

STOCK CLEARING CORPORATION OF PHILADELPHIA, CONSOLIDATED RESTATEMENT OF FEES—Continued

| Service | Fee |
|--|---|
| c. Over the Window Delivery "Don't Know". | \$10.00 |
| d. Over the Window Receive Clearing House. | \$6.00 |
| e. Dividend Settlement Service | \$5.00 |
| f. Envelope Settlement Service/Inter-City/Funds Only Settlement Service. | \$5.00 |
| g. Over the Window Delivery Fed Funds. | \$22.50 |
| h. Over the Window Receive Fed Funds. | \$22.50 |
| i. Syndicate Re-Delivery-Paid | \$14.00 |
| j. Syndicate Re-Delivery "Don't Know" | \$17.00 |
| k. Securities Hold | \$5.00 |
| l. Reorganization Pick-up | \$5.00 |
| m. Reorganization Reject | \$10.00 |
| n. Reorganization Agent Delivery | \$15.00 |
| o. Syndicate Pick-Up | \$17.00 |
| p. Miscellaneous | \$5.00 |
| q. Deliveries to New Jersey | \$12.00 per item (plus costs) |
| 10. Margin Account Interest: | |
| Charge on net debit balances | ½% above bank broker call rate |
| 11. Research Fees: | |
| a. Per photocopy of input forms | \$4.00 |
| b. Per microfiche copy | \$4.00 |
| c. Items less than 90 days old | No charge |
| d. Items 1 year old or less | \$15.00 per hour |
| e. Items over 1 year old | \$15.00 per hour, \$25.00 minimum, plus archive retrieval costs |
| 12. Computer Transmission/Tapes: | |
| a. Purchase and Sale, Trade Data (daily). | \$100.00 per month |
| b. Purchase and Sale, Trades plus T+2 Settling Trades (daily). | \$150.00 per month |
| c. Miscellaneous | \$150.00 per month; includes 6 tapes/transmission \$25.00 per additional tape/transmission |
| 13. Lost and Stolen Securities Program | \$100.00 per year, \$2.50 per inquiry |
| 14. P&L Statement Charges | \$0.01 per line |
| 15. Buy-ins | \$5.00 per items submitted |
| 16. Member to Member Envelope Service | \$5.00 per envelope (charged to sender), plus carrier costs |

**This is not a graduated rate schedule. Once this volume threshold is reached, all trades from the first trade receive such volume discount rate.

[FR Doc. 97-4609 Filed 2-24-97; 8:45 am]

BILLING CODE 8010-01-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of: (1) Promulgation of a temporary, "emergency" guideline amendment generally increasing the offense levels for List I chemicals by two levels and a proposal to re-promulgate such amendment as a non-emergency amendment; (2) deferred action until the March 19, 1997, meeting on previously proposed temporary, "emergency" guideline amendments increasing penalties for alien smuggling, fraudulent use of government-issued documents, and involuntary servitude, peonage, and slave trade offenses; (3) other proposed non-emergency amendments to

sentencing guidelines and commentary; (4) proposed conforming amendments relating to proposed amendment 18, published in 62 FR 151 (January 2, 1997); and (5) proposed conforming amendment relating to proposed amendment 12, published in 62 FR 151 (January 2, 1997). Request for comment.

SUMMARY: The Sentencing Commission hereby gives notice of the following actions: (1) Pursuant to section 302 of the Comprehensive Methamphetamine Control Act of 1996, the Commission is promulgating a temporary, emergency amendment to § 2D1.11 and accompanying commentary; pursuant to section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994(a) and (p)), the Commission further proposes to re-promulgate such amendment as a non-emergency amendment; (2) the Commission has

deferred action on promulgating amendments to §§ 2L1.1, 2L2.1, 2L2.2, and 2H4.1 relating to sections 203, 211, and 218 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 until the meeting on March 19, 1997; and (3) pursuant to section 217 (a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994 (a) and (p)), the Commission is considering promulgating certain other non-emergency amendments to the sentencing guidelines and commentary. The Commission may submit the non-emergency amendments to the Congress not later than May 1, 1997.

This notice sets forth the emergency and other proposed amendments and a synopsis of the issues addressed by the amendments, as well as additional issues for comment. The proposed amendments are presented in this notice in one of two formats. First, some of the

amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates alternative proposals and that the Commission invites comment and suggestions for appropriate policy choices; for example, a proposed enhancement of [3–5] levels means a proposed enhancement of either three, four, or five levels. Similarly, a proposed enhancement of [4] levels indicates that the Commission is considering, and invites comment on, alternative policy choices. Second, the Commission has highlighted certain issues for comment and invites suggestions for specific amendment language.

DATES: (1) The Commission has specified an effective date of May 1, 1997, for the emergency amendment increasing the penalties for offenses involving List I chemicals.

(2) Comment on the non-emergency amendments and issues set forth in this notice should be received not later than March 28, 1997.

(3) The Commission has re-scheduled the public hearing on non-emergency amendments proposed for comment in the Federal Register of January 2, 1997, (62 FR 151) and in this notice for March 18, 1997, beginning at 9:30 a.m. in the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002–8002.

A person who desires to testify at the public hearing should notify Michael Courlander, Public Information Specialist, at (202) 273–4590 not later

than March 3, 1997. Written testimony for the hearing must be received by the Commission not later than March 10, 1997. Submission of written testimony is a requirement for testifying at the public hearing.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE, Suite 2–500, Washington, DC 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

Authority: 28 U.S.C. 994 (a), (o), (p), (x).
Richard P. Conaboy,
Chairman.

Emergency Amendments

Section 2D1.11 Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy

1. Synopsis of Amendment: This amendment implements section 302 of the Comprehensive Methamphetamine Control Act of 1996. That section raises the statutory maximum penalties under 21 U.S.C. 841(d) and 960(d) from ten to twenty years' imprisonment. The Act also instructs the Commission to increase by at least two levels the offense levels for offenses involving list I chemicals under 21 U.S.C. 841(d) (1) and (2) and 960(d) (1) and (3). These offenses involve the possession and importation of listed chemicals knowing, or having reasonable cause to believe, the chemicals will be used to

unlawfully manufacture a controlled substance. The Act requires that the offense levels be calculated proportionately on the basis of the quantity of controlled substance that reasonably could be manufactured in a clandestine setting using the quantity of list I chemical possessed, distributed, imported, or exported.

The amendment raises the penalties for list I chemicals by two levels. The top of the Chemical Quantity Table for list I chemicals will now be at level 30. The offense level for list II chemicals remains the same. With the new statutory maximum of 20 years, the guidelines will now be able to better take into account aggravating adjustments such as those for role in the offense. Additionally, the increased statutory maximum will allow for higher sentences for cases convicted under this statute that involve the actual manufacture of a controlled substance.

The amendment also makes a clerical change to correct the spelling of "Isosafrole".

Effective Date: The Commission has specified an effective date of May 1, 1997, for this emergency amendment.

Notice of Proposed Re-Promulgation as Permanent Amendment: The Commission also proposes to re-promulgate this amendment as a non-emergency amendment and submit it to Congress not later than May 1, 1997.

Amendment: Section 2D1.11(d) is amended by deleting subsections (d)(1)–(9) and inserting in lieu thereof the following:

| Listed chemicals and quantity | Base of-fense level |
|--|---------------------|
| (1) List I Chemicals 17.8 KG or more of Benzaldehyde; 20 KG or more of Benzyl Cyanide; 20 KG or more of Ephedrine; 200 G or more of Ergonovine; 400 G or more of Ergotamine; 20 KG or more of Ethylamine; 44 KG or more of Hydriodic Acid; 320 KG or more of Isosafrole; 4 KG or more of Methylamine; 500 KG or more of N-Methylephedrine; 500 KG or more of N-Methylpseudoephedrine; 12.6 KG or more of Nitroethane; 200 KG or more of Norpseudoephedrine; 20 KG or more of Phenylacetic Acid; 200 KG or more of Phenylpropanolamine; 10 KG or more of Piperidine; 320 KG or more of Piperonal; 1.6 KG or more of Propionic Anhydride; 20 KG or more of Pseudoephedrine; 320 KG or more of Safrole; 400 KG or more of 3, 4-Methylenedioxyphenyl-2-propanone; | Level 30. |
| (2) List I Chemicals | Level 28. |

| Listed chemicals and quantity | Base of-fense level |
|--|---------------------|
| <p>At least 5.3 KG but less than 17.8 KG of Benzaldehyde; At least 6 KG but less than 20 KG of Benzyl Cyanide; At least 6 KG but less than 20 KG of Ephedrine; At least 60 G but less than 200 G of Ergonovine; At least 120 G but less than 400 G of Ergotamine; At least 6 KG but less than 20 KG of Ethylamine; At least 13.2 KG but less than 44 KG of Hydriodic Acid; At least 96 KG but less than 320 KG of Isosafrole; At least 1.2 KG but less than 4 KG of Methylamine; At least 150 KG but less than 500 KG of N-Methylephedrine; At least 150 KG but less than 500 KG of N-Methylpseudoephedrine; At least 3.8 KG but less than 12.6 KG of Nitroethane; At least 60 KG but less than 200 KG of Norpseudoephedrine; At least 6 KG but less than 20 KG of Phenylacetic Acid; At least 60 KG but less than 200 KG of Phenylpropanolamine; At least 3 KG but less than 10 KG of Piperidine; At least 96 KG but less than 320 KG of Piperonal; At least 480 G but less than 1.6 KG of Propionic Anhydride; At least 6 KG but less than 20 KG of Pseudoephedrine; At least 96 KG but less than 320 KG of Safrole; At least 120 KG but less than 400 KG of 3, 4-Methylenedioxyphenyl-2-propanone;</p> <p>List II Chemicals 11 KG or more of Acetic Anhydride; 1175 KG or more of Acetone; 20 KG or more of Benzyl Chloride; 1075 KG or more of Ethyl Ether; 1200 KG or more of Methyl Ethyl Ketone; 10 KG or more of Potassium Permanganate; 1300 KG or more of Toluene.</p> | |
| <p>(3) List I Chemicals At least 1.8 KG but less than 5.3 KG of Benzaldehyde; At least 2 KG but less than 6 KG of Benzyl Cyanide; At least 2 KG but less than 6 KG of Ephedrine; At least 20 G but less than 60 G of Ergonovine; At least 40 G but less than 120 G of Ergotamine; At least 2 KG but less than 6 KG of Ethylamine; At least 4.4 KG but less than 13.2 KG of Hydriodic Acid; At least 32 KG but less than 96 KG of Isosafrole; At least 400 G but less than 1.2 KG of Methylamine; At least 50 KG but less than 150 KG of N-Methylephedrine; At least 50 KG but less than 150 KG of N-Methylpseudoephedrine; At least 1.3 KG but less than 3.8 KG of Nitroethane; At least 20 KG but less than 60 KG of Norpseudoephedrine; At least 2 KG but less than 6 KG of Phenylacetic Acid; At least 20 KG but less than 60 KG of Phenylpropanolamine; At least 1 KG but less than 3 KG of Piperidine; At least 32 KG but less than 96 KG of Piperonal; At least 160 G but less than 480 G of Propionic Anhydride; At least 2 KG but less than 6 KG of Pseudoephedrine; At least 32 KG but less than 96 KG of Safrole; At least 40 KG but less than 120 KG of 3, 4-Methylenedioxyphenyl-2-propanone;</p> <p>List II Chemicals At least 3.3 KG but less than 11 KG of Acetic Anhydride; At least 352.5 KG but less than 1175 KG of Acetone; At least 6 KG but less than 20 KG of Benzyl Chloride; At least 322.5 KG but less than 1075 KG of Ethyl Ether; At least 360 KG but less than 1200 KG of Methyl Ethyl Ketone; At least 3 KG but less than 10 KG of Potassium Permanganate; At least 390 KG but less than 1300 KG of Toluene.</p> | Level 26. |
| <p>(4) List I Chemicals</p> | Level 24. |

