

Advertising & Media Alert

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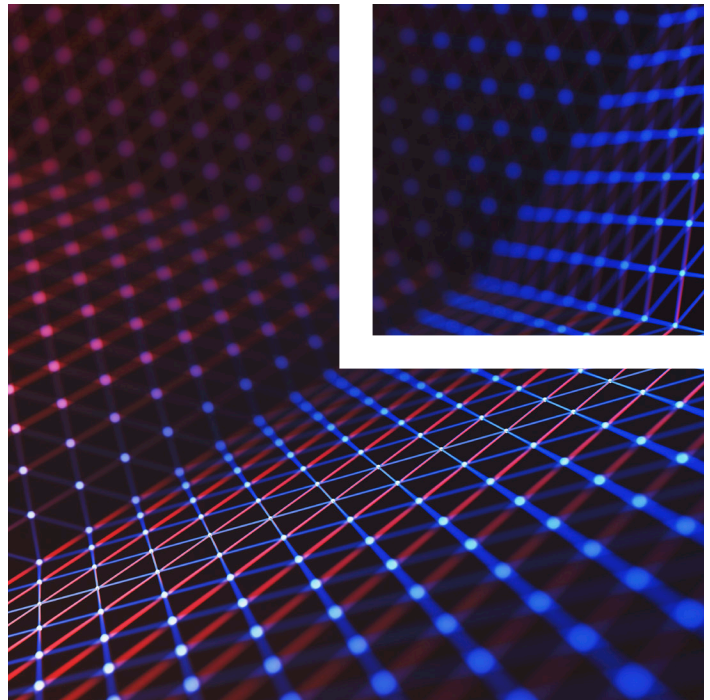
New California Law Limits Use of Recycling 'Chasing Arrows' Symbol

The state of California has enacted a new law limiting the use of the familiar "chasing arrows" symbol denoting recyclability. While aimed at helping consumers know which materials are suitable for "the blue bin," SB 343 ("Truth in Labeling for Recyclable Materials") imposes new advertising and labeling restrictions, as well as new documentation responsibilities, on product and packaging manufacturers. The new law expands the existing California "Truth in Environmental Advertising" law to make the use of the chasing-arrows symbol or any other suggestion that a product or packaging is recyclable deceptive or misleading unless the material meets statewide recyclability criteria to be developed by the California Department of Resources Recycling and Recovery (CalRecycle). SB 343 takes effect Jan. 1, 2024.

Recyclability Criteria

Under the new law, unless otherwise specified, all products and packaging that display a chasing-arrows symbol must meet specific statewide recyclability criteria, including that "the product or packaging is of a material type and form collected for recycling by recycling programs for jurisdictions that collectively encompass at least 60% of the population of the state," and that the material is handled through a defined-stream recycling process by large-volume transfer or processing facilities that collectively serve at least 60% of recycling programs statewide, with "the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention."

SB 343 exempts from the recyclability requirements a product or packaging that "has a demonstrated recycling rate of at least 75% meaning that not less than 75% of the product or packaging sorted and aggregated in the state is reprocessed into new products or packaging."



To be deemed "recyclable," products and packaging must also meet the following criteria as applicable:

- Plastic and nonplastic products and packaging may not include any nonrecyclable components, inks, adhesives or labels that prevent the recycling of the product or packaging.
- The product or packaging does not contain certain intentionally added chemicals.
- The product or packaging is not made from plastic or fiber containing perfluoroalkyl or polyfluoroalkyl (PFAS) substances at or above 100 parts per million or that contains PFAS that a manufacturer intentionally added for a functional or technical effect in the product or packaging.

SB 343 also applies to resin identification codes. California law requires all rigid plastic bottles and rigid plastic containers sold in the state to be labeled with a code that indicates the resin used to produce the bottles or containers, with specified numbers and letters placed inside a triangle. The law now bars the placement of a chasing-arrows symbol around the resin identification code unless the rigid plastic bottle

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or rigid plastic container meets the requirements for statewide recyclability.

Importantly, the new law provides that a wholesaler or retailer that does not initiate a recyclability representation by advertising or by placing the representation on a package will not be considered to have made the representation.

In addition, if a product or packaging contains multiple material types, a chasing-arrows symbol or statement indicating its recyclability is permitted on the external packaging if it is clearly indicated which components of the product or packaging are not recyclable.

CalRecycle State Data Collection

The new law requires CalRecycle to:

- Collect data from disposal facility operators and others on how the material is collected or processed by the facilities and what types of material are collected.
- Evaluate whether a product or packaging is recyclable in the state and can be used as "feedstock" to produce new products and packaging.
- Conduct a study of materials that are collected, sorted, sold or transferred by solid waste facilities, publish its findings on its website and update as necessary.

The law does not apply to any product or packaging that is manufactured up to 18 months after the date CalRecycle publishes its first material characterization study or before January 1, 2024, whichever is later.

Advertising and Labeling Documentation

In advertising and labeling of a product, the use of the chasing-arrows symbol and/or terms, including "environmental choice," "ecologically friendly," "earth friendly," "environmentally friendly," "ecologically sound," "environmentally sound," "environmentally safe," "ecologically safe" and "green product," must now be backed up by the following documentation:

1. Explanation of why the representation is true.
2. Any significant adverse environmental impacts directly associated with the production, distribution, use and disposal of the product.

3. Any measures taken to reduce the environmental impacts directly associated with the production, distribution and disposal of the product.
4. Violations of any federal, state or local permits directly associated with the production or distribution of the product.
5. Whether, if applicable, the product conforms with the uniform standards in the Federal Trade Commission Guidelines for Environmental Marketing Claims for the use of the terms "recycled," "recyclable," "biodegradable," "photodegradable" or "ozone friendly."
6. Whether the product meets all of the criteria for statewide recyclability pursuant to subdivision (d) of Section 42355.51 of the Public Resources Code, where the term "recyclable" or the chasing-arrows symbol is used or a consumer is otherwise directed to recycle the product.

This documentation must be furnished to the public on request.

Some other exceptions to the law apply. Displaying the chasing-arrows symbol or otherwise directing a consumer to recycle a product will not be considered misleading if either of the following applies:

1. The product is required by any federal or California regulation, including the federal Mercury-Containing and Rechargeable Battery Management Act, to display a chasing-arrows symbol.
2. The product is a beverage container subject to the California Beverage Container Recycling and Litter Reduction Act.

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