



FRAGRANCE CREATORS
ASSOCIATION™

May 14, 2020

VIA EMAIL [csmrprod@arb.ca.gov]

California Air Resources Board
Consumer Products and Air Quality Assessment Branch

Re: Comments of the Fragrance Creators Association on CARB's Draft Proposed Amendments to the Consumer Products Regulation

Fragrance Creators Association ("Fragrance Creators")¹ writes to provide feedback on the California Air Resources Board's ("CARB's") Proposed Amendments to the Consumer Products Regulation, which were presented at a public webinar on April 14, 2020. Fragrance Creators very much appreciates CARB staff's consideration of its prior comments and continuing efforts to discuss our concerns. As detailed below, however, CARB's revised proposal regarding the two percent exemption for fragrance ("Two Percent Exemption") and the Personal Fragrance Product category still would create significant difficulties for the fragrance and consumer product industries. Fragrance Creators therefore requests that CARB reconsider its approach on these two issues, as outlined below. We would like to follow up via a virtual meeting at a mutually convenient time.

COMMENTS

I. Fragrance Creators Requests that CARB Reconsider "Sunsetting" the Two Percent Exemption.

In its April 14 presentation, CARB proposes to sunset the Two Percent Exemption by 2031, which reflects a four-year extension from its prior proposal. CARB also proposes to retain a 0.25 percent fragrance exemption (inclusive of monoterpenes) for general purpose cleaners and degreasers in 2031 and subsequent years. Fragrance Creators generally supports these changes, which provide some relief, but respectfully submits that these slight modifications to CARB's Proposed Amendments to the Consumer Products Regulation still are not sufficient to strike the

¹ Fragrance Creators is the principal trade association representing the fragrance industry in the U.S. and Canada. Fragrance Creators has nearly 70 member-companies, and approximately 50 are small-businesses. The organization's member companies create and manufacture fragrances and scents for home care, personal care, home design, fine fragrance, and industrial and institutional products. Fragrance Creators also represents companies that market finished products containing fragrance as well as those that supply fragrance ingredients, including natural extracts and other raw materials that are used in perfumery and fragrance mixtures. More information about Fragrance Creators can be found at <https://www.fragrancecreators.org>.

appropriate balance between reducing VOC emissions and ensuring the commercial and technological viability of consumer products in California.

A. Sunsetting the Two Percent Exemption Threatens the Viability of Certain Consumer Products and Products With Certain Scents.

As we have presented, fragrance is a critical component of many consumer products: it encourages proper product use; covers base malodors; and creates a mechanism for product manufacturers to differentiate between brands and products. It is for these reasons that CARB adopted the Two Percent Exemption, explaining that the exemption would allow manufacturers to use a “de minimis level” of fragrance in their consumer products “such that the products may be marketed in an appealing manner to consumers.”² CARB’s proposal to sunset the fragrance exemption entirely for the vast majority of product categories (and in significant part, for the general purpose cleaner and degreaser categories) threatens to eliminate certain products from the California market. They would no longer be technologically and/or commercially feasible— i.e., they could not be formulated to both work as intended and comply with the low VOC limits for their product category, while still imparting a scent that drives consumer acceptance and other benefits. Even if the Two Percent Exemption fully sunsets in 2031, this will not eliminate the public’s desire to use fragranced products. In fact, the overwhelming majority of consumers want and use fragranced products. While Fragrance Creators is glad to see the timeline extended to 2031, certain chemistries cannot be reformulated.

As outlined in our March 27, 2020 Allied Trades letter,³ the Two Percent Exemption has been an integral part of the Consumer Products Regulation. In short, the Two Percent Exemption is an important tool in the formulation toolkit to deliver efficacious products to the market that meet consumers’ needs. Without this tool, it is likely that some products and scents would no longer be technologically and/or commercially feasible and would be forced from the market entirely. Fragrance Creators recommends the retention of the Two Percent Exemption. Fragrance Creators, its members, and our allied trades continue to work to identify a non-exhaustive list of product categories that require some level of exemption, should CARB proceed with sunsetting the Two Percent Exemption. However, given sunsetting the Two Percent Exemption would affect all Article 2 products, we note that many relevant stakeholders have not provided feedback.⁴

² CARB, *Proposed Regulation to Reduce Volatile Organic Compound Emissions from Consumer Products*, Technical Support Document at 6-7 (August 1990), available at ww3.arb.ca.gov/consprod/regact/ph1cptsd.pdf.

