H. R. ______

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

IN THE HOUSE OF REPRESENTATIVES

Mr. LOWENTHAL introduced the following bill; which was referred to the Committee on ________________

A BILL

To direct 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 Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Wastewater Infrastructure Pollution Prevention and Environmental Safety Act” or the “WIPPES Act”.

June 30, 2021 (3:22 p.m.)
SEC. 2. “DO NOT FLUSH” LABELING.

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

(b) REQUIREMENTS.—

(1) CYLINDRICAL PACKAGING.—In issuing regulations under subsection (a), the Commission shall require a covered product sold in cylindrical or near-cylindrical packaging, and intended to dispense individual wipes, to have—

(A) the symbol and label notice on the principal display panel in a location reasonably visible to the user each time a wipe is dispensed; or

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

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

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

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

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

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

(5) BULK PACKAGING.—

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

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

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

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

(6) PACKAGING OF COMBINED PRODUCTS.—

(A) OUTER PACKAGING.—In issuing regu-
lations under subsection (a), the Commission
shall exempt the outer packaging of a combined
product from the requirements of such regulations.

(B) Packages less than 3 by 3 inches.—In issuing regulations under subsection (a), the Commission shall provide that, with respect to a covered product in packaging smaller than 3 inches by 3 inches (such as an individually packaged wipe in tear-top packaging) and sold as part of a combined product, if a symbol and label notice are placed in a prominent location reasonably visible to the user of the covered product, such covered product is considered to be labeled clearly and conspicuously in accordance with such regulations.

(c) Reasonable Visibility of Symbol and Label Notice.—

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

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

(B) the symbol and label notice are each equal in size to at least 2 percent of the surface area of the principal display panel; and
(C) the symbol and label notice have high contrast with the immediate background of the packaging so that such symbol and label notice may be seen and read by an ordinary individual under customary conditions of purchase and use.

(2) PROXIMITY OF SYMBOL AND LABEL NOTICE.—In requiring the symbol and label notice under this section, the Commission may allow a symbol and label notice on a principal display panel to be placed adjacently or on separate areas of the principal display panel.

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

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

(e) REPRESENTATIONS OF FLUSHABILITY.—In issuing regulations under subsection (a), the Commission shall prohibit, with respect to a covered product, the rep-
representation or marketing of flushable attributes, performance, or efficacy benefits.

(f) COMPLIANCE WITH OTHER REQUIREMENTS.—

(1) FIFRA REQUIREMENTS.—

(A) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Commission and the Administrator of the Environmental Protection Agency, acting jointly, shall issue regulations that, with respect to a covered product that contains a pesticide required to be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), include the following:

(i) Instructions describing how such a covered product may comply with the requirements of such Act and the regulations issued under subsection (a).

(ii) A requirement that, not later than 90 days after the date on which regulations are issued under this subparagraph, a covered entity shall submit for approval by the Administrator of the Environmental Protection Agency a product label compliant with such instructions.
(B) ENFORCEMENT.—For purposes of subsection (h), a violation of a regulation issued under subparagraph (A) shall be treated as a violation of a regulation issued under subsection (a).

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

(A) in the case of a covered product required to display a warning pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act regarding a pesticide in such covered product, requires a type size for the label notice under this paragraph that is equal to or greater than the type size required for the “keep out of reach of children” statement under such Act; and
(B) in the case of a covered product required to contain first aid instructions pursuant to the Federal Hazardous Substances Act, requires a type size for the label notice under this paragraph that is equal to or greater than the type size required for such first aid instructions.

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

(h) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

(1) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A violation of a regulation promulgated under subsection (a) shall be treated as a violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

(2) POWERS OF COMMISSION.—Except as provided in paragraph (3), the Commission shall enforce the regulations promulgated under subsection (a) in the same manner, by the same means, and
with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section, and any person who violates such a regulation shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

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

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

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

(i) PUBLIC OUTREACH CAMPAIGN.—

(1) IN GENERAL.—Not later than the date that is 6 months after the date on which regulations are issued under subsection (a), the Commission shall provide guidance for covered entities to conduct public outreach campaigns, individually or as a part of
a group of covered entities, to educate consumers
with respect to the label notice.

(2) CAMPAIGN OBJECTIVES.—A public outreach
campaign shall provide consumers with information
on the following:

(A) The presence of the label notice on
covered products.

(B) Covered products that carry the label
notice.

(C) The intended effects of the label notice
on consumer behavior with respect to the dis-
posal of covered products.

(D) The adverse impacts that covered
products have on sewer and wastewater infra-
structure when improperly disposed of.

(3) MATERIALS.—Informational materials and
consumer communications associated with a public
outreach campaign shall be limited to information
relating to covered products.

(4) LIMITATION.—A public outreach campaign
may not promote, advocate, or depict wipes other
than covered products as covered products.

(5) TIMELINE; REPORTS.—In carrying out
paragraph (1), the Commission shall include guid-
ance providing for covered entities conducting public outreach campaigns—

(A) to carry out the public outreach campaign for a period of at least 5 years beginning on the date on which such guidance is made available; and

(B) to submit reports to the Commission biannually detailing the efficacy of the public outreach campaign with respect to consumer behavior.

(6) Public availability of reports.—The Commission shall make each report submitted under paragraph (5)(B) publicly available on a website of the Commission.

(j) Definitions.—In this section:

(1) Combined product.—The term “combined product” means two or more products sold in shared retail packaging, of which—

(A) at least one of the products is a covered product; and

(B) at least one of the products is another consumer product intended to be used in combination with such covered product.

(2) Commission.—The term “Commission” means the Federal Trade Commission.
(3) COVERED ENTITY.—The term “covered entity” means a manufacturer, wholesaler, supplier, or retailer that is responsible for the labeling or retail packaging of a covered product that is sold or offered for sale in the United States.

(4) COVERED PRODUCT.—

(A) IN GENERAL.—The term “covered product” means a premoistened, nonwoven disposable wipe sold or offered for sale—

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

(ii) that—

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

(II) has significant potential to be flushed.

(B) INCLUSIONS.—The term “covered product” includes—

(i) antibacterial wipes and disinfecting wipes;

(ii) wipes intended for general purpose cleaning or bathroom cleaning, including toilet cleaning and hard surface cleaning; and
(iii) wipes intended for personal care
use on the body, including hand sanitizing,
makeup removal, feminine hygiene, adult
hygiene (including incontinence hygiene),
and body cleansing.

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

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

(B) has a contrast percentage of at least
70 percent between such symbol or label notice
and the background, using the formula \((B_1 - B_2) / B_1 \times 100 = \text{contrast percentage}\), where
B1 is the light reflectance value of the lighter
area and B2 is the light reflectance value of the
darker area.

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

(7) **PRINCIPAL DISPLAY PANEL.**—The term
“principal display panel” means the side of a prod-
uct package that is most likely to be displayed, pre-
sented, or shown under customary conditions of dis-
play for retail sale, and—
(A) in the case of a cylindrical or near-cylindrical package, the surface area of which constitutes at least 40 percent of the product package, as measured by multiplying the height by the circumference of the package; or

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

(8) PUBLIC OUTREACH CAMPAIGN.—The term “public outreach campaign” means a public outreach campaign as described in subsection (i)(1).

(9) SYMBOL.—The term “symbol” means the “Do Not Flush” symbol, as depicted in the Guidelines for Assessing the Flushability of Disposable Nonwoven Products (Edition 4; May 2018) published by the Association of the Nonwoven Fabrics Industry (INDA) and the European Disposables And Nonwovens Association (EDANA), or an otherwise identical symbol depicting an individual of another gender.