UNITED STATES SENTENCING COMMISSION

GUIDELINES MANUAL 2026

Supplement to Appendix C

CARLTON W. REEVES
Chair

LAURA E. MATE
Vice Chair

CLAIRE MURRAY
Vice Chair

LUIS FELIPE RESTREPO
Vice Chair

CANDICE C. WONG
Commissioner

SCOTT A.C. MEISLER
Commissioner, *Ex-officio*

This document contains amendments to the Guidelines Manual effective November 1, 2026.

SUPPLEMENT TO APPENDIX C

AMENDMENTS TO THE GUIDELINES MANUAL

This supplement to Appendix C presents amendments to the guidelines, policy statements, and official commentary effective November 1, 2026 (amendments 837–843).

For amendments to the guidelines, policy statements, and official commentary effective November 1, 2012; November 1, 2013; November 1, 2014; November 1, 2015; August 1, 2016; November 1, 2016; November 1, 2018; November 1, 2023; November 1, 2024; and November 1, 2025, *see* Appendix C, Volume IV (amendments 761–836). For amendments effective November 1, 2004; October 24, 2005; November 1, 2005; March 27, 2006; September 12, 2006; November 1, 2006; May 1, 2007; November 1, 2007; February 6, 2008; March 3, 2008; May 1, 2008; November 1, 2008; November 1, 2009; November 1, 2010; and November 1, 2011, *see* Appendix C, Volume III (amendments 663–760). For amendments effective November 1, 1998; May 1, 2000; November 1, 2000; December 16, 2000; May 1, 2001; November 1, 2001; November 1, 2002; January 25, 2003; April 30, 2003; October 27, 2003; November 1, 2003; and November 5, 2003, *see* Appendix C, Volume II (amendments 576–662). For amendments effective November 1, 1997, and earlier, *see* Appendix C, Volume I (amendments 1–575).

The format under which the amendments are presented in Appendix C, including this supplement, is designed to facilitate a comparison between previously existing and amended provisions, in the event it becomes necessary to reference the former guideline, policy statement, or commentary language.

AMENDMENTS

AMENDMENT 837

AMENDMENT: Section 2A5.1 is amended by striking subsection (b) as follows:

"(b) Specific Offense Characteristic

(1) If death resulted, increase by 5 levels.".

Section 2B1.5(b) is amended by striking paragraph (6) as follows:

"(6) If a dangerous weapon was brandished or its use was threatened, increase by 2 levels. If the resulting offense level is less than level 14, increase to level 14.".

The Commentary to §2B1.5 captioned "Application Notes" is amended—

by striking Note 7 as follows:

"7. *Dangerous Weapons Enhancement Under Subsection (b)(6).*—For purposes of subsection (b)(6), 'brandished' and 'dangerous weapon' have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).";

and by redesignating Note 8 as Note 7.

Amendment 837

Section 2B2.3(b) is amended by striking paragraph (3) as follows:

"(3) If (A) the offense involved invasion of a protected computer; and (B) the loss resulting from the invasion (i) exceeded $2,500 but did not exceed $6,500, increase by 1 level; or (ii) exceeded $6,500, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.".

The Commentary to §2B2.3 captioned "Application Notes" is amended—

in the caption by striking "Notes" and inserting "Note";

in Note 1 by striking the following:

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

and by striking Note 2 as follows:

"2. *Application of Subsection (b)(3).*—Valuation of loss is discussed in §2B1.1 (Theft, Property Destruction, and Fraud) and the Commentary to §2B1.1.".

Section 2B6.1(b) is amended by striking paragraph (3) as follows:

"(3) If the offense involved an organized scheme to steal vehicles or vehicle parts, or to receive stolen vehicles or vehicle parts, and the offense level as determined above is less than level 14, increase to level 14.".

The Commentary to §2B6.1 captioned "Application Notes" is amended—

in the caption by striking "Notes" and inserting "Note";

by striking Note 1 as follows:

"1. Subsection (b)(3), referring to an 'organized scheme to steal vehicles or vehicle parts, or to receive stolen vehicles or vehicle parts,' provides an alternative minimum measure of loss in the case of an ongoing, sophisticated operation such as an auto theft ring or 'chop shop.' 'Vehicles' refers to all forms of vehicles, including aircraft and watercraft. *See* Commentary to §2B1.1 (Theft, Property Destruction, and Fraud).";

and by redesignating Note 2 as Note 1.

Section 2D1.1(b) is amended—

by striking paragraph (10) as follows:

"(10) If the defendant was convicted under 21 U.S.C. § 841(g)(1)(A), increase by 2 levels.";

by redesignating paragraphs (11) through (18) as paragraphs (10) through (17), respectively;

and in paragraph (12) (as so redesignated) by striking "subsection (b)(13)(B)" and inserting "subsection (b)(12)(B)".

Section 2D1.1(e)(2)(C) is amended by striking "subsection (b)(17)" and inserting "subsection (b)(16)".

The Commentary to §2D1.1 captioned "Application Notes" is amended—

in Note 16 by striking "Subsection (b)(11)" both places it appears and inserting "Subsection (b)(10)"; and by striking "§2D1.1(b)(16)(D)" and inserting "§2D1.1(b)(15)(D)";

in Note 17 by striking "Subsection (b)(12)" both places it appears and inserting "Subsection (b)(11)";

in Note 18, in the heading, by striking "Subsection (b)(14)" and inserting "Subsection (b)(13)";

in Note 18(A) by striking "Subsection (b)(14)(A)" both places it appears and inserting "Subsection (b)(13)(A)";

in Note 18(B) by striking "(Subsection (b)(14)(C)–(D))" and inserting "(Subsection (b)(13)(C)–(D))"; by striking "subsection (b)(14)(C)(ii) or (D)" and inserting "subsection (b)(13)(C)(ii) or (D)"; and by striking "subsection (b)(14)(D)" and inserting "subsection (b)(13)(D)";

in Note 19 by striking "Subsection (b)(15)" both places it appears and inserting "Subsection (b)(14)"; and by striking "subsection (b)(14)(A) and (b)(15)" and inserting "subsections (b)(13)(A) and (b)(14)";

in Note 20, in the heading, by striking "Subsection (b)(16)" and inserting "Subsection (b)(15)";

in Note 20(A) by striking "(Subsection (b)(16)(B))" and inserting "(Subsection (b)(15)(B))"; and by striking "subsection (b)(16)(B)" and inserting "subsection (b)(15)(B)";

in Note 20(B) by striking "(Subsection (b)(16)(C))" and inserting "(Subsection (b)(15)(C))"; by striking "Subsection (b)(16)(C)" and inserting "Subsection (b)(15)(C)"; and by striking "subsection (b)(16)(C)" and inserting "subsection (b)(15)(C)";

in Note 20(C) by striking "(Subsection (b)(16)(E))" and inserting "(Subsection (b)(15)(E))"; and by striking "subsection (b)(16)(E)" and inserting "subsection (b)(15)(E)";

and in Note 21 by striking "Subsection (b)(18)" and inserting "Subsection (b)(17)"; and by striking "subsection (b)(18)" both places it appears and inserting "subsection (b)(17)".

The Commentary to §2D1.1 captioned "Background" is amended by striking "Subsection (b)(11)" and inserting "Subsection (b)(10)"; by striking "Subsection (b)(12)" and inserting "Subsection (b)(11)"; by striking "Subsection (b)(14)(A)" and inserting "Subsection (b)(13)(A)"; by striking "Subsection (b)(14)(C)(ii) and (D)" and inserting "Subsection (b)(13)(C)(ii) and (D)"; by striking "Subsection (b)(16)" and inserting "Subsection (b)(15)"; and by striking "Subsection (b)(17)" and inserting "Subsection (b)(16)".

Section 2D1.11(b) is amended—

by striking paragraph (2) as follows:

"(2) If the defendant is convicted of violating 21 U.S.C. § 841(c)(2) or (f)(1), or § 960(d)(2), (d)(3), or (d)(4), decrease by 3 levels, unless the defendant knew or believed that the listed chemical was to be used to manufacture a controlled substance unlawfully.";

by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

by striking paragraph (5) as follows:

"(5) If the defendant is convicted under 21 U.S.C. § 865, increase by 2 levels.";

and by redesignating paragraph (6) as paragraph (4).

The Commentary to §2D1.11 captioned "Application Notes" is amended—

by striking Note 3 as follows:

"3. *Application of Subsection (b)(2).*—Convictions under 21 U.S.C. §§ 841(c)(2) and (f)(1), and 960(d)(2), (d)(3), and (d)(4) do not require that the defendant have knowledge or an actual belief that the listed chemical was to be used to manufacture a controlled substance unlawfully. In a case in which the defendant possessed or distributed the listed chemical without such knowledge or belief, a 3-level reduction is provided to reflect that the defendant is less culpable than one who possessed or distributed listed chemicals knowing or believing that they would be used to manufacture a controlled substance unlawfully.";

by redesignating Notes 4 through 9 as Notes 3 through 8, respectively;

in Note 3 (as so redesignated) by striking "Subsection (b)(3)" both places it appears and inserting "Subsection (b)(2)";

in Note 4 (as so redesignated) by striking "Subsection (b)(4)" and inserting "Subsection (b)(3)"; and by striking "subsection (b)(4)" each place it appears and inserting "subsection (b)(3)";

and in Note 6 (as so redesignated) by striking "Subsection (b)(6)" and inserting "Subsection (b)(4)"; and by striking "subsection (b)(6)" both places it appears and inserting "subsection (b)(4)".

Section 2D1.12(b) is amended by striking paragraph (4) as follows:

"(4) If the offense involved stealing anhydrous ammonia or transporting stolen anhydrous ammonia, increase by 6 levels.".

Section 2D1.14 is amended—

in subsection (a)(1) by striking "§2D1.1(a)(5)(A), (a)(5)(B), and (b)(18)" and inserting "§2D1.1(a)(5)(A), (a)(5)(B), and (b)(17)";

and by striking subsection (b) as follows:

"(b) Specific Offense Characteristic

(1) If §3A1.4 (Terrorism) does not apply, increase by 6 levels.".

Section 2G3.2 is amended by striking subsection (b) as follows:

"(b) Specific Offense Characteristics

(1) If a person who received the telephonic communication was less than eighteen years of age, or if a broadcast was made between six o'clock in the morning and eleven o'clock at night, increase by 4 levels.

(2) If 6 plus the offense level from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the volume of commerce attributable to the defendant is greater than the offense level determined above, increase to that offense level.".

The Commentary to §2G3.2 is amended by striking the Commentary captioned "Background" in its entirety as follows:

"*Background*: Subsection (b)(1) provides an enhancement where an obscene telephonic communication was received by a minor less than 18 years of age or where a broadcast was made during a time when such minors were likely to receive it. Subsection (b)(2) provides an enhancement for large-scale 'dial-a-porn' or obscene broadcasting operations that results in an offense level comparable to the offense level for such operations under §2G3.1 (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor). The extent to which the obscene material was distributed is approximated by the volume of commerce attributable to the defendant.".

Section 2H3.1(b) is amended—

in the heading by striking "Characteristics" and inserting "Characteristic";

and by striking paragraph (2) as follows:

"(2) (Apply the greater) If—

(A) the defendant is convicted under 18 U.S.C. § 119, increase by 8 levels; or

(B) the defendant is convicted under 18 U.S.C. § 119, and the offense involved the use of a computer or an interactive computer service to make restricted personal information about a covered person publicly available, increase by 10 levels.".

The Commentary to §2H3.1 captioned "Application Notes" is amended by striking Notes 3 and 4 as follows:

"3. *Inapplicability of Chapter Three (Adjustments)*.—If the enhancement under subsection (b)(2) applies, do not apply §3A1.2 (Official Victim).

4. *Definitions*.—For purposes of this guideline:

'Computer' has the meaning given that term in 18 U.S.C. § 1030(e)(1).

'Covered person' has the meaning given that term in 18 U.S.C. § 119(b).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

'Means of identification' has the meaning given that term in 18 U.S.C. § 1028(d)(7), except that such means of identification shall be of an actual (*i.e.*, not fictitious) individual, other than the defendant or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct).

'Personal information' means sensitive or private information involving an identifiable individual (including such information in the possession of a third party), including

(A) medical records; (B) wills; (C) diaries; (D) private correspondence, including e-mail; (E) financial records; (F) photographs of a sensitive or private nature; or (G) similar information.

'Restricted personal information' has the meaning given that term in 18 U.S.C. § 119(b).".

Section 2J1.3(b) is amended—

in the heading by striking "Characteristics" and inserting "Characteristic";

by striking paragraph (1) as follows:

"(1) If the offense involved causing or threatening to cause physical injury to a person, or property damage, in order to suborn perjury, increase by 8 levels.";

and by redesignating paragraph (2) as paragraph (1).

Section 2J1.6(b) is amended—

in the heading by striking "Characteristics" and inserting "Characteristic";

by striking paragraph (1) as follows:

"(1) If the base offense level is determined under subsection (a)(1), and the defendant—

(A) voluntarily surrendered within 96 hours of the time he was originally scheduled to report, decrease by 5 levels; or

(B) was ordered to report to a community corrections center, community treatment center, 'halfway house,' or similar facility, and subdivision (A) above does not apply, decrease by 2 levels.

Provided, however, that this reduction shall not apply if the defendant, while away from the facility, committed any federal, state, or local offense punishable by a term of imprisonment of one year or more.";

and by redesignating paragraph (2) as paragraph (1).

Section 2J1.9 is amended by striking subsection (b) as follows:

"(b) Specific Offense Characteristic

(1) If the payment was made or offered for refusing to testify or for the witness absenting himself to avoid testifying, increase by 4 levels.".

Section 2K1.5(b) is amended by striking the following:

"If more than one applies, use the greatest:

(1) If the offense was committed willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life, increase by 15 levels.

(2) If the defendant was prohibited by another federal law from possessing the weapon or material, increase by 2 levels.

(3) If the defendant's possession of the weapon or material would have been lawful but for 49 U.S.C. § 46505 and he acted with mere negligence, decrease by 3 levels.";

and inserting the following:

"(1) (Apply the greater) If—

(A) the offense was committed willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life, increase by 15 levels; or

(B) the defendant was prohibited by another federal law from possessing the weapon or material, increase by 2 levels.".

The Commentary to §2K1.5 captioned "Background" is amended by striking "A decrease is provided in a case of mere negligence where the defendant was otherwise authorized to possess the weapon or material.".

Section 2K2.6 is amended by striking subsection (b) as follows:

"(b) Specific Offense Characteristic

(1) If the defendant used the body armor in connection with another felony offense, increase by 4 levels.".

The Commentary to §2K2.6 is amended by striking the Commentary captioned "Application Notes" in its entirety as follows:

"*Application Notes*:

1. *Application of Subsection (b)(1).*—

(A) *Meaning of 'Defendant'.*—Consistent with §1B1.3 (Relevant Conduct), the term 'defendant', for purposes of subsection (b)(1), limits the accountability of the defendant to the defendant's own conduct and conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.

(B) *Meaning of 'Felony Offense'.*—For purposes of subsection (b)(1), 'felony offense' means any offense (federal, state, or local) punishable by imprisonment for a term exceeding one year, regardless of whether a criminal charge was brought, or a conviction obtained.

(C) *Meaning of 'Used'.*—For purposes of subsection (b)(1), 'used' means the body armor was (i) actively employed in a manner to protect the person from gunfire; or (ii) used as a means of bartering. Subsection (b)(1) does not apply if the body armor was merely possessed. For example, subsection (b)(1) would not apply if the body armor was found in the trunk of a car but was not being actively used as protection.

2. *Inapplicability of §3B1.5*.—If subsection (b)(1) applies, do not apply the adjustment in §3B1.5 (Use of Body Armor in Drug Trafficking Crimes and Crimes of Violence).

3. *Grouping of Multiple Counts*.—If subsection (b)(1) applies (because the defendant used the body armor in connection with another felony offense) and the instant offense of conviction includes a count of conviction for that other felony offense, the counts of conviction for the 18 U.S.C. § 931 offense and that other felony offense shall be grouped pursuant to subsection (c) of §3D1.2 (Groups of Closely Related Counts).".

Section 2M4.1 is amended by striking subsection (b) as follows:

"(b) Specific Offense Characteristic

(1) If the offense occurred at a time when persons were being inducted for compulsory military service, increase by 6 levels.".

Section 2P1.1(b) is amended by striking paragraph (4) as follows:

"(4) 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 Commentary to 2P1.1 captioned "Application Notes" is amended—

by striking Note 3 as follows:

"3. If the adjustment in subsection (b)(4) applies, no adjustment is to be made under §3B1.3 (Abuse of Position of Trust or Use of Special Skill).";

and by redesignating Notes 4 and 5 as Notes 3 and 4, respectively.

Section 2Q1.2(b) is amended—

by striking paragraph (5) as follows:

"(5) If a recordkeeping offense reflected an effort to conceal a substantive environmental offense, use the offense level for the substantive offense.";

and by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

The Commentary to §2Q1.2 captioned "Application Notes" is amended—

by striking Note 1 as follows:

"1. 'Recordkeeping offense' includes both recordkeeping and reporting offenses. The term is to be broadly construed as including failure to report discharges, releases, or emissions where required; the giving of false information; failure to file other required reports or provide necessary information; and failure to prepare, maintain, or provide records as prescribed.";

and by redesignating Notes 2 through 7 as Notes 1 through 6, respectively.

The Commentary to §2Q1.2 captioned "Background" is amended by striking "§2Q1.2(b)(6)" and inserting "§2Q1.2(b)(5)".

Section 2Q1.3(b) is amended—

by striking paragraph (2) as follows:

"(2) If the offense resulted in a substantial likelihood of death or serious bodily injury, increase by 11 levels.";

by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

and by striking paragraph (5) as follows:

"(5) If a recordkeeping offense reflected an effort to conceal a substantive environmental offense, use the offense level for the substantive offense.".

