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FEDERAL

CIVIL AERONAUTICS AUTHORITY

Washington, D. C.

Codification of Civil Aeronautics Authority Rules and Regulations.

The Civil Aeronautics Authority has adopted a new system of identifying and indexing its economic and general regulations. The Civil Air Regulations are not affected by the change, but new numbers have been assigned to the rules of practice and all other permanent regulations. The change was made at the suggestion of the Federal Register, which is in charge of the codification of the regulations of "general applicability and legal effect" adopted by agencies of the Federal Government. Before putting the change into effect the Authority invited the suggestions and criticisms of the air carriers and others, and received replies favorable to the change.

Under the new system, the Authority's regulations will be divided into two chapters, Chapter I and Chapter II. Each chapter is divided into part numbers and each part number is subdivided into sections.

Chapter I will consist of the Civil Air Regulations. No change has been made in the part and section numbers of the Civil Air Regulations now in force. This chapter consists of Parts 0 to 199, only 30 of which have, up to now, been assigned to specific subjects. The remaining part numbers are available if necessary for future expansion.

Chapter II consists of the rules of practice under Title IV and section 1002 (d) to (i) of the Act, and the economic and general regulations issued by the Authority. This chapter consists of Parts 200 to 299. Only 22 of these part numbers have been assigned to particular subject matters, the remainder being available for future expansion.

A list of part numbers and section numbers already assigned to the rules of practice and economic and general regulations, showing the former number of the rule or regulation, is attached. There is also attached a list showing part numbers assigned to various subjects within certain of the economic and general regulatory powers of the Authority.

PAUL J. FRIZZELL,
Secretary

October 9, 1939

CHAPTER II—ECONOMIC REGULATIONS

The existing rules, regulations and orders of the Civil Aeronautics Authority which are of an economic or general nature and have general applicability and legal effect are as follows:—

Part 202—Accounts and Reports

Section 202.1 Forms of Financial and Statistical Reports of Air Carriers. (Formerly Reg. 407-A-1, adopted October 10, 1938.)

Section 202.2 Forms of Accounts of Air Carriers. (Formerly Reg. 407-A-1, adopted October 10, 1938.)

Part 208—Mail Transportation and Service

- Section 208.1 Review of Orders of Postmaster General Under Section 405(e) of the Act. (Formerly Reg. 405-E-1, adopted August 25, 1939.)
- Section 208.2 Filing of Schedules and Changes Therein By Air Carriers under Section 405(e) of the Act. (Formerly Reg. 405-E-2, adopted August 25, 1939.)

Part 216—Rates for Transportation of Mail

- Section 216.1 Petitions for Determination of Rates of Compensation for Transportation of Mail. (Formerly Reg. 406-A-1, adopted October 4, 1938.)

Part 224—Tariffs

- Section 224.1 Filing, Posting and Publishing of Tariffs by Air Carriers and Foreign Air Carriers. (Formerly Reg. 403-A-1, adopted September 16, 1938.)
- Section 224.2 Transportation Furnished Under Trade Agreements. (Formerly Reg. 403-B-3, adopted June 16, 1939.)

Part 228—Free and Reduced Rate Transportation

- Section 228.1 Free Travel for Postal Employees. (Formerly Reg. 405-M-1, adopted September 2, 1938, as amended November 4, 1938.)
- Section 228.2 Free or Reduced Rate Transportation. (Formerly Reg. 403-B-1, adopted October 31, 1938.)
- Section 228.3 Access to Aircraft by Duly Qualified Inspectors of the Civil Aeronautics Authority. (Formerly Reg. 605-B-1, adopted December 16, 1938, as amended February 17, 1939 and May 9, 1939.)

Part 238—Certificate of Public Convenience and Necessity

- Section 238.1 Applications for Certificates of Convenience and Necessity. (Formerly Reg. 401-B-1, adopted August 20, 1938, as amended September 16, 1938 and October 10, 1938.)
- Section 238.2 Exemption of Alaskan Mail Carriers from Certain Requirements of Regulation 401-B-1. (Formerly Reg. 401-B-2, adopted October 21, 1938.)
- Section 238.3 Terms, Conditions and Limitations of Certificates of Public Convenience and Necessity Issued Under Section 401 of the Act. (Formerly Reg. 401-F-1, adopted February 24, 1939, as amended April 28, 1939.)
- Section 238.4 Terms, Conditions and Limitations of Certificates of Public Convenience and Necessity Issued Under Section 401 of the Act Authorizing Foreign Air Transportation. (Formerly Reg. 401-F-2, adopted May 17, 1939.)
- Section 238.5 Service of "Notice of Non-Stop Service" or "Airport Notice." (Formerly Reg. 401-F-3, adopted May 19, 1939.)

