

# Sustainability Regulation Update

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# Sustainability Regulation on the Rise

- Consumer attention and climate change impact is driving policy-making initiatives
- Patchwork of regulations emerging at State and Regional (EU) Level
- Key focus areas include:

Green Marketing

Corporate Reporting

Waste Management  
(esp Plastics)



# Green Marketing

# Green Marketing: Federal Green Guides

**Federal Trade Commission (FTC) Guidelines on Environmental Marketing Claims are expected to be updated in 2023.** The “Green Guides were first issued in 1992 and revised most recently in 2012

**In anticipation of the next update to the guidelines, the FTC is requesting general commentary on:**

- The continuing need for the guides
- Their economic impact
- Their effect on the accuracy of various environmental claims
- Their interaction with other environmental marketing regulations.
- Consumer perception evidence of environmental claims, including those not in the guides currently.

**The FTC encourages all interested parties to submit comments regarding potential updates to the Green Guides on or before February 21, 2023.** Comments can be submitted online to Docket Number FTC-2022-0077 at [www.regulations.gov/](http://www.regulations.gov/) and should include “Green Guides Review, Matter No. P954501” in the comment.



# Green Marketing: Green Guide Interest Areas

**Carbon Offsets and Climate Change:** The current Guides provide guidance on carbon offset and renewable energy claims. The Commission invites comments on whether the revised Guides should provide additional information on related claims and issues.

**The Term “Recyclable:”** FTC seeks comments on whether it should change the current threshold that guides marketers on when they can make unqualified recyclable claims, as well as whether the Guides should address in more detail claims for products that are collected (picked up curbside) by recycling programs but not ultimately recycled.

**The Term “Recycled Content:”** Comments are requested on whether unqualified claims about recycled content – particularly claims related to “pre-consumer” and “post industrial” content – are widely understood by consumers, as well as whether alternative methods of substantiating recycled content claims may be appropriate

**The Need for Additional Guidance:** The Commission also seeks comment on the need for additional guidance regarding claims such as “compostable,” “degradable,” “ozone-friendly,” “organic,” and “sustainable, as well as those regarding energy use and energy efficiency.

# Green Marketing: State-Enacted Regulation

## CA SB-343: Truth in Labeling Law (Effective Jan 1, 2022)

**SB 343 amends existing environmental marketing laws specifically to regulate recycling claims. The measure prohibits the use of the chasing-arrows symbol on products that are not recyclable according to CA standards.**

A product or packaging is “recyclable” only if it is made from a material type and form that is (1) collected by recycling programs in jurisdictions encompassing at least 60 percent of the state’s population and (2) sorted into defined streams for recycling processes by at least 60 percent of the state’s recycling programs.

**The new law also requires advertisers labeling their products using the chasing arrows symbol to maintain records** “supporting the validity of the representation.” This information must be provided to any member of the public who requests it. Recordkeeping may include:

- why the person believes the representation to be true
- measures taken to mitigate environmental impacts associated with the product

These new requirements apply to any product or packaging manufactured after the later of (1) January 1, 2024, or (2) 18 months after Cal. Recycle publishes its first material characterization study (underway).



# Green Marketing: State-Proposed Bills (Jan 2023)

## **CT H-5571: Plastics and Developing Connecticut Economy**

Establish coding system in 2024 for recyclability, compostability or neither. Compliance by 2025. Amending the Connecticut Unfair Trade Practices Act to include health and environmental damages as part of consumer protections from unfair or deceptive acts

## **OR H-2871: Sales of Certain Recyclability Products**

Similar to CA SB-343. Products making recyclability claims in the state must meet required standards.

## **MD H-31: Labeling, Marketing and Advertising for Recycling**

Prohibiting the display of a certain symbol on plastic bags, plastic bottles, and rigid plastic containers if the bags, bottles, and containers do not meet certain requirements; prohibiting a person from making certain environmental marketing claims; prohibiting a person from offering for sale, selling, distributing, or importing into the State any product or packaging labeled with or depicting certain environmental marketing claims; establishing requirements that a product or packaging must meet to be considered recyclable in the State; and generally relating to labeling, marketing, and advertising requirements for recycling products and packaging in the State.

# Green Marketing: What to Do

- Review any environmental claims associated with your products (esp if sold in CA); this includes labeling, marketing, and advertising on-pack and online
- Document claims support/substantiation and keep on file
- Check for “chasing arrow” symbol on packaging and confirm that the use is appropriate for each product.
- Stay abreast of updates on green marketing laws and guidelines to ensure compliance and risk management



