on, and analysis of, recidivism by child pornography offenders; and (C) possible recommendations to Congress on any statutory changes that may be appropriate.

(7) Continuation of its review of departures within the guidelines, including provisions in Parts H and K of Chapter Five of the *Guidelines Manual,* and the extent to which pertinent statutory provisions prohibit, discourage, or encourage certain factors as forming the basis for departure from the guideline sentence.

(8) Continuation of its multi-year study of the statutory and guideline definitions of "crime of violence", "aggravated felony", "violent felony", and "drug trafficking offense", including (A) an examination of relevant circuit conflicts regarding whether any offense is categorically a "crime of violence", "aggravated felony", "violent felony", or "drug trafficking offense" for purposes of triggering an enhanced sentence under certain Federal statutes and guidelines; (B) possible consideration of an amendment to provide an alternative approach to the "categorical approach", *see Taylor* v. *United States,* 495 U.S. 575 (1990); *Shepard* v. *United States,* 544 U.S. 13 (2005), for determining the applicability of guideline enhancements; and (C) possible consideration of an amendment to provide that the time period limitations in subsection (e) of § 4A1.2 (Definitions and Instructions for Computing Criminal History) apply for purposes of determining the applicability of enhancements in § 2L1.2 (Unlawfully Entering or Remaining in the United States).

(9) Consideration of a possible amendment to provide a reduction in the offense level for certain deportable aliens who agree to a stipulated order of deportation.

(10) Examination of, and possible amendments to, the guidelines and policy statements in Part D of Chapter Five of the *Guidelines Manual* pertaining to supervised release.

(11) Continued study of alternatives to incarceration, including possible consideration of any changes to the *Guidelines Manual* that might be appropriate in light of the information obtained from that study.

(12) Resolution of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States,* 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the Federal courts.

(13) Multi-year review of the guidelines pertaining to environmental crimes, with particular consideration of whether the fine provisions in Part C of Chapter Eight of the *Guidelines Manual* should apply to such offenses.

(14) Consideration of miscellaneous guideline application issues coming to the Commission's attention from case law and other sources.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

William K. Sessions III,

Chair.

[FR Doc. 2010–22340 Filed 9–7–10; 8:45 am]

BILLING CODE 2211–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendment; request for comment.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, and section 8 of the Fair Sentencing Act of 2010, Public Law 111–220, the Commission is considering promulgating a temporary, emergency amendment to the sentencing guidelines, policy statements, and commentary to decrease penalties for offenses involving cocaine base ("crack" cocaine) and to account for certain aggravating and mitigating circumstances in drug trafficking cases. This notice sets forth the proposed amendment and, for each part of the proposed amendment, a synopsis of the issues addressed by that part. This notice also provides multiple issues for comment, some of which are contained within the proposed amendment.

The specific proposed amendment (and issues for comment) in this notice is as follows: A proposed temporary, emergency amendment and issues for comment regarding offenses involving crack cocaine (particularly offenses covered by §§ 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); (Attempt or Conspiracy) and 2D2.1 (Unlawful Possession; Attempt or Conspiracy)) and to account for certain aggravating and mitigating circumstances in drug trafficking cases (particularly cases under § 2D1.1) to implement section 8 of the Fair Sentencing Act of 2010, Public Law 111–220.

DATES: Written public comment on the proposed emergency amendment should be received by the Commission not later than October 8, 2010, in anticipation of a vote to promulgate the emergency amendment by November 1, 2010.

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

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May of each year pursuant to 28 U.S.C. 994(p).

The Commission seeks comment on the proposed amendment and issues for comment.

The parts of the proposed amendment in this notice are presented in one of two formats. First, some parts of the proposed amendment are proposed as specific revisions to a guideline or commentary. Bracketed text within a part of the proposed amendment indicates a heightened interest on the Commission=s part on comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [2][4][6] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

Additional information pertaining to the proposed amendment described in this notice may be accessed through the Commission's Web site at *http://www.ussc.gov*.

