

(2) Has been integrated into the System by memorandum of agreement with NOAA.

(c) An "employee" of a regional information coordination entity is an individual who satisfies all of the following requirements:

(1) The individual is employed or contracted by a certified RCOS that has been integrated into the System by memorandum of agreement with NOAA, and that is participating in the System, as defined in §997.26(b);

(2) The individual is identified by the RCOS, as required in §997.23(d)(3) and (f)(1)(i), as one of the individuals responsible for the collection, management, or dissemination of ocean, coastal, and Great Lakes observation data; and

(3) The individual is responsive to federal government control.

(d) The protection afforded to employees of an RCOS with regard to liability applies only to specific individuals employed or contracted by an RCOS who meet the requirements of §997.26(c) and who are responsible for the collection, management, or dissemination of ocean, coastal, and Great Lakes observation data. The RCOS must identify to NOAA's satisfaction: The individual(s) responsible for overall system management, as applicable, the individual(s) responsible for observations system management across the region, and the individual(s) responsible for management of data operations across the region. In accepting certification, the RCOS will concede to NOAA the power to ensure these individuals comply with the requirements of this rule in their daily operations and that they are responsive to NOAA through the agreement the RCOS has with NOAA.

**PART 998—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMISSIONED OFFICER CORPS**

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AUTHORITY: 33 U.S.C. 3001 *et seq.*

SOURCE: 87 FR 31708, May 25, 2022, unless otherwise noted.

**Subpart A—Administrative**

AUTHORITY: 33 U.S.C. 3001 *et seq.*

**§ 998.1**

**§ 998.1 Definitions.**

As used in this part:

*Administration* means the National Oceanic and Atmospheric Administration (NOAA).

*Administrator* means the Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator.

*ADSO* means active duty service obligation.

*Chain of command* means the succession of commanding officers from a superior to a subordinate through which command is exercised, and the succession of officers or civilian personnel through whom administrative control is exercised, including supervision and rating of performance.

*Civilian training and advanced education* means education or training above the secondary school level but does not include technical training (such as maritime and aviation training provided to a member to qualify such member to perform a specified military or operational function), workshops, or short-term training programs.

*Director* means the Director of NOAA Corps and the Office of Marine and Aviation Operations.

*Officer candidate* means an individual who is enrolled in the basic officer training program of the Administration and is under consideration for appointment as an officer under the appointment authority for graduates of the basic officer training program of the commissioned officer corps of the Administration (33 U.S.C. 3021(a)(2)(A)).

*NOAA Corps* means the commissioned officer corps of the National Oceanic and Atmospheric Administration.

*Secretary* means the Secretary of Commerce.

*Written agreement* means an agreement entered into between the Secretary and a NOAA Corps officer or officer candidate that describes the officer's obligated service requirements in return for appointments, training, promotions, separations, continuations, and retirements as the Secretary considers appropriate.

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**Subpart B—Appointment of Officer Candidates of the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration**

AUTHORITY: 33 U.S.C. 3006, 3021, 3034; 37 U.S.C. 203(f).

**§ 998.10 Appointments of officer candidates.**

(a) The Secretary shall determine the number of appointments of officer candidates annually.

(b) Applicants for an appointment as an officer candidate shall meet all qualifications described in § 998.11.

(c) Selection and appointment of officer candidates shall be made according to the procedures described in § 998.12.

(d) The Secretary may dismiss any officer candidate from the NOAA Corps Basic Officer Training Class who, during the candidate's term as an officer candidate, the Secretary considers unsatisfactory in either academics or conduct, or not adapted for a career in the NOAA Corps. Officer candidates shall be subject to all rules governing discipline prescribed by the Director.

(e) Each officer candidate shall sign an agreement with the Secretary regarding the officer candidate's term of service in the NOAA Corps, which shall provide that the candidate agrees to:

(1) Complete the course of instruction of the NOAA Corps Basic Officer Training Class;

(2) Upon graduation from the Basic Officer Training Class program, accept an appointment, if tendered, to the grade of ensign; and

(3) Serve on active duty in the NOAA Corps for at least four years immediately after such appointment.

(f) An officer candidate or former officer candidate who is on active duty but who has not yet met their initial service obligation under paragraph (e)(3) of this section shall be considered to be in breach of their written agreement if they do not fulfill the terms of their service.

