

## ExSC 8096 comparison with 2010 text

At its September 2009 meeting, the ANSI Executive Standards Council (ExSC) formed a Task Group to address procedural issues associated with the current PINS process, coordination of American National Standards (ANS) related standards development activities and the handling of claims of conflict and/or unnecessary duplication. The following revisions are proposed in order to: 1) clarify procedural requirements; 2) propose a definition for “duplication” within the ANS process; 3) incorporate added details that define “good faith efforts”; 4) introduce greater transparency with respect to the outcomes of PINS deliberation activities; 5) offer a sample PINS Deliberation Report; and 6) establish a specific role for the ANSI ExSC early in the ANS development process, as a potential mediator of whether “good faith” efforts were used to address claims of conflict and/or duplication.

The proposed revisions are made to the *ANSI Essential Requirements: Due process requirements for American National Standards (ANSI Essential Requirements)* and to the *Operating Procedures of the ANSI Executive Standards Council (ExSC)*, respectively. Note that the proposal includes some changes in placement of existing text.

### 2.4 Coordination and harmonization

In order to achieve a harmonized set of American National Standards, it is necessary for developers to coordinate and harmonize activities to avoid or minimize the promulgation of conflicting or duplicative American National Standards.

ASDs shall make good faith efforts to avoid conflict and unnecessary duplication of scope and technical content due to the potential for confusion which may be caused to implementers and users of the standards, the heightened potential for introducing conflict, and the expenditure of unnecessary resources associated with maintaining multiple sets of documentation on subject matter that is substantially the same.

#### 2.4.1 Duplication and overlap

Duplication within the ANS process commonly involves either similarity in subject matter (as defined in scope statements) or similarity in specific technical content, between or among ANS and/or candidate ANS.

*Duplication of scope* refers to a situation where the standard is intended to cover substantially the same subject or portions thereof of an existing or previously or concurrently-announced candidate American National Standards.

Overlap of scope refers to a situation where a standard is intended to cover some portion or portions of the subject matter or technical content of an existing, or previously or concurrently announced candidate American National Standard.

*Duplication of technical content* refers to a situation where the provisions and requirements of one standard's written text are reproduced in the written text of another standard so as to have essentially no difference in meaning or application.

#### 2.4.2 Conflict

Conflict within the ANS process refers to a situation where, viewed from the perspective of a future implementer, the terms of one standard are inconsistent or incompatible with the terms of the other standard such that implementation of one standard under terms allowable under that standard would preclude proper implementation of the other standard in accordance with its terms.

#### 2.4.3 Coordination/Harmonization

ANSI-Accredited Standards Developers shall make a good faith effort to avoid potential conflicts and to minimize unnecessary duplication by coordinating standardization activities intended to result in harmonized American National Standards<sup>1</sup>. Should there be claims of conflict or duplication (including overlap), a good faith effort to resolve them shall be made. A good faith effort shall require coordination with other developers and substantial, thorough and comprehensive efforts to harmonize a candidate ANS and existing ANS. A "good faith" effort shall include, at minimum, compliance with all relevant sections of these procedures.

At a minimum, the following shall be undertaken by ASDs<sup>2</sup>:

- a preliminary comprehensive review of existing projects to ensure that the contemplated project does not conflict with duplicate, and/or overlap a previous one;
- outreach to other SDOs involved in similar areas to ensure that a standard does not already exist;
- Outreach to other SDOs involved in similar areas to ensure that a similar standard is not already under development.
  - consideration of a joint project, if another standard with a similar subject matter exists or is under development;
  - thorough and thoughtful consideration of the claim of conflict, duplication, and/or overlap and timely scheduling and follow-through on agreed upon actions;
  - thorough and thoughtful consideration of whether, if conflict is at issue, the alleged conflict is justified by a compelling need; and/or
  - thorough and thoughtful review of whether, if duplication and/or overlap is at issue, that such duplication and/or overlap is justified by a compelling need.

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Developers shall retain evidence of such efforts in order to demonstrate compliance with this requirement to the satisfaction of the appropriate ANSI body.

<sup>1</sup> Note that clause 4.2.1.3.4 *Withdrawal for Cause* provides a mechanism by which an interested party may at any time request the withdrawal of an existing ANS.

<sup>2</sup> See Appendix C: *Sample ANSI PINS Deliberation Report*

An ASD may reference existing standards and, where it believes it is necessary to duplicate specific text, obtain necessary permissions.

