



Amy Beasley Cronin
Secretary, Standards Council

16 August 2011

To: Interested Parties

Subject:

Standards Council Decision (Final):	D#11-13
Standards Council Agenda Item:	SC#11-8-4-f-1 through 11-8-4-j-1
Date of Decision*:	10 August 2011
NFPA 70E, <i>Standard for Electrical Safety in the Workplace</i> [®] , 2012 edition	

Dear Interested Parties:

At its meeting of August 9-10, 2011, the Standards Council considered an appeal on the above referenced matter.

Attached is the final decision of the Standards Council on this matter.

Sincerely,

A handwritten signature in black ink that reads "Amy Beasley Cronin".

Amy Beasley Cronin
Secretary, NFPA Standards Council

- c: D. Berry, M. Brodoff, L. Fuller, M. Earley, J. O'Connor, K. Shea
Members, Technical Committee on Electrical Safety in the Workplace (EEW-AAA)
Members, National Electrical Code Correlating Committee (NEC-AAC)
Members, NFPA Standards Council (AAD-AAA)
Individuals Providing Appeal Commentary

*NOTE: Participants in NFPA's codes and standards making process should know that limited review of this decision may be sought from the NFPA Board of Directors. For the rules describing the available review and the method for petitioning the Board for review, please consult section 1-7 of the NFPA Regulations Governing Committee Projects and the NFPA 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 Clerk of the Board of Directors within 15 calendar days of the Date of Decision noted in the subject line of this letter.



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At its meeting of August 9-10, 2011, the Standards Council considered five appeals from Paul Hamer of Chevron Energy Technology Company. These appeals requested that the 2012 edition of NFPA 70E[®], *Standard for Electrical Safety in the Workplace*[®], be issued as follows: with the acceptance of Certified Amending Motions (CAMs) 70E-4 (which is a Related Motion to CAMs 70E-5 and 70E-6); acceptance of CAM 70E-7, but only if the appeal on 70E-4 is not upheld; and acceptance of CAMs 70E-8, 70E-9 and 70E-10.

As background, the CAMs set forth above sought acceptance of Comments 70E-217, 70E-218 and 70E-224 (related CAMs 70E-4 70E-5, and 70E-6); acceptance of Comment 70E-219 (CAM 70E-7); acceptance of Comment 70E-364 (CAM 70E-8); acceptance of an identifiable part of Comment 70E-322 (CAM 70E-9); and rejection of an identifiable part of Comment 70E-340 (CAM 70E-10). A summary of the general effect of these motions is as follows. CAM 70E-4 and its related motions and CAM 70E-7 would amend or overturn the Technical Committee's action to delete the exception exempting electrical systems operating within specified parameters from having an arc flash hazard analysis performed. CAM 70E-8 would overturn the Technical Committee's action to eliminate the "2*" designation for selecting personal protective equipment from Table 130.7(C)(9) and (C)(10). CAM 70E-9 would revise Table 130.7(C)(9) by adding a new note regarding equipment operating where the available short-circuit current is less than 10 kA. CAM 70E-10 would amend Table 130.7(C)(9) by removing the arc flash boundaries inserted as a result of Technical Committee actions and by adding a new Fine Print Note (Informational Note) on arc flash boundary calculations.

At the 2011 Association Technical Meeting (Tech Session), eleven motions were listed on the agenda for possible presentation during the report on NFPA 70E. Of these eleven possible motions, three were presented to and considered at the Tech Session and these motions failed. None of the remaining eight motions were made, however, because the Tech Session was adjourned during the presentation of the NFPA 70E Report due to the lack of a quorum. The seven Certified Amending Motions listed above were among the remaining motions that were not presented, and they are the subject of this appeal. An eighth Certified Amending Motion, CAM 70E-11, is not the subject of any appeal and is therefore not under consideration.

