

For discussion on
23 June 2014

**LEGISLATIVE COUNCIL
PANEL ON ECONOMIC DEVELOPMENT**

**Draft Guidelines for the Operation of the Relevant Sections
Concerning the Control on Phthalates
in the Toys and Children's Products Safety
(Additional Safety Standards or Requirements) Regulation**

Purpose

This paper briefs Members on the formulation of the draft guidelines for the operation of the relevant sections concerning the control on phthalates in the Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation ("the Regulation").

The Regulation

2. The Toys and Children's Products Safety Ordinance (Cap. 424) ("the Ordinance") provides for safety standards and requirements for children's toys and specified children's products. On 18 December 2013, the Legislative Council passed the Toys and Children's Products Safety (Amendment) Ordinance 2013 ("the Amendment Ordinance"), making amendments to the Ordinance to enable regulations to be made to control the concentration of six types of phthalates in certain toys and children's products.

3. The Regulation (at Annex A), made under the Ordinance as amended by the Amendment Ordinance, will come into operation on 1 July 2014. The Customs and Excise Department ("C&ED") is the enforcement agency.

4. The Regulation provides for, among other matters, the control on

the concentration limits of six types of phthalates in toys as well as children's products intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under 4 years of age and containing any plasticized material. The six types of phthalates are BBP, DBP, DEHP (grouped as Class 1 phthalates), DIDP, DINP and DNOP¹ (grouped as Class 2 phthalates).

5. In essence, the Regulation stipulates that the total weight of the Class 1 phthalates in a toy or children's product must not exceed 0.1% of the total weight of the plasticized materials in the toy or children's product. If a toy, a children's product, or its part(s) can be placed into the mouth of a child under 4 years of age, the total weight of the Class 2 phthalates in the toy, children's product or such part(s) must not exceed 0.1% of the total weight of the plasticized materials in the toy, children's product or such part(s). Any component part of a toy or children's product that cannot come into contact with a child under 4 years of age (for Class 1 phthalates) or such a child's mouth (for Class 2 phthalates) through reasonably foreseeable use (including reasonably foreseeable improper use) of the toy or children's product is not to be taken into account in determining the total weight of the Class 1 or Class 2 phthalates or the plasticized materials in the toy or children's product.

Draft Guidelines on the Regulation

6. The relevant Subcommittee of the Legislative Council scrutinized the Regulation during the negative vetting period of 19 February to 9 April 2014 and proposed no amendment. As suggested by the Subcommittee and deputations met by the Subcommittee, we have agreed to draw up guidelines to provide technical guidance on the operation of the relevant sections concerning the control on phthalates in the Regulation for the trade's reference.

7. From 5 May to 25 May 2014, we consulted 39 major associations and organizations of the trade on a set of draft guidelines covering the scope of application of the Regulation, illustrative examples

¹ BBP means benzyl butyl phthalate, DBP means dibutyl phthalate, DEHP means di(2-ethylhexyl) phthalate (also known as bis(2-ethylhexyl) phthalate or diethylhexyl phthalate), DIDP means diisodecyl phthalate, DINP means diisononyl phthalate, and DNOP means di-n-octyl phthalate.

showing how toys and children's products would be considered as "can be placed into the mouth" as well as product testing matters.

8. We have received three submissions. The salient points therein cover enquiries or suggestions respectively on the Administration's consideration in formulating the age limit in the Regulation; factors to be taken into account in determining whether certain products constitute children's products under the Regulation or whether their parts "can be placed into the mouth"; testing of products which comply with the phthalate requirements of advanced overseas economies like the European Union or the United States; provision of documents by importers to certify compliance with the legislation; and the need for stepping up publicity and public education on the Regulation.

9. Taking account of the submissions received during the consultation period, the finalized set of draft guidelines has been prepared (at Annex B), in which the presentation has been improved and additional examples provided.

Way Forward

10. C&ED has plans to organize seminars for the trade on the phthalate requirements under the Regulation, produce education leaflets for distribution to the trade, and make visits to kindergartens and nurseries to explain how to choose compliant products.