| Listed chemicals and quantity | Base of-fense level |
|---|---------------------|
| <p>At least 1.2 KG but less than 1.8 KG of Benzaldehyde; At least 1.4 KG but less than 2 KG of Benzyl Cyanide; At least 1.4 KG but less than 2 KG of Ephedrine; At least 14 G but less than 20 G of Ergonovine; At least 28 G but less than 40 G of Ergotamine; At least 1.4 KG but less than 2 KG of Ethylamine; At least 3.08 KG but less than 4.4 KG of Hydriodic Acid; At least 22.4 KG but less than 32 KG of Isosafrole; At least 280 G but less than 400 G of Methylamine; At least 35 KG but less than 50 KG of N-Methylephedrine; At least 35 KG but less than 50 KG of N-Methylpseudoephedrine; At least 879 G but less than 1.3 KG of Nitroethane; At least 14 KG but less than 20 KG of Norpseudoephedrine; At least 1.4 KG but less than 2 KG of Phenylacetic Acid; At least 14 KG but less than 20 KG of Phenylpropanolamine; At least 700 G but less than 1 KG of Piperidine; At least 22.4 KG but less than 32 KG of Piperonal; At least 112 G but less than 160 G of Propionic Anhydride; At least 1.4 KG but less than 2 KG of Pseudoephedrine; At least 22.4 KG but less than 32 KG of Safrole; At least 28 KG but less than 40 KG of 3, 4-Methylenedioxyphenyl-2-propanone;</p> <p>List II Chemicals</p> <p>At least 1.1 KG but less than 3.3 KG of Acetic Anhydride; At least 117.5 KG but less than 352.5 KG of Acetone; At least 2 KG but less than 6 KG of Benzyl Chloride; At least 107.5 KG but less than 322.5 KG of Ethyl Ether; At least 120 KG but less than 360 KG of Methyl Ethyl Ketone; At least 1 KG but less than 3 KG of Potassium Permanganate; At least 130 KG but less than 390 KG of Toluene.</p> | |
| <p>(5) List I Chemicals</p> <p>At least 712 G but less than 1.2 KG of Benzaldehyde; At least 800 G but less than 1.4 KG of Benzyl Cyanide; At least 800 G but less than 1.4 KG of Ephedrine; At least 8 G but less than 14 G of Ergonovine; At least 16 G but less than 28 G of Ergotamine; At least 800 G but less than 1.4 KG of Ethylamine; At least 1.76 KG but less than 3.08 KG of Hydriodic Acid; At least 12.8 KG but less than 22.4 KG of Isosafrole; At least 160 G but less than 280 G of Methylamine; At least 20 KG but less than 35 KG of N-Methylephedrine; At least 20 KG but less than 35 KG of N-Methylpseudoephedrine; At least 503 G but less than 879 G of Nitroethane; At least 8 KG but less than 14 KG of Norpseudoephedrine; At least 800 G but less than 1.4 KG of Phenylacetic Acid; At least 8 KG but less than 14 KG of Phenylpropanolamine; At least 400 G but less than 700 G of Piperidine; At least 12.8 KG but less than 22.4 KG of Piperonal; At least 64 G but less than 112 G of Propionic Anhydride; At least 800 G but less than 1.4 KG of Pseudoephedrine; At least 12.8 KG but less than 22.4 KG of Safrole; At least 16 KG but less than 28 KG of 3, 4-Methylenedioxyphenyl-2-propanone;</p> <p>List II Chemicals</p> <p>At least 726 G but less than 1.1 KG of Acetic Anhydride; At least 82.25 KG but less than 117.5 KG of Acetone; At least 1.4 KG but less than 2 KG of Benzyl Chloride; At least 75.25 KG but less than 107.5 KG of Ethyl Ether; At least 84 KG but less than 120 KG of Methyl Ethyl Ketone; At least 700 G but less than 1 KG of Potassium Permanganate; At least 91 KG but less than 130 KG of Toluene.</p> | Level 22. |
| <p>(6) List I Chemicals</p> | Level 20. |

| Listed chemicals and quantity | Base of-fense level |
|---|---------------------|
| <p>At least 178 G but less than 712 G of Benzaldehyde; At least 200 G but less than 800 G of Benzyl Cyanide; At least 200 G but less than 800 G of Ephedrine; At least 2 G but less than 8 G of Ergonovine; At least 4 G but less than 16 G of Ergotamine; At least 200 G but less than 800 G of Ethylamine; At least 440 G but less than 1.76 KG of Hydriodic Acid; At least 3.2 KG but less than 12.8 KG of Isosafrole; At least 40 G but less than 160 G of Methylamine; At least 5 KG but less than 20 KG of N-Methylephedrine; At least 5 KG but less than 20 KG of N-Methylpseudoephedrine; At least 126 G but less than 503 G of Nitroethane; At least 2 KG but less than 8 KG of Norpseudoephedrine; At least 200 G but less than 800 G of Phenylacetic Acid; At least 2 KG but less than 8 KG of Phenylpropanolamine; At least 100 G but less than 400 G of Piperidine; At least 3.2 KG but less than 12.8 KG of Piperonal; At least 16 G but less than 64 G of Propionic Anhydride; At least 200 G but less than 800 G of Pseudoephedrine; At least 3.2 KG but less than 12.8 KG of Safrole; At least 4 KG but less than 16 KG of 3, 4-Methylenedioxyphenyl-2-propanone;</p> <p>List II Chemicals At least 440 G but less than 726 G of Acetic Anhydride; At least 47 KG but less than 82.25 KG of Acetone; At least 800 G but less than 1.4 KG of Benzyl Chloride; At least 43 KG but less than 75.25 KG of Ethyl Ether; At least 48 KG but less than 84 KG of Methyl Ethyl Ketone; At least 400 G but less than 700 G of Potassium Permanganate; At least 52 KG but less than 91 KG of Toluene.</p> | |
| <p>(7) List I Chemicals At least 142 G but less than 178 G of Benzaldehyde; At least 160 G but less than 200 G of Benzyl Cyanide; At least 160 G but less than 200 G of Ephedrine; At least 1.6 G but less than 2 G of Ergonovine; At least 3.2 G but less than 4 G of Ergotamine; At least 160 G but less than 200 G of Ethylamine; At least 352 G but less than 440 G of Hydriodic Acid; At least 2.56 KG but less than 3.2 KG of Isosafrole; At least 32 G but less than 40 G of Methylamine; At least 4 KG but less than 5 KG of N-Methylephedrine; At least 4 KG but less than 5 KG of N-Methylpseudoephedrine; At least 100 G but less than 126 G of Nitroethane; At least 1.6 KG but less than 2 KG of Norpseudoephedrine; At least 160 G but less than 200 G of Phenylacetic Acid; At least 1.6 KG but less than 2 KG of Phenylpropanolamine; At least 80 G but less than 100 G of Piperidine; At least 2.56 KG but less than 3.2 KG of Piperonal; At least 12.8 G but less than 16 G of Propionic Anhydride; At least 160 G but less than 200 G of Pseudoephedrine; At least 2.56 KG but less than 3.2 KG of Safrole; At least 3.2 KG but less than 4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;</p> <p>List II Chemicals At least 110 G but less than 440 G of Acetic Anhydride; At least 11.75 KG but less than 47 KG of Acetone; At least 200 G but less than 800 G of Benzyl Chloride; At least 10.75 KG but less than 43 KG of Ethyl Ether; At least 12 KG but less than 48 KG of Methyl Ethyl Ketone; At least 100 G but less than 400 G of Potassium Permanganate; At least 13 KG but less than 52 KG of Toluene.</p> | Level 18. |
| <p>(8) List I Chemicals</p> | Level 16. |

| Listed chemicals and quantity | Base of-fense level |
|--|---------------------|
| <p>3.6 KG or more of Anthranilic Acid; At least 107 G but less than 142 G of Benzaldehyde; At least 120 G but less than 160 G of Benzyl Cyanide; At least 120 G but less than 160 G of Ephedrine; At least 1.2 G but less than 1.6 G of Ergonovine; At least 2.4 G but less than 3.2 G of Ergotamine; At least 120 G but less than 160 G of Ethylamine; At least 264 G but less than 352 G of Hydriodic Acid; At least 1.92 KG but less than 2.56 KG of Isosafrole; At least 24 G but less than 32 G of Methylamine; 4.8 KG or more of N-Acetylanthranilic Acid; At least 3 KG but less than 4 KG of N-Methylephedrine; At least 3 KG but less than 4 KG of N-Methylpseudoephedrine; At least 75 G but less than 100 G of Nitroethane; At least 1.2 KG but less than 1.6 KG of Norpseudoephedrine; At least 120 G but less than 160 G of Phenylacetic Acid; At least 1.2 KG but less than 1.6 KG of Phenylpropanolamine; At least 60 G but less than 80 G of Piperidine; At least 1.92 KG but less than 2.56 KG of Piperonal; At least 9.6 G but less than 12.8 G of Propionic Anhydride; At least 120 G but less than 160 G of Pseudoephedrine; At least 1.92 KG but less than 2.56 KG of Safrole; At least 2.4 KG but less than 3.2 KG of 3, 4-Methylenedioxyphenyl-2-propanone;</p> <p>List II Chemicals</p> <p>At least 88 G but less than 110 G of Acetic Anhydride; At least 9.4 KG but less than 11.75 KG of Acetone; At least 160 G but less than 200 G of Benzyl Chloride; At least 8.6 KG but less than 10.75 KG of Ethyl Ether; At least 9.6 KG but less than 12 KG of Methyl Ethyl Ketone; At least 80 G but less than 100 G of Potassium Permanganate; At least 10.4 KG but less than 13 KG of Toluene.</p> | |
| <p>(9) List I Chemicals</p> <p>At least 2.7 KG but less than 3.6 KG of Anthranilic Acid; At least 71.2 G but less than 107 G of Benzaldehyde; At least 80 G but less than 120 G of Benzyl Cyanide; At least 80 G but less than 120 G of Ephedrine; At least 800 MG but less than 1.2 G of Ergonovine; At least 1.6 G but less than 2.4 G of Ergotamine; At least 80 G but less than 120 G of Ethylamine; At least 176 G but less than 264 G of Hydriodic Acid; At least 1.44 G but less than 1.92 KG of Isosafrole; At least 16 G but less than 24 G of Methylamine; At least 3.6 KG but less than 4.8 KG of N-Acetylanthranilic Acid; At least 2.25 KG but less than 3 KG of N-Methylephedrine; At least 2.25 KG but less than 3 KG of N-Methylpseudoephedrine; At least 56.25 G but less than 75 G of Nitroethane; At least 800 G but less than 1.2 KG of Norpseudoephedrine; At least 80 G but less than 120 G of Phenylacetic Acid; At least 800 G but less than 1.2 KG of Phenylpropanolamine; At least 40 G but less than 60 G of Piperidine; At least 1.44 KG but less than 1.92 KG of Piperonal; At least 7.2 G but less than 9.6 G of Propionic Anhydride; At least 80 G but less than 120 G of Pseudoephedrine; At least 1.44 G but less than 1.92 KG of Safrole; At least 1.8 KG but less than 2.4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;</p> <p>List II Chemicals</p> <p>At least 66 G but less than 88 G of Acetic Anhydride; At least 7.05 KG but less than 9.4 KG of Acetone; At least 120 G but less than 160 G of Benzyl Chloride; At least 6.45 KG but less than 8.6 KG of Ethyl Ether; At least 7.2 KG but less than 9.6 KG of Methyl Ethyl Ketone; At least 60 G but less than 80 G of Potassium Permanganate; At least 7.8 KG but less than 10.4 KG of Toluene.</p> | <p>Level 14.</p> |
| <p>(10) List I Chemicals</p> | <p>Level 12.</p> |

