23-3-1 The Council heard the report of the Committee Membership Task Group (M. Johnston, Chair).

23-3-1-a Upon the Council’s annual review of committee membership and participation, the Council voted to approve the committee non-reappointments as recommended by the Task Group.

23-3-1-b The Council voted to accept the recommendations of the Membership Task Group to reclassify the identified members of HYD-AAA and Mr. Buschman on SIG-ECS.

23-3-1-c The Council voted to approve the Report of the Committee Membership Task Group with amendments as recommended by the Task Group.

Changes in committee membership approved by the Council are included as Minutes Attachment 23-3-1-c.

Council Member Anthony Apfelbeck recused himself from deliberations and vote on all City of Altamonte Springs applicants; Council Member Mike Crowley recused himself from deliberations and vote on all Coffman Engineers applicants; Council Member Jeffrey Foisel recused himself from deliberations and vote on all Dow, DAKRA, and the NFPA Industrial Fire Protection Section applicants; Council Member Richard Gallagher recused himself from deliberations and vote on all Zurich Services, Corp. applicants; Council Member Michael Johnston recused himself from deliberations and vote on all NECA
applicants; Council Member David Klein recused himself from deliberations and vote on all Department of Veterans Affairs applicants; Council Member Jack Poole recused himself from deliberations and vote on all Poole & Associates, SFPE, and AFAA applicants; Council Member Rodger Reiswig recused himself from deliberations and vote on all Johnson Controls, AFAA, and NEC-AAC applications; Council Member Dwayne Sloan recused himself from deliberations and vote on all UL applications; Council Member Catherine Stashak recused herself from deliberations and vote on all Illinois Office of the State Fire Marshal and Illinois Emergency Management Agency applicants; Council Member Victoria Valentine recused herself from deliberations and vote on all AFAA applications.

| 23-3-1-d | The Council heard an update on the ongoing review of the Multi-Representative Policy |
| 23-3-1-e | The Council voted to allow administrative handling of committee members classified as ‘Voting Alternate’ (including notification communications of change in status, communications advising of pertinent deadlines and actions, and administrative removal from committee after expiration of Voting Alternate status period of one year). |
| 23-3-2 | The Council heard the report the Policies and Procedures Task Group. (J. Foisel, Chair). |
| 23-3-3 | The Council reviewed the list of candidates for the 2023 Standards Medal, Special Achievement, and Committee Service Awards and approved recipients as recommended by the Awards Task Group. |
| 23-3-5 | The Council completed its annual Standards Council Member Orientation including a presentation about the role of Standards Council in the NFPA Standards Development Process. |

**TENTATIVE INTERIM AMENDMENTS**

**23-3-6**

| **NFPA 13** | The Council voted to issue proposed Tentative Interim Amendment No. 1680 to revise paragraphs 13.2.4.1 and 13.2.4.2 of the 2022 edition of NFPA 13, Standard for the Installation of Sprinkler Systems. The TIA achieved the necessary support of the Technical Committee on technical merit and emergency nature, and the Correlating Committee on correlation when balloted prior to submission to the Standards Council. |

**23-3-7**

| **NFPA 13** | The Council voted to issue proposed Tentative Interim Amendment No. 1681 to revise paragraph 14.2.7 of the 2022 edition of NFPA 13, Standard for the Installation of Sprinkler Systems. The TIA achieved the necessary support of the Technical Committee on technical merit and emergency nature, and the Correlating Committee on correlation when balloted prior to submission to the Standards Council. |

**23-3-8**

| **NFPA 70** | The Council voted to issue proposed Tentative Interim Amendment No. 1687 to revise the definition of “pool” and bonding requirements within Section 680.26 of the 2023 edition of NFPA 70®, National Electrical Code®. The TIA achieved the necessary support of the Code-Making Panel on technical merit, but failed to achieve the necessary support on emergency nature, as well as achieved the necessary support of the |
Correlating Committee on correlation when balloted prior to submission to the Standards Council.

Standards Council members Michael Johnston and Rodger Reiswig recused themselves from the debate, deliberations, and vote on this appeal.

**23-3-8-d APPEAL DECISION**

**D#23-1** At its meeting of March 20-21, 2023, the Standards Council considered appeals from Frederic Hartwell, Hartwell Electrical Services, Inc., and Reuben Clark, Consolidated Manufacturing International. The appellants request that the Standards Council overturn the Code-Making Panel 17 (Panel 17) ballot results and issue TIA No. 1687 on the 2023 edition of NFPA 70®. National Electrical Code®. Specifically, the appellants request that the Standards Council issue TIA No. 1687, which seeks to revise the definition of “pool” and bonding requirements within Section 680.26.

As background, the TIA was balloted through Panel 17 and the NEC Correlating Committee ("CC") in accordance with the Regulations Governing the Development of NFPA Standards (Regs) to determine whether the necessary three-fourths majority support was achieved on technical merit, emergency nature, and correlation for recommendation of issuance. The TIA achieved the necessary support of Panel 17 on technical merit, but failed to achieve the necessary support on emergency nature. This TIA did achieve the necessary support of the CC on correlation.

