

## **DMM-6 / Guidelines for Annual Reporting of Organohalogen Flame Retardants per ECL § 37-1009**

New York State Department of Environmental Conservation

### **DEC Program Policy**

Issuing Authority: Dereth Glance, Deputy Commissioner	Title: Guidelines for Annual Reporting of Organohalogen Flame Retardants per § ECL 37-1009
Date Issued: November 30, 2022	Latest Date Revised: N/A

#### **I. Summary:**

This policy establishes the process by which manufacturers of electronic displays containing organohalogen flame retardant chemicals in the stands or enclosures should submit annual reports to the Department of Environmental Conservation (Department) in accordance with Environmental Conservation Law (ECL) § 37-1009. A manufacturer of an electronic display that does not contain organohalogen flame retardant chemicals in the enclosure or stand does not need to submit an annual report for that display.

#### **II. Policy:**

As set forth in Title 10 of the ECL, beginning January 1, 2023, no electronic display can be sold in the state unless the manufacturer has submitted an annual report identifying all the organohalogen flame retardant chemicals used in the enclosure or stand of the electronic display in a form determined by the Department (ECL § 37-1009(2)).

#### **III. Purpose and Background:**

ECL § 37-1009 establishes the annual reporting requirement described in Section II above. This policy provides clarification on the information that must be provided to the Department to satisfy this statutory reporting requirement. While the Department anticipates adopting regulations that will include provisions for annual reporting, the statutory annual reporting requirement will take effect on December 31, 2022, and manufacturers will need to know before then what information must be included in the annual report. This Program Policy will assist the regulated community in meeting its statutory obligations prior to the adoption of the regulations. Additionally, data collected via annual reports will provide necessary information to the Department on the use of organohalogen flame retardants in enclosures and stands to inform the rulemaking process.

#### **IV. Responsibility:**

The Division of Materials Management Pollution Prevention Unit is responsible for interpreting and implementing this Program Policy.

## **V. Procedure:**

### A. Definitions

Pursuant to ECL § 37-1001 and § 37-1009, the policy defines the following terms:

“Component” means the enclosure, stand, or both of the electronic display.

"Consumer product" means any product that is regularly used or purchased to be used for personal, family or household purposes. Consumer product does not include: (a) a food or beverage or an additive to a food or beverage regulated by the United States Food and Drug Administration; or (b) a drug, biologic or medical device regulated by the United States Food and Drug Administration.

"Electronic display" means a consumer product with a display screen and associated electronics that, as its primary function, displays visual information from wired or wireless sources and is available for purchase by individuals or households for personal use in a residential space. Electronic display does not include: (a) any electronic display with a screen area smaller than or equal to one hundred square centimeters or fifteen and one-half square inches; (b) projectors; (c) virtual reality headsets; (d) all-in-one video conference systems; or (e) displays that are integrated with appliances and are not available for purchase as separate products by end-users.

[Note: See Appendix D for further clarification on products included under the “electronic display” definition.]

"Manufacturer" means a person who: (a) assembles or substantially assembles electronic displays for sale in the state; (b) manufactures electronic displays, under its own brand name or under any other brand name, for sale in the state; (c) sells, under its own brand name, electronic displays in the state; (d) owns a brand name that it licenses to another person for use on electronic displays sold in the state; (e) imports electronic displays for sale in the state; or (f) manufactures electronic displays for sale in the state without affixing a brand name.

"Organohalogen flame retardant chemical" means a chemical that meets both of the following criteria:

- (a) A functional use for the chemical is to resist or inhibit the spread of fire or as a synergist to chemicals that resist or inhibit the spread of fire; and
- (b) The chemical contains one or more halogen elements, including fluorine,

chlorine, bromine, or iodine, bonded to carbon.

“Responsible official” means a president, vice president, secretary, treasurer, general partner, proprietor, principal executive officer, or any other person who performs policy or decision-making functions for and is authorized to legally bind the manufacturer of an electronic display.

## B. General Provisions

Pursuant to ECL § 37-1009 a manufacturer must submit its annual report using the forms determined by the Department and attached in Appendices A through E. Annual reports must include a certification by a responsible official. A responsible official must sign the form included in Appendix C to certify that after reasonable inquiry of the person or persons directly responsible for providing the information required to complete the annual report, the responsible official has concluded that the statements and information in the application are accurate and complete based on the best available information. The responsible official must acknowledge that there are significant penalties for submitting false information. The certification must include the full name, title, signature, date of signature, e-mail address and telephone number of the responsible official.

## C. Contents of the Annual Report

Pursuant to ECL § 37-1009, a manufacturer of electronic displays must submit an annual report to the Department using the form included in Appendix A of this program policy. The annual report form includes two sections: Section A – Contact Information and Section B – Product Information. Each annual report must cover all products sold or offered for sale or products which will be offered for sale by a manufacturer during the current calendar year. Instructions for completing the annual report are found in Appendix B.

