DISTRICT DEPARTMENT OF THE ENVIRONMENT

Chapter 7 - Volatile Organic Compounds

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719 CONSUMER PRODUCTS – GENERAL REQUIREMENTS

719.1 Sections 719 through 737 apply to any person who sells, supplies, offers for sale, or manufactures consumer products on or after the effective date specified in § 720 for use in the District of Columbia.

719.2 For purposes of §§ 719 through 737 and of any definitions in §799 applicable to §§ 719 through 737, the District incorporates by reference rules and test methods from the California Air Resource Board (CARB), the South Coast Air Quality Management District (SCAQMD), and the American Society for Testing and Materials (ASTM), where specifically cited.

719.3 Each part of §§ 719 through 737 shall be deemed severable, and if any part is held to be invalid, the remainder shall continue in full force.

720 CONSUMER PRODUCTS – VOC STANDARDS

720.1 Except as provided in §§ 721, 735, 736 and 737, no person shall sell, supply, offer for sale, or manufacture for sale in the District of Columbia any consumer product, manufactured on or after the effective date in the following Table of Standards, which contains VOCs in excess of the limits specified in the following Table of Standards:

Table of Standards. Percent volatile organic compounds by weight:

Product Category	Effective date 1/1/2005	Effective date 1/1/2012
Adhesive Removers:		
Floor and wall Covering		5
Gasket or thread locking		50
General purpose		20
Specialty		70
Adhesives:		
Aerosol mist spray	65	
Aerosol web spray	55	
Special Purpose Spray Adhesives:		
Mounting, automotive engine compartment, and flexible vinyl	70	

Polystyrene foam and automotive Headliner	65	
Polylolefin and laminate repair / Edgebanding	60	
Construction, panel, and floor	15	

Product Category	Effective date 1/1/2005	Effective date 1/1/2012
Contact	80	NA
Contact General Purpose		55
Contact Special Purpose		80
General purpose	10	
Structural waterproof	15	
Air Fresheners:		
Single-phase aerosols	30	
Double-phase aerosols	25	
Liquids / pump sprays	18	
Solids / semisolids	3	
Antiperspirants:		
Aerosol	40 HVOC	
Aerosol	10 MVOC	
Non-aerosol	0 HVOC	
Non-aerosol	0 MVOC	
Anti-Static Product, non-aerosol		11
Automotive Brake Cleaners	45	
Automotive Rubbing or Polishing Compound	17	
Automotive Wax, Polish, Sealant or Glaze		
Hard paste waxes	45	
Instant detailers	3	
All other forms	15	
Automotive Windshield Washer Fluids	35	
Bathroom and Tile Cleaners:		
Aerosols	7	
All other forms	5	
Bug and Tar Remover	40	
Carburetor or Fuel-Injection Air Intake Cleaners	45	
Carpet and Upholstery Cleaners:		
Aerosols	7	
Non-aerosols (dilutables)	0.1	
Non-aerosols (ready-to-use)	3.0	
Charcoal Lighter Material	see §730	
Cooking Spray:		
Aerosols	18	
Deodorants:		
Aerosol	0 HVOC	
Aerosol	10 MVOC	

Non-aerosol	0 HVOC	
Non-aerosol	0 MVOC	
Dusting Aids:		
Aerosols	25	
All other forms	7	

Product Category	Effective date 1/1/2005	Effective date 1/1/2012
Electrical Cleaner		45
Electronic Cleaner		75
Engine Degreasers:		
Aerosol	35	
Non-aerosol	5	
Fabric Protectants	60	
Fabric Refresher:		
Aerosol		15
Non-aerosol		6
Floor Polishes / Waxes:		
Products for flexible flooring materials	7	
Products for non-resilient flooring	10	
Wood floor wax	90	
Floor Wax Strippers:		
Non-Aerosol	see §731	
Footwear or Leather Care Products:		
Aerosol		75
Solid		55
Other forms		15
Furniture Maintenance Products:		
Aerosols	17	
All other forms except solid or paste	7	
General Purpose Cleaners:		
Aerosols	10	
Non-aerosols	4	
General Purpose Degreasers:		
Aerosols	50	
Non-aerosols	4	
Glass Cleaners:		
Aerosols	12	
Non-aerosols	4	
Graffiti Remover:		
Aerosols		50
Non-aerosols		30
Hair Mousses	6	
Hair Shines	55	
Hairsprays	55	
Hair Styling Gels	6	

Hair Styling Products:		
Aerosol and pump sprays		6
All other forms		2
Heavy-Duty Hand Cleaners or Soaps	8	

Product Category	Effective date 1/1/2005	Effective date 1/1/2012
Insecticides:		
Crawling bug (aerosol)	15	
Crawling bug (all other forms)	20	
Flea and tick	25	
Flying bug (aerosol)	25	
Flying bug (all other forms)	35	
Foggers	45	
Lawn and garden (all other forms)	20	
Lawn and garden (non-aerosol)	3	
Wasp and hornet	40	
Laundry Prewashes:		
Aerosols / solids	22	
All other forms	5	
Laundry Starch Products	5	
Metal Polishes / Cleansers	30	
Multi-Purpose Lubricants (excluding solid or semi-solid products)	50	
Nail Polish Removers	75	
Non-Selective Terrestrial Herbicides:		
Non-aerosols	3	
Oven Cleaners:		
Aerosols / pump sprays	8	
Liquids	5	
Paint Remover or Strippers	50	
Penetrants	50	
Rubber and Vinyl Protectants:		
Non-aerosols	3	
Aerosols	10	
Sealants and Caulking Compounds	4	
Shaving Creams	5	
Shaving Gel		7
Silicone-Based Multi-Purpose Lubricants (excluding solid or semi-solid products)	60	
Spot Removers:		
Aerosols	25	
Non-aerosols	8	
Tire Sealants and Inflators	20	
Toilet/Urinal Care:		
Aerosols		10

Non-aerosol		3
Undercoatings:		
Aerosols	40	
Wood Cleaner:		

Product Category	Effective date 1/1/2005	Effective date 1/1/2012
Aerosol		17
Non-Aerosol		4

Note: NA = Not applicable after January 1, 2012

720.2 Notwithstanding the provisions of §§ 720.1, 727, 728, and 729, a consumer product manufactured prior to each of the effective dates specified for that product in the Table of Standards in §720.1 may be sold, supplied, or offered for sale after each of the specified effective dates.

720.3 Subsection 720.2 does not apply to any consumer product that does not display on the product container or package the date on which the product was manufactured, or a code indicating such date, in accordance with § 732.1 through 732.6.

721 CONSUMER PRODUCTS – EXEMPTIONS FROM VOC STANDARDS

721.1 The following are exempt from the Table of Standards in § 720.1:

(a) Any consumer product manufactured in the District of Columbia for shipment and use outside of the District of Columbia;

(b) A consumer product that does not comply with the VOC standards specified in § 720, provided that the manufacturer or distributor who sells, supplies, or offers the product for sale in the District of Columbia meets the requirements of this section and demonstrates that:

(1) The consumer product is intended for shipment and use outside of the District of Columbia; and

(2) The manufacturer or distributor has taken reasonable precautions to ensure that the consumer product is not distributed in the District of Columbia;

(c) Ethanol with a medium volatility organic compound (MVOC) content, when used in antiperspirants or deodorants;

(d) Fragrances up to a combined level of two percent (2%) by weight contained in any consumer product and colorants up to a combined level of two percent (2%) by weight contained in any antiperspirant or deodorant;

(e) Antiperspirants or deodorants that contain VOCs of more than ten (10) carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of two millimeters of mercury (2 mm. Hg) or less at twenty degrees Celsius (20^{o} C) or sixty-eight degrees Fahrenheit (68° F);

(f) Any low-vapor-pressure VOC (LVP-VOC) as defined in § 799;

(g) Air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs under § 799, or exempted under § 721.1(f) above;

(h) Insecticides containing at least ninety-eight percent (98%) para-dichlorobenzene;

(i) Until January 1, 2012, solid air fresheners containing at least ninety-eight percent (98%) para-dichlorobenzene;

(j) Adhesives sold in containers of one (1) fluid ounce or less;

(k) Bait station insecticides which, for the purpose of this section, are containers enclosing an insecticidal bait that is not more than one fifth of an ounce (0.5 oz.) by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than five percent (5%) active ingredients;

(l) Any consumer product where the manufacturer has been granted an Alternative Control Plan (ACP) Agreement by CARB under the provisions in Subchapter 8.5, Article 4, §§ 94540-94555, of Title 17 of the California Code of Regulations. This exemption shall be for the period of time that the CARB ACP Agreement remains in effect provided that all ACP Products used for emissions credits within the CARB ACP Agreement are listed in the Table of Standards in § 720.1 and the manufacturer complies with § 735, Alternative Control Plans;

(m) Any consumer product where the manufacturer has been granted an innovative product exemption by CARB under the Innovative Products provisions in Subchapter 8.5, Article 2, § 94511, or Subchapter 8.5, Article 1, § 94503.5 of Title 17 of the California Code of Regulations. This exemption shall be for the period of time that the CARB Innovative Products exemption remains in effect provided that all consumer products within the CARB Innovative Products exemption are listed in the Table of Standards in § 720.1 and the manufacturer complies with § 736, Innovative Products Exemption; and

(n) Any consumer product where the manufacturer has been granted an alternative control plan agreement, an innovative product exemption, or a variance by the Department pursuant to §§ 735 through 737.

