

A BILL FOR AN ACT

To further amend title 11 of the Code of the Federated States of Micronesia, as amended, by creating a new chapter 13 to implement the provisions of the Chemical Weapons Convention at the National level, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Title 11 of the Code of the Federated
2 States of Micronesia, as amendd, is hereby further
3 amended by creating a new chapter 13 of title 11 to be
4 entitled "Chemical Weapons".

5 Section 2. Title 11 of the Code of the Federated
6 States of Micronesia, as amended, is hereby further
7 amended by inserting a new section 1301 under chapter 13
8 to read as follows:

9 "Section 1301. Short Title. This chapter is known
10 and may be cited as the "Federated States of
11 Micronesia Chemical Weapons Act".

12 Section 3. Title 11 of the Code of the Federated States
13 of Micronesia, as amended, is hereby further amended by inserting
14 a new section 1302 under chapter 13 to read as follows:

15 "Section 1302. Definitions. The following terms
16 shall have the following meanings for the purposes
17 of this chapter:

18 (1) 'Chemical Weapon' means the following,
19 together or separately:

1 (a) Toxic chemicals and their precursors,
2 except where intended for non-prohibited purposes
3 and of types and in quantities consistent with such
4 purposes; and

5 (b) Munitions and devices specifically
6 designed to cause death or other harm through the
7 toxic properties of such toxic chemicals;

8 (c) Any equipment specifically designed
9 for use directly in connection with the employment of
10 such munitions and devices.

11 (2) 'Compliance Purpose' means:

12 (a) the purpose of determining whether the
13 provisions of this chapter and any regulations
14 promulgated thereunder have been or are being
15 complied with; and

16 (b) the purpose of determining whether the
17 conditions applicable to a license have been or are
18 being complied with by the holder of a license.

19 (3) 'Convention' means the Convention on the
20 Prohibition of the Development, Production,
21 Stockpiling and Use of Chemical Weapons and on Their
22 Destruction;

23 (4) 'Discrete organic chemical' means any
24 chemical belonging to the class of chemical compounds
25 consisting of all compounds of carbon except for its

1 oxides, sulfides, and metal carbonates unless:

2 (a) it is an oligomer or polymer, whether
3 or not it contains phosphorus, sulphur, or fluorine;
4 or

5 (b) it contains only carbon and metal.

6 (5) 'Foreign state' means:

7 (a) any country other than the Federated
8 States of Micronesia; and

9 (b) every constituent part of such a
10 country, including a territory, dependency, or
11 protectorate, or political subdivision that
12 administers its own laws relating to international
13 cooperation.

14 (6) 'Illegally' means in breach of the
15 applicable national legislation adopted to enforce
16 the Convention.

17 (7) 'International inspection team' means an
18 inspector, inspection assistant, or group of
19 inspectors and inspection assistants, designated by
20 OPCW according to the procedures set out in the
21 Verification Annex. It also includes any
22 international observer permitted to observe an
23 inspection pursuant to the Convention.

24 (8) 'National Authority' means the national
25 authority for the implementation of the Convention

1 mandated and established under section 1313 of this
2 chapter.

3 (9) 'National inspector' means any officer of
4 the National Police of the Federated States of
5 Micronesia, designated by the National Authority in
6 writing to be an inspector under this chapter.

7 (10) 'Non-prohibited purpose' means:

8 (a) industrial, agricultural, research,
9 medical, pharmaceutical, or other peaceful purposes;

10 (b) protective purposes, namely those
11 purposes directly related to protection against toxic
12 chemicals and chemical weapons;

13 (c) military purposes not connected with
14 the use of chemical weapons and not dependent on the
15 use of the toxic properties of chemicals as a method
16 of warfare; and

17 (d) law enforcement including domestic
18 riot control purposes.

19 (11) 'OPCW' means the Organization for the
20 Prohibition of Chemical Weapons.

21 (12) 'Person' means any natural or legal person.

22 (13) 'Precursor' means any chemical reactant that
23 takes part at any stage in the production by whatever
24 method of a toxic chemical, including any key
25 component of a binary or multi-component chemical

1 system. Precursors that have been identified for the
2 application of verification measures by OPCW are
3 listed in the Schedules.

4 (14) 'Riot control agent' means any chemical not
5 listed in a schedule and that can produce rapidly in
6 human beings sensory irritation or disabling physical
7 effects that disappear within a short time following
8 termination of exposure.

