

685—4.7(17A) Presiding officer.

4.7(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the state archaeologist or the designee of the state archaeologist.

4.7(2) The state archaeologist may deny the request only upon a finding that one or more of the following apply:

a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

b. An administrative law judge is unavailable to hear the case within a reasonable time.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interdivision appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

4.7(3) The state archaeologist shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed.

4.7(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the state archaeologist. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

4.7(5) Unless otherwise provided by law, the state archaeologist, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

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