



# **Proposed Amendments to the Sentencing Guidelines (Preliminary)**

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**January 9, 2014**

This document collects the proposed amendments to the sentencing guidelines, policy statements, and commentary, in the "reader-friendly" form in which they were made available at the public meeting on January 9, 2014. As with all proposed amendments on which a vote to publish for comment has been made but not yet officially submitted to the Federal Register for formal publication, authority to make technical and conforming changes may be exercised and motions to reconsider may be made. Once submitted to the Federal Register, official text of the proposed amendments as submitted will be posted on the Commission's website at [www.usc.gov](http://www.usc.gov) and will be available in a forthcoming edition of the Federal Register, and an updated "reader-friendly" version of the proposed amendments as submitted will be posted on the Commission's website at [www.usc.gov](http://www.usc.gov).

Upon publication in the Federal Register, a 60-day period for public comment will begin. Further information on the submission of public comment will be provided in the forthcoming edition of the Federal Register referred to above. Such information will also be available at [www.usc.gov](http://www.usc.gov).

**PROPOSED AMENDMENT: DRUGS**

**Synopsis of Proposed Amendment:** *In August 2013, the Commission indicated that one of its policy priorities would be "[r]eview, and possible amendment, of guidelines applicable to drug offenses, including possible consideration of amending the Drug Quantity Table in §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) across drug types". See 78 FR 51820 (August 21, 2013). The Commission is publishing this proposed amendment and issue for comment to inform the Commission's consideration of these issues.*

*The proposed amendment contains three parts. Part A contains a detailed request for comment on whether any changes should be made to the Drug Quantity Table across drug types, including whether any other changes may be appropriate. Part B contains a proposed amendment that illustrates one possible set of changes to the Drug Quantity Table (together with conforming changes to the chemical quantity tables and certain clerical changes). Part C contains an issue for comment on whether the guidelines adequately address the environmental and other harms of drug production operations (including, in particular, the cultivation of marijuana) on public lands or while trespassing on private property.*

**(A) Request for Public Comment on Whether Any Changes Should be Made to the Drug Quantity Table Across Drug Types, and Other Possible Changes**

**Issue for Comment:**

1. *The Commission is requesting comment on whether any changes should be made to the Drug Quantity Table across drug types.*

*Penalty Structure of Federal Drug Laws. The penalty structure of the Drug Quantity Table is based on the penalty structure of federal drug laws for most major drug types. That penalty structure generally establishes several tiers of penalties for manufacturing and trafficking in controlled substances, each based on the amount of controlled substances involved. See generally 21 U.S.C. §§ 841(b)(1)(A), (B), (C), 960(b)(1), (2), (3).*

*Generally, for smaller quantities of drugs, the statutory maximum term of imprisonment is 20 years. See 21 U.S.C. § 841(b)(1)(C). For quantities of marijuana less than 50 kilograms, the statutory maximum term of imprisonment is 5 years. See 21 U.S.C. § 841(b)(1)(D). If certain aggravating factors are present (e.g., if the defendant had a prior conviction for a felony drug offense, see 21 U.S.C. § 841(b)(1)(C), (D), or if death or serious bodily injury results from the use of the substance, see 21 U.S.C. § 841(b)(1)(C)), higher statutory penalties apply.*

*If the amount of the controlled substance reaches a statutorily specified quantity, the statutory maximum term increases to 40 years, and a statutory minimum term of 5 years applies. See 21 U.S.C. § 841(b)(1)(B). If the amount of the controlled substance reaches ten times that specified quantity, the statutory maximum term is life, and a statutory minimum term of 10 years applies. See 21 U.S.C. § 841(b)(1)(A). If certain aggravating factors are present (e.g., if the defendant had one or more prior convictions for a felony drug offense, or if death or serious bodily injury results from the use of the substance), higher statutory penalties apply. See 21 U.S.C. § 841(b)(1)(A), (B).*

Framework of the Federal Sentencing Guidelines. The Sentencing Reform Act of 1984 established the Commission's organic statute and provided that the Commission, "consistent with all pertinent provisions of any Federal statute," shall promulgate guidelines and policy statements. See 28 U.S.C. § 994(a). It also provided that the Commission shall establish a sentencing range "for each category of offense involving each category of defendant". See 28 U.S.C. § 994(b)(1). Each sentencing range must be "consistent with all pertinent provisions of title 18, United States Code". See 28 U.S.C. § 994(b)(1). Where the guidelines call for imprisonment, the maximum of the range cannot exceed the minimum by more than the greater of 25 percent or six months. See 28 U.S.C. § 994(b)(2).

In addition, the Commission's organic statute contains a variety of directives to the Commission in promulgating the sentencing guidelines. Among other things, the Commission must ensure that the sentencing guidelines are "formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons." See 28 U.S.C. § 994(g). Thus, "[p]ursuant to 28 U.S.C. § 994(g), the Commission intends to consider the issue of reducing costs of incarceration and overcapacity of prisons, to the extent it is relevant to any identified priority." See 78 FR 51820 (August 21, 2013).

Incorporation of Statutory Penalties into Drug Quantity Table. The Commission has incorporated into the Drug Quantity Table the penalty structure of federal drug laws and the relevant statutory mandatory minimum sentences and has extrapolated upward and downward to set guideline sentencing ranges for all drug quantities. See §2D1.1, comment. (backg'd.) ("The base offense levels in §2D1.1 are either provided directly by the Anti-Drug Abuse Act of 1986 or are proportional to the levels established by statute, and apply to all unlawful trafficking."). By extrapolating upward and downward, the guidelines avoid sharp differentials or "sentencing cliffs" based upon small differences in drug quantities.

The drug quantity thresholds in the Drug Quantity Table have generally been set so that the drug quantity that triggers a statutory mandatory minimum penalty also triggers a base offense level that corresponds (at Criminal History Category I) to a guideline range slightly above the statutory mandatory minimum penalty. Thus, the quantity that triggers a statutory 5-year mandatory minimum term of imprisonment also triggers a base offense level of 26 (corresponding to a guideline range of 63 to 78 months), and the quantity that triggers a statutory 10-year mandatory minimum term of imprisonment also triggers a base offense level of 32 (corresponding to a guideline range of 121 to 151 months). See §2D1.1, comment. (backg'd.) ("The base offense levels at levels 26 and 32 establish guideline ranges with a lower limit as close to the statutory minimum as possible; e.g., level 32 ranges from 121 to 151 months, where the statutory minimum is ten years or 120 months."). The Commission has stated that "[t]he base offense levels are set at guideline ranges slightly higher than the mandatory minimum levels to permit some downward adjustment for defendants who plead guilty or otherwise cooperate with authorities." See United States Sentencing Commission, Special Report to Congress: Cocaine and Federal Sentencing Policy (February 1995) at 148.

A minimum offense level of 6 and a maximum offense level of 38 are incorporated into the Drug Quantity Table across all drug types. In addition, certain higher minimum offense levels are incorporated into the Drug Quantity Table for particular drug types, e.g., a minimum offense level of 12 applies if the offense involved any quantity of certain Schedule I or II controlled substances. See, e.g., §2D1.1(c)(14); §2D1.1, comment. (n.8(D)) ("Provided, that the minimum

offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12."). Similarly, certain maximum offense levels and associated drug quantity "caps" are incorporated into the Drug Quantity Table for particular drug types, e.g., a maximum offense level of 8 and a combined equivalent weight "cap" of 999 grams of marihuana apply if the offense involved any quantity of Schedule V substances. *See, e.g.,* §2D1.1(c)(16); §2D1.1, comment. (n.8(D)) ("Provided, that the combined equivalent weight of Schedule V substances shall not exceed 999 grams of marihuana.>").

Guideline Developments. Since the initial selection of offense levels 26 and 32, the guidelines have been amended many times — often in response to congressional directives — to provide greater emphasis on the defendant's conduct and role in the offense rather than drug quantity. The version of §2D1.1 in the original 1987 Guidelines Manual contained a single specific offense characteristic: a 2-level enhancement if a firearm or other dangerous weapon was possessed. The version of §2D1.1 now in effect contains fourteen enhancements and three downward adjustments (including the "mitigating role cap" provided in subsection (a)(5)), with four enhancements and one downward adjustment added effective November 1, 2010, in response to the emergency directive in the Fair Sentencing Act of 2010, Pub. L. 111–220.

The "Safety Valve." Also since the initial selection of offense levels 26 and 32, Congress has enacted the "safety valve," which applies to certain non-violent drug defendants and allows the court, without any government motion, to impose a sentence below a statutory mandatory minimum penalty if the court finds, among other things, that the defendant "has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan". *See* 18 U.S.C. § 3553(f). This statutory provision was established by Congress in 1994 and is incorporated into the guidelines at USSG §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases). In addition, §2D1.1(b)(16) provides a 2-level reduction in the defendant's offense level if the defendant meets the "safety valve" criteria, regardless of whether a mandatory minimum penalty applies in the case. In the case of a defendant for whom the statutorily required minimum sentence is at least five years, the guidelines provide an offense level of not less than 17. *See* §5G1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases).

Because the "safety valve" was established after the initial selection of levels 26 and 32, its effect on plea rates and cooperation could not have been foreseen at that time. Commission data indicate that defendants charged with a mandatory minimum penalty are more likely to plead guilty if they qualify for the "safety valve" than if they do not. Specifically, in fiscal year 2012, drug trafficking defendants charged with a mandatory minimum penalty had a plea rate of 99.6 percent if they qualified for the "safety valve" and a plea rate of 93.9 percent if they did not.

Crack Cocaine Cases After the 2007 Amendment. In 2007, the Commission amended the Drug Quantity Table for cocaine base ("crack" cocaine) so that the quantities that trigger mandatory minimum penalties also trigger base offense levels 24 and 30, rather than 26 and 32. *See* USSG App. C, Amendment 706 (effective November 1, 2007). At base offense level 24, the guideline range for a defendant in Criminal History Category I is 51 to 63 months, which includes the corresponding mandatory minimum penalty of 5 years (60 months); at base offense level 30, the guideline range for such a defendant is 97 to 121 months, which includes the corresponding mandatory minimum penalty of 10 years (120 months). In 2010, in implementing the emergency

*directive in section 8 of the Fair Sentencing Act of 2010, the Commission moved crack cocaine offenses back to a guideline penalty structure based on levels 26 and 32.*

*During the period when crack cocaine offenses had a guideline penalty structure based on levels 24 and 30, the overall rates at which crack cocaine defendants pled guilty remained stable. Specifically, in the fiscal year before the 2007 amendment took effect, the plea rate for crack cocaine defendants was 93.1 percent. In the two fiscal years after the 2007 amendment took effect, the plea rates for such defendants were 95.2 percent and 94.0 percent, respectively.*

*For those same fiscal years, the overall rates at which crack cocaine defendants received substantial assistance departures under §5K1.1 (Substantial Assistance to Authorities) were 27.8 percent in the fiscal year before the 2007 amendment took effect and 25.3 percent and 25.6 percent in the two fiscal years after the 2007 amendment took effect.*

*In light of this information, the Commission seeks comment on whether the Commission should consider changing how the base offense levels in the Drug Quantity Table incorporate the statutory mandatory minimum penalties and, if so, how? For example, should the Commission amend the Drug Quantity Table across drug types so that the quantities that trigger the statutory mandatory minimum penalties trigger base offense levels 24 and 30, rather than 26 and 32?*

*If the Commission were to amend the Drug Quantity Table across drug types, are there any circumstances that should be wholly or partially excluded from such an amendment? If so, what circumstances? For example, if the Commission were to determine that a guideline penalty structure based on levels 24 and 30, rather than based on levels 26 and 32, is appropriate, should any existing specific offense characteristics be increased, or any new specific offense characteristics be promulgated, to offset any such change for certain offenders?*

