

117TH CONGRESS
2D SESSION

S. 3956

To direct the Administrator of the Environmental Protection Agency to establish a grant program to improve the effectiveness of education and outreach on “Do Not Flush” labeling, and to require the Federal Trade Commission, in consultation with the Administrator, to issue regulations requiring certain products to have “Do Not Flush” labeling, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2022

Mr. MERKLEY (for himself and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To direct the Administrator of the Environmental Protection Agency to establish a grant program to improve the effectiveness of education and outreach on “Do Not Flush” labeling, and to require the Federal Trade Commission, in consultation with the Administrator, to issue regulations requiring certain products to have “Do Not Flush” labeling, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Wastewater Infrastruc-
3 ture Pollution Prevention and Environmental Safety Act”
4 or the “WIPPES Act”.

5 **SEC. 2. CONSUMER EDUCATION AND OUTREACH GRANT**
6 **PROGRAM.**

7 (a) IN GENERAL.—The Administrator of the Envi-
8 ronmental Protection Agency (referred to in this section
9 as the “Administrator”) shall establish a program (re-
10 ferred to in this section as the “grant program”) to award
11 competitive grants to eligible entities to improve the effec-
12 tiveness of residential and community education and out-
13 reach on “Do Not Flush” labels.

14 (b) CRITERIA.—The Administrator shall award
15 grants under the grant program for projects that, by using
16 one or more eligible activities described in subsection (d),
17 inform and educate the public about—

18 (1) the “Do Not Flush” label printing on cov-
19 ered products;

20 (2) the types of covered products with the “Do
21 Not Flush” label;

22 (3) the purpose for the “Do Not Flush” label-
23 ing requirement and the adverse impacts to water
24 collection and wastewater treatment infrastructure
25 of the improper disposal of covered products; and

1 (4) proper disposal methods for covered prod-
2 ucts.

3 (c) ELIGIBLE ENTITIES.—

4 (1) IN GENERAL.—An entity that is eligible to
5 receive a grant under the grant program is—

6 (A) a State;

7 (B) a unit of local government;

8 (C) a Tribal government;

9 (D) a nonprofit organization; or

10 (E) a public-private partnership.

11 (2) COORDINATION OF ACTIVITIES.—Two or
12 more entities described in paragraph (1) may receive
13 a grant under the grant program to coordinate the
14 provision of information to ratepayers and busi-
15 nesses within shared or combined service areas.

16 (d) ELIGIBLE ACTIVITIES.—An eligible entity that
17 receives a grant under the grant program may use the
18 grant funds for activities including—

19 (1) public service announcements;

20 (2) a door-to-door education and outreach cam-
21 paign;

22 (3) social media and digital outreach;

23 (4) an advertising campaign on “Do Not
24 Flush” label awareness;

25 (5) the development and dissemination of—

1 (A) a toolkit for a municipal and publicly
2 owned treatment works;

3 (B) notices advertising the presence of the
4 label notice on covered products;

5 (C) covered products that carry the “Do
6 Not Flush” label;

7 (D) notices describing the intended effects
8 of the label notice on consumer behavior with
9 respect to the disposal of covered products;

10 (E) notices describing the adverse impacts
11 that covered products have on sewer and waste-
12 water infrastructure when improperly disposed;
13 and

14 (F) other materials for education and out-
15 reach to promote the proper disposal of covered
16 products; and

17 (6) other activities that the Administrator de-
18 termines are appropriate to carry out the purposes
19 of this section.

20 (e) PROHIBITION ON USE OF FUNDS.—No funds
21 may be awarded under the grant program for a public out-
22 reach campaign that promotes or advocates any wipes
23 product that is not a covered product or falsely depicts
24 a covered product as not a covered product.

1 (f) AUTHORIZATION.—There is authorized to be ap-
 2 propriated to the Administrator \$5,000,000 for each of
 3 fiscal years 2023 through 2027 to carry out this section.

4 **SEC. 3. “DO NOT FLUSH” LABELING.**

5 (a) IN GENERAL.—Not later than 2 years after the
 6 date of the enactment of this section, the Federal Trade
 7 Commission, in consultation with the Administrator of the
 8 Environmental Protection Agency, shall issue regulations
 9 under section 553 of title 5, United States Code, requiring
 10 covered entities to label covered products clearly and con-
 11 spicuously with “Do Not Flush” label notices and symbols
 12 in accordance with this section.

