

18 U.S.C. § 3582

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(c) Modification of an imposed term of imprisonment.--The court may not modify a term of imprisonment once it has been imposed except that--

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

U.S.S.G. § 1B1.10

(a) Authority.--

(1) In General.--In a case in which a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (d) below, the court may reduce the defendant's term of imprisonment as provided by 18 U.S.C. 3582(c)(2). As required by 18 U.S.C. 3582(c)(2), any such reduction in the defendant's term of imprisonment shall be consistent with this policy statement.

(2) Exclusions.--A reduction in the defendant's term of imprisonment is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. 3582(c)(2) if--

(A) None of the amendments listed in subsection (d) is applicable to the defendant; or

(B) An amendment listed in subsection (d) does not have the effect of lowering the defendant's applicable guideline range.

(3) Limitation.--Consistent with subsection (b), proceedings under 18 U.S.C. 3582(c)(2) and this policy statement do not constitute a full resentencing of the defendant.

(b) Determination of Reduction in Term of Imprisonment.--

(1) In General.--In determining whether, and to what extent, a reduction in the defendant's term of imprisonment under 18 U.S.C. 3582(c)(2) and this policy statement is warranted, the court shall determine the amended

guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (d) had been in effect at the time the defendant was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (d) for the corresponding guideline provisions that were applied when the defendant was sentenced and shall leave all other guideline application decisions unaffected.

(2) Limitation and Prohibition on Extent of Reduction.--

(A) Limitation.--Except as provided in subdivision (B), the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range determined under subdivision (1) of this subsection.

(B) Exception for Substantial Assistance.--If the term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing pursuant to a government motion to reflect the defendant's substantial assistance to authorities, a reduction comparably less than the amended guideline range determined under subdivision (1) of this subsection may be appropriate.

(C) Prohibition.--In no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served.

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

(d) Covered Amendments.--Amendments covered by this policy statement are listed in Appendix C as follows: 126, 130, 156, 176, 269, 329, 341, 371, 379, 380, 433, 454, 461, 484, 488, 490, 499, 505, 506, 516, 591, 599, 606, 657, 702, 706 as amended by 711, 715, 750 (parts A and C only), and 782 (subject to subsection (e)(1)).

(e) Special Instruction.--

(1) The court shall not order a reduced term of imprisonment based on Amendment 782 unless the effective date of the court's order is November 1, 2015, or later.

Application Notes

1. Application of Subsection (a).--

(A) Eligibility.--Eligibility for consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment listed in subsection (d) that lowers the

applicable guideline range (i.e., the guideline range that corresponds to the offense level and criminal history category determined pursuant to 1B1.1(a), which is determined before consideration of any departure provision in the Guidelines Manual or any variance). Accordingly, a reduction in the defendant's term of imprisonment is not authorized under 18 U.S.C. § 3582(c)(2) and is not consistent with this policy statement if: (i) None of the amendments listed in subsection (d) is applicable to the defendant; or (ii) an amendment listed in subsection (d) is applicable to the defendant but the amendment does not have the effect of lowering the defendant's applicable guideline range because of the operation of another guideline or statutory provision (e.g., a statutory mandatory minimum term of imprisonment).

(B) Factors for Consideration.--

(i) In General.--Consistent with 18 U.S.C. § 3582(c)(2), the court shall consider the factors set forth in 18 U.S.C. § 3553(a) in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(ii) Public Safety Consideration.--The court shall consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment in determining: (I) whether such a reduction is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(iii) Post-Sentencing Conduct.--The court may consider post-sentencing conduct of the defendant that occurred after imposition of the term of imprisonment in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

2. Application of Subsection (b)(1).--In determining the amended guideline range under subsection (b)(1), the court shall substitute only the amendments listed in subsection (d) for the corresponding guideline provisions that were applied when the defendant was sentenced. All other guideline application decisions remain unaffected.

3. Application of Subsection (b)(2).--Under subsection (b)(2), the amended guideline range determined under subsection (b)(1) and the term of imprisonment already served by the defendant limit the extent to which the court may reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement. Specifically, as provided in subsection (b)(2)(A), if the term of imprisonment imposed was within the guideline range applicable to the defendant at the time of sentencing, the court may reduce the defendant's term of imprisonment to a term that is no less than the minimum term of imprisonment provided by the amended guideline range determined under subsection (b)(1). For example, in a case

in which: (A) the guideline range applicable to the defendant at the time of sentencing was 70 to 87 months; (B) the term of imprisonment imposed was 70 months; and (C) the amended guideline range determined under subsection (b)(1) is 51 to 63 months, the court may reduce the defendant's term of imprisonment, but shall not reduce it to a term less than 51 months.

