# Monograph Series

## Project 2025: Implications for Climate and the Environment

Eliminating Civil Service Protections for Thousands of Highly Experienced and Knowledgeable Career Civil Servants

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## ABOUT THE MONOGRAPH SERIES

The Heritage Foundation launched Project 2025 in 2023.Titled "Mandate for Leadership: The Conservative Promise," it presents a comprehensive collection of proposals on critical topics, many with implications for U.S. energy and environmental policy. Despite receiving significant media attention, few have read the entire 900+ page document or mapped its potential implications for climate change and environmental impacts if specific actions are enacted.

Over 100 conservative organizations contributed to Project 2025, but it is not explicitly linked to any current candidate for office. The document calls for a significant and often radical overhaul of the federal government, with a particular focus on agencies and actions connected to climate change and environmental and energy law and policy. Regardless of the outcome of the 2024 election, we anticipate that many of these proposals will continue to be put forward and underlying legal theories will be pursued.

This Monograph Series presents analyses to examine the potential implications that could result from the implementation of proposals set forth in Project 2025 and how they may affect action on climate change and the environment.

## ABOUT THE AUTHOR

Robert Uram is an environmental and natural resource lawyer with more than fifty years of experience working with federal agencies. As a government attorney in the Nixon, Ford, Carter, and Reagan administrations, he advised the Bureau of Land Management, the Geological Survey, the National Park Service and the Office of Surface Mining Reclamation and Enforcement. In the Clinton administration, he served as the head of the agency in the Department of the Interior that regulates coal mining reclamation and that administers a fund to reclaim lands and waters polluted by abandoned coal mines. In his many years of private practice he represented clients before the Army Corps of Engineers, the Environmental Protection Agency, the Fish and Wildlife Service, the Bureau of Land Management, the Forest Service and the USDA's National Organic Program. Robert is a Fellow in the American College of Environmental Lawyers and a graduate of the University of Pennsylvania and Northwestern Law School.

## ABOUT THE CENTER FOR LAW, ENERGY & THE ENVIRONMENT

CLEE channels the expertise and creativity of the Berkeley Law community into pragmatic policy solutions to environmental and energy challenges. CLEE works with government, business, and the nonprofit sector to help solve urgent problems requiring innovative, often interdisciplinary approaches. Drawing on the combined expertise of faculty, staff, and students across the University of California, Berkeley, CLEE strives to translate empirical findings into smart public policy solutions to better environmental and energy governance systems.

## Project 2025 Envisions Eliminating Civil Service Protections for Thousands of Highly Experienced and Knowledgeable Career Civil Servants

By: Robert Uram[1]

### Executive Summary

Project 2025: Mandate For Leadership is the Heritage Foundation's plan to guide the actions of a second Trump administration. One of its many recommendations is to reinstate the Trump administration's Executive Order 13957 that created Schedule F, a new category of civil service employees. Schedule F allowed career employees to be transferred into positions that lack the normal civil service protections. They could be fired without cause. New hiring could be done without regard to standard competitive service position requirements and processes. Project 2025 contends that this change is needed because career civil service employees are untrustworthy, unreliable and woke and they will hinder the ability of the new administration to carry out its policies.

Until the Congress passed the Pendleton Civil Service Reform Act in 1883, most federal employees were hired under what was referred to as the spoils or political patronage system. With the exception of around 3,000 to 4,000 employees who are political appointees, today, the approximately two million government workers are hired based on merit and cannot be fired except for cause under Office of Personnel Management and Merit System Protection Board rules. Around 10,000 civil servants are fired for cause each year.

The Heritage Foundation's Schedule F proposal would change the current system dramatically. Schedule F will reach well into agency middle management and impact many experienced and knowledgeable career civil servants with management, science, technical and other specialized expertise. If Schedule F is adopted in a new Trump administration, full implementation will likely result in ten-fold increase in political hires. Tens of thousands of the most experienced career civil servants could be moved to less secure positions and then fired. Political loyalists would take their place. This transition poses both legal and logistical challenges.

In the short term, adopting Schedule F will provide the new administration with a tool to weed out career civil servants that it believes don't share its political philosophy. However, the next time an administration with a different philosophy takes office, the prior administration's hires will be shown out the door. There will be revolving door that will make it harder for any administration, liberal or conservative, to govern.

These disruptions will happen even though studies show that Schedule F is not needed to better manage the career civil service and may be counterproductive. There are ample tools to address civil service performance issues without making the radical change of politicizing the civil service. The civil service is structured to carry out the impartial administration of the law, starting with an oath of office, merit-based hiring and a code of

[1] The views expressed are solely those of the author.

ethics that emphasizes the honest and diligent performance of duties. Over many decades, each time career employees faced new political leaders, the career employees followed the direction they received.

Schedule F would replace this even-handed system with one where political considerations become prominent, most clearly in the fully politicized Schedule F hiring process. Perhaps as some people claim, it would be beneficial. Having more true believers and loyalists on board may very well make it easier to skew policy considerations toward a specific orientation. At the same time, this massive change of personnel will very likely degrade the Federal government's ability to carry out mandates to protect clean air and clean water, to remedy climate change, to provide health care, to fund education and to respond to emergencies.

