

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

Nonwoven Disposable Products Act

The Director of the Department of Energy and Environment (DOEE), pursuant to the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq.* (2013 Repl. & 2018 Supp.)); the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.01 *et seq.* (2013 Repl. & 2018 Supp.)); and the Nonwoven Disposable Products Act of 2016, effective March 11, 2017 (D.C. Law 21-220; D.C. Official Code §§ 8-521 *et seq.* (2018 Supp.)), hereby gives notice of the intent to adopt a new Chapter 24 (Nonwoven Disposable Products Labeling) in Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

This new Chapter 24 will establish rules for determining the flushability of nonwoven disposable wipes and specify the labeling requirements for those products.

Title 21 DCMR, WATER AND SANITATION, is amended by adding a new Chapter 24, as follows:

CHAPTER 24 NONWOVEN DISPOSABLE PRODUCTS LABELING

2400	PURPOSE
2401	APPLICABILITY
2402	DETERMINATION OF FLUSHABILITY
2403	INDEPENDENT TESTING AND CERTIFICATION TO THE DEPARTMENT
2404	LABELING OF NONWOVEN DISPOSABLE PRODUCTS
2405	LABELING REQUIREMENTS FOR NON-FLUSHABLE NONWOVEN DISPOSABLE PRODUCTS
2406	ENFORCEMENT
2499	DEFINITIONS

2400 PURPOSE

2400.1 The purpose of this rule is to implement the Nonwoven Disposable Products Act of 2016, effective March 11, 2017 (D.C. Law 21-220; D.C. Official Code §§ 8-521 *et seq.* (2018 Supp.)), to protect the District’s wastewater system from debris deposition, obstruction of flow, and operational interference caused by non-flushable nonwoven disposable products.

2400.2 This rule sets forth standards to determine whether a nonwoven disposable product sold in the District may be labeled as flushable. The rule provides specific

tests in Section 2402 that determine whether a product meets the flushability requirement of the Nonwoven Disposable Products Act.

2400.3 For nonwoven disposable products that do not meet that standard and are determined to be non-flushable, this rule sets forth the labeling requirements for such products that are sold in the District.

2401 APPLICABILITY

2401.1 A manufacturer of a nonwoven disposable product for sale in the District shall comply with the rules set forth in this chapter.

2401.2 This chapter is applicable, but not limited to, the following types of nonwoven disposable products:

- (a) Feminine Hygiene Wipes
- (b) Adult Incontinence Wipes
- (c) Baby Wipes
- (d) Body Cleansing Wipes
- (e) Personal Care Wipes
- (f) Body Wipes
- (g) Shower Wipes; and
- (h) Cleansing Toilettes.

2402 DETERMINATION OF FLUSHABILITY

2402.1 A nonwoven disposable product shall be considered flushable in the District only if it passes each of the tests in §§ 2402.2 - 2402.5.

2402.2 Toilet and Drain Line Clearance Test, based on the International Nonwovens and Disposables Association (INDA) Fourth Edition, May 2018 (GD4) FG501, as amended below.

- (a) Purpose: The purpose of this test is to determine the likelihood that a product will successfully clear a toilet and building drainage lines. The test is intended to simulate two (2) days of normal toilet use by a family of four.
- (b) Test Specifications:

