



February 26, 2020

Nathan D. Berry  
Skarlatos and Zorich LLC  
320 Market Street, Suite 600W  
Harrisburg, PA 17101

Re: IAPMO Standards Council Decision Docket #02-21  
Uniform Plumbing Code – Item(s): #125 (Public Comment(s): 1,2)

IAPMO Standards Council Decision TIA UPC-002-18  
*2018 Uniform Plumbing Code -- Section 715.3*

Dear Mr. Berry:

I am transmitting to you herewith the following decision of the IAPMO Board of Directors.<sup>1</sup>

A duly appointed Board Subcommittee of the IAPMO Board of Directors consisting of myself as Chairman, Allen Becker, Steven Panelli, Jeremy Stettler and Kevin Tindall held a hearing pursuant to the *Regulations Governing Petitions to the Board of Directors from Decisions of the Standards Council*, to consider the Petitions of NASSCO concerning the IAPMO Standards Council decisions referenced above.<sup>2</sup> The IAPMO Board accepted the recommendation of the Board Subcommittee in its entirety. Henceforth the announcement and rationale provided by the Committee has been adopted by the Board and is presented by the Subcommittee on behalf and with authority of the full IAPMO Board of Directors.

Under IAPMO rules, the Standards Council has been delegated the responsibility for the administration of the codes and standards development process, including adjudication of appeals and the issuance of the *Uniform Plumbing Code* (see the IAPMO Regulations §§ 1-7, 2-2). On a petition, the Board of Directors must give due deference to the judgment of the IAPMO Standards Council, and will not intervene unless the Petitioner demonstrates the existence of extraordinary circumstances requiring intervention to protect the integrity of the codes and standards development process (see the *IAPMO Regulations Governing Petitions* § 3; see also the IAPMO Regulations § 1-7).

Petitions to the Board of Directors are not intended to be a full appeal beyond that already afforded by the Standards Council but are rather an opportunity for the Board of Directors to intervene in the event the Board determines there to be extraordinary circumstances.

#### **I. Petition to Revise Section 715.3, 2021 Edition of the *Uniform Plumbing Code***

As discussed herein below, in the opinion of the Board an extraordinary circumstance is presented here: the existence of a *complete* ban of a method of repair (cured-in-place pipe rehabilitation) as applied to a specific material (cast iron soil pipe) in the absence of any

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<sup>1</sup> IAPMO President David Straub was unable to travel to Florida to serve as the Chairman of the Board Subcommittee.

<sup>2</sup> The undersigned recused from voting on the Board Subcommittee recommendation yet did participate in the discussion prior to the vote. At the meeting of the full Board of Directors to discuss the Subcommittee's recommendation the undersigned recused from the vote and did not participate in the discussion prior to the vote.

identified concerns for public health and safety and in the absence of evidence of any issues occurring in the field materially affecting any party to merit the draconian step of issuing a complete ban. This circumstance is anathema for a model plumbing code, an American National Standard, that serves as the industry leader. A complete ban of a process such as cured-in-place rehabilitation as applied, without qualification, to a given product is appropriate only if warranted. An outright ban - even when merited - arguably presents an extraordinary circumstance. The issuance of a ban in the absence of an overwhelming argument in its favor is an extraordinary circumstance requiring remedy.

The Board has determined the Petitioner, merely through recitation of the development process for Section 715.3 in the 2021 code development cycle, demonstrated an extraordinary circumstance, though not one arrived at through a procedural violation of the IAPMO *Regulations Governing Committee Projects*. Regarding procedures, the Board found Petitioner's petition and hearing testimony devoid of any new facts or arguments offered to dispute the finding by the Standards Council of no procedural error. Petitioner asserted violations of the IAPMO *Guide for the Conduct of Participants in the IAPMO Codes and Standards Development Process* and styled these, to Petitioner's detriment, as allegations of violations of IAPMO's ANSI-accredited standards development procedures.<sup>3</sup> The Board defers to the good judgment of the IAPMO Standards Council in the Council's findings on procedural issues in this case.