11. C&ED will make reference to the finalized guidelines when enforcing the Regulation from 1 July 2014.

**Commerce, Industry and Tourism Branch,
Commerce and Economic Development Bureau
Customs and Excise Department
June 2014**

Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation

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Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation

(Made by the Secretary for Commerce and Economic Development under section 35 of the Toys and Children's Products Safety Ordinance (Cap. 424))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on the day on which section 16 of the Toys and Children's Products Safety (Amendment) Ordinance 2013 (18 of 2013) comes into operation.

2. Interpretation

(1) In this Regulation—

BBP means benzyl butyl phthalate;

Class 1 phthalate (第1類塑化劑) means—

- (a) BBP;
- (b) DBP; or
- (c) DEHP;

Class 2 phthalate (第2類塑化劑) means—

- (a) DIDP;
- (b) DINP; or
- (c) DNOP;

company (公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);

DBP means dibutyl phthalate;

DEHP means—

- (a) bis(2-ethylhexyl) phthalate;
- (b) diethylhexyl phthalate; or
- (c) di(2-ethylhexyl) phthalate;

DIDP means diisodecyl phthalate;

DINP means diisononyl phthalate;

DNOP means di-n-octyl phthalate;

use (使用) includes improper use.

- (2) For the purposes of sections 8 and 14, a toy or children's product can be placed into the mouth of a child under 4 years of age if—
 - (a) each dimension of the toy or product is less than 5 cm; or
 - (b) the toy or product can, in a reasonably foreseeable manner, be brought to the mouth of such a child and kept in the mouth so that the toy or product can be sucked or chewed.
- (3) For the purposes of sections 9 and 15, a part of a toy or children's product can be placed into the mouth of a child under 4 years of age if—
 - (a) at least one of the dimensions of the part is less than 5 cm; or
 - (b) the part can, in a reasonably foreseeable manner, be brought to the mouth of such a child and kept in the mouth so that the part can be sucked or chewed.

- (4) For the purposes of subsections (2) and (3), if a toy, children's product, or part of a toy or children's product is inflatable, the toy, product or part is to be considered in its deflated state.

3. Application

This Regulation applies to—

- (a) a toy within the meaning of paragraph (a) of the definition of *toy* in section 2 of the Ordinance; and
- (b) a children's product within the meaning of section 2C(1) of the Ordinance.

4. Additional safety standards or requirements for toys and children's products

- (1) The additional safety standards or requirements for toys are set out in Part 2.
- (2) The additional safety standards or requirements for children's products are set out in Part 3.
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Part 2

Additional Safety Standards or Requirements for Toys

Division 1—Supply of Toys

5. Identification markings

- (1) The information set out in subsection (2) must be legibly marked, in the English or Chinese language, or both, in a conspicuous position on—
- (a) a toy;
- (b) the packaging of a toy;
- (c) a label securely affixed to a toy or the packaging of a toy; or
- (d) a document enclosed in the packaging of a toy.
- (2) The information is—
- (a) the full name or trade mark of the manufacturer, importer or supplier of the toy (*connected person*), or any other mark of the connected person that enables the person to be identified; and
- (b) the address in Hong Kong of the connected person.
- (3) If the connected person is a company, the address mentioned in subsection (2)(b) is the address of the registered office in Hong Kong of the company.

6. Bilingual warnings or cautions

- (1) This section applies if a warning or caution with respect to the safe keeping, use, consumption or disposal of a toy (*safety warning*)—

- (a) is marked on the toy;
 - (b) is marked on the packaging of the toy;
 - (c) is contained in a label affixed to the toy or the packaging of the toy; or
 - (d) is contained in a document enclosed in the packaging of the toy.
- (2) The safety warning—
 - (a) must be legible; and
 - (b) must be in both the English and Chinese languages.
 - (3) If the safety warning is marked on a toy, the warning must be in a conspicuous position on the toy.
 - (4) If the safety warning is marked on the packaging of a toy, the warning must be in a conspicuous position on the packaging.
 - (5) If the safety warning is contained in a label affixed to a toy or the packaging of a toy—
 - (a) the warning must be in a conspicuous position on the label; and
 - (b) the label must be securely affixed to the toy or the packaging.
 - (6) If the safety warning is contained in a document enclosed in the packaging of a toy, the warning must be in a conspicuous position on the document.

