

ExSC_053_2016

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Proposed Draft Revisions to ANSI's Appeals Procedures: ANSI Appeals Board, ANSI Board of Standards Review (BSR) and ANSI Executive Standards Council (ExSC)

The proposed revisions that follow are intended to clarify and refine ANSI's appeals processes concerning appeals to the ANSI Appeals Board (the final level of appeal at ANSI), the ANSI Executive Standards Council (ExSC) and the ANSI Board of Standards Review (BSR). A version of these revisions shown in strikethrough and underline format follows the version immediately below.

ANSI Appeals Board

1 Authority and scope

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.

The Appeals Board shall consider appeals by directly and materially affected persons¹ 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:

ANSI-ACC-CA-003 ANSI Policy and Criteria for Accreditation of Personnel Certification Programs

...

Operating Procedures of the United States National Committee of the International Electrotechnical Commission (IEC)

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, Accreditation Committee for Product Certifiers). Any decision that is appealed shall not be reversed by the ANSI Appeals Board unless the Appeals Board finds that such decision is clearly erroneous.² 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.

¹"Persons" includes organizations, companies, government agencies, individuals etc.

² If an appropriate and persuasive argument is presented to the Appeals Board that the decision appealed from is incorrect, the Appeals Board may reverse, remand or reverse and remand. If the Appeals Board remands the appeal back to the body that rendered the decision, it will do so with instructions to take further action.

11 Appeals process

11.1 Appeal

All appeals shall be made in writing and shall be directed to the secretary of the Appeals Board on or before midnight Eastern time of the due date. Except in a matter involving extraordinary circumstances, the Appeals Board shall only consider an appeal from a final decision of the ANSI body from which the appeal is taken. A refusal by an ANSI body to decide a matter within its jurisdiction, or undue delay by such body in reaching a decision, shall constitute “extraordinary circumstances.”

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

- a) a copy of the decision from which the appeal is taken;
- b) an explanation of the issue and the procedural history;
- c) arguments that explain why appellant believes the decision was in error;
- d) references to the provision(s) of the ANSI procedures upon which appellant relies;
- e) documentary evidence that directly supports appellant’s position and upon which appellant relies; and
- f) the specific relief sought by appellant from the Appeals Board.

The brief appeal statement (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger.

The appeal shall be submitted to the secretary of the Appeals Board along with the required filing fee. The filing fee may be waived or reduced only upon sufficient evidence of hardship.

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-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-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-working-day deadline or the appellant shall forfeit the right to appeal. Extensions of time to submit an appeal statement may be granted at the discretion of the Chair of the Appeals Board, or, if the Chair is unavailable, the secretary of the Appeals Board.

The appeal filed with the Appeals Board, together with the record of the appeal before the body of ANSI that rendered the decision from which the appeal is taken, shall be distributed by 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. No party to an appeal may communicate with any unrecused member of the Appeals Board on the subject of the appeal while the matter is pending. All communications shall be directed to the secretary of the ANSI Appeals Board.

11.2 Appeals Board initial review

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

If the Appeals Board determines that a *prima facie* case has been established, the secretary of the Appeals Board will so notify all parties to the appeal that a hearing will be scheduled.

11.3 Response

If the respondent receives an Appeals Board determination that a *prima facie* case has been established, the respondent shall have fifteen-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-working-days following receipt by the respondent of the Appeals Board determination.

If the respondent is unable to provide the required response within fifteen-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-working-day deadline or the respondent shall forfeit the right to respond. Extensions of time to submit a response may be granted at the discretion of the Chair of the Appeals Board, or, if the Chair is unavailable, the secretary of the Appeals Board.

The response shall include:

- a) the reasons why respondent believes the decision under appeal was correct and a reference to the provisions in the ANSI procedures upon which the respondent relies; and
- b) documentary evidence that directly supports respondent's position and upon which respondent relies.

The brief response (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger.

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

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

11.4 Letters of support by non-parties to the appeal

If the Appeals Board determines that a prima facie case has been established and a hearing will be held, two types of letters of support will be accepted within the fifteen-working-day response period established per 11.3 Response:

- **Amicus Curiae:** A person or organization that is not a party to the appeal and who has not been solicited by any of the parties may request permission from the Appeals Board Secretary to offer information in the form of an “amicus letter” that bears on the appeal to assist the Appeals Board. The request for permission to file an amicus letter may not exceed one single-space page in length, should state the name and affiliation of the requestor, the requestor’s interest in the appeal, the reason why the requestor believes an amicus letter is desirable and why the requestor believes the matters it intends to assert are relevant to the disposition of the appeal.
- **Party Supporter:** 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 amicus curiae (if permitted) or party-supporting letters shall be clearly marked as such, may not include new evidence, may not exceed three single-space pages in length 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.

