



FRAGRANCE CREATORS
ASSOCIATION™

November 27, 2019

Consumer Products and Air Quality Assessment Branch
California Air Resources Board

Submitted via email to csmrprod@arb.ca.gov

Re: Comments of the Fragrance Creators Association on the California Air Resources Board's Draft Proposed Amendments to the Consumer Products Regulation

Dear CARB Staff:

Fragrance Creators Association ("Fragrance Creators") appreciates the opportunity to provide feedback on the California Air Resources Board's ("CARB's") draft Proposed Amendments to the Consumer Products Regulation ("Proposed Amendments"), which were presented at a public workshop on November 7, 2019. Fragrance Creators provides general feedback on the Proposed Amendments in the comments below and intends to follow up with more detailed information and data in the coming months as CARB continues to refine its regulatory approach.

Fragrance Creators is the principal trade association representing the fragrance industry. 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. As such, the Proposed Amendments, which cover many categories of consumer products that contain fragrance, are of significant interest to Fragrance Creators and its members.¹

I. Fragrance Creators Supports CARB's Updated Assumptions for Fragrance VOC Content

During the September 20, 2019 webinar, and again at the November 7, 2019 public workshop, CARB explained that it has refined its assumptions that all fragrance is composed of 100 percent volatile organic compound ("VOC") content and that fragrance has a maximum incremental reactivity ("MIR") value of 6.36. Specifically, CARB stated that, based on new data, it has refined

¹ More information about Fragrance Creators is available at <https://www.fragrancecreators.org>.

its fragrance assumptions as follows: (a) for 35 terpene-dominated categories, fragrance is assumed to be 100 percent VOC with a MIR of 4.04; and (b) for all other survey categories, fragrance is assumed to be 25 percent VOC (75 percent LVP-VOC) with a MIR of 2.80. Fragrance Creators appreciates that CARB has considered the new data that Fragrance Creators and its members have submitted and believes that the new assumptions are more appropriate and demonstrate that fragrance is a much smaller contributor to air quality issues than previously assumed.

II. CARB Should Not Eliminate the 2 Percent Exemption.

Fragrance is a critical component of many consumer products: it enhances products and drives value; encourages proper product use; provides positive social and emotional benefits; covers base malodors; and creates a mechanism for product manufacturers to differentiate between brands and products. In addition, all fragrance oils contain volatile compounds, which are necessary for the fragrance to achieve its intended effect because fragrance must evaporate to create a scent that the product user can perceive.

For these reasons, among others, the “2 percent exemption” for fragrance is critical for many product categories because it allows product manufacturers to formulate consumer products that work as intended and comply with the VOC limits for the relevant product category, while still allowing a 2 percent cushion for the manufacturers to impart a fragrance that drives consumer acceptance and provides many other important benefits. CARB developed its regulations acknowledging the unique role of fragrance:

The VOC standards do not apply to fragrances and colorants up to a combined level of 2 percent by weight contained in any consumer product. This exemption was established to allow manufacturers a de minimus level of these substances in various products such that the products may be marketed in an appealing manner to consumers.²

CARB’s proposal to eliminate the 2 percent exemption by January 1, 2027 threatens to eliminate certain products from the market (particularly those in product categories that are subject to very low VOC content standards) and may have other unintended consequences.

A. Effects on Specific Product Categories

As CARB acknowledged in its draft Proposed Amendments, the 2 percent exemption is particularly important for certain product categories (e.g., general purpose cleaners, degreasers) that have very low VOC content limits. If CARB eliminates the 2 percent exemption, it is likely that many products in these categories would no longer be technologically and/or commercially feasible (because they could not comply with the low VOC limits for the product category with

² *Proposed Regulation to Reduce Volatile Organic Compound Emissions from Consumer Products: Technical Support Document*. State of California Air Resources Board Stationary Source Division. August 1990. Pp. 6-7. Accessible at <https://ww3.arb.ca.gov/consprod/regact/ph1cptsd.pdf>.

fragrance included in the formulation). Fragrance Creators and its members intend to submit data over the coming months to demonstrate the impact of eliminating the 2 percent exemption on specific product categories and to explain why maintaining the exemption—at least at some level—is necessary to ensure that products in these categories remain viable.

B. Unintended Consequences.

Eliminating the 2 percent exemption also could have unintended consequences. As one example, the current Consumer Product Regulations define “fragrance” to mean “a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components with a combined vapor pressure not in excess of 2 mm of Hg at 20°C, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.” Cal. Code Regs. tit. 17, § 94508(a)(54). The combined vapor pressure requirement (i.e., 2 mm of Hg at 20°C) in the definition of fragrance imposes a meaningful constraint on how fragrance mixtures are formulated. If CARB eliminates the 2 percent exemption, manufacturers—who would no longer be subject to the 2 mm of Hg constraint—are likely to substitute higher vapor pressure molecules (i.e., “top notes”) that have more significant impacts on air quality in order to achieve the intended scent while still reducing overall VOC content. As another example, eliminating the 2 percent exemption may cause manufacturers to reduce the quantity of fragrance in certain of their consumer products, which could in turn lead consumers to use more of the product per use in order to achieve the intended effect. Fragrance Creators and its members intend to submit additional information in the coming months to further illustrate the potential impact of these unintended consequences.

C. Air Quality Benefits.

Fragrance Creators understands that CARB proposes to eliminate the 2 percent exemption to achieve relatively small reductions in VOC emissions based on existing utilization of the exemption (0.3 tons per day) and avoid potentially more significant VOC emissions if the exemption were fully utilized (over 3 tons per day). Fragrance Creators is not certain how CARB calculated these estimates and would appreciate clarification. In particular, it is unclear how CARB determined that the 2 percent exemption is underutilized and how CARB determined that “full utilization” of the 2 percent exemption would result in over three tons per day of VOC emissions. In this regard, a manufacturer of a consumer product subjected to a more stringent VOC emission limit cannot substitute fragrance ingredients for other components of the formulation that allow the product to function as intended. Put differently, fragrance ingredients and other product ingredients are not fungible, and therefore it is not clear that VOC emissions would increase significantly if the 2 percent exemption were more fully utilized. Fragrance Creators looks forward to the opportunity to discuss this issue further with CARB so that it may better comprehend CARB’s analysis.

D. Compliance Concerns.

Fragrance Creators understands that CARB's proposal to eliminate the 2 percent exemption is based in part on its desire to simplify compliance determinations. Fragrance Creators submits, respectfully, that addressing CARB's interest in simplifying compliance determinations could be achieved through other avenues and does not require eliminating the 2 percent exemption entirely. Fragrance Creators and its members are happy to work with CARB to address the agency's compliance concerns, including, for example, by working to develop a common method for reporting information regarding fragrance ingredients in order to increase transparency and reduce compliance burdens.

III. CARB Should Refine Its Proposal to Reduce VOC Limits for the Personal Fragrance Products (20% or Less Fragrance) Category.

In the Proposed Amendments, CARB intends to reduce the VOC standard for the Personal Fragrance Products (20% or Less Fragrance) category to 65 percent by weight by January 1, 2023 and to 50 percent by weight by January 1, 2027. CARB predicts that reformulation strategies would likely depend on product form and may include propellant substitution and/or replacement with non-VOC compounds. CARB also projects significant reductions in VOC emissions by 2031 as a result of these revised standards.

As CARB knows, the Personal Fragrance Products (20% or Less Fragrance) category includes several types of consumer products ranging from deodorant body sprays to aftershave to fine fragrance products. Compliance with the proposed VOC limits for this category will be significantly more difficult for certain types of products than others. Importantly, for certain fine fragrance products (colognes, perfumes, etc.), compliance with the proposed limits would be very difficult if not impossible. As such, Fragrance Creators recommends that CARB consider further refining the Personal Fragrance Products (20% or Less Fragrance) category—e.g., by creating subcategories subject to less stringent standards—to ensure that the Proposed Amendments are technologically and commercially feasible and do not eliminate products from the market. Fragrance Creators and its members are available to further discuss possible definitions and solutions. We also intend to provide additional information and data in the coming months to show the impact of the Proposed Amendments on specific product types within the Personal Fragrance Products (20% or Less Fragrance) category and to highlight the need to exempt certain products from the more stringent VOC standards.

Fragrance Creators also recommends that CARB, in setting deadlines for the revised standards for the Personal Fragrance Product (20% or Less Fragrance) category, consider the lead-time required to reformulate products to comply with the revised standards. Reformulation can be a very time-consuming process, and it may not be feasible, for example, to reformulate certain consumer products to comply with the revised standards by January 1, 2023. Fragrance Creators and its members intend to submit additional information about the lead-time required to reformulate specific product types in order to facilitate CARB's consideration of this issue.

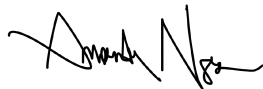
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Thank you for your time and consideration. Please do not hesitate to contact me if you have any questions or if there is additional information Fragrance Creators can provide to assist with the rulemaking process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Amanda Nguyen', with a stylized flourish at the end.

Amanda Nguyen, JD
Director, Government Affairs & Legal