Authority: 28 U.S.C. 994(a), (o), (p), (x); section 8 of the Fair Sentencing Act of 2010,

Pub. L. 111–220; USSC Rules of Practice and Procedure, Rules 4.4, 4.5.

William K. Sessions, III,
Chair.

1. Proposed Emergency Amendment: Fair Sentencing Act of 2010

Synopsis of Proposed Amendment: The Fair Sentencing Act of 2010, Public Law 111–220 (the "Act"), was signed into law on August 3, 2010. The Act reduces statutory penalties for cocaine base (crack cocaine) offenses and eliminates the mandatory minimum sentence for simple possession of crack cocaine. The Act also contains directives to the Commission to review and amend the sentencing guidelines to account for certain aggravating and mitigating circumstances in drug trafficking cases.

Section 8 of the Act invokes the Commission's emergency, temporary amendment authority under section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) and directs the Commission to promulgate within 90 days—*i.e.,* not later than November 1, 2010—the amendments to the *Guidelines Manual* provided for by the Act. It provides in full as follows:

Sec. 8. Emergency Authority for United States Sentencing Commission

The United States Sentencing Commission shall—

(1) Promulgate the guidelines, policy statements, or amendments provided for in this Act as soon as practicable, and in any event not later than 90 days after the date of enactment of this Act, in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note), as though the authority under that Act had not expired; and

(2) Pursuant to the emergency authority provided under paragraph (1), make such conforming amendments to the Federal sentencing guidelines as the Commission determines necessary to achieve consistency with other guideline provisions and applicable law.

Section 21(a) of the Sentencing Act of 1987 provides in full as follows:

Sec. 21. Emergency Guidelines Promulgation Authority

(a) In General.—In the case of—

(1) An invalidated sentencing guideline;

(2) The creation of a new offense or amendment of an existing offense; or

(3) Any other reason relating to the application of a previously established sentencing guideline, and determined by the United States Sentencing Commission to be urgent and compelling;

the Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of title 28 and title 18, United States Code, shall promulgate and distribute to all courts of the United States and to the United States Probation System a temporary guideline or amendment to an existing guideline, to remain in effect until and during the pendency of the next report to Congress under section 994(p) of title 28, United States Code.

Any temporary amendment promulgated by the Commission under the section 21(a) authority will expire not later than November 1, 2011. *See* section 21(a); 28 U.S.C. 994(p). The Commission will continue work on the issues raised by the Act during the regular amendment cycle ending May 1, 2011, with a view to re-promulgating any temporary amendment as a permanent amendment (in its original form, or with revisions) under 28 U.S.C. 994(p).

The proposed amendment and issues for comment address the issues arising under the Act in the following manner:

(A) Changes to Statutory Terms of Imprisonment for Crack Cocaine

Issue for Comment:

1. Federal drug laws establish three tiers of penalties for manufacturing and trafficking in cocaine, each based on the amount of cocaine involved. *See* 21 U.S.C. 841(b)(1)(A), (B), (C), 960(b)(1), (2), (3). For smaller quantities, the maximum term of imprisonment is 20 years, and there is no mandatory minimum term of imprisonment. If the amount of cocaine involved reaches a specified quantity, however, the maximum term increases to 40 years, and a mandatory minimum term of 5 years applies. If the amount of cocaine reaches ten times that specified quantity, the maximum term is life, and a mandatory minimum term of 10 years applies.

Section 2 of the Act amended these laws to raise the specified quantities of crack cocaine associated with these two higher tiers of penalties. Before the Act, the 5-year mandatory minimum applied to offenses involving 5 grams (or more) of crack cocaine, and the 10-year mandatory minimum applied to offenses involving 50 grams (or more) of crack cocaine. Section 2 of the Act raised these quantities to 28 grams and 280 grams, respectively.

