

IV. REGULATION HEARING PROCEDURES

- 42. Request for Hearing on Proposed Regulation.** An agency desiring a hearing on a proposed regulation pursuant to S.C. Code Ann. §1-23-111 (1976) (as amended) shall file with the clerk of the Court a transmittal form including a description of the subject matter of the regulation and a request that a hearing be scheduled. Within five (5) days the chief administrative law judge shall assign an administrative law judge to preside over the proceedings.
- 43. Documents Filed with Request for Hearing.** At the time the request for a hearing is made, the agency shall file with the clerk of the Court the following:
- (a) a copy of the drafting notice for the proposed regulation as published in the State Register;
 - (b) the State Register Document Number of the proposed regulation;
 - (c) the proposed date of submission of the proposed regulation to the State Register for publication;
 - (d) the proposed date of publication in the State Register of the text or synopsis of the proposed regulation;
 - (e) a suggested date for the hearing.

2009 Revised Notes

The Request for a Hearing on Proposed Regulations should include documentation showing that the requirements for publication in the State Register have been met.

- 44. Scheduling of Hearing on Proposed Regulation.** Within ten (10) days of receipt of the request for a hearing and the required documents, the administrative law judge to whom the matter is assigned shall notify the agency of the location, date, and time of the hearing to allow participation by all affected interests and shall advise the agency to issue the proposed Notice of Hearing for the Proposed Regulation for publication in the State Register.

2009 Revised Notes

The administrative law judge notifies the agency of the hearing date, location, and time. The agency then publishes the Notice of Hearing for the Proposed Regulation in the State Register.

- 45. Documents to be Pre-Filed with Court.** At least ten (10) days before the date scheduled for the hearing, the agency shall file a statement confirming whether or not there is a need for a hearing as required by S.C. Code Ann. §1-23-110 (1976) (as amended) on the basis that a request for a hearing was made by twenty-five (25) persons, a governmental subdivision or agency, or an association having not less than twenty-five (25) members.
- A. Agency Statement of Need and Reasonableness.** An agency desiring to adopt a regulation shall prepare and pre-file not later than ten (10) days before the date scheduled for the hearing, the full text of the proposed regulation, and a statement of need and reasonableness that contains a summary of anticipated evidence and argument to be presented by the agency at the hearing. The statement shall include citations to any statutes or case law, citations to any economic, scientific, or other manuals or treatises, and a list of any witnesses to be called by the agency to testify on its behalf with a summary of their anticipated testimony. The statement may contain evidence and argument in rebuttal of evidence and argument presented by the public.

- B. Other Pre-Filed Documents.** At the time the agency confirms the hearing, it also shall file a copy of the State Register containing the Notice; all materials received by the agency during the initial drafting period; a list of the agency personnel who will represent the agency at the hearing; a list of all persons who contacted the agency orally or in writing regarding the proposed regulation; and, a list of all persons expected to testify or present evidence at the hearing.

Note to 2013 Amendments

Rule 45 is amended to provide that an agency proposing regulations must notify the Court whether a hearing is needed or not.

- 46. Powers of Administrative Law Judge.** Consistent with law, the administrative law judge is authorized to do all things necessary and proper to the performance of the foregoing and to promote justice, fairness, and economy, including, but not limited to the power to preside at the hearing; administer oaths or affirmations; hear and rule on objections and motions; question witnesses when appropriate to make a complete record; rule on the admissibility of evidence; and strike from the record objectionable evidence, limit repetitive or immaterial oral statements and questions, and determine the order of making statements and questions.
- 47. Order of Proceedings.** All hearings held pursuant to S.C. Code Ann. §1-23-111 (1976) (as amended) shall proceed substantially in the following manner:
- A. Registration of Participants.** All persons intending to present evidence or ask questions shall register with the administrative law judge before the hearing begins by legibly printing their names, addresses, telephone numbers, and names of any individuals or associations that the person represents on a register provided by the administrative law judge.
- B. Notice of Procedure.** The administrative law judge shall convene the hearing at the proper time, and shall explain to all persons present the purpose of the hearing and the procedure to be followed at the hearing so that all persons are treated fairly and impartially. The administrative law judge may impose time limitations on testimony by the agency or interested persons. The administrative law judge also shall announce when the record of the hearing is to be closed, and in its discretion may permit the filing of additional written statements and materials within five (5) days after the hearing. The time period may be extended in the discretion of the administrative law judge, but not later than twenty (20) days after the hearing ends.
- C. Agency Presentation.** The agency representatives will identify themselves and the witnesses expected to testify on the agency's behalf for the record, and make available copies of the proposed regulation at the hearing. The agency shall make its showing of the need for and the reasonableness of the regulation, and shall present any other evidence it considers necessary to fulfill all statutory or regulatory requirements. The agency may rely on its pre-filed Statement of Need and Reasonableness to satisfy its burden, and it may also present oral evidence.
- D. Opportunity for Questions.** Interested persons shall be given an opportunity to address questions to the agency representatives or witnesses or to interested persons making oral statements. Agency representatives may question interested persons making oral statements. Questioning may extend to the proposed regulations or a suggested modification, or may be conducted for other purposes, if material to the evaluation or formulation of the proposed regulations.

- E. Opportunity for Presenting Statements and Evidence.** Interested persons shall be given an opportunity to present oral and written statements and evidence regarding the proposed regulations.
 - F. Questioning by Administrative Law Judge.** The administrative law judge may question all persons, including the agency representatives.
 - G. Further Agency Evidence.** The agency may present any further evidence that it considers appropriate in response to statements made by interested persons. Upon presentation by the agency, interested persons may respond thereto.
 - H. Receipt of Written Materials.** The administrative law judge may permit any interested person to submit written materials after the close of oral testimony on such terms and conditions as permit all parties an opportunity to comment on subsequent submissions.
- 48. Report of Administrative Law Judge.** After the time for the submission of all written materials, the administrative law judge shall issue a written report with findings as to the need and reasonableness of the proposed regulation, and if there is a finding of a lack of need or of reasonableness, may include suggested modifications to the proposed regulation.
- 49. Record of Proceeding.** The hearing record for the proposed regulations shall be closed on the date established by the administrative law judge, but not later than twenty (20) days after the hearing ends. The full record shall include:
- A. all pre-filed documents submitted to the Court;
 - B. copies of all publications in the State Register pertaining to these rules;
 - C. all written petitions, requests, submissions or comments received by the agency or the administrative law judge pertaining to the substance and jurisdiction of the proceeding on the proposed regulation;
 - D. the proposed regulation as submitted to the administrative law judge;
 - E. the transcript of the proceedings, if one has been prepared; and
 - F. the report of the administrative law judge.
- 50. Transcript.** A transcript of the proceedings shall be prepared upon the order of the administrative law judge or the request of an agency or interested person. The party or person requesting the transcript shall pay for its production.

V. SPECIAL APPEALS

- 51. Applicability.** The Rules in this section shall apply exclusively in matters heard on appeal from final decisions pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

2009 Revised Notes

The Special Appeals Rules are the exclusive rules of procedure used in appeals from final decisions of the Department of Corrections and the Department of Probation, Parole and Pardon Services. The Court's jurisdiction to hear such matters is derived entirely from the decisions of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), and Furtick v. S.C. Dep't of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2003). These Rules are based upon the Court's existing general procedural and appellate rules, with adaptations for this specific type of appeal.

- 52. Computation of Time.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after the designated