Division 2—Concentration of Phthalates in Toys

Subdivision 1—Class 1 Phthalates

7. Concentration of Class 1 phthalates in toys

- (1) This section applies to a toy that contains any Class 1 phthalate.
- (2) The total weight of the Class 1 phthalates in a toy must not exceed 0.1% of the total weight of the plasticized materials in the toy.
- (3) In determining the total weight of the Class 1 phthalates or the plasticized materials in a toy, a component part of the toy that is inaccessible is not to be taken into account.
- (4) For the purposes of subsection (3), a component part of a toy is inaccessible if the component part cannot come into contact with a child through reasonably foreseeable use of the toy.

Subdivision 2—Class 2 Phthalates

8. Toys capable of being entirely placed into mouth of child under 4 years of age

- (1) This section applies to a toy if—
 - (a) the toy can be placed into the mouth of a child under 4 years of age; and
 - (b) the toy contains any Class 2 phthalate.
- (2) The total weight of the Class 2 phthalates in a toy must not exceed 0.1% of the total weight of the plasticized materials in the toy.

- (3) In determining the total weight of the Class 2 phthalates or the plasticized materials in a toy, a component part of the toy that is inaccessible is not to be taken into account.
- (4) For the purposes of subsection (3), a component part of a toy is inaccessible if the component part cannot come into contact with the mouth of a child under 4 years of age through reasonably foreseeable use of the toy.

9. Toys capable of being partly placed into mouth of child under 4 years of age

- (1) This section applies to a toy if—
 - (a) only one part of the toy can be placed into the mouth of a child under 4 years of age, and that part contains any Class 2 phthalate; or
 - (b) more than one part of the toy can be placed into the mouth of a child under 4 years of age, and all or any of those parts contains any Class 2 phthalate.
- (2) For a toy falling within the description in subsection (1)(a), the total weight of the Class 2 phthalates in the part mentioned in that subsection must not exceed 0.1% of the total weight of the plasticized materials in that part.
- (3) For a toy falling within the description in subsection (1)(b), the total weight of the Class 2 phthalates in those parts mentioned in that subsection must not exceed 0.1% of the total weight of the plasticized materials in those parts.
- (4) In determining the total weight of the Class 2 phthalates or the plasticized materials in one or more than one part of a toy, a component part of the toy that is inaccessible is not to be taken into account.
- (5) For the purposes of subsection (4), a component part of a toy is inaccessible if the component part cannot come into contact

with the mouth of a child under 4 years of age through reasonably foreseeable use of the toy.

Part 3

Additional Safety Standards or Requirements for Children's Products

Division 1—Supply of Children's Products

10. Identification markings

- (1) The information set out in subsection (2) must be legibly marked, in the English or Chinese language, or both, in a conspicuous position on—
 - (a) a children's product;
 - (b) the packaging of a children's product;
 - (c) a label securely affixed to a children's product or the packaging of a children's product; or
 - (d) a document enclosed in the packaging of a children's product.
- (2) The information is—
 - (a) the full name or trade mark of the manufacturer, importer or supplier of the children's product (*connected person*), or any other mark of the connected person that enables the person to be identified; and
 - (b) the address in Hong Kong of the connected person.
- (3) If the connected person is a company, the address mentioned in subsection (2)(b) is the address of the registered office in Hong Kong of the company.

11. Bilingual warnings or cautions

- (1) This section applies if a warning or caution with respect to the safe keeping, use, consumption or disposal of a children's product (*safety warning*)—
 - (a) is marked on the product;
 - (b) is marked on the packaging of the product;
 - (c) is contained in a label affixed to the product or the packaging of the product; or
 - (d) is contained in a document enclosed in the packaging of the product.
- (2) The safety warning—
 - (a) must be legible; and
 - (b) must be in both the English and Chinese languages.
- (3) If the safety warning is marked on a children's product, the warning must be in a conspicuous position on the product.
- (4) If the safety warning is marked on the packaging of a children's product, the warning must be in a conspicuous position on the packaging.
- (5) If the safety warning is contained in a label affixed to a children's product or the packaging of a children's product—
 - (a) the warning must be in a conspicuous position on the label; and
 - (b) the label must be securely affixed to the product or the packaging.
- (6) If the safety warning is contained in a document enclosed in the packaging of a children's product, the warning must be in a conspicuous position on the document.

