WILDLAND FIREFIGHTERS PAY: ARE THERE INEQUITIES?

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CIVIL SERVICE

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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WILDLAND FIREFIGHTERS PAY: ARE THERE INEQUITIES?

TUESDAY, SEPTEMBER 26, 2000

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CIVIL SERVICE,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2203, Rayburn House Office Building, Hon. Joe Scarborough (chairman of the subcommittee) presiding.

Present: Representatives Scarborough, Cummings, and Morella.

Staff present: Garry Ewing, staff director; Jennifer Hemingway, deputy staff director; Bethany Jenkins, clerk; Tania Shand, minority professional staff; and Earley Green, minority assistant clerk.

Mr. SCARBOROUGH. We'd like to welcome you all here, and we want to go ahead and start out by understanding that we're going to have a vote on the floor within the next 20 minutes. We certainly would like our two Members to have a chance to testify before we have to split up.

I'd like to welcome you all here to the hearing. Today the subcommittee is going to conduct a hearing entitled, "Wildland Firefighters Pay: Are There Inequities?" The hearing is going to assess proposals to alter the current statutory caps on overtime pay that's available to wildland firefighters of the Department of Interior and the Department of Agriculture's Forest Service.

Wildland firefighters work in remote areas, in national parks, in forests and in other public lands. They perform valiant work in protecting our natural resources from destruction by fire. The epidemic of widely publicized fires that have ravaged our national forests this summer attests to the extreme importance of their work.

Today's hearing is going to focus on H.R. 2814. That bill would allow all wildland firefighters to receive overtime at the rate of one and one half times their basic pay, the familiar time and a half. Under current law, supervisory firefighters sometimes earn less money than non-supervisory wildland firefighters, because their overtime pay is in fact capped. This cap affects supervisory firefighters who are exempt from the overtime provisions of the Fair Labor Standards Act, and whose basic pay exceeds the minimum rate of basic pay for GS–10.

Their overtime pay is limited to one and one half times the hourly rate of minimum rate of basic pay for GS–10. In contrast, nonsupervisory firefighters who are not exempt from the overtime provisions of the Fair Labor Standards Act receive time and a half based on their basic pay when they work overtime.

Both the Interior Department and the USDA's Forest Service have experienced a decline in the number of supervisory Federal wildland firefighters. In fact, the total number of firefighter teams have decreased by over 40 percent from 1992 to 1997. Moreover, the Department of Interior experienced a 33 percent decrease in the number of supervisory firefighters from 1992 to 1997.

These work force reductions jeopardize not only the safety of persons and property located in wildland areas, but also the firefighters who perform their duties with support and assistance.

According to a GAO report, "Federal Wildfire Activities: Current Strategy and Issues Needing Attention," dated August 13, 1999, the current overtime pay structure contributes to this problem by deterring qualified personnel from becoming supervisory firefighters.

The Federal Fire and Aviation Leadership Council, an organization of wildland fire program leaders from all Federal agencies that is involved in the wildland fire emergency management agrees with these findings. To illustrate the problems confronting the agencies responsible for fighting wildland forest fires because of the overtime pay cap, consider this example.

An incident commander, a firefighter with critical management responsibilities, may earn less money than a truck driver working at the same fire. According to officials within the Department of Interior and the Department of Agriculture, many incident commanders are approaching retirement age. Unfortunately, there are few firefighters interested in replacing incident commanders.

Well-qualified managers and supervisors are absolutely necessary to maintain an efficient and effective wildland firefighting force. Congress must therefore ensure that we continue to provide incentives to attract highly skilled and qualified individuals to fill these positions.

I look forward to hearing from our distinguished witnesses as we address this important issue. I'd like to ask the first panel to come up, if they will.

Panel one is going to be comprised of the Honorable Richard Pombo and the Honorable Tom Udall. Congressman Pombo is a Congressman from the 11th District of California. He's chairman of the Agriculture Committee's Subcommittee on Livestock and Horticulture. He's also a member of the House Resources Committee. His subcommittee assignments cover specialty crops, agricultural marketing, farm credit, public lands and water policy.

Congressman Tom Udall is a Congressman from the Third District of New Mexico. He serves on the Committee of Resources, Small Business and Veterans Affairs. I'd like to welcome both of you here and thanks for coming to testify on this very important issue.

[The prepared statement of Hon. Joe Scarborough follows:]

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Chairman Joe Scarborough
Subcommittee on Civil Service
"Wildland Firefighters Pay: Are There Inequities?"
September 26, 2000

Today, the subcommittee will conduct a hearing, entitled "Wildland Firefighters Pay: Are There Inequities?" The hearing will assess proposals to alter current statutory caps on overtime pay available to wildland firefighters of the Department of the Interior and the Department of Agriculture's Forest Service.

Wildland firefighters work in remote areas, in national parks and forests, and in other public lands. They perform valiant work in protecting our natural resources from destruction by fire. The epidemic of widely-publicized fires that have ravaged our national forests this summer attests to the importance of this work.

Today's hearing will focus on H.R. 2814. This bill would allow all wildland firefighters to receive overtime at the rate of 1 and ½ times their basic pay, the familiar, "time and a half." Under current law, supervisory firefighters sometimes earn less money than non-supervisory wildland firefighters because their overtime pay is capped.

This cap affects supervisory firefighters who are exempt from the overtime provisions of the Fair Labor Standards Act, and whose basic pay exceeds the minimum rate of basic pay for GS-10. Their overtime pay is limited to "one and one-half times the hourly rate of the minimum rate of basic pay for GS-10." In contrast, non-supervisory firefighters, who are not exempt from the overtime provisions of the Fair Labor Standards Act, receive time and a half based on their basic pay when they work overtime.

Both the Interior Department and the USDA's Forest Service have experienced a decline in the number of supervisory federal wildland firefighters. In fact, the total number of firefighter teams decreased over 40% from 1992 to 1997. Moreover, the Department of Interior experienced a 33% decrease in the number of supervisory firefighters from 1992 to 1997. These workforce reductions jeopardize not only the safety of persons and property located in wildland areas, but also the firefighters who perform their duties with support and assistance.

According to a GAO report, "Federal Wildfire Activities: Current Strategy and Issues Needing Attention," dated August 13, 1999, the current overtime pay structure contributes to this problem by deterring qualified personnel from becoming supervisory firefighters.

The Federal Fire & Aviation Leadership Council (FFLAC), an organization of wildland fire program leaders from all federal agencies that is involved in wildland fire emergency management agrees with this finding.

To illustrate the problems confronting the agencies responsible for fighting wildland forest fires because of the overtime pay cap, consider this example. An Incident Commander, a firefighter with critical management responsibilities, may earn less money than a truck driver working at the same fire. According to officials within the Department of Interior and the Department of Agriculture, many Incident commanders are approaching retirement age. Unfortunately, there are few firefighters interested in replacing retiring Incident Commanders.

Well-qualified managers and supervisors are absolutely necessary to maintain an efficient and effective wildland firefighting force. Congress must therefore ensure that we continue to provide incentives to attract highly skilled and qualified individuals to fill these positions.

I look forward to hearing from our distinguished witnesses as we address this important issue.

Mr. SCARBOROUGH. Congressman Pombo.

STATEMENTS OF HON. RICHARD POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; AND HON. TOM UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. POMBO. Thank you, Mr. Chairman.

I want to thank you for holding this hearing today. I introduced the Federal Firefighters Pay Equity Act, H.R. 2814, after several wildland firefighters in my district brought to my attention the monumental problem and potentially dangerous situation caused by pay inequity. This legislation is needed to strengthen our Nation's ability to fight wildland fires. This is accomplished by addressing the crux of the problem, improving the retention rates of experienced Federal wildland firefighters.

At this time, I would also like to thank my colleague, Tom Udall of New Mexico, for all of his help and support in this legislation. Wildfire incidents in this country have reached near epidemic proportions. This year alone, over 79,000 fires and over 6.9 million acres have burned. Alabama, California, Idaho, Montana, Nebraska, New Mexico, Oklahoma, Texas and Wyoming are currently contending with wildland fire activity.

At a June 7th House Resources subcommittee hearing on fire management, witnesses testified that larger wildland fires are expected to occur at increasingly alarming rates. Dense forests filled with dry brush which have not been seen historically in the United States are causing increasing fire activity, and the potential for catastrophic burns.

With these facts in mind, there is an urgent need to improve the retention rates of our Federal wildland firefighters. Pay inequities contribute significantly to the shortage of key leadership and supervisorial wildland firefighter personnel who work in dangerous fire line situations. While working on emergency incidents, firefighters who are exempt from the Fair Labor Standards Act [FLSA], and hold key leadership positions, receive pay that is capped, often leaving them with less than their regular pay. On the other hand, FLSA exempt firefighters not necessarily considered managerial or supervisorial are compensated for all overtime hours worked at time and a half, based on their regular rate of pay.

This inequity leaves little incentive for key leadership firefighters to work extra hours in highly hazardous situations when they are needed the most. The discrepancies in wage rates also creates a disincentive for younger, less experienced employees to advance within the firefighting organization and assume or work toward achieving key leadership positions. These firefighters are reluctant to undertake extensive time, training and commitment required to qualify for FLSA exemption positions, because they would earn less in overtime compensation than their non-exempt subordinates on the same fire lines.

A recent GAO report, entitled, "Federal Wildfire Activities: Current Strategy and Issues Needing Attention," observed, "The disparity in overtime compensation discourages the participation of more experienced employees in firefighting activities." A 1998 letter to the director of personnel management from the Federal Fire

and Aviation Leadership Council, signed by officials from the Forest Service, the BLM, Fish and Wildlife Service and National Park Service, stated, there has been a decline in the number of Federal employees who are qualified and/or are willing to become qualified to serve on incident management teams. And that is represented in this chart that is on your left here.

Further, our remedy to address the personnel shortage issue would be for the Office of Personnel Management to grant emergency workers a waiver for the Fair Labor Standards Act ceiling on overtime rates for exempt employees. The letter continued by pointing out that only 1,500 to 2,500 Federal firefighters serve in FLSA exempt positions on emergency incidents each year, and incident labor costs for firefighters would have increased by a mere 1.3 percent in 1996. And that is on this chart here, Mr. Chairman, as well.

This represents a little over one half of 1 percent of the total amount spent on incidents in 1996. My legislation addresses and solves their concerns. Mr. Chairman, the legislative session is running short, and we must work swiftly and in a bipartisan way to allow all Federal wildland firefighters to receive pay equity. These men and women risk their lives to provide for our safety and to ensure that our natural resources are protected.

More and more of our forests are off limits to commercial harvest or forest management techniques designed to reduce those fuel loads. As a result, the likelihood that wildland forest fires will become catastrophic will continue to increase. Combined with the inevitable increase in urban interface with our natural resources, Federal wildland firefighters will be needed more than ever to ensure that life, property and natural resources are protected. We need to stand together and address this unjust situation. We must no longer accept these wrongful pay inequities.

Before concluding my statement, I would like to express my disappointment with actions taken by the administration in addressing this serious issue. The Forest Service and the Department of Interior have been working with Mr. Udall and myself in support of this legislation. Unfortunately, the Department of Interior is only able to support the intent of H.R. 2814 and unable to support the bill at today's hearing. Apparently the Office of Personnel Management has legislation pending before this committee which would raise the cap for all Government employees. Using wildland firefighters as pawns in their game to get their controversial bill passed at the expense of the safety and well-being of human lives is outrageous and an insult to these men and women.

President Clinton has failed the American public by consenting to OPM's role in this deadly game. I commend congressional leadership who have negotiated with the President to set aside emergency funds for this devastating fire season. However, the President has neglected to solve the Nation's declining firefighter population. Offering one-time pay bonuses to secure our Nation's firefighting manpower for only this season is not enough. Action to guarantee the United States has wildland firefighters for future seasons must be taken. What firefighters need is pay equity this year, next year and in coming years.

Wildland firefighters will still have bills to pay and children to provide for in coming years, and shouldn't they have an equitable paycheck, too? Wildland firefighters need us all to answer their call for help. H.R. 2814 is the answer. While it may not be reflected in their testimonies, I know the Department of Interior knows it, too.

Thank you, Mr. Chairman, again, for conducting this hearing today and I'd be happy to answer any questions you may have.

[The prepared statement of Mr. Pombo follows:]

Statement by
The Honorable Richard W. Pombo
before the
Subcommittee on Civil Service, House Government Reform Committee
10:00 a.m., Tuesday, September 26, 2000
2203 Rayburn

Thank you, Chairman Scarborough, for holding this hearing today. I introduced the Federal Firefighters Pay Equity Act, H.R. 2814, after several wildland firefighters in my district brought to my attention the monumental problem and potentially dangerous situation caused by pay inequity. This legislation is needed to strengthen our Nation's ability to fight wildland fires. This is accomplished by addressing the crux of the problem -- improving the retention rates of experienced federal wildland firefighters. At this time, I would also like to thank our colleague Tom Udall of New Mexico for all of his help and support on this legislation.

Wildfire incidents in this country have reached near epidemic proportions. This year alone, over 79,000 fires and over 6,900,000 acres have burned. Alabama, California, Idaho, Montana, Nebraska, New Mexico, Oklahoma, Texas, and Wyoming are currently contending with wildland fire activity. At a June 7th House Resources Subcommittee hearing on fire management, witnesses testified that larger wildland fires are expected to occur at increasingly alarming rates. Dense forests filled with dry brush, which have not been seen historically in U.S. forests, are causing increasing fire activity and the potential for catastrophic burns. With these facts in mind, there is an urgent need to improve the retention rates of our federal wildland firefighters.

Pay inequities contribute significantly to the shortage of key leadership and supervisory wildland firefighter personnel who work in dangerous fire line situations. While working on emergency incidents firefighters who are exempt from the Fair Labor Standards Act – or FLSA – and hold key leadership positions receive pay that is "capped," often leaving them with less than their regular pay. On the other hand, FLSA exempt firefighters, not necessarily considered managerial or supervisory, are compensated for all overtime hours worked at time and a half, based on their regular rate of pay. This inequity leaves little incentive for key leadership firefighters to work extra hours in highly hazardous situations – when they are needed the most.

The discrepancies in wage rates also creates a disincentive for younger, less experienced employees to advance within the firefighting organization and assume, or work toward achieving key leadership positions. These firefighters are reluctant to undertake the extensive time, training and commitment required to qualify for the FLSA exempt positions because they would earn less in overtime compensation than their non-exempt subordinates on the same fire lines.

A recent General Accounting Office report entitled "*Federal Wildfire Activities, Current Strategy and Issues Needing Attention,*" observed, and I quote "the disparity in overtime compensation discourages the participation of more experienced employees in firefighting activities."

A 1998 letter to the Director of Personnel Management from the Federal Fire and Aviation Leadership Council, (signed by officials from the Forest Service, the Bureau of Land Management, the Fish and Wildlife Service, and the National Park Service) stated, "There has been a decline in the number of Federal Employees who are qualified and/or are willing to

become qualified to serve on incident management teams..." Further, "Our remedy to address the personnel shortage issue would be for the Office of Personnel Management to grant emergency workers a wavier from the Fair Labor Standards Act ceiling on overtime rates for exempt employees." The letter continued by pointing out that only 1,500 to 2,500 federal firefighters serve in Fair Labor Standards Act (FLSA) exempt positions on emergency incidents each year and incident labor costs for firefighters would have increased by a mere 1.3 percent in 1996. This represents a little over one-half of one percent of the total amount spent on incidents in 1996. My legislation addresses and solves their concerns.

Mr. Chairman, the legislative session is running short. We must work swiftly – and in a bipartisan way – to allow all Federal Wildland Firefighters to receive pay equity. These men and women risk their lives to provide for our safety and ensure that our natural resources are protected.

More and more of our forests are off-limits to commercial harvest or forest management techniques designed to reduce fuel loads. As a result, the likelihood that wildland forest fires will become catastrophic will continue to increase. Combined with the inevitable increase in urban interface with our natural resources, federal wildland firefighters will be needed more than ever to ensure that life, property and natural resources are protected. We need to stand together and address this unjust situation. We must no longer accept these wrongful pay inequities.

Before concluding my statement, I would like to express my disappointment with actions taken by the Administration in addressing this serious issue. The Forest Service and the Department of the Interior have been working with Mr. Udall and myself in support of this legislation. Unfortunately, the Department of the Interior is only able to support the "intent" of H.R. 2814 and unable to support the bill at today's hearing. Apparently, the Office of Personnel Management has legislation pending before this Committee, which would raise the cap for all government employees. Using wildland firefighters as pawns in their game to get their controversial bill passed, at the expense of the safety and well being of human lives, is outrageous and an insult to these men and women.

President Clinton has failed the American public, by consenting to OPM's role in this deadly game. I commend my congressional leadership who has negotiated with the President to set aside emergency funds for this devastating fire season. However, the President has neglected to solve the nation's declining firefighter population. Offering one-time pay bonuses to secure our nation's firefighting manpower for only this season is not enough. Action to guarantee the United States has wildland firefighters for future seasons must be taken. What firefighters need is pay equity this year, next year, and in coming years. Wildland firefighters will still have bills to pay and children to provide for in coming years, shouldn't they have an equitable paycheck too?

Wildland Firefighters need us to answer their call for help. H.R. 2814 is the answer. While it may not be reflected in their testimonies, I know that the Department of the Interior knows it too.

Thank you, again, Mr. Chairman, for conducting today's hearing. I will be happy to answer any questions that you may have.

Mr. SCARBOROUGH. Thank you, Congressman.

Congressman Udall.

Mr. UDALL. Thank you. I would ask unanimous consent for my full statement to be put in the record, Mr. Chairman.

Mr. SCARBOROUGH. Without objection, so ordered.

Mr. UDALL. Thank you.

Chairman Scarborough, I appreciate the opportunity to testify before you about my strong support for H.R. 2814 and the serious problems posed by depleting wildland firefighting forces throughout the country. I applaud my colleague, Mr. Pombo, for introducing this important legislation to strengthen our Nation's capabilities to fight fires on wild lands.

I know from working with him on the Resources Committee, he's a hard worker, and putting his clout behind this, I'm sure that we're going to get a lot of momentum.

As many of you know, in May of this year, the Cerro Grande fire and the Viveash fire swept through the district I represent, destroying several hundred homes and businesses, scorching over 73,000 acres of public and private lands. I'm sure that the damage would have been even worse had it not been for the valiant and courageous efforts of many of the Federal wildland firefighters.

In many of the western States, wildland fires affect many communities and natural resources. In New Mexico, for example, the annual wildfires on average burn over 185,000 acres. This year alone, there have been over 453,000 acres burned across the State.

Adding to these alarming fire statistics are the shortages of available Federal firefighters. The Southwest Coordination Center in Albuquerque has been able to fill only 16 percent of the orders for fire overhead, skilled supervisors and managers this year. Moreover, with regard to unfilled orders for New Mexico, the National Interagency Coordination Center has also been able to fill 30 percent from other States.

I'm aware of the enormous contributions and sacrifices that Federal firefighters have made as they tirelessly fight wildland fires, not only in New Mexico but throughout the country. Mr. Chairman, in your home State of Florida, for example, over 1 million acres of land have burned since 1998, and over 750 homes were either destroyed or damaged during that same period. We face a crisis on a national level, because there aren't enough experienced fire managers. These managers are important because they plan firefighting strategies, mobilize, house and feed hundreds of firefighters at a complex.

Compounding the problem is the exodus of experienced professionals working in such areas as wildlife biology, timber sales, recreation management, and even clerical positions. During big fire seasons, up to 40 percent of these professionals set aside their normal jobs to participate in fire management. These reductions adversely affect the quality of our public lands, in addition to jeopardizing the effectiveness and safety of our firefighters.

The primary reason for the shortage of firefighting personnel is the pay equity issue that affects the structure and strength of our Nation's firefighters. When called to a fire, firefighters who normally have other jobs are categorized in either non-exempt positions, such as firefighters and truck drivers, or exempt positions,

such as incident commanders and logistic section chiefs. Overtime pay is calculated differently for these categories. Non-exempt personnel are compensated for overtime at a rate of one and a half times their normal base pay. Exempt personnel are compensated for overtime with a cap at step one of the Federal General Salary Level 10, which may be below their normal pay.

Accordingly, incident commanders, for example, with significant management responsibilities of making life and death decisions and of obligating the Federal Government to over $1 million a day, are paid less than a truck driver working on the same fire. This is inexcusable and makes no sense.

Here lies the root of the problem. The pay equity issue has discouraged many potential firefighters from advancing from a firefighter to a supervisory and management position within the fire organization. Many say, why work in a position that demands greater experience, knowledge and responsibility yet provides less compensation. There is a chronic shortage of trained, professional wildland firefighters, which has been exacerbated by this pay equity issue.

If we want to stop the exodus of trained firefighters from the ranks of our Federal employees, so that they have an incentive to move into the dwindling ranks of critically short overhead positions, we must fairly compensate them. I ask that my colleagues join Mr. Pombo and 65 others who have co-sponsored this bill, so that we can strengthen our Nation's wildland firefighter corps by compensating them fairly.

Thank you very much, Mr. Chairman.

[The prepared statement of Hon. Tom Udall follows:]

Honorable Tom Udall
Testimony before the
Government Reform S/C
On Civil Service
H.R. 2814
September 26, 2000

Chairman Scarborough, and members of the Committee, I appreciate the opportunity to testify before you about my strong support for H.R. 2814 and the portentous problems posed by the depleting wildland firefighting forces throughout the country.