(g) An individual found to be in breach of their written agreement shall be subject to the repayment provisions of § 998.30.

**§ 998.11 Qualifications of officer candidates.**

(a) Original appointments to the NOAA Corps are made based on the qualifications of individual applicants and the needs of the NOAA Corps. Each applicant must:

- (1) Be a citizen of the United States of good moral character;
- (2) Be able to obtain and maintain a security clearance level of Secret;
- (3) Meet physical and mental qualifications as the Secretary may direct, such as physical fitness, medical, dental, and mental examinations;
- (4) Hold a baccalaureate degree, preferably in a major course of study related to NOAA's scientific or technical activities, awarded from an accredited postsecondary institution. All applicants, regardless of degree(s) awarded, must have completed at least 48 semester (72 quarter) hours in math, science, or engineering coursework pertaining to NOAA's mission unless waived by the Director based on the needs of the NOAA Corps; and
- (5) Have not twice failed selection for promotion in another uniformed service.

(b) [Reserved]

**§ 998.12 Selection of officer candidates.**

(a) The Secretary shall prescribe the number of applicants to be selected for officer candidates and the basic qualifications necessary to fulfill the needs of the NOAA Corps.

(b) A personnel board convened pursuant to 33 U.S.C. 3022 shall review all qualified applicants and make recommendations for appointment to the Secretary and the President. Applicants shall be rated on collegiate record, work experience, references, the report of the interviewing officer, and all other available information.

(c) Upon review of the recommendations of the personnel board, the Secretary shall make those temporary appointments in the grade of officer candidate as deemed appropriate. An original appointment of an officer candidate, upon graduation from the Basic Officer Training Class program of the NOAA Corps, may not be made in any other grade than ensign.

(d) Officer candidates receiving appointments as ensigns upon graduation

from the Basic Officer Training Class program shall take rank according to their proficiency as shown by the order of their merit at date of graduation.

**Subpart C—Active Duty Service Obligations of NOAA Corps Officers**

AUTHORITY: 10 U.S.C. 2005; 33 U.S.C. 3006, 3071(a)(22); 37 U.S.C. 303a(e), 373.

**§ 998.20 Applicability.**

This subpart applies to all active duty NOAA Corps officers and officer candidates.

**§ 998.21 Purpose.**

(a) This subpart establishes policies and procedures for the receipt, computation, and notice of ADSOs for all commissioned officers on the active duty lineal list. It also describes how multiple ADSOs incurred by the same officer are managed.

(b) The ADSOs are intended to assist the NOAA Corps in:

- (1) Effectively managing its resources and workforce;
- (2) Accomplishing its assigned missions;
- (3) Maintaining an experienced and well-qualified officer force; and
- (4) Ensuring a reasonable return to the NOAA Corps following an expenditure of public funds.

(c) Public funds are expended starting with the commissioning phase through the NOAA Corps Basic Officer Training Class and other commissioning programs. It continues when an officer enters active duty and enters training or education programs to qualify for specialized knowledge and skills.

**§ 998.22 Policy.**

(a) In general, individuals entering active duty in the NOAA Corps must complete at least four years of obligated service upon appointment.

(b) NOAA Corps officers who complete Government-funded or -sponsored formal education and training programs shall incur an ADSO. Officers must fulfill ADSOs before they are eligible for voluntary separation. The Director may grant a waiver of the ADSO

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as described in § 998.29. Officers will not be further obligated beyond the dates that ADSOs are fulfilled without their written consent. Officers who attend NOAA Corps and officer training programs, or civilian courses of instruction as stated in this Subpart may incur an ADSO for up to six years upon completion or termination from the course(s).

(c) All NOAA Corps officers shall enter into written agreements that describe the officer's obligated service requirements prescribed in this subpart in return for such Government-funded or -sponsored education and training. The written agreement shall document the total cost of training that may be subject to the repayment provisions of § 998.30.

### § 998.23 Service obligations for original appointments.

Officer candidates accepting an original appointment in the NOAA Corps upon graduation from the NOAA Corps Basic Officer Training Class as described in subpart B of this part shall incur an ADSO of 4 years.

