

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Application of

FEDERAL EXPRESS CORPORATION

for exemption authority pursuant to 49 U.S.C. § 40109
and a certificate of public convenience and necessity
pursuant to 49 U.S.C. §§ 41102 and 41108

(U.S.-South Africa All-Cargo Service)

Docket OST-2018-0162

**APPLICATION OF FEDERAL EXPRESS CORPORATION FOR
EXEMPTION AUTHORITY AND
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

Communications with respect to this document should be sent to:

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**APPLICATION OF FEDERAL EXPRESS CORPORATION FOR
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Federal Express Corporation (“FedEx”) hereby applies for exemption authority and a certificate of public convenience pursuant 49 U.S.C. §§ 40109, 41102, 41108, Subparts B and C of the Department of Transportation’s (“the Department”) Rules of Practice (14 C.F.R. Part 302), and the Department’s streamlined regulatory procedures for U.S. carrier licensing¹ to engage in scheduled foreign all-cargo air transportation of property and mail from a point or points in the United States, via intermediate points, to a point or point in South Africa, and beyond, to the fullest extent available under the U.S.-South Africa Air Transport Agreement of 1996, as amended (the “Agreement”). FedEx requests that the exemption authority be granted for a period of at least two years or until the effective date of the corresponding certificate authority issued to FedEx. With respect to the certificate authority FedEx requests that the certificate be granted for a period of at

¹ See Notice, DOT-OST-2005-22228 (August 23, 2005).

least five years consistent with the Department's practice for limited-entry markets. FedEx further requests that the Department select Paris, France, and Liege, Belgium, as intermediate points on the all-cargo route ("Route B")² of the Agreement. Recognizing the 30-day notice requirement for point selection under the Annex to the Agreement, FedEx asks that the Department communicate through Diplomatic Note to the Government of South Africa the selection of the points as soon as possible after issuance of the authority requested herein. As described below, FedEx does not request allocation of additional frequencies, at this time, to support the requested point selection.

In support of its application and in accordance with 14 C.F.R. § 302.303:

1. FedEx is a corporation duly organized under the laws of the State of Delaware with its principal place of business and mailing address at 3610 Hacks Cross Road, Memphis, Tennessee 38125. It is a citizen of the United States within the meaning of 49 U.S.C. § 40102(a)(15). Its president and at least two-thirds of its board of directors and other managing officers are citizens of the United States, and it is under the actual control of citizens of the United States. At least 75 percent of its voting interest is owned or controlled by persons that are citizens of the United States.

2. FedEx is fit, willing, and able to provide international air cargo services, as required by 49 U.S.C. § 41102(b)(1) for issuance of a certificate. FedEx is an air carrier of property and mail in scheduled domestic and foreign air transportation, operating such services pursuant to an all-cargo air service certificate issued under 49 U.S.C. § 41103. FedEx also operates to international markets pursuant to certificates of public convenience and necessity issued under 49 U.S.C. § 41102, and specific grants of exemption authority pursuant to 49 U.S.C. § 40109.³ FedEx requests that the

² Section 1(A)(B) of the Annex to the Agreement defines the U.S. all-cargo route and Section 3 of that Annex subsequently refers to "Route B" in reference to both U.S. and South African the all-cargo routes.

³ See, e.g., Orders 2019-2-11 (U.S.-China), 2013-7-7 (U.S.-Mexico), and 2007-7-4 (Open Skies).

Department take official notice of the extensive record that establishes FedEx's fitness to operate under the authority requested pursuant to 14 C.F.R. §302.24(g).

3. The Department granted FedEx exemption authority to provide scheduled foreign air transportation of property and mail between Memphis, Tennessee, and Johannesburg, South Africa, via Dubai, United Arab Emirates, and Milan, Italy, in this docket.⁴ The Department allocated to FedEx one (1) weekly frequency to exercise this authority which FedEx currently operates using Boeing 777 aircraft with a gross payload capacity of approximately 225,000 pounds. FedEx's exemption authority for this service expires on October 31, 2020. FedEx seeks issuance of the relief requested in the instant application prior to that date, in order to obviate the need to renew its current exemption authority. In the event that the Department does not grant the relief requested in the instant application prior to October 31, 2020, FedEx hereby requests that the Department apply the automatic extension provisions of 5 U.S.C §588(c) as implemented by the Department's Special Regulations (14 C.F.R. Part 377) to continue in effect its current exemption authority to serve South Africa until the Department makes a final determination on the instant application.⁵

4. The authority FedEx requests in the instant application is consistent with the Agreement which allows unlimited designation of U.S. carriers to provide scheduled service under the Agreement.⁶ The Annex to the Agreement provides the United States the opportunity to allocate up to nine (9) weekly frequencies for all-cargo service in the U.S. -South Africa market⁷ and to select up to nine (9) intermediate points on Route B.⁸ The Department recently informed

⁴ See, Notice of Action Taken, DOT-OST-2018-0162 (Oct. 31, 2018).