I applaud my colleague Mr. Pombo for introducing this important legislation to strengthen our nation's capabilities to fight fires on wildlands.

As many of you know, in May of this year, the Cerro Grande and Viveash fires swept through the District I represent, destroying several hundred homes and businesses and scorching over 73,000 acres of public and private lands. I'm sure that the damage would have been even worse had it not been for the valiant and courageous efforts of many of the federal wildland firefighters.

In many of the western states, wildland fires affect many communities and natural resources. In New Mexico for example, the annual wildfires on average burn over 185,000 acres. This year alone there have been over 453,000 acres burned across the state.

Adding to these alarming fire statistics are the shortages of available federal firefighters. The Southwest Coordination Center in Albuquerque has been able to fill only 16% of the orders for fire overhead (skilled supervisors and managers) this year. Moreover, with regard to unfilled orders for the New Mexico, the National Interagency Coordination Center has only been able to fill 30% from other states.

I am aware of the enormous contributions and sacrifices that federal firefighters have made as they tirelessly fight wildland fires not only in New Mexico but also throughout the country.

Mr. Chairman, in your home state of Florida for example, over 1 million acres of land have burned since 1998 and over 750 homes were either destroyed or damaged during that same period of time. Despite these tremendous and unfortunate losses, firefighters were able to save over 23,000 homes or structures from fire.

I share these statistics with the committee as one example of how important the role of the federal firefighter forces and the crisis we now face.

Fighting fires on wildlands is a dangerous and unpretentious job. It involves hard work, demanding hours, working in remote locations, and long absences from family and

friends. Those who fight wildland fires are a special group of people and we need to do more in order to recognize and compensate these men and women who risk their lives to save lives and public and private property. One of my staffers who has been actively involved in wildland fires for many years has explained to me that the camaraderie experienced among firefighters is very strong.

We face a crisis on a national level because there aren't enough experienced fire managers. These managers are important because they plan firefighting strategies, and mobilize, house and feed hundreds of firefighters at a fire complex.

Budget cuts are eating away not only at fire management teams but also at the attack crews that do the work on the ground.

Compounding the problem is an exodus of experienced professionals working in such areas as wildlife biology, timber sales, recreation management, and even clerical positions. During big fire seasons, up to 40 percent of these professionals set aside their normal jobs to participate in fire management. These reductions adversely affect the quality of our public lands in addition to jeopardizing the effectiveness and safety of our firefighters.

The primary reason for the shortage of firefighting personnel is the pay equity issue that affects the structure and strength of our nation's firefighters. When called to a fire, firefighters who normally have other jobs are categorized in either non-exempt positions (such as firefighters and truck drivers) or exempt positions (such as Incident Commanders and Logistics Section Chiefs). Overtime pay is calculated differently for these categories. Non-exempt personnel are compensated for overtime at a rate of one and one-half of their normal base pay. Exempt personnel are compensated for overtime with a cap at step 1 of the federal General Salary level 10, which may be below their normal pay. Accordingly, Incident Commanders for example, with significant management responsibilities of making life and death decisions and of obligating the Federal Government to over a million dollars per day, are paid less than a truck driver working on the same fire. This is inexcusable and makes no sense.

Here lies the crux of the problem. The pay equity issue has discouraged many potential firefighters from advancing from a firefighter to a supervisory and management position within the fire organization. Many say, why work in a position that demands greater experience, knowledge and responsibility yet provides less compensation? There is a chronic shortage of trained, professional wildland firefighters, which has been exacerbated by this pay equity issue.

If we want to stop the exodus of trained firefighters from the ranks of our federal employees, so that they have an incentive to move into the dwindling ranks of the critically short overhead positions, we must fairly compensate them.

I ask that my colleagues join Mr. Pombo and the 65 others who have cosponsored this bill so that we can strengthen our nation's wildland firefighter corps by compensating them fairly.

Mr. SCARBOROUGH. Thank you for your testimony.

I'd like to recognize Congressman Cummings, the ranking member here. We obviously have a vote going, but I want to ask you all briefly a couple of quick questions, then turn it over to Congressman Cummings. And if you all want to come back afterwards, great, if not, we'll go to the next panel.

Congressman Udall said the situation was inexcusable. And I have a quote here from you, Congressman Pombo. You said OPM is engaged in a deadly game. That's pretty strong language. Can you expand on that?

Mr. POMBO. Yes, Mr. Chairman. Many times, as you are well aware, when we get into legislation, it becomes more an issue of politics and trying to achieve within the political game than it does what's really right. In this particular situation, we have firefighters who are out there who are risking their lives and the lives of the public, fighting fires that are out of control across the western United States.

To me, it is not a matter of partisan politics or trying to get other legislation passed. This is a matter of how do we take care of this one specific problem.

Congressman Udall and I both represent areas of the country that have had serious problems. We both have constituencies that are firefighters. And this is a problem that needs to be solved. It is not something that should be bottled up because of partisan politics or because the administration wants another bill passed.

Mr. SCARBOROUGH. And you're saying that they're actually tying what you consider to be a safety issue up with another bill that's totally unrelated to this?

Mr. POMBO. I believe that is the case, yes.

Mr. SCARBOROUGH. Congressman Udall, is that your understanding?

Mr. UDALL. Chairman Scarborough, I don't know about all the other legislation that's out there pending. But whether the merits of that are good or not, I think the way to tackle this fire issue and the pay equity issue is to deal with it very specifically. I mean, we, as Rich said, we have 6.6 million acres in this fire season up in flames. We have a crisis situation. We have very capable people within our firefighting ranks who could be promoted and who could be up there helping manage these fires and doing a better job at what they do in the field. And with the pay situation now, they can't do it.

I think it's urgent we move on this, regardless of the merits of the other legislation. It seems to me, let's focus on what our problem is, what we're hearing from the field, and do something about it.

Mr. SCARBOROUGH. And make it a stand-alone bill. I'll tell you, I agree with you. It sounds like they're holding this legislation hostage, and if you're talking about it, both of you have said it's a crisis situation. I'm really surprised that they would use a bill that is so important to the safety and protection of life, the protection of property, simply in a game of Washington gamesmanship. It's frightening.

Give me very briefly the history of the Forest Service and the Department of Interior's dealings with both of you. Because from my

understanding, they were actually supportive of this concept, and I thought, supportive of this bill. Yet when we called them to testify, they ran for cover. They're not even here. Why aren't they here?

Have you all talked to them? Who are you talking to there, and why is this issue not important enough to the people of your district and the people in the State of Florida and across the country for them not to even show up at this hearing?

Mr. POMBO. Well, Mr. Chairman, all throughout this entire process, we have been working with the administration in drafting the legislation and coming up with a solution to the problem. They have been supportive of our efforts. They have worked with us openly and freely throughout the entire process. I was under the impression that they were in full support of the legislation.

It was only very recently that it became apparent to me that they would not show up at this hearing and openly support the legislation. And it's through that frustration that we began to look at what the possibility was of why they would not.

Mr. SCARBOROUGH. Congressman Udall, can you tell me, was it not your impression that Interior supported this all along?

Mr. UDALL. My understanding is that both Interior and the Forest Service are very supportive. I think it's the Office of Personnel Management that's the problem here.

Mr. POMBO. I believe that's the case, yes.

Mr. SCARBOROUGH. And so as we're winding up in a legislative session, in an election year, unfortunately, it seems like they're running for cover. It's beyond me.

Congressman Cummings?

Mr. CUMMINGS. I really don't have anything. I don't know whether anybody's running for cover. I'm not sure what's going on. First of all, I want to thank both of you for your legislation. I think it's good legislation.

We have similar legislation which encompasses not only firefighters, but the law enforcement officers, the National Transportation Safety Board inspectors. This is an issue that is not a young issue. And the wildfires are certainly the big issue of the day. And it is extremely important that those ladies and gentlemen who put their lives on the line be compensated.

So maybe as we go through this hearing we'll get to the bottom of this. But I just wanted you to know you have my support.

Mr. SCARBOROUGH. I appreciate you all coming today. We've got about 5 minutes to get over to the vote. When we come back, we'll go to panel two.

We're going to be in recess probably for about 15 minutes.

[Recess.]

Mr. SCARBOROUGH. I'd like to call our hearing back to order, and would like to introduce Mr. Cummings for the purpose of giving his opening statement. Congressman Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

This hearing will address an issue that has long been of concern to me, and to Federal employee organizations, the Title V Overtime Pay Cap. In addition to the wildland firefighters, however, the overtime cap affects an estimated 500,000 Federal managers, supervisors, FLSA exempt employees.

The overtime cap for Federal managers and supervisors has not changed for over 30 years. Under current law, overtime pay for firefighters, law enforcement officers and managers is limited to that given to a general schedule level 10, step 1 employee. As a result, these employees, the majority of whom rank above that level, earn less overtime than they do for work performed during the regular work week.

When this issue was raised at a civil service reform hearing in 1998, the Director of the Office of Personnel Management testified that the cap was unfair and warranted looking into. My response back then was, "Well, when are you going to do it."

Like the rest of us, FLSA exempt employees deserve to be fairly compensated, so they can adequately provide for themselves and for their families. Last year, on behalf of the administration and with the support of Representatives Tom Davis and Connie Morella, I introduced H.R. 1770, the Federal Employees Overtime Pay and Limitations Act of 1999.

H.R. 1770 would change existing law so that no Federal employees would receive less than his or her hourly rate of pay for overtime work. My legislation would provide wildland firefighters and all other FLSA exempt employees with overtime calculated as the greater of one and one half times the GS–10 step 1 hourly pay rate, or their hourly pay rate.

Today, I plan on introducing legislation that further acknowledges the commitment and the dedication of Federal employees when they respond to emergencies and disasters, like the over 65 wildfires that besiege the western United States. In addition to the provisions in H.R. 1770, this legislation would increase the hourly overtime pay rate limitation from a GS–10 step 1 to a GS–12 step 1 for FLSA exempt employees who perform overtime work in connection with an emergency. This legislation would ensure that all Federal employees who put their lives on the line are fairly compensated.

There are numerous other bills that amend Title V to raise the overtime cap for Federal employees. H.R. 2814, the Wildland Firefighters Pay Equity Act of 1999, which was introduced by Congressman Pombo, provides that the overtime pay rate for employees engaged in emergency wildland fire suppression activities would be one and one half times their hourly rate of basic pay. Representative Tom Davis has two bills: H.R. 583 and H.R. 2696, that would raise the overtime cap for FLSA exempt Federal employees.

I hope this hearing will help the subcommittee determine the merits of these legislative proposals, and what should be done to address all of those affected by the current overtime cap.

Thank you.

Mr. SCARBOROUGH. Thank you, Congressman Cummings, and thank you for your attention to this important issue for some time.

Congresswoman Morella, would you like to make an opening statement?

Mrs. MORELLA. Thank you, Mr. Chairman, a very brief statement.

I want to thank you for holding this very important and very timely hearing. I've always, as have other members of this sub-

committee, been an advocate for our Federal employees, and I think that today's hearing is of particular importance because of the wildfires that have raged throughout the west.

I hope that we can reach some kind of an agreement on how to best compensate the individuals on the front lines of those fires, our Federal firefighters. Wildland firefighters work in remote areas, in national parks, in forests, and in other public lands. They perform valiant work in protecting our natural resources from destruction by fire.

Unfortunately, there's a dearth of supervisory firefighters. And the situation may only worsen if we don't address this overtime compensation situation. Congress must examine the issue, and ensure that we continue to provide incentives to attract highly skilled and qualified individuals to fight our Nation's wildland fires.

I know that we have heard in the first panel two of our colleagues, Congressman Pombo and Congressman Udall, on the issue. I know that Congressman Pombo has offered H.R. 2814, which has been discussed and will continue to be discussed, covering the wildland firefighters who work in the U.S. Forest Service of the Department of Agriculture or Interior.

I am, as has been mentioned by Congressman Cummings, a cosponsor of legislation H.R. 1770, which would alter pay rates for all Federal employees. There are other pieces of legislation also before us. At any rate, I think this is an important hearing. I look forward to hearing from our second panelist here, Kent Swartzlander, who is a professional firefighter, and subsequently from Mr. Romero at the Office of Personnel Management.

I yield back, and I thank you.

Mr. SCARBOROUGH. Thank you, Congresswoman Morella. You have been a tireless advocate for Federal employees, and we appreciate all you've done.

Let me go ahead and ask our second panel to come up. It's going to consist of Kent Swartzlander. And Mr. Swartzlander began his career in fire service at an early age, following in the footsteps of his father, who served in the fire service for 37 years.

Mr. Swartzlander was appointed as a battalion chief with the U.S. Forest Service in 1999. He has extensive fuels management experience, including 17 years of service on hot shot crews, fighting fires across the United States.

Mr. Swartzlander currently serves as President of the Federal Wildland Fire Service Association. It's an organization formed to pursue the acknowledgement and betterment of Federal wildland firefighters. Mr. Swartzlander, we'd like to welcome you here, and thank you for all the work you've done in the past, for those that have been protecting Americans across the country. And we certainly are grateful for your time before us today.

I'd like to ask, if you could, to stand up and take the oath.

[Witness sworn.]

Mr. SCARBOROUGH. Please have a seat.

And we'd like to ask you to testify, begin your testimony and limit your statement to 5 minutes. And any additional written statements will be introduced into the record.

STATEMENT OF KENT SWARTZLANDER, PROFESSIONAL FIREFIGHTER

Mr. SWARTZLANDER. Mr. Chairman and members of the subcommittee, I sincerely appreciate your invitation to present my views today on existing wildland firefighter pay inequity. I speak to you today as a private citizen. I represent the Federal Wildland Fire Service Association, a group formed by Federal wildland firefighters employed by the Departments of Agriculture and Interior.

As said before, I've been employed in the fire service for quite some time, 27 years, to be exact, 17 of which, as a hot shot and just currently as a battalion chief.

Federal wildland firefighters are currently classified as forestry or range technicians or other classifications which do not properly recognize their duties and responsibilities. This is ludicrous. I personally have spent more than 2,000 hours performing fire suppression activities in a single year. Federal wildland firefighters look forward to a rewrite of the 081 firefighter classification series to include wildland firefighters as advocated by OPM Director LaChance.

Today, several pay inequities exist in the Federal wildland firefighting arena. These inequities have resulted in recruitment and retention problems as well as a lack of participation by Federal personnel who are not hired as firefighters, but have historically supported emergency incidents. These inequities include a cap on the overtime for FLSA exempt employees, non-inclusion of hazard pay as basic pay for retirement calculations, and no portal to portal pay for Federal wildland firefighters.

Federal employees are designated as either exempt or non-exempt from FLSA provisions. Additionally, the agency has further designated some incident positions as non-exempt from FLSA provisions. This allows exempt employees to work in a non-exempt position and receive true overtime for their services. While that sounds beneficial on the surface, this encourages a person qualified to fill a higher responsibility exempt position to choose a lower responsibility non-exempt position which pays true overtime.

Imagine being faced with a decision to accept one of two fire assignments. One is an exempt employee, such as an incident commander or operations section chief. Another is a non-exempt position such as a time recorder. When you know the higher responsibility caps your overtime, possibly a lower wage than your base salary, it is difficult not to choose the lower responsibility position, which pays true time and a half overtime pay.

It's a stunning inequity to realize that the positions that require the highest knowledge, skills and experience, can pay less than the lower responsibility positions. Even though employees are aware of this, most of our dedicated firefighters realize the importance of their participation in these exempt position roles for public safety and have accepted these lower paying, higher responsibility positions.

However, each year, more are opting for the non-exempt positions as Federal wildland firefighters are some of the lowest paid firefighters in the country and need true overtime to support their families.

H.R. 2814 corrects this pay inequity and would simply pay all employees true overtime. I ask the members of this subcommittee to act quickly and correct this inequity by supporting this legislation and moving it through this session of Congress.

Another inequity concerns hazardous duty pay. General schedule employees receive 25 percent hazardous duty differential pay for fighting fire, but do not receive the benefit of having this differential included as part of their basic pay rate for retirement calculations. Wage grade employees, on the other hand, receive 25 percent environmental pay for fighting fire, and in fact, according to law, have this environmental pay included as part of their basic pay for retirement calculations. All personnel fighting fires and earning differential pay should receive the same benefit, no matter what their pay schedule.

Yet another inequity deals with portal to portal pay, or lack thereof. Federal wildland firefighters are only paid for their actual work time, including travel. This means that these firefighters are not being paid while they're being locked down in fire camps, not being paid while eating rations without sanitation facilities and sleeping in paper bags on the fire line.

However, most cooperators that we employ, or the agencies employ, working on these same fires, are compensated at full portal to portal pay.

I'm sure you're aware that the current 10 year average for acres burned has escalated tremendously, as compared to previous decades. You must have witnessed the rash of new fire starts across the United States in the last 2 months, many of which were large devastating fires. With almost 7 million acres burned to date, this year is not a fluke, but rather, a very real example of potential in years to come.

We support the agencies' and administration's efforts as proposed in a recent report to the President to increase funding for fire preparedness. As was pointed out in a USDA Forest Service report in Region V to Congressman Herger, reductions in initial attack capabilities over time have reduced the ability to minimize acres burned.

I believe the best thing that can happen would be for the wildland agencies to be funded at a level which will allow for the sufficient and properly compensated Federal resources for firefighting. This will encourage the retention and expertise of their employees as well as reduce the need for cooperators or expensive contractors.

A first positive step will be the elimination of the overtime pay cap currently in place. Any other proposal to alter the pay cap formula is inappropriate.

We appreciate the administration's latest efforts to fix the pay cap problem as stated by Mr. Cummings earlier. However, this solution does not fully resolve the full scope of the issue.

This concludes my testimony. As a part of the record for this hearing, I ask the committee to accept all written testimony provided to the committee for the July 26th hearing that was canceled. And I'm ready for any questions you may have.

[The prepared statement of Mr. Swartzlander follows:]

TESTIMONY BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE

OF THE

HOUSE COMMITTEE ON GOVERNMENT REFORM

JULY 26, 2000

BY

KENT B. SWARTZLANDER

PRESIDENT, FEDERAL WILDLAND FIRE SERVICE ASSOCIATION

Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to address some very important issues dealing with our Nation's federal wildland firefighters. Although currently employed as a federal wildland firefighter, I speak to you at this time as a private citizen. I have been employed in the fire service for 26 years, of which 17 years has been as a Hotshot and most recently as a Battalion Chief. I represent the Federal Wildland Fire Service Association, an association formed of federal wildland firefighters employed by the five wildland agencies of the Departments of Agriculture and Interior.

Federal wildland firefighters are currently classified as forestry technicians, range technicians, biological science technicians, and other classifications which do not properly recognize their true job duties and responsibilities. Several years ago, during a national diversity conference held in Denver, Colorado, it was determined that the proper classification of wildland firefighters was the number one issue. A task force was assembled to work on this issue, but was unable to effect any change. Federal wildland firefighters continue to be unrecognized as "professional firefighters" by the agencies that employ them, until they experience death during duty. With the death of 14 of the most elite federal wildland firefighters on the South Canyon Fire in 1994, many changes were made to avoid future incidents, but proper classification was not addressed. Proper classification would ensure appropriate training for these firefighting positions.

I have personally performed over 2,000 hours of fire suppression work in a single calendar year. My position requires that I come to work every day, never knowing where in the United States or, other countries (Canada, Mexico, etc.) I may be assigned to emergency incidents. I am available for assignment 24 hours a day, although I am only paid for eight hours if at home base. Federal wildland firefighters may spend up to 120 days away from their home and families in a year protecting the public lives, public property and this Nation's natural resources. Most everything I do at work is related to fire suppression, pre-suppression, or hazardous fuels management. To classify federal wildland firefighters as forestry technicians is ludicrous. My brother and sister firefighters are hard working, proud people who rightfully should be properly classified as "wildland firefighters".

The Director of OPM has agreed to begin a rewrite of the 081 firefighter series to consider inclusion of wildland firefighters among others. We are very excited for this occurrence and await the outcome, as the proper classification of wildland firefighters is a primary concern.

I have three issues to discuss which federal wildland firefighters feel strongly about, in hopes that this committee will better understand and support the need for change. All these issues are very important to me.

The first issue I would like to address is the **non-inclusion of hazardous duty pay** as part of federal wildland firefighters basic rate of pay for retirement purposes.

Hazardous Duty Pay

Federal wildland firefighters whom are general schedule employees receive a 25% differential pay premium when engaged in fire suppression duties. Federal employees who are not firefighters, as per position description, may be wage grade employees. These wage grade employees receive 25% environmental pay when engaged in firefighting activities. The language describing environmental pay mirrors the language describing hazardous duty pay for firefighting, in Title 5. The premium rate of 25% for either employee is the same. Yet, Title 5 specifically includes the environmental pay a wage grade employee receives as part of their basic pay for retirement purposes. While Title 5 does not specifically exclude hazardous duty pay from being considered as part of basic pay for retirement purposes for General Schedule employees, the interpretation is, that it is excluded from consideration.

Let me paint a picture of this inequity. In the U.S. Forest Service, the engineering organization has many wage grade employees. An example would be that of a heavy equipment operator. If this heavy equipment operator engages in firefighting activities, he/she receives 25% environmental pay premium. This environmental pay is included as part of their basic pay rate for retirement purposes. In this example a non-fire position employee enjoys a greater benefit from firefighting duties than the firefighters themselves, who regularly expose themselves to the incredible risks and hazards of wildland firefighting. In fact, it is likely in this scenario that the Dozer Supervisor of this Wage Grade equipment operator is a General Schedule employee, receiving hazardous duty pay but not having that pay considered into their retirement calculation.

