

June 26, 2020

via electronic transmission

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California Air Resources Board, AQPSD  
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Subject: Draft Proposed Amendments to California Consumer Products Regulation;  
2% Fragrance Exemption

Dear Mr. Ramalingam, Mr. Calavita and Mr. Berghouse,

The Household & Commercial Products Association (HCPA) appreciates the opportunity to file comments on the draft proposed amendment to the 2% fragrance exemption.

The draft proposal to sunset the 2% fragrance exemption by 2031 will impact every product category included in Article 2 of the Consumer Products Regulations. It would represent a *de facto* reduction of the VOC limits for thousands of consumer products. If adopted, this provision would require manufacturers to expend an extensive amount of labor and capital resources to review thousands of currently compliant product formulations to ensure that these products will continue to meet applicable VOC limits.

In accordance with the current CARB regulation that allows manufacturers a *de minimis* level of fragrance,<sup>1</sup> manufacturers do not over-use the fragrance exemption. They only use the necessary amount of fragrance ingredients required to cover the malodor of base active ingredients, to encourage proper consumer use and to differentiate their brands and products.

The loss of the exemption would force manufacturers to completely reformulate a large number of products to meet stringent applicable VOC limits. In addition, fragrance houses also will incur extensive costs to reformulate fragrance ingredients (which are generally the most chemically complex additive in a product formulation) for those product categories that, in fact, currently use the fragrance exemption. Therefore, the draft proposal will impose a significant and costly burden for product manufacturers and fragrance houses while achieving only marginal reductions in VOCs.

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<sup>1</sup> As explained in the CARB Staff's Technical Support Document for the Phase 1 Rulemaking for Consumer Products (August 1990), "This exemption was established to allow manufacturers a *de minimis* [sic] level of these substances in various products such that the products may be marketed in an appealing manner to consumers." See <https://ww3.arb.ca.gov/consprod/regact/ph1cptsd.pdf> at pp. 6-7

Current VOC limits are so strict and technology-forcing that manufacturers are required to formulate products that are at – or just below – the applicable regulatory limit. Thus, manufacturers and fragrance houses need a fragrance exemption to provide a reasonable degree of flexibility so that they can respond to unforeseen events (*e.g.*, disruption in supply chains, unavailability of currently used ingredients) and make necessary changes to product formulations and fragrance ingredients. It is neither reasonable nor realistic to require manufacturers to confirm product compliance every time they (and/or fragrance houses) are forced to make necessary adjustments in responding to unforeseen contingencies. Eliminating the exemption would limit the flexibility that product manufacturers and fragrance houses need to substitute ingredients due to uncontrollable events.

The fragrance exemption is an important and necessary “tool” that manufacturers use to formulate commercially and technologically feasible products that comply with California’s stringent VOC limits. Without this tool, it is likely that some products with certain fragrances would be completely eliminated, since they could not comply with stringent applicable VOC limits with fragrance included in the formulation.

### **Review of HCPA Member Companies’ Products**

In response to the draft proposal to sunset the 2% fragrance exemption, HCPA’s manufacturing member companies exercised their best effort to conduct a review of product categories that use/require a fragrance exemption. However, due to COVID 19, manufacturers, suppliers and fragrance houses are dealing with a Force Majeure predicament: supply chains are disrupted, raw materials that companies need have become unavailable or require longer than normal amount of time to acquire, and their R&D and engineering teams continue to work making necessary modifications to product formulations. As a result, product manufacturers and fragrance houses are focusing on meeting the increased consumer demand for our member companies’ products. Thus, members are unable to give the proposed CARB rulemaking the appropriate attention to be able to properly assess the potential loss of the 2% fragrance exemption and to put into perspective and assess how it may affect companies’ products.

However, manufacturers conducted an overview of product categories using the exemption and identified that, in fact, the exemption is needed in at least 36 product categories (representing 66 subcategories) in order to comply with applicable VOC limits. While this review indicated that manufacturers may need more than a 0.5% fragrance exemption in many categories, HCPA could support the following positions.