The Commentary to §2Q1.3 captioned "Application Notes" is amended—

by striking Note 1 as follows:

"1. 'Recordkeeping offense' includes both recordkeeping and reporting offenses. The term is to be broadly construed as including failure to report discharges, releases, or emissions where required; the giving of false information; failure to file other required reports or provide necessary information; and failure to prepare, maintain, or provide records as prescribed.";

by renumbering Notes 2 and 3 as Notes 1 and 2, respectively;

by striking Note 4 as follows:

"4. Subsection (b)(2) applies to offenses where the public health is seriously endangered.";

by redesignating Notes 5 and 6 as Notes 3 and 4, respectively;

in Note 3 (as so redesignated) by striking "Subsection (b)(3)" and inserting "Subsection (b)(2)";

and in Note 4 (as so redesignated) by striking "Subsection (b)(4)" and inserting "Subsection (b)(3)".

Section 2Q1.4 is amended—

by striking subsection (b) as follows:

"(b) Specific Offense Characteristics

(1) If (A) any victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) any victim sustained serious bodily injury, increase by 2 levels; or (C) the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels.

(2) If the offense resulted in (A) a substantial disruption of public, governmental, or business functions or services; or (B) a substantial expenditure of funds to clean up, decontaminate, or otherwise respond to the offense, increase by 4 levels.

(3) If the offense resulted in an ongoing, continuous, or repetitive release of a contaminant into a public water system or lasted for a substantial period of time, increase by 2 levels.";

by redesignating subsections (c) and (d) as subsections (b) and (c), respectively;

and in subsection (c)(1) (as so redesignated) by striking "the death or permanent, life-threatening, or serious bodily injury of more than one victim" and inserting "the death, permanent or life-threatening bodily injury, or serious bodily injury of more than one victim".

The Commentary to §2Q1.4 captioned "Application Notes" is amended in Note 2 by striking "Subsection (d)" and inserting "Subsection (c)"; and by striking "subsection (c)" and inserting "subsection (b)".

Section 2T1.9 is amended in subsection (b)—

in the heading by striking "Characteristics" and inserting "Characteristic";

by striking the following:

"If more than one applies, use the greater:

(1) If the offense involved the planned or threatened use of violence to impede, impair, obstruct, or defeat the ascertainment, computation, assessment, or collection of revenue, increase by 4 levels.";

and by redesignating paragraph (2) as paragraph (1).

The Commentary to §2T1.9 captioned "Application Notes" is amended—

in Note 3 by striking "Specific offense characteristics from §2T1.9(b) are to be applied" and inserting "Subsection (b)(1) is to be applied";

and in Note 4 by striking "Subsection (b)(2)" and inserting "Subsection (b)(1)".

The Commentary to §2T1.9 captioned "Background" is amended by striking "Additional specific offense characteristics are included" and inserting "A specific offense characteristic is included".

The Commentary to §3B1.4 captioned "Application Notes" is amended in Note 2 by striking "§2D1.1(b)(16)(B)" and inserting "§2D1.1(b)(15)(B)".

The Commentary to §3B1.5 captioned "Application Notes" is amended by striking Note 3 as follows:

"3. *Interaction with §2K2.6 and Other Counts of Conviction*.—If the defendant is convicted only of 18 U.S.C. § 931 and receives an enhancement under subsection (b)(1) of §2K2.6 (Possessing, Purchasing, or Owning Body Armor by Violent Felons), do not apply an adjustment under this guideline. However, if, in addition to the count of conviction under 18 U.S.C. § 931, the defendant (A) is convicted of an offense that is a drug trafficking crime or a crime of violence; and (B) used the body armor with respect to that offense, an adjustment under this guideline shall apply with respect to that offense.".

The Commentary to §3C1.1 captioned "Application Notes" is amended in Note 7 by striking "§2D1.1(b)(16)(D)" and inserting "§2D1.1(b)(15)(D)".

REASON FOR AMENDMENT: This amendment continues the Commission's multi-year efforts to simplify the *Guidelines Manual*. The initiative of simplifying the *Guidelines Manual* has taken various forms over time. Last year, as part of these efforts, the Commission revised the three-step sentencing process to eliminate departures from the guidelines. *See* USSG App. C, amend. 836 (effective Nov. 1, 2025). During this amendment cycle, the Commission examined application rates for the 298 specific offense characteristics in Chapter Two to identify any infrequently used provisions that could be eliminated as a good-government measure.

This amendment deletes 26 specific offense characteristics that did not apply at all in the last five fiscal years, some of which date back to the original *Guidelines Manual* in 1987. These 26 specific offense characteristics applied infrequently—if at all—even using a 25-year look-back period. For some of these specific offense characteristics, low usage mirrored low usage of the underlying guideline. For others, the underlying guideline was applied a relatively large number of times, but the specific offense characteristic applied infrequently.

The Commission is deleting these 26 specific offense characteristics to streamline the *Guidelines Manual* in light of their infrequent applicability.

Effective Date: The effective date of this amendment is November 1, 2026.

AMENDMENT 838

AMENDMENT: Section 2B1.1(b)(1) is amended by striking the following:

"If the loss exceeded $6,500, increase the offense level as follows:

	Loss (Apply the Greatest)	*Increase in Level*
(A)	$6,500 or less	no increase
(B)	More than $6,500	add 2
(C)	More than $15,000	add 4
(D)	More than $40,000	add 6
(E)	More than $95,000	add 8
(F)	More than $150,000	add 10
(G)	More than $250,000	add 12
(H)	More than $550,000	add 14
(I)	More than $1,500,000	add 16
(J)	More than $3,500,000	add 18
(K)	More than $9,500,000	add 20
(L)	More than $25,000,000	add 22
(M)	More than $65,000,000	add 24
(N)	More than $150,000,000	add 26
(O)	More than $250,000,000	add 28
(P)	More than $550,000,000	add 30.";

and inserting the following:

"If the loss exceeded $9,000, increase the offense level as follows:

	Loss (Apply the Greatest)	*Increase in Level*
(A)	$9,000 or less	no increase
(B)	More than $9,000	add 2
(C)	More than $20,000	add 4
(D)	More than $55,000	add 6
(E)	More than $150,000	add 8
(F)	More than $200,000	add 10
(G)	More than $350,000	add 12
(H)	More than $750,000	add 14
(I)	More than $2,000,000	add 16
(J)	More than $5,000,000	add 18
(K)	More than $15,000,000	add 20
(L)	More than $35,000,000	add 22
(M)	More than $90,000,000	add 24
(N)	More than $200,000,000	add 26
(O)	More than $350,000,000	add 28
(P)	More than $750,000,000	add 30.".

Section 2B1.4(b)(1) is amended by striking "$6,500" and inserting "$9,000".

Section 2B1.5(b)(1) is amended by striking "If the value of the cultural heritage resource or paleontological resource (A) exceeded $2,500 but did not exceed $6,500, increase by 1 level; or (B) exceeded $6,500, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount" and inserting "If the value of the cultural heritage resource or paleontological resource (A) exceeded $3,500 but did not exceed $9,000, increase by 1 level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount".

Section 2B2.1(b)(2) is amended by striking the following:

"If the loss exceeded $5,000, increase the offense level as follows:

	Loss (Apply the Greatest)	*Increase in Level*
(A)	$5,000 or less	no increase
(B)	More than $5,000	add 1
(C)	More than $20,000	add 2
(D)	More than $95,000	add 3
(E)	More than $500,000	add 4
(F)	More than $1,500,000	add 5
(G)	More than $3,000,000	add 6
(H)	More than $5,000,000	add 7
(I)	More than $9,500,000	add 8.";

and inserting the following:

"If the loss exceeded $7,000, increase the offense level as follows:

	Loss (Apply the Greatest)	*Increase in Level*
(A)	$7,000 or less	no increase
(B)	More than $7,000	add 1
(C)	More than $25,000	add 2

(D)	More than $150,000	add 3
(E)	More than $700,000	add 4
(F)	More than $2,000,000	add 5
(G)	More than $4,000,000	add 6
(H)	More than $7,000,000	add 7
(I)	More than $15,000,000	add 8.".

Section 2B3.1(b)(7) is amended by striking the following:

"If the loss exceeded $20,000, increase the offense level as follows:

	Loss (Apply the Greatest)	*Increase in Level*
(A)	$20,000 or less	no increase
(B)	More than $20,000	add 1
(C)	More than $95,000	add 2
(D)	More than $500,000	add 3
(E)	More than $1,500,000	add 4
(F)	More than $3,000,000	add 5
(G)	More than $5,000,000	add 6
(H)	More than $9,500,000	add 7.";

and inserting the following:

"If the loss exceeded $25,000, increase the offense level as follows:

	Loss (Apply the Greatest)	*Increase in Level*
(A)	$25,000 or less	no increase
(B)	More than $25,000	add 1
(C)	More than $150,000	add 2
(D)	More than $700,000	add 3
(E)	More than $2,000,000	add 4
(F)	More than $4,000,000	add 5
(G)	More than $7,000,000	add 6
(H)	More than $15,000,000	add 7.".

Section 2B3.2(b)(2) is amended by striking "$20,000" and inserting "$25,000".

Section 2B3.3(b)(1) is amended by striking "If the greater of the amount obtained or demanded (A) exceeded $2,500 but did not exceed $6,500, increase by 1 level; or (B) exceeded $6,500, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount" and inserting "If the greater of the amount obtained or demanded (A) exceeded $3,500 but did not exceed $9,000, increase by 1 level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount".

Section 2B4.1(b)(1) is amended by striking "If the greater of the value of the bribe or the improper benefit to be conferred (A) exceeded $2,500 but did not exceed $6,500, increase by 1 level; or (B) exceeded $6,500, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount" and inserting "If the greater of the value of the bribe or the improper benefit to be conferred (A) exceeded $3,500 but did not exceed $9,000, increase by 1 level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount".

Section 2B5.1(b)(1) is amended by striking "If the face value of the counterfeit items (A) exceeded $2,500 but did not exceed $6,500, increase by 1 level; or (B) exceeded $6,500, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount" and inserting "If the face value of the counterfeit items (A) exceeded $3,500 but did not exceed $9,000, increase by 1 level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount".

Section 2B5.3(b)(1) is amended by striking "If the infringement amount (A) exceeded $2,500 but did not exceed $6,500, increase by 1 level; or (B) exceeded $6,500, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount" and inserting "If the infringement amount (A) exceeded $3,500 but did not exceed $9,000, increase by 1 level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount".

Section 2B6.1(b)(1) is amended by striking "If the retail value of the motor vehicles or parts (A) exceeded $2,500 but did not exceed $6,500, increase by 1 level; or (B) exceeded $6,500, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount" and inserting "If the retail value of the motor vehicles or parts (A) exceeded $3,500 but did not exceed $9,000, increase by 1 level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount".

Section 2C1.1(b)(2) is amended by striking "$6,500" and inserting "$9,000".

Section 2C1.2(b)(2) is amended by striking "$6,500" and inserting "$9,000".

Section 2C1.8(b)(1) is amended by striking "$6,500" and inserting "$9,000".

Section 2E5.1(b)(2) is amended by striking "If the value of the prohibited payment or the value of the improper benefit to the payer, whichever is greater (A) exceeded $2,500 but did not exceed $6,500, increase by 1 level; or (B) exceeded $6,500, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount" and inserting "If the value of the prohibited payment or the value of the improper benefit to the payer, whichever is greater (A) exceeded $3,500 but did not exceed $9,000, increase by 1 level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount".

Section 2Q2.1(b)(3)(A) is amended by striking "If the market value of the fish, wildlife, or plants (i) exceeded $2,500 but did not exceed $6,500, increase by 1 level; or (ii) exceeded $6,500, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount" and inserting "If the market value of the fish, wildlife, or plants (i) exceeded $3,500 but did not exceed $9,000, increase by 1 level; or (ii) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount".

Section 2R1.1(b)(2) is amended by striking the following:

"If the volume of commerce attributable to the defendant was more than $1,000,000, adjust the offense level as follows:

	Volume of Commerce (Apply the Greatest)	*Adjustment to Offense Level*
(A)	More than $1,000,000	add 2
(B)	More than $10,000,000	add 4

(C)	More than $50,000,000	add 6
(D)	More than $100,000,000	add 8
(E)	More than $300,000,000	add 10
(F)	More than $600,000,000	add 12
(G)	More than $1,200,000,000	add 14
(H)	More than $1,850,000,000	add 16.”;

and inserting the following:

“If the volume of commerce attributable to the defendant was more than $1,500,000, adjust the offense level as follows:

	Volume of Commerce (Apply the Greatest)	*Adjustment to Offense Level*
(A)	More than $1,500,000	add 2
(B)	More than $15,000,000	add 4
(C)	More than $70,000,000	add 6
(D)	More than $150,000,000	add 8
(E)	More than $400,000,000	add 10
(F)	More than $800,000,000	add 12
(G)	More than $1,650,000,000	add 14
(H)	More than $2,500,000,000	add 16.”.

Section 2T3.1(a) is amended—

in paragraph (1) by striking “$1,500” and inserting “$2,000”;

in paragraph (2) by striking “$200” and inserting “$300”; and by striking “$1,500” and inserting “$2,000”;

and in paragraph (3) by striking “$200” and inserting “$300”.

Section 2T4.1 is amended by striking the following:

“	*Tax Loss* (Apply the Greatest)	*Offense Level*
(A)	$2,500 or less	6
(B)	More than $2,500	8
(C)	More than $6,500	10
(D)	More than $15,000	12
(E)	More than $40,000	14
(F)	More than $100,000	16
(G)	More than $250,000	18
(H)	More than $550,000	20
(I)	More than $1,500,000	22
(J)	More than $3,500,000	24
(K)	More than $9,500,000	26
(L)	More than $25,000,000	28
(M)	More than $65,000,000	30
(N)	More than $150,000,000	32
(O)	More than $250,000,000	34
(P)	More than $550,000,000	36.”;

and inserting the following:

“	*Tax Loss* (Apply the Greatest)	*Offense Level*
(A)	$3,500 or less	6
(B)	More than $3,500	8
(C)	More than $9,000	10
(D)	More than $20,000	12
(E)	More than $55,000	14
(F)	More than $150,000	16
(G)	More than $350,000	18
(H)	More than $750,000	20
(I)	More than $2,000,000	22
(J)	More than $5,000,000	24
(K)	More than $15,000,000	26
(L)	More than $35,000,000	28
(M)	More than $90,000,000	30
(N)	More than $200,000,000	32
(O)	More than $350,000,000	34
(P)	More than $750,000,000	36.”.

Section 5E1.2 is amended—

in subsection (c)(3) by striking the following:

“

Fine Table

Offense Level	*A* *Minimum*	*B* *Maximum*
3 and below	$200	$9,500
4–5	$500	$9,500
6–7	$1,000	$9,500
8–9	$2,000	$20,000
10–11	$4,000	$40,000
12–13	$5,500	$55,000
14–15	$7,500	$75,000
16–17	$10,000	$95,000
18–19	$10,000	$100,000
20–22	$15,000	$150,000
23–25	$20,000	$200,000
26–28	$25,000	$250,000
29–31	$30,000	$300,000
32–34	$35,000	$350,000
35–37	$40,000	$400,000
38 and above	$50,000	$500,000.”;

and inserting the following:

“

Fine Table

Offense Level	*A* *Minimum*	*B* *Maximum*
3 and below	$300	$15,000
4–5	$700	$15,000

6–7	$1,500	$15,000
8–9	$2,500	$25,000
10–11	$5,500	$55,000
12–13	$7,500	$75,000
14–15	$10,000	$100,000
16–17	$15,000	$150,000
18–19	$15,000	$150,000
20–22	$20,000	$200,000
23–25	$25,000	$250,000
26–28	$35,000	$350,000
29–31	$40,000	$400,000
32–34	$50,000	$500,000
35–37	$55,000	$550,000
38 and above	$70,000	$700,000.”;

and in subsection (h)—

in the heading by striking “Instruction” and inserting “Instructions”;

and by inserting at the end the following new paragraph (2):

“(2) For offenses committed on or after November 1, 2015 but prior to November 1, 2026, use the applicable fine guideline range that was set forth in the version of §5E1.2(c) that was in effect on November 1, 2025, rather than the applicable fine guideline range set forth in subsection (c) above.”.

Section 8C2.4 is amended—

in subsection (d) by striking the following:

“

Offense Level	*Amount*
6 or less	$8,500
7	$15,000
8	$15,000
9	$25,000
10	$35,000
11	$50,000
12	$70,000
13	$100,000
14	$150,000
15	$200,000
16	$300,000
17	$450,000
18	$600,000
19	$850,000
20	$1,000,000
21	$1,500,000
22	$2,000,000
23	$3,000,000
24	$3,500,000
25	$5,000,000
26	$6,500,000
27	$8,500,000
28	$10,000,000

29	$15,000,000
30	$20,000,000
31	$25,000,000
32	$30,000,000
33	$40,000,000
34	$50,000,000
35	$65,000,000
36	$80,000,000
37	$100,000,000
38 or more	$150,000,000.”;

and inserting the following:

“

Offense Level	*Amount*
6 or less	$10,000
7	$20,000
8	$20,000
9	$35,000
10	$50,000
11	$70,000
12	$95,000
13	$150,000
14	$200,000
15	$250,000
16	$400,000
17	$600,000
18	$800,000
19	$1,000,000
20	$1,500,000
21	$2,000,000
22	$2,500,000
23	$4,000,000
24	$5,000,000
25	$7,000,000
26	$9,000,000
27	$10,000,000
28	$15,000,000
29	$20,000,000
30	$25,000,000
31	$35,000,000
32	$40,000,000
33	$55,000,000
34	$70,000,000
35	$90,000,000
36	$100,000,000
37	$150,000,000
38 or more	$200,000,000.”;

and in subsection (e)—

in the heading by striking “Instruction” and inserting “Instructions”;

and by inserting at the end the following new paragraph (2):

"(2) For offenses committed on or after November 1, 2015 but prior to November 1, 2026, use the offense level fine table that was set forth in the version of §8C2.4(d) that was in effect on November 1, 2025, rather than the offense level fine table set forth in subsection (d) above.".

