

August 2012

SUPPORTING STATEMENT

OMB Control No. 0572-0020

Request for Approval to Sell Capital Assets

(RUS Form 369)

OMB Terms of Clearance: None

A. JUSTIFICATION

1. Circumstances that make this collection of information necessary.

The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA). It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. In addition to providing loans and loan guarantees, one of the Agency's main objectives is to safeguard loan security until the loan is repaid. Accordingly, the Agency manages loan program in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, as amended (RE Act) and as prescribed by Office of Management and Budget (OMB) Circular A-129, Policies for Federal Credit Programs and Non-Tax Receivables, which states that agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance. In addition, Section 4 of the RE Act states that "Loans under this section shall not be made unless the Secretary finds and certifies that in his judgment the security therefore is reasonably adequate and such loan will be repaid within the time agreed."

The loan contract and mortgage between the Agency and electric borrowers imposes certain restrictions and controls on the borrowers and gives the Agency (and other co-mortgagees in the case of the mortgage) the right to approve or disapprove certain actions contemplated by the borrowers. Certain of these controls and approval rights are referred to informally as "operational controls" because they pertain to decisions or actions with respect to the operation of the borrower's electric systems. Title 7 CFR 1717.616 stipulates certain conditions on the sale, lease, or transfer of capital assets by electric distribution borrowers.

When a borrower enters into the mortgage agreement with the Agency, all current and future capital assets of the borrower are ordinarily mortgaged or pledged to the Federal Government as security for Agency loans. The RE Act and provisions in security

instruments relate to this. Section 7 of the RE Act of 1936, as amended, states “No borrower of funds ... shall, without the approval of the Secretary, sell or dispose of its property, rights, or franchises, acquired under the provisions of this Act, until any loan obtained from the Rural Electrification Administration, including all interest and charges, shall have been repaid.” The loan contract (the agreement between an Agency borrower and the Government) states in Article VI, Section 6.6(b) “the Borrower shall not, without the written approval of the Administrator, voluntarily or involuntarily sell, convey, or dispose of any portion of its business or assets (including, without limitation, any portion of its franchise or service territory) to another entity or person if such sale, conveyance or disposition could reasonable be expected to reduce the Borrower’s existing or future requirements for energy or capacity being furnished to the Borrower under any wholesale power contract which has been pledged as security to the Agency.”

The Agency’s policy on sales of capital assets requires that the sale meet several requirements including the following: 1) the selling price shall be greater than or equal to the fair market value; and 2) the sale shall not jeopardize the repayment of the Agency’s loan. Article II, Section 3.11 of the Agency mortgage states that “The mortgagor may not...without the prior written approval of each Mortgagee, sell, lease, or transfer any Mortgaged Property to any other person or entity (including any subsidiary or affiliate of the Mortgagor), unless:

- (1) there exists no Event of Default or occurrence which with the passing of time and the giving of notice would be an Even of Default;
- (2) fair market value is obtained for such property;
- (3) the aggregate value of assets so sold, leased, or transferred in any 12-month period is less than 10% of Net Utility Plant; and
- (4) the proceeds of such sale, lease or transfer, less ordinary and reasonable expenses incident to such transaction are immediately:
 - (i) applied as a prepayment of all Notes equally and ratably;
 - (ii) in the case of dispositions of equipment, materials or scrap, applied to the purchase of the property useful in the Mortgagor’s utility business, not necessarily of the same kind as the property disposed of, which shall forthwith become subject to the Lien of the Mortgage, or
 - (iii) applied to the acquisition or construction of utility plant.

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

A borrower’s assets provide the security for a Government loan. The selling of assets reduces the security and increases the risk to the Government. An Agency borrower will use RUS Form 369 to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sale of a portion of the borrower’s systems. Agency electric utility borrowers fill out the form to request Agency approval in order to sell capital assets when the fair market value exceeds 10 percent of the

borrower's net utility plant. Specific requirements for completing RUS Form 369, "Sale of Capital Assets by Electric Borrowers," and submission of supporting documentation can be found in RUS Bulletin 115-1. RUS will use the submitted information to determine whether or not to approve the sale and also to keep track of what property exists to secure the loan. The borrower's current assets are used in calculating the risk of default in repaying the loan to the Government. If the borrower meets the requirements outlined in 7 CFR 1717.616, the borrower is not required to obtain Agency approval.

If the Agency approval is not required, the borrower simply fills in the descriptive section on the form to inform the Agency of the sale. RUS Form 369 may also be used by the Agency in granting a partial release of lien.

A certified copy of the resolution of the borrower's board of directors approving the sale must be submitted with the Form 369. Borrowers must file various supporting documentation depending upon the type of assets involved and whether there is a partial release of lien. Supporting documentation may include such items as a letter of transmittal, legal description of the asset, statement of agreement, etc. More detailed information is needed for a partial release of lien. The form and supporting documentation are stored with the other related loan information for a particular loan. All accompanying loan documentation is kept by the Agency for the life of the loan, which is generally 35 years.

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 of responses, and the basis for the decision for adopting this means of collection.

RUS is committed to meeting the requirements of 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. RUS Form 369 requires a signature by a authorized representatives of a business entity. USDA eAuthentication is the system used by USDA agencies to enable customer to obtain accounts that will allow them to access USDA Web Application and services via the Internet. This includes things such as submitting forms electronically, completing surveys online, and checking the status of USDA accounts. USDA will only accept eAuthentication Accounts from individuals. Currently, USDA eAuthentication does not have the mechanism to issue accounts to business, corporations or other entities. Therefore, at this time, RUS cannot accept electronic signature or submission of these documents. However, the agency does make these forms available in a .pdf format for customers and the agency requests approval to continue posting of the form on the agency website.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The data submitted on RUS Form 369 is specific to each borrower and to each asset of the borrower. No similar information exists; therefore there is no duplication of information.

