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VIA E-MAIL

Kevin Walder
Administrative Regulations Analyst
Department of Labor & Industries
Kevin.Walder@lni.wa.gov

Re: Costco Wholesale Corporation's Comments Regarding Washington L&I's
Proposed Lead Rules

Dear Mr. Walder:

Costco Wholesale Corporation ("Costco") has had the opportunity to review the proposed updated Lead Rule being pursued by the Washington Department of Occupational Safety and Health ("DOSH" and "Lead Rule"). As written, Costco is not in favor of the draft Lead Rule for a number of reasons, to be detailed below, and believes that implementation of the draft as written will be unduly burdensome on businesses, such as at Costco's Warehouse, where employees only encounter lead in very limited circumstances. Costco also believes that the draft Lead Rule, as written, will provide limited additional benefits and protections to Costco's employees.

Costco is the largest membership-based warehouse club in the United States. The Company is headquartered in Issaquah, Washington, operating over 525 locations and employing over 163,000 individuals across the United States. In Washington, Costco operates 32 Warehouses. Most of Costco's Warehouses have a Tire Center, where Costco sells everything from tires and wheels to batteries, electronics, and automobile accessories. Costco's Tire Centers provide a "tire balancing" service to its members – either when the tire is first purchased and mounted on the automobile or at a later date if, for example, the member comes in for a tire rotation or other service. As part of the tire balancing process, Costco employees remove and add "wheel counterweights" that have the effect of balancing out any unevenness in the wheel as it rotates.

A very small percentage (approximately 2%) of the old wheel weights removed by Costco Tire Center employees during the tire balancing process contain some amount of lead. Costco Tire Center employees replace any old lead-containing wheel weights with new lead-free wheel weights. Costco stopped purchasing or offering lead-based wheel weights in all of its Tire Centers, not just in Washington, over 6 years ago. The old wheel weights (whether containing lead or not) are removed using a specialized tool that limits employee handling of the wheel weight itself. Costco has a program in place for

proper disposal of lead-containing wheel weights. In addition, Costco provides its Tire Center employees with training and signage related to the potential to encounter lead in the course of their job duties, trains employees on proper good hygiene practices, and provides all Tire Center employees with access to PPE for handling the lead wheel weights, such as gloves. As a result, Costco is already taking steps to address the potential for its Tire Center employees to encounter lead in the workplace and these steps have resulted in significantly reduced potential exposure to lead in Tire Centers across the United States.

Costco is fully committed to employee safety and health and believes that its health and safety record across the country shows this commitment. However, Costco cannot support regulations that are arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law. Further, Costco believes that the draft Lead Rule, as currently written, contains numerous internal inconsistencies, unclear and missing definitions, and confusing formatting that may potentially lead to uncertain obligations on the part of the regulated community and uneven enforcement by the Agency. These are set forth below in more detail below.

A. WAC 296-857-10050 vs WAC 296-857-600

As written, Table 5 under WAC 296-857-10050 specifically states that the task “Working with room temperature materials containing lead but with no lead containing surface materials”¹ only requires following the “Basic Rules” under WAC 296-857-200, with “No monitoring required.” However, WAC 296-857-600(1) and (2) appear to require Costco to conduct initial “verification” blood lead level (“BLL”) monitoring for Costco’s Tire Center employees because they are “workers covered under this rule,” which, according to the “Scope” set out in WAC 296-857-10010 (not just those in its Tire Centers) as well as “ongoing blood lead tests within 3 years [sic] the last test.” As you can see, WAC 296-857-10050 and WAC 296-857-200 are internally inconsistent, with one provision stating that workers “[w]orking with room temperature materials containing lead but with no lead containing surface materials” only need to follow the “Basic Rules” and the other provision suggesting that initial verification BLL monitoring be conducted on all employees who have the potential to be exposed to any lead. Costco suggests clarification of the draft Lead Rule to specifically state that initial verification BLL monitoring is not required where workers are “[w]orking with room temperature materials containing lead but with no lead containing surface materials.”

B. WAC 296-857-10050 vs WAC 296-857-20030

Again, as written, Table 5 under WAC 296-857-10050 specifically states that the task “Working with room temperature materials containing lead but with no lead containing surface materials” only requires that the employer follow the “Basic Rules” under WAC 296-857-200. However, WAC 296-857-20030(3) and (4), which fall under the Section titled “Basic Rules,” suggest that an employer must situate hand and face washing facilities near or just outside the exit to a “control area,” even in situations where no exposure at or above the action level or permissible exposure level is likely to occur.