### § 998.24 Service obligations for NOAA Corps or officer training and education.

(a) NOAA Corps officers who attend any NOAA Corps or uniformed service officer training or education whose course of instruction is longer than 60 days or produces a duty under instruction officer evaluation report for long term training shall incur an ADSO to begin upon completion of the course or termination of attendance. If the officer does not complete the NOAA Corps or officer training, the ADSO shall still apply. The ADSO shall be calculated according to § 998.26. For the purpose of determining ADSOs, all aviation and maritime training longer than 60 days, not including the Basic Officer Training Class, shall be considered to be NOAA Corps or officer training. Exceptions to the computation standards in § 998.26 for NOAA Corps and officer training are as follows:

(1) Officers who attend initial fixed-wing multi-engine flight training shall incur a six-year ADSO upon completion of the course or termination of attendance;

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(2) Officers who attend heavy aircraft flight training for the first time shall incur a four-year ADSO upon completion of the course or termination of attendance;

(3) Officers who attend heavy aircraft flight training for a second time for the purpose of qualification on new airframes shall incur a three-year ADSO upon completion of the course or termination of attendance;

(4) Officers who attend a test pilot school longer than six months (including the U.S. Naval Test Pilot School and U.S. Air Force Test Pilot School) shall incur a four-year ADSO upon completion of the course or termination of attendance; and

(5) Officers selected as candidates for the National Aeronautics and Space Administration Astronaut Corps shall incur a three-year ADSO upon the conclusion of their detail and return to the NOAA Corps.

(b) *Concurrent obligations.* An ADSO incurred under this section shall be served concurrently with an ADSO previously incurred under any other section of this part, or any other provision of law, except as provided for officers on active duty entering into an agreement for education loan repayment under § 998.27(a). When a newly incurred ADSO under this section is to be served concurrently with an existing ADSO, the obligated period will be equal to the length of the longest remaining obligation. The Commissioned Personnel Center will track each ADSO independently and notify the officer when each is fulfilled.

(c) *Consideration of NOAA Corps and officer training toward fulfillment of other service obligations.* Time spent in NOAA Corps or officer training is considered active duty service and shall be credited toward fulfilling an ADSO previously incurred under any other section of this part, or any other provision of law.

### § 998.25 Service obligations for civilian training and advanced education.

(a) *Full-time courses.* Officers who attend full-time courses at civilian institutions that are fully funded by NOAA for more than 60 days will incur an ADSO to begin upon completion of the course or termination of attendance.

One ADSO will be incurred per written agreement for training or education, as provided under § 998.22. If the officer does not complete the course of instruction, the ADSO shall still apply. The ADSO shall be calculated according to § 998.26.

(b) *Part-time courses.* Officers who participate in part-time courses at civilian institutions that are fully funded by NOAA for more than 60 days will incur an ADSO upon completion of the course or termination of attendance. One ADSO will be incurred per written agreement for training or education, as provided under § 998.22. If the officer does not complete the course of instruction, the ADSO shall still apply. The ADSO will equal the length of training or education, computed in days. The length of training or education will be computed from the first day of instruction until the last day, to include breaks, weekends, holidays, and summers, regardless of whether the officer attended classes during those periods.

(c) *NOAA Leadership Competencies Development Program.* NOAA Corps officers who participate in NOAA's Leadership Competencies Development Program shall incur an ADSO of two years upon graduation from the program.

(d) *Voluntary disenrollment or disenrollment for poor performance.* If an officer voluntarily terminates their enrollment or is required to disenroll due to poor performance in a program under this section, the ADSO will be based on what would have been the expected graduation date.

(e) *Disenrollment for mission needs.* Each written agreement for civilian training or advanced education under this subpart shall provide that if an officer terminates enrollment because of a recall to meet urgent mission needs as determined by the Director, no ADSO will be incurred.

(f) *Consecutive obligations.* ADSOs resulting from more than one written agreement for civilian education under this section are to be served consecutively. For example, an officer completing a NOAA-funded graduate certificate course of instruction under one written agreement followed by a NOAA-funded master's degree under a second written agreement will incur

multiple ADSOs to be served consecutively. The ADSOs will be calculated separately for each written agreement according to § 998.26. When a newly incurred ADSO is to be served consecutively with another, add the period of the new ADSO to the remaining portion of the existing ADSO. In cases where the compounded period of consecutive ADSOs exceeds six years, it will be capped at 6 years.

