

May 26, 2022

Washington State Department of Agriculture
Re: Chapter 16-662 WAC
PO Box 42560
Olympia, WA 98504-2560

RE: Washington State Department of Agriculture's April 11th, 2022, Draft Regulations on Payment Methods for Electric Vehicle Supply Equipment

Dear Gloriann Robinson,

On behalf of the undersigned organizations, we write to express our concerns on the Washington State Department of Agriculture's (Department) recent draft rule change regarding payment method options for electric vehicle supply equipment (EVSE) in Chapter 19.94 RCW directed from Senate Bill 5192 Second Substitute (SB 5192 SS2).

The Department's April 11, 2022, draft regulation on payment methods is counter to explicit legislative direction, conflicts with regulatory due process given numerous Department drafts and public stakeholder meetings, and fails to adequately study or consider cost implications and payment trends. We urge the Department to return to the past drafts which are demonstrated by the regulatory record and directed by SB 5192 SS2 to explicitly allow contactless credit card readers to comply as a sufficient credit card payment method.

Regulatory Draft Requirements Exceed Legislative Direction

Section (5)(1)(e) of SB 5192 SS2, passed in 2021, directed the Department through rulemaking to develop minimum required payment methods for EV charging stations. One payment method for consideration identified is payment via credit card reader. Section (5)(1)(e)(i) below lists a credit reader device as a payment method and explicitly clarifies that "contactless credit card reader devices may be used as an option to meet the requirements of this subsection". This clause is interpreted to allow contactless credit card reader devices to be sufficient payment method in order to meet a requirement of a credit card reader device. Thus, **a mandate requiring physical credit card readers with EuroMastercardVisa (EMV) chip, swipe, and tap capabilities exceeds explicit legislative direction in SB 5192 SS2.**

SB 5192 SS2 Section (5)(1)(e)(i)

7 (e) Minimum required payment methods that are convenient and
8 reasonably support access for all current and future users at
9 publicly available level 2 electric vehicle supply equipment and
10 direct current fast charger electric vehicle supply equipment
11 installed in Washington. Payment methods may include, but are not
12 limited to:
13 (i) A credit card reader device physically located on or in
14 either the electric vehicle supply equipment unit or a kiosk used to
15 service that electric vehicle supply equipment. Contactless credit
16 card reader devices may be used as an option to meet the requirements
17 of this subsection;

Regulatory Record Runs Counter to April 11, 2022, Draft Rules

SB 5192 SS2 directed the Department to initiate a multi-month rulemaking beginning in August 2021 with numerous public meetings, opportunities for comments, and draft regulations. Department draft rules on payment methods heeded the direction of the legislation to allow for flexibility in the type of payment methods provided at EVSE while meeting the requirements for access. Draft rules on November 19, 2021¹ and most recently on January 20, 2022² provided the flexibility as directed by Washington law, determining that contactless credit card readers for EVSE would satisfy the credit card reader payment method option. The regulatory record validates the legislative direction to allow for flexibility in payment method options, including allowing contactless credit card payments, and details stakeholder discussions on the need for this flexibility. **The unanticipated shift in the Department's April 11, 2021, draft mandating physical credit card readers with EMV and stripe payments and disallowing contactless credit card readers as a sufficient alternative is not demonstrated by the regulatory record and is counter to regulatory due process.**

Department draft regulations from January 20, 2022

Electric vehicle supply equipment payment methods

(1) All publicly available electric vehicle supply equipment must have accommodations on or in each unit, kiosk, or an in-car display when use is exclusive to vehicles manufactured by the electric vehicle service provider, for accepting a minimum of three of the following payment methods. At least one of the payment methods selected must accept payment by charge card (debit, credit, and pre-paid) by use of the card number, magnetic strip, or EMV Chip.

- (a) Toll free number or built-in call button with the option to initiate a charging session at any time that electric vehicle supply equipment is operational and publicly available;
- (b) Credit card reader device (including either one or a combination of a magnetic strip, EMV chip, or contactless);

Department draft regulations from April 11, 2022

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 non-locking and shall always permit customers to remove their credit card without damage to the card, including during a fault situation or power failure.

