FAA issues a hearing order, the proposal for a consent order is submitted jointly to the official authorized to issue a hearing order, together with a request to adopt the consent order and dismiss the case. The official authorized to issue the hearing order issues the consent order as an order of the FAA and terminates the proceeding.

[Doc. No. 27783, 61 FR 54004, Oct. 16, 1996, as amended at Amdt. 16–1, 78 FR 56147, Sept. 12, 2013]

§ 16.245 Associate Administrator review after a hearing.

(a) The Associate Administrator may transfer to the FAA Assistant Administrator for Civil Rights the authority to prepare and issue Final Agency Decisions pursuant to § 16.241 for appeals from a hearing concerning civil rights issues.

(b) After a hearing is held, and, after considering the issues as set forth in § 16.245(e), if the Associate Administrator determines that the hearing officer's initial decision or order should be changed, the Associate Administrator may:

(1) Make any necessary findings and issue an order in lieu of the hearing officer's initial decision or order, or

(2) Remand the proceeding for any such purpose as the Associate Administrator may deem necessary.

(c) If the Associate Administrator takes review of the hearing officer's initial decision on the Associate Administrator's own motion, the Associate Administrator will issue a notice of review within 20 days of the actual date the initial decision is issued.

(1) The notice sets forth the specific findings of fact and conclusions of law in the initial decision that are subject to review by the Associate Administrator.

(2) Parties may file one brief on review to the Associate Administrator or rely on their posthearing brief to the hearing officer. A brief on review shall be filed not later than 10 days after service of the notice of review. Filing and service of a brief on review shall be by personal delivery.

(3) The Associate Administrator issues a final agency decision and order within 30 days of the due date of the brief. If the Associate Administrator

finds that the respondent is not in compliance with any Act or any regulation, agreement or document of conveyance issued under such Act, the final agency order includes a statement of corrective action, if appropriate.

(d) When the final agency decision finds a respondent in noncompliance, and where a respondent fails to properly seek judicial review of the final agency decision as set forth in subpart G of this part, the Associate Administrator will issue an order remanding the case to the Director for the following action:

(1) In the event that the respondent fails to submit, in accordance with the final agency decision, a Corrective Action Plan acceptable to the FAA within the time provided, unless extended by the FAA for good cause, and/or if the respondent fails to complete the Corrective Action Plan as specified therein, the Director may initiate action to revoke and/or deny applications for Airport Improvement Program grants issued under 49 U.S.C. 47114(c)–(e) and 47115. When the Director concludes that the respondent has fully complied with the Corrective Action Plan, the Director will issue an Order terminating the proceeding.

(2) For those violations that cannot be remedied through corrective action, the Director may initiate action to revoke and/or deny the respondent's applications for Airport Improvement Program grants issued under 49 U.S.C. 47114(c)–(e) and 47115.

(e) On appeal from a hearing officer's initial decision, the Associate Administrator will consider the following questions:

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

(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 allowed unless accompanied by a certified petition and good cause found as to why the new matter was not presented to the Director. Such a petition must: