

PROPOSED AMENDMENT: TRAFFICKING IN LIST I CHEMICALS

Synopsis of Proposed Amendment: *This proposed amendment addresses the three-part directive in section 3651 of the Methamphetamine Anti-Proliferation Act of 2000, Pub. L. 106–310 (the "Act"), regarding enhanced punishment for trafficking in List I chemicals. That section requires the Commission to promulgate an amendment implementing the directive under emergency amendment authority.*

First, the directive instructs the Commission "to provide increased penalties for offenses involving ephedrine, phenylpropanolamine (PPA), or pseudoephedrine (including their salts, optical isomers, and salts of optical isomers) to correspond to the quantity of controlled substance that could reasonably have been manufactured using the quantity of ephedrine, PPA, and pseudoephedrine possessed or distributed." In response to this directive, the proposed amendment provides a new chemical table specifically for ephedrine, pseudoephedrine, and PPA. The table ties the base offense levels for these chemicals to the base offense levels for methamphetamine (actual) set forth in §2D1.1, assuming a 50 percent yield of the controlled substance from the chemicals. (Methamphetamine (actual) is used rather than methamphetamine mixture because ephedrine, PPA, and pseudoephedrine produce methamphetamine (actual).)

This new table has a maximum base offense level of level 38 (as opposed to a maximum base offense level of 30 for all other precursor chemicals). Providing a maximum base offense level of level 38 increases the sentences for ephedrine, pseudoephedrine, and PPA by linking the theoretical yield of these chemicals to methamphetamine (actual) instead of methamphetamine (mixture) as had been done in the past. Additionally, this adjustment will have an impact on the relationship between §§2D1.1 and 2D1.11 by eliminating the six-level distinction that currently exists between offenses that involve intent to manufacture methamphetamine and offenses that involve an attempt to manufacture methamphetamine, at least for offenses involving ephedrine, PPA, and pseudoephedrine.

In order to address cases that involve more than one chemical, the proposed amendment eliminates the ephedrine equivalency table and instead proposes a rule that would require the court to determine the base offense level by using the quantity of the single chemical that results in the greatest base offense level. An upward departure is provided for cases in which the offense level does not adequately address the seriousness of the offense.

However, proposed amendment provides an exception to this rule for offenses that involve a combination of ephedrine, pseudoephedrine, or phenylpropanolamine because these chemicals often are used in the same manufacturing process. In a case that involves two or more of these chemicals, the base offense level will be determined using the total quantity of the chemicals involved, based on an ephedrine equivalency.

Second, the directive instructs the Commission "to establish, based on scientific, law enforcement, and other data the Commission considers appropriate, a table in which the

quantity of controlled substance that could reasonably have been manufactured shall be determined by using a table of manufacturing conversion ratios for ephedrine, PPA, and pseudoephedrine." In response to the directive, the proposed amendment adds to the Drug Equivalency Tables in §2D1.1 a conversion table for ephedrine, PPA, and pseudoephedrine for cases that are cross-referenced out of §2D1.11 because the offense involved the manufacture of methamphetamine. This table, which provides for a 50 percent conversion ratio for ephedrine, PPA, and pseudoephedrine, was developed using data from the Drug Enforcement Agency, Office of Diversion Control, as published on the web site of the Office of National Drug Control Policy (ONDCP). This data indicates that actual yield of methamphetamine from ephedrine and pseudoephedrine is "typically in the range of 50 to 75 percent".

Third, the directive instructs the Commission "to increase penalties for offenses involving any List I chemical other than ephedrine, PPA, and pseudoephedrine, such that those penalties reflect the dangerous nature of such offenses, the need for aggressive law enforcement action to fight such offenses, and the extreme dangers associated with unlawful activity involving methamphetamine and amphetamine." In response to this directive, the proposed amendment increases the base offense level for Benzaldehyde, Hydriodic Acid, Methylamine, Nitroethane and Norpseudoephedrine by two levels. These five additional List I chemicals also are associated with methamphetamine and amphetamine production. The maximum base offense level for these five chemicals will increase from level 30 to level 32. All other List I chemicals will remain at their current maximum base offense level of level 30.

An issue for comment follows the proposed amendment regarding whether, as an alternative, the maximum base offense level in the proposed Ephedrine, Pseudoephedrine, Phenylpropanolamine Table in §2D1.11 should be set lower than the maximum base offense level in §2D1.1. This reduction would maintain the existing distinction between offenses involving intent versus attempt for ephedrine, PPA, and pseudoephedrine currently captured by the maximum base offense level of 30 in §2D1.11. The original relationship between controlled substances in §2D1.1 and list I chemicals in §2D1.11 presumed a 50 percent yield of controlled substances from each chemical and then reduced the entire table by eight levels. The eight level distinction later was reduced to six levels in response to a congressional directive.

