

182. Sections 2K1.4(c) and 2K1.5(c) are amended by deleting "higher" whenever it appears and inserting in lieu thereof "greater".

The purpose of this amendment is to correct a clerical error. **The effective date of this amendment is November 1, 1989.**

183. Section 2K1.3(b) is amended by deleting "any of the following" and inserting in lieu thereof "more than one".

Section 2K1.3(b)(5) is amended by deleting "firearm offense" and inserting in lieu thereof "offense involving explosives".

The purpose of this amendment is to clarify the guideline. **The effective date of this amendment is November 1, 1989.**

184. Section 2K1.4(b) is amended by deleting "any of the following" and inserting in lieu thereof "more than one".

The purpose of this amendment is to clarify the guideline. **The effective date of this amendment is November 1, 1989.**

185. Section 2K1.4 is amended by inserting the following additional subsection:

"(d) Note

- (1) The specific offense characteristic in subsection (b)(4) applies only in the case of an offense committed prior to November 18, 1988."

The Commentary to §2K1.4 captioned "Statutory Provisions" is amended by inserting "(only in the case of an offense committed prior to November 18, 1988)" immediately following "(h)".

The Commentary to §2K1.4 captioned "Background", is amended by deleting "used fire or an explosive in the commission of a felony," immediately before "used a destructive device", and by inserting the following additional sentences at the end of the paragraph:

"As amended by Section 6474(b) of the Anti-Drug Abuse Act of 1988 (effective November 18, 1988), 18 U.S.C. § 844(h) sets forth a mandatory sentencing enhancement of five years for the first offense and ten years for subsequent offenses if the defendant was convicted of using fire or an explosive to commit a felony or of carrying an explosive during the commission of a felony. See §2K1.7."

The purpose of this amendment is to conform the guideline to a statutory revision to 18 U.S.C. § 844(h). **The effective date of this amendment is November 1, 1989.**

186. Section 2K1.5(b) is amended by deleting "any of the following" and inserting in lieu thereof "more than one".

The purpose of this amendment is to clarify the guideline. **The effective date of this amendment is November 1, 1989.**

187. Section 2K1.5(b)(1) is amended by deleting "(i.e., the defendant is convicted under 49 U.S.C. § 1472(l)(2))" immediately following "human life", and by inserting "is convicted under 49 U.S.C. § 1472(l)(2) (i.e., the defendant" immediately before "acted".

The purpose of this amendment is to clarify the guideline. **The effective date of this amendment is November 1, 1989.**

188. Chapter Two, Part K is amended by inserting an additional guideline with accompanying commentary as §2K1.7 (Use of Fire or Explosives to Commit a Federal Felony).

The purpose of this amendment is to conform the guideline to a statutory revision of 18 U.S.C. § 844(h). **The effective date of this amendment is November 1, 1989.**

189. Section 2K2.1 is amended by deleting the entire guideline and accompanying commentary, except for the commentary captioned "Background", as follows:

"§2K2.1. Receipt, Possession, or Transportation of Firearms and Other Weapons by Prohibited Persons

- (a) Base Offense Level: 9
- (b) Specific Offense Characteristics
 - (1) If the firearm was stolen or had an altered or obliterated serial number, increase by 1 level.
 - (2) If the defendant obtained or possessed the firearm solely for sport or recreation, decrease by 4 levels.
- (c) Cross Reference
 - (1) If the defendant used the firearm in committing or attempting another offense, apply the guideline in respect to such other offense, or §2X1.1 (Attempt or Conspiracy) if the resulting offense level is higher than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 922(a)(6), (g), (h).

Application Note:

1. Under §2K2.1(b)(2), intended lawful use, as determined by the surrounding circumstances, provides a decrease in offense level. Relevant circumstances include, among others, the number and type of firearms (sawed-off shotguns, for example, have few legitimate uses) and ammunition, the location and circumstances of possession, the nature of the defendant's criminal history (e.g., whether involving firearms), and the extent to which possession is restricted by local law.",

and inserting in lieu thereof:

"§2K2.1. Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition

- (a) Base Offense Level (Apply the greatest):
 - (1) 16, if the defendant is convicted under 18 U.S.C. § 922(o) or 26 U.S.C. § 5861; or
 - (2) 12, if the defendant is convicted under 18 U.S.C. § 922(g), (h), or (n); or if the defendant, at the time of the offense, had been convicted in any court of an offense punishable by

imprisonment for a term exceeding one year; or

- (3) 6, otherwise.
- (b) Specific Offense Characteristics
 - (1) If the defendant obtained or possessed the firearm or ammunition solely for lawful sporting purposes or collection, decrease the offense level determined above to level 6.
 - (2) If the firearm was stolen or had an altered or obliterated serial number, increase by 2 levels.
- (c) Cross References
 - (1) If the offense involved the distribution of a firearm or possession with intent to distribute, apply §2K2.2 (Unlawful Trafficking and Other Prohibited Transactions Involving Firearms) if the resulting offense level is greater than that determined above.
 - (2) If the defendant used or possessed the firearm in connection with commission or attempted commission of another offense, apply §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. § 922(a)(1), (a)(3), (a)(4), (a)(6), (e), (f), (g), (h), (i), (j), (k), (l), (n), and (o); 26 U.S.C. § 5861(b), (c), (d), (h), (i), (j), and (k).

Application Notes:

1. The definition of 'firearm' used in this section is that set forth in 18 U.S.C. § 921(a)(3) (if the defendant is convicted under 18 U.S.C. § 922) and 26 U.S.C. § 5845(a) (if the defendant is convicted under 26 U.S.C. § 5861). These definitions are somewhat broader than that used in Application Note 1(e) of the Commentary to §1B1.1 (Application Instructions). Under 18 U.S.C. § 921(a)(3), the term 'firearm' means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Under 26 U.S.C. § 5845(a), the term 'firearm' includes a shotgun, or a weapon made from a shotgun, with a barrel or barrels of less than 18 inches in length; a weapon made from a shotgun or rifle with an overall length of less than 26 inches; a rifle, or weapon made from a rifle, with a barrel or barrels less than 16 inches in length; a machine gun; a muffler or silencer for a firearm; a destructive device; and certain other large bore weapons.
2. Under §2K2.1(b)(1), intended lawful use, as determined by the surrounding circumstances, provides a decrease in the offense level. Relevant circumstances include, among others, the number and type of firearms (sawed-off shotguns, for example, have few legitimate uses) and ammunition, the location and circumstances of possession, the nature of the defendant's criminal history (e.g., whether involving firearms), and the extent to which possession was restricted by local law."

The Commentary to §2K2.1 captioned "Background" is amended in the last paragraph by deleting "§2K2.1(c)" and inserting in lieu thereof "§2K2.1(c)(2)".

