

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
**TO H.R. 689**  
**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) OFFICE OF MANAGEMENT AND BUDGET GUID-  
25 ANCE.—Not later than 120 days after the date of the en-

1 actment of this Act, the Director of the Office of Manage-  
2 ment and Budget shall issue a memorandum to the head  
3 of each agency that establishes guidance for the implemen-  
4 tation of the requirements of this section, including on the  
5 meaning of the terms “permitting by rule” and “permit”.

6 (b) REPORT TO CONGRESS REQUIRED.—

7 (1) SUBMISSION OF REPORT.—Not later than  
8 240 days after the date on which the guidance re-  
9 quired under subsection (a) is issued, the head of  
10 each agency shall submit to Congress, including any  
11 committee of Congress with jurisdiction over permits  
12 for that agency, and the Comptroller General a re-  
13 port on the following:

14 (A) A list and description of each type of  
15 permit issued by the agency.

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

18 (C) For each type of permit issued by the  
19 agency, a specific description of each step the  
20 agency follows to review a permit application.

21 (D) For each type of permit issued by the  
22 agency, an estimate of the time the agency typi-  
23 cally takes to review an application, beginning  
24 on the date on which an application is sub-

1           mitted and ending on the date on which a suc-  
2           cessful application is granted.

3           (E) For each type of permit issued by the  
4           agency, a description of each action typically  
5           taken for a case in which an application is  
6           found not to meet statutory or regulatory re-  
7           quirements for the issuance of a permit.

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

10          (G) An individual determination for each  
11          type of permit issued by the agency of whether  
12          permitting by rule could in whole or in part re-  
13          place the current system for issuing the type of  
14          permit.

15          (H) For each type of permit issued by the  
16          agency for which permitting by rule could in  
17          whole or in part replace the current system for  
18          issuing the type of permit, an identification of  
19          any administrative or other practical challenges  
20          the head of the agency anticipates in  
21          transitioning to permitting by rule for the type  
22          of permit.

23          (I) An identification of each type of permit  
24          for which the head of the agency has deter-  
25          mined the agency could not reasonably, in

1 whole or in part, issue permits by rule under  
2 current facts and circumstances, describing  
3 with particularity each reason why permitting  
4 by rule could not reasonably be used for any  
5 such permit and what legal or practical meas-  
6 ures could be pursued to eliminate or mitigate  
7 said reason.

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

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

22 (4) ATTORNEY FEES.—If the head of an agency  
23 does not file the report required pursuant to para-  
24 graph (1) by the applicable deadline under this sub-  
25 section, the agency shall pay, from any funds made

1 available to the agency by appropriation or other-  
2 wise, the attorney fees and costs of an applicant for  
3 a claim filed by the applicant for the failure or delay  
4 of the agency to take action with respect to an appli-  
5 cation for a permit submitted to the agency by the  
6 applicant if—

7 (A) the claim is filed against the agency in  
8 an appropriate United States district court dur-  
9 ing the period beginning on the expiration of  
10 the applicable deadline under this subsection  
11 and ending on the date on which the agency  
12 files the report;

13 (B) the court determines that the agency  
14 unreasonably delayed such action; and

15 (C) the applicant prevails in the claim.

16 (c) ESTABLISHMENT OF PROCESSES FOR PERMIT-  
17 TING BY RULE.—

18 (1) APPLICATION FOR AND APPROVAL OF PER-  
19 MITS.—Not later than 12 months after the date on  
20 which the report is submitted pursuant to subsection  
21 (b), for each type of permit issued by the agency for  
22 which the head of the agency determined under sub-  
23 section (b)(1)(G) that permitting by rule could in  
24 whole or in part replace the current system for  
25 issuing the type of permit, the head of each agency

1       shall establish by rule a permitting by rule applica-  
2       tion process that does the following:

3               (A) Specifies in writing each requirement  
4               and substantive standard that must be certified  
5               to be met by an applicant who files an applica-  
6               tion to qualify for a permit under permitting by  
7               rule.

8               (B) Allows an applicant to file an applica-  
9               tion that contains only each required certifi-  
10              cation described in subparagraph (A) and any  
11              supporting documentation the applicant chooses  
12              to submit in support of each such certification.

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

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

18                      (ii) a period of 180 days after the  
19                      date on which the completed application  
20                      was submitted has expired and the head of  
21                      the agency has not otherwise approved or  
22                      disapproved the application.

23              (2) CORRECTION OF APPLICATION.—The head  
24              of an agency shall contact an applicant within 7  
25              days after the date on which an application is sub-

1       mitted under paragraph (1) if any required certifi-  
2       cation is missing from the application.

3           (3) AUDIT OF APPLICATION.—The head of an  
4       agency may audit an application for a permit under  
5       permitting by rule and verify certifications of compli-  
6       ance with requirements and substantive standards  
7       for permitting by rule and may include reasonable  
8       requests for documentation.

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

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



1 (B) AUDIT OF COMPLIANCE AND EN-  
2 FORCEMENT FOLLOWING GRANT OF A PERMIT  
3 UNDER PERMITTING BY RULE.—

4 (i) AUDIT.—The head of an agency  
5 may audit a permit granted under permit-  
6 ting by rule and verify compliance with re-  
7 quirements and substantive standards for  
8 permitting by rule, which may include rea-  
9 sonable requests for documentation.