11.5 Hearing

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

At the hearing, the appellant’s position shall be presented first, followed by the respondent. Each side is then allowed to respond until their total allotted time is exhausted. A half hour total, for the initial presentation and subsequent responses, is allotted for each side, with a limit of three speakers per side. Additional time is allotted for a question and answer session directed by the panel. At the hearing, speakers are not permitted to make assertions about facts or issues not in the record. At the close of the question and answer period, the appeals panel shall go into executive (closed) session for the purpose of arriving at a decision.

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

12 Appeals Board decisions

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 the Appeals Board for their information. The Secretary of the Appeals Board shall notify in writing both the appellant and the respondent of the decision of the Appeals Board.

A decision reached by an Appeals Board panel after an appeals hearing, shall be sent to the parties by the secretary within a reasonable time of the hearing. The hearing decision shall specify the outcome of the appeal, the reasons for such outcome, and the specific relief granted, if any. The Appeals Board action date will be the date of notification. The decision shall be announced in Standards Action.

13 Reconsideration

Any party to an appeal may request reconsideration of an Appeals Board hearing 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-working-days after notification of the hearing decision by the Appeals Board. The opposing party will have ten-working-days to file a reply, subject to the same page and format restrictions.

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.

14 Accessibility of documentation and decisions

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 and any letters of support) 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.

15 Informal settlement

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

ANSI Board of Standards Review

7 Appeal of action on American National Standards

7.1 Right to appeal

All directly and materially affected persons³ 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.

7.2 Appeal

All appeals shall be made in writing and shall be directed to the secretary of the ANSI BSR on or before midnight Eastern time of the due date.

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

The brief appeal statement (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger.

The appeal shall be submitted to the secretary along with the required filing fee. The filing fee may be waived or reduced only upon sufficient evidence of hardship.

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-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-working-day deadline, an extension may be requested, with the grounds for such request noted. Such request must be

³ "Persons" includes organizations, companies, government agencies, individuals etc.

directed to the secretary of the BSR, within the fifteen-working-day deadline or the appellant shall forfeit the right to appeal.

7.3 Response

The appeal shall be distributed by the secretary of the BSR to the potential respondent to allow them the opportunity to respond, if they so desire. Thereafter, this party shall have fifteen-working-days to submit their response to the appeal on or before midnight Eastern time of the due date.

The response shall include:

- a) the reasons why respondent believes the decision under appeal was correct and a reference to the provisions in the ANSI procedures upon which the respondent relies; and
- b) documentary evidence that directly supports respondent's position and upon which respondent relies.

The brief response (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger.

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.

If the respondent is unable to provide the required response within fifteen-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-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.

7.4 Letters of support by non-parties to the appeal

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 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.

7.5 Hearing

The secretary of the BSR shall establish a panel to hear the appeal, subject to applicable conflict of interest procedures.

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-working-days notice of the hearing date. Panel members shall receive copies of the appeals record at least fifteen-working-days prior to the date of the appeals hearing. The names and affiliation of all speakers and any observers must be provided to the secretary of the BSR in advance of the hearing.

At the hearing, the appellant's position shall be presented first, followed by the respondent. Each side is then allowed to respond until their total allotted time is exhausted. A half hour total, for the initial presentation and subsequent responses, is allotted for each side, with a limit of three speakers per side. Additional time is allotted for a question and answer session directed by the panel. At the hearing, speakers are not permitted to make assertions about facts or issues not in the record. At the close of the question and answer period, the appeals panel shall go into executive (closed) session for the purpose of arriving at a decision.

Should any party at interest not be present at the hearing, the decision of the 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.

7.6 Decision

Decisions of the BSR appeals panels shall require a majority vote of the panel, shall represent the decision of the BSR, and shall be provided to the BSR for their information. The Secretary of the BSR shall notify in writing both the appellant and the respondent of the decision of the BSR and provide a short statement identifying the basis for the decision. The BSR action date will be the date of notification. The outcome of the appeal shall be announced in *Standards Action*.