The technical debate over the minimum standard for reducing voltage gradients around the perimeter of a pool, can be documented back to the 2008 edition of the NEC. As brought forward in August of 2022, the Council recognized that new information had been identified which had not fully been considered by the responsible CMP which could have bearing on the issue at hand. Additionally noted specifically by Council was that the body of additional and/or new information required “timely analysis”.

As a result, the Council directed a balanced task group be established by NFPA staff to review the new and/or additional new data cited by the Appellant: namely, the the 2021 U.S. Coast Guard Report referenced during the hearing, the results of the most recent EPRI report, the case studies brought forward in TIA No. 1661 and any other new and existing reports referenced on this topic (see D#22-3 at www.nfpa.org/sc2022).

The Task Group was established with the charge to report back to Council: (1) its findings based on this data; (2) its recommendations, if any, as to the minimum safety standard within the NEC for reducing voltage gradient in the perimeter of a pool; (3) if a change to Article 680 is recommended, whether TIA No. 1661 would address the Task Group’s findings; and (4) any other findings or actions that the Task Group deems necessary based on its analysis. The proposed TIA at issue herein was developed by the balanced task group and represents the supported text reflective of the task group’s position.

As evident from the Panel 17 ballots, the panel’s consensus was that the proposed TIA was technically substantiated. However, the Panel was unpersuaded—despite the Council’s specific finding in August that the new and/or additional information related to reducing voltage gradients around the perimeter of pools required timely analysis—that the submitted

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1 The balanced task group established consisted of 10 total stakeholder participants: five of whom initially supported the single wire option and five of whom supported changes to currently issued requirements.

2 Task Group position established through informal vote: one member abstained, one member did not return ballot, the Chair did not vote, and all remaining votes were in support of the text proposed.
TIA met the threshold of “emergency” in accordance with the *Regulations Governing the Development of NFPA Standards*. The Standards Council disagrees. Finding an established record of incidents, testing, and solutions, the Council determined that the TIA exceeds the threshold of emergency nature as provided by the NFPA *Regulations*.

On appeal, the Council accords great respect and deference to the NFPA standards development process. In conducting its review, the Council will overturn the results of that process only where a clear and substantial basis for doing so is demonstrated.

The Council has reviewed the entire record concerning this matter and has considered all the arguments put forth in this appeal. In the view of the Council, the appeals present clear and substantial basis upon which to overturn the results yielded by the NFPA standards development process. Accordingly, the Council has voted to uphold the appeals. The effect of this action is that the NFPA 70, *National Electrical Code* will include the text of TIA No. 1687.

Council Members Michael Johnston and Rodger Reiswig recused themselves from the deliberations and vote on the appeal.

### 23-3-8-e

**APPEAL DECISION**

*See Council Decision D#23-1*

### 23-3-9

**NFPA 70**

The Council voted to issue proposed Tentative Interim Amendment No. 1688 to revise paragraph 300.26 of the 2023 edition of NFPA 70®, *National Electrical Code*®. The TIA achieved the necessary support of the Code-Making Panel on technical merit and emergency nature, but failed to achieve the necessary support of the Correlating Committee on correlation when balloted prior to submission to the Standards Council.

Standards Council members Michael Johnston and Rodger Reiswig recused themselves from the debate, deliberations, and vote on this appeal.

### 23-3-9-d

**APPEAL DECISION**

*D#23-4* At its meeting of March 20-21, 2023, the Standards Council considered an appeal from Chad Jones, CICSO Systems. The appellant requests that the Standards Council overturn the NEC Correlating Committee ballot results and issue TIA No. 1688 on the 2023 edition of NFPA 70®, *National Electrical Code*®. Specifically, the appellant requests that the Standards Council issue TIA No. 1688, which seeks to revise section 300.26.

As background, the TIA was balloted through Code-Making Panel 3 (“CMP 3”) and the Correlating Committee (“CC”) in accordance with the *Regulations Governing the Development of NFPA Standards (Regs)* to determine whether the necessary three-fourths majority support was achieved on technical merit, emergency nature, and correlation for recommendation of issuance. The TIA achieved the necessary support of CMP 3 on both technical merit and emergency nature, but did not achieve the necessary support of the CC on correlation.

The appellant asserts that during the revision cycle for the 2023 edition of the NEC, CMP 3 intended to move specific requirements for non-power-limited remote control and signaling circuits. However, the requirements were removed from Part II of Article 725 and erroneously not reinserted elsewhere into the NEC. Given the support from CMP 3 on technical merit and emergency nature, the Council is persuaded that TIA No. 1688 text...
reestablishes requirements formerly contained within Part II of Article 725 in the 2020 NEC applicable to Class I non-power-limited remote control and signaling circuits and overcomes the current gap in technical requirements that currently exists in the 2023 edition. In the opinion of the Council, this interim resolution outweighs concerns expressed by some CC members and any suggestion that the issue can be resolved in the next revision cycle.

On appeal, the Council accords great respect and deference to the NFPA standards development process. In conducting its review, the Council will overturn the results of that process only where a clear and substantial basis for doing so is demonstrated.