If the term of imprisonment imposed was outside the guideline range applicable to the defendant at the time of sentencing, the limitation in subsection (b)(2)(A) also applies. Thus, if the term of imprisonment imposed in the example provided above was not a sentence of 70 months (within the guidelines range) but instead was a sentence of 56 months (constituting a downward departure or variance), the court likewise may reduce the defendant's term of imprisonment, but shall not reduce it to a term less than 51 months.

Subsection (b)(2)(B) provides an exception to this limitation, which applies if the term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing pursuant to a government motion to reflect the defendant's substantial assistance to authorities. In such a case, the court may reduce the defendant's term, but the reduction is not limited by subsection (b)(2)(A) to the minimum of the amended guideline range. Instead, as provided in subsection (b)(2)(B), the court may, if appropriate, provide a reduction comparably less than the amended guideline range. Thus, if the term of imprisonment imposed in the example provided above was 56 months pursuant to a government motion to reflect the defendant's substantial assistance to authorities (representing a downward departure of 20 percent below the minimum term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing), a reduction to a term of imprisonment of 41 months (representing a reduction of approximately 20 percent below the minimum term of imprisonment provided by the amended guideline range) would amount to a comparable reduction and may be appropriate.

The provisions authorizing such a government motion are § 5K1.1 (Substantial Assistance to Authorities) (authorizing, upon government motion, a downward departure based on the defendant's substantial assistance); 18 U.S.C. § 3553(e) (authorizing the court, upon government motion, to impose a sentence below a statutory minimum to reflect the defendant's substantial assistance); and Fed. R. Crim. P. 35(b) (authorizing the court, upon government motion, to reduce a sentence to reflect the defendant's substantial assistance).

In no case, however, shall the term of imprisonment be reduced below time served. See subsection (b)(2)(C). Subject to these limitations, the sentencing court has the discretion to determine whether, and to what extent, to reduce a term of imprisonment under this section.

4. Application of Subsection (c).--As stated in subsection (c), if the case involves a statutorily required minimum sentence and the court had the authority to impose a sentence below the statutorily required minimum sentence pursuant to a government motion to reflect the defendant's substantial assistance to authorities, then for

purposes of this policy statement the amended guideline range shall be determined without regard to the operation of § 5G1.1 (Sentencing on a Single Count of Conviction) and § 5G1.2 (Sentencing on Multiple Counts of Conviction). For example:

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

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

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

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

5. Application to Amendment 750 (Parts A and C Only).--As specified in subsection (d), the parts of Amendment 750 that are covered by this policy statement are Parts A and C only. Part A amended the Drug Quantity Table in § 2D1.1 for crack cocaine and made related revisions to the Drug Equivalency Tables in the Commentary to § 2D1.1 (see § 2D1.1, comment. (n.8)). Part C deleted the cross reference in § 2D2.1(b) under which an offender who possessed more than 5 grams of crack cocaine was sentenced under § 2D1.1.

6. Application to Amendment 782.--As specified in subsection (d) and (e)(1), Amendment 782 (generally revising the Drug Quantity Table and chemical quantity tables across drug and chemical types) is covered by this policy statement only in cases in which the order reducing the defendant's term of imprisonment has an effective date of November 1, 2015, or later.

A reduction based on retroactive application of Amendment 782 that does not comply with the requirement that the order take effect on November 1, 2015, or later is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. § 3582(c)(2).

Subsection (e)(1) does not preclude the court from conducting sentence reduction proceedings and entering orders under 18 U.S.C. § 3582(c)(2) and this policy statement before November 1, 2015, provided that any order reducing the defendant's term of imprisonment has an effective date of November 1, 2015, or later.

7. Supervised Release.--

(A) Exclusion Relating to Revocation.--Only a term of imprisonment imposed as part of the original sentence is authorized to be reduced under this section. This section does not authorize a reduction in the term of imprisonment imposed upon revocation of supervised release.

(B) Modification Relating to Early Termination.--If the prohibition in subsection (b)(2)(C) relating to time already served precludes a reduction in the term of imprisonment to the extent the court determines otherwise would have been appropriate as a result of the amended guideline range determined under subsection (b)(1), the court may consider any such reduction that it was unable to grant in connection with any motion for early termination of a term of supervised release under 18 U.S.C. § 3583(e)(1). However, the fact that a defendant may have served a longer term of imprisonment than the court determines would have been appropriate in view of the amended guideline range determined under subsection (b)(1) shall not, without more, provide a basis for early termination of supervised release. Rather, the court should take into account the totality of circumstances relevant to a decision to terminate supervised release, including the term of supervised release that would have been appropriate in connection with a sentence under the amended guideline range determined under subsection (b)(1).