13 (b) REQUIREMENTS.—

14 (1) CYLINDRICAL PACKAGING.—In issuing reg-
 15 ulations under subsection (a), the Commission shall
 16 require a covered product sold in cylindrical or near-
 17 cylindrical packaging, and intended to dispense indi-
 18 vidual wipes, to have—

19 (A) the symbol and label notice on the
 20 principal display panel in a location reasonably
 21 visible to the user each time a wipe is dis-
 22 pensed; or

23 (B) the symbol on the principal display
 24 panel and the label notice, or a combination of
 25 the label notice and symbol, on a flip lid in a

1 manner that covers at least 8 percent of the
2 surface area of the flip lid.

3 (2) FLEXIBLE FILM PACKAGING.—In issuing
4 regulations under subsection (a), the Commission
5 shall require a covered product sold in flexible film
6 packaging, and intended to dispense individual
7 wipes, to have—

8 (A) the symbol on the principal display
9 panel and, if the principal display panel is not
10 on the dispensing side of the packaging, on the
11 dispensing side panel; and

12 (B) the label notice on either the principal
13 display panel or the dispensing side panel, in a
14 prominent location reasonably visible to the
15 user each time a wipe is dispensed.

16 (3) RIGID PACKAGING.—In issuing regulations
17 under subsection (a), the Commission shall require
18 a covered product sold in a refillable tub or other
19 rigid packaging that may be reused by a customer,
20 and intended to dispense individual wipes, to have
21 the symbol and label notice on the principal display
22 panel in a prominent location reasonably visible to
23 the user each time a wipe is dispensed.

24 (4) PACKAGING NOT INTENDED TO DISPENSE
25 INDIVIDUAL WIPES.—In issuing regulations under

1 subsection (a), the Commission shall require a cov-
2 ered product sold in packaging that is not intended
3 to dispense individual wipes to have the symbol and
4 label notice on the principal display panel in a
5 prominent location reasonably visible to the user of
6 the covered product.

7 (5) BULK PACKAGING.—

8 (A) IN GENERAL.—In issuing regulations
9 under subsection (a), the Commission shall re-
10 quire a covered product sold in bulk at retail to
11 have labeling in compliance with such regula-
12 tions on both the outer packaging visible at re-
13 tail and the individual packaging contained
14 within the outer packaging.

15 (B) EXEMPTION.—The Commission shall
16 exempt from the requirements under subpara-
17 graph (A) the following:

18 (i) Individually packaged covered
19 products that are contained within outer
20 packaging, are not intended to dispense in-
21 dividual wipes, and have no retail labeling.

22 (ii) Outer packaging that does not ob-
23 scure the symbol and label notice on indi-
24 vidually packaged covered products con-
25 tained within.

1 (6) PACKAGING OF COMBINED PRODUCTS.—

2 (A) OUTER PACKAGING.—In issuing regu-
3 lations under subsection (a), the Commission
4 shall exempt the outer packaging of a combined
5 product from the requirements of such regula-
6 tions.

7 (B) PACKAGES LESS THAN 3 BY 3
8 INCHES.—In issuing regulations under sub-
9 section (a), the Commission shall provide that,
10 with respect to a covered product in packaging
11 smaller than 3 inches by 3 inches (such as an
12 individually packaged wipe in tear-top pack-
13 aging) and sold as part of a combined product,
14 if a symbol and label notice are placed in a
15 prominent location reasonably visible to the
16 user of the covered product, such covered prod-
17 uct is considered to be labeled clearly and con-
18 spicuously in accordance with such regulations.

19 (c) REASONABLE VISIBILITY OF SYMBOL AND LABEL
20 NOTICE.—

21 (1) IN GENERAL.—In requiring the symbol and
22 label notice under this section, the Commission shall
23 require that—

1 (A) packaging seams or folds or other
2 packaging design elements do not obscure the
3 symbol or label notice;

4 (B) the symbol and label notice are each
5 equal in size to at least 2 percent of the surface
6 area of the principal display panel; and

7 (C) the symbol and label notice have high
8 contrast with the immediate background of the
9 packaging so that such symbol and label notice
10 may be seen and read by an ordinary individual
11 under customary conditions of purchase and
12 use.

13 (2) PROXIMITY OF SYMBOL AND LABEL NO-
14 TICE.—In requiring the symbol and label notice
15 under this section, the Commission may allow a
16 symbol and label notice on a principal display panel
17 to be placed adjacently or on separate areas of the
18 principal display panel.

