NEMA PROCEDURES FOR DEVELOPMENT OF AMERICAN NATIONAL STANDARDS

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1 GENERAL

1.1 Compliance with ANSI Essential Requirements

These procedures define the NEMA process for developing evidence of consensus for the development and maintenance (approval, reaffirmation, revision, stabilized maintenance or withdrawal) of American National Standards (ANS) and registered technical reports. The procedures meet the requirements for due process and development of consensus for the approval of ANSs as given in the most recent edition of the *ANSI Essential Requirements: Due process requirements for American National Standards.*

1.2 Patent Policy

The process shall comply with the ANSI Patent Policy as contained in the most recent edition of the *ANSI Essential Requirements: Due process requirements for American National Standards*. There is no objection in principle to drafting an ANS in terms that include the use of an essential patent claim (one whose use would be required for compliance with that standard) if it is considered that technical reasons justify this approach.

Each participant in the development of a proposed, revised, or approved ANS is encouraged to bring to the attention of the consensus body and other participants at any time during and after the development of the standard any patent(s) or published patent application(s) that are believed to contain an essential patent claim, which (a) the participant owns, controls, or has the ability to license, or (b) is owned by others in the manner set forth in this policy.

No participant in the development of a proposed, revised, or approved ANS shall knowingly conceal from the consensus body or the other organizations participating in the development of a proposed, revised, or approved ANS any patent containing an essential patent claim that the participant (or any affiliate) owns, controls, or has the ability to license. Participants in the development of an ANS are encouraged to identify and disclose early in the standards development process essential patent claims of which the participant has knowledge.

1.2.1 Definitions

A. Essential Patent Claim

An “essential patent claim” means a claim contained in a patent or published patent application, the use of which is necessary to create a compliant implementation of the mandatory portions of the normative clauses of the ANS or proposed ANS when there is no commercially and technically feasible non-infringing alternative. An essential patent claim does not include any claim that is essential only for enabling technology (technology that may be necessary to make a product that complies with the standard but is neither explicitly required by nor expressly set forth in the standard) or any claim other than that set forth above even if contained in the same patent as the essential patent claim.

B. Knowledge or Knowingly

“Knowledge” or “knowingly” means or refers to the actual personal awareness by an individual of information relating to a particular matter. Knowledge shall not be deemed to include knowledge held by other personnel of the relevant individual participants’ sponsor or employer; *provided however*, that such sponsor or employer will not deliberately withhold relevant information from individual participants in standardization activities for the purpose of avoiding disclosure or licensing under this policy.

C. Participant or Individual Participant

"Participant" means a consensus body member authorized to develop an ANS, and it also refers to an individual participant. "Individual participant" means the individual person representing or employed by a participant in the development of an ANS.

D. Affiliate

"Affiliate" means an entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such entity. "Control" means ownership of or ability to direct more than 50% of the voting power of a corporation or other organization.

E. Development

"Development" means the entire effort in proposing, drafting, meeting and discussing, voting upon, revising and reaffirming an ANS or proposed ANS.

1.2.2 No Requirement to Search Patent Portfolio

Participants in the development of a proposed, revised, or approved ANS do not have an affirmative duty to search their patent portfolio to determine if they own a patent containing an essential patent claim.

1.2.3 Disclosures of Essential Patent Claims

To implement the policy of 1.2, the procedures in 1.2.3-1.2.8 shall be followed.

1.2.3.1 Self-Disclosure by Patent Holder

A participant in the development of a ANS or proposed ANS, on behalf of itself and its affiliates, shall disclose in writing to the Secretary essential patent claims that they own, control, or have the ability to license as expeditiously as possible after that participant recognizes it has an obligation of disclosure under this policy. The disclosure shall be accompanied by the written statement required by 1.2.3.3B below. A participant may also submit to the Secretary at any time a written disclaimer as provided in 1.2.3.3A below.

1.2.3.2 Disclosure at Request of NEMA

At the request of any firm or person who states that another identified party owns, controls, or has the ability to license an essential patent claim, the Secretary shall request, without coercion, that the identified party, on behalf of itself and its affiliates, provide the statement required by 1.2.3.3A or 1.2.3.3B below.

1.2.3.3 Written Disclosure Statements

A participant or an identified party providing a written statement under 1.2.3.1 or 1.2.3.2 shall submit a written communication addressed to the Secretary containing either:

A. A statement containing an assurance in the form of a general disclaimer to the effect that such party (including any affiliate) does not own, control or have the ability to license patents or published patent applications containing essential patent claim(s), but in the event that it is later discovered that such party (including any affiliate) does own, control or have the ability to license such patents, a license will be made available as prescribed in 1.2.3.3B; or
B. A statement:
   (a) Identifying the patent registration or application number(s) of the patent(s) or published patent application(s) that is believed to contain essential patent claim(s);
   (b) Identifying the ANS or proposed ANS and the part and/or section of the ANS or proposed ANS that would include the use of an essential patent claim;

(c) Containing an assurance that a license to such essential patent claim(s) will be made available by such party (including any affiliate) to applicants desiring to utilize the license for the purpose of implementing the standard either:
   (1) Under reasonable terms and conditions that are demonstrably free of any unfair discrimination; or
   (2) Without compensation and under reasonable terms and conditions that are demonstrably free of any unfair discrimination, and
   (3) At the option of the participant or identified party, that such license under (c)(1) or (2) is subject to a condition of reciprocity, where reciprocity means with respect to other parties that have a patent or published patent application containing an essential patent claim, or the assurance under (c) is conditioned on their willingness to license their patent(s) containing an essential patent claim on these terms. A participant or identified party who provides an assurance to license without compensation under 1.2.3.3B(c)(2) on a condition of reciprocity, may require a license with compensation on reasonable terms and conditions that are demonstrably free of discrimination if the reciprocating licensee will only license on such terms.

