

AVIATION ADVISORY

BIS Identifies First Foreign-Produced Commercial Aircraft Exported to Russia in Apparent Violation of US Export Controls

August 3, 2022

KEY POINTS

- In an August 2 press release, the US Commerce Department updated its list of aircraft that have flown into Russia or Belarus in apparent violation of Export Administration Regulations by adding the first 25 foreign-produced aircraft that the BIS has identified as apparently violating the EAR's *de minimis* threshold for US components.

- The press release identified foreign-produced aircraft that contain greater than 25 percent of controlled US-origin content by value as subject to the EAR and that have apparently violated the BIS's export controls on Russia.

- Accordingly, subsequent actions taken with respect to the listed aircraft, including maintenance, repair, refueling, and the provision of spare parts and services, are subject to EAR prohibitions.

Overview

As we first discussed in our [March 21 advisory](#), on February 24, in response to the invasion by Russia of Ukraine, the US Department of Commerce, Bureau of Industry and Security (BIS) [issued new rules](#) (the Rules). The Rules effectively prohibit the export, re-export, or in-country transfer or use of Boeing (or other US-manufactured) aircraft (as well as other aircraft and aircraft components with at least 25 percent US content) in or to Russia without a license. On March 2, the BIS [extended the Rules](#) to Belarus. On March 18, the BIS issued a press release identifying nearly 100 US-manufactured aircraft (all Boeing except for one Gulfstream), most apparently on lease to Russian airlines, as having violated the Rules because such aircraft had since the issuance of the Rules flown from third countries into Russia (see [the release](#)). The effect of such violation is that such aircraft are thereafter prohibited from being sold, transferred, exported, re-exported, financed, ordered, bought, removed, concealed, stored, used, loaned, disposed of, transported, forwarded or otherwise serviced by any person anywhere who has knowledge of the violation (which the BIS notified the public of). 15 CFR § 736.2(b)(10). As such, the continued leasing and financing of such an aircraft by a person with knowledge of the violation would be prohibited without a license. However, such prohibition is not limited to aircraft having flown into Russia since the issuance of the Rules. It extends also to aircraft flying within Russia since the issuance of the Rules. The BIS has since [updated the list of identified aircraft](#) several times.

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The newly identified foreign-manufactured aircraft consist of Airbus A330-300 in the fleet of I-Fly, A321-200 and A330-200 aircraft in the fleet of Nordwind, A321-200 aircraft in the fleet of Red Wings, A320-200 and A321-200 aircraft in the fleet of S7 Airlines, A320-200 and A321-200 aircraft in the fleet of Ural Airlines, and A320-200 and A321-200 aircraft in the fleet of Yamal Airlines.

The BIS again cautioned that its lists are not exhaustive, and will continue to be updated, and is part of the BIS's "ongoing effort to identify and publicly list aircraft in likely violation" of the Rules and as "notification to the public" that any form of "service" to these aircraft requires BIS authorization. The BIS also cautioned that the restrictions apply whether or not an aircraft is on the list.

The Rules Also Affect Aircraft Operated Only Within Russia

The BIS has now currently identified 183 aircraft by owner or operator, registration mark, manufacturer's serial number and aircraft type as having apparently violated the Rules. As we have pointed out in earlier advisories, the violations identified by the BIS consisted of flights of such aircraft from third countries to Russia. However, the transfer or use of any aircraft within Russia is also a violation of the Rules. This includes flights entirely within Russia. Any violation described in this paragraph gives rise to prohibitions under the Rules against leasing, financing and other activities with respect to the affected aircraft by parties having knowledge of the violation. So unless an aircraft in Russia has remained grounded since the Rules were issued, the continued leasing or financing of that aircraft (among other activities) by a party having knowledge that it had operated within Russia may be prohibited by US law.

Conclusion

As we pointed out in our earlier advisory, please note that other rules may apply to leasing and financing of commercial aircraft in Russia including the rules of the Office of Foreign Assets Control (OFAC) of the US Department of Treasury, and the rules issued by the European Union in response to the Russian invasion. Lessee parties to a leasing transaction, including airline majority shareholders, require screening against sanction regimes to ensure OFAC violations do not occur separate from the export licensing issues covered here.

If you have any questions, please reach out to any of the individuals listed below.

CONTACTS

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