Even absent a procedural error the Board will be compelled to act pursuant to the *Regulations* if extraordinary circumstances exist to compel such action. Grave health or safety concerns could constitute extraordinary circumstances. So, too, could utilization of the code development process in a way that is procedurally correct but distorted, nonetheless. Turning to the Petition, the Board is mindful that Authorities Having Jurisdiction (AHJs) have the duty and the right to determine for themselves whether a particular product or procedure is acceptable to it.<sup>4</sup> If a plumbing code of installation and practice is going to prohibit a particular practice, product or device - thereby supplanting the role of the AHJ in determining acceptance - there should be overwhelming evidence of a public health or safety concern to support such prohibition. In this case, there is not overwhelming evidence. There is not ample evidence nor some evidence. There is no evidence of any public health or safety concern to balance on *that* side of the scale against the heavy weight of an outright prohibition on *this* side of the scale. This imbalance is a distortion of the code development process and requires remedy.

The Technical Committee had the opportunity to provide its rationale to support the ban.<sup>5</sup> One oft-repeated rationale to support the ban was the concern that cured-in-place pipe rehabilitation violates the product standard for the manufacture of cast iron pipe. The Board finds this concern misplaced, even dubious, given that the standard concerns the cast-iron soil pipe during the course of manufacturing, yet the rehabilitation process is applied to pipe already installed in the field. The Board finds no evidence in the record that the product standards for cast-iron soil pipe address repair or rehabilitation once the pipe is installed. There is no evidence in the record of any concern that cured-in-place pipe repair - where permitted by the *Uniform Plumbing Code* for pipe of material other than cast iron - violates those respective product standards. There is no evidence in the record that violating the manufacturers standards is in and of itself a problem in the context of in-the-field rehabilitation and there is no evidence that cast-iron merits treatment distinct from pipes of other material.

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<sup>3</sup> The Board Subcommittee finds these allegations to be threadbare and conclusory and as such were disregarded by the Board.

<sup>4</sup> The Board Subcommittee heard testimony on how this plays out, in practice, in the example of Oceanside, CA.

<sup>5</sup> See Sections 4-3.5.1, 4-3.5.2 4-4.6.3, 4-4.6.4 of the IAPMO *Regulations Governing Committee Projects*.

During the development of the 2021 UPC, the *Uniform Plumbing Code* Technical Committee has stated one reason for this ban: the implementation of CIPP violates cast iron pipe dimensional standards. As alike the manufacturing standards, there is no evidence that violating the dimensional standards is in and of itself a problem in the context of in-place rehabilitation, given that this process is not actually creating cast-iron soil pipe. No reason was provided to address why should this process and the resulting pipe made of resin be required to meet the dimensional standards for cast-iron soil pipe. The Board finds the TC's arguments on this point unconvincing.

The *Uniform Plumbing Code* Technical Committee has also stated that the prohibition on cured-in-place pipe rehabilitation for cast iron soil pipe is justified because "...the language is necessary for the enforcement of the code..."<sup>6</sup> Upon scrutiny, the Board finds that this is not suitable justification for instating a complete ban. "Necessary for enforcement of the code" is somewhat of a circular argument in the first place; when weighed against the extreme measure of a ban it fails in its purpose completely.

The Board anticipates that if, in the future, a prohibition as broad as this ban is proposed for inclusion into an IAPMO consensus code, the Proposal will be accompanied by an abundance of evidence of a public health or safety concern or problems in the field.

The Board hereby grants the Petition, in part, rendering Section 715.3 of the *2021 Uniform Plumbing Code* as set forth in the Appendix (attached).<sup>7</sup>

## **II. Petition to Reconsider TIA to Section 715.3, 2018 Edition of the *Uniform Plumbing Code***

The second NASSCO Petition to the Board is a related petition as it addresses substantially the same subject matter.<sup>8</sup> As stated herein above, an outright ban presents an "extraordinary circumstance." Upon the presence of such exigent circumstances the Board will carry out its responsibility pursuant to the *Regulations* and review the proposed Tentative Interim Amendment (TIA).