(d) Stating in the assurance that any documents transferring ownership of the patents subject to the assurance will include provisions sufficient to ensure that the commitments in the assurance are binding on future assignees or transferees, and that the assignee or transferee will similarly include appropriate provisions in the event of future transfers with the goal of binding each successor-in-interest; and

(e) Stating that the assurance is intended to be binding on successors-in-interest regardless of whether such provisions are included in the relevant transfer documents.

C. The assurance provided under 1.2.3.3B may be withdrawn when it is established that there are commercially and technically feasible non-infringing alternatives to creating a compliant implementation of the ANS.

1.2.4 Timing of Disclosure Statements

For so long as a participant is a member of the consensus body, or, an individual participant in standards development activities, a participant in the development of aproposed, revised, or approved ANS shall continue to satisfy the requirements of 1.2. At the time an ANS or proposed ANS is submitted for approval by letter ballot or for a meeting vote, the participant shall provide the written statement required by 1.2.3.3. Letter ballots shall contain a certification requirement for compliance with 1.2, which states: “I state that [check one]:

- ☐ I am not aware of patents or published patent applications containing essential patent claims, which I or my employer or sponsor (or an affiliate of any of them) own, control or have the ability to license, but if it is later discovered that I, or my employer or sponsor do own, control or have the ability to license such patents, a license will be made available as required by the *NEMA Procedures for Development of American National Standards*, 1.2;
- ☐ I am aware of patents or published patent applications containing essential patent claims, which I or my employer or sponsor (or an affiliate of them) own, control or have the ability to license, and a written statement has been submitted to the Secretary as required by the *NEMA Procedures for Development of American National Standards*, 1.2.

1.2.5 Record of Statement

A record of the patent holder’s statement under 1.2.3 shall be retained in the NEMA files and be made publicly available. The Secretary shall cause a copy of the written communication to be sent to the firms or persons participating in the development of a proposed, revised, or approved ANS that would include the use of an essential patent claim.

1.2.6 Notice

When the Secretary receives from a patent holder the assurance set forth in 1.2.3.3 (c) above, the standard shall include a note substantially as follows:

> NOTE – The user's attention is called to the possibility that compliance with this standard could require use of an invention covered by patent rights.
> By publication of this standard, no position is taken with respect to the validity of any such claim(s) or of any patent rights in connection therewith. If a patent holder has filed a statement of willingness to grant a license under these rights on reasonable and non-discriminatory terms and conditions to applicants desiring to obtain such a license, then details may be obtained from the Secretary.

1.2.7 Responsibility for identifying patents

Neither NEMA nor the Secretary is responsible for identifying patents or published patent applications for which a license may be required by an ANS or for conducting inquiries into the legal validity or scope of those patents that are brought to their attention.

1.2.8 Discussions of patent issues at meetings

At meetings, firms or persons shall not discuss the following:

(a) The construction, validity or essentiality of patents or patent claims;
(b) Specific license rates, licensing costs, terms or conditions, or the relative costs of different technical approaches to the standard; or
(c) The status or substance of ongoing or threatened patent litigation.

1.3 Commercial Terms and Conditions

Consensus bodies shall comply with the ANSI Commercial Terms & Conditions Policy as contained in the most recent edition of the *ANSI Essential Requirements: Due process requirements for American National Standards*.

1.4 Antitrust Policy

Consensus bodies shall comply with the ANSI Antitrust Policy as contained in the most recent edition *of ANSI Essential Requirements: Due process requirements for American National Standards.*

1.5 Records Retention Policy to Determine Evidence of Compliance

The Secretary shall prepare and maintain records to provide evidence of compliance with these procedures. Records concerning new, revised, or reaffirmed ANSs maintained under the periodic maintenance option and Technical Reports registered with ANSI shall be retained for one complete development cycle, or until the standard or Technical Report is revised. Records concerning ANSs under the stabilized maintenance (see 7.5) shall be retained until the standard is revised, reaffirmed or subsequently reviewed in connection with the stabilized maintenance of the standard as an ANS. Records concerning withdrawals of all ANSs and Technical Reports registered with ANSI shall be retained for at least five years from the date of withdrawal.

1.6 Metric Policy

The International System of Units (SI) is the preferred unit of measurement in ANSs. The equivalent US Units of Measurement (inch/pound) values may be provided in parentheses.

For situations where the SI unit is not commonly used or where the SI unit is not the term of art, the more commonly used measurement or term of art may be used. The value in SI units, however, also may be included parenthetically.

1.7 Standards Interpretation Policy

1.7.1 Written Requests for Interpretation

All requests for interpretation of the language in approved ANSs shall be submitted requests in writing directly to NEMA. Requests for interpretation shall be stated in a way to solicit a "Yes" or "No" answer. The Secretary shall promptly acknowledge receipt of the request to the requester with written information on the actions that will be taken.

1.7.2 Interpretations Rendered by the Secretary

An interpretation shall be limited to providing clarification and explanation of the existing standards. Interpretations should not give rise to lengthy explanations that may inadvertently modify or amend the standards. The Secretary shall advise the requester in writing of the interpretation approved by the consensus body. Interpretations on file should be considered during the next revision of the document.

1.7.3 Direct Response by Secretary

The Secretary may directly respond to a request for interpretation if the question posed can be answered by making a direct citation to the standard.

1.8 Appeals Policy and Process

1.8.1 Right to Appeal

Parties who are directly and materially interested and who have been or will be adversely affected by an ANS, or by the lack thereof, shall have the right to appeal procedural actions or inactions of the Secretary.