¹ This is the category Costco’s work in the Tire Centers would fall under because the very small number of lead-containing wheel weights that are removed from wheels in Costco’s Tire Centers contain a non-lead-containing coating that covers the lead-containing material that forms the “core” of the wheel weight.

Specifically, WAC 296-857-20030(3) states that “Employers must locate hand and face washing facilities near or next to work activities with lead exposure just outside the exit from the control area...” and WAC 296-857-20030(4) states that “Employers must make sure workers wash their hands and faces at break times if leaving the control area...” Yet, the requirements for “Exposure control areas” are contained under **WAC 296-857-30010**, a separate section which contains requirements that clearly go beyond the “Basic Rules” contained in WAC 296-857-200. This internal inconsistency puts a heavier burden on employers, such as Costco, who are only required by the draft Lead Rule to follow the “Basic Rules.” Costco suggests removing references to “control areas” from WAC 296-857-20030(3) and (4) and simply stating that hand and face washing facilities should be placed in a location that allows employees to wash their hands and face “prior to using bathroom facilities, eating, drinking, smoking, or other similar activities.”

C. WAC 296-857-10050 vs WAC 296-857-20040

Once again, as written, Table 5 under WAC 296-857-10050 specifically states that the task “Working with room temperature materials containing lead but with no lead containing surface materials” only requires that the employer follow the “Basic Rules” under WAC 296-857-200. However, WAC 296-857-20040(1), which falls under “Voluntary Respirator Use,” requires an employer to allow its employees with potential lead exposure to voluntarily use respiratory protection in any situation where the employee will not be exposed to airborne lead at or above the PEL. Yet WAC 296-857-20040(2), the next provision, states that employers must only allow voluntary use of respirators by workers who request it when exposures are at or above the action level. These two internally inconsistent provisions create a situation where an employer could be required to allow an employee to voluntarily utilize a respirator where there is no airborne lead present - i.e. airborne lead levels are below both the action level and the PEL. Costco understands that WAC 296-857-20040(1) contains the word “may” while WAC 296-857-20040(2) contains the word “must,” but ultimately this distinction does not have any effect. By providing for voluntary use of respirators at any exposure level below the PEL under WAC 296-857-20040(1), an employee could argue that the action level threshold in WAC 296-857-20040(2) has no effect, thus effectively requiring the employer to provide for voluntary respirator use at any exposure level. Costco suggests WAC 296-857-20040(1) and (2) be consolidated and clarified to state that voluntary respirator use need only be provided at levels at or above the action level but below the PEL.

D. Lack of Clarity and Definitions for Key Terms and Scope

Many definitions are missing from the draft Lead Rule. For example, WAC 296-857-40010(1) contains the phrases “Basic Rules Conditions,” “Action Level Conditions,” “PEL Control Conditions,” and “Secondary PEL Control Conditions.” These phrases are not otherwise used or defined in any other location throughout the draft Lead Rule. However, their use in WAC 296-857-40010(1) suggests that if an employer falls within one of the four listed “Conditions,” the employer will then find a section at some other location in the draft Rule that sets forth the requirements to follow for each “Condition.” Costco believes that this was the intent of Table 5 under WAC 296-857-10050, but more clarity is needed, including correlating information in Table 5 under WAC 296-857-10050 with the phrases used in WAC 296-857-40010(1).

In addition, the lack of definitions for “workplace” and “work activity” create uncertainty regarding whether an employer is required to conduct separate “Initial classifications of worker exposure” and characterizations of worker exposure under WAC 296-857-10050 and WAC 296-857-40010, respectively, or if an employer can use representative classifications and characterizations for identical job tasks at different physical location. For example, Costco has Tire Centers at the majority of its Warehouses in Washington where the work being performed that is potentially subject to the draft Lead Rule (removing third-party lead-containing wheel weights) is identical. Yet, the draft Lead Rule does not specify one way or the other whether Costco could perform initial classification and further characterization under WAC 296-857-10050 and WAC 296-857-40010, respectively, at a Tire Center in one Warehouse and use it as representative across all Warehouses in Washington. WAC 296-857-40010(4) suggests that this may be a possibility, but is not clear as to whether “task based assessments” can be extended to separate physical locations within the State of Washington. Such an ambiguity could lead to inconsistent enforcement and an undue burden on Costco if it is determined that initial classifications and characterizations are required at each individual Tire Center. Costco suggests clarifying this ambiguity by adding a provision allowing for representative classifications and characterizations across identical job tasks, even if they are performed under identical conditions at different physical locations.

