To implement updated pay and personnel policies in order to improve the recruitment and retention of qualified Federal wildland firefighters and to reduce the Federal Government’s reliance on the more costly services of non-Federal wildfire resources.

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2012

Ms. DeGETTE introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To implement updated pay and personnel policies in order to improve the recruitment and retention of qualified Federal wildland firefighters and to reduce the Federal Government’s reliance on the more costly services of non-Federal wildfire resources.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

This Act may be cited as the “Wildland Firefighters Health Protection Act”.

SEC. 2. DEFINITIONS.

For the purposes of this Act—
(1) the term “wildland firefighter” means an employee of a Federal land management agency, the duties of whose position are primarily to perform work directly related to the prevention, control, suppression, and management of wildfires, including—

(A) an employee of a Federal land management agency who is assigned to support wildland fire suppression activities; and

(B) an employee who is transferred to a supervisory or administrative position from a position of wildland firefighter (as defined by the preceding provisions of this paragraph);

(2) the term “Federal land management agency” means—

(A) within the Department of the Interior, the Bureau of Land Management, the Bureau of Indian Affairs, the National Park Service, and the Fish and Wildlife Service; and

(B) within the Department of Agriculture, the Forest Service; and

(3) the term “employee” has the meaning given such term by section 2105 of title 5, United States Code.

SEC. 3. CLASSIFICATION OF WILDLAND FIREFIGHTERS.

(a) REQUIREMENTS.—
(1) **IN GENERAL.**—Within 30 days after the date of the enactment of this Act, the Office of Personnel Management, in cooperation with the Federal land management agencies, shall commence development of a separate and distinct wildland firefighter occupational series that will more accurately reflect the variety of duties performed by wildland firefighters.

(2) **DESIGNATION.**—The official title assigned to any occupational series established pursuant to paragraph (1) shall include the designation of “Wildland Firefighter”.

(3) **POSITIONS DESCRIBED.**—Paragraph (1) applies with respect to any class or other category of positions that consists primarily or exclusively of forestry technician positions, range technician positions, or any other positions the duties and responsibilities of which include—

(A) significant wildfire preparedness and suppression activities; or

(B) activities necessary to meet any other emergency incident to which assigned.

(4) **CONSULTATION.**—Congress encourages the Office of Personnel Management to consult with recognized employee organizations, employee associa-
tions, and any other groups that represent Federal wildland firefighters in carrying out this subsection.

(b) HAZARDOUS DUTY DIFFERENTIAL NOT AFFECTED.—Section 5545(d)(1) of title 5, United States Code, is amended by striking all after “except” and inserting an em dash and the following:

“(A) an employee in an occupational series covering positions for which the primary duties are wildland firefighting, as determined by the Office; and

“(B) in such other circumstances as the Office may by regulation prescribe; and”.

(c) EMPLOYEES CURRENTLY IN 401 SERIES.—Any individual who, as of the date of the enactment of this Act, holds a position of wildland firefighter shall have the option of either remaining in the 401 series (as in effect on such date under chapter 51 of title 5, United States Code) or being included in the new wildland firefighter series, as established pursuant to subsection (a).

SEC. 4. PAY AND BENEFITS.

(a) IN GENERAL.—In the case of a wildland firefighter, for full-time, part-time, and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours per week or 8 hours per day shall be considered overtime work, inclusive of all time the fire-
fighter is away from their official duty station assigned
to an emergency incident, in support of an emergency inci-
dent, or pre-positioned for emergency response, and shall
be compensable as work time in accordance with section
5542(a) of title 5, United States Code, as amended by
subsection (b)(1).

(b) Requirements.—

(1) Amendment to title 5.—Section 5542(a) of title 5, United States Code, is amended by adding
at the end (as a flush left sentence) the following:
“Notwithstanding paragraphs (1) and (2), for a wildland
firefighter assigned to an emergency incident, assigned in
support of an emergency incident, or pre-positioned for
emergency response, the overtime hourly rate of pay is an
amount equal to one and one-half times the hourly rate
of the basic pay of the employee, and that entire amount
is premium pay.”.

(2) Fair Labor Standards Act of 1938.—For
the purpose of applying the provisions of the Fair
seq.) with respect to wildland firefighters, no viola-
tion referred to in such provisions shall be consid-
ered to have occurred if the requirements described
in paragraph (1) are met.
(c) Portal-to-Portal Compensation Pilot Program.—

(1) Funding.—There is authorized to be appropriated $25,000,000 to initiate a portal-to-portal pilot program under this subsection, commencing with the 2013 wildfire season. Any sums required in addition to amounts appropriated pursuant to the preceding sentence may be secured from the existing wildfire suppression budget for the fiscal year in which the season occurs.

(2) Duration.—The pilot program shall be carried out by the Department of the Interior and the Department of Agriculture for a period not to exceed 3 calendar years beginning as of the start of the 2013 wildfire season.