1.8.2 Appeals Process

Parties who are directly and materially interested and who have been or will be adversely affected by any procedural action or inaction by a standards developer with regard to the development of a proposed ANS or the revision, reaffirmation, or withdrawal of an existing ANS is entitled to appeal and may do so by following the procedures included in 1.8.2.[1]

I. Notice of an appeal

A. To initiate an appeal, a written Notice of Appeal shall be filed with the Secretary of the Association (NEMA General Counsel) within forty (40) days following the decision being appealed.[2]

B. The notice of appeal shall contain the following information:

(a) the name and address of the party(ies) filing the appeal and the principal contact for the Appellant who will represent the Appellant during the appeal,

(b) the identity of the consensus body whose decision is appealed (the Appellee),

(c) the date of the consensus body's decision,

(d) the identity of the entity within the Association to whom the appeal is made,[3] and

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[1] It is important to recognize that an American National Standard cannot be approved by ANSI until "any appeal to the standards developer with respect to the standard is completed." *Essential Requirements* at 4.2.1.1.

[2] The Essential Requirements state: "Appeals of actions shall be made within reasonable time limits; *appeals of inactions may be made at any time*." The forty-day time requirement will be waived in case of alleged inactions; however unreasonable delay in making an appeal may be considered by the Secretary if it is prejudicial.

[3] This would be the NEMA Standards and Conformity Assessment Policy Committee (SCAPC).

(e) a statement of the decision which is appealed and a brief statement of the reasons[4] why that decision(s) should be overturned.

II. Response to Notice of Appeal

A. The Secretary shall review the notice for compliance with the above requirements.[5]

B. No later than one week after receipt of the notice of appeal, the Secretary of the Association shall promptly notify

(i) the President of the Association,

(ii) the Chair of the Appellee (consensus body),

(iii) the Chair of the entity within the Association (Standards and Conformity Assessment Policy Committee) to whom the appeal is taken that a notice of appeal has been filed, and

(iv) any other persons, entities or Product Group(s) (including their members) or non-members who are known to be interested in the outcome of the appeal.

C. The Chair of the consensus body shall identify to the Secretary a principal contact for the Appellee who will represent the Appellee during the appeal.

III. Appellant's Statement of Reasons

Within twenty-one days of filing a notice of appeal with the Secretary, the Appellant shall file a statement of reasons why the decision of the Appellee (procedural action or inaction) should be overturned. The Appellant may request from the Secretary a one-time enlargement of the time, not to exceed fourteen days, to file its statement of reasons in accordance with this paragraph. The Secretary shall promptly provide a copy of the statement of reasons to the Appellee (consensus body).

IV. Consensus Body's Response

Within twenty-one days of the Appellant filing of a statement of reasons with the Secretary, the consensus body shall file its response to the statement of reasons explaining why the decision from which the appeal is made should be upheld. The consensus body may request from the Secretary a one-time enlargement of the time, not to exceed fourteen days, to file its statement of reasons in accordance with this paragraph. The Secretary shall promptly provide a copy of the consensus body's response to the Appellant. Within twenty-one days of receipt of the consensus body response, the Appellant shall request a hearing, if one is desired. If the Appellant does not request such a hearing, the appeal shall be considered closed.

V. Formation of an Appeals Panel and Opportunity to Object

The Appeals Panel shall consist of three "disinterested" members of the NEMA Standards and Conformity Assessment Policy Committee (SCAPC):

A. An appeal shall be heard and decided by a panel consisting of representatives of disinterested persons.[6] For purposes of this subsection, a "disinterested person" is a person who is

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[4] The brief statement of reasons should articulate the "procedural action or inaction by a consensus body." Appeals do not address disagreements about technical judgments made by the consensus body.

[5] It should be noted that Section 8 of the Operating Procedures of ANSI Board of Standards Review states: "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." The Secretary may decide to explore a settlement of an appealed issue, in which case the timelines set forth herein will be extended.

[6] Every effort is to be made to form this Appeals Panel in a timely way to have a timely hearing. The schedules of the disinterested persons have to be coordinated and sometimes this takes some time.

(i) not affiliated with the consensus body or the person or entity that is either an Appellant or Appellee,

(ii) not a member of a committee (or entity) that is either an Appellant or Appellee,

(iii) does not have a material financial or competitive interest in the outcome of the appeal, and/or

(iv) does not have any other relationships with either the Appellant or the Appellee that the panel member believes would impair his or her ability to make a fair and impartial decision on the appeal.

B. The Chair of SCAPC shall designate the members and presiding officer of the Appeals Panel conforming to these requirements. The Secretary shall communicate to the Appellant and Appellee the identity of the Appeals Panel members. The Appellant and Appellee shall notify the Secretary within one week whether they have any objections to the members of the Appeals Panel on the ground that the panel member is not a disinterested member.

VI. Hearing

A. The Chair of SCAPC shall designate a time, date and place for the hearing of the appeal as soon as is reasonably practical, no later than thirty (30) days following the receipt of the Appellee's response, before an Appeals Panel of disinterested persons. For good cause shown, including but not limited to the availability of the panel members and the representatives of the Appellant and Appellee, the time period for the hearing may be enlarged by thirty (30) days.

B. With the permission of the presiding officer of the Appeals Panel, other persons or entities including non-members may submit a written statement, no longer than three pages, of their interest in the appeal and a statement of whether they believe the decision on appeal should be affirmed or overturned. The Chair of SCAPC shall have discretion to set limits on the number of persons who may make statements at the hearing.

C. The Secretary shall promptly notify the Appellant, Appellee, and other interested persons of the Chair's designations and hearing rules.

D. Within three days following the setting of the time, date and place for the hearing, the Appellant and the Appellee shall identify to the Secretary the person(s) who will make statements at the hearing on their behalf.

E. The Appellant and the Appellee shall each have thirty minutes (including rebuttal time) to present their respective case to the Appeals Panel.

VII. Written decision

An Appeals Panel shall make its decision no later than ten (10) business days following the hearing, unless good cause is shown for an extension. The decision of an Appeals Panel shall be in writing and state the reasons for its decision and provided to the Appellant promptly.[7]

VIII. Right of Appeal to ANSI

Persons who have directly and materially affected interests and who have been or will be adversely affected by any procedural action or inaction by ANSI or by any ANS-related process have the right to appeal to ANSI[8]. ANSI will not normally hear an appeal of an action or inaction by a standards developer relative to the development of an ANS until the appeals procedures provided by the standards developer have been completed. Appeals of actions shall be made within reasonable time limits; appeals of inactions may be made at any time. Such appeals shall be directed to ANSI in accordance with the

[7] Any decision should also note that there is a right to appeal the Appeals Panel decision to ANSI.

