§ 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 misshaped,” and an additional tolerance of 16 percent is provided for kiwifruit that is “badly misshaped,” 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). Each kiwifruit shall be at least Size 45, which means there shall be a maximum of 55 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).

Speech of Erin Morris, Associate Administrator, Agricultural Marketing Service.

For further information contact: For general inquiries, contact Laurel Leverrier, Assistant Administrator, Rural Utilities Service, U.S. Department of Agriculture (USDA), email: 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:

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

<table>
<thead>
<tr>
<th>Size designation</th>
<th>Maximum number of fruit per 8-pound sample</th>
<th>Size variation tolerance (diameter)</th>
</tr>
</thead>
<tbody>
<tr>
<td>45</td>
<td>55</td>
<td>¼-inch (6.4 mm).</td>
</tr>
<tr>
<td>49</td>
<td>64</td>
<td>Not applicable.</td>
</tr>
</tbody>
</table>

1 Not applicable to Actinidia chinensis species varieties.
2 Applicable only to Actinidia chinensis species varieties.

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.


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 Programs, Rural Utilities Service, U.S. Department of Agriculture (USDA), email: laurel.leverrier@usda.gov, telephone: (202) 720–9556.
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.

Executive Order 12868, 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.

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-
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:


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.
information in the database is current, accurate, and complete. The UFI 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. * * *

§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. * * *

§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. 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.

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.

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. 1 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 1 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.