Dear Stakeholders,

We would like to thank you for the responses submitted to the draft rule language sent out in November. The feedback we received was extremely helpful as we move forward with determining what should be included in this rule and what might need to be modified to ensure that we are meeting our statutory obligations as well as promoting the use and accessibility of electric vehicle charging stations.

In this letter, we are collectively responding to the feedback given and concerns raised. We look forward to continuing to work with you and conducting further analysis of how this rule will impact the industry.

Feedback to WAC 16-662-200, Compliance Dates

Comment: Set compliance date for newly installed electric vehicle supply equipment (EVSE) sooner than 2024 and set compliance date for prior installed EVSE to earlier dates. Align with California’s Rule.

Response: RCW 19.94.190(6) states, “Rules adopted by the director related to the sale of electricity sold as a vehicle fuel and electric vehicle fueling systems may take effect no earlier than January 1, 2024, and may be modified to achieve state objectives, reviewed, and, if necessary, amended, to maintain consistency with evolving technology. To ensure existing infrastructure may continue operating without substantial equipment replacement or alteration, electric vehicle supply equipment installed and placed into service before January 1, 2024, is exempt from the rules of this section until January 1, 2034.”

Since the rules adopted by the Department must be in line with the requirements dictated by the statute, we do not have the ability to set any compliance date for EVSE rules before 2024. We are unable to enforce any of these rules on EVSE installed prior to January 1, 2024, until January 1, 2034.

Comment: Requests that a digital on-screen label be an acceptable method of marking the EVSE with the installation date. Suggests that the labeling requirement apply only to EVSE installed after 1/1/24 and not to EVSE currently in use. Requests the Department be responsible for tracking installation dates.
Response: RCW 19.94.010(1)(d) defines “clearly marked” as “...at a minimum, a sign, sticker, plaque, or any other visible marker that is readable.” As long as the digital label on the screen is visible and readable, the Department would consider this method of marking to comply with the rule. We are revising this portion of the rule language to more clearly address this.

RCW 19.94.190(6)(a)(ii) states that exempt EVSE installed and placed into service before January 1, 2024, must be clearly marked, identifying the date of installation. Labeling of EVSE installed prior to January 1, 2024, is necessary in order to comply with the exemption outlined in the statute. EVSE units installed prior to this date that are not labeled, would not meet this compliance requirement and would therefore not be eligible for the delayed compliance timeframe. There is no requirement to label the unit with the installation date if it was installed after January 1, 2024, as it would no longer be eligible for the delayed compliance date.

The Department revised the language to clarify the requirement by including the option of allowing the install date to be on the digital display to meet the “clearly marked” requirement. See rules for more details.

Requiring the Department to research and track installation dates would be a cost burden on the agency that would need to be added to EVSE registration fees. Additionally, RCW 19.94.190(6)(a)(ii) already requires EVSE to be clearly marked in order to be exempt from the Department’s rules until 2034. Due to this, the agency feels it would be more cost effective for industry to track the installation dates of the EVSE they are responsible for, as it is already required by the statute to do so.

Comment: Recommends implementing a warning system prior to imposing monetary fines due to the stations not being regularly staffed or checked on.

Response: In most situations, Chapter 43.05 RCW requires the Department to first issue a Notice of Correction, notifying businesses that they are out of compliance and establishing a timeframe for the violation to be corrected before any monetary penalties may be imposed. While there are some exceptions to this requirement, monetary penalties will generally not be imposed unless a business fails to correct the violation after the timeframe established in the first notice or if the business has previously been issued a notice for a similar violation. Please note, there are some limited exceptions for violations that have a probability of placing a person in danger of death or bodily harm, have a probability of causing more than minor environmental harm, or have a probability of causing physical damage to the property of another, which allow a penalty to be issued without prior notification.

Feedback to WAC 16-662-210, Payment Methods:

Comment: EVSE should be required to have a physical charge card reader and add a maximum cost option for each charging session.

