

Board on Hearings and Appeals
of the
Council on Standards and Certification
Operation Guide

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Foreword

The Board on Hearings and Appeals (BHA) reports to the Council on Standards and Certification (formerly the Standards and Certification Board of Directors; the Codes and Standards Board of Directors; and the Council on Codes and Standards).

At the September 1984 meeting of the Council on Standards and Certification request for BHA procedures was made.

A draft was prepared for the next Council meeting in December 1984. Subsequent discussions and modifications resulted in procedures that were first approved by the Council on Standards and Certification on December 10, 1986. The Council on Standards and Certification approved a subsequent revision in October 1989. In 2003, a complete rewrite of the procedures was initiated to ensure consistency with revisions that have been made to appeals provisions of the supervisory board procedures and ASME's accredited standards development procedures. The Council on Standards and Certification approved this revision on November 18, 2003. In 2004, a further revision to the procedures was considered to remove the responsibility of the BHA to hear appeals of actions or inactions of the Council on Standards and Certification, the unit to which BHA reports. The Council on Standards and Certification approved this revision on March 24, 2004. Associated revisions to other pertinent procedures were approved to provide for requests for reconsideration of Council actions or inactions to be submitted to the Council. In March, 2005, the Council on Standards and Certification approved a revision to the procedures to allow parties significantly impacted by the results of the BHA hearing to attend a closed hearing. In June, 2011, the Board on Council Operations, on behalf of the Council on Standards and Certification, approved revisions to the BHA Operation Guide, primarily to update the process for appointment of BHA Chair, to be consistent with the Council Operation Guide, as well as numerous editorial revisions. In October 2017, the Board on Codes and Standards Operations, on behalf of the Council on Standards and Certification, approved revisions in an effort to align with revisions to the ANSI procedures for appeals.

TABLE OF CONTENTS

| | |
|--|----------|
| Foreword | i |
| 1.0 SCOPE | 1 |
| 2.0 ORGANIZATION | 1 |
| 3.0 DUTIES | 1 |
| 4.0 MEMBERS AND THEIR DUTIES | 2 |
| 5.0 OFFICERS AND THEIR DUTIES | 3 |
| 6.0 MEETINGS | 4 |
| 7.0 APPEAL ACTIONS | 5 |
| 8.0 AMENDMENTS TO OPERATION GUIDE | 9 |

Board on Hearings and Appeals (BHA) Operation Guide

1.0 SCOPE

- 1.1** To hear appeals that are determined to be valid, regarding codes, standards, and related conformity assessment activities after such appeals have exhausted all prior levels of ASME's codes, standards, and related conformity assessment appeals provisions.

2.0 ORGANIZATION

- 2.1** The Board is responsible to the Council on Standards and Certification, which shall assure that the Board is acting within its assigned scope and duties.
- 2.2** The Board shall establish Hearing Panels to consider and act on appeals that are determined to be valid.

3.0 DUTIES

- 3.1** Consider requests for appeals
 - 3.1.1** Investigate the validity of an appeal request (see para. 7.6).
 - 3.1.2** Hear an appeal if investigation under para. 3.1.1 concludes that the appeal is valid.
- 3.2** Establish the necessary structure for a hearing.
 - 3.2.1** Generate a procedure for the hearing.
 - 3.2.2** Appoint a Hearing Panel membership for the hearing.
 - 3.2.2.1** Determine membership for a Hearing Panel from the BHA membership.
 - 3.2.2.2** Screen Hearing Panel members for potential conflict of interest.
 - 3.2.2.3** Appoint a Chair, if not the BHA Chair, and a recording Secretary.
 - 3.2.3** Issue a report of the hearing results.
 - 3.2.4** Provide reports for the Council on Standards and Certification .
 - 3.2.4.1** Issue a summary for each hearing.

3.2.4.2 Advise the Council on Standards and Certification of BHA matters which may require consideration or action by the Council on Standards and Certification.

3.2.4.3 Nominate and/or approve individuals for honors and awards, as appropriate.

4.0 MEMBERS AND THEIR DUTIES

4.1

The Board shall consist of a Chair and all members-at-large of the Council on Standards and Certification. The Managing Director, Standards, shall be a member of the Board without vote.

