

**Comment on Proposed Rule for Schedule P/C from
Former EPA Political Appointees**

May 19, 2025

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 (April 23, 2025), Docket ID: OPM-2025-0004

Dear Office of Personnel Management:

The signatories to this comment letter are former U.S. Environmental Protection Agency (EPA) Administrators and officials who held Senate confirmed appointed positions. We served in both republican and democratic administrations going back to 1985. We recognize the significance of the Office of Personnel Management’s proposal to create a Schedule Policy/Career classification. We are very concerned about the premise for the rule and about the impact it will have on the effective functioning of the agency to accomplish its statutory responsibilities and effectuate the policy objectives of future administrations. We urge OPM to reconsider this proposal.

The Proposed Rule addresses federal employee positions described as of a “confidential, policy-determining, policy-making, or policy-advocating character,” which it refers to as “policy-influencing positions.” It estimates that there are approximately 50,000 such positions across the executive branch. The Proposed Rule proposes to transfer these positions to a new schedule in the excepted service, Schedule Policy/Career (“Schedule P/C”), and to eliminate the 5 U.S.C. chapter 43 and 75 procedural requirements and appeals for these positions (“civil service protections”), so that the employees, once hired through the traditional process, would become at-will employees, subject to dismissal without procedural protections or the right to appeal. The Proposed Rule would replace the rule finalized by OPM in 2024 on this topic (the “2024 Rule”). This would be a substantial change to the country’s civil service system.

The Proposed Rule offers legal, historical, policy, and factual justifications for the proposal. Our comment letter concerns only the policy and factual justifications, and we defer to many other commenters on the other important implications for this proposal. OPM’s primary policy and factual justifications are that:

- there are significant levels of poor performance among career federal employees that cannot be addressed adequately with the current civil service protections;
- a significant portion of poor performance is the result of resistance among career federal employees to the policies of particular administrations, including the current one;
- the current civil service protections make it extremely difficult to deal with poor employee performance; as a result, converting policy-influential employees to at-will is necessary to address those problems; and

- doing so will not adversely affect the overall ability of the federal government to deliver sound and effective policy for the American people because the civil service protections are not essential for staff to provide candid advice to political appointees.

Based on our collective experience as political appointees, we believe that the proposal is insufficiently supported by the factual record OPM has compiled and, indeed, by actual facts. There are not significant levels of poor performance or resistance among policy-influencing employees that undermine administration policies and that warrant such an extreme solution. On the contrary, removing civil service protections will have negative impacts on the effectiveness of government far beyond what the proposal acknowledges. It will chill policy-influential employees and other career employees from providing candid, expert advice to political appointees, which is essential for political appointees to develop and implement agency policies. It will likely deter talented people from seeking jobs in the federal civil service. In addition, the rule as proposed is vague and would lead to inconsistent and confusing implementation. And we believe that there are alternative, less problematic, ways to address the proposal's underlying premise that it is difficult to address poor performance in the federal workforce.

Poor performance is not rampant, nor does the record support widespread resistance to administration directives

The factual record OPM has compiled simply does not support its premise that poor performance is widespread or that resistance among employees, especially those likely to be considered “policy-influencing,” is significant. Every organization has higher, average and lower performing employees. Some personnel situations can be very challenging, and the actions needed to address those situations can be time-consuming and difficult, but these situations are infrequent and do not warrant the extreme solution of converting potentially large numbers of career staff to at-will employees. Furthermore, in our experience, the EPA career staff has a long track record of following the policy directives of whatever administration is in power.

The Proposed Rule cites press reports, general surveys, and rumors of policy resistance by career employees over time, but tellingly does not provide any substantial evidence that during those times, particular federal agencies sought to take specific actions that were deliberately delayed or undermined by career employees because they disagreed with those actions on policy grounds. In any event, these reports concern federal employees in general, and do not provide information specifically about policy-influencing employees, and thus do not provide meaningful support for the proposed rule.

In our experience, we found that the career staff at all levels of the agency understood their position as civil servants, and stepped up to assist each new administration implement its priorities, whether they agreed personally with those priorities or not. During the fourth year of each presidential term, the Office of Management and Budget organizes a process for agencies to prepare for a presidential transition. At EPA, that process has almost always been run entirely by senior career employees, with no involvement from political appointees, and has always been a genuine and professional effort to make sure the incoming political leadership had the information and support it needed.

With respect to the employees likely to be considered “policy-influencing,” the likelihood of poor performance is small. Based on their positions, their pay and our personal experience, it is clear that the great majority of these employees have been in federal service for some years and have become accomplished: they have successfully completed their probationary period; they have moved up the federal pay scale; and they have been given assignments with greater responsibility, including leading projects or programs, or they have been promoted to positions with greater responsibility, including supervisory roles. They could have achieved these accomplishments only by performing at levels that are fully satisfactory or better. Indeed, many of these employees may be considered the “stars” of government. There is no reason to expect, and no evidence pointing towards, significant performance problems with this group of employees.