8. Use of Policy Statement in Effect on Date of Reduction.--Consistent with subsection (a) of § 1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing), the court

shall use the version of this policy statement that is in effect on the date on which the court reduces the defendant's term of imprisonment as provided by 18 U.S.C. § 3582(c)(2).

Amendment 782 (2014)

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

“(1)

- 90 KG or more of Heroin;

Level 38

- 450 KG or more of Cocaine;

- 25.2 KG or more of Cocaine Base;

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

- 45 KG or more of Methamphetamine, or

4.5 KG or more of Methamphetamine (actual), or

4.5 KG or more of ‘Ice’;

- 45 KG or more of Amphetamine, or

4.5 KG or more of Amphetamine (actual);

- 900 G or more of LSD;

- 36 KG or more of Fentanyl;

- 9 KG or more of a Fentanyl Analogue;

- 90,000 KG or more of Marihuana;
- 18,000 KG or more of Hashish;
- 1,800 KG or more of Hashish Oil;
- 90,000,000 units or more of Ketamine;
- 90,000,000 units or more of Schedule I or II Depressants;
- 5,625,000 units or more of Flunitrazepam.”.

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

“(2)

- At least 30 KG but less than 90 KG of Heroin;

Level 36

- At least 150 KG but less than 450 KG of Cocaine;

- At least 8.4 KG but less than 25.2 KG of Cocaine Base;

• At least 30 KG but less than 90 KG of PCP, or at least 3 KG but less than 9 KG of PCP (actual);

- At least 15 KG but less than 45 KG of Methamphetamine, or

at least 1.5 KG but less than 4.5 KG of Methamphetamine (actual), or

at least 1.5 KG but less than 4.5 KG of ‘Ice’;

- At least 15 KG but less than 45 KG of Amphetamine, or

at least 1.5 KG but less than 4.5 KG of Amphetamine (actual);

- At least 300 G but less than 900 G of LSD;
- At least 12 KG but less than 36 KG of Fentanyl;
- At least 3 KG but less than 9 KG of a Fentanyl Analogue;
- At least 30,000 KG but less than 90,000 KG of Marihuana;
- At least 6,000 KG but less than 18,000 KG of Hashish;
- At least 600 KG but less than 1,800 KG of Hashish Oil;
- At least 30,000,000 units but less than 90,000,000 units of Ketamine;
- At least 30,000,000 units but less than 90,000,000 units of Schedule I or II Depressants;
- At least 1,875,000 units but less than 5,625,000 units of Flunitrazepam.”.

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

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

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

“

- 1,000,000 units or more of Schedule III Hydrocodone;”.

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

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

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

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

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

“

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

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

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

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

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

“(14)

- Less than 10 G of Heroin;

Level 12

- Less than 50 G of Cocaine;

- Less than 2.8 G of Cocaine Base;

- Less than 10 G of PCP, or

less than 1 G of PCP (actual);

- Less than 5 G of Methamphetamine, or

less than 500 MG of Methamphetamine (actual),

or less than 500 MG of ‘Ice’;

- Less than 5 G of Amphetamine, or

less than 500 MG of Amphetamine (actual);

- Less than 100 MG of LSD;

- Less than 4 G of Fentanyl;

- Less than 1 G of a Fentanyl Analogue;”;

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

“

- 80,000 units or more of Schedule IV substances (except Flunitrazepam).”.

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

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

“

- 160,000 units or more of Schedule V substances.”.

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

“(17)

- Less than 1 KG of Marihuana;

Level 6

- Less than 200 G of Hashish;

- Less than 20 G of Hashish Oil;

- Less than 1,000 units of Ketamine;

- Less than 1,000 units of Schedule I or II Depressants;

- Less than 1,000 units of Schedule III Hydrocodone;

• Less than 1,000 units of Schedule III substances (except Ketamine or Hydrocodone);

- Less than 16,000 units of Schedule IV substances (except Flunitrazepam);

- Less than 160,000 units of Schedule V substances.”.