19 (3) EXCEPTION.—Paragraph (1)(C) does not
20 apply to an embossed symbol or label notice on the
21 flip lid of a covered product sold in cylindrical or
22 near-cylindrical packaging.

23 (d) ADDITIONAL WORDS OR PHRASES.—In issuing
24 regulations under subsection (a), the Commission shall
25 allow additional words or phrases on a covered product

1 that describe consequences associated with flushing or dis-
2 posing of such covered product, if such words or phrases
3 are consistent with the purposes of this section.

4 (e) REPRESENTATIONS OF FLUSHABILITY.—In
5 issuing regulations under subsection (a), the Commission
6 shall prohibit, with respect to a covered product, the rep-
7 resentation or marketing of flushable attributes, perform-
8 ance, or efficacy benefits.

9 (f) COMPLIANCE WITH OTHER REQUIREMENTS.—

10 (1) FIFRA REQUIREMENTS.—

11 (A) IN GENERAL.—Not later than 2 years
12 after the date of the enactment of this Act, the
13 Commission and the Administrator of the Envi-
14 ronmental Protection Agency, acting jointly,
15 shall issue regulations that, with respect to a
16 covered product that contains a pesticide re-
17 quired to be registered under the Federal Insec-
18 ticide, Fungicide, and Rodenticide Act (7
19 U.S.C. 136 et seq.), include the following:

20 (i) Instructions describing how such a
21 covered product may comply with the re-
22 quirements of such Act and the regulations
23 issued under subsection (a).

24 (ii) A requirement that, not later than
25 90 days after the date on which regula-

1 tions are issued under this subparagraph,
2 a covered entity shall submit for approval
3 by the Administrator of the Environmental
4 Protection Agency a product label compli-
5 ant with such instructions.

6 (B) ENFORCEMENT.—For purposes of sub-
7 section (h), a violation of a regulation issued
8 under subparagraph (A) shall be treated as a
9 violation of a regulation issued under subsection
10 (a).

11 (2) TYPE SIZE EXCEPTION.—If the label notice
12 type size otherwise required by the regulations
13 issued under subsection (a) for a covered product
14 would conflict with a labeling requirement under the
15 Federal Insecticide, Fungicide, and Rodenticide Act
16 (7 U.S.C. 136 et seq.) or the Federal Hazardous
17 Substances Act (15 U.S.C. 1261 et seq.), the Com-
18 mission may, in issuing such regulations, provide for
19 a label notice type size requirement for the covered
20 product under this section that—

21 (A) in the case of a covered product re-
22 quired to display a warning pursuant to the
23 Federal Insecticide, Fungicide, and Rodenticide
24 Act regarding a pesticide in such covered prod-
25 uct, requires a type size for the label notice

1 under this paragraph that is equal to or greater
2 than the type size required for the “keep out of
3 reach of children” statement under such Act;
4 and

5 (B) in the case of a covered product re-
6 quired to contain first aid instructions pursuant
7 to the Federal Hazardous Substances Act, re-
8 quires a type size for the label notice under this
9 paragraph that is equal to or greater than the
10 type size required for such first aid instruc-
11 tions.

12 (g) APPLICABILITY.—The Commission shall provide
13 that the regulations issued under subsection (a) apply with
14 respect to covered products manufactured on or after the
15 date that is 90 days after the date on which such regula-
16 tions are issued.

17 (h) ENFORCEMENT BY FEDERAL TRADE COMMIS-
18 SION.—

19 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
20 TICES.—A violation of a regulation promulgated
21 under subsection (a) shall be treated as a violation
22 of a regulation under section 18(a)(1)(B) of the
23 Federal Trade Commission Act (15 U.S.C.
24 57a(a)(1)(B)) regarding unfair or deceptive acts or
25 practices.

1 (2) POWERS OF COMMISSION.—Except as pro-
2 vided in paragraph (3), the Commission shall en-
3 force the regulations promulgated under subsection
4 (a) in the same manner, by the same means, and
5 with the same jurisdiction, powers, and duties as
6 though all applicable terms and provisions of the
7 Federal Trade Commission Act (15 U.S.C. 41 et
8 seq.) were incorporated into and made a part of this
9 section, and any person who violates such a regula-
10 tion shall be subject to the penalties and entitled to
11 the privileges and immunities provided in the Fed-
12 eral Trade Commission Act.