9 (15) 'Schedule' means one of the three Schedules
10 of Chemicals annexed to the Convention.

11 (16) 'Secretary' means the Secretary of the
12 Department of Justice of the Federated States of
13 Micronesia.

14 (17) 'State Party' means any state for which the
15 Convention has entered into force.

16 (18) 'Toxic chemical' means any chemical,
17 regardless of its origin, method of production, or
18 place of production, which through its chemical
19 action on life processes can cause death, temporary
20 incapacitation, or permanent harm to human beings or
21 animals. Toxic chemicals which have been identified
22 for the application of verification measures by OPCW
23 are listed in the Schedules.

24 (19) 'Verification Annex' means the Annex on
25 Implementation and Verification to the Convention.

1 (20) Terms and expressions used and not defined
2 in this Act shall, unless the context otherwise
3 requires, have the same meaning as in the
4 Convention."

5 Section 4. Title 11 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by inserting a
7 new section 1303 under chapter 13 to read as follows:

8 "Section 1303. Chemical weapon prohibitions.

9 (1) A person commits an offense who:

10 (a) develops, produces, otherwise acquires,
11 stockpiles, or retains a chemical weapon;

12 (b) transfers, directly or indirectly, a
13 chemical weapon to any other person;

14 (c) uses a chemical weapon; and

15 (d) engages in any military preparations to
16 use a chemical weapon.

17 (2) Any person who violates subsection (1) of
18 this section shall be punished upon conviction by
19 imprisonment for a term of not more than 20 years, or
20 a fined not more than \$100,000, or both.

21 (3) Any chemical weapon discovered in any place
22 under the jurisdiction of the Federated States of
23 Micronesia:

24 (a) shall be forfeited to the Federated
25 States of Micronesia;

1 (b) may be seized without warrant by any law
2 enforcement officer of the Federated States of
3 Micronesia; and

4 (c) shall be stored pending disposal, and
5 disposed of, in a manner determined by the National
6 Authority in accordance with the Convention."

7 Section 5. Title 11 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by inserting a
9 new section 1304 under chapter 13 to read as follows:

10 "Section 1304. Schedule 1 chemical prohibitions.

11 (1) A person commits an offense who knowingly:

12 (a) produces, acquires, retains, or uses
13 Schedule 1 chemicals outside the territory of the
14 Federated States of Micronesia, unless such
15 production, acquisition, retention, or use takes
16 place within the territory of another State Party;

17 (b) illegally produces, acquires, retains,
18 transfers, or uses Schedule 1 chemicals;

19 (c) transfers Schedule 1 chemicals outside
20 the territory of the Federated States of Micronesia
21 to a foreign state other than a State Party;

22 (d) illegally transfers Schedule 1 chemicals
23 to another State Party; or

24 (e) re-transfers to a foreign state Schedule
25 1 chemicals transferred to the Federated States of

1 Micronesia.

2 (2) Any person who violates subsection (1) of
3 this section shall be punished upon conviction by
4 imprisonment for a term of not more than five years,
5 or with a fine not exceeding \$50,000, or both."

6 Section 6. Title 11 of the Code of the Federated States of
7 Micronesia, as amended, is hereby further amended by inserting a
8 new section 1305 under chapter 13 to read as follows:

9 "Section 1305. Schedule 2 chemical prohibitions.

10 (1) A person commits an offense who knowingly:

11 (a) illegally transfers to or receives
12 Schedule 2 chemicals from a foreign state other than
13 a State Party; or

14 (b) illegally produces, processes, consumes,
15 imports, or exports Schedule 2 chemicals.

16 (2) Any person who violates subsection (1) of
17 this section shall be punished upon conviction by
18 imprisonment for a term of not more than three
19 years, or with a fined not more than \$25,000, or
20 both."

21 Section 7. Title 11 of the Code of the Federated States of
22 Micronesia, as amended, is hereby further amended by inserting a
23 new section 1306 under chapter 13 to read as follows:

24 "Section 1306. Schedule 3 chemical prohibitions.

25 (1) A person commits an offense who knowingly:

1 (a) illegally transfers Schedule 3 chemicals
2 to a foreign state, other than a State Party; or

3 (b) produces more than 30 tonnes of a
4 Schedule 3 chemical, or imports or exports a
5 Schedule 3 chemical, unless under and in accordance
6 with the conditions of a license granted pursuant to
7 section 1310 of this chapter.

