

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4200

Heir Property

AGENCY: Rural Business-Cooperative Service, Rural Utilities Service, Department of Agriculture.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The United States Department of Agriculture, Rural Development is soliciting public comment and historical information on the heir property issue as it affects African American farmers and homeowners.

DATES: Comments must be submitted on or before March 1, 2007.

ADDRESSES: Interested persons may submit comments to:

Bethany.Erb@usda.gov Please submit any information you have regarding heir property including, but not limited to legislative action, prior studies (both government and private), historical literature, and personal insight. Please include your position on the matter along with any supporting material and plausible solutions.

FOR FURTHER INFORMATION CONTACT: USDA Rural Development, Bethany Erb (202) 720-8570. *Bethany.Erb@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Overview

Broadly defined, heir property is property passed down from one generation to another. It may be transferred to one heir, subdivided among many heirs or transferred to many heirs with undivided interest. When a property owner dies without an estate plan, state law determines property succession. Typically, properties lacking estate plans are inherited by heirs with undivided interests thereby creating fractional

interest also known as tenancy in common. The heir property issues that have elicited concern in the African American farming community arise from tenancy in common and for the purpose of this Notice the term "heir property" will be used to refer to this specific situation.

The "heir property" issue includes a cluster of problems arising when undivided interest in land is passed to multiple heirs. Problems range from land partition sales to reduced crop yields as a result of underutilization. The array of problems caused by heir property contributes to unsuccessful business models which results in land loss and the deterioration of rural African American communities. It should be noted, however, that while unclear title contributes to unsuccessful business models it is not the sole contributor to the land loss issue.

For historical reasons this issue is closely associated with African American farmers in the South. African American landholdings in the post-bellum South were generally very small. Access to capital and competent legal counsel were problematic and there was often distrust within the African American community regarding the dominant legal and lending institutions.

For all these reasons, heir property issues emerged as a special concern of the African American agrarian community and are a priority of African American farming and land loss prevention organizations today. A parallel issue, heir housing, also presents a significant concern. Although not as extensively studied, heir housing also appears to pose substantial threats to the well being of rural African American communities.

It should be noted that the heir property issue can and does occasionally arise in other contexts. It should also be emphasized that a resolution of the heir property issue, in itself, would not be a complete solution to the difficulties facing African American small farmers today. In particular, small farming operations will continue to face competitive pressures and the need to identify niche markets to survive.

Therefore, this issue is linked with the broader challenges facing all small producers in today's agriculture market. Clearing title is simply one step—though an extremely important one—in

allowing small farmers to develop sustainable market driven business models, which is the key to ensuring the future viability of African American land ownership.

Cultural Importance of Land/ Homeownership

African American land ownership and retention is of particular importance because for generations of African American, especially in the rural south it symbolized a step towards racial equality and self-sufficiency. It signified status in the wider community. USDA recognizes this unique historical and cultural component associated with African American land ownership. This factor is noneconomic, but the linkage of land and homeownership to healthy community life is unmistakable. USDA agrees that reversing the land loss trend is an important objective for rural African American communities.

Land Loss

In 1910 African American land ownership reached its peak of about 15 million acres. Since then land ownership has continually decreased and by 1992 had declined to 2.3 million acres. Because of the significant impact heir property has on land loss, African American land loss prevention organizations consider heir property one of, if not the most, significant factor contributing to land loss.

Not only does heir property contribute to and exacerbate land loss, it also inhibits heir property owners from expanding. At this point, USDA has identified three characteristics that put heir property owners at a disadvantage and therefore contribute to land loss: partition sales, barriers to government programs and private lenders, and reduced incentives to improve the land.

Partition Sales

Partition sales are a court ordered sale of land that results in the highest bidder becoming the property owner. Heir property partition sales commonly occur because one or more heirs want to liquidate their interests in the property. Sometimes another heir is able to buy out their interests, but it is not uncommon for the land to be sold to someone outside the family.

Barriers to Government Programs and Private Lenders

Ownership validation is important for federal farm loans and program enrollment. In certain situations, because heir property owners are not able to produce a clear title to land or a home, they have difficulty obtaining certain types of federal assistance available to other farmers. Like government lenders, private lenders are constrained when applicants cannot use property as collateral. Additionally, lenders are not able to exercise the option of making a loan against a crop. In order to do so, the farmer must have recordable interest in the crop, which cannot be validated by heir property owners.

