

PART D - OFFENSES INVOLVING DRUGS

1. UNLAWFUL MANUFACTURING, IMPORTING, EXPORTING, TRAFFICKING, OR POSSESSION; CONTINUING CRIMINAL ENTERPRISE

§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) the offense level specified in the Drug Quantity Table set forth in subsection (c) below.**

(b) Specific Offense Characteristics

- (1) If a dangerous weapon (including a firearm) was possessed, increase by 2 levels.**
- (2) 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, or (B) 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.**

(c) DRUG QUANTITY TABLE

Controlled Substances and Quantity*

Base Offense Level

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|-----|--|-----------------|
| (1) | <ul style="list-style-type: none">● 300 KG or more of Heroin (or the equivalent amount of other Schedule I or II Opiates);● 1500 KG or more of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);● 15 KG or more of Cocaine Base;● 300 KG or more of PCP, or 30 KG or more of PCP (actual);● 300 KG or more of Methamphetamine, or 30 KG or more of Methamphetamine (actual), or 30 KG or more of "Ice";● 3 KG or more of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);● 120 KG or more of Fentanyl;● 30 KG or more of a Fentanyl Analogue;● 300,000 KG or more of Marihuana;● 60,000 KG or more of Hashish;● 6,000 KG or more of Hashish Oil. | Level 42 |
| (2) | <ul style="list-style-type: none">● At least 100 KG but less than 300 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);● At least 500 KG but less than 1500 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);● At least 5 KG but less than 15 KG of Cocaine Base;● At least 100 KG but less than 300 KG of PCP, or at least 10 KG but less than 30 KG of PCP (actual);● At least 100 KG but less than 300 KG of Methamphetamine, or at least 10 KG but less than 30 KG of Methamphetamine (actual), or at least 10 KG but less than 30 KG of "Ice";● At least 1 KG but less than 3 KG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);● At least 40 KG but less than 120 KG of Fentanyl;● At least 10 KG but less than 30 KG of a Fentanyl Analogue;● At least 100,000 KG but less than 300,000 KG of Marihuana;● At least 20,000 KG but less than 60,000 KG of Hashish;● At least 2,000 KG but less than 6,000 KG of Hashish Oil. | Level 40 |
| (3) | <ul style="list-style-type: none">● At least 30 KG but less than 100 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);● At least 150 KG but less than 500 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);● At least 1.5 KG but less than 5 KG of Cocaine Base;● At least 30 KG but less than 100 KG of PCP, or at least 3 KG but less than 10 KG of PCP (actual);● At least 30 KG but less than 100 KG of Methamphetamine, or at least 3 KG but less than 10 KG of Methamphetamine (actual), or at least 3 KG but less than 10 KG of "Ice";● At least 300 G but less than 1 KG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);● At least 12 KG but less than 40 KG of Fentanyl;● At least 3 KG but less than 10 KG of a Fentanyl Analogue;● At least 30,000 KG but less than 100,000 KG of Marihuana;● At least 6,000 KG but less than 20,000 KG of Hashish;● At least 600 KG but less than 2,000 KG of Hashish Oil. | Level 38 |

- (4) ● At least 10 KG but less than 30 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 36**
- At least 50 KG but less than 150 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - At least 500 G but less than 1.5 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 10 KG but less than 30 KG of Methamphetamine, or at least 1 KG but less than 3 KG of Methamphetamine (actual), or at least 1 KG but less than 3 KG of "Ice";
 - At least 100 G but less than 300 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - 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.
- (5) ● At least 3 KG but less than 10 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 34**
- At least 15 KG but less than 50 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - At least 150 G but less than 500 G 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 3 KG but less than 10 KG of Methamphetamine, or at least 300 G but less than 1 KG of Methamphetamine (actual), or at least 300 G but less than 1 KG of "Ice";
 - At least 30 G but less than 100 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - 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.
- (6) ● At least 1 KG but less than 3 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 32**
- At least 5 KG but less than 15 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - At least 50 G but less than 150 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 1 KG but less than 3 KG of Methamphetamine, or at least 100 G but less than 300 G of Methamphetamine (actual), or at least 100 G but less than 300 G of "Ice";
 - At least 10 G but less than 30 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - 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.

- (7) ● At least 700 G but less than 1 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 30**
- At least 3.5 KG but less than 5 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - At least 35 G but less than 50 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 700 G but less than 1 KG of Methamphetamine, or at least 70 G but less than 100 G of Methamphetamine (actual), or at least 70 G but less than 100 G of "Ice";
 - At least 7 G but less than 10 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - 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 Marijuana;
 - At least 140 KG but less than 200 KG of Hashish;
 - At least 14 KG but less than 20 KG of Hashish Oil.
- (8) ● At least 400 G but less than 700 G of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 28**
- At least 2 KG but less than 3.5 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - At least 20 G but less than 35 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 400 G but less than 700 G of Methamphetamine, or at least 40 G but less than 70 G of Methamphetamine (actual), or at least 40 G but less than 70 G of "Ice";
 - At least 4 G but less than 7 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - 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 Marijuana;
 - At least 80 KG but less than 140 KG of Hashish;
 - At least 8 KG but less than 14 KG of Hashish Oil.
- (9) ● At least 100 G but less than 400 G of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 26**
- At least 500 G but less than 2 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - At least 5 G but less than 20 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 100 G but less than 400 G of Methamphetamine, or at least 10 G but less than 40 G of Methamphetamine (actual), or at least 10 G but less than 40 G of "Ice";
 - At least 1 G but less than 4 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - 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 Marijuana;
 - At least 20 KG but less than 80 KG of Hashish;
 - At least 2 KG but less than 8 KG of Hashish Oil.

