</b> The secretary of the BSR shall establish a panel consisting of at least five BSR members to hear the appeal, subject to applicable conflict of interest procedures. If five members of the BSR are not available to serve on the panel, the Chair or the Vice Chair of the BSR may appoint one or more additional panel members who shall be persons knowledgeable about the <i>ANSI Essential Requirements: Due process requirements for American National Standards (ANSI Essential Requirements)</i> and the standards development process. Such appointment(s) of non-BSR members shall be with the concurrence of all parties to the appeal. A majority of the members of the panel shall be members of the BSR.</p> <p>A hearing date for an appeal shall be set by the secretary of the BSR 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. BSR panel members shall receive copies of the appeals record at least fifteen (15) working days prior to the date of the appeals hearing. The name and affiliation of all speakers and any observers must be provided to the secretary of the BSR in advance of the hearing.</p> <p>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.</p> <p>Should any party at interest not be present at the hearing, the decision of the BSR panel shall be based on the presentations made by the parties that are present at the hearing in addition to the written submissions on record.</p>	
<p><b>7.6 Decision</b> Decisions of BSR panels shall require a majority vote of the panel, shall represent the decision of the BSR, and shall be provided to all BSR members for their information. Notice of a decision reached by the BSR appeals panel shall be sent by the secretary to the parties within fifteen (15) working days unless an extension is authorized by the Chair of the BSR, or, if the Chair is unavailable, by the Vice Chair of the BSR. The decision shall specify the outcome of the appeal, and shall be accompanied by an explanation of the reasons for such outcome, and the specific relief granted, if any. The outcome of the appeal shall be announced in <i>Standards Action</i>.</p>	<p><b>7.6 Decision</b> Decisions of BSR panels shall require a majority vote of the panel, shall represent the decision of the BSR, and shall be provided to all BSR members for their information. Notice of a decision reached by the BSR appeals panel shall be sent by the secretary to the parties within fifteen (15) working days unless an extension is authorized by the Chair of the BSR, or, if the Chair is unavailable, by the Vice Chair of the BSR. The decision shall specify the outcome of the appeal, and shall be accompanied by an explanation of the reasons for such outcome, and the specific relief granted, if any. The outcome of the appeal shall be announced in <i>Standards Action</i>.</p>	
<p><b>7.7 Accessibility of documentation and decisions</b> A copy of the record on appeal (<i>i.e.</i>, appeals-related documents submitted by the parties to the appeal for consideration by the BSR, including party-supporting letters) shall be made available to any directly and materially affected person upon request. The costs associated with providing such documents shall be borne by the person seeking them.</p>	<p><b>7.7 Accessibility of documentation and decisions</b> A copy of the record on appeal (<i>i.e.</i>, appeals-related documents submitted by the parties to the appeal for consideration by the BSR, including party-supporting letters) shall be made available to any directly and materially affected person upon request. The costs associated with providing such documents shall be borne by the person seeking them.</p>	

<p><b>7.8 Appeal of BSR actions</b>  In accordance with the <i>ANSI Appeals Board Operating Procedures</i>, an appeal from a final appeals decision of the BSR may be filed with the Appeals Board by the appellant or respondent to the BSR appeal at issue.</p>	<p><b>7.8 Appeal of BSR actions</b>  In accordance with the <i>ANSI Appeals Board Operating Procedures</i>, an appeal from a final appeals decision of the BSR may be filed with the Appeals Board by the appellant or respondent to the BSR appeal at issue.</p>	
<p><b>8 Informal settlement</b>  ANSI encourages settlement of disputes at any time if the settlement is consistent with the objectives of the <i>ANSI Essential Requirements</i>. Any settlement (to which the parties agree in writing) that is consistent with these procedures, or an agreement to withdraw the appeal, will terminate the appeal process. If the settlement leads to a substantive change in the standard, the change must be processed in accordance with the <i>ANSI Essential Requirements</i>.</p>	<p><b>8 Informal settlement</b>  ANSI encourages settlement of disputes at any time if the settlement is consistent with the objectives of the <i>ANSI Essential Requirements</i>. Any settlement (to which the parties agree in writing) that is consistent with these procedures, or an agreement to withdraw the appeal, will terminate the appeal process. If the settlement leads to a substantive change in the standard, the change must be processed in accordance with the <i>ANSI Essential Requirements</i>.</p>	
<p><b>9 Written report</b>  The BSR shall present a written report of its activities to the Board of Directors from time to time and at least once a year.</p>	<p><b>9 Written report</b>  The BSR shall present a written report of its activities to the Board of Directors from time to time and at least once a year.</p>	
<p><b>10 Amendments</b>  The <b>National Policy Committee (NPC)</b> may make changes to these operating procedures at any time after consultation with or upon recommendation of the BSR and the ExSC.</p>	<p><b>10 Amendments</b>  The <del>Board Executive Committee</del> may make changes to these operating procedures at any time after consultation with or upon recommendation of the BSR and the ExSC.</p> <p><del>Deleted: National Policy Committee (NPC)</del></p>	<p>The NPC no longer exists in the ANSI 2020 By-Laws so the deletion is appropriate.</p>

**GTW Associates Comments on Program Oversight Committee's ("POC") Proposed Procedures to align with new ANSI 2020 By-Laws. Comments due Nov 11.**

**2020 By-Laws Excerpts**

**ARTICLE IV  
Committees of ANSI**

**Section 4.01 Committees of ANSI.** As described in this Article IV, there are established within ANSI, **Program Oversight Committees** and International Relations Committees reporting to the Executive Committee, which shall discharge the responsibilities set forth in this Article. The **Board may create additional Program Oversight Committees**, International Relations Committees and other Committees of ANSI from time to time, and each such Committee shall report to the Executive Committee and discharge the responsibilities established by the Board.

