

provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

- (b) In the case of a defendant (1) who meets the criteria set forth in subsection (a); and (2) for whom the statutorily required minimum sentence is at least five years, the applicable guideline range shall not be less than 24 to 30 months of imprisonment.

Commentary

Application Notes:

1. Definitions.—

- (A) The term “**violent offense**” means a “crime of violence,” as defined in 18 U.S.C. § 16, that is punishable by imprisonment.
- (B) “**Dangerous weapon**” and “**firearm**,” as used in subsection (a)(2), and “**serious bodily injury**,” as used in subsection (a)(3), are defined in the Commentary to §1B1.1 (Application Instructions).
- (C) “**Offense**,” as used in subsection (a)(2)–(4), and “**offense or offenses that were part of the same course of conduct or of a common scheme or plan**,” as used in subsection (a)(5), mean the offense of conviction and all relevant conduct.

- 2. **Application of subsection (a)(2).**—Consistent with §1B1.3 (Relevant Conduct), the term “**defendant**,” as used in subsection (a)(2), limits the accountability of the defendant to his own conduct and conduct that he aided or abetted, counseled, commanded, induced, procured, or willfully caused.

3. Application of Subsection (a)(4).—

- (A) “**Organizer, leader, manager, or supervisor of others in the offense**.”—The first prong of subsection (a)(4) requires that the defendant was not subject to an adjustment for an aggravating role under §3B1.1 (Aggravating Role).
- (B) “**Engaged in a continuing criminal enterprise**.”—“**Engaged in a continuing criminal enterprise**,” as used in subsection (a)(4), is defined in 21 U.S.C. § 848(c). As a practical matter, it should not be necessary to apply this prong of subsection (a)(4) because (i) this section does not apply to a conviction under 21 U.S.C. § 848, and (ii) any defendant who “engaged in a continuing criminal enterprise” but is convicted of an offense to which this section applies will be an “organizer, leader, manager, or supervisor of others in the offense.”

- 4. **Use of Information Disclosed under Subsection (a).**—Information disclosed by a defendant under subsection (a) may not be used to enhance the sentence of the defendant unless the information relates to a violent offense, as defined in Application Note 1(A).

- 5. **Government’s Opportunity to Make Recommendation.**—Under 18 U.S.C. § 3553(f), prior to its determination, the court shall afford the government an opportunity to make a recommendation. *See also* Fed. R. Crim. P. 32(f), (i).