Chapter Two, Part K, Subpart 2 is amended by deleting §§2K2.2 and 2K2.3 in their entirety as follows:

"§2K2.2. Receipt, Possession, or Transportation of Firearms and Other Weapons in Violation of National Firearms Act

- (a) Base Offense Level: 12
- (b) Specific Offense Characteristics
 - (1) If the firearm was stolen or had an altered or obliterated serial number, increase by 1 level.
 - (2) If the firearm was a silencer, increase by 4 levels.
 - (3) If the defendant obtained or possessed the firearm solely for sport, recreation or collection, decrease by 6 levels.
- (c) Cross Reference
 - (1) If the defendant used the firearm in committing or attempting another offense, apply the guideline for such other offense or §2X1.1 (Attempt or Conspiracy), if the resulting offense level is higher than that determined above.

Commentary

Statutory Provisions: 26 U.S.C. §§ 5861(b) through (l).

Application Notes:

1. Under §2K2.2(b)(3), intended lawful use, as determined by the surrounding circumstances, provides a decrease in offense level. Relevant circumstances include, among others, the number and type of firearms (sawed-off shotguns, for example, have few legitimate uses) and ammunition, the location and circumstances of possession, the nature of the defendant's criminal history (e.g., whether involving firearms), and the extent to which possession is restricted by local law.
2. Subsection (c)(1) refers to any situation in which the defendant possessed a firearm to facilitate another offense that he committed or attempted.

Background: 26 U.S.C. § 5861 prohibits the unlicensed receipt, possession, transportation, or manufacture of certain firearms, such as machine guns, silencers, rifles and shotguns with shortened barrels, and destructive devices. As with §2K2.1, there is considerable variation in the conduct included under this statutory provision and some violations may be relatively technical.

§2K2.3. Prohibited Transactions in or Shipment of Firearms and Other Weapons

- (a) Base Offense Level:
 - (1) 12, if convicted under 26 U.S.C. § 5861; or
 - (2) 6, otherwise.
- (b) Specific Offense Characteristics
 - (1) If the number of firearms unlawfully dealt in exceeded 5, increase as follows:

- | | <u>Number of Firearms</u> | <u>Increase in Level</u> |
|-----|---------------------------|--------------------------|
| (A) | 6 - 10 | add 1 |
| (B) | 11 - 20 | add 2 |
| (C) | 21 - 50 | add 3 |
| (D) | 51 - 100 | add 4 |
| (E) | 101 - 200 | add 5 |
| (F) | more than 200 | add 6 |
- (2) If any of the following applies, use the greatest:
- (A) If the defendant knew or had reason to believe that a purchaser was a person prohibited by federal law from owning the firearm, increase by 2 levels.
- (B) If the defendant knew or had reason to believe that a purchaser resided in another state in which he was prohibited from owning the firearm, increase by 1 level.
- (C) If the defendant knew or had reason to believe that a firearm was stolen or had an altered or obliterated serial number, increase by 1 level.
- (c) Cross Reference
- (1) If the defendant provided the firearm to another for the purpose of committing another offense, or knowing that he planned to use it in committing another offense, apply §2X1.1 (Attempt or Conspiracy) in respect to such other offense, if the resulting offense level is higher.

Commentary

Statutory Provisions: 18 U.S.C. § 922 (a)(1), (a)(5), (b)(2), (b)(3), (d), (i), (j), (k), (l); 26 U.S.C. § 5861(a).

Background: This section applies to a variety of offenses involving prohibited transactions in or transportation of firearms and certain other weapons."

A replacement guideline with accompanying commentary is inserted as §2K2.2 (Unlawful Trafficking and Other Prohibited Transactions Involving Firearms).

Chapter Two, Part K, Subpart 2 is amended by inserting an additional guideline with accompanying commentary as §2K2.3 (Receiving, Transporting, Shipping or Transferring a Firearm or Ammunition With Intent to Commit Another Offense, or With Knowledge that It Will Be Used in Committing Another Offense).

This amendment addresses a number of diverse substantive and technical issues, as well as the creation of several new offenses, and increased statutory maximum penalties for certain other offenses. Because there exist a large number of overlapping statutory provisions, the three basic guidelines, §2K2.1 (Possession by a prohibited person), §2K2.2 (Possession of certain types of weapons), and §2K2.3 (Unlawful trafficking) are not closely tied to the actual conduct. The amendment addresses this issue by consolidating the current three guidelines into two guidelines: (1) unlawful possession, receipt, or transportation, and (2) unlawful trafficking; and by more carefully drawing the distinctions between the base offense levels provided. The third guideline in this amendment is a new guideline to address transfer of a weapon with intent or knowledge that it will be used to commit another offense (formerly covered in a cross reference) and a new offense added by the Anti-Drug Abuse Act of 1988 (Section 6211)(Interstate travel to acquire a firearm for a criminal purpose).

The base offense level for conduct covered by the current §2K2.1 is increased in the amendment from 9 to 12. The statutorily authorized maximum sentence for the conduct covered under §2K2.1 was increased from five to ten years by the Anti-Drug Abuse Act of 1988 (Section 6462). Note, however, that the most aggravated conduct under §2K2.1 (possession of a weapon during commission of another offense) is handled by the cross-reference at subsection (c) and is based upon the offense level for an attempt to commit the underlying offense. See Background Commentary to current §2K2.1. The offense level for unlawful possession of a machine gun, sawed off shotgun, or destructive device is increased from 12 to 16. In addition, the amendment raises the enhancement for stolen weapons or obliterated serial numbers from 1 to 2 levels to better reflect the seriousness of this conduct. The numbers currently used in the table for the distribution of multiple weapons in §2K2.2 are amended to increase the offense level more rapidly for sale of multiple weapons. **The effective date of this amendment is November 1, 1989.**

190. Section 2K2.4 is amended by deleting "penalties are those" and inserting in lieu thereof "term of imprisonment is that".

The Commentary to §2K2.4 captioned "Application Notes" is amended by inserting the following additional note:

- "3. Imposition of a term of supervised release is governed by the provisions of §5D1.1 (Imposition of a Term of Supervised Release).".

Section 2K2.4 is amended by inserting "(a)" immediately before "If", and by inserting the following additional subsection:

- "(b) Special Instructions for Fines
- (1) Where there is a federal conviction for the underlying offense, the fine guideline shall be the fine guideline that would have been applicable had there only been a conviction for the underlying offense. This guideline shall be used as a consolidated fine guideline for both the underlying offense and the conviction underlying this section.".

The Commentary to §2K2.4 captioned "Application Notes" is amended by inserting the following additional note:

- "4. Subsection (b) sets forth special provisions concerning the imposition of fines. Where there is also a conviction for the underlying offense, a consolidated fine guideline is determined by the offense level that would have applied to the underlying offense absent a conviction under 18 U.S.C. § 924(c) or 929(a). This is because the offense level for the underlying offense may be reduced when there is also a conviction under

18 U.S.C. § 924(c) or 929(a) in that any specific offense characteristic for possession, use, or discharge of a firearm is not applied (see Application Note 2). The Commission has not established a fine guideline range for the unusual case in which there is no conviction for the underlying offense."

The purpose of this amendment is to address the imposition of a fine or term of supervised release when this guideline applies. **The effective date of this amendment is November 1, 1989.**

191. Chapter Two, Part K is amended by inserting an additional guideline with accompanying commentary as §2K2.5 (Possession of Firearms and Dangerous Weapons in Federal Facilities).