Section 238.6 Temporary Suspensions of Service Under Certificate of Public Convenience and Necessity Authorizing Interstate Air Transportation. (Formerly Reg. 401-K-1, adopted July 21, 1939.)

Part 241—Permits for Foreign Air Carriers

Section 241.1 Applications for Foreign Air Carrier Permits (Grandfather clause). (Formerly Reg. 402-D-1, adopted September 16, 1938.)

Part 248—Interlocking Directors and Officers

Section 248.1 Approvals of Interlocking Relationships. (Formerly Reg. 409-A-1, adopted December 30, 1938, as amended January 20, 1939.)

Part 251—Operating Agreements

Section 251.1 Filing of Pooling and Other Agreements. (Formerly Reg. 412-A-1, adopted July 14, 1939.)

Part 285—Rules of Practice

Section 285.1 Rules of Practice Under Title IV and Section 1002(d) to (i) of the Civil Aeronautics Act of 1938. (Formerly Rules of Practice, adopted November 14, 1938, as amended April 15, 1939 and May 9, 1939.)

Part 287—Procedure, Evidence and Definitions

Section 287.1 Definitions of Terms Used in Rules, Regulations and Orders of the Authority. (Formerly Reg. 205-A-1, adopted November 16, 1938.)

Section 287.2 Non-Disclosure of Information Obtained by Representatives of the Authority in the Course of Examinations, Studies and Investigations. (Formerly Reg. 205-A-2, adopted November 16, 1938, as amended September 26, 1939.)

Part 292—Exemptions and Classifications

Section 292.1 Temporarily Exempting Non-Scheduled Operators from Certain Provisions of Title IV of the Civil Aeronautics Act of 1938. (Formerly Reg. 400-1, adopted October 18, 1938, as amended December 7, 1938.)

ECONOMIC REGULATIONS

The index of existing and future rules, regulations, and orders of the Civil Aeronautics Authority which are of an economic or general nature and have general applicability and legal effect, is as follows:

- Part 202. Accounts, Records and Reports.
- Part 208. Mail Transportation and Service.
- Part 216. Rates for Transportation of Mail.

- Part 221. Rates, Fares, and Charges for Transportation of Persons and Property.
- Part 224. Tariffs.
- Part 228. Free and Reduced Rate Transportation.
- Part 230. Through Service.
- Part 232. Discriminations and Preferences.
- Part 235. Joint Boards (Other Common Carriers).
- Part 238. Certificates of Public Convenience and Necessity.
- Part 241. Permits for Foreign Air Carriers.
- Part 243. Acquisitions of Control.
- Part 246. Consolidation and Mergers.
- Part 248. Interlocking Directors and Officers.
- Part 251. Operating Agreements.
- Part 254. Loans and Financial Aid.
- Part 257. Labor.
- Part 280. Forms and Applications.
- Part 285. Rules of Practice.
- Part 287. Procedure, Evidence and Definitions.
- Part 290. Penalties.
- Part 292. Classifications and Exemptions.

Dated September 28, 1939.

PAUL J. FRIZZELL,
Secretary.

CIVIL AERONAUTICS AUTHORITY

Dockets Nos. 278, 282, 284 and 302

**AMENDMENTS TO CERTIFICATES OF PUBLIC
CONVENIENCE AND NECESSITY**

American Airlines, Inc.

Eastern Air Lines, Inc.

Transcontinental & Western Air, Inc.

United Air Lines Transport Corporation

In the matter of the application of American Airlines, Inc., Eastern Air Lines, Inc., Transcontinental & Western Air, Inc., and United Air Lines Transport Corporation for amendments to certain certificates of public convenience and necessity under section 401 of the Civil Aeronautics Act of 1938, relative to New York, N. Y., and Newark, N. J.

Decided November 7, 1939.

