

# United States Senate

WASHINGTON, DC 20510

November 21, 2019

Robert S. Adler  
Acting Chairman, U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

Dear Acting Chairman Adler:

We write in response to your September 5, 2019 letter regarding our request that the Consumer Product Safety Commission (CPSC), together with the Department of Commerce (Department), undertake action to adopt stricter, specific, and mandatory regulations covering “toy guns,” imitation guns, and non-powder guns. Specifically, we requested that the CPSC issue regulations to ensure that non-powder guns, including traditional BB guns, look markedly different from real firearms, and imitation and toy guns.

As you know, current regulations require “a blaze orange plug inserted in the barrel of such toy, look-alike, or imitation firearm,” or that toy guns be brightly colored singly or in combination with specified colors, have an orange marking on the barrel's exterior, or be made fully of transparent or translucent materials.<sup>1</sup> Unfortunately, these orange tips are easily removed or camouflaged.<sup>2</sup> Current law states that the Department of Commerce “may provide for an alternate marking or device for any toy, look-alike, or imitation firearm.”<sup>3</sup> Current regulations do not have any requirements regarding the appearance of non-powder guns.<sup>4</sup>

We were pleased to learn that the CPSC is working with ASTM's F15.06 subcommittee for ASTM F589-17, *Standard Consumer Safety Specification for Non-Powder Guns*, to possibly update the standard. Unfortunately, the January 24, 2019 review of the standard received more than 50 percent negative responses resulting in a failed proposal. We write to encourage the CPSC to continue working with ATSM on an update to the standard. We believe the most effective standard would require all three categories of real, toy or imitation, and non-powder guns to look significantly

---

<sup>1</sup> See 15 CFR Section 1150.3 Approved markings and ASTM F963 Consumer Safety Specification for Toys , Section 4.30 which mirror such requirements.

<sup>2</sup> <https://www.nytimes.com/2014/12/21/magazine/off-target-on-toy-gun-regulation.html>;  
<https://www.thetrace.org/2019/05/replica-gun-licensing-deals/>

<sup>3</sup> See 15 U.S.C. § 2052(a)(5)(E) (exempting firearms from the definition of “consumer product” subject to the authority of the Commission); Rev. Rul. 67-453, 1967-2 C.B. 378 (stating that air rifles and air pistols are not part of that exemption); <https://www.law.cornell.edu/uscode/text/15/5001>; see 15 CFR 1150.3 which does provide for alternate marking of toys, but not air gun weapons.

<sup>4</sup> *Id.*

different from one another. Moreover, whatever markings delineate these types of imitation guns should be as tamper-proof as possible.

It is past time for the Department to revise its toy and imitation gun regulations and for the CPSC to strengthen non-powder gun regulations. To that end, it is imperative that the CPSC find a path forward on updating ASTM F589-17. Thank you in advance for your cooperation. Please contact Shelby Boxenbaum ([Shelby.Boxenbaum@menendez.senate.gov](mailto:Shelby.Boxenbaum@menendez.senate.gov) or 202-224-4744) with any questions.

Sincerely,



Robert Menendez

United States Senator



Edward J. Markey

United States Senator



Richard Blumenthal

United States Senator