



## LEGAL ADVISORY

**Subject:** The Reduction of Lead in Drinking Water Act

**Date:** December 2013, revised March 2014<sup>1</sup>

A new Federal law, effective January 4, 2014, impacts all Habitat affiliates (“Affiliates”) and ReStores by reducing allowable lead content in plumbing products used to convey water for human consumption. This legal advisory summarizes the law and discusses its impact on Affiliates.

The Reduction of Lead in Drinking Water Act, signed January 4, 2011, amends Section 1417 of the Safe Drinking Water Act (“SDWA”), and goes into effect **January 4, 2014**. This law reduces the allowable level of lead in plumbing products used to convey water for human consumption from 8.0% (where it stood since 1986) to 0.25% using a new method of lead content assessment. **The law applies to the installation, sale, and resale of potable plumbing products and will impact all current inventory (in warehouses or ReStores) and future donations.** In order to avoid fines and penalties from state and/or federal agencies, all Habitat Affiliates and Restores must understand and comply with the law effective January 4, 2014.

### **I. THE FEDERAL LAW:**

As of January 4, 2014, Affiliates cannot (i) install, (ii) sell or (iii) resell “pipes, pipe fittings, plumbing fittings or fixtures” that are not “lead free.” See 42 U.S.C. 300g-6, as amended. The new definition of “lead free” requires that the product have less than 0.25% lead content based on a new, statutory formula that factors the total number of components and the wetted surface area of each component.<sup>2</sup>

- **Products subject to this law: pipes, fittings, and fixtures that may provide water for human consumption (drinking, teeth brushing, food preparation)**
  - Kitchen faucets
  - Bathroom sink faucets
  - Dishwashers
  - Water heaters
  - Pipes and pipe fittings leading to these faucets/appliances
  - Plumbed-in appliances (if tubing is not entirely vinyl, plastic, PVC)
    - Plumbed-in appliances that contain only vinyl, PVC, or plastic piping are not subject to the lead law. Based on guidance from industry experts and the EPA, HFHI advises its

<sup>1</sup> The March 2014 revision to the legal advisory added the information on pp. 3-4 addressing ways in which ReStores can communicate the effect of the law to donors and customers.

<sup>2</sup> Affiliates must also check with local and State authorities. States may impose more stringent requirements than the Federal law.

affiliates that refrigerators (even those with ice makers or water dispensers) are included in this category of plumbed-in appliances that fall outside the scope of the lead law.

Thus, Affiliates can continue to sell refrigerators in the normal course of business as they did prior to January 4, 2014.<sup>3</sup>

- Even if installation is only temporary or for an emergency repair
- **Products exempt from this law:**
  - (1) Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles or water distribution main gate valves that are 2 inches in diameter or larger. *See* 1417(a)(4)(B).
    - This exemption category includes, but is not limited to:
      - Toilets
      - Showerheads
      - Bathtub fillers
      - And, all valves and piping leading to such toilets, bath and shower fixtures.
    - The 2 inch diameter qualification refers only to the “water distribution main gate valves.” This means that showerheads, bathtub fixtures, and related piping are exempt from the lead law regardless of size.
  - (2) Pipes, fittings, and fixtures used exclusively for services where water is not anticipated to be used for human consumption. *See* 1417(a)(4)(A).
    - manufacturing, industrial, processing, irrigation, outdoor watering, washing machine
  - Fire Hydrants
    - The House and Senate recently passed a Bill that now makes fire hydrants exempt from this law. The statute will be amended accordingly.

## II. **WHAT DOES THIS MEAN FOR AFFILIATES?**

- **Products already installed in homes:** The law does not apply retroactively. Therefore, as long as the pipes, plumbing, and fixtures complied with the former SDWA requirements (<8% lead content), then Affiliates do not have to make any change.
- **Inventory currently in warehouses and ReStores:**

(A) **Before January 4, 2014:** The allowable lead limit does not change until January 4, 2014. Therefore, until this date, Affiliates may continue to sell or dispose of lead product using the same methods they currently use.

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<sup>3</sup> Based on conversations with industry experts and the EPA, refrigerator supply lines are considered to be exclusively plastic at this point in time (likely even when looking at ReStore inventory). If for a particular refrigerator, the Affiliate has reason to believe the supply lines are not plastic and do contain lead piping, then the appliance would fall within the scope of the law. However, HFHI understands that non-plastic supply lines in refrigerators would be a rare occurrence at this point in time.

