PROPOSED RULE MAKING

CR-102 (July 2022)
(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Dept. of Agriculture

☐ Original Notice
☐ Supplemental Notice to WSR ______
☐ Continuance of WSR ______

☐ Preproposal Statement of Inquiry was filed as WSR 21-17-137; or
☐ Expedited Rule Making--Proposed notice was filed as WSR ______; or
☐ Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or
☐ Proposal is exempt under RCW ______.

Title of rule and other identifying information: (describe subject) Chapter 16-662 WAC, Weights and Measure – 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 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 electric vehicle service providers (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):

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Location: (be specific)</th>
<th>Comment:</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 11, 2022</td>
<td>10:00 AM</td>
<td>Microsoft Teams Conference Line</td>
<td>Due to the ongoing COVID-19 pandemic, the public hearing will be held solely over video and teleconference.</td>
</tr>
</tbody>
</table>
Date of intended adoption: October 18, 2022 (Note: This is NOT the effective date)

Submit written comments to:
Name: Gloriann Robinson, Agency Rules Coordinator
Address: PO Box 42560, Olympia, WA 98504-2560
Email: wsdarulescomments@agr.wa.gov
Fax: (360) 902-2092
Other:
By (date) 5:00 PM October 11, 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 re-charged by an external source. According to the U.S. 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 the 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 January 1, 2024 in accordance with 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 equipment 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 EVSPs to 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 EVSE to provide 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 EVSE 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 the 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 (OCPP) and Open Charge Point Interface (OCPI) 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 EVSEs 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 EVSEs 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 the EVSP and there are multiple ways in which the EVSE can be marked. Since the average life span of an EVSE is approximately 10 years, this would mean that EVSEs 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% 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% 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; RCW 19.94.190, RCW 19.94.555, RCW 19.94.565, RCW 19.94.570, RCW 19.94.575

**Statute being implemented:** Chapter 19.94 RCW

<table>
<thead>
<tr>
<th>Is rule necessary because of a:</th>
<th>☐ Yes ☒ No</th>
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<tbody>
<tr>
<td>Federal Law?</td>
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<td>Federal Court Decision?</td>
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<td>State Court Decision?</td>
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If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Type of proponent:** ☐ Private ☒ Public ☑ Governmental

**Name of proponent:** (person or organization) Washington State Dept. of Agriculture

**Name of agency personnel responsible for:**

<table>
<thead>
<tr>
<th>Name</th>
<th>Office Location</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drafting: Gloriann Robinson</td>
<td>1111 Washington St. SE, Olympia, WA 98504</td>
<td>(360) 902-1802</td>
</tr>
<tr>
<td>Implementation: Tahis McQueen</td>
<td>1111 Washington St. SE, Olympia, WA 98504</td>
<td>(360) 481-7452</td>
</tr>
<tr>
<td>Enforcement: Tahis McQueen</td>
<td>1111 Washington St. SE Olympia, WA 98504</td>
<td>(360) 481-7452</td>
</tr>
</tbody>
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**Is a school district fiscal impact statement required under RCW 28A.305.135?** ☒ Yes ☐ No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

<table>
<thead>
<tr>
<th>Name:</th>
<th>Address:</th>
<th>Phone:</th>
<th>Fax:</th>
<th>TTY:</th>
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**Is a cost-benefit analysis required under RCW 34.05.328?**

☐ Yes: A preliminary cost-benefit analysis may be obtained by contacting:

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<tr>
<th>Name:</th>
<th>Address:</th>
<th>Phone:</th>
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☒ No: Please explain: The Washington State Dept. of Agriculture is not a listed agency under RCW 34.05.328(5)(a)(i)
Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The Governor's Office for Regulatory Innovation and Assistance (ORIA) provides support in completing this part.

(1) Identification of exemptions:
This rule proposal, or portions of the proposal, may be exempt from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). For additional information on exemptions, consult the exemption guide published by ORIA. Please check the box for any applicable exemption(s):

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under RCW 15.65.570(2) because it was adopted by a referendum.

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

☐ RCW 34.05.310 (4)(b) (Internal government operations)
☐ RCW 34.05.310 (4)(e) (Dictated by statute)
☐ RCW 34.05.310 (4)(c) (Incorporation by reference)
☐ RCW 34.05.310 (4)(f) (Set or adjust fees)
☐ RCW 34.05.310 (4)(d) (Correct or clarify language)
☐ RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

☒ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(4) (does not affect small businesses).

☐ This rule proposal, or portions of the proposal, is exempt under RCW .

Explanation of how the above exemption(s) applies to the proposed rule: 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.

(2) Scope of exemptions: Check one.
☒ The rule proposal is fully exempt (skip section 3). Exemptions identified above apply to all portions of the rule proposal.
☐ The rule proposal is partially exempt (complete section 3). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using this template from ORIA):
☐ The rule proposal is not exempt (complete section 3). No exemptions were identified above.

(3) Small business economic impact statement: Complete this section if any portion is not exempt.

If any portion of the proposed rule is not exempt, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☐ No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. ______
☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Gloriann Robinson, Agency Rules Coordinator
Address: PO Box 42560, Olympia, WA 98504-2560
Phone: (360) 902-1802
Fax: (360) 902-2092
TTY:
Email: wsdarulescomments@agr.wa.gov
Other:
<table>
<thead>
<tr>
<th>Date:</th>
<th>9/7/2022</th>
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<tbody>
<tr>
<td>Name:</td>
<td>Brad White</td>
</tr>
<tr>
<td>Title:</td>
<td>Assistant Director</td>
</tr>
<tr>
<td>Signature:</td>
<td>[Signature]</td>
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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.

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.

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.

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.