

H.R.8784 - FREE Act

118th Congress (2023-2024) |

Sponsor:

Rep. Maloy, Celeste [R-UT-2] (Introduced 06/18/2024)

Committees:

House - Oversight and Accountability

Committee Meetings:

09/18/24 10:00AM

Latest Action:

House - 12/19/2024 Placed on the Union Calendar, Calendar No. 791. (All Actions)

Tracker:

Introduced

Passed House

Passed Senate

To President

Became Law

Summary(0) Text(1) Actions(6) Titles(3) Amendments(0) Cosponsors(26) Committees(1) Related Bills(1)

Listen

There is one version of the bill. Text available as: XML/HTML | XML/HTML (new window) (17KB) | TXT (13KB) | PDF (238KB) i

Shown Here:
Introduced in House (06/18/2024)

118TH CONGRESS
2D SESSION

H. R. 8784

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-DeREMER, 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

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Full Responsibility and Expedited Enforcement Act” or the “FREE Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Agencies near unanimously operate under a permitting system that gives agencies broad discretion and requires the Government to review each permitting application.

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

(3) The combination of broad discretion and the lack of time constraints often results in a tedious, time consuming, and often expensive permitting system for the Government and applicants. Moreover, agencies will sometimes use their discretion and the time consuming nature of permitting to stall or discourage permit issuance.

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

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

(6) Permit by rule is a process of permitting that includes specific written standards for obtaining a permit, a simple requirement for an applicant to certify compliance with each of the standards, and a streamlined approval of a maximum of 30 days that only allows the Government to verify that all conditions are met. The Government retains the right and responsibility to audit and enforce compliance with permitting requirements. Focusing upon permittees who are violating the law or standards rather than gatekeeping will make permitting more efficient while allowing an agency to protect the compelling interests for which permitting systems are intended.

SEC. 3. PERMIT BY RULE.

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

- (1) An evaluation of each permit of the agency.
- (2) A list and description of each permit issued by the agency.
- (3) The requirements for obtaining each such permit.
- (4) A specific description of each step the agency follows to review a permit application, including a list of the job title of each employee of the agency involved in the system and a short job description for each such title.
- (5) An estimate of the time the agency typically requires to review an application that begins on the date on which an application is submitted and ends on the date on which a successful application is granted.
- (6) A description of each action taken for a case in which an application is found to not meet the necessary requirements to be granted a permit.
- (7) A list of primary interests that each permit is intended to protect.
- (8) An individual determination for each such permit that describes whether a permit by rule could replace the permitting system.
- (9) An identification of each permit issued by the agency that could use a permit by rule.
- (10) An identification of each permit for which the head of the agency has determined the agency could not reasonably use a permit by rule, including a description with particularity and

detail the reasons why permit by rule could not be reasonably used for each such permit.

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

(b) PERMIT BY RULE.—

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

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

(B) Allows an applicant to submit an application that contains only each required certification for each requirement or substantive standard established under subparagraph (A).

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

(i) the application contains each certification described in subparagraph (B); and

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

(2) CORRECTION OF APPLICATION.—The head of an agency may contact an applicant if any certification is missing from an application submitted under paragraph (1).

(3) DENIAL OF APPLICATION AND ENFORCEMENT.—

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

(B) AUDIT AND ENFORCEMENT.—

(i) AUDIT.—The head of an agency may audit an application and verify compliance with substantive standards, which may include reasonable requests for documentation.

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

(C) DIRECT APPEAL.—An applicant whose application for a permit by rule is denied or whose action under a permit issued under a permit by rule is halted may appeal such denial or halting in an appropriate United States district court.

(D) REASONABLE INTERPRETATION OF SUBSTANTIVE STANDARDS.—In an appeal under subparagraph (C), the court shall consider an applicant that had a reasonable interpretation of a substantive standard, and made a good faith effort to comply with such standard pursuant to such reasonable interpretation, to have met such standard.

(E) BURDEN OF PROOF.—In an appeal under subparagraph (C), the agency shall bear the burden of proof to show that an applicant's interpretation was not reasonable and

that their effort to comply was not in good faith.

(F) INTERPRETATION.—A court shall interpret an agency rule for a permit by rule in a manner that favors the applicant if the applicant made a good faith effort to comply with the requirements of the permit by rule.

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

(c) PERMIT BY RULE REQUIRED.—

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

(2) QUALIFYING APPLICANTS.—Not later than 90 days after the date of the enactment of this section, the head of each agency shall provide a permit by rule option for any applicant for a permit that fits within the description of the activities that are approved for permit by rule.

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

(e) CONGRESSIONAL OVERSIGHT.—Not later than 180 days after the date of the enactment of this Act, the head of each agency shall submit to Congress a report on the progress of the agency in transitioning to and implementing each permit for which permit by rule is implemented under this Act.

(f) MAINTENANCE OF PREVIOUS PERMITTING SYSTEM.—

(1) CONCURRENT USE OF PREVIOUS PERMITTING SYSTEM.—If the head of agency determines that the permitting system in effect before the date of the enactment of this Act provides value that the permit by rule does not, and a permit by rule is otherwise viable, the head of the agency may offer both the permitting system and the permit by rule, and the applicant may choose which to use, if the head of the agency includes the value such permitting system has that a permit by rule does not in the report required pursuant to subsection (a).

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

(3) PREVIOUS PERMITTING SYSTEM INSTEAD OF PERMIT BY RULE.—The head of an agency may continue to use a permitting system instead of a permit by rule if the head of the agency includes in the report described in subsection (a) the reasons a permit by rule is not viable.

(g) DEFINITIONS.—In this section:

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

(2) COMPLETED APPLICATION.—The term “completed application” means an application submitted under subsection (b) that contains an application with certifications that the applicant meets each requirement and substantive standard established under subsection (b)(1) (A).

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

(4) SUBSTANTIVE STANDARD.—The term “substantive standard” means all qualities, statuses, actions, benchmarks, measurements, or other written descriptions that would qualify a party to perform the permitted action.
