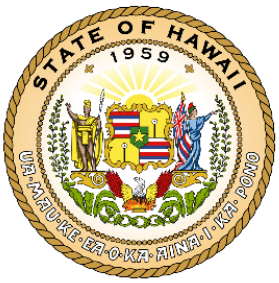


Hawai'i
Anne Lopez
Attorney General
Loio Kuhina

Minnesota
Keith Ellison
Attorney General

May 23, 2025

By Electronic Filing (*http://www.regulations.gov*)

Acting Director Charles Ezell
Office of Personnel Management
1900 E Street, N.W.
Washington, DC 20415

Re: Notice of Proposed Rulemaking, *Improving Performance, Accountability and Responsiveness in the Civil Service*, 90 Fed. Reg. 17182 (Apr. 23, 2025) (Docket ID: OPM-2025-0004; RIN 3206-AO80)

Dear Acting Director Ezell:

We, the undersigned Attorneys General of Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, Nevada, Oregon, Rhode Island, Vermont, Washington State, and the District of Columbia (the "State AGs"), submit this Comment in opposition to the proposed rulemaking by the Office of Personnel Management ("OPM") entitled *Improving Performance, Accountability and Responsiveness in the Civil Service* (the "Proposed Rule").

The undersigned State AGs oppose the Proposed Rule because it threatens to undermine the principles that have laid at the heart of our Nation's civil service system for over a century. That system has permitted each presidential administration to hire a few thousand political appointees to set and drive policy from the top—but it has generally ensured that the remaining roughly two million federal employees are hired based on merit rather than political affiliation and are afforded robust protections so that they may do their jobs without fear or favor. The Proposed Rule, however, would significantly expand the number of federal employees who are terminable at-will and thus vulnerable to pressure to curry favor with the prevailing political party. This threatens to politicize the civil service and undermine the efficient and effective delivery of federal programs and services—programs and services on which the States heavily rely. Beyond these troubling consequences, the Proposed Rule is also unlawful; it contravenes the text and purpose of the CSRA and violates the Fifth Amendment's Due Process Clause. For all of these reasons, we oppose the Proposed Rule, and we urge OPM to withdraw it.

I. BACKGROUND

A. History of the Federal Civil Service

The modern federal civil service system traces its roots to the Pendleton Act of 1883, which marked the end of the "spoils system" that had dominated federal hiring since President Andrew Jackson's Administration.[1] This led to widespread turnover with each change of administration and frequent abuses, as unqualified party supporters filled public positions. Enacted in response to widespread corruption—and catalyzed by President Garfield's assassination by a disgruntled office-seeker—the Pendleton Act introduced merit-based hiring and protections against arbitrary dismissal and political coercion.[2] It established the foundational principle that selection and advancement in federal service should depend on ability and performance, not party loyalty or favoritism.

Over the next century, Congress repeatedly reinforced and expanded these principles. The Lloyd–La Follette Act of 1912 prevented firing of civil servants for reasons other than "just cause," while the Hatch Act of 1939 barred federal employees from using their positions for partisan purposes.[3] Just as federal employees should not be hired or fired on political grounds, the Hatch Act ensured that "neither should they be permitted to use their positions, once attained, for partisan pursuits."[4] These statutory protections were designed to insulate the civil service from improper political influence while maintaining a highly qualified and accountable workforce.

Congress undertook a major structural reform in 1978 with the adoption of the Civil Service Reform Act (CSRA), which replaced the U.S. Civil Service Commission with the Office of Personnel Management (OPM), the Merit Systems Protection Board (MSPB), the Office of Special Counsel (OSC), and the Federal Labor Relations Authority (FLRA). Congress assigned the Equal Employment Opportunity Commission (EEOC) responsibility for enforcing equal employment laws in Federal agencies.[5] These institutions now ensure that civil servants are hired based on merit, protected against prohibited personnel practices, and afforded meaningful due process. The CSRA's protections were later extended to most excepted service employees through the Civil Service Due Process Amendments of 1990.[6]

---

[1] *Milestone Documents: Pendleton Act (1883)*, Nat'l Archives, https://www.archives.gov/milestone-documents/pendleton-act.

[2] *See* Anthony J. Gaughan, *Chester Arthur's Ghost: A Cautionary Tale of Campaign Finance Reform*, 71 Mercer L. Rev. 779, 790 (2020).

[3] The Lloyd-La Follette Act, § 6, 37 Stat. 555 (1912). Hatch Act, Pub. L. No. 76-252, 53 Stat. 1147 (1939) (codified as amended at 5 U.S.C. §§ 1501-08, 7321-26).

[4] Katherine Shaw, *Partisanship Creep*, 118 Nw. U. L. Rev. 1563, 1565 (2024).

[5] Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111 (codified as amended in scattered sections of 5 U.S.C.).