In this context, the Board will assume the role of the IAPMO Standards Council in determining whether the proposed TIA should be issued.<sup>9</sup> This endeavor requires an examination of the technical merit of an amendment and, next, whether an emergency nature exists to issue the amendment outside the normal standard development process.

The Board observes that the Technical Committee determined the TIA lacks technical merit.<sup>10</sup> The Board acknowledges the difficulty of assessing the technical merit of an amendment that deletes existing code text. In this case the Board is presented with the deletion of a prohibition. So, the assessment of the technical merit of the amendment is essentially an assessment of the technical merit of the product, process or device affected by the prohibition. The board finds

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<sup>6</sup> See 2019 *UPC Report on Comments*, p. 180

<sup>7</sup> The full relief requested can be found within the Petition, published online at <https://www.iapmo.org/hidden/2021-petition-filed-and-council-appeals-decisions/>.

<sup>8</sup> With the consent of the Petitioner the two petitions were heard concurrently by the Board Subcommittee in one hearing.

<sup>9</sup> See Sections 5, 6 of the IAPMO *Regulations Governing Committee Projects*.

<sup>10</sup> A review of the TC comments reflects a consensus that there was *insufficient* merit as opposed to a total lack of technical merit.

ample evidence within the complete record favoring the technical merit of the cured-in-place rehabilitation of cast iron pipe. The Board finds nothing within the record to evince that this process as applied to this product is not technically sound. Moreover, the Board notes that the amendment returns Section 715.3 to that version that exists in the *Uniform Plumbing Code*, 2015 Edition. Accordingly, the Board determines that the TIA possesses technical merit.

Given that the TIA possesses technical merit, if the TIA involves an issue of emergency nature then the TIA should be processed. This TIA exhibits the emergency nature set forth in the *Regulations*, Section 5-2(f), addressing “an adverse impact on a product or method.” Section 5-2(f) of the *IAPMO Regulations Governing Committee Projects* reads, in its entirety: “The proposed TIA intends to correct a circumstance in which the revised document has resulted in **an adverse impact on a product or method that** was inadvertently overlooked in the total revision process, or **was without adequate technical (safety) justification for the action**” (emphasis added).

1. Indisputably an outright prohibition is an adverse impact.<sup>11</sup>
2. As set forth in detail herein above, the Board determines there was a want of justification to support an outright ban.

Accordingly, the TIA shall be issued. As a result, Section 715.3 of the *2018 Uniform Plumbing Code* shall read as set forth in the Appendix (attached).

Sincerely,



David Gans  
Chairman

Cc: IAPMO Code Dept.  
Members, Mechanical Technical Committee  
Members, Standards Council  
IAPMO Board of Directors  
Connie Wilson  
Kaleel Rahaim  
Tom Bowman

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<sup>11</sup> The record is sparse as to whether the adverse impact (ban) and its consequences were considered by the TC or whether its effects were overlooked; the answer is irrelevant in the presence of inadequate technical justification.

## Appendix

### 2018 UPC

**715.3 Existing Sewers.** Replacement of existing building sewer and building storm sewers using trenchless methodology and materials shall be installed in accordance with ASTM F1216.

### 2021 UPC

**715.3 Existing Sewers.** Replacement of existing building sewer and building storm sewers using trenchless methodology and materials shall be installed in accordance with ASTM F1216, ASTM F2561, ASTM F2599, or ASTM F3240.

International Association of Plumbing and Mechanical Officials-  
Petitions Clerk of the Board of Directors  
4755 East Philadelphia Street  
Ontario, CA 91761-2816

Re: Petition to IAPMO Board of Directors

**Section 1: Petitioner**

NASSCO, Inc., represented by SkarlatosZonarich LLC

NASSCO, Inc.  
5285 Westview Drive, Suite #202  
Frederick, MD 21703

SkarlatosZonarich LLC  
320 Market Street, Suite 600W  
Harrisburg, PA 17101

**Section 2: Standards Council Action at Issue**

IAPMO Standards Council Decision  
TIA UPC-002-18  
Date of Decision: November 25, 2019  
2018 Uniform Plumbing Code – Section 715.3

