



July 18, 2022

Kerri Malinowski Farris  
Maine Department of Environmental Protection  
Office of the Commissioner  
17 State House Station  
28 Tyson Drive  
Augusta, Maine 04333-0017

**RE: Maine PFAS in Products Concept Draft**

Dear Ms. Malinowski Farris:

On behalf of the Toy Association (TTA) and our members we respectfully write to provide feedback on the Maine PFAS in Products Concept Draft dated 6-29-22. TTA is a not-for-profit trade association representing approximately eight hundred (800) toymakers, marketers, distributors, and retailers, large and small, located throughout North America. The organization has a long history of leadership in toy safety, having helped develop the first comprehensive toy safety standard more than 40 years ago, and remains committed to working with medical experts, government, consumers, and industry on ongoing programs to ensure safe and fun play. TTA regularly conducts educational seminars on these industry standards, educates parents and caregivers on choosing appropriate toys, and chairs the committee that reviews and revises America's widely emulated ASTM F963 toy safety standard.

In furtherance of this commitment to safety, most TTA members have eliminated "intentionally added PFAS" from their products or are in the process of doing so. However, the proposed draft still creates some potential compliance problems due to the definition of "manufacturer", which holds the brand owner/licensor responsible for products produced by a manufacturer who has licensed their intellectual property. In order for Toy Association members to come into compliance with this program, we respectfully suggest clarifications to the definition of "manufacturer" that would bring it more in line with other state chemical programs. Our preferred definition of manufacturer is from the Oregon Toxic Free Kids act: **"Manufacturer" means any person that produces a children's product or an importer or domestic distributor of a children's product. For the purposes of this subsection, "importer" means the owner of the children's product.**

Under a typical licensing arrangement, licensed merchandise is manufactured and sold by or on behalf of the licensee under a license agreement that permits the licensee to use the licensor's intellectual property (e.g., brand names, characters, logos, technology, etc.) on the licensee's products. The licensee's products may bear the licensor's brand name, but the licensor does not produce, own or sell

the merchandise. Trademark licensors ordinarily require that licensees comply with all laws in all jurisdictions where the licensed products are distributed, including state chemical disclosure laws. In states that currently have chemical disclosure laws (such as Oregon, Vermont, Washington, and California), licensors rely on their licensees to fulfill the registration and reporting obligations for their licensed products. However, Maine's statute makes the licensor responsible for reporting under this program. Absent a clarification in this definition, brand owners/trademark licensors would have to build systems to capture detailed information regarding when and where products are distributed into Maine – systems which do not exist today and are otherwise unnecessary, especially since this is essentially a one-time reporting requirement. This would make meeting the January 1, 2023 reporting deadline almost impossible. Furthermore, if the concept draft as written moves forward, brand owners could be held liable for counterfeit products using their intellectual property. Brand owners spend a considerable amount of time and resources attempting to eliminate counterfeit products from the market. Therefore, it is illogical to expect them to spend additional resources and to legitimize those products by having to test them and report their chemical composition to the state.

Thank you for your consideration of these concerns. I look forward to continuing to work with you throughout the rule making process. Please feel free to contact me at [eraden@toyassociation.org](mailto:eraden@toyassociation.org) or 520-991-0014 with any questions.

Sincerely,

A handwritten signature in black ink that reads "Erin Raden". The signature is written in a cursive, flowing style.

Erin Raden  
Director, State Government Affairs  
The Toy Association