

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

S. 4454

To provide for the establishment of an Operational Flexibility
Grazing Management Program on land managed by the
Bureau of Land Management, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Operational Flexibility
5 Grazing Management Program Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) BUREAU.—The term “Bureau” means the
9 Bureau of Land Management.

10 (2) FEDERAL LAND.—The term “Federal land”
11 means land managed by the Bureau.

1 (3) OPERATIONAL FLEXIBILITY.—The term
2 “operational flexibility”, with respect to grazing on
3 Federal land, means a change made to grazing man-
4 agement of an allotment that—

5 (A) modifies a grazing permit or lease to
6 allow a variance from the terms and conditions
7 of the applicable grazing permit or lease to ex-
8 ercise flexibility by making adjustments to live-
9 stock grazing use; or

10 (B) is based on emerging landscape condi-
11 tions resulting from changes in weather, forage
12 production, effects of wildfire or drought, or
13 other temporary circumstances that impact re-
14 source conditions.

15 (4) PROGRAM.—The term “program” means
16 the Operational Flexibility Grazing Management
17 Program authorized under section 3(a).

18 (5) SECRETARY.—The term “Secretary” means
19 the Secretary of the Interior.

20 **SEC. 3. OPERATIONAL FLEXIBILITY GRAZING MANAGE-**
21 **MENT PROGRAM.**

22 (a) IN GENERAL.—The Secretary may carry out a
23 grazing management program on Federal land, to be
24 known as the “Operational Flexibility Grazing Manage-
25 ment Program”, in accordance with applicable law (includ-

1 ing regulations) and the memorandum entitled “Bureau
2 of Land Management Instruction Memorandum 2018–
3 109” (as in effect on September 30, 2021) (or a substan-
4 tially similar successor memorandum), for the sole pur-
5 pose of providing to authorized grazing permittees and les-
6 sees, on request of the applicable authorized grazing per-
7 mittees and lessees, increased operational flexibility to
8 adapt to and improve the long-term ecological health of
9 the Federal land, in accordance with this section.

10 (b) FLEXIBLE GRAZING USE ALTERNATIVE FOR A
11 GRAZING PERMIT OR LEASE.—

12 (1) IN GENERAL.—At the request of an author-
13 ized grazing permittee or lessee, for purposes of re-
14 newing a grazing permit or lease of the applicable
15 authorized grazing permittee or lessee under the
16 program, pursuant to the National Environmental
17 Policy Act of 1969 (42 U.S.C. 4321 et seq.), the
18 Secretary shall develop and analyze at least 1 alter-
19 native to provide operational flexibility in livestock
20 grazing use to account for changing conditions.

21 (2) NEW OR RENEWED PERMIT TERMS AND
22 CONDITIONS.—

23 (A) PREFERRED ALTERNATIVE.—If the
24 Secretary determines that an alternative devel-

1 oped and analyzed under paragraph (1) is the
2 preferred alternative, the Secretary shall—

3 (i) incorporate the preferred alter-
4 native, including the applicable monitoring
5 plan, into the terms and conditions of the
6 applicable grazing permit or lease; and

7 (ii) specify how monitoring informa-
8 tion with respect to the preferred alter-
9 native should be used to inform manage-
10 ment adjustments under the program.

11 (B) ADJUSTMENTS.—Before implementing
12 any measure for the purposes of operational
13 flexibilities with respect to which a grazing use
14 authorized under the terms and conditions of a
15 permit or lease with respect to which a pre-
16 ferred alternative has been incorporated under
17 subparagraph (A)(i), the authorized grazing
18 permittee or lessee shall notify the Secretary in
19 writing of the proposed adjustment.

20 (C) APPLICABLE LAW.—The implementa-
21 tion of a preferred alternative incorporated
22 under subparagraph (A)(i) in a component of
23 the National Landscape Conservation System
24 shall be in accordance with the laws (including

1 regulations) applicable to the component of the
2 National Landscape Conservation System.

3 (c) INTERIM OPERATIONAL FLEXIBILITY.—

4 (1) IN GENERAL.—At the request of an author-
5 ized grazing permittee or lessee, the Secretary, using
6 new and existing data, may allow a temporary vari-
7 ance to the terms and conditions of a grazing permit
8 or lease to address significant changes in weather,
9 forage production, the effects of fire or drought, or
10 other temporary circumstances that impact resource
11 conditions, to facilitate the long-term ecological
12 health of the Federal land.

13 (2) VARIANCES.—In approving a request for in-
14 terim operational flexibility, the Secretary may au-
15 thorize a temporary variance to the terms and condi-
16 tions of the applicable grazing permit or lease to ad-
17 just the beginning date, the ending date, both the
18 beginning date and ending date, or water transpor-
19 tation, as applicable, as specified in the applicable
20 grazing permit or lease, subject to—

21 (A) the requirement that, unless otherwise
22 specified in the appropriate allotment manage-
23 ment plan or any other activity plan that is the
24 functional equivalent to the appropriate allot-
25 ment management plan under section

1 4120.2(a)(3) of title 43, Code of Federal Regu-
2 lations (or a successor regulation), the applica-
3 ble adjusted date of the season of use—

4 (i) occurs—

5 (I) not earlier than 21 days be-
6 fore the beginning date specified in
7 the applicable grazing permit or lease;

8 or

9 (II) not later than 21 days after
10 the ending date specified in the appli-
11 cable grazing permit or lease; and

12 (ii) would not result in forage removal
13 that exceeds the amount of active use spec-
14 ified in the applicable grazing permit or
15 lease;

16 (B) the requirement that the authorized
17 grazing permittee or lessee provides notice of
18 the adjustment to the Bureau not later than 7
19 business days before the date of adjustment;
20 and

21 (C) any other terms and conditions the
22 Secretary determines to be appropriate.

