



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

**Issued by the Department of Transportation
on the 27th day of September, 2024**

Air Canada

Violations of 49 U.S.C. § 41301

Docket DOT-OST-2024-0001

Served September 27, 2024

CONSENT ORDER

This consent order concerns unauthorized foreign air transportation by Air Canada in violation of 49 U.S.C. § 41301. More specifically, by carrying the United Airlines code in airspace prohibited by the Federal Aviation Administration (FAA) to U.S. operators due to safety concerns, Air Canada violated the conditions of its authority to operate and engaged in foreign air transportation without proper DOT authority. This order directs Air Canada to cease and desist from future similar violations of section 41301 and assesses the carrier a compromise civil penalty of \$250,000.

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 Pursuant to DOT Order 95-2-34, approvals of all code-sharing arrangements between U.S. and foreign carriers in which a U.S. carrier's code is carried on a foreign carrier's aircraft are conditioned on the following:

The operator shall not permit the code of its U.S. air carrier 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 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

Air Canada received authorization from the Department to display the United Airlines (United) designator code (UA code) on flights operated by Air Canada between any point or points in Canada or the United States and any point or points in any third country.²

On October 16, 2020, the FAA issued Special Federal Aviation Regulation (SFAR) 77, 14 CFR 91.1605, Prohibition against Certain Flights in the Baghdad Flight Information Region (ORBB FIR), prohibiting 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 ORBB FIR at altitudes below Flight Level (FL) 320.³ In connection with the Department's rules and the condition imposed on Air Canada's foreign air

¹ See Order 95-2-34 (Feb. 15, 1995) and Notice – Conflict Zone, DOT-OST-1998-20-0690 (Mar. 19, 2015); see also *Virgin Atlantic Airways Violations of 49 U.S.C. § 41301*, Order 2023-1-7 (Jan. 17, 2023); *Emirates Violations of 49 U.S.C. § 41301*, Order 2020-9-29 (Oct. 1, 2020); and *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-2009-0095*, (May 6, 2009), available at <https://www.regulations.gov/docket/DOT-OST-2009-0095>.

³ 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>.

carrier permit, as described above, the prohibitions in SFAR 77 extend to Air Canada's flights carrying the UA code.

An investigation by the Department's Office of Aviation Consumer Protection (OACP) revealed that between October 2022 and January 2023, Air Canada operated numerous flights carrying the UA code between the United Arab Emirates and Canada, in the airspace described in SFAR 77. Several flights took place after OACP issued an investigation letter to Air Canada regarding this issue. By operating flights carrying the UA code in airspace in which the FAA prohibited U.S. operators and airmen from flying, Air Canada's operations violated the condition imposed by DOT Order 95-2-34 on its authorization to engage in a code-sharing arrangement with United. As a result, Air Canada violated 49 U.S.C. § 41301.

Response

In response, Air Canada states that its paramount priority is the safety of its passengers, crews and aircraft, as evidenced by its strong safety record, robust safety, and compliance culture. Air Canada states it has always been aware of, and has always complied with, DOT's policy on flights over conflict zones. Air Canada rigorously monitors risks related to overflying foreign countries, and defining the boundaries of conflict zones in a manner that exceeds ICAO requirements.

Air Canada states that it took immediate action upon receiving the notice from the Department that its codeshare flights might have traversed the ORBB FIR below FL 320. Air Canada states that it issued a Crew Alert and revised Route Briefing Notes reminding flight crews of the requirement to overfly the ORBB FIR at or above FL 320; and that, if instructed by ATC that FL 320 is not available, the flight crews should immediately contact Air Canada Flight Dispatch to review options, such as speed or route changes. Air Canada further states that, concurrent to issuing these alerts and reminders, it escalated the issue to its senior management team; informed United of the issue; and commenced an investigation into why certain flights might not have adhered to Air Canada's policies concerning overflights of the ORBB FIR. This investigation included a broader review of all Air Canada routes traversing the ORBB FIR.

Air Canada asserts that the specific instances in which its flights carrying United's UA designator code traversed the ORBB FIR below FL 320 were unplanned, inadvertent, limited in number, and of brief duration. Air Canada states that it has served the Dubai, UAE (DXB) – Toronto, Canada (YYZ) route for years without incident; and that the overflight issues on this route only arose when Air Canada deployed Boeing 777-300 aircraft on the route.⁴ Air Canada states that its flights were always planned to traverse the ORBB FIR at FL 320 or higher, but that aircraft loads and variations from forecast weather conditions sometimes resulted in the aircraft being heavier than planned when it reached the ORBB FIR boundary, affecting aircraft performance.

Air Canada states that the flights that traversed the ORBB FIR below FL 320 failed to reach FL 320 before entering due to a number of unintentional reasons such as air traffic control not

⁴ Prior to the 777-300, Air Canada operated B787 aircraft between DXB and YYZ.

providing timely permission for the flight to climb until it was already inside the ORBB FIR,⁵ day of flight conditions, the aircraft's weight and performance characteristics, and the cockpit flight crew determining the aircraft did not have the performance margins to safely climb to FL 320 prior to reaching the ORBB FIR. Air Canada states that these instances of noncompliance were entirely inadvertent and unplanned, and the carrier believes that these instances did not affect flight safety.

Air Canada states that on January 13, 2023, it ceased codesharing with United on the DXB-YYZ route.

Decision

OACP views seriously Air Canada's 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. To avoid litigation, and without admitting or denying the violations described above, Air Canada 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 \$250,000 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 Air Canada 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 Air Canada violated 49 U.S.C. § 41301, as described above, by 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 in violation of DOT Order 95-2-34, thereby engaging in foreign air transportation without the appropriate economic authority;
3. We order Air Canada and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41301;
4. We assess Air Canada \$250,000 in compromise of civil penalties that might otherwise be assessed for the violations described above.
 - a. Of this total amount, \$125,000 shall be due and payable within 60 days of the service date of this order.

⁵ Air Canada asserts that the ORBB FIR is significantly more crowded following the closure of Russian airspace, which prevents flights from circumventing Iran to the north.

- b. The remaining \$125,000 shall become due and payable if, within one year of the issuance date of this order, Air Canada violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Air Canada may be subject to additional enforcement action for failure to comply with this order.
5. We order Air Canada to pay 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 Air Canada 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:

LIVAUGHN CHAPMAN, JR.
Deputy Assistant General Counsel
for the Office of Aviation Consumer Protection

*An electronic version of this document is available at
www.regulations.gov*