

Union Calendar No. 791

118TH CONGRESS
2^D SESSION

H. R. 8784

[Report No. 118-940]

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.

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 2024

Ms. MALOY (for herself, Mrs. CHAVEZ-DE REMER, Mr. NEWHOUSE, Mrs. PELTOLA, Mr. LATURNER, Mr. PFLUGER, Mr. FONG, Mr. CURTIS, Mr. GOSAR, Mr. STAUBER, Mr. ARRINGTON, Mr. MOORE of Utah, Mrs. FISCHBACH, and Mr. ZINKE) introduced the following bill; which was referred to the Committee on Oversight and Accountability

DECEMBER 19, 2024

Additional sponsors: Mr. BUCSHON, Mr. LAMBORN, Mrs. RADEWAGEN, Mr. COLLINS, Mr. OWENS, Mr. JOHNSON of South Dakota, Mr. CRANE, Mrs. MILLER-MEEKS, Mr. CISCOMANI, Mr. VALADAO, Mr. YAKYM, Mr. CALVERT, and Mr. FINSTAD

DECEMBER 19, 2024

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 18, 2024]

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:*

8 (1) *Agencies near unanimously operate under a*
9 *permitting system that gives agencies broad discretion*
10 *and requires the Government to review each permit-*
11 *ting application.*

12 (2) *Agencies near unanimously operate under a*
13 *permitting system that either does not have time con-*
14 *straints, or has time constraints that agencies do not*
15 *follow.*

16 (3) *The combination of broad discretion and the*
17 *lack of time constraints often results in a tedious,*
18 *time consuming, and often expensive permitting sys-*
19 *tem for the Government and applicants. Moreover,*
20 *agencies will sometimes use their discretion and the*
21 *time consuming nature of permitting to stall or dis-*
22 *courage permit issuance.*

23 (4) *There is a compelling interest in avoiding*
24 *unnecessary delay and expense in Federal permitting.*

1 (5) *Permit by rule is a process that seeks to over-*
2 *come agency delay and the cumbersome cost of agency*
3 *review to Government and private interests.*

4 (6) *Permit by rule is a process of permitting*
5 *that includes specific written standards for obtaining*
6 *a permit, a simple requirement for an applicant to*
7 *certify compliance with each of the standards, and a*
8 *streamlined approval process with a prompt deadline*
9 *for agency action on applications that only allows the*
10 *Government to verify that all conditions are met. The*
11 *Government retains the right and responsibility to*
12 *audit and enforce compliance with permitting re-*
13 *quirements. Focusing upon permittees who are vio-*
14 *lating the law or standards rather than gatekeeping*
15 *will make permitting more efficient while allowing an*
16 *agency to protect the compelling interests for which*
17 *permitting systems are intended.*

18 **SEC. 3. PERMITTING BY RULE.**

19 (a) *REPORT TO CONGRESS REQUIRED.*—

20 (1) *SUBMISSION OF REPORT.*—*Not later than*
21 *240 days after the date of the enactment of this sec-*
22 *tion, the head of each agency shall submit to Con-*
23 *gress, including any committee of Congress with juris-*
24 *isdiction over permits for that agency, and the Comp-*
25 *troller General a report on the following:*

1 (A) *A list and description of each type of*
2 *permit issued by the agency.*

3 (B) *The statutory and regulatory require-*
4 *ments for obtaining each such type of permit.*

5 (C) *For each type of permit issued by the*
6 *agency, a specific description of each step the*
7 *agency follows to review a permit application.*

8 (D) *For each type of permit issued by the*
9 *agency, an estimate of the time the agency typi-*
10 *cally takes to review an application, beginning*
11 *on the date on which an application is submitted*
12 *and ending on the date on which a successful ap-*
13 *plication is granted.*

14 (E) *For each type of permit issued by the*
15 *agency, a description of each action typically*
16 *taken for a case in which an application is*
17 *found not to meet statutory or regulatory re-*
18 *quirements for the issuance of a permit.*

19 (F) *A list of primary interests that each*
20 *type of permit is intended to foster or protect.*

21 (G) *An individual determination for each*
22 *type of permit issued by the agency of whether*
23 *permitting by rule could in whole or in part re-*
24 *place the current system for issuing the type of*
25 *permit.*

1 (H) For each type of permit issued by the
2 agency for which permitting by rule could in
3 whole or in part replace the current system for
4 issuing the type of permit, an identification of
5 any administrative or other practical challenges
6 the head of the agency anticipates in
7 transitioning to permitting by rule for the type
8 of permit.