*If the Commission were to make changes to the guidelines applicable to drug trafficking cases, what conforming changes, if any, should the Commission make to other provisions of the Guidelines Manual?*

## **(B) Proposed Amendment**

**Synopsis of Proposed Amendment:** *This proposed amendment changes how the base offense levels in the Drug Quantity Table incorporate the statutory mandatory minimum penalties. Specifically, it amends the table so that the quantities that trigger the statutory mandatory minimum penalties trigger base offense levels 24 and 30, rather than 26 and 32. As described more fully in Part A, above, setting base offense levels at levels 24 and 30 establishes guideline ranges with a lower limit below, and an upper limit above, the statutory minimum; e.g., level 30 corresponds (at Criminal History Category I) to a guideline range of 97 to 121 months, where the statutory minimum term is ten years or 120 months.*

*Under the proposed amendment, §2D1.1 would continue to reflect the minimum offense level of 6 and the maximum offense level of 38 that are incorporated into the Drug Quantity Table across all drug types. It also would continue to reflect the minimum offense levels that are incorporated into the Drug Quantity Table for particular drug types, e.g., the minimum offense level of 12 that applies if the offense involved any quantity of certain Schedule I or II controlled substances. See, e.g., §2D1.1(c)(14); §2D1.1, comment. (n.8(D)) ("Provided, that the minimum offense level from the Drug Quantity Table for any of*

these controlled substances individually, or in combination with another controlled substance, is level 12."). Similarly, it would continue to reflect the maximum offense levels and associated drug quantity "caps" that are incorporated into the Drug Quantity Table for particular drug types, e.g., the maximum offense level of 8 and the combined equivalent weight "cap" of 999 grams of marihuana that apply if the offense involved any quantity of Schedule V substances. See, e.g., §2D1.1(c)(16); §2D1.1, comment. (n.8(D)) ("Provided, that the combined equivalent weight of Schedule V substances shall not exceed 999 grams of marihuana.").

In the proposed amendment the various minimum and maximum offense levels and drug quantity "caps" are associated with new drug quantities, determined by extrapolating upward or downward as appropriate.

The proposed amendment makes parallel changes to the quantity tables in §2D1.11, which apply to offenses involving the chemical precursors of controlled substances. Section 2D1.11 is generally structured to provide base offense levels that are tied to, but less severe than, the base offense levels in §2D1.1 for offenses involving the final product.

Finally, the proposed amendment makes certain clerical and conforming changes to reflect the changes to the quantity tables.

#### **Proposed Amendment:**

##### **§2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy**

(a) Base Offense Level (Apply the greatest):

- (1) **43**, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or
- (2) **38**, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or
- (3) **30**, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or
- (4) **26**, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or

(5) the offense level specified in the Drug Quantity Table set forth in subsection (c), except that if (A) the defendant receives an adjustment under §3B1.2 (Mitigating Role); and (B) the base offense level under subsection (c) is (i) level **32**, decrease by **2** levels; (ii) level **34** or level **36**, decrease by **3** levels; or (iii) level **38**, decrease by **4** levels. If the resulting offense level is greater than level **32** and the defendant receives the **4**-level ("minimal participant") reduction in §3B1.2(a), decrease to level **32**.

(b) Specific Offense Characteristics

- (1) If a dangerous weapon (including a firearm) was possessed, increase by **2** levels.
- (2) If the defendant used violence, made a credible threat to use violence, or directed the use of violence, increase by **2** levels.
- (3) If the defendant unlawfully imported or exported a controlled substance under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import or export the controlled substance, (B) a submersible vessel or semi-submersible vessel as described in 18 U.S.C. § 2285 was used, or (C) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, increase by **2** levels. If the resulting offense level is less than level **26**, increase to level **26**.
- (4) If the object of the offense was the distribution of a controlled substance in a prison, correctional facility, or detention facility, increase by **2** levels.
- (5) If (A) the offense involved the importation of amphetamine or methamphetamine or the manufacture of amphetamine or methamphetamine from listed chemicals that the defendant knew were imported unlawfully, and (B) the defendant is not subject to an adjustment under §3B1.2 (Mitigating Role), increase by **2** levels.
- (6) If the defendant is convicted under 21 U.S.C. § 865, increase by **2** levels.
- (7) If the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), distributed a controlled substance through mass-marketing by means of an interactive computer service, increase by **2** levels.
- (8) If the offense involved the distribution of an anabolic steroid and a masking agent, increase by **2** levels.

- (9) If the defendant distributed an anabolic steroid to an athlete, increase by **2** levels.
- (10) If the defendant was convicted under 21 U.S.C. § 841(g)(1)(A), increase by **2** levels.
- (11) If the defendant bribed, or attempted to bribe, a law enforcement officer to facilitate the commission of the offense, increase by **2** levels.
- (12) If the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance, increase by **2** levels.
- (13) (Apply the greatest):
- (A) If the offense involved (i) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (ii) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by **2** levels.
- (B) If the defendant was convicted under 21 U.S.C. § 860a of distributing, or possessing with intent to distribute, methamphetamine on premises where a minor is present or resides, increase by **2** levels. If the resulting offense level is less than level **14**, increase to level **14**.
- (C) If—
- (i) the defendant was convicted under 21 U.S.C. § 860a of manufacturing, or possessing with intent to manufacture, methamphetamine on premises where a minor is present or resides; or
- (ii) the offense involved the manufacture of amphetamine or methamphetamine and the offense created a substantial risk of harm to (I) human life other than a life described in subdivision (D); or (II) the environment,
- increase by **3** levels. If the resulting offense level is less than level **27**, increase to level **27**.
- (D) If the offense (i) involved the manufacture of amphetamine or methamphetamine; and (ii) created a substantial risk of harm to the life of a minor or an incompetent, increase by **6** levels. If the resulting offense level is less than level **30**, increase to level **30**.
- (14) If the defendant receives an adjustment under §3B1.1 (Aggravating Role) and the offense involved 1 or more of the following factors:



- (A) (i) the defendant used fear, impulse, friendship, affection, or some combination thereof to involve another individual in the illegal purchase, sale, transport, or storage of controlled substances, (ii) the individual received little or no compensation from the illegal purchase, sale, transport, or storage of controlled substances, and (iii) the individual had minimal knowledge of the scope and structure of the enterprise;
- (B) the defendant, knowing that an individual was (i) less than 18 years of age, (ii) 65 or more years of age, (iii) pregnant, or (iv) unusually vulnerable due to physical or mental condition or otherwise particularly susceptible to the criminal conduct, distributed a controlled substance to that individual or involved that individual in the offense;
- (C) the defendant was directly involved in the importation of a controlled substance;
- (D) the defendant engaged in witness intimidation, tampered with or destroyed evidence, or otherwise obstructed justice in connection with the investigation or prosecution of the offense;
- (E) the defendant committed the offense as part of a pattern of criminal conduct engaged in as a livelihood,

increase by **2** levels.

- (15) If the defendant receives the **4**-level ("minimal participant") reduction in §3B1.2(a) and the offense involved all of the following factors:

- (A) the defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense;
- (B) the defendant received no monetary compensation from the illegal purchase, sale, transport, or storage of controlled substances; and
- (C) the defendant had minimal knowledge of the scope and structure of the enterprise,

decrease by **2** levels.

- (16) If the defendant meets the criteria set forth in subdivisions (1)-(5) of subsection (a) of §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease by **2** levels.

[Subsection (c) (Drug Quantity Table) is set forth on the following pages.]

(d) Cross References

- (1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder) or §2A1.2 (Second Degree Murder), as appropriate, if the resulting offense level is greater than that determined under this guideline.
- (2) If the defendant was convicted under 21 U.S.C. § 841(b)(7) (of distributing a controlled substance with intent to commit a crime of violence), apply §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to the crime of violence that the defendant committed, or attempted or intended to commit, if the resulting offense level is greater than that determined above.

(e) Special Instruction

- (1) If (A) subsection (d)(2) does not apply; and (B) the defendant committed, or attempted to commit, a sexual offense against another individual by distributing, with or without that individual's knowledge, a controlled substance to that individual, an adjustment under §3A1.1(b)(1) shall apply.

## (c) DRUG QUANTITY TABLE

### Controlled Substances and Quantity\*

### Base Offense Level

- (1) ● [90] KG or more of Heroin; **Level 38**  
● [450] KG or more of Cocaine;  
● [25.2] KG or more of Cocaine Base;  
● [90] KG or more of PCP, or [9] KG or more of PCP (actual);  
● [45] KG or more of Methamphetamine, or  
    [4.5] KG or more of Methamphetamine (actual), or  
    [4.5] KG or more of "Ice";  
● [45] KG or more of Amphetamine, or  
    [4.5] KG or more of Amphetamine (actual);  
● [900] G or more of LSD;  
● [36] KG or more of Fentanyl;  
● [9] KG or more of a Fentanyl Analogue;  
● [90,000] KG or more of Marihuana;  
● [18,000] KG or more of Hashish;  
● [1,800] KG or more of Hashish Oil;  
● [90,000,000] units or more of Ketamine;  
● [90,000,000] units or more of Schedule I or II Depressants;  
● [5,625,000] units or more of Flunitrazepam.
- (±)(2) ● At least 30 KG ~~or more~~ but less than [90] KG of Heroin; **Level 3836**  
● At least 150 KG ~~or more~~ but less than [450] KG of Cocaine;  
● At least 8.4 KG ~~or more~~ but less than [25.2] KG of Cocaine Base;  
● At least 30 KG ~~or more~~ but less than [90] KG of PCP, or at least 3 KG ~~or more~~ but less than [9] KG of PCP (actual);  
● At least 15 KG ~~or more~~ but less than [45] KG of Methamphetamine, or  
    at least 1.5 KG ~~or more~~ but less than [4.5] KG of Methamphetamine (actual), or  
    at least 1.5 KG ~~or more~~ but less than [4.5] KG of "Ice";  
● At least 15 KG ~~or more~~ but less than [45] KG of Amphetamine, or  
    at least 1.5 KG ~~or more~~ but less than [4.5] KG of Amphetamine (actual);  
● At least 300 G ~~or more~~ but less than [900] G of LSD;  
● At least 12 KG ~~or more~~ but less than [36] KG of Fentanyl;  
● At least 3 KG ~~or more~~ but less than [9] KG of a Fentanyl Analogue;  
● At least 30,000 KG ~~or more~~ but less than [90,000] KG of Marihuana;  
● At least 6,000 KG ~~or more~~ but less than [18,000] KG of Hashish;  
● At least 600 KG ~~or more~~ but less than [1,800] KG of Hashish Oil;  
● At least 30,000,000 units ~~or more~~ but less than [90,000,000] units of Ketamine;  
● At least 30,000,000 units ~~or more~~ but less than [90,000,000] units of  
    Schedule I or II Depressants;  
● At least 1,875,000 units ~~or more~~ but less than [5,625,000 units] of Flunitrazepam.
- (±)(3) ● At least 10 KG but less than 30 KG of Heroin; **Level 3634**  
● At least 50 KG but less than 150 KG of Cocaine;

- At least 2.8 KG but less than 8.4 KG of Cocaine Base;
- At least 10 KG but less than 30 KG of PCP, or  
at least 1 KG but less than 3 KG of PCP (actual);
- At least 5 KG but less than 15 KG of Methamphetamine, or  
at least 500 G but less than 1.5 KG of Methamphetamine (actual), or  
at least 500 G but less than 1.5 KG of "Ice";
- At least 5 KG but less than 15 KG of Amphetamine, or  
at least 500 G but less than 1.5 KG of Amphetamine (actual);
- At least 100 G but less than 300 G of LSD;
- At least 4 KG but less than 12 KG of Fentanyl;
- At least 1 KG but less than 3 KG of a Fentanyl Analogue;
- At least 10,000 KG but less than 30,000 KG of Marihuana;
- At least 2,000 KG but less than 6,000 KG of Hashish;
- At least 200 KG but less than 600 KG of Hashish Oil;
- At least 10,000,000 but less than 30,000,000 units of Ketamine;
- At least 10,000,000 but less than 30,000,000 units of Schedule I or II Depressants;
- At least 625,000 but less than 1,875,000 units of Flunitrazepam.