The purpose of this amendment is to reflect a new offense enacted by Section 6215 of the Anti-Drug Abuse Act of 1988. A base offense level of 6 is provided for the misdemeanor portion of this statute. The felony portion of this statute (possession with intent to commit another offense) is treated as if an attempt to commit that other offense. **The effective date of this amendment is November 1, 1989.**

192. Section 2L1.1(b) is amended by inserting the following additional subsection:

"(3) If the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, and the offense level determined above is less than level 8, increase to level 8."

The Commentary to §2L1.1 captioned "Application Notes" is amended in Note 6 by deleting "enhancement at §2L1.1(b)(1) does not apply" and inserting in lieu thereof "reduction at §2L1.1(b)(1) applies".

The purposes of this amendment are to provide an offense level that is no less than that provided under §2L1.2 in the case of a defendant who is a previously deported alien, and to conform Application Note 6 of the Commentary to §2L1.1 to the January 1988 revision of §2L1.1. **The effective date of this amendment is November 1, 1989.**

193. Section 2L1.2 is amended by inserting the following additional subsection:

"(b) Specific Offense Characteristic

(1) If the defendant previously was deported after sustaining a conviction for a felony, other than a felony involving violation of the immigration laws, increase by 4 levels."

The Commentary to §2L1.2 captioned "Application Notes" is amended by inserting the following additional notes:

"3. A 4-level increase is provided under subsection (b)(1) in the case of a defendant who was previously deported after sustaining a conviction for a felony, other than a felony involving a violation of the immigration laws. In the case of a defendant previously deported after sustaining a conviction for an aggravated felony as defined in 8 U.S.C. § 1101(a), or for any other violent felony, an upward departure may be warranted.

4. The adjustment under §2L1.2(b)(1) is in addition to any criminal history points added for such conviction in Chapter 4, Part A (Criminal History)."

The purpose of this amendment is to add a specific offense characteristic to provide an increase in the case of an alien previously deported after conviction of a felony other than an immigration law violation. This specific offense characteristic is in addition to, and not in lieu of, criminal history points added for

the prior sentence. The amendment provides for consideration of an upward departure where the previous deportation was for an "aggravated felony" or for any other violent felony. **The effective date of this amendment is November 1, 1989.**

194. Chapter Two, Part L, Subpart 1 is amended by deleting §2L1.3 in its entirety as follows:

"§2L1.3. Engaging in a Pattern of Unlawful Employment of Aliens

(a) Base Offense Level: 6

Commentary

Statutory Provision: 8 U.S.C. § 1324a(f)(1).

Background: The offense covered under this section is a misdemeanor for which the maximum term of imprisonment authorized by statute is six months."

The purpose of this amendment is to delete a guideline applying only to a petty offense. Petty offenses were deleted from coverage of the guidelines by the adoption of §1B1.9 (effective June 15, 1988). **The effective date of this amendment is November 1, 1989.**

195. Section 2L2.1(a) is amended by deleting "6" and inserting in lieu thereof "9".

Section 2L2.1(b)(1) is amended by deleting "for profit, increase by 3 levels" and inserting in lieu thereof "other than for profit, decrease by 3 levels".

The purpose of this amendment is to conform the structure of this guideline to that of §2L1.1. **The effective date of this amendment is November 1, 1989.**

196. Section 2L2.2 is amended by inserting the following additional subsection:

"(b) Specific Offense Characteristic

(1) If the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, increase by 2 levels."

The Commentary to §2L2.2 captioned "Application Notes" is amended by deleting:

"1. In the case of a defendant who is an unlawful alien and has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, the Commission recommends an upward departure of 2 levels in order to provide a result equivalent to §2L1.2.",

by renumbering Note 2 as Note 1, and by deleting "Notes" and inserting in lieu thereof "Note".

The purpose of this amendment is to convert a departure recommendation into a specific offense characteristic. **The effective date of this amendment is November 1, 1989.**

197. Section 2L2.3(a) is amended by deleting "6" and inserting in lieu thereof "9".

Section 2L2.3(b)(1) is amended by deleting "for profit, increase by 3 levels" and inserting in lieu thereof "other than for profit, decrease by 3 levels".

The purpose of this amendment is to conform the structure of this guideline to that of §2L1.1. **The**

effective date of this amendment is November 1, 1989.

198. Section 2L2.4 is amended by inserting the following additional subsection:

"(b) Specific Offense Characteristic

- (1) If the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, increase by 2 levels."

The Commentary to §2L2.4 captioned "Application Notes" is amended by deleting:

- "1. In the case of a defendant who is an unlawful alien and has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, the Commission recommends an upward departure of 2 levels in order to provide a result equivalent to §2L1.2.",

by renumbering Note 2 as Note 1, and by deleting "Notes" and inserting in lieu thereof "Note".

The purpose of this amendment is to convert a departure recommendation into a specific offense characteristic. **The effective date of this amendment is November 1, 1989.**

199. Section 2N3.1 is amended by deleting:

- "(b) If more than one vehicle was involved, apply §2F1.1 (Offenses Involving Fraud or Deceit).",

and inserting in lieu thereof:

"(b) Cross Reference

- (1) If the offense involved more than one vehicle, apply §2F1.1 (Fraud and Deceit)."

The purposes of this amendment are to correct a clerical error and to conform the phraseology of this subsection to that used elsewhere in the guidelines. **The effective date of this amendment is November 1, 1989.**

200. Section 2P1.1(a) is amended by deleting:

- "(1) 13, if from lawful custody resulting from a conviction or as a result of a lawful arrest for a felony;
- (2) 8, if from lawful custody awaiting extradition, pursuant to designation as a recalcitrant witness or as a result of a lawful arrest for a misdemeanor.",

and inserting in lieu thereof:

- "(1) 13, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense;
- (2) 8, otherwise."

The purpose of this amendment is to clarify the language of the guideline by making it conform more closely to that used in 18 U.S.C. § 751, the statute from which it was derived. **The effective date of this amendment is November 1, 1989.**

201. Section 2P1.1(b)(3) is amended by deleting:

"If the defendant committed the offense while a correctional officer or other employee of the Department of Justice, increase by 2 levels.",

and inserting in lieu thereof:

"If the defendant was a law enforcement or correctional officer or employee, or an employee of the Department of Justice, at the time of the offense, increase by 2 levels."

The current specific offense characteristic (b)(3) applies only to correctional officers or Justice Department employees, and not to local or state law enforcement officers who might have custody of a federal prisoner, or even to federal law enforcement officers who are not employed by the Department of Justice (e.g., Secret Service agents are employed by the Treasury Department). It also does not appear to apply to law enforcement or correctional employees who are not sworn officers unless they are Justice Department employees. The purpose of this amendment is to correct this anomaly. **The effective date of this amendment is November 1, 1989.**

202. Section 2P1.2(b)(1) is amended by deleting:

"If the defendant committed the offense while a correctional officer or other employee of the Department of Justice, increase by 2 levels.",

and inserting in lieu thereof:

"If the defendant was a law enforcement or correctional officer or employee, or an employee of the Department of Justice, at the time of the offense, increase by 2 levels."