The Commission requests comment on what temporary amendments to the *Guidelines Manual* it should promulgate in response to the statutory changes made by section 2 of the Act. In particular, the Commission requests comment on what amendments should be made to the Drug Quantity Table in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy). When Congress has provided statutory mandatory minimum sentences based on drug quantity, the Commission has generally responded by incorporating the statutory mandatory minimum sentences into the Drug Quantity Table and extrapolating upward and downward to set guideline sentencing ranges for all drug quantities. The drug quantity thresholds in the Drug Quantity Table have generally been set so as to provide base offense levels corresponding to guideline ranges that are above the statutory mandatory minimum penalties.

Until 2007, the drug quantity thresholds for crack cocaine followed the same principle. Accordingly, offenses involving 5 grams or more of crack cocaine 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 5-year statutory minimum for such offenses by at least three months). Similarly, offenses involving 50 grams or more of crack cocaine 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 10-year statutory minimum for such offenses by at least 1 month). In Amendment 706, the Commission amended the Drug Quantity Table for crack cocaine, reducing the base offense levels for these quantities to level 24 and level 30, respectively, and extrapolating upward and downward for other crack cocaine quantities. *See* USSG App. C, Amendment 706 (effective November 1, 2007). Base offense levels 24 and 30 each correspond to a guideline range for a defendant in Criminal History Category I that includes the statutory mandatory minimum penalty.

For base offense level 24, the guideline range is 51–63 months; for base offense level 30, the guideline range is 97–121 months. The Commission also amended the commentary to § 2D1.1 to revise the manner in which combined offense levels are determined in cases involving both crack cocaine and one or more other controlled substances. *See* USSG

App. C, Amendment 715 (effective May 1, 2008).

Given the statutory changes made by section 2 of the Act, how should the Commission revise the Drug Quantity Table for offenses involving crack cocaine?

In particular, should the base offense levels for crack cocaine again be set so that the statutory minimum penalties correspond to levels 26 and 32, using the new drug quantities established by the Act (the "level 26 option")? Or should the base offense levels for crack cocaine continue to be set so that the statutory minimum penalties correspond to levels 24 and 30, using the new drug quantities established by the Act (the "level 24 option")? A comparison of the base offense levels ("BOL") and quantities for these options is as follows:

BOL	Quantity under level 26 option	Quantity under level 24 option
38	8.4 KG or more	25.2 KG or more.
36	At least 2.8 KG but less than 8.4 KG	At least 8.4 KG but less than 25.2 KG.
34	At least 840 G but less than 2.8 KG	At least 2.8 KG but less than 8.4 KG.
32	At least 280 G but less than 840 G	At least 840 G but less than 2.8 KG.
30	At least 196 G but less than 280 G	At least 280 G but less than 840 G.
28	At least 112 G but less than 196 G	At least 196 G but less than 280 G.
26	At least 28 G but less than 112 G	At least 112 G but less than 196 G.
24	At least 22.4 G but less than 28 G	At least 28 G but less than 112 G.
22	At least 16.8 G but less than 22.4 G	At least 22.4 G but less than 28 G.
20	At least 11.2 G but less than 16.8 G	At least 16.8 G but less than 22.4 G.
18	At least 5.6 G but less than 11.2 G	At least 11.2 G but less than 16.8 G.
16	At least 2.8 G but less than 5.6 G	At least 5.6 G but less than 11.2 G.
14	At least 1.4 G but less than 2.8 G	At least 2.8 G but less than 5.6 G.
12	Less than 1.4 G	Less than 2.8 G.

Whichever option is adopted, conforming changes to the commentary to § 2D1.1 will need to be made to revise the manner in which combined offense levels are determined in cases involving crack cocaine and one or more other controlled substances. Under either option, 1 gram of crack cocaine would be equivalent to 3,571 grams of marijuana. However, if the level 26 option is adopted, the combined offense level in such a case would be determined under Application Note 10 in the same manner as for any other case involving more than one controlled substance, *i.e.,* Application Note 10(D) would not apply. If the level 24 option is adopted, in contrast, Application Note 10(D) would continue to apply, except that Application Note 10(D)(ii)(I) would be amended to read "the offense involved 25.2 kg or more, or less than 1.4 g, of cocaine base; or", and the examples in Application Note 10(D)(iii) would be revised.