722 CONSUMER PRODUCTS – REGISTERED UNDER FIFRA

722.1 For consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. § 136-136y), the effective date of the VOC standards is one (1) year after the date specified in § 720.

723 CONSUMER PRODUCTS – PRODUCTS REQUIRING DILUTION

723.1 Consumer products wherein the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent before use shall comply with the following:

(a) Limits specified in the Table of Standards in § 720.1 shall apply to the product only after the minimum recommended dilution has taken place; and

(b) Minimum recommended dilution shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

723.2 Consumer products wherein the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use, shall comply with the limits specified in the Table of Standards in § 720.1, only after the maximum recommended dilution has taken place.

724 CONSUMER PRODUCTS – OZONE DEPLETING COMPOUNDS

724.1 For any consumer product for which standards are specified under the Table of Standards in § 720.1, no person shall sell, supply, offer for sale, or manufacture for sale in the District of Columbia any consumer product, which may contain any of the following ozone depleting compounds:

(a) CFC-11 (trichlorofluoromethane);

(b) CFC-12 (dichlorodifluoromethane);

(c) CFC-113 (1,1,1-trichloro-2,2,2-trifluoroethane);

(d) CFC-114 (1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane);

(e) CFC-115 (chloropentafluoroethane);

(f) Halon 1211 (bromochlorodifluoromethane);

(g) Halon 1301 (bromotrifluoromethane);

(h) Halon 2402 (dibromotetrafluoroethane);

(i) HCFC-22 (chlorodifluoromethane);

(j) HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane);

(k) HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);

(l) HCFC-141b (1,1-dichloro-1-fluoroethane);

(m) HCFC-142b (1-chloro-1, 1-difluoroethane); and

(n) 1,1,1-trichloroethane, and carbon tetrachloride.

724.2 The requirements of this section shall not apply to any existing product formulation that complies with the Table of Standards in § 720.1 or any existing product formulation that is reformulated to meet the Table of Standards in § 720.1, provided the ozone depleting compound content of the reformulated product does not increase.

724.3 The requirements of this section shall not apply to any ozone depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than one one-hundredth of a percent (0.01%) by weight of the product.

725 CONSUMER PRODUCTS – AEROSOL ADHESIVES is amended to read as follows:

725.1 The standards for aerosol adhesives specified in the Table of Standards in § 720.1 apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses.

725.2 Except as otherwise provided in §§ 721, 736, and 737, no person shall sell, supply, offer for sale, use, or manufacture for sale in the District of Columbia any aerosol adhesive which, at the time of sale, use, or manufacture, contains VOCs in excess of the standards specified in the Table of Standards in § 720.1.

725.3 In order to qualify as a "Special Purpose Spray Adhesive," the product shall meet one or more definitions for "Special Purpose Spray Adhesive" specified in § 799, but if the product label indicates that the product is suitable for use on any substrate or application not listed in one of the definitions for "Special Purpose Spray Adhesive," then the product shall be classified as either a "Web Spray Adhesive" or a "Mist Spray Adhesive."

725.4 If a product meets more than one of the definitions specified in § 799 for special purpose spray adhesive, and is not classified as a web spray adhesive or mist spray adhesive under § 799, then the VOC limit should be the lowest applicable VOC limit specified in the Table of Standards in § 720.1.

725.5 No person shall sell, supply, offer for sale, or manufacture for use in District of Columbia any aerosol adhesives that contain methylene chloride, perchloroethylene, or trichloroethylene.

725.6 All aerosol adhesives shall comply with the labeling requirements specified in § 732.

726 CONSUMER PRODUCTS – ANTIPERSPIRANTS OR DEODORANTS

726.1 No person shall sell, supply, offer for sale, or manufacture for sale in the District of Columbia any antiperspirant or deodorant which contains any compound that has been identified by CARB in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 7, § 93000, as a toxic air contaminant.

727 CONSUMER PRODUCTS – CONTACT ADHESIVES, ELECTRONIC CLEANERS, FOOTWEAR AND LEATHER CARE PRODUCTS, AND GENERAL PURPOSE DEGREASERS

727.1 Except as provided in sections § 727.2 and 727.4, effective January 1, 2012, no person shall sell, supply, offer for sale, or manufacture for use in the District of Columbia any contact adhesive, electronic cleaner, footwear or leather care product, or general purpose degreaser that contains methylene chloride, perchloroethylene, or trichloroethylene.

727.2 Contact adhesives, electronic cleaners, footwear or leather care products, or general purpose degreasers that contain methylene chloride, perchloroethylene, or trichloroethylene and were manufactured before January 1, 2012, may be sold, supplied, or offered for sale until May 1, 2012, so long as the product container or package displays the date on which the product was manufactured, or a code indicating such date, in accordance with § 732.

727.3 Any person who sells or supplies a consumer product identified above in § 727.1 shall notify the purchaser of the product, in writing, that the sell-through period for that product will end on May 1, 2012, provided, however, that this notification must be given only if both of the following conditions are met:

(a) The product is sold or supplied through a distributor or retailer; and

(b) The product is sold or supplied on or after January 1, 2012.

727.4 The requirements of § 727.1 and 721.3 shall not apply to any contact adhesives,

electronic cleaner, footwear or leather care product, or general purpose degreaser containing methylene chloride, perchloroethylene, or trichloroethylene that is present as an impurity in a combined amount equal to or less than one one-hundredth of a percent (0.01%) by weight.

728 CONSUMER PRODUCTS – ADHESIVE REMOVERS, ELECTRICAL CLEANERS, AND GRAFFITI REMOVERS

728.1 Except as provided in § 728.2 and 728.4, effective January 1, 2012, no person shall sell, supply, offer for sale, or manufacture for use in the District of Columbia any adhesive remover, electrical cleaner, or graffiti remover that contains methylene chloride, perchloroethylene, or trichloroethylene.

728.2 Adhesive removers, electrical cleaners, and graffiti removers that contain methylene chloride, perchloroethylene, or trichloroethylene and were manufactured before January 1, 2012, may be sold, supplied, or offered for sale until May 1, 2012, so long as the product container or package displays the date on which the product was manufactured, or a code indicating such date, in accordance with § 732.

728.3 Any person who sells or supplies a consumer product identified above in § 728.1 must notify the purchaser of the product, in writing, that the sell-through period for that product will end on May 1, 2012, provided however, that this notification must be given only if both of the following conditions are met:

(a) The product is sold or supplied through a distributor or retailer; and

(b) The product is sold or supplied on or after January 1, 2012.

728.4 The requirements of § 728.1 and 728.3 shall not apply to any adhesive remover, electrical cleaner, or graffiti remover containing methylene chloride, perchloroethylene, or trichloroethylene that is present as an impurity in a combined amount equal to or less than one one-hundredth of a percent (0.01%) by weight.

729 CONSUMER PRODUCTS – SOLID AIR FRESHENERS AND TOILET / URINAL CARE PRODUCTS

729.1 Effective January 1, 2012, no person shall sell, supply, offer for sale, or manufacture for use in the District of Columbia any solid air fresheners or toilet/urinal care products that contain para-dichlorobenzene.

