



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

**Issued by the Department of Transportation
on the 13th day of June, 2024**

Emirates

**Violations of 49 U.S.C. § 41301 and Order
2020-9-29**

Docket DOT-OST-2024-0001

Served June 13, 2024

CONSENT ORDER

This consent order concerns unauthorized foreign air transportation by Emirates in violation of 49 U.S.C. § 41301 and DOT Order 2020-9-29. Emirates violated the conditions of its authority to operate and engaged in passenger operations to and from the United States without proper DOT authority by carrying the JetBlue Airways code on flights between the United Arab Emirates and the United States in airspace prohibited by the Federal Aviation Administration (FAA) to U.S. operators. This order directs Emirates to cease and desist from future similar violations of section 41301 and assesses the carrier a compromise civil penalty of \$1,800,000.

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 U.S. Department of Transportation (Department) authorizing the foreign air transportation or a valid exemption from that section. 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 to this requirement, 14 CFR Part 212 requires U.S. and foreign air carriers that operate code-shared services to first obtain authorization from the Department in the form of a statement of authorization. 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' (JetBlue) 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:

The code-sharing operations conducted under this authority must comply with 14 CFR Part 257 and with any amendments to the Department's regulations concerning code-sharing that may be adopted. 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.

The FAA issues flight prohibitions for U.S. civil aviation regarding flight operations in airspace other countries manage with respect to safety of flight because of the risks posed by weapons capable of targeting, or otherwise negatively affecting, U.S. civil aviation, as well as other hazards to U.S. civil aviation associated with fighting, extremist or militant activity, or heightened tensions. The FAA issues these flight prohibitions as emergency orders of the FAA Administrator via Notices-to-Air Missions (NOTAMs) and Special Federal Aviation Regulations (SFARs), as appropriate. The condition incorporated in Emirates' statement of authorization, as described above, makes such flight prohibitions applicable to foreign air carriers when they are carrying a U.S. air carrier's code.

In addition, in 2020, the Department issued Order 2020-9-29 against Emirates for operating flights carrying the designator code of a U.S. carrier into airspace in which the FAA prohibited U.S. operators and airmen from flying. By that order, Emirates was ordered to cease and desist from further violations of the conditions in its codeshare statement of authorization and engaging in foreign air transportation without the appropriate economic authority.

Facts and Conclusions

On October 16, 2020, the FAA amended and extended Special Federal Aviation Regulation (SFAR) 77, 14 CFR 91.1605, Prohibition against Certain Flights in the Baghdad Flight

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); *Emirates Violations of 49 U.S.C. § 41301*, Order 2020-9-29 (Oct. 1, 2020).

² *Approval of Joint Application (Corrected Copy) in Docket DOT-OST-2013-0103* (Jul 25, 2013), available at, <https://www.regulations.gov/document/DOT-OST-2013-0103-0003>.

Information Region (ORBB FIR), prohibiting all U.S. air carriers, all U.S. commercial operators, all persons exercising the privileges of airman certificates issued by the FAA (except when such persons are operating a U.S.-registered aircraft for a foreign air carrier), and all operators of civil aircraft registered in the United States (except when the operator of such aircraft is a foreign air carrier) from conducting flight operations in the ORBB FIR at altitudes below Flight Level (FL) 320.³ 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 SFAR 77 extend to Emirates' flights carrying the B6 code.

An investigation by the Department's Office of Aviation Consumer Protection (OACP) revealed that, between December 2021 and August 2022, Emirates operated a significant number of flights carrying the B6 code between the United Arab Emirates and the United States in the airspace described in SFAR 77. By operating flights carrying the B6 code in airspace in which the FAA prohibited U.S. operators and airmen from flying, Emirates' operations violated the conditions of its statement of authorization. As a result, Emirates violated 49 U.S.C. § 41301. By this conduct, Emirates also violated the cease-and-desist provision of DOT Order 2020-9-29.