(B) Elimination of Mandatory Minimum for Simple Possession of Crack Cocaine

Synopsis of Proposed Amendment: This part of the proposed amendment responds to section 3 of the Act, which amended 21 U.S.C. 844(a) to eliminate the 5-year mandatory minimum term of imprisonment (and 20-year statutory maximum) for simple possession of more than 5 grams of crack cocaine (or, for certain repeat offenders, more than 1 gram of crack cocaine). Accordingly, the statutory penalty for simple possession of crack cocaine is now the same as for simple possession of most other controlled substances: for a first offender, a maximum term of imprisonment of one year; for repeat offenders, maximum terms of 2 years or 3 years, and minimum terms of 15 days or 90 days, depending on the prior convictions. *See* 21 U.S.C. 844(a).

Offenses under section 844(a) are referenced in Appendix A (Statutory Index) to § 2D2.1 (Unlawful Possession; Attempt or Conspiracy). Section 2D2.1 contains a cross reference at subsection (b)(1) that was established by the Commission in 1989 to address the statutory minimum in section 844(a). *See* USSG App. C, Amendment 304 (effective November 1, 1989). Under the cross reference, an offender who possessed more than 5 grams of crack cocaine is sentenced under the drug trafficking guideline, § 2D1.1.

To reflect the elimination of this statutory minimum, the proposed amendment deletes as obsolete the cross reference at § 2D2.1(b)(1). Conforming changes to the commentary are also made.

Proposed Amendment:

Section 2D2.1(b) is amended by striking "References" and inserting "Reference"; by striking subdivision (1); and by redesignating subdivision (2) as subdivision (1).

The Commentary to § 2D2.1 captioned "Background" is amended by striking "five" and inserting "three"; and by striking the last paragraph.

(C) Enhancements and Adjustments

Synopsis of Proposed Amendment: This part of the proposed amendment responds to sections 5, 6, and 7 of the Act, which contain directives to the Commission to provide certain enhancements and adjustments for drug trafficking offenses.

Violence Enhancement

First, this part of the proposed amendment responds to section 5 of the Act, which directs the Commission to "review and amend the Federal sentencing guidelines to ensure that the guidelines provide an additional penalty increase of at least 2 offense levels if the defendant used violence, made a credible threat to use violence, or directed the use of violence during a drug trafficking offense."

This part of the proposed amendment implements this directive by amending § 2D1.1 to provide a new specific offense characteristic at subsection (b)(2) that provides an enhancement of [2][4][6] levels if violence as described in the directive was involved. A conforming amendment to Application Note 3 is also made.

Bribery Enhancement

Second, this part of the proposed amendment responds to section 6(1) of the Act, which directs the Commission to "review and amend the Federal sentencing guidelines to ensure an additional increase of at least 2 offense levels if * * * the defendant bribed, or attempted to bribe, a Federal, State, or local law enforcement official in connection with a drug trafficking offense."

This part of the proposed amendment implements this directive by amending § 2D1.1 to establish a new specific offense characteristic at subsection (b)(11) that provides an enhancement of [2][4] levels if the defendant [was

convicted of bribing or attempting to bribe][bribed or attempted to bribe] a law enforcement officer to facilitate the commission of the offense.

Drug Establishment Enhancement

Third, this part of the proposed amendment responds to section 6(2) of the Act, which directs the Commission to "review and amend the Federal sentencing guidelines to ensure an additional increase of at least 2 offense levels if * * * the defendant maintained an establishment for the manufacture or distribution of a controlled substance, as generally described in section 416 of the Controlled Substances Act (21 U.S.C. 856)."