729.2 Solid air fresheners or toilet and urinal care products that contain para-dichlorobenzene and were manufactured before January 1, 2012, may be sold, supplied, or offered for sale until May 1, 2012, so long as the product container or package displays the date on which the product was manufactured, or a code

indicating such date, in accordance with § 732.1 through 732.6.

729.3 Any person who sells or supplies any solid air freshener or toilet and urinal care product that contains para-dichlorobenzene shall notify the purchaser of the product, in writing, that the sell-through period for the product will end on May 1, 2012, provided, however, that this notification must be given only if both of the following conditions are met:

(a) The product is sold or supplied to a distributor or retailer; and

(b) The product is sold or supplied on or after January 1, 2012.

730 CONSUMER PRODUCTS – CHARCOAL LIGHTER MATERIALS

730.1 No person shall sell, supply, or offer for sale any charcoal lighter material product unless at the time of the transaction:

(a) The manufacturer can demonstrate that it has been issued a currently effective certification by CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, § 94509(h), of Title 17 of the California Code of Regulations;

(1) This certification remains in effect for the District of Columbia for as long as the CARB certification remains in effect; and

(2) Any manufacturer claiming such a certification on this basis must submit to the Department a copy of the certification decision (such as, the executive order), including all conditions established by CARB applicable to the certification;

(b) The manufacturer or distributor has been issued a currently effective certification by the Department pursuant to this section;

(c) The charcoal lighter material meets the formulation criteria and other conditions specified in an applicable Alternative Control Plan (ACP) Agreement issued pursuant to this section; and

(d) The product usage directions for the charcoal lighter material are the same as those provided to the Department pursuant to this section.

730.2 No charcoal lighter material formulation shall be certified under this section unless the applicant for certification demonstrates to the Department's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to two one hundredths of a pound (0.02 lb.) of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174, Ignition Method Compliance Certification

Protocol, dated February 27, 1991 (the South Coast Air Quality Management District Rule 1174 Testing Protocol).

730.3 The Department may approve alternative test procedures that are shown to provide equivalent results to those obtained using the South Coast Air Quality Management District Rule 1174 Test Protocol.

730.4 The provisions relating to LVP-VOC in § 799 and § 721.1(f) shall not apply to any charcoal lighter material subject to the requirements of this section.

730.5 For certification of a charcoal lighter material formulation, the application shall be in writing and shall include, at a minimum, the following:

(a) The results of testing conducted pursuant to the procedures specified in South Coast Air Quality Management District Rule 1174 Testing Protocol as required in § 730.2;

(b) The exact text or graphics that will appear on the charcoal lighter material's principal display panel, label, and any accompanying literature;

(c) Clearly displayed product usage instructions that accurately reflect the quantity of charcoal lighter material per pound that was used in the South Coast Air Quality Management District Rule 1174 Testing Protocol for that product, unless:

(1) The charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes; or

(2) The charcoal lighter material is already incorporated into the charcoal, including but not limited to certain bag light, instant light, or match light products;

(d) For a charcoal lighter material which meets the criteria specified in § 730.5(c)(1), the usage instructions provided to the Department shall accurately reflect the quantity of charcoal lighter material used in the South Coast Air Quality Management District Rule 1174 Testing Protocol for that product; and

(e) Any physical property data, formulation data, or other information required by the Department for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified in an Alternative Control Plan (ACP) Agreement issued pursuant to § 735.

730.6 The Department shall comply with the following requirements for approving an

application for certification:

(a) Within thirty (30) days of receipt of an application, the Department shall advise the applicant in writing either that the application is complete or that specified additional information is required to make it complete;

(b) Within thirty (30) days of receipt of additional information, the Department shall advise the applicant in writing either that the application is complete, or that specified additional information or testing is required before it can be deemed complete; and

(c) If the Department finds that an application meets the requirements of this section, then the Department shall issue an ACP Agreement certifying the charcoal lighter material formulation and specifying such conditions as are necessary to ensure that the requirements of this section are met. The Department shall act on a complete application within ninety (90) days after the application is deemed complete.

730.7 For any charcoal lighter material for which certification has been granted by the Department pursuant to this section, the applicant for certification shall notify the Department in writing within thirty (30) days of:

(a) Any change in the usage directions; or

(b) Any change in product formulation, test results, or any other information submitted pursuant to this section, which may result in VOC emissions greater than two one hundredths of a pound (0.02 lb.) of VOC per start.

730.8 If the Department determines that any certified charcoal lighter material formulation results in a VOC emission from the ignition of charcoal that is greater than two one hundredths of a pound (0.02 lb.) of VOC per start, as determined by the South Coast Air Quality Management District Rule 1174 Testing Protocol, and the statistical analysis procedures contained therein, the Department shall revoke or modify the certification as necessary to ensure that the charcoal lighter material will result in VOC emissions of less than or equal to two one hundredths of a pound (0.02 lb.) of VOC per start.

730.9 The Department shall not revoke or modify a certification issued pursuant to this section without first affording the person granted the certification an opportunity for a hearing in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code §§ 2-501, *et seq* (2006 Repl.), to determine if the certification should be modified or revoked.

731 CONSUMER PRODUCTS – FLOOR WAX STRIPPERS

731.1 No person shall sell, supply, offer for sale, or manufacture for use in District of Columbia any floor wax stripper unless the following requirements are met:

(a) The label of each non-aerosol floor wax stripper specifies a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of three percent (3%) by weight or less;

(b) The label of each non-aerosol floor wax stripper specifies a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of twelve percent (12%) by weight or less, if the floor wax stripper is also intended to be used for removal of heavy build-up of polish; and

(c) The terms "light build-up", "medium build-up" or "heavy build-up" are not specifically required on the label, as long as comparable terminology is used.

732 CONSUMER PRODUCTS – LABELING OF CONTENTS

732.1 Each manufacturer of a consumer product subject to §§ 719 through 737 shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date.

732.2 A manufacturer who uses the following code to indicate the date of manufacture shall not be subject to the requirements of § 732.1, if the code is represented separately from other codes on the product container so that it is easily recognizable:

YY DDD = year year day day day

where:

"YY" = two digits representing the year in which the product was manufactured; and

"DDD" = three digits representing the day of the year on which the product was manufactured, with "001"representing the first day of the year, "002" representing the second day of the year, and so forth (such as, the "Julian date").

732.3 The date or date-code information shall be displayed on each consumer product container or package no later than twelve (12) months before the effective date of the applicable standard specified in the Table of Standards in § 720.1.

732.4 The date or date-code information shall be located on the container or inside the cover/cap so that it is readily observable or obtainable by simply removing the cap/cover without irreversibly disassembling any part of the container or

packaging.

732.5 For the purposes of this section, information may be displayed on the bottom of the container as long as it is clearly legible without removing any product packaging.

732.6 The requirements of § 732.1 through 732.5 shall not apply to products containing VOCs at one tenth of a percent (0.1%) by weight or less, or products exempted from the definition of VOCs in §799.

732.7 If a manufacturer uses a code to indicate the date of manufacture for any consumer product subject to § 720, and has not previously filed with the Department a date code explanation for that product, the manufacturer shall provide an explanation of the date portion of the code to the Department no later than the effective date of the applicable standard specified in the Table of Standards in § 720.1.

732.8 If a manufacturer changes any code indicating the date of manufacture for any consumer product subject to § 732.7, an explanation of the modified code must be submitted to the Department before any products displaying the modified code are sold, supplied, or offered for sale in the District of Columbia.

732.9 No person shall erase, alter, deface, or otherwise remove or make illegible any date or code indicating the date of manufacture from any regulated product container without the express authorization of the manufacturer.

732.10 Date code explanations for codes indicating the date of manufacture are public information and may not be claimed as confidential.

732.11 Notwithstanding the definition of the term "product category" in § 799, if anywhere on the principal display panel of any consumer product manufactured before January 1, 2012, or any FIFRA registered insecticide manufactured before January 1, 2013, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC limit is specified in the Table of Standards in § 720.1, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant or deodorant products, and insecticide foggers.

