

(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;

(2) Contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and

(3) Contain a statement explaining why such new issue or evidence could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed.

(g) The Associate Administrator will issue a final decision and order within 60 days after the due date of the reply.

(h) If no appeal is filed within the time period specified in paragraph (c) of this section, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final, because there is no administrative appeal, is not judicially reviewable.

(i) No requests for rehearing, reargument, reconsideration, or modification

of a final order will be considered without a finding of good cause.

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

§ 16.34 Consent orders.

(a) The parties may agree at any time before the issuance of a final agency decision to dispose of the case by proposing a consent order. Good faith efforts to resolve a complaint through issuance of a consent order may continue throughout the administrative process. However, except as provided in §16.11(a), such efforts may not serve as the basis for extensions of the times set forth in this part.

(b) A proposal for a consent order, specified in paragraph (a) of this section, shall include:

(1) A proposed consent order;

(2) An admission of all jurisdictional facts; and

(3) An express waiver of the right to further procedural steps and of all rights of judicial review.

(c) If the parties agree to dispose of a case by issuance of a consent order before the FAA issues a Director's Determination, the proposal for a consent order is submitted jointly by the parties to the Director, together with a request to adopt the consent order and dismiss the case. The Director may issue the consent order as an order of the FAA and terminate the proceeding.

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

Subpart D—Special Rules Applicable to Proceedings Initiated by the FAA

§ 16.101 Basis for the initiation of agency action.

The FAA may initiate its own investigation of any matter within the applicability of this part without having received a complaint. The investigation may include, without limitation, any of the actions described in §16.29(b).

§ 16.103 Notice of investigation.

Following the initiation of an investigation under §16.101, the FAA sends a notice to the person(s) subject to investigation. The notice will set forth the areas of the agency's concern and the reasons therefor; request a response to