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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 178

[Docket ID: OPM-2026-0364]

RIN 3206-AP10

Procedures for Settling Claims

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 the procedures for submitting certain administrative claims 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 48231), is confirmed.

ADDRESSES: Please refer to the direct final rule published at 91 FR 48231 (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 "Procedures for Settling Claims" (91 FR 48231) (the direct final rule or DFR), amending 5 CFR part 178, subpart A. The DFR removed outdated office and contact information from § 178.102, required claimants and their representatives to submit claims through OPM's electronic filing (eFile) system absent an OPM-authorized exemption, and required claimants to provide additional information to support OPM's review of claims for compensation and leave under 31 U.S.C. 3702(a)(2), money due deceased employees under 5 U.S.C. 5583, and proceeds of

canceled checks payable to the beneficiaries of deceased veterans under 38 U.S.C. 5121 and 5122.

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 178, subpart A, published at 91 FR 48231 (July 31, 2026), became effective on September 29, 2026.

II. Public Comment Analysis

OPM received five 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-2026-0364-00nn where "nn" is the comment number.

One commenter submitted a detailed legal analysis organized in nine sections (Comment 02). Two commenters submitted identical form-letter text opposing the rule (Comments 03 and 05). One commenter submitted an individually written comment (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 06).

OPM has reviewed and carefully considered all five comments. Because several comments raise overlapping points, they are addressed together by subject below.

Use of the Direct Final Rule Procedure

Comments 02, 03, 05, and 06 argue that OPM improperly proceeded by direct final rule. Comments 03 and 05 contend 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 06 similarly argues that the rule is "substantively arbitrary" and cites *Batterton v. Marshall*, 648 F.2d 694 (D.C. Cir. 1980), for the proposition that a rule "extinguish[ing] statutory property claims" cannot be procedural.

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*, 648 F.2d at 707). *Batterton* also observed that the exception 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 a 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 § 178.102(e)(2), which may be invoked by telephone or in writing as described below, and the agency-submission option in § 178.102(b) preserve that opportunity. The procedural exception therefore applies.

The reliance of Comments 03 and 05 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 in 5 U.S.C. 553(b)(A) on the basis just described, 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 the citation in Comments 03 and 05 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.

Effective Date

Comment 02 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 48231. 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 48232. 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, as did the transition provision in the same document ("Claims filed before September 29, 2026 will be processed under the requirements in effect on the date of submission or postmark." 91 FR at 48231). Comments 03, 04, 05 and 06, which addressed the effective date, correctly identified September 29, 2026, as the operative deadline, with Comment 04 urging OPM to act "before the September 29, 2026 deadline." Comment 02, 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 178, subpart A. 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 02, 03, 05, and 06 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 to address the relationship between that review and the rule's effective date. OMB approved this collection under OMB Control Number 3206-0282. Comment 02 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 § 178.102(e)(2), on the basis of the collection's control-number status. The assigned control number is displayed on the eFile system's public-facing pages.

The Discretionary Exemption From Electronic Filing

All five comments raise, in varying terms, concerns about § 178.102(e)(2), which allows OPM to exempt "a party or representative" from the eFiling requirement in its "sole and exclusive discretion," and which provides that OPM "will not find good cause for failing to file a claim timely if the party or representative fails to contact OPM to request an exemption before any deadline to file." Commenters describe this combination as lacking defined criteria, a response timeline, or a means of reconsideration, and Comments 02, 04, and 06 describe the requirement that an exemption request be made "as instructed on OPM's website" as placing an online-only contact method between offline filers and the accommodation meant to serve them.

OPM confirms that 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 48232. Current contact information is available on OPM's website. Nonetheless, a party or representative may request an exemption under § 178.102(e)(2) 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. 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 good cause exists for a late filing or a late exemption request under § 178.102(e)(2).

OPM has not adopted the requests to codify a fixed, non-discretionary tolling period for system outages (Comment 06) or a fixed response deadline for exemption requests (Comments 03 and 05). In OPM's experience administering this part for decades, claims-processing circumstances vary too widely to be usefully reduced to a single numerical rule, and a rigid rule risks producing arbitrary results in both directions. OPM likewise has not adopted Comment 02's alternative proposals that a timely exemption request toll the filing deadline, or that a non-electronic submission be deemed filed as of its original date once an exemption later issues, because such a provision would change how § 178.104 fixes the date on which a claim is received, a result the DFR did not propose and OPM does not adopt here. OPM will, however, 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 good cause exists under § 178.102(e)(2). OPM's settlement of a claim remains subject to judicial review under § 178.107(b), which is unaffected by this rule.

Contact Information for the Denying Agency Official

Comments 03, 04, 05, and 06 note that § 178.102(a)(2), which asks a claimant to provide the name, address, telephone number, and email address of the agency official who denied the claim, may be difficult for some claimants to satisfy where the denial was issued by an office or

an automated shared-service system rather than by a named individual, or where the claimant never received an individual staff member's contact information in the first place.

Section 178.102(a) already provides that a claim "should" include this information, together with "any other information which the claimant believes OPM should consider." Consistent with OPM's existing practice under this part, a claim will not be rejected or delayed solely because a claimant cannot supply contact details for an individual agency official that were never provided to the claimant.

Cross-Reference to an Outdated Office Name

Comment 02 observes that the DFR removes the reference to the "Office of Merit Systems Oversight and Effectiveness" from § 178.102(e) as outdated, while § 178.207(b) and (c)—provisions the DFR did not amend—continue to direct disputed claims for money due deceased employees to that same office.

OPM limited its changes to sections that directly affect where or how a claim is filed or reviewed. OPM intends to conform the cross-references in § 178.207(b) and (c) to the office's current name, Merit System Accountability and Compliance, in a future rulemaking. The retained reference does not render this rule ineffective or unacceptable in the interim as the language in § 178.207(b) and (c) has no impact on claimants' ability to file a claim.

Electronic Service and the Written Record

Comment 02 asks whether a claimant's failure to observe an electronic posting in the eFile system will be treated as receipt for purposes that run a deadline or close the written record under § 178.105, given that eFile registration under § 178.102(e)(1)(ii) constitutes consent to electronic service and § 178.102(e)(1)(v) places responsibility on eFilers to monitor case activity.

Registration as an eFiler constitutes consent to electronic service. The responsibility to monitor case activity under § 178.102(e)(1)(v) 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 part. This rule does not foreclose that inquiry, and judicial review under § 178.107(b) remains available in any case where a claimant contends the written record was closed against them unfairly.

Requests To Withdraw the Rule and Retain Dual-Track Filing

Comments 03, 04, 05, and 06 ask OPM to withdraw the DFR and proceed by standard notice-and-comment rulemaking, and Comment 06 additionally proposes a specific severable alternative that would make eFile use voluntary for active civilian employees while permanently preserving mail and email intake for survivors, veterans' beneficiaries, retirees, and pro se 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 § 178.102(e)(2) and by the agency-assisted
filing option in § 178.102(b). Because that accommodation already exists 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 five 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 § 178.102 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.

Accordingly, OPM confirms that the amendments to 5 CFR part 178, subpart A, published at 91 FR 48231 (July 31, 2026), became effective on September 29, 2026.

List of Subjects in 5 CFR Part 178

Administrative practice and procedure, Claims, Government employees.

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

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Jerson Matias

Federal Register Liaison

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