5. If the collection of information impacts small businesses or other small entities (item 5 of OMB Form 83-I), describe any methods used to minimize burden.

All but 10% of the electric borrowers meet the Small Business Administration criteria for a small business. RUS has made every effort to ensure that the burden on these small entities is the minimum necessary to effectively administer the agency programs.

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

The form is completed once for the proposed sale of a particular asset. If this information were not collected at the time of the proposed sale of a borrower's capital assets, the assets securing the Government's loans could be liquidated and the security for outstanding loans would disappear. The result would be increase risk to the Government. In the event of default, the Government could lose outstanding loan funds.

7. Explain any special circumstances that would cause an information collection to conduct in a manner:

a. Requiring respondent to reporting information more than quarterly.

If a borrower chooses to sell more than one asset within a quarter, that borrower would be required to file one form for each sale, which would result in the borrower filing the form more than quarterly. The collection is event-driven, not time-driven.

b. Requiring written response in less than 30 days.

There is no requirement to respond in less than 30 days.

c. Requiring more than an original and two copies.

There is not requirement of more than original and two copies to be submitted.

d. Requiring respondent to retain records for more than 3 years.

Record retention requirements shall be in accordance with 7 CFR 1767.

e. In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study.

This collection is not a survey.

- f. **Requiring the use of a statistical data classification that has not be reviewed and approved by OMB.**

This collection does not employ statistical sampling.

- g. **Requiring a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use.**

This is no requirement of a pledge of confidentiality.

- h. **Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There is no requirement to submit propriety trade secrets.

8. If applicable, identify the date and page number of publication in the Federal Register of the agency's notice soliciting comments on the information collection. Summarize public comments received and describe actions taken by the agency in response to these comments. Describe efforts to consult with persons outside the Agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, reporting format (if any), and on data elements to be recorded, disclosed, or reported.

As required by 5 CFR 1320.8(d), a Notice to request public comments was published on June 14, 2012, at 77 FR 35657. No comments were received. A copy of the Notice is attached.

The following individuals have been consulted to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, etc.:

Kevin Clark
Atchison-Holt Electric Cooperative
P.O. Box 160
Rock Port, MO 64482-0160
660-744-5344

The borrower did not have any difficulty obtaining the form. The borrower feels that the instructions are easily available and clear.

Mike C. Kays
McCone Electric Cooperative
P.O. Box 368
Circle, MT 59215-0368
406-485-3430

The borrower finds the information on the form very available. The borrower stated that the instructions are clear. The GFR also provided detailed instructions on completing the form and the contact if further assistance was needed.

Mike Butler
Newton County REMC
P.O. 400
Goodland, IN 47948-0400
219-297-0400

The borrower feels that the instructions are easily available and clear. The information provide on form all seemed necessary for RUS as mortgage holder.

The Agency maintains close contact with borrowers through Agency general field representative (GFR), field accountants, and headquarters' staff. GFRs have direct personal contact with the borrower in connection with the fulfillment of Agency requirements and filling out the RUS Form 369.

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

Payments or gifts are not provided to respondents.

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

The information collection does not require confidentiality. Information submitted to the Agency by borrowers is covered by the provisions of the Freedom of Information Act (5 U.S.C. 552).

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

There are no questions of a sensitive nature.

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

This information collection consists of 15 hours of burden to the public as shown on the attached Summary of Information Collection. The Agency estimates that approximately

50 percent of this time, or 1.5 hours, is professional time, and the balance of 1.5 hours is clerical time. The agency used Department of Labor wage rates to estimate the hour burden of the collection of information. If an hourly rate of \$48.33 is attributed to professional time, and \$15.05 to clerical time, the costs to the public are as follows:

COST TO THE PUBLIC

Professional	1.5 hours x \$48.33/hr. x 5 responses =	\$362.48
Clerical	1.5 hours x 15.05/hr. x 5 responses =	<u>112.88</u>
	Total cost to the Public	\$475.36

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

a. Total capital and start-up cost component (annualized over its expected useful life); and

There are no capital or start-up costs associated with this collection.

b. Total operation and maintenance and purchase of services component.

There are no operation and maintenance or purchase of service components associated with this collection.

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

The Agency receives approximately 5 responses per year and is estimated to take 1 hour for review and processing by the Agency. Costs are calculated at a rate of \$48.83/hr. (GS-13-5) for professional time and \$20.63/hr. (GS-6-5) for clerical time.

COST TO THE GOVERNMENT

Professional	.75 hours x \$48.33/hr. x 5 responses =	\$181.31
Clerical	.25 hours x \$20.63/hr. x 5 responses =	<u>25.79</u>
	Total cost to the Government	\$207.10

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of the OMB Form 83-1.

This is an extension of a previously approved collection with no change from the previous submission in 2009 other than salary rates.

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

The results of this collection of information are not intended for publication.

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

Rural Utilities Service is seeking approval to not display the OMB expiration date on RUS Form 369. Borrowers often reproduce this form to meet their reporting needs. Many times Borrowers noting previous expiration dates remaining on the Form and carried over each time copies are reproduced or electronically prepared express concern because the form appears to be outdated.

18. Explain each exception to the certification statement identified in item 19 on OMB 83-1.

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This information collection does not employ statistical methods.