**Section 4.01.1 Responsibilities of Committee Members Generally.** The members of any and all Committees of ANSI shall, in that capacity, **act as fiduciaries to ANSI** and shall act in the best interest of ANSI. **The members of all Committees of ANSI shall also abide by ANSI's Conflict of Interest and Related Party Transaction Policy, as well as, the ANSI Code of Conduct.** All Committees of ANSI shall operate in accordance with **Operating Procedures** approved by the Executive Committee.

**Section 4.02 ANSI Program Oversight Committees Generally.** Each **Program Oversight Committee** shall have the **exclusive authority** to render decisions with regard to issues arising in the ANSI program it is charged to oversee, subject only to any possible further appeal pursuant to the applicable appeals procedures.

**Section 4.02.1 Membership.** Except as otherwise delegated by the Board, **members of all ANSI Program Oversight Committees shall be appointed by the Chair of the Board** with the approval of the Board. **In making these appointments, the Chair of the Board shall endeavor to ensure representation of all membership categories concerned with the activities of the Program Oversight Committee.** Membership in ANSI by the entity with which the Member is affiliated shall be a prerequisite for participation in any **ANSI Program Oversight Committee** unless the Executive Committee specifically permits otherwise. **Membership in all ANSI Program Oversight Committees, however, shall be by the individual, not the entity with which such person is affiliated.** Except as may be extended by the Board, each such appointment shall be for a term of **three full years** with no person serving more than three full consecutive terms.

**Section 4.02.2 Committee Officers.** Except as otherwise delegated by the Board, for each **Program Oversight Committee**, the Board Chair shall appoint the Chair of the Committee subject to approval by the Board. **The Chair, and such other officers authorized by the Committee's operating procedures, shall serve for a term of two years and shall be eligible to serve for a maximum of two full consecutive two-year terms.** A staff member of ANSI designated by the President shall serve as a non-voting secretary of **each ANSI Program Oversight Committee.**

**Section 4.02.3 Subcommittees and Task Forces.** Each **ANSI Program Oversight Committee** may establish such additional subcommittees and task forces as are considered desirable to accomplish its mission. Subcommittees shall have a defined scope as approved by the relevant **Program Oversight Committee**, and shall be charged with making recommendations to such **Program Oversight Committees.**

....

***The Appeals Board formerly WAS a Program Oversight Committee ("POC") reporting to the National Policy Committee. But in the new 2020 By-Laws it is no long a POC, but instead is found in the Dispute Resolution Section of the By-Laws (even though POCs also have Appeals functions - a form of a dispute resolution).***

**ARTICLE XI  
Dispute Resolution**

**Section 11.01 Exhaustion of Remedies.** Each Member agrees that if a dispute shall arise between the Member and ANSI, the Member shall in the first instance be obligated to pursue and exhaust all administrative appeals available to it within ANSI.

**Section 11.02 The Appeals Board.** There is established **an ANSI Appeals Board**, that reports to the Executive Committee, 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 persons; (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. The Appeals Board's Operating Procedures shall be approved by the Executive Committee and its members shall abide by the ANSI Conflict of Interest Policy and Code of Conduct.

**APPEALS BOARD** (Text highlighted in **GREEN** in the Appeals Board Current Procedures is TEXT shown as DELETED in the Proposed Procedures, and either **EXPLICITLY** shown as DELETED in the Rev Control PDF that was in *Standards Action*, or from inspection of Current text with Proposed text.) Any **YELLOW** highlights are just for emphasis.

Appeals Board Current Procedures 2017	Proposed Revisions ExSC_130_2019	GTW Comments
<p><b>ANSI Appeals Board Operating Procedures</b></p> <p>1 Authority and scope</p> <p>Authority to establish an appeals mechanism rests with the Board of Directors of the American National Standards Institute (ANSI) as provided in the Constitution and By-laws of ANSI. The Board of Directors has determined that the Appeals Board shall be the final level of appeal within ANSI.</p> <p>The Appeals Board shall consider appeals by directly and materially affected persons<sup>1</sup> that have exhausted all other appeals available to them through ANSI and who believe they have been, or will be, adversely affected by a decision of ANSI, whether in the form of action or inaction, in the implementation of the following ANSI procedures:</p> <p>ANSI-PR-004 Appeals            CAP-PL-301 Accreditation Policy for ANSI Certificate Accreditation Program            CFP-PL-801 Accreditation Policy for ANSI-CFP Accreditation Program            GHG-PL-701 Accreditation Policy for ANSI Greenhouse Gas Validation / Verification Body Accreditation Program            PCAC-PL-501 Accreditation Policy for Personnel Certification Accreditation Program            PRO-PL-102 Manual of Operations for Accreditation of Product Certification Programs            PRO-PR-106 Identification of Non-Conformities and Implementation of Corrective and Preventive Actions by Accredited and Applicant CBS            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</p>	<p><b>ANSI Appeals Board Operating Procedures</b></p> <p><b>Commented [AC1]:</b> Additional revisions approved by the ExSC to be submitted to the NPC in November 2019, not displayed in this version.</p> <p>1 Authority and scope</p> <p>There is established an ANSI Appeals Board, that reports to the Executive Committee of the ANSI Board of Directors ("Executive Committee"), 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 persons; (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.</p> <p><b>Deleted:</b> Authority to establish an appeals mechanism rests with the Board of Directors of the American National Standards Institute (ANSI) as provided in the Constitution and By-laws of ANSI. The Board of Directors has determined that the Appeals Board shall be the final level of appeal within ANSI. ¶</p> <p><b>Deleted:</b> o</p> <p>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 Executive Committee").</p> <p><b>Deleted:</b> s</p> <p><b>Deleted:</b> Operating Procedures</p> <p><b>Deleted:</b> shall be approved by the Executive Committee and its members shall abide by the ANSI Conflict of Interest Policy and Code of Conduct.</p> <p>The Appeals Board shall consider appeals by directly and materially affected persons<sup>1</sup> that have exhausted all other appeals available to them through ANSI and who believe they 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:</p> <p>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</p> <p><b>Deleted:</b> ANSI-PR-004 Appeals</p> <p><b>Deleted:</b> CAP-PL-301 Accreditation Policy for ANSI Certificate Accreditation Program¶            CFP-PL-801 Accreditation Policy for ANSI-CFP Accreditation Program¶            GHG-PL-701 Accreditation Policy for ANSI Greenhouse Gas Validation / Verification Body Accreditation Program¶            PCAC-PL-501 Accreditation Policy for Personnel Certification Accreditation Program¶            PRO-PL-102 Manual of Operations for Accreditation of Product Certification Programs¶            PRO-PR-106 Identification of Non-Conformities and Implementation of Corrective and Preventive Actions by Accredited and Applicant CBS¶</p>	<p>There may need to be changes to the text of the <b>Proposed Procedures</b> in this version since the item submitted to the NPC for its November 8, 2019 Meeting may not be in alignment with the <b>ANSI 2020 By-Laws</b>. And the <b>NPC did not vote to approve those changes</b> at its November 2019 Meeting. <b>After a long discussion the NPC Chair requested NPC members to submit their concerns to the ExSC but did not specify a due date.</b></p> <p>The <b>Rev Control comment</b> about <b>deletion of an "o"</b> should be <b>deleted</b> since it appears to have applied to a spelling error in the word <b>"Directors"</b> that was in <b>NEW TEXT</b> and <b>underlined</b> in <b>Section 1</b>.</p> <p>The <b>Rev Control comments</b> about <b>deletion of an "s"</b>, and the words <b>"Operating Procedures"</b> and the text starting <b>"shall be approved ...."</b>, should be <b>deleted</b> since they appear to have applied to prior language that was <b>NEW TEXT</b> in the <b>Proposed Procedures</b> and <b>underlined</b> in <b>Section 1</b>, and <b>not</b> to text deleted from the Current version of the <b>Appeals Board Operating Procedures</b>.</p> <p>This Proposed set of Procedures has the same issue as the ExSC and BSR Procedures with <b>inconsistent use of QUOTE MARKS for Defined Terms</b>. Sometimes they are used and other times they are not. Though a matter of Style, there should be consistency within the same document and in this case across all three sets of Procedures.</p> <p><b>No RATIONALE was provided for why there is a deletion of the Conformity Assessment Procedures and the Conformity Assessment Section of the Current Procedures.</b></p>

