could make them eligible for premium tax credits under Treasury regulations (see 26 CFR 1.36–2(a)(1)) or for cost-sharing reductions starting in 2014.[7] This is consistent with the rationale above.

We invite comment on the determination to exclude these individuals from eligibility for the PCIP program and from eligibility for coverage through the Affordable Insurance Exchanges, with the consequences noted above with respect to the premium tax credits and the cost-sharing reductions.

III. Interim Final Regulation and Waiver of Delay of Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 551, *et seq.*), while a notice of proposed rulemaking and an opportunity for public comment is generally required before promulgation of regulations, this is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.

HHS has determined that issuing this regulation in proposed form, such that it would not become effective until after public comment, would be contrary to the public interest. Because the PCIP program—a temporary program with limited funding—is currently enrolling eligible individuals and providing benefits for such enrollees, it is important that we provide clarity with respect to eligibility for this new and unforeseen group of individuals as soon as possible, before anyone with deferred action under the DACA process applies to enroll in the PCIP program.

HHS is issuing this amendment as an interim final rule with comment so as to provide the public with an opportunity for comment on the amendment, including to gather public comment on the implications of the amendment.

The APA also generally requires that a final rule be effective no sooner than 30 days after the date of publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds good cause as to why the effective date should not be delayed, and the agency incorporates a statement of the finding and its reason in the rule issued.

For the same reason that we are issuing an interim final rule, we are making it effective immediately; that is, because the PCIP program—a temporary program with limited funding—is currently enrolling eligible individuals and providing benefits for such enrollees, it is important that we provide clarity with respect to the eligibility of this new and unforeseen group of individuals as soon as possible, before anyone with deferred action under the DACA process applies to enroll in the PCIP program.

IV. Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

V. Statutory Authority

The amendment to the interim final regulation is adopted pursuant to the authority contained in section 1101 of the Patient Protection and Affordable Care Act (Pub. L. 111–148).

List of Subjects in 45 CFR Part 152

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 152 as follows:

PART 152—PRE-EXISTING CONDITION INSURANCE PLAN PROGRAM

■ 1. The authority citation for part 152 continues to read as follows:

Authority: Sec. 1101 of the Patient Protection and Affordable Care Act (Pub. L. 111–148).

■ 2. Section 152.2 is amended by adding paragraph (8) to the definition of ''lawfully present'' to read as follows:

§ 152.2 Definitions.

* * * * *

Lawfully present means— * * *

* * * * *

(8) *Exception.* An individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012, memorandum, shall not be considered to be lawfully present with respect to any of the above categories in paragraphs (1) through (7) of this definition.

* * * * *

Dated: August 24, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: August 27, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2012–21519 Filed 8–28–12; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; DA 12–1155]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order, the Wireline Competition Bureau (Bureau) clarifies certain rules relating to Phase I of the Connect America Fund. Commission staff have received informal inquiries from price cap companies on certain implementation aspects of the rules governing Connect America Fund Phase I. The Bureau also makes an amendment to one of the Commission's rules to fix a clerical error relating to the support for carriers serving remote areas of Alaska.

DATES: Effective October 1, 2012.

FOR FURTHER INFORMATION CONTACT: Joseph Cavender, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Wireline Competition Bureau Order in WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; DA 12–1155, released on July 18, 2012. The full text

[7] This is consistent with prior guidance issued by DHS: ''If my case is deferred, will I be eligible for premium tax credits and reduced cost sharing through Affordable Insurance Exchanges starting in 2014? No. The Departments of Health and Human Services and the Treasury intend to conform the relevant regulations to the extent necessary to exempt individuals with deferred action for childhood arrivals from eligibility for premium tax credits and reduced cost sharing. This is consistent with the policy under S. 3992, the Development, Relief, and Education for Alien Minors (DREAM) Act of 2010.'' See Consideration of Deferred Action for Childhood Arrivals, *http://www.uscis.gov/childhoodarrivals.*

of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. Or at the following Internet address: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0718/DA-12-1155A1.pdf.*

I. Introduction

1. In this Order, the Wireline Competition Bureau (Bureau) clarifies certain rules relating to Phase I of the Connect America Fund. Commission staff have received informal inquiries from price cap companies on certain implementation aspects of the rules governing Connect America Fund Phase I. The Bureau also makes an amendment to one of the Commission's rules to fix a clerical error relating to the support for carriers serving remote areas of Alaska.

