

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

Application of

FEDERAL EXPRESS CORPORATION

for renewal of an exemption pursuant to
49 U.S.C. § 40109
(U.S.-Brazil All-Cargo Service)

Docket OST-96-1196

**APPLICATION OF
FEDERAL EXPRESS CORPORATION
FOR RENEWAL OF AN EXEMPTION**

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May 22, 2000

NOTICE: Any person wishing to support or oppose this Application must file an answer with the DOT's Documentary Services Division by June 6, 2000. A copy of such answer must be served upon Federal Express and its counsel and all persons named on the attached Service List.

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Federal Express Corporation (Federal Express) hereby applies, pursuant to 49 U.S.C. § 40109 and Subpart C of the Procedural Regulations of the Department of Transportation (the Department), for renewal of its temporary exemption authority authorizing Federal Express to engage in scheduled foreign all-cargo air transportation between a point or points in the United States and certain named points in Brazil, either directly or via intermediate points, and beyond Brazil to points in Argentina, Uruguay, Paraguay and Chile.

Federal Express requests that the foregoing exemption authority be renewed for a period of two years, through July 31, 2002, or until 90 days after final action on the pending application of Federal Express for U.S.-Brazil certificate authority in Docket 45985, whichever occurs first.

In accordance with Section 302.303, Federal Express submits the following information in support of this application.

1. Existing Authority . The U.S.-Brazil all-cargo exemption authority held by Federal Express was initially issued to Federal Express by Order 89-5-10, served May 2, 1989, and was most recently renewed for a two-year period, through July 31, 2000, by Notice of Action Taken issued July 31, 1998. That exemption authority authorizes Federal Express to provide scheduled foreign air transportation of property and mail between a point or points in the United States, and nine (9) named points in Brazil,¹ operated directly or via stops at any intermediate points, and beyond Brazil to Argentina, Uruguay, Paraguay and Chile, with full traffic rights. Federal Express also holds an allocation of ten (10) U.S.-Brazil wide-body cargo aircraft frequencies most recently issued to Federal Express by the July 31, 1998 Notice for an indefinite term as long as Federal Express continues to hold underlying U.S.-Brazil authority, subject to the Department's standard 90-day dormancy condition.

Federal Express is currently designated by the U.S. Government to provide all-cargo service to Brazil pursuant to the March 21, 1989 Bilateral Air Transport Agreement between the United States and Brazil, as amended (the 1989 Agreement), and

¹ The points in Brazil which Federal Express is authorized to serve are: Porto Alegre, Recife, Belo Horizonte, Salvador de Bahia, Belem, Manaus, Brasilia, Rio de Janeiro and Sao Paulo.

currently operates scheduled all-cargo service between the U.S. and Brazil as described below.

2. Automatic Extension . Federal Express hereby invokes and relies upon the provisions of Section 558(c) of the Administrative Procedure Act, 5 U.S.C. § 558(c), as implemented by Part 377 of the Department's Special Regulations, 14 C.F.R. § 377, to continue in effect its exemption authority to serve Brazil until the Department makes a final determination of this Application. In accordance with Section 377.10(c), this renewal application is being filed more than sixty (60) days prior to the expiration date of the temporary authority at issue.

3. Current U.S.-Brazil Service. At the present time, Federal Express operates five weekly roundtrip frequencies between the U.S. and Brazil,² operated between Memphis and/or Miami, on the one hand, and Sao Paulo, Brazil, on the other hand, with onward service beyond Sao Paulo to Buenos Aires, Argentina, and Santiago, Chile. The U.S.-Brazil service of Federal Express is being operated utilizing the 150,000-pound payload DC-10-30 freighter aircraft. The service beyond Brazil to Buenos Aires and Santiago is operated utilizing 45,000-pound payload B-727-200 freighter aircraft, operated via a change-of-gauge connection to the DC-10 flights at Sao

² Concurrently herewith, Federal Express is applying for a temporary exemption from the 90-day dormancy condition applicable to its Brazil cargo frequency allocation so as to authorize Federal Express to suspend its utilization of five of its ten Brazil frequencies until a future date when market conditions warrant their resumed utilization.

Paulo. The current U.S.-Brazil flight schedule flown by Federal Express is operated southbound over a Memphis-Sao Paulo nonstop routing three days a week (Tuesday, Wednesday and Thursday), and over a Memphis-Miami-Sao Paulo routing two days a week (Friday and Sunday). All five northbound flights are operated on a nonstop basis from Sao Paulo to Memphis on the same five days each week. Grant of this renewal application will not result in increased annual fuel consumption constituting a “major regulatory action” requiring an energy statement pursuant to Part 313 of the Department’s Procedural Regulations.

The U.S.-Brazil service operated by Federal Express provides expedited air freight and air express service between every point in the United States (and points in third countries beyond the U.S.) and numerous points in Brazil, and beyond Brazil, by linking the vast domestic and international flight network and delivery system operated by Federal Express to its air and ground operations serving Sao Paulo.

4. Applicable Bilateral Agreement. As the Department has determined, the exemption authority at issue is consistent with the bilateral aviation agreements between the United States and Brazil, Argentina, Uruguay, Paraguay and Chile (Notice of Action Taken, July 31, 1998, p. 1).

5. Fitness and Public Interest. As demonstrated by the Form 41 reports and other fitness information pertaining to Federal Express on file with the Department, including extensive exhibits and testimony submitted in recent contested carrier-selection proceedings (see, e.g., U.S.-China (2001) Case, Docket OST-99-6323), Federal Express

is fit, willing and able to perform the air transportation applied for herein and to conform to the provisions of the Act and the rules, regulations and requirements of the Department thereunder.

The foreign air transportation which Federal Express proposes to render is consistent with the public convenience and necessity. Federal Express submits that the renewal of its existing exemption authority is required as a matter of law and policy. Federal Express has consistently utilized its Brazil exemption authority to provide the highest quality of efficient, convenient and reliable all-cargo service between the U.S. and Brazil. Federal Express, and its predecessor, Flying Tigers, have been the preeminent U.S.-flag all-cargo carriers in the U.S.-Brazil market for over 18 years, and have played a vital and effective role in serving, promoting and developing that market, and in providing vigorous competition to the Brazilian flag carriers.

6. Duration of Renewal . Federal Express requests that the exemption authority at issue be renewed for a two-year period, through July 31, 2002, or until 90 days after final action on the pending application of Federal Express for U.S.-Brazil certificate authority in Docket 45985, whichever occurs first. Grant of a two-year extension is consistent with established Department policy and practice in other cases involving the renewal of temporary exemption authority to serve limited-entry international markets.

WHEREFORE, Federal Express respectfully requests the Department to renew its U.S.-Brazil scheduled all-cargo exemption authority for a period

of two years, through July 31, 2002, or until 90 days after final action on the pending application of Federal Express for U.S.-Brazil certificate authority in Docket 45985, whichever occurs first.

Of Counsel:
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Senior Attorney

Respectfully submitted,

Nathaniel P. Breed, Jr.
SHAW PITTMAN

FEDERAL EXPRESS CORPORATION Attorneys for
FEDERAL EXPRESS CORPORATION

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Application of Federal Express Corporation by messenger, telecopier transmission or United States mail, properly addressed and with postage prepaid, upon each of the persons listed in the Service List attached hereto.

Doreen S. Hughes

Washington, D.C.
May 22, 2000

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