<p><i>Operating Procedures of the ANSI Board of Standards Review (BSR)</i>  <i>Operating Procedures of the ANSI Executive Standards Council (ExSC)</i>  <i>Operating Procedures of the United States National Committee of the International Electrotechnical Commission (IEC)</i></p> <p>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.</p> <p><sup>1</sup>"Persons" includes organizations, companies, government agencies, individuals etc.</p>	<p><del>Deleted: Operating Procedures of the</del></p> <p>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.</p> <p><sup>1</sup>"Persons" includes organizations, companies, government agencies, individuals etc.</p>	<p>It does not appear such <b>DELETIONS</b> are for the stated purpose of <b>"ALIGNMENT WITH 2020 BY-LAWS."</b></p> <p>Editorial</p>
<p><b>2 Membership</b>  The Appeals Board shall have a membership of not less than nine nor more than eighteen members appointed by the <b>chairperson</b> of the Board of ANSI, with the approval of the Board of Directors. 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. 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.</p>	<p><b>2 Membership</b>  The Appeals Board shall have a membership of not less than nine nor more than eighteen members appointed by the <b>Chair</b> of the Board of ANSI, with the approval of the Board of Directors. 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.</p> <p><del>Deleted: chairperson</del></p>	<p>Editorial</p> <p>In order to have a <b>BALANCE</b> of interests and experience on the Appeals Board, the word <b>"Balanced"</b> should be added to the <b>Proposed Procedures</b> in order to reflect the intent of <b>"broadly reflect[ing] the various categories of ANSI membership, to the extent practicable."</b> This <b>IS</b> a problem at ANSI when one looks at the current composition of the Appeals Board on the ANSI Web site (October 2019) and you see <b>11 MEMBERS</b> and <b>only ONE</b> is from a CMF member. The rest, including NIST (which is an ASD accredited by ANSI since October 1984), are <b>sponsored by ASDs</b> which are OMF members. <b>Thus, 91% of the current Appeals Board members are from one category of membership. That is not balanced membership, that is DOMINANCE by one Interest Category. ANSI should be mindful of OMB A-119, SDOAA and DOJ Guidance on BALANCE in Decision-Making Groups.</b></p>
<p><b>3 Terms of membership</b>  Terms shall be staggered so that approximately one-third of the membership of the Appeals Board is appointed each year. <b>M</b>embers 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.</p>	<p><b>3 Terms of membership</b>  Terms shall be staggered so that approximately one-third of the membership of the Appeals Board is appointed each year. <del>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.</del></p> <p><del>Deleted: M</del></p>	<p>Editorial</p>
<p><b>4 Qualifications</b>  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.</p>	<p><b>4 Qualifications</b>  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.</p>	
<p><b>5 Vacancies</b>  A vacancy in the membership of the Appeals Board shall be filled for the remainder of the term by an individual appointed by the <b>chairperson</b> of the Board of Directors of ANSI.</p>	<p><b>5 Vacancies</b>  A vacancy in the membership of the Appeals Board shall be filled for the remainder of the term by an individual appointed by the <b>Chair</b> of the Board of Directors of ANSI.</p> <p><del>Deleted: chairperson</del></p>	<p>Editorial</p>