The current specific offense characteristic (b)(1) applies only to correctional officers or Justice Department employees, and not to local or state law enforcement officers who might have custody of a federal prisoner, or even to federal law enforcement officers who are not employed by the Department of Justice (e.g., Secret Service agents are employed by the Treasury Department). It also does not appear to apply to law enforcement or correctional employees who are not sworn officers unless they are Justice Department employees. The purpose of this amendment is to correct this anomaly. **The effective date of this amendment is November 1, 1989.**

203. Section 2P1.2 is amended by inserting the following additional subsection:

"(c) Cross Reference

- (1) If the defendant is convicted under 18 U.S.C. § 1791(a)(1) and is punishable under 18 U.S.C. § 1791(b)(1), the offense level is 2 plus the offense level from §2D1.1, but in no event less than level 26."

The Commentary to §2P1.2 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following additional note:

- "2. Pursuant to 18 U.S.C. § 1791(c), as amended, a sentence imposed upon an inmate for a violation of 18 U.S.C. § 1791 shall be consecutive to the sentence being served at the time of the violation."

The purpose of this amendment is to implement the direction to the Commission in Section 6468 of the Anti-Drug Abuse Act of 1988. **The effective date of this amendment is November 1, 1989.**

204. Chapter Two, Part P is amended by deleting §2P1.4 in its entirety as follows:

"§2P1.4. Trespass on Bureau of Prisons Facilities

(a) Base Offense Level: 6

Commentary

Statutory Provision: 18 U.S.C. § 1793."

The purpose of this amendment is to delete a guideline applying only to a petty offense. Petty offenses were deleted from coverage of the guidelines by the adoption of §1B1.9 (effective June 15, 1988). **The effective date of this amendment is November 1, 1989.**

205. The Commentary to §2Q1.3 captioned "Statutory Provisions" is amended by deleting "§ 4912,".

The purpose of this amendment is to delete a reference to a petty offense. **The effective date of this amendment is November 1, 1989.**

206. Section 2Q1.4(b)(1) is amended by inserting "bodily" immediately preceding "injury".

The Commentary to §2Q1.4 captioned "Application Note" is amended by deleting:

"1. 'Serious injury' means serious bodily injury as defined in the Commentary to §1B1.1 (Applicable Instructions).",

and inserting in lieu thereof:

"1. 'Serious bodily injury' is defined in the Commentary to §1B1.1 (Application Instructions).".

The purpose of this amendment is to correct a clerical error. **The effective date of this amendment is November 1, 1989.**

207. Section 2Q1.5(b) is amended by deleting:

"(2) If the purpose of the offense was to influence government action or to extort money, increase by 8 levels.",

and by inserting the following additional subsection:

"(c) Cross Reference

(1) If the purpose of the offense was to influence government action or to extort money, apply §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage).".

Section 2Q1.5(b) is amended by deleting "Characteristics" and inserting in lieu thereof "Characteristic".

The purposes of this amendment are to convert a specific offense characteristic to a cross-reference and render the guidelines internally more consistent. **The effective date of this amendment is November 1, 1989.**

208. Chapter Two, Part Q, Subpart 1, is amended by inserting an additional guideline with accompanying commentary as §2Q1.6 (Hazardous or Injurious Devices on Federal Lands).

The purpose of this amendment is to reflect a new offense created by Section 6254(f) of the Anti-Drug Abuse Act of 1988. **The effective date of this amendment is November 1, 1989.**

209. Section 2Q2.1 is amended in the title by inserting at the end "; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants".

The Commentary to §2Q2.1 captioned "Statutory Provisions" is amended by inserting immediately before the period at the end ", 3373(d); 18 U.S.C. § 545".

The Commentary to §2Q2.1 captioned "Background" is amended by deleting "and the Fur Seal Act. These statutes provide special protection to particular species of fish, wildlife and plants." and inserting in lieu thereof "the Fur Seal Act, the Lacey Act, and to violations of 18 U.S.C. § 545 where the smuggling activity involved fish, wildlife, or plants."

Chapter Two, Part Q, Subpart 2 is amended by deleting §2Q2.2 in its entirety as follows:

"§2Q2.2. Lacey Act; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants

(a) Base Offense Level:

- (1) 6, if the defendant knowingly imported or exported fish, wildlife, or plants, or knowingly engaged in conduct involving the sale or purchase of fish, wildlife, or plants with a market value greater than \$350; or

(2) 4.

(b) Specific Offense Characteristics

- (1) If the offense involved a commercial purpose, increase by 2 levels.

- (2) If the offense involved fish, wildlife, or plants that were not quarantined as required by law, increase by 2 levels.

(3) Apply the greater:

- (A) If the market value of the fish, wildlife, or plants exceeded \$2,000, increase the offense level by the corresponding number of levels from the table in §2F1.1 (Fraud and Deceit); or

- (B) If the offense involved a quantity of fish, wildlife, or plants that was substantial in relation either to the overall population of the species or to a discrete subpopulation, increase by 4 levels.

Commentary

Statutory Provisions: 16 U.S.C. § 3773(d); 18 U.S.C. § 545.

Application Note:

1. This section applies to violations of 18 U.S.C. § 545 where the smuggling activity involved fish, wildlife, or plants. In other cases, see §§2T3.1 and 2T3.2.

Background: This section applies to violations of the Lacey Act Amendments of 1981, 16 U.S.C. § 3373(d), and to violations of 18 U.S.C. § 545 where the smuggling activity involved fish, wildlife, or plants. These are the principal enforcement statutes utilized to combat interstate and foreign commerce in unlawfully taken fish, wildlife, and plants. The adjustments for specific offense characteristics are identical to those in §2Q2.1."

The purpose of this amendment is to consolidate two guidelines that cover very similar offenses. **The effective date of this amendment is November 1, 1989.**

210. Section 2Q2.1(b)(3) is amended by deleting "Apply the greater:" and inserting in lieu thereof "(If more than one applies, use the greater):".

The purpose of this amendment is to conform the guideline to the style of other guidelines. **The effective date of this amendment is November 1, 1989.**

211. Section 2R1.1(b)(2) is amended in the first column of the table by deleting:

"Volume of Commerce

- (A) less than \$1,000,000
- (B) \$1,000,000 - \$4,000,000
- (C) \$4,000,001 - \$15,000,000
- (D) \$15,000,001 - \$50,000,000
- (E) over \$50,000,000",

and inserting in lieu thereof:

"Volume of Commerce (Apply the Greatest)

- (A) Less than \$1,000,000
- (B) \$1,000,000 - \$4,000,000
- (C) More than \$4,000,000
- (D) More than \$15,000,000
- (E) More than \$50,000,000".

