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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D. C. 20207

1 APR 1985

OFFICE OF THE  
GENERAL COUNSEL

Mr. S. J. Golub  
Assistant Director  
Albany International Research Co.  
1000 Providence Highway  
Dedham, Massachusetts 02026

Dear Mr. Golub:

This is in response to your letter dated March 27, 1985, concerning the preemptive provisions of section 16 of the Flammable Fabrics Act (FFA, 15 U.S.C. 1203) and their applicability to California state flammability requirements for specified fabrics, garments, and products sold for use in hospitals.

In your letter, you asked whether decisions about preemption of state flammability requirements by a Federal standard in effect under the FFA are made by the Consumer Product Safety Commission, or by the courts. As this office advised you by letter dated March 21, 1985, the Commission has no authority to enforce the preemptive provisions of the FFA. (A copy of the text of Section 16 of the FFA is enclosed.) When the issue of preemption by a Federal flammability standard arises during litigation concerning compliance with state flammability requirements, that issue must be resolved by the court which is trying the case. However, we offer the following observations in response to the questions posed in your letters of February 15, and March 27, 1985.

The Standard for the Flammability of Clothing Textiles (16 CFR Part 1610) is a standard of flammability in effect under the FFA as enacted in 1953. The Flammable Fabrics Act of 1953 and the Standard for the Flammability of Clothing Textiles are included in the enclosed booklet as Part 1609 and Part 1610, respectively. The flammability test contained in the clothing textiles standard was made mandatory by the Flammable Fabrics Act of 1953 to prohibit the manufacture for sale, or sale, in commerce of fabrics and garments which are so highly flammable as to be dangerous when worn by individuals. See sections 3 and 4 of the Flammable Fabrics Act of 1953, on pages 494 and 495 of the enclosed booklet.

CPSA & (b)(1) Cleared

4/12/85 JOT

No Mfrs/Providers of Products Identified

Enclosed by \_\_\_\_\_

Firms Notified \_\_\_\_\_

Comments Processed \_\_\_\_\_

ADVISORY OPINION

The Standard for the **Flammability** of Clothing textiles is applicable to "clothing and textiles intended to be used for clothing." See section 1610.2 of the clothing textiles standard, on page 498 of the enclosed booklet. As used in section 1610.2, the term "clothing" includes robes in sizes larger than children's size 14 which are sold for use in hospitals.

Your letter of March 27, 1985, enclosed a copy of the California state **requirements** for the **flammability** of certain **garments**, including robes in adult sizes which are sold to hospitals. The state **requirements** under consideration appear to be applicable to such robes when sold to any hospital, rather than purchasing specifications established by the State of California for its **own** use.

Section 1160.2 of the California **flammability** requirements under consideration states that they were adopted "for the purpose of providing reasonable standards governing the **flammability**" of the fabrics **garments**, and products subject to their **provisions** "for the protection of the public interest."

The California requirements under consideration provide that robes in adult sizes sold for use in hospitals after July 1, 1977, must be "flame resistant" in accordance with the Standard for the **Flammability** of Children's Sleepwear: Sizes 0 through 6X (DOC FF 3-71) [16 CFR Part 1615]; the Standard for the **Flammability** of Children's Sleepwear: Sizes 7 through 14 (DOC FF 5-47) [16 CFR Part 1616]; or "any other standard approved by the State Fire Marshal which will **provide** a level of flame resistance substantially equal to" the children's sleepwear standard referenced above.

The **flammability** requirements of the children's sleepwear standard codified at 16 CFR Parts 1615 and 1616 are not identical to the requirements of the clothing textiles standard codified at 16 CFR Part 1610.

The State of California has not **petitioned** the **Commission** to exempt the **flammability** requirements under consideration from **preemption** by the Federal clothing textiles standard in accordance with provisions of section 16(c) of the FFA.

In these circumstances, this office believes that **provisions** of section 16(a) of the **FFA** are applicable. The relevant part of that section provides:

[W]henever a **flammability** standard or other regulation for a fabric, related material, or product is in effect under this Act,

Mr. S. J. Golub  
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no State or political subdivision of a State may establish or continue in effect a **flammability** standard for other regulation for such fabric, related material, or product if the standard or other regulation is designed to protect against the same risk of occurrence of fire with respect to which the standard or other regulation under this Act is in effect unless the State or political subdivision standard or other regulation is identical to the Federal standard or other regulation.