**Section 3: Grounds for Petition**

Petitioner requests that the Board of Directors of IAPMO review the issues presented by Petitioner in its Request for Tentative Interim Amendment (“TIA”) of Section 715.3 of the 2018 Edition of the Uniform Plumbing Code (“UPC”) dated October 11, 2019 (“Request for TIA”) and take action to preserve the integrity of IAPMO’s standards development process and, as the UPC involves an American National Standard, this Petition asks the Board to protect the integrity of the American National Standards Institute (“ANSI”) and IAPMO’s status as an ANSI Audited Designator. Petitioner contends that language added to Section 715.3 during the development of the 2018 Edition of the UPC creates a ban on the use of certain technologies to repair or replace existing building sewer and building storm sewer pipes without any technical or scientific justification, creating an unreasonable restraint on trade. This ban was developed in a manner that violates IAPMO’s procedures and exposes IAPMO and individuals acting under the authority of IAPMO to potential antitrust liability and liability for unfair business practices. The Standards Council Decision regarding the Request for TIA states only “Upon review of the full record including oral testimony provided during the hearing, the Council hereby rejects the proposed TIA.” The Standards Council provided Petitioner with no basis or explanation for the rejection.

The Request for TIA outlines the development and adoption of the objectionable language and, pursuant to IAPMO’s instructions, will not be restated in this Petition; the Board is referred to pages 3-5 of the Request for TIA, which are incorporated into this Petition by reference. Petitioner contends that an objective review of the process of the development of the objectionable language leads to the conclusion that the language creates an unreasonable restraint on trade and deprives consumers of an effective and economical technology for repairing or replacing building sewers and building storm sewers pipe. The objectionable language was proposed by a member of the IAPMO Plumbing Technical Committee (“TC”) who represented the very industry that directly benefitted from the ban created by the language. The supporting justification provided by this partisan member of the TC did not provide all pertinent information and is easily characterized as vague and misleading, creates an unreasonable restraint on trade and deprives consumers of an effective and economical technology for repairing or replacing

building sewers and building storm sewers pipe. The result is an unreasonable restraint on trade, causing significant harm to consumers, while protecting the proponent of the objectionable language. A violation of the federal antitrust laws and state antitrust and unfair competition laws by such actions could not be clearer.

The Standards Council's Decision on the Request for TIA provides no basis for the rejection of the arguments advanced by Petitioner, which showed the technical deficiencies in the "substantiation" provided to support adoption of the objectionable language. Nor does the Decision address the detailed listing and discussion of violations of IAPMO's Regulations Governing Committee Projects and Guide for the Conduct of Participants in the IAPMO Codes and Standards Development Process set forth on pages 6-8 of the Request for TIA, which are incorporated into this Petition by reference. The Standards Council's silence regarding those violations may be interpreted as acquiescence to behavior by a member of the TC and participant in IAPMO's code development process in failing to: act honestly and in good faith, Guide for the Conduct of Participants in the IAPMO Codes and Standards Development Process, §3-3(b); disseminate all information necessary to enable full and fair consideration of all points, *Id.* at §3-3(c); not withhold information, *Id.* at §3-3(d); be candid and forthcoming about any weakness in their position, *Id.* at §3-3(c); and base all advocacy, voting, and other standards development activities on sound technical and scientific bases and should act in the interest of safety and IAPMO's other purposes and goals. *Id.* at §3-3(d). The Standards Council appears to have condoned the TC's violation of rules by: (1) allowing TC members to further their business and commercial interests, *Id.* at §3-1(f); and (2) allowing TC members to disseminate false or misleading information and withhold information necessary to a full, fair, and complete consideration of the issues before their committee. *Id.* at §3-1(h). Another interpretation is that the Standards Council does not object to the TC adopting language in its standard that creates an unreasonable restraint of trade without providing technical, scientific, or safety rationale to support the need for that restraint of trade, particularly when that language is proposed and advocated for by a member of the TC representing the segment of the industry directly benefitting from the restraint of trade created by the UPC standard. While IAPMO's Regulations Governing Committee Projects may allow the TC to take that action without providing justification, in this case, doing so violates IAPMO's stated purpose "to promote the interests of the arts and science of plumbing and mechanical building codes, and the officials in connections therewith, and to promote the interests of all persons whose responsibility it is to interpret plumbing and mechanical building laws and practices to the public, and those other purposes specified in the Association's Article of Incorporation[.]" IAPMO Bylaws §1.2. Such action should not be countenanced or remain unchecked when uncovered.