- (1) The test system shall consist of a toilet and drain line combination in the configuration typical in the United States. The toilet fixture and flush volume should conform to the 2013 District of Columbia Plumbing Code, 12-F DCMR § 101, *et seq.*
- (2) The test shall consist of thirty-five (35) toilet flushes at each step of the following three-part loading sequence: (1) thirty-five (35) flushes with water only; (2) thirty-five (35) flushes with a single individual wipe and at least three squares of toilet tissue; and (3) thirty-five (35) flushes with the nonwoven disposable product, simulated fecal matter, and toilet tissue. In each part, the next flush shall not be conducted until the water and/or material from the prior flush has drained from the toilet bowl and/or exited the drain line and the toilet tank has fully refilled. Each part is complete when the 35th flush of that part exits the drain line.
- (3) For each flush, the tester shall observe whether the product clears the toilet bowl and trap. The travel distance shall be measured for all flushed materials in the drain line following each flush by calculating the distance traveled from the location of the center of mass of the loaded materials within the drain line relative to the toilet.
- (4) Baseline Evaluation: Prior to testing, a thirty-five (35)-flush sequence shall be conducted using, first, standard toilet tissue and, second, standard toilet tissue with simulated fecal matter. This shall be used to establish a baseline for each specific toilet and drain line configuration and ensure proper operation of the test system. In the absence of product, no clogs should occur that require use of a plunger to clean toilet tissue and excess water from the bowl and trap. The travel distance of the center of mass of the toilet tissue must not consecutively decrease over the course of five (5) consecutive flushes.

(c) Pass/Fail Criteria:

- (1) Toilet Clearance: The test is passed if no more than three (3) of the flushes containing product are associated with clogs that require use of a plunger to clear product and excess water from the bowl and trap.
- (2) Drain Line Clearance: The test is passed if the travel distance of the center of mass of the flushed product in the drain line does not consistently decrease over the course of three (3) consecutive flushes.

2402.3

Slosh Box Test, based on the International Water Services Flushability Group (IWSFG) Publicly Available Specification (PAS) 3 2018, as amended below.

- (a) Purpose: The purpose of this test is to assess the disintegration performance of a nonwoven disposable product when it is subjected to hydraulic forces typically found in continuous flow conditions in small diameter wastewater transport systems, after a product is flushed.
- (b) Test Specifications: This test must use the following materials and processes:
 - (1) Dimensions of box: eighteen (18) inches in length by twelve (12) inches wide by twelve (12) inches high.
 - (2) Amount of rotation: eleven (11) degrees to each side, or a vertical travel of four (4) inches from top of stroke to bottom of stroke as measured from the bottom edge of the inside of the test tank's twenty-one (21) inch base platform.
 - (3) Amount of water in box: four (4) liters or one (1) gallon.
 - (4) Slosh speed: eighteen (18) revolutions per minute.
 - (5) Pre-soak time: one-half (0.5) of an hour after flushing.
 - (6) Slosh time: one half (0.5) of an hour.
- (c) Pass/Fail Criteria:
 - (1) The nonwoven disposable product must break apart into pieces less than one (1) inch in any direction by the end of the half (0.5) hour test period. All products tested must pass.
 - (2) To determine if the dispersion criteria is met, upon completion of the half (0.5) hour test period, the slosh box mechanism shall be turned off and adjusted to level orientation. The tester should allow the products to stop motion (settle) and visually observe the dimensions of pieces to determine length against a measurement grid of one (1) inch squares. The grid may be placed at the bottom of the slosh box. Other methods to determine dimensions may be used. If the grid method is used, photographs using a camera directly above the slosh box should be used for documentation. If a piece is visibly folded over, the piece should be unfolded using methods as to not further tear it.

2402.4

Settling Test, based on INDA GD4 FG504, as amended below.

- (a) Purpose: The purpose of this test is to assess whether a nonwoven disposable product settles in the sumps, septic tanks, onsite aerobic systems, or settling chambers that are associated with pump stations and municipal wastewater treatment plants.
- (b) Test Specifications:
 - (1) The test system consists of a clear plastic column, approximately twenty (20) centimeters or eight (8) inches in diameter, containing tap water which allows the settling behavior of a product to be observed. The column must have graduations that are used for determining the time needed for the product to descend a pre-determined distance in the column.
 - (2) Individual test products are rinsed in tap water or flushed through a test drain line. In addition, in the event a product floats in tap water, it may be swirled gently in wastewater for thirty (30) seconds to allow the adsorption of solids. Each product is then placed in a beaker containing tap water, which is poured into the top of the column. The settling rate is calculated from the product's travel time from the top to the bottom of the column.
 - (3) This process is repeated for ten (10) separate products and the average settling velocity is calculated. The settled products are then left in the column for twenty-four (24) hours to verify that they do not become buoyant and float. In the event that products fail to settle or become buoyant, this process can be repeated with ten (10) additional products.
- (c) Pass/Fail Criteria:
 - (1) The average settling velocity for the products that settle must exceed one-tenth (0.1) centimeters per second (cm/sec) and at least ninety-five percent (95%) of the total products tested by volume must settle; and
 - (2) At least ninety-five percent (95%) of the products tested must not become sufficiently buoyant to rise more than thirty (30) centimeters from the bottom within twenty-four (24) hours.