<p><b>6 Officers</b></p> <p>The officers of the Appeals Board shall include a <b>chairperson</b>, who shall serve for a term of one year. <b>The chairperson</b> 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.</p> <p>The <b>chairperson</b> 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 <b>chairperson</b> 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 Board a ballot containing the names of all nominees, with those submitted by the nominating committee being so indicated. The member receiving a plurality of the votes cast by December 1 shall be declared the elected <b>chairperson</b>.</p>	<p><b>6 Officers</b></p> <p><del>The officers of the Appeals Board shall include a <b>Chair</b>, who shall serve for a term of one year. <u>The Chair of the ANSI Board of Directors shall appoint the Chair of the Appeals Board subject to approval by the Board of Directors. 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.</u></del></p> <p><del>The <b>Chair</b> 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 <b>Chair of the Appeals Board</b>. 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 Board a ballot containing the names of all nominees, with those submitted by the nominating committee being so indicated. The member receiving a plurality of the votes cast by December 1 shall be declared the elected <b>Chair</b>.</del></p> <p><del>Deleted: chairperson</del></p> <p><del>Deleted: chairperson</del></p> <p><del>Deleted: chairperson</del></p> <p><del>Deleted: chairperson</del></p> <p><del>Deleted: chairperson</del></p>	<p>Editorial</p>
<p><b>7 Duties of members</b></p> <p>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 <b>chairperson</b> of the Board of Directors upon consent of the Board of Directors.</p>	<p><b>7 Duties of members</b></p> <p>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 <b>Chair of the Board of Directors</b> upon consent of the Board of Directors.</p> <p><del>Deleted: chairperson</del></p> <p><del>The Appeals Board members are the members themselves, not the entity with which they are affiliated. Serving in such capacity, its members act as fiduciaries to ANSI and are required to act in the best interest of ANSI. The voting members of the AIC also are required to abide by ANSI's Conflict of Interest and Related Party Transaction Policy, as well as the ANSI Code of Conduct. The Appeals Board shall operate in accordance with Operating Procedures approved by the Executive Committee of the ANSI Board of Directors.</del></p>	<p>Editorial</p> <p>By-Laws alignment change <b>BUT</b> the reference to <b>AIC</b> is a <b>TYPO</b> and must be corrected to <b>"Appeals Board"</b></p>
<p><b>8 Conflict of interest</b></p> <p><b>A</b> 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.</p> <p>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.</p> <p>If a materially affected party (such as a standards developer or a possible appellant) asserts that it believes that a member of the ANSI Appeals Board has a conflict of interest, that materially affected party is required to state the reason(s) for its belief. That information shall then be forwarded to the member of the ANSI Appeals Board identified as having a possible conflict for that person's response. If that committee member disagrees with the assertion, then the Chairman of the ANSI Appeals Board shall make a final determination as to whether a conflict of interest exists.</p> <p>Members of the ANSI Appeals Board who are disqualified from a particular discussion shall not participate in the deliberations or decisions.</p>	<p><b>8 Conflict of interest</b></p> <p><del>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.</del></p> <p><del>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.</del></p> <p><del>If a materially affected party (such as a standards developer or a possible appellant) asserts that it believes that a member of the ANSI Appeals Board has a conflict of interest, that materially affected party is required to state the reason(s) for its belief. That information shall then be forwarded to the member of the ANSI Appeals Board identified as having a possible conflict for that person's response. If that committee member disagrees with the assertion, then the Chairman of the ANSI Appeals Board shall make a final determination as to whether a conflict of interest exists.</del></p> <p><del>Members of the ANSI Appeals Board who are disqualified from a particular discussion shall not participate in the deliberations or decisions.</del></p> <p><del>Deleted: A</del></p>	<p>Editorial</p>

<p><b>9 Meetings and hearings</b> 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 <b>chairperson</b> 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.</p> <p>All hearings shall be open to representatives of directly and materially affected persons, except that the number of representatives of any one interest group may be limited at the discretion of the <b>chairperson</b>. 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.</p> <p><b>On questions of parliamentary procedure not covered herein, Robert's Rules of Order (latest edition) shall prevail.</b></p>	<p><b>9 Meetings and hearings</b> 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 <del>Chair</del> 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.</p> <p>All hearings shall be open to representatives of directly and materially affected persons, except that the number of representatives of any one interest group may be limited at the discretion of the <del>Chair</del>. 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.</p> <p><del>Deleted: chairperson</del></p> <p><del>Deleted: chairperson</del></p> <p><del>Deleted: On questions of parliamentary procedure not covered herein, Robert's Rules of Order (latest edition) shall prevail.</del></p>	<p>Editorial</p> <p>Editorial</p> <p><b>ANSI 2020 By-Laws remove reference to Parliamentary Procedure so the deletion is appropriate.</b></p>
<p><b>10 Voting</b> 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.</p> <p>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.</p>	<p><del>10 Voting</del> 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.</p> <p>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.</p>	
<p><b>11 Appeals process</b> <b>11.1 Appeal</b> 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."</p> <p>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:</p> <ol style="list-style-type: none"> <li>a copy of the decision from which the appeal is taken;</li> <li>an explanation of the issue and the procedural history;</li> <li>arguments that explain why appellant believes the decision was in error;</li> <li>references to the provision(s) of the ANSI procedures upon which appellant relies;</li> <li>relevant evidence that directly supports appellant's position and upon which appellant relies<sup>2</sup>; and</li> <li>the specific relief sought by appellant from the Appeals Board.</li> </ol>	<p><del>Commented [AC2]: Revisions approved by the EXSC to sections 11-16 pending NPC approval in November 2019, not displayed here.</del></p> <p><del>11 Appeals process</del> <del>11.1 Appeal</del> 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."</p> <p>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:</p> <ol style="list-style-type: none"> <li>a copy of the decision from which the appeal is taken;</li> <li>an explanation of the issue and the procedural history;</li> <li>arguments that explain why appellant believes the decision was in error;</li> <li>references to the provision(s) of the ANSI procedures upon which appellant relies;</li> <li>relevant evidence that directly supports appellant's position and upon which appellant relies<sup>1</sup>; and</li> <li>the specific relief sought by appellant from the Appeals Board.</li> </ol> <p>The brief appeal statement (exclusive of exhibits) 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.</p> <p>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.</p> <p>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.</p>	<p>There may need to be changes to the text of the <b>Proposed Procedures</b> in this version since the item submitted to the NPC for its November 8, 2019 Meeting may not be in alignment with the <b>ANSI 2020 By-Laws</b>. And the <b>NPC did not vote to approve those changes</b> at its November 2019 Meeting. <b>After a long discussion the NPC Chair requested NPC members to submit their concerns to the ExSC but did not specify a due date.</b></p> <p><b>The Footnote reference callout in Section 11.1, line "e)" of ExSC_130_2019, Proposed Procedures, is INCORRECT and must be changed to "2" since Footnote number "1" is already used in Section 1 of the Proposed Procedures.</b></p>