The purpose of this amendment is to eliminate minor gaps in the loss table. **The effective date of this amendment is November 1, 1989.**

212. Section 2S1.1(b)(2) is amended in the first column of the table by deleting:

"Value

- (A) \$100,000 or less
- (B) \$100,001 - \$200,000
- (C) \$200,001 - \$350,000
- (D) \$350,001 - \$600,000
- (E) \$600,001 - \$1,000,000
- (F) \$1,000,001 - \$2,000,000
- (G) \$2,000,001 - \$3,500,000
- (H) \$3,500,001 - \$6,000,000
- (I) \$6,000,001 - \$10,000,000

(J)	\$10,000,001 - \$20,000,000
(K)	\$20,000,001 - \$35,000,000
(L)	\$35,000,001 - \$60,000,000
(M)	\$60,000,001 - \$100,000,000
(N)	more than \$100,000,000",

and inserting in lieu thereof:

"Value (Apply the Greatest)

(A)	\$100,000 or less
(B)	More than \$100,000
(C)	More than \$200,000
(D)	More than \$350,000
(E)	More than \$600,000
(F)	More than \$1,000,000
(G)	More than \$2,000,000
(H)	More than \$3,500,000
(I)	More than \$6,000,000
(J)	More than \$10,000,000
(K)	More than \$20,000,000
(L)	More than \$35,000,000
(M)	More than \$60,000,000
(N)	More than \$100,000,000".

The purpose of this amendment is to eliminate minor gaps in the value table. **The effective date of this amendment is November 1, 1989.**

213. The Commentary to §2S1.1 captioned "Background" is amended in the third paragraph by inserting the following additional sentences at the end: "Effective November 18, 1988, 18 U.S.C. § 1956(a)(1)(A) contains two subdivisions. The base offense level of 23 applies to § 1956(a)(1)(A)(i) and (ii)."

The purpose of this amendment is to reflect a statutory revision made by Section 6471 of the Anti-Drug Abuse Act of 1988. **The effective date of this amendment is November 1, 1989.**

214. The Commentary to §2S1.1 captioned "Background" is amended in the fourth paragraph by deleting "scope of the criminal enterprise as well as the degree of the defendant's involvement" and inserting in lieu thereof "magnitude of the criminal enterprise, and the extent to which the defendant aided the enterprise".

The purpose of this amendment is to clarify the commentary. **The effective date of this amendment is November 1, 1989.**

215. Section 2S1.2(b)(1)(A) is amended by inserting at the end "or".

The Commentary to §2S1.2 captioned "Background" is amended in the third paragraph by deleting "(b)(1)" and inserting in lieu thereof "(b)(1)(B)".

The purpose of this amendment is to correct clerical errors. **The effective date of this amendment is November 1, 1989.**

216. Section 2S1.3(a)(1)(C) is amended by deleting "the proceeds of criminal activity" and inserting in lieu thereof "criminally derived property", and in subsection (b)(1) by inserting "property" immediately following "criminally derived".

The Commentary to §2S1.3 captioned "Application Note" is amended by deleting:

- "1. As used in this guideline, funds or other property are the 'proceeds of criminal activity' or 'criminally derived' if they are 'criminally derived property,' within the meaning of 18 U.S.C. § 1957.",

and inserting in lieu thereof:

- "1. 'Criminally derived property' means any property constituting, or derived from, proceeds obtained from a criminal offense. See 18 U.S.C. § 1957(f)(2)."

The purpose of this amendment is to clarify the guideline. **The effective date of this amendment is November 1, 1989.**

217. The Commentary to §2S1.3 captioned "Statutory Provisions" is amended by inserting "26 U.S.C. § 7203 (if a willful violation of 26 U.S.C. § 6050I);" immediately before "31 U.S.C.".

The purpose of this amendment is to conform the guideline to a revision of the relevant statute. **The effective date of this amendment is November 1, 1989.**

218. Section 2S1.3(a)(1)(A) is amended by inserting "or" immediately following "requirements;"

Section 2S1.3(a)(1)(B) is amended by deleting "activity" and inserting in lieu thereof "evasion of reporting requirements".

The Commentary to §2S1.3 captioned "Application Note" is amended in the caption by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following additional note:

- "2. Subsection (a)(1)(C) applies where a reasonable person would have believed from the circumstances that the funds were criminally derived property. Subsection (b)(1) applies if the defendant knew or believed the funds were criminally derived property. Subsection (b)(1) applies in addition to, and not in lieu of, subsection (a)(1)(C). Where subsection (b)(1) applies, subsection (a)(1)(C) also will apply. It is possible that a defendant 'believed' or 'reasonably should have believed' that the funds were criminally derived property even if, in fact, the funds were not so derived (e.g., in a 'sting' operation where the defendant is told the funds were derived from the unlawful sale of controlled substances)."

The Commentary to §2S1.3 captioned "Background" is amended in the second paragraph by deleting:

"The base offense level is set at 13 for the great majority of cases. However, the base offense level is set at 5 for those cases in which these offenses may be committed with innocent motives and the defendant reasonably believed that the funds were from legitimate sources. The higher base offense level applies in all other cases. The offense level is increased by 5 levels if the defendant knew that the funds were criminally derived.",

and inserting in lieu thereof:

"A base offense level of 13 is provided for those offenses where the defendant either structured the transaction to evade reporting requirements, made false statements to conceal or disguise the activity, or reasonably should have believed that the funds were criminally derived property. A lower alternative base offense level of 5 is provided in all other cases. The Commission anticipates that such cases will involve simple recordkeeping or other more minor technical violations of the regulatory scheme governing certain monetary transactions committed by defendants who reasonably believe that the funds at issue emanated from legitimate sources.

Where the defendant actually knew or believed that the funds were criminally derived property, subsection (b)(1) provides for a 5 level increase in the offense level."

The Commentary to §2S1.3 captioned "Background" is amended in the last paragraph by deleting "The dollar value of the the transactions not reported is an important sentencing factor, except in rare cases. It is an" and inserting in lieu thereof "Except in rare cases, the dollar value of the transactions not reported is an important".

The Commentary to §2S1.3 captioned "Statutory Provisions" is amended by inserting "18 U.S.C. § 1005;" immediately following "Provisions".

The purposes of this amendment are to clarify the guideline and commentary, to provide more complete statutory references, and to conform the format of the guideline to that used in other guidelines. **The effective date of this amendment is November 1, 1989.**

219. Section 2T1.1(a) is amended by deleting the last sentence as follows: "When more than one year is involved, the tax losses are to be added."

The Commentary to §2T1.1 captioned "Application Notes" is amended in Note 2 by deleting:

"The court is to determine this amount as it would any other guideline factor.",

and inserting in lieu thereof:

"Although the definition of tax loss corresponds to what is commonly called the 'criminal deficiency,' its amount is to be determined by the same rules applicable in determining any other sentencing factor."