| Listed chemicals and quantity | Base of-fense level |
|---|---------------------|
| <p>Less than 2.7 KG of Anthranilic Acid; Less than 71.2 G of Benzaldehyde Less than 80 G of Benzyl Cyanide; Less than 80 G of Ephedrine; Less than 800 MG of Ergonovine; Less than 1.6 G of Ergotamine; Less than 80 G of Ethylamine; Less than 176 G of Hydriodic Acid; Less than 1.44 G of Isosafrole; Less than 16 G of Methylamine; Less than 3.6 KG of N-Acetylanthranilic Acid; Less than 2.25 KG of N-Methylephedrine; Less than 2.25 KG of N-Methylpseudoephedrine; Less than 56.25 G of Nitroethane; Less than 800 G of Norpseudoephedrine; Less than 80 G of Phenylacetic Acid; Less than 800 G of Phenylpropanolamine; Less than 40 G of Piperidine; Less than 1.44 KG of Piperonal; Less than 7.2 G of Propionic Anhydride; Less than 80 G of Pseudoephedrine; Less than 1.44 G of Safrole; Less than 1.8 KG of 3, 4-Methylenedioxyphenyl-2-propanone;</p> <p>List II Chemicals Less than 66 G of Acetic Anhydride; Less than 7.05 KG of Acetone; Less than 120 G of Benzyl Chloride; Less than 6.45 KG of Ethyl Ether; Less than 7.2 KG of Methyl Ethyl Ketone; Less than 60 G of Potassium Permanganate; Less than 7.8 KG of Toluene."</p> | |

Section 2D1.11 is amended in Note "E" (List I Chemical Equivalency Table) of the guideline by deleting "Isoafrole" and inserting in lieu thereof "Isosafrole".

The Commentary to § 2D1.11 captioned "Application Notes" is amended in Note 4(a) by deleting "three kilograms" and inserting in lieu thereof "300 grams"; by deleting "24" each time it appears and inserting in lieu thereof "26"; and by deleting "14" and inserting in lieu thereof "16".

"Emergency" Amendments on Alien Smuggling, Immigration Document Fraud, and Involuntary Servitude

2. In its previous Notice of Proposed Amendments, see 62 FR 151 (January 2, 1997), the Commission gave notice of an intent to promulgate as temporary, "emergency" amendments certain proposals relating to Alien Smuggling (§ 2L1.1), Immigration Document Fraud (§ 2L2.1 and 2L2.2), and Involuntary Servitude (§ 2H4.1). The Commission considered these amendments at its February 12, 1997, meeting but deferred action on them until its March 19, 1997 meeting. At that meeting, the Commission intends to further consider these proposals and may promulgate some version of them as temporary, "emergency" amendments. If the Commission so acts, it may also propose

to re-promulgate these proposals as non-emergency amendments to be submitted to Congress by May 1, 1997. These proposals should be considered in light of that likely course of action.

Non-Emergency Amendments

Immigration

3. Synopsis of Proposed Amendment: The proposed amendment implements sections 321 and 334 of the Illegal Immigration and Immigrant Responsibility Act of 1996 ("the Act"). Section 321 of the Act amends the definition of "aggravated felony" in the Immigration and Nationality Act in several different ways including adding to the definition the crimes of rape and sexual abuse of a minor as well as any crime of violence for which the term of imprisonment is at least one year. This proposed amendment makes the definition of "aggravated felony" in the guidelines coextensive with the amended definition in the Immigration and Nationality Act.

Section 334 directs the Sentencing Commission to promulgate amendments to the sentencing guidelines for offenses for the crimes of unlawfully remaining and illegally entering the United States corresponding to changes made in statutory penalties for these offenses in the Violent Crime Control and Law Enforcement Act of 1994. This proposed

amendment provides for enhanced penalties for those who unlawfully enter or remain in the United States following conviction for an aggravated felony, any other felony, or three misdemeanor crimes of violence or controlled substance offenses. The proposed amendment also makes clarifying changes to the commentary.

Proposed Amendment: Section 2L1.2 is amended by deleting subsection (b) and inserting in lieu thereof the following:

"(b) Specific Offense Characteristics:

If the defendant previously was deported after a criminal conviction, or if the defendant unlawfully remained in the United States following a removal order issued after a criminal conviction, increase as follows (if more than one applies, use the greater):

(1) If the conviction was for a crime of violence or controlled substance offense[, and such conviction was punishable by more than five years imprisonment], increase by 16 levels.

(2) If the conviction was for any other aggravated felony, increase by [10, 12] levels.

(3) If the conviction was for (A) any other felony, [other than a felony involving violation of the immigration laws], or (B) three or more misdemeanors that were either crimes of

violence or controlled substance offenses, increase by 4 levels.”.

The Commentary to § 2L1.2 captioned “Application Notes” is amended by deleting Notes 3 and 4 in their entirety; by renumbering Notes 1 and 2 as Notes 2 and 3 and by inserting the following as a new Note 1:

“1. For purposes of this guideline— ‘Deported after a conviction,’ means that the deportation was subsequent to the conviction, whether or not the deportation was in response to such conviction. An alien has previously been ‘deported’ if he or she has been removed or has departed the United States while an order of exclusion, deportation, or removal was outstanding. ‘Remains in the United States following a removal order issued after a conviction,’ means that the removal order was subsequent to the conviction, whether or not the removal order was in response to such conviction. ‘Aggravated felony,’ is defined at 8 U.S.C. 1101(a)(43) [without regard to the date of conviction of the aggravated felony]. ‘Crime of violence,’ and ‘controlled substance offense’ are defined in § 4B1.2. [‘Punishable by more than five years imprisonment,’ as used in subsection (b)(1) means that the aggravated felony offense of conviction had a maximum term of imprisonment exceeding five years.] For purposes of subsection (b)(3), ‘crime of violence’ includes offenses punishable by imprisonment for a term of one year or less.”.

The Commentary to § 2L1.2 captioned “Application Notes” is amended in Note 5 by deleting “(b)(1) or (b)(2)” and inserting in lieu thereof “(b)”; and by redesignating Note 5 as Note 4.”.

The Commentary to § 2L1.2 captioned “Application Notes” is amended by deleting Notes 6 and 7 in their entirety.

4. Synopsis of Proposed Amendment: The proposed amendment implements sections 108 and 216 of the Illegal Immigration and Immigrant Responsibility Act of 1996 (“the Act”). Section 108 creates a new crime, at 18 U.S.C. 758, for fleeing or evading a law enforcement checkpoint at high speed. This proposed amendment changes Appendix A to reference the new offense to § 2A2.4. Section 216 of the Act creates a new crime, at 18 U.S.C. 611, for voting by any alien in a federal election. This proposed amendment changes Appendix A to reference the new offense to § 2H2.1.

Appendix A is amended by inserting the following at the appropriate place by title and section:

“18 U.S.C. § 611 2H2.1”.

“18 U.S.C. § 758 2A2.4”.

Reckless Endangerment During Flight

5. Synopsis of Proposed Amendment: The proposed amendment provides a minimum offense level of either 18, 19, or 20 for any offense where the defendant recklessly created a substantial risk of death or bodily injury to another person in the course of fleeing from a law enforcement officer. This proposed amendment was requested by the Department of Justice and is consistent with the approach taken by the Commission in the proposed amendment to the alien smuggling guideline, published in the Federal Register on January 2, 1997. That amendment provides minimum offense levels when a defendant creates a substantial risk of death or bodily injury in the course of an alien smuggling offense.

Section 3C1.2 is amended by inserting after the “2 levels” the following:

“, but if the resulting offense level is less than level [18–20], increase to level [18–20]” following “2 levels”.

6(A). Synopsis of Proposed Amendment: This amendment addresses several new offenses, including the offense of interstate stalking, 18 U.S.C. 2261A, which was recently enacted in section 1069 of the Defense Authorization Act for Fiscal Year 1997. That offense makes it unlawful to travel across a State line or within Federal jurisdiction with the intent to injure or harass another person and, in the course of such travel, to place that person in reasonable fear of death or serious bodily injury to that person or that person’s immediate family. The maximum term of imprisonment for violation of the statute is (A) 5 years, (B) 10 years, if serious bodily injury occurred or a dangerous weapon was used, (C) 20 years, if permanent disfigurement or life threatening bodily injury occurred, or (D) any term of years or life, if the victim dies.

Two options are presented. Option One references the new offense in the Statutory Index to various Chapter Two offense guidelines that the Commission has concluded will most likely cover the underlying conduct embodied in the federal stalking offense, including minor assault, aggravated assault, rape, and murder. This approach is consistent with the approach the Commission adopted two years ago with respect to the federal domestic violence offenses, 18 U.S.C. 2261–62.

In addition, the minor assault guideline, § 2A2.3, is amended in several respects by Option One to provide a more appropriate and sufficiently severe offense level for

offenses sentenced under that guideline. First, the amendment proposes to increase the base offense level to [9], if bodily injury occurred or if a dangerous weapon was possessed and its use was threatened, or [6], otherwise. Second, the amendment provides an enhancement if the offense involved stalking. Third, the amendment adds a cross reference to the aggravated assault guideline, § 2A2.2, if the conduct involved aggravated assault.

In order to most efficiently provide the same increase in offense level for the minor assault guideline that deals with obstructing or impeding an officer, § 2A2.4, Option One consolidates that guideline with the minor assault guideline, § 2A2.3.

Option One also incorporates repetitive stalking conduct and the violation of a court protection order into the threatening communications guideline, § 2A6.1. It expressly provides for the grouping of multiple counts involving the same victim (in order to avoid double counting with the multiple act enhancement). A cross reference is provided in that guideline to apply the Chapter Two offense guideline most appropriate to the underlying conduct, if the resulting offense level is greater.

Option Two refers the new offense only to the threatening communications guideline, § 2A6.1, and reworks that guideline to better take into account the variety of offenses covered by the expanded guideline. Option Two provides an enhancement for the commission of repetitive acts of stalking and threatening communication and for the violation of a court protection order. It expressly provides for the grouping of multiple counts involving such conduct with respect to the same victim (in order to avoid double counting with the multiple act enhancement and to address a recurring case law and hotline issue). It also provides for a cross reference to other Chapter Two offense guidelines covering crimes against the person, if the resulting offense level is higher. The cross reference is provided to cover circumstances in which offenses covered by the guideline, particularly stalking, involve underlying crimes of violence.

Option Two also adds an enhancement to the minor and aggravated assault guidelines if the offense involved the violation of a court protection order. This change is proposed in order to better ensure an adequate offense level for offenses, particularly domestic violence offenses under 18 U.S.C. 2261, 2262, in which such conduct is often a factor. In addition, Option Two references offenses under 18 U.S.C. 2262 to the

threatening communications guideline (to cover cases involving repetitive harassment in violation of a protection order) and incorporates the definition of "bodily injury" statutorily applicable to such cases.

Both options also address several new harassing telecommunications offenses, 47 U.S.C. 223(a)(1)(C)–(E), which were enacted in section 502 of the Telecommunications Act of 1996. The new offenses, which carry a maximum term of imprisonment of two years, make it unlawful to:

(C) Make a telephone call or utilize a telecommunications device, whether or not conversation or communication ensues, without disclosing one's identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communication;

(D) Make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(E) Make repeated telephone calls or repeatedly initiate communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication.