1. HCPA could support a 0.5% fragrance exemption by 2027, which would continue to apply after 2031.

HCPA members could support a fragrance exemption no lower than 0.5% across all product categories with an effective date of 2027, and continuing after 2031.

We believe that this 0.5% fragrance exemption strikes a reasonable balance by: (1) allowing CARB to achieve additional VOC emission reductions four years earlier than the draft proposed sunset date of 2031; (2) locking in emission reductions achieved by the lower level of fragrance exemption and capping future emission growth; and (3) ensuring the commercial and

technological viability of products that consumers currently use and rely upon for cleaning, protecting, maintaining, and disinfecting their homes and commercial environments.

2. A fragrance exemption for the Manual Aerosol Air Freshener subcategory needs to be determined in conjunction with CARB's decision on the proposed VOC limit that will take effect in 2027 and continue to be maintained after 2031.

As discussed in our comments dated May 19, 2020, HCPA requested that CARB establish a 2031 effective date (as opposed to a 2027 effective date) for the 5% VOC limit for Manual Aerosol Air Fresheners. At this time, HCPA member companies have reassessed our consensus position and respectfully request that CARB consider a 7% VOC limit with an effective date of 2027, which would continue to be maintained after 2031. If CARB accepts this proposal, HCPA members could support a 0.5% fragrance exemption with an effective date of 2027 and continuing after 2031.

3. HCPA respectfully urges CARB to provide a 0.5% fragrance exemption for the Non-aerosol General Purpose Cleaner and General Purpose Degreaser Product Categories.

The Non-aerosol General Purpose Cleaner and General Purpose Degreaser product categories must meet unique formulation challenges. During the April work group meeting, CARB staff proposed to provide much needed flexibility for the use of fragrance in the Non-aerosol General Purpose Cleaner and General Purpose Degreaser product categories. These two product categories encompass an extremely broad range of products for a wide variety of household, institutional, commercial and industrial users. In addition, many general purpose cleaning products also deliver antimicrobial benefits that have an important role in protecting public health in California. Thus, we need to maintain a required level of efficacy and the proper use of these products.

As a practical reality, the applicable 0.5% VOC limit for these two categories is so stringent that a narrowly-tailored exemption is needed to allow manufacturers to include some level of fragrance in these products. CARB's data on the utilization of the 2% fragrance exemption by product category supports the fact that many of these products use 0.5% fragrance exemption. Our members indicate that this level of fragrance is needed because the products have industrial and household applications and require fragrance to mask the base ingredient odors and to achieve the proper product use.

HCPA members could support a 0.5% fragrance exemption (inclusive of the 0.25% monoterpenes) with an effective date of 2027, and continuing after 2031. This will enable manufacturers the ability to formulate products that meet the requirements for the many different users and the diversity of product forms (*e.g.*, ready-to-use pump sprays, wipes, liquids with dilutions, liquids without dilutions).

4. HCPA respectfully requests that the proposed provision related to monoterpenes take effect immediately upon publication of the final rule.

Monoterpenes are part of the fragrance ingredients used in General Purpose Cleaner and General Purpose Degreaser products to impart a scent or to counteract a malodor. As currently drafted, CARB proposes that 0.25% of monoterpenes in the Non-aerosol General Purpose Cleaner and General Purpose Degreaser product categories would be allowed as part of 2% fragrance exemption beginning in 2023. HCPA respectfully requests that this provision take effect

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immediately upon publication of the final rule and continue after 2031. HCPA also respectfully requests that CARB withdraw the document titled, "Guidance Pertaining to the Two Percent Fragrance Exemption and Limonene" since it will no longer be relevant after this proposed regulation is adopted as a final rule.

In conclusion, HCPA appreciates CARB Staff's consideration of the 2% fragrance exemption issues addressed in this document. Please contact us if you have questions.

Respectfully,

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HCPA Air Quality Council