4.2 The Chair shall be appointed for a term of three years by the Council on Standards and Certification, acting on the recommendation of the Council on S&C Committee on Nominations.

4.3 Appointment of a Secretary.

4.3.1 The Secretary of the BHA shall be designated from the staff of the Standards and Certification Directorate by the Associate Executive Director, Standards and Certification.

4.3.2 The recording Secretary for each separate hearing may be the Secretary appointed under para. 4.3.1 or another staff member of the Standards and Certification Directorate, as appointed by the Associate Executive Director, Standards and Certification. Such separate appointment may be appropriate due to a possible conflict of interest.

4.4 Appointment of Hearing Panel Membership

The Chair of the BHA, in consultation with the BHA Secretary, shall appoint at least five qualified members of the BHA, one of whom shall be designated as Chair of the Panel. A qualified member is one for whom there is no apparent or actual conflict of interest.

When there are fewer than five qualified members for a hearing, the Chair of the Council on Standards and Certification shall appoint from present or former members of the Council on Standards and Certification the necessary qualified individuals to have five members on the Hearing Panel.

4.5 Voting

4.5.1 Each member of the BHA, including the Chair but excluding the staff appointed Secretary, will have one vote on general Board matters.

4.5.2 Each member of every Hearing Panel, including the Panel’s Chair, but excluding the staff appointed recording Secretary, will have one vote on business before the Panel.

4.6 The duty of each member is to give thorough consideration to each subject brought before the Board or a Panel for action, to exercise his vote, and to assist generally in carrying out the functions of the Board or a Panel.

4.7 Board and Panel members are required to act as individuals, and not as representatives of commercial entities, agencies, or interest groups.

5.0 OFFICERS AND THEIR DUTIES

5.1 The officers of the BHA shall be the Chair and the Secretary.

5.2 The office of the Chair shall conform to the following:

5.2.1 The Chair shall be the executive officer of the Board, shall preside at meetings, and shall perform such duties as are customarily attached to such office.

5.2.2 The Chair, in consultation with the BHA Secretary, shall appoint the membership and Chair of all Hearing Panels unless conflict of interest dictates otherwise. The Chair may serve as Chair of any Hearing Panel if there is no conflict of interest.

5.2.3 In the absence of a Chair, the Council on Standards and Certification shall appoint a temporary Chair during such absence.

5.2.4 For appeal hearings, the Panel Chair shall appoint an alternate Chair to guard against unexpected absence of the appointed Panel Chair, so that the appeal hearing may proceed without undue administrative problems.

5.3 The office of the Secretary shall conform to the following:

5.3.1 The Secretary shall receive and maintain all documents relative to the Board, distribute pertinent information to Board members, correspond with interfacing groups and individuals in the name of the Board, and report to the Council on Standards and Certification those matters which may require Council consideration or action. The Secretary shall record and distribute agendas and minutes of all meetings of the Board to all members of the Board and, if directed by the Chair, to guests at meetings. The Secretary shall record and distribute all information pertaining to hearings before a Hearing Panel to the appropriate personnel. If, because of the Secretary's conflict of interest, a recording Secretary is appointed for a hearing, it is still the Secretary's responsibility that the necessary duties be performed by the recording Secretary. The Secretary shall also perform other secretarial functions as requested by the Chair.

5.3.2 In the absence of the Chair at a meeting of the Board, the Secretary shall take the chair for the purpose of nomination and election of a Chair pro tem, who shall then preside at the meeting, subject to prior action of para. 5.2.3.

6.0 MEETINGS

6.1 The BHA is not subject to regularly scheduled meetings.

6.1.1 Meetings may be scheduled for discussion of policy, updating of the procedures, or for any reason that serves a useful purpose for the BHA and/or the Council on Standards and Certification.

6.1.2 The Chair may rule that all, or a portion of, a meeting be in executive session.

6.1.3 Notices of and agendas for the meetings shall be prepared by the Secretary with suggestions or recommendations by any member of the Board and after consultation with the Chair.

6.1.4 Minutes of meetings shall be prepared by the Secretary, or recording Secretary as appropriate, and shall be distributed to BHA members and guests of meetings provided such guest distribution meets with the approval of the Chair.

6.2 Meetings of a Hearing Panel for the purpose of hearing an appeal shall be scheduled as the need arises (see para. 7.7).