Although optional, DEC is requesting that the annual report include information on the concentration ranges of all organohalogen flame retardants used in the products being reported. An organohalogen flame retardant is deemed to be used in the product if it was intentionally added to the enclosure or stand by the manufacturer or added to the enclosure or stand by the supplier. For an organohalogen flame retardant that consists of a mixture, each individual organohalogen flame retardant that makes up the mixture is deemed to be used in the product and needs to be reported individually if it was added by the manufacturer or supplier and is present in the enclosure or stand. Information on the use of an organohalogen flame retardant in the enclosure or stand should be based on the manufacturer’s knowledge, laboratory testing, or information

provided by the supplier.

If the chemical(s) or concentration(s) reported in “Section B – Product Information” are trade secrets or confidential business information, the manufacturer may submit a written request to the Department to withhold the information from disclosure in accordance with the provisions of 6 NYCRR Part 616, Access to Records. The request must be submitted at the time the annual report is submitted and must state the reasons why the information should be excepted from disclosure. The manufacturer may submit such request using the form included in Appendix E.

The Department will follow the procedures set forth in section 616.7 in determining whether to grant access to information. Material presented in complete annual reports, accepted by the Department, will be maintained by the Department, and may be shared with the public upon request, with the exception of any information that qualifies as a trade secret or confidential business information under section 616.7.

#### **D. Filing Process and Timeline**

A manufacturer may submit its annual report electronically (preferred method) or via hard copy. Instructions for each submission method will be posted on the Department’s website.

Reports are due by December 31 each year, starting in 2022. Upon issuance of this policy, a manufacturer of an electronic display(s) subject to the reporting requirement must submit a report to the Department identifying organohalogen flame retardants in each electronic display’s stand and enclosure. The Department will accept reports between November 1 and December 31 annually.

#### **VI. Termination of Policy**

This Policy will remain in effect until rescinded or updated by the Department or superseded by Department regulations.

## **Appendix A**

### **Annual Report Form**

An Excel document for the annual report form can be found to the left of this page as an attachment. Click the paperclip icon to edit the Excel document, which will save directly to this PDF.

## Appendix B

### Annual Report Form Instructions

In accordance with Environmental Conservation Law § 37-1009, no electronic display shall be sold in the state of New York unless the manufacturer has submitted an annual report identifying all of the organohalogen flame retardant chemicals used in the enclosure or stand of the electronic display. The manufacturer of an electronic display(s) subject to the reporting requirement must provide information as detailed below to satisfy the annual reporting requirements of ECL § 37-1009. Aftermarket accessories are not subject to this reporting requirement

#### **Reporting Timeline:**

A manufacturer of an electronic display subject to the reporting requirement must submit an annual report to the Department identifying organohalogen flame retardants used in the stand and enclosure of each electronic display. Reports shall be due annually starting in 2022. The Department will accept reports between November 1 and December 31 annually. The report must cover the products sold or offered for sale or products that will be offered for sale during the current calendar year. A manufacturer may submit its annual report electronically (preferred method) or via hard copy. Instructions for each submission method will be posted on the Department's website.

#### **Information to Report:**

Complete the following information fields in the annual report form (Appendix A):

“Section A – Contact Information”:

1. Indicate the calendar year covered by the annual report. For example, as the first annual report will cover electronic displays sold or offered for sale, or that will be offered for sale in the State in calendar year 2022, this should be entered as “2022” in the reporting year field.
2. Under “Manufacturer Information,” provide the name, address, phone number, and manufacturer or brand website in the appropriate fields.
3. Under “Manufacturer Representative / Report Preparer,” provide the name, address, phone number, and email address in the appropriate fields for the person who the Department can contact if there are questions about the report.

“Section B – Product Information”:

1. Provide the Global Product Classification (GPC) brick code for the product that contains the organohalogen flame retardant chemical(s). A list of brick codes that

fall within each product category is provided in Appendix D for additional clarification. If a manufacturer produces a product that is covered under ECL § 37-1009, but which does not fit into one of the brick codes in Appendix D, complete this section by providing the brick code and description of the product category.

2. Identify each product sold, offered for sale, or that will be offered for sale in the State in the current calendar year that contains an organohalogen flame retardant chemical in its enclosure or stand by either providing the brand, make, and unique model identifier, or the brand name and Universal Product Code (UPC).

