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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To require each agency to evaluate the permitting system of the agency, to consider whether permitting by rule could replace that system, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. MALOY introduced the following bill; which was referred to the Committee on _____

A BILL

To require each agency to evaluate the permitting system of the agency, to consider whether permitting by rule could replace that system, 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 “Full Responsibility and
5 Expedited Enforcement Act” or the “FREE Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Agencies near unanimously operate under a
2 permitting system that gives agencies broad discre-
3 tion and requires the Government to review each
4 permitting application.

5 (2) Agencies near unanimously operate under a
6 permitting system that either does not have time
7 constraints, or has time constraints that agencies do
8 not follow.

9 (3) The combination of broad discretion and the
10 lack of time constraints often results in a tedious,
11 time consuming, and often expensive permitting sys-
12 tem for the Government and applicants. Moreover,
13 agencies will sometimes use their discretion and the
14 time consuming nature of permitting to stall or dis-
15 courage permit issuance.

16 (4) There is a compelling interest in avoiding
17 unnecessary delay and expense in Federal permit-
18 ting.

19 (5) Permit by rule is a process that seeks to
20 overcome agency delay and the cumbersome cost of
21 agency review to Government and private interests.

22 (6) Permit by rule is a process of permitting
23 that includes specific written standards for obtaining
24 a permit, a simple requirement for an applicant to
25 certify compliance with each of the standards, and

1 a streamlined approval process with a prompt dead-
2 line for agency action on applications that only al-
3 lows the Government to verify that all conditions are
4 met. The Government retains the right and responsi-
5 bility to audit and enforce compliance with permit-
6 ting requirements. Focusing upon permittees who
7 are violating the law or standards rather than
8 gatekeeping will make permitting more efficient
9 while allowing an agency to protect the compelling
10 interests for which permitting systems are intended.

11 **SEC. 3. PERMITTING BY RULE.**

12 (a) REPORT TO CONGRESS REQUIRED.—

13 (1) SUBMISSION OF REPORT.—Not later than
14 240 days after the date of the enactment of this sec-
15 tion, the head of each agency shall submit to Con-
16 gress, including any committee of Congress with ju-
17 risdiction over permits for that agency, and the
18 Comptroller General a report on the following:

19 (A) A list and description of each type of
20 permit issued by the agency.

21 (B) The statutory and regulatory require-
22 ments for obtaining each such type of permit.

23 (C) For each type of permit issued by the
24 agency, a specific description of each step the
25 agency follows to review a permit application.

1 (D) For each type of permit issued by the
2 agency, an estimate of the time the agency typi-
3 cally takes to review an application, beginning
4 on the date on which an application is sub-
5 mitted and ending on the date on which a suc-
6 cessful application is granted.

7 (E) For each type of permit issued by the
8 agency, a description of each action typically
9 taken for a case in which an application is
10 found not to meet statutory or regulatory re-
11 quirements for the issuance of a permit.

12 (F) A list of primary interests that each
13 type of permit is intended to foster or protect.

14 (G) An individual determination for each
15 type of permit issued by the agency of whether
16 permitting by rule could in whole or in part re-
17 place the current system for issuing the type of
18 permit.

19 (H) For each type of permit issued by the
20 agency for which permitting by rule could in
21 whole or in part replace the current system for
22 issuing the type of permit, an identification of
23 any administrative or other practical challenges
24 the head of the agency anticipates in

1 transitioning to permitting by rule for the type
2 of permit.

3 (I) An identification of each type of permit
4 for which the head of the agency has deter-
5 mined the agency could not reasonably, in
6 whole or in part, issue permits by rule under
7 current facts and circumstances, describing
8 with particularity each reason why permitting
9 by rule could not reasonably be used for any
10 such permit and what legal or practical meas-
11 ures could be pursued to eliminate or mitigate
12 said reason.

13 (2) PUBLIC COMMENT.—In preparing the re-
14 port required pursuant to paragraph (1), the head of
15 an agency may solicit and consider public comment
16 regarding the report.