Both options reference the new telecommunications offenses to the threatening communications guideline and amend that guideline to provide a lower offense level if the offense involved only harassment unaccompanied by a threat or stalking.

Both options also address a circuit conflict regarding the enhancement in the threatening communication guideline that provides for a 6-level increase if the offense involved any conduct evidencing an intent to carry out a threat. Specifically, the conflict is whether or not conduct which occurred prior to the making of a threat can evidence an intent to carry out the threat. Compare *United States v. Hornick*, 942 F.2d 105 (2d Cir. 1991) ("a person cannot take action that will constitute proof of his intent to carry out a threat until after the threat has been made") with *United States v. Gary*, 18 F.3d 1123 (4th Cir. 1994) ("any acts that evidence an intent to carry out the threats on which a conviction is predicated, whether committed prior to or following such threats, may form the basis of the § 2A6.1(b)(1) adjustment"); *United States v. Sullivan*, 75 F.3d 297 (7th Cir. 1996); *United States v. Hines*, 26 F.3d 1469 (9th Cir. 1994); *United States v. Taylor*, 88 F.3d 938 (11th Cir. 1996) ("the essential inquiry for § 2A6.1(b)(1) is whether the facts of the case, taken as a whole, establish a

sufficiently direct connection between the defendant's pre-threat conduct and his threat"). Both options essentially adopt the Eleventh Circuit's view by adding an application note to provide that conduct other than the offense of conviction and relevant conduct under § 1B1.3 may be considered in determining the application of the guideline's enhancements if there is a sufficient, direct connection between that other conduct and the offense of conviction.

Proposed Amendment: Option One: Section 2A2.3 is amended in the title by inserting "; Obstructing or Impeding Officers" after "Minor Assault".

Section 2A2.3(a)(1) is amended by deleting "6" and inserting in lieu thereof "[9]"; and by deleting "physical contact" and inserting in lieu thereof "bodily injury".

Section 2A2.3(a)(2) is amended by deleting "3" and inserting in lieu thereof "[6]".

Section 2A2.3(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics"; and by adding at the end the following:

"(2) If the offense involved (A) [two or more] instances of stalking, or (B) violation of a court protection order, increase by [2,3] levels.

(3) If the offense involved obstructing or impeding a governmental officer in the performance of his duties, increase by 3 levels.

(c) Cross Reference.

(1) If the offense involved aggravated assault, apply § 2A2.2 (Aggravated Assault)."

The Commentary to § 2A2.3 captioned "Application Notes" is amended in Note 1 by inserting "For purposes of this guideline—" before "Minor Assault".

The Commentary to § 2A2.3 captioned "Application Notes" is amended in Note 2 by deleting "2."

The Commentary to § 2A2.3 captioned "Application Notes" is amended in Note 3 by adding at the end the following new paragraph:

"'Stalking' means traveling with the intent to injure or harass another person and, in the course of, or as a result, of such travel, placing the person in reasonable fear of death or serious bodily injury to the person or the person's immediate family. See 18 U.S.C. 2261A. 'Immediate family' has the meaning set forth in 18 U.S.C. 115(c)(2)."

The Commentary to § 2A2.3 captioned "Application Notes" is amended in Note 3 by deleting "3."; by deleting "bodily" and inserting in lieu thereof "bodily"; and by deleting "faculty."

and inserting in lieu thereof "faculty. See".

The Commentary to § 2A2.3 captioned "Application Notes" is amended by adding at the end the following new notes:

"3. Subsection (b)(3) reflects the fact that the victim was a governmental officer performing official duties. If subsection (b)(3) applies, do not apply § 3A1.2 (Official Victim) unless the offense level is determined by use of the cross reference in subsection (c).

4. The offense level under this guideline does not assume any significant disruption of governmental functions. In situations involving such disruption, an upward departure may be warranted. See § 5K2.7 (Disruption of Governmental Functions)."

Chapter Two, Part A, Subpart 6 is amended in the title by inserting "or Harassing" after "Threatening".

Section 2A6.1 is deleted in its entirety and the following inserted in lieu thereof:

"§ 2A6.1. Threatening or Harassing Communications.

(a) Base Offense Level: [12].

(b) Specific Offense Characteristics.

(1) If the offense involved any conduct evidencing an intent to cause bodily injury or to carry out a threat, increase by [6] levels.

(2) If the defendant[, or another person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct),] committed [two or more] instances of stalking, or making a threatening communication to, the same victim, (or a combination of [two or more] instances of stalking, and making a threatening communication to, the same victim), increase by [2] levels.

(3) If the defendant[, or another person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct),] violated a court protection order, increase by [2] levels.

(4) If subdivisions (1), (2), and (3) do not apply, and the offense involved (A) a single instance evidencing little or no deliberation, or (B) harassing communication that did not involve a threat or stalking, decrease by [4] levels.

(c) Cross Reference.

(1) If the offense involved conduct covered by another offense guideline from Chapter Two, Part A (Offenses Against the Person), apply that offense guideline, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 871, 876, 877, 878(a), 879; 47 U.S.C. 223(a)(1)(C)–(E). For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. For purposes of this guideline—"Stalking" means traveling with the intent to injure or harass another person and, in the course of, or as a result of, such travel, placing the person in reasonable fear of death or serious bodily injury to the person or the person's immediate family. "Immediate family" has the meaning set forth in 18 U.S.C. 115(c)(2).

2. In determining whether subsections (b)(1), (b)(2), and (b)(3) apply, the court shall consider any conduct that occurred prior to or during the offense; however, conduct that occurred prior to the offense must be sufficiently, directly connected to the offense, under the facts of the case taken as a whole. For example, if a defendant engaged in several acts of mailing threatening letters to the same victim over a period of years, then for purposes of determining whether or not subsections (b)(1), (b)(2), and (b)(3) apply, the court shall consider each prior act of mailing threatening letters to the victim, and the conduct surrounding that act, but only if there is a sufficient, direct connection between the prior act and the offense.

For purposes of Chapter Three, Part D (Multiple Counts), multiple counts involving making a threatening or harassing communication to the same victim are grouped together under § 3D1.2 (Groups of Closely Related Counts). Multiple counts involving different victims are not to be grouped under § 3D1.2.

If the defendant was convicted of (A) [numerous][more than two] counts of making a threatening or harassing communication to the same victim, or (B) only one such count but the court determines that the offense involved [numerous][more than two] acts of making a threatening or harassing communication to the same victim, an upward departure may be warranted.

3. Prior convictions resulting in an enhancement under subsection (b)(2) or (b)(3) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

4. The Commission recognizes that this offense includes a particularly wide range of conduct and that it is not possible to include all of the potentially relevant circumstances in the offense level. Factors not incorporated in the guideline may be considered by the court in determining whether a departure from the guidelines is warranted. See Chapter Five, Part K (Departures).

Background: "These statutes cover a wide range of conduct, including harassing but nonthreatening phone

calls and threats to a government official. Because of the wide range of conduct covered by these statutes, the appropriate offense level under this guideline largely depends upon the defendant's intent, the likelihood that the defendant would carry out a threat or injure the victim, and whether or not stalking or the violation of a court protection order was involved. The specific offense characteristics are intended to distinguish such cases."

Appendix A (Statutory Index) is amended by inserting the following at the appropriate place by title and section:

"18 U.S.C. § 2261A 2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A4.1, 2B1.3, 2B3.2, 2K1.4."

Option Two: Section 2A2.2(b) is amended by adding at the end the following:

"(5) If the offense involved the violation of a court protection order, increase by [2] levels."

Section 2A2.3(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics"; and by adding at the end the following:

"(2) If the offense involved the violation of a court protection order, increase by [2] levels."

Chapter Two, Part A, Subpart 6 is amended in the title by deleting "Threatening Communications" and inserting in lieu thereof "Threatening or Harassing Communications and Stalking".

Section 2A6.1 is deleted in its entirety and the following inserted in lieu thereof:

"§ 2A6.1. Threatening or Harassing Communications; Stalking.

(a) Base Offense Level: [12].

(b) Specific Offense Characteristics.

(1) If the defendant[, or another person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct),] committed [two or more] instances of stalking, or making a threatening communication to, the same victim, (or a combination of [two or more] instances of stalking, and making a threatening communication to, the same victim), increase by [2] levels.

(2) If the defendant[, or another person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct),] violated a court protection order, increase by [2] levels.

(3) If the defendant[, or another person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct),] engaged in any conduct evidencing an intent to carry out the threat made in a threatening communication or to cause bodily injury, increase by [6] levels.

(4) If subdivisions (1), (2), and (3) do not apply, and the offense involved (A) a single instance evidencing little or no deliberation, or (B) only harassing communication that did not involve a threatening communication or stalking, decrease by [4–8] levels.

(c) Cross Reference.

(1) If the offense involved conduct covered by another offense guideline from Chapter Two, Part A (Offenses Against the Person), apply that offense guideline, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 871, 876, 877, 878(a), 879, 2261A; 47 U.S.C. 223(a)(1)(C)–(E). For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. For purposes of this guideline—"Bodily injury" means any act, except one done in self defense, that results in physical injury or sexual abuse. See 18 U.S.C. 2266.

"Stalking" means traveling with the intent to injure or harass another person and, in the course of, or as a result of, such travel, placing the person in reasonable fear of death or serious bodily injury to the person or the person's immediate family. See 18 U.S.C. 2261A. "Immediate family" has the meaning set forth in 18 U.S.C. 115(c)(2).

2. In determining whether subsections (b)(1), (b)(2), and (b)(3) apply, the court shall consider any conduct that occurred prior to or during the offense; however, conduct that occurred prior to the offense must be sufficiently, directly connected to the offense, under the facts of the case taken as a whole. For example, if a defendant engaged in several acts of stalking the same victim over a period of years, then for purposes of determining whether or not subsections (b)(1), (b)(2) and (b)(3) apply, the court shall consider each prior act of stalking the victim, and the conduct surrounding that act, but only if there is a sufficient, direct connection between the prior act and the offense.

For purposes of Chapter Three, Part D (Multiple Counts), multiple counts involving stalking of, or threatening or harassing communication to, the same victim are grouped together under § 3D1.2 (Groups of Closely Related Counts). Multiple counts involving different victims are not to be grouped under § 3D1.2.

If the defendant was convicted of (A) [numerous][more than two] counts of stalking or of threatening or harassing communications, or (B) only one such count but the court determines that the

offense involved [numerous][more than two] acts of stalking or threatening or harassing communications, an upward departure may be warranted.

3. Prior convictions resulting in an enhancement under subsection (b)(1) or (b)(2) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

4. The Commission recognizes that this offense includes a particularly wide range of conduct and that it is not possible to include all of the potentially relevant circumstances in the offense level. Factors not incorporated in the guideline may be considered by the court in determining whether a departure from the guidelines is warranted. See Chapter Five, Part K (Departures).

Background: These statutes cover a wide range of conduct, including harassing but nonthreatening phone calls, threats to a government official, and repeated acts of stalking with intent to injure the victim. Because of the wide range of conduct covered by these statutes, the appropriate offense level under this guideline largely depends upon the defendant's intent, the likelihood that the defendant would carry out a threat or injure the victim, and whether or not the conduct is repetitive. The specific offense characteristics are intended to distinguish such cases."