⁵ FedEx has filed this request more than sixty (60) days in advance of the expiration of its current authority, as contemplated by 14 C.F.R. § 377.10(c)(4).

⁶ Article 3 of the Agreement allows the United States to "designate as many airlines as it wishes to conduct international air transportation in accordance with this Agreement and to withdraw or alter such designations."

⁷ Section 3(1)(C) of the Annex to the Agreement modifies the applicability of paragraph 3 of Article 11 (Fair Competition) of the Agreement by limiting the number of weekly round-trip frequencies available for allocation to carriers on Route B.

⁸ Footnote 5 of Section 1(A)(B) of the Annex to the Agreement limits the number of points that the United States may select as "intermediate" points on Route B.

FedEx that eight (8) weekly frequencies and seven (7) intermediate points remain available for allocation and selection, respectively, by the Department. FedEx respectfully requests that the Department select Paris, France, and Liege, Belgium, as additional intermediate points on Route B. The requested point selection, in concert with the broad authority requested in the instant application, will afford FedEx the flexibility to react quickly to changes in the market. More specifically, FedEx seeks the additional flexibility so that it may respond to COVID19-related service reductions that affect its commercial line haul operations and to various international airspace restrictions periodically issued by the Federal Aviation Administration (FAA) that apply to U.S. air carriers. , Given the contingency-planning impetus for the requested point selection, FedEx does not request additional frequency allocation to support the requested point selection. FedEx notes that it intends to integrate the authorities requested herein with its other certificate and exemption authorities to provide foreign air transportation. FedEx acknowledges that any services operated pursuant to its route integration authority must be conducted in accordance with all applicable agreements between the United States and the foreign countries to which such services are operated.⁹

5. The authority sought is consistent with the Air Transport Agreement Between the Government of the United States of America and the Government of the United Arab Emirates of 1999, which allows for all-cargo service on a fifth- and seventh-freedom basis.¹⁰ The authority sought is also consistent with the Air Transport Agreement Between the United States of America and The European Community And Its Member States of 2007, as amended, which allows for

⁹ See, Order 2010-12-24, Docket DOT-OST-2005-22228 (Dec. 21, 2010), that reissued FedEx's "Blanket Route Integration" authority for an indefinite period.

¹⁰ The U.S.-UAE Air Transport Agreement, Annex 1(A), establishes to route for U.S. carrier scheduled international air transportation as: "From points behind the United States via the United States and intermediate points to a point or points in the United Arab Emirates and beyond [and] For all-cargo service or services, between the United Arab Emirates and any point or points."

all-cargo operations on a fifth-freedom basis from any Member State.¹¹ In the instant application, however, FedEx seeks broad underlying economic authority consistent with the rights available to U.S. all-cargo carriers serving Route B. Recognizing certain limitations in the Agreement, FedEx notes that were it to seek allocation of additional frequencies or selection of additional points in the future, it would do so consistent with the Department's rules of practice and obligations of the United States under applicable air service agreements.

6. Approval of the authority requested herein is consistent with the public interest because the continued service will allow FedEx to provide substantial benefits to the shipping public and maximize the benefits for U.S. shippers and U.S. commerce overall, as evidenced most recently in the global response to COVID-19.¹² It further serves the public interest because it will reduce administrative burden associated with renewal of economic authority and minimizes administrative burden associated with modified authority should market conditions warrant shifts in service.

7. The services that FedEx will continue to operate following the grant of the exemption and certificate requested herein will not result in a near-term net annual change in aircraft fuel consumption of ten (10) million gallons or more, compared to the probable consumption of fuel were the action not taken. Accordingly, the proposed service's environmental impacts following the grant of this Application are *de minimis* and will not constitute a major regulatory action requiring an energy statement pursuant to 14 C.F.R. Part 313.

¹¹ Article 3(1)(c)(i) of the U.S.-EU Air Transport Agreement, as amended, establishes the route for U.S. carriers as: "from points behind the United States via the United States and intermediate points to any point or points in any Member State or States and beyond; and for all-cargo service, between any Member State and any point or points (including in any other Member States)[.]"

¹² See, e.g., Order 2018-3-16, Docket DOT-OST-2016-0021 (Mar. 30, 2018), which states that "[t]he Department recognizes that all-cargo services provide valuable public benefits."

WHEREFORE, FedEx respectfully requests that the Department issue the authorities requested herein to the extent necessary to permit FedEx to engage in scheduled foreign air transportation of property and mail from a point or points in the United States, via intermediate points, to a point or points in South Africa, and beyond, and provide any other such relief that the Department deems necessary.

Respectfully submitted,

A handwritten signature in black ink that reads "Anne M. Bechdolt". The signature is written in a cursive style with a large, stylized 'A' and 'B'.

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Certificate of Service

I hereby certify that I have this date served a copy of the foregoing document by electronic mail upon the following:

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Sandra Lunsford

08/21/2020

Date