

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

Ilya Balakaev

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ORDER TEMPORARILY DENYING EXPORT PRIVILEGES

Pursuant to Section 766.24 of the Export Administration Regulations (the “Regulations” or “EAR”),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

¹ The Regulations, currently codified at 15 C.F.R. Parts 730-774 (2020), originally issued pursuant to the Export Administration Act (50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by successive Presidential Notices, continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.* (2012)) (“IEEPA”). 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 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 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as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.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.

temporarily denying, for a period of 180 days, the export privileges under the Regulations of: Ilya Balakaev and Radiotester OOO a/k/a Radiotester LLC. OEE's request and related information indicates that these parties are located in the Russian Federation, at the respective addresses listed on the caption page of this order and on pages 12-13, *infra*, and that Balakaev, a Russian national, owns or controls Radiotester OOO a/k/a Radiotester LLC (referred to collectively as "Radiotester").

I. 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. 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 "[l]ack 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.*

Pursuant to Sections 766.23 and 766.24, a temporary denial order ("TDO") may also be made applicable to other persons if BIS has reason to believe that they are related to a respondent and that applying the order to them is necessary to prevent its evasion. 15 C.F.R. §§ 766.23(a)-(b) and 766.24(c). A "related person" is a person, either at the time of the TDO's issuance or

thereafter, who is related to a respondent “by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business.” 15 C.F.R. §§ 766.23(a).

Related persons may be added to a TDO on an ex-parte basis in accordance with Section 766.23(b) of the Regulations. 15 C.F.R. § 766.23(b).

II. OEE’S REQUEST FOR A TEMPORARY DENIAL ORDER

As further detailed below, OEE’s request is based upon facts indicating that Balakaev engaged in conduct prohibited by the Regulations by unlawfully procuring and exporting from the United States electronic devices subject to the EAR to the Federal Security Service of the Russian Federation (“FSB”), a BIS-listed entity located in the Russian Federation (“Russia”), and to the Democratic People’s Republic of Korea (“North Korea” or “DPRK”) without the required U.S. government authorization. “Export” is defined in the EAR as an “actual shipment or transmission out of the United States, including the sending or taking of an item out of the United States, in any manner.” 15 C.F.R. § 734.13(a)(1).²

The FSB is listed on the Commerce Department’s Entity List³ with a policy of denial for all items subject to the EAR with limited exceptions for transactions authorized by the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) pursuant to General License No. 1B of March 2, 2021.⁴ As a result of this listing, no item subject to the Regulations

² “Item” means “commodities, software, and technology.” 15 C.F.R. § 772.1. Further, “technology” may be in any tangible or intangible form, such as written or oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or documentation, electronic media or information revealed through visual inspection. *Id.*

³ The Entity List (supplement no. 4 to part 744 of the EAR) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States.

⁴ See 87 Fed. Reg. 34131 (Jun. 6, 2022). See also §§ 734.9(g), 746.8(a)(3), and 744.21(b) of the EAR.

may be exported, reexported, or transferred (in-country) to the FSB without prior authorization from BIS, and BIS will review any license applications for the FSB pursuant to a policy of denial.⁵ The FSB was originally listed on the Entity List on January 4, 2017,⁶ with a license review policy of presumption of denial for all items subject to the EAR, with some limited exceptions.⁷ As such, as of January 4, 2017, a license was required to export, reexport, or transfer (in-country) all items subject to the EAR to the FSB.⁸

As of January 26, 2007, a license is required for the export or reexport to North Korea of all items subject to the EAR other than food or medicine designated as EAR99.⁹ This rule was codified in Title 15 C.F.R. § 746.4, which states “consistent with United Nations Security Council Resolution 1718, a license is required to export or reexport any item subject to the EAR (see part 734 of the EAR) to the Democratic People's Republic of Korea (North Korea), except food and medicines classified as EAR99 (definitions in part 772 of the EAR).”¹⁰

⁵ *Id.*

⁶ See 82 Fed. Reg. 722 (Jan. 4, 2017). See also 82 Fed. Reg. 18219 (Apr. 18, 2017), 86 Fed. Reg. 37903 (Jul. 19, 2021), 87 Fed. Reg. 12240 (Mar. 3, 2022), and 87 Fed. Reg. 34136 (Jun. 6, 2022) for additional listings of FSB-related entities on the Entity List.

⁷ On March 2, 2021, the Department of State designated the FSB pursuant to Executive Order 13382 for its contributions to the proliferation of weapons of mass destruction. Thus, exports to the FSB were also prohibited under 15 C.F.R. § 744.8.

⁸ As a result of Russia’s invasion of Ukraine, BIS implemented 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. As of February 24, 2022, any item classified under any Export Classification Control Number (“ECCN”) in Categories 3 through 9 of the Commerce Control List (“CCL”) required a license to be exported or reexported to Russia. See 87 Fed. Reg. 12226 (Mar. 3, 2022). As of April 8, 2022, the license requirements for Russia were expanded to cover all items on the CCL. See 87 Fed. Reg. 22130 (Apr. 14, 2022). These rules were codified in Title 15 C.F.R. § 746.8.

⁹ See 52 Fed. Reg. 3722 (Jan. 26, 2007).

¹⁰ Additionally, BIS implemented broad based controls for items and activities subject to the EAR in support of U.S. national security and foreign policy. 50 U.S.C. § 481 I(1)-(2). These controls included restrictions on exports and reexports to the DPRK for United Nations (“UN”) and anti-terrorism reasons. 15 C.F.R. §§ 746.4, 742.19. Consistent with ECRA and UN Security Council Resolutions, with limited exceptions, a license was required to export or reexport any item subject to the EAR to North Korea. 15 C.F.R. § 746.4. The DPRK was also subject to a UN Security Council arms embargo, and thus, militarily sensitive items were also restricted. 15 C.F.R. § 746.1(b)(2). Furthermore, the Secretary of State designated the DPRK a state sponsor of terrorism and implemented additional restrictions on it. 15 C.F.R. § 742.19(a)(2)-(3). For example, additional prohibitions applied to certain items destined

As referenced in OEE's request, on February 21, 2023, Balakaev was indicted on multiple counts in the United States District Court for the Eastern District of New York. The charges include, but are not limited to, conspiring to violate U.S. export control laws in connection with the unlicensed export of electronic spectrum analyzers, signal generators, and gas detection equipment, among other items, to Balakaev's company Radiotester, located in Moscow, Russia, for ultimate end use by officials of the FSB and the DPRK. As described in the OEE request and related information, Radiotester is owned or controlled by Balakaev. The company is described on its website as "helping to quickly resolve issues of supply and repair of foreign-made measuring equipment" and as having "experience of working with large federal, city-forming, manufacturing enterprises".

As described in the OEE request and indictment, Balakaev headed an illicit procurement network consisting of an individual in the United States, referred to herein as "Individual 3", who would assist Balakaev in purchasing the electronic equipment, as well as two members of the FSB in Russia, referred to as FSB Co-Conspirator 1 and FSB Co-Conspirator 2, who worked in FSB Center 8's Military Unit 43753 and who would publish a request for proposal ("RFP") to repair a device on publicly available Russian websites (collectively, the "Balakaev Network"). In particular, Balakaev would purchase the electronic devices on the internet or directly through the United States-based manufacturers and ship them to Individual 3's home in Richmond, Virginia. Then, often traveling through the Eastern District of New York, Balakaev flew to the United States to pick up the devices and bring them back to Russia or had Individual 3 and others ship the electronic devices from the United States to Russia. On occasion, Balakaev directed

for military, police, intelligence or other sensitive end users or if an item would make a significant contribution to the military potential of the DPRK. 15 C.F.R. § 742.19(a)(3); Supplement No. 2 to part 742.

others to travel with the electronic devices from the United States to Russia. Balakaev subsequently used parts from the electronic devices to repair FSB equipment or provided the equipment directly to a DPRK official. The electronic devices Balakaev purchased, repaired, and sold to the FSB and DPRK are subject to the EAR and are items commonly used as part of sensitive foreign counterintelligence and military operations, including the transmission of encrypted communications, the ability to scan a room to determine if it was bugged, and the detection of hazardous gases.

