



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

**Issued by the Department of Transportation
on the 1st day of October, 2020**

Emirates

Violations of 49 U.S.C. § 41301

Docket DOT-OST-2020-0001

Served October 1, 2020

CONSENT ORDER

This consent order concerns unauthorized foreign air transportation by Emirates in violation of 49 U.S.C. § 41301. This order directs Emirates to cease and desist from future similar violations of section 41301, and assesses the carrier a compromise civil penalty of \$400,000.

Applicable Law

Pursuant to 49 U.S.C. § 41301, a foreign air carrier may provide foreign air transportation only if the foreign air carrier holds a permit from the Department of Transportation (the Department) authorizing the foreign air transportation or a valid exemption from that section. The authority required by section 41301 is separate and distinct from the operations specifications and approvals that such an entity must obtain from the Federal Aviation Administration (FAA) for operations to and from the United States. Any operation in violation of the terms, conditions, or limitations of a foreign air carrier permit is a violation of 49 U.S.C. § 41301.

In addition, under 14 CFR 213.6, any violation by a foreign air carrier of the terms, conditions, or limitations applicable to the exercise of the privileges granted by its foreign air carrier permit shall constitute a failure to comply with the terms, conditions, and limitations of such permit.

As part of the terms, conditions, or limitations referenced above, the Department prohibits foreign air carriers from carrying the code of a U.S. air carrier in airspace in which the FAA prohibits U.S.

operators and airmen from flying.¹ This condition is incorporated into Emirates' statement of authorization in which the Department granted Emirates the authority to display JetBlue Airways' designator code (B6) in conjunction with Emirates' foreign air transportation.² The condition, provided in paragraph (d) of the statement of authorization, states, in pertinent part, the following:

Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirement[] that . . . the operating carrier shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

Carriers subject to the condition referenced above are expected to adhere to all FAA flight prohibitions while carrying a U.S. air carrier's code, including while conducting foreign air transportation abroad. The FAA issues flight prohibitions for U.S. civil aviation regarding flight operations in airspace managed by other countries as Notices-to-Airmen (NOTAMs) and Special Federal Aviation Regulations (SFARs). The above DOT condition makes such flight prohibitions applicable to foreign air carriers when they are carrying a U.S. air carrier's code.

Facts and Conclusions

On June 21, 2019, the FAA issued NOTAM KICZ A0019/19, prohibiting all persons described in paragraph A (Applicability)³ of the NOTAM from conducting flight operations in the overwater area of the Tehran Flight Information Region (FIR) (OIIX) above the Persian Gulf and the Gulf of Oman due to heightened military activities and increased political tensions in the region that present an inadvertent risk to U.S. civil aviation operations and carry the potential for miscalculation or misidentification.⁴ In connection with the Department's rules and the condition imposed on Emirates' foreign air carrier permit and the statement of authorization for a codeshare arrangement with JetBlue, as described above, the prohibitions in NOTAM KICZ A0019/19 extended to Emirates flights carrying the B6 code.

¹ See Order 95-2-34 (Feb. 15, 1995) and Notice – Conflict Zone, DOT-OST-1998-20-0690 (Mar. 19, 2015); see also *Qatar Airways Q.C.S.C. Violations of 49 U.S.C. §§ 41301 and 41712*, Order 2016-11-11 (Nov. 10, 2016).

² *Department Action on Application in Docket DOT-OST-2013-0103*, (July 25, 2013), available at <https://www.regulations.gov/document?D=DOT-OST-2013-0103-0003>.

³ The FAA NOTAM applies to: all U.S. air carriers and commercial operators; all persons exercising the privileges of an airman certificate issued by the FAA, except such persons operating U.S.-registered aircraft for a foreign air carrier; and all operators of aircraft registered in the United States, except where the operator of such aircraft is a foreign air carrier.

⁴ This NOTAM is available online at <https://pilotweb.nas.faa.gov/PilotWeb/> or [https://www.faa.gov/air_traffic/publications/us_restrictions/media/KICZ_A0019-19_Prohibition_NOTAM-Persian_Gulf_\(002\).pdf](https://www.faa.gov/air_traffic/publications/us_restrictions/media/KICZ_A0019-19_Prohibition_NOTAM-Persian_Gulf_(002).pdf).

An investigation by the Department's Office of Aviation Consumer Protection (OACP)⁵ revealed that between July 1, 2019, and July 19, 2019, Emirates operated flights carrying the B6 code in the area affected by NOTAM KICZ A0019/19. By operating flights carrying the B6 code in airspace in which the FAA prohibits U.S. operators and airmen from flying, Emirates operated in violation of the conditions of its statement of authorization. As a result, Emirates violated 49 U.S.C. § 41301.

Response

In response, Emirates states that it takes its regulatory compliance responsibilities extremely seriously, is proud of its compliance record as a foreign carrier with a significant amount of service to the United States, and devotes substantial resources and management and staff focus to regulatory compliance. Emirates states that, out of an abundance of caution, immediately after the FAA's issuance of NOTAM KICZ A0019/19, Emirates suspended all flight operations in the OIIX (except twice-daily service to Tehran) for a limited time period, at a significant cost to Emirates. When Emirates resumed U.S.-origin/destination flights through the OIIX, the carrier states that it inadvertently retained the B6 code due to an internal oversight. The carrier states that, once it became aware of the situation, it took immediate corrective action to remove the B6 code and cease transportation of passengers under the B6 code on flights through the OIIX. Emirates adds that it also conducted a thorough review of its policies to determine the root cause of this oversight. Emirates states that it quickly implemented internal organizational and process-related changes to avoid recurrence of the issue in the future. Although Emirates believes this inadvertent oversight should not merit enforcement action, it has agreed to this settlement in the interest of resolving this matter.

Decision

OACP views seriously Emirates' violations of 49 U.S.C. § 41301. Accordingly, after carefully considering all the facts in this case, including those set forth above, OACP believes that enforcement action is warranted. In order to avoid litigation, and without admitting or denying the violations described above, Emirates consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41301, and to the assessment of \$400,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent against future similar unlawful practices by Emirates and other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

⁵ The Office of Aviation Consumer Protection is formerly known as the Office of Aviation Enforcement and Proceedings.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Emirates violated 49 U.S.C. § 41301, as described above, by violating a condition of its statement of authorization, thereby engaging in foreign air transportation without the appropriate economic authority;
3. We order Emirates and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41301;
4. We assess Emirates \$400,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total amount, \$200,000 shall be due and payable within 120 days of the issuance date of this order. The remaining \$200,000 shall become due and payable if, within one year of the issuance date of this order, Emirates violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Emirates may be subject to additional enforcement action for failure to comply with this order.
5. We order Emirates to pay within 120 days of the issuance of this order the penalty assessed in Ordering Paragraph 4, above, through Pay.gov, to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Emirates to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

BLANE A. WORKIE
Assistant General Counsel
for the Office of Aviation Consumer Protection

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