The Standard for the **Flammability** of Clothing Textiles is a **standard** in effect under the FFA and applicable to hospital robes in adult sizes, the **same garments** which are subject to the California state **requirements** under consideration. The test specified in the Federal clothing textiles standard is not identical to the tests specified in the California **requirements** for hospital robes in adult sizes,

The **remaining** issue is whether the California requirements are "designed to protect against the same risk of the occurrence of fire" as the Standard for the **Flammability** of Clothing Textiles in effect under the FFA. It is the view of this office that the Federal standard and the state requirements both address the "same risk of the occurrence of fire," and for that reason provisions of section 16(a) of the FFA prohibit the continued enforcement of the California requirements with respect to any robes in sizes larger than children's size 14, including those sold to hospitals.

The views expressed in this letter are those of the Office of the General Counsel and are based on the most current interpretation of the law by this office. However, this letter has not been reviewed or approved by the **Commissioners** of the agency, and could be superseded by them.

Sincerely,



Daniel R. Levinson  
General Counsel

**Albany International Research Co.**

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Tel. 617 / 326-5500

**ALBANY**  
INTERNATIONAL

March 27, 1985

Stephen Lemberg, Assistant General Counsel  
Office of the General Counsel  
Consumer Product Safety Commission  
Washington, D.C. 20207

Dear Mr. Lemberg:

Thank you for your letter of March 21, 1985 regarding my inquiry about California's flammability requirements for hospital robes. I should have sent you the California requirements, and now enclose them herewith.

Since the robe was an adult robe sold in interstate commerce, I have assumed that CS191-53 would be the pertinent test, but I may be wrong.

Is this within CPSC's province to decide, or must a court decision be made?

I will appreciate your early advice. Thank you.

Sincerely yours,



S. J. Golub  
Assistant Director

SJG:ccr



## CART 2. FLAMMABILITY STANDARDS FOR HOSPITAL FABRICS

## Article 12. General Provisions

1160. **Title.** These regulations shall be known as the "Regulations of the State Fire Marshal," may be cited as such and will be referred to herein as "these regulations."

**NOTE:** Authority cited: Section 19818, Health and Safety Code. Reference: Sections 19810-19818, Health and Safety Code.

**History:** 1. New Article 12 (Sections 1160, 1160.1-1160.6) filed 12-15-75; effective thirtieth day thereafter (Register 75, So. 51).

1160.1. **Authority.** These regulations are adopted pursuant to the provisions of Section 19818, Health and Safety Code.

1160.2. **Purpose.** These regulations have been prepared and adopted for the purpose of providing reasonable standards governing the flammability of fabric and fabric-like materials in certain items of apparel and bedding used in hospitals and related institutions for the protection of the public interest.

1160.3. **Scope.** These regulations shall apply to fabric and fabric-like materials used as examination gowns, sleepwear\*, robes\*, sheets and pillowcases and used in all hospitals as defined herein.

**Exceptions:** (a) Fabrics or fabric-like materials used in operating rooms, including emergency surgery, OB delivery, and general surgery rooms.

(b) Fabrics or fabric-like materials which are the personal property of patients.

(c) The provisions of these regulations shall not apply to fabrics and fabric-like materials used in hospitals, as defined herein, which are owned by any local agency until such time as justified cost factors are appropriated in accordance with the provisions of Section 2231, Revenue and Taxation Code.

\* **Note:** All new children's sleepwear and robes, sizes 0 through 14, must be flame resistant in accordance with Federal standards.

1160.4. **Validity.** If any article, section, subsection, sentence, clause or phrase of these regulations is for any reason held to be unconstitutional, contrary to statute, exceeding the authority of the State Fire Marshal, or otherwise inoperative, such a decision shall not affect the validity of the remaining portion of these regulations.

1160.5. **Definitions.** (a) For the purpose of these regulations certain terms, phrases, words, and their derivatives shall be construed as set forth in this section. Words used in the singular include the plural, and words used in the plural include the feminine, and words used in the feminine gender include the masculine. Wherever an article or section is referred to in these regulations by number, it shall be understood to refer to an article or section of these regulations.