(g) *Concurrent obligations.* An ADSO incurred under this section can be served concurrently with an ADSO previously incurred under any other section of this part or any other provision of law. When a newly incurred ADSO under this section is to be served concurrently with an existing ADSO under another section of this part, the officer's total obligated period will be equal to the length of the longest remaining obligation. The Commissioned Personnel Center will track each ADSO independently and notify the officer when each is fulfilled.

(h) *Consideration of civilian education and training toward fulfillment of other service obligations.* Time spent at a civilian education or training program is considered active duty service and shall be credited toward fulfilling an ADSO incurred under any other section of this part or any other provision of law. The time spent attending a civilian education or training program under one written agreement will not be credited toward fulfilling an existing ADSO for a previous civilian education or training program under a previous written agreement incurred under this section.

**§ 998.26 Computation of service obligations for NOAA Corps and officer training and civilian training and advanced education.**

Service obligations incurred under § 998.24 and § 998.25(a) are computed as shown in this section, with the exception of fixed-period ADSOs as provided under § 998.24(a)(1) through (5). Officers may accumulate more than one ADSO from multiple obligating events. When an officer incurs an ADSO, compute the ADSO using the following rules:

(a) For obligating events that require calculation:

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(1) For training greater than 60 days but equal to or fewer than 365 days:

(i) *Step 1.* Count the number of calendar days of the course of instruction using the beginning and end dates of the course, including breaks, weekends, holidays, and summers, regardless of whether the officers attended classes during those periods.

(ii) *Step 2.* Multiply the total found in Step 1 by three to get the total length of the ADSO in days.

(iii) *Step 3.* Add the number of days found in Step 2 to the end date of the training to determine the date that the ADSO will expire.

(iv) *Example.* An officer attends a semester-long civilian course of instruction that begins on January 1, 2021, and ends on May 30, 2021.

(A) *Step 1.* January 1, 2021 to May 30, 2021 = 150 training days.

(B) *Step 2.* 150 training days  $\times$  3 = 450 days, or 1 year, 85 days ADSO length.

(C) *Step 3.* May 30, 2021 + 450 days = August 23, 2022 ADSO expiration.

(2) For training greater than 365 days:

(i) *Step 1.* The first 365 days of training automatically incur three years ADSO.

(ii) *Step 2.* Count the number of additional training days from the 366th day to the end date of the course, including breaks, weekends, holidays, and summers, regardless of whether the officers attended classes during those periods.

(iii) *Step 3.* Add the number of days found in Step 2 to three years to determine the total ADSO length.

(iv) *Step 4.* Add the total ADSO length found in Step 3 to the end date of the training to determine the date that the ADSO will expire.

(v) *Example.* An officer attends a full-time civilian postgraduate program that spans three academic years, beginning on September 1, 2021 and graduating on May 31, 2024.

(A) *Step 1.* First year: September 1, 2021 to August 31, 2022 = 3 year ADSO.

(B) *Step 2.* Additional training time: September 1, 2022 to May 31, 2024 = 639 days or 1 year, 274 days.

(C) *Step 3.* 3-year ADSO + 639 days = 4 years, 274 days total ADSO length.

(D) *Step 4.* May 31, 2024 + 4 years, 274 days = March 1, 2029 ADSO expiration.

(b) The officer will ensure that supporting documents for each event are submitted to the NOAA Commissioned Personnel Center for review and verification for accurate calculation of their ADSO. The length of the ADSO shall be identified in the written agreement with the officer described in § 998.22(c).

**§ 998.27 Service obligations for undergraduate assistance programs.**

(a) *Education Loan Repayment Program.* An individual who enters into a written agreement to serve on active duty in the NOAA Corps as part of an education loan repayment program authorized by 33 U.S.C. 3077 shall serve one year for each maximum annual amount or portion thereof paid on behalf of the individual for qualified loans. If an individual is on active duty when entering into the agreement and has an existing ADSO, the ADSO incurred under this subsection must be served consecutively to any other existing ADSO. If an individual is not on active duty when entering into an agreement, the ADSO under this paragraph (a) may be served concurrently with an ADSO incurred under § 998.23, ADSOs incurred under § 998.24 and § 998.25 after an ADSO is incurred under this paragraph (a) may be served concurrently with the ADSO incurred under this paragraph (a).