The Commentary to §2T1.1 captioned "Application Notes" is amended in Note 3 by deleting:

"Although the definition of tax loss corresponds to what is commonly called the 'criminal deficiency,' its amount is to be determined by the same rules applicable in determining any other sentencing factor. In accordance with the 'relevant conduct' approach adopted by the guidelines, tax losses resulting from more than one year are to be added whether or not the defendant is convicted of multiple counts."

and inserting in lieu thereof:

"In determining the total tax loss attributable to the offense (see §1B1.3(a)(2)), all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated. The following examples are illustrative of conduct that is part of the same course of conduct or common scheme or plan: (a) there is a continuing pattern of violations of the tax laws by the defendant; (b) the defendant uses a consistent method to evade or camouflage income, e.g., backdating documents or using off-shore accounts; (c) the violations involve the same or a related series of transactions; (d) the violation in each instance involves a false or inflated claim of a similar deduction or credit; and (e) the violation in each instance involves a failure to report or an understatement of a specific source of income, e.g., interest from savings accounts or income from a particular business activity. These examples are not intended to be exhaustive."

The purposes of this amendment are to clarify the determination of tax loss and to make this instruction consistent among §§2T1.1-2T1.3. **The effective date of this amendment is November 1, 1989.**

220. Section 2T1.1(a) is amended by deleting ", including interest to the date of filing an indictment or information" immediately following "attempted to evade".

The Commentary to §2T1.1 captioned "Application Notes" is amended in Note 2 in the first sentence by deleting ", plus interest to the date of the filing of an indictment or information" immediately following "attempted to evade", and in the second sentence by inserting "interest or" immediately before "penalties."

The purpose of this amendment is to simplify the application of the guideline by deleting interest from the calculation of tax loss. **The effective date of this amendment is November 1, 1989.**

221. Section 2T1.1(b)(1) is amended by deleting "(A)" immediately before "the defendant failed", by deleting ", or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income" immediately following "criminal activity", by inserting "or to correctly identify the source of" immediately after "report", and by deleting "per" and inserting in lieu thereof "in any".

The purposes of this amendment are to provide a more objective test for application of this enhancement, and to make clear that this enhancement applies if the defendant fails to report or disguises income exceeding \$10,000 from criminal activity in any year. **The effective date of this amendment is November 1, 1989.**

222. The Commentary to §2T1.1 captioned "Application Notes" is amended in Note 6 by deleting:

"Whether 'sophisticated means' were employed (§2T1.1(b)(2)) requires a subjective determination similar to that in §2F1.1(b)(2).",

and inserting in lieu thereof:

"'Sophisticated means,' as used in §2T1.1(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case."

The purpose of this amendment is to clarify the commentary. **The effective date of this amendment is November 1, 1989.**

223. The Commentary to §2T1.1 captioned "Background" is amended in the second paragraph by deleting "Tax Table" wherever it appears and inserting in lieu thereof in each instance "Sentencing Table".

The purpose of this amendment is to correct a clerical error. **The effective date of this amendment is November 1, 1989.**

224. Section 2T1.2(b)(1) is amended by deleting "(A)" immediately before "the defendant failed", by deleting ", or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income" immediately following "criminal activity", by inserting "or to correctly identify the source of" immediately after "report", and by deleting "per" and inserting in lieu thereof "in any".

The purposes of this amendment are to provide a more objective test for application of this enhancement, and to make clear that this enhancement applies if the defendant fails to report or disguises income exceeding \$10,000 from criminal activity in any year. **The effective date of this amendment is November 1, 1989.**

225. Section 2T1.2 is amended by inserting the following additional subsection:

"(c) Cross Reference

- (1) If the defendant is convicted of a willful violation of 26 U.S.C. § 6050I, apply §2S1.3 (Failure to Report Monetary Transactions) in lieu of this guideline."

The Commentary to §2T1.2 captioned "Statutory Provision" is amended by inserting immediately before the period at the end "(other than a willful violation of 26 U.S.C. § 6050I)".

The purpose of this amendment is to reflect a revision of 26 U.S.C. § 6050I made by Section 7601 of the Anti-Drug Abuse Act of 1988. **The effective date of this amendment is November 1, 1989.**

226. The Commentary to §2T1.2 captioned "Application Note" is amended in Note 2 by deleting:

"Whether 'sophisticated means' were employed (§2T1.2(b)(2)) requires a determination similar to that in §2F1.1(b)(2).",

and inserting in lieu thereof:

"'Sophisticated means,' as used in §2T1.2(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case."

The purpose of this amendment is to clarify the commentary. **The effective date of this amendment is November 1, 1989.**

227. The Commentary to §2T1.2 captioned "Application Note" is amended in the caption by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following additional note:

- "3. In determining the total tax loss attributable to the offense (see §1B1.3(a)(2)), all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated. See Application Note 3 of the Commentary to §2T1.1."

The purpose of this amendment is to clarify the determination of tax loss. **The effective date of this amendment is November 1, 1989.**

228. Section 2T1.3(b)(1) is amended by deleting "(A)" immediately before "the defendant failed", by deleting ", or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income" immediately following "criminal activity", by inserting "or to correctly identify the source of" immediately after "report", and by deleting "per" and inserting in lieu thereof "in any".

The purposes of this amendment are to provide a more objective test for application of this enhancement, and to make clear that this enhancement applies if the defendant fails to report or disguises income exceeding \$10,000 from criminal activity in any year. **The effective date of this amendment is November 1, 1989.**

229. The Commentary to §2T1.3 captioned "Application Notes" is amended in Note 2 by deleting:

"Whether 'sophisticated means' were employed (§2T1.3(b)(2)) requires a determination similar to that in §2F1.1(b)(2).",

and inserting in lieu thereof:

"‘Sophisticated means,’ as used in §2T1.3(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case."

The purpose of this amendment is to clarify the commentary. **The effective date of this amendment is November 1, 1989.**

230. The Commentary to §2T1.3 captioned "Application Notes" is amended by inserting the following additional note:

"3. In determining the total tax loss attributable to the offense (see §1B1.3(a)(2)), all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated. See Application Note 3 of the Commentary to §2T1.1."

The purpose of this amendment is to clarify the determination of tax loss. **The effective date of this amendment is November 1, 1989.**

231. The Commentary to §2T1.4 captioned "Application Notes" is amended in Note 2 by deleting:

"Whether ‘sophisticated means’ were employed (§2T1.1(b)(2)) requires a determination similar to that in §2F1.1(b)(2).",

and inserting in lieu thereof:

"‘Sophisticated means,’ as used in §2T1.4(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case."

The purpose of this amendment is to clarify the commentary. **The effective date of this amendment is November 1, 1989.**

232. Section 2T1.6(a) is amended by deleting ", plus interest" immediately following "paid over". The purpose of this amendment is to simplify the application of the guideline by deleting interest from the calculation of tax loss. **The effective date of this amendment is November 1, 1989.**

233. Section 2T1.9(b) is amended by deleting "either of the following adjustments" and inserting in lieu thereof "more than one".

The purpose of this amendment is to correct a clerical error. **The effective date of this amendment is November 1, 1989.**

234. The Commentary to section 2T1.9 captioned "Application Notes" is amended by deleting:

"2. The minimum base offense level is 10. If a tax loss from the conspiracy can be established under either §2T1.1 or §2T1.3 (whichever applies to the underlying conduct), and that tax loss corresponds to a higher offense level in the Tax Table (§2T4.1), use that higher base offense level.

3. The specific offense characteristics are in addition to those specified in §2T1.1 and §2T1.3.

4. Because the offense is a conspiracy, adjustments from Chapter Three, Part B (Role in the Offense) usually will apply."

and inserting in lieu thereof:

- "2. The base offense level is the offense level (base offense level plus any applicable specific offense characteristics) from §2T1.1 or §2T1.3 (whichever is applicable to the underlying conduct), if that offense level is greater than 10. Otherwise, the base offense level is 10.
3. Specific offense characteristics from §2T1.9(b) are to be applied to the base offense level determined under §2T1.9(a)(1) or (2)."

The purpose of this amendment is to clarify Application Notes 2 and 3. Application Note 4 (the content of which does not appear in any of the other guidelines covering conspiracy) is deleted as unnecessary. **The effective date of this amendment is November 1, 1989.**

235. The Commentary to §2T3.1 captioned "Application Notes" is amended in Note 2 by inserting "if the increase in market value due to importation is not readily ascertainable" immediately following "United States".

The purpose of this amendment is to clarify the commentary. **The effective date of this amendment is November 1, 1989.**

236. The Commentary to §2T3.2 is amended by inserting at the end:

"Application Note:

1. Particular attention should be given to those items for which entry is prohibited, limited, or restricted. Especially when such items are harmful or protective quotas are in effect, the duties evaded on such items may not adequately reflect the harm to society or protected industries resulting from their importation. In such instances, the court should impose a sentence above the guideline. A sentence based upon an alternative measure of the 'duty' evaded, such as the increase in market value due to importation, or 25 percent of the items' fair market value in the United States if the increase in market value due to importation is not readily ascertainable, might be considered."

The purpose of this amendment is to clarify the application of the guideline by adding the text from Application Note 2 of the Commentary to §2T3.1, which applies equally to this guideline section. **The effective date of this amendment is November 1, 1989.**

237. Section 2T4.1 is amended by deleting:

	<u>"Tax Loss</u>	<u>Offense Level</u>
(A)	less than \$2,000	6
(B)	\$2,000 - \$5,000	7
(C)	\$5,001 - \$10,000	8
(D)	\$10,001 - \$20,000	9
(E)	\$20,001 - \$40,000	10
(F)	\$40,001 - \$80,000	11
(G)	\$80,001 - \$150,000	12
(H)	\$150,001 - \$300,000	13
(I)	\$300,001 - \$500,000	14
(J)	\$500,001 - \$1,000,000	15
(K)	\$1,000,001 - \$2,000,000	16
(L)	\$2,000,001 - \$5,000,000	17
(M)	more than \$5,000,000	18",

and inserting in lieu thereof:

	<u>"Tax Loss (Apply the Greatest)</u>	<u>Offense Level</u>
(A)	\$2,000 or less	6
(B)	More than \$2,000	7
(C)	More than \$5,000	8
(D)	More than \$10,000	9
(E)	More than \$20,000	10
(F)	More than \$40,000	11
(G)	More than \$70,000	12
(H)	More than \$120,000	13
(I)	More than \$200,000	14
(J)	More than \$350,000	15
(K)	More than \$500,000	16
(L)	More than \$800,000	17
(M)	More than \$1,500,000	18
(N)	More than \$2,500,000	19
(O)	More than \$5,000,000	20
(P)	More than \$10,000,000	21
(Q)	More than \$20,000,000	22
(R)	More than \$40,000,000	23
(S)	More than \$80,000,000	24."

The purposes of this amendment are to increase the offense levels for offenses with larger losses in order to provide additional deterrence and better reflect the seriousness of the conduct, and to eliminate minor gaps in the table. **The effective date of this amendment is November 1, 1989.**

238. Section 2X1.1(b)(1) is amended by deleting "or solicitation" immediately following "If an attempt".

Section 2X1.1(b) is amended by deleting:

"(3) If a solicitation, and the statute treats solicitation identically with the object of the offense, do not apply §2X1.1(b)(1); i.e., the offense level for solicitation is the same as that for the object offense.",

and inserting in lieu thereof:

"(3)(A) If a solicitation, decrease by 3 levels unless the person solicited to commit or aid the offense completed all the acts he believed necessary for successful completion of the object offense or the circumstances demonstrate that the person was about to complete all such acts but for apprehension or interruption by some similar event beyond such person's control.

(B) If the statute treats solicitation of the offense identically with the object offense, do not apply subdivision (A) above; i.e., the offense level for solicitation is the same as that for the object offense."

The current subsection (b)(1) does not clearly address how a solicitation is to be treated where the person solicited to commit the offense completes all the acts necessary for the successful completion of the offense. The purpose of this amendment is to clarify the treatment of such cases in a manner consistent with the treatment of attempts and conspiracies. **The effective date of this amendment is November 1, 1989.**

239. Section 2X1.1 is amended in the title by deleting "Not Covered by a Specific Guideline" and inserting in lieu thereof "(Not Covered by a Specific Offense Guideline)".

Section 2X1.1 is amended by inserting the following additional subsection:

- "(c) Cross Reference
- (1) When an attempt, solicitation, or conspiracy is expressly covered by another offense guideline section, apply that guideline section."

The Commentary to §2X1.1 captioned "Application Notes" is amended by deleting:

- "1. Certain attempts, conspiracies, and solicitations are covered by specific guidelines (e.g., §2A2.1 includes attempt, conspiracy, or solicitation to commit murder; §2A3.1 includes attempted criminal sexual abuse; and §2D1.4 includes attempts and conspiracies to commit controlled substance offenses). Section 2X1.1 applies only in the absence of a more specific guideline."

and inserting in lieu thereof:

- "1. Certain attempts, conspiracies, and solicitations are expressly covered by other offense guidelines.

Offense guidelines that expressly cover attempts include: §2A2.1 (Assault With Intent to Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder); §2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse); §2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts); §2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts); §2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact); §2A4.2 (Demanding or Receiving Ransom Money); §2A5.1 (Aircraft Piracy or Attempted Aircraft Piracy); §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right); §2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity); §2D1.4 (Attempts and Conspiracies); §2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan); §2N1.1 (Tampering or Attempting to Tamper Involving Risk of Death or Serious Injury); §2Q1.4 (Tampering or Attempted Tampering with Public Water System).

Offense guidelines that expressly cover conspiracies include: §2A2.1 (Assault With Intent to Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder); §2D1.4 (Attempts and Conspiracies); §2H1.2 (Conspiracy to Interfere with Civil Rights); §2T1.9 (Conspiracy to Impair, Impede or Defeat Tax).

Offense guidelines that expressly cover solicitations include: §2A2.1 (Assault with Intent to Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder); §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right); §2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity); §2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan)."

The purpose of this amendment is to clarify the guideline. **The effective date of this amendment is November 1, 1989.**

240. The Commentary to §2X1.1 captioned "Application Notes" is amended by deleting:

- "4. If the defendant was convicted of conspiracy or solicitation and also for the completed offense, the conviction for the conspiracy or solicitation shall be imposed to run concurrently with the sentence for the object offense, except in cases where it is otherwise specifically provided for by the guidelines or by law. 28 U.S.C. § 994(1)(2)."

