

(b) EXCEPTIONS AND EXCLUSIONS.—

(1) EXCEPTION IF NO ABSORPTION OR OTHER ADVERSE IMPACT.—The Commission may, by regulation, grant an exception to the prohibition in subsection (a) for a specific product or material if the Commission, after notice and a hearing, determines on the basis of the best-available, objective, peer-reviewed, scientific evidence that lead in such product or material will neither—

(A) result in the absorption of any lead into the human body, taking into account normal and reasonably foreseeable use and abuse of such product by a child, including swallowing, mouthing, breaking, or other children’s activities, and the aging of the product; nor

(B) have any other adverse impact on public health or safety.

(2) FUNCTIONAL PURPOSE EXCEPTION.—

(A) IN GENERAL.—The Commission, on its own initiative or upon petition by an interested party, may grant an exception to the prohibition in subsection (a) for a specific product, material, or component part if the Commission, after notice and comment in accordance with subparagraph (C), determines that—

(i) the product, material, or component part requires the inclusion of lead because it is not practicable or not technologically feasible to manufacture such product, component part, or material in accordance with subsection (a) by removing the excessive lead or by making the lead inaccessible;

(ii) the product, material, or component part is not likely to be placed in the mouth or ingested, taking into account normal and foreseeable use and abuse of such product, material, or component part by a child; and

(iii) an exception for the product, component part, or material will have no measurable adverse effect on public health or safety.

(B) WARNINGS.—In the case of a product, component part, or material for which the Commission grants an exception under subparagraph (A), the Commission may require that such product, component part, or material, or its packaging, as practicable, bear a label that—

(i) indicates that such product, component part, or material contains lead;

(ii) indicates that such lead content is subject to an exception under subparagraph (A); and

(iii) gives adequate directions and warnings for safe use of such product, component part, or material, as necessary to protect the public health.

(C) PROCEDURES FOR GRANTING EXCEPTION.—

(i) NOTICE AND COMMENT PERIOD.—Before granting an exception under subparagraph (A), the Commission shall allow not fewer than 60 days for public comment after publishing the notice of the proposed exception.

(ii) BURDEN OF PROOF.—A party seeking an exception under subparagraph (A) has the burden of demonstrating that it meets the requirements of such subparagraph.

(iii) GROUND FOR DECISION.—In the case where a party has petitioned for an exception, in determining whether to grant the exception, the Commission may

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confine the evidence it considers to only that evidence presented by the party seeking such exception.

(iv) ADMISSIBLE EVIDENCE.—In demonstrating that it meets the requirements of subparagraph (A), a party seeking an exception under such subparagraph may rely on any nonproprietary information submitted by any other party seeking such an exception.

(v) NARROWEST POSSIBLE SCOPE OF EXCEPTION.—If an exception is sought for an entire product, the burden is on the petitioning party to demonstrate that the criteria in subparagraph (A) are met with respect to every component of the product.

(D) LIMITATION ON EXCEPTION.—If the Commission grants an exception for a product, component part, or material under subparagraph (A), the Commission may, as necessary to protect the public health and safety—

(i) require each manufacturer of such product, component part, or material to reduce the lead in such product, component part, or material to a level above that required by subsection (a); or

(ii) place an expiration date on such exception or establish a schedule by which such product, component part, or material shall be in full compliance with the limits in subsection (a).

(E) APPLICATION OF EXCEPTION.—An exception under subparagraph (A) for a product, component part, or material shall apply regardless of the date of manufacture unless the Commission expressly provides otherwise.

(3) EXCLUSION OF CERTAIN USED CHILDREN'S PRODUCTS.—

(A) GENERAL EXCLUSION.—The lead limits established under subsection (a) shall not apply to a used children's product.

(B) DEFINITION.—The term 'used children's product' means a children's product that was obtained by the seller for use and not for the purpose of resale or was obtained by the seller from a person who obtained such children's product for use and not for the purpose of resale. Such term shall not include—

(i) children's metal jewelry;

(ii) painted children's toys (as the term 'children's toy' is defined in section 108(e)(1)(B));

(iii) items composed primarily of accessible vinyl; or

(iv) any other children's product designated by the Commission.

For purposes of this definition, the term 'seller' includes a person who lends or donates a children's product.

(4) PROHIBITION ON SALE OF RECALLED PRODUCTS NOT AFFECTED.—Nothing in this subsection shall be construed as affecting the prohibition under section 19(a)(2) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(2)).

(5) EXCLUSION FOR INACCESSIBLE COMPONENT PARTS.—

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- (A) IN GENERAL.—The limits established under subsection (a) shall not apply to any component part of a children’s product that is not accessible to a child through normal and reasonably foreseeable use and abuse of such product, as determined by the Commission. A component part is not accessible under this subparagraph if such component part is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product. Reasonably foreseeable use and abuse shall include to, swallowing, mouthing, breaking, or other children’s activities, and the aging of the product.
- (B) INACCESSIBILITY PROCEEDING.—Within 1 year after the date of enactment of this Act, the Commission shall promulgate a rule providing guidance with respect to what product components, or classes of components, will be considered to be inaccessible for purposes of subparagraph (A).
- (C) APPLICATION PENDING CPSC GUIDANCE.—Until the Commission promulgates a rule pursuant to subparagraph (B), the determination of whether a product component is inaccessible to a child shall be made in accordance with the requirements laid out in subparagraph (A) for considering a component to be inaccessible to a child.

~~(6) CERTAIN BARRIERS DISQUALIFIED.—For purposes of this subsection, paint, coatings, or electroplating may not be considered to be a barrier that would render lead in the substrate inaccessible to a child, or to prevent absorption of any lead into the human body, through normal and reasonably foreseeable use and abuse of the product.~~

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~~(7) CERTAIN ELECTRONIC DEVICES.—If the Commission determines that it is not technologically feasible for certain electronic devices, including devices containing batteries, to comply with subsection (a), the Commission, by regulation, shall—~~

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- (A) issue requirements to eliminate or minimize the potential for exposure to and accessibility of lead in such electronic devices, which may include requirements that such electronic devices be equipped with a child-resistant cover or casing that prevents exposure to and accessibility of the parts of the product containing lead; and
- (B) establish a schedule by which such electronic devices shall be in full compliance with the limits in subsection (a), unless the Commission determines that full compliance will not be technologically feasible for such devices within a schedule set by the Commission.

~~(8) PERIODIC REVIEW.—The Commission shall, based on the best available scientific and technical information, periodically review and revise the regulations promulgated pursuant to this subsection no less frequently than every 5 years after the first promulgation of a regulation under this subsection to make them more stringent and to require the lowest amount of lead the Commission determines is technologically feasible to achieve.~~

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