II. Background

2. In the *USF/ICC Transformation Order,* 76 FR 73830 (November 29, 2011), the Commission adopted a framework for the Connect America Fund to provide support in the territories of price cap carriers and their rate-of-return affiliates based on a combination of competitive bidding and a forward-looking cost model. The Commission observed that developing a new cost model and bidding mechanism could be expected to take some time. To spur broadband deployment even as those mechanisms are being developed, the Commission established Phase I of the Connect America Fund, a transition mechanism from the old high-cost support mechanisms for price cap carriers to the new Connect America Fund. In Phase I, the Commission froze current high-cost support for price cap carriers and their affiliates, and, in addition, committed up to $300 million in incremental support to promote broadband deployment. The $300 million in incremental support was allocated among price cap carriers using a formula to estimate wire center costs that was based on the prior high-cost proxy model.

3. Participation in the Connect America Fund Phase I incremental support program is optional. But carriers that accept funding are required to deploy broadband to a number of locations, currently unserved by fixed broadband, equal to the amount of incremental support the carrier accepts divided by $775. Each carrier accepting funding must identify the areas, by wire center and census block, in which it intends to deploy broadband to meet its obligation, when it files its notice of acceptance. Carriers are required to complete deployment to no fewer than two-thirds of the required number of locations within two years and all required locations within three years, and they must certify that they have done so as part of their annual certifications under § 54.313 of the Commission's rules. The Commission also provided that ''[c]arriers failing to meet a deployment milestone will be required to return the incremental support distributed in connection with that deployment obligation and will be potentially subject to other penalties, including additional forfeitures, as the Commission deems appropriate.'' However, the Commission continued, ''[i]f a carrier fails to meet the two-thirds deployment milestone within two years and returns the incremental support provided, and then meets its full deployment obligation associated with that support by the third year, it will be eligible to have support it returned restored to it.''

III. Discussion

4. First, the Bureau clarifies how to calculate the amount of support a carrier must return for failing to meet its deployment requirements. Specifically, if a carrier fails to meet its deployment obligations, it will be required to return to the Commission an amount equal to $775 multiplied by the number of locations to which the carrier was required to deploy to but did not, but a carrier will not be required to ''pay twice'' for any failure to meet a requirement. For example, if a carrier accepted $6,975,000 and committed to deploying to 9,000 locations over three years, but only deployed to 5,800 by the end of two years, rather than the 6,000 required at that milestone, the carrier would be required to return $155,000 of its incremental support (200 locations times $775). Similarly, a carrier that accepted the same amount and deployed to all 6,000 locations by the second year but deployed to only 8,900 by the end of the third year would be required to return $77,500 (100 locations times $775). However, if the same carrier deployed to 5,800 of its required 6,000 locations by the second year, returned the $155,000 required, and then continued its deployment, reaching 8,900 by the end of the third year, it would have $77,500 of its returned support restored. The Bureau notes that this discussion does not address any additional penalties that the Commission may choose to impose on any carrier that fails to meet its deployment obligation, as stated in the *Order.*

5. Second, the Bureau clarifies that when a carrier files its notice of acceptance of funding, identifying the wire centers and census blocks in which it intends to deploy, it is not binding itself to deploy only in those areas, nor is it committing to deploy to every unserved location in those areas. The Bureau clarifies that carriers are expected to make a good faith effort to identify where they will deploy when they file their notices of acceptance. The Bureau observes, in this regard, that there are a number of practical obstacles that may make it difficult for carriers to commit irrevocably to a particular deployment plan by July 24th. For example, carriers may not have perfect information now about the number of locations in every potential area, the number of locations in an area may change over time, and the aggressive schedule for identifying intended buildout locations may make it difficult for carriers to gain complete information about potential deployments prior to filing their notices of acceptance. Accordingly, the Bureau clarifies that carriers may, in satisfaction of their deployment requirement, deploy to eligible locations not identified in their notices of acceptance, but will be required to identify subsequently where deployment actually occurred. Similarly, if a carrier finds that deploying to an area it intended to deploy to would be impractical, it will not be subject to penalties on account of its failure to deploy broadband to that particular area.

6. Third, the Bureau clarifies that the certification associated with carriers' two- and three-year deployment milestones, which carriers must include as part of their annual filings under § 54.313(b) of the Commission's rules, must specify the number of locations in a census block-wire center combination to which they have actually built. Carriers must identify the precise number of locations so that appropriate adjustments, if any, can be made to support previously provided, if a carrier fails to meet its deployment obligation. To facilitate the ability of USAC and the Commission to validate that carriers have, in fact, met their deployment obligations, carriers must be prepared, upon request, to provide sufficient information regarding the location of actual deployment to confirm the availability of service at that location.