17 (3) EXTENSION OF SUBMISSION DEADLINE.—In
18 the case that the head of an agency is not able to
19 submit the report required pursuant to paragraph
20 (1), the deadline to submit the report shall be ex-
21 tended by an additional 90 days if the head of the
22 agency submits to Congress, including any com-
23 mittee of Congress with jurisdiction over permits for
24 that agency, and the Comptroller General a notifica-

1 tion of the intended extension of the deadline under
2 this paragraph.

3 (4) ATTORNEY FEES.—If the head of an agency
4 does not file the report required pursuant to para-
5 graph (1) by the applicable deadline under this sub-
6 section, the agency shall pay, from any funds made
7 available to the agency by appropriation or other-
8 wise, the attorney fees and costs of an applicant for
9 a claim filed by the applicant for the failure or delay
10 of the agency to take action with respect to an appli-
11 cation for a permit submitted to the agency by the
12 applicant if—

13 (A) the claim is filed against the agency in
14 an appropriate United States district court dur-
15 ing the period beginning on the expiration of
16 the applicable deadline under this subsection
17 and ending on the date on which the agency
18 files the report;

19 (B) the court determines that the agency
20 unreasonably delayed such action; and

21 (C) the applicant prevails in the claim.

22 (b) ESTABLISHMENT OF PROCESSES FOR PERMIT-
23 TING BY RULE.—

24 (1) APPLICATION FOR AND APPROVAL OF PER-
25 MITS.—Not later than 12 months after the date on

1 which the report is submitted pursuant to subsection
2 (a), for each type of permit issued by the agency for
3 which the head of the agency determined under sub-
4 section (a)(1)(G) that permitting by rule could in
5 whole or in part replace the current system for
6 issuing the type of permit, the head of each agency
7 shall establish by rule a permitting by rule applica-
8 tion process that does the following:

9 (A) Specifies in writing each requirement
10 and substantive standard that must be certified
11 to be met by an applicant who files an applica-
12 tion to qualify for a permit under permitting by
13 rule.

14 (B) Allows an applicant to file an applica-
15 tion that contains only each required certifi-
16 cation described in subparagraph (A) and any
17 supporting documentation the applicant chooses
18 to submit in support of each such certification.

19 (C) Deems an application for a permit
20 under permitting by rule granted if—

21 (i) the application contains each cer-
22 tification described in subparagraph (A);
23 and

24 (ii) a period of 180 days after the
25 date on which the completed application

1 was submitted has expired and the head of
2 the agency has not otherwise approved or
3 disapproved the application.

4 (2) CORRECTION OF APPLICATION.—The head
5 of an agency shall contact an applicant within 7
6 days after the date on which an application is sub-
7 mitted under paragraph (1) if any required certifi-
8 cation is missing from the application.

9 (3) AUDIT OF APPLICATION.—The head of an
10 agency may audit an application for a permit under
11 permitting by rule and verify certifications of compli-
12 ance with requirements and substantive standards
13 for permitting by rule and may include reasonable
14 requests for documentation.

15 (4) DISAPPROVAL OF APPLICATION AND EN-
16 FORCEMENT.—

17 (A) REASON FOR DISAPPROVAL.—The
18 head of an agency may only disapprove an ap-
19 plication submitted for a permit under permit-
20 ting by rule if the head of the agency identifies
21 a requirement or substantive standard described
22 in paragraph (1)(A) that was not met by the
23 application, informs the applicant of how to cor-
24 rect the application, provides a reasonable op-
25 portunity for the applicant to make such correc-

1 tion before the final action of the agency on the
2 application, and states with particularity in any
3 final action disapproving the application the
4 facts and reasoning for such denial.

5 (B) AUDIT OF COMPLIANCE AND EN-
6 FORCEMENT FOLLOWING GRANT OF A PERMIT
7 UNDER PERMITTING BY RULE.—

8 (i) AUDIT.—The head of an agency
9 may audit a permit granted under permit-
10 ting by rule and verify compliance with re-
11 quirements and substantive standards for
12 permitting by rule, which may include rea-
13 sonable requests for documentation.

14 (ii) ENFORCEMENT.—The head of an
15 agency may require corrective action, sus-
16 pend, or revoke a permit granted under
17 permitting by rule at any time if the head
18 of the agency finds that a requirement or
19 substantive standard under permitting by
20 rule is not being met by the recipient of
21 the permit.