Federal wildland firefighters only receive hazardous duty pay while fighting uncontrolled fires, i.e., they only receive this extra 25% of base pay compensation when the danger is high. The inclusion of hazardous duty pay as part of basic pay for retirement calculation would be a miniscule cost to implement and it would set things right with the law which omitted this benefit for wildland firefighters. Now is an opportune time to remedy this disparity

Wildland firefighters are frequently exposed to such inherent risks in their jobs. No two fires are ever the same; only experience and training keep wildland firefighters safe while dealing with the cards they are dealt. Hazards such as steep slopes, box canyons, severe weather factors, heavy combustible fuels, snags, rolling material, urban interface concerns, nighttime firefighting activities, and lightning, to mention a few, are every day events for the wildland firefighter. Wildland firefighters must be alert, observant and astute to the surrounding environment to remain safe while attacking these powerful wildland fires. These wildland firefighters put their lives on the line every time they head out to the fireline and should be equally compensated with the inclusion of hazardous duty pay as part of their basic pay for retirement calculations.

I personally have had my skull fractured from a rolling rock on a fire, my leg crushed by a rolling log on a fire, injured my knees many times, and been on fires where fatalities have occurred in the proximity to my work area. I ask this committee to support this

small request for our wildland firefighters to include the hazardous duty pay we receive to be considered as part of basic pay for retirement calculations.

The next issue I would like to address is that of **portal-to-portal compensation;**

Portal-to-Portal Pay

Federal wildland firefighters are called out at a moment's notice to battle fires and support other emergency incidents all over the U.S. as well as other countries on occasion. In these instances firefighters are compensated for their travel and work time only. These firefighters are not compensated what-so-ever for being away their homes and families. In other words, it makes no difference in pay for a federal wildland firefighter to be away from their home for extended periods of time. I have fought fires throughout the western U.S., the eastern U.S., Canada, and Alaska. I have been pre-positioned for fires in other states and only worked 8-hour shifts as if I was at home, with no extra compensation for this duty. I may be literally thousands of miles from my home, but get paid as if I was going home every night to the comforts of my home and family.

Frequently my crew has been utilized in a fire suppression strategy known as "coyote tactics". This implies that we construct firelines all day, then, just before dark, receive a helicopter sling load of military rations, drinking water, and paper sleeping bags delivered to our fireline location. Once we are provided these items of survival, we go off the pay clock while remaining on the fireline. Firefighters have lost a lot of sleep with the ongoing concern of fire spread and fire behavior during these instances. Sleeping in the dirt, on some ridge top in Montana, 75 miles from the nearest community is not the same as going home at night once your shift is over, yet the compensation is the same, that is, without pay. We do not have the freedom to engage in personal freedoms during these periods as we would at home; instead we are usually trying to dry the sweat off around a campfire before your body begins to chill, while you are at the complete mercy of the incident. It is a rugged environment, on the borderline of heat exhaustion and dehydration at times and hypothermia at others, sometimes in the same 24-hour period. I have gone weeks without a shower or even washing my hands on some assignments, yet we are compensated the same as if we were returning to our homes every night and the luxuries of a hot meal, shower, and a bed; that is "no compensation" what-so-ever.

The Federal lands we protect contain some of the most rugged terrain in the United States. Firefighters work long hours on steep slopes, rationing water to make it through shifts. They carry all the necessary provisions to survive on their backs while they perform these arduous duties. Work shifts on these assignments are usually 14-16 hours long and last up to 21 days at time. Sleep is something that the wildland firefighter usually does not get enough of on these assignments, as during your off time in a fire camp situation, you can spend a lot of your programmed sleep time standing in long lines to eat, shower, or even use a portable toilet. These situations are uncomfortable, lack good sanitation, and are sleep depriving, yet we are paid as if we are going home after

every shift, that is "no pay" during the non-work period. In the case of working a 16-hour shift, during your eight hours off, a firefighter gets about 5-6 hours sleep.

Sometimes the Incident Commander deems the fire camp "closed". This means that firefighters are confined to the perimeter of fire camp. Firefighters in this case are treated no different than prisoners, during non-pay hours. Imagine being told you are off the clock, but you cannot leave the premises. It would give the appearance of a violation of one's civil rights.

Another example of the need for portal-to-portal compensation occurs when firefighters are off duty after shift and not restricted to fire camp. Firefighters may be visiting a nearby community and unavailable during off shift time when an emergency need occurs and they cannot be found. Many, many times over the years I have been awakened while in fire camp to engage in fire suppression activities due to structures or control lines being threatened. Sometimes these critical occurrences last 24-48 hours. The bottom line is that the crew supervisors cannot retain complete control of their resources during off duty/non-pay status. With the common exposures of heat exhaustion, dehydration, and muscle fatigue to mention a few, incidents need to be managed to allow for maximum recovery to personnel between work shifts as well as maintain control of the troops for their availability should the need occur.

In my part of the country, county, city, and state cooperators are paid portal-to-portal when they fight federal wildland fires. It appears unjust that the federal wildland agencies will pay their cooperators round the clock to help put out fires on federal lands when not returning to their home unit after shift, yet those same agencies do not pay their own firefighters on the same incidents. This decreases the morale of the troops to know that someone working side by side with them is compensated with constant pay, while the federal wildland firefighters are off the clock. This issue has escalated in the last several years as personnel availability in the federal workforce has shrunken drastically, this due to qualified personnel retiring with an insufficient younger workforce in place and the fact that many qualified personnel are discouraged to do the same job as cooperators, yet receive a much lower compensation.

The federal wildland agencies agree that portal-to-portal pay is needed, but I am not certain that they are pursuing this for the reasons previously mentioned. Their focus seems to be on simplifying pay calculations associated with emergency incidents. The proposal the federal wildland agencies have been working on would allow for portal-to-portal pay while working on emergency incidents at a base pay rate, i.e., no overtime or hazardous duty pay. This proposal could reduce firefighters pay on a regularly scheduled day by up to 25% from current pay scheme. Although we are glad to see the interest and acknowledgement for the need for portal-to-portal pay by the agencies, a potential loss of wages as compared to the already low wage scheme is unacceptable. Implementation of the agencies proposed portal-to-portal pay system would be in violation of the current Fair Labor Standards Act (FLSA).

A realistic portal-to-portal compensation would be like that of the cooperators who are employed and provide for; (1) compensation for wildland firefighters while assigned to emergency incidents for being away from their homes and families and enduring the rather primitive environment the incident offers, and (2) provide for the necessary control of resource personnel on incidents to increase firefighting efficiency.

The federal wildland firefighting workforce has aged progressively over the last two decades. Retention of the newest employees is a problem. As an example, the Apprenticeship program on my home unit has converted 18 firefighters into permanent status in the last ten years and to date, only 8 remain in the workforce. In some areas such as Southern California, the numbers are even more staggering and firefighters are opting to leave to other cooperating agencies which provide better pay, incentives, and year round employment.

The last issue I would like to address is that of **the overtime pay cap** imposed on many of our wildland firefighters. This is the focus discussion of my testimony, as current legislation directed to this subcommittee, if adopted into law would resolve this issue, specifically H.R.2814, introduced by Representative Pombo.

Overtime Pay Cap

Federal wildland firefighters are either determined as exempt or non-exempt from the FLSA. Additionally, emergency incident positions are determined as either exempt or non-exempt from the FLSA. A non-exempt firefighter can hold an exempt incident position and still be entitled to FLSA benefit of being paid true time and a half overtime rate pay. An exempt firefighter however can fill a non-exempt position on an incident and if that individual works greater than 20% of the workweek in that capacity, that individual is considered non-exempt for the week and receives true time and one-half overtime pay rate.

Incident positions which are deemed exempt are positions such as; Incident Commander, Operations Section Chief, Logistics Chief, Unit Leaders, and Crew Supervisors. Non-exempt positions include such positions as; Field Observers, Supply Personnel, Time Recorders, and Truck Drivers.

Many firefighters who are exempt employees and work in an exempt position on an incident receive less than time and one-half overtime pay rate. Some firefighters actually receive less a wage for overtime pay rate than their base pay rate. This situation lends to encourage our most qualified firefighters to fill non-exempt positions, given the opportunity, in order to be compensated at higher pay rates, instead of filling positions that require higher skills, knowledge and experience levels, with the associated greater responsibilities. As an example, an individual could be put in a position of either being an Incident Commander on a 50,000 acre fire burning in the urban interface of southern California making $27.36 per hour (overtime pay cap), or be a supply truck driver on that same fire making true time and one half at $33.00 per hour. Of course the disparity in pay could range higher or lower than this example.

Further, all leadership positions from crew supervisor and above on incidents are similarly capped for overtime pay. Under the current system, there is no difference in the overtime pay rate for increased skill and responsibility requirements, e.g., a Crew Supervisor may be making the exact same overtime rate of pay as a Operations Section Chief on a National Incident Management Team, who is controlling the operations on a 100,000 acre fire.

In some cases this situation leads to a total lack of participation by individuals who receive inadequate overtime pay compensation yet are fully qualified to fill the position.

The pay cap now affects the Captain level employee who is only two levels above an entry-level firefighter. It is unjust, to think that after your second promotion once attaining a permanent appointment, your overtime rate would be capped.

Another situation that exists on these emergency incidents has to do with the cooperators who are employed when needed. These cooperators come with their pay own schemes and the federal government is certainly willing to pay these escalated wages as compared to the federal wildland firefighter in the time of need. What occurs, is that the people from other agencies who are brought in to aid in the incident, make substantially higher wages than the federal wildland firefighters. Not only does this decrease motivation and participation by federal wildland firefighters, but also it leads to escalated costs for these incidents.

In 1999, at an Interagency Incident Management Workshop, five National Incident Commanders identified several problems causing difficulty in the management of large and complex incidents. Lack of participation by non-fire management personnel in command and General Staff positions was cited as one such problem. Local government personnel have been filling many of these positions. This is very expensive, as local agency personnel are under assistance-by-hire and are being paid on a portal-to-portal basis. A contributing factor to this is the overtime pay cap. Many qualified, in house personnel may be available, but are only willing to take fire assignments in FLSA covered positions that result in true time and one-half overtime pay. This results in the FLSA exempt positions being filled with the local government personnel who are earning portal-to-portal pay, which is far more expensive than the federal employee, even if they were paid at a true time and one-half rate.

An example cited in the April 19, 1999 letter uses two positions for a 21-day period, working 14 hours a day. In the first scenario, a Status Check-in Recorder position (non-exempt) is filled by a GS-13 and a Planning Section Chief position (exempt) is filled by a City Fire Battalion Chief. The shift cost for the Status Check-in Recorder is $535.64 and the shift cost for the City Battalion Chief is $996 (portal-to-portal). This totals $1,531.64/day or $32,164.44 for a 21-day assignment.

The second scenario is puts the GS-13 in the Planning Section Chief position (exempt) but considered the elimination of overtime pay cap and uses a GS-5 for the Status Check-

in Recorder position, in this case the grade level meeting the skill level. The shift cost for the Planning Section Chief is $535.64 and for the Status Check-in Recorder is $207.54. This totals $734.18/day or $15,606.78 for a 21-day assignment.

As you can see even with paying full time and one-half overtime rate for the GS-13, the second scenario would save the government more than 50%. Elimination of the pay cap would encourage FLSA exempt personnel to participate in incident positions appropriate of their skill level. This would result in less need for local government assistance.

The Jan 21, 2000 USDA report on Policy Implications on Large Fire Management, stated that use of local government overhead on the North Kirk Fire instead of Forest Service employees increased the fire cost by about $13 million dollars. This was derived from the data collection that showed that the local government firefighters received an average of $1006/shift (portal-to-portal) while the federal employees received an average of $360/shift. Between two complexes last year (Kirk & Big Bar) it is estimated that $25 million dollars could have been saved on those two fires alone, if the incidents had been fully staffed by federal employees. Disparity in firefighter pay was determined as a factor contributing to high costs on these incidents, this due to lack of participation of federal employees. This report also stated, "the Big Bar and Kirk complexes are indicators of similar conditions across the nation and should be viewed as examples of what the future will hold unless changes are made now in the fire management program".

In 1998, the Departments of Agriculture and Interior requested to the Office of Personnel Management (OPM), an elimination of the overtime pay cap during emergency incidents. OPM's reply included recognition of the concerns, but stated they did not have such authority to resolve the issue – in fact OPM said it would take a change in law. H.R.2814 is the legislation that would resolve this issue.

The federal government should not be compensating a supply truck driver with a greater overtime pay rate than an Incident Commander position which requires much greater skills, knowledge and experience, and who carries a much greater responsibility for protecting life, property, and this Nation's valuable natural resources. This is a matter of fairness. H.R.2814 merely puts everyone on the incidents on an even slate, paying all involved true time and one-half overtime. The result of making this legislation into law, would be greater firefighter motivation, greater incident participation by federal employees, reduced cooperator reliance (resulting in cost savings), and reduced pay disparity between our federal wildland firefighters and the other firefighting agencies which so many of our firefighters are moving to.

Closing

The Jan 21, 2000 USDA report on Policy Implications on Large Fire Management (previously mentioned) recommended an increase in initial and extended attack resources to improve the overall fire management program nationally. Under this section the report states, "This includes budgeting for preparedness resources at the Most Efficient Level to the field and developing a cohesive, long-term budget strategy that includes

preparedness, emergency suppression, fuel management, and state fire assistance in order to implement an effective, cost-efficient fire management program (preparedness, prevention, suppression)".

The folks I represent strongly believe that the federal government needs to appropriate more funding to the federal wildland fire organizations in order to increase and strengthen firefighting capabilities. I believe the federal government owes the American people a sense of comfort in knowing that there is a professional wildland firefighting workforce capable of protecting the American people from these events. We know wildland fires will continue to occur. It is not "if the fire occurs", but "when the fire occurs" for which a strategy for a professional fire organization should be designed. The federal wildland fire organization should be considered an inherent part of government, not one that is continually downsizing to meet budget constraints. The continued escalating rate of cooperator usage and the use of contract firefighters is not the answer. The agencies need to have a sufficient workforce in place at all times without having to rely upon the questionable availability of cooperators or contractors. I see this as no different than our U.S. military. Would the U.S. Government consider diminishing the military to insufficient levels in hope that they could rely on cooperators or contractors if our nation became threatened? Our cooperators, although valuable, are very costly and usually do not have the expertise in dealing with the type of fires we deal with. Contractors usually show up with the absolute minimum qualifications and equipment requirements in order to get the job. These are in no comparison to the quality of our own federal wildland firefighters when speaking of skill and knowledge levels.

It need not be forgotten that these same wildland firefighters support other national emergencies such as floods & hurricanes. These are emergency incidents as well and should be given the same consideration for those who serve in support.

Elimination of the overtime pay cap, inclusion of hazardous duty pay for retirement calculation, portal to portal pay compensation, and the proper classification of federal wildland firefighters would be a tremendous step in the right direction in providing for a stronger and more efficient Federal wildland firefighting workforce. This would also allow for greater retention of our firefighting workforce.

Presently, we have one vehicle to attain resolution of one of these issues, that is H.R. 2814. I would be happy to provide you with any information I can to aid you in your review of this legislation. It is my hopes and the hopes of all the people I represent, that this Subcommittee will act swiftly in marking this legislation up, in hopes that the House will vote favorably on this legislation.

I would like to thank you for allowing me this opportunity to speak to these very important federal wildland firefighter issues and I look forward to providing oral testimony to your Subcommittee.

Supplemental Sheet

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Testimony Outline:

I. Identification of who the federal wildland firefighters are.

II. Misclassification of federal wildland firefighters.

III. Inclusion of hazardous duty pay as part of basic pay for retirement calculations.

IV. Need for portal-to-portal pay.

V. Associated retention problems.

VI. Elimination of the overtime pay cap.

VII. Closing

Mr. SCARBOROUGH. Without objection, on that request, so ordered.

Let me begin just touching on something you talked about at the end, and that's just to talk about how we have a possible crisis situation regarding fires across the country. We heard earlier from Congressman Pombo that actually the situation is not getting better, it was getting worse because of just the situation out there, and predicted catastrophic burns.

You've just said that this year is not a fluke. Do you expect in the coming years actually more fires, just because of what's happening out there?

Mr. SWARTZLANDER. Mr. Chairman, I wouldn't expect a substantial increase in the number of fire starts. I think the historical range in that is pretty well set. There's so many person-caused fires and so many lightning fires, those don't change very greatly over the years.

But the acres burned, in my experience, in my 27 years, in the last decade we've had a substantial increase. And I expect that to continue for a couple of reasons. One is the amount of fuel that we do have built up in the woods out there, in the wildlands at this point in time. The second reason is the quite reduced work force we have to deal with the initial attacks on these fires.

In my area that I'm employed in, as an example, we have the charts up there that say the same thing, in the late 1970's, we had over 800 firefighters employed on the exact area I work at. Today we have 160. So in a 25 year period, we're down to 20 percent of what we used to have.

And the fires that we're dealing with out there are bigger, tougher fires. There's a lot more urban interface involved. We're focusing a lot of our efforts on the communities and saving the homes, reduce the amount of people that we have out there. That becomes a high priority.

Mr. SCARBOROUGH. So, more fires and less firefighters. How many wildland firefighters are full time and how many are of the Federal employees perform the wildland firefighting as a collateral duty?

Mr. SWARTZLANDER. Well, to the best of my knowledge and information that's been shared with me, there's about 1,400 permanent, full-time firefighters within the five wildland agencies. Additionally, well, all total, approximately 7,000 to 8,000 people that are employed with primary duty of firefighting across the United States in those five agencies. That's to the best of my knowledge.

In addition to that, the people that have, you say a collateral duty, we call them the "militia" do other things, and they're not hired specifically for firefighting; they come out. I could only guess on that. My guess would be a couple thousand, something like that.

Mr. SCARBOROUGH. Let me ask you this. And I think the thing that surprises me the most, and from hearing the statements of others up here, is that we have a situation where we're basically paying our most qualified people, let's say our generals and our admirals, less than we're paying our privates. The incentives are just totally backward.

Do you know of specific examples, and can you cite a few, you don't have to give names of people, but of qualified people that if

you're on the front line against a fire that's sweeping across acres, and in a very dangerous situation, do you know of people that are saying, "Hey, listen, I'd love to help out, but I've got a family to take care of, and I am not going to go into a supervisory role; you can give it to somebody who's less qualified?"

Mr. SWARTZLANDER. I don't know personally of anybody out there that's going to tell you that, in light of the situation, in their face.

Mr. SCARBOROUGH. Won't say that, right.

Mr. SWARTZLANDER. But if they were given an opportunity of, when they're ordered up for a fire, here's a job, do you want this job, or there are maybe two different opportunities, which one are you going to go for? I mean, it's likely the person's going to go for the one that pays the best.

And what's so out of whack about the whole thing is that you could have a GS–5 or GS–6 type person in the normal work force supervising GS–11s in fire incident. It happens all the time. Part of that problem is the fact that the overtime pay cap is in effect. The GS–11 can take a non-exempt position and get paid full time and a half overtime, and the GS–5 was already in one, a non-exempt position, so now it doesn't matter for them.

Mr. SCARBOROUGH. I missed the first part of the statement you made. You had talked about something and said it was ridiculous, and said that you spent up to 2,000 hours in a single year fighting fires. Could you go back and explain that again? What were you saying there?

Mr. SWARTZLANDER. Well, the frustration stems around the fact that we're not classified as firefighters. We're forestry technicians or range technicians or whatever. That's the frustration. For somebody to tell me that my true classification is a forestry technician, to me it's just ludicrous. Because I have spent over 2,000 hours of work in fire suppression alone. Not preparedness, but actual fire suppression activities, in one calendar year. And this happens all the time with folks.

So for me to spend what the normal work person would spend, 8 hours a day, 5 days a week, which is a little over 2,000 hours, I'm spending a whole year's worth of work just fighting fire in a more condensed time. But I'm not even a firefighter.

So there is a lot of frustration. We realize this isn't a legislative fix, it's an administrative fix, but we've been working on it.

Mr. SCARBOROUGH. Last question, then I'll pass it on to Congressman Cummings. Do you consider this issue and the back and forth, the political bickering that's going on right now, that's preventing this bill from being passed, do you consider this to be a safety issue like Congressman Pombo?

Mr. SWARTZLANDER. I definitely do. And it's for those reasons that we're not getting the right people into the right jobs. The highest level of responsibility also has the highest level of knowledge associated. And we're not absolutely getting the right people into the right jobs all the time.

Mr. SCARBOROUGH. You're not getting the best people?

Mr. SWARTZLANDER. We're not getting the best people in the best positions at all times. There has to be some additional incentive. And right now, we have total opposition to that, when we can have

the lowest level of requirement of knowledge and responsibility attain a higher wage than the very highest level on a fire.

Mr. SCARBOROUGH. Thank you.

Congressman Cummings.

Mr. CUMMINGS. You had said toward the end of your statement that my legislation would not cover all of your concerns. Can you just tell me what else needs to be covered? Is it the hazardous?

Mr. SWARTZLANDER. Mr. Cummings, my focus on that statement was just at the overtime pay cap. Since this hearing was for the wildland fire pay inequities, of course, I've surfaced some other things that we've been working on for a number of years here.