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

The Commentary to § 2D1.1 captioned “Application Notes” is amended in Note 8(A) by striking “1 gm”, “5 kg”, “100 gm”, and “500 kg” and inserting “1 gram”, “5 kilograms”, “100 grams”, and “500 kilograms”, respectively, and by striking “28” and inserting “26”; in Note 8(B) by striking “999 grams” and inserting “2.49 kilograms”; in Note 8(C)(i) by striking “22” and inserting “20”, by striking “18” and inserting “16”, and by striking “24” and inserting “22”;

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

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

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

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

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

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

“The base offense levels at levels 26 and 32 establish guideline ranges with a lower limit as close to the statutory minimum as possible; e.g., level 32 ranges from 121 to 151 months, where the statutory minimum is ten years or 120 months.”,

and inserting the following new paragraph:

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

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

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

“(1)

9 KG or more of Ephedrine;

Level 38

9 KG or more of Phenylpropanolamine;

9 KG or more of Pseudoephedrine.”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(1)

List I Chemicals

Level 30

2.7 KG or more of Benzaldehyde;

60 KG or more of Benzyl Cyanide;

600 G or more of Ergonovine;

1.2 KG or more of Ergotamine;

60 KG or more of Ethylamine;

6.6 KG or more of Hydriodic Acid;

3.9 KG or more of Iodine;

960 KG or more of Isosafrole;

600 G or more of Methylamine;

1500 KG or more of N-Methylephedrine;

1500 KG or more of N-Methylpseudoephedrine;

1.9 KG or more of Nitroethane;

30 KG or more of Norpseudoephedrine;

60 KG or more of Phenylacetic Acid;

30 KG or more of Piperidine;

960 KG or more of Piperonal;

4.8 KG or more of Propionic Anhydride;

960 KG or more of Safrole;

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

3406.5 L or more of Gamma-butyrolactone;

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

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

“(2)

List I Chemicals

Level 28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hypophosphorous Acid.

List II Chemicals

33 KG or more of Acetic Anhydride;

3525 KG or more of Acetone;

60 KG or more of Benzyl Chloride;

3225 KG or more of Ethyl Ether;

3600 KG or more of Methyl Ethyl Ketone;

30 KG or more of Potassium Permanganate;

3900 KG or more of Toluene.”.

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

“

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Reason for Amendment:

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

When Congress passed the Anti-Drug Abuse Act of 1986, Pub. L. 99-570, the Commission responded by generally incorporating the statutory mandatory minimum sentences into the guidelines and extrapolating upward and downward to set guideline sentencing ranges for all drug quantities. The quantity thresholds in the Drug Quantity Table were set so as to provide base offense levels corresponding to guideline ranges that were slightly above the statutory mandatory minimum penalties. Accordingly, offenses involving drug quantities that trigger a five-year statutory minimum were assigned a base offense level (level 26) corresponding to a sentencing guideline range of 63 to 78 months for a defendant in Criminal History

Category I (a guideline range that exceeds the five-year statutory minimum for such offenses by at least three months). Similarly, offenses that trigger a ten-year statutory minimum were assigned a base offense level (level 32) corresponding to a sentencing guideline range of 121 to 151 months for a defendant in Criminal History Category I (a guideline range that exceeds the ten-year statutory minimum for such offenses by at least one month). The base offense levels for drug quantities above and below the mandatory minimum threshold quantities were extrapolated upward and downward to set guideline sentencing ranges for all drug quantities, see § 2D1.1, comment. (backg'd.), with a minimum base offense level of 6 and a maximum base offense level of 38 for most drug types.

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

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

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

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

Federal judiciary, members of Congress, academicians, community organizations, law enforcement groups, and individual members of the public.

The Commission determined that setting the base offense levels slightly above the mandatory minimum penalties is no longer necessary to achieve its stated purpose. Previously, the Commission has stated that “[t]he base offense levels are set at guideline ranges slightly higher than the mandatory minimum levels [levels 26 and 32] to permit some downward adjustment for defendants who plead guilty or otherwise cooperate with authorities.” However, changes in the law and recent experience with similar reductions in base offense levels for crack cocaine offenses indicate that setting the base offense levels above the mandatory minimum penalties is no longer necessary to provide adequate incentives to plead guilty or otherwise cooperate with authorities.

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

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

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

During the period when crack cocaine offenses had a guideline penalty structure based on levels 24 and 30, the overall rates at which crack cocaine defendants pled guilty remained stable. Specifically, in the fiscal year before the 2007 amendment took effect, the plea rate for crack cocaine defendants was 93.1 percent. In the two

fiscal years after the 2007 amendment took effect, the plea rates for such defendants were 95.2 percent and 94.0 percent, respectively. For those same fiscal years, the overall rates at which crack cocaine defendants received substantial assistance departures under § 5K1.1 (Substantial Assistance to Authorities) were 27.8 percent in the fiscal year before the 2007 amendment took effect and 25.3 percent and 25.6 percent in the two fiscal years after the 2007 amendment took effect. This recent experience indicates that this amendment, which is similar in nature to the 2007 crack cocaine amendment, should not negatively affect the willingness of defendants to plead guilty or otherwise cooperate with authorities. See 28 U.S.C. § 991(b) (specifying that sentencing policies are to “reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process”).

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

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

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

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

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

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