7.7 Accessibility of documentation and decisions

A copy of the record on appeal (*i.e.*, appeals-related documents submitted by the parties to the appeal for consideration by the BSR) 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.

7.8 Appeal of BSR actions

In accordance with the *ANSI Appeals Board Operating Procedures*, 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.

7.9 Informal settlement

ANSI encourages settlement of disputes at any time if the settlement is consistent with the objectives of the *ANSI Essential Requirements*. 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 *ANSI Essential Requirements*.

ANSI Executive Standards Council

17 ExSC hearing of appeals

17.1 Right to appeal

All directly and materially affected persons⁴ 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 reaccreditation⁵ 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.

17.2 Appeal

All appeals shall be made in writing and shall be directed to the secretary of the ANSI ExSC on or before midnight Eastern time of the due date.

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;

⁴ "Persons" includes organizations, companies, government agencies, individuals etc.

⁵ A "reaccreditation" action is the approval of revised procedures submitted by an ANSI-Accredited Standards Developer.

- e) documentary evidence that directly supports appellant's position and upon which appellant relies; and
- f) the specific relief sought by appellant from the Appeals Board.

The brief appeal statement (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger.

The appeal shall be submitted to the secretary of the ExSC along with the required filing fee. The filing fee may be waived or reduced only upon sufficient evidence of hardship.

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-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 a developer's continuing status as an ANSI-Accredited Standards Developer. If the appellant is unable to provide the required appeals materials within the fifteen-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-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.

17.3 Response

The appeal shall be distributed by the secretary of the ExSC to the potential respondent to allow them the opportunity to respond. Thereafter, this party shall have fifteen-working-days to submit their response to the appeal on or before midnight Eastern time of the due date.

The response shall include:

- a) the reasons why respondent believes the decision under appeal was correct and a reference to the provisions in the ANSI procedures upon which the respondent relies; and
- b) documentary evidence that directly supports respondent's position and upon which respondent relies.

The brief response (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger.

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.

If the respondent is unable to provide the required response within fifteen-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-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.

17.4 Letters of support by non-parties to the appeal

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 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.

17.5 Hearing

The secretary of the ExSC shall establish a panel to hear the appeal, subject to applicable conflict of interest procedures.

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-working-days notice of the hearing date. Panel members shall receive copies of the appeals record at least fifteen-working-days prior to the date of the appeals hearing. The names and affiliation of all speakers and any observers must be provided to the secretary of the ExSC in advance of the hearing.

At the hearing, the appellant's position shall be presented first, followed by the respondent. Each side is then allowed to respond until their total allotted time is exhausted. A half hour total, for the initial presentation and subsequent responses, is allotted for each side, with a limit of three speakers per side. Additional time is allotted for a question and answer session directed by the panel. At the hearing, speakers are not permitted to make assertions about facts or issues not in the record. At the close of the question and answer period, the appeals panel shall go into executive (closed) session for the purpose of arriving at a decision.

Should any party at interest not be present at the hearing, the decision of the 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.

17.6 Decision

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. The Secretary of the ExSC shall notify in writing both the appellant and the respondent of the decision of the ExSC and provide a short statement identifying the basis for the decision. The ExSC action date will be the date of notification. The outcome of the appeal shall be announced in *Standards Action*.

18 ExSC Consideration of Complaints against ANSI Audited Designators

If a formal complaint 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 ExSC hearing of appeals of the *Operating Procedures of the ANSI Executive Standards Council*.

If a formal complaint is lodged against an Audited Designator, 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 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.

19 ExSC Consideration of Complaints against ANSI-Accredited U.S. TAGs to ISO

If a formal complaint 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 *ExSC hearing of appeals of the Operating Procedures of the ANSI Executive Standards Council*.

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, the ExSC may handle the complaint as follows:

- (a) Upon receipt of a formal complaint, the ExSC shall review the complaint.
 - 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.
 - 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.
- (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.
- (c) Upon receipt of the response from the U.S. TAG, 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 U.S. TAG has violated its procedures, it shall dismiss the complaint;
 - 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.
- (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 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 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.

20 Accessibility of documentation and decisions

A copy of the record on appeal (*i.e.*, appeals-related documents submitted by the parties to the appeal for consideration by the ExSC) 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.

21 Appeal of ExSC actions

In accordance with the *ANSI Appeals Board Operating Procedures*, an appeal from a final appeals decision of the ExSC may be filed with the Appeals Board by the appellant or respondent to the ExSC appeal at issue.

