adopted without change or interpretation, making public comment unnecessary. Therefore, the Commission has determined that the notice and comment requirements of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b). For this reason, the requirements of the Regulatory Flexibility Act also do not apply. *See* 5 U.S.C. 603, 604. Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3521, the Office of Management and Budget (''OMB'') approved the information collection requirements in the Amended TSR and assigned the following existing OMB Control Number: 3084–0097. The amendments outlined in this Final Rule pertain only to the fee provision (§ 310.8) of the Amended TSR and will not establish or alter any record keeping, reporting, or third-party disclosure requirements elsewhere in the Amended TSR.

List of Subjects in 16 CFR Part 310

Advertising, Consumer protection, Reporting and recordkeeping requirements, Telephone, Trade practices.

Accordingly, the Federal Trade Commission amends part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108; 15 U.S.C. 6151–6155.

■ 2. Revise § 310.8(c) and (d) to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $59 for each area code of data accessed, up to a maximum of $16,228; *provided,* however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further,* that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in § 310.8(c), each person excepted under § 310.8(c) from paying the annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee (''the annual period''). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under § 310.8(c) must first pay $59 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under § 310.8(c) must first pay $30 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2013–21141 Filed 8–29–13; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB61

Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program; Delay of Effective Date

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule; indefinite delay of effective date.

SUMMARY: The Department of Labor (Department or we/us) is delaying indefinitely the effective date of the Wage Methodology for the Temporary Non-agricultural Employment H–2B Program final rule (2011 Wage Rule), in order to comply with recurrent legislation that prohibits us from using any funds to implement it, and to permit time for consideration of public comments sought in conjunction with an interim final rule published April 24, 2013, 78 FR 24047. The 2011 Wage Rule revised the methodology by which the Department calculates the prevailing wages to be paid to H–2B workers and United States workers recruited in connection with a temporary labor certification for use in petitioning the Department of Homeland Security to employ a nonimmigrant worker in H–2B status. The 2011 Wage Rule was originally scheduled to become effective on January 1, 2012, and the effective date has been extended a number of times, most recently to October 1, 2013. We are now delaying the effective date of the 2011 Wage Rule indefinitely. This rule does not affect the Interim Final Rule, 78 FR 24047, published on April 24, 2013, establishing the current prevailing wage methodology for the H–2B program; that rule remains in effect.

DATES: The effective date of the rule amending 20 CFR part 655, published at 76 FR 3452 (January 19, 2011) (referred to herein as the 2011 Wage Rule), originally effective January 1, 2012, and which was previously made effective September 30, 2011, at 76 FR 45667 (August 1, 2011); and delayed to November 30, 2011, at 76 FR 59896 (September 28, 2011); to January 1, 2012, at 76 FR 73508 (November 29, 2011); to October 1, 2012, at 76 FR 82115 (December 30, 2011); to March 27, 2013, at 77 FR 60040 (October 2, 2012); and to October 1, 2013, at 78 FR 19098 (March 29, 2013), is delayed indefinitely, effective on September 30, 2013. The Department will publish a later document in the **Federal Register** establishing a new effective date in the event of implementation of the 2011 Wage Rule.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Department of Labor published a final rule, Wage Methodology for the Temporary Non-agricultural Employment H–2B Program, on January 19, 2011. *See* 76 FR 3452 (the 2011 Wage Rule). The 2011 Wage Rule revised the methodology by which we

calculate the prevailing wages to be paid to H–2B workers and United States (U.S.) workers recruited in connection with a temporary labor certification for use in petitioning the Department of Homeland Security (DHS) to employ a nonimmigrant worker in H–2B status. We originally set the effective date of the 2011 Wage Rule for January 1, 2012. However, as a result of litigation and following notice-and-comment rulemaking, we issued a final rule, 76 FR 45667 (Aug. 1, 2011), revising the effective date of the 2011 Wage Rule to September 30, 2011, and a second final rule, 76 FR 59896 (Sept. 28, 2011), further revising the effective date of the 2011 Wage Rule to November 30, 2011.

