

WSR 22-18-093

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed September 7, 2022, 8:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-137.

Title of Rule and Other Identifying Information: Chapter 16-662 WAC, Weights and measures—National handbooks, sale of motor fuel, and penalties for violations. The department is proposing amendments as required in chapter 238, Laws of 2021 (2SSB 5192) regarding electric vehicle supply equipment (EVSE). The amendments include:

- Updating the chapter title to reflect that the sale of electric vehicle fuel is now regulated under this chapter.
- Establishing EVSE compliance dates and creating an exemption for EVSE installed prior to January 1, 2024, that are clearly marked.
- Requiring all electric vehicle service providers (EVSP) make available multiple payment methods at all publicly available Level 2 EVSE or direct current fast charger (DCFC) EVSE installed in Washington and establishing minimum required payment methods.
- Requiring EVSP to provide means for conducting a charging session in at least one language other than English.
- Establishing requirements for all EVSP to, at a minimum, meet and maintain nonproprietary interoperability standards for publicly available Level 2 and DCFC EVSE.

Hearing Location(s): On October 11, 2022, at 10:00 a.m., Microsoft Teams conference line. Join by link [Date of Intended Adoption: October 18, 2022.](https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_NzcnNmJiNDgtNmYzNS00ZDBmLThkYzEtYjYxZTZiNGY2Y2E1%2540thread.v2%2F0%3Fcontext%3D%257b%2522tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522oid%2522%253a%2522838c55c7-c187-44ae-8de0-2be684ce5d4a%2522%257d&data=05%7C01%7CAClow%40agr.wa.gov%7Cb1f5cf12d40e475655b208da85f0ad52%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C637969565991353972%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sd=ata=CRgLPfBMBFlnxYSmHT0sRT49xNGGhmHOB3K4WhlxMoY%3D&reserved=0, Meeting ID 279 455 689 244, Passcode QQYbqM; join by phone +1 564-999-2000,,628782674# United States, Olympia, Phone Conference ID 628 782 674#. Due to the ongoing COVID-19 pandemic, the public hearing will be held solely over video and teleconference.</p></div><div data-bbox=)

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., October 11, 2022.

Assistance for Persons with Disabilities: Contact Deanna Painter, phone 360-902-2061, TTY 800-833-6388 or 711, email dpainter@agr.wa.gov, by October 4, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2021 legislative session, the Washington state legislature passed 2SSB 5192, amending chapter 19.94 RCW. This legislation directed the department to adopt rules regarding compliance dates, methods of payment, providing access in languages other than English and interoperability standards for publicly available EVSE.

There are currently over 63,000 electric vehicles registered in Washington, 46,000 of which are battery electric vehicles powered solely by electric energy stored in batteries which must be recharged by an external source. According to the United States Department of Energy's Alternative Fuels Data Center there are currently 1,778 electric vehicle charging stations and 4,417 charging ports in Washington. The most common electric vehicle charging stations for the traveling public are Level 2 and direct current (DC) fast chargers.

Publicly available EVSE is defined as EVSE and associated parking space or spaces designated by a property owner to be available to the public. EVSE that meet any of the following criteria are also considered publicly available:

- EVSE designated by the property owner to be available only to customers or visitors of a business or of a charging network;
- EVSE that can be accessed by any member of the public regardless of whether a fee is charged including EVSE located in a parking garage or gated facility; or
- EVSE made available to the public during limited time periods are considered publicly available only during those time periods.

Amendments to chapter 19.94 RCW require the department to adopt rules by January 1, 2023, requiring all EVSP make multiple payment methods available at all public Level 2 and DC fast chargers. At a minimum, the rules must include:

- Deadlines for compliance for Level 2 and DC fast chargers installed before a specific date;
- Deadlines for compliance for Level 2 and DC fast chargers installed after a specific date;
- Minimum required payment methods that are convenient and reasonably support access for all current and future users;
- Means for conducting a charging session in languages other than English; and
- Means for facilitating charging sessions for consumers who are unbanked, underbanked, or low-moderate income.