(3)(4) **Level 3432**

- At least 3 KG but less than 10 KG of Heroin;
- At least 15 KG but less than 50 KG of Cocaine;
- At least 840 G but less than 2.8 KG of Cocaine Base;
- At least 3 KG but less than 10 KG of PCP, or  
at least 300 G but less than 1 KG of PCP (actual);
- At least 1.5 KG but less than 5 KG of Methamphetamine, or  
at least 150 G but less than 500 G of Methamphetamine (actual), or  
at least 150 G but less than 500 G of "Ice";
- At least 1.5 KG but less than 5 KG of Amphetamine, or  
at least 150 G but less than 500 G of Amphetamine (actual);
- At least 30 G but less than 100 G of LSD;
- At least 1.2 KG but less than 4 KG of Fentanyl;
- At least 300 G but less than 1 KG of a Fentanyl Analogue;
- At least 3,000 KG but less than 10,000 KG of Marihuana;
- At least 600 KG but less than 2,000 KG of Hashish;
- At least 60 KG but less than 200 KG of Hashish Oil;
- At least 3,000,000 but less than 10,000,000 units of Ketamine;
- At least 3,000,000 but less than 10,000,000 units of Schedule I or II Depressants;
- At least 187,500 but less than 625,000 units of Flunitrazepam.

(4)(5) **Level 3230**

- At least 1 KG but less than 3 KG of Heroin;
- At least 5 KG but less than 15 KG of Cocaine;
- At least 280 G but less than 840 G of Cocaine Base;
- At least 1 KG but less than 3 KG of PCP, or  
at least 100 G but less than 300 G of PCP (actual);
- At least 500 G but less than 1.5 KG of Methamphetamine, or  
at least 50 G but less than 150 G of Methamphetamine (actual), or  
at least 50 G but less than 150 G of "Ice";
- At least 500 G but less than 1.5 KG of Amphetamine, or

- at least 50 G but less than 150 G of Amphetamine (actual);
- At least 10 G but less than 30 G of LSD;
- At least 400 G but less than 1.2 KG of Fentanyl;
- At least 100 G but less than 300 G of a Fentanyl Analogue;
- At least 1,000 KG but less than 3,000 KG of Marihuana;
- At least 200 KG but less than 600 KG of Hashish;
- At least 20 KG but less than 60 KG of Hashish Oil;
- At least 1,000,000 but less than 3,000,000 units of Ketamine;
- At least 1,000,000 but less than 3,000,000 units of Schedule I or II Depressants;
- 1,000,000 units or more of Schedule III Hydrocodone;
- At least 62,500 but less than 187,500 units of Flunitrazepam.

- (5)(6) ● At least 700 G but less than 1 KG of Heroin; **Level 3028**
- At least 3.5 KG but less than 5 KG of Cocaine;
  - At least 196 G but less than 280 G of Cocaine Base;
  - At least 700 G but less than 1 KG of PCP, or  
at least 70 G but less than 100 G of PCP (actual);
  - At least 350 G but less than 500 G of Methamphetamine, or  
at least 35 G but less than 50 G of Methamphetamine (actual), or  
at least 35 G but less than 50 G of "Ice";
  - At least 350 G but less than 500 G of Amphetamine, or  
at least 35 G but less than 50 G of Amphetamine (actual);
  - At least 7 G but less than 10 G of LSD;
  - At least 280 G but less than 400 G of Fentanyl;
  - At least 70 G but less than 100 G of a Fentanyl Analogue;
  - At least 700 KG but less than 1,000 KG of Marihuana;
  - At least 140 KG but less than 200 KG of Hashish;
  - At least 14 KG but less than 20 KG of Hashish Oil;
  - At least 700,000 but less than 1,000,000 units of Ketamine;
  - At least 700,000 but less than 1,000,000 units of Schedule I or II Depressants;
  - At least 700,000 or more but less than 1,000,000 units of Schedule III Hydrocodone;
  - At least 43,750 but less than 62,500 units of Flunitrazepam.

- (6)(7) ● At least 400 G but less than 700 G of Heroin; **Level 2826**
- At least 2 KG but less than 3.5 KG of Cocaine;
  - At least 112 G but less than 196 G of Cocaine Base;
  - At least 400 G but less than 700 G of PCP, or  
at least 40 G but less than 70 G of PCP (actual);
  - At least 200 G but less than 350 G of Methamphetamine, or  
at least 20 G but less than 35 G of Methamphetamine (actual), or  
at least 20 G but less than 35 G of "Ice";
  - At least 200 G but less than 350 G of Amphetamine, or  
at least 20 G but less than 35 G of Amphetamine (actual);
  - At least 4 G but less than 7 G of LSD;
  - At least 160 G but less than 280 G of Fentanyl;
  - At least 40 G but less than 70 G of a Fentanyl Analogue;

- At least 400 KG but less than 700 KG of Marihuana;
- At least 80 KG but less than 140 KG of Hashish;
- At least 8 KG but less than 14 KG of Hashish Oil;
- At least 400,000 but less than 700,000 units of Ketamine;
- At least 400,000 but less than 700,000 units of Schedule I or II Depressants;
- At least 400,000 but less than 700,000 units of Schedule III Hydrocodone;
- At least 25,000 but less than 43,750 units of Flunitrazepam.

- (7)(8) **Level 2624**
- At least 100 G but less than 400 G of Heroin;
  - At least 500 G but less than 2 KG of Cocaine;
  - At least 28 G but less than 112 G of Cocaine Base;
  - At least 100 G but less than 400 G of PCP, or  
at least 10 G but less than 40 G of PCP (actual);
  - At least 50 G but less than 200 G of Methamphetamine, or  
at least 5 G but less than 20 G of Methamphetamine (actual), or  
at least 5 G but less than 20 G of "Ice";
  - At least 50 G but less than 200 G of Amphetamine, or  
at least 5 G but less than 20 G of Amphetamine (actual);
  - At least 1 G but less than 4 G of LSD;
  - At least 40 G but less than 160 G of Fentanyl;
  - At least 10 G but less than 40 G of a Fentanyl Analogue;
  - At least 100 KG but less than 400 KG of Marihuana;
  - At least 20 KG but less than 80 KG of Hashish;
  - At least 2 KG but less than 8 KG of Hashish Oil;
  - At least 100,000 but less than 400,000 units of Ketamine;
  - At least 100,000 but less than 400,000 units of Schedule I or II Depressants;
  - At least 100,000 but less than 400,000 units of Schedule III Hydrocodone;
  - At least 6,250 but less than 25,000 units of Flunitrazepam.

- (8)(9) **Level 2422**
- At least 80 G but less than 100 G of Heroin;
  - At least 400 G but less than 500 G of Cocaine;
  - At least 22.4 G but less than 28 G of Cocaine Base;
  - At least 80 G but less than 100 G of PCP, or  
at least 8 G but less than 10 G of PCP (actual);
  - At least 40 G but less than 50 G of Methamphetamine, or  
at least 4 G but less than 5 G of Methamphetamine (actual), or  
at least 4 G but less than 5 G of "Ice";
  - At least 40 G but less than 50 G of Amphetamine, or  
at least 4 G but less than 5 G of Amphetamine (actual);
  - At least 800 MG but less than 1 G of LSD;
  - At least 32 G but less than 40 G of Fentanyl;
  - At least 8 G but less than 10 G of a Fentanyl Analogue;
  - At least 80 KG but less than 100 KG of Marihuana;
  - At least 16 KG but less than 20 KG of Hashish;
  - At least 1.6 KG but less than 2 KG of Hashish Oil;
  - At least 80,000 but less than 100,000 units of Ketamine;
  - At least 80,000 but less than 100,000 units of Schedule I or II Depressants;

- At least 80,000 but less than 100,000 units of Schedule III Hydrocodone;
- At least 5,000 but less than 6,250 units of Flunitrazepam.

- (9)(10) ● At least 60 G but less than 80 G of Heroin; **Level 2220**
- At least 300 G but less than 400 G of Cocaine;
  - At least 16.8 G but less than 22.4 G of Cocaine Base;
  - At least 60 G but less than 80 G of PCP, or at least 6 G but less than 8 G of PCP (actual);
  - At least 30 G but less than 40 G of Methamphetamine, or at least 3 G but less than 4 G of Methamphetamine (actual), or at least 3 G but less than 4 G of "Ice";
  - At least 30 G but less than 40 G of Amphetamine, or at least 3 G but less than 4 G of Amphetamine (actual);
  - At least 600 MG but less than 800 MG of LSD;
  - At least 24 G but less than 32 G of Fentanyl;
  - At least 6 G but less than 8 G of a Fentanyl Analogue;
  - At least 60 KG but less than 80 KG of Marihuana;
  - At least 12 KG but less than 16 KG of Hashish;
  - At least 1.2 KG but less than 1.6 KG of Hashish Oil;
  - At least 60,000 but less than 80,000 units of Ketamine;
  - At least 60,000 but less than 80,000 units of Schedule I or II Depressants;
  - At least 60,000 but less than 80,000 units of Schedule III Hydrocodone;
  - 60,000 units or more of Schedule III substances (except Ketamine or Hydrocodone);
  - At least 3,750 but less than 5,000 units of Flunitrazepam.

- (10)(11) ● At least 40 G but less than 60 G of Heroin; **Level 2018**
- At least 200 G but less than 300 G of Cocaine;
  - At least 11.2 G but less than 16.8 G of Cocaine Base;
  - At least 40 G but less than 60 G of PCP, or at least 4 G but less than 6 G of PCP (actual);
  - At least 20 G but less than 30 G of Methamphetamine, or at least 2 G but less than 3 G of Methamphetamine (actual), or at least 2 G but less than 3 G of "Ice";
  - At least 20 G but less than 30 G of Amphetamine, or at least 2 G but less than 3 G of Amphetamine (actual);
  - At least 400 MG but less than 600 MG of LSD;
  - At least 16 G but less than 24 G of Fentanyl;
  - At least 4 G but less than 6 G of a Fentanyl Analogue;
  - At least 40 KG but less than 60 KG of Marihuana;
  - At least 8 KG but less than 12 KG of Hashish;
  - At least 800 G but less than 1.2 KG of Hashish Oil;
  - At least 40,000 but less than 60,000 units of Ketamine;
  - At least 40,000 but less than 60,000 units of Schedule I or II Depressants;
  - At least 40,000 but less than 60,000 units of Schedule III Hydrocodone;
  - At least 40,000 or more but less than 60,000 units of Schedule III substances (except Ketamine or Hydrocodone);

- At least 2,500 but less than 3,750 units of Flunitrazepam.

(H)(12)

- At least 20 G but less than 40 G of Heroin;
- At least 100 G but less than 200 G of Cocaine;
- At least 5.6 G but less than 11.2 G of Cocaine Base;
- At least 20 G but less than 40 G of PCP, or  
at least 2 G but less than 4 G of PCP (actual);
- At least 10 G but less than 20 G of Methamphetamine, or  
at least 1 G but less than 2 G of Methamphetamine (actual), or  
at least 1 G but less than 2 G of "Ice";
- At least 10 G but less than 20 G of Amphetamine, or  
at least 1 G but less than 2 G of Amphetamine (actual);
- At least 200 MG but less than 400 MG of LSD;
- At least 8 G but less than 16 G of Fentanyl;
- At least 2 G but less than 4 G of a Fentanyl Analogue;
- At least 20 KG but less than 40 KG of Marihuana;
- At least 5 KG but less than 8 KG of Hashish;
- At least 500 G but less than 800 G of Hashish Oil;
- At least 20,000 but less than 40,000 units of Ketamine;
- At least 20,000 but less than 40,000 units of Schedule I or II Depressants;
- At least 20,000 but less than 40,000 units of Schedule III Hydrocodone;
- At least 20,000 but less than 40,000 units of Schedule III substances (except  
Ketamine or Hydrocodone);
- At least 1,250 but less than 2,500 units of Flunitrazepam.