In its request, OEE has presented evidence indicating that Balakaev and the other above-captioned parties are engaged in unlawfully purchasing and shipping dual-use items from U.S. manufacturers to the FSB and DPRK. These items included advanced electronics and sophisticated testing equipment, some of which can be used in sensitive foreign counterintelligence and military operations.

A. Misconduct Charged in February 2023 Indictment

The February 2023 indictment charged Balakaev, owner of Radiotester, with conspiring to defraud, conspiring to violate IEEPA, conspiring to violate ECRA, and smuggling goods from the United States. The violations charged in the indictment cover conduct occurring between at least January 2017 through February 2022, and it alleges that Balakaev was not only aware of U.S. export control laws but also took active steps to evade U.S. export controls by illicitly procuring items subject to the EAR without the required BIS export licenses.

i. Unlicensed Exports of U.S.-Origin Electronic Devices to the FSB in Russia

As stated in the indictment, Balakaev and his co-conspirators in the Balakaev Network unlawfully sourced, purchased, shipped and transported spectrum analyzers and signal generators

from vendors and manufacturers in the United States for the benefit of the FSB in Russia.

Spectrum analyzers are generally used to detect the frequency of radio signals to identify surveillance devices. The spectrum analyzers that were exported by Balakaev are classified under ECCN 3A992.a and are controlled for Anti-Terrorism (AT) reasons. Signal generators are generally used to securely transmit information, often as part of counterintelligence or other covert operations. The signal generators that were exported by Balakaev are classified under ECCN 3A992.a and are controlled for Anti-Terrorism (AT) reasons. A license was required to export these items to the FSB in Russia.

As described in the indictment, because many of the spectrum analyzers and signal generators used by the FSB were manufactured in the United States, it is difficult for the FSB to obtain parts to repair these items. Pursuant to the scheme involving the Balakaev Network, Balakaev conspired with FSB Co-Conspirator 1 and FSB Co-Conspirator 2, who worked in FSB Center 8's Military Unit 43753. In particular, FSB Co-Conspirator 1 and FSB Co-Conspirator 2 would publish a RFP to repair certain devices on publicly available Russian websites. Balakaev, FSB Co-Conspirator 1 and FSB Co-Conspirator 2 then negotiated a contract price to repair the devices before Balakaev submitted a bid in response to the RFP. To ensure that Balakaev won the bid, FSB Co-Conspirator 1 and FSB Co-Conspirator 2 instructed Balakaev to submit two higher bids under fictitious company names, in addition to the agreed-upon bid through Balakaev's company, Radiotester.

Once the FSB accepted Radiotester's bid and the contract was signed, Balakaev traveled to FSB Center 8 in Russia to pick up the broken device(s). Either FSB Co-Conspirator 1 or FSB

Co-Conspirator 2 would meet Balakaev outside the secure gate of FSB Center 8 to provide Balakaev with the broken device(s).

As described in OEE's request and the indictment, Balakaev then sourced the necessary repair parts from the United States. Balakaev either purchased the devices over the internet or directly from the U.S. manufacturers, and had the devices shipped to Individual 3's home in Richmond, Virginia. Once purchased, Balakaev brought or shipped the devices to Russia where he then mined the devices for component parts to use to repair the FSB devices. After Balakaev repaired the devices, he returned to FSB Center 8, where he met with either FSB Co-Conspirator 1 or FSB Co-Conspirator 2 outside the FSB Center 8 gate to provide the repaired devices. The FSB Military Unit 43753 then wired payment to Balakaev's Sberbank account.

As also referenced in OEE's request and the indictment, in total, between approximately 2017 and the present, Balakaev entered into approximately ten (10) contracts with FSB Military Unit 43753 to repair approximately forty (40) spectrum analyzers and signal generators. In furtherance of those contracts, Balakaev purchased approximately forty-three (43) devices in the United States. Balakaev frequently traveled between Russia and the United States during this time to obtain the devices, often through John F. Kennedy International Airport ("JFK Airport") in the Eastern District of New York. In furtherance of the scheme to unlawfully export controlled items from the United States to the FSB, on or about and between February 2017 and March 2021, Balakaev traveled from Russia to the United States approximately fourteen (14) times, typically staying in the United States anywhere from two (2) to fourteen (14) days on each trip. Included below is one example of the multiple unlawful exports to the FSB which are described in further detail in the indictment.

By way of example, on or about December 19, 2019, Balakaev, acting through Radiotester, entered into a contract with the FSB Military Unit 43753. As described in the indictment, the contract was to repair an Agilent HP 8562EC and two Agilent HP 8560EC spectrum analyzers. According to purchase records and shipment notifications, Balakaev purchased two Agilent HP 8560E spectrum analyzers that were delivered to Individual 3's home in Richmond, Virginia on or about January 14, 2020 and January 15, 2020. Approximately one month later, on or about February 10, 2020, Balakaev flew from Russia to the United States, where he stayed for approximately one week, in order to obtain the two Agilent HP 8560E spectrum analyzers that he purchased. While in the United States, on or about February 17, 2020, Balakaev e-mailed FSB Co-Conspirator 1 with the subject of the email "Repair Contracts 43753" and attached a PDF about spectrum analyzers. The following month, in or about March 2020, Balakaev purchased an Agilent HP 8562EC spectrum analyzer to fulfill the FSB contract. On or about March 21, 2020, the device was delivered to Individual 3's home in Richmond, Virginia.

In addition to the example described above, between approximately April 16, 2020 and March 6, 2021, Balakaev purchased approximately thirty (30) additional spectrum analyzers, spectrum analyzer parts, and other radio parts which were shipped to Individual 3's home in Richmond, Virginia. Balakaev also traveled to the United States twice in 2021 to obtain the devices and fulfill his FSB contracts. Further, in approximately January 2022, Balakaev, through Radiotester, entered into a new contract with FSB Military Unit 43753 to repair six spectrum analyzers and signal generators, including the following make and models: HP8648D; Agilent HP 8562E; Agilent HP 8562EC; Rohde & Schwarz FS300; and Rohde & Schwarz

SM300. In approximately February 2022, Balakaev picked up the devices from FSB Co-Conspirator 1 at FSB Center 8 to begin the process of procuring spectrum analyzers for use in repairing the devices.

ii. Unlicensed Exports of U.S.-Origin Gas Detection Equipment to the DPRK

Between approximately 2019 and 2020, Balakaev conspired with DPRK Government Official 1, the First Secretary of the Embassy of the DPRK to the Russian Federation, to provide the DPRK with U.S.-origin technology that can detect hazardous gases, in violation of United States laws.

As described in the OEE request and indictment, in approximately 2019, DPRK Government Official 1 contacted Balakaev to discuss business they could engage in together. DPRK Government Official 1 contacted Balakaev specifically due to connections that Balakaev had made while working at the Russian Ministry of Culture and in his travel to North Korea. Balakaev subsequently met DPRK Government Official 1 multiple times at the North Korean embassy in Moscow, Russia. On one of those occasions, DPRK Government Official 1 asked Balakaev to purchase an Altair 4X gas detector for the DPRK. The Altair 4X gas detector is a device manufactured by a company in the United States that can be used to detect deadly gases such as combustible gases, oxygen-deficient atmospheres, and toxic gases. The Altair 4X gas detector is subject to the EAR and designated as EAR99.¹¹

On approximately December 28, 2019, Balakaev purchased the Altair 4X gas detector on the internet in the United States and had it shipped to Individual 3's home in Richmond, Virginia. On January 2, 2020, the shipment arrived at Individual 3's home. Approximately two

¹¹ The Altair 4X gas detector would not fall within the exception set forth in § 746.4 as it is not EAR99 food or medicine.

months later, on or about February 9, 2020, DPRK Government Official 1 sent Balakaev a photograph of a broken CD labeled “Altair 4XR Multigas Detector.” Balakaev responded, in sum and substance, that he would send a link for the gas detector software. As further described in the OEE request and indictment, on or about February 10, 2020, Balakaev traveled from Russia to the United States to obtain the gas detector that was previously shipped to Individual 3’s home. Approximately one week later, on or about February 17, 2020, Balakaev returned to Russia with the gas detector.

As the indictment further demonstrates, Balakaev was aware of the applicable U.S. export control laws which prohibited him from purchasing the electronic devices in the United States for ultimate end use by the FSB and DPRK. As described in the indictment, on or about November 5, 2019, Individual 3 emailed Balakaev a hyperlink to a BIS document titled “Don’t Let This Happen To You!: Actual Investigations of Export Control and Antiboycott Violations.” In the email, Individual 3 wrote to Balakaev to “Take a look just in case.” The BIS document provided “an introduction to the consequences of violating U.S. export control law.” In addition to explaining U.S. export control laws, the document noted specific examples of individuals who violated U.S. sanction regulations by exporting items to Russia without a BIS license. Balakaev subsequently downloaded the document and saved the document to his computer.

B. Ongoing Procurement Attempts

As evidenced by the multiple transactions involving Balakaev and the Balakaev Network dating back to 2017 described in the OEE request and indictment, Balakaev has demonstrated a pattern of conduct involving the illicit procurement and unauthorized exports of EAR controlled items for end use by the FSB and DPRK. Further, as detailed in OEE’s request and related

information, Balakaev made statements to law enforcement that he intended to continue to procure EAR controlled items through other means and is still obtaining contracts through the FSB.

III. FINDINGS

As described above, I find that the evidence presented by BIS demonstrates that a violation of the Regulations by the above-captioned parties is imminent in both time and degree of likelihood. As such, a TDO is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with Ilya Balakaev and Radiotester OOO a/k/a Radiotester LLC in export or reexport transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to preclude future violations of the Regulations given the deliberate, covert, and determined nature of the misconduct and clear disregard for complying with U.S. export control laws.

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 of the Regulations.

IT IS THEREFORE ORDERED:

FIRST, that **ILYA BALAKAEV**, with an address at Sharikopodshipnikovskaya 20-68 Moscow, Russian Federation; **RADIOTESTER OOO A/K/A RADIOTESTER LLC**, with an address at Sharikopodshipnikovskaya 11, Building 1, Moscow, 115088, Russian Federation, and Volgograd Prospect, House 2, Moscow, 109316, Russian Federation; and when acting for or on their behalf, any successors or assigns, agents, or employees (each a "Denied Person" and collectively the "Denied Persons") 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, 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, or in any other activity subject to the EAR; 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 in any other activity subject to the EAR.

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

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person 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 a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person 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; 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 a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

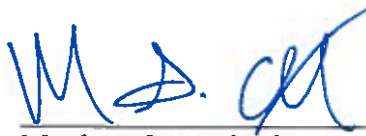
THIRD, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Ilya Balakaev and Radiotester OOO a/k/a Radiotester LLC by affiliation, ownership, control, or position of responsibility in the conduct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

In accordance with the provisions of Section 766.24(e) of the EAR, Ilya Balakaev and Radiotester OOO a/k/a Radiotester LLC 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. Respondents Ilya Balakaev and Radiotester OOO a/k/a Radiotester LLC may oppose a request to renew this Order by filing a written submission with the Assistant Secretary 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 served on each denied person 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: February 24, 2023.