## **2.5 Notification of standards development and coordination**

Notification of standards activity shall be announced in suitable media as appropriate to demonstrate the opportunity for participation by all directly and materially affected persons. Developers are encouraged to consult any relevant international or regional guides that may impact the proposed standard and shall advise the relevant ANSI-Accredited U.S. TAG(s) if the standard is intended to be submitted for consideration as an ISO or ISO/IEC JTC-1 standard.

### 2.5.1 Project Initiation Notification (PINS)

At the initiation of a project to develop or revise an American National Standard<sup>3</sup>, notification shall be transmitted to ANSI using the Project Initiation Notification System (PINS) form, or its equivalent, for announcement in *Standards Action*. Comments received in connection with a PINS announcement shall be handled in accordance with these procedures.

A statement shall be submitted and published as part of the PINS announcement that shall include:

- (a) an explanation of the need for the project, including, if it is the case, a statement of intent to submit the standard for consideration as an ISO or ISO/IEC JTC-1 standard; and
- (b) identification of the stakeholders (e.g., telecom, consumer, medical, environmental, etc.) likely to be directly impacted by the standard.

If during the standards development process, the standard changes in such a way as to alter the materially affected stakeholder population identified in 2.5.1 (b), then a revised PINS shall be submitted and published.

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#### 2.5.1.1 PINS Exceptions

A PINS is not required for revisions of an American National Standard that is maintained under continuous maintenance and (1) is registered as such on the ANSI website, (2) has a notice in the standard that the standard is always open for comment and how to submit comments, and (3) has information on the developer's website that the standard is under continuous maintenance and how to submit comments. A PINS is also not required in connection with the decision to maintain an ANS under the stabilized maintenance option. A PINS form may be submitted, but is not required, at the initiation of a project to reaffirm or withdraw an American National Standard.

#### 2.5.1.2 Assertions of conflict and/or duplication

If a developer receives written comments within 30 days from the publication date of a PINS announcement in *Standards Action*, and said comments assert that a proposed standard conflicts with or duplicates an existing American National Standard (ANS) or a candidate ANS that has been announced previously or concurrently in *Standards Action*, a mandatory deliberation of representatives from the relevant stakeholder groups shall be held within 90 days from the comment deadline. Such a deliberation shall be organized by the developer and the commenter and shall be concluded before the developer may submit a draft standard for public review. If the deliberation does not take place within the 90-day period and the developer can demonstrate that it has made a good faith effort to schedule and otherwise organize it, then the developer will be excused from compliance with this requirement. The purpose of the deliberation is to provide the relevant stakeholders with an opportunity to undertake in good faith to resolve such claims of conflict or duplication and discuss whether

<sup>3</sup> Including the national adoption of ISO and IEC standards as American National Standards, but excluding actions set-forth in 2.5.1.1.

there is a compelling need for the proposed standards project and what harmonization, if any, should take place.

The results of such PINS deliberations may vary. Among other actions, such deliberations may result in an agreement:

- to undertake a joint standard;
- to modify the scope of one or both standards to harmonize them;
- by one party to abandon a project;
- to continue to dialog through the standards development process, perhaps through appointment of members to both consensus bodies;, or
- to disagree about whether conflict or duplication and/or a compelling need in fact exists.

### 2.5.1.3 PINS Deliberation Report

The outcome of a PINS deliberation shall be conveyed in writing<sup>4</sup> (the “Deliberation Report”) within 30 days after the conclusion of the deliberation by the developer to the commenter and to ANSI. The commenter and/or materially affected stakeholders who have been involved in the PINS deliberation process may elect to file a separate Deliberation Report of the PINS deliberation to ANSI for consideration by the BSR during the ANS approval process. In these cases, ANSI shall provide the filer(s) with written acknowledgement of receipt of the report within 5 business days Upon submission of the Deliberation Report by the ASD, the developer may continue with the submission of the draft standard for public review, and the availability of the ASD submitted Deliberation Report and any separate Deliberation Reports received by ANSI shall be announced in *Standards Action* for informational purposes only. If additional deliberations take place, they should not delay the submission of the draft for public review, and an updated Deliberation Report shall be conveyed within 30 days after each deliberation and announced in *Standards Action*. Any actions agreed upon from the deliberations shall be carried out in a reasonably timely manner, but normally should not exceed 90 days following the deliberation. Subsequently, the developer shall include the Deliberation Report(s) with the BSR-9 submittal to the ANSI Board of Standards Review (BSR) for consideration should the developer ultimately submit the subject standard to ANSI for approval.

