drugs at the wholesale level (to other high-level or mid-level drug dealers);

- b. mid-level dealers—defendants who distribute at the wholesale level (to other mid-level and street-level dealers);
- c. manufacturers/growers defendants who grow, cultivate, or manufacture controlled substances for wholesale distribution and have an ownership interest in the controlled substance; and
- d. financiers—defendants who provide money for purchase, importation, manufacture, cultivation, transportation, or distribution of drugs at the wholesale level.
- 6. The terms 'manager' and 'supervisor' as used in subsection (b)(5)(B), refer to defendants who provide material supervision or management of other participants. Such defendants have some decision-making authority, but primarily implement the decisions and directives of the leader(s) or organizer(s). Managers and supervisors typically would include defendants who act as:
- a. lieutenants—defendants who implement the decisions and directives of a leader or organizer by directing the activities of other participants.

**Note:** The terms 'manager' and 'supervisor' are not intended to apply to defendants who exercise limited supervision over participants with equal or lesser roles and whose overall function within the offense is not one of material supervision or management. For example, a defendant whose only function was to off-load a single large shipment of marijuana, and who supervised other off-loaders of that shipment should not be considered a 'supervisor' under this provision.

- 7. The term 'peripheral' as used in subsection (b)(6), refers to defendants who perform a limited, low-level function in the criminal activity. Such defendants normally are among the least culpable of those involved in the conduct of the group. 'Peripherals' typically do not have any material decision-making authority, do not own the controlled substance or finance any part of the offense, sell the controlled substance or play a substantial part in negotiating the terms of the sale. Defendants who qualify for an adjustment from subsection (b)(5), subsection (b)(7)(B), or § 3B1.3 (Abuse of a Position of Trust or Use of Special Skill) do not qualify as a 'peripheral.' Peripherals typically would include defendants who act as:
- a. off-loaders, deck-hands defendants who perform the physical labor required to put large quantities of drugs onto some form of transportation or into storage or hiding, or who act as

crew members on vessels or aircraft used to transport drugs;

b. go-fers—defendants who generally have limited or no contact with drugs. These defendants run errands, answer the telephone, take messages, receive packages, and provide early warnings during meetings or drug exchanges; and

c. enablers—defendants who have a passive role in the offense, such as knowingly permitting unlawful activity to take place without acting affirmatively to further such activity. Enablers may be coerced or unduly influenced to play such a function (e.g., a parent or grandparent threatened with displacement from a home unless they permit the activity to take place), or may do so as a favor with little or no compensation.

8. The statute and guideline also apply to 'counterfeit' substances, which are defined in 21 U.S.C. § 802 to mean controlled substances that are falsely labeled so as to appear to have been manufactured or distributed legitimately.

9. Distribution of 'a small amount of marijuana for no remuneration,' 21 U.S.C. § 841(b)(4), is treated as simple possession, to which § 2D2.1 applies.

10. Where a mandatory minimum sentence applies, this mandatory minimum sentence may be 'waived' and a lower sentence imposed (including a sentence below the applicable guideline range), as provided in 28 U.S.C. § 994(n), by reason of a defendant's 'substantial assistance in the investigation or prosecution of another person who has committed an offense.' See § 5K1.1 (Substantial Assistance to Authorities).

11. A defendant who used special skills in the commission of the offense may be subject to an enhancement under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). Certain professionals often occupy essential positions in drug trafficking schemes. These professionals include doctors, pilots, boat captains, financiers, bankers, attorneys, chemists, accountants, and others whose special skill, trade, profession, or position may be used to significantly facilitate the commission of a drug offense. However, if subsection (b)(7)(B) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill)

12. In an offense involving negotiation to traffic in a controlled substance, the type of drug under negotiation in an uncompleted distribution shall be used to calculate the applicable base offense level. However, where the court finds that the defendant did not intend to produce or was not reasonably capable of producing the negotiated amount, the

court shall exclude from the guideline calculation the drug type or amount that it finds the defendant did not intend to produce or was not reasonably capable of producing.

13. The base offense level is determined by the type of controlled substance and the schedule of that substance as listed in 21 CFR § 1308.13-15. Certain pharmaceutical preparations are classified as Schedule III, IV, or V controlled substances by the Drug **Enforcement Administration under 21** CFR § 1308.13-15 even though they contain a small amount of a Schedule I or II controlled substance. For example, Tylenol 3 is classified as a Schedule III controlled substance even though it contains a small amount of codeine, a Schedule II opiate. For the purposes of the guidelines, the classification of the controlled substance under 21 CFR § 1308.13-15 is the appropriate classification.'.]

## **III. Other Amendments**

Chapter Two, Part S (Money Laundering and Monetary Transaction Reporting)

44. Synopsis of Proposed Amendment: This amendment revises the guidelines in Chapter Two, Part S (Money Laundering and Monetary Transaction Reporting). When the Commission promulgated §§ 2S1.1 and 2S1.2 to govern sentencing for the money laundering and monetary transaction offenses found at 18 U.S.C. §§ 1956 and 1957, these statutes were relatively new and, therefore, the Commission had little case experience upon which to base the guidelines. Additionally, court decisions have since construed the elements of these offenses broadly. This amendment consolidates §§ 2Sl.l and 2S1.2 for ease of application, and provides additional modifications with the aim of better assuring that the offense levels prescribed by these guidelines comport with the relative seriousness of the offense conduct.

The amendment accomplishes the latter goal chiefly by tying base offense levels more closely to the underlying conduct that was the source of the illegal proceeds. If the defendant committed the underlying offense and the offense level can be determined, subsection (a)(1) sets the base offense level equal to that for the underlying offense. In other instances, the base offense level is keyed to the value of funds involved. The amendment uses specific offense characteristics to assure greater punishment when the defendant knew or believed that the transactions were designed to conceal the criminal nature of the proceeds or when the