

Section 2D1.11(e)(3) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 71 G but less than 214 G of Red Phosphorus;"

Section 2D1.11(e)(4) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 50 G but less than 71 G of Red Phosphorus;"

Section 2D1.11(e)(5) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 29 G but less than 50 G of Red Phosphorus;"

Section 2D1.11(e)(6) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 7 G but less than 29 G of Red Phosphorus;"

Section 2D1.11(e)(7) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 6 G but less than 7 G of Red Phosphorus;"

Section 2D1.11(e)(8) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 4 G but less than 6 G of Red Phosphorus;"

Section 2D1.11(e)(9) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 3 G but less than 4 G of Red Phosphorus;"

Section 2D1.11(e)(10) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"Less than 3 G of Red Phosphorus;"

The Commentary to 2G2.1 captioned "Application Notes" is amended by striking Note 6 and inserting the following:

"6. Upward Departure Provision.—An upward departure may be warranted if the offense involved more than 10 victims."

Section 2G2.2(b)(5) is amended by inserting ", receipt, or distribution" after "transmission".

The Commentary to § 2H2.1 captioned "Statutory Provisions" is amended by inserting ", 1015(f)" after "597".

The Commentary to § 2K2.5 captioned "Statutory Provisions" is amended by inserting "; 40 U.S.C. 5104(e)(1)" after "930".

The Commentary to § 2N2.1 captioned "Statutory Provisions" is amended by inserting ", 8313" after "7734".

The Commentary to § 2R1.1 captioned "Statutory Provision" is amended by

striking "Provision" and inserting "Provisions"; and by striking "§ 1" and inserting "§§ 1, 3(b)".

The Commentary to § 4B1.5 captioned "Application Notes" is amended Note 4(A) by striking "(i) means" and inserting "means any of the following: (i)"; by striking "includes" each place it appears; by inserting "or" before "(iii)"; and by striking "; and (iv)" and inserting ". It".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 7 U.S.C. 7734 the following new line:

"7 U.S.C. 8313 2N2.1";

by inserting after the line referenced to 15 U.S.C. 1 the following new line:

"15 U.S.C. 3(b) 2R1.1";

in the line referenced to 18 U.S.C. 1015 by inserting "(a)–(e)" after "1015";

by inserting after the line referenced to 18 U.S.C. 1015(a)–(e), as amended by this amendment, the following new line:

"18 U.S.C. 1015(f) 2H2.1";

by inserting after the line referenced to 19 U.S.C. 2316 the following new line:

"19 U.S.C. 2401f 2B1.1"; and

by inserting after the line referenced to 38 U.S.C. 3502 the following new lines:

"40 U.S.C. 5104(e)(1) 2K2.5

40 U.S.C. 14309(a), (b) 2C1.3".

Reason for Amendment: This six-part amendment makes several technical and conforming changes to various guideline provisions.

First, this amendment makes changes to § 1B1.1 (Application Instructions) to (1) provide an instruction making clear that the application instructions are to be applied in the order presented in the guideline; (2) provide an application note making clear that, absent an instruction to the contrary, Chapter Two enhancements, Chapter Three adjustments, and determinations under Chapter Four triggered by the same conduct are to be applied cumulatively; and (3) provide an application note concerning the use of abbreviated guideline titles to ease reference to guidelines that have exceptionally long titles.

Second, this amendment adds red phosphorus to the Chemical Quantity Table in § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical) in response to a recent classification of red phosphorus as a List I chemical.

Third, this amendment conforms the departure provision in Application Note 6 of § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in

Production) to Application Note 12 of § 2G1.1 (Promoting A Commercial Sex Act or Prohibited Sexual Conduct).

Fourth, this amendment amends subsection (b)(5) of § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic) to include receipt and distribution in the enhancement for use of a computer.

Fifth, this amendment restructures the definitions of "prohibited sexual conduct" in §§ 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) and 4B1.5 (Repeat and Dangerous Sex Offender Against Minors) to eliminate possible ambiguity regarding the interaction of "means" and "includes".

Finally, this amendment responds to new legislation and makes other technical amendments as follows:

(1) Amends Appendix A (Statutory Index) and § 2N2.1 (Violations of Statutes and Regulations Dealing with any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product) in response to new offenses created by the Farm Security and Rural Investment Act of 2002 (the "Act"), Pub. L. 107–171. The first new offense provides a statutory maximum of one year of imprisonment for violating the Animal Health Protection Act (Subtitle E of the Act), or for counterfeiting or destroying certain documents specified in the Animal Health Protection Act. The second new offense provides a statutory maximum term of imprisonment of five years for importing, entering, exporting, or moving any animal or article for distribution or sale. The Act also provides a statutory maximum of ten years' imprisonment for a subsequent violation of either offense.

(2) Amends Appendix A and § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) in response to a new offense (19 U.S.C. 2401f) created by the Trade Act of 2002, Pub. L. 107–210. The new offense provides a statutory maximum term of imprisonment of one year for knowingly making a false statement of material fact for the purpose of obtaining or increasing a payment of federal adjustment