To implement reforms to the Federal land management agency fire programs in order to address the complexities of 21st century wildfires in a more cost-effective and efficient manner.

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2013

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

A BILL

To implement reforms to the Federal land management agency fire programs in order to address the complexities of 21st century wildfires in a more cost-effective and efficient manner.

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 “Wildland Firefighters
5 Protection Act”.
6 SEC. 2. DEFINITIONS.
7 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 AF-
FECTED.—Section 5545(d)(1) of title 5, United States
Code, is amended by striking all after “except” and insert-
ing 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 se-
ries, as established pursuant to subsection (a).

SEC. 4. PAY AND BENEFITS.

(a) PORTAL-TO-PORTAL COMPENSATION PILOT PRO-
GRAM.—

(1) 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 ap-
proved in excess of 40 hours per week or 8 hours per day shall be considered overtime work, inclusive of all time the firefighter is away from their official duty station assigned to an emergency incident, in support of an emergency incident (including wildfires, hurricanes, and other natural disasters to which employees are assigned) in support of an emergency incident, 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 paragraph (2)(A). The provisions of this subsection and the amendments made by this subsection comprise the portal-to-portal compensation pilot program.

(2) REQUIREMENTS.—

(A) 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), and only for the duration of the portal-to-portal compensation program under section 4 of the Wildland Firefighters Protection Act, for a wildland firefighter assigned to an emergency incident, assigned in support of an emergency incident, or pre-positioned for emergency response, the overtime hour-
ly 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.”.

(B) FAIR LABOR STANDARDS ACT OF
1938.—For the purpose of applying the provi-
sions of the Fair Labor Standards Act of 1938
(29 U.S.C. 201 and following) with respect to
wildland firefighters, no violation referred to in
such provisions shall be considered to have oc-
curred if the requirements described in the
amendment made by subparagraph (A) are met.

(C) DURATION AND SCOPE OF PILOT PRO-
GRAM.—The pilot program shall be carried out
by the Department of the Interior and the De-
partment of Agriculture—

(i) for a period not to exceed 3 cal-
endar years beginning as of the start of
the 2014 wildfire season; and

(ii) with respect to wildland fire-
fighters holding positions within such geo-
graphic areas as the Secretary of Agri-
culture shall, in consultation with the Sec-
retary of the Interior, determine.

(D) FUNDING.—Notwithstanding any
other provision of law, there shall be made
available from the FLAME Wildfire Suppres-
sion Reserve Funds, established by section
502(b) of the FLAME Act of 2009 (43 U.S.C.
1748a(b)), an amount—

(i) sufficient to carry out the portal-
to-portal compensation pilot program; but

(ii) only to the extent that—

(I) in the case of the 2014 wild-
fire season and any subsequent wild-
fire season during which the pilot pro-
gram is in effect, such amount ex-
ceds

(II) the average corresponding
expenses which were paid, with re-
spect to wildland firefighters holding
positions within the geographic area
or areas covered by the program (as
specified under subparagraph (C)(ii))
for the 2012 and 2013 wildfire sea-
sons.

(E) REPORT.—No later than 90 days after
the completion of the pilot program, the Sec-
retary of the Interior and the Secretary of Agri-
culture 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—

(i) recruitment and retention of wildland firefighters; and

(ii) any cost savings.

(F) EXEMPTION.—Employees compensated under the pilot program shall, for the period of such program, be exempt from any limitation on premium pay under section 5547 of title 5, United States Code.

(b) 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 Protection Act), any pay differential received under section 5545(d);”.

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(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 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.

(d) 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.