

## ANSI-Accredited U.S. TAGs to ISO - Appeals Process Guidance

### Appeals at the TAG Level – Procedural Issues to Consider

Note: this document is informative only and does not supersede any requirements set forth in the *ANSI Procedures for U.S. Participation in the International Standards Activities of ISO* (*ANSI International Procedures* – [www.ansi.org/internationalprocedures](http://www.ansi.org/internationalprocedures)). Also note that Annex B of the *ANSI International Procedures* applies to all ANSI-Accredited U.S. TAGs to ISO (see excerpts in Annex A of this document).

#### Informal Settlement

1. ANSI encourages settlement of disputes at any time if the settlement is consistent with the objectives of the *ANSI International Procedures*. Any settlement to which the parties agree in writing, that is consistent with the *ANSI International Procedures*, or an agreement to withdraw an appeal, will terminate the appeal process.
  - The TAG administrator is expected to obtain and retain written evidence of withdrawal of any appeal as part of the TAG's records, subject to ANSI audit.

#### Process Steps and Deadlines

2. Any time periods/deadlines associated with each phase of an appeals process should be established by the ANSI-Accredited U.S. TAG Administrator and made known to all parties in writing.
  - The TAG Administrator should monitor and track compliance with established deadlines.
  - Failure to adhere to clearly established and fair deadlines may result in the forfeiture of the right to proceed with the appeals process.
3. For each established time period, e.g., appeals filing period, referenced in a TAG's procedures or related official written communications, the text should specify whether the "days" are in calendar days or exclude Saturdays, Sundays and other Federal holidays.
  - Deadlines for the following should be stated: any informal resolution phase (if applicable); appeals filing period; appeals response; submittal of all related documentation with the appeals filing or the response; extensions; appeals fee (if applicable); claims of conflict of interest; identification of participants in the appeals process; issuance of the final decision; other.
  - If filing and response extensions are possible, note this, articulate the process by which such requests are to be filed and will be considered, and highlight deadlines and filing requirements.
  - Deadlines should be established with a specific date, time, and time zone.
  - Clearly state the consequences of not meeting established deadlines.

## TAG-Level Appeals Process and Panel

4. A procedural appeal concerning the development of a U.S. position in ISO or ISO/IEC activities is expected to be filed in a timely manner, in sufficient time to allow the U.S. to cast its vote. The TAG Administrator is expected to take all reasonable efforts to ensure that procedural appeals are considered in a timely manner so that the resolution of an appeal can conclude prior to submission of a timely U.S. position/vote.
  - Appeals should not be filed by aggrieved parties late in the process simply to delay the submission of a U.S. vote to ISO; the standards development process through ISO provides ample opportunity for issues to be vetted and adjudicated during the development process rather than at the final voting stage.
  - The filing of an appeal does not automatically require the stay of an action or vote, if the time required to conclude the TAG appeals process would preclude the U.S. from submitting an approved timely vote or position.
  - A TAG may wish to adopt expedited procedures for the handling of appeals when international deadlines preclude the use of routine appeals procedures. However, such expedited appeals procedures would require ExSC approval.
5. Unless otherwise specified, if an appeals procedure does not specify and require an in-person hearing, a teleconference or other suitable electronic means may be used.
6. The use of a specific appeals filing form that reflects key data points necessary for an appeals filing to proceed, may be created by a TAG Administrator and its use may be made mandatory. Such a form is expected to mirror the TAG's appeals procedures.
7. An appeals panel shall be populated by fair and impartial individuals. Members of the TAG that took the action that is the subject of the appeal cannot be the sole appeals panel that reviews and adjudicates an appeal of that action.
  - Most appeals processes involve a one-level appeals process. However, if a multi-level process is documented in a TAG's procedures, then a panel populated by TAG members can be one level of that multi-level appeals process. However, in such a model, a separate appeals panel that does not include involved TAG members must be formed to make the final decision, if the initial level appeal to the TAG members does not result in a resolution.
  - Appeals panelists, for the final level appeals process through the TAG, must be individuals who have not been directly involved in the matter in dispute, and who will not be materially or directly affected by any decision made or to be made in the dispute.
    - Note: if the TAG is accredited under the model appeals procedures, then those apply and a Panel must be established accordingly.
  - Documented and published *Conflict of Interest* procedures may be useful in ensuring a fair appeals panel.
  - A minimum size for an appeals panel (3-5 is usual) and the voting requirements associated with its decision-making process should be specified.
  - Information about how an appeals panel is selected or appointed (and by whom) should be stated, as should information about how the panel will be finalized, if objections to its composition are properly raised.

