

December 3, 2020

via electronic transmission

Ravi Ramalingam, P.E., Branch Chief
Joe Calavita, Manager, Implementation Section
Josh Berghouse, Rulemaking Lead Staff
Consumer Products and Air Quality Assessment Branch
California Air Resources Board, AQPSD
csmrprod@arb.ca.gov

Subject: Comments on the Public Webinar for Proposed Amendments to the Consumer Products Regulations (Nov. 10, 2020)

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

The Household & Commercial Products Association (HCPA) appreciates the opportunity to participate as an active stakeholder in the California Air Resources Board (CARB) Regulatory Strategies Work Group and the Regulatory Definitions Work Group, to discuss proposed amendments to the Consumer Products Regulations. This document includes HCPA member companies' comments on the draft proposed amendments that were presented and discussed during the public workshop webinar conducted on November 10, 2020.

A. Aerosol Air Freshener Product Category

Air freshener products provide an efficient and cost-effective way to control of malodor in indoor environments. Malodors are not just an annoyance – they can have significant adverse impacts on human health, behavior, and quality of life, as detailed in “The Impact of Indoor Malodor: Historical Perspective, Modern Challenges, Negative Effects, and Approaches for Mitigation.” This article was published in *Atmosphere*, an international peer-review journal, as part of a special issue on indoor air quality (January 2020).¹ This research also highlights the disproportionate impact that indoor malodors can have on low-income households. This research documents the fact that using air freshener products to mitigate or eliminate malodor provides a real benefit to individuals' health and wellness. This is particularly important as people are spending an unprecedented amount of time indoors during the current Coronavirus Pandemic.

¹ Pamela Dalton, Ph.D., Anna-Sara Claeson, Ph.D. and Steve Horenziak, M.S., “The Impact of Indoor Malodor: Historical Perspective, Modern Challenges, Negative Effects, and Approaches for Mitigation,” *Atmosphere*, Vol. 11 Issue 2 (Jan. 2020); see <https://www.mdpi.com/2073-4433/11/2/126>.

1. Proposed Definitions

HCPA member companies support CARB's proposed definitions for the Manual Aerosol Air Freshener, Concentrated Aerosol Air Freshener and Total Release Air Freshener product categories.

HCPA member companies can support CARB's proposed definition for the Automatic Aerosol Air Freshener product category with the update to the "Automatic Air Freshening Dispenser" definition, as previously proposed in CARB's July 28 public workshop, as follows:

For the purposes of this subsection, "Automatic Air Freshening Dispenser" is a device labeled to dispense product at a predetermined time or interval of time, under preset conditions, or due to sensor-activation.

HCPA also recommends that CARB consider changing the proposed name for "Total Release Air Freshener" to "Total Release Aerosol Air Freshener."

2. Proposed VOC Limits

HCPA member companies support CARB's proposed VOC limits for the following product categories:

- Automatic Aerosol Air Freshener (retains 30% standard),
- Concentrated Aerosol Air Freshener (15% VOC by 2023 and 10% by 2027)
- Total Release Air Freshener (25% VOC by 2023)
- Manual Aerosol Air Freshener (10% VOC by 2023 and 5% VOC by 2027)

The "Manual Aerosol Air Freshener" product category combines the currently regulated "Single Phase Aerosol" and "Double Phase Aerosol" Air Freshener product categories. Thus, HCPA member companies are confronted with a significant technical challenge in reformulating products that meet the currently applicable 30% VOC limit (Single Phase) and the 20% VOC limit (Double Phase) to comply with CARB's proposed 10% VOC limit by 2023 and 5% limit by 2027.

Meeting this challenge will require detailed plans for reformulating products to comply with the lower limits and associated reduction of the fragrance exemption. In addition, product manufacturers and fragrance houses will need to implement many procedural changes and exacting checks and balances over a number of years to successfully test and monitor compliance with the new VOC standards and the reduction of the fragrance exemption.

B. Aerosol Crawling Bug Insecticide Product Category

The efficacy of aerosol crawling bug insecticide products is critically important since these products kill or control pests of significant public health importance such as cockroaches, mites, spiders and scorpions which carry infectious diseases. In addition to complying with the applicable CARB VOC limit, these products must meet rigorous efficacy testing requirements

established by the U.S. Environmental Protection Agency (EPA) before the products can be registered by EPA and the California Department of Pesticide Regulation.

HCPA member companies will work to reformulate products to comply with the technologically challenging proposed 8% VOC limit by January 1, 2030. HCPA member companies will maintain an ongoing dialogue with CARB staff to communicate progress in complying with this new VOC limit.

Based upon CARB's 2013-2015 Consumer Products Survey data, the Crawling Bug Insecticide (aerosol) product category indicates fragrance utilization at the 15% VOC limit. The proposed 8% VOC limit constitutes a dramatic reduction from the currently applicable 15% VOC limit. Consequently, an increased usage of a fragrance exemption will likely be needed. As discussed in HCPA's comments filed on August 28, 2020, member companies clearly stated the need for some level of fragrance exemption after 2031.

