



AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—119th Cong., 1st Sess.

S. 1092

To require certain products to be labeled with ‘Do Not Flush’
labeling, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. CRUZ

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

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.—A covered entity shall label a cov-
9 ered product with the label notice and symbol, in accord-
10 ance with subsections (b) and (c).

11 (b) REQUIREMENTS.—

1 (1) CYLINDRICAL PACKAGING.—In the case of a
2 covered product sold in cylindrical or near-cylindrical
3 packaging, and intended to dispense individual
4 wipes—

5 (A) the symbol and label notice shall be
6 displayed on the principal display panel in a
7 clear and conspicuous location reasonably visi-
8 ble to the user each time a wipe is dispensed;
9 or

10 (B) the symbol shall be displayed on the
11 principal display panel and the label notice, or
12 a combination of the label notice and symbol,
13 shall be displayed on a flip lid in a manner that
14 covers at least 8 percent of the surface area of
15 the flip lid.

16 (2) FLEXIBLE FILM PACKAGING.—In the case
17 of a covered product sold in flexible film packaging,
18 and intended to dispense individual wipes—

19 (A) the symbol shall be displayed on the
20 principal display panel and, if the principal dis-
21 play panel is not on the dispensing side of the
22 packaging, on the dispensing side panel; and

23 (B) the label notice shall be displayed on
24 either the principal display panel or the dis-
25 pensing side panel, in a clear and conspicuous

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

3 (3) RIGID PACKAGING.—In the case of a cov-
4 ered product sold in a refillable tub or other rigid
5 packaging that may be reused by a customer, and
6 that is intended to dispense individual wipes, the
7 symbol and label notice shall be displayed on the
8 principal display panel in a clear and conspicuous lo-
9 cation reasonably visible to the user each time a
10 wipe is dispensed.

11 (4) PACKAGING NOT INTENDED TO DISPENSE
12 INDIVIDUAL WIPES.—In the case of a covered prod-
13 uct sold in packaging that is not intended to dis-
14 pense individual wipes, the symbol and label notice
15 shall be displayed on the principal display panel in
16 a clear and conspicuous location reasonably visible to
17 the user of the covered product.

18 (5) BULK PACKAGING.—

19 (A) IN GENERAL.—In the case of a covered
20 product sold in bulk at retail, the symbol and
21 label notice shall be displayed on both the outer
22 packaging visible at retail and the individual
23 packaging contained within the outer pack-
24 aging.

1 (B) EXEMPTION.—The following shall be
2 exempt from the requirements of subparagraph
3 (A):

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

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

12 (6) PACKAGING OF COMBINED PRODUCTS.—

13 (A) OUTER PACKAGING.—The outer pack-
14 aging of combined products shall be exempt
15 from the symbol and label notice requirements
16 of subsection (a).

17 (B) PACKAGES LESS THAN 3 BY 3
18 INCHES.—In the case of a covered product in
19 packaging smaller than 3 inches by 3 inches
20 (such as an individually packaged wipe in tear-
21 top packaging) and sold as part of a combined
22 product, if a symbol and label notice are placed
23 in a prominent location reasonably visible to the
24 user of the covered product, such covered prod-

1 uct shall be considered to be labeled clearly and
2 conspicuously.

3 (c) REASONABLE VISIBILITY OF SYMBOL AND LABEL
4 NOTICE.—

5 (1) IN GENERAL.—A covered entity shall ensure
6 that—

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

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

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

19 (2) PROXIMITY OF SYMBOL AND LABEL NO-
20 TICE.—A covered entity may display a symbol and
21 label notice either adjacent to or on separate areas
22 of the principal display panel.

23 (3) EXCEPTION.—Paragraph (1)(C) does not
24 apply to an embossed symbol or label notice on the

1 flip lid of a covered product sold in cylindrical or
2 near-cylindrical packaging.

3 (d) REPRESENTATIONS OF FLUSHABILITY.—With re-
4 spect to a covered product, a covered entity may not make
5 any express or implied representation that such covered
6 product can or should be flushed.

7 (e) ENFORCEMENT BY FEDERAL TRADE COMMIS-
8 SION.—

9 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
10 TICES.—A violation of this section shall be treated
11 as a violation of a rule defining an unfair or decep-
12 tive act or practice prescribed under section
13 18(a)(1)(B) of the Federal Trade Commission Act
14 (15 U.S.C. 57a(a)(1)(B)).

15 (2) POWERS OF COMMISSION.—The Commis-
16 sion shall enforce this section in the same manner,
17 by the same means, and with the same jurisdiction,
18 powers, and duties as though all applicable terms
19 and provisions of the Federal Trade Commission Act
20 (15 U.S.C. 41 et seq.) were incorporated into and
21 made a part of this section.

