

Calendar No. 627

118TH CONGRESS
2D SESSION**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.

IN THE SENATE OF THE UNITED STATES

JUNE 4, 2024

Mr. BARRASSO (for himself and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

NOVEMBER 21, 2024

Reported by Mr. MANCHIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

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.

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 “Operational Flexibility
5 Grazing Management Program Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

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

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

7 (3) OPERATIONAL FLEXIBILITY.—The term
8 “operational flexibility”, with respect to grazing on
9 Federal land, means changes made to grazing man-
10 agement of an allotment or allotment area that—

11 (A) differ from—

12 (i) the terms and conditions of the ap-
13 plicable grazing permit or lease; or

14 (ii) the administration of grazing on
15 the applicable allotment or allotment area
16 during the preceding year; or

17 (B) are based on emerging landscape con-
18 ditions or producer needs.

19 (4) PROGRAM.—The term “program” means
20 the Operational Flexibility Grazing Management
21 Program authorized under section 3(a).

22 (5) SECRETARY.—The term “Secretary” means
23 the Secretary of the Interior.

1 **SEC. 3. OPERATIONAL FLEXIBILITY GRAZING MANAGE-**
 2 **MENT PROGRAM.**

3 (a) **IN GENERAL.**—The Secretary may carry out a
 4 grazing management program on Federal land, to be
 5 known as the “Operational Flexibility Grazing Manage-
 6 ment Program”, in accordance with applicable law (includ-
 7 ing regulations) and the memorandum entitled “Bureau
 8 of Land Management Instruction Memorandum 2018–
 9 109” (as in effect on September 30, 2021), to provide to
 10 authorized grazing permittees and lessees increased oper-
 11 ational flexibility to improve the long-term ecological
 12 health of the Federal land.

13 (b) **FLEXIBLE GRAZING USE ALTERNATIVE FOR A**
 14 **GRAZING PERMIT OR LEASE.**—

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

23 (2) **CONSULTATION.**—The Secretary shall de-
 24 velop alternatives under paragraph (1) in consulta-
 25 tion with—

- 1 (A) the authorized grazing permittee or
- 2 lessee;
- 3 (B) affected Federal and State agencies;
- 4 (C) applicable Indian Tribes; and
- 5 (D) other landowners, permittees, or les-
- 6 sees in the affected allotment.

7 (e) IMPLEMENTATION OF INTERIM OPERATIONAL
 8 FLEXIBILITIES.—At the request of an authorized grazing
 9 permittee or lessee, the Secretary shall, using new and ex-
 10 isting data, allow a variance to the terms and conditions
 11 of the existing applicable grazing permit or lease for a pe-
 12 riod not to exceed the remaining term of the grazing per-
 13 mit or lease to address significant changes in weather, for-
 14 age production, effects of fire, drought, market conditions,
 15 or other temporary conditions—

16 (1) by adjusting the season of use, the begin-
 17 ning date of the period of use, the ending date of
 18 the period of use, or both the beginning date and
 19 ending date, the stocking level, water placement and
 20 transportation, and other necessary operational flexi-
 21 bilities, as applicable, under the grazing permit or
 22 lease, subject to the requirements that—

23 (A) unless otherwise specified in the appro-
 24 priate allotment management plan or any other
 25 activity plan that is the functional equivalent to

the appropriate allotment management plan under section 4120.2(a)(3) of title 43, Code of Federal Regulations (or a successor regulation); the applicable adjusted date of the season of use occurs—

(i) not earlier than 14 days before the beginning date specified in the applicable grazing permit or lease; and

(ii) not later than 14 days after the ending date specified in the applicable grazing permit or lease; and

(B) the authorized grazing permittee or lessee provides notice of the adjustment to the Bureau not later than 2 business days before the date of adjustment; and

(2) by authorizing the immediate implementation and adoption of operational flexibilities in cases in which operational flexibilities are necessary to achieve ecological health, avoid immediate ecological degradation of the allotment or allotment area, or respond to an emerging management need.

(d) MONITORING PLANS.—To monitor and evaluate outcomes from the use of operational flexibilities under the program, the Secretary, in coordination with grazing permittees and lessees, shall use—

(1) cooperative rangeland monitoring plans that
 comply with any applicable monitoring requirements
 under the Federal Land Policy and Management Act
 of 1976 (43 U.S.C. 1701 et seq.) and any applicable
 Federal grazing regulations; and

(2) rangeland health objectives.

(e) REPORTING REQUIREMENTS; REVIEW.—

(1) REPORTING REQUIREMENTS.—

(A) ANNUAL REPORTS.—

(i) IN GENERAL.—Annually, program
 staff shall submit to the Secretary a report
 on the program.

