

118TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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 SENATE OF THE UNITED STATES

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Ms. LUMMIS (for herself and Mr. BUDD) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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 nearly unanimously operate per-  
9 mitting systems that—

1           (A) give agencies broad discretion and re-  
2           quire agencies review each permit application;  
3           and

4           (B) either do not have decision deadlines  
5           or have decision deadlines which agencies do  
6           not follow.

7           (2) The combination of broad discretion and the  
8           lack of decision deadlines often results in permitting  
9           systems that are tedious, time consuming, and ex-  
10          pensive for the Government and for applicants.

11          (3) Agencies will sometimes use discretion  
12          under a permitting system and the time consuming  
13          nature of a permitting system to stall or discourage  
14          permit issuance.

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

18          (5) Permit by rule is a system of permitting—

19                (A) that includes specific written standards  
20                for obtaining a permit, a simple requirement for  
21                an applicant to certify compliance with each of  
22                the standards, and a streamlined approval proc-  
23                ess that allows an agency not more than 30  
24                days to verify that all conditions are met; and

1 (B) in which an agency retains the right  
2 and responsibility to audit and enforce compli-  
3 ance with permitting requirements.

4 (6) Permit by rule, applied by agencies, would  
5 increase efficiency and help overcome delays and the  
6 cumbersome cost of agency review to Government  
7 and private interests by focusing on grantees that  
8 are violating the law or standards rather than  
9 gatekeeping, thereby allowing agencies to protect the  
10 compelling interests for which permitting systems  
11 are intended.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

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

17 (2) COMPLETED APPLICATION.—The term  
18 “completed application” means an application sub-  
19 mitted under section 4(b) that contains a certifi-  
20 cation that the applicant meets each requirement  
21 and substantive standard established under para-  
22 graph (1)(A) of that section.

23 (3) PERMIT BY RULE.—The term “permit by  
24 rule” means the permitting process described in sec-  
25 tion 4(b).

1           (4) SUBSTANTIVE STANDARD.—The term “sub-  
2           stantive standard”, with respect to a permit, means  
3           each quality, status, action, benchmark, measure-  
4           ment, or other written description that would qualify  
5           a person to perform an action for which the permit  
6           is required.

7   **SEC. 4. PERMIT BY RULE.**

8           (a) REPORT TO CONGRESS REQUIRED.—Not later  
9           than 180 days after the date of enactment of this Act,  
10          the head of each agency shall submit to Congress a report  
11          that includes the following:

12               (1) An evaluation of each permitting system of  
13               the agency.

14               (2) A list and description of each permitting  
15               system used by the agency and the requirements for  
16               obtaining a permit under each such permitting sys-  
17               tem.

18               (3) A specific description of each step the agen-  
19               cy follows to review a permit application, including  
20               a list of the job title of each employee of the agency  
21               involved in the permitting system and a short job de-  
22               scription for each job title as the job relates to the  
23               evaluation of permit applications.

1           (4) An estimate of the number of days between  
2           submission of an application for a permit and grant  
3           of the application.

4           (5) With respect to an application for a permit  
5           that is found to not meet the necessary requirements  
6           for a grant of the application, the necessary actions  
7           required of the applicant and the agency.

8           (6) A list of primary interests that each permit-  
9           ting system is intended to protect.

10          (7) With respect to each permitting system, a  
11          determination of whether a permit by rule could re-  
12          place the permitting system, and for each permitting  
13          system for which the determination is that a permit  
14          by rule could not replace the permitting system, a  
15          description that details with particularity the rea-  
16          sons why a permit by rule could not be reasonably  
17          used.

18          (8) An identification of any challenges antici-  
19          pated for a transition from each permitting system  
20          to a permit by rule.

21          (b) PERMIT BY RULE.—

22                 (1) STREAMLINED APPLICATION PROCESS.—  
23                 Not later than 1 year after the date on which the  
24                 report is submitted under subsection (a), the head of  
25                 each agency shall establish a permit by rule applica-

1       tion process with respect to each permit system iden-  
2       tified in such report as feasible for transition to a  
3       permit by rule that does the following:

4               (A) Specifies in writing each requirement  
5               and substantive standard that must be met by  
6               an applicant to file an application under the  
7               permit by rule system.

8               (B) Allows an applicant to submit an ap-  
9               plication that contains only a certification for  
10              each requirement or substantive standard speci-  
11              fied under subparagraph (A).

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

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

17                      (ii) a period of 30 days after the date  
18                      on which the completed application was  
19                      submitted has expired and the application  
20                      was not denied under paragraph (3).

21              (2) CORRECTION OF APPLICATION.—During the  
22              30-day period after the date of submission of the ap-  
23              plication, the head of an agency may contact an ap-  
24              plicant if any certification is missing from an appli-  
25              cation submitted under paragraph (1) and the appli-

1 cant may correct the missing certification without  
2 any adverse effect on the application.