8. A TAG's appeals process may include an administrative filing fee, but any such fee must be fixed, pre-determined and reasonable. All appellants are to be treated equally and so an appeals filing fee may not vary from person to person (except when a fee waiver or reduction is granted) or from one appeal to the next.
  - A procedure for requesting a fee waiver or fee reduction shall be available.
  - It is not an acceptable practice to indicate that the party that loses an appeal is required to pay all associated costs.

### **TAG-Level Appeals – Filing and Response**

9. A written appeals filing and a written response to it are routine and expected parts of an appeals process.
  - A deadline (and any extensions) for filing written appeals documentation and a response to it should be clearly established, documented and made known to all parties.
  - Page limitations associated with filings and responses, and any similar rules, must be consistent and clearly articulated (see ANSI's appeals procedures for the ANSI Executive Standards Council (ExSC) or ANSI Board of Standards Review (BSR), for reasonable examples).
  - If supplements to an already-filed appeal or response are not allowed, state this upfront.
10. Use of standardized forms/email communications where appropriate and feasible are allowable and encouraged: e.g., appeals filing instructions, receipt of appeals filing, filing extensions, transmittal of documentation to appeals panel and parties to appeal, timelines, and distribution and format of appeals decision.

### **TAG Administrator Response to Appeal**

11. When a TAG Administrator is required to respond to a duly filed written appeal, it is recommended that the TAG Administrator's response address the following:
  - Excerpt/recount each allegation and provide a specific response for each, both clearly labeled.
  - Reference relevant procedural history, including pertinent dates, communications, meetings and procedural citations.
  - Ensure that each point/response is succinctly made, and where appropriate, supported by documentation that is attached to the response (and shared with Appellant as part of document distribution prior to the hearing).
  - Ensure that the response is objective and professional in tone.
  - Ensure that the response satisfies all applicable procedural requirements.

### **Appeals Documentation Distribution and Review**

12. All parties to an appeal, the TAG Administrator and the Panel require advance access to all of the documentation that will be considered by the Panel. To ensure this is the case, copy all parties on transmissions or postings of documents.
  - All parties and the Panel are to be given a copy of the TAG's accredited procedures and any relevant supplemental procedures, in advance of the hearing.

- Clear and simple written instructions to the Panel concerning their jurisdiction, for example, procedural compliance issues only, should be issued to all in advance of the hearing.
13. Written filings and documentation are required to be provided to the Panel and all parties to the appeal, in advance of the hearing, giving them sufficient time to review it and prepare for the hearing.
- All parties to an appeal and the Panel are expected to be provided with the same documentation in advance of a hearing.
  - Generally, it is recommended that documentation be circulated 2-3 weeks in advance of the hearing date, if possible.

**Appeals Hearing Protocol (In person hearings, if held)**

14. Develop a brief script for use by the Chair of the appeals hearing (see ANSI's sample script). Include time limitations that apply to each phase of the hearing.
15. Time allocations for speaking, rebutting and question-and-answers should be made known to all parties prior to the hearing. Staff should keep track of time during the hearing.
- The appellant and the respondent are to be allowed equivalent time for formal presentation before a Panel. Even if a TAG Administrator is a respondent, both (all) parties to the appeal must be treated fairly.
  - For example, each party may be allowed up to 30 minutes to address the Panel and may reserve any portion for rebuttal, followed by an unlimited (or time limited, x minutes) question and answer session directed by the Chair of the Panel, followed by Executive Session during which time the Panel will deliberate.
16. At the hearing, speakers are not permitted to make assertions about facts or issues not in the record.

