

Administrative Procedures for Alleged Violations of AWS Certification Programs

| Revision 1 – Second Printing
Approved by AWS Board of Directors
April 1998

Foreword

(This Foreword is not a part of AWS QC9-98, *Administrative Procedures for Alleged Violations of AWS Certification Programs*, but is included here for information purposes only.)

This document was developed originally to outline the procedures for the investigation of allegations of misconduct by AWS Certified Welding Inspectors. New certifications have since been added to those administered by the American Welding Society, and the procedure was revised to accommodate all of the AWS certifications. A second printing was necessary for updating the AWS headquarters address in this document. No other changes were made.

This document was developed by the AWS Staff and approved by the AWS Board of Directors. It has also been reviewed by legal counsel to assure that due process is served for both the Complaining Witness and the Respondent.

Comments and suggestions for the improvement of this document are welcome. They should be sent to the Director of Certification, American Welding Society, 8669 Doral Blvd., #130, Doral, Florida, 33166.

Administrative Procedures for Alleged Violations of AWS Certification Programs

1. Scope

This standard describes the procedure for the initiation, preparation, and disposition of complaints against individuals for unauthorized practices or violations of applicable rules of AWS certification programs. AWS certifications include, but are not limited to:

- Welding Inspectors and Associate Inspectors
- Welding Inspector Specialists and Inspector Assistants
- Entry Level Welders
- Level II Advanced Welders
- Level III Expert Welders
- Certified Welders
- Accredited Test Facilities
- Welding Educators
- Welding Technicians
- Welding Supervisors
- Welding Engineers

2. Complaints

2.1 Submittal. Any person or entity (Complaining Witness) including the Certification Committee, corporations, association members exclusive of AWS staff, and governmental agencies, may submit written information to the AWS Executive Director concerning a possible violation of the Code of Ethics or other applicable rules by an individual or organization certified by AWS.

2.2 Investigation. The Executive Director may conduct any investigation as deemed appropriate, regarding the information submitted by the Complaining Witness.

2.3 Determination. If the Executive Director determines that there is reasonable cause to believe that a violation has occurred, the statement of the Complaining Witness and a summary of the supporting evidence shall be letter balloted to the Certification Subcommittee on Ethics. The letter ballot shall determine further action per Article 2.4. If the Executive Director determines that there is no reasonable cause to believe that a violation has occurred, the Complaining Witness shall be advised of this determination. The Executive Director shall also advise the Complaining Witness of the right to appeal the decision to the Certification Subcommittee on Ethics.

2.3.1 Appeal of Executive Director's Determination. Upon the denial of the Complaint by the Executive Director, the Complaining Witness may appeal the decision to the Certification Subcommittee on Ethics. The Subcommittee will process the appeal as a letter ballot in accordance with its rules of operation.

2.4 Ballot. Upon the acceptance of the Complaint by the Executive Director in accordance with Article 2.3, the Certification Subcommittee on Ethics will process a letter ballot containing the Complaint, in accordance with its rules of operation, to determine whether the Complaint should be heard by a Hearing Panel. If the Subcommittee determines that there is no reasonable cause to believe that a violation has occurred, the Executive Director shall be instructed to advise the Complaining Witness of this determination. The Executive Director shall also advise the Complaining Witness of the right to appeal the decision to the AWS Executive Committee.

2.4.1 Appeal of Certification Subcommittee on Ethics' Determination. Upon the denial of the Complaint by the Certification Subcommittee on Ethics, the Complaining Witness may appeal the decision to the AWS Executive Committee. Appeal of the Certification Subcommittee on Ethics's determination must be received at AWS no more than 30 days after the date of receipt of the registered mail notice from the Executive Director in accordance with Article 2.4. The Executive Director shall, if the decision is appealed, transmit the following to the AWS Executive Committee:

- (1) a copy of any information submitted by the Complaining Witness,
- (2) a copy of the notice provided to the Complaining Witness in accordance with Article 2.4,
- (3) a memorandum from the Executive Director identifying the alleged violation(s) and summarizing the findings and conclusions, and
- (4) the ballot results from the Certification Subcommittee on Ethics, if applicable.

2.4.2 Determination of Appeal. If the AWS Executive Committee finds that there was a reasonable basis for the Certification Subcommittee on Ethics' determination, it shall affirm the determination and notify the Executive Director thereof. The Executive Director will so advise the Complaining Witness. If the AWS Executive Committee finds that there was no reasonable basis for the determination, it shall instruct the Executive Director to prepare a Complaint in accordance with Article 2.5.

2.5 Content. The Complaint shall contain the following information:

- (1) the name and address of the person charged with a violation of the rules (Respondent),
- (2) the unauthorized practices or applicable rule or rules allegedly violated,
- (3) a summary of the pertinent facts, and
- (4) all supporting documentation and evidence.