- (10) ● At least 80 G but less than 100 G of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 24**
- At least 400 G but less than 500 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - At least 4 G but less than 5 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 80 G but less than 100 G of Methamphetamine, or at least 8 G but less than 10 G of Methamphetamine (actual), or at least 8 G but less than 10 G of "Ice";
 - At least 800 MG but less than 1 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - 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.
- (11) ● At least 60 G but less than 80 G of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 22**
- At least 300 G but less than 400 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - At least 3 G but less than 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 60 G but less than 80 G of Methamphetamine, or at least 6 G but less than 8 G of Methamphetamine (actual), or at least 6 G but less than 8 G of "Ice";
 - At least 600 MG but less than 800 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - 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.
- (12) ● At least 40 G but less than 60 G of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 20**
- At least 200 G but less than 300 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - At least 2 G but less than 3 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 40 G but less than 60 G of Methamphetamine, or at least 4 G but less than 6 G of Methamphetamine (actual), or at least 4 G but less than 6 G of "Ice";
 - At least 400 MG but less than 600 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - 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;
 - 20 KG or more of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except anabolic steroids);
 - 40,000 or more units of anabolic steroids.

- (13) ● At least 20 G but less than 40 G of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 18**
- At least 100 G but less than 200 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - At least 1 G but less than 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 20 G but less than 40 G of Methamphetamine, or at least 2 G but less than 4 G of Methamphetamine (actual), or at least 2 G but less than 4 G of "Ice";
 - At least 200 MG but less than 400 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - 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 10 KG but less than 20 KG of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except anabolic steroids);
 - At least 20,000 but less than 40,000 units of anabolic steroids.
- (14) ● At least 10 G but less than 20 G of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 16**
- At least 50 G but less than 100 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - At least 500 MG but less than 1 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 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 100 MG but less than 200 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - 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 5 KG but less than 10 KG of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except anabolic steroids);
 - At least 10,000 but less than 20,000 units of anabolic steroids.

- (15) ● At least 5 G but less than 10 G of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 14**
- At least 25 G but less than 50 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - At least 250 MG but less than 500 MG of Cocaine Base;
 - At least 5 G but less than 10 G of PCP, or at least 500 MG but less than 1 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 50 MG but less than 100 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - At least 2 G but less than 4 G of Fentanyl;
 - At least 500 MG but 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 2.5 KG but less than 5 KG of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except anabolic steroids);
 - At least 5,000 but less than 10,000 units of anabolic steroids.
- (16) ● Less than 5 G Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 12**
- Less than 25 G Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - Less than 250 MG of Cocaine Base;
 - Less than 5 G of PCP, or less than 500 MG of PCP (actual);
 - Less than 5 G of Methamphetamine, or less than 500 MG of Methamphetamine (actual), or less than 500 MG of "Ice";
 - Less than 50 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - 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 1.25 KG but less than 2.5 KG of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except anabolic steroids);
 - At least 2,500 but less than 5,000 units of anabolic steroids;
 - 20 KG or more of Schedule IV substances.
- (17) ● At least 1 KG but less than 2.5 KG of Marihuana; **Level 10**
- 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 500 G but less than 1.25 KG of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except anabolic steroids);
 - At least 1,000 but less than 2,500 units of anabolic steroids;
 - At least 8 KG but less than 20 KG of Schedule IV substances.

- (18) ● At least 250 G but less than 1 KG of Marihuana; **Level 8**
● 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 125 G but less than 500 G of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except anabolic steroids);
● At least 250 but less than 1,000 units of anabolic steroids;
● At least 2 KG but less than 8 KG of Schedule IV substances;
● 20 KG or more of Schedule V substances.
- (19) ● Less than 250 G of Marihuana; **Level 6**
● Less than 50 G of Hashish;
● Less than 5 G of Hashish Oil;
● Less than 125 G of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except anabolic steroids);
● Less than 250 units of anabolic steroids;
● Less than 2 KG of Schedule IV substances;
● Less than 20 KG of Schedule V substances.

* 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. The terms "PCP (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 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) or methamphetamine (actual), whichever is greater.

"Ice," for the purposes of this guideline, means a mixture or substance containing d-methamphetamine hydrochloride of at least 80% purity.

In the case of an offense involving marihuana plants, if the offense involved (A) 50 or more marihuana plants, treat each plant as equivalent to 1 KG of marihuana; (B) fewer than 50 marihuana plants, treat each plant 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.

In the case of anabolic steroids, one "unit" means a 10 cc vial of an injectable steroid or fifty tablets. All vials of injectable steroids are to be converted on the basis of their volume to the equivalent number of 10 cc vials (e.g., one 50 cc vial is to be counted as five 10 cc vials).

Commentary

Statutory Provisions: 21 U.S.C. §§ 841(a), (b)(1)-(3), 960(a), (b). For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. "Mixture or substance" as used in this guideline has the same meaning as in 21 U.S.C. § 841.
2. The statute and guideline also apply to "counterfeit" substances, which are defined in 21 U.S.C. § 802 to mean controlled substances that are falsely labeled so as to appear to have been legitimately manufactured or distributed.
3. Definitions of "firearm" and "dangerous weapon" are found in the Commentary to §1B1.1 (Application Instructions). The enhancement for weapon possession reflects the increased danger of violence when drug traffickers possess weapons. The adjustment should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense. For example, the enhancement would not be applied if the defendant, arrested at his residence, had an unloaded hunting rifle in the closet. The enhancement also applies to offenses that are referenced to §2D1.1; see §§2D1.2(a)(1) and (2), 2D1.5(a)(1), 2D1.6, 2D1.7(b)(1), 2D1.8, 2D1.11(c)(1), 2D1.12(b)(1), and 2D2.1(b)(1).
4. Distribution of "a small amount of marihuana for no remuneration", 21 U.S.C. § 841(b)(4), is treated as simple possession, to which §2D2.1 applies.
5. Any reference to a particular controlled substance in these guidelines includes all salts, isomers, and all salts of isomers. Any reference to cocaine includes ecgonine and coca leaves, except extracts of coca leaves from which cocaine and ecgonine have been removed.
6. Where there are multiple transactions or multiple drug types, the quantities of drugs are to be added. Tables for making the necessary conversions are provided below.
7. Where a mandatory (statutory) minimum sentence applies, this mandatory minimum sentence may be "waived" and a lower sentence imposed (including a sentence below the applicable guideline range), as provided in 28 U.S.C. § 994(n), by reason of a defendant's "substantial assistance in the investigation or prosecution of another person who has committed an offense." See §5K1.1 (Substantial Assistance to Authorities).
8. A defendant who used special skills in the commission of the offense may be subject to an enhancement under §3B1.3 (Abuse of Position of Trust or Use of Special Skill). Certain professionals often occupy essential positions in drug trafficking schemes. These professionals include doctors, pilots, boat captains, financiers, bankers, attorneys, chemists, accountants, and others whose special skill, trade, profession, or position may be used to significantly facilitate the commission of a drug offense.
9. Trafficking in controlled substances, compounds, or mixtures of unusually high purity may warrant an upward departure, except in the case of PCP or methamphetamine for which the guideline itself provides for the consideration of purity (see the footnote to the Drug Quantity Table). The purity of the controlled substance, particularly in the case of heroin, may be relevant in the sentencing process because it is probative of the defendant's role or position in the chain of distribution. Since controlled substances are often diluted and combined with

other substances as they pass down the chain of distribution, the fact that a defendant is in possession of unusually pure narcotics may indicate a prominent role in the criminal enterprise and proximity to the source of the drugs. As large quantities are normally associated with high purities, this factor is particularly relevant where smaller quantities are involved.