(ii) FAILURE TO SUBMIT.—The fail-
 ure of program staff to submit an annual
 report required under clause (i) shall not
 affect the ability of authorized grazing per-
 mittees or lessees to participate in the pro-
 gram.

(B) REPORTS TO CONGRESS.—Not later
 than 3 years after the date of enactment of this
 Act and every 3 years thereafter, the Secretary
 shall submit to the appropriate committees of
 Congress a report that describes the use of
 operational flexibilities under the program and
 any associated information relating to ecological

1 outcomes and land health standards under the
 2 program.

3 ~~(2) REVIEW.—~~

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

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

16 ~~(f) NO EFFECT ON GRAZING PREFERENCE OR AC-~~
 17 ~~TIVITIES.—~~Nothing in this Act—

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

24 ~~(2) requires grazing permittees or lessees to~~
 25 ~~pursue operational flexibilities during the renewal,~~

1 extension, or authorization of a new grazing permit
2 or lease;

3 ~~(3) requires the Secretary to consider modifying~~
4 ~~or terminating any grazing activity, authorization, or~~
5 ~~use; or~~

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

10 ~~(g) NO TERMINATION OF GRAZING PERMIT OR~~
11 ~~LEASE FOR USE OF OPERATIONAL FLEXIBILITIES.—The~~
12 ~~Secretary may not terminate or fail to renew an applicable~~
13 ~~grazing permit or lease for a violation of the applicable~~
14 ~~grazing permit or lease that is due to the use of an oper-~~
15 ~~ational flexibility under the program.~~

16 **SECTION 1. SHORT TITLE.**

17 *This Act may be cited as the “Operational Flexibility*
18 *Grazing Management Program Act”.*

19 **SEC. 2. DEFINITIONS.**

20 *In this Act:*

21 *(1) BUREAU.—The term “Bureau” means the*
22 *Bureau of Land Management.*

23 *(2) FEDERAL LAND.—The term “Federal land”*
24 *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 exer-*
 8 *cise 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 the*
 16 *Operational Flexibility Grazing Management Pro-*
 17 *gram authorized under section 3(a).*

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

20 **SEC. 3. OPERATIONAL FLEXIBILITY GRAZING MANAGEMENT**
 21 **PROGRAM.**

22 (a) *IN GENERAL.*—*The Secretary may carry out a*
 23 *grazing management program on Federal land, to be known*
 24 *as the “Operational Flexibility Grazing Management Pro-*
 25 *gram”, in accordance with applicable law (including regu-*

1 lations) and the memorandum entitled “Bureau of Land
 2 Management Instruction Memorandum 2018–109” (as in
 3 effect on September 30, 2021) (or a substantially similar
 4 successor memorandum), for the sole purpose of providing
 5 to authorized grazing permittees and lessees, on request of
 6 the applicable authorized grazing permittees and lessees, in-
 7 creased operational flexibility to adapt to and improve the
 8 long-term ecological health of the Federal land, in accord-
 9 ance 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 pro-
 16 gram, pursuant to the National Environmental Pol-
 17 icy Act of 1969 (42 U.S.C. 4321 et seq.), the Secretary
 18 shall develop and analyze at least 1 alternative to
 19 provide operational flexibility in livestock grazing use
 20 to account for changing conditions.

21 (2) *NEW OR RENEWED PERMIT TERMS AND CON-*
 22 *DITIONS.*—

23 (A) *PREFERRED ALTERNATIVE.*—If the Sec-
 24 retary determines that an alternative developed

1 *and analyzed under paragraph (1) is the pre-*
2 *ferred 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 alternative*
9 *should be used to inform management ad-*
10 *justments 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 preferred*
16 *alternative has been incorporated under subpara-*
17 *graph (A)(i), the authorized grazing permittee or*
18 *lessee shall notify the Secretary in writing of the*
19 *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, for-*
 9 *age production, the effects of fire or drought, or other*
 10 *temporary circumstances that impact resource condi-*
 11 *tions, to facilitate the long-term ecological health of*
 12 *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 be-*
 18 *ginning 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 Regula-
 2 tions (or a successor regulation), the applicable
 3 adjusted date of the season of use—

4 (i) occurs—

5 (I) not earlier than 21 days before
 6 the beginning date specified in the ap-
 7 plicable grazing permit or lease; or

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

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

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

19 (C) any other terms and conditions the Sec-
 20 retary determines to be appropriate.