Response: RCW 19.94.565 describes rules for EVSE providers related to payment methods. While the statute provides some requirements for such rules, some components of the requirements are vague, and the specific method of implementation is left to the Department. RCW 19.94.565(1) states that the Department must adopt rules requiring all EVSP to make available multiple payment
methods on all publicly available EVSE. It further states that the minimum required payment methods should be convenient and reasonably support access for all current and future users. The terms ‘convenient’ and ‘reasonably support access’ are subjective and could mean very different things to different users. RCW 19.94.565(2) further requires that when adopting rules, “…the department must seek to minimize costs and maximize benefits to the public.” Implying that the Department must strive to find a balance between the costs imposed on the industry and the benefits provided to the public. After multiple discussions with stakeholders regarding the intended benefits and the challenges associated with payment methods, the draft rules were developed to provide six payment options to choose from and set a minimum requirement that the EVSP must provide at least three of the payment options at each charging station. The Department believes this approach meets the primary objective of this section requiring that all EVSP make available multiple payment options while also balancing the costs to industry with the benefit to the public and allowing for new technology to be utilized as it develops.

Regarding the maximum cost option, after discussions with stakeholders, the Department determined that the costs associated with implementing this mechanism would outweigh the benefits it may provide to customers.

**Comment:** Concerns with the requirement that the mobile payment option (if used) cannot require the download of an app or the user to sign in to pay. States that some mobile payment applications require a sign-in to use (ex. Samsung Pay, Pay Pal, applications from EV charging providers). Mobile devices themselves also require a sign-in. These are security measures.

**Response:** RCW 19.94.565(3) does not allow an electric vehicle service provider (EVSP) to require a subscription, membership, account, or minimum balance on an account to initiate a charging session. WAC 16-662-210(1) sets the minimum requirements for payment methods. If at least three of the listed methods are included, additional methods may also be provided at the discretion of the EVSP. An EVSP may have a sign-in or membership as an option (not a requirement) but must also have other payment options available which do not require this. An EVSP may offer some sort of incentive to encourage consumers to download an application or create an account, as long as it is optional and not a requirement to conduct a transaction.

**Comment:** The proposed draft rule language does not accomplish the goals of SB 5192 and would not result in any meaningful changes to industry practices, which is what this legislation is inherently designed to do. RCW 19.94.565(1)(e) directs WSDA to adopt “minimum required payment methods that are convenient and reasonably support access for all current and future users” (emphasis added). The choose-any-three approach does not set minimum requirements that would provide a necessary level of certainty to users and inevitably perpetuates an experience that is not standardized, convenient, or accessible. California has the largest electric vehicle market in the country and they require three minimum payment methods that provide certainty to users and reasonably minimized costs. An essential component to California’s minimum payment method standards is the requirement to have a credit card reader device physically located on either the EVSE unit or a kiosk used to service that EVSE. 78% of all gas customers pay by credit or debit card and it is a common experience for these transactions to occur almost instantaneously at the pump and not through a toll-free number, signing up for an app or RFID card, or setting up a mobile wallet. For these reasons, we interpret the proposed draft rule language as not meeting the requirements of SB 5192 and recommend adopting the same
requirements outlined in California’s EVSE Standards, § 2360.2, titled “Payment Method Requirements for Electric Vehicle Supply Equipment.” This will standardize minimum requirements, simplify the user experience, and streamline EVSE inspections.

Additional Similar Comments: Wants to make sure our rule ensures that the “minimum required payment methods [are] convenient and reasonably support access for all current and future users” of public electric vehicle chargers and feels that the way to accomplish this is to replicate the gas station model with multiple, standard payment methods and clear pricing. Wants the rule to provide standardization and certainty when it comes to paying for a charging session and notes how the California Air Resources Board standardized payment methods by requiring the following three payment methods: mobile payment, a toll-free number, and a credit card reader physically located on the EVSE or kiosk. Commenter strongly recommends that WSDA rule should align with California’s approach but feels that payment through a toll-free number is cumbersome for users and may lead to security concerns.

Response: WSDA appreciates the concerns raised in these comments surrounding the Department meeting the statutory requirements set forth in this legislation. The Department has that goal as well. Many bills that pass through the legislature include a section that specifically state what the intent of the bill is. This is done to ensure that all parties involved with utilizing and enforcing the resulting statute are clear on the intent of the legislature that passed the bill. Oftentimes the intent of the original drafter or the intent of the original sponsor might differ from what the resulting bill looks like when it is finally approved. Unfortunately, SB 5192 was not written in a manner that specifically detailed the intent of the bill other than a single sentence stating that it was, “An Act relating to supporting access to electric vehicle supply equipment...” Supporting access to EVSE can be accomplished in many ways. It can be accomplished by aiding consumers in being able to more easily conduct a charging session, but it is also accomplished by supporting and encouraging the EV industry to install more charging stations throughout the state. Imposing additional costs on the industry could result in fewer EVSEs being installed. This could result in negative impacts on consumers who cannot easily conduct a charging session, if there is not an abundance of charging stations for them to utilize.

There is no language in the bill that specifically states the Department is responsible for writing rules that result in meaningful changes to industry practices. Instead, the bill states that the Department’s rules should, “maintain consistency with evolving technology” and “seek to minimize costs and maximize benefits to the public”. Thus, implying that the rules should establish a balance between trying to provide as much benefit to the public as possible and minimizing the costs imposed on the industry, while also staying mindful of the fact that technology is constantly changing.

The primary focus of RCW 19.94.565(1) is that the Department must adopt rules requiring all EVSP to make available multiple payment methods on all publicly available EVSE. It further states that the minimum required payment methods should be convenient and reasonably support access for all current and future users. Nowhere in the bill does it state that those payment methods must be standardized so that all EVSE provide the same payment method options. The terms ‘convenient’ and ‘reasonably support access’ are subjective and could mean very different things to different users. The draft rules provided six payment options to choose from and sets a minimum requirement that the EVSP must provide at least three of them at each charging station. This meets the primary objective of this section, requiring that all EVSP make available multiple payment options while also balancing the costs to industry, the benefit to the public, and allowing new technology to be utilized as it develops.
There has never been a legal requirement for gas stations to accept certain forms of payment. Payment methods accepted by gas stations have evolved over time based on how customers wanted to pay. Even now, gas stations are beginning to develop mobile applications and are accepting a variety of mobile payment options. After speaking with a representative of Chevron, the Department learned that they began building a mobile application for their customers to pay for gas in 2019 because they saw that customers wanted less interaction with the station attendant and the gas pump itself. The health concerns created by the COVID-19 pandemic have only increased this desire to have less physical interaction with devices and people that could put them at risk. Among customers, there is a certain amount of distrust with credit card reader devices due to fraudulent charges resulting from skimming of these devices. Chevron now accepts mobile payments at all their corporate-owned refueling stations across the country. Other gas stations, such as BP, Accro, Cumberland Farms, CITGO, Delta Sonic, Kwik Fill, Meijer, RaceTrac, QuickTrip, Shell, Speedway, Texaco, 7-11, and Valero all accept mobile payments as well. For these reasons, the Department does not find it necessary to impose additional costs on EVSP by requiring them to adopt payment methods that are becoming outdated.

The additional commenter states that the Department’s rule should align with the rule developed by the California Air Resources Board, requiring all EVSP to provide the following three methods of payment at each EVSE unit: mobile payment, toll-free number, and credit card reader device. However, the commenter then states that toll-free numbers are cumbersome for users and may result in security issues. This is one reason why the draft rule was developed to allow flexibility for the EVSP to choose the payment methods that best meet the needs of their customers. Toll-free numbers are just one of the options available to meet the requirement of the rule. If an EVSP felt that they were able to better serve their customers by providing three other payment methods and not providing a toll-free number, that would be acceptable.

**Comment:** Supports the intent of the rule language written regarding payment methods for the following reasons. The rule as written provides options for EVSE providers to meet the requirements of the rule. Specifically, the commenter supports the options provided in the rule for meeting the payment requirements. The statute is permissive in the number of charging options and does not specify a minimum of three alternatives. With a requirement of three of six options, the rule goes beyond what is required in statute. The number of options must remain the discretion of the EV Service provider. Varieties of the outlined payment methods are largely available on the market, which will ensure a smooth adjustment period. The commenter does not support mandating credit card readers on EVSE due to the vulnerability of these systems to tampering and fraud. The bill as passed reads that “Payment methods may include, but are not limited to.” Credit card readers on EVSE should be an option available for EVSE companies to comply with the law but should not be mandated. Requests that the Director shares formally requested payment methods in item F with the public to provide stakeholders an adequate comment period and allow for feedback before implementation.

