

TABLE 1 TO PARAGRAPH (a)(4)(ii)(A)—SIZE DESIGNATION AND SIZE VARIATION CHART

Size designation	Maximum number of fruit per 8-pound sample	Size variation tolerance (diameter) <sup>1</sup>
45	55	¼-inch (6.4 mm).
<sup>2</sup> 49	64	Not applicable.

<sup>1</sup> Not applicable to *Actinidia chinensis* species varieties.  
<sup>2</sup> Applicable only to *Actinidia chinensis* species varieties.

\* \* \* \* \*

**PART 944—FRUITS; IMPORT REGULATIONS**

■ 3. The authority citation for 7 CFR part 944 continues to read as follows:  
**Authority:** 7 U.S.C. 601–674.

■ 4. Amend § 944.550 by revising paragraph (a) to read as follows:

**§ 944.550 Kiwifruit import regulation.**

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meets all the requirements of a U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340), except that the kiwifruit shall be “not badly misshapen,” and an additional tolerance of 16 percent is provided for kiwifruit that is “badly misshapen,” and except that such kiwifruit shall have a minimum of 6.2 percent soluble solids. Such fruit, except for varieties of the *Actinidia chinensis* species, shall be at least Size 45, which means there shall be a maximum of 55 pieces of fruit in an 8-pound sample. Varieties of the *Actinidia chinensis* species shall be at least Size 49, which means there shall be a maximum of 64 pieces of fruit in an 8-pound sample. The average weight of all samples in a specific lot must weigh at least 8 pounds (3.632 kilograms), provided that no individual sample may be less than 7 pounds 12 ounces (3.472 kilograms).

\* \* \* \* \*

**Erin Morris,**  
*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2023–01701 Filed 1–27–23; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF AGRICULTURE**

**Rural Utilities Service**

**7 CFR Part 1740**

[RUS–22–Telecom–0056]

RIN 0572–AC62

**Rural eConnectivity Program**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The Rural Utilities Service (RUS), a Rural Development agency of the United States Department of Agriculture (USDA), hereinafter referred to as “RUS” or “the Agency”, is issuing a final rule with comment. The intent of the final rule is to make updates to the Rural eConnectivity Program (ReConnect Program) regulation to ensure that requirements are clear, accurate as presented and in compliance with Federal reporting requirements.

**DATES:**

*Effective date:* This final rule is effective May 1, 2023.

*Comment date:* Comments due on or before March 31, 2023.

**ADDRESSES:** You may submit comments, identified by docket number RUS–22–Telecom–0056 and Regulatory Information Number (RIN) number 0572–AC62 through <https://www.regulations.gov>.

*Instructions:* All submissions received must include the Agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For general inquiries, contact Laurel Leverrier, Assistant Administrator Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture (USDA), email:

[laurel.leverrier@usda.gov](mailto:laurel.leverrier@usda.gov), telephone: (202) 720–9556.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Rural Development is a mission area within USDA comprising the RUS, the Rural Housing Service, and the Rural Business-Cooperative Service. Rural Development’s mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants, and technical assistance through numerous programs aimed at creating and improving infrastructure, housing, and business throughout rural America. The RUS loan, loan guarantee, and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecommunications and broadband infrastructure, RUS also plays a significant role in improving other measures of quality of life in rural America, including public health and safety, environmental protection and culture and historic preservation.

The ReConnect Program provides loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas. In facilitating the expansion of broadband services and infrastructure, the program will fuel long-term rural economic development and opportunities in rural America. The final rule to establish and codify requirements for the ReConnect Program was published in the **Federal Register** on February 26, 2021 (86 FR 11603).

The intent of these proposed changes is to remove outdated requirements, ensure that the requirements in the regulation are clear, accurate as presented and in compliance with federal reporting requirements. These changes will help provide clarity for the applicants as they prepare their applications for the ReConnect Program.

**II. Summary of Changes to the Rule**

The changes made to 7 CFR part 1740 include:

1. The definition of non-funded service area (NFSA) was updated in § 1740.2 to include telecommunications as well as broadband as a type of service. The program requires applicants to report revenues for all types of data, video, and/or voice services that are offered in the NFSA, so updating the definition should make it clearer that the revenues reported should be inclusive of all services.

