



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

**Issued by the Department of Transportation
on the 12th day of December, 2024**

Ethiopian Airlines

Violations of 49 U.S.C. § 41301

Docket DOT-OST-2024-0001

Served December 12, 2024

CONSENT ORDER

This consent order concerns unauthorized foreign air transportation by Ethiopian Airlines (Ethiopian) in violation of 49 U.S.C. § 41301. More specifically, by carrying the United Airlines code on flights in airspace prohibited by the Federal Aviation Administration (FAA) to U.S. operators due to safety concerns, Ethiopian violated the conditions of its authority to operate and engaged in foreign air transportation without proper DOT authority. This order directs Ethiopian to cease and desist from future similar violations of section 41301 and assesses the carrier a compromise civil penalty of \$425,000.

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 Ethiopian's statement of authorization in which the Department granted Ethiopian the authority to display the United Airlines (United) designator code (UA code) in conjunction with Ethiopian's 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-share arrangements 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 that 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

On December 11, 2019, the FAA issued an extension of SFAR 107, 14 CFR 91.1613, Prohibition against Certain Flights in the Territory and Airspace of Somalia, prohibiting all persons described in paragraph (a) (Applicability)³ of the SFAR from conducting flight operations at altitudes below

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 *Department Action on Application in Docket DOT-OST-2014-0082*, (June 13, 2014), available at <https://www.regulations.gov/document/DOT-OST-2014-0082-0004>.

³ The SFAR applies to all U.S. air carriers and U.S. commercial operators; all persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and all operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier.

Flight Level (FL) 260.⁴ In connection with the Department’s rules and the condition imposed on Ethiopian’s foreign air carrier permit and the statement of authorization for a codeshare arrangement with United, as described above, the prohibitions in SFAR 107 extend to Ethiopian’s flights carrying the UA code.

An investigation by the Department’s Office of Aviation Consumer Protection (OACP) revealed that between February 9, 2020, and December 7, 2022, Ethiopian operated a significant number of flights carrying the UA code between Addis Ababa Bole International Airport (ADD) and Djibouti-Ambouli International Airport (JIB), within the airspace described in SFAR 107. One of those prohibited flights took place after OACP issued an investigation letter to Ethiopian regarding this issue. By operating flights carrying the UA code in airspace in which the FAA prohibited U.S. operators and airmen from flying, Ethiopian’s operations violated the conditions of its statement of authorization. As a result, Ethiopian violated 49 U.S.C. § 41301.

Response

In response, Ethiopian states that it is committed to ensuring the safety of its passengers, crew, and the communities that it serves. Ethiopian states that it takes pride in its commitment to compliance and its strong compliance record as a foreign air carrier but respectfully disagrees with the Department’s findings in this case. Ethiopian states that at the time of the alleged violations, it operated routine scheduled passenger service between its hub at Bole Addis Ababa International Airport and Djibouti Ambouli International Airport. Ethiopian states that Ambouli International Airport has two runways—only one of which enables aircraft descending from the direction of Ethiopia to avoid Somali airspace. Ethiopian states that during certain seasons and/or weather conditions, Djibouti Air Space Control (i.e., Air Traffic Control) periodically orders aircraft to deviate from their proposed flight plan and, entirely for safety reasons, to land on the only alternative runway available. Ethiopian asserts that while doing so enables aircraft to re-position and avoid landing in conditions with excessive tail-wind speeds or with a sudden drop in altitude, compliance with these instructions requires aircraft to briefly maneuver into prohibited Somali airspace. Ethiopian states that its actions in briefly overflying Somali airspace so as to land at the only operational airport in Djibouti were made wholly based on safety considerations and in

⁴ This SFAR is available online at <https://www.federalregister.gov/documents/2019/12/11/2019-26597/extension-of-the-prohibition-against-certain-flights-in-the-territory-and-airspace-of-somalia>. On December 27, 2022, after the prohibited flights at issue in this Order took place, the FAA amended the flight prohibition to permit *overwater* operations in the territory and airspace of Somalia at altitudes below FL260 to the extent necessary for climb-outs from, and descents into, Djibouti Ambouli International Airport in the Addis Ababa Flight Information Region (FIR) (HAAA), if the operator of the aircraft: “(i) receives any necessary approval from the appropriate authorities of Djibouti; (ii) conducts operations that comply with applicable conditions established by the appropriate authorities of Djibouti and air traffic control instructions; and (iii) is either on a published instrument procedure or under the direction of air traffic control.” See <https://www.federalregister.gov/documents/2022/12/27/2022-28134/prohibition-against-certain-flights-in-the-territory-and-airspace-of-somalia>. The amended SFAR stresses that permitted flights must remain in the overwater areas of Somali airspace, rather than over Somali *land* territory. The flights at issue in this Order would not have been permitted under the amended SFAR, because they all entered into the overland airspace of Somalia.

accordance with instructions from local Air Traffic Control as is required by ICAO Annex 2 and Annex 6, Part 2.⁵

Ethiopian notes that it has taken significant steps to prevent recurrence. In response to this matter, Ethiopian states that it issued (and then expanded and re-issued) a company-wide Operational Restriction that instructs its flight crews to avoid Somali airspace at all costs and directs crews to divert aircraft to an alternate airport if Djibouti Air Space Control orders a breach of Somali airspace. In addition, Ethiopian states that Ethiopian and United have terminated the codeshare route that serviced Djibouti. In sum, Ethiopian states that although it firmly believes its actions were rooted in ensuring safety and should not merit enforcement action, it has agreed to this settlement in the interest of amicably resolving this matter.

Decision

OACP views seriously Ethiopian'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, Ethiopian 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 \$425,000 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 Ethiopian 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 Ethiopian Airlines violated 49 U.S.C. § 41301, as described above, by violating a condition of its statement of authorization prohibiting Ethiopian 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 order Ethiopian Airlines and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41301;

⁵ The Department emphasizes that the enforcement action being taken against Ethiopian 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 FL260 as planned and as required when carrying the United code. This action is not being taken for the carrier's adherence to the instructions of air traffic control once in the air. See *Emirates*, DOT Order 2024-6-9 (June 13, 2024).

4. We assess Ethiopian Airlines \$425,000 in compromise of civil penalties that might otherwise be assessed for the violations described above.
 - a. Of this total amount, \$212,500 shall be due and payable within 60 days of the service date of this order.
 - b. The remaining \$212,500 shall become due and payable if, within one year of the issuance date of this order, Ethiopian Airlines violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately, and Ethiopian Airlines may be subject to additional enforcement action for failure to comply with this order.
5. We order Ethiopian Airlines 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 Ethiopian 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
Office of Aviation Consumer Protection

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