to dismiss the complaint. Accordingly, a number of commenters addressed issues associated with the Secretary's determination.

IATA pointed out that the language in proposed § 302.611 stated that the Secretary would issue an order within 30 days determining whether a carrier complaint presented a significant dispute, but there was no corresponding language on requests for determination submitted by an airport owner or operator. As the preamble in the NPRM indicated, it has been our intention to issue such orders within 30 days. However, as provided in § 302.619(c), when both a complaint and a request for determination have been filed with respect to the same airport fee, the statutorily-imposed 120-day schedule for resolving complaints controls the course of the proceeding. That is, as required by the FAA Authorization Act, the Secretary will determine whether there is a significant dispute within 30 days of the date the first complaint is filed. In such cases, the determination may come more than 30 days after the date of the airport request. In light of IATA's comment, we have revised the language of § 302.613 to clarify this point.

The comments of both IATA and ATA ask that any order dismissing a complaint for lack of a significant dispute should be clearly stated to be final and appealable. IATA goes on to argue the proposed rule would leave an airport owner or operator in a better position following dismissal of a request for determination than a carrier would be following dismissal of a complaint. We disagree, and we find that no change is necessary in the final rule. If the Secretary dismisses a complaint after finding that there is no significant dispute within the meaning of the FAA Authorization Act, the order of dismissal is subject to the same judicial review as any other order of the Secretary. (If the Secretary instead finds that the complaint fails to meet the procedural requirements of this subpart, the order will set forth the conditions under which a revised complaint may

IATA asks that § 302.611 "provide some reasonably accurate guidelines and standards of review" under which the Secretary will review complaints to determine whether they present a significant dispute. ATA suggests that we employ the standards of Federal Rule of Civil Procedure 12(b)(6), accepting any complaint as constituting a significant dispute as long as it "states a claim for relief under Section 47129." In the alternative, it suggests we employ the standards for grant of summary

judgment under Federal Rule of Civil Procedure 56. Under this approach, as ATA states, "a 'significant dispute' would exist whenever there was a genuine issue of material fact or law."

Accepting either of ATA's recommendations would mean that the Department would set for hearing virtually all complaints brought, no matter how trivial. We believe that this is inconsistent with the statutory intent. If Congress had meant for the Department to hear every complaint in which a claim is made, it surely would not have mandated in § 47129(c)(2) that "the Secretary shall dismiss any complaint if no significant dispute exists." (Emphasis added.) Congress established the extraordinary dispute resolution program in § 47129 to ensure that carriers and airports can obtain a prompt decision when there is an important fee dispute. It plainly understood that the Department has limited resources; if the expedited procedures are employed any time a complainant can state a claim or establish that there is a fact in dispute, the Department could be unable to respond adequately when there are truly significant fee disputes. Moreover, while we are sympathetic to IATA's request for clear guidelines and standards for review, we believe that the circumstances at each airport and the facts behind each fee dispute vary too widely for us to be able to set out specific standards in the final rule. As we proposed, however, § 302.611 states that we will set forth our reasoning in any order dismissing a complaint on the grounds that the alleged dispute is not significant.

AAAE objected to the statement in the preamble that one piece of evidence that a dispute is significant would be that the complaining carrier had attempted to resolve the dispute with the airport but had been unsuccessful. AAAE points out, "Airports and their tenant air carriers can have legitimate, and even vehement disagreements about issues that are, objectively, minor." We agree with AAAE that the intensity of the discussions between airports and carriers does not by itself mean that there is a significant dispute within the meaning of § 47129. Nevertheless, as the preamble to the NPRM stated, the failure of direct negotiations "would be some indication, although not necessarily proof, that there is a significant dispute.'

ACI–NA and IATA disagree sharply on our authority to dismiss airport requests for determination when there is no significant dispute. ACI–NA stated that the Department was correct in determining that the FAA Authorization

Act makes no provision for dismissal on that basis (in contrast with its specific requirement to dismiss carrier complaints that do not present a significant dispute). IATA, on the other hand, claimed that our failure to provide for dismissal of an airport owner or operator's request "is clearly arbitrary and capricious." As IATA's comments note, however, the statutory language on dismissals, in § 47129(c)(2), "on its face appears to be applicable only to complaints and air carriers.' (Emphasis in original.) While IATA suggests that this "may be the result of legislative oversight," we believe this language is plain, and we will adopt the NPRM's proposal to proceed to a final order on the merits when an airport properly submits a request for determination.

Service of Documents

In order to ensure compliance with the extremely short time frames provided by the FAA Authorization Act for action on fee disputes, the NPRM proposed special service requirements. The proposal contained three main elements: (1) Complaints and requests for determination would have to be served on all carriers providing service to the airport; (2) For most filings. service would have to be made by hand, by electronic transmission, or by overnight express delivery; and (3) Parties would actually have to receive the documents no later than the day they are filed.

The NPRM stated that the Department realized that these service requirements could pose a burden in some situations, but it also expressed our belief that they are necessary to permit a consolidated hearing for all complaints. Nevertheless, we specifically invited comment on the service proposals, and particularly on an additional proposal to substitute service of complaints or requests for determination on members of any airline negotiating committee at the airport rather than on all carriers serving the airport. A number of commenters responded to this invitation.

To begin with, AAAE and ACI–NA supported the proposal to allow service of documents on airline committee members at those airports having such committees. The Metropolitan Washington Airports Authority claimed that it should be adequate to serve the committee itself, without serving the individual carrier members. ATA, however, strongly argued that service on the airline committee members would not provide adequate notice to other carriers serving the airport; it advocated requiring service on all carriers serving the airport, preferably at their