Thereafter, we delayed the effective date of the 2011 Wage Rule until January 1, 2012 in light of the enactment on November 18, 2011 of the Consolidated and Further Continuing Appropriations Act, 2012, which provided that ''[n]one of the funds made available by this or any other Act for fiscal year 2012 may be used to implement, administer, or enforce, prior to January 1, 2012 the [Wage Rule].'' Public Law No. 112–55, 125 Stat. 552, Div. B, Title V, sec. 546 (Nov. 18, 2011) (the November 2011 Appropriations Act). In delaying the 2011 Wage Rule's effective date at that time, the Department stated that although the November 2011 Appropriations Act ''prevent[ed] the expenditure of funds to implement, administer, or enforce the [2011] Wage Rule before January 1, 2012, it [did] not prohibit the [2011] Wage Rule from going into effect, which [was] scheduled to occur on November 30, 2011.'' 76 FR 73508, 73509 (Nov. 29, 2011). We explained that ''when the [2011] Wage Rule goes into effect, it will supersede and make null the prevailing wage provisions at 20 CFR 655.10(b) of the Department's existing H–2B regulations, which were promulgated under Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes; Final Rule, 73 FR 78020, Dec. 19, 2008 (the H–2B 2008 Rule).'' *Id.* Accordingly, we determined that it was necessary in light of the November 2011 Appropriations Act to delay the effective date of the 2011 Wage Rule to avoid the replacement of the wage provisions of the H–2B 2008 Rule with a new rule that we lacked appropriated funds to implement. Such an occurrence would have rendered the H–2B program inoperable because, as discussed in the NPRM, at 78 FR 44055, the issuance of a prevailing wage determination is a condition precedent to approving an employer's request for an H–2B labor certification. See 20 CFR 655.10. As a result, the Department issued a final rule, 76 FR 73508, which delayed the effective date of the 2011 Wage Rule until January 1, 2012.

Subsequent appropriations legislation [1] containing the same restriction prohibiting the Department's use of appropriated funds to implement, administer, or enforce the 2011 Wage Rule necessitated subsequent extensions of the effective date of that rule. *See* 76 FR 82115 (Dec. 30, 2011) (extending the effective date to October 1, 2012); 77 FR 60040 (Oct. 2, 2012) (extending the effective date to March 27, 2013); 78 FR 19098 (Mar. 29, 2013) (extending the effective date to October 1, 2013). In light of the continued prohibitions on the expenditure of the Department's appropriated funds to implement, administer, or enforce the 2011 Wage Rule, the Department proposed in the July 23, 2013 NPRM to delay indefinitely the effective date of the 2011 Wage Rule until such time as the rule can be implemented.

Additionally, the Department, together with DHS (the Departments),[2] recently promulgated an interim final rule (IFR), 78 FR 24047, establishing a new wage methodology. This action was taken in direct response to *Comite de Apoyo a los Trabajadores Agricolas (CATA)* v. *Solis,*—F. Supp. 2d—, 2013 WL 1163426 (E.D. Pa. Mar. 21, 2013), in which the district court vacated a provision of the H–2B 2008 rule, 20 CFR 655.10(b)(2). That provision required that prevailing wages based on the Occupational Employment Statistics (OES) survey contain tiers that are commensurate with the skill required for the job; the Department accordingly divided the OES wage applicable to the occupation in question into four tiers of wages to correspond to skill levels. The court vacated 20 CFR 655.10(b)(2), which was the basis for the four-tiered wage, and remanded the matter to the Department, ordering the Department to come into compliance with the court's order within 30 days.

