Saunders, Program Manager, Surety Bonds, 3700 East West Highway, Room 632F, Hyattsville, MD 20782, (202) 874–5283.

SUPPLEMENTARY INFORMATION:

Title: Schedule of Excess Risks.

OMB Number: 1510–0004.

Form Number: FMS 285–A.

Abstract: This information is collected from insurance companies to assist the Treasury Department in determining whether a certified or applicant company is solvent and able to carry out its contracts, and whether the company is in compliance with Treasury excess risk regulations for writing Federal surety bonds.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,066 (with 30 apps).

Estimated Time Per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 5,780.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 24, 2014.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2014–10247 Filed 5–5–14; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking One Entity Pursuant to Executive Order 13599

SUB-AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one entity whose property and interests in property have been unblocked pursuant to Executive Order 13599 of February 5, 2012, ''Blocking Property of the Government of Iran and Iranian Financial Institutions.''

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the entity identified in this notice, pursuant to Executive Order 13599, was effective on April 29, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On February 5, 2012, the President issued Executive Order 13599, ''Blocking Property of the Government of Iran and Iranian Financial Institutions'' (the ''Order''). Section 1(a) of the Order blocks, with certain exceptions, all property and interests in property of the Government of Iran, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch. Section 7(d) of the Order defines the term ''Government of Iran'' to mean the Government of Iran, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran.

On March 14, 2013, the Director of OFAC identified the entity listed below as meeting the definition of the Government of Iran and blocked the property and interests in property of the entity pursuant to section 1(a) of the Order.

On April 29, 2014, the Acting Director of OFAC, in consultation with the State Department, determined that circumstances no longer warrant the blocking of the entity listed below pursuant to Executive Order 13599 and, accordingly, unblocked and removed this entity from the SDN List.

Entity

LIBRA SHIPPING SA (a.k.a. LIBRA SHIPPING), 3, Xanthou Street, Glyfada 16674, Greece; Additional Sanctions Information—Subject to Secondary Sanctions [IRAN].

Dated: April 29, 2014.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2014–10320 Filed 5–5–14; 8:45 am]

BILLING CODE 4810–AL–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of (1) submission to Congress of amendments to the sentencing guidelines effective November 1, 2014; and (2) request for comment.

SUMMARY: The United States Sentencing Commission hereby gives notice of the following actions:

(1) Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index. This notice sets forth the amendments and the reason for each amendment.

(2) Amendment 3, pertaining to drug offenses, has the effect of lowering guideline ranges. The Commission requests comment regarding whether that amendment, or any part thereof, should be included in subsection (c) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants. This notice sets forth the request for comment.

DATES: The Commission has specified an effective date of November 1, 2014, for the amendments set forth in this notice. Public comment regarding whether Amendment 3, pertaining to drug offenses, should be included as an amendment that may be applied retroactively to previously sentenced defendants should be received on or before July 7, 2014.

ADDRESSES: Public comment should be sent to the Commission by electronic mail or regular mail. The email address

for public comment is *Public_Comment@ussc.gov.* The regular mail address for public comment is United States Sentencing Commission, One Columbus Circle NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs-Retroactivity Public Comment.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Public Affairs Officer, (202) 502–4502, *jdoherty@ussc.gov*. The amendments and the request for comment set forth in this notice also may be accessed through the Commission's Web site at *www.ussc.gov*.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

(1) Submission to Congress of Amendments to the Sentencing Guidelines

Notice of proposed amendments was published in the **Federal Register** on January 17, 2014 (*see* 79 FR 3279–300). The Commission held public hearings on the proposed amendments in Washington, DC, on February 13, 2014, and March 13, 2014. On April 30, 2014, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2014.

(2) Request for Comment on Amendment 3, Pertaining to Drug Offenses

Section 3582(c)(2) of title 18, United States Code, provides that ''in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.''

The Commission lists in § 1B1.10(c) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2). The background commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(c). To the extent practicable, public comment should address each of these factors, in addition to other matters suggested in the request for comment below.

Authority: 28 U.S.C. 994(a), (o), (p), and (u); USSC Rules of Practice and Procedure 4.1, 4.3.

Patti B. Saris,

Chair.

(1) Submission to Congress of Amendments to the Sentencing Guidelines

1. *Amendment:* Section 1B1.10 is amended in each of subsections (a)(1), (a)(2)(A), (a)(2)(B), and (b)(1) by striking ''subsection (c)'' each place such term appears and inserting ''subsection (d)''; by redesignating subsection (c) as subsection (d); and by inserting after subsection (b) the following new subsection (c):

''(c) *Cases Involving Mandatory Minimum Sentences and Substantial Assistance.*—If the case involves a statutorily required minimum sentence and the court had the authority to impose a sentence below the statutorily required minimum sentence pursuant to a government motion to reflect the defendant's substantial assistance to authorities, then for purposes of this policy statement the amended guideline range shall be determined without regard to the operation of § 5G1.1 (Sentencing on a Single Count of Conviction) and § 5G1.2 (Sentencing on Multiple Counts of Conviction).''.

The Commentary to § 1B1.10 captioned ''Application Notes'' is amended in Notes 1(A), 2, and 4 by striking ''subsection (c)'' each place such term appears and inserting ''subsection (d)''; by redesignating Notes 4 through 6 as Notes 5 through 7, respectively; and by inserting after Note 3 the following new Note 4:

''4. *Application of Subsection (c).*—As stated in subsection (c), if the case involves a statutorily required minimum sentence and the court had the authority to impose a sentence below the statutorily required minimum sentence pursuant to a government motion to reflect the defendant's substantial assistance to authorities, then for purposes of this policy statement the amended guideline range shall be determined without regard to the operation of § 5G1.1 (Sentencing on a Single Count of Conviction) and § 5G1.2 (Sentencing on Multiple Counts of Conviction). For example:

(A) Defendant A is subject to a mandatory minimum term of imprisonment of 120 months. The original guideline range at the time of sentencing was 135 to 168 months, which is entirely above the mandatory minimum, and the court imposed a sentence of 101 months pursuant to a government motion to reflect the defendant's substantial assistance to authorities. The court determines that the amended guideline range as calculated on the Sentencing Table is 108 to 135 months. Ordinarily, § 5G1.1 would operate to restrict the amended guideline range to 120 to 135 months, to reflect the mandatory minimum term of imprisonment. For purposes of this policy statement, however, the amended guideline range remains 108 to 135 months.

To the extent the court considers it appropriate to provide a reduction comparably less than the amended guideline range pursuant to subsection (b)(2)(B), Defendant A's original sentence of 101 months amounted to a reduction of approximately 25 percent below the minimum of the original guideline range of 135 months. Therefore, an amended sentence of 81 months (representing a reduction of approximately 25 percent below the minimum of the amended guideline range of 108 months) would amount to a comparable reduction and may be appropriate.

(B) Defendant B is subject to a mandatory minimum term of imprisonment of 120 months. The original guideline range at the time of sentencing (as calculated on the Sentencing Table) was 108 to 135 months, which was restricted by operation of § 5G1.1 to a range of 120 to 135 months. *See* § 5G1.1(c)(2). The court imposed a sentence of 90 months pursuant to a government motion to reflect the defendant's substantial assistance to authorities. The court determines that the amended guideline range as calculated on the Sentencing Table is 87 to 108 months. Ordinarily, § 5G1.1 would operate to restrict the amended guideline range to precisely

120 months, to reflect the mandatory minimum term of imprisonment. *See* § 5G1.1(b). For purposes of this policy statement, however, the amended guideline range is considered to be 87 to 108 months (*i.e.,* unrestricted by operation of § 5G1.1 and the statutory minimum of 120 months).

To the extent the court considers it appropriate to provide a reduction comparably less than the amended guideline range pursuant to subsection (b)(2)(B), Defendant B's original sentence of 90 months amounted to a reduction of approximately 25 percent below the original guideline range of 120 months. Therefore, an amended sentence of 65 months (representing a reduction of approximately 25 percent below the minimum of the amended guideline range of 87 months) would amount to a comparable reduction and may be appropriate.''.

The Commentary to § 1B1.10 captioned ''Background'' is amended by striking ''subsection (c)'' both places such term appears and inserting ''subsection (d)''.

Reason for Amendment: This amendment clarifies an application issue that has arisen with respect to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) (Policy Statement). Circuits have conflicting interpretations of when, if at all, § 1B1.10 provides that a statutory minimum continues to limit the amount by which a defendant's sentence may be reduced under 18 U.S.C. § 3582(c)(2) when the defendant's original sentence was below the statutory minimum due to substantial assistance.

This issue arises in two situations. First, there are cases in which the defendant's original guideline range was above the mandatory minimum but the defendant received a sentence below the mandatory minimum pursuant to a government motion for substantial assistance. For example, consider a case in which the mandatory minimum was 240 months, the original guideline range was 262 to 327 months, and the defendant's original sentence was 160 months, representing a 39 percent reduction for substantial assistance below the bottom of the guideline range. In a sentence reduction proceeding pursuant to Amendment 750, the amended guideline range as determined on the Sentencing Table is 168 to 210 months, but after application of the ''trumping'' mechanism in § 5G1.1 (Sentencing on a Single Count of Conviction), the mandatory minimum sentence of 240 months is the guideline sentence. *See* § 5G1.1(b). Section 1B1.10(b)(2)(B) provides that such a defendant may receive a comparable 39 percent reduction from the bottom of the amended guideline range, but circuits are split over what to use as the bottom of the range.

The Eighth Circuit has taken the view that the bottom of the amended guideline range in such a case would be 240 months, *i.e.,* the guideline sentence that results after application of the ''trumping'' mechanism in § 5G1.1. *See United States* v. *Golden,* 709 F.3d 1229, 1231–33 (8th Cir. 2013). In contrast, the Seventh Circuit has taken the view that the bottom of the amended guideline range in such a case would be 168 months, *i.e.,* the bottom of the amended range as determined by the Sentencing Table, without application of the ''trumping'' mechanism in § 5G1.1. *See United States* v. *Wren,* 706 F.3d 861, 863 (7th Cir. 2013). Each circuit found support for its view in an Eleventh Circuit decision, *United States* v. *Liberse,* 688 F.3d 1198 (11th Cir. 2012), which also discussed this issue.

Second, there are cases in which the defendant's original guideline range as determined by the Sentencing Table was, at least in part, below the mandatory minimum, and the defendant received a sentence below the mandatory minimum pursuant to a government motion for substantial assistance. In these cases, the ''trumping'' mechanism in § 5G1.1 operated at the original sentence to restrict the guideline range to be no less than the mandatory minimum. For example, consider a case in which the original Sentencing Table guideline range was 140 to 175 months but the mandatory minimum was 240 months, resulting (after operation of § 5G1.1) in a guideline sentence of 240 months. The defendant's original sentence was 96 months, representing a 60 percent reduction for substantial assistance below the statutory and guideline minimum. In a sentence reduction proceeding, the amended Sentencing Table guideline range is 110 to 137 months, resulting (after operation of § 5G1.1) in a guideline sentence of 240 months. Section 1B1.10(b)(2)(B) provides that such a defendant may receive a reduction from the bottom of the amended guideline range, but circuits are split over what to use as the bottom of the range.

The Eleventh Circuit, the Sixth Circuit, and the Second Circuit have taken the view that the bottom of the amended range in such a case would remain 240 months, *i.e.,* the guideline sentence that results after application of the ''trumping'' mechanism in § 5G1.1. *See United States* v. *Glover,* 686 F.3d 1203, 1208 (11th Cir. 2012); *United States* v. *Joiner,* 727 F.3d 601 (6th Cir. 2013); *United States* v. *Johnson,* 732 F.3d 109 (2d Cir. 2013). Under these decisions, the defendant in the example would have an original range of 240 months and an amended range of 240 months, and would not be eligible for any reduction because the range has not been lowered. In contrast, the Third Circuit and the District of Columbia Circuit have taken the view that the bottom of the amended range in such a case would be 110 months, *i.e.,* the bottom of the Sentencing Table guideline range. *See United States* v. *Savani,* 733 F.3d 56, 66–7 (3d Cir. 2013); *In re Sealed Case,* 722 F.3d 361, 369–70 (D.C. Cir. 2013).