In addition to performance issues, concern over a more politicized bureaucracy is acute for agencies like the Department of Justice, the Department of Homeland Security and the Treasury Department, each of which has considerable investigatory and enforcement powers. Many other government actions, like issuance of permits, licenses and grants, could become subject to a political litmus test, perhaps in a manner not fully consistent with Congressional intent.

It's hard to know all the ramifications of making the kind of change the Heritage Foundation and Schedule F envisions. What we do know, is that under Schedule F, the civil service would be politicized to an extent not seen since the spoils era.

## Introduction

Project 2025: Mandate For Leadership is the Heritage Foundation's plan to guide the actions of a second Trump administration.[2] Project 2025 provides detailed substantive policies and regulatory plans for the Office of the President and the Executive agencies.[3] In many cases, the new policies would reverse Biden administration actions and revert back to policies in effect in the Trump administration. Other substantive changes are new. [4] [5]

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[2] The Foundation has been preparing similar plans since 1980. Its first effort was for the Reagan Administration; President Reagan distributed the Heritage Foundation's plan at his first cabinet meeting. The Heritage Foundation prepared a plan for the first Trump administration; it reports that the Trump administration implemented more than 60 percent of the plan in its first year in office.

[3] A broad coalition of conservative organizations support and helped prepare Project 2025. Many of the authors served in the Trump administration.

[4] Notwithstanding any denials Trump may make about the 2025 Project, it is clear it will serve as a significant blueprint for his presidency. People aspiring to join his administration and people vetting personnel choices will read the report. Unless Trump countermands a specific program or policy, his administration will likely pursue Project 2025's recommendations.

[5] The Heritage Foundation is compiling a database of committed conservative activists to streamline the appointment process, setting up a Presidential Administrative Academy to train appointees and preparing a playbook for agency transition teams. Their goal is for a new administration to be prepared to act "upon the President's utterance of so help me God."

Project 2025 also addresses changes to the structures of agencies. The structural actions include abolishing agencies, (Department of Education and Department of Homeland Security), reorganizing agency functions (Department of Commerce and Department of Agriculture) and moving offices from their current location Washington D.C. to other cities (Department of the Interior, EPA and many others).

Both the substantive proposals and the structural changes will have significant effects. They merit careful and thoughtful review, but that review is beyond the scope of this article.

Instead, this article focuses on Project 2025's proposed changes to the federal civil service rules which apply to the hiring and firing of the two million federal government employees who serve the Country under laws the Congress has passed to carry out the nation's business.

One of Project 2025's main goals is to increase control over the workings of the federal government. Project 2025 contends that career employees hinder the ability of an administration to carry out policies. It seeks to convert a large number of experienced and knowledgeable career civil service personnel into at will employees that can be fired easily. They also seek flexibility to bypass standard competitive hiring requirements to more easily hire employees of their liking. This goal features prominently in the discussions about the Executive Office of the President, the Department of Homeland Security, including its Office of General Counsel, the State Department, USAID, the Environmental Protection Agency, the Department of Housing and Urban Development, the Department of the Interior, the Justice Department and the Department of Labor, among others.

Specifically, Project 2025 proposes to reinstate a change to the career civil service rules that President Trump adopted late in his term in office in Executive Order 13957. Executive Order 13957 created a new way to hire and fire career employees. As a result, career employees could be transferred into positions that lacked the normal civil service protections. They could be fired without cause. New hiring could be done without regard to standard competitive service position requirements and processes.

President Biden quickly repealed the Executive Order creating Schedule F as soon as he took office in Executive Order 14003. The OPM later issued a Final Rule[6] that makes it harder for a new administration to resuscitate Schedule F as discussed more fully in Section 7. OPM has greatly strengthened protections for career employees against transfers and other adverse actions. Despite those actions and the prospects of legal challenges to a new Schedule F, the possibility of a new Schedule F being proposed and adopted cannot be discounted.

The possibility of reinstating Executive Order 13957 merits special scrutiny because Project 2025 accuses the civil service of being untrustworthy, unreliable and woke. It rails against the "unelected administrative state" and vows to "bend or break" the bureaucracy.[7]

[6] 89 Fed. Reg. 91982 (April 9, 2024)

[7] Project 2025 argues that the success or failure of policy changes depend on personnel changes. It concludes:" personnel is policy".

Similarly, Trump has repeatedly attacked the career civil service employees, calling them "crooked" and part of the "deep state" that is out to get him. J.D. Vance echoes these views. This article examines whether the measures the Executive Order 13597 adopted are necessary reforms to address performance issues or whether they will weaken the federal government's operation.

## Section 1: Background

### A. Career Civil Service

Federal agencies hire career employees through a combination of a competitive process,[8] a merit based, but noncompetitive "excepted" career civil service,[9] consisting of Schedules A, B, D and E, and the Senior Executive Service,[10] who fill the upper ranks of government employees. Each administration hires career employees. The Biden administration inherited a civil service that for 40 years was selected *equally* by Republic and Democratic administrations in terms of years holding the White House.