**Level 1816**

(H)(13)

- At least 10 G but less than 20 G of Heroin;
- At least 50 G but less than 100 G of Cocaine;
- At least 2.8 G but less than 5.6 G of Cocaine Base;
- At least 10 G but less than 20 G of PCP, or  
at least 1 G but less than 2 G of PCP (actual);
- At least 5 G but less than 10 G of Methamphetamine, or  
at least 500 MG but less than 1 G of Methamphetamine (actual), or  
at least 500 MG but less than 1 G of "Ice";
- At least 5 G but less than 10 G of Amphetamine, or  
at least 500 MG but less than 1 G of Amphetamine (actual);
- At least 100 MG but less than 200 MG of LSD;
- At least 4 G but less than 8 G of Fentanyl;
- At least 1 G but less than 2 G of a Fentanyl Analogue;
- At least 10 KG but less than 20 KG of Marihuana;
- At least 2 KG but less than 5 KG of Hashish;
- At least 200 G but less than 500 G of Hashish Oil;
- At least 10,000 but less than 20,000 units of Ketamine;
- At least 10,000 but less than 20,000 units of Schedule I or II Depressants;
- At least 10,000 but less than 20,000 units of Schedule III Hydrocodone;
- At least 10,000 but less than 20,000 units of Schedule III substances (except  
Ketamine or Hydrocodone);
- At least 625 but less than 1,250 units of Flunitrazepam.

**Level 1614**



- (13)(14) ● At least 5 G but less Less than 10 G of Heroin; **Level 1412**
- At least 25 G but less Less than 50 G of Cocaine;
  - At least 1.4 G but less Less than 2.8 G of Cocaine Base;
  - At least 5 G but less Less than 10 G of PCP, or  
at least 500 MG but less than 1 G of PCP (actual);
  - At least 2.5 G but less Less than 5 G of Methamphetamine, or  
at least 250 MG but less than 500 MG of Methamphetamine (actual),  
or at least 250 MG but less than 500 MG of "Ice";
  - At least 2.5 G but less Less than 5 G of Amphetamine, or  
at least 250 MG but less than 500 MG of Amphetamine (actual);
  - At least 50 MG but less Less than 100 MG of LSD;
  - At least 2 G but less Less than 4 G of Fentanyl;
  - At least 500 MG but less Less than 1 G of a Fentanyl Analogue;
  - At least 5 KG but less than 10 KG of Marihuana;
  - At least 1 KG but less than 2 KG of Hashish;
  - At least 100 G but less than 200 G of Hashish Oil;
  - At least 5,000 but less than 10,000 units of Ketamine;
  - At least 5,000 but less than 10,000 units of Schedule I or II Depressants;
  - At least 5,000 but less than 10,000 units of Schedule III Hydrocodone;
  - At least 5,000 but less than 10,000 units of  
Schedule III substances (except Ketamine or Hydrocodone);
  - At least 312 but less than 625 units of Flunitrazepam;
  - 80,000 units or more of Schedule IV substances (except Flunitrazepam).

- (14)(15) ● Less than 5 G of Heroin;- **Level 1210**
- Less than 25 G of Cocaine;
  - Less than 1.4 G of Cocaine Base;
  - Less than 5 G of PCP, or less than 500 MG of PCP (actual);
  - Less than 2.5 G of Methamphetamine, or  
less than 250 MG of Methamphetamine (actual), or  
less than 250 MG of "Ice";
  - Less than 2.5 G of Amphetamine, or  
less than 250 MG of Amphetamine (actual);-
  - Less than 50 MG of LSD;
  - Less than 2 G of Fentanyl;-
  - Less than 500 MG of a Fentanyl Analogue;
  - At least 2.5 KG but less than 5 KG of Marihuana;
  - At least 500 G but less than 1 KG of Hashish;
  - At least 50 G but less than 100 G of Hashish Oil;
  - At least 2,500 but less than 5,000 units of Ketamine;
  - At least 2,500 but less than 5,000 units of Schedule I or II Depressants;
  - At least 2,500 but less than 5,000 units of Schedule III Hydrocodone;
  - At least 2,500 but less than 5,000 units of Schedule III substances (except  
Ketamine or Hydrocodone);
  - At least 156 but less than 312 units of Flunitrazepam;
  - At least 40,000 or more but less than 80,000 units of Schedule IV substances (except

Flunitrazepam).

- (15)(16) ● At least 1 KG but less than 2.5 KG of Marihuana; **Level 108**
- At least 200 G but less than 500 G of Hashish;
  - At least 20 G but less than 50 G of Hashish Oil;
  - At least 1,000 but less than 2,500 units of Ketamine;
  - At least 1,000 but less than 2,500 units of Schedule I or II Depressants;
  - At least 1,000 but less than 2,500 units of Schedule III Hydrocodone;
  - At least 1,000 but less than 2,500 units of Schedule III substances (except Ketamine or Hydrocodone);
  - At least 62 but less than 156 units of Flunitrazepam;
  - At least 16,000 but less than 40,000 units of Schedule IV substances (except Flunitrazepam);
  - 160,000 units or more of Schedule V substances.

- (16)(17) ● At least 250 G but less than 1 KG of Marihuana; **Level 86**
- At least 50 G but less than 200 G of Hashish;
  - At least 5 G but less than 20 G of Hashish Oil;
  - At least 250 but less than 1,000 units of Ketamine;
  - At least 250 but less than 1,000 units of Schedule I or II Depressants;
  - At least 250 but less than 1,000 units of Schedule III Hydrocodone;
  - At least 250 but less than 1,000 units of Schedule III substances (except Ketamine or Hydrocodone);
  - Less than 62 units of Flunitrazepam;
  - At least 4,000 but less than 16,000 units of Schedule IV substances (except Flunitrazepam);
  - 40,000 or more less than 160,000 units of Schedule V substances.

- (17) ● Less than 250 G of Marihuana; **Level 6**
- Less than 50 G of Hashish;
  - Less than 5 G of Hashish Oil;
  - Less than 250 units of Ketamine;
  - Less than 250 units of Schedule I or II Depressants;
  - Less than 250 units of Schedule III Hydrocodone;
  - Less than 250 units of Schedule III substances (except Ketamine or Hydrocodone);
  - Less than 4,000 units of Schedule IV substances (except Flunitrazepam);
  - Less than 40,000 units of Schedule V substances.

**\*Notes to Drug Quantity Table:**

- (A) Unless otherwise specified, the weight of a controlled substance set forth in the table refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance. If a mixture or substance contains more than one controlled substance, the weight of the entire mixture or substance is assigned to the controlled substance that results in the greater offense level.
- (B) The terms "PCP (actual)", "Amphetamine (actual)", and "Methamphetamine (actual)" refer to the weight of the controlled substance, itself, contained in the mixture or substance. For example, a mixture weighing 10 grams containing PCP at 50% purity contains 5 grams of PCP (actual). In the case of a mixture or substance containing PCP, amphetamine, or methamphetamine, use the offense level determined by the entire weight of the mixture or substance, or the offense level determined by the weight of the PCP (actual), amphetamine (actual), or methamphetamine (actual), whichever is greater.

The term "Oxycodone (actual)" refers to the weight of the controlled substance, itself, contained in the pill, capsule, or mixture.

- (C) "Ice," for the purposes of this guideline, means a mixture or substance containing d-methamphetamine hydrochloride of at least 80% purity.
- (D) "Cocaine base," for the purposes of this guideline, means "crack." "Crack" is the street name for a form of cocaine base, usually prepared by processing cocaine hydrochloride and sodium bicarbonate, and usually appearing in a lumpy, rocklike form.
- (E) In the case of an offense involving marihuana plants, treat each plant, regardless of sex, as equivalent to 100 G of marihuana. *Provided*, however, that if the actual weight of the marihuana is greater, use the actual weight of the marihuana.
- (F) In the case of Schedule I or II Depressants (except gamma-hydroxybutyric acid), Schedule III substances, Schedule IV substances, and Schedule V substances, one "unit" means one pill, capsule, or tablet. If the substance (except gamma-hydroxybutyric acid) is in liquid form, one "unit" means 0.5 ml. For an anabolic steroid that is not in a pill, capsule, tablet, or liquid form (e.g., patch, topical cream, aerosol), the court shall determine the base offense level using a reasonable estimate of the quantity of anabolic steroid involved in the offense. In making a reasonable estimate, the court shall consider that each 25 mg of an anabolic steroid is one "unit".
- (G) In the case of LSD on a carrier medium (e.g., a sheet of blotter paper), do not use the weight of the LSD/carrier medium. Instead, treat each dose of LSD on the carrier medium as equal to 0.4 mg of LSD for the purposes of the Drug Quantity Table.
- (H) Hashish, for the purposes of this guideline, means a resinous substance of cannabis that includes (i) one or more of the tetrahydrocannabinols (as listed in 21 C.F.R. § 1308.11(d)(31)), (ii) at least two of the following: cannabiniol, cannabidiol, or cannabichromene, and (iii) fragments of plant material (such as cystolith fibers).
- (I) Hashish oil, for the purposes of this guideline, means a preparation of the soluble cannabinoids

derived from cannabis that includes (i) one or more of the tetrahydrocannabinols (as listed in 21 C.F.R. § 1308.11(d)(31)), (ii) at least two of the following: cannabidiol, cannabidiol, or cannabichromene, and (iii) is essentially free of plant material (e.g., plant fragments). Typically, hashish oil is a viscous, dark colored oil, but it can vary from a dry resin to a colorless liquid.

Commentary

\* \* \*

Application Notes:

\* \* \*

8. Use of Drug Equivalency Tables.—

(A) Controlled Substances Not Referenced in Drug Quantity Table.—The Commission has used the sentences provided in, and equivalences derived from, the statute (21 U.S.C. § 841(b)(1)), as the primary basis for the guideline sentences. The statute, however, provides direction only for the more common controlled substances, i.e., heroin, cocaine, PCP, methamphetamine, fentanyl, LSD and marihuana. In the case of a controlled substance that is not specifically referenced in the Drug Quantity Table, determine the base offense level as follows:

- (i) Use the Drug Equivalency Tables to convert the quantity of the controlled substance involved in the offense to its equivalent quantity of marihuana.
- (ii) Find the equivalent quantity of marihuana in the Drug Quantity Table.
- (iii) Use the offense level that corresponds to the equivalent quantity of marihuana as the base offense level for the controlled substance involved in the offense.

(See also Application Note 6.) For example, in the Drug Equivalency Tables set forth in this Note, 1 gm of a substance containing oxymorphone, a Schedule I opiate, converts to an equivalent quantity of 5 kg of marihuana. In a case involving 100 gm of oxymorphone, the equivalent quantity of marihuana would be 500 kg, which corresponds to a base offense level of 2826 in the Drug Quantity Table.

(B) Combining Differing Controlled Substances.—The Drug Equivalency Tables also provide a means for combining differing controlled substances to obtain a single offense level. In each case, convert each of the drugs to its marihuana equivalent, add the quantities, and look up the total in the Drug Quantity Table to obtain the combined offense level.