22 Informal settlement

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

Comparison of current appeals procedures with proposed revisions shown in ExSC 053-2016

ANSI Appeals Board

1 Authority and scope

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 ~~Bylaws~~By-laws of ANSI. The Board of Directors has determined that the Appeals Board shall be the final level of appeal within ANSI.

The Appeals Board shall consider appeals by directly and materially affected persons (~~organizations, companies, government agencies, individuals,~~¹ that have exhausted all other appeals available to them through ANSI and the like) 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 ~~as they may be amended from time to time (collectively known as the "ANSI procedures")~~;

ANSI-ACC-CA-003 ANSI Policy and Criteria for Accreditation of Personnel Certification Programs

...

Operating Procedures of the United States National Committee of the International Electrotechnical Commission (IEC)

The Appeals Board shall consider an appeal based on the evidence before the body of ANSI that ~~made~~rendered the decision from which the appeal is taken (e.g., ANSI Board of Standards Review, ANSI Executive Standards Council), Accreditation Committee for Product Certifiers). Any decision that is appealed shall not be reversed by the ANSI Appeals Board unless the Appeals Board finds that such decision ~~was~~is clearly erroneous.² The burden of persuasion shall rest with the appellant. Pending ~~resolution~~a decision by the Appeals Board, the ~~original action or decision from which the decision-making body appeal is taken shall stand unless the decision-making body determines otherwise.~~remain in effect.

11 Appeals process

11.1 Appeal

All appeals shall be made in writing and shall be directed to the ~~attention of the Secretary~~secretary of the Appeals Board on or before midnight Eastern time of the due date. 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."

¹"Persons" includes organizations, companies, government agencies, individuals etc.

² If an appropriate and persuasive argument is presented to the Appeals Board that the decision appealed from is incorrect, the Appeals Board may reverse, remand or reverse and remand. If the Appeals Board remands the appeal back to the body that rendered the decision, it will do so with instructions to take further action.

~~An appeal shall be initiated by written notice of appeal to the secretary of the Appeals Board, along with a filing fee. This fee may be waived or reduced upon presentation of evidence by the appellant showing hardship. The notice of appeal shall be sent by certified mail or an overnight delivery service that can provide confirmation of delivery within fifteen (15) working days following receipt by the appellant of the final decision that is the subject of the appeal. The notice of appeal shall specify the decision from which the appeal is taken, the ANSI body that made the decision, a short statement of the matter in controversy, and the reason(s) why the appellant believes the decision is in error. The notice of appeal shall also list all other parties that appeared before the ANSI body with respect to the matter being appealed and contain a copy of the written decision, if any, from which the appeal is taken. In accordance with clause 1, *Authority and scope*, pending resolution by the Appeals Board, the original action of the decision making body shall stand unless the decision making body determines otherwise.~~

~~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;~~

~~In addition, it shall be the responsibility of the appellant to submit fifteen (15) copies of a written statement in support of the appeal to the secretary of the Appeals Board with the notice of appeal. The Appeal Statement shall include:~~

~~a) an explanation of the issue and the procedural history;~~

~~b) the specific reasons/arguments that explain why appellant believes the decision was in error and a reference;~~

~~c) references to the provision(s) of the ANSI procedures upon which appellant relies;~~

~~d) documentary evidence in support of that directly supports appellant's position, except that such evidence must have been before the ANSI body that made the decision from and upon which the appeal is taken;³ appellant relies; and~~

~~e) the specific relief sought by appellant from the Appeals Board.~~

~~The brief appeal notice and statement (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger.~~

~~The appeal shall be submitted to the secretary of the Appeals Board along with the required filing fee. The filing fee may be waived or reduced only upon sufficient evidence of hardship.~~

~~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-working-days following receipt by the appellant of the final decision that is the subject of the appeal.~~

³ ~~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 stay of the action being appealed shall remain in effect.~~

If the appellant is unable to provide the required appeals materials within the fifteen-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-working-day deadline or the appellant shall forfeit the right to appeal. Extensions of time to submit an appeal statement may be granted at the discretion of the Chair of the Appeals Board, or, if the Chair is unavailable, the secretary of the Appeals Board.