E. Confusing Formatting Could Lead to Incomplete and Inconsistent Compliance if Implemented as Drafted

The draft Lead Rule, as currently written, is set forth in a confusing and non-intuitive manner. For example, “initial classification of worker exposure” and “characterizations” are located in different sections 17 pages apart, even though each section heavily refers to and relies upon the other. Costco suggests consolidating these sections under one section related to classification and characterization near the beginning of the rule. This would make the rule more intuitive because, as currently drafted, initial administrative and classification requirements are physically separated by intervening substantive and reporting requirements that only come into play if certain prerequisites contained in the initial administrative requirements are met.

To make the draft Lead Rule more user friendly, Costco suggests re-ordering the sections as follows (with the original Section title and new, suggested Section number):

- WAC 296-857-100, Scope, Exposure Criteria, and Initial Assessment
 - ◆ WAC 296-857-10010, Scope and Exposure Criteria
 - ◆ WAC 296-857-10020, Definitions
 - ◆ WAC 296-857-10030, Implementation Schedule
 - ◆ WAC 296-857-10040, Multi-employer worksites
- WAC 296-857-200, Classification and Characterization of Worker Exposure
 - ◆ WAC 296-857-20010, Determining work not covered by this rule

- ◆ WAC 296-857-20020, Initial classification of worker exposure
- ◆ WAC 296-857-20030, Characterizing exposure for workers covered by the rule
- WAC 296-857-300, Monitoring Worker Exposure
 - ◆ WAC 296-857-30010, Monitoring worker blood lead levels
 - ◆ WAC 296-857-30020, Monitoring of worker exposure over time
 - ◆ WAC 296-857-30030, Notifying workers of exposure monitoring results
 - ◆ WAC 296-857-30040, Blood lead records (combine with current WAC 296-857-60090, Medical records)
 - ◆ WAC 296-857-30050, When to make medical examinations available
 - ◆ WAC 296-857-30060, Worker's may request a second opinion
 - ◆ WAC 296-857-30070, Selecting a medical physician
 - ◆ WAC 296-857-30080, Medical removal requirements
 - ◆ WAC 296-857-30090, Medical removal benefits
- WAC 296-857-400, Lead Sampling and Analysis Methods for Exposure Classification and Monitoring
 - ◆ WAC 296-857-40010, Surface Sampling
 - ◆ WAC 296-857-40020, Air Sampling
 - ◆ WAC 296-857-40030, Blood lead testing protocols
 - ◆ WAC 296-857-40040, Medical Protocols
- WAC 296-857-500, Basic Rules
 - ◆ WAC 296-857-50010, Cleaning practices
 - ◆ WAC 296-857-50020, Training
 - ◆ WAC 296-857-50030, Hand and face washing
 - ◆ WAC 296-857-50040, Voluntary Respirator Use
- WAC 296-857-600, Exposure Controls
 - ◆ WAC 296-857-60010, Exposure control areas

- ◆ WAC 296-857-60020, Exposure control plan
- ◆ WAC 296-857-60030, Exposure controls
- ◆ WAC 296-857-60040, Showering, changing, and eating facilities
- ◆ WAC 296-857-60050, Protective clothing and equipment
- ◆ WAC 296-857-60060, Required Respirator Use
- WAC 296-857-700, Task and Industry Specific Compliance Protocols
 - ◆ WAC 296-857-70010, Incidental Lead Paint in Construction/Renovation, Repair, and Painting (RRP) Work
 - ◆ WAC 296-857-70020, Gun Range Work
 - ◆ WAC 296-857-70030 Clean Areas
 - ◆ WAC 296-857-70040, Well Managed Blood Lead Levels
 - ◆ WAC 296-857-70050, Maintenance and Repair Work

Costco is thankful for the opportunity to comment on DOSH's proposed Lead Rule to ensure fair and consistent obligations across all employers in the State of Washington.

Please let me know if you have any questions.

Sincerely,

Robert Moyer
Director
Costco Wholesale