The amendment generally adopts the approach of the Third Circuit in *Savani* and the District of Columbia Circuit in *In re Sealed Case.* It amends § 1B1.10 to specify that, if the case involves a statutorily required minimum sentence and the court had the authority to impose a sentence below the statutorily required minimum sentence pursuant to a government motion to reflect the defendant's substantial assistance to authorities, then for purposes of § 1B1.10 the amended guideline range shall be determined without regard to the operation of § 5G1.1 and § 5G1.2. The amendment also adds a new application note with examples.

This clarification ensures that defendants who provide substantial assistance to the government in the investigation and prosecution of others have the opportunity to receive the full benefit of a reduction that accounts for that assistance. *See* USSG App. C. Amend 759 (Reason for Amendment). As the Commission noted in the reason for that amendment: ''The guidelines and the relevant statutes have long recognized that defendants who provide substantial assistance are differently situated than other defendants and should be considered for a sentence below a guideline or statutory minimum even when defendants who are otherwise similar (but did not provide substantial assistance) are subject to a guideline or statutory minimum. Applying this principle when the guideline range has been reduced and made available for retroactive application under section 3582(c)(2) appropriately maintains this distinction and furthers the purposes of sentencing.'' *Id.*

2. *Amendment:* Section 2A2.2(b) is amended by redesignating paragraphs (4) through (6) as paragraphs (5) through (7), respectively; and by inserting after paragraph (3) the following new paragraph (4):

''(4) If the offense involved strangling, suffocating, or attempting to strangle or suffocate a spouse, intimate partner, or dating partner, increase by 3 levels.

However, the cumulative adjustments from application of subdivisions (2), (3), and (4) shall not exceed 12 levels.''.

The Commentary to § 2A2.2 captioned ''Statutory Provisions'' is amended by inserting after ''113(a)(2), (3), (6),'' the following: ''(8),''.

The Commentary to § 2A2.2 captioned ''Application Notes'' is amended in Note 1 by striking ''or (C)'' and inserting ''(C) strangling, suffocating, or attempting to strangle or suffocate; or (D)''; and by adding at the end the following new paragraphs:

'' 'Strangling' and 'suffocating' have the meaning given those terms in 18 U.S.C. § 113.

'Spouse,' 'intimate partner,' and 'dating partner' have the meaning given those terms in 18 U.S.C. § 2266.'';

and in Note 4 by striking ''(b)(6)'' and inserting ''(b)(7)''.

The Commentary to § 2A2.2 captioned ''Background'' is amended in the first paragraph by striking ''minor assaults'' and inserting ''other assaults''; by striking the comma after ''serious bodily injury'' and inserting a semicolon; and by striking the comma after ''cause bodily injury'' and inserting ''; strangling, suffocating, or attempting to strangle or suffocate;'';

and in the paragraph that begins ''Subsection'' by striking ''(b)(6)'' both places it appears and inserting ''(b)(7)''.

Section 2A2.3 is amended in the heading by striking ''Minor Assault'' and inserting ''Assault''.

Section 2A2.3(b)(1) is amended by inserting after ''substantial bodily injury to'' the following: ''a spouse, intimate partner, or dating partner, or''.

The Commentary to § 2A2.3 captioned ''Statutory Provisions'' is amended by inserting after ''112,'' the following: ''113(a)(4), (5), (7),''.

The Commentary to § 2A2.3 captioned ''Application Notes'' is amended in Note 1 by striking the paragraph that begins '' 'Minor assault' means'' and inserting the following new paragraph:

'' 'Spouse,' 'intimate partner,' and 'dating partner' have the meaning given those terms in 18 U.S.C. § 2266.''.

The Commentary to § 2A2.3 captioned ''Background'' is amended by striking ''Minor assault and battery are covered by this section.'' and inserting the following: ''This section applies to misdemeanor assault and battery and to any felonious assault not covered by § 2A2.2 (Aggravated Assault).''.

Section 2A6.2(b)(1) is amended by striking ''(C)'' and inserting ''(C) strangling, suffocating, or attempting to strangle or suffocate; (D)''; by striking ''(D) a pattern'' and inserting ''(E) a pattern''; and by striking ''these aggravating factors'' and inserting ''subdivisions (A), (B), (C), (D), or (E)''.

The Commentary to § 2A6.2 captioned ''Application Notes'' is amended in Note 1 by striking the paragraph that begins '' 'Stalking' means'' and inserting the following new paragraph:

'' 'Stalking' means conduct described in 18 U.S.C. § 2261A.'';

and by adding at the end of Note 1 the following new paragraph:

'' 'Strangling' and 'suffocating' have the meaning given those terms in 18 U.S.C. § 113.'';

and in Notes 3 and 4 by striking ''(b)(1)(D)'' each place such term appears and inserting ''(b)(1)(E)''.

The Commentary to § 2B1.5 captioned ''Statutory Provisions'' is amended by striking ''1152–1153,''.

The Commentary to § 2B2.1 captioned ''Statutory Provisions'' is amended by striking ''1153,''.

The Commentary to § 2H3.1 captioned ''Statutory Provisions'' is amended by striking ''1375a(d)(3)(C), (d)(5)(B);'' and inserting ''1375a(d)(5)(B)(i), (ii);''.

The Commentary to § 2K1.4 captioned ''Statutory Provisions'' is amended by striking ''1153,''.

The Commentary to § 5D1.1 captioned ''Application Notes'' is amended in Note 3 by adding at the end the following:

''(D) *Domestic Violence.*—If the defendant is convicted for the first time of a domestic violence crime as defined in 18 U.S.C. § 3561(b), a term of supervised release is required by statute. *See* 18 U.S.C. § 3583(a). Such a defendant is also required by statute to attend an approved rehabilitation program, if available within a 50-mile radius of the legal residence of the defendant. *See* 18 U.S.C. § 3583(d); § 5D1.3(a)(3). In any other case involving domestic violence or stalking in which the defendant is sentenced to imprisonment, it is highly recommended that a term of supervised release also be imposed.''

Appendix A (Statutory Index) is amended by striking the line referenced to 8 U.S.C. § 1375a(d)(3)(C), (d)(5)(B) and inserting the following new line references:

''8 U.S.C. § 1375a(d)(5)(B)(i) 2H3.1
8 U.S.C. § 1375a(d)(5)(B)(ii) 2H3.1
8 U.S.C. § 1375a(d)(5)(B)(iii) 2B1.1'';

in the line referenced to 18 U.S.C. 113(a)(1) by adding '', 2A3.1'' at the end;

in the line referenced to 18 U.S.C. 113(a)(2) by adding '', 2A3.2, 2A3.3, 2A3.4'' at the end;

after the line referenced to 18 U.S.C. 113(a)(3) by inserting the following new line reference:

''18 U.S.C. § 113(a)(4) 2A2.3'';

after the line referenced to 18 U.S.C. 113(a)(7) by inserting the following new line reference:

''18 U.S.C. § 113(a)(8) 2A2.2'';

by striking the lines referenced to 18 U.S.C. §§ 1152 and 1153;

by inserting after the line referenced to 18 U.S.C. 1593A the following new line reference:

''18 U.S.C. § 1597 2X5.2''; and

by striking the lines referenced to 18 U.S.C. 2423(a) and (b) and inserting the following new line reference:

''18 U.S.C. § 2423(a)–(d) 2G1.3''.

Reason for Amendment: This amendment responds to recent statutory changes made by the Violence Against Women Reauthorization Act of 2013 (the ''Act''), Public Law 113–4 (March 7, 2013), which provided new and expanded criminal offenses and increased penalties for certain crimes pertaining to assault, sexual abuse, stalking, domestic violence, and human trafficking.

The Act established new assault offenses and enhanced existing assault offenses at 18 U.S.C. 113 (Assaults within maritime and territorial jurisdiction). In general, section 113 sets forth a range of penalties for assaults within the special maritime and territorial jurisdiction of the United States. The legislative history of the Act indicates that Congress intended many of these changes to allow federal prosecutors to address domestic violence against Native American women more effectively. Such violence often occurs in a series of incidents of escalating seriousness.

First, the amendment responds to changes in sections 113(a)(1) and (a)(2). Section 113(a)(1) prohibits assault with intent to commit murder, and the Act amended it to also prohibit assault with intent to commit a violation of 18 U.S.C. 2241 (Aggravated sexual abuse) or 2242 (Sexual abuse), with a statutory maximum term of imprisonment of 20 years. Section 113(a)(2) prohibits assault with intent to commit any felony except murder, and prior to the Act had also excluded assault with intent to commit a violation of Chapter 109A, including sections 2241, 2242, 2243 (Sexual abuse of a minor or ward) and 2244 (Abusive sexual contact), with a statutory maximum term of imprisonment of 10 years. The Act amended section 113(a)(2) to prohibit assault with intent to commit any felony except murder or a violation of section 2241 or 2242. The effect of the statutory change is that an assault with intent to commit a violation

of section 2243 or 2244 may now be prosecuted under section 113(a)(2). Offenses under section 2241 and 2242 are referenced to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse), and offenses under section 2243 and 2244 are referenced to §§ 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts); 2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts); and 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact).

The amendment amends Appendix A (Statutory Index) to reference the expanded offense conduct prohibited by 18 U.S.C. 113(a)(1) to 2A3.1 and to reference the expanded offense conduct prohibited by 18 U.S.C. 113(a)(2) to 2A3.2, 2A3.3, and 2A3.4. The Commission concluded that an assault offense committed with the intent to commit a sexual abuse offense is analogous to, and in some cases more serious than, an attempted sexual abuse offense under Chapter 109A, and the criminal sexual abuse guidelines which apply to attempted sexual abuse offenses were therefore appropriate for this conduct.

Second, the Act increased the statutory maximum penalty for violations of 18 U.S.C. 113(a)(4) from six months to one year of imprisonment. Section 113(a)(4) prohibits an assault by striking, beating, or wounding. Because the crime had been categorized as a Class B misdemeanor, Appendix A did not previously include a reference for section 113(a)(4). The amendment adds such a reference to § 2A2.3 (Assault). The Commission determined that § 2A2.3 will provide appropriate punishment that is consistent with the statutory maximum term of imprisonment, while sufficiently addressing the possible levels of bodily harm that may result to victims in individual cases of assault by striking, beating, or wounding.

Third, the Act expanded 18 U.S.C. 113(a)(7), which prohibits assaults resulting in substantial bodily injury to an individual who has not attained the age of sixteen years, to also apply to assaults resulting in substantial bodily injury to a spouse, intimate partner, or dating partner, and provides a statutory maximum term of imprisonment of five years. Offenses under section 113(a)(7) are referenced in Appendix A to § 2A2.3 (Assault). The amendment broadened the scope of § 2A2.3(b)(1)(B), which provides a 4-level enhancement if the offense resulted in substantial bodily injury to an individual under the age of sixteen years, to also provide a 4-level enhancement if the offense resulted in substantial bodily injury to a spouse, intimate partner, or dating partner. The Commission determined that because the expanded assaultive conduct of a victim of domestic violence has the same statutory maximum term of imprisonment, the same enhancement was warranted as for assaults of individuals under the age of sixteen resulting in substantial bodily injury.

Fourth, the Act created a new section 113(a)(8) in title 18, which prohibits the assault of a spouse, intimate partner, or dating partner by strangulation, suffocation, or attempting to strangle or suffocate, with a statutory maximum term of imprisonment of ten years. After reviewing legislative history, public comment, testimony at a public hearing on February 13, 2014, and data, the Commission determined that strangulation and suffocation of a spouse, intimate partner, or dating partner represents a significant harm not addressed by existing guidelines and specific offense characteristics.