Career employees at EPA understand that administrations will vary on their views about issues such as enforcement, EPA’s relationship with states and tribes, and challenging regulatory issues. Over the past two decades, EPA career staff have written and rewritten the Waters of the US rule multiple times and have done and redone a number of rules related to greenhouse gas emissions, the power sector and transportation. Some of us have personal knowledge that a number of EPA career employees worked on rules imposing regulatory requirements for industrial pollutants in the Obama administration, then worked on rules that rolled back those regulatory requirements in the first Trump administration, and then worked on rules that reinstated those regulatory requirements in the Biden administration. Based on recent announcements noted above from the current EPA announcing deregulation, we expect that those same career employees are now working on rules to roll back those regulatory requirements in the second Trump administration. These career employees’ expertise is essential for administrations to promulgate rules, and their willingness to spend years un-doing and re-doing their own work in administration after administration is a testament to their professionalism, and further refutes the Proposed Rule’s premise.

Political appointees rely on career employees to provide candid, expert advice and civil service protections are essential for that purpose

Our service as political appointees made clear to us how deeply we depended on the expertise, knowledge and analytical capabilities of the career staff to accomplish our policy goals, and the importance of the civil service protections to ensure staff could provide that to us. Civil service protections allow career employees to be candid in applying their expertise to provide essential advice to political leadership. It is common, perhaps even unavoidable, for the goals of political appointees and the experience of career employees to be in tension. But that tension can lead to better regulatory actions, as long as career employees are able to be candid.

Career employees have essential practical and historical knowledge that political appointees generally lack

It is the job of political appointees to apply the policies of their administration in the agencies that they manage. They come to their positions with aspirations as to what actions to take and are well aware that they have limited time to do so. They generally are knowledgeable about their agency and its work. But they invariably have less expertise than the career employees they manage, including in the law, programmatic history, relevant facts and science,

and other information that is important for the actions they seek to take. In addition, they may not have sufficient experience to judge the amount of time and agency resources needed for the actions they have in mind. Accordingly, political appointees must rely on the career employees.

On any number of issues, we relied heavily on career employees to help us get up to speed on the ins and outs of managing an agency as large as EPA. Career employees, many of whom would certainly be considered “policy-influencing” under the Proposed Rule, are the experts on issues such as the agency budget, personnel rules and labor relations, contracting, grants, and the regulatory process. They understand specialized programs and requirements like the Freedom of Information Act, the Paperwork Reduction Act and many others that, if not correctly taken into consideration, would stymie or undermine policy accomplishments. In fact, given the many years of experience career employees often have in specific areas of agency management as well as substantive policy, they were critical advisers for our successful delivery of our administration’s agenda.

We sometimes found career staff to be more cautious than we in the political leadership were, but this is a natural and, we believe, positive tension that often leads to more successful outcomes. For example, in the Obama and Biden EPAs, we often needed to work our policy ambitions through the career employees’ expertise and moderate tendencies to develop actions that were consistent with the law, facts and science, and agency resources. The 2024 Rule concluded that this process generally makes for better regulatory actions, and that was our experience as well.

Without civil service protections, career staff will be less likely to provide candid advice

It is essential that career employees be able to be fully candid in advising their political leadership. This includes pushing back, when appropriate, on inclinations the political appointees may have concerning the legal interpretations, the understanding of the underlying facts and science, the policy and programmatic ramifications, and the time and resources it takes for implementation of the actions under consideration.

The Proposed Rule purports to agree that it is essential for career employees to provide candid advice, but it asserts that civil service protections are not necessary to allow candor. Instead, it claims that “agency heads would have little desire to dismiss career employees who provide candid advice that differs from their own preferences, provided those employees faithfully execute the ultimate policy decisions.” The Proposed Rule is incorrect, and dangerously so.

The fact is that it is common for misunderstandings to arise as political appointees and career employees work together. This is especially so under the pressures of the regulatory process, and when a large number of individuals, at multiple levels in the agency’s hierarchy, are involved. Misunderstandings can be worsened because under certain circumstances, it is natural for political appointees to view career employees with some degree of suspicion. In particular, when the presidency changes hands from one of the major parties to the other, incoming political appointees may perceive the career employees as beholden to the policies of the previous administration that they helped to implement.

For example, political appointees may perceive career employees as “slow walking” actions as a type of policy resistance. This perception reflects misunderstandings because, as noted above, political appointees may not fully appreciate the amount of time and resources that regulatory actions may require, particularly to build records that will withstand judicial review.