Applicants found entitled to amendments of certificates of public convenience and necessity so as to include the points Newark, N. J., and New York, N. Y., as co-terminals on Routes Nos. 7 and 18 operated by American Airlines, Inc., Routes Nos. 5 and 6 operated by Eastern Air Lines, Inc., Route No. 2, and the route from Newark, N. J., to Kansas City, Mo., via Chicago, Ill., operated by Transcontinental & Western Air, Inc., and Route No. 1 operated by United Air Lines Transport Corporation.

Applicants found entitled to use North Beach Airport for the purpose of serving the point New York, N. Y., provided the necessary air carrier operating

certificates with respect to such use are obtained prior thereto.

H. O. Hale, for American Airlines, Inc.

Gerald B. Brophy and *John T. Lorch*, for Transcontinental & Western Air, Inc., and Eastern Air Lines, Inc.

Paul M. Godehn, for United Air Lines Transport Corporation.

John S. Wynne, for Newark, N. J., Intervener.

Frederick V. Bryan, for New York, N. Y., Intervener.*

L. Welch Pogue and *George C. Neal*, for the Civil Aeronautics Authority.

OPINION

BY THE AUTHORITY:

American Airlines, Inc. (hereinafter referred to as "American"), by application filed July 18, 1939, Eastern Air Lines, Inc. (hereinafter referred to as "Eastern"), by application filed September 11, 1939, Transcontinental & Western Air, Inc. (hereinafter referred to as "TWA"), by application filed July 15, 1939, and United Air Lines Transport Corporation (hereinafter referred to as "United"), by application filed July 14, 1939, seek to amend certain of their certificates of public convenience and necessity under section 401 of the Civil Aeronautics Act of 1938 (hereinafter referred to as the "Act"). American seeks to include New York, N. Y., as an additional point to be served on Routes Nos. 7 and 18. Eastern requests amendments to its certificates naming New York, N. Y., as a terminal point, and changing the designation of Newark, N. J., from that of a terminal point to that of an intermediate point on Routes Nos. 5 and 6. TWA requests amendments to its certificates naming New York, N. Y., as a terminal point and changing the designation of Newark, N. J., from that of a terminal point to that of an intermediate point on Route No. 2, and the route from Newark, N. J., to Kansas City, Mo., via Chicago, Ill. United requests an amendment to its certificate naming New York, N. Y., as a terminal point and changing the designation of Newark, N. J., from that of a terminal point to that of an intermediate point on Route No. 1.

By an order of the authority dated August 18, 1939, the applications of American, TWA, and United were consolidated into one proceeding. The order provided that any other application which might be filed with the Authority after the date thereof and on or before the date of the hearing for an amendment to an existing certificate authorizing air transportation to or from New York, N. Y., would be heard in said proceeding upon the further order of the Authority; and pursuant to this provision the application of Eastern, filed on September 11, 1939, was consolidated for hearing with the other applications by the Authority's order entered on that date.

By a further order of the Authority dated September 6, 1939, all questions relating to the airports to be used by each applicant in serving the points New York, N. Y., and Newark, N. J., in the event that the above applications should be granted, were included as matters for determination in this proceeding.

The applications were duly filed and notice thereof was given to the public and to the air carriers included in a list issued by the Authority, in accordance with the requirements of section 238.1 of the Authority's rules and regulations. A hearing was held before the Authority on the dates of September 11th to 16th, inclusive, and September 19th to 22nd, inclusive. Following the hearing, briefs

* The City of New York, originally appearing under Rule 4(a) of the Rules of Practice, was granted permission to intervene upon oral motion made by counsel for the City of New York during the course of the proceedings.

were filed in support of the applications by American, Eastern, TWA, United, and the City of New York, N. Y., and by the City of Newark, N. J., in opposition thereto.

The decision in this case, under the orders of the Authority referred to above, involves two issues which, although separate, are to a degree interrelated. The first relates to the right of the applicants to engage in air transportation to and from New York, N. Y., in addition to Newark, N. J. The second involves permission to utilize a particular landing area or areas in rendering service to the points Newark, N. J., and New York, N. Y., in the event that the applications are granted.

The applications filed by American, Eastern, TWA and United are governed by the provisions of section 401 of the Act. Subsection (b) thereof relates to the filing of applications for certificates of public convenience and necessity; and subsection (d) (1) provides as follows:

"The Authority shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Authority hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied."

Subsection (h) provides in part as follows:

"The Authority, upon petition or complaint or upon its own initiative, after notice and hearing, may alter, amend, modify, or suspend any such certificate, in whole or in part, if the public convenience and necessity so require . . ."