(b) *Student Pre-Commissioning Assistance Program.* An individual entering into a written agreement for pre-commissioning education assistance authorized by 33 U.S.C. 3079 shall agree to serve on active duty for:

(1) Three years if the individual received fewer than three years of assistance; and

(2) Five years if the individual received at least three years of assistance.

(c) *Concurrent obligations.* An ADSO incurred under paragraph (b) of this section may be served concurrently with an ADSO incurred under §§ 998.23, 998.24, and 998.25.

**§ 998.28 Notification and verification of active duty service obligations.**

NOAA Corps officers will be informed of their ADSOs under this part as indicated:

(a) The NOAA Corps Commissioned Personnel Center shall—

(1) Maintain and make available for review to the officer a copy of the written agreement specifying the length of service obligation incurred; and

(2) Verify that officers meet the requirements of their written agreements and determine if a breach has occurred and, if so, notify the officer of such determination in writing.

(b) [Reserved]

**§ 998.29 Waivers or suspension of compliance.**

(a) The Secretary may waive the service obligations of an officer incurred under § 998.23, § 998.24, and § 998.27 who:

(1) Becomes unqualified to serve on active duty in the NOAA Corps because of a circumstance not within the control of that officer; or

(2) Is:

(i) Not physically qualified for appointment; and

(ii) Determined to be unqualified for service in the NOAA Corps because of a physical or medical condition that was not the result of the officer's own misconduct or grossly negligent conduct.

(b) The Secretary may waive the service obligations of an officer incurred under § 998.25 who fails to satisfy the eligibility requirements if the Secretary determines that the imposition of the repayment requirement and the termination of unpaid amounts of such assistance would be—

(1) Contrary to personnel policy or management objective;

(2) Against equity and good conscience; or

(3) Contrary to the best interest of the United States.

(c) With respect to a service obligation under § 998.27(a), the Secretary may relieve an officer's ADSO and provide an alternative obligation at the discretion of the Secretary, the terms of which will be documented in a new written agreement.

(d) The authorities provided in this part to grant waivers or exceptions will be referenced in all written agreements.

**§ 998.30 Repayment for failure to satisfy service requirements.**

(a) An officer who fails to satisfy eligibility requirements or to meet the service requirements prescribed in §§ 998.23, 998.24, 998.25, 998.27(a), and 998.27(b) is required to reimburse the Government in an amount that bears the same ratio of the total costs of the training or education provided to that officer as the unserved portion of active duty bears to the total period of active duty the officer agreed to serve, unless waived by the Secretary under § 998.29(a) or (b). Calculation of the total cost of training subject to repayment includes tuition and matriculation fees, library and laboratory services, purchase or rental of books, materials, and supplies, but does not include travel, lodging, salary, or other allowances otherwise entitled to the individual. The total cost shall be calculated by the NOAA Commissioned Personnel Center and included in any written agreement.

(b) An obligation to reimburse the Government under this Section is, for all purposes, a debt owed to the United States.

(c) A discharge in bankruptcy under title 11 of the U.S. Code that is entered less than 5 years after the termination of a written agreement entered into under this part does not discharge the individual signing the agreement from a debt arising under such agreement.

**Subpart D—National Oceanic and Atmospheric Administration Commissioned Officer Corps Whistleblower Protections**

AUTHORITY: 33 U.S.C. 3071(a)(8), (a)(13), (b), and (c); 10 U.S.C. 1034 and 1090a.

SOURCE: 87 FR 59672, Oct. 3, 2022, unless otherwise noted.

**§ 998.40 Purpose.**

This subpart—

(a) Establishes policy and implements 33 U.S.C. 3071(a)(8), (a)(13), (b), and (c) to provide protection against reprisal to NOAA Corps officers for making or preparing or being perceived as making or preparing a protected communication.

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(b) Assigns responsibilities and delegates authority for such protection against reprisal and prescribes procedures.

### § 998.41 Applicability.

This subpart applies to NOAA Corps officers, personnel boards convened by the Director of Office of Marine and Aviation Operations (OMAO) and the NOAA Corps (Director), and the Inspector General of the Department of Commerce.

