And by inserting in lieu thereof: 'This section provides an adjustment for a defendant who has a minor or minimal role in the offense. To qualify for a minor or minimal role adjustment, the defendant must be substantially less culpable than a hypothetical defendant who committed the same offense without the involvement of any other indicted or unindicted participant. In a large scale offense that cannot readily be committed by one person, the above comparison would be made to a small number of equally culpable participants who committed the offense without additional assistance. In an offense involving importing, transporting, or storing contraband (including controlled substances), the defendant's relative culpability is to be assessed by comparison with a participant who owned the same type and quantity of contraband because, in an offense involving contraband that is committed without the involvement of any other participant, the person committing the offense will be the owner of the contraband."

Section 3B1.4 is deleted in its entirety.

36. Synopsis of Proposed Amendment: Some commentators have suggested that if the Commission moderates the weight given to drug quantity, it should also amend the guidelines to enhance the weight given to firearm use, serious bodily injury, and organizer and leaders in very large scale offenses.

Currently, under § 2D1.1, possession of a weapon carries a 2-level increase, which adds roughly 25% to the guideline range at higher offense levels but little in absolute time at very low offense levels. This amendment would address this issue by providing a minimum offense level for weapon possession and added enhancements for firearm discharge and serious bodily injury.

In addition, this amendment would provide an enhancement for organizers and leaders of very large scale offenses; e.g., offenses involving at least ten other participants. For consistency, this would apply to all offenses, not just drug offenses. Two options are shown. Option 1 would add an additional specific offense characteristic to address this issue. Option 2 would address this issue by an application note regarding the appropriate placement of the sentence within the applicable guideline range.

Proposed Amendment: Section 2D1.1(b) is amended renumbering subdivision (2) as subdivision (3); and by deleting subdivision (1) and inserting in lieu thereof:

"(1) (Apply the greater):

(A) If the offense involved the discharge of a firearm, increase by 4 levels, but if the resulting offense level is less than level 20, increase to level 20; or

(B) If the offense involved possession of a dangerous weapon (including a firearm), increase by 2 levels; but if the resulting offense level is less than level 18, increase to level 18.

(2) If a victim sustained serious bodily injury, other than that to which subsection (a)(1) or (2) applies, increase by 2 levels.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended by deleting Note 3 and inserting in lieu thereof:

"3. 'Firearm,' 'dangerous weapon,' and 'serious bodily injury' are defined in the Commentary to § 1B1.1 (Application Instructions). 'Discharge of a firearm' means the discharge of a firearm with intent to injure or intimidate, or in circumstances that pose a risk a risk of death or injury to a person.

The enhancement for weapon possession reflects the increased danger of violence when drug traffickers possess weapons. If a dangerous weapon is found in the same location as the controlled substance, there shall be a rebuttable presumption that the offense involved the possession of the weapon (i.e., that the possession of the weapon facilitated, or was otherwise related to, the commission of the offense).

The enhancements in subsection (b) also apply to offenses that are referenced to § 2D1.1; see §§ 2D1.2(a)(1) and (2), 2D1.5(a)(1), 2D1.6, 2D1.7(b)(1), 2D1.8, 2D1.11(c)(1), 2D1.12(b)(1), and 2D2.1(b)(1).".

Section 2D1.11(b) is amended by renumbering subdivision (2) as (3); and by deleting subdivision (1) and inserting in lieu thereof:

"(1) (Apply the greater):

- (A) If the offense involved the discharge of a firearm, increase by 4 levels, but if the resulting offense level is less than level 20, increase to level 20; or
- (B) If the offense involved possession of a dangerous weapon (including a firearm), increase by 2 levels, but if the resulting offense level is less than level 18, increase to level 18.
- (2) If a victim sustained serious bodily injury, other than that to which subsection (a)(1) or (2) applies, increase by 2 levels.".

The Commentary to § 2D1.11 captioned "Application Notes" is amended by deleting Note 1 and inserting in lieu thereof:

"1. 'Firearm,' 'dangerous weapon,' and 'serious bodily injury' are defined in the Commentary to § 1B1.1 (Application Instructions). 'Discharge of a firearm' refers to the discharge of a firearm with intent to injure or in circumstances that pose a risk a risk of death or injury to a person.

If a dangerous weapon is found in the same location as the controlled substance, there shall be a rebuttable presumption that the offense involved the possession of the weapon (i.e., that the possession of the weapon facilitated, or was otherwise related to, the commission of the offense).".

[Option 1: Section 3B1.1 is amended by redesignating subsection (a)–(c) as (b)–(d); and by inserting the following as subsection (a):

"(a) If the defendant was an organizer or leader of the offense, and the offense involved at least ten other participants, increase by 5 levels.".]

[Option 2: The Commentary to § 3B1.1 captioned "Application Notes" is amended by inserting the following additional note:

"5. If the defendant was an organizer or leader of an offense involving at least ten other participants, a sentence towards the upper limit of the applicable guideline range typically will be appropriate.".]

Additional Issue for Comment: The Commission, at the request of the Practitioners' Advisory Group, invites comment on an alternative to the weapons portion of this enhancement in the following form:

"(1)(A) If a dangerous weapon (including a firearm) was actually possessed by the defendant, or the defendant induced or directed another participant to actually possess a dangerous weapon, increase by 2 levels.

(B) If the use of a dangerous weapon (including a firearm) was threatened by the defendant, or the defendant induced or directed another participant to threaten the use of a dangerous weapon, increase by 3 levels.

(C) If a dangerous weapon (including a firearm) was actually brandished or displayed by the defendant, or the defendant induced or directed another participant to brandish or display a dangerous weapon, increase by 4 levels.

(D) If a firearm was actually discharged by the defendant, or the defendant induced or directed another participant to actually discharge a firearm, increase by 5 levels.

2(A) If a dangerous weapon (including a firearm) was actually used by the defendant and as a result someone other than the defendant received bodily injury, or if the defendant induced or directed another participant to actually