For certain types of controlled substances, the marihuana equivalencies in the Drug Equivalency Tables are "capped" at specified amounts (e.g., the combined equivalent weight of all Schedule V controlled substances shall not exceed ~~999 grams~~ 2.49 kilograms of marihuana). Where there are controlled substances from more than one schedule (e.g., a quantity of a Schedule IV substance and a quantity of a Schedule V substance), determine the marihuana equivalency for each schedule separately (subject to the cap, if any, applicable to that schedule). Then add the marihuana equivalencies to

determine the combined marihuana equivalency (subject to the cap, if any, applicable to the combined amounts).

*Note:* Because of the statutory equivalences, the ratios in the Drug Equivalency Tables do not necessarily reflect dosages based on pharmacological equivalents.

(C) Examples for Combining Differing Controlled Substances.—

- (i) The defendant is convicted of selling 70 grams of a substance containing PCP (Level ~~22~~20) and 250 milligrams of a substance containing LSD (Level ~~18~~16). The PCP converts to 70 kilograms of marihuana; the LSD converts to 25 kilograms of marihuana. The total is therefore equivalent to 95 kilograms of marihuana, for which the Drug Quantity Table provides an offense level of ~~24~~22.
- (ii) The defendant is convicted of selling 500 grams of marihuana (Level 86) and five kilograms of diazepam (Level 86). The diazepam, a Schedule IV drug, is equivalent to 625 grams of marihuana. The total, 1.125 kilograms of marihuana, has an offense level of ~~10~~8 in the Drug Quantity Table.
- (iii) The defendant is convicted of selling 80 grams of cocaine (Level ~~16~~14) and 2 grams of cocaine base (Level ~~14~~12). The cocaine is equivalent to 16 kilograms of marihuana, and the cocaine base is equivalent to 7.142 kilograms of marihuana. The total is therefore equivalent to 23.142 kilograms of marihuana, which has an offense level of ~~18~~16 in the Drug Quantity Table.
- (iv) The defendant is convicted of selling ~~56,000~~76,000 units of a Schedule III substance, ~~100,000~~200,000 units of a Schedule IV substance, and ~~200,000~~600,000 units of a Schedule V substance. The marihuana equivalency for the Schedule III substance is ~~56~~76 kilograms of marihuana (below the cap of ~~59.99~~79.99 kilograms of marihuana set forth as the maximum equivalent weight for Schedule III substances). The marihuana equivalency for the Schedule IV substance is subject to a cap of ~~4.99~~9.99 kilograms of marihuana set forth as the maximum equivalent weight for Schedule IV substances (without the cap it would have been ~~6.25~~12.5 kilograms). The marihuana equivalency for the Schedule V substance is subject to the cap of ~~999~~grams 2.49 kilograms of marihuana set forth as the maximum equivalent weight for Schedule V substances (without the cap it would have been ~~1.25~~3.75 kilograms). The combined equivalent weight, determined by adding together the above amounts, is subject to the cap of ~~59.99~~79.99 kilograms of marihuana set forth as the maximum combined equivalent weight for Schedule III, IV, and V substances. Without the cap, the combined equivalent weight would have been ~~61.99~~88.48 (~~56~~76 + ~~4.99~~9.99 + ~~.999~~2.49) kilograms.

(D) Drug Equivalency Tables.—

Schedule I or II Opiates\*

1 gm of Heroin =

1 gm of Alpha-Methylfentanyl =

1 kg of marihuana

10 kg of marihuana

1 gm of Dextromoramide =	670 gm of marihuana
1 gm of Dipipanone =	250 gm of marihuana
1 gm of 3-Methylfentanyl =	10 kg of marihuana
1 gm of 1-Methyl-4-phenyl-4-propionoxypiperidine/MPPP =	700 gm of marihuana
1 gm of 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperidine/PEPAP =	700 gm of marihuana
1 gm of Alphaprodine =	100 gm of marihuana
1 gm of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide) =	2.5 kg of marihuana
1 gm of Hydromorphone/Dihydromorphinone =	2.5 kg of marihuana
1 gm of Levorphanol =	2.5 kg of marihuana
1 gm of Meperidine/Pethidine =	50 gm of marihuana
1 gm of Methadone =	500 gm of marihuana
1 gm of 6-Monoacetylmorphine =	1 kg of marihuana
1 gm of Morphine =	500 gm of marihuana
1 gm of Oxycodone (actual) =	6700 gm of marihuana
1 gm of Oxymorphone =	5 kg of marihuana
1 gm of Racemorphan =	800 gm of marihuana
1 gm of Codeine =	80 gm of marihuana
1 gm of Dextropropoxyphene/Propoxyphene-Bulk =	50 gm of marihuana
1 gm of Ethylmorphine =	165 gm of marihuana
1 gm of Hydrocodone/Dihydrocodeinone =	500 gm of marihuana
1 gm of Mixed Alkaloids of Opium/Papaveretum =	250 gm of marihuana
1 gm of Opium =	50 gm of marihuana
1 gm of Levo-alpha-acetylmethadol (LAAM)=	3 kg of marihuana

*\*Provided, that the minimum offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12.*

Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)\*

1 gm of Cocaine =	200 gm of marihuana
1 gm of N-Ethylamphetamine =	80 gm of marihuana
1 gm of Fenethylamine =	40 gm of marihuana
1 gm of Amphetamine =	2 kg of marihuana
1 gm of Amphetamine (Actual) =	20 kg of marihuana
1 gm of Methamphetamine =	2 kg of marihuana
1 gm of Methamphetamine (Actual) =	20 kg of marihuana
1 gm of "Ice" =	20 kg of marihuana
1 gm of Khat =	.01 gm of marihuana
1 gm of 4-Methylaminorex ("Euphoria")=	100 gm of marihuana
1 gm of Methylphenidate (Ritalin)=	100 gm of marihuana
1 gm of Phenmetrazine =	80 gm of marihuana
1 gm Phenylacetone/P <sub>2</sub> P (when possessed for the purpose of manufacturing methamphetamine) =	416 gm of marihuana
1 gm Phenylacetone/P <sub>2</sub> P (in any other case) =	75 gm of marihuana
1 gm Cocaine Base ('Crack') =	3,571 gm of marihuana
1 gm of Aminorex =	100 gm of marihuana
1 gm of Methcathinone =	380 gm of marihuana
1 gm of N-N-Dimethylamphetamine =	40 gm of marihuana
1 gm of N-Benzylpiperazine =	100 gm of marihuana

*\*Provided, that the minimum offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12.*

LSD, PCP, and Other Schedule I and II Hallucinogens (and their immediate precursors)\*

1 gm of Bufotenine =	70 gm of marihuana
1 gm of D-Lysergic Acid Diethylamide/Lysergide/LSD =	100 kg of marihuana
1 gm of Diethyltryptamine/DET =	80 gm of marihuana
1 gm of Dimethyltryptamine/DMT =	100 gm of marihuana

1 gm of Mescaline =	10 gm of marihuana
1 gm of Mushrooms containing Psilocin and/or Psilocybin (Dry) =	1 gm of marihuana
1 gm of Mushrooms containing Psilocin and/or Psilocybin (Wet) =	0.1 gm of marihuana
1 gm of Peyote (Dry) =	0.5 gm of marihuana
1 gm of Peyote (Wet) =	0.05 gm of marihuana
1 gm of Phencyclidine/PCP =	1 kg of marihuana
1 gm of Phencyclidine (actual) /PCP (actual) =	10 kg of marihuana
1 gm of Psilocin =	500 gm of marihuana
1 gm of Psilocybin =	500 gm of marihuana
1 gm of Pyrrolidine Analog of Phencyclidine/PHP =	1 kg of marihuana
1 gm of Thiophene Analog of Phencyclidine/TCP =	1 kg of marihuana
1 gm of 4-Bromo-2,5-Dimethoxyamphetamine/DOB =	2.5 kg of marihuana
1 gm of 2,5-Dimethoxy-4-methylamphetamine/DOM =	1.67 kg of marihuana
1 gm of 3,4-Methylenedioxyamphetamine/MDA =	500 gm of marihuana
1 gm of 3,4-Methylenedioxymethamphetamine/MDMA =	500 gm of marihuana
1 gm of 3,4-Methylenedioxy-N-ethylamphetamine/MDEA=	500 gm of marihuana
1 gm of Paramethoxymethamphetamine/PMA =	500 gm of marihuana
1 gm of 1-Piperidinocyclohexanecarbonitrile/PCC =	680 gm of marihuana
1 gm of N-ethyl-1-phenylcyclohexylamine (PCE) =	1 kg of marihuana

*\*Provided*, that the minimum offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12.

#### Schedule I Marihuana

1 gm of Marihuana/Cannabis, granulated, powdered, etc. =	1 gm of marihuana
1 gm of Hashish Oil =	50 gm of marihuana
1 gm of Cannabis Resin or Hashish =	5 gm of marihuana
1 gm of Tetrahydrocannabinol, Organic =	167 gm of marihuana
1 gm of Tetrahydrocannabinol, Synthetic =	167 gm of marihuana

#### Flunitrazepam \*\*

1 unit of Flunitrazepam =	16 gm of marihuana
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*\*\*Provided*, that the minimum offense level from the Drug Quantity Table for flunitrazepam individually, or in combination with any Schedule I or II depressants, Schedule III substances, Schedule IV substances, and Schedule V substances is level 8.

#### Schedule I or II Depressants (except gamma-hydroxybutyric acid)

1 unit of a Schedule I or II Depressant (except gamma-hydroxybutyric acid) =	1 gm of marihuana
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#### Gamma-hydroxybutyric Acid

1 ml of gamma-hydroxybutyric acid =	8.8 gm of marihuana
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#### Schedule III Substances (except ketamine and hydrocodone)\*\*\*

1 unit of a Schedule III Substance =	1 gm of marihuana
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*\*\*\*Provided*, that the combined equivalent weight of all Schedule III substances (except ketamine and hydrocodone),

Schedule IV substances (except flunitrazepam), and Schedule V substances shall not exceed ~~59.99~~79.99 kilograms of marihuana.

Schedule III Hydrocodone\*\*\*\*\*

1 unit of Schedule III hydrocodone = 1 gm of marihuana

\*\*\*\*\*Provided, that the combined equivalent weight of all Schedule III substances (except ketamine), Schedule IV substances (except flunitrazepam), and Schedule V substances shall not exceed ~~999.99~~2,999.99 kilograms of marihuana.

Ketamine

1 unit of ketamine = 1 gm of marihuana

Schedule IV Substances (except flunitrazepam)\*\*\*\*\*

1 unit of a Schedule IV Substance (except Flunitrazepam)= 0.0625 gm of marihuana

\*\*\*\*\*Provided, that the combined equivalent weight of all Schedule IV (except flunitrazepam) and V substances shall not exceed ~~4.999.99~~ kilograms of marihuana.

Schedule V Substances\*\*\*\*\*

1 unit of a Schedule V Substance = 0.00625 gm of marihuana

\*\*\*\*\*Provided, that the combined equivalent weight of Schedule V substances shall not exceed ~~999 grams~~2.49 kilograms of marihuana.

\* \* \*

*Background: Offenses under 21 U.S.C. §§ 841 and 960 receive identical punishment based upon the quantity of the controlled substance involved, the defendant's criminal history, and whether death or serious bodily injury resulted from the offense.*

*The base offense levels in §2D1.1 are either provided directly by the Anti-Drug Abuse Act of 1986 or are proportional to the levels established by statute, and apply to all unlawful trafficking. Levels ~~32 and 26~~30 and 24 in the Drug Quantity Table are the distinctions provided by the Anti-Drug Abuse Act; however, further refinement of drug amounts is essential to provide a logical sentencing structure for drug offenses. To determine these finer distinctions, the Commission consulted numerous experts and practitioners, including authorities at the Drug Enforcement Administration, chemists, attorneys, probation officers, and members of the Organized Crime Drug Enforcement Task Forces, who also advocate the necessity of these distinctions. Where necessary, this scheme has been modified in response to specific congressional directives to the Commission.*

*The base offense levels ~~at levels 26 and 32 establish guideline ranges with a lower limit as close to the statutory minimum as possible; e.g., level 32 ranges from 121 to 151 months, where the statutory minimum is ten years or 120 months.~~ at levels 24 and 30 establish guideline ranges such that the statutory minimum falls within the range; e.g., level 30 ranges from 97 to 121 months, where the*



statutory minimum term is ten years or 120 months.