2402.5

Anaerobic Biodisintegration/Biodegradation Tests, based on INDA GD4 FG506, as amended below.

- (a) Purpose: Either the Biodisintegration Test or Biodegradation Test can be used to assess the potential for a product to biologically degrade under the anaerobic conditions typically found in sewers as well as in onsite and municipal wastewater treatment systems. These tests measure the total mass of a product retained on a one (1) mm sieve after being incubated in anaerobic sludge for twenty-eight (28) days at within two (2) degrees of thirty-five degrees Celsius (35° C).
- (b) Test Specifications:
 - (1) Biodisintegration Test:
 - (A) Samples of nonwoven disposable product are incubated in two-liter (2) vessels containing one and one half (1.5) liters of anaerobic digester sludge, which has been prescreened through a one (1) mm sieve. In addition, identically prepared treatments using U.S. Pharmacopeia Convention (USP) cotton must be used as a positive control. The flasks are incubated statically and in a way that prevents oxygen from entering the test vessels.
 - (B) After twenty-eight (28) days, the contents of each flask are passed through a one (1) millimeter wire mesh sieve and the material retained on the sieve is recovered, dried and analyzed gravimetrically. The percent of the initial product mass passing through the sieve is calculated based upon difference. The average is calculated for the three (3) replicates.
 - (2) Biodegradation Test: The biodegradation test measures the evolution of gas (carbon dioxide and methane) resulting from the mineralization of the organic constituents in the product. Testing shall be done in accordance with the provisions of the Organization for Economic Co-operation and Development (OECD) Test Guideline 311, “Anaerobic Biodegradability of Organic Compounds in Digested Sludge: by Measurement of Gas Production.”
- (c) Pass/Fail Criteria:
 - (1) Biodisintegration Test: The average percentage of initial dry mass passing through the on (1) mm sieve after twenty-eight (28) days should exceed ninety-five percent (95%).
 - (2) Biodegradation Test: The average percentage of theoretical gas produced after fifty-six (56) days must exceed seventy percent

(70%). Any remaining fraction is assumed to be incorporated into biomass or present as products of biosynthesis.

2403 INDEPENDENT TESTING AND CERTIFICATION TO THE DEPARTMENT

2403.1 The tests specified in this section shall be performed by an independent testing organization.

2403.2 Sixty (60) days after the effective date of these regulations, the manufacturer will present the following information to the Director for any nonwoven disposable product that the manufacturer seeks to label as flushable:

- (a) The test data documentation showing the results of each test required in section 2402 and;
- (b) A certification signed by both the manufacturer and the independent testing organization that the product has passed the required tests in Section 2402.

The data and certification shall be sent to the Department by e-mail to wipes.doe@dc.gov or by mail to the Water Quality Division, Department of Energy and Environment, 1200 First Street N.E., 5th Floor, Washington, D.C. 20002.

2404 LABELING OF NONWOVEN DISPOSABLE PRODUCTS

2404.1 A manufacturer of a nonwoven disposable product for sale in the District of Columbia shall not label the nonwoven disposable product as flushable (*i.e.*, safe to flush, safe for sewer systems, or safe for septic systems) unless the nonwoven disposable product meets the standards set forth in Section 2402 of these regulations.

2404.2 A manufacturer of a nonwoven disposable product for sale in the District that does not meet the standards set forth in Section 2402 must clearly and conspicuously label the product in the manner set forth in Section 2405.