The Council has reviewed the entire record concerning this matter and has considered all the arguments put forth in this appeal. In the view of the Council, this appeal presents a clear and substantial basis upon which to overturn the results yielded by the NFPA standards development process. Accordingly, the Council has voted to uphold the appeal. The effect of this action is that the NFPA 70, National Electrical Code will include the text of TIA No. 1688.

Council Members Michael J. Johnston and Rodger Reiswig recused themselves from the deliberations and vote on the appeal.

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<tr>
<th>23-3-10</th>
<th>NFPA 70</th>
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<tr>
<td><strong>The Council voted to issue proposed Tentative Interim Amendment No. 1690 to revise paragraph 314.29(A) of the 2023 edition of NFPA 70®, National Electrical Code®.</strong> The TIA achieved the necessary support of the Code-Making Panel on both technical merit and emergency nature, and the Correlating Committee on correlation when balloted prior to submission to the Standards Council.</td>
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<tr>
<td><strong>Council members Michael J. Johnston and Rodger Reiswig recused themselves from deliberations and vote on this tentative interim amendment.</strong></td>
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<th>23-3-11</th>
<th>NFPA 70</th>
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<td><strong>The Council voted to not issue proposed Tentative Interim Amendment No. 1691 to revise table 310.16 of the 2023 edition of NFPA 70®, National Electrical Code®.</strong> The TIA failed to achieve the necessary support of the Code-Making Panel on both technical merit and emergency nature, and failed to achieve the necessary support of the Correlating Committee on correlation when balloted prior to submission to the Standards Council.</td>
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<tr>
<td><strong>Council members Michael J. Johnston and Rodger Reiswig recused themselves from deliberations and vote on this tentative interim amendment.</strong></td>
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<th>23-3-12</th>
<th>NFPA 1582</th>
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<td><strong>The Council voted to issue TIA No. 1689 on the 2022 edition of NFPA 1582, Standard on Comprehensive Occupational Medical Program for Fire Departments to revise various sections and paragraphs throughout standard.</strong> The TIA failed to achieve the necessary support of the Technical Committee on both technical merit and emergency nature when balloted prior to submission to the Standards Council.</td>
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<tr>
<td><strong>Standards Council member Randy Krause recused himself from the debate, deliberations, and vote on this appeal.</strong></td>
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<th>23-3-12-d</th>
<th>APPEAL</th>
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<tr>
<td><strong>At its meeting of March 20-21, 2023, the Standards Council considered appeals from Leslie Saucedo Baskir, U.S. Department of Homeland Security, Federal Emergency</strong></td>
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Management Agency (FEMA) Office of Equal Rights, Pamela Williams, Grant Programs/FEMA, and Stan Haimes, M.D., University of Central Florida College of Medicine. The appellants request that the Standards Council overturn the Technical Committee on Emergency Responders Occupational Health (TC) ballot results and issue TIA No. 1689 on the 2022 edition of NFPA 1582, Standard on Comprehensive Occupational Medical Program for Fire Departments. Specifically, the appellants request that the Standards Council issue TIA No. 1689, which seeks to revise various paragraphs and combine Chapter 6 and Chapter 9.

The TIA was balloted through the TC in accordance with the Regulations Governing the Development of NFPA Standards (Regs) to determine whether the necessary three-fourths majority support was achieved on both technical merit and emergency nature for recommendation of issuance. The TIA did not achieve the necessary support of the TC on either technical merit or emergency nature.

On appeal, the Council accords great respect and deference to the NFPA standards development process. In conducting its review, the Council will overturn the results of that process only where a clear and substantial basis for doing so is demonstrated.

As background, NFPA 1582 is a standard that “provides information and guidance for physicians and other health care providers responsible for fire department occupational medical programs.” (Section 1.1.2 of NFPA 1582, 2022 edition) The standard has nine chapters, including essential job tasks (chapter 5), medical evaluations of candidates (chapter 6), occupational medical evaluation of members (chapter 7), annual occupational fitness evaluation of members (chapter 8) and evaluation of medical conditions in members (chapter 9).³ The medical requirements and evaluation are intended to “ensure[] that candidates and current members are medically capable of performing their required duties and will reduce the risk of occupational injuries and illnesses.” (Section 1.2.2)

Under NFPA 1582, a “member” is “a person involved in performing the duties and responsibilities of a fire department...” A “candidate” is “a person who has submitted an application to become a member of the fire department.” The definition of candidate broadly includes any person who has submitted a job application to become a member of a fire department. For example, a candidate may be a person who is new to the fire service, or may be an experienced firefighter who applies for a job at a different fire department. In other words, the requirements applicable to “candidates” affect a person who seeks to submit a job application to become a member of a fire department, regardless of their length of service as a firefighter. Likewise, the requirements applicable to members affect any person who is currently a member of a fire department, regardless of their length of service.

NFPA 1582 has different medical requirements for candidates and members. Significantly, there are a number of different health conditions described as “Category A Medical Conditions”, which are applicable only to candidates and which can preclude a person from getting a job as a firefighter. If a candidate is observed to have a Category A Medical Condition, the standard provides for no further inquiry, individualized assessment, or consideration given to the nature of the medical condition, how it affects that particular person and/or whether the person may be able to perform the essential job tasks. The condition itself is an absolute bar. For example, if a candidate has “clinically significant coronary artery disease”, that person is precluded from getting a job as a firefighter because

³ Chapter 1 is “administration”, Chapter 2 is “referenced publications”, chapter 3 is “definitions” and chapter 4 is “roles and responsibilities”.
that is a Category A Medical Condition under Section 6.5.1.1(1) and no further inquiry is required.

By contrast, there are no such “Category A Medical Conditions” applicable to members. If a member has a medical condition, generally, NFPA 1582 directs the physician to evaluate the member and report any applicable job limitations to the fire department if such conditions compromise the member’s ability to perform essential job tasks. For example, under Section 9.5.3, if a member has clinically significant coronary artery disease, the physician is directed to “report any applicable job limitations to the fire department...[which] compromise the member’s ability to perform essential job tasks 1, 2, 4, 5, 6, 7, 9 and 13, unless all of the following are present...” The section then lists 10 items, which, if satisfied, would not require the physician to report the condition. If a candidate has coronary artery disease, that person would not be considered for the job.

Applying the provisions of the standard could have different employment results for two individuals with the same condition – or at a different point in the same individual’s career. For example, a veteran firefighter who developed coronary artery disease could continue to work in her fire department with or without limitations; yet, if that same member sought a new job in a different fire department, she would then be treated as a candidate and categorically excluded from consideration for a job. It potentially leaves a member with certain medical conditions or a certain aerobic capacity with no choice but to stay in her current department for fear of losing the ability to continue a career as a firefighter.

The standards development record shows the Technical Committee⁴ has received many Public Inputs and Public Comments on this issue over the course of several revision cycles (including 9 PIs/PCs in the most recent revision cycle). The particular PIs and PCs articulated concerns that such disparate treatment of candidates and members violates disability anti-discrimination laws, unfairly impacts a person applying to become a member of a fire department, puts Authorities Having Jurisdiction (AHJs) at risk of using a discriminatory standard, and is not scientifically supported. ⁵ With such an extensive history of proposed changes, it is unsurprising that the Technical Committee devoted attention to this topic at its pre-First Draft meeting on November 16, 2018. The meeting minutes reflect that the Technical Committee “focused on the issues dealing with NFPA 1582, Chapter 6…and Chapter 9.” A task group chaired by Jim Brinkley of IAFF was formed “to conduct

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⁴ Due to an unrelated consolidation of emergency response and responder safety standards, responsibility for NFPA 1582 was transferred to a new Technical Committee after the issuance of the 2022 edition of NFPA 1582. Now, NFPA 1582 is getting consolidated as part of a new NFPA 1580, Standard for Emergency Responder Occupational Health and Wellness and a new technical committee is responsible for it.

⁵ See e.g. No 46 1582-2019 (PI proposes eliminating Chapter 6 stating, in part “The Americans with Disabilities Act (ADA) does not permit more restrictive medical criteria for applicants than are allowed for current employees...The essential job tasks are actually identical for candidates and members, and therefore the medical criteria should also be identical...the current provision of Category A criteria prohibits Fire Department management from providing reasonable accommodation when it may be feasible to do so...”); PI No. 20 1582-2019 (proposal seeking to include “an individualized assessment” in connection with Category A medical conditions for “consistency with ADA and with section 9.3.1”); PI No. 70 1582-2015 for 2018 edition (“Standards for incumbents and members should not be different.  The current double standards for members and applicants is in violation of ADA. It is also not supported by good medicine or science. Medical standards should be defined by job functions, not by status (applicant vs. member)”; PI No. 60 1582-2015 for 2018 edition (with reference to eliminating cochlear implant as being a Category A medical condition for candidates, stating “A fire department I work for has several dozens fire fighters with hearing aids.  No device failure and no adverse outcome has ever been reported.”); PI No 118 1582-205 (with reference to certain timeframes on Category A Medical conditions, “lack of scientific basis for these recommendations of duration.”); PI 45 1582-2015 from a member of the U.S. Army (with reference to a proposal to remove certain hearing conditions from Category A Medical conditions, stating “Removes the restriction preventing able-bodied individuals from becoming firefighting professionals due to correctable hearing loss”); 1582-13 Log #5, Report on Proposals from 2013 edition (member of the U.S. Forest Service, in seeking remove monocular vision as a Category A medical condition, states in part “The EEOC at one point became involved with the development [of NFPA 1582] and reiterated the need for the NFPA to establish standards that did not step outside of the legal boundaries of the Americans with Disabilities Act, quoting ‘the Commission’s longstanding opposition to blanket exclusions that exclude individuals with disabilities from employment opportunities.  The ADA emphasizes that employment decisions must be based on individualized assessments of a person’s ability to safely perform the essential functions of the job...’ ”)
a gap analysis between Chapter 6 and Chapter 9 and report back to the technical committee.” The minutes, however, reflect no report back at the First Draft meeting and no further discussion.

