

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

PJSC Aeroflot
1 Arbat St., 119019,
Moscow, Russia

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ORDER TEMPORARILY DENYING EXPORT PRIVILEGES

Pursuant to Section 766.24 of the Export Administration Regulations, 15 C.F.R. Parts 730-774 (2021) (“EAR” or “the Regulations”),¹ the Bureau of Industry and Security (“BIS”), U.S. Department of Commerce, through its Office of Export Enforcement (“OEE”), has requested the issuance of an Order temporarily denying, for a period of 180 days, the export privileges under the Regulations of: PJSC Aeroflot (“Aeroflot”). OEE’s request and related information indicates that the Russian Federal Government is the majority owner of Aeroflot, through its Federal Agency for State Property Management, and it is headquartered in Moscow, Russia, with numerous international offices facilitating Aeroflot’s international flight and business activities.

I. Legal Standard

¹ On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. § 2401 *et seq.* (“EAA”), (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.* (“IEEPA”), and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, Section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. § 4820(a)(5).

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an "imminent violation" of the Regulations, or any order, license or authorization issued thereunder. 15 C.F.R. §§ 766.24(b)(1) and 766.24(d). "A violation may be 'imminent' either in time or degree of likelihood." 15 C.F.R. § 766.24(b)(3). BIS may show "either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations." Id. As to the likelihood of future violations, BIS may show that the violation under investigation or charge "is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]" Id. A "lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation." Id.

II. OEE's Request For A Temporary Denial Order ("TDO")

The U.S. Commerce Department, through BIS, responded to the Russian Federation's ("Russia's") further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (ECCN) 9A991

(Section 746.8(a)(1) of the EAR).² BIS will review any export or reexport license applications for such items under a policy of denial. *See* Section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (AVS) (Section 740.15 of the EAR).³ Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE's request is based upon facts indicating that Aeroflot engaged in recent conduct prohibited by the Regulations by operating aircraft subject to the EAR and classified under ECCN 9A991.b, on flights into Russia after March 2, 2022, without the required BIS authorization.

Specifically, OEE's investigation, including publicly available flight tracking information, indicates that after March 2, 2022, Aeroflot operated multiple U.S.-origin aircraft subject to the EAR, including, but not limited to, those identified below, on flights into and out of Moscow, Russia from/to Beijing, China; Delhi, India; Antalya and Istanbul, Turkey; and Dubai, United Arab Emirates; respectively. Pursuant to Section 746.8 of the EAR, all of these flights would have required export or reexport licenses from BIS. Aeroflot flights would not be eligible to use license exception AVS. No BIS authorizations were either sought or obtained by

² 87 Fed. Reg. 12,226 (Mar. 3, 2022).

³ 87 Fed. Reg. 13,048 (Mar. 8, 2022).

Aeroflot for these exports or reexports to Russia. The information about those flights includes the following:

Tail Number	Serial Number	Aircraft Type	Departure/Arrival Cities	Dates
VP-BGB	41679	777-3M0 (ER) (B77W)	Beijing, CN/Moscow, RU	March 3, 2022
VQ-BFL	65309	777-300 (ER) (B77W)	Beijing, CN/Moscow, RU	March 6, 2022
VP-BGF	41686	777-3M0 (ER) (B77W)	Delhi, IN/Moscow, RU	March 5, 2022
VQ-BFO	65311	777-300 (ER) (B77W)	Delhi, IN/Moscow, RU	March 7 ,2022
VQ-BQC	41688	777-3M0 (ER) (B77W)	Antalya, TR/Moscow, RU	March 7, 2022
VQ-BQD	41682	777-3M0 (ER) (B77W)	Istanbul, TR/Moscow, RU	March 6, 2022
VQ-BQE	41683	777-3M0 (ER) (B77W)	Istanbul, TR/Moscow, RU	March 5, 2022
VQ-BUB	41690	777-3M0 (ER) (B77W)	Dubai, UAE/Moscow, RU	March 6, 2022

Based on this information, there are heightened concerns of future violations of the EAR, given that any subsequent actions taken with regard to any of the listed aircraft, or other Aeroflot aircraft illegally exported or reexported to Russia after March 2, 2022, may violate the EAR.