If the product does not have a UPC, this may be reported as "N/A", but the brand, make, and model information must still be provided. Each individual product being reported, either by brand name and product model, or by brand name and UPC, must be individually named in the report (Appendix A). Products with different model numbers or UPCs under the same brand which contain the same flame retardant chemicals and concentrations of flame retardant chemicals can be reported together in the reporting form, but each individual product must be identified by one of these two methods.

If the flame retardant chemical used or the concentration of the flame retardant chemical differs at the individual model or UPC level, then each model or UPC needs to be reported separately.

3. Identify the product component(s) containing the organohalogen flame retardant chemical(s). A component includes any of the following: enclosure, stand, or both.
4. Identify each organohalogen flame retardant chemical in the enclosure or stand by providing the following information: the Chemical Abstracts Service (CAS) registry number(s) and the chemical name(s) for each chemical present in the enclosure or stand. When reporting the chemical name, the full name should be provided. For example, report "2-ethylhexyl-2,3,4,5 tetrabromobenzoate" rather than "TBB."
5. Although optional, DEC is requesting that manufacturers report the concentration range of each organohalogen flame retardant chemical(s) used in the enclosure or stand in parts per million (ppm) by weight. Additionally, this section should provide the concentration range(s) in the product *component* that contains the organohalogen flame retardant chemical(s), not the entire final product.

The concentration ranges should be reported as follows:

- 50 ppm to <100 ppm
- 100 ppm to <500 ppm
- 500 ppm to <1,000 ppm
- 1,000 ppm to <5,000 ppm
- 5,000 ppm to <10,000 ppm
- 10,000 ppm or greater

Note: An organohalogen flame retardant is deemed to be used in the product if it was intentionally added to the enclosure or stand by the manufacturer or added to the enclosure or stand by the supplier. For an organohalogen flame retardant that consists of a mixture, each individual organohalogen flame retardant that makes up the mixture is deemed to be used in the product and should be reported individually if it was added by the manufacturer or supplier and is present in the enclosure or stand. Information on the use of an organohalogen flame retardant in the enclosure or stand should be based on the manufacturer's knowledge, laboratory testing, or information provided by the supplier.

6. If chemical concentrations are reported, provide the source of the chemical concentration range that was provided in "Section B – Product Information". Knowledge of the chemical concentration may be based on manufacturer's knowledge of the formulation of the stand or enclosure, product testing, or other sources.
7. Under "Comments (Optional)", provide additional information that is relevant to the annual report, such as information that may help to clarify or provide additional details related to the contents of the report.



## Appendix C

### Certification Form

Manufacturer Company name
Manufacturer Company address

Responsible official name	Title
Email address	Phone number

A full and complete annual report must include the following elements:

- Signed "Certification Form"
- Complete "Annual Report Form" with all applicable fields completed

I certify that this document and all attachments were prepared under my direction or supervision, and that based on my inquiry of the person or persons directly responsible for gathering the information required to complete this application, I believe the information is true, accurate, and complete based on the best available information. I am aware that there are significant penalties under Chapter 40, Part 3, Title K, Article 175 of the Penal Law, § 175.35 Offering a False Instrument for Filing in the First Degree, for submitting false information.

Responsible official name	Title
Signature	Date

## Appendix D

### Example Product Categories

10001144	Personal Computers – Desktop/Internet Terminal
10001145	Personal Computers – Portable
10001153	Computer/Video Game Monitors
10001362	Computer/Video Game Accessories – Other
10001400	Televisions
10001401	Television Combinations
10001402	Televisions – Handheld
10001405	Televisions – Other
10001420	Portable DVD Players
10006224	Signs, Unprinted
10006276	Personal Computers – Tablet/E-Book Readers
10007021	Smart Home/Automation Equipment – Control Panel
10007957	Smart Home/Automation Equipment – Power Monitoring Device

**Note:** The above list is not exhaustive and may not include all products categories that may be subject to the annual reporting requirement. As such, other product categories may be listed by the manufacturer in Section B of the annual report form.

### Note on Products Subject to Reporting

Numerous products with multiple functions are subject to the annual reporting requirement, including all-in-one computers, laptop computers, notebook computers, tablets, e-book readers, portable DVD players with attached screen, televisions, and other similar devices.

Aftermarket accessories such as wall mounts for large devices are not subject to this reporting requirement.

## Appendix E

### Confidential Business Information (CBI) Request/Substantiation

Use this form to indicate whether the chemical(s) or concentration(s) reported in “Section B – Product Information” are trade secrets or confidential business information, and to provide reasons why the information should be excepted from disclosure under the New York State Freedom of Information Law. Factors that the Department may consider in determining whether to safeguard information are included in 6 NYCRR 616.7(c)(2).

Manufacturer Company name
Manufacturer Company address

Contact name	Title
Email address	Phone number

Information within the report that is being claimed as CBI:
Reason(s) the information is considered CBI: