



FRAGRANCE CREATORS
ASSOCIATION®

August 31, 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 July 28, 2020 Draft Proposed Amendments to the Consumer Products Regulation

Fragrance Creators Association ("Fragrance Creators")¹ is pleased 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 July 28, 2020. Fragrance Creators very much appreciates CARB staff's consideration of its prior comments and continuing efforts to address the industry's concerns. As detailed below, however, CARB's revised proposal regarding the two percent exemption for fragrance and the Personal Fragrance Product category still would create significant difficulties for the fragrance and consumer product industries. Fragrance Creators, therefore, respectfully requests that CARB continue to work with the fragrance value chain on these two issues, as outlined below.

COMMENTS

A. Fragrance Creators Respectfully Requests that CARB Reconsider Its Approach to "Sunsetting" the Two Percent Exemption.

In its July 28 presentation, CARB proposed to sunset the Two Percent Exemption for fragrance by 2031, with a limited exception for general purpose cleaners and degreasers. Fragrance Creators has previously raised concerns regarding CARB's proposal to sunset the Two Percent Exemption, but writes again to reiterate the importance of the Exemption to the fragrance and consumer products industries, as well as to consumers.

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 www.fragrancecreators.org.

1. Fragrance Is A Critical Component of Many Consumer Products, and the Two Percent Exemption Is an Important Tool in the Formulation Toolkit.

As Fragrance Creators has explained in prior comments, 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 30 years ago, 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 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.

Absent some exemption for fragrance, 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. Reformulating just 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.³

In addition, reformulation often is an iterative process, such that these steps must be repeated several times (for both the fragrance itself and the overall consumer product, of which the fragrance is just one component). Reformulating many products—as would likely be required if CARB eliminates the fragrance exemption—would thus be an extraordinarily time-consuming and costly endeavor, diverting resources from other efforts, such as research and development. And even if CARB is correct that the Two Percent Exemption is not widely used, manufacturers still would 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.

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

³ See Fragrance Creators’ May 14, 2020 Comments for additional information.

2. CARB's VOC-Reduction Goals Do Not Support Sunsetting the Two Percent Exemption.

Fragrance Creators remains concerned that CARB's proposal to sunset the Two Percent Exemption is not supported by CARB's VOC-reduction goals. As Fragrance Creators has raised previously, sunsetting the Two Percent Exemption results in a relatively small reduction in VOC emissions (0.3 tons per day, based on CARB's calculation), but—as described above—will impose significant costs and burdens on manufacturers across a wide range of product categories. For example, some of the comments submitted to CARB in support of eliminating the Two Percent Exemption focus on considerations such as a general (and unsupported) desire to eliminate fragrance from consumer products. In fact, the overwhelming majority of consumers use and enjoy fragranced products. Such considerations do not relate to CARB's statutory mandate to reduce VOC emissions (see Health & Safety Code § 41712(b)) and, therefore, should be afforded no weight in CARB's rulemaking process.

Moreover, because consumers demand fragranced products, sunsetting the Two Percent Exemption will not result in the elimination of fragrance from consumer products. Instead, sunsetting the Exemption will lead to unintended consequences as manufacturers try to find ways to meet consumer demand while complying with the CARB requirements. For example, if the Two Percent Exemption is eliminated as proposed, manufacturers may need to replace VOC ingredients in fragrance with LVP-VOC ingredients. Using a higher proportion of LVP-VOC ingredients changes the character of many fragrances. And importantly, because LVP-VOC ingredients do not evaporate as well as VOC ingredients, consumers may then need to use more of the product to achieve the same fragrance effect, therein decreasing product satisfaction. As a result, it is not at all clear that sunsetting the Two Percent Exemption will reduce overall VOC emissions, as doing so will likely lead to a substantial increase in the total volume of fragrance used.

3. Sunsetting the Two Percent Exemption Threatens the Viability of Certain Consumer Products and Products with Certain Scents.

CARB's proposal to sunset the Two Percent 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 because they would no longer be technologically and/or commercially feasible. For example, some of these products 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.

Fragrance Creators and its members have identified the following, non-exhaustive list of product categories that require some level of exemption for fragrance to ensure that a diverse range of product options remain available to California consumers:

- Carpet and upholstery cleaners, non-aerosol
- Disinfectants, non-aerosol
- Disinfectants, aerosol
- Fabric refreshers, non-aerosol
- Air fresheners
- Dry shampoos
- Hair finishing sprays
- Hair styling products
- Nail polish removers
- Footwear and leather care products, aerosol
- Glass cleaners, non-aerosol
- Insect repellents, aerosol
- Spot removers
- Metal polishes and cleaners
- Oven or grill cleaners
- Toilet care products
- Furniture maintenance products
- General purpose cleaners, non-aerosol
- General purpose degreasers, non-aerosol
- Bathroom and tile cleaners, (non-aerosol)
- Toilet and urinal care products, non-aerosol

For each of these product categories, fragrance is an integral component of the product and sunseting the Two Percent Exemption would lead to significant feasibility concerns. Fragrance Creators reiterates, however, that this list is illustrative only. In fact, fragrance is an integral component of so many different product types that sunseting the Two Percent Exemption would affect virtually every product category. As explained previously, Fragrance Creators represents a large number of member companies that create and manufacture a range of fragrances and finished consumer products, and does not intend to—and cannot—be in the anticompetitive position of picking winners and losers.

Accordingly, Fragrance Creators reiterates its position that the Two Percent Exemption should be maintained for all product categories, which is the most equitable path forward. At a minimum, CARB should provide an exemption for fragrance of at least 0.5 percent for all applicable product categories, and CARB should withdraw its “Guidance Pertaining to the Two Percent Fragrance Exemption and Limonene.”

B. Fragrance Creators Will Continue to Work with CARB on Its Personal Fragrance Products Rulemaking.

Under CARB’s July 28 proposal, Personal Fragrance Products, nonaerosol, with 7 percent or less fragrance would be subject to a VOC standard of 70 percent by weight starting January 1, 2023 (up from 68 percent in the prior proposal). Starting January 1, 2031, Personal Fragrance Products, nonaerosol, with 10 percent or less fragrance would be subject to a VOC standard of 50 percent by weight. The 2023 and 2031 standards would apply to Personal Fragrance Products, aerosol,


regardless of fragrance content. CARB also proposes to conduct a technology assessment in 2026-2027 to evaluate whether the 2031 standard is feasible.

Fragrance Creators values the ongoing dialogue and collaboration with CARB staff as these new VOC targets and regulations are developed. Fragrance Creators generally supports the increased VOC limit for 2023, as well as CARB's commitment to undertake a technology assessment to reevaluate the feasibility of the 2031 standard. Fragrance Creators is concerned, however, that the proposed VOC limits are neither technologically nor commercially feasible across all subcategories of Personal Fragrance Products. Fragrance Creators remains committed to working with CARB as it assesses feasibility. However, 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 difficult (at 70 percent) if not impossible (at 50 percent). That 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. As Fragrance Creators presented previously, the composition of products in the fine fragrance category, coupled with the lack of commercially or olfactively viable alternative ingredients, makes CARB's proposal for this product category especially challenging. Still, Fragrance Creators appreciates CARB's effort to address industry's concerns and is committed to working with CARB on the technology assessment to evaluate feasibility of the 2031 standard.

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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,



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