6.3 On questions of parliamentary procedure not covered in these procedures, "Robert's Rules of Order" latest edition shall be used.

7.0 APPEAL ACTIONS

- 7.1** Any action or inaction of a standards and/or consensus committee or accreditation, registration, or certification committee may be appealed by any individual, company, or organization.
- 7.2** Appeals shall be considered according to the following:
- 7.2.1** Appeals shall first be directed to the standards committee.
 - 7.2.2** Appeals which cannot be resolved at the level of the standards committee may be referred to the cognizant supervisory board.
 - 7.2.3** If the supervisory board's decision remains objectionable to any party concerned with the action or inaction, a request for an appeal, based solely upon matters relating to procedural due process, may be submitted to the BHA, which may decide at its discretion whether or not to consider a further appeal.
- 7.3** In addition, any individual, company, or organization aggrieved by any action or inaction of a supervisory board may request reconsideration and an appeal hearing before that board. If the supervisory board's decision remains objectionable to any party concerned with the action, a request for an appeal, based solely upon matters relating to procedural due process, may be submitted to the BHA, which may decide at its discretion whether or not to consider the appeal.
- 7.4** The purview of appeals to the BHA shall include the following considerations, as well as such others which may arise:
- a. in general, that procedural due process has been provided to the appellant;
 - b. applicable policies and procedures have been properly followed;
 - c. in connection with appeals regarding the promulgation of new or revised codes or standards, that consensus has been developed; and/or
 - d. regarding appeal allegations involving a conflict of interest disqualification consideration, the BHA may consider the conflict issue; however, Society Policy P-15.8 on Conflicts of Interest shall be adhered to and final authority regarding conflict of interest appeals, if unresolved at the BHA level, is the responsibility of the ASME Committee on Ethical Standards and Review. Nevertheless, since alleged conflict of interest is often intertwined with other reasons for an appeal, the BHA may hear related arguments and rule as to whether related policies and/or procedures have been properly followed, provided that Society Policy P-15.8 is followed.

- 7.5** Procedures for submitting a request for appeal to the BHA shall be as follows:
 - 7.5.1** Within 10 working days after the date of receipt of the notification of the results of the supervisory board appeal, written notice by certified mail of intent to appeal must be filed with the Secretary of the BHA.
 - 7.5.2** Within 20 working days after the date of mailing the notice of intent to appeal, an official written appeal statement shall be submitted to the Secretary of the BHA with statements of the item(s) in question, the action or inaction of the standards and/or consensus committee, accreditation, registration, or certification committee, or supervisory board, with reason why the action should be modified, and the appellant's suggested modification of the action. The Secretary shall distribute copies of the official appeal statement to the members of the BHA. The affected supervisory board Chair shall be notified of the request for appeal and shall be given 15 working days after receipt of a copy of the official appeal statement to comment in writing on the appeal.
- 7.6** Upon receipt of an official appeal statement, and any comments by the responsible supervisory board Chair, the BHA shall investigate the validity of a request for a hearing prior to accepting such an appeal.
 - 7.6.1** The Chair shall appoint an advisory group from the BHA membership to review an appeal request to determine its validity.
 - 7.6.2** The advisory group shall prepare a report, recommending either:
 - a. a hearing before a Hearing Panel of the BHA, in which case para. 7.7 shall govern, or
 - b. dismiss the request for lack of validity, pointing out the reasons for such action. If the advisory group determines that a hearing is not in order, the secretary will so notify the appellant and the parties to the decision under appeal, in writing and the appeal will be dismissed thereby exhausting all appeals available through ASME.
- 7.7** If the recommendation of the advisory group is to hear the appeal, the date and location of the hearing shall be arranged for the earliest time mutually agreeable to the parties involved, and the membership of the Hearing Panel shall be appointed in accordance with para. 4.4.
 - 7.7.1** The appellant, the concerned supervisory board and others concerned shall be notified of the hearing at least 15 working days in advance of the date set for hearing the appeal.

7.7.2 At the time of the notification of an appeal hearing, the Secretary of the BHA shall provide the parties with a copy of the list of the members of the Hearing Panel, in order to allow anyone concerned the opportunity to object should they perceive the existence of a conflict of interest. Any such objections should be submitted to the Secretary of the BHA at least 10 working days prior to the scheduled date of the hearing, and shall then be distributed by the Secretary to the individual(s) being challenged in advance of the hearing, who shall then have the opportunity to respond prior to the hearing. If such an objection is raised concerning Hearing Panel membership, it should be addressed in a manner consistent with Society Policy P-15.8, Conflicts of Interest. Objections to members of the Panel should be resolved prior to the convening of the Panel; in the event that any such objection cannot be resolved by the BHA Chair's selecting alternative Panel members, the appeal shall be postponed until the matter is resolved pursuant to Society Policy P-15.8.

7.7.3 Should the appellant or the respondent not be present at the hearing, the decision of the Hearing Panel shall be based on the written submissions and the presentations made by the parties that are present at the hearing or who participate via teleconference.

7.8 Procedures for hearing of appeals by a Hearing Panel shall be as follows:

7.8.1 Appeal hearings generally should be held in open session (other than the executive session portion). However, upon written request of either of the parties, or by the Chair of BHA or the Hearing Panel, it shall be limited to the following participants:

- a. members of the Hearing Panel; [minimum of 5]
- b. appellant(s); [maximum of 3]
- c. respondent(s); [maximum of 3]
- d. individuals or representatives of an entity with a direct and material interest in the outcome who have participated in a related appeal at a prior level. Attendance by such individuals and representatives shall be determined by the Chair of the Hearing Panel;
- e. pertinent ASME Staff; and
- f. ASME legal counsel.

Any such written request shall be submitted to the BHA Secretary at least 10 working days prior to the scheduled hearing date.

7.8.2 Deliberations shall take place during executive session only. Attendees for the executive session portion of the hearing shall be limited to the following:

- a. members of the Hearing Panel;
- b. pertinent ASME Staff; and
- c. ASME legal counsel.

- 7.8.3** Call to Order
- 7.8.4** Opening Statement by the Chair of the Hearing Panel.
- 7.8.5** Introduction of attending personnel
- 7.8.6** Presentation of position
 - 7.8.6.1** The order of presentation shall be determined by the Chair of the Hearing Panel prior to the hearing and announced in the agenda distributed in advance of the hearing.
 - 7.8.6.2** Parties to the appeal may be represented by a maximum of three members.
 - 7.8.6.3** Time allowance for each party's initial presentation shall be a maximum of 30 minutes.
 - 7.8.6.4** Time allowance for each party's rebuttal shall be a maximum of 20 minutes.
- 7.8.7** Questions by members of the Hearing Panel
- 7.8.8** Re-rebuttal, if deemed necessary by the Chair of the Hearing Panel, shall be limited to 10 minutes for each group.
- 7.8.9** Executive Session
 - 7.8.9.1** See para. 7.8.2 for attendees.
 - 7.8.9.2** Recall of parties for questions. When there are questions by members of the Panel to be answered by either party, representatives of each party shall return to the session to hear the question and response.
 - 7.8.9.3** Voted action:
 - a. When the wording of the action to be voted on has been finalized, the Secretary shall record this and read it to members of the Panel. At the discretion of the Panel Chair, the vote may be by voice vote or by written ballot. If the vote is to be by written ballot, the ballot shall be secret. All ballots must be returned to the Secretary for determination of results. An appeal shall be upheld or denied on the basis of a majority affirmative vote of those hearing the appeal. The decision of a Hearing Panel shall be the final decision of the BHA.

- b. When a decision has been arrived at, the Secretary shall record this decision for presentation to the parties of the appeal.

7.8.10 Recall of attendees for presentation of decision

7.8.11 Decision

- a. Verbal decision statement by Chair.
- b. The recording Secretary shall notify the appellant, the Vice President of the concerned supervisory board, and others concerned of the BHA's decision within seven working days. This notification shall be sent by certified mail, return receipt requested, or equivalent communication. The notification shall advise that the appeal to the BHA is the final level of appeal regarding codes, standards, accreditation, registration and certification activities within ASME other than, if applicable, consideration of conflict of interest issues, which may be referred to the Committee on Ethical Standards and Review.

7.8.12 Adjournment

8.0 AMENDMENTS TO THE OPERATION GUIDE

- 8.1** Amendments to this Operation Guide require the approval of the Board on Codes and Standards Operations, on behalf of the Council on Standards and Certification.