

**OMB Control No. 0572-NEW  
2016**

**SUPPORTING STATEMENT  
0572-New**

**New Equipment Contract, RUS 395, for Telecommunications and Broadband Borrowers**

**A. Justification**

**1. Explain the circumstances that make the collection of information necessary.**

This new collection is associated with a final rule.

The Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, as amended (RE Act), in Title I, sec. 2, The Administrator is authorized and empowered to make loans in the States and Territories of the United States for rural electrification and the furnishing of electric energy to persons in rural areas who are not receiving central station service, and for the purpose of furnishing and improving telephone service in rural areas, as hereinafter provided; to make or cause to be made, studies, investigations, and reports concerning the condition and progress of the electrification of and the furnishing of adequate telephone service in rural areas in the several States and Territories; and to publish and disseminate information with respect thereto.

The RE Act was amended by Title IV, Rural Broadband Access, by Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) (“2002 Farm Bill”). It authorizes and empowers the Administrator of the Rural Utilities Service (Agency), an agency that administers rural utilities programs for USDA Rural Development, to provide loan and guarantees to fund the cost of construction, improvement, or acquisition for facilities and equipment for the provision of broadband service in eligible rural communities in the States and Territories of the United States.

The term of the loan can be as high as 25 years or even longer based on the expected composite economic life based on the depreciation rates of the facilities financed. These loans are secured by a first mortgage on the borrower’s telecommunications/broadband system. In the interest of protecting loan security and accomplishing the statutory objective of a sound program of rural telecommunications/broadband service access, Title VI of the RE Act further requires that the Agency make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower, will be repaid in full within the time agreed.

In the interest of protecting loan security and accomplishing the statutory objective of a sound program of telecommunication, Title II, sec. 201 further states that loans shall not be made unless the Administrator finds and certifies that in his judgment the security therefore is reasonably adequate and such loan will be repaid within the time agreed.

In order to facilitate the programmatic interests of the RE Act, and, in order to assure that loans made or guaranteed by the Agency are adequately secured, the Agency, as a secured lender, has established certain standard contracts and contracting procedures for procuring materials, equipment, and the construction of telecommunications systems.

These procedures apply to procurement and construction for all projects which will or may be financed, in whole or in part, with loans made or guaranteed by the Agency. These requirements are set forth in the standard form of the Agency mortgage.

In an effort to improve customer service provided to RUS rural borrowers, the Agency has proposed to revise, consolidate, and/or streamline its current contracts and contracting procedures. In this activity RUS has and will continue to work with industry groups to obtain their input as to what types of changes they and borrowers may want to see made to the contracts. Details on Agency consultations have been addressed in Question 8.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the Agency has made of the information received from the current collection.**

These new contract forms are used only by RUS Borrowers and their engineers and suppliers. Contract terms and obligations in the RUS' new Equipment Contract, RUS Form 395, reflect present business and RUS practices, and changes in technology, services and equipment. The new Equipment Contract, RUS Form 395 and the associated close-out documents (Forms 395a, 395b, 395c and 395d) will replace the current Equipment Specific Contracts, RUS Forms 397, 398, 525, 545, and the associated documents (Forms 231, 396, 396a, 397b, 397c, 397d, 397f, 397g, 397h, 517, 525a, 744, 752a, 754, and addendums.) The use of the new RUS forms will streamline the contractual process for RUS Borrowers and expedite RUS approval of equipment procurement during the duration of the project.

This information is used to implement provisions of the Agency standard form of loan documents regarding the borrower's purchase of materials and equipment and the construction of its telecommunications and/or broadband system by contract. This collection of information will be used by Agency borrowers and their contractors. In the Telecommunications industry, when a cooperative or company enters into contracts for services, some type of contract form is used. The Agency has developed the specific forms cleared with this package to be used by its borrowers when entering into contracts for goods or services. Standardization of forms by the Agency results in substantial savings to:

- a. Borrowers: If standard forms were not used, borrowers would need to prepare their own documents at a significant expense; and
- b. Government: If standard forms were not used, each document submitted by a borrower would require more extensive and more costly review by both the Agency and the Office of the General Counsel.