<p>The brief appeal statement (exclusive of exhibits) 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.</p> <p>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.</p> <p>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.</p> <p><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.</p>	<p><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.</p>	
<p><b>11.2 Appeals Board initial review</b> The Appeals Board shall determine by letter ballot whether the appellant has established a <i>prima facie</i> case that the decision appealed from was clearly erroneous. If the Appeals Board determines that a <i>prima facie</i> 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.</p> <p>If the Appeals Board determines that a <i>prima facie</i> 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 appellant prior to the forthcoming hearing shall be permitted without a showing of good cause and the express permission of the Appeals Board Chair.</p>	<p><b>11.2 Appeals Board initial review</b> The Appeals Board shall determine by letter ballot whether the appellant has established a <i>prima facie</i> case that the decision appealed from was clearly erroneous. If the Appeals Board determines that a <i>prima facie</i> 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.</p> <p>If the Appeals Board determines that a <i>prima facie</i> 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 appellant prior to the forthcoming hearing shall be permitted without a showing of good cause and the express permission of the Appeals Board Chair.</p>	

<p><b>11.3 Response</b> If the respondent (the party who must respond to the appeal) receives an Appeals Board determination that a <i>prima facie</i> 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. 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.</p> <p>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.</p> <p>The response shall include:</p> <p>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; and</p> <p>b) relevant evidence that directly supports respondent's position and upon which respondent relies.</p> <p>The brief response (exclusive of exhibits) 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.</p> <p>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.</p> <p>Panel members shall receive copies of the appeals record at least fifteen (15) working days prior to the date of the appeals hearing.</p>	<p><b>11.3 Response</b> If the respondent (the party who must respond to the appeal) receives an Appeals Board determination that a <i>prima facie</i> 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. 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.</p> <p>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.</p> <p>The response shall include:</p> <p>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; and</p> <p>b) relevant evidence that directly supports respondent's position and upon which respondent relies.</p> <p>The brief response (exclusive of exhibits) 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.</p> <p>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.</p> <p>Panel members shall receive copies of the appeals record at least fifteen (15) working days prior to the date of the appeals hearing.</p>	
<p><b>11.4 Letters of support by non-parties to the appeal</b> If the Appeals Board determines that a <i>prima facie</i> case has been established and a hearing will be held, a person or organization that is not a party to the appeal may submit a letter of support for a position taken by the appellant or respondent to the appeal by contacting that party and requesting that such a letter be included in that party's formal appeals brief or response. 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, and may address procedural issues only. Letters not meeting the requirements of this section will not be accepted without the approval of the Appeals Board Chair. Submitters 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.</p>	<p><b>11.4 Letters of support by non-parties to the appeal</b> If the Appeals Board determines that a <i>prima facie</i> case has been established and a hearing will be held, a person or organization that is not a party to the appeal may submit a letter of support for a position taken by the appellant or respondent to the appeal by contacting that party and requesting that such a letter be included in that party's formal appeals brief or response. 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, and may address procedural issues only. Letters not meeting the requirements of this section will not be accepted without the approval of the Appeals Board Chair. Submitters 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.</p>	<p>As GTW and other parties have pointed out to ANSI and the ExSC in earlier comments, the Appeals process at ANSI is flawed in that there is <u>no requirement</u> to give ANSI members and others who might be materially interested parties <b>PUBLIC NOTICE</b> of the <u>existence</u> of an Appeal and a way to get <b>TIMELY ACCESS</b> to the Appeal or Response Filings to decide if they wish to file a Letter of Support ("LoS") by a non-party. And a <b>PROCESS for TIMELY FILING</b> of the LoS before the Hearing Date. This should be <u>corrected</u> by ANSI and the ExSC in the revised Procedures in order to provide <b>NOTICE</b> and <b>DUE PROCESS</b>.</p>

<p><b>11.5 Hearing</b> 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.</p> <p>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.</p> <p>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.</p>	<p><b>11.5 Hearing</b> 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.</p> <p>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.</p> <p>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.</p>	
<p><b>12 Appeals Board Decisions in General</b> 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.</p> <p>A decision reached by an Appeals Board panel following an initial review (see section 11.2) and in response to a staff-issued Letter Ballot regarding whether a <i>prima facie</i> 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 <i>prima facie</i> case has been established, the decision ordinarily states only that that a <i>prima facie</i> case has not been made by the appellant and that the appeal is dismissed. If the Appeals Board's finding is that a <i>prima facie</i> 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.</p> <p>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.</p> <p>The outcome of all decisions reached by Appeals Board panels shall be announced in <i>Standards Action</i>.</p>	<p><b>12 Appeals Board Decisions in General</b> 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.</p> <p>A decision reached by an Appeals Board panel following an initial review (see section 11.2) and in response to a staff-issued Letter Ballot regarding whether a <i>prima facie</i> 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 <i>prima facie</i> case has been established, the decision ordinarily states only that that a <i>prima facie</i> case has not been made by the appellant and that the appeal is dismissed. If the Appeals Board's finding is that a <i>prima facie</i> 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.</p> <p>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.</p> <p>The outcome of all decisions reached by Appeals Board panels shall be announced in <i>Standards Action</i>.</p>	
<p><b>13 Appeals Board decisions arising from Conformity Assessment Accreditation Programs</b> In the case of appeals arising from one of ANSI's conformity assessment accreditation programs, the Appeals Board, consistent with currently applicable requirements of ISO/IEC 17011, will not consider or determine whether a requirement of the applicable accreditation standard (e.g., ISO/IEC 17065) has been met. In an appeal arising from an ANSI conformity assessment accreditation program, the Appeals Board can only dismiss an appeal for lack of a <i>prima facie</i> case (in which case the appealed decision stands), affirm a decision, or remand a decision to the body that made the decision for further action. If the Appeals</p>		<p><b>Section 13 of the Current Appeals Board Procedures and the associated FOOTNOTE appear to be DELETED in its entirety in ExSC_130_2019, Proposed Procedures, with no stated RATIONALE for the DELETION nor mention of the DELETION in ExSC_130_2019.</b></p>

