§ 15f.6 What must I say or include in my Section 741 Complaint Request?

If you must file a Section 741 Complaint Request, it should include a copy of your original complaint, a request in writing that USDA consider the complaint in accordance with these procedures, a statement as to when your complaint was filed with USDA, and any other evidence you consider necessary to prove that your complaint is an eligible complaint suitable for consideration under these procedures.

§ 15f.7 May I be represented by an attorney?

(a) If your Section 741 Complaint Request is automatically docketed as set forth in §15f.5(a), and you already are represented by counsel of whom you have notified USDA, then this section does not apply.

(b) If you are filing your Section 741 Complaint Request with USDA, and if you are represented by an attorney, your Section 741 Complaint Request should also include an authorization signed by you indicating that the attorney is entitled to represent you on your behalf. If USDA receives such an authorization, all documents in connection with consideration of your complaint under these procedures will be sent to your attorney and not to you.

(c) Once your Section 741 Complaint Request is docketed with USDA, and you afterwards retain an attorney, you should forward an authorization to USDA signed by you indicating that the attorney is entitled to represent you on your behalf. If USDA receives such an authorization, all documents in connection with consideration of your complaint under these procedures will be sent to your attorney and not to you.

§ 15f.8 What does the Docketing Clerk do with my Section 741 Complaint Request?

All Section 741 Complaint Requests docketed by the OCR Docketing Clerk will be referred to the Director for an informal review. The Director will determine if the complaint is one that can be resolved informally, and, if so, the Director will seek to resolve the complaint informally with the complainant.

§ 15f.9 What will the Director do to settle my Section 741 Complaint Request when it is received?

The Director will review each Section 741 Complaint Request. If the Director finds that your complaint is an eligible complaint, the Director will: review all documents and evidence submitted by you; review all agency or CR files, if any exist, regarding the circumstances surrounding the alleged discrimination; review any damage claims; and seek any further clarification, if necessary, from either you or the agency. CR also may refer your eligible complaint for a formal investigation by the CR Program Investigation Division or by an outside contractor. Based on his or her review, the Director will either undertake negotiations with you to resolve the complaint; or inform you that CR will not settle the complaint and explain to you your options, including your right to request formal proceedings before an ALJ under subpart D of this part within 30 days of receipt of notice from the Director that CR will not settle the complaint. If the complaint is successfully resolved or settled, the Director will issue a final determination disposing of the matter. If you have received a notice that the Director will not settle the complaint prior to February 14, 2003, you have until 90 days after February 14, 2003 to request formal proceedings under subpart D of this part. Any request for formal proceedings received by USDA after the deadlines set
§ 15f.10

forth in this section will not be accept-

[68 FR 7412, Feb. 14, 2003]

§ 15f.10 What if I do not want the Di-
rector to review my Section 741
Complaint Request and I want to
proceed directly to a hearing?

If you do not want the Director to re-
view your Section 741 Complaint Re-
quest, you may request a hearing fol-
lowing the procedures below in subpart
D. You may request a hearing at any
time during informal review or nego-
tiations with the Director, or at any
time during USDA consideration of
your Section 741 Complaint Request.

Subpart D—If I Request a Hearing,
What Will Happen? How Will
the Hearing Be Conducted?

§ 15f.11 Where must I file a hearing re-
quest and what happens to it?

If you desire a hearing, you must file
a request for a hearing with the Dock-
eting Clerk, citing the docket number
assigned to your Section 741 Complaint
Request. When the Docketing Clerk re-
ceives your request for a hearing, your
Section 741 Complaint Request will be
assigned to an ALJ. The Docketing
Clerk will send a notice of your hearing
request to OCR and the agency, noti-
fying them of the docket number and
the assigned ALJ. The Docketing Clerk
also will send you a notice of receipt of
the hearing request that will inform
you of the name of the assigned ALJ.

§ 15f.12 Am I entitled to a hearing in
all circumstances?

Under section 741, you have a right to
a hearing as part of the process for
USDA to render a final determination
on your eligible complaint. However, if
at any time the ALJ determines that
your complaint is not an eligible com-
plain, he or she may dismiss your
complaint with a final determination
and USDA review of your complaint
will then have been completed. You
also are not entitled to a hearing if
there are no material issues of fact in
dispute between you and USDA. In
other words, if the only dispute re-
maining is a question of law, you will
not receive a hearing and the ALJ will
make a final determination under
§15f.16.

§ 15f.13 What is the function of the
ALJ and who may communicate
with him?

(a) What are the powers of the ALJ?
The ALJ is responsible for conducting
a hearing at your request on your Sec-
tion 741 Complaint Request. He or she
will have all powers prescribed in these
rules and will make a proposed deter-
mination on your complaint. The pro-
posed determination then will become
the final determination after 35 days,
unless the ASCR reviews the proposed
determination.

(b) What is an ex parte communication?
An ex parte communication is a com-
munication by one party to a pro-
ceeding with the ALJ outside of the
presence of, or without notice to, the
other parties to a proceeding. Ex parte
communications in the proceedings on
your complaint are prohibited and will
be handled as follows:

(1) The ALJ will not engage in ex
parte communications regarding the
merits of a complaint with any party
or with any person having any interest
in the proceedings on the complaint,
including OCR and any person in an ad-
vocacy or investigative capacity, at
any time between the assignment of a
hearing to him or her and the issuance
of a proposed determination. This pro-
hibition does not apply to:

(i) Discussions of procedural matters
related to the complaint; or
(ii) Discussions of the merits of the
complaint where all parties to the pro-
ceeding on the complaint have been
given notice and an opportunity to par-
ticipate.

(2) In the case of a communication
described in paragraph (b)(1)(ii) of this
section, a memorandum of any such
discussion shall be included in the
hearing record.

(3) No party to the proceeding or
other interested person shall make or
knowingly cause to be made to the
ALJ an ex parte communication rel-
evant to the merits of the complaint.

(4) If the ALJ receives an ex parte
communication in violation of this sec-
tion, the ALJ will place in the written
record:

(i) All such written communications;