The reason I said that H.R. 1770 would not be a fix for our concerns out here, for the full scope of the issue, is because it wouldn't fix the non-exempt/exempt issue. It would certainly allow for better pay for these folks, and there will be some incentive for some encouragement for those highest skilled and knowledgeable people to fill those highest roles.

But it's not going to be a complete fix, because people will still know that if you get into a non-exempt position, you would get true time and a half overtime.

So really what we need for the emergency incidents, when we get into the incident demand system and they're designated exempt and non-exempt positions, we need a full elimination of the overtime pay cap so that we don't have this issue about which position might or might not fill because of the differences in pay.

Mr. CUMMINGS. We have 6 percent fewer trained firefighters than we did last year? Do you know that?

Mr. SWARTZLANDER. I'm not absolutely aware of that percentage. I do know what I told you, in the late 1970's, we had 800 on my forest area, now we have 160. So 80 percent reduction over 25 years, and at least half of that came in the last 6 to 8 years. So we've reduced down to a bare bone organization.

Mr. CUMMINGS. Do you think some of that has to do with this issue that you're here today about?

Mr. SWARTZLANDER. Well, maybe some of it. We know that there are always going to be fires. Fires aren't diminishing. It's just a matter of when the fire is going to happen, not if it's going to happen. We know it's going to happen. So I think it's been rather inexcusable to diminish the work force as we have had. But I would say it's been a budget constraint, from my knowledge.

Mr. CUMMINGS. When did you say you had 800 in your unit? When was that?

Mr. SWARTZLANDER. In the late 1970's.

Mr. CUMMINGS. So are the first just as frequent as they were, or more today than, say, around that time that you had 800?

Mr. SWARTZLANDER. Fire frequency has been about the same as when we had 800. But acres burned has escalated tremendously.

Mr. CUMMINGS. And you attribute that to, in part, I think what you said was that the initial getting to the burn in the beginning——

Mr. SWARTZLANDER. Right, the initial attack resources, those fire engines, hot shot crews that are on base, ready to go, to put the fire out. With the diminished work force that we have right now, we frequently get stripped of our resources trying to support other

fires away from our home area. But when we get down to where we have a fire in our home area, we have a limited amount of resources out there to work on the fire.

Mr. CUMMINGS. How do you feel about the training? What goes into the training of somebody like you to do this kind of work?

Mr. SWARTZLANDER. I think the training is really good. I think there's an extensive amount of training that goes into the individuals out there as they're coming up through the fire service. In my years, since I started with the fire service, the training has escalated, become a lot more professional, a lot more requirements. So I think people are getting trained appropriately.

Mr. CUMMINGS. And this is truly a specialty, isn't it?

Mr. SWARTZLANDER. Oh, yes. The difference that I've seen, growing up in the fire service over the years, one of the biggest differences is the amount of homes that we have out there, on all wildfires. I know Mrs. Morella talked about the remote areas and stuff, and we certainly go into those remote areas with the smoke jumpers and the hot shots and in the wilderness and stuff. But it's incredible how many fires we go to nowadays where we are dealing with homes, in all, almost all of our wildfire situations.

So that has become a big component of what, a new thing out there for the wildland firefighter in the last 10, 15 years.

Mr. CUMMINGS. So I take it that before, if you didn't have homes, there were certain things, I guess you could allow it to burn to a certain degree? But now you I guess you have to stop it as soon as you possibly can?

Mr. SWARTZLANDER. Well, in some places you may have had policy where you could have let it burn to some degree, but not a whole lot of places. We just didn't have that concern about the urban interface. So we could concentrate on saving the natural resources out there, and that was our primary focus. Now whenever we have homes involved, we have to engage with that concern and that becomes a primary focus, and we end up backing off the natural resources values out there, if that's the case.

Mr. CUMMINGS. Just one more question, Mr. Chairman.

Mr. SCARBOROUGH. Sure.

Mr. CUMMINGS. Let me ask you, say we were able to fix this problem. What effect do you think that would have on the people that you work with every day?

Mr. SWARTZLANDER. Well, there's two things. One is, I think it would mean, and I think most of the people I'm representing, it's a matter of fairness that we resolve something. The other one is it's going to give a considerable amount of incentive for people that have not been participating fully in the past to participate. And it's going to give a lot of incentive to retain the people we have out there.

In my part of the country, we're losing people in the masses to our cooperators, who pay much better money for the same job. We lose droves of them. Our joint apprentice academy that brings the youngest folks in, takes them through the training academy, develops them into a career employee, we're lucky if we retain 25 percent of those individuals into the careers. They're all going to our cooperators. As soon as they get through the training academy, they're gone.

Mr. CUMMINGS. Thank you.

Mr. SCARBOROUGH. Congresswoman Morella.

Mrs. MORELLA. Thank you, Mr. Swartzlander.

Yes, I am very intrigued, you gave us a very comprehensive testimony here. Obviously you were nice enough to stay within our time constraints on the committee, and I thank you for it.

Also, as a former English teacher, I'm surprised, you even categorized it, you did an outline. I won't grade the outline, but you did an outline. And I wondered, in the outline you had mentioned the issues that you have expanded in your testimony. I just wondered if you might prioritize for us what you consider to be like the most important, maybe a couple of others. You have talked about the misclassification of the Federal wildland firefighters, the hazardous duty pay as part of the retirement calculations, the need for portal to portal pay, other retention problems, the overtime pay, pay cap elimination.

Would you venture to try to prioritize?

Mr. SWARTZLANDER. Well, you're asking a tough question.

Mrs. MORELLA. I know.

Mr. SWARTZLANDER. But I think most of us out there probably truly believe that the most important thing is getting proper classification. I think a lot of things stem around that.

For us, we wonder if really people are taking us serious enough at times, because we're forestry techs and range technicians, and we're not classified firefighters. But this is all what we're hired for, to fight fires. So I think the classification issue is a big one, and we understand it's not legislative. But that is a big concern.

As far as the other three, the portal to portal, the pay cap and the hazard pay, it's really tough for me to sit here and say one is more important than the other. They're really all about fairness. We have wage grade people in our same system come out to fight fires with us. They're given this opportunity to get their environmental pay as part of their base pay rate, and it's because they're blue collar and we're considered white collar. As I talk with OPM, that's what they tell me.

Mrs. MORELLA. Are they, other than the non-legislative remedy issue of classification, are they addressed in the piece of legislation? Do you feel the Pombo bill, for instance, addresses all of them?

Mr. SWARTZLANDER. The Pombo bill is just the overtime pay cap. I've talked with Representative Pombo and Senator Burns both about these other issues. And we expect that you will see something in the future to address those issues.

We've also talked with OPM about the hazard pay thing, if it could be something that could be fixed non-legislatively. Because it seems to be just an omission from law, rather than an exclusion. But that interpretation battle seems to stem a need to have a piece of legislation to fix it.

Mrs. MORELLA. I had an opportunity to scan the AFGE statement that's on the table there. And they mentioned the role of the Department of Defense firefighters that fight alongside the Forest Service firefighters and Interior firefighters. And I just wonder, is this a frequent occurrence that happens? And then obviously, the

Pombo bill does not include the DOD firefighters, so I would ask your opinion of that.

Mr. SWARTZLANDER. My best answer for you is, I know while I worked in southern California for a number of years, places like Camp Pendleton, or Vandenberg Air Force had a lot of wildfires in their area, and they do end up working side by side with some of our resources.

Other than those areas, and there's probably others around the United States I'm not that aware of, but in the event of the large devastating fires in Montana and Idaho in the last couple of months, of course we brought in a lot of military folks that were trained up a couple of quick days and taken out on the fire lines in some of the safer spots to work on. I would say that's a rarity. It seems like we have tapped that resource a few times lately, but it's due to the fact we don't have enough resources ourselves any more.

Mrs. MORELLA. How do you feel, just your general impression, of expanding this concept of overtime pay and making it higher during emergency situations, very much like that bill, H.R. 1770? Do you have any problem with that?

Mr. SWARTZLANDER. Well, I don't know that much, and I probably should, but I don't know that much about the DOD firefighters' actual pay schedule concerning this event. I understand they're capped, too.

As far as the issue with others and what H.R. 1770 would cover, the entire Federal Government, I guess my issue with that is, I really feel strongly that this is a different situation, that what we're talking about is an emergency situation only. This bill would not cover me when I was off in the wintertime doing training or something else, doing something else that might be getting overtime, even prescribed burning, this bill would not cover me.

But for the emergency incidents, when we have an incident command system established, and we have this issue with exempt and non-exempt positions, and the rates that go along with them, that's the focus of my issue that I don't believe fits into others. An emergency incident with the incident command system that we use. This is a real problem, and anything but eliminating the pay cap will not fully resolve the issue.

Mrs. MORELLA. And I very much appreciate your addressing the specific issue, which is why you are here.

Mr. Chairman, just another brief one, about the fact that, how much of a factor is, it's kind of hard to answer, how much of a factor did the reduced numbers of supervisory firefighters play in the overall ability of the firefighting teams to manage and contain the fires out west?

Mr. SWARTZLANDER. You want me to answer that? Of course, I can't give that, all I could do is guess. But one thing I want to point up, just so we all have knowledge of it, is we talk about the supervisory manager firefighters. Actually, the overtime pay cap now affects the person that's engine captain, just the third rank up. You start firefighter to an engineer to an engine captain. That captain, in the higher steps of that grade level, is affected by the pay cap. So you don't have to get very high in the organization to be affected by the pay cap.

As far as how much of a role that was played out there, I can't tell you, and some of it may be attrition for the people that are retiring, but our reliance upon overhead management teams, our reliance on our cooperators, State and local government, to fill positions on the overhead management team, has increased considerably over the last several years. I know you heard some statistics earlier talking about how many less teams we have out there or people that are available for the teams. We have reduced the numbers of teams dramatically.

And even on those teams, where we used to have 100 percent Federal employee involvement on those overhead teams, now we're probably looking at somewhere in the neighborhood of about 30 percent of the team members are State and local government. Which, we're glad that they are participating.

But generally, their expertise is different than ours. You may get people out of the city or county fire departments that aren't, that do a lot of structure fires but not a lot of wildland, and now we're relying on what they know to help us out in wildlands. So things have changed out there.

Mrs. MORELLA. Thank you, Mr. Swartzlander, and thank you, Mr. Chairman.

Mr. SCARBOROUGH. Thank you, Mrs. Morella.

Mr. Cummings, any other questions?

Mr. CUMMINGS. No.

Mr. SCARBOROUGH. Well, thank you, Mr. Swartzlander, I appreciate your coming and testifying before us today. It's been very helpful, and we look forward to having some positive news for you and others that again put their lives on the line protecting property and life in our country. Thank you.

Mr. SWARTZLANDER. Thank you, Mr. Scarborough.

Mr. SCARBOROUGH. We'd like to now move on to our third panel. And our third panel will consist of Henry Romero. Mr. Romero has served as Associate Director for Workforce Compensation and Performance at the Office of Personnel Management since October 1997. He is responsible for developing and administering compensation, classification, and performance programs for the 1.8 million Federal employees in the executive branch.

Mr. Romero has also served at the Department of Justice and the Department of Defense, and this is his first appearance before the subcommittee, and we welcome his participation. I need to swear you in, Mr. Romero.

[Witness sworn.]

Mr. SCARBOROUGH. Thank you. You may begin.

STATEMENT OF HENRY ROMERO, ASSOCIATE DIRECTOR, WORKFORCE COMPENSATION AND PERFORMANCE SERVICE, OFFICE OF PERSONNEL MANAGEMENT

Mr. ROMERO. Mr. Chairman and members of the subcommittee, thank you for inviting me to testify today on overtime pay for wildland firefighters. We are pleased to have the opportunity to discuss the administration's plans to deal with overtime pay problems affecting Federal employees who perform work in emergency situations, including wildfire emergencies.

During the last few months, it has become clear that legislation is needed to help address the challenges posed in responding to emergencies and disasters, in particular, the wildfires that have besieged our western States. The efforts of our brave Federal wildland firefighters and other disaster relief personnel are being hampered by decades old personnel administration rules related to compensation for overtime work that never contemplated the situation we currently face.

Let me explain the problem briefly. The overtime pay rate for lower graded employees covered by the Fair Labor Standards Act [FLSA], is equal to one and a half times their hourly regular rate of pay. The hourly overtime rate under Title V of the United States Code for FLSA exempt supervisors, managers and other higher graded employees, on the other hand, is limited by law to the overtime rate for GS–10 step 1.

This difference in overtime pay entitlement has helped to create a disincentive to performing supervisory wildfire suppression duties. Last month, President Clinton took decisive action to address this problem. He instructed the Departments of Agriculture and Interior to use their statutory authority to provide incentives for those who make financial sacrifices by performing supervisory duties in the difficult battle to suppress the western wildfires.

This action offered a timely short-term solution to a longstanding problem. We all agree that a long-term solution is needed. Therefore, the administration submitted a legislative proposal to Congress last week that would address overtime pay problems in two ways. First, the administration proposal ensures that no Federal employee would receive less than his or her normal rate of pay for overtime work.

Second, it recognizes the special demands and difficult circumstances involving emergencies that threaten life or property by increasing the hourly overtime pay limitation from GS–10 step 1 to GS–12 step 1 for FLSA exempt employees who perform overtime work in connection with such an emergency or its aftermath. The head of each employing agency, in consultation with the Office of Management and Budget, would be authorized to determine the existence and duration of an emergency and whether the work of individual employees is connected to it.

The legislative proposal submitted to Congress last week builds upon and includes changes proposed in a bill submitted by the administration last year to correct longstanding FLSA exempt overtime pay problems for Federal employees generally. We urge Congress to give early consideration to the Government-wide proposal submitted to Congress last week.

We are convinced that a Government-wide solution is needed to ensure that employees are treated equitably. A Government-wide solution would be more equitable, because it would recognize that several different categories of Federal employees are called upon to perform large amounts of overtime work in difficult circumstances, sometimes involving a direct threat to life or property.

For example, the GS–10 step 1 hourly overtime pay cap now applies to National Transportation Safety Board inspectors who investigate accident scenes, Federal Emergency Management Agency employees who provide assistance at the site of a natural disaster,

weather forecasters who work long and unpredictable hours because of the vicissitudes of severe weather conditions, and civilian Defense Department employees who provide support for our armed forces in military operations.

In addition, firefighters are also subject to the same cap for any regularly scheduled overtime work they perform outside their normal tour of duty.

H.R. 2814, a bill referred to the subcommittee earlier this year, provides a solution to this problem for only one group of Federal employees, wildland firefighters who work in the U.S. Forest Service of the Department of Agriculture, or in the Department of the Interior. But it would not provide any relief for many other similarly situated Federal employees.

Moreover, the rate of overtime pay provided by H.R. 2814, up to one and a half times an employee's basic rate, regardless of grade level, is well in excess of the amount typically provided by private sector employers.

As you requested, let me compare the Federal Government and the private sector with respect to overtime compensation. Information available to the Office of Personnel Management from recent non-governmental sources indicates that only a minority of private sector employers provide time and one half overtime pay to employees who are exempt from the FLSA. For example, a 1999 Wyatt Data Services exhibit book on overtime policies for exempt employees shows that 17 private sector firms out of 104 surveyed provided time and one half overtime pay. Five firms provided double time pay.

But a majority, 54 firms, provided straight time pay. A 1996 compensation survey report of the Human Resource Association of the National Capital Area shows that 85 percent of surveyed employers in the national Capital area do not pay any overtime pay to their FLSA exempt staff at all. Of those that do make such payments, the Human Resource Association reports that overtime payments typically are made at the employee's base rate of pay, not time and one half.

However, both of the sources of information cited covered a broad range of industries and were not limited to emergency services.

We believe the administration's newly revised overtime pay proposal would address virtually all of the overtime pay problems that prompted consideration of H.R. 2814. It would also bring Federal overtime pay practices closer into alignment with private sector overtime pay practices by guaranteeing that all FLSA exempt employees receive no less than their regular hourly rate of pay for any overtime work. And it would do all of this at a reasonable cost to the taxpayer.

As always, OPM would evaluate the effectiveness of the new overtime pay practices and after 2 to 3 years of experience recommend any additional changes that may be appropriate.

This concludes my prepared remarks. I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Romero follows:]

STATEMENT OF
HENRY ROMERO, ASSOCIATE DIRECTOR
WORKFORCE COMPENSATION AND PERFORMANCE SERVICE
OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON THE CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

on

WILDLAND FIREFIGHTERS PAY: ARE THERE INEQUITIES?

September 26, 2000

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

THANK YOU FOR INVITING ME TO TESTIFY TODAY ON OVERTIME PAY FOR WILDLAND FIREFIGHTERS. WE ARE PLEASED TO HAVE THE OPPORTUNITY TO DISCUSS THE ADMINISTRATION'S PLANS TO DEAL WITH OVERTIME PAY PROBLEMS AFFECTING FEDERAL EMPLOYEES WHO PERFORM WORK IN EMERGENCY SITUATIONS, INCLUDING WILDFIRE EMERGENCIES.

DURING THE LAST FEW MONTHS, IT HAS BECOME CLEAR THAT LEGISLATION IS NEEDED TO HELP ADDRESS THE CHALLENGES POSED IN RESPONDING TO EMERGENCIES AND DISASTERS—IN PARTICULAR, THE WILDFIRES THAT HAVE BESIEGED OUR WESTERN STATES. THE EFFORTS OF OUR BRAVE FEDERAL WILDLAND FIREFIGHTERS AND OTHER DISASTER RELIEF PERSONNEL ARE BEING

HAMPERED BY DECADES-OLD PERSONNEL ADMINISTRATION RULES RELATED TO COMPENSATION FOR OVERTIME WORK THAT NEVER CONTEMPLATED THE SITUATION WE CURRENTLY FACE.

LET ME EXPLAIN THE PROBLEM BRIEFLY. THE OVERTIME PAY RATE FOR LOWER-GRADED EMPLOYEES COVERED BY THE FAIR LABOR STANDARDS ACT (FLSA) IS EQUAL TO ONE AND ONE-HALF TIMES THEIR HOURLY REGULAR RATE OF PAY. THE HOURLY OVERTIME RATE UNDER TITLE 5, UNITED STATES CODE, FOR FLSA-EXEMPT SUPERVISORS, MANAGERS, AND OTHER HIGHER-GRADED EMPLOYEES, ON THE OTHER HAND, IS LIMITED BY LAW TO THE OVERTIME RATE FOR GS-10, STEP 1. THIS DIFFERENCE IN OVERTIME PAY ENTITLEMENTS HAS HELPED TO CREATE A DISINCENTIVE TO PERFORMING SUPERVISORY WILDFIRE SUPPRESSION DUTIES.

LAST MONTH, PRESIDENT CLINTON TOOK DECISIVE ACTION TO ADDRESS THIS PROBLEM. HE INSTRUCTED THE DEPARTMENTS OF AGRICULTURE AND THE INTERIOR TO USE THEIR STATUTORY AUTHORITY TO PROVIDE INCENTIVES FOR THOSE WHO MAKE FINANCIAL SACRIFICES BY PERFORMING SUPERVISORY DUTIES IN THE DIFFICULT BATTLE TO SUPPRESS THE WESTERN WILDFIRES. THIS ACTION OFFERED A TIMELY, SHORT-TERM SOLUTION TO A LONGSTANDING PROBLEM. BUT WE ALL AGREE THAT A LONG-TERM SOLUTION IS NEEDED.

THEREFORE, THE ADMINISTRATION SUBMITTED A LEGISLATIVE PROPOSAL TO CONGRESS LAST WEEK THAT WOULD ADDRESS OVERTIME PAY PROBLEMS IN TWO WAYS. FIRST, THE ADMINISTRATION'S PROPOSAL ENSURES THAT NO FEDERAL EMPLOYEE WOULD RECEIVE LESS THAN HIS OR HER NORMAL RATE OF PAY FOR OVERTIME WORK. SECOND, IT RECOGNIZES THE SPECIAL DEMANDS AND DIFFICULT CIRCUMSTANCES INVOLVING EMERGENCIES THAT THREATEN LIFE OR PROPERTY BY INCREASING THE HOURLY OVERTIME PAY LIMITATION FROM GS-10, STEP 1, TO GS-12, STEP 1, FOR FLSA-EXEMPT EMPLOYEES WHO PERFORM OVERTIME WORK IN CONNECTION WITH SUCH AN EMERGENCY OR ITS AFTERMATH. THE HEAD OF EACH EMPLOYING AGENCY, IN CONSULTATION WITH THE OFFICE OF MANAGEMENT AND BUDGET, WOULD BE AUTHORIZED TO DETERMINE THE EXISTENCE AND DURATION OF AN EMERGENCY AND WHETHER THE WORK OF INDIVIDUAL EMPLOYEES IS CONNECTED TO IT.

THE LEGISLATIVE PROPOSAL SUBMITTED TO CONGRESS LAST WEEK BUILDS UPON AND INCLUDES CHANGES PROPOSED IN A BILL SUBMITTED BY THE ADMINISTRATION LAST YEAR TO CORRECT LONGSTANDING FLSA-EXEMPT OVERTIME PAY PROBLEMS FOR FEDERAL EMPLOYEES GENERALLY. WE URGE CONGRESS TO GIVE EARLY CONSIDERATION TO THE GOVERNMENTWIDE PROPOSAL SUBMITTED TO CONGRESS LAST WEEK.

