Expect New Lifecycle Management Duties For Battery Industry

By **Allison In, Katherine Connolly and Rose Quam-Wickham** (July 27, 2022)

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Enduring supply chain destabilization and disruptions exacerbated by the COVID-19 pandemic, the worsening impacts of climate change and an emphasis on revitalizing the manufacturing industry has led the federal government to renew its interest in revising regulations and policies for battery lifecycle management and labeling, including for electric vehicle, or EV, batteries.

This renewed interest, coupled with recent developments by various states and countries, will likely lead to new programs and directives creating new mandates for battery collection, reuse and recycling that are significantly different from the current programs. Battery producers, retailers, recyclers and users may all see a substantial change in their obligations in the near future.

In November 2021, Congress passed the Infrastructure Investment and Jobs Act, or IIJA, aimed at rebuilding the U.S.' infrastructure, addressing climate change and advancing environmental justice.

Included in the IIJA are two specific directives for the U.S. Environmental Protection Agency: Develop best practices to be implemented by state, tribal and local governments for the collection of batteries to be recycled; and establish a program to promote battery recycling through developing voluntary labeling guidelines for batteries and educational materials for battery producers and consumers about the reuse and recycling of critical minerals for batteries.

On June 9, the EPA published a request for information to fulfill its obligations under the IIJA, calling for comments from interested stakeholders concerning battery generation, collecting, recycling and reuse, as well as labeling standards for battery end-of-life management.

The IIJA has also established grant programs, to be administered by the U.S. Department of Energy, or DOE, in concert with the EPA, for the research and development of projects that provide innovative and practical approaches to battery reuse and recycling.

Since the passage of the law, the DOE has published various grant programs to enhance federal, state and local government battery lifecycle management policies including: competitive grant programs for state and local governments for battery collection, recycling and reprocessing; a prize aimed at recycling lithium-ion batteries; a critical minerals and metals processing grant program; and a battery collection and recycling grant program.

The IIJA requires that applications for such grant programs explain how the proposed projects will promote collaboration among battery producers and manufacturers; battery material and equipment manufacturers; battery recyclers, collectors, and refiners; and retailers, demonstrating the federal government's intent to focus on collaborative approaches across industries for battery lifecycle management.

The DOE has also, as mandated by the IIJA, initiated a task force to develop an extended battery producer responsibility framework.[1] The task force is intended to address battery recycling goals, cost structures for mandatory recycling, reporting requirements, product design, collection models and transportation of collected materials.

The motive behind these goals is: to provide sufficient flexibility for battery producers to determine cost-effective strategies to promote recycling; and at the same time, to devise potential regulatory pathways for effective and efficient battery recycling.

The IIJA requires that members of the task force include a wide range of stakeholders, including battery producers, manufacturers, retailers, recyclers and collectors or processors; states and municipalities; and environmental, energy or consumer organizations.

The creation of the task force signals that the DOE and EPA are actively investigating the possibility of establishing extended producer responsibilities,[2] or EPR, for batteries — whether accomplished by the formal adoption of federal guidance and/or policies, removing barriers for states to adopt EPR laws or other plausible ways.

While the EPA had investigated EPR as early as the 1990s,[3] the approach had not gained significant traction with the agency until at least the mid-2010s, while dozens of states and local counties enacted laws that have mandated EPR since 2008.[4]

Recently, EPR has made an appearance in the EPA's National Recycling Strategy,[5] which is aimed at addressing and modifying the U.S.' municipal solid waste recycling system.

The EPA's recent actions indicate that the U.S. may soon join numerous states and countries that already have established EPR laws on the books, such as California — which has six EPR regulations governing items ranging from mattresses to pharmaceutical drug and home-generated sharps waste — and the U.K., which has recently passed EPR regulations concerning packaging waste to be effective in 2023. The task force hints that batteries may be the first object of such EPR requirements at the federal level in the U.S.