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

11.2 Appeals Board initial review

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

If the Appeals Board determines that a *prima facie* case has been established, the secretary of the Appeals Board will so notify all parties ~~that appeared before the ANSI body that rendered the decision being appealed. Thereafter, these parties shall have fifteen (15) working days to submit fifteen (15) copies of a response to the appeal statement. to the appeal that a hearing will be scheduled.~~ The response shall include:

11.3 Response

If the respondent receives an Appeals Board determination that a *prima facie* case has been established, the respondent shall have fifteen-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-working-days following receipt by the respondent of the Appeals Board determination.

If the respondent is unable to provide the required response within fifteen-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-working-day deadline or the respondent shall forfeit the right to respond. Extensions of time to submit a response may be granted at the discretion of the Chair of the Appeals Board, or, if the Chair is unavailable, the secretary of the Appeals Board.

The response shall include:

- a) the reasons why ~~respondents believe~~ respondent believes the decision under appeal was correct and a reference to the provisions in the ANSI procedures upon which ~~they rely~~ the respondent relies; and

b) ~~all~~ documentary evidence in support of that directly supports respondent's position, ~~except that such evidence must have been before the ANSI body that made the decision from and upon which the appeal is taken.~~⁴ respondent relies.

~~Upon receipt of the~~ The brief response, (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger.

~~The response shall be distributed by the secretary of the Appeals Board will transmit copies to all qualified Appeals Board members, subject to applicable conflict of the Appeals Board interest procedures, and to the appellant. No reply to the response supplemental filing prior to the forthcoming hearing shall be permitted without a showing of good cause and a need therefor.~~

~~Extensions of time to submit an appeal statement or response Panel members shall be granted receive copies of the appeals record at the discretion of least fifteen-working-days prior to the chairperson date of the appeals hearing.~~

11.4 Letters of support by non-parties to the appeal

~~If the Appeals Board or, if the chairperson is unavailable, by the secretary determines that a prima facie case has been established and a hearing will be held, two types of letters of support will be accepted within the fifteen-working-day response period established per 11.3 Response:~~

- Amicus Curiae: A person or organization that is not a party to the appeal and who has not been solicited by any of the parties may request permission from the Appeals Board Secretary to offer information in the form of an "amicus letter" that bears on the appeal to assist the Appeals Board. The request for permission to file an amicus letter may not exceed one single-space page in length, should state the name and affiliation of the requestor, the requestor's interest in the appeal, the reason why the requestor believes an amicus letter is desirable and why the requestor believes the matters it intends to assert are relevant to the disposition of the appeal.
- ~~A hearing on~~ Party Supporter: 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 amicus curiae (if permitted) or party-supporting letters shall be clearly marked as such, may not include new evidence, may not exceed three single-space pages in length 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.

11.5 Hearing

A hearing date for an appeal shall be set by the secretary of the Appeals Board after consultation with the chairperson except that 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. No party ~~The names and affiliation of all speakers~~

~~and any observers must be provided to an appeal may communicate with any member the secretary of the Appeals Board while in advance of the matter hearing.~~

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

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

12—Announcement Appeals Board decisions

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 the Appeals Board for their information. The Secretary of the Appeals Board shall notify in writing both the appellant and the respondent of the decision of the Appeals Board.

Notice of a

A decision reached by the Appeals Board concerning an appeal Appeals Board panel after an appeals hearing, shall be sent to the parties by the secretary within fifteen (15) working days a reasonable time of the hearing or completion of the letter ballot, as the case may be. The hearing decision shall specify the outcome of the appeal, the reasons for such outcome, and the specific relief granted, if any. The Appeals Board action date will be the date of notification. The decision shall be announced in Standards Action. In the event that the Appeals Board held a hearing in connection with the appeal and issued a written decision, any

13 Reconsideration

Any party to such an appeal may request reconsideration of an Appeals Board hearing decision by sending a written request in writing, 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 hearing decision by the Appeals Board. The opposing party will have ten working days to file a reply, subject to the same page and format restrictions.