10. *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. The Drug Equivalency Tables set forth below provide conversion factors for other substances, which the Drug Quantity Table refers to as "equivalents" of these drugs. For example, one gram of a substance containing oxymorphone, a Schedule I opiate, is to be treated as the equivalent of five kilograms of marihuana in applying the Drug Quantity Table.*

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 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.

Examples:

- a. *The defendant is convicted of selling 70 grams of a substance containing PCP (Level 22) and 250 milligrams of a substance containing LSD (Level 18). 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.*
- b. *The defendant is convicted of selling 500 grams of marihuana (Level 8) and five kilograms of diazepam (Level 8). 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 in the Drug Quantity Table.*
- c. *The defendant is convicted of selling 80 grams of cocaine (Level 16) and five kilograms of marihuana (Level 14). The cocaine is equivalent to 16 kilograms of marihuana. The total is therefore equivalent to 21 kilograms of marihuana, which has an offense level of 18 in the Drug Quantity Table.*
- d. *The defendant is convicted of selling 28 kilograms of a Schedule III substance, 50 kilograms of a Schedule IV substance, and 100 kilograms of a Schedule V substance. The marihuana equivalency for the Schedule III substance is 56 kilograms of marihuana (below the cap of 59.99 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 kilograms of marihuana set forth as the maximum equivalent weight for Schedule IV substances (without the cap it would have been 6.25 kilograms). The marihuana equivalency for the Schedule V substance is subject to the cap of 999 grams of marihuana set forth as the maximum equivalent weight for Schedule V substances (without the cap it would have been 1.25 kilograms). The combined equivalent weight, determined by adding together the above amounts, is subject to the cap of 59.99 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 (56 + 4.99 + .999) kilograms.

DRUG EQUIVALENCY TABLES

Schedule I or II Opiates*

1 gm of Heroin =	1 kg of marihuana
1 gm of Alpha-Methylfentanyl =	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 =	500 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

*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	200 gm of marihuana
1 gm of Dextroamphetamine =	200 gm of marihuana
1 gm of Methamphetamine =	1 kg of marihuana
1 gm of Methamphetamine (Actual) =	10 kg of marihuana
1 gm of "Ice"	10 kg of marihuana
1 gm of L-Methamphetamine/Levo-methamphetamine/ L-Desoxyephedrine =	40 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 ₂ P (when possessed for the purpose of manufacturing methamphetamine) =	416 gm of marihuana
1 gm Phenylacetone/P ₂ P (in any other case) =	75 gm of marihuana
1 gm of Cocaine Base ("Crack") =	20 kg 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

**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 =	50 gm of marihuana
1 gm of 3,4-Methylenedioxymethamphetamine/MDMA =	35 gm of marihuana
1 gm of 3,4-Methylenedioxy-N-ethylamphetamine/MDEA =	30 gm of marihuana
1 gm of 1-Piperidinocyclohexanecarbonitrile/PCC =	680 gm of marihuana
1 gm of Phenylcyclohexamine (PCE) =	5.79 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

Secobarbital and Other Schedule I or II Depressants**

1 gm of Amobarbital	2 gm of marihuana
1 gm of Glutethimide =	0.4 gm of marihuana
1 gm of Methaqualone =	0.7 gm of marihuana
1 gm of Pentobarbital =	2 gm of marihuana
1 gm of Secobarbital =	2 gm of marihuana

***Provided*, that the combined equivalent weight of all Schedule I or II depressants, Schedule III substances, Schedule IV substances, and Schedule V substances shall not exceed 59.99 kilograms of marihuana.

Schedule III Substances***

1 gm of a Schedule III Substance (except anabolic steroids) =	2 gm of marihuana
1 unit of anabolic steroids =	1 gm of marihuana

****Provided*, that the combined equivalent weight of all Schedule III substances, Schedule I or II depressants, Schedule IV substances, and Schedule V substances shall not exceed 59.99 kilograms of marihuana.

Schedule IV Substances****

1 gm of a Schedule IV Substance = 0.125 gm of marihuana

*****Provided*, that the combined equivalent weight of all Schedule IV and V substances shall not exceed 4.99 kilograms of marihuana.

Schedule V Substances*****

1 gm of a Schedule V Substance = 0.0125 gm of marihuana

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

To facilitate conversions to drug equivalencies, the following table is provided:

MEASUREMENT CONVERSION TABLE

1 oz = 28.35 gm
1 lb = 453.6 gm
1 lb = 0.4536 kg
1 gal = 3.785 liters
1 qt = 0.946 liters
1 gm = 1 ml (liquid)
1 liter = 1,000 ml
1 kg = 1,000 gm
1 gm = 1,000 mg
1 grain = 64.8 mg.

11. If the number of doses, pills, or capsules but not the weight of the controlled substance is known, multiply the number of doses, pills, or capsules by the typical weight per dose in the table below to estimate the total weight of the controlled substance (e.g., 100 doses of Mescaline at 500 mg per dose = 50 gms of mescaline). The Typical Weight Per Unit Table, prepared from information provided by the Drug Enforcement Administration, displays the typical weight per dose, pill, or capsule for certain controlled substances. Do not use this table if any more reliable estimate of the total weight is available from case-specific information.