Schedule A covers positions like attorneys, doctors and priests and also covers disabled persons.[11] Schedule B includes policy analysts, teachers and various technical positions.[12] Schedule D covers positions for which a competitive process makes it hard to recruit successfully such as certain scientists, engineers and mathematicians.[13] Category E covers Administrative Law Judges.[14]

Schedules A, B, D, and E are protected by the notice and appeal provisions for adverse actions and dismissals. All of these career employees are entitled to "due process" before an agency can take adverse action against them.[15] These career employees can only be fired for cause.

The federal government has a robust performance appraisal system to monitor, evaluate and reward successful performance and to weed out weak performers.[16] The performance system[17]:

(1) Establishes standards to evaluate performance based on objective criteria related to the job in question for each employee or position;

(2) Informs each employee about the performance standards and the critical elements of the employee's position;

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[8] E.g. 5 CFR Part 2; 5 CFR §6.2; 5 CFR Part 212

[9] E.g. 5 CFR Part 213 (Excepted Service).

[10] E.g. 5 CFR Part 214 (Senior Executive Service)

[11] 5 CFR § 213.3101

[12] 5 CFR § 213.3201

[13] 5 CFR § 213.3401

[14] 5 CFR § 6.2

[15] 5 CFR Part 752 (Adverse Actions);5 CFR Part 432 (Performance Based Reductions in Grade and Removal Actions).

[16] 5 U.S.C. §4302 (Establishment of Performance Appraisal Systems).

[17] 5 U.S.C. §4302(c).

(3) Evaluates each employee based on those standards;

(4) Recognizes and rewards employees performance;

(5) Helps employees to improve poor performance; and

(6) Takes action against poorly performing employees after giving them a chance to improve.

Career civil servants are the backbone of the federal government. They are required to be nonpartisan on the job. Each administration can direct career employees to carry out its policies and to manage them to perform their jobs properly.

Civil servants swear an oath "to support and defend the Constitution of the United States against all enemies, foreign and domestic" and to "well and faithfully discharge the duties of the office" in which he serves, "[s]o help me God."

Civil servants are required to adhere to Standards for Ethical Conduct first developed under President George H.W. Bush.[18] This includes an obligation to "put forth honest effort in the performance of their duties" [19]"and to "act impartially and not give preferential treatment to any private organization or individual."[20]

Civil servants are accountable to the President, in a chain of command, that passes through Senate confirmed Presidential appointees and other political appointees who staff the upper echelons of government.

Civil servants adhere to laws that the Congress has passed, regulations that have been duly enacted after opportunity for public comment, established agency procedures and policies and direction from political appointees.

In summary, career civil servants are hired based on merit, must meet objective performance standards, must comply with a code of ethics to ensure honest and impartial service, cannot take gifts or gratuities,[21] can be demoted or fired for poor performance, and are restrained from undertaking partisan political activity. Bribery of career civil servants is virtually nonexistent.

It was not always so in the United States. Until the Congress passed the Pendleton Civil Service Reform Act in 1883, most federal employees were hired under what was referred to as the spoils or political patronage system, with many jobs turning over on the change of an administration. Job holders were hired based on political affiliation and loyalty, not on merit. The spoils system was an inefficient and ineffective way to run the federal government.

The Pendleton Act created a bipartisan commission to evaluate prospective federal employees based on merit. While limited in scope initially, over time, more and more positions were filled in this manner. There have been a number of changes and modifications to the civil service system over the years, but the current civil service, now

[18] 5 CFR Part 2635 (Standards of Ethical conduct for Federal employees).

[19] 5 CFR § 2635.101(b)(5).

[20] 5 CFR § 2635.101(b)(8).

[21] 5 CFR § 2635.202 (Twenty dollar limit on gifts)

administered by the Office of Personnel Management and the Merit System Protection Board is merit based.

### B. Political Appointees

In addition, to the career civil service, each administration can hire non-career or "political" employees that serve at the will of each administration. The non-career employees consist of Presidential appointees, both positions requiring Senate confirmation and those not requiring Senate confirmation, political hires placed in the Senior Executive Service and Schedule C appointees. The practical ability of a new administration to greatly expand the number of political appointees is limited.

Changing the number of Presidential appointees requires a statutory change. While there is an administrative process for increasing the number of SES positions, the number of political SES positions is constrained because political appointees can hold no more than ten percent of all SES positions government-wide.[22] Further, within each agency, political appointees can hold no more 25 percent of that agency's SES positions.[23]

Increasing the number of Schedule C appointees is limited due to constraints on positions a Schedule C hire can occupy. Schedule C appointments require Office of Personnel Management approval. The exception from the competitive service for each position listed in Schedule C by OPM is revoked immediately upon the position becoming vacant.[24] An agency seeking to hire under Schedule C must show that the appointee will either be in a policy making-position or in a position for which loyalty to and sympathy with the goals of the current administration are required.[25] Schedule C appointees cannot be supervised by a career competitive service employee or by a career reserved SES. An agency cannot hire a Schedule C employee and detail the employee to the White House. [26] Schedule C employees tend to occupy high-level policy and management positions within an agency, or serve as staff for other political appointees.

For many decades, the number of political appointees in an administration has generally been between 3,000 to 4,000, including approximately 1300 Presidential appointees and approximately 1500 or 1600 Schedule C appointees.[27] Many administrations, including the Trump administration struggle to fill and retain hires in political positions.