³ Allied Trades Letter, (March 27, 2020), available at https://ww2.arb.ca.gov/sites/default/files/2020-03/Allied_Trades_Letter_2_Percent_Exemption.pdf.

⁴ Since the rulemaking process began in April 2019, CARB has narrowed the scope of categories covered under this rulemaking. While Fragrance Creators appreciates CARB’s careful consideration, we have observed many industry stakeholders lessened their engagement once VOC reduction limits were not proposed for their product categories. Other suppliers and manufacturers of Article 2 consumer products have never engaged.

B. VOC Emission Reductions Do Not Justify Sunsetting of the Two Percent Exemption.

The consumer products industry has relied on the Two Percent Exemption for nearly thirty years and has depended on it when negotiating VOC levels in several product categories. The Two Percent Exemption is not a carveout for the fragrance industry but rather, an exemption used by any fragranced consumer product category that has VOC limits. Fragrance Creators acknowledges CARB's concern about increased use of the Two Percent Exemption and its potential impact on VOC emissions. We note, however, that other rationales for eliminating the exemption offered by CARB and other stakeholders (*see, e.g.*, slide 34 of CARB's April 14, 2020 presentation) are beyond the scope of CARB's statutory mandate to achieve reductions in VOC emissions from consumer products that are commercially and technologically feasible and necessary. *See* Health & Safety Code § 41712(b). Accordingly, these secondary concerns should be afforded little, if any, weight in CARB's rulemaking process. Instead, we ask CARB to consider the minimal VOC emission reductions as well as potential unintended consequences associated with sunsetting the Two Percent Exemption.

Based on CARB's calculations, "sunsetting" the Two Percent Exemption results in a comparatively small reduction of VOC emissions (0.3 tons/day) and, yet, affects many products across Article 2 product categories. Assuming that some exemption must be retained for specific categories, this will result in even less reduction. While Fragrance Creators acknowledges industry's role in addressing air quality issues—through innovation, reformulation, and the like—this proposal is uniquely challenging to understand and implement. Specifically, Fragrance Creators asserts that reformulation may not be enough to ensure that a fragrance formula will meet VOC limits for a given product category without the Two Percent Exemption. As our industry contemplates how it would formulate without the Two Percent Exemption, unintended consequences have been identified.

Fragrances contain both VOCs and LVP-VOCs in almost all fragrance formulas. The data shared by Fragrance Creators demonstrated that about 78 percent of all fragrance used in North America is LVP-VOC. Fragrance Creators appreciates CARB's recognition that most fragrances are 25 percent VOC, rather than the previous 100 percent VOC assumption.⁵ If the Two Percent Exemption is eliminated and a particular product has no additional allowance for fragrance VOCs, fragrance suppliers would have to resort to the removal of VOC ingredients, possibly replacing them with LVP-VOC ingredients. Generally, LVP-VOC ingredients would need to be present at a higher concentration in a product to have the same olfactive effect due to the reduced volatility. The loss of the use of VOC fragrance components would also significantly change the character of the fragrance when it is replaced by larger amounts of LVP fragrance materials. In such cases, the total fragrance concentration of the product would actually increase, consumer exposure to fragrance would increase, and, ultimately, more fragrance

⁵ CARB, Public Work Group Meeting: Evaluation of Fragrance Speciation (September 20, 2019), available at https://ww2.arb.ca.gov/sites/default/files/2020-04/Remediated_webinar_9202019_adav3.pdf.

would be released into the environment. In such cases, the slight VOC emissions reduction accomplished by sunseting the Two Percent Exemption comes at the expense of additional ozone forming potential.

C. Sunseting the Two Percent Exemption Imposes Significant and Costly Burdens on Product Manufacturers.

Without some exemption for fragrance, many product manufacturers—across a wide range of product categories—will have to expend a significant amount of time, money, and effort to reformulate products that were developed with the reasonable expectation that the long-standing exemption for fragrance would remain in effect. Reformulating a single consumer product is a costly and time-consuming process that involves multiple stages, including design and development of multiple fragrance options; production of sample fragrance oils; testing of each fragrance oil sample for hedonics, performance, and stability; regulatory review to ensure each fragrance oil sample meets the product manufacturer’s specifications; and production of the selected formulated fragrance for distribution to the product manufacturer. Please see **Attachment 1**, which offers an overview of the reformulation process. Fragrance Creators and its members will follow-up with more specific information and examples.