This part of the proposed amendment implements this directive by amending § 2D1.1 to establish a new specific offense characteristic at subsection (b)(12) that provides an enhancement of [2][4] levels if the defendant maintained an establishment for the manufacture or distribution of a controlled substance, as described in 21 U.S.C. 856.

Enhancement Based on "Super-Aggravating" Factors

Fourth, this part of the proposed amendment responds to section 6(3) of the Act, which directs the Commission to "review and amend the Federal sentencing guidelines to ensure an additional increase of at least 2 offense levels if * * * (A) the defendant is an organizer, leader, manager, or supervisor of drug trafficking activity subject to an aggravating role enhancement under the guidelines; and (B) the offense involved 1 or more of the following super-aggravating factors:"

(i) The defendant—

(I) Used another person to purchase, sell, transport, or store controlled substances;

(II) Used impulse, fear, friendship, affection, or some combination thereof to involve such person in the offense; and

(III) Such person had a minimum knowledge of the illegal enterprise and was to receive little or no compensation from the illegal transaction.

(ii) The defendant—

(I) Knowingly distributed a controlled substance to a person under the age of 18 years, a person over the age of 64 years, or a pregnant individual;

(II) Knowingly involved a person under the age of 18 years, a person over the age of 64 years, or a pregnant individual in drug trafficking;

(III) Knowingly distributed a controlled substance to an individual who was unusually vulnerable due to physical or mental condition, or who was particularly susceptible to criminal conduct; or

(IV) Knowingly involved an individual who was unusually vulnerable due to physical or mental condition, or who was particularly susceptible to criminal conduct, in the offense.

(iii) The defendant was involved in the importation into the United States of a controlled substance.

(iv) The defendant engaged in witness intimidation, tampered with or destroyed evidence, or otherwise obstructed justice in connection with the investigation or prosecution of the offense.

(v) The defendant committed the drug trafficking offense as part of a pattern of criminal conduct engaged in as a livelihood.

This part of the proposed amendment implements this directive by creating a new enhancement of [2][4] levels in subsection (b)(14) of § 2D1.1 if the defendant receives an adjustment under § 3B1.1 and the offense involved one or more of the factors described in the directive.

Downward Adjustment Based on Certain Mitigating Factors

Fifth, this part of the proposed amendment responds to section 7(2) of the Act, which directs the Commission to "review and amend the Federal sentencing guidelines and policy statements to ensure that * * * there is an additional reduction of 2 offense levels if the defendant—"

(A) Otherwise qualifies for a minimal role adjustment under the guidelines and had a minimum knowledge of the illegal enterprise;

(B) Was to receive no monetary compensation from the illegal transaction; and

(C) Was motivated by an intimate or familial relationship or by threats or fear when the defendant was otherwise unlikely to commit such an offense.

This part of the proposed amendment implements this directive by creating a new downward adjustment of 2 levels in subsection (b)(15) of § 2D1.1 if the defendant receives an adjustment under § 3B1.2(a) and the other factors described in the directive apply.

Technical and Conforming Changes

Finally, to reflect the renumbering of specific offense characteristics in § 2D1.1(b) by this part of the proposed amendment, this part of the proposed amendment makes technical and conforming changes to the commentary to § 2D1.1 and to § 2D1.14 (Narco-Terrorism).

Issues for comment are also included.

Proposed Amendment:

Section 2D1.1(b) is amended by redesignating subdivisions (10) and (11) as subdivisions (13) and (16); by redesignating subdivisions (2) through (9) as subdivisions (3) through (10); by inserting after subdivision (1) the following:

"(2) If the defendant used violence, made a credible threat to use violence, or directed the use of violence, increase by [2][4][6] levels.";

by inserting after subdivision (10), as redesignated by this amendment, the following:

"(11) If the defendant [was convicted of bribing or attempting to bribe][bribed or attempted to bribe] a law enforcement officer to facilitate the commission of the offense, increase by [2][4] levels.

