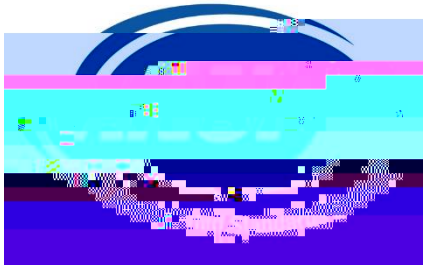




American Clean Power Association
Standards Development Procedures
Effective November 16, 2021



2.2.9. Publish or arrange with ANSI for publication of its standards, RPs, or TRs, revisions, and addenda.

2.2.10. Perform other administrative functions as required by these procedures.

2.2.10.1. Ensure the SC's compliance with these standard development procedures.

2.3. Officer Membership and Requirements

2.3.1. Officers – the SC shall elect a Chairperson and Vice Chairperson by a majority vote of the SC (see section 4.5.3 of these procedures for how a majority vote is determined). Other officer positions may be established by the Committee(s) by a majority of those vote.

2.3.1.1. Nominations – Potential candidates may self-nominate or be nominated by SC members. Candidates must be members in good standing for the SC.

2.3.1.1.1. A call for nominations will be distributed by the Secretariat prior to a term expiring.

Nominees shall fill out an application and provide a resume for Committee(s) consideration. In the event of a resignation prior to a term expiring, the Secretariat will immediately issue a call for nominations.

2.3.1.2. Terms – Terms for an officer position shall be three years. An individual may be re-elected but may not serve more than one term. An individual may be

automatically terminates upon written request of the SC member to the Secretariat or when the member resigns from the SC.

- 3.6. Categories - In order to establish balanced representation for developing evidence of consensus on standards, SC members shall be classified in accordance with the business and/or organizational interests of their primary source of support for SC participation. Alternates shall not be counted in determining the balance of the SC. The classification system and the classifications assigned to members shall be proposed by the SC and shall be included in Appendix A to these procedures. Categories shall be updated from time to time to ensure proper representation of the broader clean power market in the standards development process as the breadth of standards development work changes.
 - 3.6.1. If a member's classification changes because of a change in employment or another reason, action shall be taken by the SC to:
 - 3.6.1.1. Reaffirm the member to complete the present term, or
 - 3.6.1.2. Reappoint the member for a full term, or
 - 3.6.1.3. Terminate the membership.
 - 3.6.2. The effects of the member's changed classification on the balance of interest for the SC shall be considered.
- 3.7. Balance - The membership shall be sufficiently diverse to ensure reasonable balance, without dominance by a single interest category in compliance with the ANSI document, "*ANSI Essential Requirements: Due Process for American National Se membership*".

preparation of standards, to advise on personnel for membership on the SC and subordinate groups, and to assist generally in carrying out the functions of the SC.

3.10.2. Such duties may be carried out by attendance at meetings when possible, by correspondence, and by telephone, teleconference, or other electronic means.

3.10.3. Members failing to carry out their duties shall be subject to having their membership terminated.

3.10.4.

4.1.2. SC meetings shall be held, as decided upon by the SC and Secretariat, or by petition of five or more members, to conduct business such as making assignments, receiving reports of work, considering draft standards, resolving differences among subordinate groups,

4.4.4. SC members casting disapproved or abstain votes or not voting responses shall provide written explanation. Disapproved votes should include an alternative action that will resolve their disapproved vote

4.4.5. No committee member shall have more than one vote. Proxy voting is not permitted.

4.4.6. Authorization of Recorded Votes.

4.4.6.1. A recorded vote may be authorized by any of the following:

4.4.6.1.1. Subordinate group responsible for the standards action,

4.4.6.1.2. An SC,

4.4.6.1.3. A majority vote of those SC

- 4.5.4.1.2. Approval of a standard, RP, or TR;
- 4.5.4.1.3. Reaffirmation of an existing standard, RP, or TR;
- 4.5.4.1.4. Approval of revision or addendum to part or all of a standard, RP, or TR;
- 4.5.4.1.5. Approval of change of SC scope;
- 4.5.4.1.6. Approval of withdrawal of an existing standard, RP or TR;
- 4.5.4.1.7. Approval of discontinuance of a standards development project;
- 4.5.4.1.8. Approval of termination of the SC and abdication of ACP's standards writing body responsibilities.