(b) "Fabric and fabric-like" means materials formed of fibers or yarns, either natural or synthetic, knitted, felted, bonded, woven, or non-woven; and flexible film or sheeting formed of synthetic resins, supported or unsupported.

(c) "Hospital" means acute general hospital, (general acute care hospital), acute psychiatric hospital, skilled nursing facility or intermediate care facility.

(d) "Items" means examination gowns, robes, sleepwear, sheets or pillowcases made of fabric or fabric-like material.

**1160.8. Effective Date.** (a) All items purchased after January 1, 1976, for use in any hospital shall conform to the applicable provisions of Commercial Standard 191-3 (Class 1 or Class 2) as adopted under the Federal Flammable Fabric Act.

(b) All items purchased after July 1, 1976, for use in any hospital shall conform to the applicable Criteria of Acceptance set forth in Article 13. (See Section 1160.16)

**Exception:** Robes larger than size 14 may be purchased until July 1, 1977, without conforming to the applicable Criteria of Acceptance set forth in Article 13.

(c) All items governed by the scope of these regulations used in any hospital after July 1, 1977, shall conform to the applicable Criteria of Acceptance set forth in Article 13.

**Exception:** Robes larger than size 14 may be used until July 1, 1978, without conforming to the Criteria of Acceptance set forth in Article 13.

#### Article 13. Criteria of Acceptance

**1160.10. General.** (a) **Examination Gowns and Sleepwear.** Fabric or fabric-like material in examination gowns and sleepwear\* shall be tested in accordance with the provisions of Chapter 4, Standard Number 702-1975 of the National Fire Protection Association and shall have an average time of burning of 8.0 seconds or more.

**Exceptions:** (1) Smooth-surfaced fabrics (without nap or pile) weighing 4.0 ounces per square yard or more. Weight shall be determined in accordance with ASTM D1910.

(2) Items need not be preconditioned as specified in Sections 3-2 and 4-1 of Standard 702 if they are intended to be used only once and discarded, not intended to be washed or laundered, and are labeled accordingly.

(b) **Sheets and Pillowcases.** Fabric or fabric-like material in sheets and pillowcases shall have an average time of burning of 7.0 seconds or more when tested in the manner specified in Section 1160.10(a).

**Exceptions:** (1) Smooth-surfaced fabrics (without nap or pile) weighing 3.2 ounces per square yard or more. Weight shall be determined in accordance with ASTM D1910.

## MINIMUM FIRE SAFETY STANDARDS

(Register 75, No. 51—12-20-75)

(2) Items need not be preconditioned as specified in Sections 3-2 and 4-1 of Standard 702 if they are intended to be used only once and discarded, not intended to be washed or laundered, and are labeled accordingly.

\* **Note:** See note in Section 1160.3.

**NOTE:** Authority cited: Section 19818, Health and Safety Code. Reference: Sections 19810-19813, Health and Safety Code.

**History:** 1. New Article 13 (Sections 1160.10-1160.11) filed 12-15-75; effective thirtieth day thereafter (Register 75, No. 51).

1160.11. **Robes.** Fabric or fabric-like material in robes \* shall be flame resistant in accordance with any of the following:

(a) Federal Children's Sleepware Standard DOC FF3-71 as published in the Federal Register, July 21, 1972.

(b) Federal Children's Sleepware Standard DOC FF5-74 as published in the Federal Register, May 1, 1974.

(c) Any other standard approved by the State Fire Marshal which will provide a level of flame resistance substantially equal to (a) or (b) above.

\* **Note:** See note in Section 1160.3.

**Article 14. Labeling and Certification**

1160.15. **Labeling.** Not later than January 1, 1977, all packages or containers of items purchased for use in any hospital shall be labeled to indicate conformance with the applicable Criteria of Acceptance set forth in Article 13.

**NOTE:** Authority cited: Section 19818, Health and Safety Code. Reference: Sections 19810-19813, Health and Safety Code.

**History:** 1. New Article 14 (Sections 1160.15-1160.16) filed 12-15-75; effective thirtieth day thereafter (Register 75, No. 51).

1160.16. **Certification.** Manufacturers of items may be required to furnish substantiation of conformance in a form satisfactory to the inspection authority, such as a formal certification, or may be required to furnish a copy of the test report from a qualified testing laboratory.