3 (3) DENIAL OF APPLICATION.—The head of an  
4 agency may deny an application submitted under  
5 paragraph (1) only if the head of the agency issues  
6 a written decision that identifies a requirement or  
7 substantive standard described in subparagraph (A)  
8 of that paragraph that was not met and states with  
9 particularity the facts and reasoning for such denial.

10 (4) AUDIT AND ENFORCEMENT.—

11 (A) IN GENERAL.—

12 (i) AUDIT.—The head of an agency  
13 may audit a grantee of a permit to verify  
14 compliance with the requirements and sub-  
15 stantive standards certified in the applica-  
16 tion of the grantee under paragraph (1),  
17 including by issuing reasonable requests  
18 for documentation.

19 (ii) ENFORCEMENT.—The head of an  
20 agency may deny an application under  
21 paragraph (1) at any time or suspend a  
22 permit deemed granted under subpara-  
23 graph (C) of that paragraph if the head of  
24 the agency finds that a requirement or

1 substantive standard under subparagraph  
2 (A) of that paragraph is not met.

3 (B) DIRECT APPEAL.—

4 (i) IN GENERAL.—An applicant denied  
5 a permit or a grantee of a permit that is  
6 suspended under subparagraph (A)(ii) may  
7 appeal such denial or suspension in an ap-  
8 propriate district court of the United  
9 States.

10 (ii) REASONABLE INTERPRETATION  
11 OF A REQUIREMENT OR SUBSTANTIVE.—In  
12 an appeal under clause (i), the court shall  
13 consider the applicant or grantee to have  
14 met the requirement or substantive stand-  
15 ard upon which a denial of an application  
16 or a suspension of a permit under subpara-  
17 graph (A)(ii) is based if the applicant or  
18 grantee—

19 (I) had a reasonable interpreta-  
20 tion of the requirement or substantive  
21 standard; and

22 (II) made a good faith effort to  
23 comply with the requirement or sub-  
24 stantive standard pursuant to such  
25 reasonable interpretation.



1 (iii) BURDEN OF PROOF.—In an ap-  
2 peal under clause (i), the agency shall bear  
3 the burden of proof to show that the inter-  
4 pretation of the applicant or grantee was  
5 not reasonable or that the effort of the ap-  
6 plicant or grantee to comply was not in  
7 good faith.

8 (iv) ATTORNEY FEES; PERMIT GRANT-  
9 ED.—In an appeal under clause (i), if a  
10 court finds for the applicant or grantee  
11 under this subparagraph, the agency shall  
12 pay the attorney fees of the applicant or  
13 grantee and the permit shall be deemed  
14 granted or reinstated.

15 (c) PERMIT BY RULE REQUIRED.—

16 (1) IN GENERAL.—Not later than the date on  
17 which the report is submitted under subsection (a),  
18 the head of each agency shall issue a permit by rule  
19 option with respect to any permitting system identi-  
20 fied in subsection (a)(7) as feasible for transition to  
21 a permit by rule.

22 (2) QUALIFYING APPLICANTS.—Not later than  
23 90 days after the date of submission of the report  
24 under subsection (e), the head of each agency shall  
25 provide a permit by rule option for any applicant for

1 a permit that fits within the description of the ac-  
2 tivities that are approved for permit by rule.

3 (3) MAINTENANCE OF PREVIOUS PERMITTING  
4 SYSTEM.—

5 (A) CONCURRENT USE OF PREVIOUS PER-  
6 MITTING SYSTEM.—If the head of agency deter-  
7 mines that a permitting system in effect before  
8 the date of enactment of this Act provides value  
9 that a permit by rule does not, and a permit by  
10 rule is otherwise viable, if the head of the agen-  
11 cy includes a description of such value in the  
12 report required under subsection (a), the head  
13 of the agency may offer both such existing per-  
14 mitting system and the permit by rule, and the  
15 applicant may choose which to use.

16 (B) PREFERENCE FOR PERMIT BY  
17 RULE.—If the head of the agency determines  
18 that permit by rule is viable and wishes to  
19 maintain only 1 permitting system, the agency  
20 shall maintain permit by rule.

21 (C) EXISTING PERMITTING SYSTEM IN-  
22 STEAD OF PERMIT BY RULE.—If the head of an  
23 agency determines that permit by rule is not  
24 viable and includes the reasons permit by rule  
25 is not viable in the report under subsection (a),

1           the head of the agency may continue to use the  
2           permitting system in effect before the date of  
3           enactment of this Act.

4           (d) RESTRICTIONS ON AGENCY SETTLEMENT  
5 AGREEMENTS.—The head of an agency may not enter into  
6 a settlement agreement with an applicant under sub-  
7 section (b) in which the agency agrees to not enforce, with  
8 respect to the applicant, this Act, any regulation promul-  
9 gated under this Act, or any requirement or substantive  
10 standard for a permit by rule established pursuant to this  
11 Act.

12          (e) CONGRESSIONAL OVERSIGHT.—Not later than  
13 240 days after the date of enactment of this Act, the head  
14 of each agency shall submit to Congress a report on the  
15 progress of the agency in transitioning to a permit by rule  
16 for each permitting system for which a permit by rule is  
17 required to be implemented under this Act.