REASON FOR AMENDMENT: This amendment makes adjustments to the monetary tables in §§2B1.1 (Theft, Property, Destruction, and Fraud), 2B2.1 (Burglary), 2B3.1 (Robbery), 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors), 2T4.1 (Tax Table), 5E1.2 (Fines for Individual Defendants), and 8C2.4 (Base Fine) to account for inflation. These provisions were last revised to account for inflation in 2015. *See* USSG App. C, amend. 791 (effective Nov. 1, 2015). The amendment adjusts the monetary tables and values in the guidelines using a specific multiplier derived from the Bureau of Labor Statistics' Consumer Price Index and rounds, using a set of rules extrapolated from the provisions for adjusting monetary penalties for inflation set forth in section 5(a) of the Federal Civil Penalties Inflation Adjustment Act of 1990. This is the same methodology the Commission employed in 2015 and rounds the values using the following approach:

- amounts greater than $100,000,000 to the nearest multiple of $50,000,000;
- amounts greater than $10,000,000 to the nearest multiple of $5,000,000;
- amounts greater than $1,000,000 to the nearest multiple of $500,000;
- amounts greater than $100,000 to the nearest multiple of $50,000;
- amounts greater than $10,000 to the nearest multiple of $5,000;
- amounts greater than $1,000 to the nearest multiple of $500; and
- amounts of $1,000 or less to the nearest multiple of $50.

The amendment adjusts for inflation the monetary value in specific offense characteristics in other Chapter Two guidelines—§§2B1.4, 2B1.5, 2B2.3, 2B3.2, 2B3.3, 2B4.1, 2B5.1, 2B5.3, 2B6.1, 2C1.1, 2C1.2, 2C1.8, 2E5.1, 2Q2.1, and 2T3.1—and includes conforming changes to guidelines that refer to the monetary tables.

The amendment adjusts each table based on inflationary changes since 2014 ($1.00 in 2014 = $1.36 in 2025), the year each monetary table was last adjusted for inflation.

Congress has generally mandated that agencies in the executive branch adjust the civil monetary penalties they impose to account for inflation using the Bureau of Labor Statistics' Consumer Price Index. *See* 28 U.S.C. § 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990). Although the Commission's work does not involve civil monetary penalties, the Commission does establish appropriate sentences for categories of offenses and individuals convicted of federal crimes, including appropriate amounts for criminal fines.

Due to inflationary changes, there has been a gradual decrease in the value of the dollar over time. As a result, monetary losses in current offenses reflect, to some degree, a lower degree of harm and culpability than equivalent amounts when the monetary tables were last substantively amended. Similarly, the fine levels recommended by the guidelines are lower in value than when they were last adjusted, and therefore, do not have the same sentencing impact as a similar fine in the past. Based on its own analysis and on widespread support for inflationary adjustments expressed in public comment, the Commission concluded that aligning the above monetary tables with modern dollar values is appropriate.

Finally, the amendment adds a special instruction to both §§5E1.2 and 8C2.4 providing that, for offenses committed on or after November 1, 2015 but prior to November 1, 2026, courts should use the applicable fine guideline range that was set forth in the version of §5E1.2(c) that was in effect on November 1, 2025. This addition extends the reasoning of the existing special instruction responding to concerns previously expressed in public comment that changes to the fine tables

might create *ex post facto* problems. Such guidance is similar to that provided in the commentary to §5E1.3 (Special Assessment) relating to the amount of the special assessment to be imposed in a given case.

Effective Date: The effective date of this amendment is November 1, 2026.

AMENDMENT 839

AMENDMENT: Section 2D1.1(b)(12), as redesignated by Amendment 837, is amended—

by striking "fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) or a fentanyl analogue" both places it appears and inserting "fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), a fentanyl analogue, or a fentanyl-related substance";

and by inserting at the end the following new paragraph:

"*Provided*, however, that this enhancement shall only apply in a case involving a fentanyl-related substance if the court applies the offense level specified in the Drug Quantity Table for fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), a fentanyl analogue, or a fentanyl-related substance.".

Section 2D1.1(c)(1) is amended by inserting after the line referenced to a Fentanyl Analogue the following line:

"● 9 KG or more of a Fentanyl-Related Substance;".

Section 2D1.1(c)(2) is amended by inserting after the line referenced to a Fentanyl Analogue the following line:

"● At least 3 KG but less than 9 KG of a Fentanyl-Related Substance;".

Section 2D1.1(c)(3) is amended by inserting after the line referenced to a Fentanyl Analogue the following line:

"● At least 1 KG but less than 3 KG of a Fentanyl-Related Substance;".

Section 2D1.1(c)(4) is amended by inserting after the line referenced to a Fentanyl Analogue the following line:

"● At least 300 G but less than 1 KG of a Fentanyl-Related Substance;".

Section 2D1.1(c)(5) is amended by inserting after the line referenced to a Fentanyl Analogue the following line:

"● At least 100 G but less than 300 G of a Fentanyl-Related Substance;".

Section 2D1.1(c)(6) is amended by inserting after the line referenced to a Fentanyl Analogue the following line:

"● At least 70 G but less than 100 G of a Fentanyl-Related Substance;".

Section 2D1.1(c)(7) is amended by inserting after the line referenced to a Fentanyl Analogue the following line:

"● At least 40 G but less than 70 G of a Fentanyl-Related Substance;".

Section 2D1.1(c)(8) is amended by inserting after the line referenced to a Fentanyl Analogue the following line:

"● At least 10 G but less than 40 G of a Fentanyl-Related Substance;".

Section 2D1.1(c)(9) is amended by inserting after the line referenced to a Fentanyl Analogue the following line:

"● At least 8 G but less than 10 G of a Fentanyl-Related Substance;".

Section 2D1.1(c)(10) is amended by inserting after the line referenced to a Fentanyl Analogue the following line:

"● At least 6 G but less than 8 G of a Fentanyl-Related Substance;".

Section 2D1.1(c)(11) is amended by inserting after the line referenced to a Fentanyl Analogue the following line:

"● At least 4 G but less than 6 G of a Fentanyl-Related Substance;".

Section 2D1.1(c)(12) is amended by inserting after the line referenced to a Fentanyl Analogue the following line:

"● At least 2 G but less than 4 G of a Fentanyl-Related Substance;".

Section 2D1.1(c)(13) is amended by inserting after the line referenced to a Fentanyl Analogue the following line:

"● At least 1 G but less than 2 G of a Fentanyl-Related Substance;".

Section 2D1.1(c)(14) is amended by inserting after the line referenced to a Fentanyl Analogue the following line:

"● Less than 1 G of a Fentanyl-Related Substance;".

The annotation to §2D1.1(c) captioned "Notes to Drug Quantity Table" is amended—

by redesignating Note (K) as Note (L);

and by inserting after Note (J) the following new Note (K):

"(K) The term 'Fentanyl-Related Substance' is defined in 21 U.S.C. § 812(e). There is a rebuttable presumption that the base offense level specified in the Drug Quantity Table applies to fentanyl-related substances. However, if the defendant establishes either that the fentanyl-related substance (i) functions to block, diminish, or counteract the effect produced by fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) or a fentanyl analogue, or (ii) is significantly less potent than fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), the court should instead determine the base offense level for the fentanyl-related substance using the converted drug

weight of the most closely related controlled substance referenced in this guideline (as provided in Application Note 6 below).".

The Commentary to §2D1.1 captioned "Application Notes," as amended by Amendment 837, is further amended in Note 8(D), under the heading relating to Schedule I or II Opiates by inserting after the line referenced to a Fentanyl Analogue the following line:

"1 gm of a Fentanyl-Related Substance = 10 kg".

The Commentary to §2D1.6 captioned "Application Notes" is amended in Note 1 by striking "fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), or fentanyl analogue" and inserting "fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), fentanyl analogue, or fentanyl-related substance".

REASON FOR AMENDMENT: This amendment responds to the enactment of the Halt All Lethal Trafficking of Fentanyl Act (Pub. L. 119–26) (2025) ("HALT Fentanyl Act" or "Act"), which permanently scheduled "fentanyl-related substances" as Schedule I substances under 21 U.S.C. § 812. The Act also expanded the offenses prohibited by 21 U.S.C. §§ 841 and 960 to include "fentanyl-related substances," setting the quantities that trigger mandatory minimum penalties at the same level as fentanyl analogues. The Act defined "fentanyl-related substances" in 21 U.S.C. § 812(e).

This amendment amends the Drug Quantity Table at subsection (c) of §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and the Drug Equivalency Tables at Application Note 8(D) of the Commentary to §2D1.1 to add "fentanyl-related substances." It sets the quantity thresholds and base offense levels for fentanyl-related substances at the same level as fentanyl analogues, to mirror the equivalencies between these substances in the Act. This approach also is consistent with Commission data showing that prior to the HALT Fentanyl Act, courts sentenced most individuals convicted of offenses involving fentanyl-related substances as if those offenses involved fentanyl analogues.

The amendment also adds a new Note to the Drug Quantity Table that defines "fentanyl-related substance" by reference to the definition in 21 U.S.C. § 812(e), allowing for flexibility in case the statutory definition is amended in the future. The new Note reiterates that the base offense level specified in the Drug Quantity Table presumptively applies to fentanyl-related substances. However, in light of the class-based nature of the definition—which is based on chemical structure alone—and the resulting breadth of substances that it currently covers or could cover in the future, the Note also provides a safety valve by which, under specified conditions, that presumption can be rebutted. If a defendant establishes that the fentanyl-related substance either (i) functions to block, diminish, or counteract the effect produced by fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) or a fentanyl analogue, or (ii) is significantly less potent than fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), the Note instructs the court to instead determine the base offense level for the fentanyl-related substance using the converted drug weight of the most closely related controlled substance referenced in §2D1.1 (as provided in Application Note 6).

To maintain consistency within §2D1.1, the amendment also adds "fentanyl-related substance" to the existing enhancement at §2D1.1(b)(13), which currently increases penalties for representing or marketing fentanyl or a fentanyl analogue as another substance or as a legitimately manufactured drug. As amended, the enhancement will also apply if a fentanyl-related substance is represented or marketed as a legitimately manufactured drug. Consistent with the new Note to the Drug Quantity Table, the amendment includes a proviso that the enhancement at subsection (b)(13) shall only apply in a case involving a fentanyl-related substance if

the court applies the offense level specified in the Drug Quantity Table for fentanyl, a fentanyl analogue, or a fentanyl-related substance.

Finally, this amendment makes a technical change to Application Note 1 to §2D1.6 (Use of Communication Facility in Committing Drug Offense; Attempt or Conspiracy) to include fentanyl-related substance as one of the substances for which the Drug Quantity Table in §2D1.1 provides a minimum offense level of 12.

Effective Date: The effective date of this amendment is November 1, 2026.

AMENDMENT 840

AMENDMENT: Section 1B1.1(a)(4) is amended by striking "Apply Part D of Chapter Three to group the various counts and adjust the offense level accordingly" and inserting "Apply §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to determine the combined offense level applicable to all counts".

The Commentary to §1B1.2 captioned "Application Notes" is amended in Note 4 by striking "if the object offenses specified in the conspiracy count would be grouped together under §3D1.2(d) (*e.g.*, a conspiracy to steal three government checks) it is not necessary to engage in the foregoing analysis, because §1B1.3(a)(2) governs consideration of the defendant's conduct" and inserting "if the combined offense level for the object offenses specified in the conspiracy count is determined pursuant to 3D1.1(a) (*e.g.*, a conspiracy to steal three government checks) it is not necessary to engage in the foregoing analysis".

Section 1B1.3 is amended—

in subsection (a)(2) by striking "solely with respect to offenses of a character for which §3D1.2(d) would require grouping of multiple counts, all acts and omissions described in subdivisions (1)(A) and (1)(B) above that were part of the same course of conduct or common scheme or plan as the offense of conviction" and inserting "solely with respect to offenses described in subsection (d) below, all acts and omissions described in paragraphs (1)(A) and (1)(B) above that were part of the same course of conduct or common scheme or plan as the offense of conviction";

and by inserting at the end the following new subsection (d):

"(d) *Offenses Covered by Subsection (a)(2).*—Subsection (a)(2) applies to offenses where the offense level is determined largely on the basis of the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm, or where the offense behavior is ongoing or continuous in nature and the offense guideline is written to cover such behavior.

Subsection (a)(2) applies to offenses covered by the following guidelines:

§2A3.5;
§§2B1.1, 2B1.4, 2B1.5, 2B4.1, 2B5.1, 2B5.3, 2B6.1;
§§2C1.1, 2C1.2, 2C1.8;
§§2D1.1, 2D1.2, 2D1.5, 2D1.11, 2D1.13;
§§2E4.1, 2E5.1;
§§2G2.2, 2G3.1;
§2K2.1;

§§2L1.1, 2L2.1;
§2N3.1;
§2Q2.1;
§2R1.1;
§§2S1.1, 2S1.3;
§§2T1.1, 2T1.4, 2T1.6, 2T1.7, 2T1.9, 2T2.1, 2T3.1.

Subsection (a)(2) does not apply to the offenses covered by the following guidelines:

all offenses in Chapter Two, Part A (except §2A3.5);
§§2B2.1, 2B2.3, 2B3.1, 2B3.2, 2B3.3;
§2C1.5;
§§2D2.1, 2D2.2, 2D2.3;
§§2E1.3, 2E1.4, 2E2.1;
§§2G1.1, 2G1.3, 2G2.1;
§§2H1.1, 2H2.1, 2H4.1;
§§2L2.2, 2L2.5;
§§2M2.1, 2M2.3, 2M3.1, 2M3.2, 2M3.3, 2M3.4, 2M3.5, 2M3.9;
§§2P1.1, 2P1.2, 2P1.3;
§2X6.1.

For offenses covered by guidelines that are not listed, subsection (a)(2) may or may not apply. In such instances, a case-by-case determination must be made based upon the facts of the case and the applicable guidelines (including specific offense characteristics and other adjustments) used to determine the offense level.".

The Commentary to §1B1.3 captioned "Application Notes" is amended—

in Note 5(A) by striking the following:

"*Relationship to Grouping of Multiple Counts*.—'Offenses of a character for which §3D1.2(d) would require grouping of multiple counts,' as used in subsection (a)(2), applies to offenses for which grouping of counts would be required under §3D1.2(d) had the defendant been convicted of multiple counts. Application of this provision does not require the defendant, in fact, to have been convicted of multiple counts. For example, where the defendant engaged in three drug sales of 10, 15, and 20 grams of cocaine, as part of the same course of conduct or common scheme or plan, subsection (a)(2) provides that the total quantity of cocaine involved (45 grams) is to be used to determine the offense level even if the defendant is convicted of a single count charging only one of the sales. If the defendant is convicted of multiple counts for the above noted sales, the grouping rules of Chapter Three, Part D (Multiple Counts) provide that the counts are grouped together. Although Chapter Three, Part D (Multiple Counts) applies to multiple counts of conviction, it does not limit the scope of subsection (a)(2). Subsection (a)(2) merely incorporates by reference the types of offenses set forth in §3D1.2(d); thus, as discussed above, multiple counts of conviction are not required for subsection (a)(2) to apply.

As noted above, subsection (a)(2) applies to offenses of a character for which §3D1.2(d) would require grouping of multiple counts, had the defendant been convicted of multiple counts. For example, the defendant sells 30 grams of cocaine (a violation of 21 U.S.C. § 841) on one occasion and, as part of the same course of conduct or common scheme or plan, attempts to sell an additional 15 grams of cocaine (a violation of 21 U.S.C. § 846) on another occasion. The defendant is convicted of one count charging the completed sale of 30 grams of cocaine. The two offenses (sale of cocaine and attempted sale of cocaine), although covered by different statutory provisions, are of a character for which §3D1.2(d) would require the grouping of counts, had

the defendant been convicted of both counts. Therefore, subsection (a)(2) applies and the total amount of cocaine (45 grams) involved is used to determine the offense level.",

and inserting the following:

"*In General*.—Application of subsection (a)(2) does not require the defendant, in fact, to have been convicted of multiple counts. For example, where the defendant engaged in three drug sales of 10, 15, and 20 grams of cocaine, as part of the same course of conduct or common scheme or plan, subsection (a)(2) provides that the total quantity of cocaine involved (45 grams) is to be used to determine the offense level even if the defendant is convicted of a single count charging only one of the sales.

As noted in subsection (d), subsection (a)(2) applies to offenses where the offense level is determined largely on the basis of the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm, or where the offense behavior is ongoing or continuous in nature and the offense guideline is written to cover such behavior. For example, the defendant sells 30 grams of cocaine (a violation of 21 U.S.C. § 841) on one occasion and, as part of the same course of conduct or common scheme or plan, attempts to sell an additional 15 grams of cocaine (a violation of 21 U.S.C. § 846) on another occasion. The defendant is convicted of one count charging the completed sale of 30 grams of cocaine. The two offenses (sale of cocaine and attempted sale of cocaine), although violating different statutory provisions, are covered by a guideline to which subsection (a)(2) is applicable pursuant to subsection (d). Therefore, subsection (a)(2) applies and the total amount of cocaine (45 grams) involved is used to determine the offense level.";

and by inserting at the end the following new Note 11:

"11. *Application of Subsection (d)*.—Subsection (d) provides that subsection (a)(2) covers most property crimes (except robbery, burglary, extortion, and the like), drug offenses, firearms offenses, and other crimes where the guidelines are based primarily on quantity or contemplate continuing behavior. The list of instances in which subsection (a)(2) should be applied is not exhaustive. Note, however, that certain guidelines are specifically excluded from the operation of subsection (a)(2).

Subsection (a)(2) applies to a conspiracy, attempt, or solicitation to commit an offense if the offense that is the object of the conspiracy, attempt, or solicitation is covered under subsection (d).".

