



# Standards and Certification Training

Module B – Process

B7. The Appeals Process

# MODULE B COURSE OUTLINE

- B1. ASME Organizational Structure
- B2. Standards Development: Staff and Volunteer Roles and Responsibilities
- B3. Conformity Assessment: Staff and Volunteer Roles and Responsibilities
- B4. Initiating and Terminating S&C Projects
- B5. Consensus Process for Standards Development
- B5a. Project Management
- B6. The Basics of Parliamentary Procedure
- B7. The Appeals Process**
- B8. International Standards Development
- B9. ASME Conformity Assessment Programs
- B10. Performance Based Standards
- B11. Consensus Process for Standards Interpretation and Code Cases

# REVISIONS

<u>Date</u>	<u>Change</u>
09/13/24	Updated to align to Rev. 19 of Operating Procedures for ASME Codes and Standards Development Committees
06/27/18	Updated to incorporate procedural revisions and include additional guidance for conduct of appeals hearings.
07/03/13	Updated entirely.

# LEARNING OBJECTIVES

At the end of this module you will be able to:

- Understand how appeals support the Due Process requirements for developing the ASME standards
- Identify the appeal process steps for the different levels of appeal within ASME
- Understand how appeals can be filed for technical, administrative and/or procedural actions or inactions
- Understand the procedural process for an appeal to the standards committee

# MODULE OUTLINE

- I. Appeals Overview
- II. Standards Committee Appeal

# I. APPEALS OVERVIEW

# DUE PROCESS

- Due process means ensuring that every materially interested party, whether individual or organization:
  - Has the opportunity to express a position
  - Can be confident that the position will be considered
  - Has the right to appeal if not satisfied after their position has been considered

# DUE PROCESS

- Procedures and policies regarding appeals may be included in the following, as applicable:
  - Operating Procedures for ASME Codes and Standards Development Committees
  - Supervisory Board Procedures
  - Standards Committee Operating Guide Annex Z
  - Operating Procedures for Conformity Assessment Committees
  - Society Policy P-15.8 – Conflicts of Interest
  - CSP-20 – Policy on Conformity Assessment



# DUE PROCESS

- **ASME Procedures provide for due process by requiring that:**
  - A proposed standards action (e.g. technical revisions) is submitted for committee vote and public review and comment
  - Efforts are made to resolve objections, if any
    - Written responses to all comments are developed and if necessary, the proposed standards actions are revised
    - Any substantive changes to the proposed standards action and/or unresolved objections are reported to the consensus committee to allow each member the opportunity to change their vote
  - Substantive changes to the proposed standards action are submitted for an additional public review and comment period
  - Unresolved objector is notified of their right to appeal

# DUE PROCESS

- Due Process is assured when affected parties have the right to appeal “technical” and “procedural” issues that may exist in the development of the Standard
- If an affected party believes that the proposed action / inaction is / was “Technically”, or “Procedurally” flawed they may “Appeal” the proposed action
  - “Flawed” can include the perception by the Balloter or Commenter that due consideration was not given to their input

# ASME APPEALS PROCESS HIERARCHY



# STANDARDS COMMITTEE APPEAL

- First Level of Appeal – Standards Committee
- The Committee hears appeals of “Operational”-and “Technical” actions or inactions
- The Committee or its designated hearing panel (by upholding or denying the appeal) will decide to:
  - Accept the previous actions / inactions
  - Revise the previous actions / inactions
  - Establish new action
  - Withdraw or suspend

# SUPERVISORY BOARD APPEAL

- Second Level of Appeal- Supervisory Board
- The Supervisory Board hears appeals of “Operational” and “Technical” actions or inactions
- The Supervisory Board:
  - Can overrule any "Operational" decisions of the Standards Committee
  - Must refer “Technical” issues back to the standards committee but may provide “guidance” with their referral
  - May hold or suspend the appealed action, whether technical or operational, pending resolution of the issues

# BHA APPEAL

- Third Level of Appeal - Board on Hearings and Appeals (BHA)
- The BHA is the final level of appeal within ASME and hears appeals related to procedural due process only
- The BHA can:
  - Investigate the validity of the appeal and decide at its discretion whether or not to consider the appeal
  - Hear the appeal and determine if due process was served
    - Could refer items back to the Supervisory Board or Standards Committee for further action

# ANSI APPEAL

- If the objectionable action involves an American National Standard, an appellant may be entitled to appeals within ANSI
- Conducted only for procedural objections, not technical content
- ANSI only hears appeals after:
  - all possible hearings and appeals within ASME have been exhausted;
  - the document has been sent for public review; and
  - ANSI approval of the standard has been granted

# II. STANDARDS COMMITTEE APPEAL



# STANDARDS COMMITTEE APPEAL STEPS

- Step 1: Notification of Appeal
- Step 2: Pre-Hearing Activities
- Step 3: The Appeal Hearing
- Step 4: Post-Hearing Activities

# STEP 1: NOTIFICATION OF APPEAL

- **Written notification of intent to appeal**
  - Filed with Secretary of standards committee
    - For an action, the notification of intent to appeal must be filed within 20 working days of notification of the action
  - Stops the standards action until the appeal process is completed
- **Submittal of the Appeal statement**
  - Filed with the Secretary by the Appellant
  - Detailed objection or appeal statement, including all written documentation that will be referenced during the appeal hearing
    - Shall not be more than 30 pages, double spaced, 12 point font or larger (inclusive of exhibits)
  - Must be accompanied by the filing fee
  - Must follow notification of intent to appeal within 10 working days or an extension for cause shall be requested