*For marihuana plants, the Commission has adopted an equivalency of 100 grams per plant, or the actual weight of the usable marihuana, whichever is greater. The decision to treat each plant as equal to 100 grams is premised on the fact that the average yield from a mature marihuana plant equals 100 grams of marihuana. In controlled substance offenses, an attempt is assigned the same offense level as the object of the attempt. Consequently, the Commission adopted the policy that each plant is to be treated as the equivalent of an attempt to produce 100 grams of marihuana, except where the actual weight of the usable marihuana is greater.*

\* \* \*

**§2D1.2. Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy**

- (a) Base Offense Level (Apply the greatest):
- (1) **2** plus the offense level from §2D1.1 applicable to the quantity of controlled substances directly involving a protected location or an underage or pregnant individual; or
  - (2) **1** plus the offense level from §2D1.1 applicable to the total quantity of controlled substances involved in the offense; or
  - (3) **26**, if the offense involved a person less than eighteen years of age; or
  - (4) **13**, otherwise.

Commentary

\* \* \*

Application Note:

1. *This guideline applies only in a case in which the defendant is convicted of a statutory violation of drug trafficking in a protected location or involving an underage or pregnant individual (including an attempt or conspiracy to commit such a violation) or in a case in which the defendant stipulated to such a statutory violation. See §1B1.2(a). In a case involving such a conviction but in which only part of the relevant offense conduct directly involved a protected location or an underage or pregnant individual, subsections (a)(1) and (a)(2) may result in different offense levels. For example, if the defendant, as part of the same course of conduct or common scheme or plan, sold 5 grams of heroin near a protected location and 10 grams of heroin elsewhere, the offense level from subsection (a)(1) would be level ~~6~~**14** (2 plus the offense level for the sale of 5 grams of heroin, the amount sold near the protected location); the offense level from subsection (a)(2) would be level ~~7~~**15** (1 plus the offense level for the sale of 15 grams of heroin, the total amount of heroin involved in the offense).*

Background: This section implements the direction to the Commission in Section 6454 of the Anti-Drug Abuse Act of 1988.

\* \* \*

**§2D1.11. Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy**

- (a) Base Offense Level: The offense level from the Chemical Quantity Table set forth in subsection (d) or (e), as appropriate, except that if (A) the defendant receives an adjustment under §3B1.2 (Mitigating Role); and (B) the base offense level under subsection (d) is (i) level **32**, decrease by **2** levels; (ii) level **34** or level **36**, decrease by **3** levels; or (iii) level **38**, decrease by **4** levels.
- (b) Specific Offense Characteristics
  - (1) If a dangerous weapon (including a firearm) was possessed, increase by **2** levels.
  - (2) If the defendant is convicted of violating 21 U.S.C. § 841(c)(2) or (f)(1), or § 960(d)(2), (d)(3), or (d)(4), decrease by **3** levels, unless the defendant knew or believed that the listed chemical was to be used to manufacture a controlled substance unlawfully.
  - (3) 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.
  - (4) If the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), distributed a listed chemical through mass-marketing by means of an interactive computer service, increase by **2** levels.
  - (5) If the defendant is convicted under 21 U.S.C. § 865, increase by **2** levels.
  - (6) If the defendant meets the criteria set forth in subdivisions (1)-(5) of subsection (a) of §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease by **2** 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, Trafficking) if the resulting offense level is greater than that determined above.

**(d) EPHEDRINE, PSEUDOEPHEDRINE, AND PHENYLPROPANOLAMINE  
 QUANTITY TABLE\*  
 (Methamphetamine and Amphetamine Precursor Chemicals)**

<b>Quantity</b>	<b>Base Offense Level</b>
(1) [9] KG or more of Ephedrine; [9] KG or more of Phenylpropanolamine; [9] KG or more of Pseudoephedrine.	<b>Level 38</b>
(+) At least 3 KG <del>or more</del> but less than 9 KG of Ephedrine; (2) At least 3 KG <del>or more</del> but less than 9 KG of Phenylpropanolamine; At least 3 KG <del>or more</del> but less than 9 KG of Pseudoephedrine.	<b>Level 336</b>
(±) At least 1 KG but less than 3 KG of Ephedrine; (3) At least 1 KG but less than 3 KG of Phenylpropanolamine; At least 1 KG but less than 3 KG of Pseudoephedrine.	<b>Level 3634</b>
(±) At least 300 G but less than 1 KG of Ephedrine; (4) At least 300 G but less than 1 KG of Phenylpropanolamine; At least 300 G but less than 1 KG of Pseudoephedrine.	<b>Level 3432</b>
(±) At least 100 G but less than 300 G of Ephedrine; (5) At least 100 G but less than 300 G of Phenylpropanolamine; At least 100 G but less than 300 G of Pseudoephedrine.	<b>Level 3230</b>
(±) At least 70 G but less than 100 G of Ephedrine; (6) At least 70 G but less than 100 G of Phenylpropanolamine; At least 70 G but less than 100 G of Pseudoephedrine.	<b>Level 3028</b>
(±) At least 40 G but less than 70 G of Ephedrine; (7) At least 40 G but less than 70 G of Phenylpropanolamine; At least 40 G but less than 70 G of Pseudoephedrine.	<b>Level 2826</b>
(±) At least 10 G but less than 40 G of Ephedrine; (8) At least 10 G but less than 40 G of Phenylpropanolamine; At least 10 G but less than 40 G of Pseudoephedrine.	<b>Level 2624</b>
(±) At least 8 G but less than 10 G of Ephedrine; (9) At least 8 G but less than 10 G of Phenylpropanolamine; At least 8 G but less than 10 G of Pseudoephedrine.	<b>Level 2422</b>
(±) At least 6 G but less than 8 G of Ephedrine; (10) At least 6 G but less than 8 G of Phenylpropanolamine; At least 6 G but less than 8 G of Pseudoephedrine.	<b>Level 2220</b>

(10)	At least 4 G but less than 6 G of Ephedrine;	<b>Level 20</b>
(11)	At least 4 G but less than 6 G of Phenylpropanolamine; At least 4 G but less than 6 G of Pseudoephedrine.	<b>18</b>
(11)	At least 2 G but less than 4 G of Ephedrine;	<b>Level 18</b>
(12)	At least 2 G but less than 4 G of Phenylpropanolamine; At least 2 G but less than 4 G of Pseudoephedrine.	<b>16</b>
(12)	At least 1 G but less than 2 G of Ephedrine;	<b>Level 16</b>
(13)	At least 1 G but less than 2 G of Phenylpropanolamine; At least 1 G but less than 2 G of Pseudoephedrine.	<b>14</b>
(13)	At least 500 MG but less than 1 G of Ephedrine;	<b>Level 14</b>
(14)	At least 500 MG but less than 1 G of Phenylpropanolamine; At least 500 MG but less than 1 G of Pseudoephedrine.	<b>12</b>
(14)	Less than 500 MG of Ephedrine; Less than 500 MG of Phenylpropanolamine; Less than 500 MG of Pseudoephedrine.	<b>Level 12</b>

**(e) CHEMICAL QUANTITY TABLE\***  
**(All Other Precursor Chemicals)**

<b>Listed Chemicals and Quantity</b>	<b>Base Offense Level</b>
(1) List I Chemicals	<b>Level 30</b>
[2.7 KG] or more of Benzaldehyde;	
[60] KG or more of Benzyl Cyanide;	
[600] G or more of Ergonovine;	
[1.2 KG] or more of Ergotamine;	
[60] KG or more of Ethylamine;	
[6.6] KG or more of Hydriodic Acid;	
[3.9] KG or more of Iodine;	
[960] KG or more of Isosafrole;	
[600] G or more of Methylamine;	
[1500] KG or more of N-Methylephedrine;	
[1500] KG or more of N-Methylpseudoephedrine;	
[1.9 KG] or more of Nitroethane;	
[30] KG or more of Norpseudoephedrine;	
[60] KG or more of Phenylacetic Acid;	
[30] KG or more of Piperidine;	
[960] KG or more of Piperonal;	
[4.8] KG or more of Propionic Anhydride;	
[960] KG or more of Safrole;	
[1200] KG or more of 3, 4-Methylenedioxyphenyl-2-propanone;	
[3406.5] L or more of Gamma-butyrolactone;	
[2.1 KG] or more of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid.	

(†) List I Chemicals

**Level 3028**

- (2) At least 890 G ~~or more~~ but less than 2.7 KG of Benzaldehyde;  
At least 20 KG ~~or more~~ but less than 60 KG of Benzyl Cyanide;  
At least 200 G ~~or more~~ but less than 600 G of Ergonovine;  
At least 400 G ~~or more~~ but less than 1.2 KG of Ergotamine;  
At least 20 KG ~~or more~~ but less than 60 KG of Ethylamine;  
At least 2.2 KG ~~or more~~ but less than 6.6 KG of Hydriodic Acid;  
At least 1.3 KG ~~or more~~ but less than 3.9 KG of Iodine;  
At least 320 KG ~~or more~~ but less than 960 KG of Isosafrole;  
At least 200 G ~~or more~~ but less than 600 G of Methylamine;  
At least 500 KG ~~or more~~ but less than 1500 KG of N-Methylephedrine;  
At least 500 KG ~~or more~~ but less than 1500 KG of N-Methylpseudoephedrine;  
At least 625 G ~~or more~~ but less than 1.9 KG of Nitroethane;  
At least 10 KG ~~or more~~ but less than 30 KG of Norpseudoephedrine;  
At least 20 KG ~~or more~~ but less than 60 KG of Phenylacetic Acid;  
At least 10 KG ~~or more~~ but less than 30 KG of Piperidine;  
At least 320 KG ~~or more~~ but less than 960 KG of Piperonal;  
At least 1.6 KG ~~or more~~ but less than 4.8 KG of Propionic Anhydride;  
At least 320 KG ~~or more~~ but less than 960 KG of Safrole;  
At least 400 KG ~~or more~~ but less than 1200 KG of 3, 4-Methylenedioxyphenyl-2-propanone;  
At least 1135.5 L ~~or more~~ but less than 3406.5 L of Gamma-butyrolactone;  
At least 714 G ~~or more~~ but less than 2.1 KG of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid.

List II Chemicals

- 33 KG or more of Acetic Anhydride;  
3525 KG or more of Acetone;  
60 KG or more of Benzyl Chloride;  
3225 KG or more of Ethyl Ether;  
3600 KG or more of Methyl Ethyl Ketone;  
30 KG or more of Potassium Permanganate;  
3900 KG or more of Toluene.