## Section 2: Executive Order 13957 Rationale

The President is authorized to create new categories of excepted civil service positions upon determining that "conditions of good administration warrant" making an

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[22] 5 U.S.C. §3134(b).
[23] 5 U.S.C. §3134(d).
[24] 5 CFR § 213.3301(c)
[25] 5 CFR § 213.3301(a)
[26] 5 CFR § 213.3301(b)
[27] Center for Presidential Transitions, https://presidentialtransition.org/wp-content/uploads/sites/6/2020/12/Presidentially-Appointed-Positions.pdf, accessed September 23, 2024.

exception.[28] Executive Order 13957 used that authority to create a new kind of excepted service: Schedule F. Executive Order 13957 authorized the administration to remove career civil servants from their position and place them in Schedule F. This change allowed these employees to be fired without cause and authorized placing new hires in those positions without following the normal competitive hiring process.

Executive Order 13957's expressed rationale for taking this action is to have better management oversight over key civil servants. Schedule F is unique among the non-career categories of excepted service because employees placed in Schedule F can be hired without regard to normal competitive hiring and can be fired without cause.

Executive Order 13957 focuses on positions of a "confidential, policy-determining, policy-making, or policy-advocating character" that are now held by career civil servants in positions that don't change with a change in administration.[29] It says that with the exception of attorneys, most of these positions are in the competitive service. It contends that the people holding these kinds of positions need to have "appropriate temperament, acumen, impartiality and sound judgment", and that due to these factors, using the competitive service to hire presents constraints. More flexibility is needed in order to have appropriate management oversight.[30] It argues that the normal competitive hiring processes place undue limitations on hiring and that hiring employees "based on work ethic, judgment and ability to meet particular needs"[31] is better. It asserts that normal competitive service processes and ratings somehow don't reflect particular needs.

Even though approximately 10,000 federal employees are fired each year,[32] Executive Order 13957 asserts that the process for taking adverse actions against poorly performing employees is difficult. Executive Order 13957 references a 2016 Merit Systems Protection Board survey[33] that found that fewer than 25 percent of federal employees believe that agency addresses poor performers appropriately.[34] Consequently, Executive Order 13957 exempts Schedule F employees from the protections of the adverse action procedures.[35]

Schedule F applied government wide to all executive agencies and independent agencies including the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, the Environmental Protection Agency, Homeland Security, Housing and Urban Development, Interior, Labor, State, Transportation, Treasury, and Veterans Affairs, and the Justice Department.

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[28] 5 U.S.C. §3302(1).

[29] E.O. 13957, § 1. As explained below, Executive Order 13957 defines these terms very broadly.

[30] Id.

[31] Id.

[32] https://nffe.org/wp-content/uploads/2023/06/Fed-Facts-Electronic-Version.pdf.

[33]https://mspbpublic.azurewebsites.net/studies/studies/The_Merit_System_Principles_Guiding_the_Fair_and_Effective_Management_of_the_Federal_Workforce_1340293.pdf

[34] Id.

[35] Id.

## Section 3: Scope of Executive Order 13957

What positions could be placed in Schedule F under Executive Order 13957? A government position could be placed in Schedule F if it is of a "confidential, policy-determining, policy-making or policy-advocating character *not normally subject to change* as a result of a Presidential transition." [36] Only 3,000 to 4,000 positions in each agency are typically subject to change as a result of a Presidential transition. Schedule F would not directly affect lower level and clerical employees; its impact would be focused on the upper echelon of career employees, those with the most knowledge and experience.

Executive Order 13957's guidance broadly defines the meaning of a "confidential, policy-determining, policy-making or policy-advocating" position.[37] Schedule F's reach is extensive and can reach well into an agency's middle and upper management and staff positions affecting the most experienced and knowledgeable officials. [38] I summarize the applicable provisions below. My annotations are *italicized*.

*Schedule F can include anyone who substantively participates in policy formulation, in drafting regulations and guidance and in policy-related work. *This broad category includes lawyers and technical and other specialists.*

*Schedule F can include anyone who can determine how agency discretion is exercised. *Many people in agencies have the opportunity to exercise discretion. This could cover inspectors and other law enforcement personnel, employees that issue permits and make grants and many others.*

*Schedule F can include individuals who view, circulate or otherwise work with proposed regulations, guidance, executive orders and who either report to or work with a Presidential appointee or with an individual appointed by the head of the agency at not less than the GS-13 level or who works in the Executive Secretariat of an agency. *A GS-13 is a mid-level position. This is broad enough to sweep in many scientists, economists and other technical experts.*

*Schedule F can include anyone who supervises attorneys. *The federal government employs around 35,000 lawyers, including around 9,000 in the Justice Department. Based on my understanding from the Department of the Interior, the Environmental Protection Agency and the Justice Department, only the upper echelons of the lawyers in these agencies are political appointees. This is likely true in many other agencies. Thousands of career lawyers could be placed in Schedule F under this criterion.*

*Schedule F can include anyone who takes part in labor negotiations. *Placing anti-union negotiators in these roles could create a nightmare negotiation.*

## Section 4: Initial Application of Schedule F

Schedule F was in effect for a very short time, from October 21, 2020 until President Biden repealed it on January 21, 2021. Executive Order 13957 required all

[36] Executive Order 13957, Section 4.