In response to *CATA* v. *Solis,* the Departments issued the IFR on April 24, 2013. *See* 78 FR 24047. The Departments struck the phrase, ''at the skill level,'' from 20 CFR 655.10(b)(2), thus requiring prevailing wage determinations issued using the OES survey to be based on the mean wage for the occupation in the area of intended employment without tiers or skill levels. *See id.* at 24053. That revision became effective on April 24, 2013, the date of publication. The Departments requested comments on all aspects of the prevailing wage provisions of 20 CFR 655.10(b), including, among other things, whether the OES mean is the appropriate basis for determining the prevailing wage; whether wages based on the Davis-Bacon Act (DBA), 40 U.S.C. 276a *et seq.,* 29 CFR part 1, or the McNamara-O'Hara Service Contract Act (SCA), 41 U.S.C. 351 *et seq.,* should be used to determine the prevailing wage, and if so to what extent; and whether to permit the continued use of employer-submitted surveys and ways to strengthen their methodology, if permitted. The comment period closed on June 10, 2013, and the Departments are in the process of reviewing those comments and determining whether further revision to 20 CFR 655.10(b) is warranted in light of public comment.

Because of the confluence of the recurrent Congressional prohibition against implementation of the 2011 Wage Rule, which we anticipate will continue, and our current review and consideration of comments associated with the IFR, which revised the wage provision of the H–2B regulations that was also the subject of the 2011 Wage Rule, the Department proposed the indefinite delay of the effective date of the 2011 Wage Rule on July 23, 2013. 78 FR 44054. We accepted comments from the public on the proposed indefinite delay through August 9, 2013.

We received 36 comments on the proposed rule. We received three comments that support the delay of the effective date of the 2011 Wage Rule. Two commenters submitted joint comments on the IFR without addressing the proposed extension of the 2011 Wage Rule. The remaining

[1] These include the Consolidated Appropriations Act of 2012, Public Law 112–74, 125 Stat. 786 (Dec. 23, 2011); Continuing Appropriations Resolution, 2013, Public Law 112–175, 126 Stat. 1313 (Sept. 28, 2012); and Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113–6, 127 Stat. 198 (Mar. 26, 2013) (establishing DOL's appropriations through Sept. 30, 2013).

[2] The Department of Labor and DHS issued the IFR jointly to dispel questions about the respective roles of the two agencies and the validity of the Department's regulations as an appropriate way to implement the interagency consultation specified in section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1). *See Bayou Lawn & Landscape Servs.* v. *Sec'y of Labor,* 713 F.3d 1080 (11th Cir. 2013) (holding that the Department of Labor lacks independent rulemaking authority under the INA to issue legislative regulations implementing its role in the H–2B program). *But see La. Forestry Ass'n* v. *Solis,* 889 F. Supp. 2d 711 (E.D. Pa. 2012) (rejecting claim that the Department of Labor lacks authority under the INA to administer the H–2B program through legislative rules), *appeal pending,* No. 12–4030 (3d Cir.). Due to these inconsistent court rulings about the Department's authority to issue independent legislative rules, the Department and DHS together issued the IFR revising the prevailing wage methodology in the H–2B program.

commenters, many of whom submitted identical or nearly identical comments, summarily suggested that the Department reconsider or delay the implementation of the ''new rule'' or the ''new wage methodology.'' We interpret these comments to refer to the Department's IFR issued on April 24, 2013. As noted above, the Departments are considering comments submitted in response to the IFR and will determine, in that separate rulemaking proceeding, whether further changes are necessary in light of those comments. However, comments on the IFR are beyond the scope of this rulemaking, which only addresses the effective date of the 2011 Wage Rule. As a result, we have not considered comments about the IFR in this final rule.

One commenter challenged generally the merits of the 2011 Wage Rule and the IFR. As noted above, the relative merits of the IFR were not raised in this proposed rule, which was limited to the proposed indefinite delay of the effective date of the 2011 Wage Rule. Comments about the IFR are therefore beyond the scope of this rulemaking, as are the relative merits of the 2011 Wage Rule. The same commenter also challenged our authority to issue rules for the H–2B program, asserting, in part, that the issuance of the proposed extension of the 2011 Wage Rule violates ''the congressional defunding legislation,'' which, in its view, requires the rescission of the 2011 Wage Rule and precludes its indefinite delay. This commenter also asserted that the APA does not allow an agency to place a regulation ''on a shelf forever'' and that the Department has acted improperly by determining that it intends to issue—without public comment—the 2011 Wage Rule upon expiration of ''the defunding legislation.''