10 (ii) ENFORCEMENT.—The head of an  
11 agency may require corrective action, sus-  
12 pend, or revoke a permit granted under  
13 permitting by rule at any time if the head  
14 of the agency finds that a requirement or  
15 substantive standard under permitting by  
16 rule is not being met by the recipient of  
17 the permit.

18 (C) DIRECT APPEAL.—An applicant whose  
19 application for a permit under permitting by  
20 rule is disapproved, of whom corrective action is  
21 required under a permit granted under permit-  
22 ting by rule, or whose permit granted under  
23 permitting by rule is suspended or revoked may  
24 appeal such disapproval, corrective action, sus-

1 pension, or revocation in an appropriate United  
2 States district court.

3 (D) BURDEN OF PROOF.—In an appeal  
4 under subparagraph (C), the agency shall bear  
5 the burden of proof to show that an application  
6 was lawfully disapproved or that the agency  
7 lawfully required corrective action or suspended  
8 or revoked a permit.

9 (E) ATTORNEY FEES.—If the court finds  
10 for the applicant or permit holder under this  
11 paragraph and that the agency was not sub-  
12 stantially justified in disapproving, requiring  
13 corrective action under, suspending, or revoking  
14 a permit, the agency shall pay the attorney fees  
15 and costs of the applicant from any funds made  
16 available to the agency by appropriation or oth-  
17 erwise.

18 (d) CONGRESSIONAL OVERSIGHT.—Not later than 2  
19 years after the date on which the report is submitted pur-  
20 suant to subsection (b), the head of each agency shall sub-  
21 mit to Congress a report on the implementation by the  
22 agency of permitting by rule for each type of permit issued  
23 by the agency for which the head of the agency determined  
24 under subsection (b)(1)(G) that permitting by rule could

1 in whole or in part replace the current system for issuing  
2 the type of permit.

3 (e) CONCURRENT USE OF PREVIOUS PERMITTING  
4 SYSTEM.—If the head of the agency determines in the re-  
5 port submitted pursuant to subsection (b) that the permit-  
6 ting system in effect at the agency before the date of the  
7 enactment of this Act for any type of permit provides  
8 value that permitting by rule does not, but that permitting  
9 by rule could in whole or in part replace the current sys-  
10 tem for issuing the type of permit, the head of the agency  
11 may maintain for that type of permit both the permitting  
12 system previously in effect and permitting by rule, and  
13 the applicant may choose which system to use to apply  
14 for a permit of that type from the agency.

15 (f) GAO REPORTS.—

16 (1) REPORT ON ACCURACY OF AGENCY RE-  
17 PORTS.—Not later than 90 days after the expiration  
18 of the deadline to submit the reports required under  
19 subsection (b), the Comptroller General shall submit  
20 to Congress a report on the completeness and accu-  
21 racy of the reports, including the recommendations  
22 of the Comptroller General concerning legal or prac-  
23 tical measures that could be pursued to eliminate or  
24 mitigate any legal or practical challenges to the

1 transition by agencies to permitting by rule for any  
2 type of permit.

3 (2) REPORT ON PROGRESS BY AGENCIES.—Not  
4 later than 180 days after submission by the agencies  
5 of the reports required under subsection (c), the  
6 Comptroller General shall submit to Congress a re-  
7 port on the progress by agencies in the implementa-  
8 tion of this Act, including any recommendation con-  
9 cerning legal or practical measures that could be  
10 pursued to eliminate or mitigate any remaining legal  
11 or practical challenges to the transition by agencies  
12 to issuance of permits under permitting by rule for  
13 any type of permit.

14 (3) SUPPLEMENTS TO THE REPORTS.—The  
15 Comptroller General may submit supplements to the  
16 report described in paragraph (1) or (2) with regard  
17 to a report submitted by the head of an agency after  
18 the Comptroller General submits the report required  
19 pursuant to paragraph (1) or (2).

20 (g) DEFINITIONS.—In this section:

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

24 (2) COMPLETED APPLICATION.—The term  
25 “completed application” means an application sub-

1       mitted under subsection (c) that contains certifi-  
2       cations that the applicant meets each requirement  
3       and substantive standard specified under subsection  
4       (c)(1)(A).

5           (3) DIRECTOR.—The term “Director” means  
6       the Director of the Office of Management and Budg-  
7       et.

8           (4) PERMIT.—The term “permit” has the  
9       meaning given the term “license” in section 551 of  
10      title 5, United States Code, and as further eluci-  
11      dated by the Director in the guidance issued under  
12      subsection (a).

13          (5) PERMITTING BY RULE.—The term “permit-  
14      ting by rule” means the application process that an  
15      agency establishes by rule for granting a certain  
16      type of permit described in subsection (b), as further  
17      elucidated by the Director in the guidance issued  
18      under subsection (a).

19          (6) SUBSTANTIVE STANDARD.—The term “sub-  
20      stantive standard” means all qualities, statuses, ac-  
21      tions, benchmarks, measurements, or other written  
22      descriptions that would qualify a party to perform  
23      the permitted action.

