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(Original Signature of Member)

118TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

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

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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 a permit 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 of a maximum of 30 days  
2 that only allows the Government to verify that all  
3 conditions are met. The Government retains the  
4 right and responsibility to audit and enforce compli-  
5 ance with permitting requirements. Focusing upon  
6 permittees who are violating the law or standards  
7 rather than gatekeeping will make permitting more  
8 efficient while allowing an agency to protect the  
9 compelling interests for which permitting systems  
10 are intended.

11 **SEC. 3. PERMIT BY RULE.**

12 (a) **REPORT TO CONGRESS REQUIRED.**—Not later  
13 than 240 days after the date of the enactment of this sec-  
14 tion, the head of each agency shall submit to Congress  
15 a report on the following:

16 (1) An evaluation of each permit of the agency.

17 (2) A list and description of each permit issued  
18 by the agency.

19 (3) The requirements for obtaining each such  
20 permit.

21 (4) A specific description of each step the agen-  
22 cy follows to review a permit application, including  
23 a list of the job title of each employee of the agency  
24 involved in the system and a short job description  
25 for each such title.

1           (5) An estimate of the time the agency typically  
2 requires to review an application that begins on the  
3 date on which an application is submitted and ends  
4 on the date on which a successful application is  
5 granted.

6           (6) A description of each action taken for a  
7 case in which an application is found to not meet the  
8 necessary requirements to be granted a permit.

9           (7) A list of primary interests that each permit  
10 is intended to protect.

11          (8) An individual determination for each such  
12 permit that describes whether a permit by rule could  
13 replace the permitting system.

14          (9) An identification of each permit issued by  
15 the agency that could use a permit by rule.

16          (10) An identification of each permit for which  
17 the head of the agency has determined the agency  
18 could not reasonably use a permit by rule, including  
19 a description with particularity and detail the rea-  
20 sons why permit by rule could not be reasonably  
21 used for each such permit.

22          (11) An identification of any challenges the  
23 head of the agency anticipates in a transition to a  
24 permit by rule.

25          (b) PERMIT BY RULE.—

1           (1) AUTOMATIC APPROVAL OF PERMITS.—Not  
2 later than 12 months after the date on which the re-  
3 port is submitted pursuant to subsection (a), the  
4 head of each agency shall establish a permit by rule  
5 application process that does the following:

6           (A) Specified in writing each requirement  
7 and substantive standard that must be met by  
8 an applicant to file under a permit by rule.

9           (B) Allows an applicant to submit an ap-  
10 plication that contains only each required cer-  
11 tification for each requirement or substantive  
12 standard established under subparagraph (A).

13           (C) Deems an application for a permit  
14 granted if—

15           (i) the application contains each cer-  
16 tification described in subparagraph (B);  
17 and

18           (ii) a period of 30 days after the date  
19 on which the completed application was  
20 submitted has expired.

21           (2) CORRECTION OF APPLICATION.—The head  
22 of an agency may contact an applicant if any certifi-  
23 cation is missing from an application submitted  
24 under paragraph (1).

1           (3) DENIAL OF APPLICATION AND ENFORCE-  
2           MENT.—

3           (A) REASON FOR DENIAL.—The head of  
4           an agency may only deny an application sub-  
5           mitted under a permit by rule if the head of the  
6           agency identifies a requirement or substantive  
7           standard described in paragraph (1)(A) that  
8           was not met and states with particularity the  
9           facts and reasoning for such denial.

10          (B) AUDIT AND ENFORCEMENT.—

11          (i) AUDIT.—The head of an agency  
12          may audit an application and verify com-  
13          pliance with substantive standards, which  
14          may include reasonable requests for docu-  
15          mentation.

16          (ii) ENFORCEMENT.—The head of an  
17          agency may deny an application submitted  
18          under a permit by rule at any time or halt  
19          permitted action if the head of the agency  
20          finds that a substantive standard is not  
21          being met.

22          (C) DIRECT APPEAL.—An applicant whose  
23          application for a permit by rule is denied or  
24          whose action under a permit issued under a  
25          permit by rule is halted may appeal such denial

1 or halting in an appropriate United States dis-  
2 trict court.