<p>Board remands the decision back to the body that rendered the decision, it will do so with instructions to take further action.<sup>3</sup></p> <p><sup>3</sup> Because the Appeals Board cannot make an accreditation decision for the purposes of ISO/IEC 17011, it cannot procedurally reverse a decision of an accreditation committee.</p>		
<p><b>14 Reconsideration</b> 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.</p> <p>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.</p> <p>Once a decision on reconsideration is issued, no further requests for reconsideration will be accepted.</p>	<p><b>13 Reconsideration</b> 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.</p> <p>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.</p> <p>Once a decision on reconsideration is issued, no further requests for reconsideration will be accepted.</p>	<p>No mention of the renumbering of the Section from 14 to 13.</p>
<p><b>15 Accessibility of documentation and decisions</b> A copy of the record on appeal (i.e., the appeals-related documents submitted by the parties to the appeal for consideration by the Appeals Board including party-supporting letters) shall be made available to any directly and materially affected person upon request. The costs associated with providing such documents shall be borne by the person seeking them.</p>	<p><b>14 Accessibility of documentation and decisions</b> A copy of the record on appeal (i.e., the appeals-related documents submitted by the parties to the appeal for consideration by the Appeals Board including party-supporting letters) shall be made available to any directly and materially affected person upon request. The costs associated with providing such documents shall be borne by the person seeking them.</p>	<p>No mention of the renumbering of the Section from 15 to 14.</p>
<p><b>16 Informal settlement</b> 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 <i>ANSI Essential Requirements: Due process requirements for American National Standards</i>.</p>	<p><b>15 Informal settlement</b> 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 <i>ANSI Essential Requirements: Due process requirements for American National Standards</i>.</p>	<p>No mention of the renumbering of the Section from 16 to 15.</p>
<p><b>17 Amendments</b> The <b>National Policy Committee (NPC)</b> 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.</p>	<p><b>16 Amendments</b> The <del>Board Executive Committee</del> 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.</p> <p><del>Deleted: National Policy Committee (NPC)</del></p>	<p>No mention of the renumbering of the Section from 17 to 16.</p> <p>Deletion of <b>NPC</b> is appropriate since it does not exist in the 2020 By-Laws.</p>

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15 Attorneys for the United States of America

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 SAN JOSE DIVISION  
19

20 NSS LABS, INC.,  
21 Plaintiff

22 v.

23 CROWDSTRIKE, INC.; SYMANTEC  
24 CORPORATION; ESET, LLC; ANTI-  
25 MALWARE TESTING STANDARDS  
26 ORGANIZATION, INC; AND DOES 1-50,  
27 INCLUSIVE,  
Defendants.

No. 5:18-cv-05711-BLF

**STATEMENT OF INTEREST OF  
THE UNITED STATES**

## INTEREST OF THE UNITED STATES

1  
2 The United States respectfully submits this statement pursuant to 28 U.S.C. § 517, which  
3 permits the Attorney General to direct any officer of the Department of Justice to attend to the  
4 interests of the United States in any case pending in a federal court. The United States enforces  
5 the federal antitrust laws and has a strong interest in the proper interpretation of the Standards  
6 Development Organization Advancement Act of 2004 (“SDOAA”). In particular, the United  
7 States has a significant interest in the correct interpretation of the exemption from *per se*  
8 treatment for standards development organizations engaging in standard setting activities. An  
9 overly broad interpretation of the SDOAA exemption will harm American consumers by  
10 inadvertently protecting the very conduct our antitrust laws were designed to prevent. Antitrust  
11 exemptions should not be extended more broadly than allowed by the applicable statute, given  
12 that antitrust law “is a central safeguard for the Nation’s free market structures.” *N.C. State Bd.*  
13 *of Dental Exam’rs v. FTC*, 135 S. Ct. 1101, 1109 (2015).

## INTRODUCTION

14  
15 Plaintiff NSS Labs, Inc. (“NSS”) filed a complaint alleging the Anti-Malware Testing  
16 Standards Organization, Inc. (“AMTSO”) and its member organizations worked together to  
17 promulgate an industry standard with the effect of unreasonably restraining competition in  
18 violation of Section 1 of the Sherman Act. Because, according to NSS, the industry standard  
19 requires a group boycott, and that group boycott is the type of restraint on trade that the antitrust  
20 laws treat as having a predictable anticompetitive effect, NSS pleads that the conspiracy to  
21 promulgate and give effect to the standard was *per se* unlawful. AMTSO filed a motion to  
22 dismiss alleging, in part, that AMTSO is a “standards development organization” entitled to  
23 exemption from *per se* claims under the SDOAA.

24 The United States urges the Court not to dismiss NSS’s *per se* claims based on a  
25 presumption that the SDOAA applies to AMTSO without further evidence, because NSS’s  
26 allegations raise a factual question about whether the SDOAA applies to AMTSO. In particular,  
27 NSS alleges that “AMTSO’s membership consists principally of cybersecurity companies [with]  
28 only a small number of companies who provide testing services...,” and thus that the

1 organization’s standards development process may not incorporate the “balance of interests”  
 2 required by the SDOAA. Compl., Doc. 1, ¶ 54. Given these allegations, AMTSO’s argument  
 3 for dismissal of the *per se* claims based on the presumed applicability of the SDOAA is  
 4 conclusory and premature.