[6] *See* The Civil Service Due Process Amendments Act, Pub. L. No. 101-376, 104 Stat. 461 (1990) (codified as amended at 5 U.S.C. § 7511 (2006)); *see also*, David C. Weiss, *Nothing Improper? Examining Constitutional Limits, Congressional Action, Partisan Motivation, and Pretextual Justification in the U.S. Attorney Removals*, 107 Mich. L. Rev. 317, 354–55 (2008)

Today, most of the two million federal workers are in the competitive service, where hiring is based on open competition and objective evaluation.[7] Upon successful completion of their probationary period, competitive service employees are entitled to key procedural safeguards under Title 5, including notice of proposed adverse actions, an opportunity to respond, and the ability to appeal adverse actions to the MSPB.[8] Around one-third of federal workers serve in the excepted service, although excepted service roles "are not subject to competitive examination," excepted service employees generally receive the same statutory adverse action protections as competitive service employees..[9] As relevant here, however, an excepted service employee "whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character" does not receive such protections.[10]

Pursuant to current federal regulations, excepted service employees are organized into five categories called "Schedules."[11] Schedule C includes excepted service employees in positions of "a confidential or policy-determining character" who lack civil service protections.[12] Accordingly, "Schedule C allows for hiring for positions that are policy determining or which involve a close and confidential working relationship with the head of an agency or other key appointed officials."[13] Furthermore, "Schedule C appointees serve at the pleasure of the department or agency head," and employees in these positions "typically resign at the request of an incoming administration or before a new agency head takes office."[14] Only a relatively small number of employees in each executive agency serves in a Schedule C role. As of March 4, 2024, OPM's Periodically Listing Updates to Management ("PLUM") Reporting lists only 1,624 Schedule C employees across all federal agencies.[15] That narrow scope reflects Congress's longstanding judgment: only a limited set of positions should be exempt from merit-based rules.

("Following the scandal-tainted removal of an award-winning, excepted service Navy attorney in 1984, Congress investigated whether excepted service employees should be brought under the CSRA and be given an opportunity to challenge a dismissal before the Board.")

[7] Jon O. Shimabukuro & Jennifer A. Staman, Cong. Rsch. Serv., R45635, *Categories of Federal Civil Service Employment: A Snapshot* 1 (2019), https://crsreports.congress.gov/product/pdf/R/R45635 (last visited May 16, 2025).

[8] *Id.* at 3-4.

[9] *Id*. at 4-5.

[10] 5 U.S.C. § 7511(b)(2).

[11] 5 C.F.R § 213.102.

[12] 5 C.F.R. § 213.3301.

[13] U.S. Gov't Accountability Off., GAO-22-105504, *Agency Responses and Perspectives on Former Executive Order to Create a New Schedule F Category of Federal Positions* 6 (2022), https://www.gao.gov/assets/gao-22-105504.pdf.

[14] *Id.*

[15] *PLUM Reporting*, U.S. Off. Pers. Mgmt., https://www.opm.gov/about-us/open-government/plum-reporting/plum-data/.

B. Executive Order 13957 and the Proposed "Schedule F"

On October 21, 2020, President Trump signed Executive Order 13957, which directed the creation of a new "Schedule F" excepted service category.[16] Unlike Schedule C, Schedule F was not intended for positions that turn over with each administration. Rather, EO 13957 sought to drastically expand the scope of the "policy-making, policy-determining, or policy-advocating responsibilities" exception to apply to existing *career positions*.[17]

EO 13957 required agencies to identify and reclassify such positions into Schedule F and petition OPM for approval.[18] These reclassifications would strip the affected employees of their CSRA protections—most notably, their due process rights and access to independent review of adverse actions.[19]

The Trump Administration asserted that EO 13957 was necessary because the civil service was plagued by poor performers and bureaucratic inertia, but it provided no meaningful evidence to support this claim.[20] The CSRA already provides robust tools to address underperformance while safeguarding against arbitrary or politically motivated dismissals. Schedule F aimed to discard this balance, attempting to bypass Congress's careful statutory framework to create a new category of at-will employment for broad groups of career civil servants in policy-related roles.

It is difficult to estimate the precise impact Schedule F would have had if it had been fully implemented. Some estimates projected it would as many as 50,000 federal workers would have been reclassified.[21] Records from the first Trump Administration show wide variation in how agencies interpreted Schedule F's mandate. For example, according to a 2022 Government Accountability Office (GAO) Report, only two agencies—the Office of Management and Budget ("OMB") and the U.S. International Boundary and Water Commission ("USIBWC")—submitted petitions to reclassify positions into Schedule F.[22] OMB would have reclassified 415 workers out of its total workforce of 610—68% of the entire agency.[23] Meanwhile, USIBWC would have reclassified only six of its 234 employees into Schedule F.[24]

The potential damage to civil service continuity, independence, and expertise would have been severe. Career staff could have been chilled from offering candid advice, marginalized based on ideology, or removed for political convenience—impairing the effectiveness of agencies across the government, including the Department of Justice, the Environmental Protection Agency, and

---

[16] Exec. Order No. 13957, 85 Fed. Reg. 67,631 (Oct. 26, 2020), https://www.govinfo.gov/content/pkg/FR-2020-10-26/pdf/2020-23780.pdf (last visited May 16, 2025).
[17] *Id*. at 67,633.
[18] *Id*. at 67,633-34.
[19] U.S. Gov't Accountability Off., *supra* note 13, at 7–8.
[20] Exec. Order No. 13957, *supra* note 16, at 67,632.
[21] Jonathan Swan, *A Radical Plan for Trump's Second Term*, Axios (July 22, 2022), https://www.axios.com/2022/07/22/trump-2025-radical-plan-second-term.
[22] *Id.* at 13.
[23] *Id.* at 16–17.
[24] *Id.* at 20.

the Food and Drug Administration, and undermining public trust in impartial governance.[25] From a civil service neutrality perspective, that is alarming. It means economists at OMB, scientists at FDA, attorneys at DOJ, regulatory analysts at EPA – anyone whose work could be deemed "policy-advocating" – could be hired and fired like political staff.

Schedule F was never fully implemented. On his second day in office, President Biden revoked it through Executive Order 14003, declaring that Schedule F "undermined the foundations of the civil service and its merit system principles."[26] EO 14003 directed agencies to halt all compliance and ordered OPM to reject any pending or future petitions to convert positions into Schedule F.

C. OPM's 2024 Final Rule "Upholding Civil Service Protections and Merit System Principles."

In April 2024, following a robust notice-and-comment process, OPM issued a final rule titled Upholding Civil Service Protections and Merit System Principles ("the 2024 Final Rule").[27] The rule reinforced the legal and policy framework that EO 13957 sought to upend.[28]

First, the rule prohibited agencies from stripping employees of accrued civil service protections through involuntary reclassifications, whether from the competitive service to the excepted service or between excepted service schedules.[29] Second, it reiterated the definition of "policy-making" and similar terms to apply only to noncareer political appointees—consistent with the CSRA's statutory text, long-standing interpretations, and evident congressional intent.[30] Third, it imposed procedural safeguards for any future reclassifications, including requiring OPM approval, written justifications, notification to affected employees, and appeal rights before the MSPB.[31]

Taken together, the 2024 Final Rule reaffirmed long-standing merit system principles and ensured that federal employees cannot be reclassified into at-will status without cause or

---

[25] Ben Penn, *Trump's Planned Civil Service Overhaul Alarms DOJ Employee Group*, Bloomberg Law (June 11, 2024), https://news.bloomberglaw.com/us-law-week/trumps-planned-civil-service-overhaul-alarms-doj-employee-group (last visited May 16, 2025); Gabe Castro-Root & Stephen Lee, *EPA Staff Move to Safeguard Work Amid Worries of Trump's Return*, Bloomberg Law (Aug. 9, 2024), https://news.bloomberglaw.com/environment-and-energy/epa-staff-move-to-safeguard-work-amid-worries-of-trumps-return (last visited May 16, 2025).

[26] Exec. Order No. 14003, 86 Fed. Reg. 7,231 (Jan. 27, 2021), https://www.govinfo.gov/content/pkg/FR-2021-01-27/pdf/2021-01924.pdf (last visited May 16, 2025).

[27] Upholding Civil Service Protections and Merit System Principles, 89 Fed. Reg. 24,982 (Apr. 9, 2024), https://www.govinfo.gov/content/pkg/FR-2024-04-09/pdf/2024-06815.pdf.

[28] *Id*.

[29] 5 C.F.R. § 302.602(d).

[30] 5 C.F.R. § 210.102(b)(3-4).

[31] 5 C.F.R. §§ 302.602, 302.603.

recourse.[32] It reflected Congress's considered judgment, as reflected in its adoption of the CSRA, that a stable, expert, and politically neutral career civil service workforce is essential to good government.

D. OPM's 2025 Proposed Rule

In the Proposed Rule, OPM has done an about-face, now rejecting many of the reasons that motivated the promulgation of the 2024 Final Rule. In the Proposed Rule, OPM now claims that the 2024 Final Rule "inadequately considered" certain factors, which now "call for issuing the [Proposed Rule]."[33]

OPM further asserts that civil service protections, specifically, adverse action procedures, including rights to appeal, under 5 U.S.C. Chapters 43 and 75, "significantly impair agencies' ability to hold Federal employees accountable for poor performance or misconduct," necessitating the implementation of the Proposed Rule.[34] In coming to this conclusion, OPM focuses on evidence suggesting that federal agencies take inadequate action against low-performing employees,[35] while dismissing its previous conclusion that data does not show that poor performance is a widespread problem.[36]

OPM also explicitly cites "resistance" to President Trump's agenda by career federal employees as a reason to reverse course from the 2024 Final Rule. After citing to reports of purported "resistance" during President Trump's first term, OPM claims that "[r]eports now indicate that some career employees intend to undermine the policy agenda of the second Trump Administration."[37] Despite acknowledging that "many academics conclude that bureaucratic autonomy is beneficial," and "creates a beneficial 'internal separation of powers' within the executive branch," OPM nonetheless concludes that it "now . . . believes that career employee partisanship and policy resistance is a serious problem because it undermines democracy."[38]

II. COMMENTS OPPOSING PROPOSED RULE

A. The Proposed Rule is Not Warranted By Conditions of Good Administration.

Although the President may prescribe rules governing the competitive service, including those providing necessary exceptions of positions from the competitive service, any such

---

[32] U.S. Off. Pers. Mgmt., *Implementing Guidance for Upholding Civil Service Protections and Merit System Principles Regulations* (Oct. 25, 2024), https://www.chcoc.gov/content/implementing-guidance-upholding-civil-service-protections-and-merit-system-principles (last visited May 16, 2025).
[33] Proposed Rule at 17189.
[34] *Id.* at 17191.
[35] *Id.* at 17189-90
[36] *Id.* at 17190-91. *Cf.* 2024 Final Rule at 25002-25003 (reviewing research and data showing that civil service protections and merit system principles improve employee performance, reduce turnover, and reduce government corruption).
[37] Proposed Rule at 17192.
[38] *Id.* at 17192, 17194.

exceptions must be warranted by "conditions of good administration." 5 U.S.C. § 3302. The Proposed Rule would violate this statutory limitation because removal of CSRA's adverse action protections for non-political career service employees would make the federal government less effective and less efficient. Moreover, the Proposed Rule would harm states by undermining federal programs that state governments depend on. For these reasons, we urge OPM to withdraw the Proposed Rule because it is not warranted by conditions of good administration.

1. A Nonpartisan Career Civil Service Is Important for States, and Removal of CSRA Protections Would Make the Federal Government Less Effective and Less Efficient.

