

Calendar No. 401

117TH CONGRESS
2^D SESSION

S. 138

[Report No. 117–119]

To waive certain pay limitations for Department of Agriculture and Department of the Interior employees engaged in emergency wildland fire suppression activities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2021

Mrs. FEINSTEIN (for herself, Mr. PADILLA, Mr. DAINES, Ms. ROSEN, Mr. WYDEN, and Mr. LUJÁN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

JUNE 9, 2022

Reported by Mr. PETERS, with an amendment

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

A BILL

To waive certain pay limitations for Department of Agriculture and Department of the Interior employees engaged in emergency wildland fire suppression activities, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Wildland Firefighter
3 Fair Pay Act”.

4 **SEC. 2. WAIVER OF PREMIUM PAY LIMITATIONS FOR DE-**
5 **PARTMENT OF AGRICULTURE AND DEPART-**
6 **MENT OF THE INTERIOR EMPLOYEES EN-**
7 **GAGED IN EMERGENCY WILDLAND FIRE SUP-**
8 **PRESSION ACTIVITIES.**

9 (a) **DEFINITIONS.**—In this section:

10 (1) **COVERED EMPLOYEE.**—The term “covered
11 employee” means an employee of the Department of
12 Agriculture or the Department of the Interior.

13 (2) **COVERED SERVICES.**—The term “covered
14 services” means services performed by a covered em-
15 ployee that are determined by the Secretary con-
16 cerned to be primarily relating to emergency
17 wildland fire suppression activities.

18 (3) **PREMIUM PAY.**—The term “premium pay”
19 means the premium pay paid under the provisions of
20 law described in section 5547(a) of title 5, United
21 States Code.

22 (4) **SECRETARY CONCERNED.**—The term “Sec-
23 retary concerned” means—

24 (A) the Secretary of Agriculture, with re-
25 spect to an employee of the Department of Ag-
26 riculture; and

1 (B) the Secretary of the Interior, with re-
2 spect to an employee of the Department of the
3 Interior.

4 (b) WAIVER OF PREMIUM PAY PERIOD LIMITA-
5 TION.—Any premium pay for covered services shall be dis-
6 regarded in calculating the aggregate of the basic pay and
7 premium pay for the applicable covered employee for pur-
8 poses of a pay period limitation under section 5547(a) of
9 title 5, United States Code, or under any other provision
10 of law.

11 (c) WAIVER OF ANNUAL PREMIUM PAY LIMITA-
12 TION.—Any premium pay for covered services shall be dis-
13 regarded in calculating any annual limitation on the
14 amount of overtime pay payable in a calendar year or fis-
15 cal year under section 5547(b) of title 5, United States
16 Code.

17 (d) PAY LIMITATION.—A covered employee may not
18 be paid premium pay if, or to the extent that, the aggre-
19 gate amount of the basic pay and premium pay (including
20 premium pay for covered services) of the covered employee
21 for a calendar year would exceed the rate of basic pay pay-
22 able for a position at level II of the Executive Schedule
23 under section 5313 of title 5, United States Code, as in
24 effect at the end of that calendar year.

1 (e) ~~TREATMENT OF ADDITIONAL PREMIUM PAY.—~~

2 If the application of this section results in the payment
3 of additional premium pay to a covered employee of a type
4 that is normally creditable as basic pay for retirement or
5 any other purpose, that additional premium pay shall not
6 be—

7 (1) considered to be basic pay of the covered
8 employee for any purpose; or

9 (2) used in computing a lump-sum payment to
10 the covered employee for accumulated and accrued
11 annual leave under section 5551 or 5552 of title 5,
12 United States Code.

13 (f) ~~OVERTIME RATES.—~~Section 5542(a)(5) of title 5,
14 United States Code, is amended by striking “the United
15 States Forest Service in”.

16 (g) ~~EFFECTIVE DATE.—~~This section and the amend-
17 ment made by this section shall take effect as if enacted
18 on January 1, 2020.

19 **SECTION 1. SHORT TITLE.**

20 *This Act may be cited as the “Wildland Firefighter*
21 *Fair Pay Act”.*

1 **SEC. 2. WAIVER OF PREMIUM PAY LIMITATIONS FOR DE-**
 2 **PARTMENT OF AGRICULTURE, DEPARTMENT**
 3 **OF THE INTERIOR, AND NATIONAL WEATHER**
 4 **SERVICE EMPLOYEES ENGAGED IN EMER-**
 5 **GENCY WILDLAND FIRE SUPPRESSION AC-**
 6 **TIVITIES.**

7 *(a) DEFINITIONS.—In this section:*

8 *(1) BASIC PAY.—The term “basic pay” includes*
 9 *any applicable locality-based comparability payment*
 10 *under section 5304 of title 5, United States Code, any*
 11 *applicable special rate supplement under section 5305*
 12 *of that title, and any equivalent payment under a*
 13 *similar provision of law.*

