



CALIFORNIA LAW WILL RESTRICT CONSUMER-PRODUCT RECYCLABILITY CLAIMS

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On September 9, 2021, the California legislature passed SB 343,¹ *Truth in Labeling for Recyclable Materials*. The bill, if signed by Governor Newsom on or before October 10, 2021, will likely place significant restrictions on recyclability claims in the state, potentially as early as January 1, 2024.

SB 343 would restrict recyclability claims by narrowing the universe of “consumer goods” and packaging considered “recyclable” in California. The bill declares use of the chasing arrows symbol, the chasing arrows symbol surrounding a resin identification code, or any other symbol or statement indicating recyclability, to be deceptive or misleading unless the product or packaging is considered recyclable pursuant to statewide recyclability criteria to be developed by CalRecycle. SB 343, Proposed Cal. Pub. Res. Code § 42355.51(b)(1).

In order to develop the recyclability criteria, CalRecycle must by January 1, 2024, revise regulations governing local waste and recycling facility reporting to include information on how all recycling material is collected and all material types and forms are actively recovered by each facility. *Id.* at § 42355.51(d)(1)(A). Based on this information, CalRecycle must by January 1, 2024, conduct and publish a characterization study of material types and forms that are collected, sorted, sold, or transferred by solid waste facilities, and must update this study every five years, beginning in 2027. *Id.* at § 42355.51(d)(1)(B). According to the bill:

*a product or packaging is considered recyclable in the state if, based on information published by the department pursuant to subparagraph (B) of paragraph (1) [characterization study], the product or packaging is of a material type and form that meets **both** of the following requirements:*

*(A) The material type and form is collected for recycling by recycling programs for jurisdictions that collectively encompass **at least 60 percent of the population of the state.***

(B)(i) The material type and form is sorted into defined streams for recycling processes by large volume transfer or processing facilities, as defined in regulations adopted pursuant to Section 43020 [governing solid waste facilities], that process materials and collectively serve at least 60 percent of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention.

(ii) The department may adopt regulations modifying this requirement to encompass transfer or processing facilities other than large volume transfer or processing facilities, as the department deems appropriate for achieving the purposes of this section.

Id. at § 42355.51(d)(2). In addition to the criteria set out above, consumer products and packages sold in the state must meet the following additional requirements in order to qualify as recyclable:

¹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB343.

(3) A product or packaging shall not be considered recyclable in the state unless the product or packaging meets all of the following criteria, as applicable:

(A) For plastic packaging, the plastic packaging is designed to not include any components, inks, adhesives, or labels that prevent the recyclability of the packaging according to the APR Design® Guide published by the Association of Plastic Recyclers.

(B) For plastic products and non-plastic products and packaging, the product or packaging is designed to ensure recyclability and does not include any components, inks, adhesives, or labels that prevent the recyclability of the product or packaging.

(C) The product or packaging does not contain an intentionally added chemical identified pursuant to the regulations implementing subparagraph (4) of subdivision (g) of Section 42370.2 [concerning reusable, recyclable compostable food service containers].

(D) The product or packaging is not made from plastic or fiber that contains perfluoroalkyl or polyfluoroalkyl substances or PFAS that meets either of the following criteria:

(i) PFAS that a manufacturer has intentionally added to a product or packaging and that have a functional or technical effect in the product or packaging, including the PFAS components of intentionally added chemicals and PFAS that are intentional breakdown products of an added chemical that also have a functional or technical effect in the product.

(ii) The presence of PFAS in a product or product component or packaging or packaging component at or above 100 parts per million, as measured in total organic fluorine.

Id. at § 42355.51(d)(3). The bill does provide an exemption from the preceding requirements for a product or packaging that “has a demonstrated recycling rate of at least 75 percent, meaning that not less than 75 percent of the product or packaging sorted and aggregated in the state is reprocessed into new products or packaging.” *Id.* at § 42355.51(d)(4). That said, the Senate’s legislative analysis indicates that a fairly narrow subset of goods are expected to meet the bill’s criteria. Indeed, “[b]ased on current trends, the only plastics that would likely be allowed to be labeled with a chasing arrows symbol under the considerations of this bill would be PET #1 and DPE #2 plastic bottles and jugs.”²

The bill does, however, generally exempt consumer goods that display a chasing arrow symbol or instruct consumers to recycle a product as directed by the California Beverage Container Recycling and Litter Reduction Act or any other federal or California law. SB 343, Proposed Bus. & Prof. Code § 17580(e). A similar exclusion is provided for goods that direct consumers, consistent with several enumerated programs (e.g., The Electronic Waste Recycling Act of 2003, Lead-Acid Battery Recycling Act of 2016), to properly dispose of or otherwise handle the good at the end of its useful life. *Id.* at § 17580(g).

The bill also provides a grace or sell through period for “[a]ny product or packaging that is manufactured up to 18 months after the date the department publishes the first material characterization study required pursuant to subparagraph (B) of paragraph (1) of subdivision (d), or before January 1, 2024, whichever is later.” SB 343, Proposed Cal. Pub. Res. Code § 42355.51(b)(2)(A). A similar 18-month period will be available after each material characterization study update, provided that the product or package met the recyclability requirements under the previous version of the study. *Id.* at § 42355.51(b)(2)(B).

Note that goods or packaging recycled via non-curbside programs would be considered “recyclable” only if the “non-curbside collection program recovers at least 60 percent of the product or packaging in the program and the material has sufficient commercial value to be marketed for recycling and be transported at the end of its useful life to a transfer, processing, or recycling facility to be sorted and aggregated into defined streams by material type and form.” *Id.* at § 42355.51(d)(5). After January 1, 2030, the minimum recovery threshold would increase to 75%.

² Senate Floor Analyses (Sept. 9, 2021), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB343.