

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

_____))
Pobeda Airlines)
108811, Russian Federation, Moscow,)
p. Moskovskiy, Kievskoe shosse)
22nd km, 4/1. Moscow, Russia)
_____)

ORDER RENEWING TEMPORARY DENIAL OF EXPORT PRIVILEGES

Pursuant to Section 766.24 of the Export Administration Regulations, 15 C.F.R. Parts 730-774 (“EAR” or “the Regulations”),¹ I hereby grant the request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued in this matter on June 15, 2023. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations and that renewal for an extended period is appropriate because Pobeda Airlines (“Pobeda”) has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR.

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as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.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).

I. Procedural History

On June 24, 2022, I signed an order denying Pobeda's export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations and was effective upon issuance.² The TDO was subsequently renewed on December 20, 2022³ and again on June 15, 2023,⁴ in accordance with Section 766.24(d) of the Regulations.⁵

On November 21, 2023, BIS, through OEE, submitted a written request for a third renewal of the TDO. The written request was made more than 20 days before the TDO's scheduled expiration and, given the temporary suspension of international mail service to Russia, OEE has attempted to serve a copy of the renewal request on Pobeda in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

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.

² The TDO was published in the Federal Register on June 29, 2022 (87 Fed. Reg. 38707).

³ The December 20, 2022 renewal order was published in the Federal Register on December 23, 2022 (87 Fed. Reg. 78925).

⁴ The June 15, 2023 renewal order was published in the Federal Register on June 21, 2023 (88 Fed. Reg. 40200).

⁵ At the time of the renewal, Section 766.24(d) provided that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation.

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.*

If BIS believes that renewal of a denial order is necessary in the public interest to prevent an imminent violation, it may file a written request for renewal, with any modifications if appropriate. 15 C.F.R. § 766.24(d)(1). The written request, which must be filed no later than 20 days prior to the TDO’s expiration, should set forth the basis for BIS’s belief that renewal is necessary, including any additional or changed circumstances. *Id.* “In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year.”⁶ *Id.*

B. The TDO and BIS’s Request for Renewal

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,

⁶ 88 Fed. Reg. 59791 (Aug. 30, 2023).

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).⁷ 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).⁸ 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 for renewal for a period of one year is based upon the facts underlying the issuance of the initial TDO, the renewal orders subsequently issued in this matter, and evidence that continues to develop during this investigation. These facts and evidence demonstrate that Pobeda has continued, and continues, to act in blatant disregard for U.S. export controls and the terms of previously issued TDOs. Specifically, the initial TDO, issued on June 24, 2022, was

⁷ 87 Fed. Reg. 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List ("CCL") under Categories 0-2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 Fed. Reg. 22130 (Apr. 14, 2022).

⁸ 87 Fed. Reg. 13048 (Mar. 8, 2022).

based on evidence that Pobeda engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022, from destinations including, but not limited to, Antalya, Turkey, Gazipasa, Turkey, and Istanbul, Turkey, without the required BIS authorization.⁹ Further evidence submitted by BIS indicated that Pobeda also continued to operate aircraft subject to the EAR domestically on flights within Russia, potentially in violation of Section 736.2(b)(10) of the Regulations.

As discussed in the prior renewal orders, BIS presented evidence indicating that, after the initial June 24, 2022 TDO issued, Pobeda continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and within Russia, in violation of the Regulations and the TDO itself.¹⁰ The December 20, 2022 order detailed flights into and out of Russia from/to Minsk, Belarus.¹¹ The June 15, 2023 renewal order documented a similar pattern of prohibited conduct.¹²

Since that time, Pobeda continued to engage in conduct prohibited by the TDO and Regulations. In its November 21, 2023 request for renewal of the TDO, BIS submitted evidence that Pobeda continues to operate aircraft subject to the EAR and classified under ECCN

⁹ Publicly available flight tracking information shows, for example, that on March 6, 2022, serial number (“SN”) 64862 flew from Antalya, Turkey to Moscow, Russia. On March 7, 2022, SN 64863 flew from Gazipasa, Turkey to Moscow, Russia, and, on March 6, 2022, SN 64864 flew from Istanbul, Turkey to Mineralnye Vody, Russia.

