

§ 16.31 Director's Determinations after investigations.

(a) After consideration of the pleadings and other information obtained by the FAA after investigation, the Director will render an initial determination and serve it upon each party within 120 days of the date the last pleading specified in § 16.23 was due.

(b)(1) The Director's Determination shall include findings of fact and conclusions of law, accompanied by explanations and based upon all material issues of fact, credibility of the evidence, law and discretion presented on the record, together with a statement of the reasons therefor.

(2) The Director shall issue a determination or rule in a party's favor only if the determination or ruling is in accordance with law and supported by a preponderance of the reliable, probative, and substantial evidence contained in the record.

(c) A party adversely affected by the Director's Determination may appeal the initial determination as provided in § 16.33. However, if the Director's Determination that is appealed contains a Corrective Action Plan, the Director has the discretion to suspend the Corrective Action Plan until the appeal is resolved.

(d) If the Director's Determination finds the respondent in noncompliance and proposes the issuance of a compliance order, the initial determination will include notice of opportunity for a hearing under subpart F of this part if a hearing is required by statute or otherwise provided by the FAA. A hearing may be required by statute if the FAA determination would terminate eligibility for grants under 49 U.S.C. 47114(c) or (e), or terminate payments on a grant agreement under 49 U.S.C. subchapter 471. The respondent may elect or waive a hearing, as provided in subpart E of this part.

(e) The Director will not consider requests for rehearing, reargument, reconsideration, or modification of a Director's Determination without a finding of good cause.

[Amdt. 16-1, 78 FR 56145, Sept. 12, 2013]

§ 16.33 Final decisions without hearing.

(a) The Associate Administrator may transfer to the FAA Assistant Administrator for Civil Rights the responsibility to prepare and issue Final Agency Decisions pursuant to this section for appeals with issues concerning civil rights.

(b) The Associate Administrator will issue a final decision on appeal from the Director's Determination, without a hearing, where—

(1) The complaint is dismissed after investigation;

(2) A hearing is not required by statute and is not otherwise made available by the FAA; or

(3) The FAA provides opportunity for a hearing to the respondent and the respondent waives the opportunity for a hearing as provided in subpart E of this part.

(c) In the cases described in paragraph (b) of this section, within 30 days after the date of service of the initial determination, a party adversely affected by the Director's Determination may file in accordance with § 16.13 and serve in accordance with § 16.15 a simultaneous Notice of Appeal and Brief.

(d) A reply to an appeal brief may be filed within 20 days after the date of service of the appeal.

(e) On appeal, the Associate Administrator will consider the issues addressed in any order on a motion to dismiss or motion for summary judgment and any issues accepted in the Director's Determination using the following analysis:

(1) Are the findings of fact each supported by a preponderance of reliable, probative, and substantial evidence contained in the record?

(2) Are conclusions made in accordance with law, precedent and policy?

(3) Are the questions on appeal substantial?

(4) Have any prejudicial errors occurred?

(f) Any new issues or evidence presented in an appeal or reply will not be considered unless accompanied by a petition and good cause found as to why the new issue or evidence was not presented to the Director. Such a petition must:

(1) Set forth the new matter;