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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

[Docket ID: OPM-2026-0467]

RIN: 3206-AO74

FLSA Claims and Compliance

AGENCY: Office of Personnel Management.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Office of Personnel Management (OPM) confirms that the direct final rule updating provisions concerning Fair Labor Standards Act (FLSA) claims submissions to OPM became effective as scheduled.

DATES: The effective date of September 29, 2026, for the direct final rule published on July 31, 2026 (91 FR 48236), is confirmed.

ADDRESSES: Please refer to the direct final rule published at 91 FR 48236 (July 31, 2026) for address information.

FOR FURTHER INFORMATION CONTACT: Joe Knouff, by email at adjudications@opm.gov or by telephone at (202) 606-7948.

SUPPLEMENTARY INFORMATION:

I. Background

On July 31, 2026, OPM published in the Federal Register a direct final rule titled "FLSA Claims and Compliance" (91 FR 48236) (the direct final rule or DFR), amending 5 CFR part 551, subpart G. The DFR removed outdated office and contact information, required claimants and their representatives to submit FLSA claims and supporting documents through OPM's electronic filing (eFile) system absent an OPM-authorized exemption, and required claims to include a verifiable signature, the employing agency's name, and the claimant's email address.

OPM issued the DFR under the exception for rules of "agency organization, procedure, or practice" in 5 U.S.C. 553(b)(A), and, in the alternative, under the good cause exception in 5 U.S.C. 553(b)(B). OPM stated that, absent significant adverse comment submitted by August 31, 2026, the DFR would take effect on September 29, 2026.

As the DFR explained, a significant adverse comment is a comment that explains why the rule is inappropriate, including by challenging its underlying premise or approach, or why the rule would be ineffective or unacceptable without a change. In applying that standard, OPM treats a comment as significant and adverse if:

1. The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process—for example, because the comment causes OPM to reevaluate its position or conduct additional analysis, raises an issue serious enough to warrant a substantive response to clarify or complete the record, or raises a relevant issue not previously addressed by OPM;
2. The comment proposes a change or addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporating it; or
3. The comment causes OPM to make a substantive change to the rule.

As discussed in Section II, OPM evaluated each comment received against these criteria. For the reasons explained below, OPM determined that no comment, standing alone or in combination with other comments, rises to the level of a significant adverse comment. Accordingly, OPM confirms that the amendments to 5 CFR part 551, subpart G, became effective on September 29, 2026.

II. Public Comment Analysis

OPM received eight timely comments in response to the DFR. A reference to a comment provides the location of the item in the public record (*i.e.,* the two-digit number associated with the location in the docket). Comments filed in response to the direct final rule are available at

https://www.regulations.gov/comment/OPM-2026-0467-00nn where "nn" is the comment number.

One commenter submitted a detailed legal analysis organized in seven sections (Comment 03). Two commenters submitted identical letters addressed to OPM's point of contact, raising Administrative Procedure Act (APA) and back-pay arguments (Comments 05 and 06). One commenter submitted an anonymous individual comment describing accessibility and technology barriers (Comment 04). One commenter submitted an extensive formal comment styled as a legal demand, raising a series of statutory and constitutional arguments together with a list of document requests (Comment 07). Three commenters submitted comments that, while referencing this docket, did not address the subject matter of this rulemaking (Comments 02, 08, and 09).

OPM has reviewed and carefully considered all eight comments. Because several comments raise overlapping points, they are addressed together by subject below, with the originating comment or comments identified.

Use of the Direct Final Rule Procedure

Comments 05 and 06 argue that a rule that "substantially affect[s]" the rights of regulated parties cannot qualify for the procedural-rule exception in 5 U.S.C. 553(b)(A) merely because of its form, citing *American Hospital Ass'n v. Bowen*, 834 F.2d 1037, 1045 (D.C. Cir. 1987), and *JEM Broadcasting Co. v. FCC*, 22 F.3d 320, 326–27 (D.C. Cir. 1994). Comment 07 similarly argues that the rule is procedurally invalid because OPM did not establish good cause under 5 U.S.C. 553(b)(B) for a substantive rule.