Comment and testimony that the Commission received indicated that strangulation and suffocation in the domestic violence context is serious conduct that warrants enhanced punishment regardless of whether it results in a provable injury that would lead to a bodily injury enhancement; this conduct harms victims physically and psychologically and can be a predictor of future serious or lethal violence. Testimony and data also indicated that cases of strangulation and suffocation often involve other bodily injury to a victim separate from the strangulation and suffocation. Congress specifically addressed strangulation and suffocation in the domestic violence context, and testimony and data indicated that almost all cases involving this conduct occur in that context and that strangulation and suffocation is most harmful in such cases.

Accordingly, the amendment amends Appendix A to reference section 113(a)(8) to § 2A2.2 (Aggravated Assault) and amends the Commentary to § 2A2.2 to provide that the term ''aggravated assault'' includes an assault involving strangulation, suffocation, or an attempt to strangle or suffocate. The amendment amends § 2A2.2 to provide a 3-level enhancement at § 2A2.2(b)(4) for strangling, suffocating, or attempting to strangle or suffocate a spouse, intimate partner, or dating partner. The amendment also provides that the cumulative impact of the enhancement for use of a weapon at § 2A2.2(b)(2), bodily injury at § 2A2.2(b)(3), and strangulation or suffocation at § 2A2.2(b)(4) is capped at 12 levels. The Commission determined that the cap would assure that these three specific offense characteristics, which data suggests co-occur frequently, will enhance the ultimate sentence without leading to an excessively severe result.

Although the amendment refers section 113(a)(8) offenses to § 2A2.2, it also amends § 2A6.2 (Stalking or Domestic Violence) to address cases involving strangulation, suffocation, or attempting to strangle or suffocate, as a conforming change. The amendment adds strangulation and suffocation as a new aggravating factor at § 2A6.2(b)(1), which results in a 2-level enhancement, or in a 4-level enhancement if it applies in conjunction with another aggravating factor such as bodily injury or the use of a weapon.

Fifth, the amendment removes the term ''minor assault'' from the *Guidelines Manual.* Misdemeanor assaults and other felonious assaults are referenced to § 2A2.3, which prior to this amendment was titled ''Minor Assault.'' Informed by public comment, the Commission determined that use of the term ''minor'' is inconsistent with the severity of the underlying crimes and does a disservice to the victims and communities affected. Therefore, the amendment changes the title of § 2A2.3 to ''Assault,'' and it removes other references to ''minor assault'' from the Background and Commentary sections of §§ 2A2.2 and 2A2.3. This is a stylistic change that does not affect the application of § 2A2.3.

Sixth, the amendment amended the Commentary to § 5D1.1 (Imposition of a Term of Supervised Release) to provide additional guidance on the imposition of supervised release for domestic violence and stalking offenders. The amendment describes the statutory requirements pursuant to 18 U.S.C. 3583(a) if a defendant is convicted for the first time of a domestic violence offense as defined in 18 U.S.C. 3561(b). Under section 3583, a term of supervised release is required, and the defendant is also required to attend an approved rehabilitation program if one is available within a 50-mile radius from the defendant's residence.

The Commission received public comment and testimony that supervised release should be recommended in every case of domestic violence and stalking, and the Commission's sentencing data showed that in more than ninety percent of the cases sentenced under § 2A6.2, supervised release was imposed. Based on this comment, testimony, and data, the amendment amends the Commentary to § 5D1.1 to provide that in any other case

involving either a domestic violence or a stalking offense, it is ''highly recommended'' that a term of supervised release be imposed.

Seventh, the amendment responds to changes made by the Act amending the federal statutes related to stalking and domestic violence. For the crimes of interstate domestic violence (18 U.S.C. 2261), stalking (18 U.S.C. 2261A), and interstate violation of a protective order (18 U.S.C. 2262), the Act expanded the scope of each offense to provide that a defendant's mere presence in a special maritime or territorial jurisdiction is sufficient for purposes of satisfying the jurisdictional element of the crimes. The Act also revised the prohibited conduct set forth in section 2261A to now include stalking with intent to ''intimidate'' the victim, and it added the use of an ''electronic communication service'' or ''electronic communication system'' as prohibited means of committing the crime.

The amendment updates the definition of ''stalking'' in § 2A6.2 to reflect these changes by tying the definition to the conduct described in 18 U.S.C. 2261A. The Commission determined that such a change would simplify the application of § 2A6.2, while also ensuring that the definition of stalking remains consistent with any future statutory changes.

Eighth, the Act amended 8 U.S.C. 1375a (Regulation of international marriage brokers) by reorganizing existing offenses and increasing the statutory maximum term of imprisonment for knowing violations of the regulations concerning marriage brokers from one year to five years. The Act also added a new criminal provision for ''knowingly and with intent to defraud another person outside of the United States in order to recruit, solicit, entice, or induce that person into entering a dating or matrimonial relationship,'' making false or fraudulent representations regarding the background information required to be provided to an international marriage brokers. The new offense has a statutory maximum term of imprisonment of one year. The amendment referenced this new offense in Appendix A to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). The Commission concluded that § 2B1.1 is the appropriate guideline because the elements of the new offense include fraud and deceit. The amendment also amended Appendix A by revising the other criminal subsections, which continue to be referred to § 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information), to accord with the reorganization of the statute.

Ninth, the Trafficking Victims Protection Reauthorization Act, passed as part of the Act, included a provision expanding subsection (c) of 18 U.S.C. 2423 (Transportation of minors), which had previously prohibited U.S. citizens or permanent residents who traveled abroad from engaging in illicit sexual conduct. After the Act, the same prohibition now also applies to those individuals who reside temporarily or permanently in a foreign country and engage in such conduct. Section 2423 contains four offenses, set forth in subsections (a) through (d), each of which prohibits sexual conduct with minors. Prior to the amendment, Appendix A referenced sections 2423(a) and 2423(b) to § 2G1.3 (Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors; Travel to Engage in Commercial Sex or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children), but provided no reference for sections 2423(c) or 2423(d), which prohibits arranging, inducing, procuring, or facilitating the travel of a person for illicit sexual conduct, for the purpose of commercial advantage or financial gain. Both subsections (c) and (d) provide a 30 year statutory maximum term of imprisonment.

The amendment adds references in Appendix A for 18 U.S.C. 2423(c) and (d). Based on the seriousness of the prohibited conduct, the severity of the penalties, and the vulnerability of the victims involved, the Commission concluded that 18 U.S.C. 2423(c) and (d) should also be referenced in Appendix A to § 2G1.3.

Tenth, the Act created a new Class A misdemeanor offense at 18 U.S.C. 1597 prohibiting the knowing destruction, concealment, confiscation or possession of an actual or purported passport or other immigration documents of another individual if done in the course of violating or with the intent to violate 18 U.S.C. 1351, relating to fraud in foreign labor contracting, or 8 U.S.C. 1324, relating to bringing in or harboring certain aliens. The new offense also prohibits this conduct if it is done in order to, without lawful authority, maintain, prevent, or restrict the labor or services of the individual, and the knowing obstruction, attempt to obstruct, or interference with or prevention of the enforcement of section 1597. Section 1597 has a statutory maximum term of imprisonment of one year.

The amendment references this misdemeanor offense to § 2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)). This reference comports with the Commission's intent when it promulgated § 2X5.2, as stated in Amendment 685 (effective November 1, 2006), that the Commission will reference new Class A misdemeanor offenses either to § 2X5.2 or to another, more specific Chapter Two guideline, if appropriate. The Commission determined that with a base offense level of 6, § 2X5.2 covers the range of sentencing possibilities that are available for defendants convicted of this offense, regardless of their criminal history. The Commission may consider referencing section 1597 to another substantive guideline in the future after more information becomes available regarding the type of conduct that constitutes the typical violation and the aggravating or mitigating factors that may apply.

Finally, the amendment removes from Appendix A the guideline references for two jurisdictional statutes in title 18 related to crimes committed within Indian country. Section 1152, also known as the General Crimes Act, grants federal jurisdiction for federal offenses committed by non-Indians within Indian country. Section 1153, also known as the Major Crimes Act, grants federal jurisdiction over Indians who commit certain enumerated offenses within Indian country. The Act expanded section 1153 to include any felony assault under section 113. Because sections 1152 and 1153 are simply jurisdictional statutes that do not provide substantive offenses, the Commission determined there is no need for Appendix A to provide a guidelines reference for those statutes.

3. *Amendment:* Section 2D1.1(c) is amended by striking paragraph (17); by redesignating paragraphs (1) through (16) as paragraphs (2) through (17), respectively; and by inserting before paragraph (2) (as so redesignated) the following new paragraph (1):

''(1) • 90 KG or more of Heroin; Level 38

• 450 KG or more of Cocaine;

• 25.2 KG or more of Cocaine Base;

• 90 KG or more of PCP, or 9 KG or more of PCP (actual);

• 45 KG or more of Methamphetamine, or 4.5 KG or more of Methamphetamine (actual), or 4.5 KG or more of 'Ice';

• 45 KG or more of Amphetamine, or 4.5 KG or more of Amphetamine (actual);
• 900 G or more of LSD;
• 36 KG or more of Fentanyl;
• 9 KG or more of a Fentanyl Analogue;
• 90,000 KG or more of Marihuana;
• 18,000 KG or more of Hashish;
• 1,800 KG or more of Hashish Oil;
• 90,000,000 units or more of Ketamine;
• 90,000,000 units or more of Schedule I or II Depressants;
• 5,625,000 units or more of Flunitrazepam.''.

Section 2D1.1(c)(2) (as so redesignated) is amended to read as follows:

''(2) • At least 30 KG but less than 90 KG of Heroin; Level 36
• At least 150 KG but less than 450 KG of Cocaine;
• At least 8.4 KG but less than 25.2 KG of Cocaine Base;
• At least 30 KG but less than 90 KG of PCP, or at least 3 KG but less than 9 KG of PCP (actual);
• At least 15 KG but less than 45 KG of Methamphetamine, or at least 1.5 KG but less than 4.5 KG of Methamphetamine (actual), or at least 1.5 KG but less than 4.5 KG of 'Ice';
• At least 15 KG but less than 45 KG of Amphetamine, or at least 1.5 KG but less than 4.5 KG of Amphetamine (actual);
• At least 300 G but less than 900 G of LSD;
• At least 12 KG but less than 36 KG of Fentanyl;
• At least 3 KG but less than 9 KG of a Fentanyl Analogue;
• At least 30,000 KG but less than 90,000 KG of Marihuana;
• At least 6,000 KG but less than 18,000 KG of Hashish;
• At least 600 KG but less than 1,800 KG of Hashish Oil;
• At least 30,000,000 units but less than 90,000,000 units of Ketamine;
• At least 30,000,000 units but less than 90,000,000 units of Schedule I or II Depressants;
• At least 1,875,000 units but less than 5,625,000 units of Flunitrazepam.''.

Section 2D1.1(c)(3) (as so redesignated) is amended by striking ''Level 36'' and inserting ''Level 34''.

Section 2D1.1(c)(4) (as so redesignated) is amended by striking ''Level 34'' and inserting ''Level 32''.

Section 2D1.1(c)(5) (as so redesignated) is amended by striking ''Level 32'' and inserting ''Level 30''; and by inserting before the line referenced to Flunitrazepam the following:

''• 1,000,000 units or more of Schedule III Hydrocodone;''.

Section 2D1.1(c)(6) (as so redesignated) is amended by striking ''Level 30'' and inserting ''Level 28''; and in the line referenced to Schedule III Hydrocode by striking ''700,000 or more'' and inserting ''At least 700,000 but less than 1,000,000''.

Section 2D1.1(c)(7) (as so redesignated) is amended by striking ''Level 28'' and inserting ''Level 26''.

Section 2D1.1(c)(8) (as so redesignated) is amended by striking ''Level 26'' and inserting ''Level 24''.

Section 2D1.1(c)(9) (as so redesignated) is amended by striking ''Level 24'' and inserting ''Level 22''.

Section 2D1.1(c)(10) (as so redesignated) is amended by striking ''Level 22'' and inserting ''Level 20''; and by inserting before the line referenced to Flunitrazepam the following:

''• 60,000 units or more of Schedule III substances (except Ketamine or Hydrocodone);''.