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

1314 Accessibility of documentation and decisions

A copy of all the record on appeal (i.e., the appeals-related documents provided submitted by the parties to the appeal for consideration by the Appeals Board and any letters of support) shall be accessible made available to any directly and materially affected person who may wish to inspect and copy such documents upon request. The duplicating and postal costs incurred associated with respect to providing such documents filed with the Appeals Board in the proceedings shall be borne by the person seeking such copies them.

| **4415 Informal settlement**

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

ANSI Board of Standards Review

7 Appeal of action on American National Standards

7.1 Right to appeal

~~Directly~~All directly and materially affected persons ~~(organizations, companies, government agencies, individuals, etc.)~~⁴ 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 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. 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.~~

~~7.2 Appeals mechanism~~

~~The appeal and all related materials shall be filed in writing with the secretary of the BSR. 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.~~

7.2 Appeal

All appeals shall be made in writing and shall be directed to the secretary of the ANSI BSR on or before midnight Eastern time of the due date.

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

The brief appeal statement (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger.

The appeal shall be submitted to the secretary along with the required filing fee. The filing fee may be waived or reduced only upon sufficient evidence of hardship.

⁴ "Persons" includes organizations, companies, government agencies, individuals etc.

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 after receipt of notification by ANSI of an action by the BSR following the date of the decision that is the subject of the appeal. If the appellant is unable to provide all the required appeals materials within the fifteen (15) working days, the appellant shall request day deadline, an extension from may be requested, with the Secretary grounds for such request noted. Such request must be directed to the secretary of the BSR, and shall provide a justification therefor, within the fifteen (15) working days, day deadline or the appellant shall forfeit the right to further appeal. The appeals materials shall be accompanied by a filing fee. This fee may be waived or reduced upon sufficient evidence of hardship.

7.3 Response

The appeal shall include a statement with evidence as to why be distributed by the action secretary of the BSR should be modified. The to the potential respondent(s) shall be notified of an appeal and be given to allow them the opportunity to respond, if they so desire. Thereafter, this party shall have fifteen (15) working days after receipt of such notification days to submit to ANSI their response to the appeal on or before midnight Eastern time of the due date.

The response shall include:

- a) the reasons why respondent believes the decision under appeal was correct and a statement with reference to the provisions in the ANSI procedures upon which the respondent relies; and
- b) documentary evidence in opposition to the appeal that directly supports respondent's position and upon which respondent relies.

The brief response (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger.

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.

If the respondent is unable to provide a complete the required response within the fifteen (15) working days, the respondent shall request an extension from may be requested, with the Secretary grounds for such noted. Such request must be directed to the secretary of the BSR, and shall provide a justification therefor, within the fifteen (15) working days, day deadline or the respondent shall forfeit the right to respond. Extensions of time to submit an appeal statement or a response shall may be granted at the discretion of the chairperson Chair of the BSR, or, if the Chairperson Chair is unavailable, by the Secretary of the BSR. The original action of the BSR shall stand until all levels of appeal at ANSI have been completed unless the BSR determines otherwise. No party to an appeal may communicate with any member of the BSR while the matter is pending the Vice Chair of the BSR or the secretary of the BSR.

7.3 Appeals hearing

At 4 Letters of support by non-parties to the discretion appeal

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 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.

7.5 Hearing

The secretary of the BSR ~~or shall~~ establish a panel ~~consisting of at least five (5) BSR members, may conduct the appeals to~~ hear the appeal, subject to applicable conflict of interest procedures.

A hearing ~~at the next regularly~~ 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 ~~meeting, or on a date if~~ mutually agreeable to ~~all~~ the participants in the hearing. All parties ~~concerned. Both the appellant and the respondent(s)~~ shall be notified ~~given~~ at least fifteen-working-days notice of the hearing date ~~selected~~. Panel members shall receive copies of the appeals record at least fifteen ~~(15) working days~~ ~~working-days~~ prior to the date of the appeals hearing. The names and affiliation of all speakers and any observers must be provided to the secretary of the BSR in advance of the ~~date set and shall be invited to be represented~~ hearing.

At the hearing, the appellant's position shall be presented first, followed by the respondent. Each side is then allowed to respond until their total allotted time is exhausted. A half hour total, for the initial presentation and subsequent responses, is allotted for each side, with a limit of three speakers per side. Additional time is allotted for a question and answer session directed by the panel. At the hearing, speakers are not permitted to make assertions about facts or issues not in the record. At the close of the question and answer period, the appeals panel shall go into executive (closed) session for the purpose of arriving at ~~the hearing~~ a decision.

7.4 Appeals decision

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.