8 (2) Any person who violates this section shall
9 be punished upon conviction by imprisonment for a
10 term of not more than three years, or with a fine
11 not exceeding \$25,000, or both."

12 Section 8. Title 11 of the Code of the Federated States of
13 Micronesia, as amended, is hereby further amended by inserting a
14 new section 1307 under chapter 13 to read as follows:

15 "Section 1307. Extraterritorial application. This
16 chapter shall extend:

17 (a) to acts or omissions prohibited under this
18 chapter that are committed by a citizen or national
19 of the Federated States of Micronesia outside the
20 Federated States of Micronesia; and

21 (b) to acts or omissions prohibited by this
22 chapter that are committed on board sea vessels or
23 aircraft registered in, belonging to, or in the
24 possession of the Federated States of Micronesia."

25 Section 9. Title 11 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by inserting a
2 new section 1308 under chapter 13 to read as follows:

3 "Section 1308. Legal assistance.

4 (1) The Secretary may collaborate with the
5 authorities of foreign states and international
6 organizations and entities, and coordinate with such
7 authorities to the extent required for the
8 implementation of this chapter or of equivalent
9 foreign laws, subject to the authorities of foreign
10 states or international organizations or entities
11 being bound to official secrecy. The Secretary
12 shall provide notice of such collaboration to the
13 Secretary of Foreign Affairs of the Federated States
14 of Micronesia.

15 (2) The Secretary may request the authorities
16 of foreign states and international organizations or
17 entities to provide relevant data or information
18 pursuant to subsection (1). The Secretary is
19 authorized to receive data as shall be specified in
20 regulations.

21 (3) If a foreign state has entered into an
22 appropriate reciprocity agreement with the Federated
23 States of Micronesia, the Secretary may provide, on
24 his or her own initiative or on request, the data or
25 information described in subsection (2) to that

1 foreign state, provided that the authorities of that
2 state provide assurances that such data or
3 information shall:

4 (a) only be used for purposes consistent
5 with this chapter; and

6 (b) only be used in criminal proceedings
7 on the condition that they are obtained in accordance
8 with those provisions governing international
9 judicial cooperation.

10 (4) The Secretary may provide the data or
11 information described in subsection (2) to
12 international organizations or entities if the
13 conditions set forth in subsection (3) are fulfilled,
14 in which case the requirement for a reciprocity
15 agreement is waived."

16 Section 10. Title 11 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by inserting a
18 new section 1309 under chapter 13 to read as follows:

19 "Section 1309. Mandatory reporting.

20 (1) Any powers under this section may be
21 exercised only to ensure that:

22 (a) toxic chemicals and their precursors are
23 only developed, produced, otherwise acquired,
24 retained, transferred, or used for non-prohibited
25 purposes;

1 (b) the National Authority has knowledge of
2 dealings with scheduled chemicals that facilitates
3 the making of the Federated States of Micronesia's
4 annual declarations to OCPW under the Convention; and

5 (c) the Federated States of Micronesia is
6 otherwise able to fulfill its obligations under the
7 Convention.

8 (2) Any person who produces, otherwise
9 acquires, processes, consumes, retains, transfers, or
10 uses any discrete organic chemical or any chemical
11 listed in the Schedules, shall submit declarations
12 and keep records in accordance with regulations
13 pursuant to this chapter.

14 (3) Any person reasonably believed by the
15 National Authority to possess documents or other
16 information relevant to the implementation of the
17 Convention or enforcement of this chapter, shall on
18 written notice provide such information he or she
19 possesses to the National Authority within a
20 reasonable period.

21 (4) A person commits an offense who
22 intentionally refuses or fails to comply with
23 subsection (2) or (3) of this section or who, in any
24 document prepared pursuant thereto, knowingly makes a
25 false or misleading statement or omission regarding

1 any material matter, and shall be punished upon
2 conviction by imprisonment for a term of not more
3 than three years, or with a fine not exceeding
4 \$25,000, or both."

5 Section 11. Title 11 of the Code of the Federated States
6 of Micronesia, as amended, is hereby further amended by inserting
7 a new section 1310 under chapter 13 to read as follows:

8 "Section 1310. Licensing of scheduled chemicals.