In the case of ANSI Audited Designators<sup>5</sup>, the Audited Designator shall also provide a Deliberation Report to the commenter and to ANSI within 30 days after each deliberation. The commenter and/or materially affected stakeholders who have been involved in the PINS deliberation process may elect to file a separate

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<sup>4</sup> It is recommended that developers utilize the ANSI PINS Deliberation Report during and upon conclusion of a deliberation to ensure that “good faith” efforts are made, key issues are addressed and decisions are memorialized. *See Annex C.*

<sup>5</sup> ANSI Audited Designator: An Audited Designator is an ANSI-Accredited Standards Developer to whom the ANSI Executive Standards Council has granted the authority to designate their standards as American National Standards without such standards being reviewed and approved by the ANSI Board of Standards Review but such developer is subjected to additional audits.

Deliberation Report of the PINS deliberation to ANSI for consideration by the BSR during the ANS approval process. In these cases, ANSI shall provide the filer(s) with written acknowledgement of receipt of the report within 5 business days. The availability of the ASD submitted Deliberation Report and any separate Deliberation Reports received by ANSI shall be announced in *Standards Action* for informational purposes only. The Audited Designator shall review the results of the deliberation prior to designating a standard as an ANS.

While the outcome is not binding, unless binding provisions are agreed to by the developer, participants are encouraged to develop a consensus on whether and how the standards development project should proceed. *See* also 4.3.

## 2.5.2 Public Review

In addition, proposals for new American National Standards and proposals to revise, reaffirm, or withdraw approval of existing American National Standards shall be transmitted to ANSI using the BSR-8 form, or its equivalent, for listing in *Standards Action* in order to provide an opportunity for public comment. If it is the case, then a statement of intent to submit the standard for consideration as an ISO or ISO/IEC JTC-1 standard shall be included as part of the description of the scope summary that is published in *Standards Action*. The comment period shall be one of the following:

- A minimum of thirty days if the full text of the revision(s) can be published in *Standards Action*;
- A minimum of forty-five days if the document is available in an electronic format, deliverable within one day of a request, and the source (e.g., URL or an E-mail address) from which it can be obtained by the public is provided to ANSI for announcement in *Standards Action*; or
- A minimum of sixty days, if neither of the aforementioned options is applicable.

Such listing may be requested at any stage in the development of the proposal, at the option of the standards developer, and may be concurrent with final balloting. However, any substantive change subsequently made in a proposed American National Standard requires listing of the change in *Standards Action*.

### 4.2.1.1 Criteria for approval of an American National Standard

With respect to any proposal to approve, revise or reaffirm an American National Standard (including the national adoption of an ISO or IEC standard as an American National Standard) for which one or more unresolved objections have been reported, the BSR shall evaluate whether:

- a. the standard was developed in accordance with the procedures upon which the developer was granted accreditation, with particular attention given to whether due process was followed, consensus was achieved, and an effort was made to resolve any objections to the standard;
- b. any appeal to the standards developer with respect to the standard was completed;
- c. notice of the development process for the standard was provided to ANSI in accordance with PINS or its equivalent;
- d. good faith efforts<sup>6</sup> were undertaken to resolve any alleged conflict or duplication with other American National Standards or candidate ANS that have been announced previously in *Standards Action*; other known American National Standards were examined with regard to harmonization and if conflict or duplication exists, there is documented in the PINS Deliberation Report(s) a compelling need for existence of the conflict and/or the duplication in the standard;
- e. ANSI's patent policy is met, if applicable;
- f. ANSI's policy on commercial terms and conditions is met if applicable;

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<sup>6</sup> See 2.4.3 Coordination/harmonization

- g. the standards developer provided the following or evidence thereof:
1. title and designation of the proposed American National Standard;
  2. indication of the type of action requested (that is, approval of a new American National Standard or reaffirmation, revision, or withdrawal of an existing American National Standard);
  3. a declaration that applicable procedures were followed;
  4. a declaration that the proposed standard is within the scope of the previously registered standards activity;
  5. a declaration that good faith efforts were undertaken to resolve alleged conflicts and/or duplications with other American National Standards or candidate ANS' that have been announced previously in *Standards Action*;
  6. a roster of the consensus body that indicates: the vote of each member including abstentions and unreturned ballots, if applicable; the interest category of each member; and a summary thereof;
  7. a declaration that all appeal actions related to the approval of the proposed standard have been completed;
  8. a declaration that the criteria contained in the ANSI patent policy have been met, if applicable; and
  9. identification of all unresolved negative views and objections, with names of the objector(s), and a report of attempts toward resolution.