**(B) Inventory remaining as of January 4, 2014:** As of January 4, 2014, Affiliates have two choices for inventory remaining in their warehouses and ReStores: (1) ensure that any remaining inventory complies with the new law by using one of the four options below; or (2) dispose of noncompliant product. As for the disposal option, it remains unclear if disposal of noncompliant product will require recycling with a properly credentialed scrap metal dealer or require a more restricted manner based on guidance from state hazardous waste agencies. HFHI is currently investigating disposal options and will inform Affiliates as soon as more information is obtained. As for the first option (ensuring compliance with the new law), Affiliates can *only* install or resell inventory remaining as of January 4, 2014 if the product meets one of the four criteria below:

1. **Certification mark:** Check all inventoried product for a lead-free certification mark, which may be found on the product or packaging. For example certification marks indicating the product is compliant with the new law; see *How to Identify Lead-Free Certification Marks for Drinking Water System and Plumbing Materials*, US EPA, Sept. 2013, located at <http://nepis.epa.gov/Adobe/PDF/P100GRDZ.pdf>. It is highly unlikely that current inventory will contain a certification mark at this point in time.
2. **Self-test:** Send the product to an independent laboratory with a certified vendor. This process is likely prohibitively expensive and time-consuming.
3. **Manufacturer certification:** Call manufacturer for a written warranty of compliance by model number. This process is likely prohibitively time-consuming.
4. **Sell for nonpotable purposes:** Label both the product and package to clearly indicate that “it is illegal to use this product in potable services such as drinking water, hand washing, food preparation, and dish washing” and sell the product in the ReStore exclusively for nonpotable purposes. HFHI *strongly* recommends against labeling product for nonpotable purposes. The statutory labeling instructions are complicated and federal fines may be issued for selling nonpotable products incorrectly.

- **Accepting Future Donations:**

At this point, HFHI strongly recommends that Affiliates and ReStores only accept donations that are proven to be compliant with the new law. It is prohibitively expensive and time-consuming for Affiliates and ReStores to check all products for certification marks or send the products to a laboratory for testing. Therefore, before accepting donations from a manufacturer, Affiliates must require written documentation from the manufacturer guaranteeing compliance with the new law by model or item number. HFHI expects that most manufacturers will be familiar with the law and be able to provide the required documentation. If the donation comes from a distributor who suggests that it can provide a written guarantee of compliance, please contact the HFHI legal team. Under the new law, Affiliates and ReStores can only rely on direct *manufacturer* certification, so distributor certifications need to be analyzed on a case by case basis. Lastly, if non-compliant product is dropped off at a ReStore or Affiliate (without Affiliate knowledge), HFHI recommends disposing of the product in accordance with state and EPA regulations. As noted above, HFHI is currently investigating disposal options and will inform Affiliates as more information is obtained.

As a tool for ReStores, HFHI has created flyers and handouts to help communicate the effects of the new law to donors and customers, which come in two different templates:

- One for Affiliates who choose to accept and then properly dispose of donations that are not in compliance with the new law; and
- One for Affiliates who choose not to accept donations that are not in compliance with the new law.

THIS INFORMATION IS CURRENT AS OF THE DATE OF THE ADVISORY. THIS ADVISORY DOES NOT CONSTITUTE LEGAL ADVICE. PLEASE NOTE THAT LAWS VARY FROM STATE TO STATE. IT IS IMPORTANT TO CHECK WITH YOUR LOCAL ATTORNEY REGARDING STATE LAW AND TO OBTAIN LEGAL ADVICE REGARDING YOUR SPECIFIC AFFILIATE.

**ADVISORY**

HABITAT FOR HUMANITY INTERNATIONAL

LAST UPDATED: 12/2013

You can find both of these templates at:

<http://my.habitat.org/kc/download-detail/3f925/ReStore-Lead-Law-Flyers>

Washington Store versions are available at:

<http://my.habitat.org/kc/download-detail/3f926/Washington-Store-Lead-Law-Flyers>

Please note that requirements under the Reduction of Lead in Drinking Water Act will become clearer as the EPA supplements and clarifies its guidance on the new law. HFHI will update Affiliates as additional information becomes available. A current summary of the law and frequently asked questions can be found at <http://water.epa.gov/drink/info/lead/upload/epa815s13001.pdf>.

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