The Commentary to §1B1.3 captioned "Background" is amended by striking "The distinction is made on the basis of §3D1.2(d), which provides for grouping together (*i.e.*, treating as a single count) all counts charging offenses of a type covered by this subsection. However, the applicability of subsection (a)(2) does not depend upon whether multiple counts are alleged" and inserting "The distinction is made on the basis of subsection (d)"; by striking "(*i.e.*, to which §3D1.2(d) applies)"; and by striking "Conversely, when §3D1.2(d) does not apply, so that convictions on multiple counts are considered separately in determining the guideline sentencing range, the guidelines prohibit aggregation of quantities from other counts in order to prevent 'double counting' of the conduct and harm from each count of conviction. Continuing offenses present similar practical problems. The reference to §3D1.2(d), which provides for grouping of multiple counts arising out of a continuing offense when the offense guideline takes the continuing nature into account, also prevents double counting.".

Section 1B1.5(c) is amended by striking "Chapter Three (Adjustments)" and inserting "Chapter Three, Parts A through D,".

The Commentary to §1B1.5 captioned "Application Notes" is amended in Note 3 by striking "(or group of closely related offenses in the case of offenses that would be grouped together under §3D1.2(d))" and inserting "(or group of offenses to which §3D1.1(a) applies)".

The Commentary to §1B1.11 captioned "Background" is amended by striking "whether the offenses of conviction are the type in which the conduct is grouped under §3D1.2(d)" and inserting "whether the offenses of conviction are the type to which §3D1.1(a) applies"; and by striking "(*see* §§3D1.1–3D1.5, 5G1.2)" and inserting "(*see* §§3D1.1, 5G1.2)".

Section 2A1.4(b)(1) is amended by striking "Chapter Three, Part D (Multiple Counts)" and inserting "subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)".

The Commentary to §2A6.1 captioned "Application Notes" is amended in Note 3 by striking the following:

"*Grouping*.—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.";

and inserting the following:

"*Multiple Counts*.—For purposes of Chapter Three, Part D (Multiple Counts), do not apply subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to multiple counts involving making a threatening or harassing communication to the same victim, even if those acts occurred on separate occasions. Multiple acts of making a threatening or harassing communication to the same victim are already taken into account in the specific offense characteristics of this guideline.".

The Commentary to §2A6.2 captioned "Application Notes" is amended in Note 4 by striking the following:

"For purposes of Chapter Three, Part D (Multiple Counts), multiple counts involving stalking, threatening, or harassing the same victim are grouped together (and with counts of other offenses involving the same victim that are covered by this guideline) under §3D1.2 (Groups of Closely Related Counts). For example, if the defendant is convicted of two counts of stalking the defendant's ex-spouse under 18 U.S.C. § 2261A and one count of interstate domestic violence involving an assault of the ex-spouse under 18 U.S.C. § 2261, the stalking counts would be grouped together with the interstate domestic violence count. This grouping procedure avoids unwarranted 'double counting' with the enhancement in subsection (b)(1)(E) (for multiple acts of stalking, threatening, harassing, or assaulting the same victim) and recognizes that the stalking and interstate domestic violence counts are sufficiently related to warrant grouping.

Multiple counts that are cross referenced to another offense guideline pursuant to subsection (c) are to be grouped together if §3D1.2 (Groups of Closely Related Counts) would require grouping of those counts under that offense guideline. Similarly, multiple counts cross referenced pursuant to subsection (c) are not to be grouped together if §3D1.2 would preclude grouping of the counts under that offense guideline. For example, if the defendant is convicted of multiple counts of threatening an ex-spouse in violation of a court protection order under 18 U.S.C. § 2262 and the counts are cross referenced to §2A6.1 (Threatening or Harassing Communications), the counts would group together because Application Note 3 of §2A6.1 spe-

cifically requires grouping. In contrast, if the defendant is convicted of multiple counts of assaulting the ex-spouse in violation of a court protection order under 18 U.S.C. § 2262 and the counts are cross referenced to §2A2.2 (Aggravated Assault), the counts probably would not group together inasmuch as §3D1.2(d) specifically precludes grouping of counts covered by §2A2.2 and no other provision of §3D1.2 would likely apply to require grouping.

Multiple counts involving different victims are not to be grouped under §3D1.2 (Groups of Closely Related Counts).";

and inserting the following:

"For purposes of Chapter Three, Part D (Multiple Counts), do not apply subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to multiple counts involving stalking, threatening, or harassing the same victim, even if those acts occurred on separate occasions. Multiple acts of stalking, threatening, harassing, or assaulting the same victim are already taken into account in the specific offense characteristic of this guideline. For example, if the defendant is convicted of two counts of stalking the defendant's ex-spouse under 18 U.S.C. § 2261A and one count of interstate domestic violence involving an assault of the ex-spouse under 18 U.S.C. § 2261, §3D1.1(b) does not apply to the stalking counts.

Determine the combined offense level for multiple counts that are cross referenced to another offense guideline pursuant to subsection (c) by applying §3D1.1.".

The Commentary to §2B1.1 captioned "Application Notes" is amended in Note 20 by striking "*See* Chapter Three, Part D (Multiple Counts)" and inserting "*See* subsection (a) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)".

The Commentary to §2B1.5 captioned "Application Notes," as amended by Amendment 837, is further amended in Note 7, as redesignated by Amendment 837, by striking "For purposes of Chapter Three, Part D (Multiple Counts), multiple counts involving offenses covered by this guideline are grouped together under subsection (d) of §3D1.2 (Groups of Closely Related Counts). Multiple counts involving offenses covered by this guideline and offenses covered by other guidelines are not to be grouped under §3D1.2(d)" and inserting "For purposes of Chapter Three, Part D (Multiple Counts), apply subsection (a) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to determine the combined offense level for multiple counts involving offenses covered by this guideline".

The Commentary to §2D1.5 captioned "Application Notes" is amended by striking Note 3 as follows:

"3. *Multiple Counts*.—Violations of 21 U.S.C. § 848 will be grouped with other drug offenses for the purpose of applying Chapter Three, Part D (Multiple Counts).".

The Commentary to §2D1.11 captioned "Application Notes," as amended by Amendment 837, is further amended in Note 8, as redesignated by Amendment 837, by striking "Determine the offense level under each guideline separately" and inserting "Determine the offense level under each guideline separately as provided in subsection (c) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)"; and by striking "Under the grouping rules of §3D1.2(b), the counts will be grouped together" and inserting "Determine the combined offense level for these offenses by applying subsection (d) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)".

Section 2D2.3(b)(1) is amended by striking "apply Chapter Three, Part D (Multiple Counts)" and inserting "apply subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)".

Section 2G1.1(d)(1) is amended by striking "Chapter Three, Part D (Multiple Counts)" and inserting "subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)".

The Commentary to §2G1.1 captioned "Application Notes" is amended in Note 5 by striking "multiple counts involving more than one victim are not to be grouped together under §3D1.2 (Groups of Closely Related Counts)" and inserting "multiple counts involving more than one victim are subject to the adjustment under subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)".

Section 2G1.3(d)(1) is amended by striking "Chapter Three, Part D (Multiple Counts)" and inserting "subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)".

The Commentary to §2G1.3 captioned "Application Notes" is amended in Note 6 by striking "multiple counts involving more than one minor are not to be grouped together under §3D1.2 (Groups of Closely Related Counts)" and inserting "multiple counts involving more than one minor are subject to the adjustment under subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)".

Section 2G2.1(d)(1) is amended by striking "Chapter Three, Part D (Multiple Counts)" and inserting "subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)".

The Commentary to §2G2.1 captioned "Application Notes" is amended in Note 7 by striking "multiple counts involving the exploitation of different minors are not to be grouped together under §3D1.2 (Groups of Closely Related Counts)" and inserting "multiple counts involving the exploitation of different minors are subject to the adjustment under subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)".

The Commentary to §2H4.1 captioned "Application Notes" is amended in Note 2 by striking "the most serious such offense (or group of closely related offenses in the case of offenses that would be grouped together under §3D1.2(d)) is to be used" and inserting "the most serious such offense (or group of offenses to which §3D1.1(a) applies) is to be used".

The Commentary to §2J1.2 captioned "Application Notes" is amended—

by striking Note 3 as follows:

"3. *Convictions for the Underlying Offense*.—In the event that the defendant is convicted of an offense sentenced under this section as well as for the underlying offense (*i.e.*, the offense that is the object of the obstruction), *see* the Commentary to Chapter Three, Part C (Obstruction and Related Adjustments), and to §3D1.2(c) (Groups of Closely Related Counts).".

and by redesignating Note 4 as Note 3.

Section 2J1.3(d)(1) is amended by striking "do not group the counts together under §3D1.2 (Groups of Closely Related Counts)" and inserting "apply subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to the counts".

The Commentary to §2J1.3 captioned "Application Notes" is amended—

by striking Note 3 as follows:

"3. In the event that the defendant is convicted under this section as well as for the underlying offense (*i.e.*, the offense with respect to which he committed perjury, subornation of perjury, or witness bribery), *see* the Commentary to §3C1.1, and to §3D1.2(c) (Groups of Closely Related Counts).";

and by redesignating Note 4 as Note 3.

The Commentary to §2J1.6 captioned "Application Notes" is amended in Note 3 by striking the following:

"In the case of a failure to appear for service of sentence, any term of imprisonment imposed on the failure to appear count is to be imposed consecutively to any term of imprisonment imposed for the underlying offense. *See* §5G1.3(a). The guideline range for the failure to appear count is to be determined independently and the grouping rules of §§3D1.1–3D1.5 do not apply.

However, in the case of a conviction on both the underlying offense and the failure to appear, other than a case of failure to appear for service of sentence, the failure to appear is treated under §3C1.1 (Obstructing or Impeding the Administration of Justice) as an obstruction of the underlying offense, and the failure to appear count and the count or counts for the underlying offense are grouped together under §3D1.2(c). (Note that 18 U.S.C. § 3146(b)(2) does not require a sentence of imprisonment on a failure to appear count, although if a sentence of imprisonment on the failure to appear count is imposed, the statute requires that the sentence be imposed to run consecutively to any other sentence of imprisonment. Therefore, unlike a count in which the statute mandates both a minimum and a consecutive sentence of imprisonment, the grouping rules of §§3D1.1–3D1.5 apply. *See* §3D1.1(b)(1), comment. (n.1), and §3D1.2, comment. (n.1).) The combined sentence will then be constructed to provide a 'total punishment' that satisfies the requirements both of §5G1.2 (Sentencing on Multiple Counts of Conviction) and 18 U.S.C. § 3146(b)(2). For example, if the combined applicable guideline range for both counts is 30–37 months and the court determines that a 'total punishment' of 36 months is appropriate, a sentence of 30 months for the underlying offense plus a consecutive six months' sentence for the failure to appear count would satisfy these requirements. (Note that the combination of this instruction and increasing the offense level for the obstructive, failure to appear conduct has the effect of ensuring an incremental, consecutive punishment for the failure to appear count, as required by 18 U.S.C. § 3146(b)(2).)";

and inserting the following:

"In the case of a failure to appear for service of sentence, any term of imprisonment imposed on the failure to appear count is to be imposed consecutively to any term of imprisonment imposed for the underlying offense. *See* §5G1.3(a). The guideline range for the failure to appear count is to be determined independently and §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) does not apply.

However, in the case of a conviction on both the underlying offense and the failure to appear, other than a case of failure to appear for service of sentence, the failure to appear is treated under §3C1.1 (Obstructing or Impeding the Administration of Justice) as an obstruction of the underlying offense, and the combined offense level for the failure to appear count and the count or counts for the underlying offense is determined under §3D1.1. (Note that 18 U.S.C. § 3146(b)(2) does not require a sentence of imprisonment on a failure to appear count, although

if a sentence of imprisonment on the failure to appear count is imposed, the statute requires that the sentence be imposed to run consecutively to any other sentence of imprisonment. Therefore, unlike a count in which the statute mandates both a minimum and a consecutive sentence of imprisonment, §3D1.1 applies. *See* §3D1.1(e)(1), comment. (n.1).) The combined sentence will then be constructed to provide a 'total punishment' that satisfies the requirements both of §5G1.2 (Sentencing on Multiple Counts of Conviction) and 18 U.S.C. § 3146(b)(2). For example, if the combined applicable guideline range for both counts is 30–37 months and the court determines that a 'total punishment' of 36 months is appropriate, a sentence of 30 months for the underlying offense plus a consecutive six months' sentence for the failure to appear count would satisfy these requirements. (Note that the combination of this instruction and increasing the offense level for the obstructive, failure to appear conduct has the effect of ensuring an incremental, consecutive punishment for the failure to appear count, as required by 18 U.S.C. § 3146(b)(2).)".

The Commentary to §2J1.9 captioned "Application Notes" is amended—

in the caption by striking "Notes" and inserting "Note";

and by striking Note 2 as follows:

"2. In the event that the defendant is convicted under this section as well as for the underlying offense (*i.e.*, the offense with respect to which the payment was made), *see* the Commentary to §3C1.1, and to §3D1.2(c) (Groups of Closely Related Counts).".

The Commentary to §2K2.4 captioned "Application Notes" is amended in Note 4 by striking the following:

"*Non-Applicability of Certain Enhancements*.—

(A) *In General*.—If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm when determining the sentence for the underlying offense. A sentence under this guideline accounts for any explosive or weapon enhancement for the underlying offense of conviction, including any such enhancement that would apply based on conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct). Do not apply any weapon enhancement in the guideline for the underlying offense, for example, if (A) a co-defendant, as part of the jointly undertaken criminal activity, possessed a firearm different from the one for which the defendant was convicted under 18 U.S.C. § 924(c); or (B) in an ongoing drug trafficking offense, the defendant possessed a firearm other than the one for which the defendant was convicted under 18 U.S.C. § 924(c). However, if a defendant is convicted of two armed bank robberies, but is convicted under 18 U.S.C. § 924(c) in connection with only one of the robberies, a weapon enhancement would apply to the bank robbery which was not the basis for the 18 U.S.C. § 924(c) conviction.

A sentence under this guideline also accounts for conduct that would subject the defendant to an enhancement under §2D1.1(b)(2) (pertaining to use of violence, credible threat to use violence, or directing the use of violence). Do not apply that enhancement when determining the sentence for the underlying offense.

If the explosive or weapon that was possessed, brandished, used, or discharged in the course of the underlying offense also results in a conviction that would subject the defendant to an enhancement under §2K1.3(b)(3) (pertaining to possession of explosive material in connection with another felony offense) or §2K2.1(b)(7)(B) (pertaining to

possession of any firearm or ammunition in connection with another felony offense), do not apply that enhancement. A sentence under this guideline accounts for the conduct covered by these enhancements because of the relatedness of that conduct to the conduct that forms the basis for the conviction under 18 U.S.C. § 844(h), § 924(c) or § 929(a). For example, if in addition to a conviction for an underlying offense of armed bank robbery, the defendant was convicted of being a felon in possession under 18 U.S.C. § 922(g), the enhancement under §2K2.1(b)(7)(B) would not apply.

(B) *Impact on Grouping*.—If two or more counts would otherwise group under subsection (c) of §3D1.2 (Groups of Closely Related Counts), the counts are to be grouped together under §3D1.2(c) despite the non-applicability of certain enhancements under Application Note 4(A). Thus, for example, in a case in which the defendant is convicted of a felon-in-possession count under 18 U.S.C. § 922(g) and a drug trafficking count underlying a conviction under 18 U.S.C. § 924(c), the counts shall be grouped pursuant to §3D1.2(c). The applicable Chapter Two guidelines for the felon-in-possession count and the drug trafficking count each include 'conduct that is treated as a specific offense characteristic' in the other count, but the otherwise applicable enhancements did not apply due to the rules in §2K2.4 related to 18 U.S.C. § 924(c) convictions.";

and inserting the following:

"*Non-Applicability of Certain Enhancements*.—If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm when determining the sentence for the underlying offense. A sentence under this guideline accounts for any explosive or weapon enhancement for the underlying offense of conviction, including any such enhancement that would apply based on conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct). Do not apply any weapon enhancement in the guideline for the underlying offense, for example, if (A) a co-defendant, as part of the jointly undertaken criminal activity, possessed a firearm different from the one for which the defendant was convicted under 18 U.S.C. § 924(c); or (B) in an ongoing drug trafficking offense, the defendant possessed a firearm other than the one for which the defendant was convicted under 18 U.S.C. § 924(c). However, if a defendant is convicted of two armed bank robberies, but is convicted under 18 U.S.C. § 924(c) in connection with only one of the robberies, a weapon enhancement would apply to the bank robbery which was not the basis for the 18 U.S.C. § 924(c) conviction.

A sentence under this guideline also accounts for conduct that would subject the defendant to an enhancement under §2D1.1(b)(2) (pertaining to use of violence, credible threat to use violence, or directing the use of violence). Do not apply that enhancement when determining the sentence for the underlying offense.

If the explosive or weapon that was possessed, brandished, used, or discharged in the course of the underlying offense also results in a conviction that would subject the defendant to an enhancement under §2K1.3(b)(3) (pertaining to possession of explosive material in connection with another felony offense) or §2K2.1(b)(7)(B) (pertaining to possession of any firearm or ammunition in connection with another felony offense), do not apply that enhancement. A sentence under this guideline accounts for the conduct covered by these enhancements because of the relatedness of that conduct to the conduct that forms the basis for the conviction under 18 U.S.C. § 844(h), § 924(c) or § 929(a). For example, if in addition to a conviction for an underlying offense of armed bank robbery, the defendant was convicted of being a felon in possession under 18 U.S.C. § 922(g), the enhancement under §2K2.1(b)(7)(B) would not apply.".

The Commentary to §2L2.2 captioned "Application Notes" is amended by striking Note 5 as follows:

"5. *Multiple Counts*.—For the purposes of Chapter Three, Part D (Multiple Counts), a count of conviction for unlawfully entering or remaining in the United States covered by §2L1.2 (Unlawfully Entering or Remaining in the United States) arising from the same course of conduct as the count of conviction covered by this guideline shall be considered a closely related count to the count of conviction covered by this guideline, and therefore is to be grouped with the count of conviction covered by this guideline.".

Section 2M6.1(d)(1) is amended by striking "Chapter Three, Part D (Multiple Counts)" and inserting "subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)".

Section 2N1.1(d)(1) is amended by striking "Chapter Three, Part D (Multiple Counts)" and inserting "subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)".

The Commentary to §2P1.2 captioned "Application Notes" is amended in Note 3 by striking "group the offenses together under §3D1.2(c)" and inserting "determine the combined offense level for the offenses under §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)"; and by striking "the grouping rules of §§3D1.1–3D1.5 apply. *See* §3D1.1(b)(1), comment. (n.1), and §3D1.2, comment. (n.1)" and inserting "§3D1.1 will apply. *See* §3D1.1(e)(1), comment. (n.1)".

Section 2Q1.4(c)(1), as redesignated and amended by Amendment 837, is further amended by striking "Chapter Three, Part D (Multiple Counts)" and inserting "subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)".

The Commentary to §2S1.1 captioned "Application Notes" is amended by striking Note 6 as follows:

"6. *Grouping of Multiple Counts*.—In a case in which the defendant is convicted of a count of laundering funds and a count for the underlying offense from which the laundered funds were derived, the counts shall be grouped pursuant to subsection (c) of §3D1.2 (Groups of Closely-Related Counts).".

The Commentary to §2X1.1 captioned "Application Notes" is amended in Note 4 by striking "(or group of closely related multiple counts)" and inserting "(or the offense level for the group of counts determined under subsection (a) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts))"; and by striking "In the case of multiple counts that are not closely related counts" and inserting "In the case of multiple counts to which §3D1.1(a) does not apply".

The Commentary to §2X6.1 captioned "Application Notes" is amended in Note 3 by striking the following:

"*Multiple Counts*.—

(A) In a case in which the defendant is convicted under both 18 U.S.C. § 25 and the underlying crime of violence, the counts shall be grouped pursuant to subsection (a) of §3D1.2 (Groups of Closely Related Counts).

(B) Multiple counts involving the use of a minor in a crime of violence shall not be grouped under §3D1.2.";

and inserting the following:

"*Multiple Counts*.—In a case in which the defendant is convicted of multiple counts involving the use of a minor in a crime of violence, apply subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to the counts.".

The Commentary to §3C1.1 captioned "Application Notes," as amended by Amendment 837, is further amended—

by striking Note 8 as follows:

"8. *Grouping Under §3D1.2(c)*.—If the defendant is convicted both of an obstruction offense (*e.g.*, 18 U.S.C. § 3146 (Penalty for failure to appear); 18 U.S.C. § 1621 (Perjury generally)) and an underlying offense (the offense with respect to which the obstructive conduct occurred), the count for the obstruction offense will be grouped with the count for the underlying offense under subsection (c) of §3D1.2 (Groups of Closely Related Counts). The offense level for that group of closely related counts will be the offense level for the underlying offense increased by the 2-level adjustment specified by this section, or the offense level for the obstruction offense, whichever is greater.";

and by redesignating Note 9 as Note 8.

Chapter Three, Part D is amended—

by striking in their entirety the Introductory Commentary, §§3D1.1 through 3D1.5, and the Concluding Commentary to Part D of Chapter Three as follows:

"

Introductory Commentary

This part provides rules for determining a single offense level that encompasses all the counts of which the defendant is convicted. These rules apply to multiple counts of conviction (A) contained in the same indictment or information; or (B) contained in different indictments or informations for which sentences are to be imposed at the same time or in a consolidated proceeding. The single, 'combined' offense level that results from applying these rules is used, after adjustment pursuant to the guidelines in subsequent parts, to determine the sentence. These rules have been designed primarily with the more commonly prosecuted federal offenses in mind.

The rules in this part seek to provide incremental punishment for significant additional criminal conduct. The most serious offense is used as a starting point. The other counts determine how much to increase the offense level. The amount of the additional punishment declines as the number of additional offenses increases.

Some offenses that may be charged in multiple-count indictments are so closely intertwined with other offenses that conviction for them ordinarily would not warrant increasing the guideline range. For example, embezzling money from a bank and falsifying the related records, although legally distinct offenses, represent essentially the same type of wrongful conduct with the same ultimate harm, so that it would be more appropriate to treat them as a single offense for purposes of sentencing. Other offenses, such as an assault causing bodily injury to a teller during a bank robbery, are so closely related to the more serious offense that it would be appropriate to treat them as part of the more serious offense, leaving the sentence enhancement to result from application of a specific offense characteristic.

In order to limit the significance of the formal charging decision and to prevent multiple punishment for substantially identical offense conduct, this part provides rules for grouping offenses together. Convictions on multiple counts do not result in a sentence enhancement unless they represent additional conduct that is not otherwise accounted for by the guidelines. In essence, counts that are grouped together are treated as constituting a single offense for purposes of the guidelines.

Some offense guidelines, such as those for theft, fraud and drug offenses, contain provisions that deal with repetitive or ongoing behavior. Other guidelines, such as those for assault and robbery, are oriented more toward single episodes of criminal behavior. Accordingly, different rules are required for dealing with multiple-count convictions involving these two different general classes of offenses. More complex cases involving different types of offenses may require application of one rule to some of the counts and another rule to other counts.

Some offenses, *e.g.*, racketeering and conspiracy, may be 'composite' in that they involve a pattern of conduct or scheme involving multiple underlying offenses. The rules in this part are to be used to determine the offense level for such composite offenses from the offense level for the underlying offenses.

Essentially, the rules in this part can be summarized as follows: (1) If the offense guidelines in Chapter Two base the offense level primarily on the amount of money or quantity of substance involved (*e.g.*, theft, fraud, drug trafficking, firearms dealing), or otherwise contain provisions dealing with repetitive or ongoing misconduct *(e.g.*, many environmental offenses), add the numerical quantities and apply the pertinent offense guideline, including any specific offense characteristics for the conduct taken as a whole. (2) When offenses are closely interrelated, group them together for purposes of the multiple-count rules, and use only the offense level for the most serious offense in that group. (3) As to other offenses (*e.g.*, independent instances of assault or robbery), start with the offense level for the most serious count and use the number and severity of additional counts to determine the amount by which to increase that offense level.

§3D1.1. *Procedure for Determining Offense Level on Multiple Counts*

(a) When a defendant has been convicted of more than one count, the court shall:

(1) Group the counts resulting in conviction into distinct Groups of Closely Related Counts ('Groups') by applying the rules specified in §3D1.2.

(2) Determine the offense level applicable to each Group by applying the rules specified in §3D1.3.

(3) Determine the combined offense level applicable to all Groups taken together by applying the rules specified in §3D1.4.

(b) Exclude from the application of §§3D1.2–3D1.5 the following:

(1) Any count for which the statute (A) specifies a term of imprisonment to be imposed; and (B) requires that such term of imprisonment be imposed to run consecutively to any other term of imprisonment. Sentences for such counts are governed by the provisions of §5G1.2(a).

(2) Any count of conviction under 18 U.S.C. § 1028A. *See* Application Note 2(B) of the Commentary to §5G1.2 (Sentencing on Multiple Counts of Conviction) for guidance on how sentences for multiple counts of conviction under 18 U.S.C. § 1028A should be imposed.

Commentary

Application Notes:

1. *In General*.—For purposes of sentencing multiple counts of conviction, counts can be (A) contained in the same indictment or information; or (B) contained in different indictments or informations for which sentences are to be imposed at the same time or in a consolidated proceeding.

2. *Application of Subsection (b)*.—Subsection (b)(1) applies if a statute (A) specifies a term of imprisonment to be imposed; and (B) requires that such term of imprisonment be imposed to run consecutively to any other term of imprisonment. *See, e.g.*, 18 U.S.C. § 924(c) (requiring mandatory minimum terms of imprisonment, based on the conduct involved, to run consecutively). The multiple count rules set out under this part do not apply to a count of conviction covered by subsection (b). However, a count covered by subsection (b)(1) may affect the offense level determination for other counts. For example, a defendant is convicted of one count of bank robbery (18 U.S.C. § 2113), and one count of use of a firearm in the commission of a crime of violence (18 U.S.C. § 924(c)). The two counts are not grouped together pursuant to this guideline, and, to avoid unwarranted double counting, the offense level for the bank robbery count under §2B3.1 (Robbery) is computed without application of the enhancement for weapon possession or use as otherwise required by subsection (b)(2) of that guideline. Pursuant to 18 U.S.C. § 924(c), the mandatory minimum five-year sentence on the weapon-use count runs consecutively to the guideline sentence imposed on the bank robbery count. *See* §5G1.2(a).

   Unless specifically instructed, subsection (b)(1) does not apply when imposing a sentence under a statute that requires the imposition of a consecutive term of imprisonment only if a term of imprisonment is imposed (*i.e.*, the statute does not otherwise require a term of imprisonment to be imposed). *See, e.g.*, 18 U.S.C. § 3146 (Penalty for failure to appear); 18 U.S.C. § 924(a)(4) (regarding penalty for 18 U.S.C. § 922(q) (possession or discharge of a firearm in a school zone)); 18 U.S.C. § 1791(c) (penalty for providing or possessing a controlled substance in prison). Accordingly, the multiple count rules set out under this part do apply to a count of conviction under this type of statute.

Background: This section outlines the procedure to be used for determining the combined offense level. After any adjustments from Chapter Three, Parts E (Acceptance of Responsibility) and F (Early Disposition Programs), and Chapter Four, Parts B (Career Offenders and Criminal Livelihood) and C (Adjustment for Certain Zero-Point Offenders) are made, this combined offense level is used to determine the guideline sentence range. Chapter Five (Determining the Sentencing Range and Options Under the Guidelines) discusses how to determine the sentence from the (combined) offense level; §5G1.2 deals specifically with determining the sentence of imprisonment when convictions on multiple counts are involved. References in Chapter Five (Determining the Sentencing Range and Options Under the Guidelines) to the 'offense level' should be treated as referring to the combined offense level after all subsequent adjustments have been made.

§3D1.2. *Groups of Closely Related Counts*

All counts involving substantially the same harm shall be grouped together into a single Group. Counts involve substantially the same harm within the meaning of this rule:

(a) When counts involve the same victim and the same act or transaction.

(b) When counts involve the same victim and two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan.

(c) When one of the counts embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to another of the counts.

(d) When the offense level is determined largely on the basis of the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm, or if the offense behavior is ongoing or continuous in nature and the offense guideline is written to cover such behavior.

Offenses covered by the following guidelines are to be grouped under this subsection:

§2A3.5;
§§2B1.1, 2B1.4, 2B1.5, 2B4.1, 2B5.1, 2B5.3, 2B6.1;
§§2C1.1, 2C1.2, 2C1.8;
§§2D1.1, 2D1.2, 2D1.5, 2D1.11, 2D1.13;
§§2E4.1, 2E5.1;
§§2G2.2, 2G3.1;
§2K2.1;
§§2L1.1, 2L2.1;
§2N3.1;
§2Q2.1;
§2R1.1;
§§2S1.1, 2S1.3;
§§2T1.1, 2T1.4, 2T1.6, 2T1.7, 2T1.9, 2T2.1, 2T3.1.

Specifically excluded from the operation of this subsection are:

all offenses in Chapter Two, Part A (except §2A3.5);
§§2B2.1, 2B2.3, 2B3.1, 2B3.2, 2B3.3;
§2C1.5;
§§2D2.1, 2D2.2, 2D2.3;
§§2E1.3, 2E1.4, 2E2.1;
§§2G1.1, 2G1.3, 2G2.1;
§§2H1.1, 2H2.1, 2H4.1;
§§2L2.2, 2L2.5;
§§2M2.1, 2M2.3, 2M3.1, 2M3.2, 2M3.3, 2M3.4, 2M3.5, 2M3.9;
§§2P1.1, 2P1.2, 2P1.3;
§2X6.1.

For multiple counts of offenses that are not listed, grouping under this subsection may or may not be appropriate; a case-by-case determination must be made based upon the facts of the case and the applicable guidelines (including specific offense characteristics and other adjustments) used to determine the offense level.

Exclusion of an offense from grouping under this subsection does not necessarily preclude grouping under another subsection.

Commentary

Application Notes:

1. Subsections (a)–(d) set forth circumstances in which counts are to be grouped together into a single Group. Counts are to be grouped together into a single Group if any one or more of the subsections provide for such grouping. Counts for which the statute (A) specifies a term of imprisonment to be imposed; and (B) requires that such term of imprisonment be imposed to run consecutively to any other term of imprisonment are excepted from application of the multiple count rules. *See* §3D1.1(b)(1); *id.*, comment. (n.1).

2. The term 'victim' is not intended to include indirect or secondary victims. Generally, there will be one person who is directly and most seriously affected by the offense and is therefore identifiable as the victim. For offenses in which there are no identifiable victims (*e.g.*, drug or immigration offenses, where society at large is the victim), the 'victim' for purposes of subsections (a) and (b) is the societal interest that is harmed. In such cases, the counts are grouped together when the societal interests that are harmed are closely related. Where one count, for example, involves unlawfully entering the United States and the other involves possession of fraudulent evidence of citizenship, the counts are grouped together because the societal interests harmed (the interests protected by laws governing immigration) are closely related. In contrast, where one count involves the sale of controlled substances and the other involves an immigration law violation, the counts are not grouped together because different societal interests are harmed. Ambiguities should be resolved in accordance with the purpose of this section as stated in the lead paragraph, *i.e.*, to identify and group 'counts involving substantially the same harm.'

3. Under subsection (a), counts are to be grouped together when they represent essentially a single injury or are part of a single criminal episode or transaction involving the same victim.

   When one count charges an attempt to commit an offense and the other charges the commission of that offense, or when one count charges an offense based on a general prohibition and the other charges violation of a specific prohibition encompassed in the general prohibition, the counts will be grouped together under subsection (a).

   Examples: (1) The defendant is convicted of forging and uttering the same check. The counts are to be grouped together. (2) The defendant is convicted of kidnapping and assaulting the victim during the course of the kidnapping. The counts are to be grouped together. (3) The defendant is convicted of bid rigging (an antitrust offense) and of mail fraud for signing and mailing a false statement that the bid was competitive. The counts are to be grouped together. (4) The defendant is convicted of two counts of assault on a federal officer for shooting at the same officer twice while attempting to prevent apprehension as part of a single criminal episode. The counts are to be grouped together. (5) The defendant is convicted of three counts of unlawfully bringing aliens

into the United States, all counts arising out of a single incident. The three counts are to be grouped together. *But*: (6) The defendant is convicted of two counts of assault on a federal officer for shooting at the officer on two separate days. The counts *are not* to be grouped together.

4. Subsection (b) provides that counts that are part of a single course of conduct with a single criminal objective and represent essentially one composite harm to the same victim are to be grouped together, even if they constitute legally distinct offenses occurring at different times. This provision does not authorize the grouping of offenses that cannot be considered to represent essentially one composite harm (*e.g.*, robbery of the same victim on different occasions involves multiple, separate instances of fear and risk of harm, not one composite harm).

   When one count charges a conspiracy or solicitation and the other charges a substantive offense that was the sole object of the conspiracy or solicitation, the counts will be grouped together under subsection (b).

   Examples: (1) The defendant is convicted of one count of conspiracy to commit extortion and one count of extortion for the offense he conspired to commit. The counts are to be grouped together. (2) The defendant is convicted of two counts of mail fraud and one count of wire fraud, each in furtherance of a single fraudulent scheme. The counts are to be grouped together, even if the mailings and telephone call occurred on different days. (3) The defendant is convicted of one count of auto theft and one count of altering the vehicle identification number of the car he stole. The counts are to be grouped together. (4) The defendant is convicted of two counts of distributing a controlled substance, each count involving a separate sale of 10 grams of cocaine that is part of a common scheme or plan. In addition, a finding is made that there are two other sales, also part of the common scheme or plan, each involving 10 grams of cocaine. The total amount of all four sales (40 grams of cocaine) will be used to determine the offense level for each count under §1B1.3(a)(2). The two counts will then be grouped together under either this subsection or subsection (d) to avoid double counting. *But*: (5) The defendant is convicted of two counts of rape for raping the same person on different days. The counts *are not* to be grouped together.

5. Subsection (c) provides that when conduct that represents a separate count, *e.g.*, bodily injury or obstruction of justice, is also a specific offense characteristic in or other adjustment to another count, the count represented by that conduct is to be grouped with the count to which it constitutes an aggravating factor. This provision prevents 'double counting' of offense behavior. Of course, this rule applies only if the offenses are closely related. It is not, for example, the intent of this rule that (assuming they could be joined together) a bank robbery on one occasion and an assault resulting in bodily injury on another occasion be grouped together. The bodily injury (the harm from the assault) would not be a specific offense characteristic to the robbery and would represent a different harm. On the other hand, use of a firearm in a bank robbery and unlawful possession of that firearm are sufficiently related to warrant grouping of counts under this subsection. Frequently, this provision will overlap subsection (a), at least with respect to specific offense characteristics. However, a count such as obstruction of justice, which represents a Chapter Three adjustment and involves a different harm or societal interest than the underlying offense, is covered by subsection (c) even though it is not covered by subsection (a).

   Sometimes there may be several counts, each of which could be treated as an aggravating factor to another more serious count, but the guideline for the more serious count provides an adjustment for only one occurrence of that factor. In such cases, only

the count representing the most serious of those factors is to be grouped with the other count. For example, if in a robbery of a credit union on a military base the defendant is also convicted of assaulting two employees, one of whom is injured seriously, the assault with serious bodily injury would be grouped with the robbery count, while the remaining assault conviction would be treated separately.

A cross reference to another offense guideline does not constitute 'a specific offense characteristic . . . or other adjustment' within the meaning of subsection (c). For example, the guideline for bribery of a public official contains a cross reference to the guideline for a conspiracy to commit the offense that the bribe was to facilitate. Nonetheless, if the defendant were convicted of one count of securities fraud and one count of bribing a public official to facilitate the fraud, the two counts would not be grouped together by virtue of the cross reference. If, however, the bribe was given for the purpose of hampering a criminal investigation into the offense, it would constitute obstruction and under §3C1.1 would result in a 2-level enhancement to the offense level for the fraud. Under the latter circumstances, the counts would be grouped together.

6. Subsection (d) likely will be used with the greatest frequency. It provides that most property crimes (except robbery, burglary, extortion and the like), drug offenses, firearms offenses, and other crimes where the guidelines are based primarily on quantity or contemplate continuing behavior are to be grouped together. The list of instances in which this subsection should be applied is not exhaustive. Note, however, that certain guidelines are specifically excluded from the operation of subsection (d).

A conspiracy, attempt, or solicitation to commit an offense is covered under subsection (d) if the offense that is the object of the conspiracy, attempt, or solicitation is covered under subsection (d).

Counts involving offenses to which different offense guidelines apply are grouped together under subsection (d) if the offenses are of the same general type and otherwise meet the criteria for grouping under this subsection. In such cases, the offense guideline that results in the highest offense level is used; *see* §3D1.3(b). The 'same general type' of offense is to be construed broadly.

Examples: (1) The defendant is convicted of five counts of embezzling money from a bank. The five counts are to be grouped together. (2) The defendant is convicted of two counts of theft of social security checks and three counts of theft from the mail, each from a different victim. All five counts are to be grouped together. (3) The defendant is convicted of five counts of mail fraud and ten counts of wire fraud. Although the counts arise from various schemes, each involves a monetary objective. All fifteen counts are to be grouped together. (4) The defendant is convicted of three counts of unlicensed dealing in firearms. All three counts are to be grouped together. (5) The defendant is convicted of one count of selling heroin, one count of selling PCP, and one count of selling cocaine. The counts are to be grouped together. The Commentary to §2D1.1 provides rules for combining (adding) quantities of different drugs to determine a single combined offense level. (6) The defendant is convicted of three counts of tax evasion. The counts are to be grouped together. (7) The defendant is convicted of three counts of discharging toxic substances from a single facility. The counts are to be grouped together. (8) The defendant is convicted on two counts of check forgery and one count of uttering the first of the forged checks. All three counts are to be grouped together. Note, however, that the uttering count is first grouped with the first forgery count under subsection (a) of this guideline, so that the monetary amount of that check

counts only once when the rule in §3D1.3(b) is applied. *But*: (9) The defendant is convicted of three counts of bank robbery. The counts *are not* to be grouped together, nor are the amounts of money involved to be added.

7. A single case may result in application of several of the rules in this section. Thus, for example, example (8) in the discussion of subsection (d) involves an application of §3D1.2(a) followed by an application of §3D1.2(d). Note also that a Group may consist of a single count; conversely, all counts may form a single Group.

8. A defendant may be convicted of conspiring to commit several substantive offenses and also of committing one or more of the substantive offenses. In such cases, treat the conspiracy count as if it were several counts, each charging conspiracy to commit one of the substantive offenses. *See* §1B1.2(d) and accompanying commentary. Then apply the ordinary grouping rules to determine the combined offense level based upon the substantive counts of which the defendant is convicted and the various acts cited by the conspiracy count that would constitute behavior of a substantive nature. *Example*: The defendant is convicted of two counts: conspiring to commit offenses A, B, and C, and committing offense A. Treat this as if the defendant was convicted of (1) committing offense A; (2) conspiracy to commit offense A; (3) conspiracy to commit offense B; and (4) conspiracy to commit offense C. Count (1) and count (2) are grouped together under §3D1.2(b). Group the remaining counts, including the various acts cited by the conspiracy count that would constitute behavior of a substantive nature, according to the rules in this section.

Background: Ordinarily, the first step in determining the combined offense level in a case involving multiple counts is to identify those counts that are sufficiently related to be placed in the same Group of Closely Related Counts ('Group'). This section specifies four situations in which counts are to be grouped together. Although it appears last for conceptual reasons, subsection (d) probably will be used most frequently.

A primary consideration in this section is whether the offenses involve different victims. For example, a defendant may stab three prison guards in a single escape attempt. Some would argue that all counts arising out of a single transaction or occurrence should be grouped together even when there are distinct victims. Although such a proposal was considered, it was rejected because, in many cases, it would not adequately capture the scope and impact of the criminal behavior. Cases involving injury to distinct victims are sufficiently comparable, whether or not the injuries are inflicted in distinct transactions, so that each such count should be treated separately rather than grouped together. Counts involving different victims (or societal harms in the case of 'victimless' crimes) are grouped together only as provided in subsection (c) or (d).

Even if counts involve a single victim, the decision as to whether to group them together may not always be clear cut. For example, how contemporaneous must two assaults on the same victim be in order to warrant grouping together as constituting a single transaction or occurrence? Existing case law may provide some guidance as to what constitutes distinct offenses, but such decisions often turn on the technical language of the statute and cannot be controlling. In interpreting this part and resolving ambiguities, the court should look to the underlying policy of this part as stated in the Introductory Commentary.

§3D1.3. *Offense Level Applicable to Each Group of Closely Related Counts*

Determine the offense level applicable to each of the Groups as follows:

(a) In the case of counts grouped together pursuant to §3D1.2(a)–(c), the offense level applicable to a Group is the offense level, determined in accordance with Chapter Two and Parts A, B, and C of Chapter Three, for the most serious of the counts comprising the Group, *i.e.*, the highest offense level of the counts in the Group.

(b) In the case of counts grouped together pursuant to §3D1.2(d), the offense level applicable to a Group is the offense level corresponding to the aggregated quantity, determined in accordance with Chapter Two and Parts A, B and C of Chapter Three. When the counts involve offenses of the same general type to which different guidelines apply, apply the offense guideline that produces the highest offense level.

Commentary

Application Notes:

1. The 'offense level' for a count refers to the offense level from Chapter Two after all adjustments from Parts A, B, and C of Chapter Three.

2. When counts are grouped pursuant to §3D1.2(a)–(c), the highest offense level of the counts in the group is used. Ordinarily, it is necessary to determine the offense level for each of the counts in a Group in order to ensure that the highest is correctly identified. Sometimes, it will be clear that one count in the Group cannot have a higher offense level than another, as with a count for an attempt or conspiracy to commit the completed offense. The formal determination of the offense level for such a count may be unnecessary.

3. When counts are grouped pursuant to §3D1.2(d), the offense guideline applicable to the aggregate behavior is used. If the counts in the Group are covered by different guidelines, use the guideline that produces the highest offense level. Determine whether the specific offense characteristics or adjustments from Chapter Three, Parts A, B, and C apply based upon the combined offense behavior taken as a whole. Note that guidelines for similar property offenses have been coordinated to produce identical offense levels, at least when substantial property losses are involved. However, when small sums are involved the differing specific offense characteristics that require increasing the offense level to a certain minimum may affect the outcome.

Background: This section provides rules for determining the offense level associated with each Group of Closely Related Counts. Summary examples of the application of these rules are provided at the end of the Commentary to this part.

§3D1.4. *Determining the Combined Offense Level*

The combined offense level is determined by taking the offense level applicable to the Group with the highest offense level and increasing that offense level by the amount indicated in the following table:

Number of Units	*Increase in Offense Level*
1	none
1 1/2	add 1 level
2	add 2 levels
2 1/2 – 3	add 3 levels
3 1/2 – 5	add 4 levels
More than 5	add 5 levels.

In determining the number of Units for purposes of this section:

(a) Count as one Unit the Group with the highest offense level. Count one additional Unit for each Group that is equally serious or from 1 to 4 levels less serious.

(b) Count as one-half Unit any Group that is 5 to 8 levels less serious than the Group with the highest offense level.

(c) Disregard any Group that is 9 or more levels less serious than the Group with the highest offense level. Such Groups will not increase the applicable offense level but may provide a reason for sentencing at the higher end of the sentencing range for the applicable offense level.

Commentary

Application Notes:

1. Application of the rules in §§3D1.2 and 3D1.3 may produce a single Group of Closely Related Counts. In such cases, the combined offense level is the level corresponding to the Group determined in accordance with §3D1.3.

2. The procedure for calculating the combined offense level when there is more than one Group of Closely Related Counts is as follows: First, identify the offense level applicable to the most serious Group; assign it one Unit. Next, determine the number of Units that the remaining Groups represent. Finally, increase the offense level for the most serious Group by the number of levels indicated in the table corresponding to the total number of Units.

Background: When Groups are of roughly comparable seriousness, each Group will represent one Unit. When the most serious Group carries an offense level substantially higher than that applicable to the other Groups, however, counting the lesser Groups fully for purposes of the table could add excessive punishment, possibly even more than those offenses would carry if prosecuted separately. To avoid this anomalous result and produce declining marginal punishment, Groups 9 or more levels less serious than the most serious Group should not be counted for purposes of the table, and that Groups 5 to 8 levels less serious should be treated as equal to one-half of a Group. Thus, if the most serious Group is at offense level 15 and if two other Groups are at level 10, there would be a total of two Units for purposes of the table (one plus one-half plus one-half) and the combined offense level would be 17.

§3D1.5. *Determining the Total Punishment*

Use the combined offense level to determine the appropriate sentence in accordance with the provisions of Chapter Five.

Commentary

This section refers the court to Chapter Five (Determining the Sentencing Range and Options Under the Guidelines) in order to determine the total punishment to be imposed based upon the combined offense level. The combined offense level is subject to adjustments from Chapter Three, Parts E (Acceptance of Responsibility) and F (Early Disposition Programs), and Chapter Four, Parts B (Career Offenders and Criminal Livelihood) and C (Adjustment for Certain Zero-Point Offenders).

* * * * *

Concluding Commentary to Part D of Chapter Three
Illustrations of the Operation of the Multiple-Count Rules

The following examples, drawn from presentence reports in the Commission's files, illustrate the operation of the guidelines for multiple counts. The examples are discussed summarily; a more thorough, step-by-step approach is recommended until the user is thoroughly familiar with the guidelines.

1. Defendant A was convicted of four counts, each charging robbery of a different bank. Each would represent a distinct Group. §3D1.2. In each of the first three robberies, the offense level was 22 (20 plus a 2-level increase because a financial institution was robbed) (§2B3.1(b)). In the fourth robbery $21,000 was taken and a firearm was displayed; the offense level was therefore 28. As the first three counts are 6 levels lower than the fourth, each of the first three represents one-half unit for purposes of §3D1.4. Altogether there are 2 1/2 Units, and the offense level for the most serious (28) is therefore increased by 3 levels under the table. The combined offense level is 31.

2. Defendant B was convicted of four counts: (1) distribution of 230 grams of cocaine; (2) distribution of 150 grams of cocaine; (3) distribution of 75 grams of heroin; (4) offering a DEA agent $20,000 to avoid prosecution. The combined offense level for drug offenses is determined by the total quantity of drugs, converted to converted drug weight (using the Drug Conversion Tables in the Commentary to §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking)). The first count translates into 46 kilograms of converted drug weight; the second count translates into 30 kilograms of converted drug weight; and the third count translates into 75 kilograms of converted drug weight. The total is 151 kilograms of converted drug weight. Under §2D1.1, the combined offense level for the drug offenses is 24. In addition, because of the attempted bribe of the DEA agent, this offense level is increased by 2 levels to 26 under §3C1.1 (Obstructing or Impeding the Administration of Justice). Because the conduct constituting the bribery offense is accounted for by §3C1.1, it becomes part of the same Group as the drug offenses pursuant to §3D1.2(c). The combined offense level is 26 pursuant to §3D1.3(a), because the offense level for bribery (20) is less than the offense level for the drug offenses (26).

3. Defendant C was convicted of four counts arising out of a scheme pursuant to which the defendant received kickbacks from subcontractors. The counts were as follows: (1) The defendant received $1,000 from subcontractor A relating to contract X (Mail Fraud). (2) The defendant received $1,000 from subcontractor A relating to contract X (Commercial Bribery). (3) The defendant received $1,000 from subcontractor A relating to contract Y (Mail Fraud). (4) The defendant received $1,000 from subcontractor B relating to contract Z (Commercial Bribery). The mail fraud counts are covered by §2B1.1 (Theft, Property Destruction, and Fraud). The bribery counts are covered by §2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery), which

treats the offense as a sophisticated fraud. The total money involved is $4,000, which results in an offense level of 9 under either §2B1.1 (assuming the application of the 'sophisticated means' enhancement in §2B1.1(b)(10)) or §2B4.1. Since these two guidelines produce identical offense levels, the combined offense level is 9.";

and inserting the following new Introductory Commentary and new §3D1.1:

"

Introductory Commentary

This part provides rules for determining a single offense level that encompasses all the counts of which the defendant is convicted. These rules apply to multiple counts of conviction (A) contained in the same indictment or information; or (B) contained in different indictments or informations for which sentences are to be imposed at the same time or in a consolidated proceeding. The single offense level that results from applying these rules is used, after adjustment pursuant to the guidelines in subsequent parts, to determine the applicable guideline range.

The Commission first designed these rules primarily based on the more commonly prosecuted offenses with the goals of providing incremental punishment for significant additional criminal conduct, preventing multiple punishments for substantially identical conduct, and limiting the significance of the formal charging decision. These goals led to the development of three principles: (1) combining the offense behavior of offenses using a Chapter Two guideline primarily based on the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm; (2) grouping related offenses together and assigning an offense level based on the most serious of the related offenses; and (3) assigning incremental offense-level increases based on any remaining unrelated offenses using a unit system. The Guidelines Manual expanded on these three principles in five guidelines, each containing several rules that courts and commenters frequently found confusing, particularly the rules for determining whether multiple offenses were related or unrelated.

In 2026, the Commission revised Chapter Three, Part D to simplify the multiple count rules while maintaining the goals and principles of the original rules. The current rules still combine offenses to which the applicable Chapter Two guideline is primarily based on the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm. However, to simplify the process for assigning incremental punishment in certain cases, the current rules set forth one rule that was developed based on the situations where incremental punishment applied most frequently under the original rules and the average increase involved in those cases. This rule provides for incremental offense-level increases to multiple counts involving different victims or the same victim on different occasions, such as multiple counts of murder, assault, robbery, and sexual abuse, based solely on the number of counts instead of a unit system.

§3D1.1. *Procedure for Determining Offense Level on Multiple Counts*

(a) If there are multiple counts to which the same guideline applies and the guideline is listed below, determine the offense level applicable to these counts using the combined offense behavior taken as a whole.

The guidelines covered by subsection (a) are as follows:

§2A3.5;
§§2B1.1, 2B1.4, 2B1.5, 2B4.1, 2B5.1, 2B5.3, 2B6.1;
§§2C1.1, 2C1.2, 2C1.8;
§§2D1.1, 2D1.2, 2D1.5, 2D1.11, 2D1.13;

§§2E4.1, 2E5.1;
§§2G2.2, 2G3.1;
§2K2.1;
§§2L1.1, 2L2.1;
§2N3.1;
§2Q2.1;
§2R1.1;
§§2S1.1, 2S1.3;
§§2T1.1, 2T1.4, 2T1.6, 2T1.7, 2T1.9, 2T2.1, 2T3.1.

(b) (1) If there are multiple counts (A) to which the same guideline applies, (B) for which the applicable guideline is listed below, and (C) involving different victims or the same victim on different occasions, determine the offense level applicable to these counts by calculating the offense level for each count separately and applying the adjustment set forth in subsection (b)(2) to the count resulting in the highest offense level.

The guidelines covered by subsection (b) are as follows:

all offenses in Chapter Two, Part A (except §2A3.5);
§§2B2.1, 2B3.1, 2B3.2, 2B3.3;
§2D2.3;
§§2E1.3, 2E1.4, 2E2.1;
§§2G1.1, 2G1.3, 2G2.1;
§§2H1.1, 2H4.1;
§§2J1.2, 2J1.3;
§2K1.4;
§§2M3.9, 2M6.1;
§2N1.1;
§2Q1.4;
§2X6.1.

(2) The adjustment set forth in the table below shall be based on the number of counts covered by the guidelines listed in paragraph (1).

Number of Counts Covered by Guideline Listed in Paragraph (1)	*Increase in Offense Level*
(A) 2	add 2 levels
(B) 3	add 3 levels
(C) 4 or 5	add 4 levels
(D) 6 or more	add 5 levels.

(c) If there are any remaining counts not covered by subsection (a) or (b), determine the offense level for these counts by calculating the offense level for each count separately.

(d) The offense level applicable to all counts of conviction is the highest offense level applicable to: (1) any group of counts as determined under subsection (a); (2) any group of counts as determined under subsection (b); or (3) any count as determined under subsection (c).

(e) *Special Instruction for Certain Multiple Counts*.—If there are multiple counts of conviction, exclude from the application of subsections (a) through (d) above the following counts:

(1) Any count for which the statute (A) specifies a term of imprisonment to be imposed; and (B) requires that such term of imprisonment be imposed to run consecutively to any other term of imprisonment. Sentences for such counts are governed by subsection (a) of §5G1.2 (Sentencing on Multiple Counts of Conviction).

(2) Any count of conviction under 18 U.S.C. § 1028A. *See* Application Note 2(B) of the Commentary to §5G1.2 (Sentencing on Multiple Counts of Conviction) for guidance on how sentences for multiple counts of conviction under 18 U.S.C. § 1028A should be imposed.

Commentary

Application Notes:

1. *In General*.—For purposes of sentencing multiple counts of conviction, counts can be (A) contained in the same indictment or information; or (B) contained in different indictments or informations for which sentences are to be imposed at the same time or in a consolidated proceeding.