7.6 Decision

Decisions of the BSR ~~relating the outcome of an appeal~~ ~~appeals panels~~ shall require a majority vote of ~~those BSR members hearing the appeal. These decisions~~ ~~the panel,~~ shall represent the decision of the BSR, and shall be provided to the ~~full~~ BSR for their information. ~~Should the appellant and/or the respondent not be present at the hearing, the decision of the BSR appeals panel shall be based on the written submissions and the presentations made by the parties that are present at the hearing or who participate via teleconference.~~

The ~~secretary of the BSR~~ ~~The~~ Secretary of the BSR shall notify in writing both the appellant and the respondent(s) of the decision of the ~~Board~~ BSR and provide a short statement identifying the basis ~~for~~ the ~~Board~~ decision, ~~and announce the~~. The BSR action date will be the date of notification. The outcome of the appeal shall be announced in Standards Action. ~~The BSR action date will be the date of notification.~~

~~7.5 Further appeal~~

~~The final decision of the BSR may be appealed to the ANSI Appeals Board in~~

7.7 Accessibility of documentation and decisions

A copy of the record on appeal (i.e., appeals-related documents submitted by the parties to the appeal for consideration by the BSR) 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.

7.8 Appeal of BSR actions

In accordance with the *ANSI Appeals Board Operating Procedures*, 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.

7.69 Informal settlement

ANSI encourages settlement of disputes at any time if the settlement is consistent with the objectives of the *ANSI Essential Requirements*. 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 *ANSI Essential Requirements*.

ANSI Executive Standards Council

17 ExSC hearing of appeals

17.1 Right to appeal

All directly and materially affected persons ~~(organizations, companies, government agencies, individuals etc.)~~⁵ 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 reaccreditation⁶ 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.

An appeal

Pending a decision by the ExSC panel, the original decision of the ExSC shall be initiated by written notice of appeal to the Secretary of the ExSC. Except as remain in effect unless the ExSC determines otherwise provided for Audited Designators, all appeals, and all related materials, 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 filed in writing with directed to the secretary of the ANSI ExSC.

17.2 Appeal

All appeals shall be made in writing and shall be directed to the secretary of the ANSI ExSC on or before midnight Eastern time of the due date.

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:

⁵ "Persons" includes organizations, companies, government agencies, individuals etc.

⁶ A "reaccreditation" action is the approval of revised procedures submitted by an ANSI-Accredited Standards Developer.

- 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) documentary evidence that directly supports appellant's position and upon which appellant relies; and
- f) the specific relief sought by appellant from the Appeals Board.

The brief appeal statement (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger.

The appeal shall be submitted to the secretary of the ExSC along with the required filing fee. The filing fee may be waived or reduced only upon sufficient evidence of hardship.

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 of notification by ANSI of an action by the ExSC or its designee, 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 a developer's continuing status as an ANSI-Accredited Standards Developer. If the appellant is unable to provide all the required appeals materials within the fifteen (15) working days, the appellant shall request a day deadline, an extension from may be requested, with the Secretary grounds for such request noted. Such request must be directed to the secretary of the ExSC, and shall provide a justification therefor, within the fifteen (15) working days, or day deadline or the appellant shall forfeit the right to further appeal. The appeals materials shall be accompanied by a filing fee. This fee may be waived or reduced upon sufficient evidence of hardship. The notice of appeal shall specify the decision from which the appeal is taken, a short statement of the matter in controversy, the reason(s) why the appellant believes the decision is in error, and the specific relief sought by the appellant from 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.

17.3 Response

The appeal notice and statement shall be distributed by the Secretary secretary of the ExSC to the potential respondent 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 statement, on or before midnight Eastern time of the due date.

The response shall include:

- a) the reasons why the respondent(s) believe(s) believes the decision under appeal was correct and a reference to the provisions in the ANSI *Essential Requirements* procedures upon which they rely, the respondent relies; and all
- b) documentary evidence in support of the that directly supports respondent's position, and upon which respondent relies.

The brief response (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger.

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.

If the respondent is unable to provide all the appeals materials, required response within fifteen (15) working days, the respondent shall request an extension from the Secretary grounds for such noted. Such request must be directed to the secretary of the ExSC, and shall provide a justification therefor, within the fifteen (15) working days, 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.

Extensions

17.4 Letters of time support by non-parties to submit an the appeal statement or response

A person or organization that is not a party to the appeal may be granted at the discretion submit a letter of the Chair of the ExSC, support for a position taken by the appellant or, if respondent to the Chair is unavailable, of 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 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 the ExSC 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.