Proposed Amendment:

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

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Section 2D1.11(d) is amended by striking the Chemical Quantity Table in its entirety and inserting the following:

**(d)(1) EPHEDRINE, PSEUDOEPHEDRINE, AND PHENYLPROPANOLAMINE
 QUANTITY TABLE*
 (Methamphetamine and Amphetamine Precursor Chemicals)**

Quantity	Base Offense Level
(1) 3 KG or more of Ephedrine; 3 KG or more of Phenylpropanolamine; 3 KG or More of Pseudoephedrine.	Level 38
(2) At least 1 KG but less than 3 KG of Ephedrine; At least 1 KG but less than 3 KG of Phenylpropanolamine; At least 1 KG but less than 3 KG of Pseudoephedrine.	Level 36
(3) At least 300 G but less than 1 KG of Ephedrine; At least 300 G but less than 1 KG of Phenylpropanolamine; At least 300 G but less than 1 KG of Pseudoephedrine.	Level 34
(4) At least 100 G but less than 300 G of Ephedrine; At least 100 G but less than 300 G of Phenylpropanolamine; At least 100 G but less than 300 G of Pseudoephedrine.	Level 32
(5) At least 70 G but less than 100 G of Ephedrine; At least 70 G but less than 100 G of Phenylpropanolamine; At least 70 G but less than 100 G of Pseudoephedrine.	Level 30
(6) At least 40 G but less than 70 G of Ephedrine; At least 40 G but less than 70 G of Phenylpropanolamine; At least 40 G but less than 70 G of Pseudoephedrine.	Level 28
(7) At least 10 G but less than 40 G of Ephedrine; At least 10 G but less than 40 G of Phenylpropanolamine; At least 10 G but less than 40 G of Pseudoephedrine.	Level 26
(8) At least 8 G but less than 10 G of Ephedrine; At least 8 G but less than 10 G of Phenylpropanolamine; At least 8 G but less than 10 G of Pseudoephedrine.	Level 24
(9) At least 6 G but less than 8 G of Ephedrine; At least 6 G but less than 8 G of Phenylpropanolamine; At least 6 G but less than 8 G of Pseudoephedrine.	Level 22
(10) At least 4 G but less than 6 G of Ephedrine; At least 4 G but less than 6 G of Phenylpropanolamine; At least 4 G but less than 6 G of Pseudoephedrine.	Level 20
(11) At least 2 G but less than 4 G of Ephedrine;	Level 18

- At least 2 G but less than 4 G of Phenylpropanolamine;
At least 2 G but less than 4 G of Pseudoephedrine.
- (12) At least 1 G but less than 2 G of Ephedrine; **Level 16**
At least 1 G but less than 2 G of Phenylpropanolamine;
At least 1 G but less than 2 G of Pseudoephedrine.
- (13) At least 500 MG but less than 1 G of Ephedrine; **Level 14**
At least 500 MG but less than 1 G of Phenylpropanolamine;
At least 500 MG but less than 1 G of Pseudoephedrine.
- (14) Less than 500 MG of Ephedrine; **Level 12**
Less than 500 MG of Phenylpropanolamine;
Less than 500 MG of Pseudoephedrine.

(d)(2) CHEMICAL QUANTITY TABLE*
(All Other Precursor Chemicals)

Listed Chemicals and Quantity	Base Offense Level
<p>(1) <u>List I Chemicals</u> 51 KG or more of Benzaldehyde; 132 KG or more of Hydriodic Acid; 12 KG or more of Methylamine; 37.8 KG or more of Nitroethane; 600 KG or more of Norpseudoephedrine.</p>	Level 32
<p>(2) <u>List I Chemicals</u> At least 17 KG but less than 51 KG of Benzaldehyde; 20 KG or more of Benzyl Cyanide; 200 G or more of Ergonovine; 400 G or more of Ergotamine; 20 KG or more of Ethylamine; At least 44 KG but less than 132 KG of Hydriodic Acid; 320 KG or more of Isosafrole; At least 4 KG but less than 12 KG of Methylamine; 500 KG or more of N-Methylephedrine; 500 KG or more of N-Methylpseudoephedrine; At least 12.6 KG but less than 37.8 KG of Nitroethane; At least 200 KG but less than 600 KG of Norpseudoephedrine; 20 KG or more of Phenylacetic Acid; 10 KG or more of Piperidine; 320 KG or more of Piperonal; 1.6 KG or more of Propionic Anhydride; 320 KG or more of Safrole; 400 KG or more of 3, 4-Methylenedioxyphenyl-2-propanone.</p>	Level 30