An "oft-cited formulation," drawn from *Batterton* itself, is that the "critical feature" of the procedural exception "is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency." *JEM Broadcasting*, 22 F.3d at 326 (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980)). *Batterton* also observed that the exemption does not reach

agency action that "trenches on substantial private rights and interests," 648 F.2d at 708, but the D.C. Circuit has since "gradually shifted focus from asking whether a given procedure has a 'substantial impact' on parties" to asking whether the action "encodes a substantive value judgment or puts a stamp of approval or disapproval on a given type of behavior." *American Hospital Ass'n*, 834 F.2d at 1047. Under either formulation, a rule prescribing the method through which a claim is submitted is procedural. The D.C. Circuit has sustained application-processing rules as procedural "even though 'failure to observe [them] might cause the loss of substantive rights,'" *JEM Broadcasting*, 22 F.3d at 327 (quoting *Ranger v. FCC*, 294 F.2d 240, 244 (D.C. Cir. 1961)), where, as here, the rule "did not change the substantive standards" by which the agency evaluates the merits. *JEM Broadcasting*, 22 F.3d at 327. That is the character of this rule: it prescribes the manner in which an FLSA claim is submitted without altering who may file a claim, the substantive standard OPM applies in deciding it, the evidence required to support it, or the duration of any codified time limit. Where a filing requirement bears on timeliness, the D.C. Circuit asks whether the requirement is "so short as to foreclose effective opportunity to make one's case on the merits." *Lamoille Valley R.R. Co. v. ICC*, 711 F.2d 295, 328 (D.C. Cir. 1983), quoted in *JEM Broadcasting*, 22 F.3d at 328. The exemption process in § 551.710(b)(7), which may be invoked by telephone or in writing as described below, and the agency-assisted filing option in § 551.705(b) preserve that opportunity. The procedural exception therefore applies.

Comments 05 and 06's reliance on *JEM Broadcasting* is unpersuasive for the proposition asserted. *JEM Broadcasting*, as an alternative holding, sustained the FCC's rule dismissing incomplete license applications without opportunity to amend against the identical argument, reasoning that "procedure impacts on outcomes and thus can virtually always be described as affecting substance, but to pursue that line of analysis results in the obliteration of the distinction that Congress demanded." 22 F.3d at 326–27 (quoting *Air Transport Ass'n of America v. Department of Transportation*, 900 F.2d 369, 383 (D.C. Cir. 1990) (Silberman, J., dissenting), remanded, 498 U.S. 1077 (1991), vacated as moot, 933 F.2d 1043 (D.C. Cir. 1991)). Applying

the same reasoning here, just because a filing method may affect the outcome of a particular claim does not convert a procedural rule into a substantive one.

Additionally, because the rule qualifies for the procedural-rule exception under 5 U.S.C. 553(b)(A), the alternative good-cause finding under 5 U.S.C. 553(b)(B) is not necessary to sustain the rule. OPM nonetheless notes, in response to Comment 07's argument that OPM failed to establish good cause and to the citation in Comments 05 and 06 to *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012), that the DFR's good-cause statement was offered as an independent and alternative basis, and its sufficiency (or lack thereof) does not affect the validity of the rule under the separate and independently adequate 5 U.S.C. 553(b)(A) exception.

Comment 07 also invokes *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), asserting that courts owe no deference to OPM's interpretation of statutory filing requirements and that OPM lacks authority under 29 U.S.C. 204(f) to affect the preservation of FLSA back-pay limitation periods. *Loper Bright* does not alter the analysis here, because the procedural-rule exemption does not turn on deference to an agency's statutory interpretation. The rule exercises OPM's authority under 29 U.S.C. 204(f) to administer the Act's claims process, including the manner in which claims are submitted. A claim submitted through the eFile system, or through a method OPM authorizes under an approved exemption, is received in the ordinary course; the limitations periods in 5 CFR 551.702(b) and 29 U.S.C. 255 are untouched by this rule.