22 (3) PRIVILEGES AND IMMUNITIES.—Any person
23 who violates this section shall be subject to the pen-
24 alties and entitled to the privileges and immunities

1 provided in the Federal Trade Commission Act (15
2 U.S.C. et seq.).

3 (4) AUTHORITY PRESERVED.—Nothing in this
4 section shall be construed to limit the authority of
5 the Commission under any other provision of law.

6 (f) COMMISSION GUIDANCE.— Not later than 180
7 days after the date of enactment of this Act, the Commis-
8 sion, in consultation with the Administrator of the Envi-
9 ronmental Protection Agency, the Commissioner of Food
10 and Drugs, the Consumer Product Safety Commission,
11 and any other agency determined appropriate by the Com-
12 mission, shall issue guidance to assist covered entities in
13 complying with the requirements of this section.

14 (g) LIMITATION ON COMMISSION GUIDANCE.—

15 (1) IN GENERAL.—No guidance issued by the
16 Commission with respect to this section shall—

17 (A) confer any rights on any person, State,
18 or locality; or

19 (B) bind the Commission or any person to
20 the approach recommended in such guidance.

21 (2) SPECIFIC VIOLATIONS.—In any enforcement
22 action brought under this section, the Commission
23 shall allege a specific violation of a provision of this
24 section.

1 (3) NO ENFORCEMENT ACTIONS BASED ON
2 GUIDANCE.—The Commission may not base an en-
3 forcement action on, or execute a consent order
4 based on, practices that are alleged to be incon-
5 sistent with any guidance issued under this Act, un-
6 less the practices allegedly violate this section.

7 (h) PREEMPTION OF STATE LAWS.—No State or po-
8 litical subdivision of a State may directly or indirectly es-
9 tablish or continue in effect, under any authority, require-
10 ments with respect to the “Do Not Flush” labeling of cov-
11 ered products that are not identical to the requirements
12 of this section.

13 (i) DEFINITIONS.—In this section:

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

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

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

22 (2) COMMISSION.—The term “Commission”
23 means the Federal Trade Commission.

24 (3) COVERED ENTITY.—The term “covered en-
25 tity” means a manufacturer, wholesaler, supplier, in-

dividual or group of individuals, or retailer that is responsible for the labeling or retail packaging of a covered product that is sold or offered for retail sale within the United States.

5 (4) COVERED PRODUCT.—

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

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

11 (ii) that is a household or personal
12 care wipe (including a wipe described in
13 subparagraph (B)) that—

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

(II) has significant potential to
be flushed.

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

21 (i) antibacterial wipes and disinfecting
22 wipes;

(ii) wipes intended for general purpose
cleaning or bathroom cleaning, including

1 toilet cleaning and hard surface cleaning;
2 and

3 (iii) wipes intended for personal care
4 use on the body, including hand sanitizing,
5 makeup removal, feminine hygiene, adult
6 hygiene (including incontinence hygiene),
7 and body cleansing.

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

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

13 (B) has a contrast percentage of at least
14 70 percent between such symbol or label notice
15 and the background, using the formula $(B1 -$
16 $B2)/B1 * 100 = \text{contrast percentage}$, where B1
17 is the light reflectance value of the lighter area
18 and B2 is the light reflectance value of the
19 darker area.

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

22 (7) PRINCIPAL DISPLAY PANEL.—The term
23 “principal display panel” means the side of a prod-
24 uct package that is most likely to be displayed, pre-

1 sented, or shown under customary conditions of dis-
2 play for retail sale, and—

3 (A) in the case of a cylindrical or near-cy-
4 lindrical package, the surface area of which
5 constitutes at least 40 percent of the product
6 package, as measured by multiplying the height
7 by the circumference of the package; or

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

16 (8) STATE.—The term “State” means each
17 State of the United States, the District of Columbia,
18 and each commonwealth, territory, or possession of
19 the United States.

20 (9) SYMBOL.—The term “symbol” means the
21 “Do Not Flush” symbol, as depicted in the most re-
22 cent edition of the Guidelines for Assessing the
23 Flushability of Disposable Nonwoven Products pub-
24 lished by the Association of the Nonwoven Fabrics

1 Industry (INDA) and the European Disposables
2 And Nonwovens Association (EDANA).

3 (j) EFFECTIVE DATE.—This section shall apply to a
4 covered entity beginning on the date that is 1 year after
5 the date of the enactment of this Act and shall not apply
6 to any covered product packaged or sold before such date.