Section 2D1.1(c)(11) (as so redesignated) is amended by striking ''Level 20'' and inserting ''Level 18''; and in the line referenced to Schedule III substances (except Ketamine or Hydrocodone) by striking ''40,000 or more'' and inserting ''At least 40,000 but less than 60,000''.

Section 2D1.1(c)(12) (as so redesignated) is amended by striking ''Level 18'' and inserting ''Level 16''.

Section 2D1.1(c)(13) (as so redesignated) is amended by striking ''Level 16'' and inserting ''Level 14''.

Section 2D1.1(c)(14) (as so redesignated) is amended by striking ''Level 14'' and inserting ''Level 12''; by striking the line referenced to Heroin and all that follows through the line referenced to Fentanyl Analogue and inserting the following:

''(14) • Less than 10 G of Heroin; Level 12
• Less than 50 G of Cocaine;
• Less than 2.8 G of Cocaine Base;
• Less than 10 G of PCP, or less than 1 G of PCP (actual);
• Less than 5 G of Methamphetamine, or less than 500 MG of Methamphetamine (actual), or less than 500 MG of 'Ice';
• Less than 5 G of Amphetamine, or less than 500 MG of Amphetamine (actual);
• Less than 100 MG of LSD;
• Less than 4 G of Fentanyl;
• Less than 1 G of a Fentanyl Analogue;'';

by striking the period at the end of the line referenced to Flunitrazepam and inserting a semicolon; and by adding at the end the following:

''• 80,000 units or more of Schedule IV substances (except Flunitrazepam).''.

Section 2D1.1(c)(15) (as so redesignated) is amended by striking ''Level 12'' and inserting ''Level 10''; by striking the line referenced to Heroin and all that follows through the line referenced to Fentanyl Analogue; and in the line referenced to Schedule IV substances (except Flunitrazepam) by striking ''40,000 or more'' and inserting ''At least 40,000 but less than 80,000''.

Section 2D1.1(c)(16) (as so redesignated) is amended by striking ''Level 10'' and inserting ''Level 8''; in the line referenced to Flunitrazepam by striking ''At least 62 but less'' and inserting ''Less''; by striking the period at the end of the line referenced to Schedule IV substances (except Flunitrazepam) and inserting a semicolon; and by adding at the end the following:

''• 160,000 units or more of Schedule V substances.''.

Section 2D1.1(c)(17) (as so redesignated) is amended to read as follows:

''(17) • Less than 1 KG of Marihuana; Level 6
• Less than 200 G of Hashish;
• Less than 20 G of Hashish Oil;
• Less than 1,000 units of Ketamine;
• Less than 1,000 units of Schedule I or II Depressants;
• Less than 1,000 units of Schedule III Hydrocodone;
• Less than 1,000 units of Schedule III substances (except Ketamine or Hydrocodone);
• Less than 16,000 units of Schedule IV substances (except Flunitrazepam);
• Less than 160,000 units of Schedule V substances.''.

The annotation to § 2D1.1(c) captioned ''Notes to Drug Quantity Table'' is amended in Note (E) by striking ''100 G'' and inserting ''100 grams''; in Note (F) by striking ''0.5 ml'' and ''25 mg'' and inserting ''0.5 milliliters'' and ''25 milligrams'', respectively; and in Note (G) by striking ''0.4 mg'' and inserting ''0.4 milligrams''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 8(A) by striking ''1 gm'', ''5 kg'', ''100 gm'', and ''500 kg'' and inserting ''1 gram'', ''5 kilograms'', ''100 grams'', and ''500 kilograms'', respectively, and by striking ''28'' and inserting ''26'';

in Note 8(B) by striking ''999 grams'' and inserting ''2.49 kilograms'';

in Note 8(C)(i) by striking ''22'' and inserting ''20'', by striking ''18'' and inserting ''16'', and by striking ''24'' and inserting ''22'';

in Note 8(C)(ii) by striking ''8'' both places such term appears and inserting ''6'', by striking ''five kilograms'' and inserting ''10,000 units'', and by striking ''10'' and inserting ''8'';

in Note 8(C)(iii) by striking ''16'' and inserting ''14'', by striking ''14'' and inserting ''12'', and by striking ''18'' and inserting ''16'';

in Note 8(C)(iv) by striking ''56,000'' and inserting ''76,000'', by striking ''100,000'' and inserting ''200,000'', by striking ''200,000'' and inserting ''600,000'', by striking ''56'' and inserting ''76'', by striking ''59.99'' and inserting ''79.99'', by striking ''4.99'' and inserting ''9.99'', by striking ''6.25'' and inserting ''12.5'', by striking ''999 grams'' and inserting ''2.49 kilograms'', by striking ''1.25'' and inserting ''3.75'', by striking ''59.99'' and inserting ''79.99'', and by striking ''61.99 (56 + 4.99 + .999)'' and inserting ''88.48 (76 + 9.99 + 2.49)'';

in Note 8(D), under the heading relating to Schedule III Substances (except ketamine and hydrocodone), by striking ''59.99'' and inserting ''79.99''; under the heading relating to Schedule III Hydrocodone, by striking ''999.99'' and inserting ''2,999.99''; under the heading relating to Schedule IV Substances (except flunitrazepam) by striking ''4.99'' and inserting ''9.99''; and under the heading relating to Schedule V Substances by striking ''999 grams'' and inserting ''2.49 kilograms'';

and in Note 9 by striking ''500 mg'' and ''50 gms'' and inserting ''500 milligrams'' and ''50 grams'', respectively.

The Commentary to § 2D1.1 captioned ''Background'' is amended in the paragraph that begins ''The base offense levels in § 2D1.1'' by striking ''32 and 26'' and inserting ''30 and 24''; and by striking the paragraph that begins ''The base offense levels at levels 26 and 32'' and inserting the following new paragraph:

''The base offense levels at levels 24 and 30 establish guideline ranges such that the statutory minimum falls within the range; *e.g.,* level 30 ranges from 97 to 121 months, where the statutory minimum term is ten years or 120 months.''.

The Commentary to § 2D1.2 captioned ''Application Note'' is amended in Note 1 by striking ''16'' and inserting ''14''; and by striking ''17'' and inserting ''15''.

Section 2D1.11(d) is amended by striking paragraph (14); by redesignating paragraphs (1) through (13) as paragraphs (2) through (14), respectively; and by inserting before paragraph (2) (as so redesignated) the following new paragraph (1):

''(1) 9 KG or more of Ephedrine; Level 38

9 KG or more of Phenylpropanolamine;

9 KG or more of Pseudoephedrine.''.

Section 2D1.11(d)(2) (as so redesignated) is amended by striking ''Level 38'' and inserting ''Level 36''; and by striking ''3 KG or more'' each place such term appears and inserting ''At least 3 KG but less than 9 KG''.

Section 2D1.11(d)(3) (as so redesignated) is amended by striking ''Level 36'' and inserting ''Level 34''.

Section 2D1.11(d)(4) (as so redesignated) is amended by striking ''Level 34'' and inserting ''Level 32''.

Section 2D1.11(d)(5) (as so redesignated) is amended by striking ''Level 32'' and inserting ''Level 30''.

Section 2D1.11(d)(6) (as so redesignated) is amended by striking ''Level 30'' and inserting ''Level 28''.

Section 2D1.11(d)(7) (as so redesignated) is amended by striking ''Level 28'' and inserting ''Level 26''.

Section 2D1.11(d)(8) (as so redesignated) is amended by striking ''Level 26'' and inserting ''Level 24''.

Section 2D1.11(d)(9) (as so redesignated) is amended by striking ''Level 24'' and inserting ''Level 22''.

Section 2D1.11(d)(10) (as so redesignated) is amended by striking ''Level 22'' and inserting ''Level 20''.

Section 2D1.11(d)(11) (as so redesignated) is amended by striking ''Level 20'' and inserting ''Level 18''.

Section 2D1.11(d)(12) (as so redesignated) is amended by striking ''Level 18'' and inserting ''Level 16''.

Section 2D1.11(d)(13) (as so redesignated) is amended by striking ''Level 16'' and inserting ''Level 14''.

Section 2D1.11(d)(14) (as so redesignated) is amended by striking ''Level 14'' and inserting ''Level 12''; and by striking ''At least 500 MG but less'' each place such term appears and inserting ''Less''.

Section 2D1.11(e) is amended by striking paragraph (10); by redesignating paragraphs (1) through (9) as paragraphs (2) through (10), respectively; and by inserting before paragraph (2) (as so redesignated) the following new paragraph (1):

''(1) *List I Chemicals* Level 30

2.7 KG or more of Benzaldehyde;

60 KG or more of Benzyl Cyanide;

600 G or more of Ergonovine;

1.2 KG or more of Ergotamine;

60 KG or more of Ethylamine;

6.6 KG or more of Hydriodic Acid;

3.9 KG or more of Iodine;

960 KG or more of Isosafrole;

600 G or more of Methylamine;

1500 KG or more of N-Methylephedrine;

1500 KG or more of N-Methylpseudoephedrine;

1.9 KG or more of Nitroethane;

30 KG or more of Norpseudoephedrine;

60 KG or more of Phenylacetic Acid;

30 KG or more of Piperidine;

960 KG or more of Piperonal;

4.8 KG or more of Propionic Anhydride;

960 KG or more of Safrole;

1200 KG or more of 3, 4-Methylenedioxyphenyl-2-propanone;

3406.5 L or more of Gamma-butyrolactone;

2.1 KG or more of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid.''.

Section 2D1.11(e)(2) (as so redesignated) is amended to read as follows:

''(2) *List I Chemicals* Level 28

At least 890 G but less than 2.7 KG of Benzaldehyde;

At least 20 KG but less than 60 KG of Benzyl Cyanide;

At least 200 G but less than 600 G of Ergonovine;

At least 400 G but less than 1.2 KG of Ergotamine;

At least 20 KG but less than 60 KG of Ethylamine;

At least 2.2 KG but less than 6.6 KG of Hydriodic Acid;

At least 1.3 KG but less than 3.9 KG of Iodine;

At least 320 KG but less than 960 KG of Isosafrole;

At least 200 G but less than 600 G of Methylamine;

At least 500 KG but less than 1500 KG of N-Methylephedrine;

At least 500 KG but less than 1500 KG of N-Methylpseudoephedrine;

At least 625 G but less than 1.9 KG of Nitroethane;

At least 10 KG but less than 30 KG of Norpseudoephedrine;

At least 20 KG but less than 60 KG of Phenylacetic Acid;

At least 10 KG but less than 30 KG of Piperidine;

At least 320 KG but less than 960 KG of Piperonal;

At least 1.6 KG but less than 4.8 KG of Propionic Anhydride;

At least 320 KG but less than 960 KG of Safrole;

At least 400 KG but less than 1200 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

At least 1135.5 L but less than 3406.5 L of Gamma-butyrolactone;

At least 714 G but less than 2.1 KG of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid.

List II Chemicals

33 KG or more of Acetic Anhydride;

3525 KG or more of Acetone;

60 KG or more of Benzyl Chloride;

3225 KG or more of Ethyl Ether;

3600 KG or more of Methyl Ethyl Ketone;

30 KG or more of Potassium Permanganate;

3900 KG or more of Toluene.''.

Section 2D1.11(e)(3) (as so redesignated) is amended by striking ''Level 28'' and inserting ''Level 26''; and, under the heading relating to List II Chemicals, by striking the line referenced to Acetic Anhydride and all that follows through the line referenced to Toluene and inserting the following:

''At least 11 KG but less than 33 KG of Acetic Anhydride;

At least 1175 KG but less than 3525 KG of Acetone;

At least 20 KG but less than 60 KG of Benzyl Chloride;

At least 1075 KG but less than 3225 KG of Ethyl Ether;

At least 1200 KG but less than 3600 KG of Methyl Ethyl Ketone;

At least 10 KG but less than 30 KG of Potassium Permanganate;

At least 1300 KG but less than 3900 KG of Toluene.''.

Section 2D1.11(e)(4) (as so redesignated) is amended by striking ''Level 26'' and inserting ''Level 24''.

Section 2D1.11(e)(5) (as so redesignated) is amended by striking ''Level 24'' and inserting ''Level 22''.

Section 2D1.11(e)(6) (as so redesignated) is amended by striking ''Level 22'' and inserting ''Level 20''.

Section 2D1.11(e)(7) (as so redesignated) is amended by striking ''Level 20'' and inserting ''Level 18''.

Section 2D1.11(e)(8) (as so redesignated) is amended by striking ''Level 18'' and inserting ''Level 16''.

Section 2D1.11(e)(9) (as so redesignated) is amended by striking ''Level 16'' and inserting ''Level 14''.

Section 2D1.11(e)(10) (as so redesignated) is amended by striking ''Level 14'' and inserting ''Level 12''; and in each line by striking ''At least'' and all that follows through ''but less'' and inserting ''Less''.

The Commentary to § 2D1.11 captioned ''Application Notes'' is amended in Note 1(A) by striking ''38'' both places such term appears and inserting ''36'', and by striking ''26'' and inserting ''24''; and in Note 1(B) by striking ''32'' and inserting ''30''.

The Commentary to § 3B1.2 captioned ''Application Notes'' is amended in Note 3(B) by striking ''14'' and inserting ''12''.

The Commentary following § 3D1.5 captioned ''Illustrations of the Operation of the Multiple-Count Rules'' is amended in Example 2 by striking ''26'' and inserting ''24''; and by striking ''28'' each place such term appears and inserting ''26''.

The Commentary to § 5G1.3 captioned ''Application Notes'' is amended in Note 2(D) by striking ''40'' and inserting ''90''; by striking ''15'' and inserting ''25''; and by striking ''55'' and inserting ''115''.

Reason for Amendment: This amendment revises the guidelines applicable to drug trafficking offenses by changing how the base offense levels in the Drug Quantity Table in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) incorporate the statutory mandatory minimum penalties for such offenses.

When Congress passed the Anti-Drug Abuse Act of 1986, Public Law 99–570, the Commission responded by generally incorporating the statutory mandatory minimum sentences into the guidelines and extrapolating upward and downward to set guideline sentencing ranges for all drug quantities. The quantity thresholds in the Drug Quantity Table were set so as to provide base offense levels corresponding to guideline ranges that were slightly above the statutory mandatory minimum penalties. Accordingly, offenses involving drug quantities that trigger a five-year statutory minimum were assigned a base offense level (level 26) corresponding to a sentencing guideline range of 63 to 78 months for a defendant in Criminal History Category I (a guideline range that exceeds the five-year statutory minimum for such offenses by at least three months). Similarly, offenses that trigger a ten-year statutory minimum were assigned a base offense level (level 32) corresponding to a sentencing guideline range of 121 to 151 months for a defendant in Criminal History Category I (a guideline range that exceeds the ten-year statutory minimum for such offenses by at least one month). The base offense levels for drug quantities above and below the mandatory minimum threshold quantities were extrapolated upward and downward to set guideline sentencing ranges for all drug quantities, *see* § 2D1.1, comment. (backg'd.), with a minimum base offense level of 6 and a maximum base offense level of 38 for most drug types.

This amendment changes how the applicable statutory mandatory minimum penalties are incorporated into the Drug Quantity Table while maintaining consistency with such penalties. *See* 28 U.S.C. 994(b)(1) (providing that each sentencing range must be ''consistent with all pertinent provisions of title 18, United States Code''); *see also* 28 U.S.C. 994(a) (providing that the Commission shall promulgate guidelines and policy statements ''consistent with all pertinent provisions of any Federal statute'').

Specifically, the amendment reduces by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties, resulting in corresponding guideline ranges that include the mandatory minimum penalties. Accordingly, offenses involving drug quantities that trigger a five-year statutory minimum are assigned a base offense level of 24 (51 to 63 months at Criminal History Category I, which includes the five-year (60 month) statutory minimum for such offenses), and offenses involving drug quantities that trigger a ten-year statutory minimum are assigned a base offense level of 30 (97 to 121 months at Criminal History Category I, which includes the ten-year (120 month) statutory minimum for such offenses). Offense levels for quantities above and below the mandatory minimum threshold quantities similarly are adjusted downward by two levels, except that the minimum base offense level of 6 and the maximum base offense level of 38 for most drug types is retained, as are previously existing minimum and maximum base offense levels for particular drug types.

The amendment also makes parallel changes to the quantity tables in § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), which apply to offenses involving chemical precursors of controlled substances. Section 2D1.11 is generally structured to provide offense levels that are tied to, but less severe than, the base offense levels in § 2D1.1 for offenses involving the final product.

In considering this amendment, the Commission held a hearing on March 13, 2014, and heard expert testimony from the Executive Branch, including the Attorney General and the Director of the Federal Bureau of Prisons, defense practitioners, state and local law enforcement, and interested community representatives. The Commission also received substantial written public comment, including from the Federal judiciary, members of Congress, academicians, community organizations, law enforcement groups, and individual members of the public.

The Commission determined that setting the base offense levels slightly above the mandatory minimum penalties is no longer necessary to achieve its stated purpose. Previously, the Commission has stated that ''[t]he base offense levels are set at guideline ranges slightly higher than the

mandatory minimum levels [levels 26 and 32] to permit some downward adjustment for defendants who plead guilty or otherwise cooperate with authorities.'' However, changes in the law and recent experience with similar reductions in base offense levels for crack cocaine offenses indicate that setting the base offense levels above the mandatory minimum penalties is no longer necessary to provide adequate incentives to plead guilty or otherwise cooperate with authorities.

In 1994, after the initial selection of levels 26 and 32, Congress enacted the ''safety valve'' provision, which applies to certain non-violent drug defendants and allows the court, without a government motion, to impose a sentence below a statutory mandatory minimum penalty if the court finds, among other things, that the defendant ''has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.'' *See* 18 U.S.C. § 3553(f). The guidelines incorporate the ''safety valve'' at § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) and, furthermore, provide a 2-level reduction if the defendant meets the ''safety valve'' criteria. *See* §§ 2D1.1(b)(16).

These statutory and guideline provisions, which are unrelated to the guideline range's relationship to the mandatory minimum, provide adequate incentive to plead guilty. Commission data indicate that defendants charged with a mandatory minimum penalty in fact are more likely to plead guilty if they qualify for the ''safety valve'' than if they do not. In fiscal year 2012, drug trafficking defendants charged with a mandatory minimum penalty had a plea rate of 99.6 percent if they qualified for the ''safety valve'' and a plea rate of 93.9 percent if they did not.

Recent experience with similar reductions in the base offense levels for crack cocaine offenses indicates that the amendment should not negatively affect the rates at which offenders plead guilty or otherwise cooperate with authorities. Similar to this amendment, the Commission in 2007 amended the Drug Quantity Table for cocaine base (''crack'' cocaine) so that the quantities that trigger mandatory minimum penalties were assigned base offense levels 24 and 30, rather than 26 and 32. *See* USSG App. C, Amendment 706 (effective November 1, 2007). In 2010, in implementing the emergency directive in section 8 of the Fair Sentencing Act of 2010, Public Law 111–220, the Commission moved crack cocaine offenses back to a guideline penalty structure based on levels 26 and 32.

During the period when crack cocaine offenses had a guideline penalty structure based on levels 24 and 30, the overall rates at which crack cocaine defendants pled guilty remained stable. Specifically, in the fiscal year before the 2007 amendment took effect, the plea rate for crack cocaine defendants was 93.1 percent. In the two fiscal years after the 2007 amendment took effect, the plea rates for such defendants were 95.2 percent and 94.0 percent, respectively. For those same fiscal years, the overall rates at which crack cocaine defendants received substantial assistance departures under § 5K1.1 (Substantial Assistance to Authorities) were 27.8 percent in the fiscal year before the 2007 amendment took effect and 25.3 percent and 25.6 percent in the two fiscal years after the 2007 amendment took effect. This recent experience indicates that this amendment, which is similar in nature to the 2007 crack cocaine amendment, should not negatively affect the willingness of defendants to plead guilty or otherwise cooperate with authorities. *See* 28 U.S.C. 991(b) (specifying that sentencing policies are to ''reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process'').

The amendment also reflects the fact that the guidelines now more adequately differentiate among drug trafficking offenders than when the Drug Quantity Table was initially established. Since the initial selection of offense levels 26 and 32, the guidelines have been amended many times—often in response to congressional directives—to provide a greater emphasis on the defendant's conduct and role in the offense rather than on drug quantity. The version of § 2D1.1 in the original 1987 *Guidelines Manual* contained a single specific offense characteristic: a 2-level enhancement if a firearm or other dangerous weapon was possessed. Section 2D1.1 in effect at the time of this amendment contains fourteen enhancements and three downward adjustments (including the ''mitigating role cap'' provided in subsection (a)(5)). These numerous adjustments, both increasing and decreasing offense levels based on specific conduct, reduce the need to rely on drug quantity in setting the guideline penalties for drug trafficking offenders as a proxy for culpability, and the amendment permits these adjustments to differentiate among offenders more effectively.

The amendment was also motived by the significant overcapacity and costs of the Federal Bureau of Prisons. The Sentencing Reform Act directs the Commission to ensure that the sentencing guidelines are ''formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons.'' *See* 28 U.S.C. § 994(g). Reducing the federal prison population and the costs of incarceration has become an urgent consideration. The Commission observed that the federal prisons are now 32 percent overcapacity, and drug trafficking offenders account for approximately 50 percent of the federal prison population (100,114 of 199,810 inmates as of October 26, 2013, for whom the Commission could determine the offense of conviction). Spending on federal prisons exceeds $6 billion a year, or more than 25 percent of the entire budget for the Department of Justice. The Commission received testimony from the Department of Justice and others that spending on federal prisons is now crowding out resources available for federal prosecutors and law enforcement, aid to state and local law enforcement, crime victim services, and crime prevention programs, all of which promote public safety.

In response to these concerns, the Commission considered the amendment an appropriate step toward alleviating the overcapacity of the federal prisons. Based on an analysis of the 24,968 offenders sentenced under § 2D1.1 in fiscal year 2012, the Commission estimates the amendment will affect the sentences of 17,457—or 69.9 percent—of drug trafficking offenders sentenced under § 2D1.1, and their average sentence will be reduced by 11 months—or 17.7 percent—from 62 months to 51 months. The Commission estimates these sentence reductions will correspond to a reduction in the federal prison population of approximately 6,500 inmates within five years after its effective date.

The Commission carefully weighed public safety concerns and, based on past experience, existing statutory and guideline enhancements, and expert testimony, concluded that the amendment should not jeopardize public safety. In particular, the Commission was informed by its studies that compared the recidivism rates for offenders who were released early as a result of retroactive application of the Commission's 2007 crack cocaine amendment with a control group of offenders who served their full terms of imprisonment. *See* USSG App. C, Amendment 713 (effective March 3, 2008). The Commission detected no statistically significant difference in the rates of recidivism for the two groups of

offenders after two years, and again after five years. This study suggests that modest reductions in drug penalties such as those provided by the amendment will not increase the risk of recidivism.

Furthermore, existing statutory enhancements, such as those available under 18 U.S.C. 924(c), and guideline enhancements for offenders who possess firearms, use violence, have an aggravating role in the offense, or are repeat or career offenders, ensure that the most dangerous or serious offenders will continue to receive appropriately severe sentences. In addition, the Drug Quantity Table as amended still provides a base offense level of 38 for offenders who traffic the greatest quantities of most drug types and, therefore, sentences for these offenders will not be reduced. Similarly, the Drug Quantity Table as amended maintains minimum base offense levels that preclude sentences of straight probation for drug trafficking offenders with small quantities of most drug types.