Appendix A (Statutory Index) is amended in the item referenced to 18 U.S.C. 2262 by inserting "2A6.1," after "2A4.1,"; and by inserting the following at the appropriate place by title and section:

"18 U.S.C. 2261A 2A6.1

47 U.S.C. 223(a)(1)(C)-(E) 2A6.1".

(B). Issues for Comment: The Commission requests comment on alternative ways to address the new federal stalking offense at 18 U.S.C. 2261A. For example, instead of incorporating the stalking offense into the threatening communications guideline (§ 2A6.1), as proposed above, should the Commission reference the stalking offense to the assault guidelines? If so, what changes, if any, are appropriate to make to the assault guidelines to adequately cover the stalking offense?

Currently, counts of conviction of offenses covered by § 2A6.1 are excluded from the application of § 3D1.2(d) but may be groupable under § 3D1.2(b). The Second and Eleventh Circuits, however, have held that such counts of conviction are not groupable under § 3D1.2(b) because the conduct covered by such counts inflicts distinct psychological harms upon the victim.

See *United States v. Miller*, 993 F.2d 16 (2d Cir. 1993); *United States v. Bonner*, 85 F.3d 522 (11th Cir. 1996). The amendment proposed above adds an enhancement in subsection (b) for multiple incidents and expressly provides for grouping under § 3D1.2. The Commission requests comment on how multiple instances of stalking, threatening, or harassing the same victim should be treated under the guidelines.

The Commission also requests comment on whether, in determining the offense level under this guideline, the court should be able to take into account certain prior conduct ordinarily not considered to be part of the offense. Currently, there is a circuit conflict on whether or not conduct which occurred prior to the making of a threat can evidence an intent to carry out the threat for purposes of this guideline. Compare *United States v. Hornick*, 942 F.2d 105 (2d Cir. 1991) ("a person cannot take action that will constitute proof of his intent to carry out a threat until after the threat has been made") with *United States v. Gary*, 18 F.3d 1123 (4th Cir. 1994) ("any acts that evidence an intent to carry out the threats on which a conviction is predicated, whether committed prior to or following such threats, may form the basis of the § 2A6.1(b) (1) adjustment"); *United States v. Sullivan*, 75 F.3d 297 (7th Cir. 1996); *United States v. Hines*, 26 F.3d 1469 (9th Cir. 1994); *United States v. Taylor*, 88 F.3d 938 (11th Cir. 1996) ("the essential inquiry for § 2A6.1(b)(1) is whether the facts of the case, taken as a whole, establish a sufficiently direct connection between the defendant's pre-threat conduct and his threat"). The amendment proposed above adds an application note to provide that conduct occurring prior to the offense is to be considered in determining the application of the guideline's enhancements if there is a sufficient, direct connection between that prior conduct and the offense.

The Commission further requests comment on whether the definition of aggravated assault in the commentary to § 2A2.2 should be amended to eliminate the requirement that intent to do bodily injury be present in an assault involving a dangerous weapon in order for that assault to be considered "aggravated", rather than "minor", under the guidelines.

Chapter Two, Parts B and F

7. Synopsis of Proposed Amendment: This amendment adds Commentary to §§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring,

Transmitting, or Possessing Stolen Property); 2B1.3 (Property Damage or Destruction); 2B2.3 (Trespass); 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage); and 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). Specific offense characteristics are added to §§ 2B1.1 and 2B2.3. Also, special instructions are added to §§ 2B1.3 and 2F1.1.

This amendment also addresses several new statutes including: 18 U.S.C. 1030(a)(7), which prohibits extortion by threats to damage or impair a non-public government computer or a computer of a financial institution (18 U.S.C. 1030(e)(2) (A) or (B)); 18 U.S.C. 1831, which prohibits "economic espionage"; and 18 U.S.C. 1832, which prohibits theft of "trade secrets" as broadly defined at 18 U.S.C. 1839. Offenses under 18 U.S.C. 1030(a)(7) are referenced to the extortion guideline 2B3.2; offenses under 18 U.S.C. 1031 and 1832 are referenced to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).

A specific offense characteristic has been added to § 2B1.1 to increase offense levels for those defendants who misappropriate a trade secret with the knowledge that the information will benefit a foreign government. This behavior is "economic espionage" as proscribed by 18 U.S.C. 1831. Congress set a maximum sentence of 15 years for those convicted of "economic espionage". A maximum sentence of ten years was set forth for those convicted of "theft of trade secrets". The proposed 2-level increase for "economic espionage" is in recognition of Congress' assessment that providing a victim's trade secrets to foreign interests is a more serious offense than providing that victim's trade secrets to a domestic competitor.

A specific offense characteristic has been added to § 2B2.3 which will increase the offense levels for those who trespass in a non-public database to the extent that the trespass creates financial loss as measured by the table in § 2B1.1.

Special instructions have been added to §§ 2B1.3 and 2F1.1 to the effect that the minimum guideline sentence for those convicted under 18 U.S.C. 1030(a) (4) and (5) is six months' imprisonment. This has been done pursuant to Congress' direction in the Antiterrorism and Effective Death Penalty Act of 1996.

Salient among the commentary changes is an addition to § 2B1.1, Application Note 2, which expands the definition of "loss" for unlawfully

accessing, or exceeding authorized access to, a "protected computer" as defined in 18 U.S.C. 1030(e)(2) (A) or (B). "Loss" in that context will now include "the reasonable cost to the victim of conducting a damage assessment, restoring the system and data to their condition prior to the offense, and any lost revenue or costs incurred due to interruption of service." Upward departures are invited in § 2B1.1, Application Notes 15 and 16, where unauthorized access to a computer invades a substantial privacy interest or is in furtherance of a "broader criminal purpose".

Finally, this amendment changes the Statutory Index reference for computer crimes under 18 U.S.C. 1030(a)(2)(3) and (5) from the fraud guideline, § 2F1.1, to more appropriate subsections of Part B—Offenses Involving Property. These new references accommodate changes made to 18 U.S.C. 1030 by the National Information Infrastructure Protection Act of 1996.

Proposed Amendment: Section 2B1.1(b) is amended by inserting at the end the following new subdivision:

"(7) If the offense involved misappropriation of a trade secret and the defendant knew or intended that the offense would benefit any foreign government, foreign instrumentality, or foreign agent, increase by [2] levels."

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 1 by inserting as the second and third sentences the following:

"'Trade secret' is defined in 18 U.S.C. 1839(3). 'Foreign instrumentality' and 'foreign agent' are defined in 18 U.S.C. § 1839 (1) and (2), respectively."

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 2 by inserting after the fourth paragraph the following new paragraph:

"In an offense involving unlawfully accessing, or exceeding authorized access to, a 'protected computer' as defined in 18 U.S.C. 1030(e)(2) (A) or (B), 'loss' includes the reasonable cost to the victim of conducting a damage assessment, restoring the system and data to their condition prior to the offense, and any lost revenue due to interruption of service."

The Commentary to § 2B1.1 captioned "Application Notes" is amended by inserting at the end the following new notes:

"15. In cases where the loss determined under subsection (b)(1) does not fully capture the harmfulness of the conduct, an upward departure may be warranted. For example, the theft of personal information or writings (e.g., medical records, educational records, a diary) may involve a substantial

invasion of a privacy interest that would not be addressed by the monetary loss provisions of subsection (b)(1).

16. In cases involving theft of information from a "protected computer", an upward departure may be warranted where the defendant sought the stolen information to further a broader criminal purpose."

Section 2B1.3 is amended by inserting after subsection (c) the following new subsection:

"(d) Special Instruction

"(1) If the defendant is convicted under 18 U.S.C. 1030(a)(5), the minimum guideline sentence, notwithstanding any other adjustment, shall be six months' imprisonment."

The Commentary to § 2B1.3 is amended by inserting at the end the following:

"Background: Subsection (d) implements the instruction to the Commission in section 805(c) of Public Law 104-132."

Section 2B2.3(b) is amended by inserting after subdivision (2) the following new subdivision:

"(3) If the offense involved invasion of a protected computer resulting in a loss exceeding [\$2000], increase by the corresponding number of levels from the table in § 2F1.1."

The Commentary to § 2B2.3 captioned "Application Note" is amended in Note 1 by inserting "For purposes of this guideline—" before "'Firearm'"; and by inserting as the second paragraph the following:

"'Protected computer' means a computer described in 18 U.S.C. 1030(e)(2)(A) or (B)."

The Commentary to § 2B2.3 captioned "Application Note" is amended by inserting the following additional note:

"2. Valuation of loss is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)."

The Commentary to § 2B2.3 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes".

The Commentary to § 2B3.2 captioned "Background" is amended by inserting the following sentence at the end:

"This guideline also applies to offenses under 18 U.S.C. 1030(a)(7) involving a threat to impair the operation of a 'protected computer.'"

Section 2F1.1 is amended by inserting the following new subsection:

"(c) Special Instruction

(1) If the defendant is convicted under 18 U.S.C. 1030(a)(4), the minimum guideline sentence, notwithstanding any other adjustment, shall be six months' imprisonment."

The Commentary to § 2F1.1 captioned "Background" is amended by inserting as the last paragraph the following:

" Subsection (c) implements the instruction to the Commission in section 805 (c) of Public Law 104-132."

Appendix A (Statutory Index) is amended by inserting, in the appropriate place by title and section, the following:

"18 U.S.C. 1831 2B1.1";

"18 U.S.C. 1832 2B1.1";

"18 U.S.C. 1030(a)(7) 2B3.2";

In the line referenced to "18 U.S.C. 1030(a)(2)" by deleting "2F1.1" and inserting in lieu thereof "2B1.1";

In the line referenced to "18 U.S.C. 1030(a)(3)" by deleting "2F1.1" and inserting in lieu thereof "2B2.3";

In the line referenced to "18 U.S.C. 1030(a)(5)" by deleting "2F1.1" and inserting in lieu thereof "2B1.3".

8(A). Synopsis of Proposed Amendment: The Drug-Induced Rape Prevention Act of 1996 raises the penalty for offenses involving trafficking in flunitrazepam, a Schedule IV controlled substance, from a maximum of three years' imprisonment for any amount of the drug to 20 years' imprisonment for one gram of flunitrazepam and to not more than five years' imprisonment for 30 milligrams of flunitrazepam. The maximum sentence for importing and exporting offenses involving flunitrazepam is raised to twenty years' imprisonment regardless of weight.

The Act also instructs the Sentencing Commission to "review and amend as appropriate the sentencing guidelines for offenses involving flunitrazepam" and to ensure the guidelines reflect the serious nature of offenses involving flunitrazepam.

Under the revised statute, trafficking in precisely one gram of flunitrazepam will have a maximum penalty of 20 years' imprisonment and trafficking in precisely 30 milligrams of flunitrazepam will have a maximum of five years' imprisonment. Trafficking in any amount other than those specified will be governed by 21 U.S.C.

841(b)(1)(C)(2), which provides a maximum penalty for Schedule IV controlled substances of not more than three years' imprisonment.

The following proposed amendment assumes Congress meant to treat flunitrazepam in the trafficking statute as it did in the export/import statute (i.e., raise the maximum penalty from three to twenty years' imprisonment). Accordingly, this amendment treats flunitrazepam as a Schedule I and II depressant because Schedule I and II depressants also carry a maximum penalty of twenty years' imprisonment.

The offense levels are bracketed to indicate the possibility that the offense levels ultimately adopted for flunitrazepam may be higher than those indicated in this amendment.

The Act also raises the maximum sentence for simple possession of flunitrazepam from one year's imprisonment to three years. The new statute treats the simple possession of flunitrazepam as more serious than the simple possession of personal amounts of any other controlled substance, in that it establishes a three-year maximum sentence of imprisonment as compared to one year for all other controlled substances (except 5 or more grams of crack).