The amendments to chapter 19.94 RCW also require the department to adopt rules by January 1, 2023, establishing requirements for all EVSE to, at a minimum, meet and maintain nonproprietary interoperability standards for publicly available Level 2 and DC fast chargers. Interoperability means the ability of hardware, systems, software, or a communication network provided by one service provider to interact with and exchange information, including payment information, between hardware, software, or a communication network provided by a different service provider.

The proposed amendments and their anticipated effects include:

- *Establishing EVSE compliance dates and creating an exemption for EVSE installed prior to January 1, 2024, that are clearly marked.* The department is required to establish compliance dates for publicly available Level 2 and DC fast charger EVSE installed prior to, on, or after a specific date, under RCW 19.94.565. The compliance dates set a deadline for when EVSE must be in compliance with the proposed rule amendments. In addition to compliance dates, an exemption is created for publicly available Level 2 and DC fast charger EVSE installed prior to January 1, 2024, which are clearly marked with the installation date. To ensure existing infrastructure may continue operating without substantial equip-

ment replacement or alteration, the language added in rule reiterates the compliance dates set in RCW 19.94.190(6), which state that EVSE installed and placed into service before January 1, 2024, are exempt from these rules until January 1, 2034, as long as they are clearly marked with the date of installation and that any EVSE installed and placed into service (including those placed or retrofitted) after January 1, 2024, must be in compliance with these rules upon installation.

- *Requiring all EVSP make available multiple payment methods at all publicly available Level 2 EVSE or DC fast charger EVSE installed in Washington and establishing minimum required payment methods.* This component of the rule establishes the following minimum required payment methods that are convenient and reasonably support access for all current and future users at publicly available Level 2 and DC fast chargers, as specified in RCW 19.95.565:
 - o Toll-free number or built-in call button that provides the user the option to initiate a charging session and submit payment at any time that EVSE is operational and publicly available;
 - o Credit card reader device that can accept, at a minimum, a Euro Mastercard Visa (EMV) chip; and
 - o A mobile payment option.
- *EVSP must provide means for conducting a charging session in at least one language other than English.* RCW 19.94.565 (1)(f) requires the department to adopt rules requiring all EVSPs to provide a means for conducting a charging session in languages other than English. The proposed rule sets the minimum requirement that at least one language other than English be supported. However, since many languages are spoken throughout Washington state, the department is including in the rule a requirement that service providers consider the demographics of the area in which the unit will be installed and the languages most commonly spoken in that location when determining the alternative language(s) provided, to ensure that the language(s) most relevant to the community where an EVSE unit is located are represented.
- *Establishing requirements for all EVSPs to, at a minimum, meet and maintain nonproprietary interoperability standards for publicly available Level 2 EVSE and DC fast charger EVSE.* Interoperability standards provide safeguards to consumers and allow for a reliable, standardized and easy refueling experience. In order for Washington to have reliable, accessible, and competitive markets for EVSE that are necessary for the movement of goods and people by electric vehicles, interoperability standards that align with national and international best practices or standards are necessary. In the case of electric vehicle chargers that have communication capabilities or are "networked," interoperability between EVSE and network provider also helps site hosts and other owner/operators of charging equipment to minimize the risk of "stranded assets" with equipment that isn't capable of functioning on different vehicles and charging networks, while also supporting the development of vehicle-grid integration. Unfortunately, there is currently no set of uniform national standards for interoperability. The open charge point protocol and open charge point interface are global industry standards that are well established and involve the transfer of charging data and information between charging stations and network providers as well as facilitating payment between various electric vehicle charging

networks. By requiring in rule for EVSPs to utilize these two standards, the department is ensuring that Washington state will have a reliable, accessible and competitive market for EVSE.