9 (I) An identification of each type of permit
10 for which the head of the agency has determined
11 the agency could not reasonably, in whole or in
12 part, issue permits by rule under current facts
13 and circumstances, describing with particularity
14 each reason why permitting by rule could not
15 reasonably be used for any such permit and
16 what legal or practical measures could be pur-
17 sued to eliminate or mitigate said reason.

18 (2) *PUBLIC COMMENT.*—In preparing the report
19 required pursuant to paragraph (1), the head of an
20 agency may solicit and consider public comment re-
21 garding the report.

22 (3) *EXTENSION OF SUBMISSION DEADLINE.*—In
23 the case that the head of an agency is not able to sub-
24 mit the report required pursuant to paragraph (1),
25 the deadline to submit the report shall be extended by

1 *an additional 90 days if the head of the agency sub-*
2 *mits to Congress, including any committee of Con-*
3 *gress with jurisdiction over permits for that agency,*
4 *and the Comptroller General a notification of the in-*
5 *tended extension of the deadline under this para-*
6 *graph.*

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

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

23 (B) *the court determines that the agency*
24 *unreasonably delayed such action; and*

25 (C) *the applicant prevails in the claim.*

1 **(b) ESTABLISHMENT OF PROCESSES FOR PERMITTING**
2 *BY RULE.—*

3 **(1) APPLICATION FOR AND APPROVAL OF PER-**
4 *MITS.—Not later than 12 months after the date on*
5 *which the report is submitted pursuant to subsection*
6 *(a), for each type of permit issued by the agency for*
7 *which the head of the agency determined under sub-*
8 *section (a)(1)(G) that permitting by rule could in*
9 *whole or in part replace the current system for*
10 *issuing the type of permit, the head of each agency*
11 *shall establish by rule a permitting by rule applica-*
12 *tion process that does the following:*

13 **(A) Specifies in writing each requirement**
14 *and substantive standard that must be certified*
15 *to be met by an applicant who files an applica-*
16 *tion to qualify for a permit under permitting by*
17 *rule.*

18 **(B) Allows an applicant to file an applica-**
19 *tion that contains only each required certifi-*
20 *cation described in subparagraph (A) and any*
21 *supporting documentation the applicant chooses*
22 *to submit in support of each such certification.*

23 **(C) Deems an application for a permit**
24 *under permitting by rule granted if—*

1 (i) the application contains each cer-
2 tification described in subparagraph (A);
3 and

4 (ii) a period of 180 days after the date
5 on which the completed application was
6 submitted has expired and the head of the
7 agency has not otherwise approved or dis-
8 approved the application.

9 (2) *CORRECTION OF APPLICATION.*—The head of
10 an agency shall contact an applicant within 7 days
11 after the date on which an application is submitted
12 under paragraph (1) if any required certification is
13 missing from the application.

14 (3) *AUDIT OF APPLICATION.*—The head of an
15 agency may audit an application for a permit under
16 permitting by rule and verify certifications of compli-
17 ance with requirements and substantive standards for
18 permitting by rule and may include reasonable re-
19 quests for documentation.

20 (4) *DISAPPROVAL OF APPLICATION AND EN-*
21 *FORCEMENT.*—

22 (A) *REASON FOR DISAPPROVAL.*—The head
23 of an agency may only disapprove an applica-
24 tion submitted for a permit under permitting by
25 rule if the head of the agency identifies a re-

1 *quirement or substantive standard described in*
2 *paragraph (1)(A) that was not met by the appli-*
3 *cation, informs the applicant of how to correct*
4 *the application, provides a reasonable oppor-*
5 *tunity for the applicant to make such correction*
6 *before the final action of the agency on the appli-*
7 *cation, and states with particularity in any*
8 *final action disapproving the application the*
9 *facts and reasoning for such denial.*

10 *(B) AUDIT OF COMPLIANCE AND ENFORCE-*
11 *MENT FOLLOWING GRANT OF A PERMIT UNDER*
12 *PERMITTING BY RULE.—*

13 *(i) AUDIT.—The head of an agency*
14 *may audit a permit granted under permit-*
15 *ting by rule and verify compliance with re-*
16 *quirements and substantive standards for*
17 *permitting by rule, which may include rea-*
18 *sonable requests for documentation.*

19 *(ii) ENFORCEMENT.—The head of an*
20 *agency may require corrective action, sus-*
21 *pend, or revoke a permit granted under per-*
22 *mitting by rule at any time if the head of*
23 *the agency finds that a requirement or sub-*
24 *stantive standard under permitting by rule*

1 is not being met by the recipient of the per-
2 mit.