WE ARE CONVINCED THAT A GOVERNMENTWIDE SOLUTION IS NEEDED TO ENSURE THAT EMPLOYEES ARE TREATED EQUITABLY. A GOVERNMENTWIDE SOLUTION WOULD BE MORE EQUITABLE BECAUSE IT WOULD RECOGNIZE THAT SEVERAL DIFFERENT CATEGORIES OF FEDERAL EMPLOYEES ARE CALLED UPON TO PERFORM LARGE AMOUNTS OF OVERTIME WORK IN DIFFICULT CIRCUMSTANCES SOMETIMES INVOLVING A DIRECT THREAT TO LIFE OR PROPERTY.

FOR EXAMPLE, THE GS-10, STEP 1, HOURLY OVERTIME PAY CAP NOW APPLIES TO NATIONAL TRANSPORTATION SAFETY BOARD INSPECTORS WHO INVESTIGATE ACCIDENT SCENES, FEDERAL EMERGENCY MANAGEMENT AGENCY EMPLOYEES WHO PROVIDE ASSISTANCE AT THE SITE OF A NATURAL DISASTER, WEATHER FORECASTERS WHO WORK LONG AND UNPREDICTABLE HOURS BECAUSE OF THE VICISSITUDES OF SEVERE WEATHER CONDITIONS, AND CIVILIAN DEFENSE DEPARTMENT EMPLOYEES WHO PROVIDE SUPPORT FOR OUR ARMED FORCES IN MILITARY OPERATIONS. IN ADDITION, STRUCTURAL FIREFIGHTERS ALSO ARE SUBJECT TO THE SAME CAP FOR ANY REGULARLY SCHEDULED OVERTIME WORK THEY PERFORM OUTSIDE THEIR NORMAL TOUR OF DUTY.

H.R. 2814, A BILL REFERRED TO THE SUBCOMMITTEE EARLIER THIS YEAR, PROVIDES A SOLUTION TO THIS PROBLEM FOR ONLY ONE GROUP OF FEDERAL

EMPLOYEES—WILDLAND FIREFIGHTERS WHO WORK IN THE UNITED STATES FOREST SERVICE OF THE DEPARTMENT OF AGRICULTURE OR IN THE DEPARTMENT OF THE INTERIOR. BUT IT WOULD NOT PROVIDE ANY RELIEF FOR MANY OTHER SIMILARLY SITUATED FEDERAL EMPLOYEES. MOREOVER, THE RATE OF OVERTIME PAY PROVIDED BY H.R. 2814—UP TO ONE AND ONE-HALF TIMES THE EMPLOYEE'S BASIC RATE, REGARDLESS OF GRADE LEVEL—IS WELL IN EXCESS OF THE AMOUNT TYPICALLY PROVIDED BY PRIVATE SECTOR EMPLOYERS.

AS YOU REQUESTED, LET ME COMPARE THE FEDERAL GOVERNMENT AND THE PRIVATE SECTOR WITH RESPECT TO OVERTIME COMPENSATION. INFORMATION AVAILABLE TO THE OFFICE OF PERSONNEL MANAGEMENT FROM RECENT NON-GOVERNMENTAL SOURCES INDICATES THAT ONLY A MINORITY OF PRIVATE-SECTOR EMPLOYERS PROVIDE TIME AND ONE-HALF OVERTIME PAY TO EMPLOYEES WHO ARE EXEMPT FROM THE FLSA. FOR EXAMPLE, A 1999 WYATT DATA SERVICES EXHIBIT BOOK ON OVERTIME POLICIES FOR EXEMPT EMPLOYEES SHOWS THAT 17 PRIVATE-SECTOR FIRMS OUT OF 104 SURVEYED PROVIDED TIME AND ONE-HALF OVERTIME PAY. FIVE FIRMS PROVIDED DOUBLE TIME PAY, BUT A MAJORITY—54 FIRMS—PROVIDED STRAIGHT TIME PAY.

A 1996 COMPENSATION SURVEY REPORT OF THE HUMAN RESOURCE ASSOCIATION OF THE NATIONAL CAPITAL AREA SHOWS THAT 85 PERCENT OF SURVEYED EMPLOYERS IN THE NATIONAL CAPITAL AREA DO NOT PAY ANY OVERTIME PAY TO THEIR FLSA-EXEMPT STAFF AT ALL. OF THOSE THAT DO MAKE SUCH PAYMENTS, THE HUMAN RESOURCE ASSOCIATION REPORTS THAT OVERTIME PAYMENTS TYPICALLY ARE MADE AT THE EMPLOYEE'S BASE RATE OF PAY—NOT TIME AND ONE-HALF. HOWEVER, BOTH OF THE SOURCES OF INFORMATION CITED COVERED A BROAD RANGE OF INDUSTRIES, AND WERE NOT LIMITED TO EMERGENCY SERVICES.

WE BELIEVE THE ADMINISTRATION'S NEWLY REVISED OVERTIME PAY PROPOSAL WOULD ADDRESS VIRTUALLY ALL OF THE OVERTIME PAY PROBLEMS THAT PROMPTED CONSIDERATION OF H.R. 2814. IT WOULD ALSO BRING FEDERAL OVERTIME PAY PRACTICES CLOSER INTO ALIGNMENT WITH PRIVATE SECTOR OVERTIME PAY PRACTICES BY GUARANTEEING THAT ALL FLSA-EXEMPT EMPLOYEES RECEIVE NO LESS THAN THEIR REGULAR HOURLY RATE OF PAY FOR ANY OVERTIME WORK. AND IT WOULD DO ALL OF THIS AT A REASONABLE COST TO THE TAXPAYER. AS ALWAYS, OPM WOULD EVALUATE THE EFFECTIVENESS OF THE NEW OVERTIME PAY PRACTICES AND AFTER TWO TO THREE YEARS OF EXPERIENCE RECOMMEND ANY ADDITIONAL CHANGES THAT MAY BE APPROPRIATE.

THIS CONCLUDES MY PREPARED REMARKS. I WOULD BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Mr. SCARBOROUGH. Thank you, Mr. Romero.

Let me begin by talking about something that apparently is a great concern to Congressman Pombo and Congressman Udall, who called the situation inexcusable, and Congressman Pombo, I'm sure you heard, went a little further and said right now the administration was engaged in a deadly game by pushing harder for the Government-wide fix, as opposed to something that just keys in on this one crisis issue.

Would you agree that if Congress can't make a decision on the Government-wide preference that we at least need to go ahead and get a fix before we're out of session this year on the firefighters issue to make sure that there's not a preference for people denying promotions?

Mr. ROMERO. No, I'm not sure I agree with that, Mr. Chairman. Mr. Pombo's bill addresses one group of employees, one segment of the work force.

Mr. SCARBOROUGH. Right.

Mr. ROMERO. As Mrs. Morella pointed out already, there are statements to this subcommittee in regard to this hearing already talking about. You forgot the DOD firefighters. I'm sure there will be other groups of employees that will emerge.

If there are practices that show that only one group of employees have been taken care of, I wish we had the luxury in OPM to just deal with pay policies one group at a time whenever an issue is raised with us. But we have the responsibly to look across the entire executive branch, and as we mentioned in my testimony, we already have been approached by the National Transportation Safety Board, by FEMA, by DOD, about people that get involved in emergency work and do face threats to life and property in the course of their duties that would normally say, "What about us?"

Mr. SCARBOROUGH. But my question to you is, if agreement can't be reached on a Government-wide policy, are you saying that we shouldn't pass a firefighter's fix?

Mr. ROMERO. I think our bill addresses the wildland firefighter issues, the ones they've raised, and would do so in a reasonable way. I think that bill should address the concerns that have been raised to the subcommittee.

Mr. SCARBOROUGH. Right. But my question is, would you support the passing of that legislation by itself in a stand-alone position if it's obvious that Congress can't pass the administration's Government-wide fix?

Mr. ROMERO. No. We would not support that because of the, we think it's unnecessary, and the overtime rates that would be in place for these employees are, we think, excessive to the need that has been addressed and would create problems in pay administration for all the other groups that would surely come to the subcommittee and want to be fixed as well.

Mr. SCARBOROUGH. Let me ask you this. Can you give me another example of these other agencies where more experienced people are actually discouraged from taking promotions because they're going to actually get a pay cut?

Mr. ROMERO. The pay cap applies to everybody. And the situation would be the same in FEMA, where higher graded employees would have the same disincentive to taking on other kinds of duties

that are in a different FLSA category. They react to natural disasters. They react, in your home State, to hurricanes and flooding. And they have the same kind of challenges in terms of people having a disincentive to taking certain duties to which the pay cap applies, the overtime pay cap.

Mr. SCARBOROUGH. I've got a Judiciary vote, I've got to run, I'm going to ask another quick question then pass it on, and then come back and maybe get some more questions in.

Let me ask you this. Do you have evidence from FEMA or any other area of similar recruitment and retention problems in other positions covered by the administration's proposal, like we have in this situation?

Mr. ROMERO. We have; in approaching us, they have cited the same kinds of concerns about employees who are in non-exempt positions being unwilling to take on higher graded duties that would put them in an exempt category or would move them into a GS–12 or GS–13 position that would be subject to overtime pay caps. Yes, sir, that is a situation that exists elsewhere beyond the wildland firefighters.

Mr. SCARBOROUGH. And where is that? What agency?

Mr. ROMERO. FEMA, National Transportation Safety Board, Department of Defense.

Mr. SCARBOROUGH. And do you have evidence of, again, similar recruitment problems because of that situation, like we have in this firefighting situation?

Mr. ROMERO. Yes, we do have problems with the overtime pay cap. We have evidence of the overtime pay cap creating disincentives for employees outside the wildland firefighter situation, not willing to take certain other duties because of the overtime pay cap.

Mr. SCARBOROUGH. Right. And I'm sorry, but my question is, is there evidence as direct as we have evidence here that's actually causing recruitment and retention problems like it's causing in this situation?

Mr. ROMERO. I don't have data that would be specifically addressing the same kind of scope of situation as the data presented here this morning.

Mr. SCARBOROUGH. My time has run out. Mr. Cummings.

Mr. CUMMINGS. You know, as I was listening to you, I couldn't help but think about the problem that we are developing in Baltimore, where the mayor gave the policemen a 10 percent raise. And it will be, I think, 33 percent over the next 3 years.

And then with all the other city employees, like the firefighters, you know, they're saying, what about me, we put our lives on the line. The garbage men are saying, we lift heavy cans every day, and all these fumes and getting rid of garbage. And the interesting thing, I think the thing that troubles me about all of this, is that we are in a situation where we really do sympathize with the firefighters. And I think you do, too.

Mr. ROMERO. We admit that's a problem, and we've submitted some proposals to address that.

Mr. CUMMINGS. Yes. And you don't want to be viewed as being anti-firefighter, because you are trying to deal with the kinds of problems that we're now beginning to face in Baltimore. But at the

same time, you want to get a remedy that will hopefully cure everything, so you don't have folks coming in and out of here, like you said a few minutes ago. And that's got to be a kind of tough situation.

And then the firefighting situation is right on the front burner, I didn't want to use burner, but it is, it is right here in front of us, because we're dealing with it, it seems like, almost on a daily basis.

And that leads me to, Mr. Swartzlander's testimony was excellent, by the way, he testified that wildland firefighters are incorrectly classified as forestry technicians, and that OPM has agreed to address this issue.

In your opinion, are the wildland firefighters incorrectly classified?

Mr. ROMERO. We're doing a data gather right now as a result of that assertion. We're not sure. We issue guidelines for agencies to use to classify the duties and responsibilities they assign to employees. The classification of wildland firefighters as forestry technicians in the GS–462 series is a function of the Department of Agriculture and Department of Interior having made that decision that's where they belong, based on the scope of duties and responsibilities they have assigned.

They've made a decision that they're not firefighters by name, but we have a series for firefighters, and there's a lot of other Federal employees who are firefighters. That's an administrative solution that can be accomplished by determining what is the proper duties and responsibilities. And we can do that with administrative options.

But that's a decision that's made by management as to what are the proper duties and responsibilities, with the proper classification based on the assignment of duties.

I would point out that the grade level criteria for forestry technicians in many cases, provide for higher grade levels than firefighters who are in the GS–081 series. So there's some tension there as to whether or not there's higher grades for forestry technicians than there are for the typical GS–4 and GS–5 firefighters.

Mr. CUMMINGS. Do you know why the wildland firefighters weren't included in the Firefighters Reform bill enacted back in 1998?

Mr. ROMERO. No, I don't, Mr. Cummings.

Mr. CUMMINGS. Are you familiar with H.R. 1770?

Mr. ROMERO. Yes, I am.

Mr. CUMMINGS. Do you see that as a solution to the problem, or do you like what you're doing better?

Mr. ROMERO. Well, H.R. 1770 addressed an issue that's been discussed at length this morning, the fact that at some, in many cases, people that are assigned to overtime work because of the cap actually earn even less money than their basic hourly rate of pay; 1770 sought to address that. And had that been dealt with by the Congress last year, we would not have been talking about that today.

The new bill deals with that problem, and in addition, solves by raising the pay cap to GS–12 step 1 the question of having a low pay, overtime pay cap that is a disincentive for certain employees

to take on supervisory or higher graded duties. So it does one up on H.R. 1770.

Mr. CUMMINGS. The GS–12 step 1, what's the significance of that?

Mr. ROMERO. Well, I know we've been talking mostly in the abstract this morning about GS grade levels and percentages. But let's talk about dollars. That GS–10 step 1 cap that exists right now is approximately $27; $27.36 I think is the GS–10 step 1 cap that is the problem.

By raising the pay cap to 12 step 1, the overtime rate for most employees who are in the rest of the United States, not in locality pay areas, but for most employees that would rise to about $36 an hour, approximately a 30 percent increase for a GS–12 employee from the current cap. At higher grade levels it would be even higher. I know there's not that many GS–15 employees, but for a GS–15 employee who would not want to take on fire suppression duties because they would have to take, the overtime pay cap would be so low, it would actually jump to about, to $47 an hour or a 60 percent increase in the overtime pay cap. So there, our bill would result in large percentage increases in the overtime rate for people at the GS–12 through 15 pay level.

I would like to point out that in Mr. Pombo's bill, with no limitation on grade level, a GS–15 senior employee who got straight time and a half, no cap, people have been referring to straight time and a half, the overtime rate for that employee would be over $77 an hour. That would be a 180 percent plus increase from their current cap. That's what happens to a senior employee where there is no pay cap, where it's true time and a half. And I think that it is unnecessary, certainly not consistent with pay practices in most parts of our economy in this country.

Mr. CUMMINGS. Thank you very much.

Mr. SCARBOROUGH. Mr. Romero, I only have a couple more questions. My staff has been advised of the fact, as we heard Mr. Swartzlander him testify to this earlier, that even if the administration's bill is enacted, there's going to continue to be a pay disparity within the Federal wildland firefighter ranks. That is, it will continue to be routine for employees assigned to the wildland fire emergency command positions with significant responsibilities to receive lower overtime pay than personnel with much more limited experience and training. Do you agree with that assessment? Do you agree with Mr. Swartzlander's assessment? Do you agree with what we've been hearing from Mr. Pombo, Udall and other offices' assessment of the bill that you're supporting here?

Mr. ROMERO. I can't address the relative skill levels of who the other cooperators might be. That's not my field. But I do know that in proposing our bill, we think we're addressing some of the concerns that have been raised about what causes that disincentive and what causes there to be lesser skilled people on the fire lines, a fact that some supervisors and higher grade people don't want to take on those duties, because the overtime pay cap keeps them from being attracted to that work.

We think our bill helps with that part of the problem. I don't think I can address whether the skill levels, in comparison to the other cooperators in the fire suppression duties, would be changed

by that. I think we're addressing, though, I think Mr. Swartzlander addressed the fact that there are retention problems, and newly trained people leave before they're able to be utilized by the Federal Government. I think that's a retention problem Government-wide. It's not an overtime pay cap issue, those folks are leaving. And that's something we have to address on a Government-wide basis.

But I do know that in some comparisons that are made, we do it State by State. And I know in Mr. Pombo's bill, the reference is to what California State practices might be, but they differ from the practices in the State of Florida, which are lesser pay and straight time, not even time and a half, for FLSA exempt employees. So I'm just concerned that our responsibility at OPM isn't to look at all the pay practices, pick the ones that are the highest and use that as a benchmark for setting pay policy for the Federal Government.

Mr. SCARBOROUGH. Congressman Pombo and Congressman Udall's bill at least can ensure that all wildland fire supervisors and managers are going to receive greater overtime pay than their subordinates while on a wildland fire. Can you make that same guarantee today before the committee, that the administration's bill can ensure that the supervisors and managers are going to receive greater overtime rate of pay than their subordinates?

Mr. ROMERO. Yes, I can do that. Raising the pay cap means that, there are two provisions. First of all, no one is going to earn less money than their basic rate of pay. So if you have a GS–12 or GS–13 working overtime, their rate of pay is going to be what their GS–12 or GS–13 basic rate of pay was anyway, and if they're a supervisor, they will be earning more money than their subordinate, who would have been at a lower grade level.

Mr. SCARBOROUGH. But isn't it true that if a GS–13 takes a non-exempt position that he's going to get paid more for taking that non-exempt position? I mean, he's going to get paid a higher rate of overtime pay than if he took an exempt supervisory position, correct?

Mr. ROMERO. The non-exempt employee will get time and a half. The GS–13 employee will get either the basic rate of pay, depending on whichever is higher, either that basic rate of pay, or the overtime rate which will be capped at the 12 step 1 rate.

So it's possible that for a higher graded GS–14 employee, and certainly the 15 level, that the rate of pay might be less than for an exempt employee at a very senior GS–12 level. So it's a situational situation, one on one. But in general, most, under our bill, most supervisors are going to earn more money than their subordinates.

Mr. SCARBOROUGH. But not all, which was——

Mr. ROMERO. Not in 100 percent of the cases, no, sir.

Mr. SCARBOROUGH. Which was the last question I asked you.

Have you discussed this specific issue with the Department of Interior and the Forest Service? Because very interesting things happened throughout this process. They supported the Pombo-Udall approach, supported the bill, worked with them, have been working with us. And then we come up to the time when we're going to

have a hearing and all of a sudden they disappear on us. And they aren't going to come testify.

Have you had conversations with anybody?

Mr. ROMERO. I have not had any conversations with anybody from the Department of Agriculture or Department of Interior. I don't know what kind of support or conversations they were having in the drafting of Mr. Pombo's bill. I would have loved to have had some of my colleagues from the executive branch share the privilege of being before the subcommittee this morning.

Mr. SCARBOROUGH. But you're the lucky one, you're getting all the glory yourself. [Laughter.]

Mr. ROMERO. The decision of the Department of Agriculture and Department of Interior to not be here this morning was made outside of OPM. I have no knowledge of what, you know.

Mr. SCARBOROUGH. No knowledge of why they're not here?

Mr. ROMERO. No, sir.

Mr. SCARBOROUGH. First or second hand? You have no second hand knowledge?

Mr. ROMERO. No.

Mr. SCARBOROUGH. Mr. Cummings.

Mr. CUMMINGS. I don't have anything.

Mr. SCARBOROUGH. OK. Let me ask you one more question on retirement, a little different subject. But under current law, law enforcement officers are not required to separate from service until they become 57 years old. But the maximum age for firefighters is 55.

When the law was changed to raise the retirement age for Federal law enforcement officers from 55 to 57, do you know why that age wasn't raised for firefighters?

Mr. ROMERO. No, Mr. Chairman, I don't know. When the Federal Employees Pay Comparability Act, when it was enacted in 1990, it provided for that new retirement age of 57 for law enforcement officers. The 55 retirement age for firefighters had been longstanding. And why it was not addressed in that piece of legislation, I don't know. The disparity exists today. I am aware that Congressman Gallegly had introduced a bill that would address this disparity. But we have not been asked, the administration has not been asked to comment on that bill.

Mr. SCARBOROUGH. Is that something you'd support, getting rid of the disparity?

Mr. ROMERO. I'm not familiar with the bill, so I'm not sure exactly what its provisions are. But——

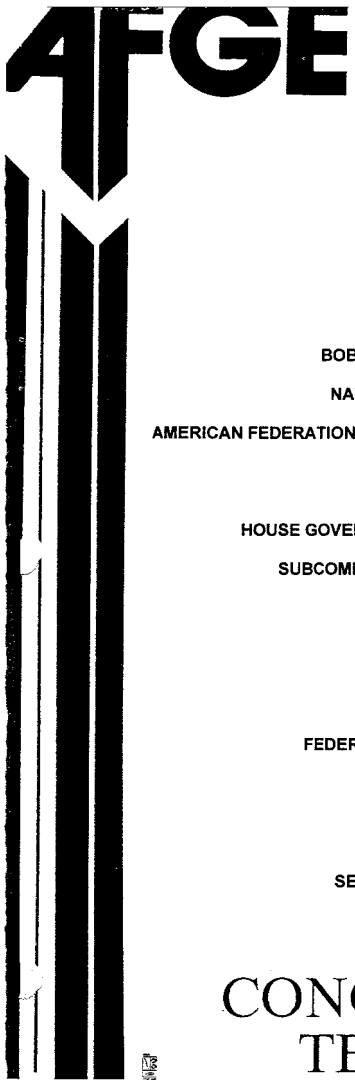
Mr. SCARBOROUGH. What about the general concept?

Mr. ROMERO. The general concept is that unless there is a valid reason for disparity, we would oppose having these disparities, we would like to look at Government-wide situations and ensure that there is consistency and uniformity, unless there are valid reasons for any difference.