This rule also revises 7 CFR 1753, Post-loan Construction Policies to reflect the use of the new contract and forms and other administrative updates. The Software License Agreement, §1753.38c, is updated and incorporated into the new Equipment Contract, RUS Form 395. It will no longer be a “stand-alone” form. RUS is also eliminating several forms that will no longer be used by RUS borrowers including the forms used to obtain, when required by RUS, a Contractor’s Bond. Each of these bond forms were associated with a contract form being eliminated under this rule. Instead, borrowers are approved by RUS to use a generic form, RUS Form 168b, that can be used with any of the RUS Standard Contract Forms, including RUS 395, to obtain such a bond. Therefore, the following contract forms currently found in 7 CFR 1755.30 will be rescinded: RUS Form 257a, “Contractor’s Bond,” RUS Form 397f, “Contractor’s Bond (Special Telephone Equipment),” and RUS Form 525a, ‘Contractor’s Bond (Central Office Equipment).

RUS is also revising the list of contract forms found at 7 CFR 1755.30 by deleting the following forms which will no longer be used: RUS Form 397, “Special Equipment Contract (Including Installation),” RUS Form 398, “Special Equipment Contract (Not Including Installation),” RUS Form 517, “Results of Acceptance Tests,” RUS Form 525, “Central Office Equipment Contract (Including Installation)” and RUS Form 545, “Central Office Equipment Contract (Not Including Installation).” These forms will not be needed and are replaced with the new RUS Form 395 and associated new Forms 395a, 395b, 395c, and 395d. Any actions with regard to changes in forms will be addressed in the corresponding approved collection(s).

Subpart A of 1753 includes some pre-construction review paperwork burdens for which there are no forms. These burdens include:

- a. 1753.3 requires a borrower to send a letter to the Agency requesting approval for any construction which is not in conformance with Agency standards and specifications or detailed on the Loan Design that the Agency has approved. This provides the Agency with the means to review proposed construction to be certain that the design will provide for effective and proficient facilities and preserve loan security.
- b. 1753.6 require borrowers to send a letter to obtain Agency approval to incorporate used materials and equipment or materials and equipment that do not comply with Agency standards and specifications. This provides the Agency with the means to review proposed construction materials to be certain that the quality and design will provide for effective and proficient facilities and preserve loan security.

The Agency requires the submission of a form contract only when the contract is subject to Agency approval. The Agency also requires that the borrower maintain the contract as part of its record retention and accounting system as required by 7 CFR Part 1767 (0572-0003).

The specific purposes and uses of each component of this information collection are addressed as follows:

## **FORMS APPROVED WITH THIS COLLECTION**

### **Written - Letter for pre-construction review of nonconforming standards and specifications.**

Letter for pre-construction review of nonconforming standards and specifications §1753.3 and §1753.6 requires a borrower to write a letter to the Agency requesting approval to incorporate used materials and equipment or for any construction and materials/equipment which are not in conformance with Agency standards and specifications or detailed on the Loan Design that the Agency has approved. This provides the Agency with the means to review proposed construction to be certain that the quality and design will provide for effective and proficient facilities and preserve loan security.

The Agency requires the submission of a form contract only when the contract is subject to Agency approval. The Agency also requires that the borrower follow generally accepted accounting practices as part of its contract record retention system.

### **Written – Lobbying Certification (Telephone Version 3, 8/11).**

§1753 Subparts E and H requires the completion of this lobbying certification.

### **RUS Form 395, Equipment Contract.**

The new RUS form 395 will be used for equipment purchases.

## **NEW ASSOCIATED FORMS WITH RUS FORM 395 ARE AS FOLLOWS:**

### **RUS Form 395a, Certificate of Completion (Equipment Contract Including Installation).**

The RUS Form 395a will be used for the closeout of RUS Form 395 when the contract includes installation.

### **RUS Form 395b, Certificate of Completion (Equipment Contract Not Including Installation).**

The RUS Form 395b form will be used to amend contracts except for distribution line construction contracts.

### **RUS Form 395c, Certificate of Contractor and Indemnity Agreement.**

The RUS Form 395c will be used in the closeout of RUS Form 395.

### **RUS Form 395d, Results of Acceptance Tests.**

The RUS Form 395d is a suggestive form to be used to report results of acceptance testing of equipment for purposes of closing out the contract.

**Form AD-1048, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters –Lower Tier Covered Transactions.” (Form approved under OMB Control No. 0505-0027 – Burden counted under this collection).**

The Form AD-1048 will be signed by the applicant's suppliers, auditors, contractors, etc., and retained by the applicant in their files.