Finally, the Commission relied on testimony from the Department of Justice that the amendment would not undermine public safety or law enforcement initiatives. To the contrary, the Commission received testimony from several stakeholders that the amendment would permit resources otherwise dedicated to housing prisoners to be used to reduce overcrowding, enhance programming designed to reduce the risk of recidivism, and to increase law enforcement and crime prevention efforts, thereby enhancing public safety.

4. *Amendment:* Section 2D1.1(b) is amended by redesignating paragraphs (14) through (16) as paragraphs (15) through (17), respectively; and by inserting after paragraph (13) the following new paragraph (14):

''(14) If (A) the offense involved the cultivation of marihuana on state or federal land or while trespassing on tribal or private land; and (B) the defendant receives an adjustment under § 3B1.1 (Aggravating Role), increase by 2 levels.''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 16 by striking ''(b)(14)(D)'' and inserting ''(b)(15)(D)''; by redesignating Notes 19 through 26 as Notes 20 through 27, respectively; and by inserting after Note 18 the following new Note 19:

''19. *Application of Subsection (b)(14).*—Subsection (b)(14) applies to offenses that involve the cultivation of marihuana on state or federal land or while trespassing on tribal or private land. Such offenses interfere with the ability of others to safely access and use the area and also pose or risk a range of other harms, such as harms to the environment.

The enhancements in subsection (b)(13)(A) and (b)(14) may be applied cumulatively (added together), as is generally the case when two or more specific offense characteristics each apply. *See* § 1B1.1 (Application Instructions), Application Note 4(A).'';

in the heading of Note 20 (as so redesignated) by striking ''(b)(14)'' and inserting ''(b)(15)'';

in Note 20(A) (as so redesignated) by striking ''(b)(14)(B)'' both places such term appears and inserting ''(b)(15)(B)'';

in Note 20(B) (as so redesignated) by striking ''(b)(14)(C)'' each place such term appears and inserting ''(b)(15)(C)'';

in Note 20(C) (as so redesignated) by striking ''(b)(14)(E)'' both places such term appears and inserting ''(b)(15)(E)''; and

in Note 21 (as so redesignated) by striking ''(b)(16)'' each place such term appears and inserting ''(b)(17)''.

The Commentary to § 2D1.1 captioned ''Background'' is amended by striking ''(b)(14)'' and inserting ''(b)(15)''; and by striking ''(b)(15)'' and inserting ''(b)(16)''.

Section 2D1.14(a)(1) is amended by striking ''(b)(16)'' and inserting ''(b)(17)''.

The Commentary to § 3B1.4 captioned ''Application Notes'' is amended in Note 2 by striking ''(b)(14)(B)'' and inserting ''(b)(15)(B)''.

The Commentary to § 3C1.1 captioned ''Application Notes'' is amended in Note 7 by striking ''(b)(14)(D)'' and inserting ''(b)(15)(D)''.

Reason for Amendment: This amendment provides increased punishment for certain defendants involved in marihuana cultivation operations on state or federal land or while trespassing on tribal or private land. The amendment adds a new specific offense characteristic at subsection (b)(14) of § 2D1.1 (Unlawful Manufacturing, Importing, Exporting or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy). The new specific offense characteristic provides an increase of two levels if the defendant receives an adjustment under § 3B1.1 (Aggravating Role) and the offense involved the cultivation of marihuana on state or federal land or while trespassing on tribal or private land.

The amendment responds to concerns raised by federal and local elected officials, law enforcement groups, trade groups, environmental advocacy groups and others, especially in areas of the country where unlawful outdoor marihuana cultivation is occurring with increasing frequency. The concerns included the fact that such operations typically involve acts such as clearing existing vegetation, diverting natural water sources for irrigation, using potentially harmful chemicals, killing wild animals, and leaving trash and debris at the site. The concerns also included the risk to public safety of marihuana cultivation operations on federal or state land or while trespassing on tribal or private land. Additionally, when an operation is located on public land or on private land without the owner's permission, the operation deprives the public or the owner of lawful access to and use of the land.

Accordingly, this amendment provides an increase of two levels when a marihuana cultivation operation is located on state or federal land or while trespassing on tribal or private land, but only applies to defendants who received an adjustment under § 3B1.1 (Aggravating Role). These defendants are more culpable and have greater decision-making authority in the operation. The amendment also adds commentary in § 2D1.1 at Application Note 19 clarifying that, consistent with ordinary guideline operation, the new increase may be applied cumulatively with the existing enhancement at subsection (b)(13)(A) of § 2D1.1, which applies if an offense involved certain conduct relating to hazardous or toxic substances or waste.

5. *Amendment:* Section 2K2.1(c)(1) is amended by inserting after ''firearm or ammunition'' both places it appears the following: ''cited in the offense of conviction''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended in Note 14 by striking '' *'In Connection With'.*—'' and inserting ''*Application of Subsections (b)(6)(B) and (c)(1).*—'';

in Note 14(A) by adding at the end the following: ''However, subsection (c)(1) contains the additional requirement that the firearm or ammunition be cited in the offense of conviction.'';

in Note 14(B) by striking ''application of subsections (b)(6)(B) and (c)(1)'' and inserting ''application of subsections (b)(6)(B) and, if the firearm was cited in the offense of conviction, (c)(1)'';

and by adding at the end of Note 14 the following:

''(E) *Relationship Between the Instant Offense and the Other Offense.*—In determining whether subsections (b)(6)(B) and (c)(1) apply, the court must consider the relationship between the instant offense and the other offense, consistent with relevant conduct principles. *See* § 1B1.3(a)(1)–(4) and accompanying commentary.

In determining whether subsection (c)(1) applies, the court must also consider whether the firearm used in the other offense was a firearm cited in the offense of conviction.

For example:

(i) *Firearm Cited in the Offense of Conviction.* Defendant A's offense of conviction is for unlawfully possessing a shotgun on October 15. The court determines that, on the preceding February 10, Defendant A used the shotgun in connection with a robbery. Ordinarily, under these circumstances, subsection (b)(6)(B) applies, and the cross reference in subsection (c)(1) also applies if it results in a greater offense level.

Ordinarily, the unlawful possession of the shotgun on February 10 will be 'part of the same course of conduct or common scheme or plan' as the unlawful possession of the same shotgun on October 15. *See* § 1B1.3(a)(2) and accompanying commentary (including, in particular, the factors discussed in Application Note 9 to § 1B1.3). The use of the shotgun 'in connection with' the robbery is relevant conduct because it is a factor specified in subsections (b)(6)(B) and (c)(1). *See* § 1B1.3(a)(4) ('any other information specified in the applicable guideline').

(ii) *Firearm Not Cited in the Offense of Conviction.* Defendant B's offense of conviction is for unlawfully possessing a shotgun on October 15. The court determines that, on the preceding February 10, Defendant B unlawfully possessed a handgun (not cited in the offense of conviction) and used the handgun in connection with a robbery.

Subsection (b)(6)(B). In determining whether subsection (b)(6)(B) applies, the threshold question for the court is whether the two unlawful possession offenses (the shotgun on October 15 and the handgun on February 10) were 'part of the same course of conduct or common scheme or plan'. *See* § 1B1.3(a)(2) and accompanying commentary (including, in particular, the factors discussed in Application Note 9 to § 1B1.3).

If they were, then the handgun possession offense is relevant conduct to the shotgun possession offense, and the use of the handgun 'in connection with' the robbery is relevant conduct because it is a factor specified in subsection (b)(6)(B). *See* § 1B1.3(a)(4) ('any other information specified in the applicable guideline'). Accordingly, subsection (b)(6)(B) applies.

On the other hand, if the court determines that the two unlawful possession offenses were not 'part of the same course of conduct or common scheme or plan,' then the handgun possession offense is not relevant conduct to the shotgun possession offense and subsection (b)(6)(B) does not apply.

Subsection (c)(1). Under these circumstances, the cross reference in subsection (c)(1) does not apply, because the handgun was not cited in the offense of conviction.''.

Reason for Amendment: This amendment addresses cases in which the defendant is convicted of a firearms offense (in particular, being a felon in possession of a firearm) and also possessed a firearm in connection with another offense, such as robbery or attempted murder.

In such a case, the defendant is sentenced under the firearms guideline, § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition). If the defendant possessed any firearm in connection with another felony offense, subsection (b)(6)(B) provides a 4-level enhancement and a minimum offense level of 18. If the defendant possessed any firearm in connection with another offense, subsection (c)(1) provides a cross reference to the offense guideline applicable to the other offense, if it results in a higher offense level. (For example, if the defendant possessed any firearm in connection with a robbery, a cross reference to the robbery guideline may apply.)

This amendment is a result of the Commission's review of the operation of subsections (b)(6)(B) and (c)(1). The review was prompted in part because circuits have been following a range of approaches in determining whether these provisions apply. Several circuits have taken the view that subsections (b)(6)(B) and (c)(1) apply only if the other offense is a ''groupable'' offense under § 3D1.2(d). *See, e.g., United States* v. *Horton,* 693 F.3d 463, 478–79 (4th Cir. 2012) (felon in possession used a firearm in connection with a murder, but the cross reference does not apply because murder is not ''groupable''); *United States* v. *Settle,* 414 F.3d 629, 632–33 (6th Cir. 2005) (attempted murder); *United States* v. *Jones,* 313 F.3d 1019, 1023 n.3 (7th Cir. 2002) (murder); *United States* v. *Williams,* 431 F.3d 767, 772–73 & n.9 (11th Cir. 2005) (aggravated assault). *But see United States* v. *Kulick,* 629 F.3d 165, 170 (3d Cir. 2010) (felon in possession used a firearm in connection with extortion; the cross reference may apply even though extortion is not ''groupable''); *United States* v. *Gonzales,* 996 F.2d 88, 92 n.6 (5th Cir. 1993) (relevant conduct principles do not restrict the application of subsection (b)(6)(B)); *United States* v. *Outley,* 348 F.3d 476 (5th Cir. 2003) (relevant conduct principles do not restrict the application of subsection (c)(1)).

The amendment clarifies how relevant conduct principles operate in determining whether subsections (b)(6)(B) and (c)(1) apply. Subsections (b)(6)(B) and (c)(1) are not intended to apply only when the other felony offense is a ''groupable'' offense. Such an approach would result in unwarranted disparities, with defendants who possess a firearm in connection with a ''groupable'' offense (such as a drug offense) being subject to higher penalties than defendants who possess a firearm in connection with a ''non-groupable'' offense (such as murder or robbery). Instead, the central question for the court in these cases is whether the defendant's two firearms offenses—the firearms offense of conviction, and his unlawful possession of a firearm in connection with the other felony offense—were ''part of the same course of conduct or common scheme or plan''. *See* § 1B1.3(a)(2). The amendment adds examples to the commentary to clarify how relevant conduct principles are intended to operate in this context.

The amendment also responds to concerns regarding the impact of subsection (c)(1), particularly in cases in which the defendant was convicted of unlawfully possessing a firearm on one occasion but was found to have possessed a different firearm on another occasion in connection with another, more serious, offense. Because unlawfully possessing a firearm is an offense based on a status (*i.e.,* being a felon) that can continue for many years, the cross reference at subsection (c)(1) may, in effect, expose such a defendant to the highest offense level of any crime he may have committed at any time, regardless of its connection to the instant offense.

While relevant conduct principles provide a limitation on the scope of subsection (c)(1) (and, as discussed above, this amendment clarifies how those principles operate in this context), the Commission determined that a further limitation on the scope of subsection (c)(1) is appropriate. Specifically, the instant offense and the other offense must be related to each other by, at a minimum, having an identifiable firearm in common. Accordingly, the amendment revises the cross reference so that it applies only to the particular firearm or firearms cited in the offense of conviction.

6. *Amendment:* The Commentary to § 2L1.1 captioned ''Application Notes'' is amended in Note 5 after ''vehicle'' by

striking the comma and inserting a semicolon; after ''vessel'' by striking '', or'' and inserting a semicolon; and after ''inhumane condition'' by inserting the following: ''; or guiding persons through, or abandoning persons in, a dangerous or remote geographic area without adequate food, water, clothing, or protection from the elements''.