### § 998.42 Definitions.

As used in this subpart, the following terms shall have the meaning stated:

*Corrective action* means any action deemed necessary to make the complainant whole, changes in agency regulations or practices, administrative or disciplinary action against offending personnel, and/or referral to the United States Attorney General of any evidence of criminal violation.

*Inspector General* means the Inspector General in the Office of Inspector General of the Department of Commerce or any other Inspector General, as appointed under the Inspector General Act of 1978, as amended.

*Investigation report* means a report issued by the Inspector General of the Department of Commerce that includes a thorough review of the facts and circumstances relevant to an allegation of reprisal against a NOAA Corps officer, the relevant documents acquired during the investigation, and summaries of interviews conducted.

*Personnel action* means an action taken, or the failure to take an action, that affects or has the potential to affect a NOAA Corps officer's position and/or career. Personnel actions include disciplinary or corrective actions; a transfer or reassignment; significant changes in the duties or responsibilities of a NOAA Corps officer not commensurate with their grade; an inaccurate assessment of an officer's performance, skills, qualities, aptitudes, potential, or value to the NOAA Corps in the NOAA Corps officer's annual or semiannual officer evaluation reports; a decision concerning promotion, pay, benefits, awards, or training; separation; discharge; referral for mental health evaluations in accord-

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ance with 10 U.S.C. 1090a; the failure of a superior to respond to a retaliatory or harassment action against a NOAA Corps officer by one or more subordinate when the superior had knowledge of the retaliatory or harassment action; and conducting a retaliatory investigation against a NOAA Corps officer.

*Protected communication* means any lawful communication to a Member of Congress or an Inspector General; or a communication in which a NOAA Corps officer complains of, or discloses information that they reasonably believe evidences a violation of law or regulation (including sexual harassment or discrimination), gross mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to any of the following: a Member of Congress; an Inspector General; a member of a Department of Commerce audit, inspection, investigation, or law enforcement organization; any person or organization in the chain of command; and any other person or organization designated pursuant to regulations or other established administrative procedures to receive such communications.

*Records Examination Board* means a NOAA Corps personnel board convened by the Director to determine whether information contained in a NOAA Corps officer's personnel files should be corrected.

*Reprisal* means taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action against a NOAA Corps officer for making or preparing or being perceived as making or preparing a protected communication.

*Retaliatory investigation* means an investigation requested, directed, initiated, or conducted for the purpose of punishing, harassing, or ostracizing a NOAA Corps officer for making a protected communication.

### § 998.43 Requirements.

(a) No person within the Department of Commerce may restrict a NOAA Corps officer from making a lawful

communication to a Member of Congress or an Inspector General.

(b) A NOAA Corps officer shall be free from reprisal for making or preparing or being perceived as making or preparing a protected communication.

(c) Any NOAA Corps officer or employee of the Department of Commerce who has the authority to take, direct others to take, or recommend or approve any personnel action shall not, under such authority, take or threaten to take a personnel action, or withhold or threaten to withhold a personnel action, as reprisal against any NOAA Corps officer for making or preparing or being perceived as making or preparing a protected communication.

#### § 998.44 Responsibilities.

(a) The Inspector General of the Department of Commerce:

(1) Shall expeditiously determine whether there is sufficient evidence to warrant an investigation of an allegation that a personnel action has been taken, withheld, or threatened as reprisal for making or preparing or being perceived as making or preparing a protected communication. No investigation is required when such allegation is submitted more than 1 year after the NOAA Corps officer or former NOAA Corps officer became aware of the personnel action that is the subject of the allegation. However, the Inspector General of the Department of Commerce may consider a complaint of reprisal received more than 1 year later based on compelling reasons or circumstances. These circumstances may include situations in which the NOAA Corps officer or former NOAA Corps officer:

(i) Was actively misled regarding their rights; or

(ii) Was prevented from exercising their rights.

(2) Shall, if an investigation described in paragraph (a)(1) of this section is warranted, initiate a separate investigation of the underlying allegations contained in the protected communication if a prior investigation has not already been initiated, or if the Inspector General of the Department of Commerce determines that the prior investigation was biased or inadequate.