21 (3) *MONITORING PLANS FOR INTERIM OPER-*
 22 *ATIONAL FLEXIBILITIES.*—

23 (A) *IN GENERAL.*—In accordance with ap-
 24 plicable law (including regulations) and applica-
 25 ble permit or lease terms and conditions, an au-

1 *thorized grazing permittee or lessee using in-*
 2 *terim operational flexibilities under this sub-*
 3 *section shall develop and use a monitoring plan*
 4 *determined to be acceptable to the Secretary as*
 5 *a reasonable way to track the effects of the in-*
 6 *terim operational flexibilities under the program*
 7 *on the long-term ecological health of the allot-*
 8 *ment on which the interim operational flexibili-*
 9 *ties are used.*

10 *(B) USE OF DATA; THIRD-PARTY DATA.—A*
 11 *monitoring plan developed under subparagraph*
 12 *(A) shall include provisions—*

13 *(i) allowing the use by the authorized*
 14 *grazing permittee or lessee of any data gen-*
 15 *erated under the terms and conditions of the*
 16 *applicable permit or lease; and*

17 *(ii) for adjusting any components of*
 18 *the monitoring plan, including acceptance*
 19 *of data from third parties as part of the*
 20 *monitoring process.*

21 *(C) MONITORING DATA.—*

22 *(i) IN GENERAL.—The Secretary shall*
 23 *accept for consideration under the moni-*
 24 *toring process established in accordance*

1 *with a monitoring plan developed under*
 2 *this paragraph any monitoring data that—*

3 *(I) are collected using Bureau-ap-*
 4 *proved methods and protocols; and*

5 *(II) meet Bureau data quality re-*
 6 *quirements.*

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

15 (4) *REPORTING.—*

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

22 (i) *any interim operational flexibilities*
 23 *or permit or lease variances implemented*
 24 *by the authorized grazing permittee or lessee*

1 *during the previous year in response to re-*
 2 *source conditions; and*

3 (ii) *the effects of those implemented in-*
 4 *terim operational flexibilities on landscape*
 5 *health.*

6 (B) *REQUIREMENT.—The Secretary shall—*

7 (i) *assess the impact of the interim*
 8 *operational flexibilities implemented under*
 9 *this subsection; and*

10 (ii) *terminate those interim oper-*
 11 *ational flexibilities if the Secretary deter-*
 12 *mines that applicable land health standards*
 13 *are not met.*

14 (d) *REPORTING REQUIREMENTS; REVIEW.—*

15 (1) *REPORTING REQUIREMENTS.—*

16 (A) *ANNUAL REPORTING.—Not less fre-*
 17 *quently than annually, each authorized grazing*
 18 *permittee or lessee participating in the program*
 19 *shall submit to the applicable Bureau program*
 20 *staff monitoring data relating to any operational*
 21 *flexibilities or permit or lease variances imple-*
 22 *mented by the authorized grazing permittee or*
 23 *lessee during the previous year.*

24 (B) *REPORTS TO SECRETARY.—*

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

6 (ii) *FAILURE TO SUBMIT.*—The failure
 7 of program staff to submit a report required
 8 under clause (i) shall not affect the ability
 9 of authorized grazing permittees or lessees to
 10 participate in the program.

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

16 (i) the use of operational flexibilities
 17 under the program; and

18 (ii) any associated information relat-
 19 ing to ecological outcomes and land health
 20 standards under the program.

21 (2) *REVIEW.*—

22 (A) *IN GENERAL.*—Subject to subparagraph
 23 (B), not earlier than the date that is 8 years
 24 after the date of enactment of this Act, the Sec-
 25 retary shall conduct a review of the use of oper-

1 *ational flexibilities under the program, including*
 2 *a review of ecological outcomes and other rel-*
 3 *evant outcomes under the program.*

4 (B) NO EFFECT ON GRAZING AUTHORIZA-
 5 TIONS OR USE.—*The review of the program*
 6 *under subparagraph (A) shall not affect the ex-*
 7 *istence, renewal, or termination of a grazing per-*
 8 *mit or lease entered into under the program.*

9 (e) NO EFFECT ON GRAZING PREFERENCE OR ACTIVI-
 10 TIES.—*Nothing in this Act—*

11 (1) *affects grazing preferences or authorizations*
 12 *provided under the Act of June 28, 1934 (commonly*
 13 *known as the “Taylor Grazing Act”; 43 U.S.C. 315*
 14 *et seq.), the Federal Land Policy and Management*
 15 *Act of 1976 (43 U.S.C. 1701 et seq.), or any other ap-*
 16 *plicable Federal law;*

17 (2) *requires grazing permittees or lessees to pur-*
 18 *sue operational flexibilities during the renewal, exten-*
 19 *sion, or authorization of a new grazing permit or*
 20 *lease;*

21 (3) *requires the Secretary to consider modifying*
 22 *or terminating any grazing activity, authorization,*
 23 *or use; or*

24 (4) *precludes the Secretary from modifying or*
 25 *terminating an existing grazing permit or lease in*

- 1 *accordance with applicable law (including regula-*
- 2 *tions).*

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