The long-term effect of ineligibility for government programs and reduced access to private lenders accentuates land-loss and damages rural communities by limiting the resources owners need to maintain or develop their property. This situation also puts these producers at a disadvantage with regards to other producers.

Reduced Incentive To Improve the Land

Property ownership gives individuals an incentive to reinvest in their asset and increases the capacity to build wealth over time by leveraging existing assets. Heir property owners have less incentive to invest in their property because it is not soundly theirs. As a result, utilization and productivity are undermined.

Marketability of property is also reduced. Land value is depressed because property cannot be easily marketed without clear title. Potential buyers are likely to be deterred by the complications of heir property. Lease value is depressed for similar reasons. These lower values further reduce the ability of the heir property owner to improve the productivity of the land.

Finally, such beneficial property modifications as environmental enhancements, product diversification, irrigation and home repairs may be neglected because the incentive to invest is absent for heir property owners. Consequently, land potential is not maximized, which further accelerates the land-loss trend.

Heir Property Study

Purpose of Study

The mission of USDA Rural Development is to increase economic opportunity and improve the quality of life for all rural Americans. For the African American community in particular, the Rural Development mission includes working to increase

African American land and home ownership.

Rural Development believes that prosperity in rural America today depends on economic diversification and flexible adaptation to market opportunities. However, heir property owners' economic options are severely restricted. In order to find a way to expand economic options, USDA began an heir property study in early 2005.

The 2005 USDA heir property study was intended as a follow-up to a more extensive study conducted in 1984 titled; *The Impact of Heir Property on Black Rural Land Tenure in the Southeastern Region of the United States*, conducted by the Emergency Land Fund Inc. At the onset, USDA officials identified four fundamental areas that required study. Areas included:

1. The current status/extent of heir property.
2. What, if any, measures are already in place to prevent and correct heir properties.
3. Determine how frictional ownership affects the African American agricultural business model.
4. Determine what options USDA has for assisting property owners in clearing title.

Data Collection Procedure

In the early summer of 2005, a researcher was assigned to begin studying the heir property issue. The preliminary research determined that heir properties are extremely difficult to monitor or track, and that there was no means by which to access or compare quantifiable data. Heir properties are difficult for government land base systems to track because fractionally-owned lands are not typically enrolled in government programs.

County property records do list property succession, but this data is only relevant for probated property or for title that has been transferred and processed by the courts. These records did prove useful when evaluating historical trends because the researcher was able to determine which properties were tenancies in common before sale.

As a result of this preliminary analysis, USDA concluded that the best way to approach the subject was to select a small area where information could be verified by local farmers and county officials. A small county in eastern Arkansas was chosen as a representative test case.

Current Status

Results of this study confirm that heir property remains a complex problem for African American farmers and

homeowners. In the county selected for the 2005 review, around 40 percent of the African American owned lands were heir property. This is not surprising. The 1980 *The Impact of Heir Property on Black Rural Land Tenure in the Southeastern Region of the United States*, found that 80 percent of all African Americans who owned rural property had not established a will for property succession.

While this research, completed in 1980, thus suggested that the share of future African American heir properties could approach 80 percent of the total, the actual ratio appears to be substantially lower today. USDA believes that partition sales have exacerbated the land loss trend since 1980. This is the reason today's heir ownership is significantly lower than the previous study indicated.

Problems facing today's heir property landowners are similar to those of past generations: partition sales, reduced access to government programs and private lenders, and reduced incentives for land improvement relevant. For example, a landowner in Forrest City, Arkansas was not accepted into the USDA Conservation Security Program because he was unable to show proof of title, which was essential for program enrollment.

The factors that have contributed to land loss also had a similar effect on heir owned homes. For example, heir property homeowners were unable to receive a Rural Development home loan to complete badly needed home repairs. In several cases, homes have been abandoned as a result of unclear title. It is estimated that in certain rural communities of in eastern Arkansas, up to fifteen percent of homes in these communities are heir property homes.