[37] Compare 5 CFR 210.102(b)(4),(5) governing Schedule C positions with Section 5(c) of the Executive Order.

[38] Executive Order 13957, Section 5(c).

executive agencies to implement Schedule F by conducting a preliminary review of all career positions and to ask the OPM to place positions in Schedule F.

The General Accounting Office did a report[39] on Schedule F's attempted implementation. It reported that the Trump administration was *not* able to transfer anyone to Schedule F before President Trump's term expired. Only two agencies published their recommended move of employees to Schedule F: the Office of Management and Budget, a key agency with authority over spending and with a substantial role in approving rules, and the International Boundary Review Commission, a minor agency.

OMB's proposal was far reaching, moving 136 categories of positions into Schedule F, affecting 415 employees, or 68 percent of OMB's workforce at the time. (The Boundary Commission more modestly selected only 5 people out of a staff of more than 230). The OPM approved OMB's proposal with the exception of four people who were trainees. OPM said trainees could not be placed in Schedule F. At the end of the Trump Administration, OMB had seven Presidential appointees, 14 people filling career SES positions and 23 Schedule C employees, for a total of 44 political appointees. Using Schedule F, OMB was able to able to increase the number of political employees almost tenfold.

Of course, Schedule F was not limited to OMB, but extended to all Executive Branch and independent agencies, including such sensitive agencies as the FBI, and the Justice Department, potentially affecting at least tens of thousands of the most highly experienced and knowledgeable career civil servants. All or virtually all of the SES could be placed in Schedule F, circumventing the limitations on non- career SES positions.

## Section 5: Application of Schedule F: A Case Study of The Bureau of Land Management

The application of Schedule F to OMB is informative. It confirms that the number of positions transferred from competitive service to Schedule F could be quite extensive. Would that result be typical of other federal agencies? To examine that question in detail, I evaluated how Schedule F could be applied to one agency within the Department of the Interior: the Bureau of Land Management, commonly called the BLM. Project 2025 focused extensively on the BLM.[40]

At the end of 2020, the Department of the Interior, of which the BLM is a part, had a total of 98 political appointees: 17 Presidential appointees, 158 SES positions, of which 35 were non-career, 42 Schedule C employees and four others were in statutorily excepted

[39] Civil Service: Agency Responses and Perspectives on Former Executive Order to Create a New Schedule F Category of Federal Positions

[40] Perry Pendley, a former Trump administration appointee who a federal judge found was wrongfully appointed to his position, and a longtime BLM critic, authored the Project 2025 Chapter 16 on the Department of the Interior. He devotes substantial attention to the BLM. He argues that the BLM is a bad manager of the public lands and that it has operated lawlessly in defiance of congressional laws and court orders.

service.[41][42] The Department of the Interior has around 70,000 employees. It includes the National Park Service, the Fish and Wildlife Service, the Bureau of Indian Affairs, the Bureau of Land Management, the Bureau of Reclamation, the Bureau of Ocean Safety, the Geological Survey and the Office of Surface Mining Control and Reclamation.[43]

### A. BLM Background

The BLM has around 10,000 employees. The BLM manages[44] around 240 million acres of publicly owned land, plus millions of additional acres of subsurface mineral rights, mostly in the western United States.[45] Activities on public lands create hundreds of thousands of jobs and generate huge revenues most of which is shared with the state in which the activity is located.

The BLM has a total of five non-career employees--one Presidential appointee, two non-career SES employees and two Schedule C employees.[46] In addition to a headquarters office, the BLM has an extensive network of offices in the States they manage lands. Eleven public lands states plus the Eastern States each have a State Director. Within each state, District and Field managers oversee operations.[47] Many BLM employees have a great deal of scientific expertise—biologists, geologists, planners, grazing experts, wildlife specialists, hydrologists, mining and petroleum engineers and economists.

The BLM uses land-use plans known as resource management plans or RMP's to guide where and how BLM lands are used lands for grazing, mining, recreation, oil and gas and other resources. The RMP's are prepared largely in District and Field offices and take years to develop.[48] They are multidisciplinary efforts developed with extensive opportunity for public input.

BLM prepares them in compliance with many other laws including the National Environmental Policy Act, the Endangered Species Act, the Clean Water Act and the National Historic Preservation Act. The BLM also develops plans which range across multiple States and district offices. One example is the recent proposal for solar energy projects on federal lands that identifies 22 million acres in 11 western states best suited for development.

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[41] "Plumbook" Policy and Supporting Positions, pages 115-121 and 210.

[42] There were 106 political appointees in 2016. 2016 Political Appointees.

[43] DOI Employees, DOI Bureaus

[44] Public lands are used for a wide range of activities, including grazing, oil and gas development, coal mining, hardrock mining for gold, copper, zinc and other minerals, recreation and wilderness, transmission corridors, hunting and fishing and timber. Public lands have become increasingly important and will grow even more important in the future as a provider of solar and wind power.