3 (D) REASONABLE INTERPRETATION OF  
4 SUBSTANTIVE STANDARDS.—In an appeal  
5 under subparagraph (C), the court shall con-  
6 sider an applicant that had a reasonable inter-  
7 pretation of a substantive standard, and made  
8 a good faith effort to comply with such stand-  
9 ard pursuant to such reasonable interpretation,  
10 to have met such standard.

11 (E) BURDEN OF PROOF.—In an appeal  
12 under subparagraph (C), the agency shall bear  
13 the burden of proof to show that an applicant's  
14 interpretation was not reasonable and that their  
15 effort to comply was not in good faith.

16 (F) INTERPRETATION.—A court shall in-  
17 terpret an agency rule for a permit by rule in  
18 a manner that favors the applicant if the appli-  
19 cant made a good faith effort to comply with  
20 the requirements of the permit by rule.

21 (G) ATTORNEY FEES; PERMIT GRANTED.—  
22 If the court finds for the applicant under this  
23 paragraph, the agency shall pay the attorney  
24 fees of the applicant and the permit shall is  
25 deemed granted.

1 (c) PERMIT BY RULE REQUIRED.—

2 (1) IN GENERAL.—Not later than the date on  
3 which the report is submitted pursuant to subsection  
4 (a), the head of each agency shall issue a permit by  
5 rule for any permit identified in subsection (a)(9).

6 (2) QUALIFYING APPLICANTS.—Not later than  
7 90 days after the date of the enactment of this sec-  
8 tion, the head of each agency shall provide a permit  
9 by rule option for any applicant for a permit that  
10 fits within the description of the activities that are  
11 approved for permit by rule.

12 (d) RESTRICTIONS ON AGENCY SETTLEMENT  
13 AGREEMENTS.—The head of an agency may not enter into  
14 a settlement agreement with an applicant under sub-  
15 section (b) in which the agency agrees to not enforce this  
16 Act, any regulation promulgated under this Act, or any  
17 permitting requirement for a permit by rule established  
18 under this Act against such applicant.

19 (e) CONGRESSIONAL OVERSIGHT.—Not later than  
20 180 days after the date of the enactment of this Act, the  
21 head of each agency shall submit to Congress a report on  
22 the progress of the agency in transitioning to and imple-  
23 menting each permit for which permit by rule is imple-  
24 mented under this Act.

1 (f) MAINTENANCE OF PREVIOUS PERMITTING SYS-  
2 TEM.—

3 (1) CONCURRENT USE OF PREVIOUS PERMIT-  
4 TING SYSTEM.—If the head of agency determines  
5 that the permitting system in effect before the date  
6 of the enactment of this Act provides value that the  
7 permit by rule does not, and a permit by rule is oth-  
8 erwise viable, the head of the agency may offer both  
9 the permitting system and the permit by rule, and  
10 the applicant may choose which to use, if the head  
11 of the agency includes the value such permitting sys-  
12 tem has that a permit by rule does not in the report  
13 required pursuant to subsection (a).

14 (2) PREFERENCE FOR PERMIT BY RULE.—If an  
15 agency determines that permit by rule is viable, yet  
16 wishes to maintain only one permitting system, the  
17 agency shall choose permit by rule.

18 (3) PREVIOUS PERMITTING SYSTEM INSTEAD  
19 OF PERMIT BY RULE.—The head of an agency may  
20 continue to use a permitting system instead of a per-  
21 mit by rule if the head of the agency includes in the  
22 report described in subsection (a) the reasons a per-  
23 mit by rule is not viable.

24 (g) DEFINITIONS.—In this section:

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

4           (2) COMPLETED APPLICATION.—The term  
5           “completed application” means an application sub-  
6           mitted under subsection (b) that contains an appli-  
7           cation with certifications that the applicant meets  
8           each requirement and substantive standard estab-  
9           lished under subsection (b)(1)(A).

10          (3) PERMIT BY RULE.—The term “permit by  
11          rule” means the permitting process described under  
12          subsection (b).

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