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United States Department of State

Washington, D.C. 20520

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Dear Speaker Hastert:

On January 10, 2003, President Bush certified that waiving the restrictions contained in section 1305 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65, as amended), with respect to obligation and expenditure of funds for planning, design, and construction of a chemical weapons destruction facility at Shchuch'ye in the Russian Federation, is important to the national security interests of the United States.

Enclosed are the statement, justification, and plan described in section 8144(a) of the Department of Defense Appropriations Act for Fiscal Year 2003. The President has directed that these documents be published in the Federal Register.

We hope the information contained in the documents proves useful in addressing any concerns you may have regarding this subject. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

Paul V. Kelly

Paul V. Kelly
Assistant Secretary
Legislative Affairs

Enclosure:

Presidential Waiver, Statement, Justification and Plan

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

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THE WHITE HOUSE

WASHINGTON

January 10, 2003

Presidential Determination
No. 2003-10

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Presidential Determination on Waiver of Conditions on Obligation and Expenditure of Funds for Planning, Design, and Construction of a Chemical Weapons Destruction Facility in Russia

Pursuant to the authority vested in me by section 8144 of the Department of Defense Appropriations Act for Fiscal Year 2003 (Public Law 107-248) (the "Act"), I hereby certify that waiving the conditions described in section 1305 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65) is important to the national security interests of the United States, and include herein, for submission to the Congress, the statement, justification, and plan described in section 8144(a) of the Act.

You are authorized and directed to transmit this certification, including the statement, justification, and plan to the Congress and to arrange for its publication in the Federal Register.

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STATEMENT, JUSTIFICATION AND PLAN INCLUDED IN PRESIDENTIAL CERTIFICATION UNDER SECTION 8144 OF THE DEPARTMENT OF DEFENSE APPROPRIATIONS ACT FOR FY 2003 (P.L. 107-248)

Section 8144 of Public Law 107-248 provides that the conditions described in section 1305 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65) (FY2000 Act) shall not apply to the obligation and expenditure of funds for fiscal years 2000, 2001, 2002 and 2003 for the planning, design, or construction of a chemical weapons (CW) destruction facility in Russia if the President submits to Congress a written certification that includes:

(1) a statement as to why waiving the conditions is important to the national security interests of the Untied States;

(2) a full and complete justification for exercising this waiver; and

(3) a plan to promote a full and accurate disclosure by Russia regarding the size, content, status and location of its CW stockpile.

1. Waiving the conditions is important to the national security interests of the United States.

The Russian Federation inherited from the Soviet Union millions of modern nerve agent munitions that must be destroyed pursuant to the Chemical Weapons Convention (CWC). Many of these munitions are manportable, in excellent, ready-to-use condition, and are stored at five declared storage sites in Russia identified as having potential security vulnerabilities. For the most part, these munitions are small, easily transportable, and stored in wooden structures. They therefore present a significant proliferation risk.

A key United States national security objective is to keep the world's most dangerous technologies out of the hands of the world's most dangerous people. An important element in achieving this goal is to support efforts for prompt and irreversible destruction of Russia's CW in accordance with the verification provisions in the CWC. Because the Secretary of Defense cannot certify the elements specified in Section 1305 of the FY2000 Act, assistance cannot be provided for the construction of a facility at which these weapons would be destroyed unless the President exercises the authority provided

by Section 8144 of Public Law 107-248 to waive the conditions in the FY2000 Act. It is therefore important to the national security interests of the United States that the conditions in Section 1305 of the FY2000 Act be waived. Issuance of the waiver will permit assistance to Russia for construction of a nerve agent CW destruction facility at Shchuch'ye, at which Russia can destroy the munitions that pose the greatest proliferation threat.

2. Full and complete justification for exercising this waiver.

Section 1305 of the FY2000 Act prohibited the obligation or expenditure of funds appropriated for Cooperative Threat Reduction (CTR) programs for planning, design or construction of a CW destruction facility in Russia. This provision was amended by Section 1308 of the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, to permit such obligation or expenditure upon certification by the Secretary of Defense that there has been:

(1) information provided by Russia, that the United States assess to be full and accurate, regarding the size of the CW stockpile of Russia;

(2) a demonstrated annual commitment by Russia to allocate at least $25 million to CW elimination;

(3) development by Russia of a practical plan for destroying its stockpile of nerve agents;

(4) enactment of a law by Russia that provides for the elimination of all nerve agents at a single site;

(5) an agreement by Russia to destroy or convert its chemical weapons production facilities (CWPF) at Volgograd and Novocheboksarsk; and

(6) a demonstrated commitment from the international community to fund and build infrastructure needed to support and operate the facility.

As detailed below, the actions that the Russian Federation has taken over the past two years, satisfy the second and fifth elements under Section 1305 of the FY2000 Act, and actions by other donor governments satisfy the sixth. With regard to the three remaining elements, our concerns have not yet been resolved. The Secretary of Defense is therefore unable to make

the certification required by Section 1305. The conditions in Section 1305 of the FY2000 Act on spending funds for a CW destruction facility in Russia must therefore be waived to make possible U.S. assistance for a facility for the destruction of millions of lethal nerve agent weapons that pose a significant proliferation risk as long as they exist.

Resolved Elements:

Element 2: A demonstrated annual commitment by Russia to allocate at least $25 million to CW elimination.

Since 2001, Russia has allocated at least $25 million per year to eliminate its CW at Shchuch'ye. Russia's 2001 budget allocated three billion rules ($107 million[1]) for CW destruction in Russia, including $25 million for Shchuch'ye. Russia's fiscal year 2002 budget for chemical weapons destruction is 5.436 billion rubles ($181 million), including $35 million to fund social and industrial infrastructure projects (e.g., housing, schools, power lines) at Shchuch'ye. In October 2002, Russia announced plans to spend at least $35 million for Shchuch'ye in 2003.

