



Oshkosh Corporation  
1917 Four Wheel Drive  
Oshkosh, WI 54903-2566  
920.235.9151

January 21, 2022

Monet Vela  
Office of Environmental Health Hazard Assessment  
1001 I Street, 23rd Floor  
P. O. Box 4010  
Sacramento, California 95812-4010

Re: Proposed Amendments to Article 6, Clear and Reasonable Warnings -- Short-Form  
Proposed December 17, 2021

Oshkosh Corporation, founded over 100 years ago, is an American industrial company headquartered in Wisconsin. We appreciate OEHHA's providing an opportunity for public comments on its December 17, 2021 Proposed Amendments to the short-form warnings.

While the current set of proposed rules (PR) claims to address the plethora of public comments made previously, as a whole, Oshkosh still cannot support this proposed version.

In its December 17, 2021 notice (Notice), OEHHA states,

OEHHA has modified the proposed regulation to, among other things: increase the maximum label size for short-form warnings from 5 square inches to 12 square inches; allow use of the short-form warning on the internet or in catalogs where the short form warning is used on the product label; provide additional signal word options; provide additional warning language options; and provide minor clarifications on the wording of the warning.

While technically accurate, this description is *materially* misleading, undercutting the entire PR and subjecting it to legal challenge. It is misleading because nowhere in the Notice does it mention what many will agree is the most significant modification (much less a minor wording clarification) to the PR. That significant modification is in PR section 25603(b)(2)(A) through (D) which, as proposed now, without appropriate justification, requires naming and identifying the chemical(s) of concern that can cause cancer and/or reproductive harm if someone is exposed.<sup>1</sup> This significantly conflicts with OEHHA's original explanation for adopting the short-form warning and this conflict is not addressed or resolved in the Notice.<sup>2</sup>

---

<sup>1</sup> In fact, section 25603 is; a) barely referenced in the Notice, and b) there is literally no substantive discussion about that section in the Notice.

<sup>2</sup> Initial Statement of Reasons, Title 27, California Code of Regulations Proposed Repeal of Article 6 And Adoption of New Article 6 Regulations For Clear And Reasonable Warnings (November 27, 2015).

While we incorporate by reference our comments submitted on or about March 29, 2021 concerning this rulemaking, since the latest version of the PR is, in many ways, worse than the prior version, we think it useful to restate and expand on our three main points previously communicated to OHHEA.

1) Though Oshkosh supports the increase in maximum label size from 5 to 12 square inches, that size remains too small. If OEHHA insists, despite the clear legal frailty, on adopting a short-form warning that requires listing the offending chemical(s), then there should be no limit on the size of the label it can be used on. This PR effectively does more to eviscerate the current short-form warning than the earlier proposed language, and

2) As OEHHA has acknowledged, Prop. 65 does not require testing of products to determine the presence of any of the 1,000+ listed chemicals. If, however, the currently proposed language is adopted, essentially all products sold in California will need to be tested, even by the smallest of businesses, including sole proprietors. This testing will apply across the board, to large and small companies, as the Prop. 65 Plaintiff's bar continues to issue 60-day NOV's to small companies that so much as "touch" a product since they know they can leverage the large retailers and suppliers to force small businesses to resolve allegations, and

3) As with previously adopted regulatory changes meant to "improve" Prop. 65 and how the public is warned about possible chemical exposures, the proposed amendments will exacerbate, rather than reduce frivolous or shake-down lawsuits. They also are likely give rise to new bases for such suits (e.g., if the chemical identified on the label is not found by the "enforcers" testing).

Beyond the real and substantial infirmities mentioned above, Oshkosh supports the following proposed changes:

- The increase in label size where the short-form warning can be used, but think the 12 square inches is still too small;
- Allowing use of the short-form warning on the internet or in catalogs where the short form warning is used on the product label, as this can promote label consistency across platforms; and
- Providing the additional signal word options including **CA WARNING:** and **CALIFORNIA WARNING:**.

Oshkosh appreciates OEHHA's consideration of these comments. Thank you.

Sincerely,  
/s/  
Patrick T. Taverna  
Associate General Counsel