

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 8784
OFFERED BY MR. COMER OF KENTUCKY**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

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

4 SEC. 2. FINDINGS.

5 Congress finds the following:

6 (1) Agencies near unanimously operate under a
7 permitting system that gives agencies broad discre-
8 tion and requires the Government to review each
9 permitting application.

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

14 (3) The combination of broad discretion and the
15 lack of time constraints often results in a tedious,
16 time consuming, and often expensive permitting sys-
17 tem for the Government and applicants. Moreover,
18 agencies will sometimes use their discretion and the

1 time consuming nature of permitting to stall or dis-
2 courage permit issuance.

3 (4) There is a compelling interest in avoiding
4 unnecessary delay and expense in Federal permit-
5 ting.

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

9 (6) Permit by rule is a process of permitting
10 that includes specific written standards for obtaining
11 a permit, a simple requirement for an applicant to
12 certify compliance with each of the standards, and
13 a streamlined approval process with a prompt dead-
14 line for agency action on applications that only al-
15 lows the Government to verify that all conditions are
16 met. The Government retains the right and responsi-
17 bility to audit and enforce compliance with permit-
18 ting requirements. Focusing upon permittees who
19 are violating the law or standards rather than
20 gatekeeping will make permitting more efficient
21 while allowing an agency to protect the compelling
22 interests for which permitting systems are intended.

23 **SEC. 3. PERMITTING BY RULE.**

24 (a) REPORT TO CONGRESS REQUIRED.—

1 (1) SUBMISSION OF REPORT.—Not later than
2 240 days after the date of the enactment of this sec-
3 tion, the head of each agency shall submit to Con-
4 gress, including any committee of Congress with ju-
5 risdiction over permits for that agency, and the
6 Comptroller General a report on the following:

7 (A) A list and description of each type of
8 permit issued by the agency.

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

11 (C) For each type of permit issued by the
12 agency, a specific description of each step the
13 agency follows to review a permit application.

14 (D) For each type of permit issued by the
15 agency, an estimate of the time the agency typi-
16 cally takes to review an application, beginning
17 on the date on which an application is sub-
18 mitted and ending on the date on which a suc-
19 cessful application is granted.

20 (E) For each type of permit issued by the
21 agency, a description of each action typically
22 taken for a case in which an application is
23 found not to meet statutory or regulatory re-
24 quirements for the issuance of a permit.

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

3 (G) An individual determination for each
4 type of permit issued by the agency of whether
5 permitting by rule could in whole or in part re-
6 place the current system for issuing the type of
7 permit.

8 (H) For each type of permit issued by the
9 agency for which permitting by rule could in
10 whole or in part replace the current system for
11 issuing the type of permit, an identification of
12 any administrative or other practical challenges
13 the head of the agency anticipates in
14 transitioning to permitting by rule for the type
15 of permit.

16 (I) An identification of each type of permit
17 for which the head of the agency has deter-
18 mined the agency could not reasonably, in
19 whole or in part, issue permits by rule under
20 current facts and circumstances, describing
21 with particularity each reason why permitting
22 by rule could not reasonably be used for any
23 such permit and what legal or practical meas-
24 ures could be pursued to eliminate or mitigate
25 said reason.

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

5 (3) EXTENSION OF SUBMISSION DEADLINE.—In
6 the case that the head of an agency is not able to
7 submit the report required pursuant to paragraph
8 (1), the deadline to submit the report shall be ex-
9 tended by an additional 90 days if the head of the
10 agency submits to Congress, including any com-
11 mittee of Congress with jurisdiction over permits for
12 that agency, and the Comptroller General a notifica-
13 tion of the intended extension of the deadline under
14 this paragraph.

15 (4) ATTORNEY FEES.—If the head of an agency
16 does not file the report required pursuant to para-
17 graph (1) by the applicable deadline under this sub-
18 section, the agency shall pay, from any funds made
19 available to the agency by appropriation or other-
20 wise, the attorney fees and costs of an applicant for
21 a claim filed by the applicant for the failure or delay
22 of the agency to take action with respect to an appli-
23 cation for a permit submitted to the agency by the
24 applicant if—

1 (A) the claim is filed against the agency in
2 an appropriate United States district court dur-
3 ing the period beginning on the expiration of
4 the applicable deadline under this subsection
5 and ending on the date on which the agency
6 files the report;

7 (B) the court determines that the agency
8 unreasonably delayed such action; and

9 (C) the applicant prevails in the claim.

10 (b) ESTABLISHMENT OF PROCESSES FOR PERMIT-
11 TING BY RULE.—

12 (1) APPLICATION FOR AND APPROVAL OF PER-
13 MITS.—Not later than 12 months after the date on
14 which the report is submitted pursuant to subsection
15 (a), for each type of permit issued by the agency for
16 which the head of the agency determined under sub-
17 section (a)(1)(G) that permitting by rule could in
18 whole or in part replace the current system for
19 issuing the type of permit, the head of each agency
20 shall establish by rule a permitting by rule applica-
21 tion process that does the following:

22 (A) Specifies in writing each requirement
23 and substantive standard that must be certified
24 to be met by an applicant who files an applica-

1 tion to qualify for a permit under permitting by
2 rule.

3 (B) Allows an applicant to file an applica-
4 tion that contains only each required certifi-
5 cation described in subparagraph (A) and any
6 supporting documentation the applicant chooses
7 to submit in support of each such certification.

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

10 (i) the application contains each cer-
11 tification described in subparagraph (A);
12 and

13 (ii) a period of 180 days after the
14 date on which the completed application
15 was submitted has expired and the head of
16 the agency has not otherwise approved or
17 disapproved the application.

