CHASING COMPLIANCE WITH CHASING ARROWS: EXPLORING THE IMPLICATIONS OF SB 343, CONFLICTING STATE LEGISLATION, AND THE IMPACT OF CALRECYCLE'S PRELIMINARY FINDINGS

Date: 11 January 2024

US Policy and Regulatory Alert

On 28 December 2023, CalRecycle published the results of the preliminary Material Characterization Study required under SB 343, codified as Cal. Pub. Res. Code § 42355.51. The preliminary findings identify the types of materials actually recycled in California, informing the public about the products and packaging eligible to use the "chasing arrows" symbol or any other indicator of recyclability in California.

Under SB 343, a product or packaging may be considered "recyclable" in California if, based on the information published by CalRecycle, the product or packaging is of a "Material Type and Form" that is both: (1) collected for recycling by jurisdiction recycling programs servicing at least 60% of Californians; and (2) sorted by large volume transfer/processing facilities (LVTPs) servicing at least 60% of statewide recycling programs. CalRecycle conducted two primary data collection efforts to provide information in the preliminary study on both criteria.

The preliminary findings describe

- The SB 343 materials, defined as "Material Type and Form;"
- The percentage of California that accepts SB 343 materials for recycling; and
- The percentage of California served by both the surveyed and statewide LVTPs that sort SB 343 materials into a defined stream.

The preliminary study offers examples of each Material Type and Form in the appendices, which may help companies align their product or packaging with the appropriate SB 343 material. Each Material Type and Form also falls into a material category, such as glass, metal, paper/fiber, plastic, and textiles, among other categories.

OVERVIEW OF SB 343

SB 343, often referred to by industry stakeholders as California's "Truth in Recycling" or "Truth in Labeling" law, prohibits the use of the "chasing arrows" symbol and any other indicator of recyclability on products and packaging that are not deemed "recyclable" in the state. Although signed into law in October 2021, the legislators did not give manufacturers all of the information they needed to determine whether their product or packaging is considered "recyclable." Instead, SB 343 directed CalRecycle to perform a material characterization study to identify those materials that are commonly collected, sorted, sold, or transferred for recycling in California.

©2005-2026 K&L Gates LLP. All Rights Reserved.

IMPORTANT DATES FOR THOSE AFFECTED BY SB 343

These initial findings will clarify for manufacturers whether their current labeling practices satisfy SB 343's standards. However, manufacturers will still have the opportunity to voice their concerns about the findings and impact the final publication. CalRecycle will conduct a public meeting on 13 February 2024 to present the findings and receive public comments. It will also accept written feedback by email until 29 February 2024. CalRecycle expects to publish the final Material Characterization Study Findings in or around March or April of 2024. Manufacturers will have 18 months after the final study is published to ensure the use of the “chasing arrows” recycling symbol (or other “recyclable” labeling) on their product or packaging complies with SB 343.

IMPACT OF CALRECYCLE'S PRELIMINARY FINDINGS

For consumer brands in California that have been struggling to create a compliance plan for their recyclability labeling, the release of the preliminary findings will finally kick off those conversations that have been tabled. However, for consumer brands selling products nationwide, the findings may weave a new tangled web, where compliance with California law causes non-compliance in other state markets. For example, Michigan law requires all plastic products sold within the state to be labeled with the resin code within the chasing arrows symbol and imposes a US$500 civil fine per violation. See Mich. Comp. Laws §§ 324.16102(1), 324.16104(1). Once CalRecycle publishes the final study, a consumer brand may find that it is prohibited from using the chasing arrows symbol in California, yet required to use it in another market like Michigan.

These legislative inconsistencies in the world of recyclable labeling may prompt brands to weigh the advantages and disadvantages of transitioning supply chains to comply with only one or a few states' standards. Brands will also want to consider whether failure to satisfy one state's standards increases their risk of consumer class action litigation, given that consumers are already bringing consumer deception claims predicated on the chasing arrows symbol.

Although CalRecycle's preliminary findings have provided some initial guidance for compliance in California, we anticipate continuous regulatory development, both at the state level and federal administrative level, on recyclability claims in the coming years. For example, the Federal Trade Commission's “Green Guides” administer a different, arguably lower standard for making recyclable claims, but even these guides are undergoing review. If you need assistance navigating SB 343 and related state and federal administrative recyclability law, responding to related litigation claims, preparing for the public meeting, or submitting your company's feedback to CalRecycle, please reach out to our team.

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.