In addition, reformulation often is an iterative process, such that these steps must be repeated several times. It is also cumulative in that the costs of fragrance reformulation will be added to the overall cost for any product’s reformulation. Reformulating many products—as likely would be required if CARB eliminates the fragrance exemption—would thus be an extraordinarily time-consuming and costly endeavor. This work pulls resources from other efforts, such as research and development. Even if CARB is correct that it is not widely used, manufacturers would still have to review each of their products to ensure that the formulations comply with the applicable VOC limits without the Two Percent Exemption. In either case, sunseting the Two Percent Exemption would impose a significant and costly burden on product manufacturers, while achieving only marginal reductions in VOC emissions.

II. CARB Should Refine Its Proposal Regarding Personal Fragrance Products.

CARB also proposes to reduce the applicable fragrance content threshold for the Personal Fragrance Products category from 20 percent to 10 percent. Under CARB’s April 14 proposal, Personal Fragrance Products with 10 percent or less fragrance would be subject to a VOC standard of 68 percent by weight starting January 1, 2023, and 50 percent by weight starting January 1, 2027. Personal Fragrance Products with more than 10 percent fragrance would continue to be subject to a VOC standard of 75 percent by weight. CARB explained (at slide 31 of its April 14 presentation) that the lower fragrance threshold helps address reformulation challenges for eau de parfum and eau de toilette products. Fragrance Creators asks that CARB revisit the proposed VOC limits affecting all personal fragrance products (after shaves, body sprays/mists, eau de parfum, eau de toilette, etc.), reduce the proposed fragrance content cutoff, and consider refining the category by using frame formulation information.

A. Less than 10 Percent of the Existing Market⁶ Currently Comply with CARB's Proposed 2023 VOC Limits for Personal Fragrance Products.

Fragrance Creators appreciates that CARB's mandate is to achieve the maximum VOC reduction, but continues to express concerns that the proposed VOC limits are neither technically nor commercially feasible. As Fragrance Creators explained previously, for the vast majority of fine fragrance products (colognes, perfumes, parfums, eau de parfum, eau de toilette, etc.), compliance with the more stringent limits would be very difficult (at 68 percent) if not impossible (at 50 percent)⁷. This is because it often is not possible to reformulate these products, as even a small change to the formulation changes the olfactory character of the product such that it loses its identity. Fragrance Creators also would like to discuss the impact of this proposal on natural products; we intend to provide additional examples in our next meeting. As presented in our February 10, 2020 meeting, the composition of all the products in this category, coupled with the commercially or olfactively unviable alternatives, makes this proposal especially challenging. Reformulating from the current VOC limit of 75 percent to 68 percent will require a massive reformulation of thousands of products and, even if some manufacturers are able to meet this limit, the technical feasibility will not exist for others. Further reduction to 50 percent by 2027 mandates a limit that has not been achieved in the current market and makes a far more draconian reduction than any other product category in the proposed rulemaking.

B. The Fragrance Content Threshold Should be Lowered.

Fragrance Creators appreciates CARB's effort to further refine this product category. CARB's proposed approach of reducing the fragrance content threshold to 10 percent, however, is both over- and under-inclusive, as it subjects some fine fragrances⁸ that have 10 percent or less fragrance to the more stringent limits, while allowing a few Personal Fragrance Products that have more than 10 percent fragrance to comply with less stringent limits.⁹ At a minimum, CARB should reduce the threshold to 5 percent and grandfather existing fine fragrance products to avoid eliminating "iconic" fine fragrance products from the California market.

Fragrance Creators understands that CARB does not want to select a fragrance content threshold that could possibly encourage manufacturers to increase fragrance content to avoid regulation. Fragrance Creators is gathering additional feedback and examples from its members, but offers two responses. First, a manufacturer cannot increase the fragrance content of the product

⁶ Complying Market Share by Mass. See CARB, Regulatory Strategies Work Group Meeting at Slide 74 (October 10, 2019), available at https://ww3.arb.ca.gov/consprod/regact/oct10_presentation.pdf.

⁷ Fragrance Creators and its member companies have shared samples demonstrating the technical issues with these proposed limits. We are unaware of any company or CARB-identified market share capable of meeting the 50% limit by 2027.

⁸ Approximately 55%. See CARB, Regulatory Strategies Work Group Meeting at Slide 36 (March 10, 2020), available at https://ww2.arb.ca.gov/sites/default/files/2020-03/Work%20Group%20Presentation%203-10-20_0.pdf.