(3) Shall, except as provided in paragraph (a)(5) of this section, complete the investigation of the allegation of reprisal and issue a report not later than 180 days after receipt of the allegation, which shall include a thorough review of the facts and circumstances relevant to the allegation, the relevant documents acquired during the investigation, and summaries of interviews conducted. The report may also include a recommendation as to the disposition of the complaint.

(4) Shall submit a copy of the investigation report to the Secretary, the Administrator, the NOAA Deputy Under Secretary for Operations, the Director, and to the NOAA Corps officer or former NOAA Corps officer making the allegation. In the copy of the investigation report transmitted to the NOAA Corps officer or former NOAA Corps officer, the Inspector General of the Department of Commerce shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under the Freedom of Information Act (5 U.S.C. 552 *et seq.*). The Inspector General of the Department of Commerce may withhold the summaries of interviews conducted and documents acquired during the course of the investigation in the copy of the investigation report transmitted to the NOAA Corps officer or former NOAA Corps officer. If requested under this paragraph (a)(4), the summaries of interviews conducted and documents acquired during the course of the investigation shall be transmitted to the NOAA Corps officer or former NOAA Corps officer, with the exception of information that is not required to be disclosed under the Freedom of Information Act. This disclosure is separate from a disclosure resulting from a request submitted pursuant to the Freedom of Information Act or the Privacy Act (5 U.S.C. 552a *et seq.*). All other releases of information not made in accordance with this paragraph (a)(4) shall be processed pursuant to the respective disclosure statute that governs the request seeking those records. The items may be transmitted with the copy of the investigation report or within a reasonable time after the

transmittal of the copy of the investigation report to the NOAA Corps officer or former NOAA Corps officer, regardless of whether the request for those items is made before or after the copy of the investigation report is transmitted to the NOAA Corps officer or former NOAA Corps officer.

(5) Shall, if a determination is made that the investigation report cannot be issued within 180 days of receipt of the allegation, notify the Secretary and the NOAA Corps officer or former NOAA Corps officer making the allegation of the current progress of the investigation, the reasons why the investigation report will not be submitted within that time, and estimate the time remaining until completion and transmittal. Every 180 days thereafter until the transmission of the investigation report, the Inspector General of the Department of Commerce shall notify the Secretary and NOAA Corps officer or former NOAA Corps officer making the allegation of the current progress of the investigation and estimated time remaining until completion and transmittal of the investigation report.

(6) At the request of the Records Examination Board, shall submit a copy of the investigation report to the Records Examination Board. If the Records Examination Board requests further evidence and a further report as provided in paragraph (b)(3) of this section, the Inspector General of the Department of Commerce shall respond within 30 days, and not later than every 30 days thereafter, until the transmission of the further report.

(b) The Records Examination Board, under directions prescribed by the Director:

(1) Shall consider an application for the correction of records made by a NOAA Corps officer or former NOAA Corps officer who has filed a complaint investigated by the Inspector General of the Department of Commerce alleging that a personnel action was taken, withheld, or threatened in reprisal for making or preparing or being perceived as making or preparing a protected communication.

(2) Shall review the investigation report issued by the Inspector General of the Department of Commerce.

(3) May ask the Inspector General to gather further evidence and issue a further report to the Records Examination Board.

(4) Shall provide a summary of the record of its proceedings, along with its recommendations, to the NOAA Corps officer or former NOAA Corps officer who has filed a complaint not later than 90 days after the NOAA Corps officer or former NOAA Corps officer made a request to convene such a Records Examination Board.

(5) Shall issue an appropriate recommendation to the Director concerning corrections, deletions, or additions to the NOAA Corps officer or former NOAA Corps officer's records not later than 90 days after the NOAA Corps officer or former NOAA Corps officer made a request to the Director to convene such a Records Examination Board. If the Records Examination Board requests a further report as provided under paragraph (b)(3) of this section and determines that it cannot issue recommendations within 90 days, the Records Examination Board shall notify the officer or former officer and the Director and provide an estimate of time remaining until completion.

(c) If the Records Examination Board determines that a personnel action was taken, withheld, or threatened in reprisal for a NOAA Corps officer making or preparing or being perceived as making or preparing a protected communication, the Records Examination Board shall forward its recommendation to the Director for appropriate correction of the NOAA Corps officer's or former NOAA Corps officer's records.