**Appeals Panel Final Decision**

17. Issuance of a concise and timely final written appeals decision is required. Such a written decision should be clear and complete, allowing all those involved and other readers, including ANSI Program Oversight Committees like the ANSI ExSC and ANSI Appeals Board, to understand the decision and the basis for it.
- The final written appeals decision should be distributed to all parties to the appeal at the same time, by the ANSI-Accredited U.S. TAG Administrator.
18. TAG Members should be provided with a copy of the written decision for their information. The record of the appeal may be made available to TAG Members upon request or posted where it can be accessed. Typically, appeals records are not considered confidential.
19. The format of a written appeals decision should include: 1) date of hearing; 2) names of parties and any other participants; 3) names of panelists; 4) summary of the issues and brief procedural history; 5) the decision and the procedures upon which it relies; and 6) final decision.

### **Other General Recommendations/Points of Information**

1. Records concerning the appeals process, including any hearing, and all related documentation, shall be retained by the TAG Administrator, subject to ANSI audit.
2. Circulate at the start of each year, the TAG's accredited procedures, roster, code of conduct, TAG Administrator contact information, and links for training and reference materials. Participation and cooperation may be improved when everyone knows and understands the rules.
3. Consider incorporating *ISO's Code of Conduct* as part of the TAG's routine protocols/references to ensure TAG Members and other participants are aware of expectations. For example, provide it to new members, link it to agendas and meeting reports, circulate it annually, recite it at the start of meetings and webinars, etc.
4. Familiarize staff and leadership with *Chapter XX Disciplinary Procedures, Roberts Rules of Order*, particularly if the TAG's procedures are silent on issues related to disciplinary actions, termination of members and the like.
5. For reference, ANSI's appeals procedures relative to the American National Standards (ANS) process are available in section 7 of the *Operating Procedures of the ANSI Board of Standards Review (BSR)*. These procedures can serve as a sample, effective approach to the implementation of a procedural appeals process, addressing applicable rules, timeframes, expectations and the sequence of stages in an appeals process. As such, they reflect a time-tested model of a fair appeals process and may provide a useful implementation model for a TAG Administrator.

## Annex A

### *Relevant Excerpts from Annex B of the ANSI International Procedures* *([www.ansi.org/internationalprocedures](http://www.ansi.org/internationalprocedures)) – Applicable to all ANSI-Accredited U.S. TAGs to* *ISO*

#### **B8 Criteria for Appeals**

The provision of appeals is important for the protection of directly and materially affected interests and for the organizations involved in the development of U.S. positions in international activities and is required as a part of due process. This section provides for the right to appeal, indicates what may be appealed, and gives general criteria regarding the appeals mechanism.

**B8.1 Right to Appeal.** Directly and materially affected U.S. national interested parties have the right to appeal any procedural action or inaction in the development of U.S. positions on international standards activities.

**B8.2 Appeals Mechanism.** The following general criteria shall apply to any appeals mechanism provided by the U.S. TAG pursuant to these procedures:

- 1) Appeals shall be addressed promptly and a decision made expeditiously
- 2) The right of the involved parties to present their cases shall not be denied
- 3) Appeals procedures shall provide for participation by all parties concerned without imposing an undue burden on them
- 4) Consideration of appeals shall be fair and unbiased and shall fully address the concerns expressed
- 5) Records of appeals shall be kept and made available to the involved parties

**B8.3 Access.** Appeals shall be processed in accordance with the written procedures used by the U.S. TAG for the development of pertinent U.S. positions. (See B5) ANSI will not normally hear an appeal of an action or inaction until all other appeal procedures have been exhausted.

For reference:

**B5.5 Appeals.** The written procedures shall contain an identifiable, realistic, and readily available appeals mechanism for the impartial handling of substantive and procedural complaints regarding any action or inaction.