If OPM implements the Proposed Rule, tens of thousands of experienced, knowledgeable, and tenured career civil servants would lose their CSRA adverse action protections. As the Proposed Rule acknowledges, the point of this change is to render these employees terminable at will.[39] This shift would fundamentally undermine the merit-based principles that are the hallmark of the modern federal government system.[40] Eroding these protections would drive out experienced federal government employees who possess critical institutional knowledge that ensures that agency programs run effectively and efficiently.[41]

While a small number of political appointees in each administration establish agency objectives, it is the long-serving civil servants—scientists, lawyers, economists, procurement officers, and other professionals—who carry out those goals in accordance with the law. Their specialized expertise and tenure allow them to implement complex policies across administrations. Civil service protections ensure that these professionals can do so without fear of political retaliation, contributing to both workforce stability and morale.[42]

Removing merit protections would make it difficult to retain this talent.[43] Without safeguards against partisan targeting, experienced employees would likely leave—taking critical institutional knowledge with them. Studies show that their experience will not be easily replaced. Non-tenured professionals are more likely to turn over between administrations and are less likely to develop long-term expertise.[44]

---

[39] *See, e.g.*, Proposed Rule at 17183.

[40] Moynihan, Don, *The Risks of Schedule F for Administrative Capacity and Government Accountability*, Brookings Institution (Dec. 12, 2023), https://www.brookings.edu/articles/the-risks-of-schedule-f-for-administrative-capacity-and-government-accountability/.

[41] Aneja, Abhay, et al., *Strengthening State Capacity: Civil Service Reform and Public Sector Performance*, 114 Am. Econ. Rev. 8 (2023), https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20230019; Potter, Rachel, *Democracy Reform Primer Series: Schedule F* (2024), https://blockyapp.s3.eu-west-2.amazonaws.com/store/f072aaafa48323955af09e75d2161ef9.pdf.

[42] Oliveira, Eloy, et al., *What Does the Evidence Tell us about Merit Principles and Government Performance?*, 102(2) Pub. Admin. 668 (2023).

[43] Lowande, Kenneth, *Politicization and Responsiveness in Executive Agencies*, 81:1 J. Pol. 1, 33-48 (2019); Oliveira, 102(2) Pub. Admin at 687.

[44] Oliveira, 102(2) Pub. Admin at 660-87.

The removal of adverse action protections from thousands of career civil servants poses a substantial risk to agency performance and continuity.[45] According to the GAO, this disruption would impair the federal government's ability to administer long-term policies, respond to emergencies, and manage complex regulatory regimes.[46] Agencies rely on experienced professionals to oversee grants, enforce compliance, and ensure smooth program administration. Their sudden removal could result in significant delays and procedural errors. For example, benefits determinations at the Social Security Administration, veterans' services at the Veterans' Administration, and permitting at the Environmental Protection Agency could slow dramatically—impacting millions of Americans. The Proposed Rule would also likely undermine the trust that the public and financial markets place in government statistics.[47]

Moreover, many career employees manage long-term projects that span administrations, such as implementing Medicare and Medicaid policy, maintaining military readiness, and regulating financial markets. These long-term efforts depend on stable leadership and expertise, which cannot be sustained under politicized employment conditions.

The consequences would also extend to emergency response. Agencies like the Federal Emergency Management Agency, the Centers for Disease Control and Prevention, and the Department of Health and Human Services depend on trusted career professionals with experience coordinating federal responses to disasters and public health crises. Removal of adverse action protections from career civil servants in these roles would make them vulnerable to retaliation for accurately describing facts or scientific research when those conclusions are politically inconvenient.[48] Politicizing these roles could delay responses, disrupt coordination, and undermine national preparedness.

Just as serious, politicizing civil service roles could destroy public trust in government institutions. Trust in government institutions is foundational to civic stability. When the public perceives that politics overrides policy or the law, trust in government erodes. The lack of trust

---

[45] U.S. Gov't Accountability Off., GAO-22-105504, *Agency Responses and Perspectives on Former Executive Order to Create Schedule F in the Excepted Service* (2022), https://www.gao.gov/products/gao-22-105504.

[46] Moynihan, Don, *The Risks of Schedule F for Administrative Capacity and Government Accountability*, Brookings Institution (Dec. 12, 2023), https://www.brookings.edu/articles/the-risks-of-schedule-f-for-administrative-capacity-and-government-accountability/.

[47] Groshen, Erica L., *Is Schedule Policy/Career a Risk for Federal Statistical Agencies* (Apr. 23, 2025) (explaining that the Proposed Rule would likely cause "[e]rosion of professional autonomy in the operations of statistical agencies would undermine their perceived or actual independence, leading to a loss of public trust in the data they produce"), https://static1.squarespace.com/static/5bedb4a070e802cb58b90b79/t/680aa2de6230d01455eb4680/1745527518674/UTF-8Policy+Brief+re+Schedule+Policy-Career.pdf

[48] *Safeguarding Science in State Agencies*, Union of Concerned Scientists, *et al.*, 8-10 (Sep. 27, 2023) (describing how inadequate civil service protections can make state-level scientists vulnerable to political retaliation), https://www.brennancenter.org/media/11752/download/BCJ-150%20SafeguardingScience.pdf.

reduces civic engagement and threatens citizen cooperation with government initiatives such as public health campaigns or disaster recovery efforts.[49]