(d) When reprisal is found, the Director:

(1) Shall issue a decision concerning the correction of the NOAA Corps officer's or former NOAA Corps officer's records within 60 days of receiving the Records Examination Board's decision, but no sooner than 20 days after receiving the Records Examination Board decision to allow sufficient time for the NOAA Corps officer or former NOAA Corps officer to submit any written disagreement with the Records Examination Board's recommendations under

paragraph (c) of this section, and ensure that appropriate corrective action is taken;

(2) Shall notify the Inspector General of his or her decision concerning an application for the correction of personnel records of a NOAA Corps officer or former NOAA Corps officer who alleged reprisal for making or preparing or being perceived as making or preparing a protected communication at the time the Director issues a decision under paragraph (d)(1) of this section; and

(3) Shall take appropriate administrative disciplinary action against the individual or individuals found to have taken, withheld, or threatened a personnel action as reprisal if those individuals are under the Director's chain of command. If those individuals are not under the Director's chain of command, refer those individuals to the Deputy Under Secretary for Operations for appropriate administrative disciplinary action against the individual or individuals found to have taken, withheld, or threatened a personnel action in reprisal.

(e) The Deputy Under Secretary for Operations:

(1) Shall provide an additional level of review concerning an application for the correction of personnel records of a NOAA Corps officer or former NOAA Corps officer within 90 days of the Director's decision if requested by the officer. If the Deputy Under Secretary for Operations fails to issue such a decision within that time, the NOAA Corps officer or former NOAA Corps officer shall be deemed to have exhausted their administrative remedies and the Director's decision constitutes the final agency action.

(2) Shall take appropriate administrative disciplinary action against the individual or individuals found to have taken, withheld, or threatened a personnel action as reprisal if referred by the Director under paragraph (d) of this section.

#### § 998.45 Procedures.

(a) Any NOAA Corps officer or former NOAA Corps officer who reasonably believes a personnel action was taken, withheld, or threatened in reprisal for making or preparing or being perceived

as making or preparing a protected communication may file a complaint with the Department of Commerce Office of Inspector General Hotline online at <https://www.oig.doc.gov/Pages/Hotline.aspx> by phone at (800) 424-5197, or by mail addressed to: United States Department of Commerce, Office of Inspector General, 1401 Constitution Avenue NW, Washington, DC 20230.

(b) The complaint should include relevant and specific details, including the name, address, and telephone number of the complainant; the name and location of the activity where the alleged violation occurred; the personnel action taken, withheld, or threatened that is alleged to be motivated by reprisal; the name(s) of the individual(s) believed to be responsible for the personnel action; the date when the alleged reprisal occurred; the date when the NOAA Corps officer or former NOAA Corps officer became aware of the personnel action; and any information that suggests or evidences a connection between the protected communication and reprisal. The complaint should also include a description of the protected communication, including a copy of any written communication and a brief summary of any oral communication showing the date of communication, the subject matter, and the name of the person or official to whom the communication was made. Where the complaint is submitted more than 1 year after the date when the NOAA Corps officer or former NOAA Corps officer became aware of the personnel action, the complainant should include an explanation of any circumstances which caused the complaint to be submitted more than 1 year after the complainant became aware of the personnel action. These circumstances may include descriptions of how the NOAA Corps officer or former NOAA Corps officer was actively misled regarding their rights, or was prevented from exercising their rights.

(c) A NOAA Corps officer or former NOAA Corps officer who alleges reprisal for making or preparing or being perceived as making or preparing a protected communication may, within 20 days of receiving an investigation

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report, request in writing that the Director convene a Records Examination Board to consider an application for the correction of records.

(d) A NOAA Corps officer or former NOAA Corps officer who disagrees with the recommendations of a Records Examination Board may submit in writing the reasons for disagreement to the Director within 20 days of receiving the Records Examination Board's recommendations.

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(e) A NOAA Corps officer or former NOAA Corps officer who disagrees with the Director's decision on a Records Examination Board's recommendations may request in writing a second level of review by the Deputy Under Secretary for Operations within 20 days of the Director's decision.

**PART 999 [RESERVED]**