Division 2—Concentration of Phthalates in Children's Products

Subdivision 1—Application

12. Application of Division 2 of Part 3

This Division applies to a children's product that is intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under 4 years of age, and that contains any plasticized material.

Subdivision 2—Class 1 Phthalates

13. Concentration of Class 1 phthalates in children's products

- (1) This section applies to a children's product that contains any Class 1 phthalate.
- (2) The total weight of the Class 1 phthalates in a children's product must not exceed 0.1% of the total weight of the plasticized materials in the product.
- (3) In determining the total weight of the Class 1 phthalates or the plasticized materials in a children's product, a component part of the product that is inaccessible is not to be taken into account.
- (4) For the purposes of subsection (3), a component part of a children's product is inaccessible if the component part cannot come into contact with a child under 4 years of age through reasonably foreseeable use of the product.

Subdivision 3—Class 2 Phthalates

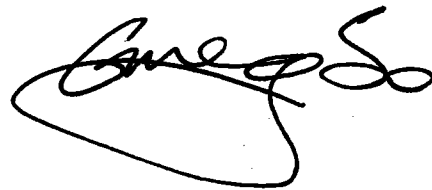
14. Children's products capable of being entirely placed into mouth of child under 4 years of age

- (1) This section applies to a children's product if—
 - (a) the product can be placed into the mouth of a child under 4 years of age; and
 - (b) the product contains any Class 2 phthalate.
- (2) The total weight of the Class 2 phthalates in a children's product must not exceed 0.1% of the total weight of the plasticized materials in the product.
- (3) In determining the total weight of the Class 2 phthalates or the plasticized materials in a children's product, a component part of the product that is inaccessible is not to be taken into account.
- (4) For the purposes of subsection (3), a component part of a children's product is inaccessible if the component part cannot come into contact with the mouth of a child under 4 years of age through reasonably foreseeable use of the product.

15. Children's products capable of being partly placed into mouth of child under 4 years of age

- (1) This section applies to a children's product if—
 - (a) only one part of the product can be placed into the mouth of a child under 4 years of age, and that part contains any Class 2 phthalate; or
 - (b) more than one part of the product can be placed into the mouth of a child under 4 years of age, and all or any of those parts contains any Class 2 phthalate.

- (2) For a children's product falling within the description in subsection (1)(a), the total weight of the Class 2 phthalates in the part mentioned in that subsection must not exceed 0.1% of the total weight of the plasticized materials in that part.
- (3) For a children's product falling within the description in subsection (1)(b), the total weight of the Class 2 phthalates in those parts mentioned in that subsection must not exceed 0.1% of the total weight of the plasticized materials in those parts.
- (4) In determining the total weight of the Class 2 phthalates or the plasticized materials in one or more than one part of a children's product, a component part of the product that is inaccessible is not to be taken into account.
- (5) For the purposes of subsection (4), a component part of a children's product is inaccessible if the component part cannot come into contact with the mouth of a child under 4 years of age through reasonably foreseeable use of the product.



Secretary for Commerce and
Economic Development

12 February 2014

Explanatory Note

Section 35 of the Toys and Children's Products Safety Ordinance (Cap. 424) (*TCPSO*) is replaced by a new section 35 under section 16 of the Toys and Children's Products Safety (Amendment) Ordinance 2013 (18 of 2013) (*Amendment Ordinance*). This Regulation is made under the new section 35. The main purpose of the Regulation is to impose additional safety standards or requirements for toys and children's products (other than their packaging). For the meaning of *toy*, see section 2 of the TCPSO as amended by the Amendment Ordinance. For the meaning of *children's product*, see section 2C of the amended TCPSO.