[45] The BLM operates under a number of laws, most notably, the Federal Land Policy and Management Act, as well as the Mineral Leasing Act, the Federal Coal Leasing Amendments Act, Wilderness Act, the Antiquities Act and the Mining Law of 1872 (an anachronism whose survival is a wonder).

[46] Id.

[47] https://www.blm.gov/about/organization-chart

[48] BLM RMP Process

### B. Application of Schedule F to the BLM

Project 2025 specifically calls for Schedule F to be applied to the BLM. How is that likely to work? The BLM has at least 14 career-headquarters supervisors and 12 career State Directors. These positions and their deputies have substantive involvement in regulations, policy and guidance.[49] Placing these positions in Schedule F would affect 52 positions. In addition, there are approximately 175 District and Field Office managers that also could be considered to have substantive involvement in regulations, policy and guidance.

Even under a *modest* application of Schedule F, the number of people in the BLM subject to direct political control could easily increase from five to 52 to 237. These are the most experienced and knowledgeable employees. Removing them from their positions will create a large gap in agency expertise that will be hard to replace. The latter figure is more than double the number of political appointees currently in the entire Department of the Interior.

What about the rest of the BLM employees? Could they also be placed in Schedule F? Hundreds of career BLM employees, both in the field and headquarters, prepare and implement RMP's, solar plans and issue leases and permits, approve operating plans and make grants. These employees respond to policy direction from Washington and develop proposals that best suit the lands they manage and that achieve the goals that laws, regulations, guidance documents and manuals. By necessity, they regularly exercise and make professional judgments that inform the outcomes with major implications for stakeholders. The employees who work on plans, permits and grants could easily be swept up into Schedule F. Losing these employees could cripple the BLM.

Applying Schedule F to the BLM looks much like the result for the OMB; hundreds, if not thousands of the most senior, experienced and qualified employees dislodged from career positions and placed in Schedule F. The increase in employees serving at the pleasure of political leaders would be replicated in the other DOI agencies like the Fish and Wildlife Service, the Bureau of Indian Affairs, the Bureau of Reclamation, the Bureau of Ocean Safety, and the Office of Surface Mining Control and Reclamation. Each of the agencies would suffer a serious loss of experience and expertise.

## Section 6: Schedule F is Not Needed to Better Manage the Federal Government

The question this article poses is whether Schedule F is necessary reform to better manage the federal government? It is not. Support for the proposition that Schedule F is a necessary reform is sparse to virtually nonexistent.

Schedule F is a workaround to the existing system that generally results in approximately 3,000 to 4,000 political appointees. OMB's reclassification affecting over 400 employees and the BLM case study show how extensive the impact of a reinstated Schedule F is likely to be on the career civil service. These examples easily support an estimate that Schedule F would affect upwards of 50,000 civil servants. Moving tens of thousands of employees from their current civil service positions and subjecting them to being fired at would fundamentally change the nature of the civil service.

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[49] BLM Organization Chart

There is scant empirical experience that shows that the civil service fundamentally frustrates the ability of a new administration to implement its policies or that more at will employees would result in better government. Every aspect of the performance of the civil service can certainly be improved, but the civil service is structured to the impartial administration of the law, starting with the oath of office, merit-based hiring and a code of ethics that emphasizes the honest and diligent performance of duties.

The federal civil service system's goal is to ensure "A highly qualified, diverse Federal workforce that is fairly and effectively managed, providing excellent service to the American people."[50] The Merit System principles guide the Federal Workforce.[51] Federal agencies are to:

1. Select employees on the basis of ability, through fair and open competition, to attain a representative workforce.
2. Treat employees and applicants fairly and equitably, with proper regard for their privacy and constitutional rights.
3. Provide equal pay for work of equal value and recognize excellence in performance.
4. Maintain high standards of conduct and concern for the public interest.
5. Use the Federal workforce efficiently and effectively.
6. Retain employees on the basis of performance and address inadequate performance fairly and decisively.
7. Train and educate employees to improve individual and organizational performance.
8. Protect employees against favoritism, political coercion and arbitrary action and prohibit abuse of authority.
9. Protect employees against reprisal for whistle blowing.

In Trump's administration, civil servants followed direction from the President and his appointees to reverse Obama administration Executive Orders, regulations and policies, both in foreign and domestic issues of great importance. Many agencies including the BLM and the Environmental Protection Agency, made 180-degree changes from the Obama administration. The same civil service response occurred when Biden/Harris administration reversed course in many areas from their predecessor, including notably on policies to address climate change. To the extent that Trump encountered resistance to his efforts, the resistance was most notably focused on his own political appointees, not on the career civil service.

This recent experience is consistent with many decades of administration changes. Over many decades, each time career employees faced new political leaders, the career employees followed the direction they received. Along the way, some career employees

[50] https://www.mspb.gov/about/about.htm
[51] https://www.mspb.gov/about/about.htm

may have expressed their concern or questioned the course an administration was taking. Such a give and take is legitimate and healthy. Ultimately, the political leadership's views prevail.

The only support that Executive Order 13957 provides for its assertions that it needs greater control over career employees is a reference to an employee survey in the Merit Systems Protection Board 2016 report, The Merit System Principles: Guiding the Fair and Effective Management of the Federal Workforce. In their 2016 Report, the Board reported that less than a quarter of federal employees believe their agency addresses poor performance effectively. The same report showed that 64 percent of employees said their agency held them to high standards.