Both of these subsections establish public convenience and necessity as the standard under which the Authority must exercise its discretionary power in issuing or amending certificates of public convenience and necessity. Subsection (d) (1) also expressly prescribes an additional test, namely, whether a particular applicant is "fit, willing, and able" to perform the air transportation for which authorization is sought and to conform to the provisions of the Act and the rules, regulations, and requirements of the Authority. It will not be necessary in this opinion to decide whether the order of the Authority in this proceeding is properly issuable under section 401(d) (1) or 401(h) inasmuch as the record establishes that each of the applicants meets the additional test set down in section 401(d) (1). Each of the applicants has been engaged in scheduled airline operations for a substantial period of time, three of them operating an East-West transcontinental service and the fourth operating a North-South service from Miami, Fla., and Brownsville, Tex., in the south, to Newark, N. J., and Chicago, Ill., in the north. On the basis of this performance, it is clear that each of the applicants is fit, willing, and able to perform properly the air transportation for which authorization is sought, and to conform to the provisions of the Act, and the rules, regulations and requirements of the Authority thereunder, and we so find.

It now becomes necessary to determine whether or not the air transportation for which authorization is sought is required by the public convenience and necessity.

Congress has prescribed specifically certain of the elements which must be considered by the Authority in deciding what is in the public interest and in accordance with the public convenience and necessity. Section 2 of the Act, which embodies the declaration of policy, provides as follows:

"In the exercise and performance of its powers and duties under this Act, the Authority shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity—

"(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

"(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

"(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

"(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

"(e) The regulation of air commerce in such manner as to best promote its development and safety; and

"(f) The encouragement and development of civil aeronautics."

It is apparent that the interest to be considered whenever, as in the present case, the public convenience and necessity becomes an issue, is the national interest; that the "public" whose convenience and necessity is to be served is not limited to the public within the corporate limits of any municipality. Congress has decreed that consideration shall be given to the encouragement and development of an air transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service and of the national defense. The phrase "foreign and domestic commerce" obviously does not connote a local interest. Nor does the phrase "the postal service and the national defense" describe local interests. Such interests transcend municipal and even state boundaries. In the present proceedings, therefore, we must consider the national interest as paramount, giving full consideration, however, to the interests represented by the Cities of New York and Newark in their relation to, and as a part of, the national public interest.

The issue here under consideration involves the general question of the needs of the New York-Northeastern New Jersey Metropolitan District* (hereinafter called the "Metropolitan District") with respect to air transportation service. According to the official figures of the 1930 Census, published by the United States Department of Commerce and referred to by a witness for Newark, N. J., this Metropolitan District has a total population of 10,901,424 contained in an area of 2,514 square miles. In population, the Metropolitan District is more than twice the size of the Chicago Metropolitan District, which ranks second in the nation, and it is almost 1,000 square miles greater in area than any other metropolitan district as recognized by the Bureau of the Census.

At the present time, Newark, N. J., through the Newark Airport, is the only point serving the Metropolitan District in so far as scheduled airline trans-

* This is the title used to describe the greater New York metropolitan area in the 1930 Census. The New Jersey Division refers to the part thereof lying within the State of New Jersey, and the New York Division of the Metropolitan District to that part lying within the States of New York and Connecticut.

portation is concerned. Newark, roughly speaking, is located in the western half of the area constituting the Metropolitan District and is accessible to most of the New Jersey territory within the Metropolitan District as well as to lower Manhattan. There is no point located in what may be described as the eastern half of the Metropolitan District readily accessible with respect to the greater part of the territory east of the Hudson River, to which airline service is authorized at present, with the exception of Route No. 23 operated by American, and we so find.

The New York Division, excluding the Borough of Richmond and Rockland County which lie west of the Hudson River, has a total population of 7,771,891 according to the 1930 Census. As shown by the record, the total value of products manufactured in the industrial area of this section, excluding Manhattan, during 1935 was roughly \$1,367,360,000, or 24% of the total value of products manufactured in the entire New York Industrial Area.* It was testified that Westchester County and sections of Long Island within the Metropolitan District include large residential areas.