Propellants constitute the majority of VOCs contained in these products. And, as explained in detail in the initial feedback documents HCPA filed on January 30, 2020 and May 19, 2020, the propellants also serve as solvents that aid in the delivery and efficacy of the active pesticidal ingredients to control the target pests. Complying with the proposed 8% VOC limit will require a reformulation that uses most of the allowable VOCs to ensure that the product contains an adequate amount of propellant to deliver the proper particle size and spray pattern needed to achieve the requisite efficacy level.

Some level of fragrance is needed to ensure the application of proper dosage levels (*i.e.*, the fragrance provides olfactory feedback for gauging the amount of product applied). Moreover, these products need some level of fragrance to mask the strong base odor of the active ingredients. As a practical matter, if the product does not contain an adequate amount of fragrance, the active ingredients' lingering malodor may cause consumers to avoid using (or limit the use) of products that have been proven to be effective in killing and controlling disease-carrying insects.

Therefore, HCPA requests that CARB provide a 0.25% fragrance exemption in 2031 for the Aerosol Crawling Bug Insecticide product category.

C. Bed Bug Insecticide

HCPA members support the draft proposed definition for "Bed Bug Insecticide" and the proposed 15% VOC limit for the aerosol form and the proposed 20% VOC limit for all forms.

However, as currently drafted, the proposed revision to the table of standards states that the VOC limits will take effect on the "date of amendment." Bed Bug Insecticide is the only product category in this rulemaking that does not have specifically stated effective dates for the new VOC limits. To eliminate any potential confusion, HCPA recommends that the table of standards establish January 1, 2030, as the effective date for both Bed Bug Insecticide (all forms) and Bed Bug Insecticide (aerosol).

D. Proposed Sunset of the Two Percent Fragrance Exemption in 2031

HCPA members do not support the draft proposal to sunset the two percent fragrance exemption. Fragrance is an important component of almost every consumer product: it encourages proper product use; covers base malodors; and creates a mechanism for product manufacturers to differentiate between brands and products. The draft proposal to sunset the 2% fragrance exemption on January 1, 2031, will impact almost every product category included in Article 2 of the Consumer Products Regulations and represents a *de facto* reduction of the VOC limits for thousands of consumer products. For the past 30 years, manufacturers have formulated products that include the exemption to achieve compliance with CARB's stringent VOC regulatory standards. Therefore, the sunset of the 2% fragrance exemption would reduce currently applicable VOC limits for an extremely large number of consumer products.

Product manufacturers only use the necessary amount of fragrance ingredients to meet consumer and regulatory requirements. CARB's own data provides irrefutable evidence that product manufacturers do not over-use the current exemption that allows them to add a *de minimis* level of fragrance to products.

Since California's consumer product VOC limits are so strict and technology-forcing, many manufacturers currently formulate their products to be at – or just below – the applicable regulatory limit. The sunset of the 2% fragrance exemption will require manufacturers to expend extensive amounts of labor and capital resources to review compliant product formulations to ensure that these products will continue to meet applicable VOC limits without the currently allowable fragrance exemption. In many cases, manufacturers will likely be required to completely reformulate a large number of consumer products. Based on CARB's data presented during the November 10th webinar, the sunset of the 2% fragrance exemption will only result in producing 0.3 tons per day of additional VOC reductions to help meet California's State Implementation Plan (SIP) commitment for 2031.

Manufacturers frequently produce a product that has a single base formulation but is manufactured with different fragrances to meet customer preferences. The fragrance ingredients that create these various scents have different levels of LVP-VOC and VOC content. Under the current exemption, as long as the fragrance level is equal to or less than 2% by weight, the product manufacturer does not have to factor the fragrance into determining VOC compliance. Currently, manufacturers typically do not need to speciate the fragrance ingredients since the fragrance houses communicate that the supplied fragrance complies with the requirements of the exemption.

However, if the 2% fragrance exemption is eliminated, product manufacturers will require detailed information about the LVP-VOC and VOC content for each of the different fragrance compounds when formulating a product to determine whether each individually scented variant of that product complies with the applicable VOC limit. Moreover, manufacturers may be forced to reformulate products using a particular fragrance when there is a change to one of the many ingredients in that fragrance due to disruptions in supply chains or when essential raw materials

suddenly become unavailable. Therefore, the loss of the fragrance exemption would significantly alter the existing process for formulating and manufacturing consumer products.

In addition to imposing substantial labor and cost burdens on product manufacturers and fragrance houses, the draft proposal to sunset the current fragrance exemption will not “facilitate” CARB’s compliance determinations. Currently, CARB can buy and test a single variant of a product to determine compliance. However, if the VOC content of fragrance is required to be included in determining compliance, the Enforcement Division would have to purchase each differently-scented variant of a particular product because the VOC level of each fragrance may be different since one fragrance may pass and the next fail. And, the CARB Monitoring and Laboratory Division (MLD) would be required to include the speciation of fragrance ingredients contained in each differently-scented product as part of its determination of the total volatile material contained in that product. Moreover, it is not clear whether the MLD can detect and accurately measure the concentrations of fragrance components due to the large number and complexity of fragrance ingredients that may be included in single fragrance compound. For example, a fragrance compound that has a level of 0.25% by weight in a particular product may contain 50 or more different fragrance ingredients. If CARB cannot speciate each fragrance ingredient, determine if they are VOCs or LVP-VOCs and subtract all LVP-VOCs from the total VOC content of the product, CARB will be unable to accurately determine whether a product complies with the applicable VOC limit.

