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INSTITUTE FOR LEGISLATIVE ACTION
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NRA

Office of the Executive Director
CHRIS W. COX

August 20, 2010

Lisa P. Jackson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 2004

Dear Administrator Jackson:

The National Rifle Association represents millions of sportsmen and wildlife conservationists across the country. We are writing to urge you to reject a petition filed by the Center for Biological Diversity and others asking EPA to ban lead shot and bullets under the Toxic Substances Control Act (TSCA). Simply put, the Act does not grant EPA the authority to regulate ammunition of any composition.

As you know, TSCA allows EPA under certain circumstances to regulate “chemical substances,” which are defined as

any organic or inorganic substance of a particular molecular identity, including--

(i) any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature and

(ii) any element or uncombined radical.

15 U.S.C. § 2602(2)(A).

Nevertheless, Congress explicitly excluded from this definition “any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1986 (determined without regard to any exemptions from such tax provided by section 4182 or 4221 or any other provision of such code).” 15 U.S.C. § 2602(2)(B)(v). This cross reference refers to 26 U.S.C. § 4181, which imposes excise taxes upon pistols, revolvers, and firearms (other than pistols and revolvers), as well as “[s]hells, and cartridges.”

Petitioners attempt to evade the clear import of this exemption with the Solomonic suggestion that while ammunition itself is exempt from regulation under the Act, EPA should in effect divide shells and cartridges into their constituent parts and find that each separate component of a shell or cartridge falls under its jurisdiction.

Unsurprisingly, the petition musters no legal authority to demonstrate that this was the intent behind the exemption in 15 U.S.C. § 2602(2)(B)(v). Instead, the petition cites a Revenue Ruling for the uncontroversial proposition that the tax rates in 26 U.S.C. § 4181 should be applied to the producer's or importer's sale price for the final product, rather than as cumulative, value-added taxes on each separate component. In other words, in the case of a *positive* tax, treating each component separately would *add more* to the final tariff than what Congress intended. The unitary concept that Congress meant to tax was saleable ammunition.

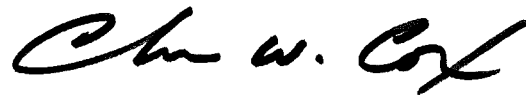
On the other hand, to exclude the necessary components of ammunition from the *negative* carve-out in 15 U.S.C. § 2602(B) would be *subtracting less* than what Congress intended. Clearly, Congress meant to exempt ammunition from regulation under the Act. Yet if each separate, indispensable component of ammunition were regulated (and the idea of a shell or cartridge necessarily includes its shot or bullet), then the exemption becomes less than what Congress intended. Petitioners' rationale would reduce the exemption to meaningless formalism. In the case of the exemption, the whole must necessarily be interpreted as including all of its constituent parts. Put another way, if Congress exempts a cow from regulation, one could hardly argue that it nevertheless would allow for regulation of the hide attached to the cow's body.

This appears to be the first time since TSCA's inception in 1976 that anyone has suggested that EPA may regulate projectiles used in firearms under the Act. Petitioners, however, claim they "have waited until nontoxic alternatives have become available to submit this petition in an effort to clearly indicate that this petition is not an attempt to regulate ammunition or firearms." Nevertheless, the exemption is not based on the availability of nontoxic alternatives, it is manifestly based on congressional intent that TSCA not be a vehicle to implement gun control.

To summarize, the goal of statutory construction is to implement the intent of the legislature. If petitioners prevailed in their argument that the TSCA exemption does not apply to shot and bullets, nothing would remain of the exemption for shells and cartridges that Congress included in TSCA. If EPA can regulate each individual component of ammunition, then EPA can effectively regulate shells and cartridges themselves. A shell does not exist as ammunition without shot, any more than a cartridge exists as ammunition without a bullet. Shot and bullets are inseparably linked to the item that Congress meant to exempt in TSCA. To interpret the exemption any other way would defeat a purpose well understood since 1976 and impute an absurd intention to Congress.

Thank you for considering our position. We would be pleased to discuss this issue with you further.

Sincerely,

A handwritten signature in black ink that reads "Chris W. Cox". The signature is written in a cursive, flowing style.

Chris W. Cox
Executive Director, NRA-ILA