(3) List I Chemicals **Level 28**

At least 5.3 KG but less than 17.8 KG 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 13.2 KG but less than 44 KG of Hydriodic Acid;
At least 96 KG but less than 320 KG of Isosafrole;
At least 1.2 KG but less than 4 KG 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 3.8 KG but less than 12.6 KG of Nitroethane;
At least 60 KG but less than 200 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;

List II Chemicals

11 KG or more of Acetic Anhydride;
1175 KG or more of Acetone;
20 KG or more of Benzyl Chloride;
1075 KG or more of Ethyl Ether;
1200 KG or more of Methyl Ethyl Ketone;
10 KG or more of Potassium Permanganate;
1300 KG or more of Toluene.

(4) List I Chemicals **Level 26**

At least 1.8 KG but less than 5.3 KG 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 4.4 KG but less than 13.2 KG of Hydriodic Acid;
At least 32 KG but less than 96 KG of Isosafrole;
At least 400 G but less than 1.2 KG 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 1.3 KG but less than 3.8 KG of Nitroethane;
At least 20 KG but less than 60 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;

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.

(5)

List I Chemicals

Level 24

At least 1.2 KG but less than 1.8 KG 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 3.08 KG but less than 4.4 KG of Hydriodic Acid;
At least 22.4 KG but less than 32 KG of Isosafrole;
At least 280 G but less than 400 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 879 G but less than 1.3 KG of Nitroethane;
At least 14 KG but less than 20 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;

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.

(6)

List I Chemicals

Level 22

At least 712 G but less than 1.2 KG 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 1.76 KG but less than 3.08 KG of Hydriodic Acid;
At least 12.8 KG but less than 22.4 KG of Isosafrole;
At least 160 G but less than 280 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 503 G but less than 879 G of Nitroethane;
At least 8 KG but less than 14 KG 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;

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.

(7)

List I Chemicals

Level 20

At least 178 G but less than 712 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 440 G but less than 1.76 KG of Hydriodic Acid;
At least 3.2 KG but less than 12.8 KG of Isosafrole;
At least 40 G but less than 160 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 126 G but less than 503 G of Nitroethane;
At least 2 KG but less than 8 KG 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;

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.

(8) List I Chemicals **Level 18**

At least 142 G but less than 178 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 352 G but less than 440 G of Hydriodic Acid;
At least 2.56 KG but less than 3.2 KG of Isosafrole;
At least 32 G but less than 40 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 100 G but less than 126 G of Nitroethane;
At least 1.6 KG but less than 2 KG 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;

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.

(9) List I Chemicals **Level 16**

3.6 KG or more of Anthranilic Acid;
At least 107 G but less than 142 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 264 G but less than 352 G of Hydriodic Acid;
At least 1.92 KG but less than 2.56 KG of Isosafrole;
At least 24 G but less than 32 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 75 G but less than 100 G of Nitroethane;
At least 1.2 KG but less than 1.6 KG 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;

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.

(10)

List I Chemicals

Level 14

At least 2.7 KG but less than 3.6 KG of Anthranilic Acid;

At least 71.2 G but less than 107 G of Benzaldehyde;

At least 80 G but less than 120 G of Benzyl Cyanide;

At least 800 MG but less than 1.2 G of Ergonovine;

At least 1.6 G but less than 2.4 G of Ergotamine;

At least 80 G but less than 120 G of Ethylamine;

At least 176 G but less than 264 G of Hydriodic Acid;

At least 1.44 KG but less than 1.92 KG of Isosafrole;

At least 16 G but less than 24 G of Methylamine;

At least 3.6 KG but less than 4.8 KG of N-Acetylanthranilic Acid;

At least 2.25 KG but less than 3 KG of N-Methylephedrine;

At least 2.25 KG but less than 3 KG of N-Methylpseudoephedrine;

At least 56.25 G but less than 75 G of Nitroethane;

At least 800 G but less than 1.2 KG of Norpseudoephedrine;

At least 80 G but less than 120 G of Phenylacetic Acid;

At least 40 G but less than 60 G of Piperidine;

At least 1.44 KG but less than 1.92 KG of Piperonal;

At least 7.2 G but less than 9.6 G of Propionic Anhydride;

At least 1.44 KG but less than 1.92 KG of Safrole;

At least 1.8 KG but less than 2.4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

At least 66 G but less than 88 G of Acetic Anhydride;

At least 7.05 KG but less than 9.4 KG of Acetone;

At least 120 G but less than 160 G of Benzyl Chloride;

At least 6.45 KG but less than 8.6 KG of Ethyl Ether;

At least 7.2 KG but less than 9.6 KG of Methyl Ethyl Ketone;

At least 60 G but less than 80 G of Potassium Permanganate;

At least 7.8 KG but less than 10.4 KG of Toluene.