The violations of IAPMO's regulations that occurred in the process of the development of UPC Section 715.3 and the resulting unreasonable restraint of trade calls into question the integrity of the UPC and IAPMO's code development process. ANSI specifically requires that American National Standards "be developed in accordance with applicable antitrust and competition laws[.]" ANSI Essential Requirements: Due process requirements for American National Standards, §3.3, and considers whether an ANSI Audited Designator has designated an American National Standard that contains an unfair provision. *Id.* at §5.2g.

Courts have long recognized that the activities of standards development bodies present opportunities for anticompetitive activity. *American Society of Mechanical Engineers, Inc. v. Hydrolevel Corporation*, 456 U.S. 556 (1982). Actions taken in the standard setting process can lead to anticompetitive results even if the rules of the standards setting bodies were followed. "An association cannot validate the anticompetitive activities of its members simply by adopting rules that fail to provide [safeguards sufficient to prevent the standards setting process from being

biased by members with economic interests in restraining competition].” *Allied Tube & Conduit Corporation v. Indian Head, Inc.*, 486 U.S. 492, 509 (1988).

The objectionable language in Section 715.3 creates a ban on the use of trenchless methodologies to repair or replace cast iron soil pipes and fittings. As explained in pages 4-5 of the Request for TIA, which are incorporated into this Petition by reference, the support cited for this ban does not justify the ban in any technical or scientific manner. By prohibiting use of trenchless methodologies to repair or replace cast iron soil pipes in existing building sewers and building storm sewers without the expense and dangers associated with open trench construction, Section 715.3 of the UPC negatively impacts competition and decreases the efficiency in the competitive process involved in the market for the rehabilitation of existing cast iron soil pipes and fittings in building sewers and building storm sewers. See page 8 of the Request for TIA for additional details. Section 715.3 of the UPC creates an unreasonable restraint on trade and constitutes unfair methods of competition and unfair or deceptive acts or practices. When viewed in an objective manner, the ban created by Section 715.3 of the UPC, resulting from a proposal submitted and advanced by a member of the TC representing the segment of the industry that directly benefits from the ban and not supported by substantive scientific or technical need or reasoning, can lead to the conclusion that IAPMO’s standards development process was utilized as a means to benefit one segment of the industry to the detriment of the public and other segments in the industry. The anticompetitive intent of Section 715.3 is shown by the materially misleading rationale for the amended rule, the lack of technical justification, and the fact that it was proposed by the industry that benefited from the amended rule.

The Standards Council Decision subject to this Petition provides no insight into the Council’s decision to reject the Request for TIA. Testimony from the hearing on the Request for TIA suggests that at least one member of the Standards Council was operating under the incorrect impression that a TIA is justified only if the request “affect[s] the health and safety or prevent[s] the death ...” Transcript p. 112. IAPMO’s Regulations Governing Committee Projects, Section 5 sets forth the regulations governing Tentative Interim Amendments. Section 5 does not limit a TIA to circumstances that affect human health and safety or prevent death. Without the Standards Council providing any basis for its decision, Petitioner cannot know if the decision stemmed from the misunderstanding of the purpose and rules for granting a TIA that was vocalized by a member of the Standards Council during the hearing.

IAPMO’s Board of Directors is empowered to take any action necessary to fulfill its obligations to preserve the integrity of the standards development process when extraordinary circumstances require such action. Regulations Governing Committee Projects §1-7.1. The IAPMO Board must intercede and correct this situation. The TC violated IAPMO’s written regulations and, at the instigation of a TC member representing the benefited industry, adopted a rule that benefits one segment of an industry. The result is a standard that constitutes an unreasonable restraint of trade. Worse, the Standards Council summarily and without explanation rejected the Request for TIA. Thus, to avoid further exposure to antitrust claims, the Board should exercise its powers to either (1) reject the language included in Section 715.3 during the development process for the 2018 Edition of the UPC or (2) send Section 715.3 back to the TC for further study and move forward with the language of Section 715.3 as it existed prior to the inclusion of the tainted language.