(12) If the defendant maintained an establishment for the manufacture or distribution of a controlled substance, as described in 21 U.S.C. § 856, increase by [2][4] levels.";

by inserting after subdivision (13), as redesignated by this amendment, the following:

"(14) If the defendant receives an adjustment under § 3B1.1 (Aggravating Role) and the offense involved 1 or more of the following factors:

(A) (i) The defendant used impulse, fear, friendship, affection, or some combination thereof to involve another individual in the purchase, sale, transport, or storage of controlled substances; and (ii) the individual (I) was to receive little or no compensation from that purchase, sale, transport, or storage of controlled substances and (II) had minimal knowledge of [the scope and structure of] the enterprise;

(B) the defendant knowingly (i) distributed a controlled substance to an individual under the age of 18 years, an individual over the age of 64 years, a pregnant individual, an individual who was unusually vulnerable due to physical or mental condition, or an individual who was particularly susceptible to criminal conduct, or (ii) involved such an individual in the offense;

(C) the defendant was involved in the importation of a controlled substance;

(D) the defendant engaged in witness intimidation, tampered with or destroyed evidence, or otherwise obstructed justice;

(E) the defendant committed the offense as part of a pattern of criminal conduct engaged in as a livelihood;

increase by [2][4] levels.

(15) If the defendant receives an adjustment under subsection (a) of § 3B1.2 (Mitigating Role) and the offense involved all of the following factors:

(A) The defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense;

(B) the defendant was to receive no monetary compensation from the offense; and

(C) the defendant had minimal knowledge of [the scope and structure of] the enterprise,

decrease by 2 levels.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 3 by inserting "in subsection (b)(1)" after "weapon possession"; by striking "The adjustment" and inserting "Subsection (b)(1)"; by striking "the enhancement" and inserting "subsection (b)(1)"; and by striking the last sentence and inserting the following:

"Although the enhancements for weapon possession in subsection (b)(1) and violence in subsection (b)(2) may be triggered by the same conduct (such as where the defendant uses the possessed weapon to make a credible threat to use violence), they are to be applied cumulatively (added together), as is generally the case when two or more specific offense characteristics each apply. *See* § 1B1.1 (Application Instructions), Application Note 4(A).".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 8 in the last paragraph by striking "(2)" and inserting "(3)";

in Note 18 by striking "(2)" and inserting "(3)", and by striking "(4)" and inserting "(5)";

in Note 19 by striking "(10)" and inserting "(13)" in both places;

in Note 20 by striking "(10)" and inserting "(13)" in both places;

in Note 21 by striking "(11)" and inserting "(16)" each place it appears;

in Note 23 by striking "(6)" and inserting "(7)" each place it appears;

in Note 25 by striking "(7)" and inserting "(8)" in both places;

and in Note 26 by striking "(8)" and inserting "(9)" in both places.

The Commentary to § 2D1.1 captioned "Background" is amended by inserting after the paragraph that begins "For marihuana plants" the following:

"Subsection (b)(2) implements the directive to the Commission in section 5 of Public Law 111–220.";

In the paragraph that begins "Specific Offense Characteristic" by striking "Specific Offense Characteristic (b)(2)" and inserting "Subsection (b)(3)";

By inserting after the paragraph that begins "The dosage weight" the following:

"Subsection (b)(11) implements the directive to the Commission in section 6(1) of Public Law 111–220.

Subsection (b)(12) implements the directive to the Commission in section 6(2) of Public Law 111–220.";

In the paragraph that begins "Subsection (b)(10)(A)" by striking "(10)" and inserting "(13)";

In the paragraph that begins "Subsections (b)(10)(C)(ii)" by striking "(10)" and inserting "(13)";

and by adding at the end the following:

"Subsection (b)(14) implements the directive to the Commission in section 6(1) of Public Law 111–220.

Subsection (b)(15) implements the directive to the Commission in section 7(2) of Public Law 111–220."