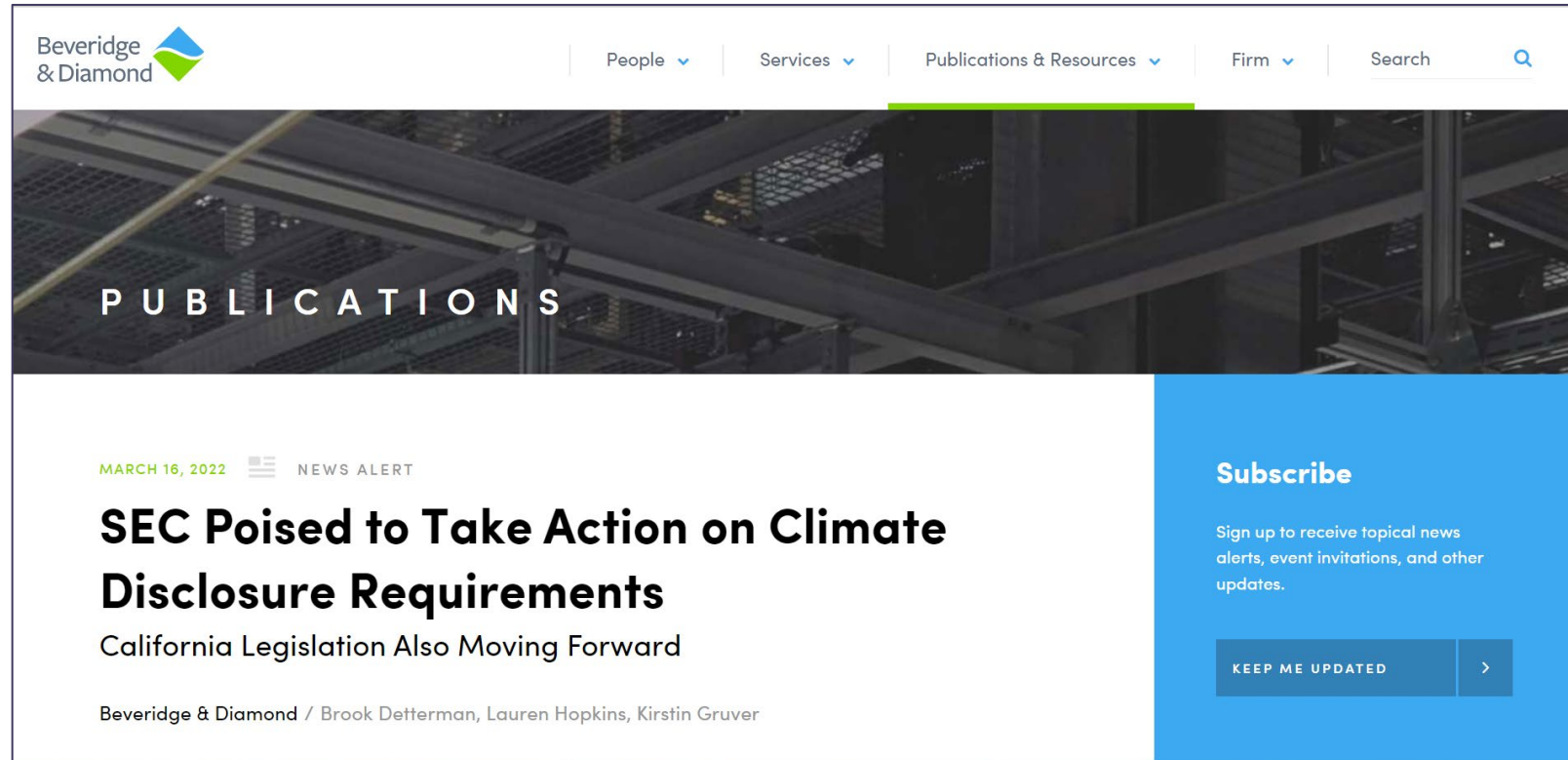


# Corporate Reporting

# Corporate Reporting: ESG and the SEC

Growing **SEC interest** in standardization and oversight of ESG reporting of public companies and investor groups

In March 2022, SEC proposed rule changes that would require registrants to include certain climate-related disclosures in their registration statements and periodic reports,



The screenshot shows the Beveridge & Diamond website. The top navigation bar includes the firm's logo, a search bar, and dropdown menus for 'People', 'Services', 'Publications & Resources', and 'Firm'. The main content area features a dark background with the word 'PUBLICATIONS' in white. Below this, a news alert for 'MARCH 16, 2022' is displayed. The main headline reads 'SEC Poised to Take Action on Climate Disclosure Requirements', with a sub-headline 'California Legislation Also Moving Forward'. The authors listed are Brook Detterman, Lauren Hopkins, and Kirstin Gruver. On the right side, there is a blue 'Subscribe' button with a text box that says 'Sign up to receive topical news alerts, event invitations, and other updates.' and a 'KEEP ME UPDATED' button with a right-pointing arrow.

# Corporate Reporting: ESG and the SEC

**On March 21, 2022, the SEC released its proposal** on climate-related disclosures, “The Enhancement and Standardization of Climate-Related Disclosures for Investors–Release Nos. 33-11042, 34-94478.”

**The proposed rule changes would require a registrant to disclose information about:**

- (1) the registrant’s governance of climate-related risks and relevant risk management processes
- (2) how any climate-related risks identified by the registrant have had or are likely to have a material impact on its business and consolidated financial statements (short-, medium-, or long-term)
- (3) how any identified climate-related risks have affected or are likely to affect the registrant’s strategy, business model, and outlook
- (4) the impact of climate-related events (severe weather events and other natural conditions) and transition activities on the line items of a registrant’s consolidated financial statements, as well as on the financial estimates and assumptions used in the financial statements.