732.12 Notwithstanding the definition of "product category" in § 799, if anywhere on the container or packaging of any consumer product manufactured on or after January 1, 2012, or any FIFRA registered insecticide manufactured on or after January 1, 2013, or any sticker or label affixed thereto, any representation is made that the product may be used, or is suitable for use as a consumer product for which a lower VOC content limit is specified in the Table of Standards in § 720.1, then the lowest VOC limit shall apply. This requirement does not apply to general all purpose cleaners, antiperspirant or deodorant, and insecticide foggers.

732.13 Both the manufacturer and responsible party for each aerosol adhesive, adhesive remover, electronic cleaner, electrical cleaner, energized electrical cleaner, and contact adhesive product subject to §§ 719 through 737 shall comply with § 732.1 through 732.12 and §733 and ensure that all consumer products clearly display the following information on the container for each product which is manufactured on or after the effective date for the category specified in the Table of Standards in § 720.1:

(a) The product category as specified in § 720 or an abbreviation of the category;

(b) The VOC standard for the product as specified in the Table of Standards in § 720.1, except for energized electrical cleaner, expressed as a percentage of weight, unless the product is included in an alternative control plan approved by the Department, as provided in § 732.12, and the product exceeds the applicable VOC standard:

(1) If the product is included in an approved Alternative Control Plan (ACP) pursuant to § 735, the product shall be labeled with the term "ACP" or "ACP product"; or

(2) If the product is classified as a special purpose spray adhesive, the substrate and/or application or an abbreviation of the substrate/application that qualifies the product as special purpose shall be displayed;

(c) An explanation of the abbreviation used pursuant to § 732.13(a) must be filed with the Department before the abbreviation is used;

(d) The information required in this section shall be displayed on the product container such that it is readily observable without removing or disassembling any portion of the product container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging; and

(e) No person shall remove, alter, conceal, or deface the information required in this section before final sale of the product.

733 CONSUMER PRODUCTS – REPORTING REQUIREMENTS

733.1 Upon ninety (90) days written notice, the Department may require any responsible party to report information for any consumer product or products the Department may specify. Such report may include, but is not limited to, the following information:

(a) The company name, address, telephone number, and designated contact person of the responsible party;

(b) Any claim of confidentiality made pursuant to applicable District of Columbia confidentiality requirements in 20 DCMR § 106;

(c) The product brand name for each consumer product subject to reporting;

(d) The product category to which the consumer product belongs pursuant to the Table of Standards in § 720.1;

(e) The applicable product form(s) listed separately;

(f) An identification of each product brand name and form as a "Household Product", "Industrial and Institutional Product", or both;

(g) Separate District of Columbia sales calculated in VOC pounds per year, to the nearest pound, and the method used to calculate District of Columbia sales for each product form;

(h) For information submitted by multiple companies, an identification of each company which is submitting relevant data separate from that submitted by the responsible party;

(i) For each product brand name and form, the net percent by weight of the total product, less container and packaging, comprised of the following, rounded to the nearest one tenth of a percent (0.1%):

(1) Total Table B compounds;

(2) Total LVP-VOCs that are not fragrances;

(3) Total of all other carbon-containing compounds that are not fragrances;

(4) Total of all non-carbon-containing compounds;

(5) Total fragrance;

(6) For products containing greater than two percent (2%) by weight fragrance the percent of fragrance that are LVP-VOCs; and the percent of fragrance that are all other carbon-containing compounds; and

(7) Total paradichlorobenzene;

(j) For each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstracts Service (CAS) number, of the following:

(1) Each Table B compound; and

(2) Each LVP-VOC that is not a fragrance;

(k) If applicable, the weight percent comprised of propellant for each product; and

(l) If applicable, an identification of the type of propellant indicating whether it is Type A, Type B, Type C, or a blend of each type.

733.2 In addition to the requirements of § 733.1(j), the responsible party shall report or arrange to have reported to the Department the net percent by weight of each ozone-depleting compound that is:

(a) Listed in § 724.1; and

(b) Contained in a product subject to reporting under § 733.1 in any amount greater than one tenth of a percent (0.1%) by weight.

733.3 If the responsible party does not have or does not provide the information requested in § 733.1 and 733.2, the Department may require the reporting of this information by the person that has the information including, but not limited to, any formulator, manufacturer, supplier, parent company, private labeler, distributor, or repackager.

733.4 All information submitted by any person pursuant to § 733 shall be handled in accordance with the District of Columbia confidentiality requirements in 20 DCMR § 106.

733.5 Consumer products that contain perchloroethylene or methylene chloride shall comply with the following special reporting requirements:

(a) The requirements of this section shall apply to all responsible parties for consumer products that are subject to the Table of Standards in § 720.1 and contain perchloroethylene or methylene chloride and energized electrical cleansers as defined in § 799, that contain perchloroethylene or methylene chloride; and

(b) For the purposes of this subsection, a product contains perchloroethylene or methylene chloride if the product contains one percent (1.0%) or more by weight, exclusive of the container or packaging, of either

perchloroethylene or methylene chloride.

734 CONSUMER PRODUCTS – TEST METHODS

734.1 Testing to determine compliance with the requirements of §§ 720 through 737 shall be performed using CARB Method 310, Determination of Volatile Organic Compounds (VOCs) in Consumer Products, adopted September 25, 1997, and as last amended on May 5, 2005, including any subsequent amendments, incorporated herein by reference. The requirements of Sections 3.5, 3.6, and 3.7 of CARB Method 310 define a process for the initial determination of VOC content, the determination of LVP VOC status of compounds and mixtures, and the final determination of VOC content, and are incorporated in paragraphs (a) through (c) of this subsection as follows:

(a) Pursuant to Section 3.5 of CARB Method 310, Initial Determination of VOC Content, the Department shall determine the VOC content pursuant to Sections 3.2 and 3.3 of CARB Method 310. Only those components with concentrations equal to or greater than one tenth of a percent (0.1%) by weight shall be reported:

(1) Pursuant to Section 3.5.1 of CARB Method 310, using the appropriate formula specified in Section 4 of CARB Method 310, the Department shall make an initial determination of whether the product meets the applicable VOC standards specified in CARB regulations. If initial results show that the product does not meet the applicable VOC standards, the Department may require additional testing to confirm the initial results;

(2) Pursuant to Section 3.5.2 of CARB Method 310, if the results obtained under Section 3.5.1 of CARB Method 310 show that the product does not meet the applicable VOC standards, the Department shall request that the product manufacturer or responsible party supply product formulation data:

(A) The manufacturer or responsible party shall supply the requested information; and

(B) Information submitted to the Department may be claimed as confidential in accordance with the District of Columbia confidentiality requirements in 20 DCMR § 106;

(3) Pursuant to Section 3.5.3 of CARB Method 310, if the information supplied by the manufacturer or responsible party shows that the product does not meet the applicable VOC standards, then the Department will take appropriate enforcement action; and

(4) Pursuant to Section 3.5.4 of CARB Method 310, if the manufacturer or responsible party fails to provide formulation data as specified in Section 3.5.2 of CARB Method 310, the initial determination of VOC content under Section 3.5 of CARB Method 310 shall determine if the product is in compliance with the applicable VOC standards. This determination may be used to establish a violation of District of Columbia regulations;

(b) Pursuant to Section 3.6 of CARB Method 310, Determination of the LVP-VOC Status of Compounds and Mixtures, Section 3.6 of CARB Method 310 does not apply to antiperspirants and deodorants or aerosol coating products because there is no LVP-VOC exemption for these products;

(1) Pursuant to Section 3.6.1 of CARB Method 310, Formulation Data, if the vapor pressure is unknown, the following ASTM methods may be used to determine the LVP-VOC status of compounds and mixtures: ASTM D 86-04b, ASTM D 850-00, ASTM D 1078-01, ASTM D 2879-97), as modified in Appendix B to Method 310, ASTM D 2887-01 and ASTM E 1719-97, including any subsequent amendments;

(2) Pursuant to Section 3.6.2 of CARB Method 310, LVP-VOC Status of Compounds or Mixtures, the Department will test a sample of the LVP-VOC used in the product formulation to determine the boiling point for a compound or for a mixture;

(A) If the boiling point exceeds two hundred sixteen degrees Celsius (216^{o} C) or four hundred twenty-one degrees Fahrenheit (421^{o} F), the compound or mixture is an LVP-VOC;