The experience of states that have removed civil service protections for their employees provides a troubling example of the likely impacts that the Proposed Rule would have if implemented. Like the federal government, states rely on professional, nonpartisan administration to ensure efficiency and accountability. When states have removed civil service protections for their employees, public confidence, agency performance, and worker morale have often declined.[50]

For example, in 1996, Georgia transitioned to an at-will employment system for new state workers. The intent of the change was to improve state agency leaders' flexibility to terminate poor performing workers. Research has shown that the result led to higher turnover and difficulties retaining skilled high-performing workers.[51]

Similarly, Florida reduced civil service protections and expanded at-will positions in 2001. This fostered perceptions of politicized hiring and favoritism. Employee morale decreased, and internal disagreement was chilled as workers feared retaliation for speaking out.[52]

These State experiences offer a cautionary tale. Far from creating an efficient government, eliminating civil service protections will reduce efficient delivery of services to citizens and decrease agency performance. We urge OPM to withdraw the Proposed Rule because, like these state-level changes, it would undermine rather than improve government effectiveness and efficiency.

2. Removal of Civil Service Protections for Federal Employees Would Undermine Federal Programs States Depend On.

States rely on partnerships with federal agencies to safeguard the health, safety, and welfare of their residents. In times of disasters or emergencies, states rely on federal agencies' experience and infrastructure to swiftly and efficiently deliver aid. States also rely on federal agencies to set and enforce national standards for clean air and water and safe food and drugs. And states also work closely with federal employees to deliver critical federal funds and benefits directly to state residents. We urge OPM to withdraw the Proposed Rule because it would jeopardize these essential state-federal partnerships by undermining the integrity and reliability of federal decision-

---

[49] *See* Oliveira, Eloy, *et al.*, *What Does the Evidence Tell us about Merit Principles and Government Performance?*, 102(2) Pub. Admin. 668 (2023).

[50] *See* Brewer, Gene A., *et al.*, *Administrative Values and Public Personnel Management: Reflections on Civil Service Reform*, 45:2 Pub. Personnel Management 171, 181-84 (2016) (discussing how state-level withdrawals of merit system protections can undermine public employee morale, decrease effectiveness, and increase turnover).

[51] U.S. Merit Systems Protection Board, *Building a High-Quality Workforce: The GA Experience* (2006).

[52] Bowman, James, *et al.*, Ending Civil Service Protections in Florida Government, 26(2) Rev. Pub. Personnel Admin. 139 (2006); *See also* Kettl, Don, *The Transformation of Governance*, (Brookings Institution P. 2002).

making, improperly injecting political pressures into decisions which should be made based on science, data, experience, and legal duties.

For example, the Proposed Rule threatens the reliable availability of disaster and emergency assistance. When a major disaster is declared, an extremely wide scope of federal assistance may be available to states and their residents; from general assistance, to the distribution of food and medicine, to physical labor, to targeted assistance to individuals and households, to unemployment assistance.[53] And as the recent COVID-19 pandemic demonstrated, in cases of public health emergencies that can spread quickly beyond state borders, states depend on the unsurpassed resources and coordinated efforts of the federal government, particularly the Centers for Disease Control and Prevention, to contain the threat, stop its spread, and deliver aid directly to states.[54] Decisions about how to best deliver aid to states to minimize loss of life and property should be based on the federal government's scientific and logistical expertise. However, President Trump has already threatened to condition federal disaster aid on political trade-offs.[55] He has also expressed hostility to vaccine mandates, an effective, proven public health measure.[56] The Proposed Rule would increase the risk that the federal employees who help decide what aid is needed and how best to deliver that aid will be influenced by political pressures rather than impartial considerations of how to save as many lives as possible.

States also depend on their federal partners to set, monitor, and enforce standards to protect the health and safety of state residents on a continuing basis. States heavily rely on federal scientific and policy experts to craft standards in the realms of clean air, clean water, and food, drug, and product safety. Even though states may have their own permitting or enforcement programs, they are often subject to federal oversight. For instance, Title V of the Clean Air Act requires all major pollution sources to obtain operating permits which are generally issued by state and local agencies, but are subject to review, objection, or termination, by the EPA. As another example, the National Pollutant Discharge Elimination System (NPDES) program is jointly administered by the EPA and state governments, but state-implemented NPDES programs are still subject to federal oversight. Federal standards and oversight are especially important in the environmental protection space because hazardous pollution can easily cross state lines, yet states can only regulate polluters within their own boundaries.

Similarly, while state health departments have jurisdiction to enforce their own food safety regulations, they also depend on the U.S. Department of Agriculture to inspect all meat, poultry,

---

[53] *See* 42 U.S.C. §§ 5170-5189h.

[54] *See* Centers for Disease Control and Prevention, *CDC Museum COVID-19 Timeline* (chronicling, among other things, the issuance of CDC notices and guidance, CDC efforts to expedite the development and delivery of test kits and CDC distribution of funding to states), https://www.cdc.gov/museum/timeline/covid19.html.

[55] Samuels, Brett, *Trump Cites Voter ID, Water Flow As Conditions For LA Wildfire Aid*, The Hill (Jan. 24, 2025), https://thehill.com/homenews/administration/5105004-trump-demands-voter-id-water-aid/.

[56] *Fact Sheet: President Donald J. Trump Prohibits Federal Funding for COVID-19 Vaccine Mandates in Schools*, The White House (Feb. 14, 2025), https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-prohibits-federal-funding-for-covid-19-vaccine-mandates-in-schools/.

and egg products sold in interstate commerce, and the U.S. Food and Drug Administration to investigate outbreaks of foodborne illnesses, issue notices of voluntary product recalls, and if necessary, initiate mandatory product recalls. States, especially smaller ones, simply do not have the resources to replicate the expertise and infrastructure the federal government uses to keep unsafe food, drugs, and other products out of interstate commerce. And, as with pollution, states have limited jurisdiction to stop unsafe products from crossing their borders.

