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THE WHITE HOUSE
WASHINGTON

200300691

January 10, 2003

Presidential Determination
No. 2003-11

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Presidential Determination on Waiver of
Restrictions on Assistance to Russia under
the Cooperative Threat Reduction Act of 1993
and Title V of the FREEDOM Support Act

Pursuant to the authority vested in me by section 1306 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314), I hereby certify that waiving the restrictions contained in subsection (d) of section 1203 of the Cooperative Threat Reduction Act of 1993 (22 U.S.C. 5952), as amended, and the requirements contained in section 502 of the FREEDOM Support Act (22 U.S.C. 5852) during Fiscal Year 2003 with respect to the Russian Federation is important to the national security interests of the United States.

I have enclosed the unclassified report described in section 1306(b)(1) of the National Defense Authorization Act for Fiscal Year 2003, together with a classified annex.

You are authorized and directed to transmit this certification and report with its classified annex to the Congress and to arrange for the publication of this certification in the Federal Register.

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REPORT IN SUPPORT OF PRESIDENTIAL CERTIFICATION UNDER
SECTION 1306 OF THE 2003 NATIONAL DEFENSE AUTHORIZATION ACT
REGARDING ASSISTANCE FOR THE RUSSIAN FEDERATION

Section 1306 of the Floyd Spence National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314) (NDAA) grants the President the authority to waive the restrictions of section 1203(d) of the Cooperative Threat Reduction (CTR) Act of 1993 (Title XII of Public Law 103-160) and the requirements of section 502 of the FREEDOM Support Act (FSA) (Public Law 102-511) with respect to providing assistance to an independent state of the former Soviet Union during a fiscal year, if he submits to Congress a certification that the waiver is important to the national security interests of the United States and a report containing the following:

(A) A description of the activity or activities that prevent the President from certifying that the state is committed to the matters set forth in subsection (d) of section 1203 of the Cooperative Threat Reduction Act of 1993 (22 U.S.C. 5952) and section 502 of the FREEDOM Support Act (22 U.S.C. 5852) in such fiscal year;

(B) An explanation of why the waiver is important to the national security interests of the United States; and

(C) A description of the strategy, plan, or policy of the President for promoting the commitment of the state to, and compliance by the state with, such matters, notwithstanding the waiver.

Authority to make this waiver has not yet been delegated, and accordingly at this time may be exercised only by the President.

Pursuant to section 1203(d) of the CTR Act of 1993, as amended, and section 502 of the FSA, assistance may be provided to the independent states of the former Soviet Union for a fiscal year only if the President certifies to the Congress, for that fiscal year, that the proposed recipient country is committed to:

(1) making a substantial investment of its resources for dismantling or destroying its weapons of mass destruction, if such state has an obligation under a treaty or other agreement to destroy or dismantle any such weapons;

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(2) foregoing any military modernization program that exceeds legitimate defense requirements and foregoing the replacement of destroyed weapons of mass destruction;

(3) foregoing any use in new nuclear weapons of fissionable or other components of destroyed nuclear weapons;

(4) facilitating United States verification of any weapons destruction carried out under the Cooperative Threat Reduction Act of 1993, the Former Soviet Union Demilitarization Act of 1992, Section 212 of the Soviet Nuclear Threat Reduction Act of 1991, or Section 503(a) or 504(a) of the FREEDOM Support Act;

(5) complying with all relevant arms control agreements; and

(6) observing internationally recognized human rights, including the protection of minorities.

Certification of a recipient country's commitment to the last two courses of action listed above is required under section 1203(d) of the CTR Act, but not under section 502 of the FSA. The President's authority to make the requisite CTR and FSA Title V certifications has been delegated to the Secretary of State.

The Secretary of State has advised that he would be able to certify the commitment of the Russian Federation to the first, third, fourth, and sixth courses of action listed above, but not to the second and fifth courses of action specified above, for the reasons described below. Information in support of these conclusions is attached in the classified annex.

