



United States
Department of
Agriculture

Office of the
Assistant Secretary
for Civil Rights

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**INFORMATIONAL MEMORANDUM FOR DEPUTY CHIEF OF STAFF TO THE
SECRETARY**

TO: Carole Jett
Deputy Chief of Staff

FROM: Lloyd Wright
Advisor to the Secretary

SUBJECT: Proposed Resolution to Adjust the Recorded Yields of Black Farmers in
Clarendon County, South Carolina

DATE: November 5, 2010

ISSUE:

The recorded crop yields of black farmers in Clarendon County, South Carolina remain lower than the recorded crop yields of white farmers in the county despite an Administrative Law Judge's finding that the disparity in recorded crop yields among black and white farmers in Clarendon County, South Carolina is racially motivated.

BACKGROUND:

On July 8, 2010 an Administrative Law Judge (ALJ) concluded that the Farm Service Agency (FSA) discriminated against Charles McDonald (a black farmer in Clarendon County, South Carolina) by unlawfully considering his race when establishing his recorded crop yields. McDonald, an award winning corn producer, regularly received lower recorded crop yields than comparable white farmers in his county despite being honored for yielding over 200 bushels of corn per acre.

The ALJ primarily relied on the Slay Report (a statistical analysis of the average established crop yields of black and white corn producers in Clarendon County, South Carolina) to assess whether racial discrimination contributed to the disparity in the established crop yields of black and white farmers. The Slay Report compared the average established yields of nine black corn producers against the average established yields of nine white corn producers in Clarendon County. The Report revealed that the average established yield for black farmers in Clarendon County was 58 bushels of corn per acre while the average established yield for white farmers was 101 bushels of corn per acre, almost twice as much.

Based on the data presented in the Slay Report, the ALJ concluded that racial discrimination was the predominant factor in establishing crop yields in Clarendon County, South Carolina. Additionally, the ALJ noted that "while a number of white farmers succeeded in increasing their yields, no black farmer was identified as having increased his or her yield," which further demonstrates Clarendon County's use of race in recording crop yields.

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DISCUSSION:

Recorded crop yields are used by USDA and FSA to evaluate loan eligibility, disaster payments, deficiency payments and other program benefits. Setting lower established crop yields for black farmers precludes them from fully participating in and/or benefiting from USDA programs and can ultimately result in the loss of their farmland.

Unless the methods used to establish crop yields in Clarendon County, South Carolina are altered, black farmers will remain vulnerable to the loss of their farmland at alarming rates because of the inappropriate and illegal use of race in determining crop yields.

Additionally, the continued effect of this racial disparity on black farmers in Clarendon County will result in, among other things:

- Negative cash flow, which will prevent black farmers from receiving farm loans because they will lack the documented income needed to justify the loan
- Denial of certain benefits and services offered by FSA and other USDA agencies
- Lower commodity payments and other farm payments based on yield
- Low or no insurance payments if payments are based on recorded crop yield, despite being required to pay insurance premiums in order to participate in USDA programs
- Exclusion of black farmers from disaster relief programs. Many black farmers will be ineligible for disaster relief programs that require a minimum percentage of crop loss in order to qualify for relief because their recorded crop yields will impede their ability to demonstrate the required loss.
 - For example, in the McDonald case, the ALJ found that on average, white farmers in Clarendon County received recorded crop yields of 101 bushels per acre while black farmers received recorded crop yields of 58 bushels per acre. If both farmers applied for disaster relief with a program that mandated a 30% loss, the white farmer would be eligible for relief if he yielded a maximum of 70 bushels per acre, while the black farmer would qualify if he yielded a maximum of 40 bushels per acre. Thus, the white farmer could yield almost twice the number of bushels per acre than the black farmer and still remain eligible for disaster relief because his recorded crop yield is nearly double that of the black farmer. In contrast, the black farmer must lose nearly twice as much as the white farmer in order to qualify for the same disaster relief because his recorded crop yield is nearly half that of the white farmer.

The above examples, if left unchecked, will ultimately lead to the additional loss of black farmland in Clarendon County, South Carolina.

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RECOMMENDATIONS:

1. Prior to issuing payments for the 2010 crop year, FSA should be directed to revise the yields for farmers in Clarendon County, South Carolina based on production by soil type. The NRCS soil survey and recorded yields should be used for all farmers in the county. Any reductions to obtain the average yield should be made across the board.
2. Alternatively, the recorded crop yields for black farmers in Clarendon County, South Carolina should be adjusted to 101 bushels per acre to match the average recorded crop yields of white farmers in the county.
3. Determine other counties in South Carolina, as well as other states, where minority farmers have lower recorded yields than white farmers and make the needed changes.