2. Several sections were updated to clarify that non-federal entities identified under 2 CFR part 200 should submit a single audit for the previous year from the date the application is submitted while other entities will be required to submit a comparative audit. The language, as currently presented, does not make it clear that non-federal entities, as defined under 2 CFR part 200, that are subject to the Single Audit Act are only required to provide one year of audited financial statements during the years when they have received more than \$750,000 in federal assistance. The sections updated to be clear of the application of the Single Audit Act include:

(a) Sections 1740.10(a) and 1740.60(d)(12), which was redesignated as (c)(12), were updated to remove the word “comparative.”

(b) Section 1740.63 was updated to add a new paragraph (a)(1) and revisions were made to paragraph (a)(2).

(c) Section 1740.80 was updated to add a new paragraph (b) and revisions were made to the redesignated paragraph (c).

(3. Section 1740.46 was amended to update the title from “Buy American Requirement” to “The Buy American preference and the Buy American requirement” and to better clarify and explain the Buy American provision requirements of the Infrastructure Investment and Jobs Act.

4. Section 1740.60 was updated to remove paragraph (b) as this information is now considered obsolete in response to the governmentwide initiative to transition to a unique entity identifier (UEI) in lieu of a Dun and Bradstreet number. Paragraph (c), redesignated as paragraph (b), was updated to add the UEI language and to remove the requirement to provide a CAGE code.

5. Section 1740.60(d)(19), redesignated as (c)(19), was updated to make it clear that applicants must have Tribal consent from the appropriate Tribal official if services are proposed on or over Tribal Land.

### III. Executive Orders and Acts

#### *Executive Order 12866, Regulatory Impact Analysis*

This final rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

#### *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

#### *Executive Order 12988, Civil Justice Reform*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that conflict with this rule will be preempted. No retroactive effect will be given to this rule.

#### *Executive Order 12372, Intergovernmental Consultation*

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related notice entitled, “Department Programs and Activities Excluded from Executive Order 12372” (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

#### *Regulatory Flexibility Act Certification*

RUS certifies that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

#### *National Environmental Policy Act*

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has

determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

#### *Assistance Listing Number (Formally Known as Catalog of Federal Domestic Assistance)*

The Assistance Listing number assigned to the Rural e-Connectivity Pilot Program is 10.752. The Assistance Listings are available on the internet at <https://sam.gov/>.

#### *Unfunded Mandates*

This rule contains no federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for state, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of § 202 and 205 of the Unfunded Mandates Reform Act of 1995.

#### *E-Government Act Compliance*

RUS is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

#### *Executive Order 13132, Federalism*

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

#### *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

The final rule published February 26, 2021 (86 FR 11603) was reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires federal agencies to consult and coordinate with tribes on a government-

to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The amendments in this final rule documenting Tribal support consent and support of proposed projects serving Tribal lands were informed and drafted based on direct feedback from Tribal leaders during Tribal consultation hosted by USDA's Office of Tribal Relations and Rural Development in 2021 and 2022. These changes have also been incorporated into recent ReConnect funding announcements and the same provisions are now included in this final rule for consistency. If Tribal leaders are interested in additional consultation with RUS on these amendments, they are encouraged to contact USDA's Office of Tribal Relations or Rural Development's Tribal Coordinator at: [ALAN@usda.gov](mailto:ALAN@usda.gov) to request such a consultation.

#### *Civil Rights Impact Analysis*

Rural Development, a mission area for which RUS is an agency, has reviewed this rule in accordance with USDA Regulation 4300-4, Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After review and analysis of the rule and available data, it has been determined that based on the analysis of the program purpose, application submission and eligibility criteria, issuance of this Final Rule is not likely to adversely or disproportionately impact very low, low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights impact is likely to result from this rule.

#### *Information Collection and Recordkeeping Requirements*

The Information Collection and Recordkeeping requirements contained in this rule have been approved by OMB under OMB Control Number 0572-0152. This final rule contains no new reporting or recording keeping requirements.

#### **List of Subjects in 7 CFR Part 1740**

Broadband, Community development, Grant programs-communications, Loan programs—communications, Rural areas, Telecommunications.

Accordingly, for reasons set forth in the preamble, 7 CFR part 1740 is amended to read as follows:

#### **PART 1740—RURAL ECONNECTIVITY PROGRAM**

■ 1. The authority citation for part 1740 continues to read as follows:

**Authority:** 7 U.S.C. 1981(b)(4), 7 U.S.C. 901 *et seq.*, 7 U.S.C. 950aaa *et seq.*, and 7 U.S.C. 950cc.

#### **Subpart A—General**

■ 2. Amend § 1740.2 by revising the definition of “Non-funded service area (NFSA)” to read as follows:

##### **§ 1740.2 Definitions.**

\* \* \* \* \*

*Non-funded service area (NFSA)* means any area in which the applicant offers telecommunication/broadband service, or intends to offer telecommunication/broadband service, during the forecast period, but which is not part of its Proposed Funded Service Area.

\* \* \* \* \*

#### **Subpart B—Eligibility Requirements**

■ 3. Amend § 1740.10 by revising paragraph (a) to read as follows:

##### **§ 1740.10 Eligible projects.**

\* \* \* \* \*

(a) Submit a complete application and provide all supporting documentation including unqualified, audited financial statements from the date the application is submitted as detailed in § 1740.63.

\* \* \* \* \*

#### **Subpart D—Award Terms**

■ 4. Revise § 1740.46 to read as follows:

##### **§ 1740.46 The Buy American preference and the Buy American requirement. (Amended)**

The domestic content preference under this Program applies differently to two classes of awardees: those that are defined as Non-Federal Entities under 2 CFR 200.1 and those that are not.

(a) *Non-Federal Entity awardees.* Funding to Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian Tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of section

70914 of the Build America, Buy America Act (BABA) within the Infrastructure Investment and Jobs Act (IIJA).

(b) *All other awardees.* Awardees shall use in connection with the expenditure of loan and grant funds only such unmanufactured articles, materials, and supplies, as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country, substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States or in any eligible country. For purposes of this section, an “eligible country” is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative. The Buy American regulations may be found at, and any requests for waiver must be submitted pursuant to, 7 CFR part 1787.

#### **Subpart E—Application Submission and Evaluation**

■ 5. Amend § 1740.60 by:

- a. Removing paragraph (b);
- b. Redesignating paragraph (c) as paragraph (b) and revising newly redesignated paragraph (b);
- c. Redesignating paragraph (d) as paragraph (c) and revising newly redesignated paragraph (c)(12) and the first sentence of newly redesignated paragraph (c)(19) introductory text; and
- d. Redesignating paragraph (e) as paragraph (d).

The revisions read as follows:

##### **§ 1740.60 Elements of a complete application.**

\* \* \* \* \*

(b) *System for Award Management (SAM).* Prior to submitting an application, the applicant must register in SAM and also obtain a unique entity identifier (UEI) as part of the registration process. Applicants can register and obtain the UEI at <https://www.sam.gov/content/home>. SAM registration must be active with current data at all times, from the application review throughout the active Federal award funding period. To maintain active SAM registration, the applicant must review and update the information in the SAM database annually from the date of initial registration or from the date of the last update or renewal. The applicant must ensure that the

information in the database is current, accurate, and complete. The UEI of the applicant must be included in the application.

(c) \* \* \*

(12) Unqualified, audited financial statements from the date the application is submitted as detailed in § 1740.63;

\* \* \* \* \*

(19) If service is being proposed on or over Tribal Land, a Tribal Government Resolution of Consent from the Tribal Council of the Tribal Government with jurisdiction over the Tribal Lands at issue must be provided to show that they are in support of the project and will allow construction to take place on Tribal Land. \* \* \*

\* \* \* \* \*

■ 6. Amend § 1740.63 by:

■ a. Redesignating paragraphs (a)(2) through (5) as paragraphs (a)(3) through (6).

■ b. Redesignating paragraph (a)(1) as paragraph (a)(2);

■ c. Adding a new paragraph (a)(1); and

■ d. Revising the first sentence of newly redesignated paragraph (a)(2).

The addition and revision read as follows:

**§ 1740.63 Financial information.**

(a) \* \* \*

(1) Applicants subject to 2 CFR part 200 must submit an audited financial statement for the previous year from the date the application is submitted. If an application is submitted and the most recent year-end audit has not been completed, the applicant can use the previous audit that has been completed.

(2) Applicants not subject to 2 CFR part 200 must submit unqualified, comparative, audited financial statements for the previous year from the date the application is submitted.