4.6. Communication

- 4.6.1. Correspondence of SC officers should preferably be on "ACP Standard Committee" letterhead.
- 4.6.2. If correspondence between subordinate groups or between working groups of different subordinate groups involves issues or decisions (i.e., non-routine matters) affecting other subordinate groups, copies shall be sent to all affected subordinate group chairpersons and to the SC.
- 4.6.3. Inquiries relating to the SC should be directed to the SC Chairperson, with copy to the Secretariat.
- 4.6.4. Written inquiries requesting interpretation of the SC's approved ANS shall be responded to in

- 5.3.2.1.1. The responsibility shall normally be assigned to the SC responsible for the topic of the standard, RP, or TR.
- 5.3.2.1.2. The SC shall take responsibility or authorize a subgroup per these procedures.
- 5.3.2.2. Affirm or modify the statement of purpose and scope.
- 5.3.2.3. Notify the subordinate group chairperson of the statement of purpose and scope and direct the chairperson to develop the standards document.
- 5.3.2.4. The SC, through the Secretariat, shall notify directly any materially affected parties.
- 5.3.3. The SC or subordinate group shall develop the standard document.
- 5.4. Review and Comment
 - 5.4.1. At appropriate stages of the development process, the SC or subordinate group should provide access to draft proposals for review and written comment to materially affected parties, such as: the SC, other subordinate groups, ACP board members, ACP members, and members of the public who have expressed interest.
 - 5.4.2. The SC or subordinate group shall determine whether written comments received are substantive. Written comments received that are not related to the proposal under consideration shall be considered non-substantive. Resolution of all written comments shall be documented and shared as required by this procedure.
 - 5.4.3. Substantive written comments will be considered and incorporated as appropriate by SC or subordinate group responsible for the standards action.
 - 5.4.4. The applicable SC or subordinate group shall develop written responses along with reasons therefore, to all comments, prepare a summary of comments and responses, and make the summary available.
 - 5.4.5. All unresolved objections from the consensus body, that are related to the proposal under consideration, along with project team attempts at resolution, shall be distributed to members of the SC who will have the opportunity to respond, reaffirm or change their vote on the proposal. [Refer to Section 10 for alternative public review procedures for proposed identical national adoption of ISO or IEC standards.]
 - 5.4.6. Submitters of any unresolved objections will be informed in writing of their right to appeal.
 - 5.4.7. If substantive changes are made to the draft standard document following consensus body ballot and public review, the document shall be recirculated to the consensus body in order to afford all members the opportunity to respond, reaffirm, or change their vote.
- 5.5. Public Review and Notice
 - 5.5.1. All proposed, revised, reaffirmed, or withdrawn standards shall be announced for public review. A notification shall be included in ACP publications that, at a minimum,
 - 5.5.1.1. directs interested parties to the ACP website for the public review announcements,
 - 5.5.1.2. provide instructions on obtaining copies of public review proposals, and
 - 5.5.1.3. provide instructions for submission of public comments, which will include deadlines, format, and forms needed to submit public comments (reasonable accommodations will be provided upon request).
 - 5.5.1.3.1. Incomplete forms or submission of public comments that deviate from the instruction will not be considered by the SC or subordinate group.
 - 5.5.1.4. If the proposal is intended to be submitted to ANSI for approval, it shall also be announced in ANSI's *Standards Action*.
 - 5.5.2. Proposals for new ANS or reaffirmation, revision, or withdrawal of existing ANS shall be transmitted to