TYPICAL WEIGHT PER UNIT (DOSE, PILL, OR CAPSULE) TABLE

Hallucinogens

LSD (Lysergic acid diethylamide)*	0.05 mg
MDA*	100 mg
Mescaline	500 mg
PCP*	5 mg
Peyote (dry)	12 gm
Peyote (wet)	120 gm
Psilocin*	10 mg

<i>Psilocybe mushrooms (dry)</i>	5 gm
<i>Psilocybe mushrooms (wet)</i>	50 gm
<i>Psilocybin*</i>	10 mg
<i>2,5-Dimethoxy-4-methylamphetamine (STP, DOM)*</i>	3 mg

Depressants

<i>Methaqualone*</i>	300 mg
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Marihuana

<i>1 marihuana cigarette</i>	0.5 gm
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Stimulants

<i>Amphetamine*</i>	10 mg
<i>Methamphetamine*</i>	5 mg
<i>Phenmetrazine (Preludin)*</i>	75 mg

**For controlled substances marked with an asterisk, the weight per unit shown is the weight of the actual controlled substance, and not generally the weight of the mixture or substance containing the controlled substance. Therefore, use of this table provides a very conservative estimate of the total weight.*

12. *Types and quantities of drugs not specified in the count of conviction may be considered in determining the offense level. See §1B1.3(a)(2) (Relevant Conduct). Where there is no drug seizure or the amount seized does not reflect the scale of the offense, the court shall approximate the quantity of the controlled substance. In making this determination, the court may consider, for example, the price generally obtained for the controlled substance, financial or other records, similar transactions in controlled substances by the defendant, and the size or capability of any laboratory involved.*

If the offense involved both a substantive drug offense and an attempt or conspiracy (e.g., sale of five grams of heroin and an attempt to sell an additional ten grams of heroin), the total quantity involved shall be aggregated to determine the scale of the offense.

In an offense involving negotiation to traffic in a controlled substance, the weight under negotiation in an uncompleted distribution shall be used to calculate the applicable amount. However, where the court finds that the defendant did not intend to produce and was not reasonably capable of producing the negotiated amount, the court shall exclude from the guideline calculation the amount that it finds the defendant did not intend to produce and was not reasonably capable of producing.

13. *If subsection (b)(2)(B) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).*
14. *D-lysergic acid, which is generally used to make LSD, is classified as a Schedule III controlled substance (to which §2D1.1 applies) and as a listed precursor (to which §2D1.11 applies).*

Where the defendant is convicted under 21 U.S.C. §§ 841(b)(1)(D) or 860(b)(4) of an offense involving d-lysergic acid, apply §2D1.1 or §2D1.11, whichever results in the greater offense level. See Application Note 5 in the Commentary to §1B1.1 (Application Instructions). Where the defendant is accountable for an offense involving the manufacture of LSD, see Application Note 12 above pertaining to the determination of the scale of the offense.

15. Certain pharmaceutical preparations are classified as Schedule III, IV, or V controlled substances by the Drug Enforcement Administration under 21 C.F.R. § 1308.13-15 even though they contain a small amount of a Schedule I or II controlled substance. For example, Tylenol 3 is classified as a Schedule III controlled substance even though it contains a small amount of codeine, a Schedule II opiate. For the purposes of the guidelines, the classification of the controlled substance under 21 C.F.R. § 1308.13-15 is the appropriate classification.

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 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.

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.

In cases involving fifty or more marihuana plants, an equivalency of one plant to one kilogram of marihuana is derived from the statutory penalty provisions of 21 U.S.C. § 841(b)(1)(A), (B), and (D). In cases involving fewer than fifty plants, the statute is silent as to the equivalency. For cases involving fewer than fifty 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, in the case of fewer than fifty marihuana plants, 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.

Specific Offense Characteristic (b)(2) is derived from Section 6453 of the Anti-Drug Abuse Act of 1988.

Frequently, a term of supervised release to follow imprisonment is required by statute for offenses covered by this guideline. Guidelines for the imposition, duration, and conditions of supervised release are set forth in Chapter Five, Part D (Supervised Release).

Historical Note: Effective November 1, 1987. Amended effective January 15, 1988 (see Appendix C, amendments 19, 20, and 21); November 1, 1989 (see Appendix C, amendments 123-134, 302, and 303); November 1, 1990 (see Appendix C, amendment 318); November 1, 1991 (see Appendix C, amendments 369-371 and 394-396); November 1, 1992 (see Appendix C, amendments 446 and 447).

§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

Statutory Provisions: 21 U.S.C. §§ 859 (formerly 21 U.S.C. § 845), 860 (formerly 21 U.S.C. § 845a), 861 (formerly 21 U.S.C. § 845b).

Application Note:

1. *Where 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 16 (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 17 (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.

Historical Note: Effective November 1, 1987. Amended effective January 15, 1988 (see Appendix C, amendment 22); November 1, 1989 (see Appendix C, amendment 135); November 1, 1990 (see Appendix C, amendment 319); November 1, 1991 (see Appendix C, amendment 421); November 1, 1992 (see Appendix C, amendment 447).

§2D1.3. [Deleted]

Historical Note: Section 2D1.3 (Distributing Controlled Substances to Individuals Younger than Twenty-One Years, to Pregnant Women, or Within 1000 Feet of a School or College), effective November 1, 1987, amended effective January 15, 1988 (see Appendix C, amendment 23), was deleted by consolidation with §2D1.2 effective November 1, 1989 (see Appendix C, amendment 135).

§2D1.4. [Deleted]

Historical Note: Section 2D1.4 (Attempts and Conspiracies), effective November 1, 1987, amended effective November 1, 1989 (see Appendix C, amendments 136-138), was deleted by consolidation with the guidelines applicable to the underlying substantive offenses effective November 1, 1992 (see Appendix C, amendment 447).

§2D1.5. Continuing Criminal Enterprise; Attempt or Conspiracy

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

- (1) 4 plus the offense level from §2D1.1 applicable to the underlying offense; or
- (2) 38.

Commentary

Statutory Provision: 21 U.S.C. § 848.