(‡) List I Chemicals

**Level 2826**

- (3) At least 267 G but less than 890 G of Benzaldehyde;  
At least 6 KG but less than 20 KG of Benzyl Cyanide;  
At least 60 G but less than 200 G of Ergonovine;  
At least 120 G but less than 400 G of Ergotamine;  
At least 6 KG but less than 20 KG of Ethylamine;  
At least 660 G but less than 2.2 KG of Hydriodic Acid;  
At least 376.2 G but less than 1.3 KG of Iodine;  
At least 96 KG but less than 320 KG of Isosafrole;  
At least 60 G but less than 200 G of Methylamine;  
At least 150 KG but less than 500 KG of N-Methylephedrine;  
At least 150 KG but less than 500 KG of N-Methylpseudoephedrine;  
At least 187.5 G but less than 625 G of Nitroethane;  
At least 3 KG but less than 10 KG of Norpseudoephedrine;

At least 6 KG but less than 20 KG of Phenylacetic Acid;  
At least 3 KG but less than 10 KG of Piperidine;  
At least 96 KG but less than 320 KG of Piperonal;  
At least 480 G but less than 1.6 KG of Propionic Anhydride;  
At least 96 KG but less than 320 KG of Safrole;  
At least 120 KG but less than 400 KG of 3, 4-Methylenedioxyphenyl-2-propanone;  
At least 340.7 L but less than 1135.5 L of Gamma-butyrolactone;  
At least 214 G but less than 714 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

#### List II Chemicals

At least 11 KG ~~or more~~ but less than 33 KG of Acetic Anhydride;  
At least 1175 KG ~~or more~~ but less than 3525 KG of Acetone;  
At least 20 KG ~~or more~~ but less than 60 KG of Benzyl Chloride;  
At least 1075 KG ~~or more~~ but less than 3225 KG of Ethyl Ether;  
At least 1200 KG ~~or more~~ but less than 3600 KG of Methyl Ethyl Ketone;  
At least 10 KG ~~or more~~ but less than 30 KG of Potassium Permanganate;  
At least 1300 KG ~~or more~~ but less than 3900 KG of Toluene.

(3)

#### List I Chemicals

**Level 2624**

(4)

At least 89 G but less than 267 G of Benzaldehyde;  
At least 2 KG but less than 6 KG of Benzyl Cyanide;  
At least 20 G but less than 60 G of Ergonovine;  
At least 40 G but less than 120 G of Ergotamine;  
At least 2 KG but less than 6 KG of Ethylamine;  
At least 220 G but less than 660 G of Hydriodic Acid;  
At least 125.4 G but less than 376.2 G of Iodine;  
At least 32 KG but less than 96 KG of Isosafrole;  
At least 20 G but less than 60 G of Methylamine;  
At least 50 KG but less than 150 KG of N-Methylephedrine;  
At least 50 KG but less than 150 KG of N-Methylpseudoephedrine;  
At least 62.5 G but less than 187.5 G of Nitroethane;  
At least 1 KG but less than 3 KG of Norpseudoephedrine;  
At least 2 KG but less than 6 KG of Phenylacetic Acid;  
At least 1 KG but less than 3 KG of Piperidine;  
At least 32 KG but less than 96 KG of Piperonal;  
At least 160 G but less than 480 G of Propionic Anhydride;  
At least 32 KG but less than 96 KG of Safrole;  
At least 40 KG but less than 120 KG of 3, 4-Methylenedioxyphenyl-2-propanone;  
At least 113.6 L but less than 340.7 L of Gamma-butyrolactone;  
At least 71 G but less than 214 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

#### List II Chemicals

At least 3.3 KG but less than 11 KG of Acetic Anhydride;  
At least 352.5 KG but less than 1175 KG of Acetone;  
At least 6 KG but less than 20 KG of Benzyl Chloride;  
At least 322.5 KG but less than 1075 KG of Ethyl Ether;

At least 360 KG but less than 1200 KG of Methyl Ethyl Ketone;  
At least 3 KG but less than 10 KG of Potassium Permanganate;  
At least 390 KG but less than 1300 KG of Toluene.

(4)

List I Chemicals

**Level 2422**

(5)

At least 62.3 G but less than 89 G of Benzaldehyde;  
At least 1.4 KG but less than 2 KG of Benzyl Cyanide;  
At least 14 G but less than 20 G of Ergonovine;  
At least 28 G but less than 40 G of Ergotamine;  
At least 1.4 KG but less than 2 KG of Ethylamine;  
At least 154 G but less than 220 G of Hydriodic Acid;  
At least 87.8 G but less than 125.4 G of Iodine;  
At least 22.4 KG but less than 32 KG of Isosafrole;  
At least 14 G but less than 20 G of Methylamine;  
At least 35 KG but less than 50 KG of N-Methylephedrine;  
At least 35 KG but less than 50 KG of N-Methylpseudoephedrine;  
At least 43.8 G but less than 62.5 G of Nitroethane;  
At least 700 G but less than 1 KG of Norpseudoephedrine;  
At least 1.4 KG but less than 2 KG of Phenylacetic Acid;  
At least 700 G but less than 1 KG of Piperidine;  
At least 22.4 KG but less than 32 KG of Piperonal;  
At least 112 G but less than 160 G of Propionic Anhydride;  
At least 22.4 KG but less than 32 KG of Safrole;  
At least 28 KG but less than 40 KG of 3, 4-Methylenedioxyphenyl-2-propanone;  
At least 79.5 L but less than 113.6 L of Gamma-butyrolactone;  
At least 50 G but less than 71 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

At least 1.1 KG but less than 3.3 KG of Acetic Anhydride;  
At least 117.5 KG but less than 352.5 KG of Acetone;  
At least 2 KG but less than 6 KG of Benzyl Chloride;  
At least 107.5 KG but less than 322.5 KG of Ethyl Ether;  
At least 120 KG but less than 360 KG of Methyl Ethyl Ketone;  
At least 1 KG but less than 3 KG of Potassium Permanganate;  
At least 130 KG but less than 390 KG of Toluene.

(5)

List I Chemicals

**Level 2220**

(6)

At least 35.6 G but less than 62.3 G of Benzaldehyde;  
At least 800 G but less than 1.4 KG of Benzyl Cyanide;  
At least 8 G but less than 14 G of Ergonovine;  
At least 16 G but less than 28 G of Ergotamine;  
At least 800 G but less than 1.4 KG of Ethylamine;  
At least 88 G but less than 154 G of Hydriodic Acid;  
At least 50.2 G but less than 87.8 G of Iodine;  
At least 12.8 KG but less than 22.4 KG of Isosafrole;  
At least 8 G but less than 14 G of Methylamine;

At least 20 KG but less than 35 KG of N-Methylephedrine;  
At least 20 KG but less than 35 KG of N-Methylpseudoephedrine;  
At least 25 G but less than 43.8 G of Nitroethane;  
At least 400 G but less than 700 G of Norpseudoephedrine;  
At least 800 G but less than 1.4 KG of Phenylacetic Acid;  
At least 400 G but less than 700 G of Piperidine;  
At least 12.8 KG but less than 22.4 KG of Piperonal;  
At least 64 G but less than 112 G of Propionic Anhydride;  
At least 12.8 KG but less than 22.4 KG of Safrole;  
At least 16 KG but less than 28 KG of 3, 4-Methylenedioxyphenyl-2-propanone;  
At least 45.4 L but less than 79.5 L of Gamma-butyrolactone;  
At least 29 G but less than 50 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

#### List II Chemicals

At least 726 G but less than 1.1 KG of Acetic Anhydride;  
At least 82.25 KG but less than 117.5 KG of Acetone;  
At least 1.4 KG but less than 2 KG of Benzyl Chloride;  
At least 75.25 KG but less than 107.5 KG of Ethyl Ether;  
At least 84 KG but less than 120 KG of Methyl Ethyl Ketone;  
At least 700 G but less than 1 KG of Potassium Permanganate;  
At least 91 KG but less than 130 KG of Toluene.

(6)

#### List I Chemicals

**Level 2018**

(7)

At least 8.9 G but less than 35.6 G of Benzaldehyde;  
At least 200 G but less than 800 G of Benzyl Cyanide;  
At least 2 G but less than 8 G of Ergonovine;  
At least 4 G but less than 16 G of Ergotamine;  
At least 200 G but less than 800 G of Ethylamine;  
At least 22 G but less than 88 G of Hydriodic Acid;  
At least 12.5 G but less than 50.2 G of Iodine;  
At least 3.2 KG but less than 12.8 KG of Isosafrole;  
At least 2 G but less than 8 G of Methylamine;  
At least 5 KG but less than 20 KG of N-Methylephedrine;  
At least 5 KG but less than 20 KG of N-Methylpseudoephedrine;  
At least 6.3 G but less than 25 G of Nitroethane;  
At least 100 G but less than 400 of Norpseudoephedrine;  
At least 200 G but less than 800 G of Phenylacetic Acid;  
At least 100 G but less than 400 G of Piperidine;  
At least 3.2 KG but less than 12.8 KG of Piperonal;  
At least 16 G but less than 64 G of Propionic Anhydride;  
At least 3.2 KG but less than 12.8 KG of Safrole;  
At least 4 KG but less than 16 KG of 3, 4-Methylenedioxyphenyl-2-propanone;  
At least 11.4 L but less than 45.4 L of Gamma-butyrolactone;  
At least 7 G but less than 29 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;



List II Chemicals

At least 440 G but less than 726 G of Acetic Anhydride;  
At least 47 KG but less than 82.25 KG of Acetone;  
At least 800 G but less than 1.4 KG of Benzyl Chloride;  
At least 43 KG but less than 75.25 KG of Ethyl Ether;  
At least 48 KG but less than 84 KG of Methyl Ethyl Ketone;  
At least 400 G but less than 700 G of Potassium Permanganate;  
At least 52 KG but less than 91 KG of Toluene.

(7)

List I Chemicals

**Level 1816**

(8)

At least 7.1 G but less than 8.9 G of Benzaldehyde;  
At least 160 G but less than 200 G of Benzyl Cyanide;  
At least 1.6 G but less than 2 G of Ergonovine;  
At least 3.2 G but less than 4 G of Ergotamine;  
At least 160 G but less than 200 G of Ethylamine;  
At least 17.6 G but less than 22 G of Hydriodic Acid;  
At least 10 G but less than 12.5 G of Iodine;  
At least 2.56 KG but less than 3.2 KG of Isosafrole;  
At least 1.6 G but less than 2 G of Methylamine;  
At least 4 KG but less than 5 KG of N-Methylephedrine;  
At least 4 KG but less than 5 KG of N-Methylpseudoephedrine;  
At least 5 G but less than 6.3 G of Nitroethane;  
At least 80 G but less than 100 G of Norpseudoephedrine;  
At least 160 G but less than 200 G of Phenylacetic Acid;  
At least 80 G but less than 100 G of Piperidine;  
At least 2.56 KG but less than 3.2 KG of Piperonal;  
At least 12.8 G but less than 16 G of Propionic Anhydride;  
At least 2.56 KG but less than 3.2 KG of Safrole;  
At least 3.2 KG but less than 4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;  
At least 9.1 L but less than 11.4 L of Gamma-butyrolactone;  
At least 6 G but less than 7 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

At least 110 G but less than 440 G of Acetic Anhydride;  
At least 11.75 KG but less than 47 KG of Acetone;  
At least 200 G but less than 800 G of Benzyl Chloride;  
At least 10.75 KG but less than 43 KG of Ethyl Ether;  
At least 12 KG but less than 48 KG of Methyl Ethyl Ketone;  
At least 100 G but less than 400 G of Potassium Permanganate;  
At least 13 KG but less than 52 KG of Toluene.