There are two options for addressing the increase in the maximum sentence for simple possession of flunitrazepam. Currently, flunitrazepam has a base offense level of 4. The first option is to treat flunitrazepam the same as the simple possession of other Schedule I and II depressants (as it is in the proposed trafficking guideline). This option would effect no change in the current guideline. The second option, as shown in the amendment below, is to change the base offense level for flunitrazepam from level 4 to level 8. This option raises the base offense level to the same base offense level as heroin, other Schedule I and II opiates, and cocaine base.

Proposed Amendment: Section 2D1.1(c) (10)–(17) is amended by inserting “, Flunitrazepam” immediately following “II Depressants” wherever it appears.

Section 2D1.1(c)(14)–(17) is amended by inserting “(except Flunitrazepam)” immediately following “Schedule IV substances” wherever it appears.

Section 2D1.1(c) is amended in the section titled “*Notes to the Drug Quantity Table” in Note (F) by inserting “or flunitrazepam” following “II Depressants”, and by inserting “(except flunitrazepam)” following “IV substances”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended in Note 10 in the Drug Equivalency Tables in the subsection captioned “Schedule I or II Depressants**” by inserting “or Flunitrazepam” immediately following “or II Depressants”; by inserting “or Flunitrazepam” immediately following “II Depressant”; by inserting “, flunitrazepam” immediately following “or II depressants”; and by inserting “(except flunitrazepam)” immediately following “IV substances”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended in Note 10 in the Drug Equivalency Tables in the subsection captioned “Schedule

IV Substances**”; by inserting “(except Flunitrazepam)” immediately following “IV Substances”; by inserting “(except Flunitrazepam)” immediately following “IV Substance”; and by inserting “(except flunitrazepam)” immediately following “Schedule IV”.

Section 2D2.1(a)(1) is amended by deleting “or” before “cocaine” and by inserting “, or flunitrazepam” following “base”.

(B). Issue for Comment: The Drug-Induced Rape Prevention and Punishment Act of 1996 included a section concerning “date rape” and related crimes. This section amends 21 U.S.C. 841(b) by adding:

Whoever, with intent to commit a crime of violence, as defined in section 16 of title 18, United States Code (including rape), against an individual, violates subsection (a) by distributing a controlled substance to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with title 18, United States Code.

“Without the individual's knowledge” is defined by the statute as meaning “that the individual is unaware that a substance with an ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.”

Currently, the guidelines cover the commission of violent offenses as well as attempts to commit these offenses; they do not have a general mechanism covering offenses committed with intent to commit another crime. Section 2A3.1 (Criminal Sexual Abuse) does not currently include intent but does have an enhancement for the use of controlled substances to commit criminal sexual abuse. Specifically, this guideline contains a 4-level enhancement above the base offense level of 27 for offenses committed by means listed in 18 U.S.C. 2241 (a) or (b), which includes the use of drugs or intoxicants to commit the offense.

The Commission solicits comment as to how offenses committed under this section of the Drug Induced Rape Prevention Act of 1996 should be included in the guidelines. Should the Commission treat these offenses as an attempt and reference them to the underlying crimes of violence? If these crimes are seen as something less than an attempt, how should the guidelines cover the offenses?

Chapter Two, Part D—Offenses Involving Drugs

9(A). Synopsis of Proposed Amendment: Section 101 of the

Comprehensive Methamphetamine Control Act of 1996 adds listed chemicals to 21 U.S.C. 959. Section 959(a) makes it unlawful to manufacture or distribute a schedule I or II controlled substance intending or knowing that such substance will be unlawfully imported into the United States. Section 959(b) makes it unlawful for a United States citizen, or any person aboard an aircraft owned by a United States citizen or an aircraft registered in the United States, to manufacture, distribute, or possess with intent to distribute a controlled substance. The penalty for such an offense involving a listed chemical is a fine in accordance with title 18, United States Code, not more than ten years' imprisonment, or both. This amendment references these statutes in the Statutory Index to § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical).

Section 201 of the Act makes an addition to Title 21, United States Code (simple possession), which states:

It shall be unlawful for any person knowingly or intentionally to possess any list I chemical obtained pursuant to or under authority of a registration issued to that person . . . if that registration has been revoked or suspended, if that registration has expired, or if the registrant has ceased to do business in the manner contemplated by his registration.

This amendment adds list I chemicals to § 2D2.1 (Unlawful Possession: Attempt or Conspiracy). This guideline contains a base offense level of eight for Schedule I and II opiates, their analogues, and cocaine base; a base offense level of 6 for cocaine PCP, and LSD; and a base offense level of 4 for all other controlled substances. This amendment includes list I chemicals with other controlled substances, thereby having a base offense level of four.

Section 209 of the Act makes several technical changes to 21 U.S.C. 802 by correcting the spelling for several precursors. The only correction for the guidelines is to correct the spelling of isosafrole, a list I chemical.

Proposed Amendment: Section 2D2.1(a)(3) is amended by inserting “or a list I chemical” after “other controlled substance”.

Appendix A (Statutory Index) in the line referenced to “21 U.S.C. 959” is amended by inserting “, 2D1.11” following “2D1.1”.

Appendix A (Statutory Index) is amended by inserting at the appropriate place by line and title the following:

“21 U.S.C. 960(d)(7) 2D1.11”.

(B). Issue for Comment: Section 203 amends 21 U.S.C. 843(d) to state that anyone who violates 21 U.S.C. 843(a) (6) or (7) (possession, manufacture or distribution of certain laboratory equipment) with the intent to manufacture or facilitate the manufacture of methamphetamine is subject to a term of imprisonment of up to ten years. The statute gives instructions to the Commission to amend the sentencing guidelines to ensure that violations of this section are treated as a significant violation.

Violations of 21 U.S.C. 843(a) (6) or (7) currently carry a maximum sentence of imprisonment of four years and cover knowing, intending, or having reasonable cause to believe the equipment will be used to manufacture a controlled substance. The guidelines provide a base offense level of 12 if the defendant intended to manufacture a controlled substance and 9 if the defendant had reasonable cause to believe the equipment would be used to manufacture a controlled substance. The level 12 was used to correspond to the lowest offense level for methamphetamine in the Drug Quantity Table and the lowest level of the Chemical Quantity Table. Additionally, the guideline contains a cross reference to § 2D1.1 if the offense involved the actual manufacture of a controlled substance.

The Commission requests comment on the proper offense level for possession of equipment (i.e., a round-bottomed three-necked flask, tableting machine, gelatin capsule, or any equipment, chemical, product, or material used to manufacture a controlled substance) to manufacture methamphetamine. Should there be an enhancement if the equipment is used to manufacture methamphetamine and, if so, how many levels?

10(A). Synopsis of Proposed Amendment: This multi-part amendment implements sections 301 and 303 of the Comprehensive Methamphetamine Control Act of 1996. Among other things, the Act generally instructs the Commission to increase the penalties for unlawful manufacturing, importing, exporting and trafficking of methamphetamine. This amendment is in four parts, followed by a fifth part requesting comment.

Part A of this amendment directly increases the penalties for methamphetamine by reducing by one-half the quantity at each offense level found in the Drug Quantity Table at § 2D1.1(c). This proposal has the same effect on methamphetamine guideline penalties that would have occurred if Congress had passed legislation to

reduce by half the quantities to trigger the mandatory minimum penalties under 21 U.S.C. 841.

For example, offense level 26, which is equivalent to the five-year mandatory minimum sentence, is currently applied when the amount of methamphetamine (actual) falls between 10 and 40 grams, or the amount of methamphetamine mixture is between 100 and 400 grams. The amendment reduces the amounts in question by one-half, to 5 to 20 grams for methamphetamine (actual) and 50 to 200 grams for methamphetamine mixture. A corresponding change is made at level 32, which is equivalent to the ten-year mandatory minimum sentence. Other offense levels have been changed to conform with these changes.

In addition, a conforming change is made to the drug equivalency tables, doubling the amount of marijuana to be used in multi-drug crimes involving methamphetamine, methamphetamine (actual), and "ice."

Finally, Note "(B)" following the Drug Quantity Table is rewritten to emphasize that the offense level for methamphetamine (or PCP) mixtures is to be determined by the quantity (weight) of the actual controlled substance in the mixture whenever the purity can be determined and exceeds 10 percent.

Part B of this amendment proposes, either as an alternative or an addition to Part A, changes in the guidelines directed to the importation of methamphetamine and precursor chemicals. These changes would add a new specific offense characteristic for the unlawful importation of methamphetamine or its precursor drugs. Multiple options regarding the formulation of this enhancement are presented. Accompanying commentary would indicate that this new adjustment is not to be applied in addition to the enhancement available under § 2D1.1(b)(2), which also relates to importation. A third option proposes an alternative approach of an invited upward departure if the offense involved importation of methamphetamine or listed chemicals.

Part C of this amendment proposes, either as an alternative or an addition to Part A, changes in the guidelines to address environmental damage associated with the manufacture of methamphetamine. This proposed amendment adds environmental damage as a ground for either a specific offense characteristic enhancement (Option 1) or an invited upward departure (Option 2) to §§ 2D1.1, 2D1.11, 2D1.12, and 2D1.13.

Congress specifically asked the Commission to address the adequacy of

penalties for violations of environmental laws which are covered by guidelines §§ 2D1.11, 2D1.12, and 2D1.13. Although the drug trafficking guideline was not specifically addressed in this directive, it is reasonable for the Commission to consider similar means of addressing adverse environmental impact in guideline § 2D1.1. As a result, these changes would also affect sentencing under that guideline.

Part D of this amendment proposes, either as an alternative or an addition to Part A, changes to the guidelines which would add provisions relating to the use of a special skill in the manufacture of controlled substances. The amendments would add language to § 2D1.1 (comment. n. 8) indicating that persons involved in the illegal manufacture of controlled substances may be subject to an enhancement under § 3B1.3 (Abuse of Position of Trust or Use of a Special Skill). It also offers, as an option, eliminating language in existing guideline § 3B1.3 that currently prohibits the Special Skill enhancement from being applied cumulatively with an enhancement for Aggravating Role. This change is not limited to methamphetamine cases, but would apply to all affected cases.

Part E is a section requesting comment on specific issues. First, the section requests comment on other aggravating factors which distinguish methamphetamine offenses and which should be included in the guidelines. Second, the section requests comment on how the proposed aggravating factors (Parts B through D) might be coupled with lesser penalty increases in Part A. Third, comment is requested on whether changes in methamphetamine penalties as proposed in Part A should lead to further changes in the Chemical Quantity Table in § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy). (In this regard, it should be noted that the Commission has promulgated, effective May 1, 1997, an emergency amendment that generally increases the offense levels in the Chemical Quantity Table by two levels. This amendment responds to the congressional directive in section 302 of the Comprehensive Methamphetamine Control Act of 1996).

Part A

Proposed Amendment: Section 2D1.1(c)(1) is amended by deleting:

"30 KG or more of Methamphetamine, or 3 KG or more of Methamphetamine (actual), or 3 KG or more of 'Ice'",

and inserting in lieu thereof:

"15 KG or more of Methamphetamine, or 1.5 KG or more of Methamphetamine (actual), or 1.5 KG or more of 'Ice'".

Section 2D1.1(c)(2) is amended by deleting:

"At least 10 KG but less than 30 KG of Methamphetamine, or at least 1 KG but less than 3 KG of Methamphetamine (actual), or at least 1 KG but less than 3 KG of 'Ice'",

and inserting in lieu thereof:

"At least 5 KG but less than 15 KG of Methamphetamine, or at least .5 KG but less than 1.5 KG of Methamphetamine (actual), or at least .5 KG but less than 1.5 KG of 'Ice'".

