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:

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

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

“Section 1301. Short Title. This chapter is known and may be cited as the “Federated States of Micronesia Chemical Weapons Act”.

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

“Section 1302. Definitions. The following terms shall have the following meanings for the purposes of this chapter:

(1) ‘Chemical Weapon’ means the following, together or separately:
(a) Toxic chemicals and their precursors, except where intended for non-prohibited purposes and of types and in quantities consistent with such purposes; and

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

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

(2) ‘Compliance Purpose’ means:

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

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

(3) ‘Convention’ means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction;

(4) ‘Discrete organic chemical’ means any chemical belonging to the class of chemical compounds consisting of all compounds of carbon except for its
oxides, sulfides, and metal carbonates unless:

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

or

(b) it contains only carbon and metal.

(5) ‘Foreign state’ means:

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

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

(6) ‘Illegally’ means in breach of the applicable national legislation adopted to enforce the Convention.

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

(8) ‘National Authority’ means the national authority for the implementation of the Convention
mandated and established under section 1313 of this chapter.

(9) ‘National inspector’ means any officer of the National Police of the Federated States of Micronesia, designated by the National Authority in writing to be an inspector under this chapter.

(10) ‘Non-prohibited purpose’ means:

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

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

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

(d) law enforcement including domestic riot control purposes.


(12) ‘Person’ means any natural or legal person.

(13) ‘Precursor’ means any chemical reactant that takes part at any stage in the production by whatever method of a toxic chemical, including any key component of a binary or multi-component chemical
system. Precursors that have been identified for the application of verification measures by OPCW are listed in the Schedules.

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

(15) ‘Schedule’ means one of the three Schedules of Chemicals annexed to the Convention.

(16) ‘Secretary’ means the Secretary of the Department of Justice of the Federated States of Micronesia.

(17) ‘State Party’ means any state for which the Convention has entered into force.

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

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

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

“Section 1303. Chemical weapon prohibitions.

(1) A person commits an offense who:

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

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

(c) uses a chemical weapon; and

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

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

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

(a) shall be forfeited to the Federated States of Micronesia;
(b) may be seized without warrant by any law enforcement officer of the Federated States of Micronesia; and

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

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

“Section 1304. Schedule 1 chemical prohibitions.

(1) A person commits an offense who knowingly:

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

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

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

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

(e) re-transfers to a foreign state Schedule 1 chemicals transferred to the Federated States of Micronesia.
(2) Any person who violates subsection (1) of this section shall be punished upon conviction by imprisonment for a term of not more than five years, or with a fine not exceeding $50,000, or both.”

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

“Section 1305. Schedule 2 chemical prohibitions.

(1) A person commits an offense who knowingly:

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

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

(2) Any person who violates subsection (1) of this section shall be punished upon conviction by imprisonment for a term of not more than three years, or with a fine not more than $25,000, or both.”

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

“Section 1306. Schedule 3 chemical prohibitions.

(1) A person commits an offense who knowingly:
(a) illegally transfers Schedule 3 chemicals to a foreign state, other than a State Party; or

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

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

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

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

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

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

Section 9. Title 11 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by inserting a new section 1308 under chapter 13 to read as follows:

“Section 1308. Legal assistance.

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

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

(3) If a foreign state has entered into an appropriate reciprocity agreement with the Federated States of Micronesia, the Secretary may provide, on his or her own initiative or on request, the data or information described in subsection (2) to that
foreign state, provided that the authorities of that state provide assurances that such data or information shall:

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

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

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

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

“Section 1309. Mandatory reporting.

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

(a) toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or used for non-prohibited purposes;
(b) the National Authority has knowledge of dealings with scheduled chemicals that facilitates the making of the Federated States of Micronesia’s annual declarations to OCPW under the Convention; and

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

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

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

(4) A person commits an offense who intentionally refuses or fails to comply with subsection (2) or (3) of this section or who, in any document prepared pursuant thereto, knowingly makes a false or misleading statement or omission regarding
any material matter, and shall be punished upon conviction by imprisonment for a term of not more than three years, or with a fine not exceeding $25,000, or both.”

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

“Section 1310. Licensing of scheduled chemicals.

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

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

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

“Section 1311. Inspections.

(1) The purpose of this section is to
facilitate inspections by national inspectors for a compliance purpose and inspections by an international inspection team in accordance with the Convention.

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

(a) search any premises;

(b) take samples of a matter or thing;

(c) examine relevant documents and make copies thereof;

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

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

(f) do anything necessary or expedient for the carrying out of any of the acts referred to in this subsection, including restricting or prohibiting the access of persons and vehicles to or from the premises.
(3) International inspections.

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

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

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

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

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

(6) Obstruction of verification measures. A person commits an offense who intentionally obstructs any measure of verification of compliance
with this chapter and the Convention, that is taken
in accordance with this section and regulations
thereunder, and shall be punished upon conviction by
imprisonment for a term of not more than three
years, or with a fine not exceeding $25,000, or
both.”

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

“Section 1312. Protection of confidential
information.

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

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

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

(b) enforcing this chapter; or

(c) resolving an emergency involving public
safety.

(3) Any person who fails to comply with this
section shall be fined not more than $10,000.”
Section 14. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 1313 under chapter 13 to read as follows:

"Section 1313. National Authority.

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

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

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

Date: 5/15/13

Introduced by: /s/ Wesley W. Simina

Wesley W. Simina