23 (3) MONITORING PLANS FOR INTERIM OPER-
24 ATIONAL FLEXIBILITIES.—

1 (A) IN GENERAL.—In accordance with ap-
2 plicable law (including regulations) and applica-
3 ble permit or lease terms and conditions, an au-
4 thorized grazing permittee or lessee using in-
5 terim operational flexibilities under this sub-
6 section shall develop and use a monitoring plan
7 determined to be acceptable to the Secretary as
8 a reasonable way to track the effects of the in-
9 terim operational flexibilities under the program
10 on the long-term ecological health of the allot-
11 ment on which the interim operational flexibili-
12 ties are used.

13 (B) USE OF DATA; THIRD-PARTY DATA.—
14 A monitoring plan developed under subpara-
15 graph (A) shall include provisions—

16 (i) allowing the use by the authorized
17 grazing permittee or lessee of any data
18 generated under the terms and conditions
19 of the applicable permit or lease; and

20 (ii) for adjusting any components of
21 the monitoring plan, including acceptance
22 of data from third parties as part of the
23 monitoring process.

24 (C) MONITORING DATA.—

1 (i) IN GENERAL.—The Secretary shall
2 accept for consideration under the moni-
3 toring process established in accordance
4 with a monitoring plan developed under
5 this paragraph any monitoring data that—

6 (I) are collected using Bureau-
7 approved methods and protocols; and

8 (II) meet Bureau data quality re-
9 quirements.

10 (ii) LIMITATION.—Any monitoring
11 data not collected using Bureau-approved
12 methods and protocols or determined by
13 the Secretary not to accurately reflect on-
14 the-ground conditions may be subject to
15 limited use under the monitoring process
16 established in a monitoring plan developed
17 under this paragraph.

18 (4) REPORTING.—

19 (A) IN GENERAL.—An authorized grazing
20 permittee or lessee implementing interim oper-
21 ational flexibility under this subsection shall in-
22 clude with the annual monitoring data sub-
23 mitted under subsection (d)(1)(A) a description
24 of—

1 (i) any interim operational flexibilities
2 or permit or lease variances implemented
3 by the authorized grazing permittee or les-
4 see during the previous year in response to
5 resource conditions; and

6 (ii) the effects of those implemented
7 interim operational flexibilities on land-
8 scape health.

9 (B) REQUIREMENT.—The Secretary
10 shall—

11 (i) assess the impact of the interim
12 operational flexibilities implemented under
13 this subsection; and

14 (ii) terminate those interim oper-
15 ational flexibilities if the Secretary deter-
16 mines that applicable land health stand-
17 ards are not met.

18 (d) REPORTING REQUIREMENTS; REVIEW.—

19 (1) REPORTING REQUIREMENTS.—

20 (A) ANNUAL REPORTING.—Not less fre-
21 quently than annually, each authorized grazing
22 permittee or lessee participating in the program
23 shall submit to the applicable Bureau program
24 staff monitoring data relating to any oper-
25 ational flexibilities or permit or lease variances

1 implemented by the authorized grazing per-
2 mittee or lessee during the previous year.

3 (B) REPORTS TO SECRETARY.—

4 (i) IN GENERAL.—Not later than 3
5 years after the date of enactment of this
6 Act and every 3 years thereafter, program
7 staff shall submit to the Secretary a report
8 on the program.

9 (ii) FAILURE TO SUBMIT.—The fail-
10 ure of program staff to submit a report re-
11 quired under clause (i) shall not affect the
12 ability of authorized grazing permittees or
13 lessees to participate in the program.

14 (C) REPORTS TO CONGRESS.—Not later
15 than 4 years after the date of enactment of this
16 Act and every 3 years thereafter, the Secretary
17 shall submit to the appropriate committees of
18 Congress a report that describes—

19 (i) the use of operational flexibilities
20 under the program; and

21 (ii) any associated information relat-
22 ing to ecological outcomes and land health
23 standards under the program.

24 (2) REVIEW.—

1 (A) IN GENERAL.—Subject to subpara-
2 graph (B), not earlier than the date that is 8
3 years after the date of enactment of this Act,
4 the Secretary shall conduct a review of the use
5 of operational flexibilities under the program,
6 including a review of ecological outcomes and
7 other relevant outcomes under the program.

8 (B) NO EFFECT ON GRAZING AUTHORIZA-
9 TIONS OR USE.—The review of the program
10 under subparagraph (A) shall not affect the ex-
11 istence, renewal, or termination of a grazing
12 permit or lease entered into under the program.

13 (e) NO EFFECT ON GRAZING PREFERENCE OR AC-
14 TIVITIES.—Nothing in this Act—

15 (1) affects grazing preferences or authorizations
16 provided under the Act of June 28, 1934 (commonly
17 known as the “Taylor Grazing Act”; 43 U.S.C. 315
18 et seq.), the Federal Land Policy and Management
19 Act of 1976 (43 U.S.C. 1701 et seq.), or any other
20 applicable Federal law;

21 (2) requires grazing permittees or lessees to
22 pursue operational flexibilities during the renewal,
23 extension, or authorization of a new grazing permit
24 or lease;

1 (3) requires the Secretary to consider modifying
2 or terminating any grazing activity, authorization, or
3 use; or

4 (4) precludes the Secretary from modifying or
5 terminating an existing grazing permit or lease in
6 accordance with applicable law (including regula-
7 tions).