



FRAGRANCE CREATORS
ASSOCIATION®

June 29, 2020

VIA EMAIL csmrprod@arb.ca.gov

California Air Resources Board
Consumer Products and Air Quality Assessment Branch

Re: Two Percent Exemption for Fragrance

Fragrance Creators Association (“Fragrance Creators”)¹ writes to again urge the California Air Resources Board (“CARB”) to maintain the current two percent exemption for fragrance in the Consumer Products Regulation (“Two Percent Exemption”). As Fragrance Creators, its members, and our allied trades have explained in prior communications and comments, CARB’s current proposal to eliminate the Two Percent Exemption for most product categories—and retain a 0.25 percent fragrance exemption only for general purpose cleaners and degreasers—would create significant difficulties for the fragrance and consumer product industries.

I. Fragrance Creators Reasserts the Importance of the Two Percent Exemption

Fragrance Creators has previously commented on the Two Percent Exemption, but the importance of the exemption necessitates some reiteration. In short, fragrance is a critical component of many consumer products, and the Two Percent Exemption has been an important tool in the formulation toolkit for nearly thirty years. The consumer products industry has relied on this exemption for many years to formulate products that both work as intended and comply with the VOC limits for their product category, while still imparting a scent that drives consumer acceptance and other benefits. The Two Percent Exemption thus enables product manufacturers to deliver efficacious products to the market that meet consumers’ needs; without it, it is likely that some products and scents would no longer be technologically and/or commercially feasible.

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/>.

At a minimum, many product manufacturers—across a wide range of product categories and products—would 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.

Fragrance Creators is concerned that CARB's proposal to sunset the Two Percent Exemption is not supported by CARB's VOC-reduction goals. In particular, sunseting the Two Percent Exemption results in a relatively small reduction in VOC emissions (0.3 tons per day based on CARB's calculation), but will impose significant costs and burdens on manufacturers across a wide range of product categories. Notably, many of the comments submitted to CARB in support of eliminating the Two Percent Exemption focus on considerations that are beyond the scope of CARB's statutory mandate to achieve reductions in VOC emissions, such as a general (and unsupported) desire to eliminate fragrance from consumer products. In fact, the overwhelming majority of consumers want and use fragranced products. In any event, such considerations do not relate to CARB's mandate to reduce VOC emissions and should be afforded no weight in CARB's rulemaking process. See Health & Safety Code § 41712(b).²

Moreover, given consumer demand, the use of fragrance simply will not diminish if the Two Percent Exemption is eliminated. Unintended consequences should be considered. Specifically, without the Two Percent Exemption, it is possible that VOC ingredients in the fragrance may need to be replaced with LVP-VOC fragrance ingredients. Using only LVP-VOC ingredients changes the character of many fragrances, and, it is highly likely that increased fragrance concentrations will be required to accomplish the same fragrance experience. Since LVP fragrance materials do not evaporate as well, they usually necessitate larger amounts of LVP-VOC fragrance in the finished product to compensate. Fragrance Creators therefore respectfully disagrees that sunseting the Two Percent Exemption will reduce the overall VOC emissions from fragrance as doing so may result in a substantial increase in the total volume of fragrance used.

Fragrance Creators believes that the burdens and costs imposed by sunseting the Two Percent Exemption—including the potential elimination of certain products or scents that would be technologically or commercially infeasible absent an exemption for fragrance—vastly outweigh the modest reductions in VOC emissions that might be achieved. Fragrance Creators therefore respectfully reiterates its request that CARB reconsider its proposal to sunset the Two Percent Exemption.

² Health & Safety Code § 41712(b) provides: "The state board shall adopt regulations to achieve the maximum feasible reduction in volatile organic compounds emitted by consumer products, if the state board determines that adequate data exists to establish both of the following: (1) The regulations are necessary to attain state and federal ambient air quality standards. (2) The regulations are commercially and technologically feasible and necessary."

II. Fragrance Creators is Committed to Providing Meaningful Feedback to CARB

At CARB's request, Fragrance Creators—along with its members and allied trades—has tried to identify a non-exhaustive list of product categories that require some level of exemption for fragrance, should CARB proceed with sunseting the Two Percent Exemption. This exercise has proved difficult, however, for several reasons. First, and importantly, fragrance is an integral component of so many different product types that sunseting the Two Percent Exemption would affect virtually every product category. Second, CARB is proposing to revise the VOC emission standards for a number of product categories, and Fragrance Creators cannot fully evaluate the extent to which a fragrance exemption is needed for those product categories until the standards are finalized. Third and finally, Fragrance Creators represents a large number of member companies that create and manufacture a range of fragrances and finished consumer products, and cannot be in the anticompetitive position of picking winners and losers.

III. Fragrance Creators Believes an Exemption across Product Categories Remains the Most Equitable Path Forward

For the reasons outlined in Section II, Fragrance Creators respectfully requests that CARB retain an exemption for fragrance that applies across **all** product categories. Fragrance Creators believes that the existing exemption of two percent remains appropriate, but **at a minimum, CARB should provide an exemption for fragrance of at least 0.5 percent for all applicable product categories.** Fragrance Creators would be willing to support an accelerated timeline (2027 as opposed to 2031) should CARB be interested in retaining at least a 0.5 Percent Exemption. Fragrance Creators also notes that—given feasibility concerns—all product categories in the current rulemaking (manual aerosol air freshener, hair finishing spray, no rinse shampoo, hair shine, temporary hair color, personal fragrance products, and aerosol crawling bug insecticed) should not be subject to the sunseting of the Two Percent Exemption. Similarly, CARB has previously proposed a retention of a 0.25 Percent Exemption for general purpose cleaners/degreasers. Fragrance Creators requests that a 0.5 Percent Exemption be set for these categories and that CARB withdraw its “Guidance Pertaining to the Two Percent Fragrance Exemption and Limonene.” Establishing a 0.5 Percent Exemption balances CARB's stated concerns while ensuring that unintended consequences are minimized and consumer products remain accessible to all Californians.

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We very much appreciate your consideration and look forward to continuing to discuss this issue at the public meeting on July 9, 2020.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Amanda Nguyen". The signature is fluid and cursive, with a large initial "A" and "N".

Amanda Nguyen, J.D.

Vice President, Government Affairs & Legal

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