National Weather Service Employees Organization

Office of Personnel Management
1900 E Street, N.W.
Washington, DC 20415

Re: "Improving Performance, Accountability and Responsiveness in the Civil Service," Proposed Rule, 90 Fed. Reg. 17182, Docket ID OPM20250004

Dear Office of Personnel Management:

The National Weather Service Employees Organization (NWSEO) submits these comments concerning the Office of Personnel Management's (OPM) Proposed Rule "Improving Performance, Accountability and Responsiveness in the Civil Service," 90 Fed. Reg. 17182 (April 23, 2025). We write to express opposition to the Proposed Rule.

NWSEO

The National Weather Service Employees Organization (NWSEO) was established in 1976 and has championed the rights of workers in the National Oceanic and Atmospheric Administration (NOAA). NWSEO is a labor organization and professional association that now represents approximately 4,000 NOAA employees in the U.S. Department of Commerce (DOC). Among NWSEO's ranks are forecasters, technicians, researchers, attorneys, and support personnel. Our members track satellites and provide the nation's official weather forecasts and warnings. Our members also work to enforce and implement laws that facilitate protection of the nation's environment and natural resources. NWSEO has five bargaining units representing employees in the National Weather Service (NWS) NOAA's Office of Satellite & Product Operations within the National Environmental Data and Information Service (NESDIS), Office of General Counsel (NOAA Attorneys Guild), Aircraft Operations Center within NOAA's Office of Marine and Aviation Operations (OMAO), and the Atlantic Oceanographic & Meteorological Laboratory within NOAA's Office of Atmospheric Research (OAR). Our members have a long history of working on behalf of Presidents of both parties to efficiently and effectively serve the public's interests.

On behalf of our members, the NWSEO's five bargaining units have negotiated with NOAA bargaining agreements that promote professional development, safe working conditions, performance-based awards, fair and timely promotion procedures, and flexible work schedules for bargaining-unit employees.

Impacts of this Proposed Rule

Our members are extremely concerned that this proposed rule, if finalized, would greatly expand what is currently a very narrow exemption from the Civil Service Reform Act (CSRA, or Act) for positions of a confidential policy-determining, making, or advocating character. 5 U.S.C. 7511(b)(2). The proposed rule expands this statutorily limited category in two ways. First, it expands this exemption beyond a small number of Schedule C political appointee positions (which typically amount to 1,400 appointees)[1] to include career civil service employees. Second, it goes beyond the plain language of the statute to include any position that has a potential to *influence* policy rather than those positions that *determine, make, or advocate* policy. This proposed rule would grant the President broad authority to inappropriately reclassify thousands of career civil service employees to at-will employment. It would also provide no avenue for reclassified civil service employees to review the President's reasons and rationale for why their position was reclassified, and, where appropriate, challenge whether their position was appropriately reclassified. Without the ability to challenge an incorrect reclassification decision, our members will wrongly lose their legally vested rights to tenure without due process. *See, e.g., Board of Regents of State Colleges* v. *Roth,* 408 U.S. 564, 576-77 (1972). As a result, this proposed rule has the potential to result in stripping broad swaths of career civil service employees, including our members, of their statutory rights to a notice "for cause," and the to appeal removals to the Merit Systems Protection Board. This proposed rule undermines the purpose of the Act which is to provide a long-term, career workforce of highly qualified and experienced experts in scientific, technical, and legal fields to assist the Executive Branch of either political party to faithfully enforce and execute laws, manage government operations, and implement policies.

As a threshold matter, this rule overstates federal employee responsibilities to implement the elected President's agenda. All federal career employees are required by statute to take an oath that "I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." 5 U.S.C. 3331. This oath does not require employees to swear allegiance to a political party, the President, or even a particular agency, but to the United States and the Constitution.

We strongly disagree with the premise underlying this rule that "it is well documented that many career federal employees use their positions to advance their personal political or policy preferences instead of implementing the elected President's agenda." The proposed rule provides no reliable evidence there is any widespread problem of employees in "policy-determining, policy-making, or policy-advocating" positions who "engage in misconduct, perform poorly, or undermine the democratic process by intentionally subverting Presidential directives." It is telling that this proposed rule **does not cite to any reports** from any of the 74 agency Investigator Generals or Congress's Government Accountability Office to support its claims. Instead, a review of the the Department of Commerce's Inspector Generals Website at https://wwwoig.doc.gov/reports/ and the GAO's website,