(8)

List I Chemicals

**Level 1614**

(9)

3.6 KG or more of Anthranilic Acid;  
At least 5.3 G but less than 7.1 G of Benzaldehyde;  
At least 120 G but less than 160 G of Benzyl Cyanide;  
At least 1.2 G but less than 1.6 G of Ergonovine;  
At least 2.4 G but less than 3.2 G of Ergotamine;

At least 120 G but less than 160 G of Ethylamine;  
At least 13.2 G but less than 17.6 G of Hydriodic Acid;  
At least 7.5 G but less than 10 G of Iodine;  
At least 1.92 KG but less than 2.56 KG of Isosafrole;  
At least 1.2 G but less than 1.6 G of Methylamine;  
4.8 KG or more of N-Acetylanthranilic Acid;  
At least 3 KG but less than 4 KG of N-Methylephedrine;  
At least 3 KG but less than 4 KG of N-Methylpseudoephedrine;  
At least 3.8 G but less than 5 G of Nitroethane;  
At least 60 G but less than 80 G of Norpseudoephedrine;  
At least 120 G but less than 160 G of Phenylacetic Acid;  
At least 60 G but less than 80 G of Piperidine;  
At least 1.92 KG but less than 2.56 KG of Piperonal;  
At least 9.6 G but less than 12.8 G of Propionic Anhydride;  
At least 1.92 KG but less than 2.56 KG of Safrole;  
At least 2.4 KG but less than 3.2 KG of 3, 4-Methylenedioxyphenyl-2-propanone;  
At least 6.8 L but less than 9.1 L of Gamma-butyrolactone;  
At least 4 G but less than 6 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

#### List II Chemicals

At least 88 G but less than 110 G of Acetic Anhydride;  
At least 9.4 KG but less than 11.75 KG of Acetone;  
At least 160 G but less than 200 G of Benzyl Chloride;  
At least 8.6 KG but less than 10.75 KG of Ethyl Ether;  
At least 9.6 KG but less than 12 KG of Methyl Ethyl Ketone;  
At least 80 G but less than 100 G of Potassium Permanganate;  
At least 10.4 KG but less than 13 KG of Toluene.

#### (9) List I Chemicals

(10) At least 2.7 KG but less Less than 3.6 KG of Anthranilic Acid;  
At least 3.6 G but less Less than 5.3 G of Benzaldehyde;  
At least 80 G but less Less than 120 G of Benzyl Cyanide;  
At least 800 MG but less Less than 1.2 G of Ergonovine;  
At least 1.6 G but less Less than 2.4 G of Ergotamine;  
At least 80 G but less Less than 120 G of Ethylamine;  
At least 8.8 G but less Less than 13.2 G of Hydriodic Acid;  
At least 5 G but less Less than 7.5 G of Iodine;  
At least 1.44 KG but less Less than 1.92 KG of Isosafrole;  
At least 800 MG but less Less than 1.2 G of Methylamine;  
At least 3.6 KG but less Less than 4.8 KG of N-Acetylanthranilic Acid;  
At least 2.25 KG but less Less than 3 KG of N-Methylephedrine;  
At least 2.25 KG but less Less than 3 KG of N-Methylpseudoephedrine;  
At least 2.5 G but less Less than 3.8 G of Nitroethane;  
At least 40 G but less Less than 60 G of Norpseudoephedrine;  
At least 80 G but less Less than 120 G of Phenylacetic Acid;  
At least 40 G but less Less than 60 G of Piperidine;  
At least 1.44 KG but less Less than 1.92 KG of Piperonal;  
At least 7.2 G but less Less than 9.6 G of Propionic Anhydride;

**Level 1412**

At least 1.44 KG but less ~~Less~~ than 1.92 KG of Safrole;  
At least 1.8 KG but less ~~Less~~ than 2.4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;  
At least 4.5 L but less ~~Less~~ than 6.8 L of Gamma-butyrolactone;  
At least 3 G but less ~~Less~~ than 4 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

At least 66 G but less ~~Less~~ than 88 G of Acetic Anhydride;  
At least 7.05 KG but less ~~Less~~ than 9.4 KG of Acetone;  
At least 120 G but less ~~Less~~ than 160 G of Benzyl Chloride;  
At least 6.45 KG but less ~~Less~~ than 8.6 KG of Ethyl Ether;  
At least 7.2 KG but less ~~Less~~ than 9.6 KG of Methyl Ethyl Ketone;  
At least 60 G but less ~~Less~~ than 80 G of Potassium Permanganate;  
At least 7.8 KG but less ~~Less~~ than 10.4 KG of Toluene.

(10) List I Chemicals

**Level 12**

Less than 2.7 KG of Anthranilic Acid;  
Less than 3.6 G of Benzaldehyde;  
Less than 80 G of Benzyl Cyanide;  
Less than 800 MG of Ergonovine;  
Less than 1.6 G of Ergotamine;  
Less than 80 G of Ethylamine;  
Less than 8.8 G of Hydriodic Acid;  
Less than 5 G of Iodine;  
Less than 1.44 KG of Isosafrole;  
Less than 800 MG of Methylamine;  
Less than 3.6 KG of N-Acetylanthranilic Acid;  
Less than 2.25 KG of N-Methylephedrine;  
Less than 2.25 KG of N-Methylpseudoephedrine;  
Less than 2.5 G of Nitroethane;  
Less than 40 G of Norpseudoephedrine;  
Less than 80 G of Phenylacetic Acid;  
Less than 40 G of Piperidine;  
Less than 1.44 KG of Piperonal;  
Less than 7.2 G of Propionic Anhydride;  
Less than 1.44 KG of Safrole;  
Less than 1.8 KG of 3, 4-Methylenedioxyphenyl-2-propanone;  
Less than 4.5 L of Gamma-butyrolactone;  
Less than 3 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

Less than 66 G of Acetic Anhydride;  
Less than 7.05 KG of Acetone;  
Less than 120 G of Benzyl Chloride;  
Less than 6.45 KG of Ethyl Ether;  
Less than 7.2 KG of Methyl Ethyl Ketone;  
Less than 60 G of Potassium Permanganate;  
Less than 7.8 KG of Toluene.

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\*Notes:

- (A) Except as provided in Note (B), to calculate the base offense level in an offense that involves two or more chemicals, use the quantity of the single chemical that results in the greatest offense level, regardless of whether the chemicals are set forth in different tables or in different categories (i.e., list I or list II) under subsection (d) or (e) of this guideline, as appropriate.
- (B) To calculate the base offense level in an offense that involves two or more chemicals each of which is set forth in the Ephedrine, Pseudoephedrine, and Phenylpropanolamine Quantity Table, (i) aggregate the quantities of all such chemicals, and (ii) determine the base offense level corresponding to the aggregate quantity.
- (C) In a case involving ephedrine, pseudoephedrine, or phenylpropanolamine tablets, use the weight of the ephedrine, pseudoephedrine, or phenylpropanolamine contained in the tablets, not the weight of the entire tablets, in calculating the base offense level.

Commentary

Statutory Provisions: 21 U.S.C. §§ 841(c)(1), (2), (f)(1), 865, 960(d)(1), (2), (3), (4).

Application Notes:

1. Cases Involving Multiple Chemicals.—

- (A) Determining the Base Offense Level for Two or More Chemicals.—*Except as provided in subdivision (B), if the offense involves two or more chemicals, use the quantity of the single chemical that results in the greatest offense level, regardless of whether the chemicals are set forth in different tables or in different categories (i.e., list I or list II) under this guideline.*

*Example:* The defendant was in possession of five kilograms of ephedrine and 300 grams of hydriodic acid. Ephedrine and hydriodic acid typically are used together in the same manufacturing process to manufacture methamphetamine. The base offense level for each chemical is calculated separately and the chemical with the higher base offense level is used. Five kilograms of ephedrine result in a base offense level of level ~~38~~**36**; 300 grams of hydriodic acid result in a base offense level of level ~~26~~**24**. In this case, the base offense level would be level ~~38~~**36**.

- (B) Determining the Base Offense Level for Offenses involving Ephedrine, Pseudoephedrine, or Phenylpropanolamine.—*If the offense involves two or more chemicals each of which is set forth in the Ephedrine, Pseudoephedrine, and Phenylpropanolamine Quantity Table, (i) aggregate the quantities of all such chemicals, and (ii) determine the base offense level corresponding to the aggregate quantity.*

*Example:* The defendant was in possession of 80 grams of ephedrine and 50 grams of phenylpropanolamine, an aggregate quantity of 130 grams of such chemicals. The base

offense level corresponding to that aggregate quantity is level ~~32~~30.

- (C) *Upward Departure.*—In a case involving two or more chemicals used to manufacture different controlled substances, or to manufacture one controlled substance by different manufacturing processes, an upward departure may be warranted if the offense level does not adequately address the seriousness of the offense.

\* \* \*

*Background:* Offenses covered by this guideline involve list I chemicals (including ephedrine, pseudoephedrine, and phenylpropanolamine) and list II chemicals. List I chemicals are important to the manufacture of a controlled substance and usually become part of the final product. For example, ephedrine reacts with other chemicals to form methamphetamine. The amount of ephedrine directly affects the amount of methamphetamine produced. List II chemicals are generally used as solvents, catalysts, and reagents.

**(C) Issue for Comment on Environmental and Other Harms Caused by Drug Production Operations (Including, in Particular, the Cultivation of Marijuana)**

1. *The Commission requests comment on the environmental and other harms caused by offenses involving drug production operations (including, in particular, the cultivation of marijuana). Specifically, the Commission requests comment on whether the guidelines provide penalties for these offenses that appropriately account for the environmental and other harms caused by these offenses and, if not, what changes to the guidelines would be appropriate.*

*A person who cultivates or manufactures a controlled substance on Federal property may be prosecuted under 21 U.S.C. § 841 and subject to the same statutory penalty structure that applies to most other drug offenses. See 21 U.S.C. § 841(b)(5). As discussed in Part A, the base offense level for such an offense will generally be determined under §2D1.1 based on the type and quantity of the drug involved. The guideline also provides a range of other provisions that may apply in particular cases. For example:*

- (1) *§2D1.1(b)(12) provides a 2-level enhancement if the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance; and*
- (2) *§2D1.1(b)(13) provides a tiered enhancement that includes, among other things, a 2-level enhancement if the offense involved an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance, see §2D1.1(b)(13)(A)(i), and a 3-level enhancement if the offense involved the manufacture of amphetamine or methamphetamine and the offense created a substantial risk of harm to human life or the environment, see §2D1.1(b)(13)(C)(ii).*

*An offense involving the cultivation or production of a controlled substance may also be prosecuted under certain other statutes that take into account environmental or other harms. For example:*

- (A) *Section 841(b)(6) makes it unlawful to manufacture a controlled substance (or attempt to*

*do so) and knowingly or intentionally use a poison, chemical, or other hazardous substance on Federal land, and by such use (A) create a serious hazard to humans, wildlife, or domestic animals; (B) degrade or harm the environment or natural resources; or (C) pollute an aquifer, spring, stream, river, or body of water. A person who violates section 841(b)(6) is subject to a statutory maximum term of imprisonment of five years. Section 841(b)(6) is not referenced in Appendix A (Statutory Index) to any offense guideline.*

- (B) *Section 841(d) makes it unlawful to assemble, maintain, place, or cause to be placed a boobytrap on Federal property where a controlled substance is being manufactured. A person who violates section 841(d) is subject to a statutory maximum term of imprisonment of ten years. Section 841(d) is referenced in Appendix A (Statutory Index) to §2D1.9 (Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances; Attempt or Conspiracy). Section 2D1.9 provides a base offense level of level 23 and contains no other provisions.*

*The Commission seeks comment on offenses involving drug production operations, including, in particular, offenses involving the cultivation of marijuana. What conduct is involved in such offenses, and what is the nature and seriousness of the environmental and other harms posed by such offenses? What aggravating and mitigating circumstances may be present in such offenses? For example, if the offense was committed on federal property or caused environmental or other harm to federal property, should that circumstance be an aggravating factor? If the offense was committed while trespassing on private property or caused environmental or other harm while trespassing on private property, should that circumstance be an aggravating factor?*

*Do the provisions of §2D1.1 and §2D1.9, as applicable, adequately account for the conduct, the environmental and other harms, and the aggravating and mitigating circumstances? If not, how should the Commission amend the guidelines to account for the conduct, the environmental and other harms, and the aggravating and mitigating circumstances? Should the Commission provide a new specific offense characteristic, cross reference, or departure provision? If so, what should the new provision provide? Alternatively, should the Commission increase the amount, or the scope, of the existing specific offense characteristics, such as those in subsections (b)(12) and (b)(13)? If so, what should the new amount or scope of such provisions be?*