

- (2) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (B) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by **2** levels.
  - (3) If the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), distributed any prohibited flask, equipment, chemical, product, or material through mass-marketing by means of an interactive computer service, increase by **2** levels.
  - (4) If the offense involved stealing anhydrous ammonia or transporting stolen anhydrous ammonia, increase by **6** levels.
- (c) Cross Reference
- (1) If the offense involved unlawfully manufacturing a controlled substance, or attempting to manufacture a controlled substance unlawfully, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) if the resulting offense level is greater than that determined above.

#### Commentary

**Statutory Provisions:** 21 U.S.C. §§ 843(a)(6), (7), 864.

#### Application Notes:

1. ***“Offense involved unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully,”*** as used in subsection (c)(1), means that the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), completed the actions sufficient to constitute the offense of unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully.
2. Subsection (b)(2) applies if the conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. § 1319(c), the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9603(b), and 49 U.S.C. § 5124 (relating to violations of laws and regulations enforced by the Department of Transportation with respect to the transportation of hazardous material). Any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under §5E1.1 (Restitution) and in fashioning appropriate conditions of supervision under §§5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release).
3. **Application of Subsection (b)(3).**—For purposes of subsection (b)(3), ***“mass-marketing by means of an interactive computer service”*** means the solicitation, by means of an interactive computer service, of a large number of persons to induce those persons to purchase a controlled substance. For example, subsection (b)(3) would apply to a defendant who operated a web site to promote the sale of prohibited flasks but would not apply to conspirators who use an interactive