[8] For further information, see https://www.ansi.org/standards_activities/domestic_programs/appeals/appeals Appeals procedures at ANSI can be found in Section 7 of the *Operating Procedures ANSI Board of Standards Review* (May 2017, current edition).

procedures of the appropriate ANSI board or council (e.g., the ANSI Board of Standards Review). *ANSI Essential Requirements* at ¶2.8.2.

1.9 Coordination and Harmonization

1.9.1 Good Faith Effort

NEMA shall make good faith efforts to resolve potential conflicts between and among existing ANSs and candidate ANSs. NEMA shall also coordinate standardization activities intended to result in harmonized ANSs.

A good faith effort shall require substantial, thorough and comprehensive efforts to harmonize a candidate ANS and existing ANSs. Such efforts shall include, at minimum, compliance with all relevant sections of these procedures. The Secretary shall retain evidence of such efforts in order to demonstrate compliance with this requirement to the satisfaction of the appropriate ANSI body.

1.9.2 Definition of Conflict

Conflict within the American National Standards 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 CONSENSUS BODIES

Consensus bodies shall be responsible for developing and maintaining the standards and technical reports within the scope of these procedures. New consensus bodies shall be approved by the NEMA Codes and Standards Committee with the consent of NEMA as the Secretariat. When a new consensus body is established, NEMA staff shall recommend a scope of activities and appropriate interest categories for approval by the NEMA Codes and Standards Committee to solicit initial membership. New consensus bodies shall be announced in suitable media as appropriate to demonstrate and provide a meaningful opportunity for participation by all directly and materially affected persons.

NOTE: The NEMA Codes and Standards Committee shall approve new consensus bodies after implementation of these procedures. Existing consensus bodies do not need Codes and Standards Committee approval.

2.1 Consensus Body Charter Documents

Each consensus body shall adopt a charter that is consistent with these procedures and the ANSI *Essential Requirements*. The charter shall cover, at a minimum, the following: scope of the consensus body, interest categories, officer nomination and election, quorum requirements, subgroup operations and establishment and meeting information (frequency, notice, etc.). The consensus body charter shall not conflict with these procedures and shall reference these procedures where appropriate. Revision to the consensus body charter shall be approved by the consensus body.

2.2 Membership

Consensus body membership shall be open to anyone having a direct and material interest in the activities of the consensus body, subject to approval. Participation on consensus bodies shall not be conditional upon membership in any organization and shall not be unreasonably restricted on the basis of technical qualifications. The member's name (or if membership is by organization, the name of the

organization with a point of contact), affiliation[9] and interest category of each member of the consensus body shall be made available to interested parties upon request.

NEMA may impose fees for membership; however, there shall be no undue financial barriers to participation, and a fee waiver may be requested in writing to the Secretary.

2.3 Interest Categories

All appropriate interests that might be directly and materially affected by the standards activity shall have the opportunity for fair and equitable participation without dominance by any single interest category, individual, or organization. Each consensus body shall determine the appropriate interest categories in accordance with the established categories specified in Annex B. Members shall propose their own interest categories.

2.4 Balance

Where possible, the following balance of interests should be maintained:

a) no single interest category constitutes more than one-third of the membership when dealing with safety-related standards;
b) no single interest category constitutes a majority of the membership when dealing with standards other than safety-related standards.

If a consensus body lacks balance in accordance with the historical criteria for balance, and no specific alternative formulation of balance was approved by the ANSI Executive Standards Council, outreach to achieve balance shall be undertaken.

2.5 Application for Membership

Organizations or individuals seeking membership on a consensus body shall submit a written request to the Secretary, indicating their interest in the work of the consensus body, designating a primary and alternate representative(s) and identifying their interest category. All members and representatives shall agree to abide by the NEMA Code of Conduct and Ethics.

In accepting or rejecting applicants, NEMA shall consider the following:

a) the need for active participation by each interest;
b) the potential for dominance or imbalance by a single interest category;
c) the extent of interest expressed by the applicant and the applicant's willingness to participate actively;
d) the representative(s) identified by the applicant organization, company, or government agency; and
e) reasonable limits on the size of the consensus body.

2.6 Diverse Interests

If distinct divisions of an organization can demonstrate independent interests and authority to make independent decisions in the area of the activity of the consensus body, or independent interests based upon regional or regulatory differences, each may request to participate in the consensus body. For example, one division or operating company of a private corporation may show a producing or selling interest while another may show a buyer/user interest; or a government agency may show a buyer/user interest in one department and a separate regulatory concern in another department; or a utility holding company that operates through separate subsidiaries in different states with sufficiently unique regulatory

[9] "Affiliation" refers to the entity that the consensus body member represents (which may or may not be that person's employer). If the consensus body member is serving in an individual capacity, then the name of the individual, that person's employer, sponsor and interest category should be available. Contact information is not required.

or environmental requirements that the different divisions would not have the same business interests in the work of the consensus body.

2.7 Combined Interests

When appropriate, the Secretary may recommend that an applicant seek participation through an organization which already participates and represents the same or similar interest.

2.8 Review of Member Participation

Members are expected to participate actively in the consensus body by attending meetings regularly and returning letter ballots. The Secretary shall record members' performance relative to meeting attendance and letter ballot returns. This information should be reviewed periodically, and the Secretary may take corrective action such as notifying a member in writing of inactivity and encouraging active participation, or, for a previously notified member whose participation has not improved, reclassifying as an observer. To regain voting privileges, a member that has been reclassified shall reapply as a voting member.

2.9 Observers

Individuals and organizations having an interest in the work of the consensus body may request being added to the consensus body roster as observers. Observers shall be advised of consensus body activities, may attend consensus body meetings, may submit comments for consideration, but shall not have the right to vote. Observers shall not be included in calculations determining voting results and meeting quorums.

