Note 2 by inserting the Following additional paragraph at the end:

"A 'manager' or 'supervisor' means a person who managed or supervised another participant, whether directly or indirectly.".

The Commentary to § 3B1.1 captioned "Application Notes" is amended by deleting Note 3 and inserting in lieu thereof:

'3. In the case of a defendant who would have merited a minor or minimal role adjustment but for the defendant's supervision of other minor- or minimalrole participants, do not apply an adjustment from § 3B1.1 (Aggravating Role). For example, an increase for an aggravating role would not be appropriate for a defendant whose only function was to offload a large shipment of marihuana and who supervised other offloaders of that shipment. Instead, consider this factor in determining the appropriate reduction, if any, under § 3B1.2 (Mitigating Role). For example, in the case of a defendant who would have merited a reduction for a minimal role but for his or her supervision of other minimal-role participants, a reduction for a minor, rather than minimal, role might be appropriate. In the case of a defendant who would have merited a reduction for a minor role but for his or her supervision of other minimal- or minor-role participants, no reduction for role in the offense might be appropriate.

The interaction of §§ 3B1.1 and 3B1.2 is to be addressed in the manner described above. Thus, if an adjustment from § 3B1.1 is applied, an adjustment from § 3B1.2 may not be applied.".

(B). Synopsis of Proposed Amendment: This proposed amendment revises § 3B1.2 (Mitigating Role) and the Introductory Commentary to Chapter Three, Part B (Role in the Offense) to provide clearer definitions of the circumstances under which a defendant qualifies for a mitigating role reduction. In addition, § 3B1.4 is deleted as unnecessary. This amendment is derived from the work of two Commission working groups that found significant problems with the clarity of the current definitions of mitigating role.

Proposed Amendment: The Introductory Commentary to Chapter Three, Part B is amended by deleting the second paragraph and inserting the following in lieu thereof:

"For § 3B1.1 (Aggravating Role) or § 3B1.2 (Mitigating Role) to apply, the offense must involve the defendant and at least one other participant, although that other participant need not be apprehended. When an offense has only one participant, neither § 3B1.1 nor

§ 3B1.2 will apply. In some cases, some participants may warrant an upward adjustment under § 3B1.1, other participants may warrant a downward adjustment under § 3B1.2, and still other participants may warrant no adjustment. Section 3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply to offenses committed by any number of participants.

Sections 3B1.1 (Aggravating Role) and 3B1.2 (Mitigating Role) authorize an increase or decrease in offense level for a defendant who has an aggravating or mitigating role, respectively, in the offense conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). Sections 3B1.1 and 3B1.2 are designed to work in conjunction with § 1B1.3, which focuses upon the acts and omissions in which the defendant participated (i.e., that the defendant committed, aided, abetted, counseled, commanded, induced, procured or willfully caused) and, in the case of a jointly undertaken criminal activity, the acts and omissions of others in furtherance of the jointly undertaken criminal activity that were reasonably foreseeable.

For example, in a controlled substance trafficking offense, the Chapter Two offense level for Defendant A, who arranged the importation of 1000 kilograms of marihuana and hired a number of other participants to assist him, is level 32. The same Chapter Two offense level applies to Defendant B, a hired hand whose only role was to assist in unloading the ship upon which the marihuana was imported; Defendant C, a hired hand whose only role was as a deckhand on that ship; and Defendant D, a hired hand whose only role was to act as a lookout for that unloading. Defendant E, who purchased the marihuana from Defendant A and resold it, acting alone, also receives the same Chapter Two offense level. Although the quantity of marihuana involved for each of these defendants (and thus the Chapter Two offense level) is identical, courts traditionally have distinguished among such defendants in imposing sentence to take into account their relative culpabilities (based on their respective roles). Defendant A logically would be seen as having the most culpable role because he organized the importation and recruited and managed others. Defendants B, C, and D logically would be seen as having substantially less culpable roles. Defendant E, who acted alone, would receive no role adjustment. Consistent with these principles, §§ 3B1.1 (Aggravating Role) and 3B1.2 (Mitigating Role) are designed to provide the court with the ability to make appropriate adjustments in offense levels on the basis of the defendant's role and relative culpability in the offense conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct).

The fact that the conduct of one participant warrants an upward adjustment for an aggravating role, or warrants no adjustment, does not necessarily mean that another participant must be assigned a downward adjustment for a mitigating role. For example, Defendant F plans a bank robbery and hires Defendant G, who commits the robbery. Both defendants plead guilty to bank robbery, and each has a Chapter Two offense level of 24. Defendant G may be less culpable than Defendant F, who will receive an upward adjustment under § 3B1.1 for employing Defendant G. Nevertheless, Defendant G does not have a minimal or minor role in the robbery because his role is not substantially less culpable than that of a defendant who committed the same robbery acting alone.".

Section 3B1.2(a) is amended by deleting "in any criminal activity"

Section 3B1.2(b) is amended by deleting "in any criminal activity".

Section 3B1.2 is amended by deleting "In cases falling between (a) and (b), decrease by 3 levels.".

The Commentary to § 3B1.2 captioned "Application Notes" is amended by renumbering Note 4 as Note 7; and by deleting Notes 1–3 and inserting in lieu thereof:

"1. (A) Minimal Role. For subsection (a) to apply, the defendant must—

(1) be substantially less culpable than a person who committed the same offense without the involvement of any other participant;

(2) ordinarily have all of the characteristics listed in Application Note 2(a)–(d); and

(3) not be precluded from receiving this adjustment under Application Notes 3–7.

(B) Minor Role. For subsection (b) to apply, the defendant must—

(1) be substantially less culpable than a person who committed the same offense without the involvement of any other participant;

(2) ordinarily have most of the characteristics listed in Application Note 2(a)–(d); and

(3) not be precluded from receiving this adjustment under Application Notes 3–7.

(C) The difference between a defendant with a minimal role and a minor role is one of degree, and depends upon the presence and intensity of the types of factors described in Application Note 2(a)–(d).