¹<https://cms.agr.wa.gov/WSDAKentico/Documents/AdminRegs/Rule%20Making/EVSE%20Stakeholder%20Input/EVSE-Draft-Rule-Language-Nov192021.pdf>

²<https://cms.agr.wa.gov/WSDAKentico/Documents/AdminRegs/Rule%20Making/EVSE%20Stakeholder%20Input/EVSE-2nd-version-Draft-Rule-Language-Jan202022.pdf>

Increased and Uncertain Cost Implications Are Not Justifiable Given Trends

The April 11, 2022, draft regulations are not only in conflict with SB 5192, but are counter to where payment trends are heading. According to a 2021 study by Pulse, a Discover Card company, 94% of all debit cards will be contactless by 2023. This is a significant shift in the debit card space, when in 2019, only 11% of all debit cards had contactless capabilities.³ The Department must also consider the increase in use by consumers of third-party mobile wallets such as Google Pay, Apple Pay, and Samsung that totaled \$2 billion transactions in 2020, representing a 51% year over year growth.⁴ Finally, there is a continued acceleration in the usage of Peer to Peer (P2P) platforms such as Paypal, Venmo, Cash App and Zelle, which represent 90% of the market. Most of these P2P providers offer their users debit cards with contactless capabilities that are less restrictive than traditional banks. The payment space is rapidly evolving, and contactless payment methods is continuing to see high adoption levels by users.

Added costs for complying with the April 11, 2022, draft which would require an EMV and swipe credit card reader must be evaluated by the Department. Recent quotes provided to Avista and Puget Sound Energy for a compliant credit card reader range from \$1,500 to \$2,500 each, with additional maintenance and web payment costs. For Level 2 charging stations in particular, these credit card reader costs would be exorbitant, sometimes greater than the cost of the actual Level 2 charger and installation. Federal, state, utility, and local EVSE funding programs may see meaningful reductions in the total number of EVSE installed if faced with the added costs of providing an EMV and swipe credit card reader at each new EVSE in Washington starting in 2024.

Importantly, the existing data on credit card reader use at public EVSE does not support a mandated requirement. EVgo, one of the few EV service providers with an EMV chip reader on their public EV charging stations, stated in 2019 public comments that only 1% of all charging sessions were initiated with a credit card.⁵ It is additionally unclear if an EMV chip reader actually increases access to low-income EV drivers. On this, the California Air Resources Board in its “2019 Final Statement of Reasons” acknowledged that “EMV chip readers alone may not increase low-income access”.⁶ With limited to no data that demonstrates including an EMV chip or swipe credit card reader increases usage or access, the Department must question if a mandate for a waning technology is prudent.

The Department must conduct a robust third-party study on cost implications of the proposed April 11, 2022, change, in addition to a thorough evaluation of market changes to credit card payment method options and payment method uses by low-income, unbanked and underbanked individuals.

³ <https://www.pulsenetwork.com/public/debit-issuer-study/>

⁴ <https://www.pulsenetwork.com/public/debit-issuer-study/>

⁵ <https://www2.arb.ca.gov/sites/default/files/barcu/regact/2019/evse2019/fsor.pdf>

⁶ <https://www2.arb.ca.gov/sites/default/files/barcu/regact/2019/evse2019/fsor.pdf>

Conclusion

For all of the aforementioned reasons, we urge the Washington Department of Agriculture and complementary departments to return to the draft regulations regarding payment standards in the January 20, 2022, draft regulations and explicitly allow contactless credit card readers to comply as a sufficient credit card payment method. To not do so would be a mandate counter to explicit legislative direction, misaligned with the regulatory record, and without an accurate analysis of costs impacts and payment market trends.

We appreciate your consideration on this important issue. We look forward to working to address these concerns.

Sincerely,