[1] http://presidentialtransition.org/blog/posts/160316_help-wanted-4000-appointees.php, citing https://www.gpo.gov/fdsys/pkg/GPO-PLUMBOOK-2012/pdf/GPO-PLUMBOOK-2012.pdf .

https://www.gao.gov/agencies/department-commerce reveals no reports of any such widespread misconduct, and the reports demonstrate that the IG's are effectively identifying, investigating, and addressing any potential issues of employee fraud, waste, or abuse using their existing authorities.[2] Further, the proposed rule cites a federal employee survey showing that many federal employees do not believe their agency "addresses poor performers effectively." But the cited survey does not show that civil service protections are to blame for this. Moreover, no evidence is provided that the survey in question was focused on the performance of employees in "policy-determining, policy-making, or policy-advocating" roles. And the survey provides no evidence that the proposed rule would do anything to address the issue identified in the survey. Two GAO reports have found that supervisors may be reluctant to take adverse actions against employee misconduct, but the GAO recommends improving supervisor training rather than removing employee rights[3]

This proposed rule will not encourage but discourage employee performance. It will create a fear of retaliation if our members provide honest scientific, technical or legal advice that appears to run counter to the administration's political or policy goals. This risk could not be more clear based on the current administration's removal of career federal employees who, as career professionals, faithfully implemented the previous administration's policy priorities of diversity, equity, and inclusion, or whose position description includes studying or advising on climate change. Despite the Proposed Rule's profession that the administration desires to retain highly skilled, impartial civil servants who will provide candid advice, the President's recent budget announces instead an intention to "gut[] a weaponized deep state."[4] The fear of political retribution fostered by the proposed rule would chill our members' ability to fulfill their professional duty to provide candid and sound scientific, technical, and legal advice to the agency. It will hamper any administration's policy goals by resulting in actions that are potentially not informed by our members' scientific, technical, or legal expertise, or result in rules or decisions that are vulnerable to long and costly delays from legal challenges.

Converting career civil servants to at-will employees would also undermine and destabilize the recruitment and retention of highly skilled civil servants – with each presidential transition potentially triggering waves of removals and replacements based on political alignment rather than merit or performance.[5] It would result in many potential employees viewing government service as only a short-term temporary position. Employee turnover and inefficiency will

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[2] *See, e.g.*, Federal Employee Misconduct: Actions Needed to Ensure Agencies Have Tools to Effectively Address Misconduct GAO-18-48. Washington, D.C.: July 16, 2018; Federal Workforce: Improved Supervision and Better Use of Probationary Periods Are Needed to Address Substandard Employee Performance GAO-15-191. Washington, D.C.: February 6, 2015.

[3] *Id.*

[4] https://www.whitehouse.gov/briefings-statements/2025/05/the-white-house-office-of-management-and-budget-releases-the-presidents-fiscal-year-2026-skinny-budget/; https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-creates-new-federal-employee-category-to-enhance-accountability/

[5] This risk is most evident in this Administration's attempt to remove federal employees assigned to work on diversity, equity, and inclusion under the previous Biden administration, rather than re-assigning these professionals to execute policy priorities aligned with the new Administration. This evidences an intent to punish rather than encourage employees to faithfully execute an Administration's policy priorities. *See, e.g.*, https://www.npr.org/2025/04/07/nx-s1-5348922/trump-dei-federal-employees-firing.

increase as those with expertise either avoid seeking such short-term employment or are terminated at the whim of an incoming administration that may seek loyalty over competence.

Making career civil servants serve at-will would undermine the critical function of a professional workforce that can offer objective analyses and educated views without fear of reprisal or loss of employment, weakening the continuity of expertise and experience necessary for the Federal Government to function optimally across administrations.

Our concern that our members will be reclassified is not hypothetical. In the prior effort to implement Schedule F, OPM proposed to reclassify fully 68% of its entire workforce, including statisticians, IT specialists, and executive assistants. In response to GAO's inquiry on Schedule F, many stakeholders said that agencies could have identified positions affecting hundreds of thousands of federal employees across government because Schedule F's vague criteria could be broadly interpreted.[6]

In this administration, OPM's January 27, 2025, implementing guidance,[7] cited in the proposed rule, reflects a similarly sweeping effort to reclassify:

- employees whose duties include "viewing, circulating, or otherwise working with proposed regulations, guidance, executive orders, or other non-public policy proposals or deliberations generally covered by deliberative process privilege,"
- employees working "in the executive secretariat," employees directly working with an "agency head who is paid at a rate . . . not less than GS-13," or
- employees who engage in "substantive participation and discretionary authority in agency grantmaking, such as the substantive exercise of discretion in the drafting of funding opportunity announcements, evaluation of grant applications, or recommending or selecting grant recipients."

