

"1. Definitions.—For purposes of this guideline, 'condoned,' 'prior criminal adjudication,' 'similar misconduct,' 'substantial authority personnel,' and 'willfully ignorant of the offense' have the meaning given those terms in the Commentary to § 8A1.2 (Application Instructions—Organizations)."

The Commentary to § 8C2.5 captioned "Application Notes" is amended in Note 3 in the last sentence by striking "entire organization" and inserting "organization in its entirety".

The Commentary to § 8C2.5 captioned "Application Notes" is amended in Note 10 by striking "The second proviso in subsection (f)" and inserting "Subsection (f)(2)"; and by striking "this proviso" and inserting "subsection (f)(2)".

The Commentary to § 8C2.5 captioned "Application Notes" is amended in Note 12 by adding at the end the following:

"If the defendant has satisfied the requirements for cooperation set forth in this note, waiver of the attorney-client privilege and of work product protections is not a prerequisite to a reduction in culpability score under subsection (g). However, in some circumstances, waiver of the attorney-client privilege and of work product protections may be required in order to satisfy the requirements of cooperation."

Section 8C2.8(a) is amended in subdivision (9) by striking "and"; in subdivision (10) by striking the period and inserting "; and"; and by adding at the end the following:

"(11) whether the organization failed to have, at the time of the instant offense, an effective program to prevent and detect violations of law within the meaning of § 8B2.1 (Effective Program to Prevent and Detect Violations of Law)."

The Commentary to § 8C2.8 captioned "Application Notes" is amended in Note 4 in the first sentence by inserting "within high-level personnel of" after "organization or".

The Commentary to § 8C4.1 captioned "Application Note" is amended by striking "Note" and inserting "Notes"; in Note 1 by inserting "Intent of Provision.—" before "Departure" [; and by adding at the end the following:

"2. Waiver of Certain Privileges and Protections.—If the defendant has satisfied the requirements for substantial assistance set forth in subsection (b)(2), waiver of the attorney-client privilege and of work product protections is not a prerequisite to a motion for a downward departure by the government under this section. However, the government may determine that waiver of the attorney-

client privilege and of work product protections is necessary to ensure substantial assistance sufficient to warrant a motion for departure."].

Section 8C4.10 is amended by adding at the end the following paragraph:

"Similarly, if, at the time of the instant offense, the organization was required by law to have an effective program to prevent and detect violations of law, but the organization did not have such a program, an upward departure may be warranted."

Section 8D1.1(a) is amended by striking subdivision (3) in its entirety and inserting the following:

"(3) if, at the time of sentencing, (A) the organization (i) has 50 or more employees, or (ii) was otherwise required by law to have an effective program to prevent and detect violations of law; and (B) the organization does not have such a program;"

Section 8D1.4(b)(4) is amended by striking "(1)" and inserting "(A)"; by striking "(2)" and inserting "(B)"; and by striking "(3)" and inserting "(C)".

Section 8D1.4(c) is amended by striking subdivision (1) in its entirety and inserting the following:

"(1) The organization shall develop and submit to the court an effective program to prevent and detect violations of law, consistent with § 8B2.1 (Effective Program to Prevent and Detect Violations of Law). The organization shall include in its submission a schedule for implementation of the program."

and in subdivisions (2), (3), and (4) by striking "to prevent and detect violations of law" each place it appears and inserting "referred to in subdivision (1)".

The Commentary to § 8D1.4 captioned "Application Notes" by striking "Notes" and inserting "Note"; and in the third sentence by striking ", provided" and inserting "as long as"; by inserting "§ 8B2.1 (Effective Program to Prevent and Detect Violations of Law), and" after "with"; and by striking "or regulatory requirement" and inserting "and regulatory requirements".

Chapter Eight, Part D, Subpart One is amended by striking § 8D1.5 and accompanying commentary.

Chapter Eight is amended by adding at the end the following:

"PART F—VIOLATIONS OF PROBATION—ORGANIZATIONS

§ 8F1.1. Violations of Conditions of Probation—Organizations (Policy Statement)

Upon a finding of a violation of a condition of probation, the court may extend the term of probation, impose

more restrictive conditions of probation, or revoke probation and resentence the organization.

Commentary

Application Notes:

1. Appointment of Master or Trustee.—In the event of repeated, serious violations of conditions of probation, the appointment of a master or trustee may be appropriate to ensure compliance with court orders.

2. Conditions of Probation.—Mandatory and recommended conditions of probation are specified in §§ 8D1.3 (Conditions of Probation—Organizations) and 8D1.4 (Recommended Conditions of Probation—Organizations)."

Issues for Comment:

1. Subsection (f) of § 8C2.5 (Culpability Score) currently prohibits receipt of the three-point reduction in the culpability score for an effective program to prevent and detect violations of law if the organization unreasonably delayed reporting an offense to appropriate governmental authorities after becoming aware of the offense. The proposed amendment retains that prohibition. The Commission requests comment regarding whether the prohibition should be eliminated so that an organization could be considered for the reduction under § 8C2.5(f) regardless of whether the organization unreasonably delayed reporting the offense after its detection. Elimination of this prohibition may be appropriate in light of the fact that § 8C2.5(g) provides for a five-point decrease for cooperation with authorities, including reporting the offense to authorities within a reasonable time.

2. Subsection (f) of § 8C2.5 also currently precludes receipt of the three-point reduction for an effective program to prevent and detect violations of law if certain high-level individuals within the organization participated in, condoned, or were willfully ignorant of the offense. The proposed amendment changes this automatic preclusion to a rebuttable presumption that the organization did not have an effective program to prevent and detect violations of law under such circumstances. The Commission requests comment regarding whether the automatic preclusion should continue to apply in the context of large organizations. Moreover, should the rebuttable presumption apply in the context of small organizations, in which high-level individuals within the organization almost necessarily will have been involved in the offense?

3. The reduction in the culpability score under § 8C2.5(f) for an effective