Reason for Amendment: This amendment accounts for the risks of death, injury, starvation, dehydration, or exposure that aliens potentially face when transported through dangerous and remote geographical areas, *e.g.,* along the southern border of the United States.

Section 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) currently has an enhancement at subsection (b)(6), which provides for a 2-level increase and a minimum offense level of 18, for intentionally or recklessly creating a substantial risk of death or serious bodily injury to another person. The Commentary for subsection (b)(6), Application Note 5, explains that § 2L1.1(b)(6) may apply to a ''wide variety of conduct'' and provides as examples ''transporting persons in the trunk or engine compartment of a motor vehicle, carrying substantially more passengers than the rated capacity of a motor vehicle or vessel, or harboring persons in a crowded, dangerous, or inhumane condition.''

One case that illustrates the concerns addressed in this amendment is *United States* v. *Mateo Garza,* 541 F.3d 290 (5th Cir. 2008), in which the Fifth Circuit held that the reckless endangerment enhancement at § 2L1.1(b)(6) does not *per se* apply to transporting aliens through the South Texas brush country, and must instead be applied based on the specific facts presented to the court. The Fifth Circuit emphasized that it is not enough to say, as the district court had, that traversing an entire geographical region is inherently dangerous, but that it must be dangerous on the facts presented to and used by the district court. The Fifth Circuit identified such pertinent facts from its prior case law as the length of the journey, the temperature, whether the aliens were provided food and water and allowed rest periods, and whether the aliens suffered injuries and death. *See, e.g., United States* v. *Garcia-Guerrero,* 313 F.3d 892 (5th Cir. 2002). Additional facts that have supported the enhancement include: whether the aliens were abandoned en route, the time of year during which the journey took place, the distance traveled, and whether the aliens were adequately clothed for the journey. *See, e.g., United States* v. *Chapa,* 362 Fed. App'x 411 (5th Cir. 2010); *United States* v. *De Jesus-Ojeda,* 515 F.3d 434 (5th Cir. 2008); *United States* v. *Hernandez-Pena,* 267 Fed. App'x 367 (5th Cir. 2008); *United States* v. *Rodriguez-Cruz,* 255 F.3d 1054 (9th Cir. 2001).

The amendment adds to Application Note 5 the following new example of the conduct to which § 2L1.1(b)(6) could apply: ''or guiding persons through, or abandoning persons in, a dangerous or remote geographic area without adequate food, water, clothing, or protection from the elements.'' The Commission determined that this new example will clarify application of subsection (b)(6), highlight the potential risks in these types of cases, provide guidance for the courts to determine whether to apply the enhancement, and promote uniformity in sentencing by providing factors to consider when determining whether to apply § 2L1.1(b)(6).

7. *Amendment:* The Commentary to § 5D1.2 captioned ''Application Notes'' is amended in Note 1, in the paragraph that begins '''Sex offense' means'', in subparagraph (A), by striking ''(ii) chapter 109B of such title;'', and by redesignating clauses (iii) through (vi) as clauses (ii) through (v), respectively; in subparagraph (B) by striking ''(vi)'' and inserting ''(v)''; and by adding at the end as the last sentence the following: ''Such term does not include an offense under 18 U.S.C. § 2250 (Failure to register).''.

The Commentary to § 5D1.2 captioned ''Application Notes'' is amended by adding at the end the following new Note 6:

''6. *Application of Subsection (c).*—Subsection (c) specifies how a statutorily required minimum term of supervised release may affect the minimum term of supervised release provided by the guidelines.

For example, if subsection (a) provides a range of two years to five years, but the relevant statute requires a minimum term of supervised release of three years and a maximum term of life, the term of supervised release provided by the guidelines is restricted by subsection (c) to three years to five years. Similarly, if subsection (a) provides a range of two years to five years, but the relevant statute requires a minimum term of supervised release of five years and a maximum term of life, the term of supervised release provided by the guidelines is five years.

The following example illustrates the interaction of subsections (a) and (c) when subsection (b) is also involved. In this example, subsection (a) provides a range of two years to five years; the relevant statute requires a minimum term of supervised release of five years and a maximum term of life; and the offense is a sex offense under subsection (b). The effect of subsection (b) is to raise the maximum term of supervised release from five years (as provided by subsection (a)) to life, yielding a range of two years to life. The term of supervised release provided by the guidelines is then restricted by subsection (c) to five years to life. In this example, a term of supervised release of more than five years would be a guideline sentence. In addition, subsection (b) contains a policy statement recommending that the maximum—a life term of supervised release—be imposed.''.

Reason for Amendment: This amendment resolves a circuit conflict and a related guideline application issue about the calculation of terms of supervised release. The circuit conflict involves defendants sentenced under statutes providing for mandatory minimum terms of supervised release, while the application issue relates specifically to defendants convicted of failure to register as a sex offender, in violation of 18 U.S.C. § 2250.

The guideline term of supervised release is determined by § 5D1.2 (Term of Supervised Release). Section 5D1.2(a) sets forth general rules for determining the guideline term of supervised release, based on the statutory classification of the offense. *See* § 5D1.2(a)(1)–(3); 18 U.S.C. § 3559 (sentencing classification of offenses). For certain terrorism-related and sex offenses, § 5D1.2(b) operates to replace the top end of the guideline term calculated under subsection (a) with a life term of supervised release. In the case of a ''sex offense,'' as defined by Application Note 1 to § 5D1.2, a policy statement recommends that a life term of supervised release be imposed. *See* § 5D1.2(b), p.s. Finally, § 5D1.2(c) states that ''the term of supervised release imposed shall be not less than any statutorily required term of supervised release.''

When a Statutory Minimum Term of Supervised Release Applies

First, there appear to be differences among the circuits in how to calculate the guideline term of supervised release when there is a statutory minimum term of supervised release. These cases involve the meaning of subsection (c) and its interaction with subsection (a).

The Seventh Circuit has held that when there is a statutory minimum term of supervised release, the statutory minimum term becomes the bottom of the guideline range (replacing the bottom of the term provided by (a)) and, if the statutory minimum equals or

exceeds the top of the guideline term provided by subsection (a), the guideline ''range'' becomes a single point at the statutory minimum. *United States* v. *Gibbs,* 578 F.3d 694, 695 (7th Cir. 2009). Thus, if subsection (a) provides a range of three to five years, but the statute provides a range of five years to life, the ''range'' is precisely five years. *Gibbs* involved a drug offense for which 21 U.S.C. 841(b) required a supervised release term of five years to life. *See also United States* v. *Goodwin,* 717 F.3d 511, 519–20 (7th Cir. 2013) (applying *Gibbs* to a case involving a failure to register for which 18 U.S.C. § 3583(k) required a supervised release term of five years to life).

These cases are in tension with the approach of the Eighth Circuit in *United States* v. *Deans,* 590 F.3d 907, 911 (8th Cir. 2010). In *Deans,* the range calculated under subsection (a) was two to three years of supervised release. However, the relevant statute, 21 U.S.C. 841(b)(1)(C), provided a range of three years to life. Under the Seventh Circuit's approach in *Gibbs,* the guideline ''range'' would be precisely three years. Without reference to *Gibbs,* the Eighth Circuit in *Deans* indicated that the statutory requirement ''trumps'' subsection (a), and the guideline range becomes the statutory range—three years to life. 590 F.3d at 911. Thus, the district court's imposition of five years of supervised release ''was neither an upward departure nor procedural error.'' *Id.*

The amendment adopts the approach of the Seventh Circuit in *Gibbs* and *Goodwin.* The amendment provides a new Application Note and examples explaining that, under subsection (c), a statutorily required minimum term of supervised release operates to restrict the low end of the guideline term of supervised release.

The Commission determined that this resolution was most consistent with its statutory obligation to determine the ''appropriate length'' of supervised release terms, and with how a statutory minimum term of imprisonment operates to restrict the range of imprisonment provided by the guidelines. *See* 28 U.S.C. 994(a)(1)(c); USSG § 5G1.1(a). This outcome is also consistent with the Commission's 2010 report on supervised release, which found that most supervised release violations occur in the first year after release from incarceration. *See* U.S. Sentencing Comm'n, *Federal Offenders Sentenced to Supervised Release,* at 63 & n. 265 (July 2010). If an offender shows non-compliance during the initial term of supervised release, the court may extend the term of supervision up to the statutory maximum, pursuant to 18 U.S.C. 3583(e)(2).

When the Defendant is Convicted of Failure to Register as a Sex Offender

Second, there are differences among the circuits over how to calculate the guideline range of supervised release when a defendant is convicted, under 18 U.S.C. 2250, of failing to register as a sex offender. That offense carries a statutory minimum term of supervised release of at least five years, with a term up to life permitted. *See* 18 U.S.C. 3583(k).

There is an application issue about when, if at all, such an offense is a ''sex offense'' for purposes of subsection (b) of § 5D1.2. If a failure to register is a sex offense, then subsection (b) specifically provides for a term of supervised release of anywhere from the minimum provided by subsection (a) to the maximum provided by statute (*i.e.,* life), and a policy statement contained within subsection (b) recommends that the maximum be imposed. *See* § 5D1.2(b), p.s. Another effect of the determination is that, if failure to register is a ''sex offense,'' the guidelines recommend that special conditions of supervised release also be imposed, such as participating in a sex offender monitoring program and submitting to warrantless searches. *See* § 5D1.3(d)(7).

Application Note 1 defines ''sex offense'' to mean, among other things, ''an offense, perpetrated against a minor, under'' chapter 109B of title 18 (the only section of which is Section 2250). Circuits have reached different conclusions about the effect of this definition.

The Seventh Circuit has held that a failure to register can never be a ''sex offense'' within the meaning of Note 1. *United States* v. *Goodwin,* 717 F.3d 511, 518–20 (7th Cir. 2013); *see also United States* v. *Segura,* No. 12–11262, __F.3d __, 2014 WL 1282759, at *4 (5th Cir. Mar. 31, 2014) (agreeing with *Goodwin*). The court in *Goodwin* reasoned that there is no specific victim of a failure to register, and therefore a failure to register is never ''perpetrated against a minor'' and can never be a ''sex offense''—rendering the definition's inclusion of offenses under chapter 109B ''surplusage.'' 717 F.3d at 518. In an unpublished opinion, the Second Circuit has determined that a failure to register was not a ''sex offense.'' *See United States* v. *Herbert,* 428 Fed. App'x 37 (2d Cir. 2011). In both cases, the government argued for these outcomes, confessing error below.

There are unpublished decisions in other circuits that have reached different results, without discussion. In those cases, the defendant had a prior sex offense against a minor, and the circuit court determined that the failure to register was a ''sex offense.'' *See United States* v. *Zeiders,* 440 Fed. App'x 699, 701 (11th Cir. 2011); *United States* v. *Nelson,* 400 Fed. App'x 781 (4th Cir. 2010).

The Commission agrees with the Seventh Circuit that failure to register is not an offense that is ''perpetrated against a minor.'' In addition, expert testimony and research reviewed by the Commission indicated that commission of a failure-to-register offense is not correlated with sex offense recidivism. The amendment resolves the application issue by amending the commentary to § 5D1.2 to clarify that offenses under Section 2250 are not ''sex offenses.''

8. *Amendment:* The Commentary to § 2L1.2 captioned ''Application Notes'' is amended by redesignating Note 8 as Note 9 and by inserting after Note 7 the following new Note 8:

''8. *Departure Based on Time Served in State Custody.*—In a case in which the defendant is located by immigration authorities while the defendant is serving time in state custody, whether pre- or post-conviction, for a state offense, the time served is not covered by an adjustment under § 5G1.3(b) and, accordingly, is not covered by a departure under § 5K2.23 (Discharged Terms of Imprisonment). *See* § 5G1.3(a). In such a case, the court may consider whether a departure is appropriate to reflect all or part of the time served in state custody, from the time immigration authorities locate the defendant until the service of the federal sentence commences, that the court determines will not be credited to the federal sentence by the Bureau of Prisons. Any such departure should be fashioned to achieve a reasonable punishment for the instant offense.