3 (C) *DIRECT APPEAL.*—An applicant whose
4 application for a permit under permitting by
5 rule is disapproved, of whom corrective action is
6 required under a permit granted under permit-
7 ting by rule, or whose permit granted under per-
8 mitting by rule is suspended or revoked may ap-
9 peal such disapproval, corrective action, suspen-
10 sion, or revocation in an appropriate United
11 States district court.

12 (D) *BURDEN OF PROOF.*—In an appeal
13 under subparagraph (C), the agency shall bear
14 the burden of proof to show that an application
15 was lawfully disapproved or that the agency
16 lawfully required corrective action or suspended
17 or revoked a permit.

18 (E) *ATTORNEY FEES.*—If the court finds for
19 the applicant or permit holder under this para-
20 graph and that the agency was not substantially
21 justified in disapproving, requiring corrective
22 action under, suspending, or revoking a permit,
23 the agency shall pay the attorney fees and costs
24 of the applicant from any funds made available
25 to the agency by appropriation or otherwise.

1 (c) *CONGRESSIONAL OVERSIGHT.*—Not later than 2
2 years after the date on which the report is submitted pursu-
3 ant to subsection (a), the head of each agency shall submit
4 to Congress a report on the implementation by the agency
5 of permitting by rule for each type of permit issued by the
6 agency for which the head of the agency determined under
7 subsection (a)(1)(G) that permitting by rule could in whole
8 or in part replace the current system for issuing the type
9 of permit.

10 (d) *CONCURRENT USE OF PREVIOUS PERMITTING SYS-*
11 *TEM.*—If the head of the agency determines in the report
12 submitted pursuant to subsection (a) that the permitting
13 system in effect at the agency before the date of the enact-
14 ment of this Act for any type of permit provides value that
15 permitting by rule does not, but that permitting by rule
16 could in whole or in part replace the current system for
17 issuing the type of permit, the head of the agency may
18 maintain for that type of permit both the permitting system
19 previously in effect and permitting by rule, and the appli-
20 cant may choose which system to use to apply for a permit
21 of that type from the agency.

22 (e) *GAO REPORTS.*—

23 (1) *REPORT ON ACCURACY OF AGENCY RE-*
24 *PORTS.*—Not later than 90 days after the expiration
25 of the deadline to submit the reports required under

1 subsection (a), the Comptroller General shall submit
2 to Congress a report on the completeness and accu-
3 racy of the reports, including the recommendations of
4 the Comptroller General concerning legal or practical
5 measures that could be pursued to eliminate or miti-
6 gate any legal or practical challenges to the transition
7 by agencies to permitting by rule for any type of per-
8 mit.

9 (2) *REPORT ON PROGRESS BY AGENCIES.*—Not
10 later than 180 days after submission by the agencies
11 of the reports required under subsection (c), the
12 Comptroller General shall submit to Congress a report
13 on the progress by agencies in the implementation of
14 this Act, including any recommendation concerning
15 legal or practical measures that could be pursued to
16 eliminate or mitigate any remaining legal or prac-
17 tical challenges to the transition by agencies to
18 issuance of permits under permitting by rule for any
19 type of permit.

20 (3) *SUPPLEMENTS TO THE REPORTS.*—The
21 Comptroller General may submit supplements to the
22 report described in paragraph (1) or (2) with regard
23 to a report submitted by the head of an agency after
24 the Comptroller General submits the report required
25 pursuant to paragraph (1) or (2).

1 (f) *DEFINITIONS.*—*In this section:*

2 (1) *AGENCY; RULE.*—*The terms “agency” and*
3 *“rule” have the meaning given those terms in section*
4 *551 of title 5, United States Code.*

5 (2) *COMPLETED APPLICATION.*—*The term “com-*
6 *pleted application” means an application submitted*
7 *under subsection (b) that contains certifications that*
8 *the applicant meets each requirement and substantive*
9 *standard specified under subsection (b)(1)(A).*

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

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

Amend the title so as to read: “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.”.

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