Filing-Method Changes and the FLSA Limitations Period

Comments 03, 05, and 06 argue that, because 5 CFR 551.702(c) ties a claimant's back-pay recovery to the date OPM or the employing agency receives the claim and because the exemption from mandatory eFiling in § 551.710(b)(7) is committed to OPM's "sole and exclusive discretion" with no stated response time, a claimant who cannot reasonably file electronically and who is awaiting action on an exemption request risks losing recoverable back pay for reasons unrelated to the merits of the claim. Comment 03 further observes that, under § 551.703(c), filing an administrative claim with an agency or OPM does not toll the separate

limitations period governing an FLSA action filed in court, so such a claimant, in Comment 03's description, is consuming the administrative limitations period and the judicial limitations period at the same time and cannot preserve one by pursuing the other. Comments 03, 05, and 06 argue this shows the rule is not the kind of internal housekeeping matter the 5 U.S.C. 553(b)(A) exception is meant to cover, notwithstanding the DFR's statement that it "does not change . . . the applicable time limits for filing."

The interaction Comment 03 describes between the administrative and judicial limitations periods is not new to this rule. Section 551.703(c) has provided, since the current subpart G was adopted in 2007, that filing a claim with an agency or OPM does not satisfy the statute of limitations governing an FLSA claim filed in court, and nothing in the DFR amends § 551.703(c). A claimant who mailed a paper claim under the prior rule faced the identical structural feature. To the extent Comments 03, 05, and 06 challenge that pre-existing feature of subpart G, the challenge is directed at a provision this rulemaking does not touch and is outside its scope.

This rule simply changes the method used for submission and does not substantively affect a claimant's rights. OPM's statement that the rule "does not change . . . the applicable time limits for filing" refers to the duration of the codified limitations periods themselves – none of which this rule shortens, lengthens, or otherwise alters. The possibility that a change in filing method *could*, in an individual case, affect the date on which a claim is received does not convert a rule about filing methods into a rule about the length of a limitations period.

The rule also does not leave a claimant who cannot reasonably use eFile without recourse. Section 551.710(b)(7) permits OPM to exempt such a claimant from the eFiling requirement, and OPM will treat a claimant's timely, good-faith attempt to contact OPM—whether by telephone, email, or a non-electronic filing—as bearing directly on whether "circumstances beyond the claimant's control" support reconsideration of a cancelled claim under § 551.707(b) or a waiver of the 45-day period under § 551.708(a), both of which are

unaffected by this rule and remain available, within their respective terms, on a case-by-case basis regardless of whether an exemption request was granted, denied, or still pending when a deadline passed. OPM therefore declines to adopt Comment 03's proposed regulatory text automatically tolling a deadline during the pendency of an exemption request, or deeming a non-electronic submission filed as of its original date once an exemption later issues, because such a provision would change how § 551.702(c) sets the date on which the claim period is preserved, a result the DFR did not propose and OPM does not adopt here. Finally, § 551.703(c) preserves a claimant's independent right to bring an FLSA action in a United States court regardless of the outcome of the administrative claim.

Claimants Subject to a Negotiated Grievance Procedure

Comment 03 correctly notes, as a limitation on the scope of its own comment, that under § 551.703(a) a claimant who at any time during the claim period was covered by a collective bargaining agreement that did not exclude FLSA matters must use the negotiated grievance procedure as the exclusive administrative remedy, and that §§ 551.704 through 551.710—including the filing and eFiling provisions this rule amends—do not apply to such claimants. OPM confirms this is correct. The filing-method changes addressed in this notice accordingly have no bearing on claimants who are subject to a negotiated grievance procedure that does not exclude FLSA matters.