The combined population of the Boroughs of Queens and the Bronx alone is greater by almost a million people than any other city in the United States other than New York, N. Y., itself and Chicago, Ill., and the major part of this area is more than an hour removed from the Newark Airport. Westchester County, sections of Connecticut and the outlying sections of Long Island within the Metropolitan District have a combined population of 999,781, and they are still further removed from the Newark Airport. It is a well-known fact, and the record establishes, that these areas play an important part in the industrial and business activities of the nation. Interest in establishing adequate air transportation service to a community of this size and importance is more than local in scope; the national interest requires ready access to such a community.

Other evidence in the record establishes the need for more than one airport available for use in rendering air transportation service to the Metropolitan District as a whole.

Newark's first exhibit, strongly relied upon by this intervener, is a report submitted on November 29, 1927, by a special "Fact Finding Committee on Suitable Airport Facilities for the New York Metropolitan District". The Committee was appointed by the Honorable Herbert Hoover, then Secretary of Commerce, and was composed of twenty-four members, including representatives of the Mayors of Newark and New York, the Governor of New Jersey, the New Jersey State Chamber of Commerce, the Chambers of Commerce of Newark and the boroughs of New York City, the Department of Commerce, the Postmaster General, the United States Weather Bureau, various air transport companies and the Daniel Guggenheim Fund for the Promotion of Aeronautics. On page 5 of the report, the Committee makes the following statement:

"As a result of the studies that have been made, it is felt that a general plan looking toward the development of a system, or series, of airports should be recommended which may be carried out as the increasing needs of commercial aeronautics and of private flying may require."

The following specific recommendations appear on page 8 of the report:

"The most important need for any city to consider today in developing airport facilities is air transport, although the importance of aerial service is rapidly increasing.

"The sites suggested as suitable airport locations for the Metropolitan

* A term appearing in the record which apparently describes a territory approximately the same as the Metropolitan District described supra, including Northeastern New Jersey.

District fall in six general localities which have been designated as follows:

1. The Queens-Flushing Bay Area
2. The Newark Bay Area
3. The Bronx-East River Area
4. The Hackensack Meadows Area
5. The Jamaica Bay Area
6. The Wall Street-Brooklyn Area

"From the point of view of air transport, airport facilities should be as close as practicable to the center of the Metropolitan District, and in the direction of flow of air traffic. For northern and northeastern air traffic, the natural point of arrival and departure is in either the Queens-Flushing Bay Area or the Bronx-East River Area. For southern and western traffic, the natural point of arrival and departure is in either the Newark Bay Area or the Hackensack Meadows Area.

"There is immediate necessity for an airport east of the Hudson River located in the Queens-Flushing Bay Area. . . .

"An airport is now being developed in the Newark Bay Area by the City of Newark . . . which is recommended by this Committee as first choice for the location of an airport in this area . . ."

The Committee thus recognized the need for an airport in the Newark Bay Area, and indicated a preference for the Newark Airport in this particular location, but at the same time it pointed out that there was, even in 1927, an immediate need for an airport in the Queens-Flushing Bay Area.

The "stacking"* of planes approaching the Newark Airport in bad weather also emphasizes the need of another completely equipped and accessible airport in the Metropolitan District. Aside from the anxiety experienced by passengers when "stacking" becomes necessary, the record shows a substantial loss of time as a result of delays from this cause. In the month of December, 1938, the applicants experienced a total of 21 delays ranging from eleven to thirty minutes. During the month of June, 1939, there occurred a total of 42 delays from eleven to thirty minutes, 16 delays from thirty-one to sixty minutes, and 17 delays over one hour. As many as eight planes approaching the Newark Airport have been "stacked" at one time, although Mr. Addems, Superintendent of Flight Operations for the Eastern Division of United, testified that "actual stacking" does not occur "more than ten per cent of the time." The rapid growth of air traffic requires relief of increasing congestion, and although the record fails to show how many schedules will include both stops if the use of another airport in the Metropolitan District is approved, testimony shows that the availability of two airports completely equipped for scheduled airline operation may be expected to improve this condition materially.

We find that the use of two airports for regularly scheduled air transportation service to and from the Metropolitan District, located so as to be readily accessible to the centers of population on each side of the Hudson River, is necessary at the present time, and that such use will encourage and assist the development of an air transportation system properly adapted to the future needs of the foreign and domestic commerce of the United States, the Postal Service, and the national defense.

This recognition of a single metropolitan area as calling for the identification of two separate points to be served within that area is an exceptional device.