**The proposed rules also would require a registrant to disclose information about its direct greenhouse gas (GHG) emissions** (Scope 1), indirect emissions from purchased electricity or other forms of energy (Scope 2), and emissions from upstream and downstream activities in its value chain (Scope 3), if material or if the registrant has set a GHG emissions target or goal that includes Scope 3 emissions.

**SEC opened public comment period until June: Climate Disclosure comments to SEC**

<https://www.sec.gov/comments/climate-disclosure/cll12.htm>

# Corporate Reporting: What to Do

- Review and assess the extent and nature of climate-related risk exposure, along with the ability/readiness to manage those risks.
- Educate key company stakeholders and identify any with relevant expertise. Inform top-level executives and board members and ensure that both a long-term view and short-term view is assessed for both ESG-related risk and financial exposure considerations
- Build relationships with supply chain partners (suppliers, transportation providers, 3PLs) and discuss collection of data (e.g., GHG emissions, water usage, energy consumption) as well as assessment of materials with high exposure to climate/ESG risk
- Build an action plan to address critical climate risks
- Determine appropriate metrics for strategy, assessment and/or reporting
- Review ESG disclosures and ensure they are substantiated and documented; can also evaluate third party validation/certification agencies
- Follow updates on SEC rulings and review any final language in the Federal Register

# Plastics Management

# Plastics Management: Regulation Types

## Recycled Content (PCR) Mandates

- Goals include boosting U.S. market for recycled material and reduce use of virgin plastic
- Amount of recycled content in packaging and products increases over time
- Must meet mandates to sell in state

## Extended Producer Responsibility (EPR) Laws

- Places responsibility for disposal/end of life of products and packaging on “producers” (typically brand owners)
- Must join a PRO/SRO (Producer Responsibility Organization/ Stewardship Responsibility Organization)
- Must pay fees to support administrative and operational costs

# Plastics Management: Recycled Content Mandates



## New Jersey S-2515

- Packaging Products including plastic containers (8 floz-5 gal)
- Increases over time from 10% to 50%
- Registration starts **2022**, Compliance deadlines begin in **2024**



## Washington H-5022

- Plastic bottles for Household and Personal Care products
- Increases over time from 10% to 50%
- Registration starts **2022**, Compliance deadlines begin in **2024 (2025 for Personal care, HH)**



## California SB-54/AB 793\*

- Products must be recyclable or compostable; otherwise cannot be sold or distributed in CA
- Compliance deadlines begin in **2032**
- \* AB 793 outlines PCR in beverage containers

# Plastics Management: Extended Producer Mandates



## California SB-54

Compliance  
deadline:  
Form and join  
a PRO by **2024**



## Colorado HB 22-1355

Compliance  
deadline:  
Establish a PRO  
**July 2023**; pay  
dues in **2029**



## Maine LD-1541

Compliance  
deadline:  
**One calendar  
year** after PRO  
bid



## Oregon SB-582

Compliance  
deadline:  
Register with a  
PRO by **July  
2025**



# Plastics Management: State-Proposed Bills (Jan 2023)

## **CT S-331: Extended Producer Responsibility for Certain On-Line Retailers**

Requires that large, multistate and multinational online retailers provide recycling services to their customers.

## **NH H-253: EPR Committee Study**

Establish committee to study extended producer responsibility policies for NH.

## **RI H-5091: Packaging Reduction and Recycling Program**

Extended Producer responsibility program

## **NY S-1064: Extended Producer Responsibility Program for Packaging**

Extended Producer responsibility program

## **OR S-544: Source Reduction for Single-Use Plastic Packaging/Plastic Ware**

25% Reduction by 2030, in comparison to 2023 levels

## **WA H-1085: Act Relating to Plastic Pollution**

Lodging establishment may not provide a personal health or beauty product in a small plastic personal health or beauty product container, a plastic wrapper, or any other single-use plastic packaging to a person staying in a lodging unit or within bathrooms shared by the public or guests

# Plastics Management: What to Do

- Review and assess plastic packaging used for products—track weight and type of plastic components
- Review EPR or recycling mandates in states where your products is sold and determine compliance requirements and time/resources needed for compliance
- Understand what exemptions may apply
- Determine timing to join a PRO, determine if PROs have been established for states and understand rules governing fees, oversight, etc. Get involved in rulemaking
- Determine how best to assess qty (tonnage) of your packaging material sold/disposed of in states requiring qty-based reporting/fee structures
- Stay informed of updates on plastic/packaging waste proposals moving through state legislatures

# How to stay informed

- Join IBA and add key personnel to the membership to receive alerts, emails and newsletters on these topics (<https://independentbeauty.org>)
- Register and attend IBA's upcoming virtual **Cosmetic Technical Regulatory Forum (Mar 1-2)** to learn more about these regulation and more to inform your regulatory compliance, business risk, and financial strategies for 2023 and beyond (<https://independentbeauty.org/events-awards/tech-reg-forum/>)

# Questions?

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