As discussed above, the Department presumes that airports will provide all information necessary for carriers to understand the basis and justification for any new or increased airport fee. However, we have included this provision to clarify the Department's ability to ensure that adequate information is made available.

Finally, the Secretary's order will state when the administrative law judge must issue a recommended decision (60 days after the instituting order, unless the order specifies a shorter period).

Section 302.613 Review of Requests for Determination

An airport owner or operator's request for determination of the reasonableness of an airport fee will generally be handled in the same manner as a carrier complaint. As discussed above, we have revised the language of § 302.613 to clarify the timing for action on an

airport's request.

When only an airport request has been filed, and not a carrier complaint, the Secretary will determine within 30 days whether there is a significant dispute and whether the procedural requirements of the subpart have been met. Properly submitted requests raising a significant dispute will be assigned to an administrative law judge in the same manner as carrier complaints, with appropriate guidelines on the scope of the issues and the parties to participate. If there is a procedural deficiency, the request will be dismissed without prejudice, and the order of dismissal will set forth the terms and conditions under which a revised request could be

However, when both an airport request and one or more carrier complaints have been filed, the Secretary will proceed under the statutorily prescribed schedule for resolving the complaint. As required by the FAA Authorization Act, the Secretary will determine whether any complaint presents a significant dispute within 30 days after the first complaint is submitted. If the first complaint is filed after the airport owner or operator's request, the request will be reviewed in conjunction with the complaints, and the consolidated instituting order may be issued more than 30 days following the request.

As discussed above, the Secretary will not dismiss an airport owner or operator's request for determination on the basis that it does not raise a significant issue. In such cases, the Secretary would usually proceed directly to issue a final order determining whether the fee is reasonable. While this determination

would ordinarily not require any additional procedures, the Secretary would retain discretion to require whatever additional procedures are necessary in a particular case.

ACI–NA notes that paragraph (b) differs from paragraph (c) in that the latter specifies that the Secretary's determination with respect to reasonableness will be issued within 120 days after the airport request is filed. ACI–NA asks that we insert the 120-day language in paragraph (b) as well. While ACI–NA is correct that the two provisions should be parallel, § 302.619(b) contains the completion time applicable to all requests for determination. Therefore, to avoid confusion, the final rule deletes the last sentence of proposed paragraph (c).

Section 302.615 Decision by Administrative Law Judge

As provided by the FAA Authorization Act, § 302.615 requires the administrative law judge to issue a recommended decision within 60 days after the case is assigned by the Secretary for hearing, unless the instituting order specifies a shorter period.

ATA asked that we set out in this subpart specific requirements for hearings on airport fee disputes. It recommended that "the Rule provide clear definition as to the nature of these hearings and a standardized approach to the resolution of the complicated factual and legal issues raised by airport fee disputes. As presently crafted, the NPRM would apparently rely upon the Secretary's order to draft a different approach in each and every case. Aside from the logical impracticality of such an unpredictable approach, we believe it to be so lacking in procedural guidance as to be fundamentally inconsistent with the requirements of Section 47129. As an alternative, we propose that the Secretary incorporate the procedures governing hearings set forth in 14 CFR part 302, subpart A, as modified in order to meet the time constraints imposed by Section 47129."

ATA appears to be suggesting that the Department lacks authority to impose specific requirements on the conduct of individual proceedings. This is simply incorrect, and indeed one important purpose of an instituting order is to tailor the general rules to the needs of a particular case. However, with respect to ATA's alternative suggestion that we rely generally on subpart A procedures, no change from the NPRM language is necessary. We have made it clear throughout this rulemaking that subpart A procedures will apply in the absence of a specific applicable provision in this

subpart or a direction in the instituting order. As the FAA Authorization Act expressly states, following assignment of the proceeding to an administrative law judge, "the matter shall be handled in accordance with part 302 of title 14, Code of Federal Regulations, or as modified by the Secretary to ensure an orderly disposition of the matter within the 120-day period and any specifically applicable provisions of this section." (49 U.S.C. 47129(c)(2)). Similarly, subpart A of part 302 states as follows:

Subpart A of this part sets forth general rules applicable to all types of proceedings. Each of the other subparts of this part sets forth special rules applicable to the type of proceedings described in the title of the subpart. Therefore, for information as to applicable rules, reference should be made to subpart A and to the rules in the subpart relating to the particular type of proceeding 14 CFR 302.1(b).

ACI-NA argued that a prehearing conference should be mandatory for all parties in any proceeding brought under this subpart in which an oral hearing is scheduled. Although ACI–NA points out that this is common practice in the federal courts and many state courts, we do not believe that it is desirable to include this requirement in the rule. Once the case is assigned for hearing, we anticipate that the administrative law judge will frequently choose to order a prehearing conference. There might even be situations in which it would be appropriate for the Secretary to require a prehearing conference, in which case the instituting order will direct one be held. However, there is no reason for the final rule to make a prehearing conference mandatory in all cases.

Section 302.617 Petitions for Discretionary Review

The Los Angeles Department of Airports objected to our proposal to provide for the filing of petitions for discretionary review of the administrative law judge's recommended decision. Instead, it argues that the FAA Authorization Act mandates Secretarial review of the recommended decision. It advocated allowing seven days for parties to provide exceptions to the recommended decision, and an additional seven days in which to file cross-exceptions.

As we stated in the preamble to the NPRM, we anticipate that the Secretary will issue all final orders in proceedings under subpart F. Nevertheless, we do not agree that the Authorization Act makes this mandatory. In fact, the statute specifically anticipates that the Secretary might not issue a final order: It provides that the administrative law