9 (1) No person shall produce, process, acquire,
10 import, export, retain, transfer, or use a Schedule 1
11 chemical except under, and in accordance with the
12 conditions of, a license granted by the National
13 Authority pursuant to the regulations under this
14 chapter.

15 (2) No person shall export a Schedule 2 or
16 Schedule 3 chemical to a foreign state, other than a
17 State Party, except under and in accordance with the
18 conditions of a license granted by the National
19 Authority pursuant to the regulations under this
20 chapter."

21 Section 12. Title 11 of the Code of the Federated States
22 of Micronesia, as amended, is hereby further amended by inserting
23 a new section 1311 under chapter 13 to read as follows:

24 "Section 1311. Inspections.

25 (1) The purpose of this section is to

1 facilitate inspections by national inspectors for a
2 compliance purpose and inspections by an
3 international inspection team in accordance with the
4 Convention.

5 (2) Either with the consent of the person in
6 control of any premises, or under a warrant issued
7 pursuant to chapter 3 of title 12 of the Code of the
8 Federated States of Micronesia, a national inspector
9 may enter the premises and exercise, inter alia, the
10 following inspection powers for a compliance
11 purpose:

12 (a) search any premises;

13 (b) take samples of a matter or thing;

14 (c) examine relevant documents and make
15 copies thereof;

16 (d) interview any person working on the
17 premises, including making recordings of such
18 interviews;

19 (e) have operated any equipment, including
20 electronic equipment, located at the premises; and

21 (f) do anything necessary or expedient for
22 the carrying out of any of the acts referred to in
23 this subsection, including restricting or
24 prohibiting the access of persons and vehicles to or
25 from the premises.

1 (3) International inspections.

2 (a) Either with the consent of the person in
3 control of any premises, or under a warrant issued
4 pursuant to chapter 3 of title 12 of the Code of the
5 Federated States of Micronesia, an international
6 inspection team may enter the premises in order to
7 carry out an international inspection;

8 (b) An international inspection team shall
9 have all powers as laid down in the Convention; and

10 (c) The point of entry for an international
11 inspection team shall be Pohnpei International
12 Airport unless otherwise designated by the National
13 Authority.

14 (4) Inspected persons and their personnel have
15 the duty to facilitate national and international
16 inspections and cooperate during such inspections.

17 (5) The National Authority may promulgate
18 regulations regarding the conduct of inspections by
19 national inspectors and international inspection
20 teams, provided that any regulations with respect to
21 international inspection teams are not inconsistent
22 with the Convention or Verification Annex.

23 (6) Obstruction of verification measures. A
24 person commits an offense who intentionally
25 obstructs any measure of verification of compliance

1 with this chapter and the Convention, that is taken
2 in accordance with this section and regulations
3 thereunder, and shall be punished upon conviction by
4 imprisonment for a term of not more than three
5 years, or with a fine not exceeding \$25,000, or
6 both."

7 Section 13. Title 11 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by inserting a
9 new section 1312 under chapter 13 to read as follows:

10 "Section 1312. Protection of confidential
11 information.

12 (1) Any information obtained pursuant to this
13 chapter or the Convention shall be kept
14 confidential.

15 (2) Such proprietary information may be
16 disclosed only with the consent of the person whose
17 affairs it relates, or for the purpose of:

18 (a) enabling the Federated States of
19 Micronesia to fulfill its obligations under the
20 Convention;

21 (b) enforcing this chapter; or

22 (c) resolving an emergency involving public
23 safety.

24 (3) Any person who fails to comply with this
25 section shall be fined not more than \$10,000."

1 Section 14. Title 11 of the Code of the Federated States
2 of Micronesia, as amended, is hereby further amended by inserting
3 a new section 1313 under chapter 13 to read as follows:

4 "Section 1313. National Authority.

5 (1) The Department of Justice of the Federated
6 States of Micronesia shall be the National Authority
7 for the purposes of implementing the provisions of
8 the Convention and this chapter.

9 (2) The President and the Congress shall direct
10 or assign to the National Authority such powers and
11 budget as may be necessary to implement and enforce
12 the Convention and the national implementing
13 legislation. Inter alia, the National Authority
14 shall have regulatory power as required for
15 effective implementation of this chapter and the
16 Convention."

17 Section 15. This act shall become law upon approval by
18 the President of the Federated States of Micronesia or upon its
19 becoming law without such approval.

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21 Date: 5/15/13

Introduced by: /s/ Wesley W. Simina
Wesley W. Simina

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