The purpose of this amendment is to delete an application note that does not apply to any determination

under this section. The circumstances which this application note addresses are covered under Chapter Three, Part D and Chapter Five, Part G. **The effective date of this amendment is November 1, 1989.**

241. The Commentary to §2X1.1 captioned "Application Notes" is amended by inserting the following additional note:

"4. In certain cases, the participants may have completed (or have been about to complete but for apprehension or interruption) all of the acts necessary for the successful completion of part, but not all, of the intended offense. In such cases, the offense level for the count (or group of closely-related multiple counts) is whichever of the following is greater: the offense level for the intended offense minus 3 levels (under §2X1.1(b)(1), (b)(2), or (b)(3)(A)), or the offense level for the part of the offense for which the necessary acts were completed (or about to be completed but for apprehension or interruption). For example, where the intended offense was the theft of \$800,000 but the participants completed (or were about to complete) only the acts necessary to steal \$30,000, the offense level is the offense level for the theft of \$800,000 minus 3 levels, or the offense level for the theft of \$30,000, whichever is greater.

In the case of multiple counts that are not closely-related counts, whether the 3-level reduction under §2X1.1(b)(1) or (2) applies is determined separately for each count."

The purpose of this amendment is to clarify how the guidelines are to be applied to partially completed offenses. **The effective date of this amendment is November 1, 1989.**

242. The Commentary to §2X1.1 captioned "Application Notes" is amended in the last sentence of Note 2 by deleting "intended" and inserting in lieu thereof "attempted".

The purpose of this amendment is to clarify the commentary. **The effective date of this amendment is November 1, 1989.**

243. The Commentary to §2X3.1 captioned "Application Notes" is amended in Note 1 by deleting:

"'Underlying offense' means the offense as to which the defendant was an accessory.",

and inserting in lieu thereof:

"'Underlying offense' means the offense as to which the defendant is convicted of being an accessory. Apply the base offense level plus any applicable specific offense characteristics that were known, or reasonably should have been known, by the defendant; see Application Note 1 of the Commentary to §1B1.3 (Relevant Conduct)."

The purpose of this amendment is to clarify the commentary. **The effective date of this amendment is November 1, 1989.**

244. The Commentary to §2X4.1 captioned "Application Notes" is amended in Note 1 by deleting:

"'Underlying offense' means the offense as to which the misprision was committed.",

and inserting in lieu thereof:

"'Underlying offense' means the offense as to which the defendant is convicted of committing the misprision. Apply the base offense level plus any applicable specific offense characteristics

that were known, or reasonably should have been known, by the defendant; see Application Note 1 of the Commentary to §1B1.3 (Relevant Conduct)."

The purpose of this amendment is to clarify the commentary. **The effective date of this amendment is November 1, 1989.**

245. Section 3A1.1 is amended by deleting "the victim" wherever it appears and inserting in lieu thereof in each instance "a victim", and by inserting "otherwise" immediately before "particularly".

The Commentary to §3A1.1 captioned Application Notes is amended in Note 1 by deleting:

"any offense where the victim's vulnerability played any part in the defendant's decision to commit the offense",

and inserting in lieu thereof:

"offenses where an unusually vulnerable victim is made a target of criminal activity by the defendant",

and by deleting:

"sold fraudulent securities to the general public and one of the purchasers",

and inserting in lieu thereof:

"sold fraudulent securities by mail to the general public and one of the victims".

The purpose of the amendment is to clarify the guideline and commentary. **The effective date of this amendment is November 1, 1989.**

246. Section 3A1.2 is amended by deleting:

"any law-enforcement or corrections officer, any other official as defined in 18 U.S.C. § 1114, or a member of the immediate family thereof, and",

and inserting in lieu thereof:

"a law enforcement or corrections officer; a former law enforcement or corrections officer; an officer or employee included in 18 U.S.C. § 1114; a former officer or employee included in 18 U.S.C. § 1114; or a member of the immediate family of any of the above, and".

The purpose of this amendment is to expand the coverage of this provision to reflect a statutory revision effected by Section 6487 of the Anti-Drug Abuse Act of 1988. **The effective date of this amendment is November 1, 1989.**

247. Section 3A1.2 is amended by deleting "If the victim" and inserting in lieu thereof:

"If--

(a) the victim",

and by deleting "crime was motivated by such status, increase by 3 levels." and inserting in lieu thereof:

"offense of conviction was motivated by such status; or

(b) during the course of the offense or immediate flight therefrom, the defendant or a person for

whose conduct the defendant is otherwise accountable, knowing or having reasonable cause to believe that a person was a law enforcement or corrections officer, assaulted such officer in a manner creating a substantial risk of serious bodily injury,

increase by 3 levels."

The Commentary to §3A1.2 captioned "Application Notes" is amended by inserting the following additional notes:

- "4. 'Motivated by such status' in subdivision (a) means that the offense of conviction was motivated by the fact that the victim was a law enforcement or corrections officer or other person covered under 18 U.S.C. § 1114, or a member of the immediate family thereof. This adjustment would not apply, for example, where both the defendant and victim were employed by the same government agency and the offense was motivated by a personal dispute.
5. Subdivision (b) applies in circumstances tantamount to aggravated assault against a law enforcement or corrections officer, committed in the course of, or in immediate flight following, another offense, such as bank robbery. While this subdivision may apply in connection with a variety of offenses that are not by nature targeted against official victims, its applicability is limited to assaultive conduct against law enforcement or corrections officers that is sufficiently serious to create at least a 'substantial risk of serious bodily injury' and that is proximate in time to the commission of the offense.
6. The phrase 'substantial risk of serious bodily injury' in subdivision (b) is a threshold level of harm that includes any more serious injury that was risked, as well as actual serious bodily injury (or more serious harm) if it occurs."

The purpose of the amendment is to set forth more clearly the categories of cases to which this adjustment is intended to apply. **The effective date of this amendment is November 1, 1989.**

248. The Commentary to §3A1.2 captioned "Application Notes" is amended in Note 3 by inserting the following additional sentences at the end:

"In most cases, the offenses to which subdivision (a) will apply will be from Chapter Two, Part A (Offenses Against the Person). The only offense guideline in Chapter Two, Part A that specifically incorporates this factor is §2A2.4 (Obstructing or Impeding Officers)."

The purpose of this amendment is to clarify the application of the guideline. **The effective date of this amendment is November 1, 1989.**

249. Section 3A1.3 is amended by deleting "the victim of a crime" and inserting in lieu thereof "a victim".

The Commentary to §3A1.3 captioned "Application Notes" is amended in Note 2 by deleting "the victim" and inserting in lieu thereof "a victim".

The purpose of this amendment is to clarify the guideline. **The effective date of this amendment is November 1, 1989.**

250. The Commentary to §3A1.3 captioned "Application Notes" is amended by inserting the following additional note:

"3. If the restraint was sufficiently egregious, an upward departure may be warranted. See §5K2.4 (Abduction or Unlawful Restraint)."