6b ok Secretary

135

CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

OCT 4 1974

Mr. Leonard Smith, Manager
Textiles Flammability Research
Cotton Incorporated
4505 Creedmoor Road
Raleigh, North Carolina 27612

Dear Mr. Smith:

Thank you for your letter of August 20, 1974, regarding federal preemption in the regulation of flammable fabrics.

I do not believe there has ever been a judicial determination of the extent of federal preemption provided in section 16 of the Flammable Fabrics Act (15 U.S.C. 1203). That section states that the Act "is intended to supersede any law of any state or political subdivision thereof inconsistent with its provisions."

A three judge panel of the U. S. District Court in Massachusetts 1/ suggested, but did not decide, that section 10 of the Flammable Fabrics Act, as amended (15 U.S.C. 1199), which states that the Act's provisions "shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other law," did not foreclose the application of a state statute which is stricter than the federal provision.

Until the courts provide a definitive statement on the perimeters of permissible state regulation of flammable fabrics, the issue is open to individual interpretation. Accordingly, anyone who feels he has been injured by state action in this area may resolve the issue by bringing suit to enforce the preemption provision.

1/ American Apparel Manufacturers Association v. Sargent Civil No. 73-3937-M (D.Mass., Feb 6, 1974)

Director of Fish, Game and Shellfisheries of the Department of Environmental Protection, pursuant to authority of N.J.S.A. 13:1D-30 et seq. and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted the 1974-1975 Game Code, substantially as proposed in the Notice published May 9, 1974, at 6 N.J.R. 174(a), with only inconsequential structural or language changes, in the opinion of the Department of Environmental Protection.

The 1974-1975 Game Code may be cited as N.J.A.C. 7:25-5.1 et seq.

An order adopting the Game Code was filed June 18, 1974, as R.1974 d.149 to become effective August 1, 1974.

Thomas F. Kistner
Director of Administrative Procedure
Department of State

(a)

ENVIRONMENTAL PROTECTION

DIVISION OF FISH, GAME AND SHELLFISHERIES

FISH AND GAME COUNCIL

Revisions for Controlled Hunting

On June 17, 1974, the Fish and Game Council in the Division of Fish, Game and Shellfisheries of the Department of Environmental Protection, pursuant to authority of N.J.S.A. 23:7-9 and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted revisions to N.J.A.C. 7:25-2.15 concerning controlled hunting, as proposed in the Notice published May 9, 1974, at 6 N.J.R. 175(a).

Such revisions were filed June 18, 1974, as R.1974 d.150 to become effective August 1, 1974.

Thomas F. Kistner
Director of Administrative Procedure
Department of State

(b)

ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

BUREAU OF WATER POLLUTION CONTROL

Rules On Allocation of Waste Loads to Point Source Discharges

On June 18, 1974, Ernest Segesser, Acting Director of the Division of Water Resources in the Department of Environmental Protection, pursuant to authority of N.J.S.A. 13:1D-1 et seq. and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted rules concerning the allocation of waste loads to point source dischargers as proposed in the Notice published April 4, 1974, at 6 N.J.R. 132(c).

Such rules may be cited as N.J.A.C. 7:9-11.1 et seq.

An order adopting these rules was filed and effective June 18, 1974, as R.1974 d.151.

Thomas F. Kistner
Director of Administrative Procedure
Department of State

(c)

ENVIRONMENTAL PROTECTION

JUL 29

THE COMMISSIONER

Repeal of Procedural Rules for Hearings Held Pursuant to the Coastal Area Facilities Review Act

On June 24, 1974, David J. Bardin, Commissioner of Environmental Protection, pursuant to authority of N.J.S.A. 13:19-17 and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted a procedural rule which repealed in its entirety the procedural rules for hearings held pursuant to the Coastal Area Facilities Review Act (i.e., N.J.A.C. 7:7C-1.1 et seq.) which were filed and became effective February 1, 1974, as R.1974 d.26 (See: 6 N.J.R. 101(b)) as well as the amendments thereto which were filed and became effective February 8, 1974, as R.1974 d.32 (See: 6 N.J.R. 101(c)).

Chapter 7C in Title 7 of the New Jersey Administrative Code will now be marked as Reserved.

An order repealing these rules was filed and effective June 24, 1974, as R.1974 d.162 (Exempt, Procedural Rule).