* "Stacking" is a term used to describe the controlled distribution of aircraft converging on a given airport, when conditions of visibility are such as to preclude the safe separation of aircraft by means of pilot vision alone.

It is justified in this instance by such exceptional circumstances of population and area and industrial activity as have been recounted in the preceding paragraphs. The more normal expedient would be to receive and act on notices, as provided by section 238.3 of the Authority's regulations, proposing the service of a single point through two airports used together or in alternation. In the present instance, however, the public convenience and necessity require that the provision of air transportation to separate parts of the Metropolitan District be given the stability and the status that separate incorporation in the certificates provides; and, therefore, that we treat the Metropolitan District as constituting two points, corresponding to the two major subdivisions into which this exceptionally large metropolitan area can most naturally be arranged.

Under the provisions of the Act it is necessary to designate points to serve particular areas, and it is the established practice to name a city as a means of identifying the point to which service shall be rendered. We find that the designation of New York, N. Y., as the point will make it possible for the eastern part of the Metropolitan District to receive adequate air transportation service.

According to the evidence appearing in the record, conducting operations to an airport east of the Hudson River will entail an increase in the operating costs of the applicants. It is estimated that the recurring ground costs of the four applicants will increase approximately \$500,000 a year if service is maintained through two airports, although this figure may be reduced somewhat by the fact that, because of the facilities available at the North Beach Airport in the Queens-Flushing Bay Area, American will centralize its offices and equipment for its entire system at this point, which will effect substantial savings in the company's annual operating costs. Because of the additional flying distance involved, United estimates an increase of \$54,000 a year in direct flying costs. American did not submit an estimate of the annual increase in direct flying costs, but on two of its routes the distance will be greater, while on the route to Boston a saving will result in cases where schedules are originated or terminated at the North Beach Airport. From the figures given, an increased annual cost of about \$50,000 for American in this category may be expected. Relief of congestion by the use of a second airport will result in some savings in direct flying costs through the reduction of flying time. The record does not contain a complete picture of the non-recurring costs which will result from moving equipment and personnel, etc., but the few figures available indicate that this expense will be comparatively low.

According to the testimony of traffic experts employed by three of the applicants, the use of a second airport located east of the Hudson River would result in a sufficient increase in passenger business to at least offset the increased operating expense. A witness for Eastern, however, expressed doubt that increased revenues would offset its increased operating cost, since that company is a North-South operator and a large part of its business is short haul. The population and importance of the part of the Metropolitan District lying east of the Hudson has been pointed out, however, and even if the testimony concerning the immediate increase in business expected as a result of the use of a second airport east of the Hudson River is disregarded, we find that making air transportation more directly available to such a large community of people justifies the additional expense involved.

The application of American seeks to have New York, N. Y., designated as an additional point to be served, whereas Eastern, TWA and United seek to have New York, N. Y., designated as a terminal point, at the same time

requesting a change in the designation of Newark, N. J., from that of a terminal point to that of an intermediate point. The applications of the last three companies, however, include a request that the Authority grant to the petitioners such other and different relief as it may determine to be proper.

We find, in view of the fact that the two points, Newark, N. J., and New York, N. Y., are within the same Metropolitan District, and in order to permit flexibility in the schedules of the applicants and their adjustment as the public interest may from time to time require, that these two points should be named as co-terminals.

On the basis of the foregoing findings of fact and the facts appearing in the record, we find that the specification of New York, N. Y., and Newark, N. J., as co-terminals on the routes described in the certificates involved in this proceeding, and the authorization to engage in air transportation to and from such points on each of the routes described in such certificates and with respect to the classes of traffic now authorized on each of said routes, subject to the provisions of such certificates, are required by the public convenience and necessity. In rendering service to these two points, the applicants should be authorized to originate or terminate schedules at either point, and to make stops at both points on any schedule.

It has been suggested in testimony presented at the hearing, that the amendments of the certificates involved in this proceeding would result in the virtual abandonment by the applicants of service to Newark, N. J., through the Newark Airport. Newark, however, will be retained in the certificates as a point to be served, and the statutory duty of the applicants to continue to render adequate service to such point will continue unaffected.

