



## NATIONAL SHOOTING SPORTS FOUNDATION, INC.

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LAWRENCE G. KEANE  
SENIOR VICE PRESIDENT &  
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August 23, 2010

Lisa P. Jackson  
Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Dear Administrator Jackson:

The National Shooting Sports Foundation (“NSSF”) is the trade association for the firearm, ammunition, hunting, and shooting sports industry. We respectfully write to urge you to deny the petition submitted by the Center for Biological Diversity and others to ban traditional ammunition made with lead components under the Toxic Substances and Control Act (“TSCA”). TSCA simply does not allow the Environmental Protection Agency (“EPA”) to regulate ammunition of any kind or in the manner proposed by the Petitioners, and EPA should promptly deny this petition.

NSSF and our association of shooting ranges are proud of our cooperative relationship with EPA on the voluntary Shooting Range Certification Program that encourages ranges and gun clubs to operate in an environmentally responsible manner by implementing an Environmental Stewardship Plan (“ESP”). We commend you for the important role you played in developing this joint EPA-NSSF program while working with EPA Region 2. We remain committed to continuing and strengthening our relationship with EPA on the Shooting Range Certification Program as one way of achieving our shared goals.

TSCA expressly excludes from the definition of “chemical substance” subject to regulation under TSCA, any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by sections 4181 or 4221 or any other provision of such Code). 15 U.S.C. § 2602(2) (B)(v). There is no debate that “shells and cartridges” are subject to taxes imposed pursuant to section 4181 of the Internal Revenue Code. Thus, “shells and cartridges” are not “chemical substances” subject to Section 6 of TSCA.

Petitioners acknowledge this exemption, but claim that because “lead shot and bullets are not subject to this tax,” EPA may regulate them under TSCA. In essence, while Petitioners concede that “shells and cartridges” are exempt from TSCA, they nonetheless would have EPA regulate these identical items under TSCA by illegally creating a loophole dependent on the component parts of “shells and cartridges.” This would effectively read out of the statute Congress’s clear direction that TSCA was not intended to regulate ammunition, since ammunition is simply the sum total of its components.

When TSCA was enacted in 1976, essentially the only substance available at that time to manufacture shot and bullets was lead. This indicates that Congress’s intent in exempting shells and cartridges from TSCA regulation was also to exempt their lead-containing component parts. Any other interpretation would stand the exemption on its head and impute an absurd intention to Congress. Congress would not

have exempted shells and cartridges from TSCA regulation only to effectively undo the exemption by allowing EPA to use TSCA to ban or regulate their indispensable component parts. By claiming they "have waited until nontoxic alternatives have become available to submit this petition" Petitioners concede this point -- alternatives to traditional ammunition containing lead components were not available in 1976. It is worth noting that the timing of the petition can have no bearing on Congressional intent.

Petitioners cite no legal authority to support their claim that Congress intended to authorize EPA to use TSCA to regulate or ban the component parts of ammunition, but yet prohibited EPA using TSCA to regulate the final product itself. Petitioners can cite only to an IRS Revenue Ruling for the obvious proposition that the tax rates in 26 U.S.C. § 4181 should be applied to the sale price for the final manufactured product, rather than as cumulative, value-added taxes on each separate component. Petitioners claim that this ruling "has been confirmed by subsequent administrative decisions," but further cite only to the "Fed. Tax Coordinator," which is simply a legal treatise on various tax issues. It does not support Petitioners' claim.

We note that adopting Petitioners' statutory interpretation would impute a second absurd intention to Congress: lead-containing shells and cartridges could no longer be manufactured in the United States (because lead shot and bullets would have been banned); yet lead-containing shells and cartridges could still be imported from other countries for use in the United States because, as even the Petitioners conceded, shells and cartridges are not subject to TSCA. EPA's guidance on TSCA's import requirements confirms the conclusion that imported ammunition is not subject to TSCA. *See*, Introduction to the Chemical Import Requirements of the Toxic Substances Control Act at p. 2 (EPA, 1999). Therefore, EPA cannot ban the importation of lead-containing shells and cartridges, nor their use for hunting in the United States. Congress did not intend such a curious regulatory scheme.

Granting the petition would therefore not result in a ban on the use of lead ammunition because it would then be imported and used. Instead, granting the petition would only eliminate numerous jobs of people working in the manufacturing sector and ship these jobs to foreign countries. America's firearm and ammunition industry contributed almost \$28 billion to our nation's economy, creating 183,000 well paying full time jobs, generating wages exceeding \$8.2 billion and contributing almost \$4 billion in state and federal taxes. In 2009, the sale of ammunition to hunters, target shooters and sportsmen contributed nearly \$171 million dollars to wildlife conservation funding in the United States. We estimate that over 92% of that amount was from the sale of traditional ammunition made with lead components, less than 6% was from the sale of alternative shot shells and only 2% from the sale of metallic (non-shot shell) ammunition.

Finally, EPA's own regulations and guidance show that the individual components of ammunition are not to be regulated under TSCA. For example, EPA has stated that "ammunition" is not subject to the pre-manufacture notification requirements of Section 5 of TSCA. 48 Fed. Reg. 21722, 21723 (May 13, 1983). Further, under 40 C.F.R. § 712, manufacturers have to report to EPA certain information on chemical substances. In the instructions to the Part 712 form (known as the "Manufacturer's Report, Preliminary Assessment Information," copy attached), EPA instructs manufacturers not to report "any quantity of chemical substance that is manufactured or processed solely for use as: . . . firearms or ammunition. . . . **The above are not TSCA-regulable.**" (*See* p. 4, emphasis added.) EPA goes on to explain that:

Some of the chemical substances are manufactured for both TSCA and non-TSCA regulable purposes. If a chemical from a given manufacturing stream is solely for a non-TSCA use, no reporting is required.

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*Id.* EPA does not define “manufacturing stream” in Part 712, but does define it in the Part 721 rules broadly as “all reasonably anticipated transfer, flow, or disposal of a chemical substance, regardless of physical state or concentration, through all intended operations of manufacture, including the cleaning of equipment.” 40 C.F.R. § 721.3.

Given these provisions, it is clear that, in accordance with the exemption contained in the statute, EPA cannot use TSCA to regulate the individual components of ammunition. The use and processing of lead “solely for use” as ammunition (e.g., the manufacture of bullets or shot) is a “non-TSCA regulable” use.

We, of course, also strongly disagree with Petitioners’ other arguments and scientific claims, which they advance in support of their petition. However, our purpose in writing to you today is not to engage in a full rebuttal of the petition. Our purpose is simply to call to your attention the fact that Petitioners’ attempt to do away with the statutory exemption for shells and cartridges finds no support in the statute, regulations, or EPA’s guidance.

Accordingly, and with all due respect, EPA should promptly deny the petition because the Agency has no authority to regulate either the finished product—shells and cartridges—or their component parts—lead-containing shot and bullets. We are standing by to help EPA in any way in considering this petition. We would welcome the opportunity to discuss this with you further and to provide EPA with additional information, which might assist the Agency in considering the petition.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lawrence G. Keane".

Lawrence G. Keane

LGK/mas

Enclosure