The principle question relating to these appeals is how potential motions that were not presented to the Tech Session because of the lack of a quorum should be treated on appeal. In this regard, the *Regs Governing Committee Projects (Regs)* provide direction

on how to proceed. The *Regs* at Section 4.8 direct the Standards Council to act on the issuance of all NFPA Documents that have completed processing and been presented for action at a Tech Session. (See *Regs* at 4.8 & 4.8.1). The Council does so based on the entire record of processing, including the reports of the responsible Technical and Technical Correlating Committees (*Regs* at 4.8.1[a]) and any deliberations or recommendations made at the Tech Session (*Regs* at 4.8.1[b] & [c]). Section 4.6.10(b) of the *Regs* goes on to direct that, where there have not been any deliberations or recommendations made due to the lack of a quorum, the Document must still be forwarded to the Council for action under Section 4.8. Specifically, the *Regs* at Section 4.6.10(b) provide as follows:

Where, due to the lack of a quorum at an Association Technical Meeting, the Association fails to make a recommendation concerning a Report or a portion of a Report, the Document shall be forwarded directly to the Council without recommendation for action in accordance with 4.8. Notwithstanding the foregoing, any motions to amend or return the Report that have passed prior to the loss of a quorum shall be processed and forwarded to the Council in accordance with 4.6 and 4.7.

The above-quoted Section 4.6.10(b), by its terms, directs Documents that have not received recommendations at the Tech Session due to the lack of a quorum to be forwarded, without recommendation, to the Standards Council for action pursuant to its Section 4.8 issuance authority. The *Regs*, therefore, clearly authorize the Standards Council to act on the issuance of an NFPA Document even where the NFPA membership, though the failure to maintain a quorum has chosen not to consider and make recommendations on the Document.

There are important reasons why the lack of a quorum at a Tech Session should not prevent issuance of a standard that has reached full consensus within the responsible NFPA Technical Committees. In the NFPA standards development process, as in any ANSI-accredited consensus standards development process, the primary responsibility for developing an NFPA standard belongs with the responsible consensus bodies. In the case of NFPA 70E, these bodies are the Technical Committee on Electrical Safety in the Workplace and, for correlation functions, the Technical Correlating Committee on National Electrical Code[®] (referred to collectively as the Committees). These NFPA Committees are appointed so as to contain a balance of affected interests, and they work, through NFPA procedures, so as to arrive at a consensus of those various interests. The consideration of Documents developed by the consensus Committees at the Tech Session is an important but limited part of the process. It provides an opportunity for the NFPA membership to provide their input to the Committees and, ultimately the Standards Council, through their debate and action on Amending Motions. The powers of the membership are limited, however, and any amendment to revise a Document from an existing edition must be confirmed by a ballot of the responsible Committees. See generally *Regs* at 4.7.

It is, therefore, the consensus Committees that are the principle focus of consensus within the NFPA process and, where those Committees have achieved full consensus on a new or updated edition of an NFPA standard, it would be anomalous to prohibit the

Document's issuance simply because the NFPA membership has shown insufficient concerns with the proposed Document to convene in sufficient numbers to consider potential Certified Amending Motions. Section 4.6.10(b) makes clear that there is no such prohibition, and that the Standards Council can proceed to consider and act on the issuance of Documents even when the consideration was not undertaken or completed by the NFPA membership due to its failure to maintain a quorum.

Having determined that Documents that have not received full consideration at a Tech Session due to the lack of a quorum must be forwarded to the Council for action on issuance, it remains to determine how to handle the current appeals. The appeals request that the Council issue NFPA 70E with the modifications outlined in the seven CAMs listed above. The appeals are properly before the Council since anyone can appeal to the Council on matters related to the issuance of a Document. (See *Regs* at 1.6.1). The appeals, however, seek action that would require the Council to reject the conclusion of the consensus Committees. The Committees, through the Committee actions challenged by the CAMs, disagreed with the positions of the appellant, and the NFPA membership chose not to weigh in to urge a different result.

In such circumstances, the default action must be the consensus actions of the responsible Committees and, absent compelling circumstances, the Council must respect the consensus reached within the responsible Committees. The Council has reviewed the entire record concerning the appeals and has considered all the arguments put forth by the appellant. The Council has found no compelling circumstances that would cause it to reject the consensus reached by the Committees, which, it is noted, overwhelmingly rejected the positions taken by the appellant. Accordingly, the Council has voted to deny the appeals. Since appeals related to failed CAMs on NFPA 70E that were made prior to the loss of the quorum have also been denied (see Decision Nos. 11-10 and 11-11 and 11-12), the Council has voted to issue the proposed new edition of NFPA 70E as recommended in the Committee Report.