On September 6, 1939, the Authority ordered that, in addition to all matters which were required to be determined in the present proceeding pursuant to section 401 of the Act, there should be considered all questions relating to the airports to be used by each of the applicants in serving New York, N. Y., and Newark, N. J., and, should the Authority decide to approve any or all of the applications involved herein, the Authority might at that time dispose of said questions and to the extent that said questions are so disposed of, the applicant or applicants should be relieved of any necessity of complying with Article II of Regulation 401-F-1, now designated as section 238.3 of the rules and regulations, insofar as said articles would require the filing of any notice or notices with the Authority prior to the inauguration of the use of such airports.

Regulation 401-F-1 was promulgated pursuant to the express authority contained in section 401(f) of the Act, which insofar as pertinent, provides as follows:

"Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require. . . ."

The Authority's order waiving the requirement of filing notice also supercedes Regulation 401-F-1 insofar as the necessity of issuing a show cause order is concerned, since it is expressly stated that all question relating to the airport to be used are to be considered in this proceeding. The applicants have requested permission to utilize the North Beach Airport, and the issue in this phase of the proceeding, therefore, is whether or not the public interest will be adversely affected by the use of the North Beach Airport by these applicants in conducting

regularly scheduled airline operations.

Section 2 of the Act, which sets forth specifically the elements to be considered in deciding what is in the public interest, has been quoted in the first part of this opinion. The only question is whether or not any of the objectives outlined therein will be jeopardized by the use of the North Beach Airport in rendering service to the east side of the Metropolitan District, herein identified as the point New York, N. Y.

The applicants and the City of New York have introduced into the record much evidence on the subject of the accessibility of the North Beach Airport. As shown by the maps contained in the exhibits for American and the City of New York, the site of the North Beach Airport is located in the Flushing Bay area of the Borough of Queens, approximately in the center of the part of the Metropolitan District east of the Hudson River and connected by express highways to the territory to the north and the rest of Long Island. The Boroughs of the Bronx and Queens, with respect to which it is the most accessible, have a combined population of 2,907,059, according to the latest estimates referred to in the record, and the major part of this area is more than one hour removed from the Newark Airport by ordinary means of ground transportation. It is also readily accessible to areas such as Westchester County to the north and the Oyster Bay section of Long Island, and the advantage over the Newark Airport with respect to this territory is even greater. Upper Manhattan likewise is closer to the North Beach Airport.

As to the relative convenience of the Newark and North Beach Airports to the Grand Central Station and the 42nd Street area of Manhattan, the evidence is somewhat conflicting. Fifty minutes is the present scheduled running time for busses from that area to the Newark Airport, according to the record, including the necessary time for taking tickets and loading baggage, and a witness for one of the airlines testified that it was planned to operate similar bus service to North Beach Airport on a thirty-five minute schedule, which would include time for the same procedure. Taking all of the evidence together, we find that the North Beach Airport is from ten to fifteen minutes closer to the 42nd Street area by ordinary means of ground transportation than is the Newark Airport.

In connection with this fact, the record shows that a substantial percentage of the passengers traveling into the Newark Airport at the present time are bound for the Grand Central area or north thereof. According to a survey of the passengers arriving on planes during the period August 29 to September 3, 1939, conducted by the City of Newark, 29% alighted from the bus at the Grand Central Station, or north thereof. These figures were checked with bus line records.

On the basis of the evidence, we find that the North Beach Airport is located so as to be readily accessible to the greater part of the eastern half of the Metropolitan District and that its use will materially improve air transportation service to large and important population centers.

We find, from an examination of the train schedules incorporated into the record, that excellent train service is available in the vicinity of both airports. Newark has the advantage for service to the south, whereas North Beach is more convenient for service to New England and points in New York State. Both airports afford good connections for service to the Midwest and West, although Newark offers a greater variety of connecting lines and more frequent schedules as a result.

According to exhibits submitted by the Post Office Department, the annual cost of transporting the mails from the Newark Airport into Manhattan, from which point all the mail for the City of New York is distributed, is greater than the estimated cost of transportation from the North Beach Airport by either railroad or truck. No estimates were submitted as to the cost of the joint use of both airports, but the witnesses appearing on behalf of the Post Office Department testified that the joint use of the North Beach and Newark Airports would improve the air mail service to the greater metropolitan area, and we so find.

The North Beach Airport, furthermore, includes a seaplane base which may be used for trans-Atlantic service, according to testimony appearing in the record. The use of this airport by the applicants will afford direct connections with seaplane operations, and we so find.