2. *Application of Subsection (e)*.—Subsection (e)(1) applies if a statute (A) specifies a term of imprisonment to be imposed; and (B) requires that such term of imprisonment be imposed to run consecutively to any other term of imprisonment. *See, e.g.*, 18 U.S.C. § 924(c) (requiring mandatory minimum terms of imprisonment, based on the conduct involved, to run consecutively). The multiple count rules set out under this guideline do not apply to a count of conviction covered by subsection (e). However, a count covered by subsection (e)(1) may affect the offense level determination for other counts. For example, a defendant is convicted of one count of bank robbery (18 U.S.C. § 2113), and one count of use of a firearm in the commission of a crime of violence (18 U.S.C. § 924(c)). The two counts are not grouped together pursuant to this guideline, and, to avoid unwarranted double counting, the offense level for the bank robbery count under §2B3.1 (Robbery) is computed without application of the enhancement for weapon possession or use as otherwise required by subsection (b)(2) of that guideline. Pursuant to 18 U.S.C. § 924(c), the mandatory minimum five-year sentence on the weapon-use count runs consecutively to the guideline sentence imposed on the bank robbery count. *See* §5G1.2(a).

Unless specifically instructed, subsection (e)(1) does not apply when imposing a sentence under a statute that requires the imposition of a consecutive term of imprisonment only if a term of imprisonment is imposed (*i.e.*, the statute does not otherwise require a term of imprisonment to be imposed). *See, e.g.*, 18 U.S.C. § 3146 (Penalty for failure to appear); 18 U.S.C. § 924(a)(4) (regarding penalty for 18 U.S.C. § 922(q) (possession or discharge of a firearm in a school zone)); 18 U.S.C. § 1791(c) (penalty for providing or possessing a controlled substance in prison). Accordingly, the multiple count rules set out under this part do apply to a count of conviction under this type of statute.

3. *Rules for Determining a Single Offense Level*.—Subsections (a) through (c) set forth the rules for determining a single offense level in cases involving multiple counts of conviction, and subsection (d) instructs to use the highest resulting offense level. In most cases, the single offense level applicable to all counts can be determined by applying only one subsection in this guideline. In some cases, the application of two subsections will be necessary to determine the single offense level applicable to all counts. In rare cases, the application of all three subsections will be necessary to determine the single offense level applicable to all counts. The following examples illustrate the interaction of the rules set forth in this guideline.

(A) *Cases Involving Subsections (a), (c), and (d)*.—Defendant A is convicted of two counts of wire fraud, in violation of 18 U.S.C. § 1343, and one count of tax evasion, in violation of 26 U.S.C. § 7201. The guideline that applies to the wire fraud counts is §2B1.1, while the guideline that applies to the tax evasion is §2T1.1. Although both guidelines are specifically listed in subsection (a), the rule set forth in subsection (a) is only used to determine a single offense level for the multiple counts to which the same guideline applies (*i.e.*, wire fraud counts). Therefore, the offense level for the wire fraud counts is determined by using the combined behavior. Subsection (c) would then apply to the remaining tax evasion count, and the offense level applicable to this count will be calculated separately. Subsection (d) is used to determine the single offense level for all three counts. Defendant A's offense level will be the greater of the offense levels determined above: the offense level based on the combined behavior calculated for the two counts of wire fraud or the offense level calculated for the tax evasion count.

(B) *Cases Involving Subsections (b), (c), and (d)*.—Defendant B is convicted of two counts of impeding a federal officer (each count involving a different federal officer), in violation of 18 U.S.C. § 111(a), and one count of burglary of a post office, in violation of 18 U.S.C. § 2115. The guideline that applies to the two counts of impeding a federal officer is §2A2.4, while the guideline that applies to the burglary count is §2B2.1. Although both guidelines are specifically listed in subsection (b), the rule set forth in subsection (b) is only used to determine a single offense level for the multiple counts to which the same guideline applies (*i.e.*, the counts of impeding a federal officer). Under subsection (b), each count of impeding a federal officer is calculated separately. Because subsection (b) applies to two counts, two levels are added to the count of impeding a federal officer that results in the highest offense level. Subsection (c) would apply to the remaining burglary count, and the offense level applicable for this count will be calculated separately. Subsection (d) is then used to determine the single offense level for all three counts, which will be the greater of the offense levels determined above: the offense level based under subsection (b) for the counts of impeding a federal officer or the offense level calculated for the burglary count under subsection (c).

(C) *Cases Involving Subsections (a), (b), and (d)*.—Defendant C is convicted of two counts of distribution of child pornography, in violation of 18 U.S.C. § 2252A, and three counts of sexual exploitation of a minor (each count involving a different minor), in violation of 18 U.S.C. § 2251(a). Subsection (a) is to be used to determine the single offense level for the two counts of child pornography distribution because §2G2.2, a guideline specifically listed in subsection (a), applies to both counts. The offense level for both counts is determined by using 'the combined offense behavior taken as a whole.' Subsection (b) is to be used to determine the single offense level for the three sexual exploitation counts

because §2G2.1, a guideline specifically listed in subsection (b), applies to these counts. Each sexual exploitation count is calculated separately, and three levels are added under subsection (b)(2)(B) (because there are three counts) to the count of sexual exploitation that results in the highest offense level. Subsection (d) is then used to determine the single offense level applicable to all five counts, which will be the greater of the offense level determined under subsection (a) for the two counts of child pornography distribution or the offense level determined under subsection (b) for the three counts of sexual exploitation.

4. *Counts Involving Different Victims or the Same Victim on Different Occasions*.—To prevent double counting of offense behavior, subsection (b)(1)(C) requires that the counts involve different victims or the same victim on different occasions. For example, a defendant convicted of two counts of robbery of Victim A, where the robberies occurred several days apart, would be subject to a multiple count adjustment under subsection (b). On the other hand, a defendant convicted of two counts of robbery of Victim A, where one count charges conspiracy or solicitation to commit robbery and the other charges the substantive robbery, would not be subject to a multiple count adjustment under subsection (b) because the counts involve the same victim on the same occasion.

5. *Interaction with §1B1.5(c)*.—Subsection (c) of §1B1.5 (Interpretation of References to Other Offense Guidelines) provides (with certain exceptions) that, in the case of a cross reference or other reference to use an entire Chapter Two guideline, this guideline applies based on the referenced offense guideline, not the offense guideline containing the reference. The following examples illustrate the circumstances where this instruction would apply.

(A) *Cross References*.—Defendant A is convicted of one count of distribution of child pornography, in violation of 18 U.S.C. § 2252A, and one count of sexual exploitation of a minor, in violation of 18 U.S.C. § 2251(a). Distribution of child pornography is referenced in Appendix A (Statutory Index) to §2G2.2, while sexual exploitation of a minor is referenced to §2G2.1. However, §2G2.2 contains a cross reference to §2G2.1 for certain cases. If the cross reference at §2G2.2(c) applies to the count of distribution of child pornography based on a different victim or the same victim on a different occasion, subsection (b) is to be used to determine the single offense level for both counts because the same guideline (§2G2.1), a guideline specifically listed in subsection (b), is applicable to the counts.

(B) *Other References*.—Defendant B is convicted of one count of Hobbs Act robbery, in violation of 18 U.S.C. § 1951, and one count of conspiracy to commit bank robbery, in violation of 18 U.S.C. § 371. The Hobbs Act robbery is referenced in Appendix A (Statutory Index) to §2B3.1, while conspiracy to commit bank robbery is referenced to §2X1.1. Section 2X1.1(a) requires the offense level to be determined by applying the base offense level and adjustments from the guideline for the underlying substantive offense, which is §2B3.1 in this case. If the counts involve different victims or the same victim on different occasions, subsection (b) is to be used to determine the single offense level for both counts because the same guideline (§2B3.1), a guideline specifically listed in subsection (b), is applicable to the counts.

(C) *Exception*.—Defendant C is convicted of money laundering, in violation of 18 U.S.C. § 1956, and one count of conspiracy to commit murder, in violation of 18 U.S.C. § 1117. Defendant C laundered proceeds that were wired to him

> as advanced payment for murder, which never took place. Money laundering is referenced in Appendix A (Statutory Index) to §2S1.1, while conspiracy to commit murder is referenced to §2A5.1. For the money laundering count, §2S1.1(a)(1) instructs to determine the offense level for the underlying offense from which the laundered funds were derived. Therefore, the base offense level for the money laundering count is determined by applying §2A1.5, the guideline applicable to the conspiracy to commit murder. Although the offense level for both counts is calculated by applying §2A1.5 (a guideline listed in subsection (b)), subsection (b) cannot be used to determine the single offense level for the counts because of a special instruction included in the Commentary to §2S1.1. This instruction provides that '[n]otwithstanding §1B1.5(c), . . . application of any Chapter Three adjustment shall be determined based on the offense covered by this guideline (*i.e.*, the laundering of criminally derived funds) and not on the underlying offense from which the laundered funds were derived.' Consequently, for purposes of subsection (b), two different guidelines (§2S1.1 and §2A1.5) apply to the counts.

Background: This section outlines the procedure to be used for determining the combined offense level. After any adjustments from Chapter Three, Parts E (Acceptance of Responsibility) and F (Early Disposition Programs), and Chapter Four, Parts B (Career Offenders and Criminal Livelihood) and C (Adjustment for Certain Zero-Point Offenders) are made, this combined offense level is used to determine the guideline sentence range. Chapter Five (Determining the Sentencing Range and Options Under the Guidelines) discusses how to determine the sentence from the (combined) offense level; §5G1.2 deals specifically with determining the sentence of imprisonment when convictions on multiple counts are involved. References in Chapter Five (Determining the Sentencing Range and Options Under the Guidelines) to the 'offense level' should be treated as referring to the combined offense level after all subsequent adjustments have been made.".

The Commentary to §5G1.2 captioned "Application Notes" is amended in Note 2(B)(ii) by striking "Whether the underlying offenses are groupable under §3D1.2 (Groups of Closely Related Counts). Generally, multiple counts of 18 U.S.C. § 1028A should run concurrently with one another in cases in which the underlying offenses are groupable under §3D1.2" and inserting "Whether subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) applies to the underlying offenses. Generally, multiple counts of 18 U.S.C. § 1028A should run concurrently with one another in cases in which §3D1.1(b) does not apply to the underlying offenses".

Reason for Amendment: As part of the Commission's continued efforts to simplify the *Guidelines Manual*, this amendment revises the rules in Chapter Three, Part D (Multiple Counts), to simplify the procedure for determining the single offense level for cases involving multiple counts. The amendment responds to both commenter concerns and Commission observations through its training mission that the rules were confusing and, at times, led to misapplication of the rules, potentially resulting in unwarranted sentencing disparities.

This amendment replaces the five guidelines in Chapter Three, Part D, with a single guideline at §3D1.1 (Procedure for Determining Offense Levels on Multiple Counts) that provides all the steps necessary to determine a single offense level for cases involving multiple counts. The new guideline simplifies the process with minimal impact to sentencing outcomes. In that regard, the new guideline retains the same goals of providing incremental punishment for significant additional criminal conduct, preventing multiple punishments for substantially identical conduct, and limiting the significance of the formal charging decision.

New subsection (a) provides the rule for calculating an offense level where multiple counts involve aggregate harms, such as multiple counts of fraud, drug trafficking, firearms, and tax. New subsection (a) provides that, if multiple counts use the same guideline and the guideline is listed therein, the offense level for this group of counts is determined using the combined offense behavior taken as a whole. The guidelines listed in new subsection (a) are the same guidelines that required aggregation under the prior version of subsection (d) of §3D1.2 (Groups of Closely Related Counts). As such, new subsection (a) maintains the approach for aggregate harm offenses as set forth in prior subsection (b) of §3D1.3 (Offense Level Applicable to Each Group of Closely Related Counts).

New subsection (b) provides the rule for calculating an offense level for multiple counts involving physical harm to an individual victim, such as multiple counts of murder, assault, robbery, and sexual abuse. Where the case involves multiple counts sentenced pursuant to the same guideline involving different victims or the same victim on different occasions, and that guideline is listed in subsection (b), the rule provides that the offense level for each count is first calculated separately to determine the highest offense level. Then, an adjustment is applied based on the table set forth in subsection (b)(2).

Consistent with the Commission's goal of outcome neutrality, both the guideline list provided for in subsection (b) and the offense-level adjustment were developed based upon empirical data and informed by public comment. The list is intended to capture guidelines covering offenses involving physical harm to an individual victim as well as guidelines that previously contained instructions to apply a multiple count adjustment under similar circumstances. Similarly, the offense-level adjustment results in average increases that are consistent with the pre-amendment guidelines.

New subsection (c) instructs courts to calculate the offense level for counts not covered by subsection (a) or (b) separately.

New subsection (d) instructs courts to use the highest resulting offense level from subsection (a), (b), or (c).

Finally, new subsection (e) retains the provisions of prior §3D1.1(b) identifying certain types of convictions that are excluded from the multiple count rules.

Consistent with the Commission's overarching intent, the amendment is largely outcome neutral. The Commission estimated that 93 percent of the nearly 11,000 multiple count cases from fiscal year 2024 and 99 percent of all cases sentenced in fiscal year 2024 would have no change in sentence. Further, when accounting for the cases that result in a higher or lower final offense level under the new rules, the Commission observed that the average change in sentence imposed on all multiple count cases would be less than one month, from an average of 99.5 months to 98.9 months.

The amendment also makes several conforming changes throughout the *Guidelines Manual*. Most notably, the amendment makes conforming changes to §1B1.3 (Relevant Conduct) to address the fact that it previously referenced the grouping rules at prior §3D1.2(d). As revised, §1B1.3(a)(2) now incorporates the relevant provisions from prior §3D1.2(d) in new §1B1.3(d). Therefore, while §1B1.3 appears different than the prior version, the Commission intends for relevant conduct to function identically to how it had before the amendment.

Effective Date: The effective date of this amendment is November 1, 2026.

AMENDMENT 841

AMENDMENT: Chapter Five is amended in the Introductory Commentary by striking "Chapter Five sets forth the steps used to determine the applicable sentencing range based upon the guideline calculations made in Chapters Two through Four. Additionally, the provisions" and inserting "Chapter Five sets forth the steps used to determine the applicable sentencing range and sentencing options based upon the guideline calculations made in Chapters Two through Four. The provisions".

Chapter Five, Part A is amended—

in the heading by striking "Sentencing Table" and inserting "Determination of Sentencing Range and Sentencing Options";

by inserting at the beginning the following new Introductory Commentary:

"

Introductory Commentary

By statute, sentencing courts must consider and balance a broad range of factors when determining the appropriate sentence to impose in each individual case. Among these factors, courts are required to consider 'all available sentencing options.' 18 U.S.C. § 3553(a)(3). Each of the available sentencing options—imprisonment, probation, and fines—serves a punitive function, and the sentencing court must determine the option, or combination of options, that best achieves a sentence 'sufficient, but not greater than necessary to comply with the purposes set forth in [18 U.S.C. § 3553(a)(2)].' 18 U.S.C. § 3553(a).

Congress charged the Commission with promulgating guidelines for sentencing courts to use in determining 'whether to impose a sentence to probation, a fine, or a term of imprisonment' (*see* 28 U.S.C. § 994(a)(1)(A)). The provisions within Chapter Five, in combination, guide all aspects of determining the appropriate sentence under the guidelines, including the initial determination of sentence type. By clearly delineating the sentencing options available under the guidelines, the Commission intends for Part A of this chapter to assist courts in making this critical decision.";

by striking "The Sentencing Table used to determine the guideline range follows:";

by inserting before the Sentencing Table the following new heading: "§5A1.1. *Sentencing Table*";

by redesignating the Sentencing Table as §5A1.1(c);

in §5A1.1 by inserting before subsection (c) (the Sentencing Table as so redesignated) the following:

"The Sentencing Table is used to determine the applicable sentencing range and sentencing options based upon the guideline calculations made in Chapters Two through Four.

(a) The Offense Level (1–43) forms the vertical axis of the Sentencing Table. The Criminal History Category (I–VI) forms the horizontal axis of the Table. The intersection of the Offense Level and Criminal History Category displays the Guideline Range in months of imprisonment. For example, the guideline range applicable to a defendant with an Offense Level of 15 and a Criminal History Category of III is 24–30 months of imprisonment. For purposes of the Sentencing Table, 'Life' means life imprisonment.

(b) The Sentencing Table is divided into Zones A, B, C, and D. Each zone provides for different sentencing options for the court's consideration. Subject to any statutory limitations in an individual case (s*ee, e.g.*, §5B1.1(b) (statutory eligibility for probation); §§5G1.1, 5G1.2 (statutory minimums and maximums)), the sentencing options in each zone are as follows:

	Sentencing Options
Zone A	• probation; • probation with a period of intermittent confinement, community confinement, or home detention; • a "split sentence" (*i.e.*, part of the term satisfied by imprisonment and the remainder satisfied by a term of supervised release with a condition that substitutes community confinement or home detention for imprisonment, according to the schedule in §5C1.1(e)); or • imprisonment. *See* §5B1.1(a)(1); §5C1.1(b), (e); §5C1.1, comment. (n.2).
Zone B	• probation with the minimum term of imprisonment satisfied by a period of intermittent confinement, community confinement, or home detention, according to the schedule in §5C1.1(e); • a "split sentence" (with at least one month satisfied by imprisonment); or • imprisonment. *See* §5B1.1(a)(2); §5C1.1(c), (e); §5C1.1, comment. (n.3).
Zone C	• a "split sentence" (with at least one-half of the minimum term satisfied by imprisonment); or • imprisonment. *See* §5C1.1(d), (e); §5C1.1, comment. (n.4).
Zone D	• imprisonment. *See* §5C1.1(f). ".

by redesignating the Commentary captioned "Commentary to Sentencing Table" as the "Commentary" to §5A1.1;

and in the Commentary to §5A1.1 (as so redesignated) captioned "Application Notes"—

by striking Note 1 as follows:

"1. The Offense Level (1–43) forms the vertical axis of the Sentencing Table. The Criminal History Category (I–VI) forms the horizontal axis of the Table. The intersection of the Offense Level and Criminal History Category displays the Guideline Range in months of imprisonment. 'Life' means life imprisonment. For example, the guideline range applicable to a defendant with an Offense Level of 15 and a Criminal History Category of III is 24–30 months of imprisonment.";

by redesignating Notes 2 and 3 as Notes 1 and 2, respectively;

in Note 1 (as so redesignated) by inserting at the beginning the following new heading: "*Total Offense Level.*—";

in Note 2 (as so redesignated) by inserting at the beginning the following new heading: "*Criminal History Category*.—";

and by inserting at the end the following new Note 3:

"3. *Fine-Only Sentence*.—A fine may be the sole sanction if the guidelines do not require a term of imprisonment. *See* §5E1.2, comment. (n.1)."

