

M-493.1

Order 95-2-34



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

Issued by the Department of Transportation
on the 15th day of February, 1995

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IN RE PROHIBITED OVERFLIGHTS

Docket 50130

ORDER

Due to conditions prevailing in Afghanistan, the Federal Aviation Administration has forbidden U.S.-registered aircraft from overflying that country for some time. By this order, the Department of Transportation is conditioning relevant code-sharing authority held by U.S. carriers to extend this prohibition to flights by foreign carriers on which the code of a U.S. airline is carried.

On December 20, 1994, the Department of State issued a public announcement relating to overflights of Afghanistan. That announcement reads as follows:

Because of safety and security concerns arising from the civil conflict in Afghanistan, all U.S. airlines and aircraft operators are prohibited by the Federal Aviation Administration from overflying Afghanistan. However, many foreign air carriers continue to overfly Afghanistan on routes between Asia and Europe. American citizens who are flying between Asia and Europe should be aware of the risks involved in taking these flights.

The International Civil Aviation Organization (ICAO) has advised that there are no reliable communications with Kabul air traffic control. Should an air disaster occur in Afghanistan, the ICAO advises, adjacent countries would most likely become aware only when an aircraft failed to exit the country. In that event, because there is no U.S. embassy in Afghanistan, and no third country represents United States interests, the United States Government is unable to accord consular protective services to U.S. citizens there. Moreover, any search and rescue efforts cannot be expected as it is also not possible for neighboring states to obtain permission to enter Afghanistan in search of the survivors of an accident.

This and other information has convinced us that the concerns compelling the FAA to forbid overflight of Afghanistan for U.S. aircraft also apply to U.S. carriers whose codes are carried on foreign airliners overflying Afghanistan. We have no direct jurisdiction over foreign aircraft overflying Afghanistan between points outside the United States, but we retain jurisdiction over code-sharing arrangements involving U.S. carriers.

The same concerns, and the same ability to exercise jurisdiction in responding to them, would apply to code-sharing operations over any area where the FAA has proscribed U.S.-carrier overflight. Thus, by this order, we find that any area that the FAA has proscribed for overflight by U.S. carriers should also be banned to any flight carrying a U.S. carrier's code. A foreign airline operating the aircraft may, of course, continue to operate its own flights through such airspace, as long as it carries no U.S. airline's code on those flights. Moreover, if a given flight's routing can be altered to avoid proscribed airspace, a U.S. carrier's code may continue to be carried on that flight in compliance with this order.

We will accordingly condition our approvals of all code-sharing arrangements between U.S. and foreign carriers pursuant to which a U.S. carrier's code is carried on a foreign carrier's aircraft. Such code-sharing arrangements are regulated under Part 212 as wet leases (charters) by the foreign air carrier partners.¹ The condition will read:

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.

We have designed this condition to apply to any area over which the FAA has prohibited operations by a U.S. carrier, even though there is only one such country at present. We recognize that this will place a certain burden on operators to remain abreast of what areas are subject to overflight prohibitions, but this burden already exists with respect to operations using those carriers' own aircraft, and we do not anticipate that such areas will become numerous, or will change often, so this burden should not become unreasonable.

¹ We need not take similar action under Part 207, which governs U.S. wet leases to foreign air carriers, as U.S. carriers are already forbidden by the FAA from operating their own aircraft in such airspace.

ACCORDINGLY,

1. We amend all statements of authorization issued under 14 C.F.R. Part 212 authorizing foreign air carriers to conduct code-sharing operations in which a U.S. carrier's code is carried on a foreign carrier's aircraft, and all such statements of authorization that may be issued subsequent to this order, to impose the condition set out in the text of this order;
2. This order shall be effective immediately, and shall remain in effect until further order of the Department; and
3. We shall serve this order on all U.S. and foreign air carriers holding certificates of public convenience and necessity, foreign air carrier permits, or exemption authority, the Federal Aviation Administration, and the Department of State.

By:

PATRICK V. MURPHY, JR.
Acting Assistant Secretary for Aviation
and International Affairs

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