- 6.3.1. The Secretariat shall arrange the panel, which will consist of five (5) unbiased panelists,
 - 6.3.1.1. who have not been directly involved in the matter in dispute,
 - 6.3.1.2. who will not be materially or directly affected by any decision made or to be made in the dispute,
 - 6.3.1.3. who are not members of the SC that is developing the standard under appeal,
 - 6.3.1.4. and who have no conflict of interest.
 - 6.3.1.4.1. The Secretariat shall notify the appellant of the panelist, in order to allow the appellant an opportunity to object should they perceive the existence of a conflict of interest.
 - 6.3.1.4.2. Any objection shall be submitted in writing to the Secretariat within ten (10) working days of notice with specific objection. Any objection to the panelist shall be addressed prior to the hearing. If the Secretariat and the appellant cannot agree upon the final composition of the panel within fifteen (15) working days of receipt of such an objection, The Secretariat may appoint the panel.
- 6.3.2. The appellant has the burden of demonstrating adverse effects, improper actions or inactions, and the efficacy of the requested remedial action. If that burden is met, then the respondent has the burden of demonstrating that the committee and the Secretariat took all actions in compliance with these procedures and that the requested remedial action would be ineffective or detrimental. Each party may adduce other pertinent arguments, and members of the appeals panel may address questions to individuals.
- 6.3.3. Robert's Rules of Order (latest edition) shall apply to questions of parliamentary procedure for the hearing not covered herein.
- 6.3.4. The logistical procedures for a hearing/panel are as follows:
 - 6.3.4.1. Notes of the proceedings can be taken, but the hearing may not be recorded or transcribed. The official record consists of the formal complaint, official response, and copies of the testimony.
 - 6.3.4.2. Observers may attend the hearing so long as the Secretariat receives prior knowledge of their attendance, and there is adequate space for their attendance.
 - 6.3.4.3.

- 6.3.6.1. Finding for the appellant, remanding the action to the Committee or the Secretariat with a specific statement of the issues and facts in regard to which fair and equitable action was not taken;
- 6.3.6.2. Finding for the respondent, with a specific statement of the facts that demonstrate fair and equitable treatment of the appellant and the appellant's objections;
- 6.3.6.3. Finding that new, substantive evidence has been introduced, and remanding the entire action to the Committee or the Secretariat for appropriate reconsideration.

7. Interpretations

7.1. Interpretations are formal written responses by the SC to written (e.g., letter, fax, or e-mail) inquiries which are transmitted to the inquirer by the Secretariat on ACP Standard Committee letterhead.

7.2. Requirements for Interpretations:

7.2.1. Interpretations shall be formal in nature.

7.2.2. Interpretations shall be requested in writing in an "inquiry" format.

7.2.3.

10.2. If an ACP ANS, with the same scope does exist, it shall be withdrawn subsequent to the national adoption of the ISO or IEC standard, or revised to supplement the nationally adopted ISO or IEC standard.

10.3. Recommendations for proposed national adoptions of ISO or IEC standards shall be in accordance with the established voting requirements. [TJETA.00000912 0 612 792 reW*BT/F1 10.98 Tf1 0 0 1 32]

Standards for requirements for proposed national adoptions of ISO and IEC standards. Only identical or modified versions of ISO or IEC standards may be considered for national adoption.

10.4.1. The expedited procedures contained in the ANSI requirements may be used only for the national adoption of ISO or IEC standards for which the US TAG voted or will vote in the affirmative and for which no claims of conflict or duplication with an existing American National Standard have been

as long as the description of the process or criteria is limited to technical, engineering or scientific concerns and does not include what would otherwise be contractual or commercial terms.

It is permissible for health, safety, or environmental protection reasons to include a generic requirement for third-party, i.e., independent, conformity assessment, testing or training. ANS shall not dictate the use or non-use of a particular conformity-assessment body, testing facility or training organization.