The Commentary to §5G1.2 captioned "Application Notes," as amended by Amendment 840, is further amended in Note 1 by striking "Chapter Five, Part A (Sentencing Table)" and inserting "Chapter Five, Part A (Determination of Sentencing Range and Sentencing Options)".

REASON FOR AMENDMENT: This amendment revises Part A (Sentencing Table) of Chapter Five (Determining the Sentencing Range and Options Under the Guidelines) by adding Introductory Commentary and a new guideline at §5A1.1 (Sentencing Table). The amendment was informed by feedback the Commission received from stakeholders throughout the amendment cycle, including at a Sentencing Options Roundtable held in December 2025. The Commission's consideration of this amendment was also informed by research finding that the initial determination of whether a sentence should include any incarceration has been a site of demographic disparities in sentencing. *See, e.g.*, U.S. SENT'G COMM'N, DEMOGRAPHIC DIFFERENCES IN FEDERAL SENTENCING (2023).

Chapter Five is divided into seven parts—Parts A through G—that, in combination, guide all aspects of determining the appropriate sentence, including the initial determination of sentence type. The Sentencing Table, at Part A, provides guideline ranges that are determined by a defendant's offense level and criminal history category and are measured in months of imprisonment. It is further divided into four zones—Zones A through D—each of which authorizes different sentencing options. Zone A authorizes probationary sentences, and Zones B and C each authorize alternative sentences, contingent upon the imposition of confinement conditions. Zone D authorizes imprisonment sentences only. Prior to this amendment, only the Sentencing Table and its commentary appeared in Part A, while the instructions regarding the sentencing options available within each zone were distributed throughout different sections of Chapter Five. *See* §5B1.1(a); §5C1.1 & comment. nn.2–4.

The amendment adds Introductory Commentary and a new guideline to Chapter Five that clearly delineates the full range of sentencing options available under the guidelines before proceeding to the Sentencing Table itself. The Commission intends for the new Introductory Commentary and §5A1.1 to serve complementary functions. First, the new Introductory Commentary emphasizes that courts must consider and balance a broad range of factors to achieve a sentence that is "sufficient, but not greater than necessary to comply with the purposes set forth in [18 U.S.C. § 3553(a)(2)]," and that each of the available sentencing options—imprisonment, probation, and fines—serves a punitive function. The Introductory Commentary highlights Congress's considerations at the time the Sentencing Reform Act was enacted and further effectuates Congress's directive to the Commission to promulgate guidelines for determining "whether to impose a sentence to probation, a fine, or a term of imprisonment." 28 U.S.C. § 994(a)(1)(B).

Second, new §5A1.1 describes the structure and operation of the Sentencing Table and lists all available guideline sentencing options to assist the court in determining the appropriate sentence under the guidelines, including the determination of sentence type. Subsection (a) adopts language that previously appeared in Application Note 1 of the Commentary to the Sentencing Table, which explains the two axes of the Table and how to determine the guideline range. Subsection (b) provides a table that lists the sentencing options available within each zone in

the Sentencing Table with cross-references to the relevant provisions of Chapter Five. Subsection (c) then sets forth the Sentencing Table, which is unchanged by the amendment.

By setting forth the operation of the Sentencing Table and clearly delineating a court's guideline sentencing options, the Commission intends to further assist courts in determining the appropriate sentence—both sentence length and sentence type. The Commission believes an explanation of the sentencing options and its placement before the Sentencing Table will benefit new practitioners and new judges and serve as a useful reminder to judges of the importance that the Commission and its enabling legislation place on the determination of sentence type.

Effective Date: The effective date of this amendment is November 1, 2026.

AMENDMENT 842

AMENDMENT: The Commentary to §2C1.1 captioned "Statutory Provisions" is amended by striking "18 U.S.C. §§ 201(b)(1), (2), 226, 227, 371 (if conspiracy to defraud by interference with governmental functions), 872, 1341 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services of a public official), 1342 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services of a public official), 1343 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services of a public official), 1951" and inserting "18 U.S.C. §§ 201(b)(1), (2), 226, 227, 371 (if conspiracy to defraud by interference with governmental functions), 872, 1341 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services of a public official), 1342 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services of a public official), 1343 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services of a public official), 1352, 1951".

The Commentary to §2H3.1 captioned "Statutory Provisions" is amended by striking "8 U.S.C. § 1375a(d)(5)(B)(i), (ii);" and inserting "8 U.S.C. § 1375a(d)(5)(B)(i), (ii); 15 U.S.C. § 9901;".

Appendix A (Statutory Index) is amended—

by inserting before the line referenced to 16 U.S.C. § 114 the following new line reference:

"15 U.S.C. § 9901 2H3.1";

and by inserting before the line referenced to 18 U.S.C. § 1361 the following new line reference:

"18 U.S.C. § 1352 2C1.1".

REASON FOR AMENDMENT: This amendment responds to recently enacted legislation.

Protecting Americans' Data from Foreign Adversaries Act

First, the amendment amends Appendix A (Statutory Index) to reference a new offense at 15 U.S.C. § 9901 (Prohibition on transfer of personally identifiable sensitive data of United States individuals to foreign adversaries) to §2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information) in response to the Protecting Americans' Data from Foreign Adversaries Act, Pub. L. 118–50 (2024).

Section 9901 prohibits data brokers from selling, licensing, trading, disclosing, or providing access to personally identifiable sensitive data of an individual of the United States to any foreign adversary country or any entity controlled by a foreign adversary. "Personally identifiable sensitive data" under section 9901 includes any sensitive data that identifies or is reasonably linkable to an individual, including Social Security numbers, financial account numbers, and phone or text logs and emails. Section 9901(b)(2) provides that the penalties are the same as provided in the Federal Trade Commission Act (15 U.S.C. §§ 41–58). Section 50 (Offenses and penalties) of title 15 provides, in turn, a statutory maximum term of imprisonment of one year, for anyone who refuses to attend, testify, or answer any lawful inquiry or produce documentary evidence "in obedience to an order of a district court . . . directing compliance with the subpoena or lawful requirement" of the Federal Trade Commission, and for officers or employees of the Commission who make any information obtained by the Commission public without authority. Section 50 also provides a statutory maximum term of imprisonment of three years, for willfully making any false entry or statement of fact in certain reports, accounts or records of any person, partnership, or corporation subject to the Act, or removing from the jurisdiction or mutilating, altering, or otherwise falsifying any documentary evidence.

The Commission determined that §2H3.1 is the most appropriate guideline to which to reference section 9901. The statutory elements of section 9901 are most analogous to the elements of other statutes criminalizing the unauthorized disclosure of certain personal information, including 18 U.S.C. § 119 (Protection of individuals performing certain official duties), prohibiting making publicly available restricted personal information such as Social Security numbers, telephone numbers, and personal email, which is referenced to §2H3.1.

Foreign Extortion Prevention Technical Corrections Act

Next, the amendment amends Appendix A to reference a new offense at 18 U.S.C. § 1352 (Demands by foreign officials for bribes) to §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions) in response to the Foreign Extortion Prevention Technical Corrections Act, Pub. L. 118–78 (2024).

Section 1352 prohibits foreign officials (or those selected to be foreign officials) from corruptly demanding, seeking, receiving, accepting, or agreeing to receive or accept, anything of value personally or for any person or nongovernmental entity, from any "person" while located in the United States, or from a "domestic concern" (as those terms are defined in sections 78dd-2 and 78dd-3 of the Foreign Corrupt Practices Act), or from an issuer, in return for being influenced or induced, or conferring any improper advantage in connection with obtaining or retaining business for or with any person, with a statutory maximum term of imprisonment of 15 years.

The Commission determined that §2C1.1 is the most appropriate guideline to which to reference this offense because the statutory elements of the offense are most analogous to the elements in other statutes criminalizing bribery referenced to §2C1.1. Specifically, sections 78dd-2 (Prohibited foreign trade practices by domestic concerns) and 78dd-3 (Prohibiting foreign trade practices by persons other than issuers or domestic concerns) of the Foreign Corrupt Practices Act, which are referenced to §2C1.1, prohibit the paying of bribes to foreign officials, foreign political parties, or candidates for foreign political office.

Effective Date: The effective date of this amendment is November 1, 2026.

AMENDMENT 843

AMENDMENT: Section 1B1.13(a) is amended by striking "Bureau of Prisons" and inserting "Federal Bureau of Prisons".

Section 1B1.13(b)(4) is amended by striking "Bureau of Prisons" and inserting "Federal Bureau of Prisons".

Section 2A3.1(b)(4)(C) is amended by striking "subdivisions (A) and (B)" and inserting "subparagraphs (A) and (B)".

The Commentary to §2A3.1 captioned "Application Notes" is amended in Note 1, in the paragraph that begins " 'Interactive computer service' has", by striking "section 230(e)(2)" and inserting "section 230(f)(2)".

The Commentary to §2A3.2 captioned "Application Notes" is amended in Note 1, in the paragraph that begins " 'Interactive computer service' has", by striking "section 230(e)(2)" and inserting "section 230(f)(2)".

The Commentary to §2A3.3 captioned "Application Notes" is amended in Note 1, in the paragraph that begins " 'Interactive computer service' has", by striking "section 230(e)(2)" and inserting "section 230(f)(2)".

The Commentary to §2A3.4 captioned "Application Notes" is amended in Note 1, in the paragraph that begins " 'Interactive computer service' has", by striking "section 230(e)(2)" and inserting "section 230(f)(2)".

The Commentary to §2D1.1 captioned "Application Notes," as amended by Amendment 837 and Amendment 839, is further amended in Note 13 by striking "section 230(e)(2)" and inserting "section 230(f)(2)".

The Commentary to §2D1.11 captioned "Application Notes," as amended by Amendment 837 and Amendment 840, is further amended—

in Note 1(A) by striking "subdivision (B)" and inserting "subparagraph (B)";

in Note 4, as redesignated by Amendment 837, by striking "section 230(e)(2)" and inserting "section 230(f)(2)";

and in Note 7, as redesignated by Amendment 837, by striking "involved unlawfully manufacturing a controlled substance or attempting to manufacture" and inserting "involved unlawfully manufacturing a controlled substance, or attempting to manufacture".

The Commentary to §2D1.12 captioned "Application Notes" is amended—

in Note 1 by striking "involved unlawfully manufacturing a controlled substance or attempting to manufacture" and inserting "involved unlawfully manufacturing a controlled substance, or attempting to manufacture";

and in Note 3 by striking "section 230(e)(2)" and inserting "section 230(f)(2)".

The Commentary to §2G1.3 captioned "Application Notes," as amended by Amendment 840, is further amended in Note 1, in the paragraph that begins " 'Interactive computer service' has", by striking "section 230(e)(2)" and inserting "section 230(f)(2)".

The Commentary to §2G2.1 captioned "Application Notes," as amended by Amendment 840, is further amended in Note 1, in the paragraph that begins " 'Interactive computer service' has", by striking "section 230(e)(2)" and inserting "section 230(f)(2)".

Section 2G2.2(b)(3)(D) is amended by striking "subdivision (E)" and inserting "subparagraph (E)".

Section 2G2.2(b)(3)(F) is amended by striking "subdivisions (A) through (E)" and inserting "subparagraphs (A) through (E)".

The Commentary to §2G2.2 captioned "Application Notes" is amended in Note 1—

in the paragraph that begins " 'Interactive computer service' has" by striking "section 230(e)(2)" and inserting "section 230(f)(2)";

and in the paragraph that begins " 'Sexual abuse or exploitation' means" by striking "subdivisions (A) or (B)" and inserting "subparagraphs (A) or (B)".

The Commentary to §2G2.2 captioned "Background" is amended by striking "subdivision (7)" and inserting "paragraph (7)".

The Commentary to §2G2.6 captioned "Application Notes" is amended in Note 1, in the paragraph that begins " 'Interactive computer service' has", by striking "section 230(e)(2)" and inserting "section 230(f)(2)".

Section 2G3.1(b)(1)(D) is amended by striking "subdivision (E)" and inserting "subparagraph (E)".

Section 2G3.1(b)(1)(F) is amended by striking "subdivisions (A) through (E)" and inserting "subparagraphs (A) through (E)".

The Commentary to §2G3.1 captioned "Application Notes" is amended in Note 1, in the paragraph that begins " 'Interactive computer service' has", by striking "section 230(e)(2)" and inserting "section 230(f)(2)".

The Commentary to §5E1.2 captioned "Application Notes" is amended in Note 6 by striking "Bureau of Prisons" and inserting "Federal Bureau of Prisons".

The Commentary to §5F1.7 captioned "Background" is amended in the paragraph that begins "In 1990," by striking "Bureau of Prisons" each place it appears and inserting "Federal Bureau of Prisons".

The Commentary to §5F1.8 captioned "Application Note" is amended in Note 1 by striking "Bureau of Prisons" and inserting "Federal Bureau of Prisons".

Section 5G1.3(b)(1) is amended by striking "Bureau of Prisons" and inserting "Federal Bureau of Prisons".

The Commentary to §5G1.3 captioned "Application Notes" is amended in Note 2(C) by striking "Bureau of Prisons" and inserting "Federal Bureau of Prisons".

The Commentary to §7B1.4 captioned "Application Notes" is amended in Note 3 by striking "18 U.S.C. § 3563(a)" and inserting "18 U.S.C. § 3563(e)".

Section 7C1.1(a) is amended by striking "four grades" and inserting "three grades".

The Commentary to §7C1.5 captioned "Application Notes" is amended in Note 3 by striking "The availability" and inserting "In the case of a defendant who fails a drug test, the availability".

Section 8A1.2(b)(2)(G) is amended by striking "guideline range" and inserting "guideline fine range".

Section 8A1.2(b)(4) is amended by striking "guideline range" and inserting "guideline fine range".

Section 8C2.8(a) is amended by striking "guideline range" and inserting "guideline fine range".

The Commentary to §8C2.8 captioned "Application Notes" is amended in Note 2 by striking "guideline range" and inserting "guideline fine range".

Appendix A (Statutory Index), as amended by Amendment 842, is further amended—

in the line referenced to 7 U.S.C. § 6b(A) by striking "§ 6b(A)" and inserting "§ 6b(a)";

in the line referenced to 7 U.S.C. § 6b(B) by striking "§ 6b(B)" and inserting "§ 6b(b)";

in the line referenced to 7 U.S.C. § 6b(C) by striking "§ 6b(C)" and inserting "§ 6b(c)";

by inserting before the line referenced to 46 U.S.C. App. § 1707a(f)(2) the following line references:

"46 U.S.C. § 70503 2D1.1

46 U.S.C. § 70506(a) 2D1.1

46 U.S.C. § 70506(b) 2D1.1";

and by striking the following line references:

"46 U.S.C. App. § 1903(a) 2D1.1

46 U.S.C. App. § 1903(g) 2D1.1

46 U.S.C. App. § 1903(j) 2D1.1".

Reason for Amendment: This amendment makes technical, stylistic, and other non-substantive changes to the *Guidelines Manual*.

First, the amendment makes clerical changes to several guidelines to replace references to the "Bureau of Prisons" with more accurate references to the "Federal Bureau of Prisons." It makes changes to the following guidelines: §1B1.13 (Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A) (Policy Statement)); §5E1.2 (Fines for Individual Defendants); §5F1.7 (Shock Incarceration Program (Policy Statement)); §5F1.8 (Intermittent Confinement); and

§5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment or Anticipated State Term of Imprisonment).

Second, the amendment makes technical changes to update the references to the Communications Act of 1934 in the context of the definition of the term "interactive computer service," which is used by several guidelines. It makes changes to the following guidelines: §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse); §2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts); §2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts; Criminal Sexual Abuse of an Individual in Federal Custody); §2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact); §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy); §2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy); §2D1.12 (Unlawful Possession, Manufacture, Distribution, Transportation, Exportation, or Importation of Prohibited Flask, Equipment, Chemical, Product, or Material; Attempt or Conspiracy); §2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor); §2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production); §2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possessing Material Involving the Sexual Exploitation of a Minor); §2G2.6 (Child Exploitation Enterprises); §2G3.1 (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor; Misleading Domain Names); and §2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information). The amendment also makes other non-substantive changes to some of these guidelines to provide stylistic consistency in how subdivisions are designated and to correct some typographical errors.

Third, the amendment makes technical changes to §7B1.4 (Term of Imprisonment—Probation (Policy Statement)) and §7C1.5 (Term of Imprisonment—Supervised Release (Policy Statement)), to clarify statutory references regarding a court's authority to provide an exception to mandatory revocation of probation or supervised release in the case of a defendant who fails a drug test.

Fourth, the amendment makes a technical change to §7C1.1 (Classification of Violations (Policy Statement)) to correct an inaccurate reference to "four" grades of supervised release violations.

Fifth, the amendment makes technical changes to §8A1.2 (Application Instructions — Organizations) and §8C2.8 (Determining the Fine Within the Range (Policy Statement)), to replace references to the "guideline range" with more accurate references to the "guideline fine range."

Finally, the amendment makes clerical changes to Appendix A (Statutory Index) to reflect the editorial reclassification of certain sections in the United States Code.

Effective Date: The effective date of this amendment is November 1, 2026.