Mr. SCARBOROUGH. OK. Thank you, Mr. Romero. I appreciate your coming to testify.

And I just have two unanimous consent requests. First of all, I ask unanimous consent that the statement of Bobby Harnage, national president of American Federal of Government Employees, be made part of the record. And without objection, that is so ordered.

[The prepared statement of Mr. Harnage follows:]



American Federation of
Government Employees, AFL-CIO

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STATEMENT BY

BOBBY L. HARNAGE, SR.

NATIONAL PRESIDENT

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE THE

HOUSE GOVERNMENT REFORM COMMITTEE

SUBCOMMITTEE ON CIVIL SERVICE

ON

FEDERAL FIRE FIGHTER PAY

SEPTEMBER 26, 2000

CONGRESSIONAL TESTIMONY

Mr. Chairman and Members of the House Civil Service Subcommittee, I am Bobby L. Harnage, Sr., National President of the American Federation of Government Employees, AFL-CIO, which represents over 600,000 federal and District of Columbia employees, including a majority of the fire fighters employed by the Department of Defense (DoD) and other agencies. Consequently, AFGE possesses unique expertise concerning the pay and working conditions of these men and women who protect us all from the perils of fire, whether wildland or otherwise.

We are pleased to have this opportunity to present our views on H.R. 2814, a bill to "authorize overtime pay provisions for all Federal employees engaged in wildland fire suppression operations".

Each year, the media brings to our attention the devastation wrought by wildland fires. Not only do they threaten wildlife, wildland fires imperil and often destroy homes and other structures in their paths. Wildland fires burn for days and take just as long to control and then to finally extinguish. Those who fight wildland fires face great risks and, far too often, are injured and sometimes even killed. Wildland fire fighters are often in fire camps for weeks at a time. In being away from their families for so long, many wildland fire fighters also often incur additional expenses for child care and other necessary domestic arrangements.

All of us must do whatever we can to support those who fight so hard in defense of our lives and for the preservation of our parks and other natural resources. H.R. 2814 is a measure intended to alleviate some of the financial burdens faced by wildland fire fighters by removing the GS-10/step 1 cap and ensuring that wildland fire fighters receive a full one and one-half of their hourly rate of pay while engaged in wildland fire fighting activities.

While you and your colleagues consider this legislation, we urge you to keep in mind one important fact: Wildland fire fighting is not restricted to employees of the Forest Service (FS) in the Department of Agriculture and to employees of the Department of Interior (DoI), who are the only wildland fire fighters covered by H.R. 2814. Fire fighters from other agencies also engage in wildland fire fighting. Most are employed by DoD on a full-time basis as fire fighters.

DoD fire fighters combat wildland fires on their installations, such as the fires which have occurred near Ft. Carson, Colorado (around Pinon Canyon), as well as those which have blazed at Ft. Hood, Texas, on sites which are frequently used for training and may have live ammunition on the ground. DoD fire fighters are also frequently detailed to fight wildland fires in areas hundreds of miles from their installations.

When these DoD fire fighters are detailed from their installations to fight wildland fires. they work side-by-side with the wildland fire fighters employed by the FS and the DoI. The two groups of fire fighters are already treated differently in terms of pay and overtime. More specifically, the FS and DoI fire fighters earn overtime after working 40 hours in a week. However, the DoD fire fighters earn overtime only after working 53 hours in a week, because they are full-time fire fighters. That is their job--to extinguish and control fires--and the Fair Labor Standards Act (FLSA) provides that overtime must be paid to fire fighters only after they have worked 53 hours in a week.

The wildland fire fighting of DoI and FS employees is generally incidental to their main jobs that are primarily in land management. Consequently, their fire fighting is generally confined to the wildland fire season and to wildland fire outbreaks. Because they are not full-time fire fighters, they are not subject to the FLSA provisions pertaining to other federal fire fighters, like those in DoD, and so they receive overtime after only 40 hours, rather than 53. Moreover, the base for the calculation of overtime is vastly different. This means that the FS and DoI employees who fight wildland fires receive overtime at the rate of one and one-half times their hourly rate. DoD fire fighters combating the same wildland fires, on the other hand, receive overtime at the so-called fire fighter rate that is about 75% of the general schedule hourly rate.

Finally, it should be noted that the positions of DoI and FS employees who are asked to fight wildland fires as part of their jobs are generally classified at grades higher than the classification of DoD fire fighters. This means that FS and DoI wildland fire fighters generally receive pay for grades two or three levels higher than the DoD wildland fire fighters. Nevertheless, both groups of employees work side-by-side, face the same risks, and are separated from their families for extended periods.

Neither wildland fire fighters in DoI and FS, some of whom are represented by AFGE, nor Congressional supporters of H.R. 2814, many of whom are strong supporters of federal employees and their families, are responsible for this unfortunate situation. However, H.R. 2814 does not address these inequities and would, however unintentionally, exacerbate those problems.

H.R. 2814 would remove the GS-10/step 1 cap on overtime. However, it would do so only for FS and DoI wildland firefighters. DoD fire fighters, on the other hand, would still be subject to the cap.

In 1998, Congress addressed the issue of pay calculations for fire fighters by passing the Fire Fighters Overtime Pay Reform Act, (FFOPRA). The primary issue it was designed to address was the inequity caused by using the provisions of Title 5, United States Code, to calculate firefighter pay. Those provisions were based on a forty-hour work-week and did not make allowances for those

employees whose regular tour of duty was more than 72 hours. The bill was not a perfect fix. It was a compromise made in order to satisfy budgetary constraints. However, enactment of FFOPRA resulted in a significant improvement in the amount of pay received by fire fighters.

FFOPRA, however, only covered full-time employees whose positions were classified under the standards for firefighters. It did not apply to those like FS and DoI personnel who, during the wildland fire season, can be called upon to engage in fire suppression activities. This oversight was wrong and highlights the need to treat all fire fighters equally. It's a homely cliché, but two wrongs don't make a right. H.R. 2814 corrects one inequity only to create, however accidentally, another inequity.

For these reasons, Mr. Chairman, we urge that H.R. 2814 be modified to make it applicable to all employees during the time in which they are fighting wildland fires. Alternatively, we suggest that the FFOPRA be amended to provide that FS and DOI employees are covered by its provisions during the time they are engaged in fire suppression activities.

We would welcome the opportunity to work with your staff to make the necessary modifications to H.R. 2814. Thank you for this opportunity to provide the views of AFGE.

Mr. SCARBOROUGH. And I also ask unanimous consent that several statements submitted in July by various firefighters be entered into the record. The minority has been given copies. And without objection, they are so ordered.

Thank you for testifying. I'd like to thank everybody in all the panels, and thank you all for coming and listening to this very important issue. We are adjourned.

[Whereupon, at 11:55 a.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Additional information submitted for the hearing record follows:]

Christopher J. Mehne
Federal Wildland Fire Service Association

Testimony of Christopher J. Mehne, member Federal Wildland Fire Service Association for the House Committee on Government Reform, Subcommittee on Civil Service.

July 18, 2000

Mr. Chairman and members of the Subcommittee:

I appreciate this opportunity to present in writing for the record some very important issues of our country's federal wildland firefighters. I am an active member of the Federal Wildland Fire Service Association (FWFSA); an association formed of federal wildland firefighters employed by the five wildland agencies of the Departments of Agriculture and Interior. In January 1998, I retired from this dedicated group of men and women after 27 years of service, 16 years in the field, 11 years in secondary fire management positions. At the time of my retirement I held the fire rank of Division Chief, was the supervisor of a complex emergency command, communications and dispatch center, and a fire training officer.

Federal wildland firefighters are involved in some of the most hazardous work imaginable. No two wildfires are alike, only experience, training and a well-structured organization helps in reducing the risks inherent in the profession. Wildland fires can, and do occur geographically everywhere and our nation's wildland fire season is nearly year around. These proud and dedicated individuals also are called to support other natural disasters, such as hurricane relief. There is a National Incident Command Team on call every day of the week throughout the year. Within the agencies that employ them wildland firefighters are currently classified as forestry, range, or biological technicians, and other classifications that do not properly recognize their true duties and responsibilities. Now the paradox is, they spend their entire careers, as I did, working under agency position descriptions that are Office of Personnel Management approved primary or secondary firefighter job description under 5 U.S.C. 8336(c). In fact to take a job not so approved jeopardizes their ability to retire under approved firefighter retirement statues. This issue has been a sore point with many others and myself for decades. Several years ago in Denver, Colorado at a national diversity conference, the proper classification of wildland firefighters emerged as the number one issue. A task force formed to pursue this issue effected no change.

I cannot even fathom how many hours I have spent on or supporting fire suppression and emergency response in 27 years. In my capacity as an engine captain, a hot shot captain or a handcrew captain I could easily spent over 2000 hours performing direct suppression duties in one year. As a Division Chief supervising a dispatch center I was virtually on unpaid call 24 hours a day, 365 days a year. Most everything I did in my career was directly related to fire suppression, pre-suppression, fire training or fuels management. To have been classified, as forestry technician was an affront to the profession I selected, and ludicrous to the hard working, proud and dedicated individuals

who continue to do the job. Federal wildland firefighters remain unrecognized as "professional firefighters" by the agencies that employ them, until unfortunately death while on duty occurs. Such was the case with the death of 14 of the most experienced and elite federal wildland firefighters in the nation on the South Canyon Fire in 1994. In Prineville, Oregon there is a monument, a solemn tribute to those fallen brave **firefighters**. Changes were implemented to avoid future incidents of this nature, but proper classification was not one of them. Proper classification would ensure appropriate training for these firefighting positions, and most appropriately, give these individuals the rightfully status they have achieved, "professional wildland firefighters".

The Director of OPM has agreed to begin a rewrite of the 081 federal firefighter series to consider inclusion of wildland firefighter. I am pleased that this is taking place, however without oversight from outside OPM and the employing agencies, I am skeptical of the sincerity of the effort and the outcome.

Currently before this session of Congress is legislation (H.R. 2814 & S. 1498) that addresses one issue within the federal wildland firefighting community that of the **Overtime Pay Cap**. Federal wildland firefighters are either exempt or non-exempt from the Fair Labor Standards Act (FLSA). In addition, the incident command system has also determined positions as either exempt or non-exempt. The inequities in this area substantially contribute to a number of situations that adversely effect the efficient management of an emergency incident.

I will not go into the nuts and bolts of this situation as you will hear and read other testimony that will describe them better than I. Let it suffice to say, that capping the overtime pay rate leads to situations which encourage our most qualified firefighters to fill a non-exempt position, in order to be compensated at a greater level, instead of filling a position that requires a higher skill level and associated responsibilities.

Essentially, all leadership positions from crew supervisor to the Incident Commander handling a 100,000 acre fire are capped for overtime pay. Under this system, there is no recognized difference in the overtime pay rate for increased skill and responsibility. In a number of cases this situation leads to a total lack of participation by individuals who receive inadequate overtime pay compensation yet are fully qualified to work in the position.

This situation becomes execrable when on these emergency incidents cooperators are employed. These cooperators come with their own pay schedules. What occurs, is these individuals make substantially higher wages than the federal wildland firefighters. Not only does this decrease motivation and participation by federal employees, it also leads to escalated cost for these incidents.

In 1998, the Departments of Agriculture and Interior requested to the Office of Personnel Management, an elimination of the overtime pay cap during emergency incidents. OPM's reply included recognition of the concerns, but stated they did not have such authority to resolve the issue.

At a 1999 Interagency Incident Management Workshop, National Incident Commanders identified several problems causing difficulty in the management of large and complex incidents. Lack of participation by non-fire management personnel in Command and General Staff positions was cited as one such problem. Local and state government personnel have been filling many of these slots. This is very expensive as

these personnel are under assistance by hire and are being paid off their agencies pay schedules and receive portal-to-portal pay.

The federal government simply should not be compensating a supply truck driver with a greater overtime pay rate than the Incident Commander who carries a much greater responsibility protecting life, property, and our valuable natural resources. We don't pay sergeants in the military, the same as colonels or generals. This is a matter of fairness. H.R. 2814, and it's companion S.1498, merely puts everyone on the incidents on an even playing field, paying all involved true time and one-half overtime. The results of passing this legislation into law, would be; greater firefighter motivation, more incident participation by federal employees, reduced cooperator participation resulting in cost savings, and reducing the great pay disparity that exists between federal wildland firefighters and the other state and local firefighting agencies.

Another issue I hope the committee will support concerns the **non-inclusion of hazardous duty pay** as part of federal wildland firefighters basic rate for retirement purposes.

Federal wildland firefighters who are general schedule (GS) employees receive a 25% differential hazardous duty (HP) pay premium when engaged in fire suppression duties on uncontrolled incidents. Federal employees, who are not firefighters per position description, may be wage grade (WG) employees. These WG employees receive a 25% environmental pay (EP) when engaged in firefighting activities. The language describing environmental pay mirrors the language describing hazardous duty pay in Title 5. Yet, Title 5 specifically includes environmental pay received by a WG employee as part of their basic pay for retirement purposes. While Title 5 does not specifically exclude hazardous duty pay from being considered as part of a GS employee's basic pay for retirement purposes, it doesn't say to include it.

Surely the members of this Subcommittee can see the inequity here. A person whom is not a firefighter by position description enjoys a greater benefit from firefighting duties than the firefighters themselves. Federal wildland firefighters are regularly exposed to incredible risk and hazards. No two fires are the same; experience, training and physical conditioning keep them safe from the inherent risks in wildland fire suppression. Wildland firefighters must stay alert, observant and aware to the surrounding environment to remain safe while attacking often extremely powerful wildfires. Hazards such as steep canyons, severe weather factors, heavy fuel buildups, snags, rolling material, nighttime suppression activities, urban interface zones, to mention just a few, are everyday occurrences for the wildland firefighter. Wildland firefighters put their lives on the line as a matter of fact. They only receive this HP pay while engaged in fighting <u>uncontrolled</u> wildfire. The inclusion of hazardous duty pay as part of their basic pay for retirement calculations would be a minimal cost to implement and it would set things right with the law which omits this benefit from federal wildland firefighters.

I personally in the course my career broke a finger, injured both knees a number of times, sprained most joints in my body, separated a shoulder, was hit by rolling rocks and burning logs on numerous occasions. I was on fires where fatalities occurred. In 1976 I was honored for efforts related to saving the life of my foreman who was struck up a boulder the size of a Volkswagen bus, as well as providing trauma first aid to five

other wildland firefighters caught in the same rock slide, one of whom suffered an career ending broken back.

Over the course of my career the hours of hazard pay I received would have provided a fairly significant increase in the annuity I now receive. I ask this committee to support this request to include the hazardous duty pay federal wildland firefighters receive to be considered as part of their basic pay for retirement calculations. A simple amendment to Title 5 involving a few words would right a great inequity.

Federal wildland firefighters are dispatched at a moment's notice to fight fires and support other emergency incidents all across America, as well as other countries on occasion. In these instances firefighters are compensated for their travel and work time only. These firefighters are not compensated for being away from homes and families. Our federal lands these firefighters protect contain some of the most rugged in the country. Firefighters work long hours on steep slopes, rationing water to make it through shifts; carrying all the provisions to survive on their backs while performing some of the most arduous work imaginable. Work shifts on many assignments are usually 14-16 hours in length, up to 21 days in a row without a day off. Sleep is something a wildland firefighter learns to live without enough of. Off shift time is spent standing in long lines to eat, shower, re-supply, to use a portable toilet and sleep. These situations are uncomfortable, generally unsanitary and sleep depriving. Yet, these dedicated men and women are compensated as if at the end of the day they get to go home.

In California, county, city, and state cooperating wildland firefighters are paid portal to portal when they fight OUR fires. It is so unjust that the federal wildland agencies will pay our cooperators round the clock to help put fires out on federal lands when not returning to their home units after shift, yet these same agencies do not pay their own firefighters in the same situation. This really decreases morale. This issue has escalated in the last decade as personnel availability in the federal workforce has drastically shrunk. This reduction is due to qualified personnel retiring with an insufficient younger workforce in place and the fact that many qualified federal personnel see the benefits of working for their cooperators, resign to take better paying positions providing better benefits.

The federal wildland agencies agree that portal-to-portal pay is needed, however their proposal is based on simplifying pay calculations association with emergency incidents, not making things equitable. They want portal-to-portal at base pay rate; i.e. no overtime, no hazardous duty pay. Such a proposal could reduce firefighter pay on a regularly schedule day by up to 25% from current pay schemes. Although it is encouraging to finally see a dialogue beginning on this issue, a potential program that would reduce wages to an already low wage system is unacceptable. Implementation of the agency proposal would be in violation of the FLSA and call for an exemption from FLSA.

A realistic and equitable portal-to-portal compensation would provide 24 hour compensation for federal wildland firefighters only while on assignment to emergency incidents; would retain hazardous duty pay compensation that counted towards retirement calculations; and provide true time and one-half overtime.

Elimination of the overtime pay cap, inclusion of hazardous duty pay for retirement calculation, equitable portal-to-portal compensation, and the proper classification of federal wildland firefighters would be tremendous steps in the right direction in providing for a stronger and more efficient federal firefighting force. This would also allow for greater retention of the federal workforce. However, these steps need to be joined by others. The federal government needs to appropriate more funding to the federal wildland fire organizations in order to increase and strengthen firefighting capabilities.

I venture to say that since I started my career in 1965, the professional federal wildland firefighting workforce is at it's historic lowest. This couple with incisive downsizing of the non-fire workforce crippling the ability to field a "fire militia" does an extreme disservice to the American people. We know wildland fires will continue to occur. It is not "if", but "when". We need a professional wildland fire organization prepared and in place to deal with the inevitable. The federal wildland fire organization should be considered an integral part of government, not one that is continually downsizing to meet budget constraints.

I thank you for allowing my comments to be presented to this Subcommittee on these important and critical federal wildland firefighting issues.

CASEY JUDD; 5TH DIST. VICE PRESIDENT CALIFORNIA PROFESSIONAL FIRE FIGHTERS

Testimony of Casey Judd, 5th District Vice President, California Professional Firefighters before the House Committee on Government Reform, Subcommittee on Civil Service

July 2000

Mr. Chairman and distinguished members of the Subcommittee:

My name is Casey Judd. I am a battalion chief and former President of Local F-57 of the International Assn. of Firefighters at McClellan AFB in Sacramento California and current 5th district V.P. of the California Professional Firefighters. As such, I represent California's federal firefighters in a legislative/political capacity. I am not a federal **wildland** firefighter but would respectfully like to offer written comments with respect to the issues facing the nation's federal wildland firefighters.

As we meet here today, and for many weeks prior to this, thousands of brave men and women that make up this nation's federal wildland firefighters, are engaged in battling countless wildfires that rage across the country. These men and women, on a moments notice, are transported to some of the most remote, inhospitable, yet awe-inspiring landscapes across this great nation in an effort to win the war against the incredible destructive power of wildfires. These fires will continue to rage until the cooling signs of fall and winter approach, still some months away.

Make no mistake when I suggest that battling a wildfire is much like a war. A war with mother nature. Of all the natural disasters confronting humans today, including hurricanes, tornadoes, earthquakes, volcanoes and others, the wildfire is but one of those we as a society have chosen to attack head on. This attack, includes rudimentary back-breaking labor by countless men and women to cut fire lines around a fire through thick forests and brush and at slopes not even commonly traveled by more astute four legged animals.

Most of us have watched in amazement the documentaries bringing us into the heart and soul of the wildfire battle. These real-life encounters brought to the safe, sterile environments of our theaters and living rooms, a battle against a beast of immense and often overwhelming proportion. One cannot be anything but awed by the firestorm's capacity for creating it's own weather, watching flames race across roadways at 80 mph, and seeing mighty redwoods and pines explode like match sticks in an instant.

Yet virtually undetected within the chaotic dance of 100 ft. flames and acrid plumes of thick choking smoke, our federal wildland firefighters work hand tools for 8, 10, 16 hours a day or more to forge a line around the fire, now flying across the forest through the tops of 100 ft. trees. They are protected only by training, intuition, experience and thin aluminized shelters quickly donned to protect the firefighters from the intense heat and unimaginable force of a firestorm bearing down on them.

Members of the committee, this is not a science fiction novel. Vivid scenes such as this are played out day after day across this country. There are no state boundaries, no roadblocks to keep such incidents in check. Our federal wildland fire fighters traverse the country, from state to state, responding to where ever they are needed, often being away from their families for weeks on end.

For years, and perhaps more significantly since 1994, we have worked diligently to educate Congress on the plight of our brave federal wildland firefighters, and seek remedies to the issues that affect them most. Our efforts have secured an incredible array of support from both sides of the aisle representing the full spectrum of political ideology as member after member has come to clearly understand the issues affecting federal wildland firefighters.

The poignancy of the 1994 effort should clearly be etched on all our minds as the year we lost 14 federal wildland fire fighters on one incident in Colorado. Far more American lives lost than in all military conflicts that year. There has been much debate as to whether the dynamics of the issues we bring to you today contributed to that tragedy and it is certainly not my intent to make that suggestion. I will however leave any such conclusion to you after the completion of this hearing and the information provided to you.

As our federal wildland firefighters once again risk their lives to save precious stands of old growth forest, homes which have encroached into the wilderness, and vast expanses of federal lands, it is incumbent upon all of us who share in the common understanding of their plight, to raise the level of awareness and education within this body and seek your assistance in providing relief to these brave men and women who ask so little of us while we ask so much of them.