#### **Section 4: Relief Requested**

Petitioner requests that the Board of Directors take action to fulfill its obligations to preserve the integrity of the standards development process by either (1) rejecting the language included in Section 715.3 during the development process for the 2018 Edition of the UPC or (2)



returning that portion of the Report on Comments related to Section 715.3 to the TC with instructions for further study and return to the text of Section 715.3 as it existed prior to the actions of the TC giving rise to the grounds for this Petition – the language of Section 715.3 in the 2015 Edition of the UPC.

SkarlatosZonarich LLC

By:   
Nathan D. Berry, Attorney for NASSCO, Inc.

Date: January 3, 2020



November 25, 2019

Lynn Osborn, Technical Director  
NASSCO, Inc.  
2470 Longstone Lane, Suite M  
Marriottsville, MD 21104

Re: IAPMO Standards Council Decision  
TIA UPC-002-18  
Decision date: November 25, 2019\*\*  
*2018 Uniform Plumbing Code – Section 715.3*

Dear Ms. Osborn:

I am transmitting to you herewith the following decision of the Standards Council. At its meeting on November 14, 2019, the Standards Council considered your request for the issuance of proposed TIA UPC-002-18 in the 2018 edition of the *Uniform Plumbing Code*. The proposed Tentative Interim Amendment requested the deletion of text to Section 715.3, as follows:

**715.3 Existing Sewers.** Replacement of existing building sewer and building storm sewers using trenchless methodology and materials shall be installed in accordance with ASTM F1216. ~~Cast iron soil pipes and fittings shall not be repaired or replaced by using this method aboveground or belowground.~~  
~~Replacement using cured in place pipe liners shall not be used on collapsed piping or when the existing piping is compromised.~~

Prior to the November 14 meeting, the proposed TIA was balloted through the Plumbing Technical Committee in accordance with the Regulations Governing Committee Projects to determine if there existed the necessary three-fourths majority support on technical merit and emergency nature to establish the recommendation for issuance. The ballot failed on both accounts and subsequently came to the IAPMO Standards Council, as prescribed by the Regulations.

Upon review of the full record including oral testimony provided during the hearing, the Council hereby rejects the proposed TIA.

Sincerely,

A handwritten signature in black ink, appearing to read "Gabriella Davis". The signature is fluid and cursive, written over a light blue horizontal line.

Gabriella Davis  
Secretary, Standards Council

CC: Monte Bogatz, Executive VP & General Counsel  
Hugo Aguilar, VP, Codes & Standards Development  
Enrique Gonzalez, Staff Liaison  
IAPMO Standards Council  
Members of the Plumbing TC  
Kaleel Rahaim, NASSCO  
Joanne Carroll, Subtegitic Group  
Connie Wilson, NASSCO  
Tom Bowman, NuFlow  
Mike Jennings, RotoCo, Inc.  
Dave Mann, Self

**\*\*NOTE:** Participants in IAPMO's codes and standards making process are advised that limited review of this decision may be sought from the IAPMO Board of Directors. For the rules describing the available review and the method for petitioning the Board of Directors for review, please consult Section 1-7 of the *IAPMO Regulations Governing Committee Projects* and the *IAPMO Regulations Governing Petitions to the Board of Directors from Decisions of the Standards Council*. **Notice of the intent to file such a petition must be submitted to the Petitions Clerk of the Board of Directors within 15 calendar days of the Date of Decision noted in the subject line of this letter.** As this document is an American National Standard (ANS), any persons who have directly and materially affected interests by this decision have the right to appeal to ANSI in accordance with ANSI procedures.