At the Second Draft meeting on September 21-22, 2020, civil rights attorneys and grant program administrators from the U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA) attended to raise their serious concerns that NFPA 1582 violates civil rights laws. FEMA was concerned because it uses NFPA 1582 physicals as criteria for fire departments to receive the Assistance to Firefighters Grant (AFG) and Staffing for Adequate Fire and Emergency Response (SAFER) grant programs. Fire Departments across the U.S. receive AFG and/or SAFER funding. Jo Linda Johnson, Director, FEMA’s Office of Equal Rights gave a presentation stating FEMA’s concern that the application of NFPA 1582’s Category A medical conditions and disparate treatment of candidates and members violates the ADA/Rehabilitation Act of 1973. FEMA stated it was considering no longer recognizing 1582 physicals if the standard was not changed. Ms. Johnson provided a handout to the Technical Committee and offered to work with the Committee to revise the standard to comply with federal law. In response to this information, the Technical Committee formed a new task group, chaired by David Bernzweig to “address the differences between Chapters 6 and 9 and to recommend changes in the form of a Tentative Interim Amendment (TIA) by the 1st Quarter of 2021” (the “Task Group”). The Task Group included physicians, fire service members, researchers, and FEMA civil rights attorneys (among others).

The Task Group grew to include around seventeen participants. It met approximately three times by early April 2021 and was unable to reach agreement on a TIA in the timeframe directed by the Technical Committee. The Task Group continued working for more than two years and met about twenty-five times (as a whole group or as working groups) until developing a TIA in November 2022, which created a single set of medical requirements that were equally applicable to both members and candidates. The Task Group agreed that Dr. David Prezant of FDNY would submit the TIA on its behalf. Shortly after submitting the TIA, on December 14, 2022, the Committee held a special meeting where Dr. Prezant made a presentation to describe the changes and reasons for the TIA, and to encourage support for the proposed revisions. The TIA substantiation states in part:

“[t]he use of separate chapters in NFPA 1582 to address medical evaluations of candidates and members has been identified as a potential source of disparate treatment of individuals that have the same medical conditions, which could be a violation of antidiscrimination law. This amendment’s primary change is to combine the medical evaluations into a single chapter…”

While the TIA was being balloted by the Technical Committee, the Committee held its First Draft meeting on January 10, 2023 for the current revision cycle. The minutes show that Dr. Prezant (the submitter of TIA 1689 on behalf of the Task Group) and David Bernzweig (former Task Group chair) made a co-presentation recommending “to proceed forward with the entire task group proposal with the exception of the aerobic piece…” This is consistent with comments on the TIA 1689 ballot, as several individuals who voted against the TIA commented that they agreed with the TIA for the most part except for the aerobic capacity requirements.

At the hearing, Council heard testimony from Mr. Bernzweig and members of the International Association of Firefighters (IAFF) that they agreed with creating a single set of
criteria for candidates and members to address the concerns raised. However, they were unwilling to support the TIA because they wanted different aerobic capacity requirements in place. Appellant Dr. Haimes responded by pointing out that the current edition of NFPA 1582 already includes aerobic capacity requirements for members, and noted that the requirements for aerobic capacity in the TIA are nearly identical to existing requirements for members ("[w]hat is present in the TIA is simply the language that is present in the current 1582 standard for the incumbent fire fighters, which is the most liberal, most lenient of the criteria that we had"). The specific provisions of the 2022 edition and TIA are included as reference for comparison.

The most significant change to aerobic capacity requirements in the TIA affects candidates. Specifically, Section 6.5.4 of the 2022 edition of NFPA 1582 deems “aerobic capacity less than 12 metabolic equivalents (METs)” to be a Category A medical condition. In other words, the current edition of NFPA 1582 bars a candidate from becoming a member if the candidate has an aerobic capacity less than 12 METs.

By contrast, the 2022 edition of NFPA 1582 has no such aerobic capacity bar for members. Rather, Section 8.2.1 requires “mandatory fitness evaluation that is not punitive or competitive shall be conducted annually as part of an individualized program.” The 2022 edition anticipates that a member can continue to perform essential job tasks unless the member is at or below 8 METs, at which time the Authority Having Jurisdiction (AHJ) is advised to consider certain restrictions from identified essential job tasks.

The TIA reflects a similar standard to the one that already applies to existing members, and it no longer bars candidates with capacity under 12 METs. The TIA also makes clear that

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6 8.2.2
The mandatory fitness evaluation shall include a mandatory pre-evaluation procedure and the components in 8.2.2.1 and 8.2.2.2. (For additional information, see The Fire Service Joint Labor Management Wellness-Fitness Initiative.)

8.2.2.1* An evaluation of aerobic capacity shall be performed after appropriate medical evaluation.

8.2.2.1.1* Testing shall be conducted using an appropriate maximal or submaximal protocol.

8.2.2.1.2* At levels below 12 METs, a firefighter shall be counseled to improve his/her fitness.