(3) Report.—No later than 90 days after the completion of the pilot program, the Secretary of the Interior and the Secretary of Agriculture shall submit to Congress a joint report on the effectiveness of the pilot program. Such report shall address the effect of the program with respect to—

(A) recruitment and retention of wildland firefighters; and

(B) any cost savings.
(4) ADDITIONAL REQUIREMENTS.—To ensure adequate funding and to realize maximum wildfire suppression savings, the Secretary of the Interior and the Secretary of Agriculture shall take appropriate measures to ensure that total funding for non-Federal fire suppression personnel and other resources, by their respective Departments—

(A) for the first year of the pilot program, do not exceed 90 percent of their combined non-Federal fire suppression costs for the 2011 and 2012 wildfire seasons;

(B) for the second year of the pilot program, do not exceed 75 percent of their combined non-Federal fire suppression costs for the 2011 and 2012 wildfire seasons; and

(C) for the third year of the pilot program, do not exceed 65 percent of their combined non-Federal fire suppression costs for the 2011 and 2012 wildfire seasons.

(d) HAZARDOUS DUTY DIFFERENTIAL TO BE TREATED AS PART OF A WILDLAND FIREFIGHTER’S BASE PAY FOR RETIREMENT PURPOSES.—

(1) IN GENERAL.—Section 8331(3) of title 5, United States Code is amended—
(A) in subparagraph (G), by striking “and” at the end;

(B) in subparagraph (H), by inserting “and” at the end; and

(C) by adding after subparagraph (H) the following:

“(I) with respect to a wildland firefighter (as defined by section 2 of the Wildland Firefighters Health Protection Act), any pay differential received under section 5545(d);”.

(2) CONFORMING AMENDMENT.—Such section 8331(3) is further amended, in the matter following subparagraph (I) (as added by paragraph (1)(C)), by striking “subparagraphs (B) through (H) of this paragraph” and inserting “subparagraphs (B) through (I),”.

(e) HAZARDOUS DUTY DIFFERENTIAL.—

(1) IN GENERAL.—In the administration of section 5545(d) of title 5, United States Code, the Office of Personnel Management shall take such measures as may be necessary to ensure that, under the schedule or schedules of pay differentials for duty involving unusual physical hardship or hazard, a pay differential of 25 percent shall be payable to an indi-
individual while serving as a member of a wildland firefighting crew.

(2) DEFINITION.—For purposes of this subsection, the term “wildland firefighting crew” includes ground (hand crew, hotshot, engine, and other fire apparatus personnel) and airborne (smoke jumper or helitack) firefighting personnel on the fire line of any wildfire or prescribed fuel treatment burn or fire, as further defined in regulations of the Office of Personnel Management.

(f) BENEFITS FOR SEASONAL WILDLAND FIREFIGHTERS.—

(1) PROVISIONS RELATING TO LIFE INSURANCE.—Section 8716(b) of title 5, United States Code, is amended—

(A) in paragraph (2), by striking “or” at the end;

(B) in paragraph (3), by striking the period at the end and inserting “; or”; and

(C) by adding after paragraph (3) the following:

“(4) a wildland firefighter within the meaning of section 2 of the Wildland Firefighters Health Protection Act.”.
(2) PROVISIONS RELATING TO HEALTH BENEFITS.—Section 8913(b) of title 5, United States Code, is amended—

(A) in paragraph (3), by striking “or” at the end;

(B) in paragraph (4), by striking the period at the end and inserting “; or”; and

(C) by adding after paragraph (4) the following:

“(5) a wildland firefighter within the meaning of section 2 of the Wildland Firefighters Health Protection Act.”.

(g) BUY BACK OF CIVILIAN TIME AFTER 1989.—

(1) IN GENERAL.—Any individual who is subject to the Federal Employees’ Retirement System as a firefighter (within the meaning of section 8401 of title 5, United States Code) on the date of the enactment of this Act shall be entitled to have any qualifying firefighter service treated as creditable service under section 8411 of such title.

(2) QUALIFYING FIREFIGHTER SERVICE.—For purposes of this subsection, the term “qualifying firefighter service” means, in connection with an individual, any service—
(A) which was performed by such individual, as a wildland firefighter, after 1989 and before the date of the enactment of this Act; and

(B) for which such individual was not allowed to receive retirement credit by reason of section 8347(g) or 8402(c) of such title 5.

(3) DEPOSIT REQUIREMENT.—Credit for a period of service may not be given under this subsection unless the individual involved makes a deposit, in such manner as the Office of Personnel Management may by regulation require, equal to the employee contributions that would have been required (in the case of a firefighter) for such period under section 8334(c) or 8422(a) of such title 5, with interest.

(4) CERTIFICATION.—The Office of Personnel Management shall accept the certification of the Secretary of the Interior or the Secretary of Agriculture, as the case may be, concerning whether an individual performed qualifying firefighter service and the length of the period of such service the individual performed.