Thus, states need to be able to rely on the fact that the federal agencies responsible for protecting the health and safety of state residents are making decisions based on science, data, and their statutory duties. The Proposed Rule, however, threatens to allow political pressures, including pressures from regulated industries, to supplant impartial professional expertise in making these critical agency decisions.

States also rely heavily on the expertise and institutional knowledge of federal employees to properly award and administer grants and other funds to states and their residents. The funds provided through federal programs often provide critical lifelines to the most vulnerable state populations, yet they also require states to navigate complicated federal requirements. For example, the Medicaid and SNAP programs allow flexibility for states to administer their respective state programs to best meet the unique needs of their residents. In connection with this Administration's attacks on the civil service, the Proposed Rule threatens to deprive states of long-standing working relationships with federal employees who help to ensure that critical federal aid is delivered to those who are legally entitled to receive it.

In sum, states need to be able to trust their federal agency partners to make decisions based on data- and science-backed expertise and institutional experience. The Proposed Rule, however, creates a significant risk that federal decisionmakers will instead pressure career civil servants to make critical choices based not on evidence, science, safety, or even the law, but on the political whims of the President. At the same time, the Proposed Rule risks causing a mass exodus of career employees by stripping them of their CSRA adverse action protections. The loss of such employees would cause great harm to the states that depend on them for their institutional knowledge and continuity of service.

For these reasons, we urge you to withdraw the Proposed Rule because it is not warranted by conditions of good administration and would undermine federal programs states depend on.

B. The Proposed Rule Would Violate the APA.

The Administrative Procedure Act ("APA") provides that agency action is unlawful and must be set aside if it is "not in accordance with law"; "in excess of statutory jurisdiction, authority, or limitations"; or "arbitrary, capricious, [or] an abuse of discretion." 5 U.S.C. § 706(2)(A), (C). The Proposed Rule would violate the APA because it is contrary to law; exceeds OPM's statutory authority; and is arbitrary and capricious. The Proposed Rule contravenes Congress's clear intent in enacting the CSRA.[57] The Proposed Rule would violate the CSRA because it exceeds the scope of statutory authorization to create exceptions to the CSRA's adverse action procedures. The Proposed Rule would also violate the CSRA by undermining merit system principles by making

[57] 5 U.S.C. §§ 1101, *et seq*.

federal employees vulnerable to favoritism, politicization, and patronage as well as undermining the ability of federal employees to oppose unlawful actions. Moreover, the Proposed Rule also violates the Fifth Amendment of the United States Constitution by purporting to permit the executive to remove vested civil service protections from incumbent federal employees. For these reasons, we urge OPM to withdraw the Proposed Rule because it would be contrary to law if promulgated.

1. Removal of CSRA Protections For Non-Political Appointees Contravenes the Will of Congress.

The Proposed Rule seeks to except non-political, career employees from the CSRA's adverse-action protections. Under the CSRA, however, OPM lacks the authority to strip non-political, career employees of those protections. The Rule thus exceeds OPM's authority and is contrary to law.

Under 5 U.S.C. § 7511(b)(2), an employee may only be excepted from the CSRA's adverse action protections where their "position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character." As OPM recognized in promulgating its 2024 Final Rule, the phrase "confidential, policy-determining, policy-making or policy-advocating" is a term of art in the civil service context that is intended to refer to political appointees.[58] Indeed, the historical record demonstrates that since at least 1936, the phrase "confidential or policy-determining" has been used consistently to refer to noncareer political appointees.[59] The CSRA's legislative history also makes clear that the slightly longer formulation used in section 7511 was intended to have the same meaning.[60]

Accordingly, by purporting to extend the phrase "confidential, policy-determining, policy-making or policy-advocating" to apply to career civil servants, the Proposed Rule exceeds the statutory authorization to create exceptions to the CSRA's adverse action protections, and it is therefore contrary to law.

2. Removal of CSRA Protections Makes Employees Vulnerable to Arbitrary Action, Favoritism, Politicization, and Patronage.

As OPM recognized in adopting the 2024 Final Rule, the CSRA codified several "merit system principles" that govern the management of the federal workforce.[61] Among these principles is the requirement that federal employees must be "protected against arbitrary action, personal favoritism, or coercion for partisan political purposes."[62] By removing the adverse action protections from career civil service employees, the Proposed Rule would violate this requirement by rendering those employees more vulnerable to favoritism, politicization, and patronage.

---

[58] 2024 Final Rule at 24991.
[59] *See* 2024 Final Rule at 25020-25023.
[60] *Id.*
[61] 2024 Final Rule at 24986.
[62] 5 U.S.C. § 2301(b)(8)(A).

As the Proposed Rule makes clear throughout, its purpose is to strip career civil service positions of adverse action procedural protections to render them subject to termination at will.[63] The Trump Administration has made no secret of the fact that it intends to subject federal employees without adverse action protections to arbitrary action. Consider the Administration's terminations of tens of thousands of probationary employees in February and March of this year.[64] Although federal probationary employees are generally not covered by the CSRA's adverse action protections,[65] federal regulations limit the authority of agencies to terminate them to individualized reasons related to the employee's performance or qualifications, or otherwise as part of a reduction in force.[66] Notwithstanding these limitations, the Trump Administration directed federal agencies to terminate probationary employees *en masse*, providing the employees with letters stating that they had been terminated for cause even though that was untrue, and the government had not conducted any individualized assessment of the employees' performance.[67] This Administration's course of conduct thus demonstrates that the removal of adverse action protections from career service employees could subject them to considerable risk of arbitrary action without any recourse, in violation of merit system principles.