22 (C) DIRECT APPEAL.—An applicant whose
23 application for a permit under permitting by
24 rule is disapproved, of whom corrective action is
25 required under a permit granted under permit-

1 ting by rule, or whose permit granted under
2 permitting by rule is suspended or revoked may
3 appeal such disapproval, corrective action, sus-
4 pension, or revocation in an appropriate United
5 States district court.

6 (D) BURDEN OF PROOF.—In an appeal
7 under subparagraph (C), the agency shall bear
8 the burden of proof to show that an application
9 was lawfully disapproved or that the agency
10 lawfully required corrective action or suspended
11 or revoked a permit.

12 (E) ATTORNEY FEES.—If the court finds
13 for the applicant or permit holder under this
14 paragraph and that the agency was not sub-
15 stantially justified in disapproving, requiring
16 corrective action under, suspending, or revoking
17 a permit, the agency shall pay the attorney fees
18 and costs of the applicant from any funds made
19 available to the agency by appropriation or oth-
20 erwise.

21 (c) CONGRESSIONAL OVERSIGHT.—Not later than 2
22 years after the date on which the report is submitted pur-
23 suant to subsection (a), the head of each agency shall sub-
24 mit to Congress a report on the implementation by the
25 agency of permitting by rule for each type of permit issued

1 by the agency for which the head of the agency determined
2 under subsection (a)(1)(G) that permitting by rule could
3 in whole or in part replace the current system for issuing
4 the type of permit.

5 (d) CONCURRENT USE OF PREVIOUS PERMITTING
6 SYSTEM.—If the head of the agency determines in the re-
7 port submitted pursuant to subsection (a) that the permit-
8 ting system in effect at the agency before the date of the
9 enactment of this Act for any type of permit provides
10 value that permitting by rule does not, but that permitting
11 by rule could in whole or in part replace the current sys-
12 tem for issuing the type of permit, the head of the agency
13 may maintain for that type of permit both the permitting
14 system previously in effect and permitting by rule, and
15 the applicant may choose which system to use to apply
16 for a permit of that type from the agency.

17 (e) GAO REPORTS.—

18 (1) REPORT ON ACCURACY OF AGENCY RE-
19 PORTS.—Not later than 90 days after the expiration
20 of the deadline to submit the reports required under
21 subsection (a), the Comptroller General shall submit
22 to Congress a report on the completeness and accu-
23 racy of the reports, including the recommendations
24 of the Comptroller General concerning legal or prac-
25 tical measures that could be pursued to eliminate or

1 mitigate any legal or practical challenges to the
2 transition by agencies to permitting by rule for any
3 type of permit.

4 (2) REPORT ON PROGRESS BY AGENCIES.—Not
5 later than 180 days after submission by the agencies
6 of the reports required under subsection (c), the
7 Comptroller General shall submit to Congress a re-
8 port on the progress by agencies in the implementa-
9 tion of this Act, including any recommendation con-
10 cerning legal or practical measures that could be
11 pursued to eliminate or mitigate any remaining legal
12 or practical challenges to the transition by agencies
13 to issuance of permits under permitting by rule for
14 any type of permit.

15 (3) SUPPLEMENTS TO THE REPORTS.—The
16 Comptroller General may submit supplements to the
17 report described in paragraph (1) or (2) with regard
18 to a report submitted by the head of an agency after
19 the Comptroller General submits the report required
20 pursuant to paragraph (1) or (2).

21 (f) DEFINITIONS.—In this section:

22 (1) AGENCY; RULE.—The terms “agency” and
23 “rule” have the meaning given those terms in sec-
24 tion 551 of title 5, United States Code.

1 (2) COMPLETED APPLICATION.—The term
2 “completed application” means an application sub-
3 mitted under subsection (b) that contains certifi-
4 cations that the applicant meets each requirement
5 and substantive standard specified under subsection
6 (b)(1)(A).

7 (3) PERMITTING BY RULE.—The term “permit-
8 ting by rule” means the application process that an
9 agency establishes by rule for granting a certain
10 type of permit described in subsection (b).

11 (4) SUBSTANTIVE STANDARD.—The term “sub-
12 stantive standard” means all qualities, statuses, ac-
13 tions, benchmarks, measurements, or other written
14 descriptions that would qualify a party to perform
15 the permitted action.