Application Notes:

1. Do not apply any adjustment from Chapter Three, Part B (Role in the Offense).
2. If as part of the enterprise the defendant sanctioned the use of violence, or if the number of persons managed by the defendant was extremely large, an upward departure may be warranted.
3. Under 21 U.S.C. § 848, certain conduct for which the defendant has previously been sentenced may be charged as part of the instant offense to establish a "continuing series of violations." A sentence resulting from a conviction sustained prior to the last overt act of the instant offense is to be considered a prior sentence under §4A1.2(a)(1) and not part of the instant offense.
4. Violations of 21 U.S.C. § 848 will be grouped with other drug offenses for the purpose of applying Chapter Three, Part D (Multiple Counts).

Background: Because a conviction under 21 U.S.C. § 848 establishes that a defendant controlled and exercised authority over one of the most serious types of ongoing criminal activity, this guideline provides a minimum base offense level of 38. An adjustment from Chapter Three, Part B is not authorized because the offense level of this guideline already reflects an adjustment for role in the offense.

Title 21 U.S.C. § 848 provides a 20-year minimum mandatory penalty for the first conviction, a 30-year minimum mandatory penalty for a second conviction, and a mandatory life sentence for principal administrators of extremely large enterprises. If the application of the guidelines results in a sentence below the minimum sentence required by statute, the statutory minimum shall be the guideline sentence. See §5G1.1(b).

Historical Note: Effective November 1, 1987. Amended effective October 15, 1988 (see Appendix C, amendment 66); November 1, 1989 (see Appendix C, amendment 139); November 1, 1992 (see Appendix C, amendment 447).

§2D1.6. Use of Communication Facility in Committing Drug Offense; Attempt or Conspiracy

(a) Base Offense Level: the offense level applicable to the underlying offense.

Commentary

Statutory Provision: 21 U.S.C. § 843(b).

Application Note:

1. *Where the offense level for the underlying offense is to be determined by reference to §2D1.1, see Application Note 12 of the Commentary to §2D1.1 for guidance in determining the scale of the offense. Note that the Drug Quantity Table in §2D1.1 provides a minimum offense level of 12 where the offense involves heroin (or other Schedule I or II Opiates), cocaine (or other Schedule I or II Stimulants), cocaine base, PCP, Methamphetamine, LSD (or other Schedule I or II Hallucinogens), Fentanyl, or Fentanyl Analogue (§2D1.1(c)(16)); and a minimum offense level of 6 otherwise (§2D1.1(c)(19)).*

Background: *This section covers the use of a communication facility in committing a drug offense. A communication facility includes any public or private instrument used in the transmission of writing, signs, signals, pictures, and sound; e.g., telephone, wire, radio.*

Historical Note: Effective November 1, 1987. Amended effective November 1, 1990 (see Appendix C, amendment 320); November 1, 1992 (see Appendix C, amendment 447).

§2D1.7. Unlawful Sale or Transportation of Drug Paraphernalia; Attempt or Conspiracy

- (a) Base Offense Level: 12
- (b) Cross Reference
 - (1) If the offense involved a controlled substance, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) or §2D2.1 (Unlawful Possession), as appropriate, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provision: 21 U.S.C. § 863 (formerly 21 U.S.C. § 857).

Application Note:

1. *The typical case addressed by this guideline involves small-scale trafficking in drug paraphernalia (generally from a retail establishment that also sells items that are not unlawful). In a case involving a large-scale dealer, distributor, or manufacturer, an upward departure may be warranted. Conversely, where the offense was not committed for pecuniary gain (e.g., transportation for the defendant's personal use), a downward departure may be warranted.*

Historical Note: Effective November 1, 1987. Amended effective November 1, 1991 (see Appendix C, amendment 397); November 1, 1992 (see Appendix C, amendment 447).

§2D1.8. Renting or Managing a Drug Establishment; Attempt or Conspiracy

(a) Base Offense Level:

- (1) The offense level from §2D1.1 applicable to the underlying controlled substance offense, except as provided below.
- (2) If the defendant had no participation in the underlying controlled substance offense other than allowing use of the premises, the offense level shall be 4 levels less than the offense level from §2D1.1 applicable to the underlying controlled substance offense, but not greater than level 16.

(b) Special Instruction

- (1) If the offense level is determined under subsection (a)(2), do not apply an adjustment under §3B1.2 (Mitigating Role).

Commentary

Statutory Provision: 21 U.S.C. § 856.

Application Note:

1. Subsection (a)(2) does not apply unless the defendant had no participation in the underlying controlled substance offense other than allowing use of the premises. For example, subsection (a)(2) would not apply to a defendant who possessed a dangerous weapon in connection with the offense, a defendant who guarded the cache of controlled substances, a defendant who arranged for the use of the premises for the purpose of facilitating a drug transaction, a defendant who allowed the use of more than one premises, a defendant who made telephone calls to facilitate the underlying controlled substance offense, or a defendant who otherwise assisted in the commission of the underlying controlled substance offense. Furthermore, subsection (a)(2) does not apply unless the defendant initially leased, rented, purchased, or otherwise acquired a possessory interest in the premises for a legitimate purpose. Finally, subsection (a)(2) does not apply if the defendant had previously allowed any premises to be used as a drug establishment without regard to whether such prior misconduct resulted in a conviction.

Background: This section covers the offense of knowingly opening, maintaining, managing, or controlling any building, room, or enclosure for the purpose of manufacturing, distributing, storing, or using a controlled substance contrary to law (e.g., a "crack house").

Historical Note: Effective November 1, 1987. Amended effective November 1, 1991 (see Appendix C, amendment 394); November 1, 1992 (see Appendix C, amendments 447 and 448).

§2D1.9. Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances; Attempt or Conspiracy

(a) Base Offense Level: 23

Commentary

Statutory Provision: 21 U.S.C. § 841(e)(1).

Background: This section covers the offense of assembling, placing, or causing to be placed, or maintaining a "booby-trap" on federal property where a controlled substance is being manufactured or distributed.

Historical Note: Effective November 1, 1987. Amended effective November 1, 1992 (see Appendix C, amendment 447).

§2D1.10. Endangering Human Life While Illegally Manufacturing a Controlled Substance; Attempt or Conspiracy

- (a) Base Offense Level (Apply the greater):
 - (1) 3 plus the offense level from the Drug Quantity Table in §2D1.1; or
 - (2) 20.

Commentary

Statutory Provision: 21 U.S.C. § 858.

