

U.S.C. 2339 or 2339A or who committed any offense involving or intending to promote a federal crime of terrorism, as defined in 18 U.S.C. 2332b(g)(5). In such a case, the base offense level under this guideline shall be not more than level 30, as provided in subdivision (A).”.

The Commentary to § 2X3.1 captioned “Statutory Provisions” is amended by inserting “, 2339C(c)(2)(A), (c)(2)(B) (but only with respect to funds known or intended to have been provided or collected in violation of 18 U.S.C. 2339C(a)(1)(A))” after “2339A”.

The Commentary to § 2X3.1 captioned “Application Notes” is amended in Note 1 by inserting “, or in the case of a violation of 18 U.S.C. 2339C(c)(2)(A), ‘underlying offense’ means the violation of 18 U.S.C. 2339B with respect to which the material support or resources were concealed or disguised” after “(that offense)”.

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. 1960 by inserting “2S1.1,” before “2S1.3”;

by inserting after the line referenced to 18 U.S.C. 2332d the following new line:

“18 U.S.C. 2332f 2K1.4, 2M6.1”;

by inserting after the line referenced to 18 U.S.C. 2339B the following new lines:

“18 U.S.C. 2339C(a)(1)(A)	2X2.1
18 U.S.C. 2339C(a)(1)(B)	2M5.3
18 U.S.C. 2339C(c)(2)(A)	2X3.1
18 U.S.C. 2339C(c)(2)(B)	2M5.3,

2X3.1”;

and in the line referenced to 42 U.S.C. 300i–1 by striking “, 2Q1.5”.

Reason for Amendment: This amendment is a three part amendment that (1) further responds to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. 107–56; (2) responds to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188; and (3) responds to the Terrorist Bombings Preparedness and Response Act of 2002, Pub. L. 107–197.

First, this amendment makes changes to the money laundering and transactions structuring guidelines to complete work begun in 2002 to address the provisions of the USA PATRIOT Act. The amendment eliminates the six level enhancement for terrorism in § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity) because such conduct is adequately accounted for by the terrorism adjustment at § 3A1.4 (Terrorism). The terrorism adjustment at § 3A1.4 applies if the offense is a felony

that involved, or was intended to promote, a federal crime of terrorism as defined in 18 U.S.C. 2332b(g)(5). Therefore, if the defendant knew or believed that any of the laundered funds were the proceeds of, or were intended to promote, an offense involving terrorism, as defined in § 3A1.4, that adjustment will apply. This amendment also provides for the treatment of certain offenses under 18 U.S.C. 1960. The amendment changes Appendix A (Statutory Index) to refer violations of 18 U.S.C. 1960 to both §§ 2S1.1 and 2S1.3 (Structuring Transactions; Failure to Report Case or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports; Bulk Cash Smuggling; Establishing or Maintaining Prohibited Accounts). Referring violations of 18 U.S.C. 1960(b)(1)(C) to § 2S1.1 is appropriate because the essence of this offense is money laundering, rather than structuring transactions to evade reporting requirements.

The amendment also raises the maximum offense level in § 2X3.1 (Accessory After the Fact) from level 20 to level 30 for offenses in which the conduct involves harboring or concealing a fugitive involved in a terrorism offense. The Commission determined that the heightened maximum offense level of level 30 is appropriate for offenses involving the harboring of terrorists because of the relative seriousness of those offenses. Specifically, the heightened maximum offense level applies in any case in which the defendant is convicted under 18 U.S.C. 2339 or 2339A or in which the conduct involved harboring a person who committed any offense listed under those statutes, or who committed any offense involving or intending to promote a federal crime of terrorism as defined in 18 U.S.C. 2332b(g)(5).

Second, the amendment responds to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. The amendment refers certain new offenses involving biological agents and toxins to the guideline covering nuclear, biological, and chemical weapons and materials, § 2M6.1 (Unlawful Production, Development, Acquisition, Stockpiling, Alteration, Use, Transfer, or Possession of Nuclear Material, Weapons, or Facilities, Biological Agents, Toxins, or Delivery Systems, Chemical Weapons, or Other Weapons of Mass Destruction; Attempt or Conspiracy).

The amendment also responds to amendments made to the Safe Drinking Water Act (42 U.S.C. 300i–1(a)) made by

section 403 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. Section 1432(a) of the Safe Drinking Water Act prohibits any person from tampering with a public water system. The statutory maximum penalty was increased from five years’ imprisonment to 20 years’ imprisonment. Section 1432(b) of the Act prohibits anyone from attempting or threatening to tamper with a public water system. The statutory maximum penalty was increased from three years’ imprisonment to ten years’ imprisonment.

The amendment consolidates §§ 2Q1.5 (Threatened Tampering with Public Water System) and 2Q1.4 (Tampering or Attempted Tampering with Public Water System). This consolidation reflects the similar manner in which threats to carry out a nuclear, biological, or chemical weapons offense are treated under § 2M6.1. Three alternative base offense levels are provided for the substantive offense and for a threat to carry out the substantive offense, either accompanied or unaccompanied by other conduct evidencing an intent to carry out the threat.

The amendment also increases the base offense level for offenses involving tampering and threatened tampering with a public water system. The amendment increases the base offense level for tampering with a public water system from level 18 to level 26. The six level enhancement for the risk of death or serious bodily injury (in the predecessor guideline) is incorporated into the base offense level, as are two levels for bodily injury (similar to the treatment of this aggravated conduct in the consumer product tampering guideline). A graduated enhancement for serious or life-threatening bodily injury, modeled after the nuclear, biological, and chemical guideline and the consumer product tampering guideline, is added. Likewise, the base offense level for threatening to tamper with a public water system, without conduct evidencing an intent to carry out the threat, is increased from level 10 to level 16. A base offense level of level 22 is provided if there is conduct evidencing an intent to carry out the threat. For point of comparison, the existing base offense levels for threatening communications under § 2A6.1 (Threatening or Harassing Communications) is level 12, and for threatened use of nuclear, biological, and chemical weapons under § 2M6.1 is level 20. These substantial increases in the base offense levels for threatened tampering of a public water system are