Module B - Process
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B7. The Appeals Process
Objectives

This submodule will review the process for appealing standards actions, administrative actions, or inactions.
AGENDA

I. Appeals Overview
II. Standards Committee Appeal

Agenda

We will begin with an overview of the entire appeals process—including all the various levels of appeal—then focus on the first and most important step in the process, namely, the appeal to the Standards Committee.
I. APPEALS OVERVIEW

Part I - Appeals Overview
Due Process

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, if adversely affected, to appeal both technical and procedural issues
DUE PROCESS

- **Procedural implementation**
  - Proposed standard submitted for committee vote & public review and comments solicited
  - Effort made to resolve objections
  - Written response made to objections
  - Unresolved objector notified of appeals process

Due Process (cont’d)

Procedural Implementation:

ASME Procedures provide for due process by requiring that:

- Proposed standards be submitted for committee vote and public review
- Every effort be made to resolve objections
- Each objector be advised, in writing, of the disposition of his or her objection
- Both substantive changes and unresolved objections to a proposed standard be reported to the consensus body, giving each member an opportunity to change his or her vote
- Each unresolved objector be notified of his or her right to appeal
Appeals Process

The ASME appeals process offers several levels of appeal. Let’s look more closely at each of these.
Appeals Process (cont’d)

Levels of appeal - Standards Committee appeal:
Whatever the nature of the action being appealed—be it administrative 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.
Appeals Process (cont’d)

Levels of appeal - Supervisory Board appeal:

If a party to the appeal is not happy 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 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 Board, on appeal from the individual, finds for the appellant, the 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 Board wishes, it may hold or suspend the appealed action, whether technical or administrative, pending resolution of the issues.
APPEALS PROCESS

- Levels of appeal—from first to last (cont’d)
  - Standards Committee
  - Supervisory Board
  - Board on Hearings and Appeals (BHA)
    - Reviews procedural due process issues only
    - Will decline to hear an invalid appeal
  - ANSI

Appeals Process (cont’d)

Levels of appeal - Board on Hearings and Appeals (BHA) appeal:
If a party to the appeal is unhappy with the Supervisory Board’s decision, they may submit an appeal to
the Codes and Standards Board of Directors’ 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.

The BHA is the final level of appeal within ASME.
APPEALS PROCESS

- Levels of appeal—from first to last (cont’d)
  - Standards Committee
  - Supervisory Board
  - Board on Hearings and Appeals (BHA)
  - ANSI
    - American National Standards only

Appeals Process (cont’d)

Levels of appeal - ANSI appeal:

If the objectionable action involves an American National Standard, an appellant may be entitled to bring further appeals within the American National Standards Institute.

ANSI will not consider an appeal until 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.
Pop Quiz #1

NOTE: This quiz has a third question, continued on next slide.

Answers:
1. a, b, c
2. a, b
Pop Quiz #1 (cont’d)

Answer:
3. a
Part II - Standards Committee Appeal

The remainder of this submodule will focus on the most important of the appeals, the Standards Committee appeal.
Standards Committee Appeal

Steps:
An appeal to a Standards Committee goes through four steps.
In the first, the committee is notified of the appeal.
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.
The committee then holds the actual hearing.
Then the results and the notes of the hearing are issued.
Notification of Appeal

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 action under way from proceeding until the appeal process is completed.

Appeal statement:
Within 10 working days of filing a notice of intent to appeal, an appellant must submit a detailed appeal statement to the Committee Secretary.
Pre-Hearing Activities

Standards Committee tasks:
After the receipt of the Appeal Statement, the Standards Committee must do the following. The committee must appoint Respondents to develop a Committee Response and may appoint a panel to hear the appeal. ASME procedures require the Secretary to notify the standards committee of the request for appeal and for a “proponent of the action or inaction in question” to develop the committee response. 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 appointed Respondents must prepare the Committee Response to the appeal. The committee must set a date for the hearing. The date may be set for the earliest practical scheduled meeting of the Consensus Committee, or at the discretion of the Standards Committee Chair, for a meeting of a hearing panel, consisting of members of the Consensus Committee appointed by the Chair, on a date mutually agreeable to all parties.
Pre-Hearing Activities (cont’d)

Objections to committee or panel membership:
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 at least 10 working days prior to the scheduled date of the hearing. 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.

Request for a closed hearing:
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: appellant(s), respondent(s), pertinent ASME Staff and ASME legal counsel.
Any such written request must be submitted to the Secretary at least 10 working days prior to the scheduled hearing date.
Pre-Hearing Activities (cont'd)

Hearing Agenda:
The Secretary must prepare an Appeal Hearing Agenda. This agenda should include:
The order in which the appellants and respondents will present their positions
The order in which each side will rebut
Recommended time limits for these presentations
Guidelines for preparing the Appeal Hearing Agenda can be found in the ASME Guidelines for Appeal Hearing Agendas. 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.
Pre-Hearing Activities (cont’d)

Hearing Documentation:
The Secretary must distribute the following to all concerned parties at least 15 working days prior to the date of the hearing:

- Appeal Statement
- Committee Response
- Hearing Agenda
POP QUIZ #2

An appellant may (select all that apply):

a. Challenge the assigned Respondents
b. Challenge the hearing panel membership
c. Request a different hearing date
d. Request a closed hearing
e. Skip the committee and appeal directly to the Supervisory Board

Pop Quiz #2

Answers: b, c, d
The Appeal Hearing

The actual appeal hearing generally consists of these steps:

The presentation of positions, rebuttals and closing remarks by the appellant and respondents

Questions from members hearing the appeal

The deliberations

(Regardless of whether the actual hearing is open or closed, the deliberations take place during executive session only. Participation in the executive portion of the hearing is limited to the members of the Consensus Committee hearing the appeal and eligible to vote, pertinent ASME Staff and ASME legal counsel.)

For appeals relating to personnel or other administrative items, the appeal is upheld or denied by a majority recorded vote of those hearing the appeal; for appeals relating to technical issues, the appeal is upheld or denied by a two thirds affirmative vote.

The decision is read at the hearing and then officially transmitted to the parties within seven days of the hearing, along with instructions for further appeal.
Post-Hearing Activities

Hearing Notes:
Certain aspects of an appeal hearing must be documented. The ASME Guidelines for Appeal Hearing Notes 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.
Pop Quiz #3

Answer: False. The deliberations are always conducted in a closed Executive Session.
I. Appeals Overview
II. Standards Committee Appeal
References

The Procedures for ASME Codes and Standards Development Committees, Section 11 and the C&S Guidelines for Appeal Hearing Agendas and Notes contain all of 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.