Response

In response, Emirates states that it prioritizes the safety of its passengers, employees, and other users of the airspace. Emirates states that all of the flights in question were planned above FL320 and only operated below this level as a result of direct instructions from the relevant air traffic controllers (either a refusal by air traffic control to allow the flight to ascend to FL320 before entering the ORBB FIR or an instruction by air traffic control in ORBB FIR to descend below FL320 to avoid a collision). Emirates contends that as a result, the pilots of the flights in question were legally obliged to follow the instructions of the relevant air traffic controllers and any failure to comply with such instructions would have had significant safety implications by jeopardizing the safety of all users of the ORBB FIR and the passengers and crew on the relevant flight and resulted in a breach of law by Emirates and the pilot in charge.⁴

Emirates further states that it took all precautions to ensure that the flights in question were performed at or above FL320 whilst traversing the ORBB FIR, including filing a flight plan for each such flight at or above FL320; inserting specific information about the ORBB FIR in the 'crew briefing pack' for each flight; and distributing the NOTAM and SFAR 77 setting out the

³ 14 CFR 91.1605(b). This SFAR is available online at <https://www.federalregister.gov/documents/2020/10/16/2020-23047/prohibition-against-certain-flights-in-the-baghdad-flight-information-region-fir-orbb>. On September 20, 2022, the FAA published a notice in the Federal Register extending the expiration date of this SFAR until October 26, 2024, without changing the boundaries of the flight prohibition for U.S. civil aviation. <https://www.federalregister.gov/documents/2022/09/20/2022-20318/extension-of-the-prohibition-against-certain-flights-in-the-baghdad-flight-information-region-fir>.

⁴ The Department emphasizes that the enforcement action being taken against Emirates under this order is a result of the carrier's continuing to operate over an area where the carrier knew or should have known that it could not operate flights above FL320 as planned and as required when carrying the JetBlue code. This action is not being taken for the carrier's adherence to the instructions of air traffic control once in the air to operate flights below FL 320.

FL320 requirement in the ORBB FIR. Further, Emirates states that the flights in question ascended to FL320 as soon as they were cleared by the relevant air traffic controllers.

Emirates believes that the ‘Emergency situations’ exemption to SFAR 77⁵ applies to the flights in question given the safety implications of refusing instructions from air traffic control.⁶

Decision

OACP views seriously Emirates’ violations of 49 U.S.C. § 41301 and Order 2020-9-29. Accordingly, after carefully considering all the facts in this case, including those set forth above, OACP believes that enforcement action is warranted. 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 \$1,800,000 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.

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 the condition of its statement of authorization prohibiting Emirates from operating flights carrying the designator code of a U.S. carrier into airspace in which the FAA prohibits U.S. operators and airmen from flying, thereby engaging in foreign air transportation without the appropriate economic authority;
3. We find that Emirates violated the cease-and-desist provision in Order 2020-9-29 by violating 49 U.S.C. § 41301, as described above;

⁵ See 14 CFR 91.1605(d), which provides that in an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from SFAR 77 to the extent required by that emergency.

⁶ It is the Department’s position that even if local air traffic control instructed each of these flights to fly below FL320 after the flights entered ORBB FIR, the emergency situation exemption in Paragraph (d) of SFAR 77, described above, did not apply. After the first few instances on that route where Emirates was instructed to fly below FL320, Emirates knew or should have known that it was likely that local air traffic control would continue to direct flights to fly below FL320, and as such, Emirates should and could have taken actions to avoid violating the condition of its codeshare statement of authorization but failed to do so.

4. We order Emirates and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41301;
5. We assess Emirates \$1,800,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total amount, \$1,500,000 shall be due and payable within 60 days of the issuance of the date of this order. The remaining \$300,000 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; and
6. We order Emirates to pay the penalty assessed in Ordering Paragraph 5, 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:

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for the Office of Aviation Consumer Protection

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