Historical Note: Effective November 1, 1989 (see Appendix C, amendment 140). Amended effective November 1, 1992 (see Appendix C, amendment 447).

§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) below.
- (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(d)(2), (g)(1), or 960(d)(2), decrease by 3 levels, unless the defendant knew or believed that the listed chemical was to be used to manufacture a controlled substance unlawfully.
- (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) CHEMICAL QUANTITY TABLE*

Listed Chemicals and Quantity

Base Offense Level

(1) Listed Precursor Chemicals Level 28

20 KG or more of Benzyl Cyanide;
200 G or more of D-Lysergic Acid;
20 KG or more of Ephedrine;
200 G or more of Ergonovine;
400 G or more of Ergotamine;
20 KG or more of Ethylamine;
44 KG or more of Hydriodic Acid;
320 KG or more of Isoafrole;
4 KG or more of Methylamine;
500 KG or more of N-Methylephedrine;
500 KG or more of N-Methylpseudoephedrine;
200 KG or more of Norpseudoephedrine;
20 KG or more of Phenylacetic Acid;
200 KG or more of Phenylpropanolamine;
10 KG or more of Piperidine;
320 KG or more of Piperonal;
1.6 KG or more of Propionic Anhydride;
20 KG or more of Pseudoephedrine;
320 KG or more of Safrole;
400 KG or more of 3, 4-Methylenedioxyphenyl-2-propanone;

Listed Essential 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.

(2) Listed Precursor Chemicals Level 26

At least 6 KG but less than 20 KG of Benzyl Cyanide;
At least 60 G but less than 200 G of D-Lysergic Acid;
At least 6 KG but less than 20 KG of Ephedrine;
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 Isoafrole;
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 60 KG but less than 200 KG of Norpseudoephedrine;
At least 6 KG but less than 20 KG of Phenylacetic Acid;
At least 60 KG but less than 200 KG of Phenylpropanolamine;
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 6 KG but less than 20 KG of Pseudoephedrine;
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;

Listed Essential 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.

(3) Listed Precursor Chemicals

Level 24

At least 2 KG but less than 6 KG of Benzyl Cyanide;
At least 20 G but less than 60 G of D-Lysergic Acid;
At least 2 KG but less than 6 KG of Ephedrine;
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 Isoafrole;
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 20 KG but less than 60 KG of Norpseudoephedrine;
At least 2 KG but less than 6 KG of Phenylacetic Acid;
At least 20 KG but less than 60 KG of Phenylpropanolamine;
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 2 KG but less than 6 KG of Pseudoephedrine;
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;

Listed Essential 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.

(4) Listed Precursor Chemicals

Level 22

At least 1.4 KG but less than 2 KG of Benzyl Cyanide;
At least 14 G but less than 20 G of D-Lysergic Acid;
At least 1.4 KG but less than 2 KG of Ephedrine;
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 Isoafrole;
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 14 KG but less than 20 KG of Norpseudoephedrine;
At least 1.4 KG but less than 2 KG of Phenylacetic Acid;
At least 14 KG but less than 20 KG of Phenylpropanolamine;
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 1.4 KG but less than 2 KG of Pseudoephedrine;
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;

Listed Essential 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.

(5) Listed Precursor Chemicals

Level 20

At least 800 G but less than 1.4 KG of Benzyl Cyanide;
At least 8 G but less than 14 G of D-Lysergic Acid;
At least 800 G but less than 1.4 KG of Ephedrine;
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 Isoafrole;
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 8 KG but less than 14 KG of Norpseudoephedrine;
At least 800 G but less than 1.4 KG of Phenylacetic Acid;
At least 8 KG but less than 14 KG of Phenylpropanolamine;
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 800 G but less than 1.4 KG of Pseudoephedrine;
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;

Listed Essential 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.

(6) Listed Precursor Chemicals

Level 18

At least 200 G but less than 800 G of Benzyl Cyanide;
At least 2 G but less than 8 G of D-Lysergic Acid;
At least 200 G but less than 800 G of Ephedrine;
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 Isoafrole;
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 2 KG but less than 8 KG of Norpseudoephedrine;
At least 200 G but less than 800 G of Phenylacetic Acid;
At least 2 KG but less than 8 KG of Phenylpropanolamine;
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 200 G but less than 800 G of Pseudoephedrine;
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;

Listed Essential 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.

(7) Listed Precursor Chemicals

Level 16

At least 160 G but less than 200 G of Benzyl Cyanide;
At least 1.6 G but less than 2 G of D-Lysergic Acid;
At least 160 G but less than 200 G of Ephedrine;
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 Isoafrole;
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 1.6 KG but less than 2 KG of Norpseudoephedrine;
At least 160 G but less than 200 G of Phenylacetic Acid;
At least 1.6 KG but less than 2 KG of Phenylpropanolamine;

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 160 G but less than 200 G of Pseudoephedrine;
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;

Listed Essential 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.

(8) Listed Precursor Chemicals

Level 14

3.6 KG or more of Anthranilic Acid;
At least 120 G but less than 160 G of Benzyl Cyanide;
At least 1.2 G but less than 1.6 G of D-Lysergic Acid;
At least 120 G but less than 160 G of Ephedrine;
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 Isoafrole;
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 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 1.2 KG but less than 1.6 KG of Phenylpropanolamine;
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 120 G but less than 160 G of Pseudoephedrine;
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;

Listed Essential 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.

(9) Listed Precursor Chemicals

Less than 3.6 KG of Anthranilic Acid;
 Less than 120 G of Benzyl Cyanide;
 Less than 1.2 G of D-Lysergic Acid;
 Less than 120 G of Ephedrine;
 Less than 1.2 G of Ergonovine;
 Less than 2.4 G of Ergotamine;
 Less than 120 G of Ethylamine;
 Less than 264 G of Hydriodic Acid;
 Less than 1.92 KG of Isoafrole;
 Less than 24 G of Methylamine;
 Less than 4.8 KG of N-Acetylanthranilic Acid;
 Less than 3 KG of N-Methylephedrine;
 Less than 3 KG of N-Methylpseudoephedrine;
 Less than 1.2 KG of Norpseudoephedrine;
 Less than 120 G of Phenylacetic Acid;
 Less than 1.2 KG of Phenylpropanolamine;
 Less than 60 G of Piperidine;
 Less than 1.92 KG of Piperonal;
 Less than 9.6 G of Propionic Anhydride;
 Less than 120 G of Pseudoephedrine;
 Less than 1.92 KG of Safrole;
 Less than 2.4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

Listed Essential 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) If more than one listed precursor chemical is involved, use the Precursor Chemical Equivalency Table to determine the offense level.
- (B) If more than one listed essential chemical is involved, use the single listed essential chemical resulting in the greatest offense level.
- (C) If both listed precursor and listed essential chemicals are involved, use the offense level determined under (A) or (B) above, whichever is greater.
- (D) The Precursor Chemical Equivalency Table provides a means for combining different listed precursor chemicals to obtain a single offense level. In cases involving multiple precursor chemicals, convert each to its ephedrine equivalency from the table below, add the quantities, and apply the Chemical Quantity Table to obtain the applicable offense level.