Reasons Supporting Proposal: Setting compliance dates gives EVSPs time to meet the requirements outlined in the proposed rule amendment, while also providing a clear timeline for the consumer. For EVSE installed prior to January 1, 2024, to be considered exempt from compliance requirements, the installation date must be clearly marked in a conspicuous location that is easily seen during normal use by an inspector and the public. The exemption itself provides some flexibility to EVSP and there are multiple ways in which EVSE can be marked. Since the average life span of an EVSE is approximately 10 years, this would mean that EVSPs would not be required to replace or alter any of the EVSE currently installed, with the exception of just labeling the unit with the date of installation. This also allows consumers and department inspectors to more easily identify EVSE that must follow the proposed requirements.

Requiring charging stations to provide three payment options ensures that electric vehicle drivers are able to pay for their charging session in a familiar way and makes access to charging an electric vehicle available to all. These payment options utilize three different technologies, ensuring that if the technology behind one of the methods fails, the driver will still be able to pay for their charging session using one of the other methods. Requiring a physical charge card reader device will establish a level of payment method certainty for consumers (particularly those that are unbanked and underbanked) and maintain consistency along the west coast by aligning with California's EVSE standards.

Requiring service providers to offer a means for conducting a charging session in a language other than English supports electric vehicle accessibility for the nearly 20 percent of Washington residents who speak a language other than English. This approach also benefits high-mileage drivers, such as those who drive for transportation network companies (TNCs) like Uber and Lyft. According to a TNC driver survey conducted by the city of Seattle, 93 percent of drivers spoke a language other than English at home. Electrifying TNC vehicles has three times the climate impact as electrifying a privately-owned vehicle.

Establishing requirements around interoperability standards will help facilitate payments across networks. This will ultimately help electric vehicle customers. It will also help protect Washington individuals and businesses investing in electric vehicle infrastructures across the state, by lessening the risk of businesses experiencing stranded assets. Additionally, this requirement will also increase protections for EVSPs, particularly smaller ones.

Statutory Authority for Adoption: Chapter 238, Laws of 2021 (2SSB 5192); RCW 19.94.010, 19.94.190, 19.94.555, 19.94.565, 19.94.570, 19.94.575.

Statute Being Implemented: Chapter 19.94 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Gloriann Robinson, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1802;

Implementation and Enforcement: Tahis McQueen, 1111 Washington Street S.E., Olympia, WA 98504, 360-481-7452.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5) (a) (i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: All of the businesses impacted by the proposed rule are large businesses. The department conducted extensive research and stakeholder engagement to determine whether any small businesses were impacted by the proposed rule amendment. There are three main areas of the electric vehicle industry that will likely be impacted. These include site hosts, service providers, and utility companies. The agency surveyed and researched businesses across the state and found that there were no small businesses impacted. All businesses identified have 50 or more employees or are not located in Washington state.

Scope of exemption for rule proposal:

Is fully exempt.

A copy of the statement may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, email wsdarulescomments@agr.wa.gov.

September 7, 2022
Brad White
Assistant Director

OTS-4013.2

Chapter 16-662 WAC

WEIGHTS AND MEASURES—NATIONAL HANDBOOKS, SALE OF MOTOR FUEL, ELECTRIC VEHICLE SUPPLY EQUIPMENT, AND PENALTIES FOR VIOLATIONS

NEW SECTION

WAC 16-662-200 Electric vehicle supply equipment compliance dates. (1) Any publicly available electric vehicle supply equipment, including both level 2 and direct current fast chargers, installed and placed into service before January 1, 2024, is exempt from the requirements in WAC 16-662-210 through 16-662-220 until January 1, 2034. Equipment that is replaced or retrofitted with new hardware on or after January 1, 2024, is considered to have been installed and placed into service after January 1, 2024, and must comply with the requirements in WAC 16-662-210 through 16-662-220 upon installation.

(2) Publicly available electric vehicle supply equipment that is exempt as described in subsection (1) of this section must be clearly

marked with the date of installation in a conspicuous location that is easily seen during normal use by the public. Acceptable ways to clearly mark the installation date may include:

- (a) A sign, sticker, or plaque; or
 - (b) Any other visible marker that is readable, such as a digital display showing the installation date on the home screen or through a menu that is intuitive, making the installation date easily identified.
 - (c) When dates are located on a kiosk, the installation date of each electric vehicle supply equipment serviced by that kiosk shall be clearly identified.
- (3) If the installation date is not clearly marked, the device will be considered to have been installed and placed into service after January 1, 2024, and will be subject to the requirements in WAC 16-662-210 through 16-662-220.