(B) If the boiling point is less than two hundred sixteen degrees Celsius (216^{o} C) or four hundred twenty-one degrees Fahrenheit (421^{o} F), then the weight percent of the mixture that boils above two hundred sixteen degrees Celsius (216^{o} C) or four hundred twenty-one degrees Fahrenheit (421^{o} F) is an LVP-VOC; and

(C) The Department will use the nearest five percent (5%) distillation cut that is greater than two hundred sixteen degrees Celsius (216^{o} C) or four hundred twenty-one degrees Fahrenheit (421^{o} F) as determined under Section 3.6.1 of CARB Method 310 to determine the percentage of the mixture qualifying as an LVP-VOC; and

(3) Pursuant to Section 3.6.3 of CARB Method 310, Reference Method for Identification of LVP-VOC Compounds and Mixtures, if a product does not qualify as an LVP-VOC under Section 3.6.2 of CARB Method 310, the Department will test a sample of the compound or mixture used in a products formulation utilizing one or both of the following: ASTM D 2879-97, as modified in Appendix B to Method 310, and ASTM E 1719-97, to determine if the compound or mixture meets the CARB requirements in § 94508(91)(A) of Title 17 of the California Code of Regulations including any subsequent amendments; and

(c) Pursuant to Section 3.7 of CARB Method 310, Final Determination of VOC Content, if a product's compliance status is not satisfactorily resolved under Sections 3.5 and 3.6 of CARB Method 310, the Department will conduct further analyses and testing as necessary to verify the formulation data:

(1) Pursuant to Section 3.7.1 of CARB Method 310, if the accuracy of the supplied formulation data is verified and the product sample is determined to meet the applicable VOC standards, then no enforcement action for a violation of the VOC standards will be taken;

(2) Pursuant to Section 3.7.2 of CARB Method 310, if the Department is unable to verify the accuracy of the supplied formulation data, then the Department will request that the product manufacturer or responsible party supply information to explain the discrepancy; and

(3) Pursuant to Section 3.7.3 of CARB Method 310, if a discrepancy exists that cannot be resolved between the results of CARB Method 310 and the supplied formulation data, then the results of CARB Method 310 shall take precedence over the supplied formulation data. The results of CARB Method 310 shall then determine if the product is in compliance with the applicable VOC standards, and may be used to establish a violation of District of Columbia regulations.

734.2 Alternative methods that are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon approval of the Department.

734.3 Testing to determine compliance with the requirements of §§ 734 through 737 may also be demonstrated through calculation of the VOC content from records of the amounts of constituents used to make the product pursuant to the following

criteria:

(a) Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three (3) years;

(b) For the purposes of this section, the VOC content shall be calculated according to the following equation:

$$VOC\ Content = \frac{B - C}{A} \times 100$$

where:

A = total net weight of unit, excluding container and packaging;

B = total weight of all VOCs, as defined in § 799, per unit;

C = total weight of VOCs exempted under § 721, per unit;

(c) If product records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over the product records and may be used to establish a violation of District of Columbia regulations.

734.4 Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90(2000)e1, including any subsequent amendments, which are incorporated by reference herein.

734.5 Testing to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), including any subsequent amendments, which are incorporated by reference herein.

734.6 Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-04b, including any subsequent amendments, which are incorporated by reference herein.

734.7 No person shall create, alter, falsify, or otherwise modify records in such a way that the records do not accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and any other tests, processes, or records used in connection with product manufacture.

735 CONSUMER PRODUCTS – ALTERNATIVE CONTROL PLANS

735.1 This section provides an alternate method to comply with the Table of Standards specified in § 720.1. This alternative is provided by allowing responsible parties the option of voluntarily entering into separate Alternative Control Plan (ACP) Agreements for consumer products, identified in §§ 719 through 737. Only responsible ACP parties for consumer products may enter into an ACP.

735.2 Any manufacturer of consumer products which has been granted an ACP Agreement by CARB under the provisions in Subchapter 8.5, Article 4, §§ 94540-94555, of Title 17 of the California Code of Regulations, shall be exempt from the Table of Standards in § 720.1 for the period of time that the CARB ACP Agreement remains in effect, provided that all ACP Products used for emissions credits within the CARB ACP Agreement are contained in the Table of Standards in § 720.1 of this chapter. Any manufacturer claiming such an ACP Agreement must submit to the Department a copy of the CARB ACP decision including the executive order and all conditions established by CARB applicable to the exemption.

735.3 Manufacturers that have been granted an ACP Agreement under the ACP provision in Subchapter 8.5, Article 4, §§ 94540-94555, of Title 17 of the California Code of Regulations based on California specific data, or that have not been granted an exemption by the CARB, may apply to the Department for an ACP Agreement in accordance with §§ 735.4 to 735.23.

735.4 An application for an ACP shall be submitted in writing to the Department by the responsible ACP party and shall contain all of the following information:

(a) An identification of the contact persons, phone numbers, names, and addresses of the responsible ACP party that is submitting the ACP application and will be implementing the ACP requirements specified in the ACP Agreement;

(b) A statement of whether the responsible ACP party is a small business or a one-product business, as defined in § 799;

(c) A listing of the exact product brand name, form, available variations including but not limited to flavors, scents, colors, and sizes, and applicable product categories for each distinct product that is proposed for inclusion in the ACP;

(d) A demonstration to the satisfaction of the Department that the enforceable sales records used by the responsible ACP party to track product sales for each proposed ACP product identified in paragraph (c) of this subsection

meet the minimum criteria of seventy-five percent (75%) of the District of Columbia gross sales as specified in subparagraph (d)(5) of this subsection. To provide this demonstration, the responsible ACP party shall meet all of the following requirements:

(1) Provide the contact persons, phone numbers, names, street and mailing addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales;

(2) Determine the enforceable sales of each product using enforceable sales records as defined in § 799;

(3) Demonstrate to the satisfaction of the Department the validity of the enforceable sales based on enforceable sales records provided by the contact persons or the responsible ACP party;

(4) Calculate the percentage of the District of Columbia gross sales, as defined in § 799, that is comprised of enforceable sales; and

(5) Determine which ACP products have enforceable sales that are seventy-five percent (75%) or more of the District of Columbia gross sales. Only ACP products meeting these criteria shall be allowed to be sold in the District of Columbia under an ACP;

(e) For each of the ACP products identified in subparagraph (d)(5) of this subsection:

(1) Legible copies of the existing labels for each product; and

(2) The VOC content and LVP content for each product for the following time periods:

(A) At the time the application for an ACP is submitted; and

(B) At any time within the four (4) years before the date of submittal of the application for an ACP, if either the VOC or LVP contents have varied by more than plus or minus ten percent (+/- 10%) of the VOC or LVP contents reported in § 735.4(e)(2)(A);

(f) A written commitment obligating the responsible ACP party to date code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date- code on each ACP product container or package no later than five (5) working days after the date an approved ACP is signed by the Department;

(g) An operational plan covering all the products identified under subparagraph (d)(5) of this subsection for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(1) An identification of the compliance periods and dates for the responsible ACP party to report the information required by the Department in the ACP Agreement approving an ACP:

(A) The length of the compliance period shall be chosen by the responsible ACP party provided, however, that no compliance period shall be longer than three hundred sixty- five (365) days; and

(B) The responsible ACP party shall also choose the dates for reporting information such that all required VOC content and enforceable sales data for ACP products shall be reported to the Department at the same time and at the same frequency;

(2) An identification of specific enforceable sales records to be provided to the Department for enforcing the provisions of §§ 719 through 737 and the ACP Agreement approving an ACP. The enforceable sales records shall be provided to the Department no later than the compliance period dates specified in subparagraph (g)(1) of this subsection;

(3) For a small business or a one-product business that will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP parties that they will be transferring the surplus reductions to the small business or one-product business upon approval of the ACP;

(4) For each ACP product, all VOC content levels which will be applicable for the ACP product during each compliance period;

(5) The plan shall also identify the specific method(s) by which the VOC content will be determined and the statistical accuracy and precision, including repeatability and reproducibility, calculated for each specified method;

(6) The projected enforceable sales for each ACP product and the different VOC contents for each compliance period that the ACP will be in effect;

(7) A detailed demonstration showing the combination of specific ACP

reformulations or surplus trading, if applicable, that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (such as, by ACP reformulation);

(A) This demonstration shall use the equations specified in § 799 for projecting the ACP emissions and ACP limits during each compliance period; and

(B) This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold in the District of Columbia during each compliance period;

(8) A certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or any other attempts to circumvent the provisions of §§ 719 through 737;

(9) Written explanations of the date-codes that will be displayed on each ACP product container or packaging;

(10) A statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP; and

(11) A plan for reconciling shortfalls that commits the responsible ACP party to completely reconcile any shortfalls in all cases, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain:

(A) A clear and convincing demonstration of how shortfalls of up to five, ten, fifteen, twenty-five, fifty, seventy-five, and one hundred percent (5%, 10%, 15%, 25%, 50%, 75% and 100%) of the applicable ACP Limit will be completely reconciled within ninety (90) days from the date the shortfall is determined;

(B) A listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this paragraph; and

(C) A commitment to provide any record or information requested by the Department to verify that the shortfalls have been completely reconciled; and

(h) A declaration, signed by a legal representative for the responsible ACP party, stating that all information and operational plans submitted with the ACP application are true and correct.