The Discretionary Exemption From Electronic Filing

Comments 03, 04, 05, 06, and 07 raise concerns, in varying terms, about § 551.710(b)(7), which allows OPM to exempt a party or representative from the eFiling requirement in its "sole and exclusive discretion" and provides that OPM "will not find good cause for failing to file a claim timely" if the party fails to contact OPM to request an exemption before the applicable deadline. Commenters describe this combination as lacking defined criteria, a response timeline, or a means of reconsideration; Comment 03 and Comment 04 note that the codified text directs an exemption request to be made "as instructed on OPM's website" with no non-electronic

method specified in the regulatory text itself and Comment 04 offers twelve specific requested changes addressing technology access, literacy and disability barriers, temporary loss of access, and related concerns, while Comment 07 proposes a mandatory, permanently preserved dual-track paper-and-email intake method for field and wage-grade personnel (its "Component B") together with a fixed, non-discretionary tolling period for system outages.

The standard governing exemption requests is the one described in the DFR's preamble: an exemption is available to a party or representative "who cannot reasonably file electronically." 91 FR at 48237. Current contact information is available on OPM's website. Nonetheless, a party or representative may request an exemption under § 551.710(b)(7) by contacting OPM using the telephone number or email address listed in the FOR FURTHER INFORMATION CONTACT caption of the DFR or of any successor document—both of which OPM publishes independently of, and without requiring access to, its website. Similarly, OPM will treat a timely telephone or written exemption request the same as one submitted through OPM's website. OPM will likewise treat a documented, agency-side outage of the eFile system, and a claimant's literacy, disability, or other barrier to independently using the eFile system, as circumstances bearing on whether reconsideration of a cancelled claim is warranted under § 551.707(b) or whether the 45-day period in § 551.708(a) should be waived. This is all consistent with OPM's longstanding case-by-case approach to discretionary relief under this subpart and is unaffected by this rulemaking.

OPM has not adopted Comment 04's twelve requested textual additions or Comment 07's proposed fixed, non-discretionary dual-track and outage-tolling provisions or a fixed response deadline for exemption requests. Claims-processing circumstances vary too widely to be usefully reduced to a single set of numerical rules, and a rigid rule risks producing arbitrary results in both directions. In addition, § 551.705(b) already provides that, at the claimant's request, the employing agency may forward the claim to OPM using the eFile system on the claimant's

behalf. Finally, § 551.703(c) preserves a claimant's independent right to bring an FLSA action in a United States court.

Electronic Service and Administrative Deadlines

Comment 03 asks whether a claimant's failure to observe an electronic posting in the eFile system will be treated as receipt for purposes that cancel a claim under § 551.706(a)(1) or run the 45-day reconsideration period under § 551.708(a), given that eFile registration under § 551.710(b)(2) constitutes consent to electronic service and § 551.710(b)(5) places responsibility on eFilers to monitor case activity.

Registration as an eFiler constitutes consent to electronic service. The responsibility to monitor case activity under § 551.710(b)(5) is no different in kind from the obligation of a party who receives paper correspondence to review their mail. Where a claimant demonstrates that a technical failure of the eFile system, rather than the claimant's own inattention, prevented them from receiving or responding to a posting, that is a circumstance OPM will weigh in the same case-by-case manner it weighs any other question of good cause or excusable delay under this subpart, through the existing discretion in §§ 551.707(b) and 551.708(a). This rule does not foreclose that inquiry, and a claimant's independent right to bring an action in court under § 551.703(c) remains available.