**Response:** RCW 19.94.565 requires the Department to adopt rules that require all EVSP to make available multiple payment methods at all publicly available EVSE. The statute requires that the rules include minimum required payments but leaves the types of payment and the number of methods required, up to the Department to determine. That Department has determined that it is within the statutory authority provided to set the minimum number of required payment methods.

When additional payment methods are submitted to the Director for approval, it will be at the Director’s discretion to request feedback from the public before deciding on the request. The Director will assess
whether the alternative payment method is for the benefit of the public, convenient, and reasonably supports access for current or future users. If the Director decides to approve an additional payment method request, a Policy Statement will be issued, per RCW 34.05.230, until rulemaking can be conducted to officially incorporate the additional payment method into the rule language. During the rulemaking process, the public will have the opportunity to provide feedback and input regarding the payment method.

**Comment:** Requests to include an “in-vehicle” payment option.

**Response:** This option has been added to the draft rule language with limitations aligning with the exemption regarding interoperability standards. The limitations are that the EVSP and the vehicle manufacturer be the same and as one party are responsible for the operation of both the EVSE and the display. See new draft of WAC 16-662-210(1).

**Feedback to WAC 16-662-210, Languages Other Than English:**

**Comment:** States the language requirement is ambiguous and difficult to enforce. Wants clear requirements with options for toll-free numbers, applications, and/or signage based on demographics. Additional comments were received related to methods for determining demographics.

**Response:** RCW 19.94.565(1)(f) requires the Department to adopt rules that include means for conducting a charging session in languages other than English. The Department received no specific input on what this section was to achieve or examples of issues it was addressing. The Department is not aware of similar regulations on private industry to draw examples from. The statute left the requirement vague and at this time, the draft rules are sufficient to meet the requirement. The draft rule language was clarified to specify that only one additional language other than English was necessary to meet the requirement. As the EV charging process evolves, this requirement can be readdressed if needed.

Regarding the EVSP methods for determining demographics, the EVSP should be able to provide sufficient justification for the selection of language(s) they are providing.

**Feedback to WAC 16-662-215, Interoperability:**

**Comment:** Not supportive of mandating software protocols that are not approved by international or national standards.

**Response:** While it would be preferred that the required protocols were from a national or international consensus standards organization, we are unaware of any such standards existing at this time. RCW 19.94.570 requires that we adopt interoperability standards with some guidance and the Department believes it has done its best to achieve this with the input it has received.

**Comment:** Feels the OCPP requirement is unenforceable and open to interpretation.
Response: We have added two additional restraints to the interoperability requirements in the new draft rules that will help with enforcement and consumer protections. At this time, only OCPP version 1.6 can be certified, and version 2.0.1 is not backwards compatible with 1.6. There are additional benefits to 2.0.1 and some EVSEs may be designed to only run on the newer version. The Department also has some concerns that only one laboratory in the USA currently offers certification. While the process involved with certification does not explicitly require the purchase of proprietary software or to become a member, it is the intended/preferred process, which does not align with the intent of RCW 19.94.570(2) “The requirements shall not provide that any charging provider must purchase or license proprietary technology or software”. There are significant additional costs if the software is not purchased and/or they are not a member.

Comment: Does not want specific versions of OCPI or OCPP required except as a minimum. Suggest adding “or later” under subpart (b).

Response: The Department will not adopt language that allows compliance through use of standards that have not yet been issued due to uncertainty and unpredictability of yet-to-be-issued standards. It is even possible future versions of the standards may not be backwards compatible. The Department may consider amending the rule to account for newly issued standards after they are formally issued and can be reviewed.

Adopting NIST Handbooks 44 and 130

Comment: Requested a timeline for adopting NIST Handbooks 44 and 130.

Response: The Department plans to begin the process of adopting the currently published Handbooks before 2024, once this rule making process is further along. There is no plan to make any modifications to the EV charging related model rules found in the Handbooks. Please note that the model regulations for EVSE found in Handbook 44 are marked as tentative and will likely continue to have this status for several more years. 2024 would be the first possible year for Handbook 44 to be published with the “tentative status” removed making it enforceable, but that would have to be proposed at a regional meeting by Fall 2022. Tentative model regulations are not enforceable.