**IAPMO Regulations Governing Committee Projects**  
**Section 1-7**

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**1-7 Petitions to the Board of Directors.**

**1-7.1 General.** The Standards Council has been delegated the responsibility for the administration of the codes and standards development process and the issuance of Documents. However, where extraordinary circumstances requiring the intervention of the Board of Directors exist, the Board of Directors may take any action necessary to fulfill its obligations to preserve the integrity of the standards development process. Anyone seeking such intervention of the Board of Directors may petition the Board of Directors concerning Standards Council action on any matters. Such petitions shall be filed and processed in accordance with the Regulations Governing Petitions to the Board of Directors from Decisions of the Standards Council.

**1-7.2 Notice of Intent to File the Petition.** Anyone wishing to petition the Board of Directors concerning an Standards Council action related to the issuance of a document, shall file a Notice of Intent to File a Petition within 15 days following the Standards Council action. A Standards Council action related to the issuance of a document includes any action of the Council that issues or returns a Document or that affects the text of a Document. Petitions concerning other Standards Council actions shall be filed within a reasonable period of time.

**1-7.3 Effect of Filing.** The filing of a Petition will not serve to stay the effective date of a Document or a Tentative Interim Amendment unless the Chief Executive Officer of the Association or the Board of Directors acts, pursuant to 4-7.2 or 5-6, to delay the effective date. Any Petition pending at the time a Document or Tentative Interim Amendment becomes effective will be treated as a Petition to withdraw the Document or Tentative Interim Amendment.

**1-8 Use of Visual Aids and Demonstrations Before the Standards Council or Board of Directors.** The policy for the use of visual aids and physical demonstrations to the Standards Council and Board of Directors shall be the same as that required for TCCs, TCs, and Task Groups, in accordance with 3-3.3.3(e) and 3-3.3.3(f).

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**IAPMO Regulations Governing Petitions to the Board of Directors**  
**from Decisions of the Standards Council**

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ADOPTED BY THE IAPMO BOARD OF DIRECTORS SEPTEMBER 4, 2000. Amended in January 2007.

**Section 1 Scope of and Authority for these Regulations.**

- (a) These regulations have been issued by the Board of Directors pursuant to its authority under Article 5, 6 and 8 of the IAPMO Bylaws.
- (b) These regulations set forth the procedures to be used for the filing and processing of all petitions to the Board of Directors filed pursuant to 1-7 of the Regulations Governing Committee Projects.
- (c) The Board of Directors can amend these regulations from time to time and waive or supplement, in whole or in part, at any time or times at its discretion.
- (d) For the purposes of these regulations, the Standards Council Secretary, or such other person as the Chair of the Board of Directors may appoint, shall act as a petitions clerk.

**Section 2 Subcommittees of the Board of Directors.** Unless the Board of Directors otherwise orders, the authority to consider and make recommendations on the disposition of a petition by the Board of Directors shall be delegated to a subcommittee of the Board of Directors, which shall be appointed, in accordance with 2.1 of these regulations. Subcommittees shall be appointed by the Chair of the Board of Directors.

**2-1 Composition of Subcommittees.** Subcommittees shall consist of three or more members of the Board of Directors. The criteria for selection and appointment of subcommittee members shall be as follows:

- (a) A subcommittee member shall be a person who can decide the petition on the merits in an impartial manner.
- (b) A subcommittee member shall not have any conflict of interest. (A conflict of interest is defined as any situation in which a decision on a petition could substantially and materially affect the member's financial or business interest.)
- (c) Each subcommittee member shall, to the extent practicable, represent diverse interests within the association.
- In making a decision of whether or not to serve on a subcommittee, the member may consult with the IAPMO general counsel.

**Section 3 The Scope of Review.** The petitioner shall generally confine the argument in the petition to matters that were presented below and shall not raise any new matters that could have but were not presented within the standards development process. A petition to the Board of Directors shall not be regarded as simply another opportunity to reargue a position that was rejected by the Standards Council. In considering a petition, the subcommittee shall give due deference to the judgment of the Standards Council and shall not intervene unless it can be demonstrated that extraordinary circumstances exist requiring the Board of Director's intervention to protect the integrity of the standards development process.