If the BSR determines, based on the weight of the evidence presented including the Deliberation Reports provided by the ASD, the commenter and/or participating stakeholders, that the above-stated criteria have been satisfied, the standard shall be approved as an American National Standard. The BSR shall deny approval, if, based on the weight of the evidence presented, the BSR determines that the American National Standard:

- a) is contrary to the public interest;
- b) contains unfair provisions;
- c) is unsuitable for national use;

or that the ASD has failed to make a good faith effort to resolve conflicts or duplication.

Standards approved as American National Standards shall be designated, published, and maintained in accordance with the procedures contained herein. A substantive change that has not been afforded due process in accordance with these procedures may not be made in an approved American National Standard.

The BSR shall not approve standards that conflict with .substantially overlap or duplicate existing American National Standards unless good faith efforts have been undertaken and/or there is evidence or justification of a compelling need.

Notice of the BSR's final action on all standards shall be published in *Standards Action*.

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### 4.3 Planning, Coordination and Public Notice

ANSI's planning and coordinating activities depend on the cooperation and participation of standards developers and affected interests. Various methods are used to plan and coordinate voluntary standards activities. A considerable amount of planning and coordinating activity routinely takes place at the standards development level by the standards writing consensus bodies or their subgroups. Specific coordination requirements are set-forth in other sections of this document.

Overall responsibility for ANSI's national and international planning and coordinating functions is assigned by the Board of Directors to the Executive Standards Council (ExSC). The ExSC delegates specific activities as opportunity and needs arise, appointing designees or standards advisors, as appropriate.

To achieve a harmonized set of American National Standards and to represent the United States in non-treaty international standards activities, it is necessary for ANSI's procedures to encourage harmonization and avoid the promulgation of conflicting or unnecessarily duplicative American National Standards.

A harmonized set of American National Standards can be accomplished through planning, coordination and careful consideration of public comments. Additionally, the following activities represent those key steps that should be followed to ensure consistency

- a) clear delineation of scope, purpose, and intended application of each standard;
- b) thorough investigations of the need for an ANS;
- c) thorough investigations of existing ANS and already announced proposed ANS prior to development of a new candidate ANS;
- d) if conflict, duplication, and/or overlap with an existing or proposed ANS exists, that a "compelling need" for the standard is established early on;
- e) public notice of standardization activities in *Standards Action* and in relevant other publications;
- f) joint and cooperative activities of the individual organizations, including liaison representation;
- g) liaison between national standards developers and the organization responsible for the U.S. position on corresponding international standards;
- h) use of the ANSI PINS system; and
- i) conclusion of good faith efforts to resolve claims of conflict, unnecessary duplication or overlap.

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After concluding PINS deliberations under Section 2.5 above, a developer or commenter may claim that a party to the deliberation failed to deliberate in good faith and may, within 30 days after the final PINS deliberation report was filed but prior to the submittal of a BSR-9 or BSR-109 to ANSI, request the ExSC to provide informal mediation of the claim. Such request must be in writing and include a copy of the Deliberation Report(s) required under Section 2.5 along with a short and concise statement of the claimant's position. The request shall be considered by the ANSI ExSC in accordance with the procedures contained in clause 20 *Informal Mediation* of the *Operating Procedures of the ANSI Executive Standards Council*.

### 5.4 Requirements

With respect to submitting American National Standards to ANSI without BSR approval, the qualified applicant shall agree to provide to ANSI the following:

- a. title and designation of the American National Standard;
- b. indication of the type of action (that is, approval of a new American National Standard or reaffirmation, revision, or withdrawal of an existing American National Standard);
- c. declaration that applicable procedures were followed;
- d. a declaration that the standard is within the scope of the previously registered standards activity;
- e. a declaration that good faith efforts were undertaken to resolve any alleged conflict or duplication and/or overlap with other American National Standards or candidate ANS' that have been announced previously in *Standards Action*, other known ANS were examined with regard to harmonization and duplication of content, and if conflict, overlap and/or duplication exists good faith efforts have been undertaken and/or there is compelling need for the standard;
- f. a declaration that the Audited Designator has made a good faith effort to resolve conflicts, overlap and/or duplication;
- g. a declaration that all appeal actions related to the approval of the proposed standard have been completed;
- h. a declaration that the criteria contained in the ANSI patent policy have been met, if applicable;
- i. approval date of the American National Standard.

