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CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

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13 JUN 1975

Joseph B. Selden
Children's Hospital Medical Center
Elland & Bethesda Avenue
Cincinnati, Ohio 45229

Dear Mr. Selden:

This letter is in reply to your correspondence of February 12, 1975, in which you inquired whether patient gowns made by volunteers are covered by the flammability standards for children's sleepwear (DOC FF 3-71, FF 5-74) and whether small, longsleeve and shortsleeve T-shirts, with and without cuffs are classified as sleepwear under the Standards. We apologize for the delay in responding to your letter. The additional questions you raise in your letter of May 1, 1975 will be answered in a separate letter.

In regard to your first question concerning patient gowns worn by children and made by volunteers for patient use within Children's Hospital Medical Center, section 3(a) of the Flammable Fabrics Act (15 U.S.C. 1192) prohibits, among other things, the manufacture for sale, the sale, or the offering for sale in commerce, of any product, fabric, or related material which fails to conform to an applicable standard. The standard for children's sleepwear in sizes 0-6X was effective July 29, 1973; and the standard for children's sleepwear in sizes 7-14 became effective on May 1, 1975. All children's sleepwear in sizes 0-14 and all fabric intended or promoted for children's sleepwear manufactured on or after those dates must comply with the standards. It is the view of the Office of the General Counsel that the patient gowns addressed in your letter are not required to meet the children's sleepwear standards as long as they are not manufactured for sale, sold, or offered for sale in commerce. However, we encourage your volunteers to use fabric which complies with the standards in making children's sleepwear, in order to provide protection to children wearing the garments.

ADVISORY OPINION

Your second question concerns whether children's long and short sleeve T-shirts, with and without cuffs, are underwear and, therefore, excluded from both of the sleepwear standards. The standard for children's sleepwear in sizes 0-6X (DOC FF 3-71) defines the term children's sleepwear as meaning "any product of wearing apparel up to and including size 6X, such as nightgowns, pajamas, or similar or related items, such as robes, intended to be worn primarily for sleeping or activities related to sleeping. Diapers and underwear are excluded from this definition." The term children's sleepwear is similarly defined in FF 5-74 except that standard applies to children's sleepwear in sizes 7-14. We are however, unable to determine whether the T-shirts you describe are covered by the standard without viewing the garments.

The flammability standards and the Flammable Fabrics Act do not prohibit the purchase of noncomplying sleepwear at any time. Thus, if the T-shirts in question are purchased by the hospital from an outside source, the hospital would appear to be a "consumer" in regard to its purchase. The manufacturer of a noncomplying items and any distributor or retailer of the product could be held responsible for violating the Flammable Fabrics Act if in fact the items in question were required to comply with either of the children's sleepwear standards. The hospital, that uses the product as a consumer, however, would not be in violation of the FFA.

This advisory opinion, which can be subsequently changed or superseded by the Commission, reflects the most current interpretation of the law by the General Counsel's office.

Sincerely,

Margaret A. Freeston

Margaret A. Freeston
Acting Assistant General Counsel

CHILDREN'S HOSPITAL MEDICAL CENTER

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FEB 14 1975

OFFICE OF THE DIRECTOR
OFFICE OF STANDARDS COORDINATION & APPRAISAL

February 12, 1975

Mr. L.J. Sharman
Consumer Products Safety Commission
Washington, D.C. 20207

Dear Jim;

Thank you for your call this morning and for your helpful answers. I am writing for a formal ruling by the Consumer Products Safety Commission on two questions.

1. Are patient gowns made by volunteers included under the Flammability Standards For Children's Sleepwear? The gowns are made of cotton and are made for patient use within Children's Hospital Medical Center. The gowns are worn by children in the emergency room, oupatient clinics, etc. They are also frequently worn by children who are in bed. We do not sell these patient gowns.

2. Like most children's hospitals, we have small T-shirts for the smaller children. These shirts may have long sleeves with or without cuffs. These are used to cover the smaller child who will spend much of his or her time sleeping in a crib. Are these items classified as underwear (and therefore not covered by the flammability standards) or sleepwear?

I'd appreciate any answers you may give.

Sincerely,

Joseph B. Selden

Joseph B. Selden
Assistant Administrator

JBS:lm