

California Law Restricts Recyclability Claims

The Bottom Line

- By 2024, California's new recyclability standard will impose heightened restrictions on companies making recyclability claims. Similar proposals have also been introduced in several other states.
- The FTC has indicated that it will initiate a review of the Green Guides in 2022, which may include updates to its standards for "recyclable" claims.

The recently signed California Senate Bill 343 prohibits use of the "chasing arrows" recyclable symbol, or any other symbol or statement indicating that a product or packaging is recyclable, in California, unless the product is recyclable in accordance with certain to-be-developed standards.

Requirements

The law requires that, on or before January 1, 2024, the California Department of Resources Recycling and Recovery (CalRecycle) take steps to evaluate and identify which materials are recyclable in the state.

Can Be Recyclable

Based on CalRecycle's findings, a product or packaging **can be deemed recyclable** if:

- The material type and form is collected for recycling by recycling programs for jurisdictions that collectively encompass at least 60% of the population of the state; and
- The material type and form is sorted into defined streams for recycling processes by large volume transfer or processing facilities (or other facilities as determined by CalRecycle) that process materials and collectively serve at least 60% of recycling programs statewide.

These standards will be updated every five years.

Cannot Be Recyclable

In addition to the above, the law provides that products and packages are **not deemed recyclable** in California if:

- It includes components, inks, dyes, adhesives or labels that prevent its recyclability;
- It contains intentionally-added chemicals (identified in regulations implementing section 42370.2(g)(4) of the California Public Resources Code); or
- It is made from plastic or fiber-containing PFAS that have been intentionally added with a functional or technical effect or that measure above 100 parts per million total organic fluorine.

Exemptions

The law includes a number of exemptions, which permit a company to make a recyclable claim if:

- The product or packaging has a demonstrated recycling rate in California of at least 75%;
- The product or packaging is not collected due to a curbside program but the non-curbside collection program recovers a certain portion of the product or packaging and it has sufficient commercial value; or
- The product or packaging is part of, and in compliance with, a program established on or after January 1, 2022, governing the recyclability of that product or packaging and the director of CalRecycle determines that it will not increase contamination of curbside recycling or deceive consumers.

Compliance

Companies will have 18 months after the date CalRecycle publishes its standards, or until January 1, 2024, whichever is later, to come into compliance. This law applies to all consumer goods and packaging sold in California, but will not apply to any product or packaging that is manufactured up to 18 months after the date CalRecycle publishes (or updates) its standards, or is otherwise covered by other state recycling laws (such as certain kinds of batteries and beverage containers).

For More Information

Please contact the attorneys listed below or the Davis+Gilbert attorney with whom you have regular contact.

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