Effective Date

Comment 03 correctly identifies an inconsistency in the DFR's preamble. The DATES caption stated that the rule "is effective September 29, 2026 unless significant adverse comment is submitted by August 31, 2026." 91 FR at 48236. Later in the same document, the preamble indicated that "this direct final rule will become effective 45 days after the comment period expires." *Id.* at 48237. The reference to "45 days" was a drafting error. The DATES caption—which under Office of the Federal Register drafting convention states the document's operative dates—consistently identified September 29, 2026, throughout the comment period, as did the rule's transition provision ("Claims filed before September 29, 2026 will be processed under the

requirements in effect on the date of submission or postmark. Any submissions on or after September 29, 2026 must comply with the requirements of this part as amended by this rule." 91 FR at 48237). Comments 05, 06, and 07, which addressed the effective date, identified September 29, 2026, as the operative date, with Comment 07 demanding withdrawal "prior to September 29, 2026." Comment 03, which identified the inconsistency, likewise recognized September 29, 2026, as the date stated in the DATES caption and in the transition provision, and asked OPM to confirm the operative effective date. OPM confirms that September 29, 2026, was the effective date of the amendments to 5 CFR part 551, subpart G. A drafting error in the preamble discussion, which did not appear in the DATES caption, the transition provision, or the regulatory text, does not constitute a significant adverse comment.

Paperwork Reduction Act Status of the eFile Information Collection

Comments 03, 05, 06, and 07 ask OPM to confirm the status of Office of Management and Budget (OMB) review of the information collection associated with the eFile system (OMB Control Number 3206-NEW) and its relationship to the rule's effective date. OMB approved this collection under OMB Control Number 3206-0282. Comment 03 also asks whether the burden estimate has been revised to reflect the addition of other appeal types to the eFile system. The 30-day notice (91 FR 46802 (July 24, 2026)) reflects a revised estimate of 1,286 respondents and 13,039 annual burden hours, which reflects the full scope of appeals available through the eFile system.

As to the interaction between Paperwork Reduction Act (PRA) clearance and the rule's effective date: consistent with 44 U.S.C. 3512(a), OPM confirms that it did not decline to accept, or delay action on, a claim submitted through the eFile system, nor deny a request for an exemption under § 551.710(b)(7), on the basis of the collection's control-number status. The assigned control number is displayed on the eFile system's public-facing pages.

Alleged Regulations.gov Comment-Submission Difficulty

Comment 07 asserts that OPM's docket was displayed on regulations.gov as belonging to a "Non-Participating Agency" that does not accept electronic comments, and that this display "effectively nullif[ied] the public's ability to submit electronic comments until the final hours of August 31, 2026," which Comment 07 characterizes as an independent violation of the meaningful-comment-opportunity requirement in 5 U.S.C. 553(c) warranting withdrawal and a fresh 30-day comment period.

The docket record does not support this characterization. OPM's docket reflects that timely comments were submitted and received through regulations.gov well before the close of the comment period, including comments received July 31 and on August 19, 2026—more than a month and more than a week, respectively, before the August 31, 2026, deadline—in addition to several comments received on the final day, which is a common feature of rulemaking dockets generally and is not itself evidence that earlier submission was unavailable. Whatever display irregularity, if any, an individual commenter may have encountered, the requirement that an agency provide the public a meaningful opportunity to comment is satisfied by a genuine opportunity to submit comments, and the actual receipt of substantive comments across nearly the full length of the comment period demonstrates that such an opportunity existed here. OPM does not find a basis in this record to withdraw the rule or reopen the comment period on this ground.

Section 508, the Privacy Act, FISMA, and Collective Bargaining Obligations

Comment 07 raises a series of additional compliance questions concerning the eFile system: accessibility under Section 508 of the Rehabilitation Act (29 U.S.C. 794d), System of Records Notice coverage under the Privacy Act (5 U.S.C. 552a), security authorization under the Federal Information Security Modernization Act (FISMA) (44 U.S.C. 3551 et seq.), and bargaining obligations under 5 U.S.C. 7114(b)(4).