14 *(2) COVERED EMPLOYEE.—The term “covered*
 15 *employee” means an employee of the Department of*
 16 *Agriculture, the Department of the Interior, or the*
 17 *National Weather Service.*

18 *(3) COVERED SERVICES.—The term “covered*
 19 *services” means services performed by a covered em-*
 20 *ployee—*

21 *(A) serving as a wildland firefighter or a*
 22 *fire management response official, including a*
 23 *regional fire director, a deputy regional fire di-*
 24 *rector, an agency official who directly oversees*
 25 *fire operations, and a fire management officer;*

1 (B) serving as an incident meteorologist ac-
 2 companying a wildland firefighter crew; or

3 (C) serving on an incident management
 4 team, at the National Interagency Fire Center,
 5 at a Geographic Area Coordinating Center, or at
 6 an operations center.

7 (4) *PREMIUM PAY.*—The term “premium pay”
 8 means the premium pay paid under the provisions of
 9 law described in section 5547(a) of title 5, United
 10 States Code.

11 (5) *RELEVANT COMMITTEES.*—The term “rel-
 12 evant committees” means—

13 (A) the Committee on Homeland Security
 14 and Governmental Affairs of the Senate;

15 (B) the Committee on Oversight and Reform
 16 of the House of Representatives;

17 (C) the Committee on Appropriations of the
 18 Senate; and

19 (D) the Committee on Appropriations of the
 20 House of Representatives.

21 (6) *SECRETARY CONCERNED.*—The term “Sec-
 22 retary concerned” means—

23 (A) the Secretary of Agriculture, with re-
 24 spect to an employee of the Department of Agri-
 25 culture;

1 (B) the Secretary of the Interior, with re-
 2 spect to an employee of the Department of the
 3 Interior; and

4 (C) the Secretary of Commerce, with respect
 5 to an employee of the National Weather Service.

6 (b) *WAIVERS OF PREMIUM PAY LIMITATION.*—

7 (1) *WAIVER OF PREMIUM PAY PERIOD LIMITA-*
 8 *TION.*—Any premium pay for covered services shall be
 9 disregarded in calculating the aggregate of the basic
 10 pay and premium pay for the applicable covered em-
 11 ployee for purposes of a limitation under section 5547
 12 of title 5, United States Code, or under any other pro-
 13 vision of law.

14 (2) *CALCULATION OF AGGREGATE PAY.*—Any
 15 pay that is disregarded under paragraph (1) shall be
 16 disregarded in calculating the aggregate pay of the
 17 applicable covered employee for purposes of applying
 18 the limitation under section 5307 of title 5, United
 19 States Code, during calendar year 2022.

20 (3) *PAY LIMITATION.*—A covered employee may
 21 not be paid premium pay under this subsection if, or
 22 to the extent that, the aggregate amount of the basic
 23 pay and premium pay (including premium pay for
 24 covered services) of the covered employee for a cal-
 25 endar year would exceed the rate of basic pay payable

1 *for a position at level II of the Executive Schedule*
 2 *under section 5313 of title 5, United States Code, as*
 3 *in effect at the end of that calendar year.*

4 (4) *TREATMENT OF ADDITIONAL PREMIUM*
 5 *PAY.—If the application of this subsection results in*
 6 *the payment of additional premium pay to a covered*
 7 *employee of a type that is normally creditable as*
 8 *basic pay for retirement or any other purpose, that*
 9 *additional premium pay shall not be—*

10 (A) *considered to be basic pay of the covered*
 11 *employee for any purpose; or*

12 (B) *used in computing a lump-sum pay-*
 13 *ment to the covered employee for accumulated*
 14 *and accrued annual leave under section 5551 or*
 15 *5552 of title 5, United States Code.*

16 (5) *EFFECTIVE PERIOD.—This subsection shall*
 17 *be in effect during calendar year 2022 and apply to*
 18 *premium pay payable during that year.*

19 (c) *SUBMISSION OF PLAN.—Not later than March 30,*
 20 *2022, each Secretary concerned, in consultation with the*
 21 *Director of the Office of Management and Budget and the*
 22 *Director of the Office of Personnel Management, shall sub-*
 23 *mit to the relevant committees a plan that addresses the*
 24 *needs of the Department of Agriculture, the Department of*
 25 *the Interior, or the National Weather Service, as applicable,*

1 *to hire and train additional wildland firefighters and inci-*
2 *dent meteorologists and modernize compensation for*
3 *wildland firefighters and incident meteorologists such that*
4 *sufficient firefighting resources are available throughout*
5 *each year without the need for waivers of premium pay lim-*
6 *itations.*

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