PRECURSOR CHEMICAL EQUIVALENCY TABLE

1 gm of Anthranilic Acid* =	0.033 gm of Ephedrine
1 gm of Benzyl Cyanide =	1 gm of Ephedrine
1 gm of D-Lysergic Acid =	100 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 Isoafrole =	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 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 both hydriodic acid and ephedrine, calculate the offense level for each separately and use the quantity that results in the greater offense level.

Commentary

Statutory Provisions: 21 U.S.C. §§ 841(d)(1), (2), (g)(1), 960(d)(1), (2).

Application Notes:

1. "Firearm" and "dangerous weapon" are defined in the Commentary to §1B1.1 (Application Instructions). The adjustment in subsection (b)(1) should be applied if the weapon was present, unless it is improbable that the weapon was connected with the offense.
2. "Offense involved unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully," as used in subsection (c)(1), means that the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), completed the actions sufficient to constitute the offense of unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully.
3. In certain cases, the defendant will be convicted of an offense involving a listed chemical covered under this guideline, and a related offense involving an immediate precursor or other controlled substance covered under §2D1.1 (Unlawfully Manufacturing, Importing, Exporting, or Trafficking). For example, P2P (an immediate precursor) and 3,4-methylenedioxyphenyl-2-propanone (a listed chemical) are used together to produce methamphetamine. Determine the

offense level under each guideline separately. The offense level for 3,4-methylenedioxyphenyl-2-propanone is determined by using §2D1.1. The offense level for P2P is determined by using §2D1.1 (P2P is listed in the Drug Equivalency Table under LSD, PCP, and Other Schedule I and II Hallucinogens (and their immediate precursors)). Under the grouping rules of §3D1.2(b), the counts will be grouped together. Note that in determining the scale of the offense under §2D1.1, the quantity of both the controlled substance and listed chemical should be considered (see Application Note 12 in the Commentary to §2D1.1).

4. Where there are multiple listed precursor chemicals, the quantities of all listed precursors are added together for purposes of determining the base offense level, except as expressly noted (see Note A to the Chemical Quantity Table). This reflects that only one listed precursor typically is used in a given manufacturing process. For example, in the case of an offense involving 300 grams of piperidine and 800 grams of benzyl cyanide, the piperidine is converted to 600 grams of ephedrine and the benzyl cyanide is converted to 800 grams of ephedrine, using the Precursor Chemical Equivalency Table, for a total of 1400 grams of ephedrine. Applying the Chemical Quantity Table to 1400 grams (1.4 kilograms) of ephedrine results in a base offense level of 22.
5. Where there are multiple listed essential chemicals, all quantities of the same listed essential chemical are added together for purposes of determining the base offense level. However, quantities of different listed essential chemicals are not aggregated (see Note B to the Chemical Quantity Table). Thus, where multiple listed essential chemicals are involved in the offense, the base offense level is determined by using the base offense level for the single listed essential 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 listed precursor chemicals and listed essential chemicals are involved, use the greater of the base offense level for the listed precursor chemicals or the listed essential chemicals (see Note C to the Chemical Quantity Table).
7. Convictions under 21 U.S.C. §§ 841(d)(2), (g)(1), and 960(d)(2) do not require that the defendant have knowledge or an actual belief that the listed chemical was to be used to manufacture a controlled substance unlawfully. Where the defendant possessed or distributed the listed chemical without such knowledge or belief, a 3-level reduction is provided to reflect that the defendant is less culpable than one who possessed or distributed listed chemicals knowing or believing that they would be used to manufacture a controlled substance unlawfully.

Background: Offenses covered by this guideline involve listed precursor chemicals and listed essential chemicals. Listed precursor chemicals are critical to the formation of a controlled substance and 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. Listed essential chemicals are generally solvents, catalysts, and reagents, and do not become part of the finished product.

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 371). Amended effective November 1, 1992 (see Appendix C, amendment 447).

§2D1.12. Unlawful Possession, Manufacture, Distribution, or Importation of Prohibited Flask or Equipment; Attempt or Conspiracy

- (a) Base Offense Level: 12
- (b) 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.

Commentary

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

Application Notes:

1. *If the offense involved the large-scale manufacture, distribution, or importation of prohibited flasks or equipment, an upward departure may be warranted.*
2. *"Offense involved unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully," as used in subsection (b)(1), means that the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), completed the actions sufficient to constitute the offense of unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully.*

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 371). Amended effective November 1, 1992 (see Appendix C, amendment 447).

§2D1.13. Structuring Chemical Transactions or Creating a Chemical Mixture to Evade Reporting or Recordkeeping Requirements; Presenting False or Fraudulent Identification to Obtain a Listed Chemical; Attempt or Conspiracy

- (a) Base Offense Level (Apply the greatest):
 - (1) The offense level from §2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing a Listed Chemical) if the defendant knew or believed that the chemical was to be used to manufacture a controlled substance unlawfully; or
 - (2) The offense level from §2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical) reduced by 3 levels if the defendant had reason to believe that the chemical was to be used to manufacture a controlled substance unlawfully; or
 - (3) 6, otherwise.

Commentary

Statutory Provisions: 21 U.S.C. §§ 841(d)(3), (g)(1), 843(a)(4)(B), (a)(8).

Application Note:

1. "The offense level from §2D1.11" includes the base offense level and any applicable specific offense characteristic or cross reference; see §1B1.5 (Interpretation of References to Other Offense Guidelines).