2.10 Advisory Participant

Individuals that are representatives of a voting member that are not designated as the primary or alternate voter are considered advisory participants. These individuals shall be advised of consensus body activities, may attend consensus body meetings and may submit comments for consideration. The Secretary may consider the number of advisory participants from a voting member before adding additional individuals to the roster.

2.11 Resignations

Consensus body members, including observers, may resign by notifying the Secretary in writing.

3 COMMUNICATIONS

3.1 Electronic Means

Where noted in these operating procedures, the terms “in writing” and “by correspondence” shall include the use of electronic means. In addition, electronic means may be used to authorize letter ballots, issue letter ballots, issue voting results, and issue the disposition of views and objections.

3.2 External Communication

Inquiries relating to the consensus body should be directed to NEMA. All replies to inquiries shall be made through the Secretary.

4 SUBGROUPS CREATED BY THE CONSENSUS BODY

Consensus bodies may form one or more standing subgroups (subcommittees, task forces, etc.) to expedite the work of the consensus body. Information regarding their operations, including formation, scope, responsibilities, officers, members, and disbandment shall be included in the consensus body charter.

5 MEETINGS

5.1 General

Meetings of the consensus body and its subgroups, if any, shall be held as appropriate. Meetings for the conduct of business such as making assignments, receiving reports of work, considering draft Standards, resolving differences among subgroups, and considering views and objections from any source, shall also include conference calls and other electronic means, such as web meetings.

5.2 Open Meetings

Meetings of the consensus body shall be open to all active, inactive and advisory members, observers, and others having direct and material interest. All meeting participants shall agree to abide by the NEMA Code of Conduct and Ethics. At least 30 calendar days' notice of regularly scheduled meetings should be given by the Secretary in ANSI *Standards Action* or in other media designed to reach directly and materially affected interests, or in both. The notice should describe the purpose of the meeting and shall identify a readily available source for further information. An agenda shall be available and shall be distributed in advance of the meeting to members and to others expressing interest.

5.3 Quorum

If a quorum is not present at a meeting, actions taken at the meeting shall be approved either by letter ballot or at the scheduled meeting at which a quorum is present. Observers, inactive and advisory members shall not be included in the calculations to determine meeting quorums.

6 VOTING AND COMMENTING

6.1 General

6.1.1 Single Vote

Generally, no representative shall have more than one vote. However, if two or more organizations appoint the same individual to represent each of them, that individual may cast a separate vote for each organization represented. The organizations shall confirm in writing to the Secretary that they are aware of and will accept the results. Additionally, representation of more than one organization by the same individual shall require approval either by a majority of the active consensus body members at a meeting where a quorum is present, or by a majority of all active consensus body members if done by letter ballot.

6.1.2 Vote of Alternate

The vote of an alternate representative is counted only if the principal representative fails to vote.

6.1.3 Proxy Votes

Proxy votes on letter ballots shall not be allowed. Proxy votes at meetings are permissible, only if the voting representative and alternate are unavailable to attend a meeting. If that is the case, they may identify, in writing, in advance of the meeting, a representative to represent the voting member. Such a situation shall not affect voting rights.

6.1.4 Pre-Ballot Comment Period

A pre-ballot comment period is an informal tool that may be used by consensus bodies at any time in the process of developing or modifying a Standard to gauge whether a work item is proceeding in a direction that most members support. A pre-ballot comment period should last at least 14 calendar days. All members (voting, observer and advisory) of the consensus body shall be notified of such a pre-ballot comment period, and all comments shall be distributed to the consensus body. Formal comment response is encouraged but not required for comments received during a pre-ballot comment period.

6.1.5 Authorization of Letter Ballots

A letter ballot may be authorized by any of the following:

a) majority of active consensus body members at a meeting where a quorum is present;
b) the consensus body Chair;
c) the consensus body Executive Committee, if one exists;
d) the consensus body Secretary; or
e) petition of five or more active consensus body members whose names shall be circulated to the consensus body.

6.1.6 Letter Ballot Voting Period and Follow-up

The voting period for letter ballots for approval of Standards actions (e.g., approval, revision, reaffirmation, withdrawal) shall be at least 30 calendar days from the date of issue. However, the ballot may be closed as soon as all ballots are returned, if that occurs in less than 30 calendar days. An extension may be granted at the option of the Secretary or chair when warranted. The Secretary shall send at least one follow-up reminder to all those who did not return a vote within 14 calendar days of the original or extended closing date. Letter ballots for approval of other documents or actions shall be at least 14 calendar days from the date of issue and may also be closed as soon as all ballots are returned if that occurs in less than 14 calendar days.

6.1.7 Actions Requiring Approval by a Majority

The actions listed below may be taken at a meeting or done by letter ballot. If taken at a meeting, a quorum shall be present, and a majority of active consensus body members voting shall approve the action (not counting abstentions). If taken by letter ballot, a majority of active consensus body members shall respond to the ballot (counting abstentions) and at least a majority of active consensus body members voting shall approve the action (not counting abstentions).

a) Approval of consensus body officers appointed by the Secretary;
b) Approval of withdrawal of an existing Standard;
c) Interpretation of Standards;
d) Approval, revision, reaffirmation or withdrawal of technical reports (if done at a meeting, all active consensus body members absent shall still be given the opportunity to vote before or after the meeting);
e) Retention of document in stabilized maintenance;
f) All other actions not specifically requiring two-thirds approval.

