



Standards and Certification Training

Module B – Process B7. The Appeals Process

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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

Module B contains eleven modules. This is Module B7, The Appeals Process

REVISIONS

<u>Date</u>	<u>Change</u>
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

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 that appeals can be filed for technical standards actions or inactions, administrative actions or inactions and/or procedural actions or inactions.
- Understand the procedural process in an appeal to the standards committee.

MODULE OUTLINE

- I. Appeals Overview
- II. Standards Committee Appeal

We will begin with an overview of the entire appeals process—including all the various levels of appeal—then focus on the first step in the process, namely, the appeal to the standards committee.

I. APPEALS OVERVIEW

Part 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

The appeals process arises from ASME's commitment to 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:
 - Procedures for ASME Codes and Standards Development Committees
 - Supervisory Board Procedures
 - Standards Committee Supplemental Procedures
 - Operating Procedures for Conformity Assessment Committees
 - Society Policy P-15.8 – Conflicts of Interest
 - CSP-20 – Policy on Conformity Assessment
 - CSP-34 – Recording of Committee Meetings and Teleconferences
 - CSP-51 – Standards Committee Hearings

The following documents contain policies and procedures regarding the administration of the ASME Appeals process.

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

ASME Procedures provide for due process by requiring that:

- A proposed standards action be submitted for committee vote and public review and comments.
- Every effort is made to resolve objections, if any
- Each objector is advised, in writing, of the disposition of their objection
- Both substantive changes and unresolved objections to a proposed standards action are reported to the consensus committee, giving each member an opportunity to change their vote
- Substantive changes are also submitted for an additional public review and comment period.
- Each 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

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 that due consideration was not given to their input.

APPEALS PROCESS HIERARCHY



The Society provides procedural due process in connection with codes, standards, and related conformity assessment activities. As part of this procedural due process, there are several levels to which an aggrieved individual or party may appeal. Let's look more closely at these.

STANDARDS COMMITTEE APPEAL

- First Level of Appeal – Standards Committee
- The Committee hears appeals of “Administrative”, “Procedural” 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

- Whatever the nature of the action being appealed—be it administrative, procedural or technical—an appellant must begin by making an appeal to the Standards Committee responsible for the objectionable action or inaction.
- Because the Standards Committee is the body responsible for developing consensus on standards, only the standards committee has the authority to revise a standard that is the subject of an appeal. After hearing the appeal, the standards committee or its designated hearing panel will decide to
 - Accept the previous actions / inactions.
 - Revise the previous actions / inactions.
 - Establish new action (e.g. require additional revisions or ballots)

SUPERVISORY BOARD APPEAL

- Second Level of Appeal- Supervisory Board
- The Supervisory Board hears appeals of “Administrative”, “Procedural” and “Technical” actions or inactions
- The Supervisory Board:
 - Can overrule any “Administrative” or “Procedural” decisions of the Standards Committee
 - Must refer “Technical” issues back to the standards committee but may provide “guidance” with their referral
 - Can place a hold on, or suspend, the administrative, procedural or technical appealed actions

If a party to the appeal is not satisfied with the Standards Committee’s decision, they may submit a subsequent appeal to the committee’s Supervisory Board.

- The Supervisory Board has the authority to overrule a Standards Committee’s administrative or procedural decisions, but not to overrule the committee’s technical decisions. An appeal to the Board therefore tends to focus on the policies and procedures the committee has followed and whether consensus has been achieved.
- If the Supervisory Board disagrees with an administrative action the committee has taken, it may reverse the committee’s action directly. For example, if a standards committee decides not to recommend appointment of a particular individual to the committee and the Supervisory Board, on appeal from the individual, finds for the appellant, the Supervisory Board may actually appoint the individual to the committee.
- If the Board has questions about the technical decisions reached by the Standards Committee, it may submit suggestions and/or questions to the Standards Committee for consideration and ask the committee to report back, but it cannot revise a standard. As we mentioned earlier, the Standards Committee is responsible for developing consensus on standards and is the only body that may establish or revise a standard.
- If the Supervisory Board wishes, it may hold or suspend the appealed action, whether technical or administrative, 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 decline to hear an invalid 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

- If a party to the appeal is unhappy with the Supervisory Board's decision, they may submit an appeal to the Standards and Certification Council's Board on Hearings and Appeals (BHA). However, this appeal may only be based on an apparent failure to provide procedural due process. The BHA will not consider appeals based on technical issues.
- Unlike the Standards Committee and Supervisory Boards, the BHA will investigate the validity of an appeal to determine whether to schedule a hearing.
- If the appeal is heard, the BHA can determine if due process was served. As a result, it 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

- If the objectionable action involves an American National Standard, an appellant may be entitled to bring further appeals within the American National Standards Institute.
- Conducted only for procedural objections, not technical content.
- ANSI will not consider an appeal until after public review, ANSI approval of the standard, and after all possible hearings and appeals within ASME have been exhausted.
- Most disputes are resolved at the standards committee or Supervisory Board level. Very few appeals have continued through to the BHA, and fewer still to ANSI.