(11)

List I Chemicals

Level 12

Less than 2.7 KG of Anthranilic Acid;

Less than 71.2 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 176 G of Hydriodic Acid;
Less than 1.44 KG of Isosafrole;
Less than 16 G 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 56.25 G of Nitroethane;
Less than 800 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;

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.

*Notes:

- (A) ~~The List I Chemical Equivalency Table provides a method for combining different precursor chemicals to obtain a single offense level. In a case involving two or more list I chemicals used to manufacture different controlled substances or to manufacture one controlled substance by different manufacturing processes, convert each to its ephedrine equivalency from the table below, add the quantities, and use the Chemical Quantity Table to determine the base offense level. In a case involving two or more list I chemicals used together to manufacture a controlled substance in the same manufacturing process, use the quantity of the single list I chemical that results in the greatest base offense level.~~
- (A) Except as provided in subdivision (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) of this guideline.
- (B) ~~If more than one list II chemical is involved, use the single list II chemical resulting in the greatest offense level.~~
- (B) To calculate the base offense level in an offense that involves two or more chemicals set forth in the Ephedrine, Pseudoephedrine, and Phenylpropanolamine Quantity Table, (i) convert each chemical to its ephedrine equivalency using the table below; (ii) add the quantities that result from that equivalency; and (iii) use the Ephedrine, Pseudoephedrine, and Phenylpropanolamine Quantity Table to determine the base offense level.

PSEUDOEPHEDRINE AND PHENYLPROPANOLAMINE EQUIVALENCY TABLE

1 gm of Pseudoephedrine=	1 gm of Ephedrine
1 gm of Phenylpropanolamine=	1 gm of Ephedrine

(C) If both list I and list II chemicals are involved, use the offense level determined under (A) or (B) above, whichever is greater.

(D)(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.

(E) LIST I CHEMICAL EQUIVALENCY TABLE

1 gm of Anthranilic Acid* –	0.033 gm of Ephedrine
1 gm of Benzaldehyde** –	1.124 gm of Ephedrine
1 gm of Benzyl Cyanide –	1 gm of Ephedrine
1 gm of Ergonovine –	100 gm of Ephedrine
1 gm of Ergotamine –	50 gm of Ephedrine
1 gm of Ethylamine** –	1 gm of Ephedrine
1 gm of Hydriodic Acid** –	0.4545 gm of Ephedrine
1 gm of Isosafrole –	0.0625 gm of Ephedrine
1 gm of Methylamine –	5 gm of Ephedrine
1 gm of N-Acetylanthranilic Acid* –	0.025 gm of Ephedrine
1 gm of N-Methylephedrine** –	0.04 gm of Ephedrine
1 gm of N-Methylpseudoephedrine** –	0.04 gm of Ephedrine
1 gm of Nitroethane** –	1.592 gm of Ephedrine
1 gm of Norpseudoephedrine** –	0.1 gm of Ephedrine
1 gm of Phenylacetic Acid –	1 gm of Ephedrine
1 gm of Phenylpropanolamine** –	0.1 gm of Ephedrine
1 gm of Piperidine –	2 gm of Ephedrine
1 gm of Piperonal –	0.0625 gm of Ephedrine
1 gm of Propionic Anhydride –	12.5 gm of Ephedrine
1 gm of Pseudoephedrine** –	1 gm of Ephedrine
1 gm of Safrole –	0.0625 gm of Ephedrine
1 gm of 3,4-Methylenedioxyphenyl- 2-propanone** –	0.05 gm of Ephedrine

* The ephedrine equivalency for anthranilic acid or N-acetylanthranilic acid, or both, shall not exceed 159.99 grams of ephedrine.

**In cases involving (A) hydriodic acid and one of the following: ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, or pseudoephedrine; or (B) ethylamine and 3,4-methylenedioxyphenyl-2-propanone; or (C) benzaldehyde and nitroethane, calculate the offense level for each separately and use the quantity that results in the greater offense level.