3. Pre-Hearing Procedures

3.1 Preparation. The AWS President, upon notification by the Executive Director that a Complaint is to be heard by a hearing Panel, shall appoint a Hearing Panel in accordance with Article 4. The Executive Director shall furnish copies of the Complaint to the Respondent, Hearing Panel, and Complaining Witness.

3.2 Hearing Date. The Executive Director shall determine a date, time, and place for the Hearing and shall notify the Respondent thereof. The Executive Director shall also notify the Respondent that his written response to the Complaint (Answer) must be received by AWS no more than 20 days after receipt by the Respondent of the Complaint. Notices required in accordance with this Article shall be mailed, together with a copy of the Complaint and these Procedures, by Certified Mail, return receipt requested, and must be received by the Respondent no less than 30 days prior to the date set for the Hearing. The Executive Director or Hearing Panel may extend this deadline, upon request of the Respondent, if justified in the interest of due process.

3.3 Response. The Respondent may submit an Answer within the time specified. Any Respondent who does not submit an Answer will be deemed to have denied the Complaint.

3.4 Data Transmittal. The Executive Director shall furnish copies of the Answer, if any, to the Hearing Panel, and Certification Committee Chair.

3.5 Assistance From Executive Director. The Executive Director shall provide reasonable assistance to the Complaining Witness in the preparation for the presentation of the evidence.

3.6 Pre-Hearing Conference. The Executive Director may conduct a pre-hearing conference, in person or by telephone with the Respondent in an attempt to resolve the Complaint by stipulation. If the Respondent stipulates to a disposition of the Complaint, the Executive Director shall prepare a proposed stipulation for approval by the Hearing Panel. If the Hearing Panel approves the stipulation, the Executive Director shall issue a ruling and shall furnish copies thereof to the Respondent, Certification Committee Chair and Complaining Witness. Any such ruling shall constitute a final disposition of the Complaint. If the Hearing Panel does not approve the stipulation, a Hearing shall be held on the Complaint. If the Complaining Witness disagrees with the stipulation, the Complaining Witness may prepare a statement for the Hearing Panel to consider when it reviews the stipulation.

3.7 Withdrawal. If at any time prior to the pre-Hearing conference, the Complaining Witness decides to withdraw from participation, the Certification Subcommittee on Ethics shall be notified of the action.

3.7.1 The withdrawal of a Complaining Witness shall be prejudicial to the continuance of the Complaint, unless a substitute Complaining Witness is furnished by the Certification Subcommittee on Ethics. If no action is taken by the Subcommittee, the proceedings shall be terminated and the Respondent so notified.

4. Hearing Panel

4.1 Hearing Panel. A Hearing Panel shall be appointed by the AWS President in accordance with Article 3.1, and shall be comprised of 3 members, including at least one of whom holds the same certification as the Respondent. The AWS President shall designate 1 of the 3 Panel members to be the presiding officer.

4.2 Term. The members of the Hearing Panel shall serve until the Complaint is resolved.

4.3 Restrictions. Members of the Hearing Panel shall be current AWS members. No member of the Certification Committee, Certification Subcommittee on Ethics or AWS Executive Committee shall serve as a member of the Hearing Panel.

5. Hearings

5.1 Control. The Hearing Panel shall control the conduct of the Hearing and may establish any reasonable rules that are consistent with these procedures. Due process shall be observed and shall govern the conduct of the Hearing.

5.2 Attendance. The Hearing Panel, Complaining Witness, Respondent, Executive Director (or his designee) and AWS Counsel (as determined by the Executive Director) shall be present at the Hearing. Should the Respondent be unable to attend, the Hearing may nevertheless proceed, and non-attendance shall not be considered an admission of wrongdoing. In the event that the Complaining Witness is unable to attend the Hearing, the presiding officer of the Hearing Panel may appoint an individual to present the evidence furnished by the Complaining Witness. Any witness, excluding the Complaining Witness and Respondent, shall be present at the Hearing only when offering testimony. Except as otherwise provided herein, the Hearing shall be closed to the public.

5.3 Sequence. The Hearing shall be conducted as follows:

- (1) Complaining Witness's Opening Statement
- (2) Respondent's Opening Statement
- (3) Complaining Witness's Case
- (4) Examination of witnesses
- (5) Respondent's Case
- (6) Examination of witnesses
- (7) Complaining Witness's Closing Statement
- (8) Respondent's Closing Statement

5.4 Rules. Formal rules of evidence shall not apply; however, due process shall be observed and shall govern the conduct of the Hearing. Complaining Witness and Respondent shall both have the opportunity to cross-examine witness(es) offering testimony.

5.4.1 The charges must be proven by a preponderance of the evidence.

5.5 Oath. All testimony offered during the Hearing shall be under oath.

5.6 Record. A record shall be made of all testimony, documents and other evidence submitted at the Hearing. The Respondent may obtain a copy of the record by paying the cost of duplication thereof.