### 5 1. Legal Background

6 The SDOAA, codified at 15 U.S.C. §§ 4301-4306, amended the National Cooperative  
 7 Research and Production Act of 1993 (“NCRPA”) to preclude *per se* treatment for any  
 8 “standards development organization” (“SDO”) while engaged in “standards development  
 9 activity.”<sup>1</sup> 15 U.S.C. § 4302(2). The SDOAA defines an SDO as an organization that “plans,  
 10 develops, establishes, or coordinates voluntary consensus standards using procedures that  
 11 incorporate the attributes of openness, balance of interests, due process, an appeals process, and  
 12 consensus in a manner consistent with the Office of Management and Budget Circular Number  
 13 A-119, as revised February 10, 1998.” 15 U.S.C. § 4301(a)(8). This Circular does not define  
 14 any of these attributes other than “consensus,” but the SDOAA legislative findings and history as  
 15 well as OMB’s 2016 revision of the Circular provide further guidance.

16 The SDOAA’s own legislative findings elaborate on the attributes outlined in the Circular  
 17 and provide further insight on their interpretation, including a specific reference to balance of  
 18 interests: “Such principles provide for...balancing interests so that standards development  
 19 activities are not dominated by any single group of interested persons....” Pub. L. No. 108-237,  
 20 title I, § 102(5)(C), 118 Stat. 661, 662 (2004).

21 From a practical standpoint, the “balance of interests” requirement of the SDOAA is  
 22 particularly critical as it gives meaning to the statute’s other required attributes of openness, due  
 23 process, an appeals process, and consensus. A “single group of interested persons” is unlikely to  
 24 leverage these other tools of consensus building because there is little to disagree about. A

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25 <sup>1</sup> The following discussion focuses on the procedural attributes required by the SDOAA’s  
 26 definition of an SDO. The ability of an organization to claim the SDOAA’s protections will  
 27 depend on whether it engaged in qualifying “standards development activity” and whether any  
 28 such activities were conducted using the type of procedures required under the Act.

1 dominant single group is also able to circumvent the other protective attributes enumerated in the  
2 SDOAA to suppress minority interests. As an example, an SDO's consensus requirements (i.e.  
3 70% of votes) may be overcome when one group holds overwhelming voting power, even  
4 though no actual consensus among interest groups was reached.

5 Courts recognize the competitive harm that can ensue in such circumstances. "There is  
6 no doubt that the members of [trade] associations often have economic incentives to restrain  
7 competition and that the product standards set by such associations have a serious potential for  
8 anticompetitive harm." *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 500  
9 (1988). Yet despite this risk, competitive benefits can result when "private associations  
10 promulgate...standards...through procedures that prevent the standard-setting process from  
11 being biased by members with economic interests in stifling product competition..." *Id.* at 501.  
12 "What [parties] may not do (without exposing [themselves] to possible antitrust liability for  
13 direct injuries) is bias the process by...stacking the private standard-setting body with  
14 decisionmakers sharing their economic interest in restraining competition." *Id.* at 511; *see also*  
15 *Am. Soc. of Mech. Engineers, Inc. v. Hydrolevel Corp.*, 456 U.S. 556, 571 (1982) ("[A] standard-  
16 setting organization...can be rife with opportunities for anticompetitive activity."). The  
17 attributes and criteria identified in the SDOAA provide criteria to organizations for how to  
18 mitigate these risks.

19 A 2003 House Report referenced both these cases as "particularly instructive" in shaping  
20 the SDOAA. H.R. Rep. No. 108-125, at 4 (2003). In explaining the SDOAA's basis for  
21 precluding *per se* treatment, Congress reasoned: "The rationale...is that SDOs, as non-profits  
22 serving a cross-section of an industry, are unlikely to engage in anti-competitive conduct  
23 creating market dominance." *Id.* at 3-4 (emphasis added). This "cross-section of an industry"  
24 references the "balance of interests" requirement of the SDOAA that works to prevent  
25 dominance by a subset of the industry.

26 In 2016, the Office of Management and Budget revised Circular A-119, referenced by the  
27 SDOAA, elaborating on the definition of each of the Circular's previously identified attributes.  
28 Notice on Revision of OMB Circular No. A-119, 81 Fed. Reg. 4673 (Jan. 27, 2016). The 2016

1 Circular defines the “balance” requirement as: “The standards development process should be  
 2 balanced. Specifically, there should be meaningful involvement from a broad range of parties,  
 3 with no single interest dominating the decision-making.” Office of Mgmt.& Budget, Exec.  
 4 Office of the President, OMB Circular No. A-119 § 2e(ii), as revised January 27, 2016.

## 5 2. Factual Allegations

6 NSS alleges a number of facts about the structure and makeup of AMTISO which bear on  
 7 the question whether it meets the SDOAA’s balance of interests requirement. Specifically, “we  
 8 [NSS] have observed that the AMTISO forum (currently dominated by vendors) has on more than  
 9 one occasion attempted to limit [test content and procedures].” Compl., Doc. 1, ¶ 17. Further,  
 10 “AMTISO’s membership consists principally of cybersecurity companies and only a small  
 11 number of companies who provide testing services to the cybersecurity companies.” *Id.* ¶ 54.  
 12 Finally, “[w]hile providers of...testing services, including NSS Labs, are allowed to and do  
 13 participate in AMTISO, they constitute a small minority of AMTISO members and are easily  
 14 outvoted by...product vendor members as indeed they were in the adoption of the AMTISO  
 15 Testing Standard.” *Id.* ¶ 60.