These natural misunderstandings and, in some cases, suspicions, underline the need for career employees to have civil service protections. Otherwise, the career employees will have good reason to be concerned that their candid advice (e.g., they will need more time for a particular action) will be mistaken for policy resistance (e.g., “slow walking”) and raise the risk that they will be subject to adverse actions. And, to be fully candid ourselves in this comment, career staff may reasonably be concerned that the current political leadership would be quick to dismiss an employee given a number of adverse actions the Administration has already taken against career civil servants.

Such a fundamental change to the institution of the civil service will likely discourage capable and committed people from seeking jobs in the federal government

In our experience, people are attracted to work at EPA because they care deeply about public health and environmental protection. They have knowledge and skills that are well suited to the scientific, technical, legal and policy issues that arise in EPA’s work to implement the nation’s environmental laws, and they are so committed to public service that they are willing to forgo higher paying, private sector jobs. Employees stay at EPA a long time in absolute terms and relative to other agencies. The long careers people have at EPA necessarily mean that they stay through many changes in administrations. As they move up in the agency, they take on more responsibility, but retain the commitment to public service first and foremost. If the civil service rules are changed to turn them into at-will employees, more subject to dismissal without process by political appointees, especially for behavior that is perceived as partisan, fewer dedicated and high performing individuals will choose public service.

The definition of “policy-influencing” is extremely broad and subject to interpretation, with potentially broad implications for day-to-day work and a likelihood of inconsistent application.

The Proposed Rule defines “policy-influencing” employees as career employees with “[d]elegated or subdelegated authority to make decisions committed by law to the discretion of the agency head” as well as career employees who direct the work of an organizational unit, are responsible for specific programs or projects, are responsible for adjusting organizational goals, have significant responsibility for making discretionary grants, advocate to administration policy in public or before Congress or the state governments, or have a position that is otherwise described as entailing policy-making duties. This is incredibly broad, and almost certainly could include positions that are below the GS-15 level. Indeed, in 2017, the Office of Management and Budget’s plan to implement the Schedule F classification put forward in the first Trump Administration reportedly identified two-thirds of its workforce for the Schedule F designation, including “statisticians, IT specialists and even executive assistants.” EPA documents show that in 2017 it identified 579 positions that fit into the Schedule F classification, including positions at the GS-12 level and below. The documentation shows that even within a single agency, there were questions about how to interpret the new classification consistently.

There are other, better approaches to addressing the challenge of dealing with poor performance.

If the concern really is poor performance, OPM should look to improve processes that apply to all career staff, including training and support for supervisors. In our experience, the existing systems and best practices work as they should in most cases. These practices include careful attention to hiring individuals who appear to be a good fit and have a strong work ethic; reviewing the performance of these individuals during their probationary period and mentoring them during that period, providing regular feedback, and addressing any performance issues as soon as they arise.

To the extent that performance problems with “policy-influencing” employees, arise, they can usually be adequately addressed through the current mechanisms for performance management systems, performance improvement plans, and adverse actions such as suspensions, demotions, or removals in 5 U.S.C. chapters 43 and 75, as the 2024 Rule correctly explained. It is true that these mechanisms are imperfect in part because they are time- and resource-intensive, and that as a result, some managers may decide that they are not worth the investment, but as the 2024 Rule notes, they are in fact used to address poor performance.

However, if the real concern is perceived recalcitrance to a particular administration, political leadership is in the ultimate position to ensure that career staff do not obstruct activity. It can (and in our experience, regularly does) revisit delegations of authority or otherwise direct that certain decisions must be made by political leadership. It can engage directly in rulemaking, grants and other priority activities and be clear about expectations. It can assign and reassign work if it has concerns about particular employees. These approaches are all fully available and likely to be more effective than OPM’s ill-considered Proposed Rule.

All of us signing this letter value our public service greatly and firmly believe in the value of the career civil service as essential to delivery of government service to the American people, no matter which Administration is in office. Our comments are based on our collective years of experience, and motivated by our commitment to effective government. Thank you for your consideration.

Respectfully submitted,

William K. Reilly
Administrator, USEPA
1989-1993

Gina McCarthy
Administrator, USEPA
2013-2017

Christine Todd Whitman
Administrator, USEPA
2001-2003

A. James Barnes
Deputy Administrator, USEPA
1985-1988

Linda J. Fisher
Deputy Administrator, USEPA
2001-2003

Bob Perciasepe
Deputy Administrator, USEPA
2009-2014

Janet G. McCabe
Deputy Administrator, USEPA
2021-2024

Mary Nichols
Assistant Administrator, Office of Air and
Radiation
1993-1997