5.7 Postponement/Relocation of Hearing. The date, time and/or place of Hearing may be changed by the Executive Director for good cause, and the interested parties shall be notified promptly by telephone or mail of any such change. The Respondent shall be furnished with reasonable notice of any new time or place of Hearing by Certified Mail, return receipt requested, no less than 30 days prior to the new Hearing date. The 30 day notice may be waived if the Executive Director, Complaining Witness and Respondent agree on a new date, time, and place of Hearing.

6. Final Ruling

6.1 Issuance of Ruling. The Hearing Panel shall issue a written ruling, including its findings and conclusions (Final Ruling), at the conclusion of the Hearing or as soon thereafter as practicable, but in no event more than 60 days after the date of the Hearing. The Final Ruling shall find the Respondent guilty or not guilty of the violation(s) charged and shall either impose sanctions or dismiss the Complaint.

6.2 Delivery. The Hearing Panel shall deliver the Final Ruling to the Executive Director, who shall furnish copies to the Complaining Witness and Certification Committee. The Executive Director shall furnish a copy of the Final Ruling to the Respondent by Certified Mail, return receipt requested.

7. Sanctions

The Hearing Panel may impose the following sanctions if it finds the Respondent guilty of the violation(s) charged:

- (1) revocation, suspension or refusal of renewal of an AWS certification issued the Respondent, or
- (2) issuance of a reprimand, or
- (3) other actions as deemed appropriate.

8. Review of Final Ruling

When a Final Ruling imposes a sanction (other than a sanction to which the Respondent has stipulated or consented), the Respondent may seek review of the Final Ruling by submitting a written request for review which must be received by the Executive Director no more than 30 days after receipt by the Respondent of the Final Ruling. The AWS Executive Committee shall review the Final Ruling on the basis of the Complaint, the Answer, if any, and the record of the Hearing. Based upon its review, the AWS Executive Committee may affirm, modify, or vacate the Final Ruling, or remand the Complaint back to the Hearing Panel for further deliberation. Disposition of the review by the AWS Executive Committee shall be final.

9. Amendment

If, after a Complaint has already been prepared and the Executive Director determines that there is reasonable cause to believe that an additional violation by the Respondent has occurred, the Executive Director shall prepare an Amended Complaint which shall include any new charges. A copy of the Amended Complaint shall be mailed to the Respondent by Certified Mail, return receipt requested, and must be received by the Respondent no less than 30 days prior to the Hearing with a notice that the Respondent's Answer to the Amended Complaint must be received by AWS no more than 20 days after receipt by the Respondent of the Amended Complaint.

10. Publication

Any proceedings, including the results thereof, brought pursuant to these administrative procedures may be publicized by AWS, at any stage and at its sole discretion, if deemed to be in the interests of AWS, the welding industry, or any segment of the general public.

11. Right to Counsel

The Respondent has the right, at his or her own cost, to be represented by legal counsel in connection with any proceedings brought in accordance with this procedure.

12. Notices

Except as otherwise provided in this procedure, all complaints*, notices, or other documents required or permitted herein shall be delivered by hand or by first class mail. All notices or other documents permitted or required to be mailed to AWS shall be addressed to:

Executive Director (A *Formal Complaint* form is attached for this purpose.)
American Welding Society
8669 Doral Blvd., #130
Doral, Florida 33166

13. Revisions and Modifications

AWS Staff is responsible for monitoring the effectiveness of this document and making the appropriate changes to the document where necessary. All subsequent changes or revisions to this document will be subject to approval by the AWS Board of Directors.

This document shall remain in effect until the approval of any subsequent revision.

**COMPLAINT OF ALLEGED VIOLATION OF
AWS CERTIFICATION RULES**

Identify the name and address of the one filing the complaint, the name and address of the person who is accused of any violation, identification of the specific QC Standard rule(s) allegedly violated, clear, concise description of the issues of fact and dates involved, what relief is sought and a statement of the interest of the complainant in the matter.

This complaint will be considered in accordance with the Administrative Procedures for Alleged Violations of AWS Certification Programs.

Please return the completed form to the following address:

Executive Director
American Welding Society
8669 Doral Blvd., #130
Doral, Florida 33166

Date _____

Name of Complainant (Person filing Complaint): _____

Company Name: _____

Address/Postal Address: _____

City: _____ State or Province: _____ Country _____

Zip/Postal Code _____ Country: _____

Telephone: (____) _____ Fax: _____

Name of Respondent (Person that the Complaint is directed against): _____

Company Name: _____

Address/Postal Address: _____

City: _____ State or Province: _____ Country _____

Zip/Postal Code _____ Country: _____

Telephone: (____) _____ Fax: _____

Please provide the information requested below. *Additional sheets of paper may be submitted.*

I. Concise description of issues of fact involved: _____

II. Allegations raised by complainant. Identify the applicable rule for each alleged violation by document name, section and paragraph number: _____

III. Relief sought and your (complainant's) interest in the issue:

NOTE: Attachments may be used to corroborate items II and I.
Allegations must be supported by objective evidence; AWS will not conduct investigations to discover evidence. Company proprietary information that may be part of documents that are submitted, as evidence will be kept confidential.