These are each freestanding statutory obligations that apply to OPM's operation of the eFile system on their own terms, through their own enforcement mechanisms, independent of

whether this procedural rule was properly issued as a direct final rule under the APA; a deficiency in compliance with any of them, if one exists, would not retroactively convert this filing-procedure rule into a substantive rule requiring notice and comment. As to the Privacy Act specifically, the DFR already identified the System of Records Notices OPM has determined apply to information collected through the eFile system and described the routine uses under which that information may be disclosed. 91 FR at 48238. As to FISMA and the Federal Risk and Authorization Management Program (FedRAMP), OPM's July 24, 2026, 30-day notice for the eFile information collection confirmed that the cloud products and services supporting the system are FedRAMP-certified and that applicable FISMA requirements have been met and committed to publishing a Privacy Impact Assessment. 91 FR at 46802–03.

As to bargaining obligations under 5 U.S.C. 7114(b)(4), that provision requires an agency, as an employer, to furnish data to the exclusive representative of its employees upon request, to the extent not prohibited by law, in connection with collective bargaining over conditions of employment; it does not impose a duty to bargain over the content of governmentwide procedural regulations that OPM issues under 29 U.S.C. 204(f) in its capacity as administrator of the Act's claims process, rather than as the employing agency of the claimants who file FLSA claims. To the extent Comment 07 invokes a broader duty to bargain over changes to conditions of employment, that duty runs under 5 U.S.C. 7114(a)(4) and (b) between an executive agency and the exclusive representative of its own employees; it does not run to OPM when OPM acts as claims adjudicator rather than employer, and, under 5 U.S.C. 7117(a)(1), the duty to bargain does not extend to matters that are the subject of a Government-wide rule or regulation, such as the regulations in 5 CFR part 551 that OPM issues under 29 U.S.C. 204(f).

Requests To Withdraw the Rule and Retain Dual-Track Filing

Comment 04 asks OPM to withdraw the rule and restore permanent, unconditional postal-mail and email filing options; Comments 05 and 06 ask OPM to withdraw the rule and

proceed by standard notice-and-comment rulemaking; and Comment 07 similarly demands withdrawal and proposes a specific severable alternative that would make eFile use voluntary for desk-based personnel while permanently preserving mail and email intake for non-desk, field, and wage-grade personnel and unrepresented claimants.

OPM has considered these requests together with the more specific points addressed above. The premise common to all of them—that the rule leaves claimants who cannot reasonably use the eFile system without a means of filing—is addressed by the exemption process in § 551.710(b)(7) and by the agency-assisted filing option in § 551.705(b). Because these accommodations already exist in the rule, OPM does not agree that permanent, parallel paper and email intake methods for entire categories of claimants are necessary.

III. Determination Regarding Significant Adverse Comment

OPM has evaluated each of the eight comments received, individually and collectively, against the standard described in Section I. None opposes the rule on a ground that requires a substantive change to the regulatory text adopted in the DFR. The sentence in the preamble discussion regarding the rule's effective date was a drafting error; however, the same document provided notice of the effective date in the DATES caption, which is the date that is controlling for the Office of the Federal Register. No commenter disputed that the DATES caption identified September 29, 2026, as the effective date, and the one commenter that identified the inconsistency asked OPM to confirm the operative date, which this document does. The error does not bear on the substance of 5 CFR part 551, subpart G, as adopted. The remaining points are either addressed on the merits above or, to the extent not separately discussed, were considered and do not alter this determination. None causes OPM to reevaluate the rule's underlying approach, none identifies a respect in which the rule as adopted would be ineffective or unacceptable absent a change to its text, and none has caused OPM to make a substantive change to the rule.

List of Subjects in 5 CFR Part 551

Government employees, Wages.

Accordingly, OPM confirms that the amendments to 5 CFR part 551, subpart G, published at 91 FR 48236 (July 31, 2026), became effective on September 29, 2026.

Signing Statement

The Director of OPM, Scott Kupor, reviewed and approved this document and has authorized the undersigned to electronically sign and submit this document to the Office of the Federal Register for publication.

Office of Personnel Management

Jerson Matias

Federal Register Liaison

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