Upon receipt of the response, the Secretary

17.5 Hearing

The secretary of the ExSC shall establish a panel to hear the appeal, and, in subject to applicable conflict of interest procedures.

A hearing date for an appeal shall be set by the secretary of the ExSC after consultation with the panel members and Chair. However, a later date may be scheduled if mutually agreeable to the parties involved participants in the appeal, shall fix a date for the appeal hearing. All parties shall be given at least fifteen (15) working days notice of the date of the hearing. No party to an appeal may discuss the appeal with any member of the ExSC appeals panel while the matter is pending date. Panel members shall receive copies of all statements the appeals record at least fifteen (15) working days prior to the date of the appeal appeals hearing. The names and affiliation of all speakers and any observers must be provided to the secretary of the ExSC in advance of the hearing.

At the hearing, the appellant's position shall be presented first, followed by the respondent. Each side is then allowed to respond until their total allotted time is exhausted. A half hour total, for the initial presentation and subsequent responses, is allotted for each side, with a limit of three speakers per side. Additional time is allotted for a question and answer session. ~~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.~~

directed by the panel. At the hearing, speakers are not permitted to make assertions about facts or issues not in the record. At the close of the question and answer period, the appeals panel shall go into executive (closed) session for the purpose of arriving at a decision.

Should any party at interest not be present at the hearing, the decision of the 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.

17.6 Decision

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. ~~Should the appellant or the respondent not be present at the hearing, the decision of the ExSC appeals panel shall be based on the written submissions and the presentations made by the parties that are present at the hearing or who participate via teleconference. Notice of a decision reached by the ExSC appeals panel shall be sent 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 of the ExSC. 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 Secretary of the ExSC shall notify in writing both the appellant and the respondent of the decision of the ExSC and provide a short statement identifying the basis for the decision. The ExSC action date will be the date of notification.~~ The outcome of the appeal shall be announced in *Standards Action*.

~~The final decision of the ExSC appeals panel may be appealed to the ANSI Appeals Board in accordance with the *Appeals Board Operating Procedures*.~~

18 ExSC Consideration of Complaints against ANSI Audited Designators

~~If a formal complaint is lodged against a standards developer, the ExSC shall treat the complaint as an appeal pursuant to clause 2.8.2 *Appeals at ANSI* of the *ANSI Essential Requirements*. In its discretion, the ExSC may choose as part of that appeals process to require that the developer undergo a special audit pursuant to the *ANSI Auditing Policy and Procedures*. If the ExSC determines that a special audit is necessary, then the ExSC shall determine what the scope of that audit should be.~~

If a formal complaint 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 *ExSC hearing of appeals* of the *Operating Procedures of the ANSI Executive Standards Council*.

~~Regardless of which way such a complaint is processed, initiation or conclusion of an appeal at the standards developer level is not a precondition for consideration of said complaint by the ExSC⁴.~~

If a formal complaint is lodged against an Audited Designator, and if (i) the complaint relates to one or more specific approved American National Standards and (ii) the complainant has

⁴ Reference to “the ExSC” in this clause is defined as the full ExSC or a panel of not less than five ExSC members.

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 ~~by mail~~ 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.

19 ExSC Consideration of Complaints against ANSI-Accredited U.S. TAGs to ISO

If a formal complaint 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 *ExSC hearing of appeals of the Operating Procedures of the ANSI Executive Standards Council*.

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, the ExSC may handle the complaint as follows:

- (a) Upon receipt of a formal complaint, the ExSC shall review the complaint.
 - 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.
 - 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.
- (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.
- (c) Upon receipt of the response from the U.S. TAG, 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 U.S. TAG has violated its procedures, it shall dismiss the complaint;
 - 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.
- (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 ~~by mail~~ remotely, rather than through an on-site visit.
- (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 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.

20 Accessibility of documentation and decisions

A copy of the record on appeal (i.e., appeals-related documents submitted by the parties to the appeal for consideration by the ExSC) 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.

21 Appeal of ExSC actions

In accordance with the *ANSI Appeals Board Operating Procedures*, an appeal from a final appeals decision of the ExSC ~~or an appeal of an action or inaction of the ExSC~~ may be appealed ~~to~~ filed with the Appeals Board by those directly and materially affected parties that have been adversely affected. ~~The original action of the appellant or respondent to the ExSC shall stand until all levels of appeal at ANSI have been completed unless the ExSC determines otherwise~~ issue.

22 Informal settlement

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