**Section 4 The Record.** In its consideration of the petition, the subcommittee shall have before it the entire record that was before the Standards Council, as well as all proceedings and decisions of the Standards Council on the issue. In addition, the subcommittee may consult any other records of the association that it deems pertinent to the issue, and the subcommittee may seek technical assistance from staff, the technical committee, or any other source or persons that it deems appropriate.

**Section 5 Notice of Intent to File the Petition.** Anyone wishing to petition the Board of Directors concerning a Standards Council action related to the issuance of a document, shall file a Notice of Intent to File a Petition within 15 days following the Standards Council action. A Standards Council action related to the issuance of a document includes any action of the Council that issues or returns a document or that affects the text of a document. Petitions concerning other Standards Council actions shall be filed within a reasonable period of time.

**Section 6 Filing and Contents of the Petition.**

- (a) Within 15 days following the receipt of the notice of intent to file, or within such other time as the petitions clerk may allow, the petitioner shall file the petition together with 20 copies. The petition shall be no more than 10 pages in length and shall contain, in separately denominated sections, the following:
- (1) Name, affiliation, and address of the petitioner;
  - (2) Statement identifying the particular Standards Council action to which the petition relates;
  - (3) Argument setting forth the grounds for the petition and, in particular, addressing why there exist extraordinary circumstances requiring the intervention of the Board of Directors (see the preceding Section 3 and 1-7 of the Regulations Governing Committee Projects); and
  - (4) Statement of the precise relief requested.
- (b) Any part of the record related to the standards development process that is referenced or discussed in the petition should be clearly cited in the petition using available markings such as the title, author, date, and page of the record. Since the full record will be available to the subcommittee during its review, attachments and appendices shall not accompany the petition, unless express permission has been obtained from the petitions clerk.

**Section 7 Consideration of the Petition.**

**7-1 Initial Review.** The petitions clerk may, at his or her discretion, arrange for initial review of the petition by meeting, correspondence, or telephone conference. If upon such initial review of the petition and any relevant portions of the record, the subcommittee determines that the petition has no merit, it may dismiss the petition.

**7-2 Full Review.** If initial review is not conducted, or, if upon such review, the subcommittee determines that further review is warranted, it shall afford the opportunity for responses to be filed by interested parties.

Responses, together with 20 copies, shall be filed within 15 days or within such other time as the petitions clerk may allow.

(a) Responses shall be no more than 10 pages in length and shall contain, in separately denominated sections, the following:

(1) Name, affiliation, and address of the respondent;

(2) Statement identifying the petition to which the response relates and stating whether the respondent supports or opposes the petition; and

(3) Argument setting forth the grounds for opposing or supporting the petition and, in particular, addressing why there does or does not exist extraordinary circumstances requiring the intervention of the Board of Directors (see the preceding Section 3 and 1-7 of the Regulations Governing Committee Projects).

(b) Any part of the record related to the standards development process that is referenced or discussed in a response should be clearly cited in the response using available markings such as the title, author, date, and page of the record. Since the full record will be available to the subcommittee during its review, attachments and appendices shall not accompany the response, unless express permission has been obtained from the petitions clerk.

(c) So as to avoid unnecessary repetition and duplication of effort, parties are encouraged to file joint responses where possible and appropriate.

(d) Unless a hearing has been requested and granted by the subcommittee (see Section 8), the subcommittee shall, either by meeting or telephone conference, review and render a decision on the petition based on the written submissions of the parties and the record before it.

**Section 8 Requests for Hearings.** If the petitioner requests a hearing on the petition and that hearing is granted, the petitioner shall be assessed a filing fee of \$2,500 to be posted following the granting of the request. This fee may be reduced or waived by the Chief Executive Officer upon application of the petitioner if good cause for reducing or waiving the fee is presented. If a hearing is granted, the Procedures for Hearings shall be followed.

**Section 9 Waiver of Regulations.** Any of the deadlines or requirements set forth in these regulations may be waived by the subcommittee upon application of the petitioner or any other party for good cause shown, or in the discretion of the subcommittee.

**Section 10 Subcommittee Report to the Board of Directors.** The subcommittee shall file with the Board of Directors a written report concerning each petition that it has determined.