⁹ See, e.g., CARB, Public Webinar for Proposed Amendments to the Consumer Products Regulations, at slide 32 (April 14, 2020), available at https://ww2.arb.ca.gov/sites/default/files/2020-04/Workshop_Presentation_April_14_2020_final_2.pdf.

without reformulating the entire finished product or creating an entirely new product. This is due to various olfactive properties, ingredients, safety assessments, and other factors. Second, fragrance is generally the most expensive ingredient in a personal fragrance product. While adding more fragrance may avoid a regulatory change from CARB, particularly for price conscious products, this is an unappealing choice for a manufacturer. Fragrance Creators would be pleased to continue this discussion with CARB during our next meeting.

C. CARB Should Consider Frame Formulations.

Although further reducing the fragrance content threshold to 5 percent would better address the reformulation challenges for fine fragrances, Fragrance Creators submits that a different approach may also accomplish CARB's objectives. By way of background, all Personal Fragrance Products are composed of fragrance, ethanol, water, and other ingredients. Additional qualitative features may be helpful to distinguish fine fragrances. Fine fragrances, however, typically have less than 1.5 percent "other ingredients," whereas other Personal Fragrance Products typically have between 1.5 and 10 percent "other ingredients." Importantly, the "other ingredients" in fine fragrances are limited to colors and few technical ingredients, strictly and solely affecting the solubility, stability and longevity of the fragrance compound or the color (e.g., UV filters, colorants, etc.). In contrast, the "other ingredients" in other Personal Fragrance Products (body sprays, aftershaves, fragrance mists) include a much broader range of ingredients, including emollients, humectants, skin and hair conditioning agents, deodorizing agents, shining ingredients, fixatives, and more. These ingredients are unrelated to the fragrance or the color, but provide some other formulation or cosmetic effect, or some additional claims beyond scent whereas the purpose of a fine fragrance is to impart scent. Fine fragrances are always packed in glass or crystal, while the other products in this CARB product category use many more packaging materials. Finally, fine fragrances are never aerosols, whereas other Personal Fragrance Products can be either aerosols or non-aerosols.

Fragrance Creators therefore proposes the following framework to differentiate fine fragrances (described as parfum, perfume, cologne, eau de parfum, eau de toilette) from other Personal Fragrance Products. To qualify as a fine fragrance product and retain the 75 percent VOC limit, the product must satisfy each of the following conditions:

1. A hydroalcoholic product containing less than 1.5 percent by weight of ingredients other than fragrance, ethanol, and water (the "quantitative component"); and
2. Satisfy the following criteria (the "qualitative component"): (a) contains no ingredients other than fragrance, ethanol, water, and other ingredients designed to stabilize the fragrance or color; (b) is non-aerosol; (c) is packaged in glass or crystal; and (d) is solely and uniquely labeled as a parfum, perfume, cologne, eau de parfum, or eau de toilette.

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Fragrance Creators believes that this framework better differentiates fine fragrances from other Personal Fragrance Products, while also avoiding the potential for abuse that could arise if the product category were based solely on label statements. Our hope is also that the aforementioned qualitative aspects will aid enforcement. Fragrance Creators encourages CARB to consider using this framework, or some variation thereof, to develop revised VOC standards for the Personal Fragrance Products category. At a minimum, this approach may aid in identifying existing fine fragrances that should maintain the 75 percent VOC limit, as it is more precise than other options (e.g. identification of "iconic" fine fragrances).

* * *

Thank you for your time and consideration. We appreciate CARB staff's transparency and open communication throughout this rulemaking process. We request a follow-up conversation to discuss the above issues and any additional information Fragrance Creators receives from our members. Please do not hesitate to contact me if you have any questions.

Respectfully,



Amanda Nguyen, J.D.