However, for informational purposes, where known sources exist for products or services necessary to determine compliance with the ANS, it is permissible, but not obligatory, to identify the sources (which may include a source's name and address) in a footnote, an appendix, or a table. (b) (5) - (D)

Appendix A - Membership Categories

The ACP Standard Committee may define their membership/interest categories as appropriate for consensus towards any given standards activity. Membership categories should reflect the function of the nature of the standards being developed. Membership categories shall be discretely defined, cover all materially affected parties, and differentiate each category from the other categories. Each SC will ensure their membership categories are made available with descriptions to the committees and the public. At a minimum, membership/interest categories will include:

1. Producer
2. User; and
3. General Interest

Appendix B - ACP Patent Policy

1. For any proposed or approved American National Standards, ACP will comply with the requirements set forth in the most current version of the ANSI Patent Policy.

Appendix C

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as per-se violations. This means that the alleged restraint may or may not be illegal depending on the circumstances. The rule of reason analysis requires that a court must consider the purpose for a restraint and its effect on competition in the relevant market in determining if the restraint is reasonable and therefore lawful.⁴ It is important for ACP members to recognize the kinds of conduct that are subject to the rule of reason analysis and ensure that programs that may be subject to this rule are conducted properly, with the assistance of counsel, as needed. Some activities which are subject to the rule of reason analysis are as follows:

1. **Standards Setting.** Product standard setting and development refers to the process of identifying and agreeing upon a specific set of criteria to which a product should conform. Standard setting can be pro-competitive in many ways, including ensuring product quality and safety, and fostering interoperability of products. However, standards can create antitrust violations if the criteria have the effect of limiting or eliminating certain products or competitors from the marketplace. A trade association can lawfully participate in standard setting, provided that it is done in a way that provides interested parties with the opportunity to participate in the development and implementation of the standard. Consult with counsel before engaging in standard-setting activity.

2. **Certification.** If an association engages in the practice of certifying products or the expertise and qualifications of members, it must be aware that such certification activities must be conducted properly to avoid antitrust violations. Such activities will meet the rule of reason analysis if it can be shown that granting or denying certification is based upon legitimate, preferably measurable and objective, criteria and does not have the effect of limiting or restraining competition.

3. **Information Exchanges.** Sharing non-public information -- such as statistics, pricing information, marketing reports, raw material costs and employee compensation -- with fellow members can cause antitrust problems if not structured properly. Information-sharing programs must be structured in ways that do not disclose pricing strategies, market share or other areas that could create or provide the inference of unlawful agreements or coordination. Consult with legal counsel in advance regarding the design and implementation of any program to share competitively sensitive information, such as prices, costs, or compensation.

4. **Government Relations Activities.** A very important role for most associations is to act as the liaison between the industry and legislatures and government regulators. Joint action by competitors to influence government action is immune from antitrust liability under the provisions of the Noerr-Pennington doctrine.³ There are certain kinds of lobbying activities by competitors that are exceptions to the Noerr-Pennington doctrine, however, and legal advice should be obtained to properly structure lobbying campaigns to ensure compliance.

² See, National Society of Professional Engineers v. US, *ibid*.

³ E RR President's Conference v. Noerr Motor Freight, 365 US 127 (1961); United Mine Workers of America v. Pennington, 381 US 657 (1965).

ACP Antitrust Compliance Operating Procedures:

1. The ACP board will adopt a formal antitrust compliance policy that shall detail its intention to fully comply with the antitrust laws and indicate that it is pro-actively taking steps to ensure compliance.
2. The ACP Antitrust Guidelines will be included as part of mailed to new business members. Each ACP business member will also be provided with a copy of the Antitrust Guidelines in conjunction with their annual membership renewal.
3. The ACP Antitrust Guidelines will be posted on the ACP web site in the same area as the ACP

Antitrust Guidelines for Discussions at the American Clean Power Association Meetings