16 In its motion to dismiss, AMTISO declares “all per se claims...must be dismissed”  
 17 because “the SDOAA protect[s] AMTISO from per se liability...” Def. AMTISO Mot., Doc. 51,  
 18 at 13. AMTISO claims to be an SDO, conclusively stating it satisfies each of the SDOAA  
 19 required attributes. *Id.* at 12. As to the “balance of interests” attribute, however, AMTISO  
 20 concedes its membership is skewed, as NSS alleges: “vendors do numerically outnumber  
 21 testers...in the AMTISO membership...” *Id.* at 5.

## 22 ARGUMENT

23 The United States urges the Court to reject AMTISO’s claimed exemption from *per se*  
 24 liability on the basis of its own conclusory assertion that it qualifies as an SDO under the  
 25 SDOAA.<sup>2</sup>

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26 <sup>2</sup> This filing focuses on the “balance of interests” requirement of the SDOAA as an example of a  
 27 clear factual dispute between the parties of a critical issue that must be resolved prior to  
 28 determining whether AMTISO qualifies as an SDO under the SDOAA. The United States takes

1 As an initial matter, the Court should treat the *per se* exemption under the SDOAA as an  
2 affirmative defense, putting the burden on AMTSO to prove that it qualifies, with a fact-specific  
3 showing. The United States is aware of no prior court decision assigning the burden of proof to  
4 either party in the context of the application of the SDOAA, but it believes that assigning the  
5 burden to AMTSO is consistent with fundamental principles of burden-shifting articulated by the  
6 Supreme Court. “[W]here the facts with regard to an issue lie peculiarly in the knowledge of a  
7 party, that party is best situated to bear the burden of proof.” *Smith v. United States*, 568 U.S.  
8 106, 112 (2013) (quotation marks and citation omitted). AMTSO is best situated to articulate its  
9 own procedures for reaching consensus, and proffer evidence showing that those procedures  
10 satisfy the requirements of the SDOAA.

11 Requiring AMTSO to bear the burden of qualifying for the *per se* exemption is also  
12 consistent with Supreme Court precedent limiting antitrust exemptions. “Implied antitrust  
13 immunities...are disfavored, and any exemptions from the antitrust laws are to be strictly  
14 construed.” *S. Motor Carriers Rate Conference, Inc. v. United States*, 471 U.S. 48, 67-68  
15 (1985). The bipartisan Antitrust Modernization Commission explained the reason for this  
16 principle in a 2007 report, advising Congress to avoid immunities and exemptions that “displace  
17 free-market competition absent extensive, careful analysis and strong evidence....” Antitrust  
18 Modernization Commission, *Report and Recommendations* 334 (2007), available at  
19 [http://govinfo.library.unt.edu/amc/report\\_recommendation/amc\\_final\\_report.pdf](http://govinfo.library.unt.edu/amc/report_recommendation/amc_final_report.pdf). According to  
20 the Commission, the free-market values underpinning the nation’s antitrust laws would be in  
21 jeopardy if exemptions were granted without scrutiny. “Courts should construe all immunities  
22 and exemptions from the antitrust laws narrowly.” *Id.* at 337.

23 AMTSO’s conclusory assertions in its motion to dismiss are insufficient to demonstrate  
24 that AMTSO qualifies as an SDO under the SDOAA, and the Court therefore should not grant its  
25 motion to dismiss the *per se* claims on that basis. AMTSO summarily pronounces that it  
26 satisfies the SDOAA’s requirements, but it does not offer any specifics to support that claim.

27  
28 no position as to whether other requirements of the SDOAA may also be an independent basis  
for disqualification.

1 Indeed, to the contrary, it admits its membership is *not* balanced. Def. AMTSO Mot., Doc. 51, at  
2 12; *id.* at 5 (“vendors do numerically outnumber testers...in the AMTSO membership”). The  
3 Court should therefore resolve the application of the SDOAA at a later stage, if AMTSO  
4 properly supports its claim that it follows procedures that qualify it for SDOAA protection. *Cf.*  
5 *McCready v. eBay, Inc.*, 453 F.3d 882, 892 n.2 (7th Cir. 2006) (“[I]t is incorrect to grant a  
6 motion to dismiss under Rule 12(b)(6) on the basis of an affirmative defense.”); *see also*  
7 *PageMelding, Inc. v. ESPN, Inc.*, 2012 WL 3877686, at \*1 (N.D. Cal. Sept. 6, 2012) (holding  
8 that there is “widespread agreement” within the Northern District of California that heightened  
9 pleading standards for complaints apply equally to affirmative defenses).

10 In the alternative, even if the Court holds that a plaintiff bears the burden of proving the  
11 SDOAA does not apply to a defendant, the Court should find the Complaint here sufficient to  
12 overcome a motion to dismiss. NSS alleges facts that raise serious doubt that AMSTO qualifies  
13 as an SDO. NSS pleads with specificity that cybersecurity vendors, who compete with each  
14 other, are able to use AMTSO to restrict competition despite objection among testing companies.  
15 This is because, according to NSS, AMTSO’s makeup is unbalanced toward vendors. Taken as  
16 true, a fact-finder could conclude that AMTSO does not use procedures that ensure a balance of  
17 interests, and that AMTSO thus fails to qualify for the *per se* exemption under the SDOAA. It  
18 would therefore be inappropriate to decide that the exemption applies at the motion to dismiss  
19 stage.

20 \* \* \*

21 Congress extended the *per se* exemption to specially qualified SDOs that present little  
22 risk of anticompetitive conduct, with particular focus on enumerated attributes that prevent  
23 dominance by any single group of interested persons. Whether those criteria are met presents  
24 legal and factual matters that cannot be resolved on the pleadings in this case. To determine  
25 AMTSO’s eligibility under the SDOAA at this point is premature and risks extending an antitrust  
26 exemption beyond Congress’ intent. Accordingly, the United States recommends the Court defer  
27 assessing AMTSO’s eligibility for a *per se* exemption until a later stage in the proceeding.

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Respectfully submitted,

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