Similarly, although OPM contends that the Proposed Rule "contains safeguards to prevent patronage, such as forbidding the White House office in charge of vetting political positions from being involved with selecting Schedule Policy/Career appointees,"[68] there is considerable cause for concern that those safeguards are inadequate. In the first several months of this Administration, there have been numerous reports that employees have been subject to political loyalty tests and adverse actions for failing to adequately adhere to the Administration's political agenda.[69] There

---

[63] *See, e.g.*, Proposed Rule at 17183.

[64] *See generally, e.g.*, *Maryland v. United States Dep't of Agric.*, No. CV JKB-25-0748, 2025 WL 973159 (D. Md. Apr. 1, 2025).

[65] 5 U.S.C. § 7511(a)(1)(A)(i).

[66] 5 C.F.R. §§ 315.202, 315.804, 315.805.

[67] *Maryland*, 2025 WL 973159, at *20-23.

[68] Proposed Rule at 17208-17209.

[69] *See, e.g., Trump team is questioning civil servants at National Security Council about commitment to his agenda*, Associated Press (Jan. 13, 2025) (describing political loyalty tests), https://apnews.com/article/trump-biden-nsc-loyalty-waltz-21913da0464f472cb9fef314fed488e5; *Justice Dept. suspends attorney who acknowledged deportation was a mistake*, Washington Post (Apr. 5, 2025), https://www.washingtonpost.com/national-security/2025/04/05/ezra-reuveni-justice-attorney-suspended-deportation-mistake/ (reporting that the Department of Justice suspended an attorney following his admission that the Administration had deported Maryland resident Kilmar Abrego Garcia by mistake); *Gabbard fires leaders of intelligence group that wrote Venezuela assessment*, Washington Post (May 14, 2025) (describing terminations of National Intelligence Council employees for writing an intelligence assessment that contradicted the Administration's rationale for invoking the Alien Enemies Act), https://www.washingtonpost.com/national-security/2025/05/14/gabbard-intelligence-venezuela-tren-de-aragua/.

were even reports that Administration officials had asked career civil servants about their political contributions and who they had voted for in the 2024 election.[70]

Because the Proposed Rule would make federal career employees more vulnerable to arbitrary action, favoritism, politicization, and patronage, it would be arbitrary and capricious and contrary to law because it would violate merit systems principles.

3. Removal of CSRA Protections Undermines Ability of Employees to Oppose Unlawful Actions.

Merit system principles also require that employees should "maintain high standards of integrity, conduct, and concern for the public interest," and that employees should be "protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences . . . a violation of any law, rule, or regulation."[71]

In addition to the removal of CSRA adverse action protections, section 213.3501(a) of the Proposed Rule explains that Schedule Policy/Career employees "are required to faithfully implement administration policies to the best of their ability, consistent with their constitutional oath and the vesting of executive authority solely in the President" and that "Failure to do so is grounds for dismissal."[72] Rather than protecting employees' duty to uphold and defend the United States Constitution, this language appears to refer to OPM's belief that it is the constitutional duty of Schedule Policy/Career employees to implement the President's directives independent of their own assessment of the lawfulness of his orders. That is, as drafted, this language appears to require federal employees to "implement administration policies" that they believe to be unlawful on pain of termination so long as the President contends that his actions are lawful. This helps to clarify the Proposed Rule's preoccupation with federal employee "resistance" to administration policies because the Proposed Rule, by removing CSRA adverse action protections from Schedule Policy/Career employees and converting them to at-will status, appears designed to coerce these employees into participating in violations of federal law.[73]

This concern is not hyperbolic. In its first few months, the Trump Administration has undertaken a wide range of patently unlawful activities that it claims are in fact lawful.[74] The

---

[70] *., Trump team is questioning civil servants at National Security Council about commitment to his agenda*, Associated Press (Jan. 13, 2025) (describing political loyalty tests), https://apnews.com/article/trump-biden-nsc-loyalty-waltz-21913da0464f472cb9fef314fed488e5.

[71] 5 U.S.C. §§ 2301(b)(4), (b)(8).

[72] Proposed Rule at 17222.

[73] *See, generally* Proposed Rule (using the terms "resist" or "resistance" more than 20 times).

[74] *See, e.g., Ozturk v. Hyde*, No. 25-1019, 2025 WL 1318154, at *1 (2d Cir. May 7, 2025) (unlawfully detaining a graduate student for co-authoring an opinion piece in a university newspaper); *Rhode Island v. Trump*, No. 1:25-CV-128-JJM-LDA, 2025 WL 1303868, at *1 (D.R.I. May 6, 2025) (unlawfully dismantling federal agencies in disregard of separation of powers); *Abrego Garcia v. Noem*, No. 25-1404, 2025 WL 1135112, at *1 (4th Cir. Apr. 17, 2025) ("asserting a right to stash away residents of this country in foreign prisons without the semblance of due process that is the foundation of our constitutional order"); *New York v. Trump*, No. 25-

Proposed Rule would therefore put career civil servants at significant risk of termination for refusal of orders that they reasonably believe to be unlawful. Indeed, the Administration has already demonstrated a propensity for taking adverse actions against employees for making factually accurate representations in court and in intelligence assessments.[75]

For these reasons, the Proposed Rule would undermine CSRA competitive service principles, and it is therefore contrary to law and arbitrary and capricious.