The fact that American, according to the evidence in the record, will centralize its shops and maintenance equipment at the North Beach Airport, and that complete airway traffic control equipment will be installed, constitutes a definite advantage with regard to the national defense, and we so find.

The "Fact Finding Committee on Suitable Airport Facilities for the New York Metropolitan District," referred to in the first part of this opinion, indicated in 1927 that there was *immediate* necessity for an airport in the Queens-Flushing Bay area, the precise area in which the North Beach Airport is located. If the necessity of an airport available for air transportation service in this area was so apparent to an impartial, fact-finding committee in 1927, the need today, in view of the tremendous increase in the importance of air transportation in the past twelve years, must be immeasurably greater. We find that the facts established in the first part of this opinion, relative to the size of the Metropolitan District and the need for two airports to adequately serve the eastern and western divisions thereof, lend further support to the conclusion that the use of the North Beach Airport will be in the public interest.

Conflicting evidence concerning the safety of the use of the North Beach Airport for scheduled airline operation appears in the record.

The present proceeding, arising under section 401 of the Act and regulation 401-F-1, promulgated under subsection (f) of section 401, is concerned primarily with economic considerations. The details of safe operation are governed by air carrier operating certificates and the rules and regulations issued by the Authority pursuant to the provisions of Title VI of the Act. Particular circumstances and conditions affecting the safety of airline operation must be met as they arise, in the light of progress in the art and science of aviation and on the basis of technical investigation and analysis. This matter will be handled in accordance with the statutory provisions governing safety, and the operation of the applicants at the North Beach Airport will not be permitted until the safety thereof has been established and air carrier operating certificates with respect thereto have been issued.

It was testified, however, by witnesses for the City of New York, that the site of the North Beach Airport had been approved by all responsible government officials and that it was fully equipped with the most modern safety devices. We find nothing in the record to establish that there is inherent in the location or the facilities of this airport anything which would preclude safe operation, or to compel the conclusion that the airport is unsafe. Accordingly, the Authority cannot find, on the basis of the record in this hearing, that the operation of the applicants from the North Beach Airport will be unsafe.

On the basis of the foregoing findings of fact and the facts appearing in the record, we find that the public interest will not be adversely affected by the use of the North Beach Airport in serving the point New York, N. Y., that such use will be in the public interest, and that American, Eastern, TWA, and United, the applicants in this proceeding, should be authorized to use such airport in serving such point, subject to the applicable provisions of the Act and the rules and regulations of the Authority adopted thereunder.

An appropriate order will be entered.

Branch, Ryan, Mason, Warner, Members of the Authority, concurred in the above opinion. Hinckley, Chairman, did not take part in the decision.

AIR SAFETY BOARD CHANGES

On August 22, 1939, the Air Safety Board of the Civil Aeronautics Authority had been functioning one year, and shortly thereafter it met and revised its officer personnel as follows: Thomas O. Hardin, Chairman; C. B. Allen, Vice-Chairman; and Sumpter Smith, Member. Just lately Sumpter Smith has resigned in order to accept full charge of the construction and establishment of the national airport at Washington, D. C. To date this vacancy on the Air Safety Board has not been filled.

CIVIL AERONAUTICS BULLETIN No. 4

The Civil Aeronautics Authority has announced the publication of Civil Aeronautics Bulletin No. 4, State Aeronautical Legislation Digest and Uniform State Laws. This brings to date (October 1, 1939) and supersedes Air Commerce Bulletin No. 18 (January 1, 1936) covering the same subject matter. The publication fills a great need and the active state coordination work of the Authority indicates that it will be kept up to date.

Chairman Hinckley of the CAA has now contacted the Governor of each State and the aviation personnel of each State, and CAA State Coordinator Elwood B. Cole has followed through with personal and other contacts to such an extent that he will shortly have covered the entire country. The response of the States has been unusually gratifying, and as a direct result several States, formerly having no aviation set-up, now have temporary aviation officials appointed by their respective Governors for the interim until necessary and proper legislation can be enacted. These States include Washington, Indiana and Missouri. In addition, New Hampshire has a newly appointed director; Texas is considering a legislative program; Oregon has appointed a new commission; and Virginia has had a change in personnel. A complete list of personnel with current changes can be had from George C. Roberts, Secretary, N.A.S.A.O., Illinois Aeronautics Commission, Springfield, Illinois.