7. Fourth, the Bureau clarifies that the certifications each carrier makes when it accepts incremental support—that the locations to be deployed to are shown on the National Broadband Map as unserved by fixed broadband by any provider other than the certifying entity

itself or an affiliate; that, to the best of the carrier's knowledge, the locations are, in fact, unserved by fixed broadband; that the carrier's capital improvement plan did not already include plans to complete broadband deployment within the next three years to the locations to be counted to satisfy the deployment obligation; and that incremental support will not be used to satisfy any merger commitment or similar regulatory obligation—are certifications that apply to all locations that in fact the carrier extends broadband to, using Connect America Phase I incremental support. That is, if a carrier finds it necessary to deploy to locations other than the locations identified in its initial acceptance filing, those other locations may not be in areas, for example, that were shown on the National Broadband Map, at the time of acceptance, as served.

8. Fifth, the Bureau clarifies that when a carrier certifies that the locations to which it will deploy are shown as unserved by fixed broadband on the ''current'' version of the National Broadband Map, the ''current'' version of the National Broadband Map is the version that was publicly available on the National Broadband Map Web site on the date eligible support amounts were announced. The Commission intended for carriers to have 90 days to determine how much incremental support they would accept and which wire centers and census blocks they would deploy to in order to meet their Connect America Phase I commitments. To the extent the National Broadband Map data is updated during the 90-day period in which carriers are evaluating how much incremental support they will accept, that could leave carriers with less time to evaluate the updated version of the map. Potentially altering Connect America Phase I incremental support deployment plans before the deadline for them to accept funding would be unreasonable and contrary to the Commission's framework for Connect America Phase I funding, and we clarify the requirement to ensure that carriers have a full 90 days to make their Connect America I Phase plans.

9. Sixth, the Bureau further clarifies that the term ''fixed broadband'' for the purposes of Connect America Phase I includes any technology identified on the then-current version of the National Broadband map that is not identified as a mobile technology or a satellite-based technology. In this regard, the Bureau observes that the technologies reported on the National Broadband Map at the time the *Order* was issued varied from the technologies listed on the Broadband Map currently. The Commission in the *Order* distinguished fixed terrestrial broadband technologies from mobile and satellite broadband technologies, determining that only fixed terrestrial broadband technologies are relevant to the determination of whether an area is served for the purposes of Connect America Phase I; the clarification the Bureau provides here reflects this distinction.

10. Finally, the Bureau corrects § 54.307(e)(5) of the Commission's rules. Paragraph 180 of the first erratum to the *USF/ICC Transformation Order* corrected § 54.307(e)(5) to replace ''described in paragraph (e)(2)(iv) of this section'' with ''described in paragraph (e)(2)(iii) of this section.'' The text to be replaced appeared twice in § 54.307(e)(5), but, through a clerical error, only the second instance of that text in the rule was corrected. We now correct the rule to replace the remaining instance of that text.

IV. Procedural Matters

A. Paperwork Reduction Act

11. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

B. Final Regulatory Flexibility Act Certification

12. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

13. This Order clarifies, but does not otherwise modify, the *USF/ICC Transformation Order.* These clarifications do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to *USF/ICC Transformation Order.* Therefore, the Bureau certifies that the requirements of this Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order including a copy of this final certification in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

C. Congressional Review Act

14. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

V. Ordering Clauses

15. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 2, 4(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and pursuant to §§ 0.91, 0.201(d), 0.291, 1.3, and 1.427 of the Commission's rules, 47 CFR 0.91, 0.201(d), 0.291, 1.3, 1.427 and pursuant to the delegation of authority in paragraph 1404 of FCC 11–161 (rel. Nov. 18, 2011), that this Order *is adopted, effective* October 1, 2012.

Federal Communications Commission.

Trent Harkrader,

Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 to read as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 2. Amend § 54.307 by revising paragraph (e)(5) to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

* * * * *

(e) * * *

(5) *Implementation of Mobility Fund Phase II Required.* In the event that the implementation of Mobility Fund Phase II has not occurred by June 30, 2014, competitive eligible telecommunications carriers will continue to receive support at the level described in paragraph (e)(2)(iii) of this section until Mobility Fund Phase II is implemented. In the event that Mobility Fund Phase II for Tribal lands is not implemented by June 30, 2014, competitive eligible telecommunications carriers serving Tribal lands shall continue to receive support at the level described in paragraph (e)(2)(iii) of this section until Mobility Fund Phase II for Tribal lands is implemented, except that competitive eligible telecommunications carriers serving remote areas in Alaska and subject to paragraph (e)(3) of this section shall continue to receive support at the level described in paragraph (e)(3)(v) of this section.