4. Removal of Vested CSRA Protections from Incumbent Employees Violates the Due Process Clause.

As OPM recognized in promulgating the 2024 Final Rule, "once a government requires cause for removals, constitutional due process protection will attach to that property interest and determine the minimum procedures by which a removal may be carried out. Any new law addressing the removal of a federal employee with a vested property interest in the employee's continued employment must, at a minimum, comport with due process."[76] For this reason, the 2024 Final Rule required that any future attempts to involuntarily reclassify federal career employees into positions that lack CSRA adverse action protections would not deprive affected employees of their vested right to such protections.[77] By attempting to withdraw these guarantees to federal career employees' vested rights to invoke CSRA adverse action protections, the Proposed Rule would deprive affected employees of rights in violation of the Due Process Clause of the Fifth Amendment. For this reason also, the Proposed Rule is contrary to law.

***

We thank OPM for the opportunity to submit this comment on the Proposed Rule, which we strongly oppose, and which we urge OPM to withdraw.

CV-39-JJM-PAS, 2025 WL 715621, at *9 (D.R.I. Mar. 6, 2025) (unlawfully freezing appropriated and obligated funds), *enforced*, No. 25-CV-39-JJM-PAS, 2025 WL 1009025 (D.R.I. Apr. 4, 2025), *reconsideration denied*, No. 1:25-CV-39-JJM-PAS, 2025 WL 1098966 (D.R.I. Apr. 14, 2025).

[75] *See, e.g.*, *Justice Dept. Suspends Attorney Who Acknowledged Deportation Was A Mistake*, Washington Post (Apr. 5, 2025), https://www.washingtonpost.com/national-security/2025/04/05/ezra-reuveni-justice-attorney-suspended-deportation-mistake/ (reporting that the Department of Justice suspended an attorney following his admission that the Administration had deported Maryland resident Kilmar Abrego Garcia by mistake); *Gabbard Fires Leaders of Intelligence Group That Wrote Venezuela Assessment*, Washington Post (May 14, 2025) (describing terminations of National Intelligence Council employees for writing an intelligence assessment that contradicted the Administration's rationale for invoking the Alien Enemies Act), https://www.washingtonpost.com/national-security/2025/05/14/gabbard-intelligence-venezuela-tren-de-aragua/.

[76] 2024 Final Rule at 24987 & n.71 (collecting cases).

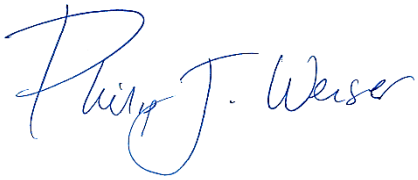
[77] *See* 2024 Final Rule at 25047-25049.

Respectfully submitted,

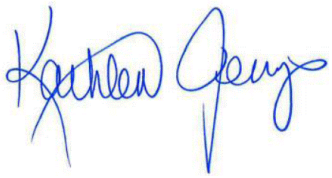
KRISTIN K. MAYES
Attorney General of Arizona
2005 N. Central Ave.
Phoenix, AZ 85004

ROB BONTA
Attorney General of California
1300 I Street
Sacramento, CA 95814

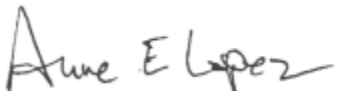
WILLIAM TONG
Attorney General of Connecticut
165 Capitol Avenue
Hartford, CT 06106



PHILIP J. WEISER
Attorney General, State of Colorado
1300 Broadway, 10th Floor
Denver, CO 80203



KATHLEEN JENNINGS
Attorney General of Delaware
820 N. French Street
Wilmington, DE 19801



ANNE E. LOPEZ
Attorney General of Hawaii
425 Queen Street
Honolulu, HI 96813

AARON M. FREY
Attorney General of Maine
6 State House Station
Augusta, ME 04333-0006

ANTHONY G. BROWN
Attorney General of Maryland
200 St. Paul Place
Baltimore, MD 21202

ANDREA CAMPBELL
Attorney General of Massachusetts
One Ashburton Place
Boston, MA 02108

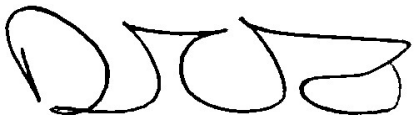
DANA NESSEL
Attorney General of Michigan
P.O. Box 30212
Lansing, MI 48909

KEITH ELLISON
Attorney General of Minnesota
102 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

AARON D. FORD
Attorney General of Nevada
100 North Carson Street
Carson City, NV 89701

MATTHEW J. PLATKIN
Attorney General of New Jersey
25 Market Street
Trenton, NJ 08625

LETITIA JAMES
Attorney General of New York
The Capitol
Albany, NY 12224



DAN RAYFIELD
Attorney General of Oregon
1162 Court Street, NE
Salem, OR 97301

PETER NERONHA
Attorney General of Rhode Island
150 South Main Street
Providence, RI 02903

CHARITY R. CLARK
Attorney General of Vermont
109 State Street
Montpelier, VT 05609

BRIAN L. SCHWALB
Attorney General of the District of Columbia
400 6th Street NW
Washington, DC 20001

NICK BROWN
Attorney General of Washington State
800 Fifth Ave, Suite 2000
Seattle, WA 98104