2. Section 1 provides for the commencement of the Regulation.
3. Section 2 defines certain terms and expressions used in the Regulation.
4. Section 3 provides that the Regulation applies to—
 - (a) a toy within the meaning of paragraph (a) of the definition of *toy* in section 2 of the amended TCPSO (*regulated toy*); and
 - (b) a children's product within the meaning of section 2C(1) of the amended TCPSO (*regulated children's product*).
5. Part 2 (sections 5 to 9) relates to additional safety standards or requirements for regulated toys.
6. Sections 5 and 6 apply to the supply of regulated toys.
7. Section 5 imposes standards or requirements in relation to identification markings of regulated toys, and section 6 imposes standards or requirements in relation to warnings or cautions with respect to the safe keeping, use, consumption or disposal of regulated toys.

8. Section 7 imposes standards or requirements on the concentration of benzyl butyl phthalate (*BBP*), dibutyl phthalate (*DBP*) and bis(2-ethylhexyl) phthalate (also known as diethylhexyl phthalate or di(2-ethylhexyl) phthalate) (*DEHP*) in regulated toys.
9. Section 8 imposes standards or requirements on the concentration of diisodecyl phthalate (*DIDP*), diisononyl phthalate (*DINP*) and di-n-octyl phthalate (*DNOP*) in regulated toys that can be entirely placed into the mouth of a child under 4 years of age.
10. Section 9 imposes standards or requirements on the concentration of DIDP, DINP and DNOP in regulated toys that can be partly placed into the mouth of a child under 4 years of age.
11. Part 3 (sections 10 to 15) relates to additional safety standards or requirements for regulated children's products.
12. Sections 10 and 11 apply to the supply of regulated children's products.
13. Section 10 imposes standards or requirements in relation to identification markings of regulated children's products, and section 11 imposes standards or requirements in relation to warnings or cautions with respect to the safe keeping, use, consumption or disposal of regulated children's products.
14. Section 13 imposes standards or requirements on the concentration of BBP, DBP and DEHP in regulated children's products that are intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under 4 years of age.
15. Section 14 imposes standards or requirements on the concentration of DIDP, DINP and DNOP in regulated children's products that are intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under 4 years of age and that can be entirely placed into the mouth of such a child.

16. Section 15 imposes standards or requirements on the concentration of DIDP, DINP and DNOP in regulated children's products that are intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under 4 years of age and that can be partly placed into the mouth of such a child.
17. If a person fails to comply with the additional safety standards or requirements in Part 2 or 3, the person commits an offence under section 8 of the amended TCPSO.

Final Draft Guidelines
For
The Toys and Children's Products Safety
(Additional Safety Standards or Requirements) Regulation

June 2014

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Introduction

The Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation (the Regulation), made in February 2014 under section 35 of the Toys and Children's Products Safety Ordinance (Cap. 424) (the Ordinance) as amended by the Toys and Children's Products Safety (Amendment) Ordinance 2013, comes into operation on 1 July 2014. The Customs and Excise Department (C&ED) is the enforcement agency.

2. The Regulation provides for, among other matters, the control on the concentration limits of six types of phthalates in certain toys and children's products. The six types of phthalates are –

- benzyl butyl phthalate (BBP);
- dibutyl phthalate (DBP);
- di(2-ethylhexyl) phthalate (also known as bis(2-ethylhexyl) phthalate or diethylhexyl phthalate) (DEHP);
- diisodecyl phthalate (DIDP);
- diisononyl phthalate (DINP); and
- di-n-octyl phthalate (DNOP).

3. This set of guidelines comes into effect on 1 July 2014. It is issued by C&ED to provide technical guidance on the operation of sections 2, 3, 7, 8, 9, 12, 13, 14 and 15 of the Regulation concerning the control on the concentration limits of the above six types of phthalates, so as to facilitate compliance by manufacturers, importers or suppliers of toys or children's products concerned. The examples used in the guidelines seek to illustrate the coverage of those regulations and how they may be enforced in practice. The examples however do not cover each and every toy, children's product or situation which may be covered by the sections. Accordingly, even if a particular toy, children's product or situation is not mentioned in the guidelines, it does not necessarily

imply that such a toy, children's product or situation falls outside the coverage of the sections.