Such actions include, but are not limited to, refueling, maintenance, repair, or the provision of spare parts or services. *See* General Prohibition 10 of the EAR at 15 C.F.R. § 736.2(b)(10).⁴

Even Aeroflot's continued use of such U.S.-origin aircraft only on domestic routes within Russia runs afoul of General Prohibition 10, which (among other restrictions) prohibits the continued use of an item that was known to have been exported or reexported in violation of the EAR.⁵ For example, publicly available flight tracking data shows that on March 17-18, 2022, aircraft VP-

⁴ Section 736.2(b)(10) of the EAR provides: **General Prohibition Ten - Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur)**. You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. Nor may you rely upon any license or License Exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of the EAR. (emphasis in original).

⁵ <https://www.ibtimes.com/russias-aeroflot-says-halting-all-flights-abroad-march-8-3425087>

BGB and VQ-BFL flew on flights into and out of Moscow, Russia to/from Vladivostok, Russia and Petropavlovsk-Kamchatsky, Russia, respectively. In addition, Aeroflot has publicly announced its intention to continue operating domestic flights across its route network within Russia and to/from Belarus. In a public statement on its website and available as of the signing of this order, Aeroflot stated that **“AEROFLOT WILL CONTINUE FULL OPERATIONS OF ITS FLIGHT NETWORK WITHIN RUSSIA, WITH THE EXCEPTION OF TEMPORARY RESTRICTIONS ON FLIGHTS TO SOUTHERN CITIES IN RUSSIA. FLIGHTS TO/FROM MINSK (BELARUS) WILL CONTINUE”** (emphasis in original).⁶

Moreover, additional concerns of future violations of the Regulations are raised by public statements available as of the signing of this order on Aeroflot’s own website stating, in part, that “[o]ne of the goals of Aeroflot Group’s 2028 business strategy is to expand its fleet to 600 aircraft (235 of which will be Russia-built).”⁷ As of December 2021, Aeroflot’s fleet consisted of 187 aircraft, of which 59 were U.S.-origin aircraft along with 118 additional aircraft manufactured outside of Russia, some of which could also be subject to the EAR based on containing more than 25% U.S.-origin controlled content.⁸ Given BIS’s review policy of denial under Section 746.8(a) of the Regulations for exports and reexports to Russia, it is foreseeable that Aeroflot will attempt to evade the Regulations in order to obtain new or additional aircraft

⁶ https://www.aeroflot.ru/us-en/news/62292?_preferredLocale=us&_preferredLanguage=en

⁷ https://www.aeroflot.ru/en/about/aeroflot_today/company_profile#:~:text=Aeroflot%20is%20Russia%E2%80%99s%20de%20facto%20national%20carrier%20and,1923%2C%20Aeroflot%20is%20among%20the%20world%E2%80%99s%20oldest%20airlines

⁸ *Id.*

and parts, or service its existing aircraft that were exported or reexported to Russia in violation of Section 746.8 of the Regulations.

III. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Aeroflot took actions in apparent violation of the Regulations by exporting or reexporting the aircraft cited above, among many others, on flights into Russia after March 2, 2022, without the required BIS authorization. Moreover, the continued operation of these aircraft by Aeroflot, even on domestic routes within Russia, along with its stated intent to acquire additional aircraft, and the company's on-going need to acquire replacement parts and components, many of which are U.S.-origin, presents a high likelihood of imminent violations warranting imposition of a TDO. I further find that such apparent violations have been significant, and deliberate. Therefore, issuance of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Aeroflot, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation in accordance with Section 766.24 and 766.23(b) of the Regulations.

IV. Order

IT IS THEREFORE ORDERED:

FIRST, **PJSC Aeroflot**, 1 Arbat St., 119019, Moscow, Russia, when acting for or on their

behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

SECOND, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Aeroflot any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Aeroflot of the ownership, possession, or control of any item subject to the EAR that has been or will be

exported from the United States, including financing or other support activities related to a transaction whereby Aeroflot acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Aeroflot of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from Aeroflot in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Aeroflot, or service any item, of whatever origin, that is owned, possessed or controlled by Aeroflot if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

THIRD, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Aeroflot by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of Sections 766.24(e) of the EAR, Aeroflot may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Aeroflot as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Aeroflot, and shall be published in the *Federal Register*.

This Order is effective immediately and shall remain in effect for 180 days.



Matthew S. Axelrod
Assistant Secretary of Commerce
for Export Enforcement

Dated: April 7, 2022.