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

23 (3) AUDIT OF APPLICATION.—The head of an
24 agency may audit an application for a permit under
25 permitting by rule and verify certifications of compli-

1 ance with requirements and substantive standards
2 for permitting by rule and may include reasonable
3 requests for documentation.

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

6 (A) REASON FOR DISAPPROVAL.—The
7 head of an agency may only disapprove an ap-
8 plication submitted for a permit under permit-
9 ting by rule if the head of the agency identifies
10 a requirement or substantive standard described
11 in paragraph (1)(A) that was not met by the
12 application, informs the applicant of how to cor-
13 rect the application, provides a reasonable op-
14 portunity for the applicant to make such correc-
15 tion before the final action of the agency on the
16 application, and states with particularity in any
17 final action disapproving the application the
18 facts and reasoning for such denial.

19 (B) AUDIT OF COMPLIANCE AND EN-
20 FORCEMENT FOLLOWING GRANT OF A PERMIT
21 UNDER PERMITTING BY RULE.—

22 (i) AUDIT.—The head of an agency
23 may audit a permit granted under permit-
24 ting by rule and verify compliance with re-
25 quirements and substantive standards for

1 permitting by rule, which may include rea-
2 sonable requests for documentation.

3 (ii) ENFORCEMENT.—The head of an
4 agency may require corrective action, sus-
5 pend, or revoke a permit granted under
6 permitting by rule at any time if the head
7 of the agency finds that a requirement or
8 substantive standard under permitting by
9 rule is not being met by the recipient of
10 the permit.

11 (C) DIRECT APPEAL.—An applicant whose
12 application for a permit under permitting by
13 rule is disapproved, of whom corrective action is
14 required under a permit granted under permit-
15 ting by rule, or whose permit granted under
16 permitting by rule is suspended or revoked may
17 appeal such disapproval, corrective action, sus-
18 pension, or revocation in an appropriate United
19 States district court.

20 (D) BURDEN OF PROOF.—In an appeal
21 under subparagraph (C), the agency shall bear
22 the burden of proof to show that an application
23 was lawfully disapproved or that the agency
24 lawfully required corrective action or suspended
25 or revoked a permit.

1 (E) ATTORNEY FEES.—If the court finds
2 for the applicant or permit holder under this
3 paragraph and that the agency was not sub-
4 stantially justified in disapproving, requiring
5 corrective action under, suspending, or revoking
6 a permit, the agency shall pay the attorney fees
7 and costs of the applicant from any funds made
8 available to the agency by appropriation or oth-
9 erwise.

10 (c) CONGRESSIONAL OVERSIGHT.—Not later than 2
11 years after the date on which the report is submitted pur-
12 suant to subsection (a), the head of each agency shall sub-
13 mit to Congress a report on the implementation by the
14 agency of permitting by rule for each type of permit issued
15 by the agency for which the head of the agency determined
16 under subsection (a)(1)(G) that permitting by rule could
17 in whole or in part replace the current system for issuing
18 the type of permit.

19 (d) CONCURRENT USE OF PREVIOUS PERMITTING
20 SYSTEM.—If the head of the agency determines in the re-
21 port submitted pursuant to subsection (a) that the permit-
22 ting system in effect at the agency before the date of the
23 enactment of this Act for any type of permit provides
24 value that permitting by rule does not, but that permitting
25 by rule could in whole or in part replace the current sys-

1 tem for issuing the type of permit, the head of the agency
2 may maintain for that type of permit both the permitting
3 system previously in effect and permitting by rule, and
4 the applicant may choose which system to use to apply
5 for a permit of that type from the agency.

6 (e) GAO REPORTS.—

7 (1) REPORT ON ACCURACY OF AGENCY RE-
8 PORTS.—Not later than 90 days after the expiration
9 of the deadline to submit the reports required under
10 subsection (a), the Comptroller General shall submit
11 to Congress a report on the completeness and accu-
12 racy of the reports, including the recommendations
13 of the Comptroller General concerning legal or prac-
14 tical measures that could be pursued to eliminate or
15 mitigate any legal or practical challenges to the
16 transition by agencies to permitting by rule for any
17 type of permit.

18 (2) REPORT ON PROGRESS BY AGENCIES.—Not
19 later than 180 days after submission by the agencies
20 of the reports required under subsection (c), the
21 Comptroller General shall submit to Congress a re-
22 port on the progress by agencies in the implementa-
23 tion of this Act, including any recommendation con-
24 cerning legal or practical measures that could be
25 pursued to eliminate or mitigate any remaining legal

1 or practical challenges to the transition by agencies
2 to issuance of permits under permitting by rule for
3 any type of permit.

4 (3) SUPPLEMENTS TO THE REPORTS.—The
5 Comptroller General may submit supplements to the
6 report described in paragraph (1) or (2) with regard
7 to a report submitted by the head of an agency after
8 the Comptroller General submits the report required
9 pursuant to paragraph (1) or (2).

10 (f) DEFINITIONS.—In this section:

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

14 (2) COMPLETED APPLICATION.—The term
15 “completed application” means an application sub-
16 mitted under subsection (b) that contains certifi-
17 cations that the applicant meets each requirement
18 and substantive standard specified under subsection
19 (b)(1)(A).

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

24 (4) SUBSTANTIVE STANDARD.—The term “sub-
25 stantive standard” means all qualities, statuses, ac-

1 tions, benchmarks, measurements, or other written
2 descriptions that would qualify a party to perform
3 the 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.”.