* * * * *

[FR Doc. 2012–21314 Filed 8–29–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2012–0078]

RIN 2127–AL19

Make Inoperative Exemptions; Retrofit On-Off Switches for Air Bags

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: NHTSA has a regulation that permits motor vehicle dealers and repair businesses to install retrofit on-off switches for air bags in vehicles owned by or used by persons whose request for a switch has been approved by the agency. This regulation is only available for motor vehicles manufactured before September 1, 2012. This document extends the availability of this regulation for three additional years, so that it applies to motor vehicles manufactured before September 1, 2015.

DATES: *Effective Date:* This rule is effective August 30, 2012. *Petitions:* Petitions for reconsideration must be received by October 15, 2012.

ADDRESSES: Any petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Ms. Carla Rush, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–366–1740, fax 202–493–2739).

For legal issues: Mr. William Shakely, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–366–2992, fax 202–366–3820).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background [1]

To prevent or mitigate the risk of injuries or fatalities in frontal crashes, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection'' (49 CFR 571.208), requires that vehicles be equipped with seat belts and frontal air bags.

In the 1990s, while air bags proved to be highly effective in reducing fatalities from frontal crashes, they were found to cause a small number of fatalities, especially to unrestrained, out-of-position children, in relatively low speed crashes.[2] To address this problem, NHTSA developed a plan that included an array of immediate, interim and long-term measures. As one of the interim measures, on November 21, 1997, NHTSA published in the **Federal Register** (62 FR 62406) a final rule permitting motor vehicle dealers and repair businesses to install retrofit on-off switches for frontal air bags in vehicles owned by or used by persons whose request for a switch had been approved by the agency (subpart B of 49 CFR Part 595). This rule provided a limited exemption from a statutory provision that generally prohibits motor vehicle dealers and repair businesses from making inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable FMVSS.[3]

Under the procedures set forth in the 1997 rule, vehicle owners can request a retrofit air bag on-off switch by completing an agency request form (Appendix B of Part 595) and submitting the form to the agency. Owners must certify that they have read the information brochure, in Appendix A of Part 595, discussing air bag safety and risks. The brochure describes the steps that the vast majority of people can take to minimize the risk of serious injuries from air bags while preserving the benefits of air bags, without going to the expense of buying an on-off switch. The agency developed the brochure to enable owners to determine whether they are, or a user of their vehicle is, in one of the groups of people at risk of a serious air bag injury and to make a careful, informed decision about requesting an on-off switch.[4] Owners also must certify that they or another user of their vehicle is a member of one of the risk groups. Since the risk groups for drivers are different from those for passengers, a separate certification must be made on the request form for each frontal air bag to be equipped with a retrofit air bag on-off switch.

If NHTSA approves a request, the agency will send the owner a letter authorizing the installation of one or more on-off switches in the owner's vehicle. The owner may give the authorization letter to a dealer or repair business, which may then install an on-off switch for the driver or passenger air bag or both, as approved by the agency. The retrofit air bag on-off switch must meet certain criteria, such as being equipped with a telltale light to alert vehicle occupants when an air bag has been turned off. The dealer or repair

[1] For a more detailed discussion, see the June 8, 2012 Notice of Proposed Rulemaking (77 FR 33998).

[2] See preamble to agency final rule on advanced air bags, 65 FR 30680, 30682–83, May 12, 2000.

[3] The ''make inoperative'' provision is at 49 U.S.C. 30122.

[4] At NHTSA's request, an expert panel of physicians convened to formulate recommendations on specific medical indications for air bag deactivation. The panel concluded that air bags are effective lifesavers and that a medical condition does not warrant turning off an air bag unless the condition makes it impossible for a person to maintain an adequate distance from the air bag. Specifically, the panel recommended disconnecting an air bag if a safe sitting distance or position cannot be maintained by a: driver or front passenger because of scoliosis, osteoporosis/arthritis; driver because of achondroplasia; or passenger because of Down syndrome and atlantoaxial instability. The panel also warranted the disconnection of air bags if the need for wheelchair related modifications made it necessary or if there is a medical condition that requires an infant or child to be placed in the front passenger seat for monitoring purposes. (The Ronald Reagan Institute of Emergency Medicine Department of Emergency Medicine and The National Crash Analysis Center, ''National Conference on Medical Indications for Air Bag Disconnection,'' July 16–18, 1997.)