Thomas F. Kistner
Director of Administrative Procedure
Department of State

(d)

HEALTH

THE COMMISSIONER

Proposed Rule on Patient Clothing And Bedding Materials

Joanne E. Finley, Commissioner of Health, pursuant to authority of N.J.S.A. 26:2H-1 et seq. and with the approval of the Health Care Administration Board, proposes to adopt a new rule concerning patient clothing and bedding materials.

Full text of the proposed rule follows:

SUBCHAPTER 13. PATIENT CLOTHING AND BEDDING MATERIALS

8:31-13.1 Fire retardance; patient clothing and bedding materials

(a) All health care facilities shall use fire-retardant chemicals during laundering to ensure the fire-retardance of all patient apparel and bedding materials, including sheets, pillowcases, bedspreads and blankets, presently in use.

(b) All future acquisition and use of patient clothing and bedding materials, including sheets, pillowcases, bedspreads and blankets, as provided by the facility, shall have a permanent fire-retardant quality.

Interested persons may present statements or argument in writing relevant to the proposed action on or before July 31, 1974, to:

Arthur E. Brown
Assistant Commissioner for Health Facilities
State Department of Health
John Fitch Plaza
Trenton, New Jersey 08625

COTTON INCORPORATED
Representing America's Cotton Producers

RECEIVED
OFFICE OF THE SECRETARY
SEP 3 12 4 PM '74
CONSUMER PRODUCT
SAFETY COMMISSION

August 20, 1974

Mr. Richard Simpson, Chairman
Consumer Product Safety Commission
1750 K Street, NW
Washington, DC 20230

Dear Dick:

Attached for your ready reference is a copy of a publication from the New Jersey Register, Thursday, July 11, covering fire retardance for patient clothing and bedding materials.

As even the most superficial glance will show, the man who wrote this proposed rule, knew absolutely nothing about flame retardance. For example, he doesn't say how fire retardant, how durable, as measured by what test, etc.

This is, to me, an outstanding example of the kinds of actions which point to the urgent need for the Consumer Product Safety Commission to take a strong position in making flame retardance regulations national in their application, and for the Consumer Products Safety Commission to make it impossible for states to enact their own separate and distinct rules and regulations.

As you know, I am no legislative expert, and I don't know how it can be done, but the need is clear, and I hope that you will see your way clear to work in the direction of national standards to preempt all flammability regulation.

Very sincerely yours,

Leonard Smith, Manager
Textiles Flammability Research

LS/rlk

Attachment

4505 CREEDMOOR ROAD • RALEIGH, NORTH CAROLINA 27612 • TELEPHONE (919) 782-6330
NEW YORK • LOS ANGELES • DALLAS • WASHINGTON

The Commission has taken no position as to the effect of the preemption provision under the Flammable Fabrics Act. However, we are considering a request from the National Cotton Counsel of America to hold a hearing on the issue of federal preemption. Should the Commission decide to hold the hearing, advance notice of the proceeding will appear in the Federal Register.

Mr. Arrie J. DuShane of the New Jersey State Department of Health informed me that the Proposed Rule on Patient Clothing and Bedding Materials, a copy of which you enclosed in your letter, has not been adopted yet, and he would appreciate receiving your comments on the proposed regulation. Your comments should be sent to: Arthur E. Brown, Assistant Commissioner for Health Facilities, State Department of Health, John Fitch Plaza, Trenton, New Jersey 08625.

Please let me know if I may be of further assistance.

Sincerely yours,

Michael A. Brown
General Counsel

COTTON INCORPORATED
Representing America's Cotton Producers

RECEIVED
OFFICE OF THE SECRETARY
SEP 3 12 4 PM '74
CONSUMER PRODUCT
SAFETY COMMISSION

August 20, 1974

Mr. Richard Simpson, Chairman
Consumer Product Safety Commission
1750 K Street, NW
Washington, DC 20230

Dear Dick:

Attached for your ready reference is a copy of a publication from the New Jersey Register, Thursday, July 11, covering fire retardance for patient clothing and bedding materials.

As even the most superficial glance will show, the man who wrote this proposed rule, knew absolutely nothing about flame retardance. For example, he doesn't say how fire retardant, how durable, as measured by what test, etc.

This is, to me, an outstanding example of the kinds of actions which point to the urgent need for the Consumer Product Safety Commission to take a strong position in making flame retardance regulations national in their application, and for the Consumer Products Safety Commission to make it impossible for states to enact their own separate and distinct rules and regulations.

As you know, I am no legislative expert, and I don't know how it can be done, but the need is clear, and I hope that you will see your way clear to work in the direction of national standards to preempt all flammability regulation.

Very sincerely yours,

Leonard Smith, Manager
Textiles Flammability Research

LS/rlk

Attachment

4505 CREEDMOOR ROAD • RALEIGH, NORTH CAROLINA 27612 • TELEPHONE (919) 782-6330
NEW YORK • LOS ANGELES • DALLAS • WASHINGTON

Director of Fish, Game and Shellfisheries of the Department of Environmental Protection, pursuant to authority of N.J.S.A. 13:1D-30 et seq. and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted the 1974-1975 Game Code, substantially as proposed in the Notice published May 9, 1974, at 6 N.J.R. 174(a), with only inconsequential structural or language changes, in the opinion of the Department of Environmental Protection.

The 1974-1975 Game Code may be cited as N.J.A.C. 7:25-5.1 et seq.

An order adopting the Game Code was filed June 18, 1974, as R.1974 d.149 to become effective August 1, 1974.

Thomas F. Kistner
Director of Administrative Procedure
Department of State

(c)

ENVIRONMENTAL PROTECTION

DIVISION OF FISH, GAME AND SHELLFISHERIES

FISH AND GAME COUNCIL

Revisions for Controlled Hunting

On June 17, 1974, the Fish and Game Council in the Division of Fish, Game and Shellfisheries of the Department of Environmental Protection, pursuant to authority of N.J.S.A. 23:7-9 and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted revisions to N.J.A.C. 7:25-2.15 concerning controlled hunting, as proposed in the Notice published May 9, 1974, at 6 N.J.R. 175(a).

Such revisions were filed June 18, 1974, as R.1974 d.150 to become effective August 1, 1974.

Thomas F. Kistner
Director of Administrative Procedure
Department of State

(b)

ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

BUREAU OF WATER POLLUTION CONTROL

Rules On Allocation of Waste Loads to Point Source Discharges

On June 18, 1974, Ernest Segesser, Acting Director of the Division of Water Resources in the Department of Environmental Protection, pursuant to authority of N.J.S.A. 13:1D-1 et seq. and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted rules concerning the allocation of waste loads to point source dischargers as proposed in the Notice published April 4, 1974, at 6 N.J.R. 132(c).

Such rules may be cited as N.J.A.C. 7:9-11.1 et seq.

An order adopting these rules was filed and effective June 18, 1974, as R.1974 d.151.

Thomas F. Kistner
Director of Administrative Procedure
Department of State

(c)

ENVIRONMENTAL PROTECTION

JUL 29

THE COMMISSIONER

Repeal of Procedural Rules for Hearings Held Pursuant to the Coastal Area Facilities Review Act

On June 24, 1974, David J. Bardin, Commissioner of Environmental Protection, pursuant to authority of N.J.S.A. 13:19-17 and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted a procedural rule which repealed in its entirety the procedural rules for hearings held pursuant to the Coastal Area Facilities Review Act (i.e., N.J.A.C. 7:7C-1.1 et seq.) which were filed and became effective February 1, 1974, as R.1974 d.26 (See: 6 N.J.R. 101(b)) as well as the amendments thereto which were filed and became effective February 8, 1974, as R.1974 d.32 (See: 6 N.J.R. 101(c)).

Chapter 7C in Title 7 of the New Jersey Administrative Code will now be marked as Reserved.

An order repealing these rules was filed and effective June 24, 1974, as R.1974 d.162 (Exempt, Procedural Rule).

Thomas F. Kistner
Director of Administrative Procedure
Department of State

(d)

HEALTH

THE COMMISSIONER

Proposed Rule on Patient Clothing And Bedding Materials

Joanne E. Finley, Commissioner of Health, pursuant to authority of N.J.S.A. 26:2H-1 et seq. and with the approval of the Health Care Administration Board, proposes to adopt a new rule concerning patient clothing and bedding materials.

Full text of the proposed rule follows:

SUBCHAPTER 13. PATIENT CLOTHING AND BEDDING MATERIALS

8:31-13.1 Fire retardance; patient clothing and bedding materials

(a) All health care facilities shall use fire-retardant chemicals during laundering to ensure the fire-retardance of all patient apparel and bedding materials, including sheets, pillowcases, bedspreads and blankets, presently in use.