Russia plans to spend significantly more for CW elimination during each succeeding year. According to Russia's July 5, 2001 revised CW estruction program plan, over 90 billion rubles ($3 billion) will be expended through fiscal year 2011 for CW elimination.

Element 5: An agreement by Russia to destroy or convert its CWPF at Volgograd and Novocheboksarsk.

As a State Party to the CWC, Russia is legally obligated to destroy all of its declared CWPF, including those at Volgograd and Novocheboksarsk. In exceptional cases of compelling need, CWC States Parties may request permission to use a CWPF for purposes not prohibited under the CWC. The Organization for the Prohibition of Chemical Weapons (OPCW) Conference of the States Parties has approved Russia's request conversion requests for portions of the Volgograd and Novocheboksarsk facilities. Since 1999 the CTR program has, following OPCW approval, provided assistance to Russia to demilitarize nerve agent production facilities at both locations.

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[1] The amounts stated in this paper in U.S. dollars for Russian funding and international assistance are approximate, because of the fluctuation of currency exchange rates.

Element 6: A demonstrated commitment from the international community to fund and build infrastructure needed to support and operate the CW destruction facility.

To date, the international community has committed or plans to commit about $50 million to fund and build the infrastructure needed to support and operate a nerve agent destruction facility at Shchuch'ye. G8 leaders have cited CW destruction in Russia as a priority for the G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction, agreed at the Kananaskis Summit in Jun 2002. It is expected, therefore, that international assistance to the Shchuch'ye facility will increase under the G8 Global Partnership.

Specific international commitments (alphabetized by donor country) for Shchuch'ye areas follows:

Canada: provided $250,000 for Shchuch'ye infrastructure in 2000-2001; signed an agreement with Russia in 2002 for an additional $3.4 million.

European Union: committed $1.8 million in 2001.

Germany: plans to provide $1.3 million in 2002.

Italy: ratified an agreement with Russia to provide $7.15 million over three years, beginning in 2001, for Shchuch'ye infrastructure.

The Netherlands: contributing $10 million to Russian chemical weapons destruction, including a possible contribution of $2 million to support Shchuch'ye.

Norway: committed $2.15 million for Shchuch'ye infrastructure.

Sweden: intends to commit $700,000.

Switzerland: earmarked $11.4 million in assistance to Russian CW destruction program over at least five years, beginning in 2003; seriously considering contributing a significant portion of that to Shchuch'ye.

United Kingdom: agreed with Russia in December 2001 to contribute $18 million for Shchuch'ye over three years.

In addition, Denmark, Czech Republic, France, Japan and Poland have indicated interest in providing assistance to Shchuch'ye. In March 2002, the Nuclear Threat Initiative (a non-governmental organization) announced a $1 million commitment to Shchuch'ye to match $2 million in funds from an international donor. The United States will continue to press Allies for commitments to fund and build infrastructure needed to support and operate the Shchuch'ye facility.

Unresolved Elements

Element 1: Information provided by Russia, that the United States assesses to be full and accurate, regarding the size of the CW stockpile of Russia.

The United States is engaged in ongoing bilateral consultations with Russia on the Russian CWC stockpile declaration and is seeking to resolve our concerns. Only limited progress has been made. Russia has provided some additional information on its stockpile declaration but that information does not resolve U.S. concerns. A U.S. team visited Moscow in early December to review documentation offered by Russia as relevant to resolving the question of an undeclared stockpile. Russia offered only documents already available to the United States through the OPCW. The Administration continues to stress with senior Russian officials the importance of resolving this element.

Element 3: Development by Russia of a practical plan for destroying its stockpile of nerve agents.

Russia continues to revise a practical plan for destroying its stockpile of nerve agents. On July 5, 2001, the Russian Government approved the revised CW destruction program plan (Resolution No. 510) that amends the initial Russian plan of March 21, 1996 (Resolution No. 305). Russia has provided the United States and the OPCW numerous details on the planned destruction of its nerve agent stocks. However, the United States continues to seek clarification and additional information as the Russian plan continues to evolve. In October 2002, Russia recognized the need to provide a single document that addresses all the necessary steps, including transportation and safety measures, to destroy its nerve agent stockpile at Shchuch'ye in accordance with the CWC.

Element 4: Enactment of a law by Russia that provides for the elimination of all nerve agents at a single site.

A May 2, 1997 Russian law had prohibited, *inter alia*, transportation of chemical weapons across Russian regions. As a result of an amendment signed by President Putin on November 29, 2001, Russian federal law now allows the transportation of nerve agents from one storage site to another storage site. Russia is seriously considering a recent U.S. proposal that it formally confirm the Russian commitment to eliminate all nerve agents at a single site (i.e., Shchuch'ye). The amendment of November 29, 2001, coupled with an anticipated official commitment by Russia to eliminate all nerve agents at Shchuch'ye, would satisfy this condition.

3. Plan to promote a full and accurate disclosure by Russia regarding the size, content, status, and location of its chemical weapons stockpile.

The United States continues to work closely with Russia in an attempt to resolve our concerns with the first element. The United States intends to address this concern through a combination of gathering corroborating information, encouraging Russian cooperation and transparency, conducting bilateral expert consultations, and seeking Russian agreement to a U.S. proposal that would allow short-notice visits, with unimpeded access, to undeclared suspect Russian CW sites. The Administration continues to stress with senior Russian officials the importance of resolving this element.