6.1.8 Actions Requiring Approval by Two-Thirds

The actions listed below may be taken at a meeting or done by letter ballot. If taken at a meeting, a quorum shall be present and at least two-thirds of active consensus body members voting shall approve the action (not counting abstentions). If taken by letter ballot, a majority of active consensus body members shall respond to the ballot (counting abstentions) and at least two-thirds of active consensus body members voting shall approve the action (not counting abstentions).

a) Approval of a new Standard or reaffirmation of an existing Standard (if done at a meeting, all active consensus body members absent shall still be given the opportunity to vote before or after the meeting);
b) Approval of revision or addendum to part or all of a Standard (if done at a meeting, all active consensus body members absent shall still be given the opportunity to vote before or after the meeting);
c) Approval of placing a Standard into stabilized maintenance;
d) Approval of change in the consensus body charter;
e) Approval of termination of the consensus body.

6.2 Voting on an American National Standard

6.2.1 Opportunity to Vote and Voting at Meetings

All active consensus body voting members shall have the opportunity to vote on approval of a Standard, or portion thereof, as a candidate ANS. If a vote on a proposed ANS or registered Technical Report is taken at a meeting, all active consensus body members shall be given the opportunity to vote before or after the meeting in the event they are not able to attend the meeting. Consensus body members not present during a meeting vote shall be provided at least 7 calendar days to respond to an absentee letter ballot.

6.2.2 Vote Choices

Consensus body voting members may vote in the affirmative (e.g., “affirmative”, “yes”, or “approve”), in the negative (e.g., “negative”, “no”, or “disapprove”) or may abstain. A consensus body voting member should vote in the affirmative if the member endorses the document whether or not comments are accepted. A consensus body voting member should vote in the negative if substantive technical changes are necessary to resolve one or more of the member’s comments.

Negative votes shall be accompanied by comments; otherwise, they shall be recorded as “negative without comments” without further notice to the voter. Affirmative votes may include comments; however, a vote of approval shall not be contingent upon acceptance of those comments.

Abstentions may be accompanied by an explanation.

6.2.3 Handling of Negative Votes

The consensus body is not required to consider negative votes accompanied by comments not related to the proposal under consideration, or negative votes without comments.

The Secretary shall indicate conspicuously on the letter ballot that negative votes must be accompanied by comments related to the proposal and that votes unaccompanied by such comments will be recorded as “negative without comments” without further notice to the voter. If comments not related to the proposal are submitted with a negative vote, the comments shall be documented and considered in the same manner as submittal of a new proposal.

In the case where clear instruction is provided on the ballot and a negative vote unaccompanied by comments related to the proposal is received notwithstanding, the Secretary registers the vorecirculation ballotte as “negative without comment.” The Secretary is not required to solicit any comments from the negative voter, nor is the Secretary required to conduct a recirculation ballot of the negative vote. The Secretary is required to report the no vote as a “negative without comment” when making the final submittal to the Board of Standards Review.

6.2.4 Opportunity to Vote

All consensus body voting members shall have the opportunity to vote on approval of a document, or portion thereof, as a candidate ANS.

6.2.5 Evidence of Consensus and Consensus Body Vote

The Secretary shall not change a vote unless instructed to do so by the voter. If the change of vote was not submitted in writing by the voter, written confirmation of such a vote change shall be provided to the voter by the Secretary. All negative votes that are not changed at the request of the voter shall be recorded and reported to the BSR as unresolved negatives. The Secretary shall maintain records of evidence regarding any change of an original vote.

7 TECHNICAL REPORTS

A technical report is a non-normative document developed by a consensus body and registered with ANSI. Consensus bodies shall determine the need for a Technical Report on a particular topic or in a particular area. Ballots for approval of Technical Reports shall last at least 14 calendar days. Approval of

technical reports require that a majority of active consensus body members respond to the ballot (counting abstentions) and at least a majority of active consensus body members voting shall approve the action (not counting abstentions). The resolution of any comments received may be less formal than that required to resolve comments on a draft Standard. Any substantive changes to the document after ballot shall be distributed to the consensus body for concurrence before submittal to ANSI, using the PSA-01 form.

In the development of Technical Reports, NEMA agrees to comply with the most recent version of the *Procedures for the Registration of Technical Reports with ANSI*.

8 CONTRIBUTIONS

Consensus body and subgroup members agree that, as a condition of their participation, copyright of any new material created during the course of a meeting will be held by NEMA. Representatives who contribute material to be used in a NEMA document agree to provide a free, irrevocable license to use the contribution in any NEMA publication (no license is necessary where the information is not subject to copyright protection).

Contributions made by anyone participating in Standards activities shall be free of proprietary, company confidential or other similar claims. Copyrighted material may be shared with a consensus body or subcommittee for information purposes only provided the contributor specifically identifies the copyrighted material when it is presented.

9 ADOPTION OF INTERNATIONAL DOCUMENTS

For adoption of ISO or IEC Standards, the requirements set forth in the *ANSI Procedures for the National Adoption of ISO or IEC Standards as American National Standards* and the applicable provisions from these procedures shall be followed. Consensus bodies may use the Expedited Procedures included in the *ANSI Procedures for the National Adoption of ISO or IEC Standards as American National Standards* when the requirements for the use of such procedures are met.

10 ADMINISTRATIVE PROCEDURES FOR AMERICAN NATIONAL STANDARDS

10.1 Notification of, and Public Comment on, Standards Activity

10.1.1 Project Initiation Notification System (PINS)

The consensus body shall approve new projects (new Standards, technical reports, reaffirmations, revisions and withdrawals) prior to submittal of any forms to ANSI (e.g., PINS, BSR-8, PSA-01). Such approval may be provided at a meeting with quorum present, via a valid letter ballot or by concurrence of the consensus body.

At the initiation of a project to develop or revise an ANS, the Secretary shall send notification to ANSI using the Project Initiation Notification System (PINS) form, or its equivalent, for listing in *Standards Action*. If it is the intent for the developed or revised ANS to be submitted to IEC or ISO for consideration, this shall be stated on the PINS form. A PINS form may be submitted, but is not required, at the initiation of a project to reaffirm, place in stabilized maintenance, or withdraw an ANS. If during the course of the project the identified stakeholders change substantively, a new PINS form shall be submitted. Comments received in connection with a PINS announcement shall be handled in accordance with these procedures.

