



Dawn Michele Bellis  
Secretary, Standards Council

31 August 2017

To: Interested Parties

Subject:

Standards Council Decision (Final):	<b>D#17-5</b>
Standards Council Agenda Item:	<b>SC#17-8-13-a</b>
Date of Decision*:	17 August 2017
<i>NFPA 2112, Standard on Flame-Resistant Garments for Protection of Industrial Personnel Against Flash Fire, 2018 Edition</i>	

Dear Interested Parties:

At its meeting of August 15 - 17, 2017, the Standards Council considered an appeal on the above referenced matter. The Council's Final decision is now available and is attached herewith.

Sincerely,

A handwritten signature in cursive script that reads "Dawn Michele Bellis".

Dawn Michele Bellis  
Secretary, NFPA Standards Council

cc: D. Berry, S. Everett, L. Fuller, E. Nette, L. Hartman  
Members, TC Flash Fire Protective Garments (FLG-AAA)  
Members, NFPA Standards Council (AAD-AAA)  
Individuals Providing Appeal Commentary

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\*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 Regulations Governing the Development of NFPA Standards 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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***SUMMARY OF ACTION (for convenience only; not part of official decision):*** The Standards Council voted to deny the appeal to overturn the Association action on CAM 2112-1 and Reject Second Revision Nos. 52 and 76.

***DECISION:***

At its meeting of August 15-17, 2017, the Standards Council considered an appeal from Roger F. Parry of The DuPont Company, Inc. The appeal requests that the Standards Council overturn the Association action on CAM 2112-1 and reject Second Revision Nos. 52 and 76 for the 2018 Edition of NFPA 2112, *Standard on Flame-Resistant Garments for Protection of Industrial Personnel Against Flash Fire*. Specifically, the appeal requests the Council reject the Technical Committee’s inclusion of language regarding the manner in which a test lab calibrates its equipment and return the document to previous edition text which included no such requirement.

As background, in Section 8.5.4, NFPA 2112 refers to the testing of personal protective equipment in accordance with ASTM F1930. For the 2018 edition of NFPA 2112, the Technical Committee proposed including language to require a lab conducting testing to ASTM F1930 to have a defined threshold range of result for a garment of a standard reference material in order to calibrate its equipment as a means of ensuring all test labs calibrate testing equipment to the same standard conditions. In this way, the Technical Committee sought to improve the likelihood that claims of safety for Personal Protective Equipment would not vary depending on which testing facility conducted the testing. There was testimony offered at the hearing on the appeal that without such calibration, neither purchasers nor users of the personal protective equipment could be certain of the level of safety provided. Mr. Parry filed a Notice of Intent to Make a Motion (NITMAM) which was certified by the Motions Committee as CAM 2112-1. CAM 2112-1 sought to remove the the calibration requirements from the 2018 edition of NFPA 2112. CAM 2112-1 failed on the floor of the NFPA Technical Meeting.

The text subject to appeal did gain sufficient support within the standards development process for inclusion in the 2018 Edition of NFPA 2112, *Standard on Flame-Resistant Garments for Protection of Industrial Personnel Against Flash Fire*. The appeal requests that the Council overturn the results yielded by the standards development process. In support of the appeal filed by Roger Parry of the DuPont Company, he asserts that the calibration requirements were introduced at the second draft stage and therefore were improperly introduced as new material at that time; that there are no published studies or independent testing conducted to support the values identified in the calibration requirements included in the Second Draft by the Technical Committee; and that the results are exclusionary and raise antitrust concerns.

During the first draft meeting, the Technical Committee processed Committee Input Number 25 on Section 8.5.4 of NFPA 2112 and provided the following Committee Statement: “The committee anticipates modifying this section . . . depending on additional data pertaining to variability in the ASTM F1930 test results. The modifications will likely focus on . . . verification of the test computer code, the test garment and the calibration. A task group will be formed to address this.” The appellant, DuPont, was a member of this task group. The task group agreed to a set of round robin testing to provide the basis for the calibration requirement. DuPont participated in all phases of the round robin testing.

In fact, NFPA 2112 previously slipped cycle in order to complete this testing. The *Regulations Governing the Development of NFPA Standards (Regs)* do not require, as DuPont seems to indicate in its appeal, that the exact text of a Second Revision must appear in the First Draft. In fact, in many cases, such a result would be impossible and would eliminate the benefit of having a second round of public review. The *Regs* state that Public Comments only “must be *related to* material that has received public review either through the submission of Public Input, Committee Input, or . . . through the First Revisions.” (*Regs*, Section 4.4.4.2, emphasis added.) In this case, the idea that the Technical Committee was considering calibration requirements was included in the Committee Input. DuPont participated in all of the testing. The Council finds no merit in the argument that the proposed change to Section 8.5.4 of NFPA 2112 was new material for purposes of the *Regs* or that DuPont was unaware such was in the works or under consideration.

DuPont also argues there was no independent third party testing to corroborate the task group’s round robin testing results. While this may be the case, it is not a reason to overturn the results yielded by the standards development process. It appears, instead, that the lack of such studies was part of the reason for undertaking the round robin testing. The requirements of the round robin testing were developed and agreed upon by the task group. The four manufacturers that participated in the testing submitted a standard size piece of material to each of five labs for testing with the labs all reporting the respective results anonymously. The task group then recommended to the Technical Committee proposed language for the calibration requirement to be included in the 2018 edition of NFPA 2112. The fact that there were other ways to accomplish such calibration as DuPont claimed at the hearing, does not mean that this method was inappropriate.

At the hearing, DuPont raised antitrust concerns with the outcome of the standards development process for a number of reasons. One of the reasons was the assertion that only a single lab in North America can currently meet the proposed standard to be included in the 2018 edition of NFPA 2112 although there was conflicting testimony on this point. Even if that were the case currently, it does not necessarily indicate that others will not be able to meet the standard. In fact, Mr. R. Baker, a representative of North Carolina State (NC State) who attended the hearing, indicated that NC State fully anticipates being able to meet the requirements and be certified very soon. In light of the fact that no other testing labs appealed the Technical Committee’s action, the Council has no reason to believe that there will not be others who are able to meet the requirements as well.

To establish a violation of antitrust law, there must be an underlying conspiracy or joint activity. In other words, there must be evidence of a conscious commitment to a common scheme with an unlawful objective. There is no evidence in this case nor did Mr. Parry or anyone else at the hearing claim that the participants in the round robin testing or those on the Technical Committee conspired to generate results that would exclude anyone from the market. The task group was

merely trying to establish calibration requirements for the testing of personal protective equipment in order to ensure purchasers and users of this equipment have the information they need to make appropriate purchasing decisions. Claims of antitrust concerns arising in the standards development context are generally treated under a “rule of reason” analysis rather than as “per se” violations. Appellant does not allege any misconduct with regard to the round robin testing or that the testing was undertaken in an unfair manner. The sole allegation of procedural impropriety was that the inclusion of the task group’s findings at the Second Draft stage was contrary to the *Regs*. As set forth above, based upon the record before it, the Council found no such impropriety.

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 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 NFPA 2112, *Standard on Flame-Resistant Garments for Protection of Industrial Personnel Against Flash Fire* will include Second Revision Nos. 52 and 76.

Standards Council Chair Kerry Bell and Council Member Patricia Gleason recused themselves from the deliberations and vote on the appeal.