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1ST SESSION

S. 1350

To require the Federal Trade Commission to issue regulations requiring certain products to have “Do Not Flush” labeling, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2023

Mr. MERKLEY (for himself, Ms. COLLINS, Mr. KING, Mrs. SHAHEEN, Mr. WYDEN, Mr. MARKEY, Mr. BLUMENTHAL, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require the Federal Trade Commission 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,*

3 **SECTION 1. SHORT TITLE.**

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

7 **SEC. 2. “DO NOT FLUSH” LABELING.**

8 (a) IN GENERAL.—

1 (1) REGULATIONS.—Not later than 2 years
2 after the date of enactment of this section, the Fed-
3 eral Trade Commission shall issue regulations under
4 section 553 of title 5, United States Code, requiring
5 covered entities to label covered products clearly and
6 conspicuously with “Do Not Flush” label notices
7 and symbols in accordance with this section.

8 (2) CONSULTATION WITH OTHER AGENCIES.—
9 In developing the regulations required under para-
10 graph (1), the Federal Trade Commission may con-
11 sult with the Administrator of the Environmental
12 Protection Agency, the Commissioner of Food and
13 Drugs, and the Consumer Product Safety Commis-
14 sion as appropriate depending on the type of covered
15 product involved.

16 (b) REQUIREMENTS.—

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

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

1 (B) the symbol on the principal display
2 panel and the label notice, or a combination of
3 the label notice and symbol, on a flip lid in a
4 manner that covers at least 8 percent of the
5 surface area of the flip lid.

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

11 (A) the symbol on the principal display
12 panel and, if the principal display panel is not
13 on the dispensing side of the packaging, on the
14 dispensing side panel; and

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

19 (3) RIGID PACKAGING.—In issuing regulations
20 under subsection (a), the Commission shall require
21 a covered product sold in a refillable tub or other
22 rigid packaging that may be reused by a customer,
23 and intended to dispense individual wipes, to have
24 the symbol and label notice on the principal display

1 panel in a prominent location reasonably visible to
2 the user each time a wipe is dispensed.

3 (4) PACKAGING NOT INTENDED TO DISPENSE
4 INDIVIDUAL WIPES.—In issuing regulations under
5 subsection (a), the Commission shall require a cov-
6 ered product sold in packaging that is not intended
7 to dispense individual wipes to have the symbol and
8 label notice on the principal display panel in a
9 prominent location reasonably visible to the user of
10 the covered product.

11 (5) BULK PACKAGING.—

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

19 (B) EXEMPTION.—The Commission shall
20 exempt from the requirements under subpara-
21 graph (A) the following:

22 (i) Individually packaged covered
23 products that are contained within outer
24 packaging, are not intended to dispense in-
25 dividual wipes, and have no retail labeling.

1 (ii) Outer packaging that does not ob-
2 scure the symbol and label notice on indi-
3 vidually packaged covered products con-
4 tained within.

5 (6) PACKAGING OF COMBINED PRODUCTS.—

6 (A) OUTER PACKAGING.—In issuing regu-
7 lations under subsection (a), the Commission
8 shall exempt the outer packaging of a combined
9 product from the requirements of such regula-
10 tions.

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

23 (c) REASONABLE VISIBILITY OF SYMBOL AND LABEL
24 NOTICE.—

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

4 (A) packaging seams or folds or other
5 packaging design elements do not obscure the
6 symbol or label notice;

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

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

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

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

1 (d) ADDITIONAL WORDS OR PHRASES.—In issuing
2 regulations under subsection (a), the Commission shall
3 allow additional words or phrases on a covered product
4 that describe consequences associated with flushing or dis-
5 posing of such covered product, if such words or phrases
6 are consistent with the purposes of this section.

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

12 (f) COMPLIANCE WITH OTHER REQUIREMENTS.—

13 (1) FIFRA REQUIREMENTS.—

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

23 (i) Instructions describing how such a
24 covered product may comply with the re-

1 requirements of such Act and the regulations
2 issued under subsection (a).

3 (ii) A requirement that, not later than
4 90 days after the date on which regula-
5 tions are issued under this subparagraph,
6 a covered entity shall submit for approval
7 by the Administrator of the Environmental
8 Protection Agency a product label compli-
9 ant with such instructions.

10 (B) ENFORCEMENT.—For purposes of sub-
11 section (h), a violation of a regulation issued
12 under subparagraph (A) shall be treated as a
13 violation of a regulation issued under subsection
14 (a).

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

1 (A) in the case of a covered product re-
2 quired to display a warning pursuant to the
3 Federal Insecticide, Fungicide, and Rodenticide
4 Act regarding a pesticide in such covered prod-
5 uct, requires a type size for the label notice
6 under this paragraph that is equal to or greater
7 than the type size required for the “keep out of
8 reach of children” statement under such Act;
9 and

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

17 (g) APPLICABILITY.—The Commission shall provide
18 that the regulations issued under subsection (a) apply with
19 respect to covered products manufactured on or after the
20 date that is 90 days after the date on which such regula-
21 tions are issued.

22 (h) ENFORCEMENT BY FEDERAL TRADE COMMIS-
23 SION.—

24 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
25 TICES.—A violation of a regulation promulgated

1 under subsection (a) shall be treated as a violation
2 of a regulation under section 18(a)(1)(B) of the
3 Federal Trade Commission Act (15 U.S.C.
4 57a(a)(1)(B)) regarding unfair or deceptive acts or
5 practices.

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

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

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

1 (B) In no event may the total amount of
2 fines imposed for a single violation exceed
3 \$100,000.

4 (i) PREEMPTION OF STATE LAWS.—No State or po-
5 litical subdivision of a State may directly or indirectly es-
6 tablish or continue in effect under any authority restric-
7 tions with respect to the “Do Not Flush” labeling of cov-
8 ered products that are not identical to the restrictions
9 under this section.

10 (j) DEFINITIONS.—In this Act:

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

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

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

19 (2) COMMISSION.—The term “Commission”
20 means the Federal Trade Commission.

21 (3) COVERED ENTITY.—The term “covered en-
22 tity” means a manufacturer, wholesaler, supplier, or
23 retailer that is responsible for the labeling or retail
24 packaging of a covered product that is sold or of-
25 fered for sale in the United States.

1 (4) COVERED PRODUCT.—

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

5 (i) that is marketed as a baby wipe or
6 diapering wipe; or

7 (ii) that is a household or personal
8 care wipe (including wipes described in
9 subparagraph (B)) that—

10 (I) is composed entirely, or in
11 part, of petrochemical-derived fibers;
12 and

13 (II) has significant potential to
14 be flushed.

15 (B) INCLUSIONS.—The wipes described in
16 this subparagraph are—

17 (i) antibacterial wipes and disinfecting
18 wipes;

19 (ii) wipes intended for general purpose
20 cleaning or bathroom cleaning, including
21 toilet cleaning and hard surface cleaning;
22 and

23 (iii) wipes intended for personal care
24 use on the body, including hand sanitizing,
25 makeup removal, feminine hygiene, adult

1 hygiene (including incontinence hygiene),
2 and body cleansing.

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

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

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

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

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

22 (A) in the case of a cylindrical or near-cy-
23 lindrical package, the surface area of which
24 constitutes at least 40 percent of the product

1 package, as measured by multiplying the height
2 by the circumference of the package; or

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

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

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