The President has determined not to certify the commitment of Russia to the second and fifth courses of action, but rather to exercise the waiver authority provided by section 1306 of the NDAA, by certifying to Congress that a waiver of the restrictions in subsection (d) of section 1203 of the CTR Act of 1993 and the requirements of section 502 of the FSA with respect to assistance to the Russian Federation under those Acts in FY 2003 is important to the national security interests of the United States, and by submitting this Report. Further information concerning the items in section 1306(b)(1) of the NDAA is included in the classified annex attached to this report.

I. Description of Activity or Activities That Prevent the President from Certifying that the Russian Federation is

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Committed to the Matters Set Forth in 22 U.S.C. 5952(d) and Section 502 of the FREEDOM Support Act

The Administration has continuing concerns about Russia's commitment to foregoing any military modernization program that exceeds legitimate defense requirements, and complying with all relevant arms control agreements.

CTR and FSA Certification No. 2: Commitment to Foregoing Any Military Modernization Program That Exceeds Legitimate Defense Requirements and Foregoing the Replacement of Destroyed Weapons of Mass Destruction

Because of concerns about Russia's ongoing biological weapons (BW) and chemical weapons (CW) activities, the Secretary of State is unable to certify that the Russian Federation is committed to foregoing any military modernization program that exceeds legitimate defense requirements and foregoing the replacement of destroyed weapons of mass destruction. The following sections describe concerns about Russia's biological weapons program and the accuracy and completeness of its Chemical Weapons Convention (CWC) declaration at the unclassified level.

Biological Weapons

There exists ample evidence that Russia inherited a robust offensive BW program from the Soviet Union. However, some Russian officials now deny that any offensive BW program ever existed.

Former President Yeltsin issued a decree in April 1992 prohibiting all activities that contravene the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BWC). President Putin has expressed his desire to ensure that Russia complies with the BWC.

In contrast with these statements, Russia continues a BW program, although it is much smaller than the massive Soviet BW program. Research activities with potential offensive applications are ongoing at certain facilities known to have been involved in offensive BW work during the Soviet era. Civilian facilities associated with the Soviet offensive BW program have been subject to varying degrees of modification and equipment removal and U.S. assistance has facilitated U.S. access to some of these civilian facilities. However, the

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inherent ability of these facilities to contribute to offensive BW-related activities remains. Many key officials from the former Soviet offensive BW program continue to occupy influential positions. Funding for activities at certain suspect military BW sites has continued. The Ministry of Defense facilities remain closed to the West, and the nature of Russian activities there remains uncertain.

Russia's Pathogen Biodefense Initiative, publicly initiated in 1999, is ostensibly aimed at providing a unified government system to defend against human, animal, and environmental pathogens, but could also potentially support offensive BW capabilities. The key government agencies associated with Moscow's BW program also play key roles in the Pathogen Biodefense Initiative.

The United States is concerned that a mobilization capability to produce such weapons quickly in time of war may be maintained at facilities in Russia. However, Russia has stated that it possesses no stockpile of BW agents and filled munitions.

Chemical Weapons

The CWC requires Russia to declare and destroy its CW stocks. Russia has requested CTR assistance to destroy Russian chemical weapons stocks and dismantle several former chemical weapons production facilities (CWPFs) in accordance with CWC requirements.

With regard to declared stockpiles, the Russian leadership has taken steps reflecting its commitment to the elimination of its CW program, including approving a CW destruction program plan in April 1996, and depositing its instrument of ratification of the CWC in November 1997. In becoming a State Party to the CWC, Russia accepted legal obligations to destroy its CW stockpile and to forego the development or possession of CW. In May 1997, the Duma passed and President Yeltsin signed the Russian Federal Law on Chemical Weapons Destruction, approving implementation of the 1996 destruction plan. The plan has subsequently undergone several revisions, most recently in July 2001. In recent years, the Russian Federation has taken steps to strengthen its CW destruction program, including consolidating responsibility under civilian leadership and significantly increasing funding, admittedly from a low starting point. For both financial and bureaucratic reasons, progress toward fulfilling Russia's CWC obligations has been slow, and

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senior-level Russian policy statements regarding Russia's general commitment to destroy its CW stocks remain largely unimplemented. As a result, Russia has requested extensions on its CW destruction deadlines from the Organization for the Prohibition of Chemical Weapons (OPCW). With international assistance, Russia is close to commencing the destruction of its Category 1 blister agent stockpile.