735.5 In accordance with the time periods specified in § 735.7, the Department shall issue an ACP Agreement approving an ACP application that meets the requirements of §§ 719 through 737. The Department shall specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in the Table of Standards in § 720.1. The ACP Agreement shall also include:

(a) Only those ACP products for which the enforceable sales are at least seventy-five percent (75%) of the District of Columbia gross sales, as determined in § 735.4(d);

(b) A reconciliation of shortfalls plan meeting the requirements of § 735.4(g)(11); and

(c) Operational terms, conditions, and data to be reported to the Department to ensure that all requirements of §§ 719 through 736 are met.

735.6 The Department shall not approve an ACP submitted by a responsible ACP party if the Department determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in §§ 719 through 731, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

735.7 Unless the Department and the responsible party mutually agree to a different period of action, the Department shall take appropriate action on an ACP application within the following time periods:

(a) Within thirty (30) days of receipt of an ACP application, the Department shall inform the applicant in writing that either:

(1) The application is complete and accepted for filing; or

(2) The application is deficient, and the Department shall identify the specific information required to make the application complete;

(b) Within thirty (30) days of receipt of additional information provided in

response to a determination that an ACP application is deficient, the Department shall inform the applicant in writing that either:

(1) The additional information is sufficient to make the application complete, and the application is accepted for filing; or

(2) The application is deficient, and the Department shall identify the specific information required to make the application complete;

(c) The Department shall act to approve or disapprove a complete application within ninety (90) days after the application is deemed complete.

735.8 All information specified in the ACP Agreement shall be maintained by the responsible ACP party for a minimum of three (3) years after such records are generated and shall meet the following requirements:

(a) Such records shall be clearly legible and maintained in good condition during this period; and

(b) The records specified in § 735.4 shall be made available to the Department:

(1) Immediately upon request, during an on-site visit to a responsible ACP party;

(2) Within five (5) working days after receipt of a written request from the Department; or

(3) Within a time period mutually agreed upon by both the Department and the responsible ACP party.

735.9 Any person who commits a violation of this chapter is subject to the penalties specified in 20 DCMR § 105. Failure to meet any condition of an applicable ACP Agreement shall constitute a single, separate violation for each day until such requirement or condition is satisfied, unless otherwise provided in paragraphs (a) through (i) of this subsection:

(a) False reporting of any information contained in an ACP application, or any supporting documentation or amendments thereto shall constitute a single, separate violation for each day that the approved ACP is in effect;

(b) Any exceedance during the applicable compliance period of the VOC content specified for an ACP product and which is included in the ACP Agreement approving an ACP shall constitute a single, separate violation for each ACP product which exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use in the District of

Columbia;

(c) Any of the following actions shall each constitute a single, separate violation for each day after the applicable deadline until the requirement is satisfied:

(1) Failure to report data to the Department, including but not limited to missing data, or failure to report data accurately in writing regarding the VOC content, LVP content, enforceable sales, or any other information required by any deadline specified in the applicable ACP Agreement;

(2) False reporting of any information submitted to the Department for determining compliance with the ACP requirements;

(3) Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP Agreement, within thirty (30) days from the date of written notification of a shortfall by the Department; and

(4) Failure to completely reconcile the shortfall as specified in the ACP Agreement, within ninety (90) days from the date of written notification of a shortfall by the Department;

(d) False reporting or failure to report any of the information specified in § 735.10, or the sale or transfer of invalid surplus reductions, shall constitute a single, separate violation for each day during the time period for which the surplus reductions are claimed to be valid;

(e) Except as provided in § 735.9(f), any exceedance of the ACP limit for any compliance period that the ACP is in effect shall constitute a single, separate violation for each day of the applicable compliance period. The Department shall determine whether an exceedance of the ACP limit has occurred as follows:

(1) If the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP Agreement approving an ACP, then the Department shall determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product, as reported by the responsible ACP party for the applicable compliance period; and

(2) If the responsible ACP party has failed to provide all the required information specified in the ACP Agreement for an applicable compliance period, the Department shall determine whether an exceedance of the ACP limit has occurred as follows:

(A) For the missing data days, the Department shall calculate the total maximum historical emissions, as specified in § 799;

(B) For the remaining portion of the compliance period which are not missing data days, the Department shall calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period;

(C) The ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to subparagraph (e)(2)(A) of this subsection, and the emissions determined pursuant to subparagraph (e)(2)(B) of this subsection;

(D) The Department shall calculate the ACP limit for the entire compliance period using the ACP standards applicable to each ACP product and the enforceable sales records specified in subparagraph (e)(2)(B) of this subsection. The enforceable sales for each ACP product during missing data days, as specified in subparagraph (e)(2)(A) of this subsection, shall be zero (0); and

(E) An exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to subparagraph (e)(2)(C) of this subsection exceeds the ACP limit, determined pursuant to subparagraph (e)(2)(D) of this subsection;

(f) If a violation specified in paragraph (e) of this section occurs, the responsible ACP party may, pursuant to this paragraph, establish the number of violations as calculated according to the following equation:

NEV = (ACP Emissions - ACP Limit) x 1 Violation/40 Pounds

where:

NEV = number of ACP Limit violations;

ACP Emissions = the ACP Emissions for the compliance period;

ACP Limit = the ACP Limit for the compliance period; and

The responsible ACP party may determine the number of ACP Limit violations pursuant to this paragraph only if it has provided all required information for the applicable compliance period, as specified in the ACP

Agreement approving the ACP. By choosing this option, the responsible ACP party waives all legal objections to the calculation of the ACP Limit violations pursuant to this subsection;

(g) In assessing the amount of penalties for any violation occurring pursuant to paragraphs (a) through (f) of this section, the circumstances identified in applicable District of Columbia health and safety laws and regulations shall be taken into consideration;

(h) A cause of action against a responsible party under this section shall be deemed to accrue on the date(s) when the records establishing the violation are received by the Department or when documents are not received as requested by the Department; and

(i) The responsible ACP party is fully liable for compliance with the requirements of this subsection, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this subsection.

735.10 The Department shall issue surplus reduction certificates, which establish and quantify, to the nearest pound of VOC reduced, any surplus reductions achieved by a responsible ACP party operating under an ACP. All surplus reductions shall be calculated by the Department at the end of each compliance period within the time specified in the approved ACP. Surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, according to the following provisions:

(a) Surplus reduction certificates shall not constitute instruments, securities, or any other form of property;

(b) For the purposes of this regulation, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in the Table of Standards in § 720.1 may not be used to generate surplus reductions;

(c) Surplus reductions are valid only when generated by a responsible ACP party and only while that responsible ACP party is operating under an approved ACP;

(d) Surplus reductions are valid only after the Department has issued an ACP Agreement pursuant to § 735;

(e) Surplus reductions issued by the Department may be used by the responsible ACP party who generated the surplus until, pursuant to § 735.17:

(1) The reductions expire;

(2) The reductions are traded; or

(3) The ACP is canceled;

(f) Surplus reductions cannot be applied retroactively to any compliance period before the compliance period in which the reductions were generated;

(g) Only small or one-product businesses selling products under an approved ACP may purchase surplus reductions, except as provided in § 735.10(h)(2). An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business before the date of the increase;

(h) While valid, surplus reductions may be used only for the following purposes:

(1) To adjust the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by any responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

(2) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfalls plan approved by the Department pursuant to § 735.4(g)(11);

(i) A valid surplus reduction shall be in effect starting five (5) days after the date of issuance by the Department, for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period;

(j) At least five (5) working days before the effective date of transfer of surplus reductions, both the responsible ACP party that is selling surplus reductions and the responsible ACP party that is buying the surplus reductions shall, either together or separately, notify the Department in writing of the transfer. The notification shall include all of the following:

(1) The date the transfer is to become effective;

(2) The date the surplus reductions being traded are due to expire; (3)

The amount in pounds of VOCs of surplus reductions that are being transferred;

(4) The total purchase price paid by the buyer for the surplus reductions;

(5) The contact persons, names of the companies, street and mail addresses, and telephone numbers of the responsible ACP parties involved in the trading of the surplus reductions; and

(6) A copy of the District of Columbia-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions;

(A) The copy shall show the amount of any remaining non-traded surplus reductions, if applicable, and their expiration date; and

(B) The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this section; and

(k) Surplus reduction credits shall only be traded between ACP parties for consumer products.