In addition to the federal government, several states have recently begun to evaluate battery lifecycle management practices. California categorizes[6] batteries as hazardous waste when discarded, and thus, discarded batteries must be taken to a household hazardous waste disposal facility, a universal waste handler or an authorized recycling facility.

In California, owners and operators of solid waste transfer stations, municipal landfills and recycling centers are required to remove and manage batteries separately if found in their facilities pursuant to the state's hazardous waste management regulations.

An advisory group within California's Environmental Protection Agency recently recommended[7] several specific policies to define responsibility regarding end-of-life lithium-ion battery management, including implementing a core exchange and vehicle backstop policy, producer take-back policies, physical labeling requirements and digital identifiers, and recycling incentive packages.

In late 2020, Washington, D.C., passed a comprehensive waste management law that includes the development of a new battery recycling and reuse program, and the first EPR requirements for battery producers in the U.S.

As of Jan. 1, 2023, battery producers that manufacture batteries or battery-containing

products that are sold, offered for sale or distributed for sale in Washington must join a battery stewardship organization and implement a battery collection program as part of their membership in that organization.

Battery producers have also been prohibited from disposing of batteries within Washington except through specific battery recycling programs or methods approved by of the mayor since Jan. 1. Similarly, the law prohibits all persons from knowingly disposing of batteries within Washington, except by through specific programs or methods approved of by the mayor, beginning Jan. 1, 2023.

The European Union has also proposed a major new regulation on batteries. The proposal takes a cradle-to-grave approach, aiming to promote circular supply chain, and imposing obligations on each step in the life cycle of a battery, from extraction of raw materials through to disposal.

The European Commission's draft proposal would impose new obligations including but not limited to: a maximum carbon footprint for EV battery production; mandatory minimum levels of recycled content; mandatory labeling requirements, electronic records and unique identifiers for EV batteries; specific documentation relating to performance and durability for EV batteries; and broad due diligence requirements for environment, social and governance factors that include third-party verification.

The proposal also requires end-of-life management practices, including EPR requirements for EV batteries, providing information to end uses and distributors concerning battery end-of-life practices, and recycling targets. Final details of the regulation are being negotiated by the European Council and EU Parliament, with the parliament pushing, in some areas, for still stricter standards than those in the current proposal.

Ultimately, battery producers, retailers and even end-users could expect significant changes in relevant regulations if and when the federal government and agencies execute on the recent emphasis on battery recycling and reuse programs.

Such emphasis will likely also push individual states to evaluate their battery recycling and reuse programs, and we may see new developments and regulations similar to those from Washington, D.C., California or the EU concerning battery recycling, reuse and disposal.

Significant EPR requirements could be among those new developments and regulations if these governments decide to pursue a cradle-to-grave framework, and enforcement actions could also sharply increase.

The battery industry should also expect that any regulations stemming from these developments will consider environment, social and governance factors, ranging from considerations of the labor conditions involved in raw material extraction to impacts that battery end-of-life recycling facilities might have on underserved communities.

To remain informed of potentially changing obligations and risks, any battery-related business — whether that business produces, sells, distributes, recycles or otherwise handles batteries — should stay tuned for new updates to policies and regulations regarding batteries, including announcements from federal agencies and states.

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[1] https://www.energy.gov/eere/vehicles/battery-policies-and-incentives-search#/?show=result&id=71.

[2] https://www.oecd.org/env/tools-evaluation/extendedproducerresponsibility.htm.

[3] https://archive.epa.gov/wastes/conserve/tools/stewardship/web/pdf/eprbrochure.pdf.

[4] https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/Nash_Bosso_2013-10.pdf.

[5] https://www.epa.gov/system/files/documents/2021-11/final-national-recycling-strategy.pdf.

[6] https://calrecycle.ca.gov/reducewaste/batteries/.

[7] https://calepa.ca.gov/wp-content/uploads/sites/6/2022/05/2022_AB-2832_Lithium-Ion-Car-Battery-Recycling-Advisory-Goup-Final-Report.pdf.