II. STANDARDS COMMITTEE APPEAL

The remainder of this module will focus on the first level of appeals, the 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

An appeal to a standards committee goes through four steps.

1. In the first, the committee is notified of the appeal.
2. In the second, the committee sets up the hearing, distributes materials to the participants and provides opportunities for participants to challenge or shape these preparations.
3. The committee then holds the actual hearing.
4. Then the results and the notes of the hearing are issued.

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 (exclusive of exhibits)
 - Must follow notification of intent to appeal within 10 working days or an extension for cause shall be filed

Initiating an appeal involves two actions: filing a written notice of intent to appeal and filing a formal appeal statement.

Written notice of intent to appeal:

- An individual or organization that decides to appeal must file a written notice of intent to appeal with the Secretary of the standards committee within 20 working days after the date of notification of the action in question, or at any time for an inaction.
- A request for appeal will stop the standards action under way from proceeding until the appeal process is completed.

Appeal statement:

- Within 10 working days of filing a notification of intent to appeal, an appellant must submit a detailed appeal statement to the standards committee Secretary.
 - Per 11.3.1.2 of the procedures, the appeal statement (exclusive of exhibits) shall not be longer more than 30 pages, double spaced, 12 point font or larger.
- An extension of time to submit an appeal statement may be granted at the discretion of the Officers of the Standards Committee.

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 determined by:
 - 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

After the receipt of the Appeal Statement, the standards committee must do the following.

- An officer of the committee determines if a hearing is in order (i.e. whether or not the reason for appeal is accurate/inaccurate)
- ASME procedures require the Secretary to notify the standards committee of the request for appeal
- The Chair determines if the consensus committee, or a hearing panel, consisting of members of the consensus committee appointed by the Chair, will hear the appeal.
- An Officer must appoint Respondents to develop a committee response. Respondents are generally a “proponent of the action or inaction in question”. In practice, the Chairman of the standards committee usually appoints a couple of subcommittee or standards committee members to prepare the response and act as the Respondents in the appeal.
- The date of the hearing may be set for the earliest practical scheduled meeting of the consensus committee, or on a date mutually agreeable to all parties.
- All parties and others concerned 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 consensus committee roster 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 ASME Society Policy P-15.8, Conflict of Interest

- The committee Secretary provides the parties with a copy of the consensus committee roster or a list of the members of the proposed hearing panel, as applicable, in order to allow any concerned party the opportunity to object should they perceive the existence of a conflict of interest.
- Any such objections should be submitted to the Secretary no more than 10 working days after receipt of the roster. They shall then be distributed by the Secretary in advance of the hearing to the individual(s) being challenged, who shall then have the opportunity to respond prior to the hearing.
- Any objection must be addressed prior to the hearing in a manner consistent with Society Policy P-15.8, Conflicts of Interest.

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

- The procedures specify that hearings should generally be held in open session, except for the executive session portion; however, the hearing can be closed upon written request of either of the parties or the committee officers.
- A closed session is limited to consensus committee members hearing the appeal and eligible to vote or members of the hearing panel : appellant(s), respondent(s), pertinent ASME Staff and ASME legal counsel.
- Any such written request must be submitted to the Secretary no more than 10 working days after receiving the scheduled 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

- The Secretary must distribute the following to all concerned parties at least 15 working days prior to the date of the hearing:
 - Appeal Statement
 - Response Statement
- The Secretary must prepare an Appeal Hearing Agenda, in accordance with the ASME Guidelines for Appeal Hearings. These Guidelines describe the requirements and restrictions related to the preparation of the agenda for standards committee appeal hearings and their contents.

NOTE: These Guidelines do not apply to hearings regarding accreditation, certification or registration. Guidance for hearings related to accreditation, certification or registration may be found in applicable Conformity Assessment procedures.

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

- At any level of hearing or appeal, there shall be no informal discussion(s) regarding the grievance between members of the hearing panel 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 receives 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.