If the Secretary receives written comments within 30 calendar days from the publication date of a PINS announcement in *Standards Action,* and said comments assert that a proposed ANS duplicates or conflicts with an existing 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 calendar days from the comment deadline. Such a deliberation shall be organized by the Secretary and the commenter and shall be concluded before a draft Standard may be submitted for public review. If the deliberation does not take place within the 90-calendar day period and the Secretary can demonstrate that it has made a good faith effort to schedule and otherwise organize it, then

the Secretary will be excused from compliance with this requirement. The purpose of the deliberation is to provide the relevant stakeholders with an opportunity to discuss whether there is a compelling need for the proposed Standards project.

The outcome of a PINS deliberation shall be conveyed in writing (the "Deliberation Report") within 30 days after the conclusion of the deliberation by the Secretary to the commenter and to ANSI. Upon submission of the Deliberation Report, NEMA may continue with the submission of the proposed ANS for public review. If additional deliberations take place, they should not delay the submission of the proposed ANS for public review, and an updated Deliberation Report shall be conveyed within 30 days after each deliberation. 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 Secretary shall include all of the Deliberation Report(s) with the BSR-9 submittal to the ANSI Board of Standards Review (BSR) for consideration should NEMA ultimately submit the subject Standard to ANSI for approval. Stakeholders who were involved in the PINS deliberation process may also file separate Deliberation Report(s) with ANSI and NEMA within 30 days after conclusion of any deliberation for consideration by the BSR, if the Standard is submitted to ANSI for approval. While the outcome is not binding, unless binding provisions are agreed to by NEMA, participants are encouraged to develop a consensus on whether and how the Standards development project should proceed.

NEMA agrees to comply with all other requirements contained in clause 2.5.1 (and its subsections) of the most current version of the ANSI Essential Requirements.

10.1.2 BSR-8 Submittal and Public Review

Proposals for new ANSs and proposals to revise, reaffirm, place in stabilized maintenance, or withdraw approval of existing ANSs shall be transmitted by the Secretary to ANSI using the BSR-8 form, or its equivalent, for listing in *Standards Action* in order to provide an opportunity for public comment. The comment period shall be one of the following:

a) A minimum of 30 calendar days if the full text of the revision(s) can be published in *Standards Action*;

b) A minimum of 45 calendar 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

c) A minimum of 60 calendar 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 ANS requires listing of the change in Standards Action.

Although a 60-day public comment period is not required in all instances, a number of provisions in the ANSI Essential Requirements, when read in combination, satisfy the WTO's 60-day rule. Before adopting a Standard, ANSI-Accredited Standards Developers shall allow a period of at least 60 days in total for submission of comments on the draft Standard if requested by an interested party within the territory of a member of the WTO. Exceptions outlined in the rule are permitted due to issues of safety, health or environment. (See WTO Agreement on Technical Barriers to Trade (TBT), Annex 3 Code of Good Practice for the Preparation, Adoption and Application of Standards (CGP) Substantive Provision L.)

10.1.3 Disposition of Views and Objections on Standards Activity

Prompt consideration shall be given to the written views and objections of all participants, including those commenting on either the PINS announcement or public comment listing in *Standards Action*. In connection with an objection articulated during a public comment period, or submitted with a negative vote, an effort to resolve all expressed objections accompanied by comments related to the proposal under consideration shall be made, and each such objector shall be advised in writing (including electronic communications) of the disposition of the objection and the supporting reasons. If resolution is not achieved, each such objector shall be informed in writing that an appeals process exists contained in

these operating procedures. In addition, each objection resulting from public review or submitted by a consensus body participant, and which is unresolved must be reported to the ANSI BSR.

When this process is completed in accordance with these operating procedures, the Secretary may consider any comments received subsequent to the closing of the public review and comment period or shall consider them in the same manner as a new proposal. Timely comments that are not related to the proposal under consideration shall be documented and considered in the same manner as submittal of a new proposal. The submitter of the comments shall be so notified.

Unresolved objections, along with attempts at resolution, and any substantive change[10] made in a proposed ANS shall be reported to the consensus body. All members of the consensus body shall be given at least 14 calendar days to respond, reaffirm, or change their vote.

10.2 ANSI Approval

10.2.1 Information Submitted to ANSI

The Secretary shall submit the information to ANSI as listed on the American National Standard Formal Submittal Checklist (BSR-9 or equivalent). The BSR-9 or equivalent shall be submitted to ANSI within one year from the close of the public comment period listed in *Standards Action* unless NEMA notifies ANSI in writing of good cause for a different schedule for submittal.

10.2.2 Criteria for ANSI Approval

The criteria for approval by the ANSI Board of Standards Review for a new, revised, or reaffirmed ANS are as contained in the most recent version of *ANSI Essential Requirements: Due process requirements for American National Standards*. The only version of a document approved as an ANS[11] is the English language version.

10.3 Discontinuance of a Standards Activity

The Secretary may abandon the processing of a proposed new or revised ANS or portion thereof without a vote of the consensus body. NEMA shall notify ANSI immediately of such actions which will be announced in *Standards Action*.

10.4 Withdrawal of an American National Standard by NEMA

If NEMA decides to withdraw one or more of its ANSs, it may do so without a vote of the consensus body. The Secretary shall submit a request for withdrawal to ANSI immediately and the Standard shall be withdrawn as an ANS and announced in *Standards Action*.

10.5 Maintenance of American National Standards

NEMA endeavors to keep its ANSs relevant by means of timely revision, reaffirmation, or action to stabilize. Obsolete standards shall be withdrawn. NEMA utilizes both periodic maintenance and stabilized maintenance to accomplish this, as outlined below.

10.5.1 Periodic Maintenance

Periodic maintenance of an ANS and registered Technical Reports shall be undertaken on a schedule not to exceed five years from the date of approval as an ANS or registration of a Technical Report with ANSI unless the Standard has been approved for stabilized maintenance. In the case of adoption of ISO and

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[10] Any substantive change made in a proposed ANS shall also be listed for public comment in accordance with Section 10.1.2.