Section 2D1.14(a)(1) is amended by striking "(11)" and inserting "(16)".

Issues for Comment:

1. In the proposed new violence enhancement in subsection (b)(2) of § 2D1.1, should the Commission provide a single level of enhancement for any conduct covered by the violence enhancement, or should the Commission distinguish among the different categories of conduct (use of violence; credible threat to use violence; directing others to use violence) by assigning different levels of enhancement to each?

2. The proposed amendment would amend Application Note 3 to § 2D1.1 to provide that the enhancements for weapon possession in subsection (b)(1) and violence in subsection (b)(2) are to be applied cumulatively. Should the Commission instead provide that the enhancements are not to be applied cumulatively?

3. The *Guidelines Manual* uses the term "violence" in several provisions, *e.g.,* § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) (the "safety valve" provision), without defining the term. Should the term "violence" be defined for purposes of the new violence enhancement in subsection (b)(2)? If so, what should the definition be? How, if at all, should such a definition interact with the other provisions in the Manual where the term is not defined?

4. The proposed new bribery enhancement in § 2D1.1(b)(11) may interact with other provisions in the *Guidelines Manual,* such as § 3C1.1 (Obstructing or Impeding the Administration of Justice). How should the new bribery enhancement interact with such other provisions? In particular, should they be applied cumulatively, or should they not be applied cumulatively?

5. The proposed new enhancement in § 2D1.1(b)(12) would apply if the defendant "maintained an establishment for the manufacture or distribution of a controlled substance, as described in 21 U.S.C. 856." Should this enhancement apply more broadly, *e.g.,* if the defendant "committed an offense described in 21 U.S.C. 856"? How should this proposed new enhancement in subsection (b)(12) interact with § 2D1.8 (Renting or Managing a Drug Establishment; Attempt or Conspiracy)? In particular, should the Commission raise the alternative base offense level 26 in § 2D1.8 to [28][30]?

6. As an alternative to establishing new specific offense characteristics at subsections (b)(14) and (15) of § 2D1.1, should the Commission instead implement these directives in Chapter Three? In particular, should the Commission amend §§ 3B1.1 and 3B1.2, or establish new Chapter Three guidelines, to provide the adjustments required by the directives?

7. For the proposed new specific offense characteristic in § 2D1.1(b)(14), should the Commission distinguish among the different factors described by the directive (*e.g.,* the factors set forth in subparagraphs (A) through (E) of the proposed new § 2D1.1(b)(14)) by assigning different levels to each? For example, should the most egregious factor be assigned an adjustment of [6] levels, and other factors assigned adjustments of [4] or [2] levels? If more than one factor is present, should that have a cumulative effect, warranting a higher total adjustment for that defendant? As an alternative, should the Commission provide an upward departure provision for cases in which more than one factor is present?

8. The proposed new specific offense characteristic in § 2D1.1(b)(14) may interact with other provisions in the *Guidelines Manual,* such as § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy), § 3B1.4 (Using a Minor to Commit a Crime), § 3C1.1 (Obstructing or Impeding the Administration of Justice), and § 4B1.3 (Criminal Livelihood). How should the new specific offense characteristic in subsection (b)(14) interact with such other provisions? In particular, should they be applied cumulatively, or should they not be applied cumulatively?

9. The proposed new specific offense characteristic in § 2D1.1(b)(14) and the proposed new specific offense characteristics in § 2D1.1 for bribery (see Part C of this proposed amendment) and maintenance of a drug establishment (see Part D of this proposed amendment) all respond to section 6 of the Fair Sentencing Act of 2010. How should these provisions interact with each

other? In particular, should they be applied cumulatively, or should they not be applied cumulatively?