2405 LABELING REQUIREMENTS FOR NON-FLUSHABLE NONWOVEN DISPOSABLE PRODUCTS

2405.1 A non-flushable nonwoven disposable product shall be clearly and conspicuously labeled to communicate that the nonwoven disposable product does not meet the standard set forth in Section 2402 of these regulations. Such label shall contain the following information, including either that:

- (a) “Based on its performance during testing, the District of Columbia has determined that this product is not flushable,” or;
- (b) “Warning: This product may contribute to the clogging of your sewer system and/or the District’s wastewater system,” or;
- (c) Manufacturers may propose their own alternative information statement that adequately conveys that the District has determined the product is not flushable because it failed to meet the standard set forth in section 2402 of these regulations. The manufacturer that proposes to use an alternative information statement shall:
 - (1) Submit the request in writing to the Department by e-mail to wipes.doe@dc.gov or by mail to the Office of General Counsel, Department of Energy and Environment, 1200 First St. N.E., 5th Floor, Washington, D.C. 20002;
 - (2) Provide any additional information requested by the Director;
 - (3) Use the alternative material or method only after receiving approval in writing from the Director.

2405.2 In addition to the label information statement required in Section 2405, the packaging shall include the INDA Code of Practice 2 (COP2) “Do Not Flush” logo, presented in Figure 1. The logo shall cover at least ten percent (10%) of the surface area of the side of the package on which the logo is presented.



Figure 1

2405.3 The “Do Not Flush” logo shall be placed in a prominent and reasonably visible location on the package. If the package has a point where an individual nonwoven disposable product is to be taken out of the container holding and dispensing the nonwoven disposable product, the logo shall be placed near that point.

2405.4 The “Do Not Flush” logo must be prominently visible on the on-shelf package that consumers are purchasing so that a consumer looking for disposal instructions can locate them on the package without opening the pack. The “Do Not Flush” logo should not be obscured by packaging seals or folds, or obscured by other package design elements.

2405.5 The “Do Not Flush” logo should have sufficiently high contrast with the background to be highly readable.

2406 ENFORCEMENT

2406.1 The Mayor may impose civil fines and penalties as sanctions for violations of the provisions of this section, pursuant to the Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801 *et seq.*) and the "Civil Infractions Regulations" (Title 16 DCMR, Chapter 40). Enforcement and adjudication of an infraction shall be pursuant to the Civil Infractions Act.

2406.2 In addition to the enforcement authority provided in this part, the Attorney General for the District of Columbia may seek injunctive relief or other appropriate remedy in any court of competent jurisdiction to enforce compliance with this act.

2499 DEFINITIONS

2499.1 When used in this chapter, the following terms shall have the meanings ascribed:

Department - The Department of Energy and Environment.

Director - The Director of the Department of Energy and Environment

District - The District of Columbia.

Flushable - A wipe that meets the Flushability Standard set forth in Section 2402 above.

Independent testing organization - A lab or other facility not controlled by a manufacturer that is capable of carrying out the tests set forth in this chapter.

Label - to represent by statement, word, picture, design, or emblem on the packaging of a nonwoven disposable product.

Nonwoven disposable product - a product constructed from nonwoven sheets, including moist toilet tissue or cloth, that is designed, marketed, or commonly used for personal hygiene purposes.

Manufacturer - a business entity that produces products for sale and distribution in the District.

All persons desiring to comment on the proposed regulations should file comments in writing no later than thirty (30) days after the publication of this notice in the *D.C. Register*. Comments should identify the commenter and be clearly marked “DOEE Nonwoven Disposable Products Labeling Comments.” Comments may be (1) mailed or hand-delivered to DOEE, 1200 First St. N.E., 5th Floor, Washington, D.C. 20001, Attention: DOEE Nonwoven Disposable Products Labeling, or (2) sent by e-mail to wiperule@dc.gov, with the subject “DOEE Nonwoven Disposable Products Labeling Proposed Rule Comments.”

The proposed rules are available for viewing at: <http://doee.dc.gov/nonwovendisposableproducts>.