The United States believes that Russia's CWC declarations are incomplete, and that Russia failed to fully declare its CW stockpiles and CW-related facilities.

In addition, Russia may maintain CW production mobilization capacities. Moscow television commentary related to a July 1998 OPCW inspection of the Khimprom CWF in Novocheboksarsk noted that, "in line with safety regulations, the so-called mobilization capacities are being maintained. This is costing Khimprom vast sums of money even though this is a matter for the federal government."

Any offensive CW program is a violation of the CWC.

Based on continuing reports of offensive biological warfare activities, the retention and maintenance of key components of the former Soviet BW program, and the involvement of personnel previously associated with the Soviet offensive BW program in the current allegedly defensive program, the Administration judges that Russia retains an offensive BW program. Additionally, Russia has not provided a complete and accurate CWC declaration. Because of our concerns about continuing Russian BW and CW activities, the Secretary of State is not prepared to certify that Russia is committed to foregoing any military modernization program that exceeds legitimate defense requirements.

CTR Certification No. 5: Commitment to Complying With All
Relevant Arms Control Agreements

The Administration has continuing concerns about Russia's commitment to comply with certain relevant arms control agreements, including with the BWC and the CWC. Certification of a commitment to comply with all relevant arms control agreements is a requirement for the CTR program, but not for FSA Title V assistance. The following sections describe concerns about Russia's commitment to comply with the BWC and the CWC at the unclassified level.

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Biological Weapons Convention

The Administration has continuing concerns about Russia's commitment to comply with the 1972 BWC and believes that Russia continues to maintain a covert offensive BW program in violation of the BWC. Russian offensive BW activities are detailed above in the discussion of CTR and PSA Certification No. 2, in the section entitled "Biological Weapons." Relevant information is also contained in the classified annex.

Russia regularly submits an annual BWC declaration to the United Nations, pursuant to voluntary Confidence-Building Measures adopted at past BWC Review Conferences. Russia's initial 1992 declaration was purported to be a complete declaration of the Soviet BW program. An initial review of Russia's 2001 BWC Confidence Building Measures Data Declaration, however, reaffirmed U.S. concerns that Russia's 1992 declaration was incomplete and misleading in certain areas. There continues to be a profound lack of openness about the offensive BW program inherited from the Soviet Union. Subsequent Data Declarations provide no additions to Russia's 1992 declaration of past offensive BW activities, which falsely denied past production and stockpiling of BW. The 1992 declaration also failed to list all of the sites that supported the Soviet offensive BW program and that retain at least some of their offensive capability:

The more recent declarations suffer from the same failings as the earlier ones. They detail a reduced defensive BW program that is increasingly concentrated at military facilities that, according to past Russian statements, supported the offensive BW program prior to 1992. The Russians have asserted that their large production capacities are necessary to meet their civilian, health, and biological defense demands. This explanation does not satisfactorily address specific U.S. concerns, including those listed above.

It is a matter of concern that contacts between the United States and the Russian Federation on BWC-related issues are increasingly strained, with public statements by Russian officials appearing to retreat from the statements made by President Yeltsin in 1992. The United States has offered several times to have regular bilateral meetings on the BWC, but Russia has not accepted.

