consideration revenues derived from activities such as concessions and parking, which are also the product of aviation activities. Failure to consider such revenues to be "aviation related," carriers argued, is inconsistent with the requirement in § 110 to take all airport revenue into consideration in setting aeronautical fees.

The Department has retained the policy as proposed. The approach requested by ATA was specifically rejected by the Supreme Court in the Kent County decision, and § 113 expressly preserves an airport proprietor's right to use a compensatory methodology, which does not require carrier agreement or the cross-crediting of concession revenues. Moreover, § 110 recognizes that airports may depend on revenue generated from nonaeronautical uses for airport capital improvements and other airport system purposes. Accordingly, the policy adopted does not define concessions and parking as aeronautical revenue or require the cross-crediting of concession revenue to carriers. However, as discussed below, terminal costs and other shared costs must be allocated fairly among aeronautical and nonaeronautical users.

## 5. Fair and Reasonable Rates: Allowable Capital Costs

Airports commented that capital costs allowed in the rate base should specifically include such "indirect" costs as debt coverage, cash and capital reserves, and allocation of some airport capital expenditures, *e.g.*, roadways, in the carrier rate base.

ATA did not comment specifically on what capital expenditures should be allocated to aeronautical users, but expressed concerns that airport proprietors are seeking unconstrained rights to generate "excessive surpluses" based on airport proprietors' assertions that adequate reserves are necessary.

The final policy clarifies that the reserves and coverage required in bond indentures and other debt instruments, as well as reserves to cover normal income fluctuations and unforeseen contingencies, may be included in the rate base. The final policy statement also clarifies policy regarding what some commenters referred to as "indirect" capital expenditures, which the Department understands to refer to airport facilities that support aeronautical use of the airport but which also receive nonaeronautical use, such as airport roads and fire-rescue facilities. The policy provides that costs allocable to both aeronautical and nonaeronautical uses, or shared costs, may be included in a particular rate

base if the facility at issue supports the aeronautical activity being charged, and the allocation to aeronautical users is in proportion to the aeronautical purpose and use of the facility.

For example, the costs of roadways on the airport that provide public access to the passenger terminal could not be charged entirely to any class of aeronautical users. However, a portion of roadway costs could be included in the rate base for the terminal building, for example, so long as the portion of the shared costs allocated to terminal users does not exceed an amount that reflects the respective aeronautical and nonaeronautical use of the same facility. The Department does not expect the use of any particular formula for the determination of aeronautical portion of shared costs, because the circumstances may vary. For example, an airfield crash-fire-rescue facility may exist primarily to support Part 121 air carrier operations, but may actually be used primarily for landside public emergency calls. An airport proprietor must be able to justify the reason for the allocation used.

## 6. Fair and Reasonable Rates: Imputed Interest and Rate of Return

Airports argued that the final policy should expressly provide that while the rates charged to aeronautical users cannot exceed costs of providing services, those costs should be considered to include a reasonable rate of return on investment; the return should apply to all internally generated funds, regardless of source; a reasonable rate of return would permit an airport proprietor to accumulate cash reserves, which may be necessary as a condition of financing agreements and to compensate a proprietor for the risk of undertaking a particular investment; and allowance of rate of return will assure that the Department's policy is consistent with Article 10 of the United States-United Kingdom Air Services Agreement ("Bermuda 2"), which permits a competent charging authority to recover a reasonable return. Airport commenters further argued that airport proprietors should be permitted to recover the implicit cost of capital for internally generated funds without regard to source, aeronautical or nonaeronautical; in addition, the rate allowed should be the highest of either the rates of return available on the proprietor's investment at the time of the capital expenditure (lost investment opportunity rates) or the cost of borrowed funds available to the airport proprietor at the time of the expenditure; rates prevailing on bonds at similarly-sized airports is not

appropriate because other airports may have different credit ratings and, therefore, different capital costs.

ATA argued that routine inclusion of "implied capital costs" is inconsistent with the concept of dedicated aviation resources; an airport should not be allowed to collect interest for use of its own reserves; allowance of implied capital costs is a device to generate more revenue than is needed for airport purposes in violation of the congressional direction that airports should not seek to accumulate excessive reserves.

The final policy adopted by the Department continues to permit the charge of imputed interest on the expenditure of airport funds generated from non-aeronautical sources, but not on those generated from aeronautical uses. While ATA is correct that all reserves must generally be used for airport purposes, Federal law does not require that the funds be used for aeronautical activities. Therefore, an airport decision to fund an aeronautical activity is an investment choice that benefits aeronautical users, and the reasonable costs of that investment, including imputed interest, are appropriately recoverable in the aeronautical rate base. The policy provides that the borrowing rate, rather than interest obtainable, is the appropriate measure of reasonable imputed interest for a public entity.

The Department does not agree with the comment that imputed interest should be allowed for the use of funds generated by aeronautical uses. First, a rate of return or imputed interest on the use of aeronautical revenues is not necessary for bond coverage and other reserves, because the policy adopted expressly allows the establishment of such reserves as a direct cost. Second, the use of any reserves generated from aeronautical revenues does not carry with it any implicit cost to the airport for the use of capital, since the reserve was generated by direct charge to users; the Department sees no justification for an additional charge for the use of these funds for the purposes for which they were collected.

To the extent that airports would justify a particular rate of return policy on the basis of bilateral agreements such as Bermuda 2, that reliance is misplaced; Bermuda 2 does not obligate the United States to permit its airports to earn a rate of return; rather the provision requires that each country recognize the other's authority to permit its airports to earn a rate of return on assets, after depreciation, to the extent provided by the domestic law of each country.