8.2.2.1.3 At levels below 10 METs, participation in a prescribed aerobic fitness program shall be required.

8.2.2.1.4 At levels at or below 8 METs, a prescribed aerobic fitness program shall be required, and the AHJ shall be advised to consider restriction from essential job tasks 1, 2, 4, 5, 6, 7, 8, 9, and 13.

7 11. Revise sections 8.2.2.1.2, 8.2.2.1.3, and 8.2.2.1.4 to read as follows:

8.2.2.1.2* At levels below 12 METs and not less than 10 METs, a firefighter member shall be counseled to improve his/her fitness.

A.8.2.2.1.2 A prescribed aerobic program might be a consideration.

8.2.2.1.3* At levels below less than 10 METs and greater than 8 METs, the fire department physician shall do both of the following:

1) After performing an individualized evaluation to determine if the firefighter can safely and effectively perform essential job tasks 1, 2, 4, 5, 6, 7, 8, 9, and 13, recommend to the AHJ any applicable job restrictions associated with these specific essential job tasks that cannot be safely and effectively performed by the member due to a medical condition(s) or physical fitness

2) Require the member to participate in a prescribed aerobic fitness program shall be required.

A.8.2.2.1.3 An individualized evaluation is based on the physical intensity level typically required to perform the essential job tasks in that jurisdiction. Such evaluations could include a simulated work evaluation, such as a candidate physical ability test (CPAT), or a functional skill test that mirrors the tasks performed in that jurisdiction.

8.2.2.1.4 At levels at or below 8 METs, the fire department physician shall do both of the following: (1) Recommend to the AHJ that the member is restricted from performing a prescribed aerobic fitness program shall be required, and the AHJ shall be advised to consider restriction from essential job tasks 1, 2, 4, 5, 6, 7, 8, 9, and 13.

2) Require the member to participate in a prescribed aerobic fitness program

8 The TIA also aligns any medical evaluation that requires an individual to undergo physical exertion to be conducted with requirements that align with those in 8.2.2.1.2- 8.2.2.1.4. Specifically, Section 9.3.4 of TIA 1689 proposes the following:

Medical evaluations that require the individual to undergo physical exertion shall be conducted in accordance with the following:
the most a fire department physician can do with this information is to make a recommendation to the AHJ and even then, the TIA states clearly that “only job tasks that are essential for the position description provided by the AHJ shall be used to determine the medical qualifications of the individual.” These requirements are no longer designed to be a categorical bar for any individual, including both candidates and members. Ms. Saucedo on behalf of FEMA and the civil rights attorneys who participated in the Task Group, testified at the hearing that the changes introduced through TIA 1689 comply with civil rights law.

The Council has reviewed the entire record concerning this matter and has considered all the arguments put forth in this appeal. In the view of the Council, this appeal presents a clear and substantial basis upon which to overturn the results yielded by the NFPA standards development process. The record is replete with documentation and comments reflecting concern that NFPA 1582 violates civil rights laws, exposes AHJs to risk by using a potentially discriminatory standard, and unfairly affects people applying for a firefighter job or looking to apply for a firefighter job in a new department.

At the hearing, FEMA’s Director of the Office of Equal Rights stated that if NFPA 1582 is not amended to comply with civil rights law, it would “take action to address the offending standard outside of the NFPA standards process” and take action that may include “prohibiting physicals that adhere to NFPA 1582”, consider “compliance reviews of organizations that have received funds regarding their use of physical for hiring or recruitment of grant funded positions”, and noted that “[d]isallowing reimbursement of NFPA 1582 physicals for fire departments with existing grant awards…will add additional financial burden to many already financially-strapped departments…” This is an untenable position for fire departments, candidates, and members; and to the extent NFPA 1582 is potentially used as an instrument of discrimination, the Council is compelled to take action and issue the TIA that rectifies this immediate concern.

Accordingly, the Council has voted to uphold the appeal. The effect of this action is that the current edition of NFPA 1582, *Standard on Comprehensive Occupational Medical Program for Fire Departments* will include the text of TIA No. 1689.

At the hearing, the Council heard from opponents to this appeal that the Technical Committee is working on a new TIA that is largely the same as TIA 1689, but with different aerobic capacity requirements. As with any TIA, the text of TIA 1689 will become a Public Input to the next edition of the standard. In the meantime, the Council encourages the Technical Committee to continue its work.

Council Member Randy Krause recused himself from the deliberations and vote on the appeal.

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(1) Testing shall be conducted using an appropriate maximal or submaximal protocol. (See A.8.2.2.1.1.)

(2) The workload/oxygen consumption level for the exercise shall be the individual’s maximum aerobic capacity.

(3) For individuals with an aerobic capacity greater than 12 metabolic equivalents (METs), the evaluation shall be permitted to stop after a workload/oxygen consumption level of 12 METs is achieved.

(4) *For individuals with an aerobic capacity at or below 8 METs, the fire department physician shall recommend to the AHJ that the individual is restricted from performing essential job tasks 1, 2, 4, 5, 6, 7, 8, 9, and 13.

(5) * For individuals with an aerobic capacity at or below 8 METs, the fire department physician shall recommend to the AHJ that the individual is restricted from performing essential job tasks 1, 2, 4, 5, 6, 7, 8, 9, and 13.
### APPEAL DECISION

**23-3-12**

See Council Decision D#23-2

The Council voted to issue proposed Tentative Interim Amendment No. 1685 to add new paragraph 8.4.12.6.5 and renumber subsequent paragraphs of the 2023 edition of NFPA 2112, Standard on Flame-Resistant Clothing for Protection of Industrial Personnel Against Short-Duration Thermal Exposures from Fire. The TIA achieved the necessary support of the Technical Committee on both technical merit and emergency nature when balloted prior to submission to the Standards Council.

### GENERAL BUSINESS

**23-3-13**

NFPA 2112

The appellants request that the Standards Council rescind Chapter 2, Sections 215.18(E), 225.42(E), and 230.67(E) and to clarify the appeals process for inaction appeals (as defined in 2.8.1 of the ANSI Essential Requirements) in the Regulations Governing the Development of NFPA Standards for the 2023 edition of NFPA 70®, National Electrical Code®.

As background, Maxivolt pursued three appeals to Standards Council in August of 2022 to reject the language proposed for the 2023 edition of NFPA 70 in Sections 215.18(E), 225.42(E), and 230.67(E), respectively. All appeals were denied (see Decisions D#22-7, D#22-8, and D#22-9 at www.nfpa.org/sc2022) with the Council finding in each that there was no clear and substantial basis upon which to overturn the results yielded by the standards development process. As part of those three decisions, the Council encouraged the Appellant to continue participating in the standards development process, to apply for membership on Code-Making Panel 10 (“CMP 10”), and for the panel to take any additional information provided into consideration should a Tentative Interim Amendment or Public Input to the next revision cycle be filed. To date, application for CMP 10 membership has been submitted (which will be acted upon by Council at the August 2023 meeting), but neither Public Input nor a Tentative Interim Amendment have been submitted within the standards development process. Subsequent to the Council’s decisions on the appeals, Maxivolt filed a Petition to the Board of Directors seeking review of Council’s decisions, and the Petition was denied, as well. While Maxivolt had exhausted its appeals on that topic within the Standards Development Process, it asserted it had a basis for a new appeal. Council gave the appellant the benefit of the doubt and granted request for a hearing.

As an American National Standard (ANS), the NEC must be developed in accordance with the Regulations Governing the Development of NFPA Standards (the “Regs”), which are accredited by American National Standards Institute (ANSI) to meet ANSI’s Essential Requirements for due process (the “Essential Requirements”). In the present appeal, appellants set forth two claims: the first is that NFPA failed to comply with §2.4.2 of the Essential Requirements by failing to “resolve potential conflicts” with stakeholders Underwriters Laboratories (“UL”) and IEEE’s Power Engineering Society Surge Protection Device Committee (“SPDC”). Section 2.4.2 of the Essential Requirements states that good-faith efforts for coordination/harmonization shall include compliance with §§2.1, 2.4, 2.6,
and 4.3, which require, as examples, timely notice of actions and standards activity, process to resolve potential conflicts, and consideration of written views and objections.

NFPA’s Regs, include several ways to satisfy §2.4.2 of the Essential Requirements of “good faith” effort to coordinate and harmonize ANS standards, and the standards development record reflects NFPA followed the Regs with regard to this matter. Timely and adequate notice of actions related to standards development are accomplished through filing of PINs and BSR 108s (published in ANSI’s weekly publication Standards Action), as well as through NFPA doc info alerts, public notices on NFPA’s website of standards activity, as examples. Specifically, for the 2023 edition of NFPA 70, PINs were filed to initiate revisions to the 2020 edition and published in the January 10, 2020 edition (Volume 51, No. 2) of ANSI Standards Action. The purpose of this notification is to alert the world that NFPA is initiating standards revision activities.

Following posting of the First Draft Report and Second Draft Report respectively, NFPA filed the appropriate BSR 108 forms to alert the world that NFPA 70 was accepting Public Comments and NITMAMs (published in the July 16, 2021 (Volume 52, No. 29) and April 8, 2022 (Volume 53, No. 14) editions respectively). In fact, NFPA exceeds the single BSR 108 filing requirement and provides the public with two published notices in ANSI Standards Action. Once Council issued the 2023 edition—after hearing and deciding all appeals in August—NFPA filed the final required documentation of public notice, the BSR 109, and notice was published of the newly issued edition in ANSI Standards Action on September 16, 2022 (Volume 53, No. 37).

In addition to NFPA meeting obligations for harmonization through publication of notices, the organizations claimed by appellants that should have been consulted (namely IEEE and UL), in fact, have representatives who sit as voting members on CMP 10—the Code-Making Panel responsible for the text at issue. The CMP-10 consensus body members from both UL and IEEE participated during the revision cycle: attending meetings where the amendments at issue were discussed, as well as voting on proposed revisions through the balloting process post-meetings. Neither standards developer, IEEE nor UL, has made claim (as required by ANSI) of a lack of coordination or harmonization between its standards and NFPA 70.