Section 2D1.1(c)(3) is amended by deleting:

"At least 3 KG but less than 10 KG of Methamphetamine, or at least 300 G but less than 1 KG of Methamphetamine (actual), or at least 300 G but less than 1 KG of 'Ice'",

and inserting in lieu thereof:

"At least 1.5 KG but less than 5 KG of Methamphetamine, or at least 150 G but less than 500 G of Methamphetamine (actual), or at least 150 G but less than 500 G of 'Ice'".

Section 2D1.1(c)(4) is amended by deleting:

"At least 1 KG but less than 3 KG of Methamphetamine, or at least 100 G but less than 300 G of Methamphetamine (actual), or at least 100 G but less than 300 G of 'Ice'",

and inserting in lieu thereof:

"At least 500 G but less than 1.5 KG of Methamphetamine, or at least 50 G but less than 150 G of Methamphetamine (actual), or at least 50 G but less than 150 G of 'Ice'".

Section 2D1.1(c)(5) is amended by deleting:

"At least 700 G but less than 1 KG of Methamphetamine, or at least 70 G but less than 100 G of Methamphetamine (actual), or at least 70 G but less than 100 G of 'Ice'",

and inserting in lieu thereof:

"At least 350 G but less than 500 G of Methamphetamine, or at least 35 G but less than 50 G of Methamphetamine (actual), or at least 35 G but less than 50 G of 'Ice'".

Section 2D1.1(c)(6) is amended by deleting:

"At least 400 G but less than 700 G of Methamphetamine, or at least 40 G but less than 70 G of Methamphetamine (actual), or at least 40 G but less than 70 G of 'Ice'",

and inserting in lieu thereof:

"At least 200 G but less than 350 G or Methamphetamine, or at least 20 G but less than 35 G of Methamphetamine (actual), or at least 20 G but less than 35 G of 'Ice'".

Section 2D1.1(c)(7) is amended by deleting:

"At least 100 G but less than 400 G of Methamphetamine, or at least 10 G but less than 40 G of Methamphetamine (actual), or at least 10 G but less than 40 G of 'Ice'",

and inserting in lieu thereof:

"At least 50 G but less than 200 G of Methamphetamine, or at least 5 G but less than 20 G of Methamphetamine (actual), or at least 5 G but less than 20 G of 'Ice'".

Section 2D1.1(c)(8) is amended by deleting:

"At least 80 G but less than 100 G of Methamphetamine, or at least 8 G but less than 10 G of Methamphetamine (actual), or at least 8 G but less than 10 G of 'Ice'",

and inserting in lieu thereof:

"At least 40 G but less than 50 G of Methamphetamine, or at least 4 G but less than 5 G of Methamphetamine (actual), or at least 4 G but less than 5 G of 'Ice'".

Section 2D1.1(c)(9) is amended by deleting:

"At least 60 G but less than 80 G of Methamphetamine, or at least 6 G but less than 8 G of Methamphetamine (actual), or at least 6 G but less than 8 G of 'Ice'",

and inserting in lieu thereof:

"At least 30 G but less than 40 G of Methamphetamine, or at least 3 G but less than 4 G of Methamphetamine (actual), or at least 3 G but less than 4 G of 'Ice'".

Section 2D1.1(c)(10) is amended by deleting:

"At least 40 G but less than 60 G of Methamphetamine, or at least 4 G but less than 6 G of Methamphetamine (actual), or at least 4 G but less than 6 G of 'Ice'",

and inserting in lieu thereof:

"At least 20 G but less than 30 G of Methamphetamine, or at least 2 G but less than 3 G of Methamphetamine (actual), or at least 2 G but less than 3 G of 'Ice'".

Section 2D1.1(c)(11) is amended by deleting:

"At least 20 G but less than 40 G of Methamphetamine, or at least 2 G but less than 4 G of Methamphetamine (actual), or at least 2 G but less than 4 G of 'Ice'",

and inserting in lieu thereof:

"At least 10 G but less than 20 G of Methamphetamine, or at least 1 G but less than 2 G of Methamphetamine (actual), or at least 1 G but less than 2 G of 'Ice'".

Section 2D1.1(c)(12) is amended by deleting:

"At least 10 G but less than 20 G of Methamphetamine, or at least 1 G but less than 2 G of Methamphetamine (actual), or at least 1 G but less than 2 G of 'Ice'".

and inserting in lieu thereof:

"At least 5 G but less than 10 G Methamphetamine, or at least 500 MG but less than 1 G of Methamphetamine (actual), or at least 500 MG but less than 1 G of 'Ice'".

Section 2D1.1(c)(13) is amended by deleting:

"At least 5 G but less than 10 G of Methamphetamine, or at least 500 MG but less than 1 G of Methamphetamine (actual), or at least 500 MG but less than 1 G of 'Ice'",

and inserting in lieu thereof:

"Less than 5 G of Methamphetamine, or less than 500 MG Methamphetamine (actual), or less than 500 MG of 'Ice'".

Section 2D1.1(c)(14) is amended by deleting:

"Less than 5 G of Methamphetamine, or less than 500 MG of Methamphetamine (actual), or less than 500 MG of 'Ice'".

Section 2D1.1(c) is amended in the notes following the Drug Quantity Table by deleting the last sentence in Note B and inserting in lieu thereof the following:

"In the case of a mixture or substance containing PCP or methamphetamine, if the purity of the mixture or substance can be determined and exceeds 10 percent, then the weight of the actual controlled substance in the mixture shall be used to determine the offense level. In any other case involving a mixture or substance containing PCP or methamphetamine, use the weight of the mixture containing PCP or methamphetamine to determine the offense level."

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10(d) in the Drug Equivalency Tables in the subdivision captioned "Cocaine and Other Schedules I and II Stimulants (and their immediate precursors)" by deleting:

| | |
|------------------------------------|----------------------|
| "1 gm of Methamphetamine = | 1 kg of marihuana |
| 1 gm of Methamphetamine (Actual) = | 10 kg of marihuana |
| 1 gm of 'Ice' = | 10 kg of marihuana", |

and inserting in lieu thereof:

| | |
|------------------------------------|----------------------|
| "1 gm of Methamphetamine = | 2 kg of marihuana |
| 1 gm of Methamphetamine (actual) = | 20 kg of marihuana |
| 1 gm of 'Ice' = | 20 kg of marihuana". |

Part B

Section 2D1.1(b) is amended by renumbering subdivision (4) as subdivision (5); and by inserting after subdivision (3) the following new subdivision (4):

[Option 1: "(4) If the offense involved the importation of methamphetamine, or the manufacture of methamphetamine from listed chemicals that the defendant knew were imported unlawfully, increase by [2] levels."].

[Option 2: "(4) If (A) the offense involved the importation of methamphetamine [or the manufacture of methamphetamine from listed chemicals that the defendant knew were imported unlawfully,] and (B) the defendant [is subject to an adjustment under § 3B1.1 (Aggravating Role)][is not subjected to an adjustment under § 3B1.2 (Mitigating Role)], increase by 2 levels."].

[Both Options: The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting the following additional note:

"19. If the offense involved importation of methamphetamine, and an adjustment from subsection (b)(2) applies, do not apply subsection (b)(4)."]

[Option 3: The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting the following additional note:

"19. If the offense involved the unlawful importation of methamphetamine, or the manufacture of methamphetamine from listed chemicals that the defendant knew were imported unlawfully, an upward departure may be warranted [, particularly if the defendant had an aggravating role in the offense under § 3B1.1 (Aggravating Role)]."]

Part C

[Option 1: Section 2D1.1(b) is amended renumbering subsection (4) as subsection (5) and by inserting the following as the new subsection (4):

"(4) If the offense involved a discharge or emission into the environment of a hazardous or toxic substance or created a substantial risk of environmental harm, increase by [2-6] levels."].

[Option 2: The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting the following additional note:

"19. If the offense involved a discharge or emission into the environment of a hazardous or toxic substance or created a substantial risk of environmental harm, an upward departure may be warranted."].

[Option 1: Section 2D1.11(b) is amended by adding the following new subdivision:

"(3) If the offense involved a discharge or emission into the environment of a hazardous or toxic

substance or created a substantial risk of environmental harm, increase by [2-6] levels."].

[Option 2: The Commentary to § 2D1.11 captioned "Application Notes" is amended by inserting the following new note:

"8. If the offense involved a discharge or emission into the environment of a hazardous or toxic substance or created a substantial risk of environmental harm, an upward departure may be warranted."].

[Option 1: Section 2D1.12 is amended by renumbering subsection (b) as (c) and by inserting the following new subsection:

"(b) Specific Offense Characteristic
(1) If the offense involved a discharge or emission into the environment of a hazardous or toxic substance or created a substantial risk of environmental harm, increase by [2-6] levels."].

The Commentary to § 2D1.12 captioned "Application Notes" is amended by inserting the following new note:

"3. If the offense involved a discharge or emission into the environment of a hazardous or toxic substance or created a substantial risk of environmental harm, an upward departure may be warranted."].

[Option 1: Section 2D1.13 is amended by inserting the following new subsection:

"(b) Specific Offense Characteristic
(1) If the offense involved a discharge or emission into the environment of a hazardous or toxic substance or created a substantial risk of environmental harm, increase by [2-6] levels."].

[Option 2: The Commentary to § 2D1.13 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes" and by inserting the following new note:

"2. If the offense involved a discharge or emission into the environment of a hazardous or toxic substance or created a substantial risk of environmental harm, an upward departure may be warranted."].

Part D

The Commentary to § 2D1.1 captioned "Application Notes" is amended in the second sentence of Note 8 by inserting "and other persons with highly developed skills" immediately following "professionals" and by inserting "manufacturing and" immediately following "drug"; in the third sentence by deleting "professionals" and inserting in lieu thereof "persons" and by inserting "'cooks' (depending on the level of skill and sophistication)," immediately before "accountants".

Section 3B1.3 is amended by deleting the third sentence.

The Commentary to 3B1.3 captioned "Application Notes" is amended in Note 2 by inserting the following as the last sentence:

"Depending on their level of skill and sophistication, persons involved in the manufacture of methamphetamine or other controlled substances, including individuals described as "cooks," may be subject to this enhancement."].

Part E

Issue for Comment: The Sentencing Commission requests comment on the following issues related to the above amendments:

(a) The existence of other aggravating factors which distinguish methamphetamine offenses and should be recognized as such under the guidelines; and

(b) Whether and how the proposed aggravating factors listed in Parts B through D, and any other factors that meaningfully distinguish methamphetamine cases, might be combined with quantity-related increases in punishment of lesser magnitude than those proposed in Part A.

(c) If the changes in Part A are made, conforming changes to 2D1.11 may be necessary. The Commission invites comment on how the offense levels in the chemical Quantity Table should be changed to reflect the changes in the Drug Quantity Table.

11. Synopsis of Proposed Amendment: This amendment makes Appendix A (Statutory Index) more comprehensive based on newly enacted legislation described below.

(A) Health Insurance Portability and Accountability Act of 1996

1. Section 242 creates a new crime at 18 U.S.C. 1347, with a maximum penalty of 10 years imprisonment, for schemes to defraud or to obtain funds by false pretenses from any health care benefit program. Penalties increase to 20 years or life imprisonment, respectively, if "serious bodily injury" or death results from the violation. Because this new offense involves fraud, it is recommended that 18 U.S.C.1347 be referenced to § 2F1.1 (Fraud and Deceit).

2. Section 243 creates a new crime at 18 U.S.C. 669 for the theft, embezzlement, or intentional misapplication of the funds, property, or assets of a health care benefit program. The maximum penalty is 10 years imprisonment, but the statutory maximum drops to 1 year if the value of the property involved is less than \$100. Because this new offense involves fraud, it is recommended that 18 U.S.C.