735.11 The use of limited-use surplus reduction credits for early reformulations of ACP products shall comply with the following provisions:

(a) For the purposes of this section, early reformulation means an ACP product that is reformulated to result in a reduction in the product's VOC content, and which is sold, supplied, or offered for sale in the District of Columbia for the first time during the three hundred sixty-five (365) day period immediately before the date wherein the application for a proposed ACP is submitted to the District. Early reformulation does not include any reformulated ACP product that is sold, supplied, or offered for sale in the District of Columbia more than one (1) year before the date on which the ACP application is submitted to the Department;

(b) If requested in the application for an ACP, the Department shall, upon approval of the ACP, issue surplus reduction credits for early reformulations of ACP products, provided that all of the following

documentation has been submitted by the responsible ACP party to the satisfaction of the Department:

(1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level that is below the pre-ACP VOC content of the product, or below the applicable VOC standard specified in the Table of Standards in § 720.1, whichever is the lesser of the two;

(2) Accurate documentation demonstrating that the early reformulated ACP product was sold in District of Columbia retail outlets within the time period specified in paragraph (a) of this section;

(3) Accurate sales records for the early reformulated ACP product that meet the definition of enforceable sales records as defined in § 799, and which demonstrate that the enforceable sales for the ACP product are at least seventy-five percent (75%) of the District of Columbia gross sales for the product, as specified in § 735.4(d); and

(4) Accurate documentation for the early reformulated ACP product that meets the requirements specified in § 735.4(c)-(d), § 735.4(g)(8)-(9), and which identifies the specific test methods for verifying the claimed early reformulation(s) and the statistical accuracy and precision of the test methods as specified in § 735.4(g)(4)-(5);

(c) Surplus reduction credits issued pursuant to this section shall be calculated separately for each early reformulated ACP product by the Department according to the following equation:

$$SR = Enforceable\ Sales \times \frac{((VOC\ Content)_{initial} - (VOC\ Content)_{final})}{100}$$

where:

SR = Surplus Reductions for the ACP product, expressed to the nearest pound;

Enforceable Sales = the Enforceable Sales for the early reformulated ACP product, expressed to the nearest pound of ACP product;

$VOC\ Content_{initial}$ = the Pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in §720, whichever is the lesser of the two, expressed to the nearest one tenth of a pound (0.1 lb.) of VOC per one hundred pounds (100 lb.) of ACP product;

$VOC\ Content_{final}$ = the VOC Content of the early reformulated ACP product after the early reformulation is achieved, expressed to the

nearest one tenth of a pound (0.1 lb.) of VOC per one hundred pounds (100 lb.) of ACP product; and

(d) The use of surplus reduction credits issued pursuant to this section shall be subject to all of the following provisions:

(1) Surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the ACP Agreement approving an ACP, and shall not be used for any other purpose;

(2) Surplus reduction credits shall not be transferred to, or used by, any other responsible ACP party; and

(3) Except as provided in this section, surplus reduction credits shall be subject to all requirements applicable to surplus reductions and surplus trading, as specified in § 735.10.

735.12 At the end of each compliance period, the responsible ACP party shall make an initial calculation of any shortfalls occurring in that compliance period, as specified in the ACP Agreement approving the ACP. Upon receipt of this information, the Department shall determine the amount of any shortfall that has occurred during the compliance period, and shall notify the responsible ACP party of this determination:

(a) The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP Agreement approving the ACP, within thirty (30) days from the date of written notification of a shortfall by the District;

(b) All shortfalls shall be completely reconciled within ninety (90) days from the date of written notification of a shortfall by the Department, by implementing the reconciliation of shortfalls plan specified in the ACP Agreement approving the ACP; and

(c) All requirements specified in the ACP Agreement approving an ACP, including all applicable ACP limits, shall remain in effect while any shortfalls are in the process of being reconciled.

735.13 The responsible ACP party shall notify the Department, in writing, of any change in an ACP product's name, formulation, form, function, applicable product categories, VOC content, LVP content, date-codes, or recommended product usage directions, no later than fifteen (15) days from the date such a change occurs. These modifications do not need Department pre-approval, but the notification shall fully explain the following:

(a) The nature of the modification;

(b) The extent to which the ACP product formulation, VOC content, LVP Content, or recommended usage directions will be changed;

(c) The extent to which the ACP emissions and ACP limit specified in the ACP Agreement will be changed for the applicable compliance period; and

(d) The effective date and corresponding date-codes for the modification.

735.14 Modifications to the enforceable sales records or reconciliation of shortfalls plan specified in the ACP Agreement approving the ACP require Department pre-approval and shall comply with the following requirements:

(a) Any such proposed modifications shall be fully described in writing and forwarded to the Department;

(b) The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of §§ 719 through 737; and

(c) The Department shall act on the proposed modifications using the procedure set forth in § 735.7. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time that any proposed modification is approved in writing by the Department.

735.15 Except as otherwise provided in § 735.13 and 735.14, the responsible ACP party shall notify the Department, in writing, of any information learned of by the responsible ACP party which may alter any of the information submitted pursuant to the requirements of § 735. The responsible ACP party shall provide such notification to the Department no later than fifteen (15) working days from the date such information is known to the responsible ACP party.

735.16 To ensure that the ACP meets all of the requirements of this chapter and that the ACP emissions will not exceed the ACP limit, the District shall modify the ACP under the following conditions as necessary:

(a) If the District determines that:

(1) The enforceable sales for an ACP product are no longer at least seventy-five percent (75%) of the District of Columbia gross sales for that product;

(2) The information submitted pursuant to the approval process set forth in §735 is no longer valid; or

(3) The ACP emissions are exceeding the ACP limit specified in the ACP Agreement approving an ACP;

(b) If the responsible ACP party has had an opportunity for a public hearing in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code §§ 2-501, *et seq*.(2006 Repl.), to determine if the ACP should be modified; and

(c) If any applicable VOC standards specified in the Table of Standards in § 720.1 are modified by the California Air Resources Board (CARB) in a future rule making, the Department shall modify the ACP limit specified in the ACP Agreement approving an ACP to reflect the modified ACP VOC standards as of their effective dates.

735.17 An ACP shall remain in effect until the following occurs:

(a) The ACP reaches the expiration date specified in the ACP Agreement;

(b) The ACP is modified by the responsible ACP party and approved by the Department, as provided in § 735.13 and 735.14;

(c) The ACP is modified by the Department, as provided in § 735.16;

(d) The ACP includes a product for which the VOC standard specified in the Table of Standards in § 720.1 is modified by the Department in a future rule making, and the responsible ACP party informs the Department in writing that the ACP will terminate on the effective date of the modified standard; or

(e) The ACP is cancelled pursuant to § 735.18.

735.18 The Department shall cancel an ACP if any of the following circumstances occur:

(a) The responsible ACP party demonstrates to the satisfaction of the Department that the continuation of the ACP will result in an extraordinary economic hardship;

(b) The responsible ACP party violates the requirements of the approved ACP, and the violation results in a shortfall that is twenty percent (20%) or more of the applicable ACP limit, meaning that the ACP Emissions exceed the ACP Limit by twenty percent (20%) or more;

(c) The responsible ACP party fails to meet the requirements of § 735.12 within the time periods specified in § 735.12; or

(d) The responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

735.19 The Department shall not cancel an ACP pursuant to § 735.18 without first affording the responsible ACP party an opportunity for a public hearing in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code §§ 2-501, *et seq.*(2006 Repl.), to determine if the ACP should be canceled.

