ANSI Appeals Board Operating Procedures

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 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, 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-PR-004 Appeals
CAP-PL-301 Accreditation Policy for ANSI Certificate Accreditation Program
CFP-PL-801 Accreditation Policy for ANSI-CFP Accreditation Program
GHG-PL-701 Accreditation Policy for ANSI Greenhouse Gas Validation / Verification Body Accreditation Program
PCAC-PL-501 Accreditation Policy for Personnel Certification Accreditation Program
PRO-PL-102 Manual of Operations for Accreditation of Product Certification Programs
PRO-PR-106 Identification of Non-Conformities and Implementation of Corrective and Preventive Actions by Accredited and Applicant CBs
~~*ANSI-ACC-CA-003 ANSI Policy and Criteria for Accreditation of Personnel Certification Programs*~~
~~*ANSI-ACP-CA-001 ANSI Policy and Criteria for Accredi*~~*ANSI*~~*tation of Product Certification Programs ANSI-ACP-CA-002 ANSI Manual of Operations for Accreditation of Product Certification Programs ANSI-ACP-PM-100 ANSI Accreditation Services Management System – Policy Manual*~~
ANSI Auditing Policy and Procedures
ANSI Essential Requirements: Due process requirements for American National Standards
~~*ANSI-PCAC-CA-501 ANSI Policy and Criteria for Accreditation*~~
~~*ANSI-PCAC-CA-502 ANSI Manual of Operations for Accreditation of Personnel Certification Programs*~~
~~*ANSI-PCAC-CA-503 Operating Procedures of the Personnel Certification Accreditation Committee (PCAC)*~~
ANSI Procedures for the National Adoption of ISO and IEC Standards as American National Standards
ANSI Procedures for U.S. Participation in the International Standards Activities of the ISO, including Annex B, *Criteria for the Development and Coordination of U.S. Positions in the International Standardization Activities of the ISO and IEC*
Operating Procedures of the ANSI Board of Standards Review (BSR)
Operating Procedures of the ANSI Executive Standards Council (ExSC)
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 the decision from which the appeal is taken (e.g., ANSI Board of Standards Review, ANSI Executive Standards Council). Any decision that is appealed shall not be reversed by the ANSI Appeals Board unless the Appeals Board finds that such decision was clearly erroneous. The burden of persuasion shall rest with the appellant. Pending resolution by the Appeals Board, the original action of the decision-making body shall stand unless the decision-making body determines otherwise.

2 Membership

The Appeals Board shall have a membership of not less than nine nor more than eighteen members appointed by the chairperson of the Board of ANSI, with the approval of the Board of Directors. Membership in the Institute shall be a prerequisite for participation on the Appeals Board, unless, the Board of Directors specifically permits an exception. The members shall be chosen to broadly reflect the various categories of ANSI membership, to the extent practicable. The resident counsel of ANSI, or in his or her absence, outside ANSI counsel, shall be a non-voting, ex-officio member of the Appeals Board.

Comments due to psa@ansi.org by July 25, 2016

ExSC_053_2016

June 10, 2016

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 persons[1] 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.

ExSC_053H-2016

From: Katie Calder
Sent: Thursday, July 14, 2016 10:23 AM
To: Anne Caldas
Subject: appeals procedures

Here's my suggested language for 11.1 d (and 11.3 a):

d) references to the provision(s) of the ANSI procedures upon which appellant relies
For appeals arising from the conformity assessment accreditation process, the appeal should include any applicable reference to a conformity assessment accreditation standard.

I'm attaching some examples of decisions on appeals from NCRs so you can see that sometimes our appeals require the decider to interpret the requirements of an accreditation standard.

I'm also attaching a version of the current appeals board procedure redlined to show our current procedures that should be listed in the document, a copy your pdf (ExSC_053_2016) with my comments, and a copy of our appeals procedure.

Thanks!

Katie