669 be referenced to § 2F1.1 (Fraud and Deceit).

3. Section 244 creates a new crime at 18 U.S.C. 1035 for false statements relating to health care matters, with a maximum penalty of 5 years' imprisonment. Because this new offense involves fraud, it is recommended that 18 U.S.C. 1035 be referenced to § 2F1.1.

4. Section 245 creates a new crime at 18 U.S.C. 1518 for obstruction of a criminal investigation of a health care offense, with a maximum penalty of 5 years' imprisonment. Because this new offense involves obstruction of justice, it is recommended that 18 U.S.C. 1518 be referenced to § 2J1.2 (Obstruction of Justice).

(B) Omnibus Consolidated Appropriations for Fiscal Year 1997

1. Section 648 reclassifies as Class B felonies the counterfeit offenses at 18 U.S.C. 474 (Plates or stones for counterfeiting obligations or securities) and 474A (Deterrents to counterfeiting of obligations and securities) (previously Class C felonies), which effectively increases the statutory maximum penalties for these offenses from 12 years to 25 years. The effective date is the date of enactment. The legislation does not contain any directions to the Commission regarding the drafting of sentencing guidelines. Appendix A references violations of § 474 to § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) and § 2F1.1 (Fraud); Appendix A does not currently reference violations of § 474A. It is recommended that 18 U.S.C. 474A be referenced to § 2B5.1.

2. Section 648 creates a new crime at 18 U.S.C. 514 for offenses involving fictitious obligations. This new provision, classified as a Class B felony, prohibits the production and transfer, with the intent to defraud, of any false or fictitious instrument, document or other item representing through scheme or artifice, to be an actual security or other financial instrument issued under the authority of the United States, a foreign government, a State or other political subdivision of the United States, or an organization. Section 514 also prohibits the use of the mails, wire, radio or other electronic communication to move the false instruments through interstate or foreign commerce. Section 514 covers attempts and imposes the same penalties on attempts as the completed substantive offense. The effective date is the date of enactment. The legislation does not contain any directions to the Commission regarding the drafting of sentencing guidelines.

The Financial Crimes Unit of the U.S. Secret Service explained that this

legislation stems from the criminal activity of groups like the Freeman of Montana; these groups manufacture "bogus" financial instruments that are transferred as if the instruments were real. As opposed to a "counterfeit" item, which purports to be genuine but is not because it has been falsely made or manufactured in its entirety, a "fictitious obligation" is an instrument that cannot be genuine because the instrument is entirely "made-up" or "invented". The counterfeiting statutes do not cover manufacturing of fictitious instruments because such conduct does not involve the counterfeiting of any existing financial obligation or instrument.

The amendment below references 18 U.S.C. 514 to § 2F1.1 (Fraud and Deceit). The conduct involved seems more like fraud than counterfeiting because (1) the manufactured obligation is an entirely phony instrument and not a copy of a legitimate type of financial instrument; and (2) this conduct does not seem to raise the public policy interest in protecting the integrity of government obligations that counterfeiting offenses raise because the United States has no obligation to pay on a "bogus" type of financial instrument. Further, § 514 includes conduct comprising mail and wire fraud. The Commission can monitor the types of financial instruments involved in § 514 offenses to determine whether a reference to the counterfeiting guideline (§ 2B5.1) is also necessary.

Proposed Amendment: Appendix A (Statutory Index) is amended by inserting the following at the appropriate place by title and section:

"18 U.S.C. 474A 2B5.1";
 "18 U.S.C. 514 2F1.1";
 "18 U.S.C. 669 2F1.1";
 "18 U.S.C. 1035 2F1.1";
 "18 U.S.C. 1347 2F1.1";
 "18 U.S.C. 1518 2J1.2".

Fraud, Theft, and Tax Offenses—Chapter Two, Parts B, C, and Q (Addendum to Proposed Amendment #18 in the Guideline Amendments for Public Comment—Part I, 62 FR 151, Dated January 2, 1997)

12. Synopsis of Proposed Amendment: (A) Generally conforms the loss enhancements to those proposed in Amendment #18, and (B) proposes a one level increase in the base offense level of each of these guidelines. These latter changes are designed to avoid any unintended decreases in offense level of the cases sentenced under these guidelines that may result from the adoption of Amendment #18.

Each of the guidelines affected by this amendment has a specific offense

characteristic that references the loss table in § 2F1.1. For example, § 2B3.3 (Blackmail and Similar Forms of Extortion) has a specific offense characteristic that provides that "If the greater of the amount obtained or demanded exceeded \$2,000," the offense level should be increased "by the corresponding number of levels from the table in § 2F1.1." Among other provisions, options one and three of Amendment #18 would increase the amount of loss required to trigger the first increase for loss from \$2,000 to \$5,000. Consequently, options one and three, if adopted, would produce a one-level reduction compared to the current guideline for those cases sentenced under each of the guidelines listed in this amendment if the loss amount was between \$2,000 and \$5,000. Because of the nature of the loss table proposed in option two (the first trigger of an increase for loss remains at \$2,000), if that option is adopted the conforming changes in this amendment would be unnecessary.

It should be noted that, because these guidelines listed in this amendment do not have an enhancement for more-than-minimal planning so they would be affected in a more complex way by Amendment #18 than guidelines that currently have that enhancement. The package of proposals in Amendment #18 would eliminate the two-level enhancement for more-than-minimal planning from guidelines where it currently exists, build that two-level increase into the loss table, and add a new enhancement for "sophisticated means." Amendment #18 also proposes significant increases for loss amounts near the top of the table. Because the guidelines listed in this amendment reference the loss table, the changes to the loss tables proposed by Amendment #18 would cause increases to offense levels for cases sentenced under these guidelines (under options one and three, for loss amounts over \$5,000; under option two, loss over \$2,000). Moreover, any resulting increases in offense levels for cases sentenced under the guidelines will not be offset—even partially—by the elimination of the enhancement for more-than-minimal planning.

Proposed Amendment: Section 2B3.3(a) is amended by deleting "9" and inserting in lieu thereof "10".

Section 2B3.3(b)(1) is amended by deleting "\$2,000" and inserting in lieu thereof "\$5,000".

Section 2B4.1(a) is amended by deleting "8" and inserting in lieu thereof "9".

Section 2B4.1(b)(1) is amended by deleting "\$2,000" and inserting in lieu thereof "\$5,000".

Section 2B5.1(a) is amended by deleting "9" and inserting in lieu thereof "10".

Section 2B5.1(b)(1) is amended by deleting "\$2,000" and inserting in lieu thereof "\$5,000".

Section 2B5.3(a) is amended by deleting "6" and inserting in lieu thereof "7".

Section 2B5.3(b)(1) is amended by deleting "\$2,000" and inserting in lieu thereof "\$5,000".

Section 2B6.1(a) is amended by deleting "8" and inserting in lieu thereof "9".

Section 2B6.1(b)(1) is amended by deleting "\$2,000" and inserting in lieu thereof "\$5,000".

Section 2C1.1(a) is amended by deleting "10" and inserting in lieu thereof "11".

Section 2C1.1(b)(2)(A) is amended by deleting "\$2,000" and inserting in lieu thereof "\$5,000".

Section 2C1.2(a) is amended by deleting "7" and inserting in lieu thereof "8".

Section 2C1.2(b)(2)(A) is amended by deleting "\$2,000" and inserting in lieu thereof "\$5,000".

Section 2C1.6(a) is amended by deleting "7" and inserting in lieu thereof "8".

Section 2C1.6(b)(1) is amended by deleting "\$2,000" and inserting in lieu thereof "\$5,000".

Section 2C1.7(a) is amended by deleting "10" and inserting in lieu thereof "11".

Section 2C1.7(b)(1)(A) is amended by deleting "\$2,000" and inserting in lieu thereof "\$5,000".

Section 2Q2.1(a) is amended by deleting "6" and inserting in lieu thereof "7".

Section 2Q2.1(b)(3)(A) is amended by deleting "\$2,000" and inserting in lieu thereof "\$5,000".

Section 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery)(Addendum to Proposed Amendment #12 in the Guideline Amendments for Public Comment—Part I, 62 FR 151, Dated January 2, 1997)

13. Synopsis of Proposed Amendment: In the January 2, 1997 Federal Register notice, the Commission published an amendment to § 2B1.1(b)(6)(B) and § 2F1.1(b)(6)(B). That amendment (amendment 12) addresses the difficulty in interpreting the meaning of "affected a financial institution and the defendant derived more than \$1,000,000 in gross receipts from the offense." This amendment makes conforming changes to § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery), which

also contains an enhancement to cover instances when the defendant's conduct "affected a financial institution and the defendant derived more than \$1,000,000 in gross receipts from the offense."

Section 2B4.1 is amended in subsection (b)(2) by deleting "—" immediately following "offense"; by deleting "(A)"; by deleting "or" immediately following "institution" and inserting in lieu thereof ","; by deleting subsection (b)(2)(B) in its entirety; and by inserting the following additional subsection:

"(3) If (A) obtaining or retaining the gross receipts of one or more financial institutions was an object of the offense, (B) the defendant derived more than \$1,000,000 in gross receipts from such institutions, and (C) the offense level as determined above is less than level 24, increase to level 24."

The Commentary to § 2B4.1 captioned "Application Notes" is amended in the first sentence of Note 5 by deleting "from the offense" immediately following "receipts"; by deleting "(2)(B)" and inserting in lieu thereof "(3)"; by deleting "generally"; by deleting the second sentence in its entirety; and by deleting "See 18 U.S.C. 982(a)(4)."; and by inserting the following as the first sentence:

"For purposes of subsection (b)(3), 'gross receipts' means any moneys, funds, credits, assets, securities, or other real or personal property, whether tangible or intangible, owned by, or under the custody or control of, a financial institution, that are obtained directly or indirectly as a result of such offense. See 18 U.S.C. 982(a)(4), 1344."

The Commentary to § 2B4.1 captioned "Background" is amended in the seventh paragraph by deleting "Subsection" and inserting in lieu thereof "Subsections"; by deleting "(A)" and inserting in lieu thereof "and (b)(3)"; by deleting "implements" and inserting in lieu thereof "implement"; by deleting "instruction" and inserting in lieu thereof "instructions"; and by inserting "and section 2507 of Public Law 101-647, respectively" immediately following "101-73".

The Commentary to § 2B4.1 captioned "Background" is amended by deleting the last paragraph in its entirety.

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BILLING CODE 2210-40-P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendation

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S. W., Suite 5000, Washington, D.C. 20416. Phone Number: 202-205-6629.

SUPPLEMENTARY INFORMATION:

Title: "Request From Borrower".

Type of Request: Extension of a Currently Approved Collection.

Form No.: SBA Form 770.

Description of Respondents: Recipients of SBA Loans.

Annual Responses: 161,000.

Annual Burden: 281,750.

Comments: Send all comments regarding this information collection to Annie McCluney, Program Analyst, Office of Borrower and Lender Servicing, Small Business Administration, 409 3rd Street, S. W., Suite 8300 Washington, D.C. 20416. Phone No.: 202-205-7545. Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Survey on the Effects of Bank Mergers and Acquisitions on Small Business Lending in the United States".

Type of Request: Extension of Currently Approved Collections.

Form No.: SBA Form 1981.

Description of Respondents: Banks Involved in Mergers or Acquisitions.

Annual Responses: 235.

Annual Burden: 117.

Comments: Send all comments regarding this information collection to Charles Ou, Office of Advocacy, Small Business Administration, 409 3rd Street, S.W., Suite 7800 Washington, D.C. 20416. Phone No. 202-205-6966.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.