Commentary

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Application Notes:

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4. ~~When two or more list I chemicals are used together in the same manufacturing process, calculate the offense level for each separately and use the quantity that results in the greatest base offense level. In any other case, the quantities should be added together (using the List I Chemical Equivalency Table) for the purpose of calculating the base offense level.~~

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 subsection (d) of this guideline.

Examples:

(a) ~~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. Therefore, the~~ The base offense level for each ~~listed~~ chemical is calculated separately and the ~~list I~~ chemical with the higher base offense level is used. Five kilograms of ephedrine result in a base offense level of ~~26~~level 38; 300 grams of hydriodic acid result in a base offense level of 16. In this case, the base offense level would be ~~26~~level 38.

(b) ~~The defendant was in possession of five kilograms of ephedrine and two kilograms of phenylacetic acid. Although both of these chemicals are used to manufacture methamphetamine, they are not used together in the same manufacturing process. Therefore, the quantity of phenylacetic acid should be converted to an ephedrine equivalency using the List I Chemical Equivalency Table and then added to the quantity of ephedrine. In this case, the two kilograms of phenylacetic acid convert to two kilograms of ephedrine (see List I Chemical Equivalency Table), resulting in a total equivalency of seven kilograms of ephedrine.~~

B. Determining the Base Offense Level for Offenses Involving Ephedrine, Pseudoephedrine, or Phenylpropanolamine.—If the offense involves two or more chemicals set forth in the Ephedrine, Pseudoephedrine, and Phenylpropanolamine Quantity Table, (i) convert each chemical to its ephedrine equivalency; (ii) add the quantities that result from that equivalency; and (iii) use the Ephedrine, Pseudoephedrine, and Phenylpropanolamine Quantity Table to determine the base offense level.

Example: The defendant was in possession of 80 grams of ephedrine and 50 grams of phenylpropanolamine. The 50 grams of phenylpropanolamine converts to 50 grams of ephedrine, which when added to the quantity of ephedrine, results in a total of 130 grams of ephedrine. In this case, the base offense level would be level 32.

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.

~~5. Where there are multiple list II chemicals, all quantities of the same list II chemical are added together for purposes of determining the base offense level. However, quantities of different list II chemicals are not aggregated (see Note B to the Chemical Quantity Table). Thus, where multiple list II chemicals are involved in the offense, the base offense level is determined by using the base offense level for the single list II chemical resulting in the greatest base offense level. For example, in the case of an offense involving seven kilograms of methyl ethyl ketone and eight kilograms of acetone, the base offense level for the methyl ethyl ketone is 12 and the base offense level for the acetone is 14, therefore, the base offense level is 14.~~

~~6. Where both list I chemicals and list II chemicals are involved, use the greater of the base offense level for the list I chemicals or the list II chemicals (see Note CA to the Chemical Quantity Table).~~

7.5. * * *

8.6. * * *

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.

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

Commentary

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Application Notes:

10. * * *

DRUG EQUIVALENCY TABLES

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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 of marihuana.

List I Chemicals (relating to the manufacture of amphetamine or methamphetamine)*****

1 gm of Ephedrine = 10 kg of marihuana

1 gm of Phenylpropanolamine = 10 kg of marihuana

1 gm of Pseudoephedrine = 10 kg of marihuana

*****Provided, that 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.

* * *

Issue for Comment: *Currently, there is a six level difference between the base offense levels in the Drug Quantity Table of §2D1.1 and the Chemical Quantity Table in §2D1.11. (The original relationship between controlled substances in §2D1.1 and list I chemicals in §2D1.1 presumed a 50 percent yield of controlled substances from each chemical and then reduced the entire table in §2D1.11 by eight levels. The eight level distinction was later reduced to six levels as a result of a congressional directive.) This six level difference effectively creates a distinction between offenses involving intent to manufacture a controlled substance and offenses involving an attempt to manufacture a controlled substance. However, the proposed amendment essentially will eliminate this distinction for cases involving ephedrine, pseudoephedrine, and phenylpropanolamine by setting the maximum base offense level at level 38, the maximum base offense level provided for the manufacture of methamphetamine in §2D1.1. The Commission invites comment regarding whether the maximum base offense level for the proposed Ephedrine, Pseudoephedrine, Phenylpropanolamine Table in §2D1.11 should be lower than level 38. A lower maximum base offense level would maintain a distinction between offenses involving and intent to manufacture methamphetamine and offenses involving an attempt to manufacture methamphetamine.*