As evidence of failure to harmonize with IEEE, the appellants point to a letter from Steve Hensley, Chair SPDC, and Ray Hill, SPDC Low Voltage Subcommittee Chair, which states that the IEEE representative on CMP 10 does not represent the IEEE section that would raise harmonization issues. This letter was previously introduced during the standards development process and considered in appellant’s prior appeal. However, upon public notice of this appeal, Council received notice from Dave Ringle, Director IEEE-SA Governance, which has authority over SPDC, that the opinions expressed within Mr. Hensley and Mr. Hill’s letter “did not necessarily represent the position of IEEE, the IEEE Standards Association, or the IEEE Power & Energy Society.” Mr. Ringle stated the letter should have included “a disclaimer stating that the document solely represents the views of the authors. Simply, IEEE nor UL have come forward with claims of failure to harmonize to NFPA or to ANSI.

The second claim raised by the appellants was that NFPA’s Regs did not clearly articulate a right of appeal for “inaction”. Council’s consideration of the claim for inaction as described herein is evidence that NFPA’s standards development process allows for consideration of all appeals, including an appeal based on inaction. Section 1.6.1 of the Regs clearly states that:
[a]nyone can appeal to the Standards Council concerning procedural or substantive matters related to the development, content, or issuance of any NFPA Standard of the NFPA or on matters within the purview of the authority of the Standards Council, as established by the by laws and as determined by the Board of Directors.

The Council finds this right of appeal to be broadly written to include “inaction” or failure to act as may be required in the standards development process.

On appeal, the Council accords great respect and deference to the NFPA standards development process. In conducting its review, the Council will overturn the results of that process only where a clear and substantial basis for doing so is demonstrated.

Appellants have failed to bring forward new or different information that was not known at the time of first appeals, heard and decided in August 2022, pertaining to these same sections of the NEC. In addition, appellants’ requests to remove requirements in the current edition of the NEC is not timely under the Regs, which requires an appeal related to the issuance of an NFPA Standard to be filed no later than 20 days after the close of the NFPA Technical Meeting at which NFPA membership action was recommended. Nonetheless, the Council has reviewed the entire record concerning this matter and considered all the arguments put forth in this appeal. Based upon that review, the Council determined this appeal does not present any clear and substantial basis upon which to overturn the results yielded by the NFPA standards development process. Accordingly, the Council has voted to deny the appeal. The effect of this action is that the requested text in NFPA 70, National Electrical Code, 2023 edition will not be rescinded nor will the Regulations Governing the Development of NFPA Standards be revised to include procedures of appeal for “inactions”.

Council Members Michael J. Johnston, Rodger Reiswig and Dwayne Sloan recused themselves from the deliberations and vote on the appeal.

23-3-15 The Council conducted its annual review of the current ANSI/NFPA patent policy and commercial terms and conditions.

23-3-16 REVISION CYCLES

The Council voted to approve the request to change the revision cycle of NFPA 232, Standard for the Protection of Records to having a PI Closing of January 4, 2024.

23-3-17 REPORTS BACK TO COUNCIL

At its December 2022 meeting, the Council reissued a call for interest regarding cybersecurity and potential for development of an advisory committee that would provide support and technical input to technical committees. As a result of the revised call for interest, the Council received numerous responses from interested participants, including comments in support of establishing a cybersecurity advisory committee. After review and discussion of all responses, the Council requested staff to establish the scope of a standing advisory committee on cybersecurity. Additionally, staff is asked to create a balanced initial roster from those who expressed interest in participation and report back to Council in August on progress.
At the December 2022 meeting, the Council directed that a Joint Task Group be established and chaired by Council Member, Jeffrey Foisel. The task group was to be comprised of members of the NFPA 30, NFPA 77, and NFPA 780 with the primary task of considering information of potential inconsistency between NFPA 780, *Standard for the Installation of Lightning Protection Systems* regarding certain non-metallic tank requirements in NFPA 77, *Recommended Practice on Static Electricity* and NFPA 30, *Flammable and Combustible Liquids Code* and to report back to the Council.

As a result of multiple meetings, the Task Group’s findings and recommendations included that: (1) lightning protection requirements for tanks (metallic and non-metallic) is within the scope of NFPA 780; (2) no inconsistencies between the standards’ requirements currently exist; and (3) a special call be made for applications to the NFPA 780 committee from individuals with tank and electromagnetic expertise. Additionally, the Task Group identified that a literature review of available data from the NFPA Research Foundation would be helpful to the respectively represented committees and advise the NFPA 780 project on potential amendments to Annex N.

The Council took no action based upon the findings and recommendations of the task group; however, encourages coordination amongst these standards to continue with focused efforts on lightning protection requirements for metallic and non-metallic tanks.

The Council additionally voted to disband the Joint Task Group and to express its sincerest appreciation of the member’s time, expertise, and participation.

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**23-3-19**

Dates of upcoming Council meetings:

- **August 23-25, 2023**
  - Quincy, Massachusetts

- **November 29-30, 2023 (amended from December)**
  - Location to be determined.

- **April 17-18, 2024**
  - Location to be determined.

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**23-3-20**

The Council heard updates from the Council Secretary. No action was taken by the Council.