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 371). Amended effective November 1, 1992 (see Appendix C, amendment 447).

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2. UNLAWFUL POSSESSION

§2D2.1. Unlawful Possession; Attempt or Conspiracy

(a) Base Offense Level:

- (1) 8, if the substance is heroin or any Schedule I or II opiate, an analogue of these, or cocaine base; or
- (2) 6, if the substance is cocaine, LSD, or PCP; or
- (3) 4, if the substance is any other controlled substance.

(b) Cross Reference

- (1) If the defendant is convicted of possession of more than 5 grams of a mixture or substance containing cocaine base, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) as if the defendant had been convicted of possession of that mixture or substance with intent to distribute.

Commentary

Statutory Provision: 21 U.S.C. § 844(a). For additional statutory provision(s), see Appendix A (Statutory Index).

Background: Mandatory minimum penalties for several categories of cases, ranging from fifteen days' to five years' imprisonment, are set forth in 21 U.S.C. § 844(a). When a mandatory minimum penalty exceeds the guideline range, the mandatory minimum becomes the guideline sentence. §5G1.1(b).

Section 2D2.1(b)(1) provides a cross reference to §2D1.1 for possession of more than five grams of a mixture or substance containing cocaine base, an offense subject to an enhanced penalty under Section 6371 of the Anti-Drug Abuse Act of 1988. Other cases for which enhanced penalties are provided under Section 6371 of the Anti-Drug Abuse Act of 1988 (e.g., for a person with one prior conviction, possession of more than three grams of a mixture or substance containing cocaine base; for a person with two or more prior convictions, possession of more than one gram of a mixture or substance containing cocaine base) are to be sentenced in accordance with §5G1.1(b).

Historical Note: Effective November 1, 1987. Amended effective January 15, 1988 (see Appendix C, amendment 24); November 1, 1989 (see Appendix C, amendment 304); November 1, 1990 (see Appendix C, amendment 321); November 1, 1992 (see Appendix C, amendment 447).

§2D2.2. Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge: Attempt or Conspiracy

- (a) Base Offense Level: 8

Commentary

Statutory Provision: 21 U.S.C. § 843(a)(3).

Historical Note: Effective November 1, 1987. Amended effective November 1, 1992 (see Appendix C, amendment 447).

§2D2.3. Operating or Directing the Operation of a Common Carrier Under the Influence of Alcohol or Drugs

- (a) Base Offense Level (Apply the greatest):
- (1) 26, if death resulted; or
 - (2) 21, if serious bodily injury resulted; or
 - (3) 13, otherwise.
- (b) Special Instruction:
- (1) If the defendant is convicted of a single count involving the death or serious bodily injury of more than one person, apply Chapter Three, Part D (Multiple Counts) as if the defendant had been convicted of a separate count for each such victim.

Commentary

Statutory Provision: 18 U.S.C. § 342.

Background: This section implements the direction to the Commission in Section 6482 of the Anti-Drug Abuse Act of 1988. Offenses covered by this guideline may vary widely with regard to harm and risk of harm. The offense levels assume that the offense involved the operation of a common carrier carrying a number of passengers, e.g., a bus. If no or only a few passengers were placed at

risk, a downward departure may be warranted. If the offense resulted in the death or serious bodily injury of a large number of persons, such that the resulting offense level under subsection (b) would not adequately reflect the seriousness of the offense, an upward departure may be warranted.

Historical Note: Effective November 1, 1987. Amended effective January 15, 1988 (see Appendix C, amendment 25); November 1, 1989 (see Appendix C, amendment 141).

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3. REGULATORY VIOLATIONS

§2D3.1. Illegal Use of Registration Number to Manufacture, Distribute, Acquire, or Dispense a Controlled Substance; Attempt or Conspiracy

(a) Base Offense Level: 6

Commentary

Statutory Provisions: 21 U.S.C. §§ 842(a)(1), 843(a)(1), (2).

Background: *The maximum term of imprisonment authorized by statute is four years, except in a case with a prior drug-related felony where the maximum term of imprisonment authorized by statute is eight years.*

Historical Note: Effective November 1, 1987. Amended effective November 1, 1991 (see Appendix C, amendment 421); November 1, 1992 (see Appendix C, amendment 447).

§2D3.2. Manufacture of Controlled Substance in Excess of or Unauthorized by Registration Quota; Attempt or Conspiracy

(a) Base Offense Level: 4

Commentary

Statutory Provisions: 21 U.S.C. §§ 842(b), 843(a)(3).

Background: *This offense is a misdemeanor. The maximum term of imprisonment authorized by statute is one year.*

Historical Note: Effective November 1, 1987. Amended effective November 1, 1991 (see Appendix C, amendment 421); November 1, 1992 (see Appendix C, amendment 447).

§2D3.3. Illegal Use of Registration Number to Distribute or Dispense a Controlled Substance to Another Registrant or Authorized Person; Attempt or Conspiracy

(a) Base Offense Level: 4

Commentary

Statutory Provision: 21 U.S.C. § 842(a)(2).

Background: This offense is a misdemeanor. The maximum term of imprisonment authorized by statute is one year.

Historical Note: Effective November 1, 1987. Amended effective November 1, 1991 (see Appendix C, amendment 421); November 1, 1992 (see Appendix C, amendment 447).

§2D3.4. Illegal Transfer or Transshipment of a Controlled Substance; Attempt or Conspiracy

(a) Base Offense Level: 4

Commentary

Statutory Provisions: 21 U.S.C. §§ 954, 961.

Background: This offense is a misdemeanor. The maximum term of imprisonment authorized by statute is one year.

Historical Note: Effective November 1, 1987. Amended effective November 1, 1990 (see Appendix C, amendment 359); November 1, 1992 (see Appendix C, amendment 447).

§2D3.5. Violation of Recordkeeping or Reporting Requirements for Listed Chemicals and Certain Machines; Attempt or Conspiracy

(a) Base Offense Level: 4

Commentary

Statutory Provisions: 21 U.S.C. § 842(a)(9), (10).

Historical Note: Effective November 1, 1991 (see Appendix C, amendment 371). Amended effective November 1, 1992 (see Appendix C, amendment 447).