\* \* \*

\* \* \* \* \*

**Subpart F—Closing, Servicing, and Reporting**

■ 7. Amend § 1740.80 by:

■ c. Redesignating paragraphs (c) through (g) as paragraphs (d) through (h);

■ b. Redesignating paragraph (b) as paragraph (c);

■ a. Adding a new paragraph (b); and

■ d. Revising the first sentence of newly redesignated paragraph (c).

The addition and revision read as follows:

**§ 1740.80 Accounting, monitoring, and reporting requirements.**

\* \* \* \* \*

(b) Awardees subject to 2 CFR part 200 must submit annual audited

financial statements along with a report on compliance and on internal control over financial reporting, in accordance with 2 CFR part 200, subpart F.

(c) Awardees not subject to 2 CFR part 200 must submit annual comparable audited financial statements along with a report on compliance and on internal control over financial reporting in accordance with the requirements of 7 CFR part 1773 using the RUS' online reporting system.

\* \* \* \* \*

**Andrew Berke,**

*Administrator, Rural Utilities Service, Rural Development.*

[FR Doc. 2023-01621 Filed 1-27-23; 8:45 am]

**BILLING CODE 3410-15-P**

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Chapter X**

**Consumer Financial Protection Circular 2023-01: Unlawful Negative Option Marketing Practices**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Consumer financial protection circular.

**SUMMARY:** The Consumer Financial Protection Bureau (Bureau or CFPB) has issued Consumer Financial Protection Circular 2023-01, titled “Unlawful Negative Option Marketing Practices.” In this circular, the Bureau responds to the question, “Can persons that engage in negative option marketing practices violate the prohibition on unfair, deceptive, or abusive acts or practices in the Consumer Financial Protection Act (CFPA)?”

**DATES:** The Bureau released this circular on its website on January 19, 2023.

**ADDRESSES:** Enforcers, and the broader public, can provide feedback and comments to [Circulars@cfpb.gov](mailto:Circulars@cfpb.gov).

**FOR FURTHER INFORMATION CONTACT:** Colin Reardon, Senior Counsel, Office of Law & Policy, at (202) 570-6740. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

**SUPPLEMENTARY INFORMATION:**

**Question Presented**

Can persons that engage in negative option marketing practices violate the prohibition on unfair, deceptive, or abusive acts or practices in the Consumer Financial Protection Act (CFPA)?

**Response**

Yes. “Covered persons” and “service providers” must comply with the prohibition on unfair, deceptive, or abusive acts or practices in the CFPA.<sup>1</sup> Negative option marketing practices may violate that prohibition where a seller (1) misrepresents or fails to clearly and conspicuously disclose the material terms of a negative option program; (2) fails to obtain consumers’ informed consent; or (3) misleads consumers who want to cancel, erects unreasonable barriers to cancellation, or fails to honor cancellation requests that comply with its promised cancellation procedures.

**Background on Negative Option Marketing**

As used in this Circular, the phrase “negative option” refers to a term or condition under which a seller may interpret a consumer’s silence, failure to take an affirmative action to reject a product or service, or failure to cancel an agreement as acceptance or continued acceptance of the offer.

Negative option programs are common across the market, including in the market for consumer financial products and services, and such programs can take a variety of forms. For example, in automatic renewal plans, consumers’ subscriptions are automatically renewed when they expire unless consumers affirmatively cancel their subscriptions by a certain date. In continuity plans, consumers agree in advance to receive a product or service, which they continue to receive until they cancel the agreements. In trial marketing plans, consumers receive products or services for free (or for a reduced fee) for a trial period. After the trial period, consumers are automatically charged a fee (or a higher fee) on a recurring basis unless they affirmatively cancel.

Negative option programs can cause serious harm to consumers who do not wish to receive the products or services for which they are charged. Harm is most likely to occur when sellers mislead consumers about terms and conditions, fail to obtain consumers’ informed consent, or make it difficult for consumers to cancel. The Consumer Financial Protection Bureau (CFPB) has received consumer complaints, including complaints from older

<sup>1</sup> 12 U.S.C. 5481(6), (26), 5531, 5536. For simplicity, the remainder of this Circular refers to covered persons and service providers as “sellers.” The CFPB notes, however, that entities and individuals can be covered persons or service providers (and thus subject to liability under the CFPA) even if they do not themselves engage in “selling” a consumer financial product or service with a negative option feature.