# STEP 2: PRE-HEARING ACTIVITIES

## Standards Committee Tasks

- An officer of the committee determines if a hearing is in order
- Secretary notifies committee of the request to appeal
- The group hearing the appeal is:
  - The Consensus Committee, OR
  - A Hearing Panel consisting of members of the consensus committee
- Respondent(s) are appointed and the response statement is prepared
- A hearing is scheduled
- All parties shall be notified of the hearing at least 20 working days in advance of the date set for hearing

# STEP 2: PRE-HEARING ACTIVITIES

## Objections to Committee or Hearing Panel Membership

- Secretary provides the appellant and respondent with a ~~copy of the~~ list of consensus committee or a list of the members of the proposed hearing panel, as applicable
- Any concerned party is given the opportunity to object, should they perceive the existence of a conflict of interest
- Objection must be in writing and state why participation is objected to and submitted no more than 10 working days after receipt of the roster
- The challenged member has the opportunity to respond to the challenge
- Must be resolved before hearing in accordance with Operating Procedures for ASME Codes and Standards Development Committees A3-3.4.2.2

# STEP 2: PRE-HEARING ACTIVITIES

## Request for a closed hearing

- Limits hearing to voting committee members or members of the hearing panel, appellants, respondents, ASME Staff and legal counsel
- No “Public” attendance
- Must be made in writing by either of the parties or committee officers
- Must be submitted 10 working days after receipt of notification of the appeals hearing date

# STEP 2: PRE-HEARING ACTIVITIES

- **Hearing Documents**

- At least 15 working days prior to the date of the hearing, the Secretary distributes the following documents to all concerned parties:
  - Appeal Statement
  - Response Statement
  - Appeal Hearing Agenda, prepared by the Secretary in accordance with ASME Guidelines for Appeal Hearings

# STEP 3: THE APPEAL HEARING

## General Guidelines

- At any level of hearing or appeal, there shall be no informal discussion(s) regarding the grievance between those hearing the appeal and representatives of the appellant or of the respondent from the beginning of appeal hearing until appellant and respondent receive the decision
- To ensure that the individual(s) appearing before the committee or board receive the results of the hearing as a Board or Committee decision, those serving on these boards and committees shall refrain from communicating the apparent results of such a hearing prior to the time that the position of the board or committee is transmitted by staff in a written communication

# STEP 3: THE APPEAL HEARING

## Agenda

- Opening statements by Chair and Secretary
- Introductions of those present
- Presentation of Positions\*- Appellants and Respondents
- Rebuttals\* - Appellants and Respondents
- Questions by members hearing the appeal\*
- Closing Remarks\* - Appellants and Respondents
- Deliberations (Executive Session) – CLOSED SESSION
- Announcement of Decision Statement

**\*NOTE:** ASME Guidelines for Appeal Hearings provide recommended time limits, the officers decide the actual amount of time allowed.



# STEP 3: THE APPEAL HEARING

## Questions and Answers

- Questions are only taken from voting members or alternates hearing the appeal and can only be asked of the Appellant or Respondent
  - Time duration for Q/A session is established by the Chair
  - The Chair will call on those with questions
  - Total time allowed for each answer is established by the Chair
  - Answer ONLY from the person to whom Question was directed
  - NO answers from others

# STEP 3: THE APPEAL HEARING

## **Deliberations (Closed - Executive Session)**

- Limited to committee members or alternates eligible to vote or members of the hearing panel, ASME Staff and legal counsel (typically only at Board level and above)
- Appellants, Respondents and Public are not in attendance
- A representative for Appellants and Respondents should be available for recall during executive session

# STEP 3: THE APPEAL HEARING

## Decision on issues are established by voice vote:

- Administrative issues require a Majority approval vote of those present
- Technical issues require 2/3 approval vote of those present

**NOTE:** The committee **must** approve the final decision statement prior to leaving executive session

# STEP 3: THE APPEAL HEARING

## Reading of Decision Statement

- After deliberations, Appellants and Respondents return to Hearing Room
- The Decision Statement is read if applicable by the Chair
- The Decision Statement will **NOT** be interpreted/clarified or otherwise expanded after it is read
- There will be **NO** discussion of statement
  - Members of the hearing panel are prohibited from communicating with the appellant and respondent about the appeal until the results of the hearing have been transmitted by ASME staff in a written communication

**NOTE:** Executive session discussions are strictly confidential

# STEP 4: POST-HEARING ACTIVITIES

## Hearing Notes – After Meeting

- Decision Statement will be “Officially” transmitted to the Appellants and Respondents within 7 working days
- Secretary will develop notes for the Hearing in accordance with ASME Guidelines for Appeal Hearings
- Secretary will provide limited distribution of notes to:
  - Committee members that heard appeal
  - ASME Staff (as required)
  - ASME Legal Counsel (as required)

# MODULE SUMMARY

- Appeals support the Due Process requirements for developing the ASME standards by ensuring that every materially interested party, has the opportunity to express a position and can be confident that their position was considered.
- Appeals can be filed for technical standards actions or inactions, and/or operational actions or inactions.
- There are 3 levels of appeal within ASME. They are Standards Committee, Supervisory Board and Board on Hearings and Appeals.
- Appeals at the Standards Committee level follow the process steps outlined in the Procedures for ASME Codes and Standards Development Committees.
- Once all possible appeals within ASME have been exhausted, the appellant may appeal to ANSI for actions/inactions relating to an American National Standard.

# REFERENCES

- Operating Procedures for ASME Codes and Standards Development Committees

<https://cstools.asme.org/csconnect/CommitteePages.cfm?Committee=A01000000&Action=7609>

- ASME Guidelines for Appeal Hearings

<https://cstools.asme.org/csconnect/CommitteePages.cfm?Committee=A01000000&Action=7609>

- Supervisory Board Procedures

Available on Board Committee Pages through Committee Central at:

<http://cstools.asme.org/csconnect/CommitteePages.cfm>