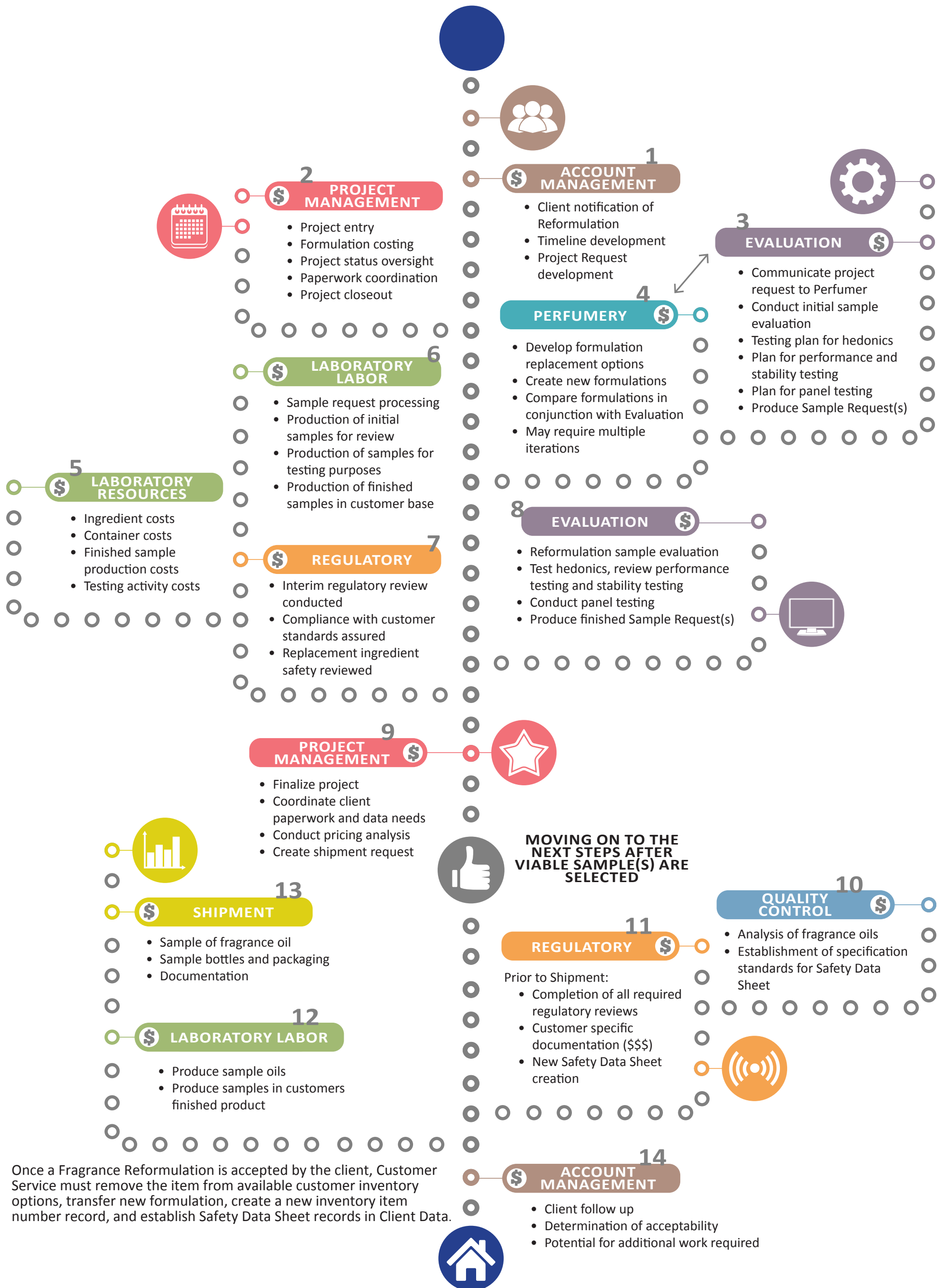
Vice President, Government Affairs & Legal

Enclosure: Attachment 1

cc: Ravi Ramalingam, Branch Chief, Consumer Products and Air Quality Assessment Branch
Joe Calavita, Manager, Consumer Products Implementation Section
Josh Berghouse, Rulemaking Lead Staff, Consumer Products Implementation Section
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CARB FRAGRANCE REFORMULATION COST OVERVIEW

Fragrance reformulations are a complex process that drives expenses across multiple areas within a fragrance company. This chart represents analysis of the steps required for a single Regulatory Reformulation Project.



In some cases, additional costs may be also incurred. If raw material replacement is not readily available, **Purchasing Departments** will incur costs in sourcing new ingredient options. **Quality Assurance** will have to conduct complex reviews of safety assessments, regulatory compliance, and supplier performance requirements. **Marketing Departments** may also be required to communicate project timelines and activities through the development of portfolios over-viewing the project process, the testing results, and data analytics developed and utilized to support the reformulation selection. Departmental responsibility for certain activities may vary from company to company but cost analytics remain the same.