

685—4.28(17A) Appeals and review.

4.28(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the state archaeologist within 30 days after issuance of the proposed decision.

4.28(2) *Review.* The state archaeologist may initiate review of a proposed decision on the state archaeologist's own motion at any time within 30 days following the issuance of such a decision.

4.28(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with OSA. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

4.28(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal, or by a nonappealing party, within 14 days of service of the notice of appeal. The state archaeologist may remand a case to the presiding officer for further hearing or may personally preside at the taking of additional evidence.

4.28(5) *Scheduling.* OSA shall issue a schedule for consideration of the appeal.

4.28(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The state archaeologist may resolve the appeal on the briefs or provide an opportunity for oral argument. The state archaeologist may shorten or extend the briefing period as appropriate.

[ARC 9025B, IAB 8/25/10, effective 9/29/10]