Notwithstanding U.S. concerns with Russia's offensive BW capabilities, the massive BW program Russia inherited from the

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Soviet Union has been considerably reduced. Since the Soviet era, there have been severe cuts in funding and personnel at former key BW facilities. In another positive development, U.S.-Russian cooperative biotechnology programs in recent years have enhanced transparency by providing controlled access to non-MoD facilities and personnel formerly associated with the Soviet Union's offensive BW program. This transparency has reduced, but not eliminated, U.S. concerns that these civilian facilities are directly involved in an ongoing, offensive BW program. This year access for United States Government personnel was expanded to include cooperation-related visits to several key Soviet-era civilian BW production facilities in Russia. Russia continues, however, to deny Western access to certain biological facilities, including those believed to have been associated with the Soviet offensive BW program.

As another positive development, in November 2001, President Putin signed a Joint Statement with President Bush that reaffirmed Russia's commitment to the BWC.

Chemical Weapons Convention

On November 5, 1997, Russia deposited its instrument of ratification of the CWC, and the treaty entered into force for Russia that year. The CWC requires States Parties to cease all development and production of chemical weapons, declare and destroy or convert CWPFs, and declare and destroy their existing CW stockpiles. In addition, States Parties are to refrain from transferring CW or assisting another country with prohibited CW programs. Since the December 1997 entry into force of the treaty for Russia, the United States has considered its provisions to be the appropriate basis for evaluating Russia's commitment to CW disarmament. The CWC provides additional mechanisms such as Article IX for pursuing concerns about Russia's compliance with the CWC.

The United States is concerned that Russia may maintain undeclared CW stockpiles and facilities as well as CW production mobilization capabilities.

In addition to the declared agent and weapons at Russia's seven declared storage sites, the United States is concerned that Russia may possess chemical agent/munition stocks in excess of what it declared under the CWC. Russia may store such stocks at sites that were not declared under the CWC.

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The Administration believes that the Russian declaration of chemical weapons development facilities is incomplete. Moreover, there are facilities that Russia may be required to declare as chemical weapons destruction facilities as well. Rather than destroying many of its declared CWWFs, Russia is converting them into commercial chemical production facilities, making them sources of revenue. Based on U.S.-negotiated changes, once Russia completes the conversion of its declared CW production facilities, these facilities should have no greater capability than equivalent industrial facilities to produce CW, as required under the CWC, and will be subject to OPCW inspections through at least 2012, and review to determine if continued verification is warranted.

Further relevant information is contained in the classified annex.

II. Explanation of Why the Waiver is Important to the National Security Interests of the United States

The President has determined that a waiver of the CTR and FSA Title V certification requirements is important to the national security interests of the United States. Continued provision of assistance to the Russian Federation under the CTR Act and Title V of the FSA (which includes Strategic Offensive Arms Elimination, the Civilian Research and Development Foundation, Export Control and Related Border Security, and other programs designed to achieve U.S. policy objectives related to relocation, destruction, and security of weapons of mass destruction (WMD) and related equipment) is important to U.S. national security interests. Such programs contribute substantially to U.S. security by helping to secure, prevent, deter, detect, and interdict proliferation of WMD and associated technologies, expertise and equipment, and by eliminating WMD, fissile material, delivery systems, and associated infrastructure. Such programs also enhance U.S. national security by eliminating the potential risk posed by excess Russian WMD. Russia is making a substantial investment of its own limited resources to eliminate the huge inventory of excess WMD and related materials inherited from the Soviet Union, and U.S. CTR and FSA Title V assistance serves to increase the scope and accelerate the pace of Russian elimination, as well as encourage other countries to provide assistance. United States participation in the CTR process also provides some transparency into Russian CW- and BW-related activities.

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The Administration's commitment to these efforts is clear. It is a key U.S. national security objective to keep the world's most dangerous technologies out of the hands of the world's most dangerous people. It is indisputably important to the national security interests of the United States to prevent Russia's excess nuclear weapons, its stockpile of CW munitions, its dangerous pathogen collections, and its surplus of highly-capable delivery vehicles from falling into the hands of terrorists or rogue states. The best method to prevent these dangerous occurrences is to help Russia destroy its excess WMD and delivery vehicles promptly, irreversibly, and verifiably.