735.20 The responsible ACP party for an ACP that is canceled pursuant to this section and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

(a) All remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of § 735.12; and

(b) All ACP products subject to the ACP shall be in compliance with the applicable VOC standards in the Table of Standards in § 720.1 immediately upon the effective date of ACP cancellation.

735.21 Any violations incurred pursuant to § 735.9 shall not be cancelled or in any way affected by the subsequent cancellation or modification of an ACP pursuant to § 735.13 through 735.18.

735.22 The information required by § 735.4(a), 735.4(b), and 735.10 is public information that may not be claimed as confidential. All other information submitted to the Department to meet the requirements of this regulation shall be handled in accordance with the District of Columbia confidentiality requirements in 20 DCMR § 106.

735.23 A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

(a) The Department shall be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP Agreement;

(1) The written notifications shall be postmarked at least five (5) working days before the effective date of the transfer and shall be signed and submitted separately by both responsible parties; and

(2) The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and telephone numbers of the responsible parties involved in the transfer; and

(b) The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP Agreement.

736 CONSUMER PRODUCTS – INNOVATIVE PRODUCTS EXEMPTION

736.1 Any manufacturer claiming an exemption from the Table of Standards in § 720.1 based on a CARB Innovative Products exemption under the Innovative Products provisions in Subchapter 8.5, Article 2, § 94511, or Subchapter 8.5, Article 1, § 94503.5 of Title 17 of the California Code of Regulations, must submit to the Department a copy of the CARB Innovative Product exemption decision including the executive order and all conditions established by CARB applicable to the exemption.

736.2 Manufacturers of consumer products that have been granted an Innovative Products exemption under the Innovative Products provisions in Subchapter 8.5, Article 2, § 94511, or Subchapter 8.5, Article 1, § 94503.5 of Title 17 of the California Code of Regulations based on California specific data, or that have not been granted an exemption by CARB, may apply for an Innovative Products exemption from the District of Columbia if the product meets the following criteria:

(a) The manufacturer demonstrates by clear and convincing evidence that due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

(1) The VOC emissions from a representative consumer product which complies with the VOC limits specified in the Table of Standards in § 720.1; or

(2) The calculated VOC emissions from a non-complying representative product, if the product had been reformulated to comply with the VOC limits specified in the Table of Standards in § 720.1; and

(3) VOC emissions shall be calculated using the following equation:

$$E_R = E_{NC} \times VOC_{STD} \, , \, VOC_{NC}$$

where:

E_R = The VOC emissions from the non-complying representative product, had it been reformulated;

E_{NC} = The VOC emissions from the non-complying

representative product in its current formulation;

VOC_{STD} = The VOC limit specified in the Table of Standards in § 720.1; and

VOC_{NC} = The VOC content of the non-complying product in its current formulation;

(b) If a manufacturer demonstrates that the equation in paragraph (a) of this section yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method that accurately calculates emissions may be used upon approval of the Department;

(c) For the purposes of this section, representative consumer product means a consumer product that meets all of the following criteria:

(1) The representative product shall be subject to the same VOC limit in the Table of Standards in § 720.1 as the innovative product;

(2) The representative product shall be of the same product form as the innovative product, unless the innovative product uses a new form that does not exist in the product category at the time the application is made; and

(3) The representative product shall have at least similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry;

(d) To apply for an innovative products exemption under this section, a manufacturer shall submit a written application to the Department, which includes:

(1) The supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage; and

(2) Any information necessary to enable the Department to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content;

(e) The Department shall comply with the following process in responding to applications for exemptions:

(1) All information submitted by a manufacturer pursuant to paragraph (d) shall be handled in accordance with the District of Columbia confidentiality requirements in 20 DCMR § 106;

(2) Within thirty (30) days of receipt of the exemption application the Department shall determine whether an application is complete;

(3) Within ninety (90) days after an application has been deemed complete, the Department shall determine whether, under what conditions, and to what extent, an exemption from the requirements of §720 will be permitted;

(A) The applicant and the Department may mutually agree to a longer time period for reaching a decision; and

(B) Additional supporting documentation may be submitted by the applicant before a decision is reached;

(4) The Department shall notify the applicant of the decision in writing and specify such terms and conditions that are necessary to ensure that emissions from the product will meet the emissions reductions specified in subparagraph (a)(1), and that such emissions reductions can be enforced; and

(5) In granting an exemption for a product, the Department shall establish conditions that are enforceable:

(A) These conditions shall include the VOC content of the innovative product, dispensing rates, application rates, and any other parameters determined by the Department to be necessary;

(B) The Department shall also specify the test methods for determining conformance to the conditions established; and

(C) The test methods shall include criteria for reproducibility, accuracy, sampling, and laboratory procedures;

(f) For any product for which an exemption has been granted pursuant to this section, the manufacturer shall notify the Department in writing within thirty (30) days of any change in the product formulation or recommended product usage directions, and shall also notify the Department within thirty (30) days if the manufacturer learns of any information which would alter the emissions estimates submitted to the Department in support of the exemption application;

(g)If the VOC limits specified in the Table of Standards in § 720.1 are lowered

for a product category through any subsequent rulemaking, all innovative product exemptions granted for products in the product category shall have no effect as of the effective date of the modified VOC standard, except for those innovative products that have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the Department at least sixty (60) days before the effective date of such limits; and

(h) If the Department believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in this section, the Department may modify or revoke the exemption as necessary to ensure that the product will meet these criteria. The Department shall not modify or revoke an exemption without first affording the applicant an opportunity for a public hearing held in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code §§ 2-501, *et seq*.(2006 Repl.).

737 CONSUMER PRODUCTS – VARIANCE REQUESTS

737.1 Any person who cannot comply with the requirements set forth in §§ 720 and 722 through 731 because of extraordinary reasons beyond the person's reasonable control may apply in writing to the Department for a variance according to the following requirements:

(a) The variance application shall include:

(1) The specific grounds upon which the variance is sought;

(2) The proposed date(s) by which compliance with the provisions of §§ 720 and 722 through 731 will be achieved; and

(3) A compliance report reasonably detailing the methods by which compliance will be achieved;

(b) Upon receipt of a variance application containing the information required in paragraph (a), the Department shall hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements in §§ 720 and 722 through 731 is necessary and will be permitted according to the following requirements:

(1) A hearing shall be initiated no later than seventy-five (75) days after receipt of a variance application;

(2) Notice of the time and place of the hearing shall:

(A) Be sent to the applicant by certified mail not less than thirty (30) days before the hearing;

(B) Be submitted for publication in the District of Columbia Register and sent to every person who requests such notice, not less than thirty (30) days before the hearing; and

(C) State that the parties may, but need not be, represented by counsel at the hearing;

(3) At least thirty (30) days before the hearing, the variance application shall be made available to the public for inspection; and

(4) Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered;

(c) Information submitted to the Department by a variance applicant may be claimed as confidential, and such information shall be handled in accordance with the District of Columbia confidentiality requirements in 20 DCMR § 106. The Department may consider such confidential information in reaching a decision on a variance application;

(d) No variance shall be granted unless all of the following findings are made: (1)

Because of reasons beyond the reasonable control of the applicant, requiring compliance with §§ 720 and 722 through 731 would result in extraordinary economic hardship;

(2) The public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance; and

(3) The compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible;

(e) Any variance order issued by the Department shall specify a final compliance date by which the requirements of §§ 720 and 722 through specifies increments of progress necessary to ensure timely compliance, and such other conditions that the Department, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of applicable District of Columbia health and safety laws and regulations;

(f) A variance shall cease to be effective upon failure of the party to whom the

variance was granted to comply with any term or condition of the variance; and

(g) Upon the application of any person, the Department may review, and for good cause, modify or revoke a variance from requirements of §§ 720 and 722 through 731 after holding a public hearing in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code §§ 2-501, *et seq*. (2006 Repl.).