**THE FOLLOWING INFORMATION/FORMS ARE COLLECTED AND ACCOUNTED FOR UNDER OTHER COLLECTION PACKAGES:**

**SF-LLL, "Disclosure of Lobbying Activities" (Common Form approved under OMB Control No.4040-0013).**

Applicant will complete all items on the form that apply for both the initial filing and material change report.

**RUS Form 213, Certificate ("Buy American") (Approved under OMB Control No. 0572-0107).**

This form is used to document compliance with the "Buy American" requirement.

**RUS Form 238, Construction for Equipment-Contract Amendment (Approved under OMB Control No. 0572-0107).**

This form allows borrowers to alter contract scope, terms and conditions; provides legal validation for alterations; legal adjustments to the contractor's bond; and provides the Agency with evidence of the adjusted amount so funds can be advanced properly. This form provides the Agency loan security by tracking changes affecting project scope and costs. Except for the inclusion of terms and conditions related to Public Laws and Executive Orders, etc., this type of contract form would be used by respondents under normal business practice.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission and responses, and the basis for the decision for adopting this means of collection.**

Since computer capabilities differ widely, there are at present no feasible alternatives to requiring that the information be submitted to RUS in hard copy with computer generated drawings, charts, and graphs as supporting documentation where appropriate.

RUS is in the process of reviewing its short and long range electronic plans and needs. We are currently identifying options for collecting data from our borrowers electronically. After the new contract forms are approved, the Agency plans to place an electronic version on the Agency Web Page. The web version will be printable and identical to the hard copy version.

All Forms in this collection are available at the following website: [http://www.rurdev.usda.gov/UP\\_ETPW\\_Forms.html#Telecom](http://www.rurdev.usda.gov/UP_ETPW_Forms.html#Telecom) and are in a pdf. electronic format. A majority of the forms are "printable only". RUS encourages borrowers to use the most advanced technology to prepare the required information.

**4. Describe efforts to identify duplication.**

This collection is specific to a particular procurement of material or equipment related to a RUS funded project. There are no other collections which would provide the same information pertaining to that procurement.

**5. If the collection of information impacts small businesses or other small entities, describe the methods used to minimize burden.**

Information to be collected is in a format designed to minimize the paperwork burden on small businesses and other small entities if applicable. The new RUS forms will streamline the contractual process for the RUS Borrower and all other parties including small businesses and other small entities. The information collected is the minimum needed by the Agency to approve loans and monitor borrower performance. There are no anticipated small businesses or entities.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

The information collected under these programs is the minimum necessary to conform to the requirements of the program regulations established by law. Information is collected when needed and cannot be collected less frequently to meet the requirements of the programs. Failure to collect proper information could result in the improper use of project funds. There are no small business

**7. Explain any special circumstances that would require an information collection to be conducted in a manner:**

- a. **Requiring written responses in less than 30 days.** There are no information requirements for written responses in less than 30 days.
- b. **Requiring more than an original and two copies.** There are no specific requirements.
- c. **Requiring respondents to retain records for more than 3 years.** There are no such requirements.
- d. **Not utilizing statistical sampling.** There are no such requirements.
- e. **Requiring use of statistical sampling which has not been reviewed and approved by OMB.** There are no such requirements.
- f. **Requiring a pledge of confidentiality.** There are no such requirements.
- g. **Requiring submission of proprietary trade secrets.** There are no such requirements.

**8. Describe efforts to consult with persons outside the Agency to obtain their views on availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

On February 12, 2014, RUS published a proposed rule in the Federal Register, (79 FR 8327) to establish a New Equipment Contract and associated Policies for Telecommunications and Broadband Borrowers, RUS Form 395 under 7 CFR Parts 1753 and 1755. The Agency also issued a Request for Comments notice in the *Federal Register* on Thursday, October 1, 2015 at 80 FR 59080 providing the public with an additional opportunity for public comment. Comments were received by the Agency which are summarized and addressed in this section of the final rule.

Comments specifically concerning the new contract were submitted by Osmose Communications Services, LLC and by ACE, The Association of Communications Engineers. Additionally, the Bloom corporation submitted general comments non-related to the RUS Form 395.