Many products are formulated at – or just below – the applicable regulatory limit. Without the current fragrance exemption, unless MLD can accurately determine the VOC contribution of the fragrance, there will likely be more cases in which the MLD may make an initial determination that the total volatile material in many products exceed the applicable VOC limit. Thus, the Enforcement Division will issue an increased number of notices of violation (NOVs). And to the extent that product manufacturers are able to document compliance, the Enforcement Division will have expended a significant amount of time and effort in issuing NOVs that ultimately prove not to be actionable.

Therefore, HCPA members cannot support the draft proposal to sunset the current fragrance exemption because it will impose an unduly significant amount of time and cost burdens on product manufacturers, fragrance houses and CARB staff while achieving only minimal additional VOC reductions.

If CARB decides to go forward with the proposed sunset of the 2% fragrance exemption, HCPA member companies would support an implementation date of January 1, 2031. The impact of COVID-19 continues to shift member companies’ resources and personnel from addressing issues related to this rulemaking. They are focusing their full resources in responding to the urgent challenges of producing the cleaning, disinfecting, and sanitizing products that need to be readily available to protect public health. Therefore, they need a sufficient amount of time to address all of the issues related to the sunset of the 2% fragrance exemption and other regulatory provisions in this rulemaking.

1. Nonaerosol General-purpose Cleaner and Nonaerosol General Purpose Degreaser

HCPA member companies support CARB's proposal to allow 0.25% of monoterpenes in the Nonaerosol General Purpose Cleaner and General Purpose Degreaser products as part of 2% fragrance exemption beginning in 2023. HCPA respectfully requests that this provision take effect immediately upon publication of the final rule. This will ensure that the clear intent of the regulatory action will be implemented by the CARB Enforcement Division during the time period between the date the final rule is published and the January 1, 2023 effective date of the regulation.

HCPA also requests that upon publication of the final rule, CARB withdraw the guidance document titled, "Guidance Pertaining to the Two Percent Fragrance Exemption and Limonene" since the issues addressed in this document will be incorporated in the regulation.

If the 2% fragrance exemption is eliminated in 2031, HCPA member companies support CARB's proposal to provide a 0.25% fragrance exemption (inclusive of monoterpenes) beginning on January 1, 2031 and continuing thereafter.

2. Air Fresheners, Disinfectants and Sanitizers

If the 2% fragrance exemption is eliminated on January 1, 2031, HCPA member companies support CARB's proposal to provide a much-needed 0.25% fragrance exemption for Air Fresheners, Disinfectants and Sanitizers in order address feasibility concerns and the potential for unintended consequences.

E. Definition Update of "Energized Electrical Cleaner" product category

HCPA members support the proposed draft definition update because it provides needed clarity.

F. Other Draft Regulatory Proposals

1. Product Label Definition / Web Based Claims

HCPA members support CARB's decision to defer consideration of this complex issue for a future rulemaking.

2. Innovative Product Exemption (IPE) for Products Using Compressed Gas Propellants

HCPA member companies support CARB's intention to create a pathway for exempting an aerosol product using compressed gas propellants from its VOC standard if certain criteria are met. During a Microsoft Teams meeting with CARB staff on November 23, HCPA members indicated that the draft proposed regulatory language does not provide clear and workable direction needed for industry.

While HPCA member companies recognize that the proposed provision (as currently written) applies to three specific personal care product categories, this provision needs to be available for the future application to other product categories. Thus, it is imperative that the final regulatory language be straightforward, understandable and clear to all parties involved.

While the concept of an IPE for compressed gas propellants has been brought up during the past year, the November 10th public workshop was the first time that the proposed language was presented by CARB, which has provided only a very limited amount of time to thoroughly review the proposed language.

Therefore, HPCA members recommend that CARB include a general framework for the IPE in this regulation with the intention of forming a work group including CARB staff and industry experts after the Board's approval of this regulation. This work group will address the technical details of this IPE to ensure that this regulatory provision better achieves CARB's stated intention of encouraging the development of innovative products that provide a positive sustainable environmental impact.

3. Innovative Product Exemption Update for Single-phase Aerosol Air Freshener Products

HPCA members support the proposed update.

4. Proposed Method 310 Amendments

HPCA members are reviewing the redline text changes and will provide comments at a future date.

Conclusion

HPCA appreciates CARB Staff's consideration of issues addressed in this document. HPCA and our member companies commit to continuing to work cooperatively with other stakeholders and CARB Staff to develop technologically and commercially feasible VOC limits for products, definitions and other provisions included in this rulemaking.

Please contact me if you have questions about issues addressed in these comments.

Respectfully,

Joseph T. Yost
Vice President, Strategic Alliances & Industry Relations

cc: Jose Gomez, Manager, Technical Development Section
HPCA Air Quality Council