The MSPB did not see this survey information as supporting a massive increase in the number of at-will employees or circumventing established competitive hiring practices. Very logically, the MSPB recognized that the existing rules and regulations provided the tools to address poor performance issues. It recommended more training for employees and supervisors, better selection of supervisors with a demonstrated commitment to upholding the high expectations of the Federal merit systems and "*ensur*[*ing*] *that political appointees are well-informed about the practical implications of the MSPs and PPPs and understand the criticality of demonstrating their full support of the Federal merit systems given their influential leadership role."*(Emphasis added)[52] Its recommendation that political appointees support the merit system is 180 degrees in the opposite direction from Executive Order 13957.

To the extent there is research on the potential effect of increasing the number of political or at will employees, that research tends to show that there are minimal benefits to doing so. The United States already has higher numbers of political employees than most major western countries. Political appointees tend to have more extreme views than career employees and non-politicized bureaucracies are less prone to corruption. As one study found, "factors such as meritocratic appointments/recruitment, tenure protection, impartiality, and professionalism are strongly associated with higher government performance and lower corruption".[53]

Politicization, or the injection of politics into administration, can damage the ability of the agency to implement policy.[54] Another study noted that responsiveness to the President is not the same as high performance. In fact, many high performing agencies such as the Federal Reserve and the National Institutes of Health function well, perhaps because they have minimal Presidential oversight. Political managers are associated with

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[52] The Merit System Principles: Guiding the Fair and Effective Management of the Federal Workforce, page x.

[53] Eloy Oliveira, Gordon Abner, Shinwoo Lee, Kohei Suzuki, Hyunkang Hur, James L. Perry, *What does the evidence tell us about merit principles and government performance?,* 102 Public Administration, pages 668-690 (June 2024),https://doi.org/10.1111/padm.12945.

[54] Abby K. Wood, David E. Lewis, *Agency Performance Challenges and Agency Politicization,* Journal of Public Administration Research And Theory, 2017, https://cdn.vanderbilt.edu/vu-my/wp-content/uploads/sites/411/2019/04/14094204/jpart-online-pdf-wood-lewis.pdf.

lower performance and politicization can affect long-term stability and recruitment.[55] One reason why political appointees tend to be worse mangers is that they are more focused on policy than management. One recent study concluded that although "presidents are the defacto managers of the administrative state, they do not approach governance from the perspective of public management. Instead, presidents regularly use these agencies to advance their own interest".[56]

Political appointees also tend to have limited tenures. One of the benefits of career service is that the managers have accumulated years of experience of dealing with issues, personnel and stakeholders. In the BLM, for example, career employees ascend to higher levels of management by serving in a variety of positions, systematically increasing their responsibility. A person who has become a State Director has likely worked in multiple offices both in Washington D.C. and the field, learned the intricacies of the BLM planning process, interacted with constituents and stakeholders, learned the budgeting process and become adept at leadership. The experience of the current New Mexico State Director[57] is typical:

> She was previously the Deputy State Director for Land and Resources for BLM New Mexico, Oklahoma, Kansas, and Texas, and has also served as the acting Deputy Assistant Director for Resources and Planning with BLM Headquarters. In her 17 years with the BLM, she has also held positions as the Branch Chief of Resources, acting Assistant Field Manager, a state Planning and Environmental Specialist, a field office Surface Protection Specialist, and a Biological Science Technician.

The New Mexico State Director "oversees the management of 13.5 million acres of public lands and 42 million acres of federal mineral estate in New Mexico, Oklahoma, Texas, and Kansas."[58] Parachuting someone without a similar background and experience is likely to be counterproductive.

### Section 7: Legal and Logistical Hurdles

A new administration will not have an easy task in seeking to put Schedule F in place. There are both legal and logistical obstacles.

The major legal obstacle is that the OPM Final Rule[59] protects the holder of a career position from being transferred to a position that does not have protections against adverse actions. The three primary actions the Final Rule takes (1) ensure that civil service

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[55] David E. Lewis, Democracy Reform Primer Series, Political Appointments to the Federal Bureaucracy, https://effectivegov.uchicago.edu/primers/political-appointees-to-the-federal-bureaucracy)

[56] Nicholas Bednar and David E Lewis, *Presidential Investment in the Administrative State, https://my.vanderbilt.edu/davidlewis/files/2023/08/presidential-investment-in-the-administrative-state.pdf. at 12*

[57] New Mexico State Director Bio

[58] *Id.*

[59] The final rule extensively discusses the background and history of the civil service, including the benefits of having a merit-based personnel system. It makes for interesting reading.

protections against adverse actions cannot be lost as a result of a forced transfer from competitive service to an excepted service or from one excepted service to another; (2) limit the phrase "confidential, policy determining, policymaking, or policy-advocating" positions to non-career, political appointments; and (3) establish new procedural requirements as a prerequisite to moving positions from the competitive service to the excepted service and within the excepted service.