Testimony provided to this subcommittee today, coupled with that heard last year before the Forests and Public Land Management Subcommittee of the Senate Natural Resources Committee, and the Forest & Forest Health Subcommittee of the House Resources Committee paint a clear picture with respect to three issues affecting our federal wildland firefighters. Indeed, even the agencies employing these firefighters concede the need for such changes.

Although testimony of others today will encompass more detail, I would like to provide the subcommittee with a layman's perspective of the issues.

PORTAL TO PORTAL PAY

Our federal wildland firefighters often are assigned to emergency incidents lasting up to 21 days. Such incidents, as described earlier can take these firefighters to all 50 states of the nation as well as Canada and Mexico. However, these federal wildland firefighters are only compensated for the time actually spent combating the fire. Thus, imagine if you would, being a federal wildland firefighter being dispatched thousands of miles away from your home and family for up to 3 weeks. Although you are gone for 3 weeks and often entrenched in areas hundreds of miles from civilization, you are only compensated while on the fire line.

During the non-pay hours while on assignments, federal wildland firefighters are expected to remain available and fit for duty with no compensation. In the case of closed fire camps, the firefighters are restricted to the confines of the camp. In such an instance, our wildland firefighters are treated no different than prisoners. However, therein lies the irony. Often, wildfire campaigns will employ "cooperatives," firefighters from surrounding communities, municipalities and even prison firefighter crews. While in camp, all other firefighters are paid portal to portal pay (for all hours on the incident) **including** the convict crews. You, as a federal wildland firefighter however, fighting on the same fire line using the same equipment, do not get compensated.

The dynamics of this inequity manifests itself in the fact that many federal wildland firefighters remain on the fire line far too long, often forgoing rest, recuperation and sustenance, simply to get paid so as to put food on the table for his/her family perhaps thousands of miles away. A causative action in the Colorado incident? Perhaps we'll never know.

There are some who would suggest that federal wildland firefighters should not be paid while eating and sleeping. They further refuse to believe the fact that municipal firefighters on similar wildfire campaigns receive such compensation. To those, and all with such a mind set I offer this analogy: keeping in mind the fact that battling a wildfire is in fact a war with nature, such a thought would be tantamount to suggesting to the Armed Services Committee that they compensate the men and women of the armed forces **only** when they are engaged in an armed conflict and firing their weapons. Such a foolish and dangerous policy would destroy the ability to recruit and retain quality personnel. Such is what we are now beginning to see in the ranks of the federal wildland firefighters.

HAZARD DUTY PAY

Federal wildland firefighters are General Schedule (GS) employees while other federal employees are Wage grade (WG) employees. Federal wildland firefighters receive **differential** pay (hazardous duty pay) of 25% while engaged in fire suppression duties. Wage Grade employees (non-firefighters) receive **environmental** pay of 25% while engaged in support functions during the suppression of wildland fires. The non-firefighter WG employee's ***environmental pay*** **is** credited towards their retirement annuity while the GS firefighter's ***hazard duty pay*** **is not** credited towards their retirement calculations.

Thus conceivably you can have a GS firefighter on a fire line with hand tools who does not enjoy the inclusion of his/her hazard duty pay in their retirement calculations, working aside a WG equipment operator whose environmental pay is included in their retirement calculations. The inequity is glaring. Although current law does not specifically exclude wildland firefighters from being provided this benefit, correcting this disparity must be accomplished through legislative process. Whether such a disparity in the law was simply an oversight or done for some other reason, it must be corrected to provide fair and equitable treatment to the federal wildland firefighters.

OT PAY CAP

Much has been discussed recently about the overtime pay cap with respect to federal employees. Nowhere in the federal sector does the pay cap issue become so egregious as when it literally adversely affects the manner in which a wildfire incident is managed. I believe after you hear testimony from those before you today as to how the OT cap impacts a wildfire incident, you will become compelled to join us in calling for changes to such a system that can literally cause chief officers, who should be taking FLSA exempt command positions within an incident, to instead take lower responsibility non-exempt positions on the same incident which results in greater pay than if they had taken the higher responsibility exempt positions in the incident.

CONCLUSION

Mr. chairman and members of the subcommittee, in conclusion, some staff within this body of Congress have suggested to our federal firefighters that if they don't like the current system, they should find another job. Most of us who have dedicated our adult lives to public safety, whether it be through law enforcement or firefighting, do so not so much for the pay and benefits, but because we have a deeply ingrained desire to help others; to return something to our communities. Our federal wildland firefighters, who face the fiercest of fires, do so on a national level. They will ply their trade in their own communities, or in yours, thousands of miles away or next door. On a routine basis, they face a monster of incredible proportion with but a few hand tools in an effort to create a line around a fire...a line that can be miles and miles long.

Unfortunately, these federal wildland firefighters are simply too busy this time of year to come to Capitol Hill en masse and share with you their critical needs. Thus, the few of us here today ask you to listen to our words, review the written testimony of those unable to be here, and visualize, through what ever media best allows you to recall such scenes of pure hell and horror that wildfires represent, and encourage this body of Congress to take care of those that have dedicated their lives to taking care of this land by supporting H.R. 2814 and other legislative initiatives to remedy the issues brought forth before you today. I respectfully ask that the subcommittee mark up H.R. 2814 and forward it to the full committee for action.

Thank you for providing me this opportunity on behalf of the nation's federal wildland firefighters.

DENNY BUNGARZ:REPRESENTING RETIRED WILDLAND FIREFIGHTERS, FEDERAL WILDLAND FIRE SERVICE ASSOCIATION

Testimony of Denny Bungarz, Representing Retired Wildland Firefighters, Federal Wildland Fire Service Association before the House Committee on Government Reform, Subcommitee on Civil Service.

July 17, 2000

Mr. Chairman and distinguished Members of the Subcommittee:

My name is Denny Bungarz and I represent the Federal Wildland Fire Service Association. I retired from the US Forest Service in December 1989 as Forest Aviation and Fire Management Officer assigned to the Mendocino National Forest in California. I started my wildland firefighting career in 1952 on the Trinity National Forest on a fire crew. I have filled progressively more complex positions in the wildland firefighting area and was a National Incident Commander on California Team 4 during my last two years of service. I returned to school in 1964 and obtained a BS degree in Forest Management from California State University of Humboldt in January 1967. Some of you may remember during the 1988 fires in Yellowstone, watching as the fire burned around Old Faithful. I was the Incident Commander on that fire. After some 35+ years as a wildland firefighter I retired and spent the next seven years as Training Coordinator for the National Firefighter Joint Apprentice and Training Program. We were under contract to the US Forest Service, Bureau of Land Management, Bureau of Indian Affairs and the Hoopa Indian Tribe to train entry level wildland firefighters. During the seven years that I participated in this organization, we trained over 600 men and women to become this Nations wildland firefighters. To emphasize that wildland firefighting is a serious and dangerous business, one of our students, Jon Kelso was one of the 14 fire fighters who was killed on the South Canyon Fire in Colorado in 1994. After that tragedy, I spent some time with Jons Mother, Father and Brother trying to explain how something like that could happen. Jon was just starting his firefighting career and was a seasonal federal employee. Jon and all the other wildland firefighters that continue to do the job that I so enjoyed are the reason that I am interested in assisting in any way I can to improve the working conditions of this very dedicated group of men and women. Since retiring from federal service and from wildland firefighting training, I have taken on a new responsibility. Since about 1988, I have became interested in local government. I was elected and served on the Willows City Council for six years and during my second term on the Council I ran for and was elected to the Glenn County Board of Supervisors. I ran unopposed for a second term on the Board in 1998 and currently serve as the Chair. I wanted to let you know that I have some knowledge of the responsibility you have in legislating and deciding how to spend scarce taxpayers dollars. And, due to local commitments I will be unable to attend this hearing.

During my 35+ years of wildland firefighting, I have filled numerous positions on many fires in the Western United States. I have been an instructor in wildland fire and prescribed fire courses from California to Florida, including a number of weeks of instruction at the National Fire Training Center at Marana Arizona. With this brief introduction I will make some comments on the issues that concern me, other retired fire fighters and the members of the Federal Wildland Fire Service Association.

Classification:

Presently, most federal wildland fire fighters are classified as Forestry Technicians. I believe that this classification came from the fact that, in the old days we were hired to do work on the National Forests and fight fire when it happened. That is, we put in an 8 hour day and a 40 hour week preparing for fires and doing forestry related work. We were getting ready for fighting fire, but our main concern was work that for the most part was unrelated to fighting fire. In the 1950's that was probably reasonable. My first fire truck was a pickup with a box of tools in the back. Since the 1950's situations have changed drastically. The professionalism of the wildland firefighters equals that of municipal firefighters. Equipment is much better, more complex and requires a great deal of intelligence, training and experience to operate. But the most important change is that houses and people now live in the wildland. When I started fighting fire, we fought the fire and did not have to worry much about peoples lives and property like the wildland firefighter of today. It just makes sense to recognize the complexity and responsibility of the wildland firefighter and properly classify them as wildland firefighters. This classification change could cause some problems in areas of our country that still fight fires out of pickups with hand tools, but the vast majority of federal wildland firefighters are working with equipment as complex as those in cities and with a greater responsibility than I had 35+ years ago.

Hazard Duty Pay:

Presently hazard duty pay of 25% is paid for federal firefighters while fighting fire. Title 5 also requires that a 25% environmental pay be granted to other federal employees who are not firefighters for work that is considered hazardous. Wage grade employees that receive the 25% differential have that additional pay added to the calculations for retirement annuity purposes. Presently, federal wildland firefighters do not have their 25% hazardous duty pay differential calculated for retirement annuity purposes. Hazardous duty pay as a part of basic pay for retirement annuity calculation should be implemented for wildland firefighters. The costs would be extremely small, the benefits great.

Overtime Pay Cap:

As is or will be explained in testimony by others, some wildland firefighters work under a overtime pay cap which means that some firefighters on the same fire have their overtime capped and some do not. In the last 10 years of my career, as a GM-13 Forester, my overtime was capped on most of the fires that I worked on. It did not take many hours in a pay period for me to reach the cap. As Incident Commander, most folks working in our Logistics section, that is, people that were providing service to the front line firefighters, were being paid more than the folks directly fighting the fire. I will have to tell you that almost all of the dedicated people that I worked with over these many years did not like this inequity, but they still did their job and did it well. In California, this is a particularly sticky issue as we are working side by side with firefighters from State and local agencies that are being paid properly for what they are doing. Many times I had folks from cooperative agencies that worked for me that were paid considerably more that I was being paid. And the federal

government was reimbursing that agency for the services of those folks. I would hope that you will look into this glitch in the system and bring some logic and sense to the pay cap issue. H.R. 2814 resolves this issue.

Portal to Portal Pay:

Presently, federal firefighters are paid only when they are considered on duty. This means that the firefighter is paid while traveling to a fire assignment, while on the fire line and travel home. A federal wildland firefighter is the only one on fires that I am aware of that has this pay schedule. All other municipal, state and local firefighters on the same fire are paid portal to portal pay. It may seem reasonable to take firefighters off the clock when they are resting, eating, getting ready to go on shift. However, many times, if the fire fighter is not needed, due to equipment problems, poor planning or many other reasons, they are compensated only for their regular 8 hours for that 24 hour period or, if it is their regularly scheduled day off, they are paid a minimum of 8 hours. In addition, they are usually in an isolated location and have to stay in the fire camp. Other testimony has related the long periods of time away from home and the isolation of fighting fire. The policy is to rotate crews every 21 days, however, my wife is still reminding me that I was on the Yellowstone fires for 29 days!

As an Incident Commander it is extremely difficult to try to explain and control a bunch of young people in a isolated fire situation as to the need for having them ready to go, rested properly and fed when we are not compensating them for the control we have to maintain over them. In the case of the Yellowstone fires, I had about 2000 military folks under my command. There were no problems of discipline or control. They were paid portal to portal. Many times I have had to send crews home, some back to Alaska, because of their behavior in communities during their off shift time as I had no control, because we were not paying them. I do not want to sound like this is the only reason for portal to portal pay as the vast majority of firefighters that worked under my command acted in a professional manner. It is just unfair and difficult when the best wildland firefighters in the world are working alongside others and are not being compensated equally. In addition, we spend a great deal of time, effort and money, keeping track of on duty, off duty, travel time and the like. When the volunteer firefighters of my community of Willows staff a fire engine and work on a federal wildfire, they are paid from the time they leave the station until they return. And, the bill is paid by the federal government. Portal to portal is a fair and equitable system of compensation for all firefighters, even federal wildland firefighters.

Conclusion

I have seen many good young people leave the federal wildland firefighting profession early in their careers due to the lack of proper compensation. Many of these folks have moved to State and County fire departments that have recognized that issues like proper classification of the position, pay issues like hazard pay, overtime pay cap and portal to portal pay were issues that needed to be addressed and they were. The federal wildland firefighting agencies have lost a great deal of young, bright talent due to some of these issues. From an economic point of view, spending the small amount of federal dollars it will take to correct these problems now will pay off many times over in satisfied employees and in the retention of the future firefighter leaders of

these agencies. I thank you for reviewing my comments. I hope I have given you an insight from someone that has lived these issues for some 35+ years. I will continue to assist the working wildland firefighter to better their situation in the hopes that these issues will be resolved soon. If I can be of further assistance or answer any questions, please feel free to contact me.

JERRY HURLEY; MEMBER, FEDERAL WILDLAND FIRE SERVICE ASSOCIATION

Testimony of Jerry Hurley, member, Federal Wildland Fire Service Association before the House Committee on Government Reform, Subcommittee on Civil Service.

July 17, 2000

Mr. Chairman and members of the committee:

I wish I had the opportunity to be present to address some very important issues of federal wildland firefighters to this distinguished group, but I appreciate your acceptance of my written testimony. My name is Jerry Hurley, I am writing as a private citizen and as a representative of the Federal Wildland Fire Service Association. I am currently employed by one of the federal wildland agencies as a Fire Management Officer.

I would like to share my thoughts with you on pay fairness and proper recognition for Federal wildland firefighters throughout this great country. I believe these men and women need to be more fairly compensated and properly classified for the work they are asked to do; for the conditions in which they are asked to perform; for the places they are asked to go; and for the time they are expected to commit. I plan to address four key issues pertaining to this matter by sharing my personal experiences to illustrate points. I would like to share capsules of my career and how wildland firefighter pay fairness has affected thousands of others, including myself, over the last 30 years. In doing this I am not attempting to portray myself as unique, but only as an example. An example, which I know to be absolutely true.

The first issue I would like to address is elimination of the **overtime pay cap** imposed on many federal wildland firefighters. The current legislation in front of this subcommittee, H.R. 2814, introduced by Representative Pombo.

Overtime pay Cap

I started in southern California as a firefighter on a hotshot crew in 1968. I was on base and available from 7 AM until 10 PM each of duty days, five days per week. For this 15-hour obligation we were compensated as follows: Seven hours of the day were considered ordered standby and we were paid 25% of our base salary. Eight of the hours were considered work time and we were paid base salary. When the crew was dispatched to a fire the formula remained. That is, even though we were "working" on the fireline, we were only compensated the 25% standby rate, about fifty cents per hour, for the same hours we would have been considered on standby back at the station and base pay for the eight hours that were normally base. The true rewards came after 15 hours, or on our weekends, when we were compensated at the full base rate. Additionally, we could earn an additional 25% differential for hazard pay when the fire was uncontrolled. I spent many hours working for less than base salary and for less than

minimum wage while fighting fire. I don't believe this met the intention of the Fair Labor Standards Act (FLSA)?

In 1969, I returned to the same hotshot crew, however the agency had made changes in the pay compensation system. There was now no ordered standby at 25%. All time worked, either base hours for our scheduled duty day or overtime were compensated at the base salary rate, but not at time and one half. I don't believe this was fair pay compensation and met the intention of FLSA.

I returned in 1970, as a fire engine crewmember. That year, all hours greater than eight per day, or forty hours per week, were compensated at time and one half. I think you would agree, that this finally met the intent of FLSA. As you have to believe there is no way a GS-2 or 3 firefighter should have ever been exempt from FLSA.

As I promoted and increased my qualifications and experience in wildland firefighting I was rewarded by becoming classified as an "exempt" employee, which met I was no longer entitled to full time and one half pay compensation. My pay could now be capped at the GS-10 step 1 level. Not only could my pay be capped at the hourly rate, but also for total earnings in a pay period. If I was required to work long hours on wildfires and our total pay exceeded a pre determined rate, we would not be paid for additional overtime hours worked in a pay period, regardless of how many hours we actually worked. I believe it was following the firefighting efforts throughout the west including Yellowstone, in 1988, that the pay period cap was lifted, following a lengthy legal process. But the hourly cap remains.

Many exempt employees who are called upon and who respond not only to wildfires, but national emergencies such as floods, hurricanes, and earthquakes both in the United States and to neighboring countries make less per hour on overtime than with their base salary. In my particular case, the difference in my capped overtime salary versus true time and one half is a loss of about ten dollars per hour.

My position in wildland fire management requires I be available for call out at a moment's notice and that I may be committed up to 21 days. The very nature of our business requires substantial time commitments from the spring through fall months. It is not uncommon for persons in positions like mine to average 300 hours of overtime per year on emergency incidents. For suppression resources such as engines, hotshots, and helicopter crews that I manage, they usually work more overtime hours, yet many are capped at the GS 10/1 hourly rate. Many of us engaged in both the suppression of wildfires and providing emergency assistance on natural disasters are losing thousands of dollars per year.

I have spent hundreds of days on large complex fires throughout many parts of the United States in a variety of positions, gained a wealth of experience and attended countless hours of training, to qualify me as an Operations Chief on a National Incident Management Team. As Operations Chief, I manage tactical resources including aircraft,

personnel, engines and dozers. I make decisions on the use and allocation of those resources that have a direct affect on protection of life, property and natural resources. These complex incidents often cost well over one million dollars per day during the height of suppression activities. As an Operations Chief I am considered an exempt employee and my hourly pay is capped. Now if I were to chose instead to become a driver of a truck that provides supplies to the same incident, or be a person who scouts the fire and reports back information, both of which require substantially less training and experience, I would then become a "non-exempt" employee and entitled to full time and one half pay for overtime hours.

Because of this hourly pay cap many men and women are choosing to take positions on incidents well below their experience and qualifications levels in order to receive full time and one half pay for overtime and usually with less responsibility. I think you distinguished members of this committee would agree this is not fair pay compensation for services provided; not the best use of agency personnel's knowledge and experience and not in the public's best interest.

IN 1998, the Federal Fire & Aviation Leadership Council requested to the Office of Personnel Management (OPM), an elimination of the overtime pay cap during emergency incidents. OPM's reply included recognition of the concerns but stated they did not have such authority to resolve the issue – in fact OPM said it would take a change in law. I fully support the agencies attempt to remove the pay cap for wildland firefighters. I hope you will change this.

Additionally, there are a number of faucets affecting pay fairness and proper recognition for professional wildland firefighters, I believe you also have an opportunity in this subcommittee to amend the current proposal for H.R.2814 and correct some other key inequities on this subject. They are portal to portal pay, Hazard Duty Pay as base pay and proper classification or professional wildland firefighters. I will now address the issue of **portal to portal pay**.

Portal to Portal Pay

In the eighties, in California, the Incident Command System was adopted by firefighting agencies to better utilize all available resources and to standardize the organizational structure and have similar typing of resources. There has been a positive increase in interagency cooperation in both training and the sharing of resources between the federal, state, counties and local jurisdictions for suppression of wildland fires in California, over the last 20 years. There are some extensive cooperative agreements in place that provide a maximum amount of resources in the shortest period of time to maximize protection of life and property. Almost every incident in California includes participation of personnel from federal, state, county and local jurisdictions. For example, last year the Incident Management Team I am on was assigned to manage a large fire on a National Forest in central California. This fire was the jurisdictional responsibility of the National Forest. On this incident there were 78 fire engines assigned for fire suppression and structure

protection; 30 from federal agencies and 48 from the state, counties and local jurisdictions.

Most of the state, county, and local jurisdiction resources are on a portal to portal pay system when they are assigned away from their stations. Federal wildland firefighters are only paid for "hours actually worked". Supervisors who work off-forest on incidents are responsible for the control and supervision of their crews and required to be available 24 hours per day, but only paid for hours worked on the line. Sometimes agency personnel are sent thousands of miles from home for 21 days and placed on standby making only day's wages yet their family and home comforts are unavailable to them. We may also be required to sleep in rugged mountainous terrain with only rations and a sleeping bag, not receive showers and in some cases hot meals for a number of days and yet are only paid for hours worked on the line. While cooperating counterparts are being compensated with portal to portal pay, from the same federal agency.

This inequity between how federal agencies pay and compensate cooperators yet fail to provide similar compensation to their employees is demoralizing and insulting. Is it that Federal Wildland Firefighters are not worthy of fair and comparable compensation? I hardly think so! Federal helitack, hotshot and engine crews and federal overhead personnel are expected to work side by side with other agency personnel, and in many cases supervise them. Yet federal personnel go off pay at the end of shift, while their counterparts are continuing to be compensated by federal agencies.