[11] An ANS that is an identical national adoption of an ISO or IEC standard which has been translated officially by ISO or IEC may carry the ANS mark. A modified national adoption may not.

IEC Standards as ANSs, the periodic review provisions contained in the *ANSI Procedures for the National Adoption of ISO or IEC Standards as American National Standards* shall apply.

10.5.2 Stabilized Maintenance

The Secretary may recommend that a Standard be maintained under stabilized maintenance if it satisfies all of the following criteria:

a) The Standard addresses mature technology or practices, and as a result, is not likely to require revision;

b) The Standard is other than safety or health related;

c) The Standard currently holds the status of ANS and has been reaffirmed at least once;

d) At least ten years have passed since the approval or last revision of the Standard as an ANS; and

e) The Standard is required for use in connection with existing implementations or for reference purposes.

The due process and consensus requirements defined in these procedures apply to the decision to maintain an ANS under stabilized maintenance.

An ANS maintained under stabilized maintenance is not required to be revised or reaffirmed on a routine five-year cycle; however, it shall be subject to review of such status by the Secretary on a ten-year cycle. If it is determined in connection with this review that the Standard shall continue to be maintained under stabilized maintenance and does not require revision or withdrawal, then the Secretary shall communicate this with ANSI via an informational announcement and a related announcement shall be made in *Standards Action*. If the Standard is to be revised, the Secretary shall submit a PINS.

If a written recommendation is made at any time by a materially affected and interested party that a Standard under stabilized maintenance requires revision or should be withdrawn, that recommendation shall be considered in the same manner as a new proposal but within a maximum of 60 calendar days from receipt. Such a recommendation should include a rationale to withdraw the Standard or to begin a revision and shall not be dismissed due to the fact that it does not necessarily suggest a specific revision. The Secretary shall respond to the submitter of such a recommendation in writing within 60 calendar days of receipt of the recommendation and advise the submitter of the decision relative to the maintenance status of the Standard.

An ANS that is under stabilized maintenance shall include a clear statement of the intent to consider requests for change and information on the submittal of such requests.

APPENDIX A – DEFINITIONS

- ANSI Accreditation: The approval by the ANSI Executive Standards Council (ExSC) of the written procedures submitted by a standards developer relative to the development and documentation of evidence of consensus in connection with Standards that are expected to be approved as ANSs. Accreditation by ANSI signifies that the procedures submitted by the Standards developer satisfy the ANSI Essential Requirements.
- Consensus: Consensus means substantial agreement has been reached by directly and materially affected interests. This signifies the concurrence of more than a simple majority, but not necessarily unanimity. Consensus requires that all views and objections be considered, and that an effort be made toward their resolution.
- Periodic maintenance: Periodic maintenance is defined as the maintenance of a Standard by review of the entire document and action to revise or reaffirm it on a schedule not to exceed five years from the date of its approval as an ANS.
- Proxy: A written and signed document by which a participant authorizes another person to vote in the member's stead, if allowed by the developer's procedures.
- Resolved: A negative vote cast by a participant or a comment submitted as a result of public review where the negative voter agrees to change his/her vote, or the negative commenter accepts the proposed resolution of his/her comment.
- Secretary: A consensus body Secretary is a person assigned by NEMA to administer these procedures and facilitate the work of the NEMA consensus body.
- Substantive Change: A substantive change in a proposed ANS is one that directly and materially affects the use of the Standard. Examples of substantive changes are:
    - "shall" to "should" or "should" to "shall";
    - addition, deletion or revision of requirements, regardless of the number of changes;
    - addition of mandatory compliance with referenced Standards.
- Unresolved: Either a negative vote submitted by a participant or written comments submitted by a person during public review expressing disagreement with some or all of the proposed Standard, that have not been satisfied and/or withdrawn after having been addressed by NEMA in accordance with these procedures.

Annex B – Definitions of Interest Categories

General Interest

Organization or individual that has an interest in the use of equipment included in the scope of this Standard, but neither produces nor uses it directly. The General Interest category should include only those whose business or other interests are not covered by another interest category in use by the consensus body or those who represent multiple interest categories.

Government

Government agency or department that has an interest in the use of equipment included in the scope of this Standard. Please note that a government agency or department that uses this equipment should select the **USER** category.

Insurance

Insurance agency or department that has an interest in the use of equipment included in the scope of this Standard. Please note that an insurance agency or department that uses this equipment should select the **USER** category.

Producer

Manufacturer of equipment included in the scope of this Standard.

Producer, Poles

Manufacturer of poles for roadway or area lighting.

Producer, Luminaires

Manufacturer of luminaires for use in roadway or area lighting.

Other Producer

Manufacturer of products or materials related to products covered by the scope of the consensus body, but not products covered by the scope of the consensus body.

Other Producer (Alternative Definition)

Manufacturer of equipment other than poles or luminaires included in the scope of the Standard.

Testing Laboratory

Organization that tests equipment included in the scope of this Standard to established specifications.

Distributor

Company or organization that distributes a related commodity at either wholesale or retail.

User

Organization (company, association, government agency, individual) that uses equipment included in the scope of this Standard.

Labor

An organization of workers who have banded together to achieve common goals such as better working conditions. Labor, through its leadership, bargains with the employer on behalf of union members and negotiates labor contracts with employers.

Application User

A member that specifies and applies safety signs, labels, tags, or tapes in support of its primary business or other functions such as:

1) The products it manufactures;
2) The workplace it manages;

3) The environmental area or occupancy for which it has responsibility.

Target Audience User

A member that is an end user or that works in an environment using product safety, environmental or facility safety signs, label tags and tapes. Examples include: consumer advocacy groups; trade unions, product manufacturers (other than the manufacturers of the actual safety signs, labels, tags, and tapes and thus classified in the Producer category); factory managers; operators of recreational parks, facilities or other public occupancies.