10. This part of the proposed amendment establishes several new specific offense characteristics in § 2D1.1. What, if any, changes should the Commission make to other Chapter Two offense guidelines involving drug trafficking to ensure consistency and proportionality? Many such guidelines refer to § 2D1.1 in determining the offense level, but not in all cases. For example, if the base offense level is determined under subsection (a)(3) or (a)(4) of § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy), or under subsection (a)(2) of § 2D1.5 (Continuing Criminal Enterprise; Attempt or Conspiracy), or under § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), the new specific offense characteristics would not apply. Should the Commission establish similar specific offense characteristics in § 2D1.2, § 2D1.5, and § 2D1.11?

11. What other changes, if any, should the Commission make to the *Guidelines Manual* under the emergency authority provided by section 8 of the Act?

(D) Maximum Base Offense Level for Minimal Role ("Minimal Role Cap")

Synopsis of Proposed Amendment: This part of the proposed amendment responds to section 7(1) of the Act, which contains a directive to the Commission to "review and amend the Federal sentencing guidelines and policy statements to ensure that * * * if the defendant is subject to a minimal role adjustment under the guidelines, the base offense level for the defendant based solely on drug quantity shall not exceed level 32."

This part of the proposed amendment implements the directive by adding a new sentence to the end of § 2D1.1(a)(5) (the so-called "mitigating role cap"), to reflect the "minimal role cap" of level 32 required by the directive.

Proposed Amendment:

Section 2D1.1(a)(5) is amended by adding at the end the following:

"If the resulting offense level is greater than level 32 and the defendant receives an adjustment under subsection (a) of § 3B1.2, decrease to level 32.".

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BILLING CODE 2210–40–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of period during which individuals may apply to be appointed to certain voting memberships of the Practitioners Advisory Group; request for applications.

SUMMARY: Because the terms of certain voting members of the Practitioners Advisory Group are expiring as of October 2010, the United States Sentencing Commission hereby invites any individual who is eligible to be appointed to succeed such a voting member to apply. The voting memberships covered by this notice are two circuit memberships (for the Second Circuit and District of Columbia Circuit) and one at-large voting membership. Applications should be received by the Commission not later than November 8, 2010. Applications may be sent to Michael Courlander at the address listed below.

DATES: Applications for voting membership of the Practitioners Advisory Group should be received not later than November 8, 2010.

ADDRESSES: Send applications to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4597.

SUPPLEMENTARY INFORMATION: The Practitioners Advisory Group of the United States Sentencing Commission is a standing advisory group of the United States Sentencing Commission pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Under the charter for the advisory group, the purpose of the advisory group is (1) To assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on the Commission's activities and work, including proposed priorities and amendments; (3) to disseminate to defense attorneys, and to other professionals in the defense community, information regarding federal sentencing issues; and (4) to perform other related functions as the Commission requests. The advisory group consists of not more than 17 voting members, each of whom may serve not more than two consecutive three-year terms. Of those 17 voting members, one shall be Chair, one shall be Vice Chair, 12 shall be circuit members (one for each federal judicial circuit other than the Federal Circuit), and three shall be at-large members.

To be eligible to serve as a voting member, an individual must be an attorney who (1) devotes a substantial portion of his or her professional work to advocating the interests of privately-represented individuals, or of individuals represented by private practitioners through appointment under the Criminal Justice Act of 1964, within the federal criminal justice system; (2) has significant experience with federal sentencing or post-conviction issues related to criminal sentences; and (3) is in good standing of the highest court of the jurisdiction or jurisdictions in which he or she is admitted to practice. Additionally, to be eligible to serve as a circuit member, the individual's primary place of business or a substantial portion of his or her practice must be in the circuit concerned. Each voting member is appointed by the Commission.

The Commission invites any individual who is eligible to be appointed to a voting membership covered by this notice to apply.

Authority: 28 U.S.C. 994(a), (o), (p), § 995; USSC Rules of Practice and Procedure 5.2, 5.4.

William K. Sessions III,

Chair.

[FR Doc. 2010–22343 Filed 9–7–10; 8:45 am]

BILLING CODE 2211–04–P