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NEW SECTION

WAC 16-662-210 Electric vehicle supply equipment payment method and fee disclosure requirements. (1) All publicly available electric vehicle supply equipment installed in Washington that requires payment shall meet the following requirements:

(a) Have a credit card reader device physically located on either the electric vehicle supply equipment unit or a kiosk used to service that electric vehicle supply equipment. The credit card reader device shall comply with all of the following requirements:

(i) The credit card reader device shall accept, at a minimum, the Euro MasterCard Visa (EMV) chip and, at a minimum, one of the following credit card types: Visa, MasterCard, or American Express; and

(ii) The credit card reader device shall be nonlocking and shall always permit customers to remove their credit card without damage to the card, including during a fault situation or power failure.

(b) All electric vehicle supply equipment subject to this section shall have a mobile payment device physically located on the electric vehicle supply equipment or kiosk used to service that electric vehicle supply equipment; and

(c) The electric vehicle service provider shall provide and display a toll-free number on each electric vehicle supply equipment or kiosk used to service that electric vehicle supply equipment that provides the user with the option to initiate a charging session and submit payment at any time that the electric vehicle supply equipment is operational and publicly available.

(2) At a minimum, the electric vehicle service provider shall disclose to the user, at the point of sale, the following minimum information, if applicable:

(a) A fee for use of the parking space;

(b) A nonmember plug-in fee from the electric vehicle service provider;

(c) The price to refuel in United States dollars per kilowatt-hour or mega joule;

(d) Any potential changes in the price to refuel, in United States dollars per kilowatt-hour or mega joule, due to variable pricing; and

(e) Any other fees charged for a charging session.

(3) If the charging session or portion of a charging session is offered at no cost, it must be disclosed at the location where the charging session is initiated and prior to a user or a vehicle initiating a charging session.

(4) The electric vehicle service provider may not require a subscription, membership, or account or a minimum balance on an account in order to initiate a charging session at an electric vehicle supply equipment subject to this section.

(5) The requirements of this section shall not apply to electric vehicle supply equipment exempted under RCW 19.94.555.

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NEW SECTION

WAC 16-662-215 Electric vehicle supply equipment language requirements. (1) The electric vehicle supply equipment must provide means for conducting a charging session in at least one language other than English. The electric vehicle service provider shall consider the demographics of the area in which the unit will be installed, and the language(s) most commonly spoken in that location, when determining the alternative language(s) provided. At a minimum, electric vehicle service providers shall consult data published from the American Community Survey (ACS).

(2) The requirements of this section shall not apply to electric vehicle supply equipment exempted under RCW 19.94.555.

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NEW SECTION

WAC 16-662-220 Interoperability requirements related to electric vehicle supply equipment. (1) All publicly available electric vehicle supply equipment must be in compliance with the following interoperability requirements:

(a) The electric vehicle service provider shall, at a minimum, use Open Charge Point Interface (OCPI) version 2.1.1 or 2.2 standards.

(b) All networked electric vehicle supply equipment shall be compliant with Open Charge Point Protocol (OCPP) version 1.6 or 2.0.1 standards.

(2) Upon request, electric vehicle service providers shall provide the department with documentation that demonstrates compliance with the requirements of this section. If a certification is available for a standard, the documentation to be provided shall include the certification, otherwise acceptable documentation may include a self-attestation by the service provider. The service provider must provide additional documentation as the department may require to demonstrate compliance.

(3) The requirements of this section shall not apply to:

(a) Electric vehicle supply equipment exempted under RCW 19.94.555.

(b) Publicly available electric vehicle supply equipment provided by a manufacturer of electric vehicles for the exclusive use by vehicles it manufactures.

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