13 (3) PENALTY AMOUNTS.—Notwithstanding sec-
14 tion 5 of the Federal Trade Commission Act (15
15 U.S.C. 45), any civil penalties imposed under such
16 section with respect to a violation of a regulation
17 promulgated under subsection (a) of this section
18 shall be in accordance with the following:

19 (A) A fine of not more than \$2,500 for
20 each day that a violation occurs.

21 (B) In no event may the total amount of
22 fines imposed for a single violation exceed
23 \$100,000.

24 (i) PREEMPTION OF STATE LAWS.—No State or po-
25 litical subdivision of a State may directly or indirectly es-

1 tablish or continue in effect under any authority restric-
 2 tions with respect to the “Do Not Flush” labeling of cov-
 3 ered products that are not identical to the restrictions
 4 under this section.

5 (j) DEFINITIONS.—In this Act:

6 (1) COMBINED PRODUCT.—The term “com-
 7 bined product” means two or more products sold in
 8 shared retail packaging, of which—

9 (A) at least one of the products is a cov-
 10 ered product; and

11 (B) at least one of the products is another
 12 consumer product intended to be used in com-
 13 bination with such covered product.

14 (2) COMMISSION.—The term “Commission”
 15 means the Federal Trade Commission.

16 (3) COVERED ENTITY.—The term “covered en-
 17 tity” means a manufacturer, wholesaler, supplier, or
 18 retailer that is responsible for the labeling or retail
 19 packaging of a covered product that is sold or of-
 20 fered for sale in the United States.

21 (4) COVERED PRODUCT.—

22 (A) IN GENERAL.—The term “covered
 23 product” means a premoistened, nonwoven dis-
 24 posable wipe sold or offered for retail sale—

1 (i) that is marketed as a baby wipe or
2 diapering wipe; or

3 (ii) that is a household or personal
4 care wipe (including wipes described in
5 subparagraph (B)) that—

6 (I) is composed entirely, or in
7 part, of petrochemical-derived fibers;
8 and

9 (II) has significant potential to
10 be flushed.

11 (B) INCLUSIONS.—The wipes described in
12 this subparagraph are—

13 (i) antibacterial wipes and disinfecting
14 wipes;

15 (ii) wipes intended for general purpose
16 cleaning or bathroom cleaning, including
17 toilet cleaning and hard surface cleaning;
18 and

19 (iii) wipes intended for personal care
20 use on the body, including hand sanitizing,
21 makeup removal, feminine hygiene, adult
22 hygiene (including incontinence hygiene),
23 and body cleansing.

1 (5) HIGH CONTRAST.—The term “high con-
2 trast” means, with respect to the symbol or label no-
3 tice, that such symbol or label notice—

4 (A) is either light on a solid dark back-
5 ground or dark on a solid light background; and

6 (B) has a contrast percentage of at least
7 70 percent between such symbol or label notice
8 and the background, using the formula $(B1 -$
9 $B2) / B1 * 100 =$ contrast percentage, where
10 B1 is the light reflectance value of the lighter
11 area and B2 is the light reflectance value of the
12 darker area.

13 (6) LABEL NOTICE.—The term “label notice”
14 means the written phrase “Do Not Flush”.

15 (7) PRINCIPAL DISPLAY PANEL.—The term
16 “principal display panel” means the side of a prod-
17 uct package that is most likely to be displayed, pre-
18 sented, or shown under customary conditions of dis-
19 play for retail sale, and—

20 (A) in the case of a cylindrical or near-cy-
21 lindrical package, the surface area of which
22 constitutes at least 40 percent of the product
23 package, as measured by multiplying the height
24 by the circumference of the package; or

1 (B) in the case of a flexible film package
2 in which a rectangular prism or near-rectan-
3 gular prism stack of wipes is housed within the
4 film, the surface area of which is measured by
5 multiplying the length by the width of the side
6 of the package when the flexible packaging film
7 is pressed flat against the stack of wipes on all
8 sides of the stack.

9 (8) SYMBOL.—The term “symbol” means the
10 “Do Not Flush” symbol, as depicted in the Guide-
11 lines for Assessing the Flushability of Disposable
12 Nonwoven Products (Edition 4; May 2018) pub-
13 lished by the Association of the Nonwoven Fabrics
14 Industry (INDA) and the European Disposables
15 And Nonwovens Association (EDANA), or an other-
16 wise identical symbol depicting an individual of an-
17 other gender.