4. This set of guidelines is neither legally binding nor is it subsidiary legislation made under the Ordinance. It is not a definitive interpretation of the relevant sections of the Regulation. It does not serve to give any legal advice, nor does it substitute, add, supplement or amend the statutory provisions of the Regulation. Manufacturers, importers or suppliers of toys or children's products concerned should refer to the Regulation for the relevant statutory provisions and seek their own legal advice if necessary.

Scope of Application of the Regulation

Six types of phthalates subject to control

5. The Regulation provides for the control on the concentration limits of six types of phthalates, i.e. Class 1 phthalates comprising BBP, DBP and DEHP, and Class 2 phthalates comprising DIDP, DINP and DNOP. The Regulation does not control phthalates other than these six types of phthalates.

Toys and children's products subject to control

6. Pursuant to section 3, the phthalate control under the Regulation applies to a toy. "Toy", in accordance with the Ordinance, means a product or material that is designed or clearly intended for use in play by a child. The phthalate control does not apply to the packaging of a toy.

7. Section 3 as read with section 12, the phthalate control under the Regulation also applies to a children's product that is intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under 4 years of age and contains any plasticized material. The phthalate control does not apply to the packaging of a children's product.

Application of concentration limits of six types of phthalates

8. Paragraphs 9 to 18 below set out the applicable concentration limits of the six types of phthalates in toys and children's products, which are subject to the exclusion provisions set out in paragraph 21 below.

Toys

Class 1 phthalates

9. Section 7 provides that the total weight of the Class 1 phthalates in a toy must not exceed 0.1% of the total weight of the plasticized materials in the toy.

Class 2 phthalates

10. Sections 8 and 9 regulate the concentration limit of Class 2 phthalates in toys capable of being entirely or partly placed into the mouth of a child under 4 years of age.

11. If a toy can be entirely placed into the mouth of a child under 4 years of age, the total weight of the Class 2 phthalates in the toy must not exceed 0.1% of the total weight of the plasticized materials in the toy.

12. If only one part of a toy can be placed into the mouth of a child under 4 years of age, the total weight of the Class 2 phthalates in that part must not exceed 0.1% of the total weight of the plasticized materials in that part.

13. If more than one part of a toy can be placed into the mouth of a child under 4 years of age, the total weight of the Class 2 phthalates in those parts must not exceed 0.1% of the total weight of the plasticized materials in those parts.

Children's products

Class 1 phthalates

14. Section 13 provides that the total weight of the Class 1 phthalates in a children's product must not exceed 0.1% of the total weight of the plasticized materials in the product.

Class 2 phthalates

15. Sections 14 and 15 regulate the concentration limit of Class 2 phthalates in children's products capable of being entirely or partly placed into the mouth of a child under 4 years of age.

16. If a children's product can be entirely placed into the mouth of a child under 4 years of age, the total weight of the Class 2 phthalates in the children's product must not exceed 0.1% of the total weight of the plasticized materials in the product.

17. If only one part of a children's product can be placed into the mouth of a child under 4 years of age, the total weight of the Class 2 phthalates in that part must not exceed 0.1% of the total weight of the plasticized materials in that part.

18. If more than one part of a children's product can be placed into the mouth of a child under 4 years of age, the total weight of the Class 2 phthalates in those parts must not exceed 0.1% of the total weight of the plasticized materials in those parts.

19. There are numerous children's products being supplied in the market. Some examples are shown below –

To facilitate	Children's product
Feeding	<ul style="list-style-type: none">● bib● bottle teat● feeding bottle● children's high chair and multi-purpose high chair for domestic use● eating cutlery or utensil

To facilitate	Children's product
Hygiene	<ul style="list-style-type: none"> ● toothbrush ● tongue cleanser ● changing mat ● bathing aid
Relaxation	<ul style="list-style-type: none"> ● babies' dummy ● plastic play mat ● babies' bassinet / cradle / rocker chair
Sleep	<ul style="list-style-type: none"> ● babies' blanket ● children's cot for domestic use ● carry cot and similar handled product and stand ● crib mattress, pad and cover ● pillow with plastic cover
Sucking	<ul style="list-style-type: none"> ● sipper cup ● straw
Teething	<ul style="list-style-type: none"> ● teether / teething ring ● gum soother

20. Some products containing plasticized materials such as baby slings, baby carriages and strollers may have multiple functions. Whether these products are subject to the phthalate control under the Regulation would depend mainly on whether they are intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under 4 years of age. When considering whether a product has any of these functions, relevant factors to be taken into account include (but are not limited to) any promotion/ marketing material, advertisement and user manual of the product.

“Inaccessible parts” of toys and children's products not subject to control

21. Pursuant to sections 7(3), 7(4), 8(3), 8(4), 9(4), 9(5), 13(3), 13(4), 14(3), 14(4), 15(4) and 15(5), any component part of a toy or children's

product that is inaccessible is not to be taken into account in determining the total weight of the Class 1 or Class 2 phthalates or the plasticized materials in the toy or children's product. A component part is inaccessible if it cannot come into contact with a child under 4 years of age (for Class 1 phthalates) or the mouth of a child under 4 years of age (for Class 2 phthalates) through reasonably foreseeable use of the toy or children's product. The expression "reasonably foreseeable" means "what a reasonable person could have anticipated". "Use" as defined in section 2 includes "improper use".

22. Reasonably foreseeable improper use of a toy or children's product may, depending on the purposes for which the toy or children's product is designed, include any tearing, bending, breaking, throwing or mouthing of the toy or children's product. An example of a component part that is inaccessible is a cable which remains securely enclosed inside a toy or children's product even if a child throws the toy or children's product around.

23. In determining the "reasonably foreseeable use" of a toy or children's product, and whether a component part of a toy or children's product is inaccessible, C&ED may make reference to the relevant use and abuse tests in the international safety standards (e.g. ISO 8124) or standards adopted in advanced economies such as the European Union and the United States (e.g. BS EN 71 and ASTM F963), as appropriate.

Toys or Children’s Products that “can be placed into the mouth”

24. Section 2(2) stipulates that a toy or children’s product can be placed into the mouth of a child under 4 years of age if –

- (a) each dimension of the toy or product is less than 5 cm; or
- (b) the toy or product can, in a reasonably foreseeable manner, be brought to the mouth of such a child and kept in the mouth so that the toy or product can be sucked or chewed.

25. Section 2(3) stipulates that a part of a toy or children’s product can be placed into the mouth of a child under 4 years of age if –

- (a) at least one of the dimensions of the part is less than 5 cm; or
- (b) the part can, in a reasonably foreseeable manner, be brought to the mouth of such a child and kept in the mouth so that the part can be sucked or chewed.

26. In general, a toy, a children’s product, or a part of it will not be regarded as “can be placed into the mouth” if it can just be licked.

27. Section 2(4) specifies that an inflatable toy, children’ product, or part of a toy or children’s product should be considered in its deflated state for the purposes of sections 2(2) and 2(3).

28. The expression “reasonably foreseeable” in sections 2(2) and 2(3) means “what a reasonable person could have anticipated”. When considering whether a toy, a children’s product, or a part of it can in a reasonably foreseeable manner be placed into a child’s mouth, relevant factors to be taken into account would include (but are not limited to) the use, size, shape or material of the toy or children’s product.

29. Some examples are shown below to illustrate how a toy, a children's product or its parts are regarded as "can be placed into the mouth" –

Example 1 – toy (doll)



- Hands, feet and leaf-shaped cap can be placed into the mouth as at least one of their dimensions is less than 5 cm (see section 2(3)(a)).
- Head and body are considered as parts that cannot be placed into the mouth if none of their dimensions is less than 5 cm, and they cannot in a reasonably foreseeable manner be brought to a child's mouth so that they can be sucked or chewed (see section 2(3)).

Example 2 – toy (inflatable ball)



- The ball can be placed into the mouth as one of its dimensions is less than 5 cm when deflated (see sections 2(3)(a) and 2(4)).
- Air-inflation inlet with stopper can be placed into the mouth as all of its dimensions are less than 5 cm (see section 2(3)(a)).

Example 3 – children’s product (teether)



- Any part of the teether that is less than 5 cm in one dimension can be placed into the mouth (see section 2(3)(a)).

Example 4 – children’s product (changing mat)



- Edges of the changing mat can be placed into the mouth if at least one of their dimensions is less than 5 cm (see section 2(3)(a)).
- Centre part and backside of the changing mat are considered as parts that cannot be placed into the mouth. The centre part can just be licked. The backside cannot come into contact with a child’s mouth through reasonably foreseeable use of the changing mat. (See sections 2(3)(b) and 15(5).)

Example 5 – children’s product (high chair)



- Tray of the high chair can be placed into the mouth if at least one of its dimensions is less than 5 cm (see section 2(3)(a)).
- As the seat back, footrest, legs and wheels of the high chair cannot come into contact with a child’s mouth through reasonably foreseeable use of the high chair, they are considered as parts that cannot be placed into the mouth (see sections 2(3)(b) and 15(5)).

Testing of Phthalates

30. The Regulation does not specify any particular test methods for determining whether a toy or children's product complies with the relevant sections of the Regulation concerning the control on the concentration limits of the six types of phthalates. Manufacturers, importers or suppliers may have a toy or children's product tested by an approved laboratory¹ using any commonly used test methods (e.g. BS EN 14372:2004² of the European Union, CPSC-CH-C1001-09.3³ of the United States, Method C-34⁴ of Canada and GB/T 22048-2008⁵ of the Mainland).

31. Advanced economies such as the European Union and the United States have already implemented control on the concentration limits of the six types of phthalates in toys and children's products. If manufacturers, importers or suppliers provide a test certificate showing compliance of a toy or children's product with the phthalate requirements implemented in these advanced economies to indicate compliance with the relevant sections of the Regulation, C&ED would examine such certificates on a case by case basis. For example, a test certificate may show the concentration of each of the six types of phthalates in each component part of a product. Pursuant to sections 7, 8, 9, 13, 14 and 15 of the Regulation, the total weight of the Class 1 phthalates and the total

¹ An approved laboratory refers to a laboratory approved in writing by the Commissioner for Innovation and Technology for the purpose of testing toys and children's products. It includes a laboratory accredited under the Hong Kong Laboratory Accreditation Scheme (HOKLAS); and a laboratory accredited under those Schemes which have concluded mutual recognition agreements with HOKLAS.

² BS EN 14372:2004 – “Child use and care articles – Cutlery and feeding utensils – Safety requirements and tests” established by the European Committee for Standardization.

³ CPSC-CH-C1001-09.3 – “Standard Operating Procedure for Determination of Phthalates” used by the Consumer Product Safety Commission of the United States.

⁴ Method C-34 – “Determination of Phthalates in Polyvinyl Chloride Consumer Products” provided by Health Canada.

⁵ GB/T 22048-2008 – “Toys and children's products – Determination of phthalate plasticizers in polyvinyl chloride plastic” published by the General Administration of Quality Supervision, Inspection and Quarantine of the Mainland.

weight of the Class 2 phthalates must not exceed 0.1% of the total weight of the plasticized materials in the product. Generally speaking, where such test certificate could show that the aggregated concentration of the Class 1 phthalates and the aggregated concentration of the Class 2 phthalates in each component part of a product do not exceed 0.1%, the product would comply with the phthalate requirements under the Regulation. If necessary, C&ED may have the toy or children's product tested by the Government Chemist.

Enquiries

32. Any enquiries on this set of guidelines can be made with C&ED through the following means –

By telephone

(852) 2815 7711

By email

customsenquiry@customs.gov.hk

By fax

(852) 3108 3427

By post

Customs and Excise Department
Consumer Protection Bureau (1)
14/F, Customs Headquarters Building
222 Java Road, North Point
Hong Kong

Customs and Excise Department

June 2014