The federal wildland agencies agree that portal to portal pay is needed, but I am not certain that they are pursuing this for reasons previously mentioned. The focus seems to be on simplifying pay calculations associated with emergency incidents. The federal wildland proposal allows for portal to portal pay while working on emergency incidents at a base pay rate, with no overtime, differentials or hazardous duty pay. Although I am glad to see their interest and acknowledgement for the need, a potential loss of wages as compared to the already low wage scheme is unacceptable. Implementation of the agencies proposed portal to portal pay system would be in violation of the FLSA.

In 1995 when the federal wildland agencies proposed portal to portal, I reviewed an analysis comparing the proposal to the current pay system with some employees actual hours worked. In one case, a hotshot firefighter GS-4, who had hazard pay, differentials and worked long shifts, would have suffered a net loss of earnings. While pay systems would be simplified it would not be fair, especially to those on the fireline. Modification of the pay system certainly should not take away existing compensation!

I would now like to address the issue of **hazard pay** being considered a part of federal wildland firefighters basic pay calculation for retirement purposes.

Hazard Pay

As I earlier mentioned, federal employees receive a 25% differential pay premium when engaged in certain fire suppression duties. Federal employees include both General Schedule (GS), and wage grade employees who usually are not firefighters, but work in engineering or other areas. Wage grade employees receive 25% environmental pay when engaged in firefighting activities. General Schedule employees receive 25% hazard pay differential. Language describing environmental pay mirrors the language describing hazardous duty pay for firefighting, in Title 5. The premium rate of 25% for either employee is the same. Yet, Title 5 specifically includes the environmental pay a wage grade employee receives as part of their basic pay for retirement purposes. While Title 5 does not specifically exclude hazardous duty pay from being considered as part of basic pay for retirement purposes, the interpretation has been that it is excluded from consideration. Many of my friends who spent their career in wildland fire management and recently retired have been excluded from the same benefit offered to wage grade employees. I ask you, to take this opportunity to be fair to wildland firefighters.

Members of this committee, I ask you to support this small request for wildland firefighters and include clarification that the hazardous duty pay we receive be considered part of our basic pay for retirement calculations. This clarification would be a miniscule cost and is the right thing to do for wildland firefighters.

The last issue I would like to address is the proper **classification of federal wildland firefighters.**

Wildland Firefighter Classification

Federal wildland firefighters are currently classified as forestry technicians, range technicians, biological science technicians, or other classifications series, which do not properly recognize their true job duties and responsibilities. The predominant response when discussing classification is that "firefighting is only a portion of the duties and resource management is the driving force". I disagree, it is our primary duty! Where I work there are 25 permanent and seasonal employees in the fire management organization. They are all classified as supervisory forestry technicians and forestry technicians. They spend over 90% of their time on wildland fire management activities. Whether it's, supervision of wildland fire resources, planning and implementing prescribed burns, teaching wildland fire management courses, involvement in wildland fire prevention activities, suppression of wildland fires or response to national emergencies. In fact, all of theses positions are covered under the Federal retirement systems as firefighters and have a mandatory retirement age, yet are not classified as a firefighter.

Additionally, there are over 30 temporary employees hired annually as firefighters, who are classified as forestry technicians, and their sole duties are to train for, prepare for and fight wildland fire. To classify federal wildland firefighters as forestry technicians, range technicians or with some other inappropriate series is ludicrous. My brother and sister

firefighters are hard working proud people who rightfully should be properly classified as "wildland firefighters".

I find sad irony in the fact, that at the memorial service for those who paid the ultimate price on Storm King Mountain in 1994, when agency representatives referred them to as "Professional Wildland Firefighters". They were hired for the sole purpose of fighting fire, but were classified as forestry and range technicians.

Closing Remarks

In closing, the federal wildland firefighting workforce has aged progressively over the last two decades. Retention of new employees is a growing problem. In some areas such as Southern California firefighters are opting to leave, in staggering numbers, to other cooperating agencies which provide better pay, incentives, and year round employment.

Elimination of the overtime pay cap, inclusion of hazardous duty pay for retirement calculation, portal to portal pay compensation and proper classification would be a big step in the right direction in the compensation, recognition and retention of younger professional federal wildland firefighters in the federal workforce.

This concludes my remarks. I would like to thank you for allowing me to provide this written testimony before this Subcommittee and address some of these very important federal wildland firefighter issues.

Kenneth S. Blonski; Extension Advisor, Wildland/Urban Fire Mitigation
University of California, Forest Products Laboratory

Testimony of Kenneth S. Blonski, before the House Resources Committee, Subcommittee on Civil Service.

July 18, 2000

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to provide written testimony on an issue that is extremely important to those of us that are concerned with the protection and management of America's forests and wildland resources.

Until two months ago I was the Deputy Director of Aviation and Fire Management in the Pacific Southwest Region of the USDA Forest Service. Having started out as a firefighter 27 years ago I have seen a lot of changes in wildland fire management over the years. Many of these changes have been for the better and some have been to the determent of the natural resources and the dedicated public employees hired to protect them.

After working my way up through the organization and having experience in most every area of Fire Management in the Forest Service, including fighting over two hundred large fires I decided it was time to leave. At 53 and the height of my career I chose to leave early, as are many other employees. Frankly, the internal issues combined with other outside opportunities here in California just don't make staying worth it for more and more people anymore.

A diminished management capability, eroding infrastructure and a lack of long-term commitment are dramatically affecting the fire management capability of the Forest Service. The unfortunate reality is that the taxpayers are paying more and more each year and getting less and less wildland fire protection. This situation is putting Wildland FireFighters in a tenuous predicament. This Subcommittee has an opportunity to start to reverse this trend.

A recent internal strategic study for the Pacific Southwest Region of the Forest Service (R5) that focused on the Fire and Aviation Organization identified "the growing loss of experience, competence and militia resources" as the greatest concern of agency fire managers. This potential problem has been identified for years yet repeated requests for support have not only gone unheeded but have actually been met with internal resistance from line officers that for a number of reasons have not dealt with the "bad news on their watch".

Many of the newer line managers in the agency have little if any fire experience and have grown increasingly dependent on fire personnel to provide staff support as well as operational management. If one were to do an analysis of the actual strength of the of the fire organization one would see many of the higher level fire management positions are

now filled by individuals that have strong planning skills yet marginal operational experience.

As the agency budget for fire increases in dollar amounts the internal administrative take increases even faster. It was initially estimated that the indirect regional take of congressionally mandated fire dollars was about 27% in R5 in FY1998. During the FY 2000 implementation (this was system independent) of the FFIS system this amount increased to over 40%.

How does this affect Wildland Fire Fighters? The actual reduction in direct fire suppression dollars means there are now fewer full time fire suppression resources in R5 than at any time since the early eighties. In 1982 there were over 260 large fire engines, today there are about 215. As the suppression resources shrink the work is increasing. During that same time period the population in California has grown from about 22 million people to almost 33 million people. The historical relationship between fire ignitions, acreage burned and population in California has shown that during the period from 1970 to 1985 the population increased 97%, while ignitions rose by 90% and acreage burned by 95%.

California is expected to grow to 50 million people by 2020. Presently about 90% of all fires are human caused in the state. One could expect the fire workload will increase correspondingly!

The fire workload on Forest Service personnel continues to grow dramatically. Not only are the ranks of the initial attack personnel being reduced, recruitment and retention efforts are ineffective because the **pay inequality** is not being adequately addressed. It has been estimated that almost 60% of the new recruits are being lost after their training and work commitment is completed. Where do they go? To any other non-federal fire agency as they offer: better pay, better benefits, year round work and the assurance that they will have a job the following year.

Perhaps one of the most discouraging aspects of the high turn over of new personnel is that many of the women and minorities that the agency has worked so hard to recruit quickly leave for other work.

So, on the management side one has experienced managers, leaving and being replaced by fewer less knowledgeable managers, many with little fire experience. Additionally today's firefighters are experiencing high turnover which bodes ill for tomorrows workforce and this is compounded by an increasing fire workload, a direct result of a rapidly increasing population.

What should be done? There are three specific pay inequity issues that this committee can address to alleviate this exodus of fire personnel: 1) Eliminate the **overtime pay cap.** 2) Institute **portal-to-portal pay** and 3) Include **hazard pay for retirement calculations.**

Presently the **overtime pay cap** is at the GS-10/1 rate, which penalizes all employees above that level that manage large devastating wildland fires. Without going into a lengthy explanation two things are occurring: 1) Higher graded level employees are just not participating in fire suppression citing a heavy non-fire workload. 2) When they do participate it's often in non-exempt positions such as truck driver that are far below their skill and knowledge level so they can be fully compensated at their full overtime rate. This negates their participation in a decision making capacity and any high level contribution to the fire effort. It's difficult to quantify the actual affect this has on the overall outcome of the fire or other disaster yet it compounds the present shortage of available qualified management personnel.

This situation has come to the attention of the Office of Personnel Management (OPM); as last year they recognized the need to eliminate the overtime pay cap during emergencies but have determined they do not have the authority to resolve the issue as it requires a change in the law. I strongly encourage you to do everything in your power to remove the overtime pay cap for wildland firefighters.

.Secondly the present pay disparity between how local and state agencies pay their personnel as opposed to the federal agencies has become an embarrassment to federal employees. **Portal-to-Portal** pay is an important step to reducing the hemorrhaging loss of federal fire personnel. Most of the local, county and state jurisdictions are on a portal-to-portal pay system when assigned away from their normal duty stations. Many of our federal fire personnel are sent far from their homes and required to stay in the most basic of primitive conditions.

Perhaps the greatest irony and affront to the federal wildland firefighters is that the Federal Government pays full portal-to-portal to an increasing number of cooperators as the ranks of the Forest Service diminishes through attrition, yet refuses to pay it's own employees in a similar manner. This has turned into being a source of a major morale problem and it's a slap in the face to those dedicated public servants we eulogize as heroes when they die in the line of duty.

Lastly it is time to reconsider how **hazard pay** is omitted from retirement calculations. Federal wildland firefighters are general schedule (GS) employees and receive a 25% pay premium when fighting an uncontrolled fire. For some time now wage grade employees have also received a 25% environmental pay when engaged in firefighting. The language in Title 5. for both hazard pay and environmental pay mirrors one another yet environmental pay is included in the base calculation for retirement while hazard pay is not. It's time to be consistent and it's time to be fair!

In closing I want to thank you for your concern, which I might add is warranted! Two months ago when I prematurely left the Forest Service as the Deputy Director of Fire Management in R5. after approximately 27-year career, I did so with reluctance. It finally came time to vote with my feet. My only misgiving was that I was leaving hundreds of friends and colleagues that I hold in high regard for their dedication and commitment.

If you value the federal wildland firefighters you have an opportunity to: 1) Eliminate the overtime pay cap 2) Institute portal-to-portal pay 3) Include hazard pay in retirement calculations.

We're not talking about a lot of money here and I'll never personally benefit but you can bet that it's; "pay me now or pay me later". If you don't do something now to reverse the situation you'll be paying more in the long run as other agencies develop their own "special" federal reimbursement rate as some jurisdictions are doing here in California.

Thank you for allowing me to provide this written testimony to this subcommittee on these very important issues.

Testimony of Jack G. Lee, United States Forest Service, Retired.

July 18, 2000

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to address some issues that affect federal firefighters. I have seen what these problems have done to erode the federal fire organization and I feel that this forum is the place to address these issues. I was employed by the United States Forest Service from June 1961 until December 1997. During this tenure I served in fire positions ranging from a firefighter to a Type 1 Incident Commander and Area Commander. I always prided myself in being a part of a professional organization and associating with professional, dedicated firefighters. When I retired I was Deputy Fire Management Officer on the Sierra National Forest.

I want to address these issues one by one. People far more articulate than I have commented on the merit of these so I will try to be short and concise on what I see are problems that need to be corrected.

Hazardous Duty Pay

Federal fire fighters receive hazardous duty pay when engaged in the suppression efforts on wildland fires. This amounts to 25% of one's base pay for general schedule employees and is not calculated into the retirement calculation. If one were a wage grade employee, hazardous duty pay would be part of the calculation. We have an inequity within our own federal system on this issue. In looking at what constitutes hazardous duty pay, we see that there are a plethora of hazards, including but not limited to, erratic fire behavior, steep slopes, rolling rocks, snags, heavy fuel loading as well as flash fuels, urban interface and a multitude of Haz Mat situations. Firefighters live with these hazards on a daily basis and are paid a small amount for the exposure they face. The costs of adding hazardous duty pay to the retirement calculations are small and hopefully this committee will support its inclusion to the retirement package.

Portal to Portal Pay

Portal to portal pay is a great inequity in our pay system. State, county and local government agencies receive this compensation when they are committed to a wildland fire. Federal fire firefighters are paid for time actually worked and then they are off shift. They are far from home and living in less than ideal conditions for which they receive no compensation. We must gain equity with our cooperating agencies who compensate their

This would make retaining our work force easier. The federal system is loosing trained personnel to other agencies. It seems that every time a cooperating agency opens its hiring roster we lose trained personnel. They are moving to organizations that provide better benefits and pay. We must make changes to keep these people that federal agencies have spent time and money to train and not merely be training ground for other agencies. I feel that solving this portal to portal issue would be a positive step to attain this goal.

Another facet we must look at is that portal to portal pay provides the fire managers with control over the firefighters who are unassigned. Many times the base camps are near towns, and when the firefighters are off shift they are free to leave camp. By having positive control over these resources they are readily available for immediate dispatch to support the incident they are assigned to or to be dispatched to a new one. This positive control will give the organization a rested, more efficient fire fighting force.

Overtime Pay Cap

The exempt verses non-exempt issue needs to be solved. It is one of the biggest problems that faces the federal wildland fire community. The easy way to solve this age old problem is very simple, change to policy and have it state that whenever one is assigned to a emergency incident they automatically become non-exempt, eligible for the true time and a half overtime pay rate. By doing this it would make the pay rate fair for all and increase the participation of personnel in fire suppression.

Through the years I have heard people say that they would not take staff or unit leader positions because they were exempt positions and they could make more money getting true time and a half taking non-exempt positions. This has hurt the suppression organization, especially in the support staffs. Personnel do not want the hassle of being a supervisor when they get more money being a subordinate.

In my years of being an incident commander on large high profile fires, I have watched vehicle drivers delivering lunches to the fire lines get true time an a half while I was getting an overtime rate that was less than my base rate. Why do people keep doing these jobs with less than adequate pay? They do it because they are professionals and dedicated to their organization. Unfortunately the "old guard" is fading out and the new employees are going to where the better pay and benefits are.

Conclusion

As I stated in the beginning I tried to put my thoughts down in a short concise way. I strongly feel that the elimination of the over time pay cap, portal to portal pay compensation and the inclusion of hazard pay into the retirement pay calculation would be a positive move towards a stronger and more efficient federal wildland fire fighting

S/S

JACK G. LEE
United States Forest Service (Retired)

MARK L. LINANE; U.S.F.S HOTSHOT SUPERINTENDENT (RETIRED)

Testimony Of Mark L. Linane
Retired USFS Hotshot Superintendent
Before The House Committee On Government Reform, Subcommittee On Civil Service.

July 20, 2000

Mr. Chairman and members of the Subcommittee:

I appreciate this opportunity to discuss some very important issues of our nation's federal wildland fire fighters. I speak to you as a private citizen. I worked as a Forestry Technician for thirty-six years on the Los Padres National Forest in Southern California (ten years as a firefighter, fire engine operator, Captain, and Helitak Foremen) and twenty-six years as the superintendent of the Los Padres Hot Shots. In December, 1999, I was given mandatory retirement at age 55. I presently work for Ventura County Fire Department as Wildland Fire Training Specialist.

When I went to work in 1963, I was classified as a Fire Control Aide/Technician and sometime in the mid 1970, our jobs were reclassified as a Forestry Technician. During the past twenty-six years as Hot Shot Crew Superintendent, my crew and I averaged 80% of our time on wildfire suppression preparations, training, travel, or operations. This included an average of 1000 to 1500 hours of mandatory overtime (you don't have a choice on an IHC Type I National Resource Crew). The crews availability for nine months of the year is 24/7, twenty-four hours a day and seven days a week. My crew has been operationally deployed up to 130 days away from home base, which can lead to high marriage and relationship mortality rates. Hot Shot crews annually experience more fire on the ground than any municipal fire agency in the United States. However, Federal wildland firefighters are still classified as Forestry Technicians and they rightfully should be properly classified as Wildland Fire Fighters.

Hazardous duty pay

Federal wildland firefighters, who are general schedule employees, receive a 25% differential pay premium when engaged in fire suppression duties. Federal employees who are not firefighters, as per position description, may be wage grade employees. These wage grade employees receive 25% environmental pay differential when engaged in firefighting activities. The language describing environmental pay mirrors the language describing as hazardous duty pay for firefighting in Title 5. Yet Title 5 specifically includes the environmental pay that a wage grade employee receives as part of their basic pay for retirement purposes. Title 5 does not specifically exclude hazardous duty pay from being considered as part of basic pay for retirement purposes of general schedule employees. The interpretation is that it is excluded from consideration. I requested from the U.S. Forest Service Retirement person that hazardous duty pay be included in my retirement basic pay calculations and was told that Title 5 law prohibits this payment. This is another mandatory pay issue that you

lack a choice whether to say yes or no. Because of the hazardous nature of the wild fire environment, the 25% hazardous duty pay retirement inclusion would be a powerful incentive tool to help in personnel retention and to encourage our best and most capable people to be active in fire and stay with the agency.

Portal to Portal Pay

Federal wildland fire fighters are called on at a moments notice for nine to twelve months a year 24/7 (24 hours a day, seven days a week). When the alarm bell goes off, you may find yourself hundreds or thousands of miles away from home and family in a remote, primitive, hazardous, inclement environment and unable to contact home or family for up to twenty-one days. This is often with back-to-back twenty-one day assignments. During this time, when you are operationally deployed, you receive only pay for the time you work. I and my crew members are taken off the clock for a one-half hour mandatory lunch on the fireline, off the clock while rehabbing the crew (showers, first aid, meals) and off the clock when sleeping (supposedly) in triple digit heat with no shade or "coyote spiked " on an 8,000 foot peak in a paper sleeping bag on rocky ground.

"Closed" fire camps place our fire fighters in a near prison camp environment. Open fire camps (due to the lack of paid time) often have fire crews in town and not available for immediate emergency response, if structures are threatened or the fire jumps control lines. Supervisors have no legal ability to keep their crews in camp in non-pay status.

Fatigue has been identified as a major factor in bad decision-making, and vehicle operation during these times may be equal to driving when drunk. Our cooperators in California have long ago recognized this and provide for twenty-four hour portal to portal pay. The agency that I presently work for operates under this system.

Once again, the inclusion of portal to portal pay would be a strong incentive in the retention of experience wildland fire fighters and an incentive to the best and most capable to take leadership position in wildland fire management.

Overtime Pay Cap

The last issue to discuss is the overtime pay cap. This is the primary focus of my testimony, as H.R. 2814 introduced by Representative Pombo, if adopted into law, would solve this issue. Federal wildland fire fighters are either determined to be exempt or non-exempt from the Fair Labor Standards Act (FLSA). Emergency incident positions are determined as either exempt or non- exempt from the FLSA. A non-exempt firefighter can hold an exempt incident position and still be entitled to FLSA benefit of true time and one-half overtime pay rate. An exempt firefighter can fill a non-exempt position on an incident and if that individual works greater than 20% of the workweek in that capacity, that individual is considered non-exempt for the week and receives true time and one-half overtime pay rate. Exempt incident positions are: **Incident Commander, Operations Section Chief, Logistics Chief, Unit Leaders, and Crew Supervisors.** These, of course, are the most **important leadership roles** on an incident. Non-exempt positions are: **Field Observer, Supply Personnel, Time Recorders, and Truck Drivers.**

This is a true disincentive to wildfire emergency management. This affects safety, motivation, and efficiency. There are many experienced and talented employees who would participate as leaders if H.R. 2814 in adopted into law.

In no fire organization in the world are leaders paid less than workers. Our cooperators in Southern California not only get true time and one-half but also receive portal to portal pay. H.R. 2814 would put everyone on the incident on the same even ground, paying everyone involved true time and one-half overtime

At present, there are some cultural, legislative, organizational, and economic reasons to look at the primary subjects covered in this discussion. Culturally, our employees believe in a greater need to spend time with their families and there **are** many single parent employees. Twenty-one day assignments, less pay, and double the workload when you get back home, does not encourage employees to participate in fire management on incidents.

Legislatively, in California, the upcoming AB 1937 will offer an early out incentive at age 50 with a 3% bonus for every year served up to 85% of base salary. This legislation will affect state firefighters first and then move on to county and city firefighters. This mass exodus of early out retirement will leave huge gaps in experience for these agencies. They will actively a recruit for the best, brightest, and most capable Federal wildland firefighters, thus shifting the experience gap to the federal agencies. Injuries, burns fatalities, and OSHA Citations do not make for good press for any agency. These state and county cooperators also give their employees full-time employment as firefighters with health benefits and higher pay. This could lead to a mass exodus of our most experience federal wildland firefighters throughout all ranks.

Elimination of the overtime pay cap, inclusion of hazardous duty pay for retirement calculations, portal to portal pay compensation and the proper classification of Federal wildland firefighters would be a huge step in the right direction for providing a stronger, experienced, and efficient firefighting work force. This would give firefighters a safer fire groundwork environment and help in the retention of the best and brightest employees in a professional wildland fire organization.

Thank you very much for allowing me to address you on these extremely important Federal wildland firefighter issues.

Sincerely,

Mark L. Linane
Los Padres Hot Shot Superintendent (Retired)

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