The appeal hearing agenda generally consists of these steps:

- Opening statements by Chair and Secretary and Introductions
- The presentation of positions, rebuttals and closing remarks by the appellant and respondents*
- Questions from members hearing the appeal*
- Closing remarks by the appellant and respondents
- Deliberations and decision statement will be discussed further in this presentation

For additional guidance in preparing an appeals hearing agenda, please refer to the ASME Guidelines for Appeal Hearings.

***NOTE:** ASME Guidelines for Appeal Hearings provide recommended time limits. The officers ultimately decide the actual amount of time allowed for each portion of the hearing.

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

The committee can determine how to run the question and answer session. From experience, the following method works well:

Questions will only be heard from the hearing panel or those members and alternates of the consensus committee that are eligible to vote during the hearing 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.
- Answers will only be heard from the person to whom question was directed.
- No answers will be allowed 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

Deliberations take place in closed- Executive Session.

- Executive session is limited to committee members or alternates eligible to vote or members of the hearing panel, ASME staff and legal counsel (Counsel is present typically only at Board level and above).
- Appellants, Respondents and Public are not in attendance.
- Possibility of questions by members of the committee hearing the appeal to clarify points. During executive session, a representative of each party should be available for recall, if necessary. If it is necessary to recall one party for such questioning, all parties shall be recalled

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

Decision on issues are established by voice vote per following :

- For an Administrative issue, a Majority “approval” vote of those present is required.
- For a Technical issue, a 2/3 “Approval” vote of those present is required.

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 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

- After deliberations, Appellants and Respondents will be requested to return to Hearing Room.
 - If either the appellant or respondents are not present, the hearing will adjourn after executive session has concluded, and the decision statement will be transmitted to both parties in writing, within 7 working days following the hearing.
- Once all parties have returned to the hearing room:
 - The Decision Statement is read by the Chair.
 - The Decision Statement will not be interpreted/clarified or otherwise expanded after it is read.
- The meeting is adjourned directly after the decision statement has been read and the Chair has advised those present of the subsequent transmittal of the decision statement:
 - “The Committee’s decision will be officially transmitted to the appellant by letter under the Secretary’s signature. Should the appellant or respondent be aggrieved by the Committee’s ruling, the letter will contain information on submitting a request for an appeal hearing before this committee’s supervisory body.”
 - **NOTE:** If parties are not going to be recalled, statement should be read prior to entering executive session.
- There will be NO discussion of statement.
 - As a participant in the Hearing Panel of this appeal, communication with the appellants and respondents at all levels of the appeal are prohibited until the results of such hearings conducted by the Hearing Panel and above has been transmitted by ASME Staff in a written communication.
 - Written communication can be transmitted up to 7 business days following the Appeal Hearing.

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)

Certain aspects of an appeal hearing must be documented.

- The Decision Statement will be “Officially” transmitted to the Appellants and Respondents within 7 working days.
- The Secretary will develop notes for the Hearing in accordance with ASME Guidelines for Appeal Hearings. The ASME Guidelines for Appeal Hearings explain how to document appeal hearings other than those related to accreditation, certification, or registration. Minimum requirements generally include a record of attendance and a record of the final voted outcome. At the discretion of the Secretary, a general summary of the hearing discussions may also be included, but generally should be limited to the essence or final outcome of each motion.
- Notes may only be distributed to committee members that heard the appeal, pertinent ASME Staff, and ASME Legal Counsel.

For additional guidance in preparing an appeals hearing notes, please refer to the ASME Guidelines for Appeal Hearings.

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, administrative actions or inactions and/or procedural 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.

- 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.
- There are 3 levels of appeal within ASME. They are standards committee, Supervisory Board and Board on Hearings and Appeals. Once all possible appeals within ASME has been exhausted, an appellant can appeal to ANSI. Most appeals are resolved within the standards committee or Board level.
- Appeals can be filed for technical standards actions or inactions, administrative actions or inactions and/or procedural actions or inactions.
- Appeals at the standards committee level follow the process steps outlined in the Procedures for ASME Codes and Standards Development Committees.

REFERENCES

- 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>

The Procedures for ASME Codes and Standards Development Committees, Section 11 and the C&S Guidelines for Appeal Hearings contain the relevant information regarding a Standards Committee Hearing. The Procedures of the relevant Supervisory Board and the Board on Hearings and Appeals, should be reviewed for appeals to these levels.

NOTE: Standards Committee supplemental procedures should also be consulted for any committee specific requirements for the administration of an appeal hearing.