

(1) Has notified the person named in the notice of hearing by the specified date of his or her intent to participate in the hearing as a witness pursuant to § 1.804; and

(2) Who submits written direct testimony on the proposed regulations pursuant to § 1.807; and

(3) Testifies orally at the hearing.

[82 FR 51149, Nov. 3, 2017, as amended at 84 FR 51939, Oct. 1, 2019]

§ 1.803 Institution of proceedings.

(a) *Filing and contents of the notice of hearing.* A proceeding under this subpart shall be instituted by the Secretary or designee through filing the notice of hearing with the hearing clerk. The notice of hearing shall state:

(1) The legal authority under which the rule is proposed.

(2) The scope and nature of the hearing, including witness instructions for testifying, including the means and timing of the submission of pre-hearing documents, and scheduling, as necessary.

(3) The terms or substance of the proposed rule or a description of the subjects and issues involved.

(4) The time and place of such hearing.

(5) The final date for notification of intent to participate as a party or witness in the hearing pursuant to § 1.804.

(6) The person to whom notification of intent to participate as a party or witness is to be provided pursuant to § 1.804, and the means by which such notifications are to be provided.

(7) Any alternative procedures established pursuant to paragraph (d) of this section.

(b) *Giving notice of hearing.* (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER.

(ii) By posting of the notice of hearing to the USDA Web site.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by paragraph (b)(1)(i) of this section.

(c) *Record of notice.* A copy of the notice of hearing published in the FEDERAL REGISTER pursuant to paragraph (b)(1)(i) of this section shall be filed

with the hearing clerk and submitted to the Judge at the hearing.

(d) *Alternative procedures.* The Administrator may establish alternative procedures for the proceeding that are in addition to or in lieu of one or more procedures in this subpart, provided that the procedures are consistent with 5 U.S.C. 556 and 557. The alternative procedures must be described in the notice of hearing, as required in paragraph (a)(7) of this section.

§ 1.804 Notification by interested persons.

(a) Any person desiring to participate as a party or witness at the hearing shall notify the person named in the notice of hearing, as prescribed in the notice of hearing, on or before the date specified in the notice of hearing. A person may be both a party and a witness.

(b) The notification must clearly state whether the interested person is participating at the hearing as a party, witness, or both.

(c) If a party or witness will be participating with or through a representative or counsel, the notification must so state and provide the name of the representative or counsel.

(d) Persons who fail to comply with this section and any specified instructions in the notice of hearing shall be deemed to have waived their right to participate in the hearing. Failure to comply with this section shall result in the exclusion of any filed written testimony.

§ 1.805 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 1.806 Judge.

(a) *Assignment.* No Judge who has any pecuniary interest in the outcome of a proceeding shall serve as Judge in such proceeding.

(b) *Power of Judge.* Subject to review by the Secretary, as provided elsewhere in this subpart, the Judge in any proceeding shall have power to:

(1) Rule upon motions and requests;