**Osmose Communications Services, LLC**

Issue 1: The two (2) comments submitted on behalf of Osmose Communications Services, LLC concerned the provisions of the contract form to accommodate a buyer's request for partial or staged delivery of equipment covered under the contract.

RUS Response: As written, the RUS Form 395 already supports agreements for staged delivery by appropriately filling in the agreed to information in the table that comprises Schedule 1. Due to the fact that Schedule 1 is part of the contract, the delivery schedule is acknowledged by both parties of the contract by the signatures of offer and acceptance.

**Association of Communications Engineers (ACE)**

Issue 1: Twenty two (22) comments submitted on behalf of ACE were editorial in nature, providing typographical correction, consistency with other RUS contracts, and/or section clarity.

RUS Response: RUS accepts these suggestions and has incorporated those suggestions into the document.

Issue 2: ACE referenced the notice published in the Federal Register on October 1, 2015, that RUS technical specifications 397b, 397c, 397d, 397g, and 397h are not being replaced as stated in the notice.

RUS Response: RUS agrees. The Final Rule will state that these documents are being eliminated rather than replaced.

Issue 3: ACE commented that they support RUS' inclusion of sales and use tax in Schedule 2 of RUS Form 395.

RUS Response: No response is required.

## **Bloom Corporation**

Comments not specifically related to the new Equipment Contract, Form 395 were submitted on behalf of the Bloom Corporation, Bellevue, WA. In summary, it was stated that as presently written, the revised regulations do not adequately ensure equipment purchased using program funds are in compliance with the “Buy American” Requirement of the Rural Electrification Act of 1936, as amended. The Bloom Corporation responses are summarized below with the Agency’s responses as follows:

Issue 1: Commenter states that only a manufacturer can certify Buy American compliance. Proposed regulations allow RUS Form No. 213 (Buy American) to be signed by a “Contractor”, “Subcontractor”, “Seller” or “Material Supplier”.

RUS Response: The RUS Form 395 does not include changes to Form 213 or its associated policy. The purpose of this rulemaking is to streamline the contractual process for the RUS Borrower and expedite the approval process of equipment during the duration of the project. Addressing changes to Buy American regulations or the procedure for certification is not within the scope of this rulemaking.

Issue 2: Commenter states that only RUS can confirm that a Buy American Certification is adequate and in line with statutory requirements. Proposed regulations abdicate this oversight function to a “Contractor”, “Subcontractor”, “Seller” or “Material Supplier”. RUS can rely on borrowers and their engineers to ascertain conformance with relevant standards but not the Buy American Act requirement.

RUS Response: The RUS Form 395 does not include changes to Form 213 or its associated policy. The purpose of this rulemaking is to streamline the contractual process for the RUS Borrower and expedite the approval process of equipment during the duration of the project. Changes to Buy American regulations or the procedure for certification is not within the scope of this rulemaking.

Issue 3: Commenter states that if RUS never possesses the signed Buy American Certification, their role is not one of oversight, but is reduced to one of administration only. The proposed regulations do not require borrowers to submit the Buy American Certification paperwork they assembled to RUS. Without that paperwork, RUS is entrusting borrowers to enforce the statutory Buy American requirement in a way I believe they are not permitted.

RUS Response: The procedure specifies the requirement that the certification be maintained and presented to RUS if and when requested.

Issue 4: Commenter states that retiring the Information Publication (I.P.) 344-2, “List of Material acceptable for Use on Telecommunications Systems of RUS Borrowers” reference tool, while still requiring that equipment be in compliance with the Buy American Act, will create an exponential increase in work for borrowers and engineers as they are left to their own devices to determine Buy American compliance, a function the RUS List of Materials once performed. The proposed regulations intentionally or not will require every borrower, for every project, for every component to ascertain Buy American compliance by their own means. And in turn every manufacturer will have to address every inquiry, for every component, from every borrower on a case-by-case basis. The RUS List of Materials was created to avoid this exact scenario.

*RUS Response:* In an open letter from the Rural Utilities Service (RUS) Administrator on May 23, 2011, it was announced that RUS would no longer accept applications for equipment to be added to the List of Materials for Telecommunications and immediately ceased publication of the List of Materials for Telecommunications. To protect the Agency's loan security and compliance with continuing Buy America statutory mandates, RUS transitioned from a listing process to an approach which ensures that construction financed by RUS meets applicable industry standards. This approach has been incorporated into the Agency's review of individual projects and the approval of loan advances. The purpose of this rulemaking is to streamline the contractual process for the RUS Borrower and expedite the approval process of equipment during the duration of the project and not to reinstate the listing process.

*Issue 5:* Commenter states that RUS should create and maintain a Buy American Registry listing of all the equipment for which RUS themselves have collected documented proof are compliant with the Buy American Act. Such a list will resolve most if not all of the issues I raise.

*RUS Response:* The discontinuance of the RUS List of Material, under which the Buy American registry would be maintained, was announced by the RUS Administrator in an open letter on May 23, 2011. The purpose of this rulemaking is to streamline the contractual process for the RUS Borrower and expedite the approval process of equipment during the duration of the project and not to reinstate a listing process.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors of grantees.**

RUS has not made any such decisions or payments.

**10. Describe any assurance of confidentiality provided to respondents, and the basis for the assurance in statute, regulation, or agency policy.**

No assurance of confidentiality is provided. Under the Freedom of Information Act, the public can request most data collected from respondents. The information collected under the provisions of these programs is not considered to be confidential.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

The information collected does not contain any questions of a sensitive nature such as sexual behavior, religious beliefs, or other matters commonly considered private.

**12. Provide estimates of the hour burden of the collection of information.**

See the attached spreadsheet for breakout. The collection is summarized as follows:

Total Annual Respondents	Total Annual Responses	Hours per Response	Total Annual Hours
279	1,407	3.1899	890

Professional time

279 respondents @ (\$44.94/hr. + 29.4% benefits (\$13.21) ) x 222.5 hrs. .... \$12,938.90

Clerical time

279 respondents @ (\$27.77/hr. + 29.4% benefits (\$8.16) ) x 667.5 hrs. .... \$23,983.28  
 Total \$36,922.18

RUS estimates a cost of \$36,922.18 for respondents to comply with this regulation. The cost is based on 279 respondent filings of the new RUS Form 395 and receiving RUS approval. RUS used labor rates based on information from the program’s professional services contracts used by the same respondents. Primary individual’s working time on an equipment contract response would typically be 25% professional consultant earning of \$44.94 per hour and 75% clerical staff member earning \$27.77 per hour. Both would also earn an additional 29.4% of their wages as benefits. See, <http://www.bls.gov/ncs/ect/sp/ecsuhst.pdf>, Page 91. The hourly wage estimates are from the 2013 Bureau of Labor Statistics published mean wages for Engineers, Technicians, and Drafters for the Architectural, Engineering, and Related Services industry.

**13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.**

There are no capital and start-up costs or purchase of services components involved with this collection.

**14. Provide estimates of annualized cost to the Federal Government.**

The cost to the Federal Government is estimated using an hourly rate of \$49.32 for professional time (grade 13, step 5), and \$28.60 to clerical time (grade 9, step 5), per the OPM 2015 wage scale. Additionally, benefits amounting to 36.25% of earned wages were added to the total cost.<sup>1</sup>

Contract review phase

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<sup>1</sup> Cost of total benefits as a percentage of total hourly compensation for Federal Government employees has been calculated by multiplying 36.25% by the hourly OPM wage in accordance with OMB Memorandum M-08 13.

1.5 hours per response X 1407 responses X (\$49.32 + 36.25% benefit (17.88)) = \$94,550.40

Clerical processing phase

0.5 hours per response X 1407 responses X (\$28.60 + 36.25% benefit (\$10.37)) = \$54,830.79

**Total estimated cost to the Federal Government is: \_\_\_\_\_ = \$149,381.19**

**15. Explain the reasons for any program change or adjustments reported in items 13 or 14 of the OMB Form 83-I.**

There were no changes in burden between the proposed rule collection and this collection for the final rule.

**16. For collection of information whose results will be published, outline plans for tabulation and publication.**

RUS has no plans to publish the information collected under the provisions of this program.

**17. If seeking approval to not display the expiration date for OMB approval of the information collected, explain the reasons that display would be inappropriate.**

No such approval is requested.

**18. Explain each exception to the certification statement identified in item 19 on OMB 83-I.**

There are no exceptions requested.

**19. Collection of Information Employing Statistical Methods.**

This collection does not employ statistical methods.