***Proposed for inclusion in the ANSI ExSC Operating Procedures rather than the ANSI Essential Requirements***

20 Informal Mediation of Claims of Conflict and Duplication and Overlap

After concluding PINS deliberations, a developer, commenter or stakeholder involved in the deliberation may claim that a party to the deliberation failed to deliberate in good faith, and may, within 30 days after the final PINS Deliberation Report was filed by the ASD but prior to the submittal of a BSR-9 or BSR-109 to ANSI, request the ExSC to provide informal mediation of the claim. However, if separate PINS deliberation reports were submitted by the commenter and/or materially affected stakeholders, ANSI is required, within five business days, to notify the commenters and/or other stakeholders that submitted the separate Deliberation Report(s) involved in the deliberation that they have 30 days to request the ExSC to provide informal mediation, notwithstanding the filing of a BSR-9 or BSR-109 in the interim. In both cases such requests must be in writing and include a copy of the Deliberation Report(s) required per the *ANSI Essential Requirements* along with a short and concise statement of the claimant's position. The request shall be considered by the ANSI ExSC in accordance with the following procedures:

- (a) Upon receipt of a formal complaint, the following actions shall occur.
  - 1) If the complaint has not been submitted to ANSI (i) within 30 days after the final PINS deliberation report but before the submittal of a BSR-9 or BSR-109, the ExSC Secretary in consultation with the ExSC Chairman shall dismiss the complaint unless there are compelling circumstances.

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- 2) If the complaint does not (i) specifically allege that the ASD failed to deliberate in good faith as suggested or specified by the *Essential Requirements*, and (ii) provide sufficient substantiation of facts to support such allegations to establish a *prima facie* case, the ExSC<sup>7</sup> shall dismiss the complaint.
- (b) If the complaint is not dismissed pursuant to (a), the ExSC Secretary shall send a copy of the complaint to the ASD and request a response to the allegations in the complaint.
- (c) Upon receipt of the response from the ASD, 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 ASD has not deliberated or acted subsequently in good faith as specified in the *Essential Requirements*, it shall dismiss the complaint without recommendations for corrective actions.
  - 2) If it determines that the complaint and the response taken together do raise issues that merit further review, it shall so advise the parties along with any recommendations for corrective action in a written report, the availability of which shall be announced in *Standards Action* for informational purposes only and, except in the case of Audited Designators, provided to the ANSI BSR for its review prior to the approval of the standard at issue as an American National Standard. In the case of an Audited Designator, the report shall be forwarded to the full ExSC for information.
- (d) Any subsequent claim for appeal for any reason shall be handled through the applicable appeals process<sup>8</sup> or through the ExSC complaint process for Audited Designators.

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<sup>7</sup> Reference to “the ExSC” in this clause is defined as the full ExSC or a panel of not less than five ExSC members.

<sup>8</sup> Except in the case of Audited Designators, an appeal of an ANSI BSR final action on a standard is heard by the ANSI BSR in accordance with the *Operating Procedures of the ANSI Board of Standards Review*.

**Location:** *ANSI Essential Requirements*

**Annex C – Non-Mandatory: Sample**

**ANSI PINS Deliberation Report**  
**Submit to ANSI and participants within 30 days of deliberation**  
*Submit to ANSI: psa@ansi.org*

**Date of Deliberation:**

**Location of Deliberation:**

**Deliberation Chair:**

**Deliberation Attendees:**

**Decision-making Panel members (if by panel):**

**Standard at issue (Designation and Title):**

**ANSI-Accredited Standards Developer (Sponsor of standard):**

**Scope of standard:**

**Summary of comments prompting a PINS Deliberation:**

**Summary of good faith efforts to date to resolve issue (*See 2.4.3 of the ANSI Essential Requirements*):**

**Do the parties agree that there is conflict or duplication? If yes, what is the “compelling need”? If no, summarize position of each side:**

**Key Discussion Points:**

**Outcome of Deliberation/Next Steps and Agreed Upon Timeline:**

**Contact information for submitters:**