As explained in the proposed rule, we have complied with the restrictions imposed on our use of appropriated funds to implement, administer, or enforce the 2011 Wage Rule. Contrary to the commenter's view, the appropriations legislation, by its terms, is only applicable for a specified period of time and does not supplant the substantive provisions of the 2011 Wage Rule. Moreover, the proposal to indefinitely delay the effective date of the rule is consistent with the conditions imposed by Congress. As noted in the proposed rule, we have promulgated a series of notices delaying the effective date of the 2011 Wage Rule. By doing so, we have clarified the status of the rule for the public, thereby eliminating any uncertainty or confusion as to its status.

To the extent that the commenter is challenging our authority to issue *any* regulations in the H–2B program, we disagree for the reasons stated in the 2011 Wage Rule (76 FR at 3452–3453) and the IFR (78 FR at 24049–24051). As to the commenter's additional assertions, we have complied fully with the Administrative Procedure Act (APA) in proposing and adopting as a final rule the indefinite delay of the 2011 Wage rule. Our future actions likewise will be guided by the APA and other statutory requirements. The 2011 Wage Rule has already been the subject of extensive public comment to which we responded in detail in the preamble to the 2011 Wage Rule. The commenter provides no authority, and we are aware of none, that would require us to reopen the rule for comment simply because the effective date of the rule has been changed.

In sum, after considering all the comments, the Department has decided to indefinitely delay the 2011 Wage Rule for the reasons stated in the proposal. As noted in the proposed rule, if the 2011 Wage Rule were to become effective, it would supplant the revisions made to 20 CFR 655.10(b) in the IFR, which were necessary in light of the court's order in *CATA* v. *Solis.* In that event, we would likely continue to be unable to implement the 2011 Wage Rule, based on the continuation of the Congressional prohibition on its implementation. However, if Congress lifts the prohibition against implementation of the 2011 Wage Rule, the Department would need time to assess the current regulatory framework, to consider any changed circumstances, novel concerns or new information received, and to minimize disruptions. This rule preserves our ability to do so.

Until such time as Congress no longer prohibits the Department from implementing the 2011 Wage Rule, the effective date of the 2011 Wage Rule is delayed indefinitely. If Congress no longer prohibits implementation of the 2011 Wage Rule, the Department will publish a document in the **Federal Register** within 45 days of that event apprising the public of the status of 20 CFR 655.10 and the effective date of the 2011 Wage Rule. This rule does not affect the Interim Final Rule, 78 FR 24047, published on April 24, 2013, establishing the current prevailing wage methodology for the H–2B program; that rule remains in effect.

Signed: at Washington, DC this 26th of August, 2013.

Eric Seleznow,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2013–21132 Filed 8–29–13; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Parts 718 and 725

RIN 1240–AA07

Black Lung Benefits Act: Standards for Chest Radiographs

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) published a direct final rule in the **Federal Register** on June 13, 2013, updating existing film-radiograph standards and providing parallel standards for submission of digital radiographs in connection with claims filed under the Black Lung Benefits Act. The comment period closed on August 12, 2013. OWCP is withdrawing the direct final rule because the agency received significant adverse comment.

DATES: Effective August 30, 2013, the direct final rule published on June 13, 2013, (78 FR 35549) is withdrawn.

FOR FURTHER INFORMATION CONTACT: Steven Breeskin, Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue NW., Suite N–3464, Washington, DC 20210. Telephone: (202) 693–0824 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–800–877–8339 for further information.

SUPPLEMENTARY INFORMATION: On June 13, 2013, OWCP published the direct final rule, *Black Lung Benefits Act: Standards for Chest Radiographs* (78 FR 35549), to update existing film-radiograph standards and provide parallel standards for digital radiographs submitted in Black Lung Benefits Act claims. OWCP stated that the rule would go into effect unless the agency received significant adverse comment; in that event, OWCP stated that it would withdraw the direct final rule and proceed on the companion proposed rule also published in the **Federal Register** on June 13, 2013 (78 FR 35575). Because OWCP has received