Several community based African American farm organizations are working to address the heir property issue. Much of the assistance they provide is technical such as legal and financial planning tools. This assistance covers both prevention and correction mechanisms. For example, community based organizations teach estate-planning courses, designed to assist minority farmers with property succession. Some organizations also have staff attorneys experienced in assisting heir property owners with land use options. Attorney services appear to be a widely successful technical assistance tool.

Study results concluded that unclear title had a significant impact on farmers' overall ability to sustain business. Unclear title diminishes farm asset returns, access to capital and reduces participation in several USDA programs.

The challenge of developing a sustainable, market driven business model are intensified in heir property situations.

Grants, subsidies, and litigation settlements have failed to prevent land loss. It cannot be overemphasized that long-term stability cannot be based on perpetual dependence on subsidy programs; rather it requires adaptation to market initiatives and the leveraging of assets to build competitive business models.

Request for Public Comments

The objective of any USDA program would be to reverse the land loss trend and foster the growth of healthy, sustainable African American farms and rural communities. USDA is inviting public comment on this goal. USDA seeks public response on the questions listed below. However, public comments are not limited to addressing only the seven bulleted points. Comments on all heir property related issues are welcomed.

1. Greater Understanding. USDA seeks any materials or personal insights that would contribute to the overall understanding of the heir property issue.

2. What has been done, or is being done to alleviate heir properties. What should be done? USDA would like to learn about any previous attempts to clear heir property. USDA is interested in why each attempt succeeded or failed and would like detailed accounts of the attempts.

3. What should USDA's role be to assist African American land and homeowners to clear title?

4. What are the risks—to all parties involved—of clearing title? USDA is mindful of the fact that heir properties are unique and sometimes fragile. It should also be noted that USDA would not sanction any program that could potentially take an ownership interest in farmland.

5. What resources are needed to clear title? The 2005 study proved that there are several resources being used to clear title. USDA seeks public comment to determine if those resources are sufficient and if so is there anything USDA can do to bolster them? If those resources are insufficient, what additional measures should be taken to improve the situation?

6. Is clear title in itself sufficient to reverse the land loss trend? USDA's first objective is the effective resolution of the heir property issue; however USDA realizes that the African American community will quickly advance beyond clear title. Therefore, USDA seeks public comment to determine if

clearing title in itself is enough to reverse the land loss trend. If clear title alone is not enough to reverse the land loss trend, please indicate what else is needed.

Please illustrate any ideas for initiatives that go beyond clear title. USDA is particularly interested in any ideas for educational courses that may help reverse the land loss trend.

7. Role of the Community Based Organizations. Community based organizations (CBOs) have played a critical role in supporting small farmers. In the past century, they have made significant progress advancing civic equality for all minorities. Research suggests that community based organizations will be an essential part of the heir property solution.

Currently, USDA seeks a partnership with a community based organization that has a commitment to local communities and can be a bridge to the government at the local and national levels while at the same time building trust between USDA and African American farmers. USDA seeks public advice on the future role of such a partner. For example, must a CBO be an agriculture related organization in order to effectively administer a clear title program? Or could it be an organization with lesser agriculture credentials, but an equally well-established community relationship, such as a faith-based organization?

USDA Rural Development is working to ensure all sectors of rural America are able to participate in the growth and expansion of the rural economy. The ability of small producers to participate in these opportunities depends on their ability to become vertical owners in the agriculture production process and in order to do so they must have access to capital and innovative business models.

A clear title initiative would be an important contribution of stabilizing African American land ownership and would lay the foundation for a more sustainable and diversified pattern of development for the years ahead.

Dated: November 22, 2006.

Thomas C. Dorr,

Under Secretary for Rural Development.

[FR Doc. E6-22102 Filed 1-9-07; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. APHIS-2006-0147]

RIN 0579-AC26

Cattle for Export; Removal of Certain Testing Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the livestock exportation regulations to eliminate the requirement for pre-export tuberculosis and brucellosis testing of certain cattle being exported to countries that do not require such testing. This action would facilitate the exportation of certain cattle by eliminating the need to conduct pre-export tuberculosis and brucellosis testing when the receiving country does not require such testing.

DATES: We will consider all comments that we receive on or before March 12, 2007.

ADDRESSES: You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS-2006-0147 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2006-0147, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2006-0147.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be