¹⁰ Engaging in conduct prohibited by a denial order violates the Regulations. 15 C.F.R. §§ 764.2(a) and (k).

¹¹ Publicly available flight tracking information shows, for example, the following flights: 1) on November 26, 2022, SN 61793 flew from Minsk, Belarus to Moscow, Russia; 2) on December 3, 2023, SN 41238 flew from Minsk, Belarus to Moscow, Russia; and 3) on November 24, 2022, SN 64866 flew from Minsk, Belarus to Moscow, Russia.

¹² Publicly available flight tracking information shows that SN 41227 flew from Istanbul, Turkey to Moscow, Russia on May 24, 2023. Additionally, SN 41238 flew from Dubai, United Arab Emirates to Moscow, Russia on May 31, 2023. Further, SN 41242 flew from Antalya, Turkey to Perm, Russia on June 10, 2023.

9A991.b, both on flights into and within Russia, in violation of the June 15, 2023 renewal order and/or the Regulations. Specifically, BIS’s evidence and related investigation demonstrates that Pobeda continued to operate aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia, including from/to Dubai, United Arab Emirates, and Gazipasa and Istanbul, Turkey, Gyumri, Armenia, and Minsk, Belarus, as well as domestically within Russia. Information about those flights includes, but is not limited to, the following:

Tail Number	Serial Number	Aircraft Type	Departure/Arrival Cities	Dates
RA-73242	41227	737-8LJ	Moscow, RU / Minsk, BY	November 29, 2023
RA-73242	41227	737-8LJ	Dubai, AE / Beslan, RU	November 28, 2023
RA-73242	41227	737-8LJ	Abu Dhabi, UAE / Moscow, RU	November 26, 2023
RA-73242	41227	737-8LJ	Istanbul, TR / Moscow, RU	November 15, 2023
RA-73242	41227	737-8LJ	Gyumri, AM / Moscow, RU	November 6, 2023
RA-73248	41238	737-8LJ	Abu Dhabi, AE / Moscow, RU	December 4, 2023
RA-73248	41238	737-8LJ	Yekaterinburg, RU / Moscow, RU	December 4, 2023
RA-73248	41238	737-8LJ	Istanbul, TR / Moscow, RU	November 27, 2023
RA-73248	41238	737-8LJ	Samarkand, UZ / Moscow, RU	November 7, 2023
RA-73248	41238	737-8LJ	Dubai, AE / Moscow, RU	November 2, 2023
RA-73250	41242	737-8LJ	Istanbul, TR / Makhachkala, RU	December 4, 2023
RA-73250	41242	737-8LJ	Dubai, AE / Makhachkala, RU	December 3, 2023
RA-73250	41242	737-8LJ	Chelyabinsk, RU / Moscow, RU	December 2, 2023
RA-73250	41242	737-8LJ	Gazipasa, TR / Moscow, RU	November 10, 2023
RA-73250	41242	737-8LJ	Samarkand, UZ / Moscow, RU	November 8, 2023

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 demonstrates that Pobeda has acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Moreover, I find that renewal for an extended period is appropriate because Pobeda has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR. Therefore, renewal of the TDO for one year 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 Pobeda, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

IT IS THEREFORE ORDERED:

FIRST, **Pobeda Airlines**, 108811, Russian Federation, Moscow, p. Moskovskiy, Kievskoe shosse, 22nd km, 4/1. 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 Pobeda 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 Pobeda 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 Pobeda 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 Pobeda 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 Pobeda 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 Pobeda, or service any item, of whatever origin, that is owned, possessed or controlled by Pobeda 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 Pobeda 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, Pobeda 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 Pobeda 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 Pobeda and shall be published in the *Federal Register*.

This Order is effective immediately and shall remain in effect for one year.



Matthew S. Axelrod
Assistant Secretary of Commerce
for Export Enforcement

Dated: December 11, 2023.