This guidance required agencies to submit "petitions to OPM" to reclassify positions by April 20, 2025, petitions that have not been publicly released, and attempts to notify individual employees listed were subsequently withdrawn.[8] The media[9] reported that NOAA submitted a list of "thousands" of names, including most General Schedule-15 employees, a lot of GS-14s and some below that."

Our NOAA attorneys are concerned that all attorney advisors in Grade 13 and above will be converted to P/C positions. This would impact approximately **95% of our bargaining unit employees in the NOAA Attorneys Guild.**

We represent over one hundred attorney-advisors in NOAA. Our members provide legal advice to all line offices within NOAA, including the NWS, National Marine Fisheries Service (NMFS),

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[6] https://www.gao.gov/assets/gao-22-105504.pdf, at p. 25.

[7] OPM, "Guidance on Implementing President Trump's Executive Order titled, 'Restoring Accountability To Policy-Influencing Positions Within the Federal Workforce,'" Jan. 27, 2025, available at https://www.chcoc.gov/content/guidance-implementing-president-trump%E2%80%99s-executive-order-titled-restoring-accountability.

[8] https://www.eenews.net/articles/commerce-takes-back-job-reclassifications-for-noaa-workers/.

[9] https://www.govexec.com/management/2025/04/some-agencies-are-notifying-employees-their-schedule-f-status/404271/;

NESDIS, OAR, OMAO, and the National Ocean Service (NOS). Our members provide legal advice to NOAA program offices on a wide variety of legal issues including implementing administrative and federal law requirements and procedures; managing U.S. and international fisheries, marine mammals, endangered and threatened marine species; conserving and managing ocean and coastal areas and marine sanctuaries; predicting and communicating weather forecasts; planning and managing Earth-observing satellite systems; and licensing of commercial satellites.

Reclassification of NOAA's attorney advisors is inappropriate because attorney advisors are not policy decisionmakers or advocates, but rather legal advisors. Moreover, it is unnecessary because each attorney advisor is bound by his/her licensing state's professional code of ethics that mirror the American Bar Association's Model Rules of Professional Conduct (ABA Model Rules) and that requires such attorney advisor to diligently and competently advise his/her clients regardless of his/her personal preferences or politics.

For example, under the ABA Model Rules 1.2, lawyers "shall abide by a client's decisions concerning the objectives of representation. . . shall consult with the client as to the means by which they are to be pursued. . . a lawyer shall abide by a client's decision whether to settle a matter. . . [and] in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify."

Furthermore, NOAA attorney-advisors have no delegated decision-making authority under NOAA's various statutory authorities. See, e.g., NOAA Delegation Handbook, Transmittal 82 (Feb. 22, 2013, as amended Jan. 4, 2021).[10] In fact, such a lack of decision-making authority is enshrined in some of the promotion criteria for GS-15 level. For example, for a NOAA attorney-advisor to be considered for a GS-15 level, he/she must have "[d]emonstrated the ability to distinguish between legal and policy advice, to communicate that difference, and to present legal options"[11]and must "[d]emonstrate the ability to support an Agency decision in a professional manner regardless of the employee's own opinion or position."[12]

Finally, this rule will create a disincentive for attorneys to fulfill their ethical and professional duties to provide candid advice. Comment 1 to ABA Rule 2.1 emphasizes that "Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. . . However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client." This proposed rule will allow attorneys to be terminated for providing such candid, impartial advice. This disincentive undermines the essential role of an attorney-advisor and may, in the long term, have adverse effects on the administration's ability to achieve its policy goals.

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[10] Available at https://www.noaa.gov/organization/administration/noaa-delegations-of-authority.

[11] Office of General Counsel and NWSEO Collective Bargaining Agreement (CBA), Art. 16, Sec. 5.Y, Dec. 21, 2024, available at https://www.nwseo.org/library.

[12] CBA, Art. 16, Sec. 5.W.

Conclusion

In short, this proposed rule has the potential to strip broad swaths of career civil service employees, including our members, of their statutory right to be removed with notice "for cause," and the right to appeal removals to the Merit Systems Protection Board. This proposed rule undermines the purpose of the CSRA which is to provide a long-term career workforce of highly qualified and experienced experts in scientific, technical, and legal fields to assist the Executive Branch to enforce and execute laws, manage government operations, and implement policies. We strongly oppose this rule.

Respectfully,

JoAnn Becker
NWSEO National President