

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private party plaintiff under the False Claims Act may participate in proceedings under this subpart to the extent authorized by the provisions of that Act.

**§ 1.315 Separation of functions.**

(a) Neither the investigating official, the reviewing official, nor any employee or agent of the USDA who takes part in investigating, preparing, or presenting a particular case may, in such case or in a factually related case—

- (1) Conduct the hearing in such case;
- (2) Participate in or advise the ALJ in the decision in such case, or participate in or advise in the review of the decision in such case by the judicial officer, except as a witness or representative in public proceedings; or
- (3) Make the collection of penalties and assessments under § 1.341 of this part.

(b) The ALJ shall not be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

(c) Except to the extent limited by paragraph (a) of this section, the representative for USDA may be employed in any constituent agency of USDA, including the offices of either the investigating official or the reviewing official.

**§ 1.316 Ex parte contacts.**

Except to the extent required for the disposition of ex parte matters as authorized by law, the ALJ shall not consult or be consulted by any person or party (except employees of the ALJ's office) on any matter in issue, unless on notice and opportunity for all parties to participate.

**§ 1.317 Disqualification of reviewing official or ALJ.**

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's dis-

covery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f).

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

**§ 1.318 Rights of parties.**

All parties may:

- (a) Be accompanied, represented, and advised by a representative;
- (b) Participate in any prehearing or post-hearing conference held by the ALJ;
- (c) Agree to stipulations of fact or law, which shall be made part of the record;
- (d) Conduct discovery;
- (e) Make opening and closing statements at the hearing;
- (f) Present evidence relevant to the issues at the hearing;
- (g) Cross examine witnesses;
- (h) Present oral arguments at the hearings; and
- (i) Submit written briefs, proposed findings of fact, and proposed conclusions of law after the hearing.

**§ 1.319 Authority of the ALJ.**

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceedings is made.

(b) The ALJ may: