Introduction

The Office of Personnel Management's proposed rule to create a new "Schedule Policy/Career" category represents a fundamental threat to the merit-based civil service system that has served America for nearly 140 years. While presented as an accountability measure, this rule would effectively strip thousands of federal employees of basic job protections, politicize the career civil service, and undermine the institutional knowledge and expertise needed for effective governance.

Constitutional and Legal Concerns

Executive Overreach

The proposed rule asserts broad presidential authority to designate any "policy-influencing" career positions as at-will employees. However, this interpretation runs contrary to Congressional intent in the Civil Service Reform Act of 1978 (CSRA). Congress created a balanced system with the Senior Executive Service (SES) for high-level policy positions while maintaining protections for career civil servants. The proposed rule distorts this statutory framework.

Due Process Violations

The rule dismisses due process concerns by claiming that reclassification is a "legislative" rather than "adjudicative" action. This ignores that federal employees have a constitutionally protected property interest in their employment that has been repeatedly recognized by the Supreme Court since *Arnett v. Kennedy* (1974). Removing these protections from incumbent employees would likely face significant legal challenges.

Selective Statutory Interpretation

The proposed rule engages in selective reading of 5 U.S.C. 7511(b)(2), focusing narrowly on the position's classification rather than considering statutory context and legislative history indicating that "policy-determining" positions referred primarily to political appointments. The rule contradicts decades of consistent MSPB interpretation on this matter.

Practical Governance Concerns

Institutional Knowledge Loss

The rule would likely trigger significant departures of career civil servants with valuable institutional knowledge. According to a survey mentioned in the Washington Post, nearly half of senior federal employees indicated they would follow what they believed was best policy rather than directives they considered problematic. This signals potential mass departures if job protections are removed.

Reduced Government Effectiveness

Contrary to the rule's claims, removing job protections would likely decrease government effectiveness. Federal employees would fear offering candid professional opinions that differ from political leadership, leading to echo chambers and poorer decision-making. The governance value of having professionals willing to present contrary perspectives based on expertise would be lost.

Recruitment and Retention Crisis

The proposed rule would severely damage the government's ability to recruit and retain top talent. The federal government already struggles to compete with private sector salaries; civil service job security has been a key competitive advantage. Creating a large class of at-will employees would exacerbate existing recruiting challenges.

Policy Resistance: A Manufactured Problem

Mischaracterized "Resistance"

The rule characterizes professional disagreement as improper "policy resistance" or "insubordination." However, what's described often amounts to career officials providing expert advice or identifying implementation challenges—precisely what they should do. Professional disagreement is not insubordination; it's essential to good governance.

Selective Evidence and Anecdotes

The rule relies heavily on anecdotal accounts of "resistance" during the Trump administration without substantiating a systemic problem. It mischaracterizes academic literature on bureaucratic autonomy, suggesting that scholars who study bureaucratic behavior view it as problematic rather than an essential feature of democratic governance.

Checks and Balances by Design

Institutional resistance to potentially illegal or unethical directives is a feature, not a bug, of our constitutional system. As Professor Jon D. Michaels has argued, administrative separation of powers within agencies serves as an important constitutional safeguard against overreach and abuse.

Performance Management: Better Alternatives Exist

Existing Tools Underutilized

The rule claims current procedures make it impossible to remove poor performers, but the data shows this is exaggerated. Many managers simply don't use available tools effectively. Training

and resources for better performance management would be more effective than dismantling fundamental job protections.

Contradictory Data

The rule cites Federal Employee Viewpoint Survey data showing that steps are rarely taken to address poor performers. However, it fails to mention that during the Trump administration, overall federal employee job satisfaction reached record highs (72% in 2020). This contradicts claims of a dysfunctional civil service requiring radical reform.

Political Weaponization

The true concern is that "poor performance" will be redefined as "disagreement with political appointees," not actual job performance deficiencies. This transforms a legitimate management concern into a tool for political purging.

The Spoils System in Modern Dress

Practical Political Purge

Despite claims that Schedule Policy/Career won't reintroduce patronage, the practical effect would be similar. Officials could be removed for "failing to faithfully implement administration policies"—a subjective standard easily abused to punish those perceived as insufficiently loyal.

Historical Regression

The Pendleton Act of 1883 established the merit-based civil service precisely to prevent the problems that plagued the spoils system: corruption, inefficiency, and instability in government operations. The proposed rule would effectively return us to pre-Pendleton Act conditions for thousands of positions.

Undisclosed Scope

The rule provides no clear parameters for which positions qualify as "policy-influencing." OPM estimates up to 50,000 positions could be affected—potentially 2% of the federal workforce—but the actual criteria remain vague and could expand in application.

Conclusion

The proposed Schedule Policy/Career rule represents a thinly veiled attempt to politicize the civil service under the guise of accountability. It undermines core merit system principles, threatens due process rights, and would significantly damage government effectiveness and institutional knowledge. Rather than strengthening accountability, it would weaken our democratic institutions by eliminating crucial safeguards against political overreach. The proper approach would be to strengthen existing performance management systems and provide better training to

managers, rather than dismantling fundamental civil service protections established over a century ago.