Such a departure should be considered only in cases where the departure is not likely to increase the risk to the public from further crimes of the defendant. In determining whether such a departure is appropriate, the court should consider, among other things, (A) whether the defendant engaged in additional criminal activity after illegally reentering the United States; (B) the seriousness of any such additional criminal activity, including (1) whether the defendant used violence or credible threats of violence or possessed a firearm or other dangerous weapon (or induced another person to do so) in connection with the criminal activity, (2) whether the criminal activity resulted in death or serious

bodily injury to any person, and (3) whether the defendant was an organizer, leader, manager, or supervisor of others in the criminal activity; and (C) the seriousness of the defendant's other criminal history.''.

The Commentary to § 2X5.1 captioned ''Application Notes'' is amended in Note 1 by inserting after ''§ 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment'' the following: ''or Anticipated State Term of Imprisonment''.

Section 5G1.3 is amended in the heading by inserting after ''Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment'' the following: ''or Anticipated State Term of Imprisonment''.

Section 5G1.3 is amended in subsection (b) by striking ''and that was the basis for an increase in the offense level for the instant offense under Chapter Two (Offense Conduct) or Chapter Three (Adjustments)''; by redesignating subsection (c) as (d); and by inserting after subsection (b) the following new subsection (c):

''(c) If subsection (a) does not apply, and a state term of imprisonment is anticipated to result from another offense that is relevant conduct to the instant offense of conviction under the provisions of subsections (a)(1), (a)(2), or (a)(3) of § 1B1.3 (Relevant Conduct), the sentence for the instant offense shall be imposed to run concurrently to the anticipated term of imprisonment.''.

The Commentary to § 5G1.3 captioned ''Application Notes'' is amended in Note 2(A) by striking ''(i)'' and by striking ''; and (ii) has resulted in an increase in the Chapter Two or Three offense level for the instant offense'';

in Note 2(B) by striking ''increased the Chapter Two or Three offense level for the instant offense but'';

by redesignating Notes 3 and 4 as Notes 4 and 5, respectively, and inserting after Note 2 the following new Note 3:

''3. *Application of Subsection (c).*—Subsection (c) applies to cases in which the federal court anticipates that, after the federal sentence is imposed, the defendant will be sentenced in state court and serve a state sentence before being transferred to federal custody for federal imprisonment. In such a case, where the other offense is relevant conduct to the instant offense of conviction under the provisions of subsections (a)(1), (a)(2), or (a)(3) of § 1B1.3 (Relevant Conduct), the sentence for the instant offense shall be imposed to run concurrently to the anticipated term of imprisonment.'';

and in Note 4 (as so redesignated), in the heading, by striking ''(c)'' and inserting ''(d)''; in each of subparagraphs (A), (B), (C), and (D) by striking ''(c)'' each place such term appears and inserting ''(d)''; and in subparagraph (E) by striking ''subsection (c)'' both places such term appears and inserting ''subsection (d)'', and by striking ''§ 5G1.3 (c)'' and inserting ''§ 5G1.3(d)''.

Section 5K2.23 is amended by inserting after ''Imposition of a Sentence on a Defendant Subject to Undischarged Term of Imprisonment'' the following: ''or Anticipated Term of Imprisonment''.

Reason for Amendment: This multi-part amendment addresses certain cases in which the defendant is subject to another term of imprisonment, such as an undischarged term of imprisonment or an anticipated term of imprisonment. The guideline generally applicable to undischarged terms of imprisonment is § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment).

Section 5G1.3 identifies three categories of cases in which a federal defendant is also subject to an undischarged term of imprisonment. First, there are cases in which the federal offense was committed while the defendant was serving the undischarged term of imprisonment (including work release, furlough, or escape status). In these cases, the federal sentence is to be imposed consecutively to the remainder of the undischarged term of imprisonment. *See* § 5G1.3(a). Second, assuming subsection (a) does not apply, there are cases in which the conduct involved in the undischarged term of imprisonment is related to the conduct involved in the federal offense—specifically, the offense for which the defendant is serving an undischarged term of imprisonment is relevant conduct under subsections (a)(1), (a)(2), or (a)(3) of § 1B1.3 (Relevant Conduct)—and was the basis for an increase in the offense level under Chapter Two or Chapter Three. In these cases, the court is directed to adjust the federal sentence to account for the time already served on the undischarged term of imprisonment (if the Bureau of Prisons will not itself provide credit for that time already served) and is further directed to run the federal sentence concurrently with the remainder of the sentence for the undischarged term of imprisonment. *See* § 5G1.3(b). Finally, in all other cases involving an undischarged state term of imprisonment, the court may impose the federal sentence concurrently, partially concurrently, or consecutively, to achieve a reasonable punishment for the federal offense. *See* § 5G1.3(c), p.s.

Within the category of cases covered by subsection (b), where the conduct involved in the undischarged term of imprisonment is related to the federal offense conduct, the Commission considered whether the benefit of subsection (b) should continue to be limited to cases in which the offense conduct related to the undischarged term of imprisonment resulted in a Chapter Two or Three increase. The Commission determined that this limitation added complexity to the guidelines and may lead to unwarranted disparities. For example, a federal drug trafficking defendant who is serving an undischarged state term of imprisonment for a small amount of a controlled substance that is relevant conduct to the federal offense may not receive the benefit of subsection (b) because the amount of the controlled substance may not be sufficient to increase the offense level under Chapter Two. In contrast, a federal drug trafficking defendant who is serving an undischarged state term of imprisonment for a large amount of a controlled substance that is relevant conduct to the federal offense may be more likely to receive the benefit of subsection (b) because the amount of the controlled substance may be more likely to increase the offense level under Chapter Two. The amendment amends § 5G1.3(b) to require a court to adjust the sentence and impose concurrent sentences in any case in which the prior offense is relevant conduct under the provisions of § 1B1.3(a)(1), (a)(2), or (a)(3), regardless of whether the conduct from the prior offense formed the basis for a Chapter Two or Chapter Three increase. The Commission determined that this amendment will simplify the operation of § 5G1.3(b) and will also address concerns that the requirement that the relevant conduct increase the offense level under Chapters Two or Three is somewhat arbitrary.

Second, the amendment addresses cases in which there is an anticipated, but not yet imposed, state term of imprisonment that is relevant conduct to the instant offense of conviction under the provisions of subsections (a)(1), (a)(2), or (a)(3) of § 1B1.3 (Relevant Conduct). This amendment creates a new subsection (c) at § 5G1.3 that directs the court to impose the sentence for the instant federal offense to run concurrently with the anticipated but not yet imposed period of imprisonment if § 5G1.3(a) does not apply.

This amendment is a further response to the Supreme Court's decision in

Setser v. *United States,* 132 S. Ct. 1463 (2012). Last year, the Commission amended the Background Commentary to § 5G1.3 to provide heightened awareness of the court's authority under *Setser. See* USSG App. C, Amend. 776 (effective November 1, 2013). In *Setser,* the Supreme Court held that a federal sentencing court has the authority to order that a federal term of imprisonment run concurrent with, or consecutive to, an anticipated but not yet imposed state sentence. This amendment reflects the Commission's determination that the concurrent sentence benefits of subsection (b) of § 5G1.3 should be available not only in cases in which the state sentence has already been imposed at the time of federal sentencing (as subsection (b) provides), but also in cases in which the state sentence is anticipated but has not yet been imposed, as long as the other criteria in subsection (b) are satisfied (*i.e.,* the state offense is relevant conduct under subsections (a)(1), (a)(2), or (a)(3) of § 1B1.3, and subsection (a) of § 5G1.3 does not apply). By requiring courts to impose a concurrent sentence in these cases, the amendment reduces disparities between defendants whose state sentences have already been imposed and those whose state sentences have not yet been imposed. The amendment also promotes certainty and consistency.

Third, the amendment addresses certain cases in which the defendant is an alien and is subject to an undischarged term of imprisonment. The amendment provides a new departure provision in § 2L1.2 (Unlawfully Entering or Remaining in the United States) for cases in which the defendant is located by immigration authorities while the defendant is in state custody, whether pre- or post-conviction, for a state offense unrelated to the federal illegal reentry offense. In such a case, the time served is not covered by an adjustment under § 5G1.3(b) and, accordingly, is not covered by a departure under § 5K2.23 (Discharged Terms of Imprisonment). The new departure provision states that, in such a case, the court may consider whether a departure is appropriate to reflect all or part of the time served in state custody for the unrelated offense, from the time federal immigration authorities locate the defendant until the service of the federal sentence commences, that the court determines will not be credited to the federal sentence by the Bureau of Prisons. The new departure provision also sets forth factors for the court to consider in determining whether to provide such a departure, and states that a departure should be considered only if the departure will not increase the risk to the public from further crimes of the defendant.

This amendment addresses concerns that the amount of time a defendant serves in state custody after being located by immigration authorities may be somewhat arbitrary. Several courts have recognized a downward departure to account for the delay between when the defendant is ''found'' by immigration authorities and when the defendant is brought into federal custody. *See, e.g., United States* v. *Sanchez-Rodriguez,* 161 F.3d 556, 563–64 (9th Cir. 1998) (affirming downward departure on the basis that, because of the delay in proceeding with the illegal reentry case, the defendant lost the opportunity to serve a greater portion of his state sentence concurrently with his illegal reentry sentence); *United States* v. *Barrera-Saucedo,* 385 F.3d 533, 537 (5th Cir. 2004) (holding that ''it is permissible for a sentencing court to grant a downward departure to an illegal alien for all or part of time served in state custody from the time immigration authorities locate the defendant until he is taken into federal custody''); *see also United States* v. *Los Santos,* 283 F.3d 422, 428–29 (2d Cir. 2002) (departure appropriate if the delay was either in bad faith or unreasonable). The amendment provides guidance to the courts in the determination of an appropriate sentence in such a case.

(2) Request for Comment on Amendment 3, Pertaining to Drug Offenses

On April 30, 2014, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2014, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the **Federal Register**.

Amendment 3, pertaining to drug offenses, has the effect of lowering guideline ranges. Pursuant to 28 U.S.C. 994(u), ''[i]f the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.''

The Commission intends to consider whether, pursuant to 18 U.S.C. 3582(c)(2) and 28 U.S.C. 994(u), this amendment, or any part thereof, should be included in subsection (c) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants. In considering whether to do so, the Commission will consider, among other things, a retroactivity impact analysis and public comment. Accordingly, the Commission seeks public comment on whether it should make this amendment available for retroactive application. To help inform public comment, the retroactivity impact analysis will be made available to the public as soon as practicable.

Among the factors that have been considered in the past by the Commission in selecting the amendments included in subsection (c) of § 1B1.10 were the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range. *See* § 1B1.10, comment. (backg'd.).

Part-by-Part Consideration of Amendment

The Commission seeks comment on whether it should list the entire amendment, or one or more parts of the amendment, in subsection (c) of § 1B1.10 as an amendment that may be applied retroactively to previously sentenced defendants. For example, one part of the amendment changes the Drug Quantity Table in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) across drug types. This has the effect of lowering guideline ranges for certain defendants for offenses involving drugs. Another part of the amendment changes the quantity tables in § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy) across chemical types. This has the effect of lowering guideline ranges for certain defendants for offenses involving chemical precursors. For each of these parts, the Commission requests comment on whether that part should be listed in subsection (c) of § 1B1.10 as an amendment that may be applied retroactively.

Other Guidance or Limitations for the Amendment Pertaining to Drug Offenses

If the Commission does list the entire amendment, or one part of the amendment, in subsection (c) of § 1B1.10 as an amendment that may be applied retroactively to previously sentenced defendants, should the Commission provide further guidance or

limitations regarding the circumstances in which and the amount by which sentences may be reduced?

For example, should the Commission limit retroactivity only to a particular category or categories of defendants, such as (A) defendants who received an adjustment under the guidelines' ''safety valve'' provision (currently § 2D1.1(b)(16)), or (B) defendants sentenced before *United States* v. *Booker,* 543 U.S. 220 (2005)?

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