Of equal importance are programs underway, using CTR and FSA Title V funds, to engage thousands of former Soviet weapons scientists, at dozens of former Soviet WMD institutes and facilities, so that these experts can find legitimate and commercially-sustainable work and do not turn to rogue states for employment. In recognition of the importance of these and other United States Government nonproliferation programs, the Administration's FY 2003 budget included a request for nonproliferation and threat reduction assistance to the former Soviet states of over \$1 billion. CTR assistance also remains an invaluable component of U.S. efforts to encourage Russian compliance with its arms control obligations.

For these reasons, a waiver of the restrictions of 22 U.S.C. 5952(d) and the requirements of section 502 of the FSA with respect to the Russian Federation is important to the national security interests of the United States.

III. Description of the Strategy, Plan, or Policy of the President for Promoting the Commitment of the Russian Federation to, and Compliance by the Russian Federation with Such Matters, Notwithstanding the Waiver

Addressing Concerns with Russia's Offensive BW Activities

U.S. officials regularly engage the Russians at both senior and expert levels to press for greater openness regarding the offensive BW program Russia inherited from the Soviet Union. We will continue to raise our concerns with the highest levels of the Russian Government and in all relevant fora.

Along with the United States, the UK and Russia serve as Depositaries for the BWC. It is anticipated that there will be more regularized discussion among the three in preparation for

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annual meetings of experts and meetings of States Parties prior to the 2006 Sixth BWC Review Conference. The United States has invited Russia to engage in regular bilateral consultations to review BW concerns, including participants from all responsible agencies, to no avail. Recognizing the dual-use nature of most facilities, the United States will continue to encourage Russia to open facilities that remain off limits to us.

In the areas of access and transparency, we have achieved some successes through ongoing U.S. efforts to engage former BW scientists, which are coordinated by the Department of State. These programs have provided us unprecedented access to numerous formerly closed biological facilities that are now involved in collaborative civilian research. To the extent possible, through continued and expanded engagement, we will continue to seek greater openness and transparency at Ministry of Defense bio-related facilities. In addition to our engagement efforts with former BW scientists, we also continue collaborative programs to secure and consolidate dangerous pathogen collections.

Ending Russia's Offensive CW Activities

The United States continues to work closely with Russia in an attempt to resolve our concerns with Russia's CWC declaration. On several occasions, the Under Secretary of State for Arms Control and International Security and other senior U.S. officials have stressed the importance of resolving these concerns, particularly related to Russia's CW stockpile, with senior Russian officials, including the Chairman of the State Commission on Chemical Disarmament.

The United States and the Russian Federation also hold periodic bilateral meetings at the expert level, with political oversight. The last experts' meeting on this issue was held in February 2002. In response to official U.S. questions about Russia's stockpile declaration, Russia provided some additional information and a proposal to review documentation related to its declared CW stockpile. A team of experts visited Moscow in early December to conduct the documentation review.

In February 2002, the United States also proposed to Russia that U.S. experts conduct site visits as part of our plan to resolve concerns related to the Russian CW declaration. The U.S. proposal requests a series of short-notice visits, with unimpeded access, to undeclared suspect Russian CW sites. The United States also provided detailed procedures governing how

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such visits would be conducted and made clear that such visits were not reciprocal. To date Russia has only agreed to site visits at declared CW storage and destruction facilities. The United States has made clear our concern is not with declared facilities, but with sites that were not declared under the CWC. Consultations are continuing on this U.S. proposal.

Russia is continuing to revise its previous plan for destroying its stockpile of nerve agents. On July 5, 2001, the Russian Government approved the revised chemical weapons destruction 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 is continuing to seek additional clarification as the Russian plan continues to evolve. In October 2002, Russia indicated that it is giving serious consideration to providing a single document that addresses all the necessary steps to destroy its nerve agent stockpile in accordance with the CWC and the conditions specified in the Fiscal Year NDAA.

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