Together, these changes virtually eliminate the potential for a new administration to adopt Schedule F and to involuntarily transfer career civil servants to unprotected positions *unless the new rule is suspended and repealed*. [60] Even if the Final Rule is repealed, the courts may ultimately rule that those rights cannot be eliminated.

The logistical obstacles to implementing Schedule F have received vey little attention. They could be very formidable. Suspending and repealing the Final Rule could take a considerable amount of time. Suspending or repealing the Final Rule will certainly be challenged in court. Litigation over an effort to suspend the rule on an emergency basis may take months and may involve appeals to the Supreme Court.

Assuming the effort to reinstate Schedule F is eventually successful, the first step, deciding what positions should be placed in Schedule F, is difficult. Schedule F gave agencies 90 days to develop a preliminary list and 210 days to make added designations of positions to be transferred to Schedule F.[61] Theoretically, the Heritage Foundation could accelerate the process by preparing target positions in advance of a new President taking office. Otherwise it could take months to identify positions to be moved into Schedule F. In either case, these lists could not be sent to OMB for approval until at least some new political appointees were in place. The Trump administration was historically slow at appointing new agency heads and Senate confirmation can be slow.

Many months could pass before agencies could begin the designation process in earnest. OMB needs time for its review. Plus, completing this process may not have the same priority as making changes to agency policies. Finally, the employees would have to be transferred to their new positions. It's easy to see how that could take the better part of a year.

However, Project 2025 is seemingly not content with just transferring employees to Schedule F. Its vision is to replace them with more malleable and loyal people. A position cannot be filled until it is vacant. If the plan is to transfer and fire hundreds or tens of thousands of employees, filling those vacant positions will take time and considerable effort, effort that detracts from adopting new policies and programs.

An agency cannot hire an excepted service employee by waving a magic wand. Unless the current rules are changed, agencies are required to follow their rules for excepted service appointments[62], to make announcements of the availability of an

[60] Legislation could specifically authorize Schedule F to proceed if he Republicans not only win the Presidency, but also take control of both the House and Senate.

[61] Executive Order 13957, Section 5.

[62] 5 CFR § 302.102

excepted position[63], to develop qualification statements[64] and performance standards for the position, to follow rules for accepting applications[65] and making appointments, including consideration of various preferences. [66] The hiring process could be prioritized for employees in key positions, but it could still take many months or years before any substantial hiring will be completed.

For these reasons, breaking the back of the federal bureaucracy by firing thousands of highly experienced employees could have a high price. Until backfilling of fired employees can be accomplished, the government will have vacancies that will degrade the effectiveness of the agency. It will affect the ability to keep work on schedule and to maintain quality. This could affect critical functions of agencies such as the disaster work of FEMA. Poor performance will further undermine public confidence in government. Finally, the problems associated with massive termination and replacement is not a one-time scenario. Each succeeding administration would seek to redress the prior agency's personnel changes, leading to yet another area of instability and contention.

By way of analogy, imagine the consternation of Wall Street if a publicly traded company decided to replace its most valued managers and talented employees every four years or if the CEO decided that the CEO's company had too many employees who did not share the CEO's political views and proceeded to fire thousands of employees. It would be a short seller's heaven.

## Section 8: Conclusion

The Heritage Foundation's Schedule F proposal is controversial. If adopted in a Trump administration, it may or may not survive litigation challenges. If it does go forward, full implementation of Schedule F will likely result in tens of thousands of the most experienced career civil servants being moved to less secure positions and then fired. In the short term, adopting Schedule F will provide the new administration a tool to weed out career civil servants employees that they believe don't share their political philosophy. However the next time an administration with a different philosophy takes office, the prior administration's hires will be shown out the door. There will be a new revolving door that will make it harder for any administration, liberal or conservative, to govern.

These disruptions will happen even though studies show that Schedule F is not needed to better manage the career civil service and may be counterproductive. There are ample tools to address civil service performance issues without making the radical change of politicizing the civil service. Schedule F is contrary to Congressionally-authorized OPM rules and MSPB principles (with whatever flaws they possess) that have worked for decades.

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[63] 5 CFR § 302.106

[64] 5 CFR § 302.202

[65] 5 CFR Part 302, Subpart C.

[66] 5 CFR Part 302, Subpart D.

Schedule F would replace a system that seeks to be even handed with one where political considerations become prominent, most clearly in the fully politicized Schedule F hiring process. Perhaps as some people claim, it would be beneficial. Having more true believers and loyalists on board may very well make it easier to skew policy considerations toward a specific orientation. At the same time, the process of changing personnel will very likely degrade the Federal government's ability to carry out its many responsibilities including mandates to protect clean air and clean water, to address climate change, to provide health care, to fund education and to respond to emergencies.

In addition to performance issues, concern over a more politicized bureaucracy is acute for agencies like the Department of Justice, the Department of Homeland Security and the Treasury Department, each of which has considerable investigatory and enforcement powers. Many other government actions, like issuance of permits, licenses and grants, could become subject to a political litmus test, perhaps in a manner not fully consistent with Congressional intent.

It's hard to know all the ramifications of making the kind of change the Heritage Foundation and Schedule F envisions. What we do know, is that under Schedule F, the civil service would be politicized to an extent not seen since the spoils era.