(b) All future acquisition and use of patient clothing and bedding materials, including sheets, pillowcases, bed spreads and blankets, as provided by the facility, shal have a permanent fire-retardant quality.

Interested persons may present statements or argument in writing relevant to the proposed action on or before Jul 31, 1974, to:

Arthur E. Brown
Assistant Commissioner for Health Facilities
State Department of Health
John Fitch Plaza
Trenton, New Jersey 08625

The Department of Health, upon its own motion or at the instance of any interested party, may thereafter adopt this rule substantially as proposed without further notice.

Joanne E. Finley
Commissioner
Department of Health

(a)

HEALTH

THE COMMISSIONER

Rule on Expiration Dates For Fluid Milk Products

On June 10, 1974, William J. Dougherty, Acting Commissioner of Health, pursuant to authority of N.J.S.A. 24:10-57.23 and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted a new rule concerning expiration dates for fluid milk products, as proposed in the Notice published May 9, 1974, at 6 N.J.R. 184(a).

Such rules may be cited as N.J.A.C. 8:21-4.44.

An order adopting this rule was filed and effective June 12, 1974, as R.1974 d.143.

Thomas F. Kistner
Director of Administrative Procedure
Department of State

(b)

HEALTH

THE COMMISSIONER

New Jersey Youth Camp Safety Act Standards

On June 10, 1974, William J. Dougherty, Acting Commissioner of Health, pursuant to authority of N.J.S.A. 26:12-1 and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted rules concerning the New Jersey Youth Camp Safety Act standards, substantially as proposed in the Notice published May 9, 1974, at 6 N.J.R. 180(a), with only inconsequential structural or language changes in the opinion of the Department of Health.

Such rules may be cited as N.J.A.C. 8:25-1.1 et seq.

An order adopting these rules was filed and effective June 19, 1974, as R.1974 d.156.

Thomas F. Kistner
Director of Administrative Procedure
Department of State

(c)

INSTITUTIONS AND AGENCIES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Proposed Changes in Podiatry Manual

Ann Klein, Commissioner of Institutions and Agencies, pursuant to authority of N.J.S.A. 30:4D-1 et seq., proposes to revise Subchapter 2 of Chapter 57 in Title 10 of the New Jersey Administrative Code concerning billing procedures contained in the Podiatry Manual.

The proposed revisions basically concern an updating of listings of locations, telephone numbers and the like, and do not include changes that are substantive, in the opinion of the New Jersey Health Services Program.

Full text of the six pages of the proposed revisions may be obtained by writing to:

Administrative Analyst
Div. of Medical Assistance and Health Services
Post Office Box 2486
Trenton, New Jersey 08625

Interested persons may present statements or arguments in writing relevant to the proposed action on or before July 31, 1974, to the Division of Medical Assistance and Health Services at the above address.

The Department of Institutions and Agencies, upon its own motion or at the instance of any interested party, may thereafter adopt these revisions substantially as proposed without further notice.

Ann Klein
Commissioner
Department of Institutions and Agencies

(d)

INSTITUTIONS AND AGENCIES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Revisions to Independent Clinic Services Manual

On June 3, 1974, Ann Klein, Commissioner of Institutions and Agencies, pursuant to authority of N.J.S.A. 30:4D-1 et seq. and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted revisions to N.J.A.C. 10:66-1.10 and 10:66-1.12 of the Independent Clinic Services Manual concerning podiatry and dental services, as proposed in the Notice published May 9, 1974, at 6 N.J.R. 192(a).

An order adopting these revisions was filed and effective June 14, 1974, as R.1974 d.144.

Thomas F. Kistner
Director of Administrative Procedure
Department of State

(e)

INSTITUTIONS AND AGENCIES

DIVISION OF YOUTH AND FAMILY SERVICES

Rules on Administrative Hearings

On June 20, 1974, Frederick A. Schenck, Director of the Division of Youth and Family Services in the Department of Institutions and Agencies, pursuant to authority of N.J.S.A. 30:1-9 et seq. and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted rules of practice and procedure governing administrative hearings conducted in the Division of Youth and Family Services.

Full text of the adopted rules follows:

SUBCHAPTER 1. ADMINISTRATIVE HEARINGS

10:120-1.1 Scope of rules

The following rules shall constitute the practice and procedure and shall govern all contested cases as defined by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-2(b), before the Division of Youth and Family Services, where a violation of any statute, rule or regulation affecting the Division is alleged.