
UNITED STATES SENTENCING COMMISSION

SUPPLEMENT TO THE **2000 GUIDELINES MANUAL**



MAY 1, 2001

This supplement incorporates the emergency guideline amendments to §§2D1.1, 2D1.10, 2D1.11, 2G1.2, 2G2.1, 2H4.1, and 5E1.1, and Appendix A (Statutory Index) and the emergency promulgation of §2H4.2. This document, used in conjunction with the 2000 Guidelines Manual (dark blue cover), constitutes the operative Manual effective May 1, 2001.

TABLE OF CONTENTS

	Page
§2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy)	1
§2D1.10 (Endangering Human Life While Illegally Manufacturing a Controlled Substance; Attempt or Conspiracy)	21
§2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy)	22
§2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct)	34
§2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production)	38
§2H4.1 (Peonage, Involuntary Servitude, and Slave Trade)	41
§2H4.2 (Willful Violations of the Migrant and Seasonal Agricultural Worker Protection Act)	42
§5E1.1 (Restitution)	44
Appendix A - Statutory Index	46
Supplement to the 2000 Supplement to Appendix C	60

AMENDED GUIDELINES*

*For guidelines other than those shown in this supplement, see the main volume of the 2000 Guidelines Manual.

CHAPTER TWO - OFFENSE CONDUCT

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**.
 - (3) If the object of the offense was the distribution of a controlled substance in a prison, correctional facility, or detention facility, increase by **2** levels.
 - (4) If (A) the offense involved the importation of methamphetamine or the manufacture of methamphetamine from listed chemicals that the defendant knew were imported unlawfully, and (B) the defendant is not subject to an

adjustment under §3B1.2 (Mitigating Role), increase by **2** levels.

- (5) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (B) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by **2** levels.
- (6) (Apply the greater):
 - (A) If the offense (i) involved the manufacture of amphetamine or methamphetamine; and (ii) created a substantial risk of harm to (I) human life other than a life described in subsection (b)(6)(B); or (II) the environment, increase by **3** levels. If the resulting offense level is less than level **27**, increase to level **27**.
 - (B) If the offense (i) involved the manufacture of amphetamine or methamphetamine; and (ii) created a substantial risk of harm to the life of a minor or an incompetent, increase by **6** levels. If the resulting offense level is less than level **30**, increase to level **30**.
- (7) If the defendant meets the criteria set forth in subdivisions (1)-(5) of §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) and the offense level determined above is level **26** or greater, decrease by **2** levels.

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

(d) Cross References

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

(c) DRUG QUANTITY TABLE

Controlled Substances and Quantity*	Base Offense Level
<p>(1) M 30 KG or more of Heroin (or the equivalent amount of other Schedule I or II Opiates); M 150 KG or more of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); M 1.5 KG or more of Cocaine Base; M 30 KG or more of PCP, or 3 KG or more of PCP (actual); M 15 KG or more of Methamphetamine, or 1.5 KG or more of Methamphetamine (actual), or 1.5 KG or more of "Ice"; M 15 KG or more of Amphetamine, or 1.5 KG or more of Amphetamine (actual); M 300 G or more of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); M 12 KG or more of Fentanyl; M 3 KG or more of a Fentanyl Analogue; M 30,000 KG or more of Marihuana; M 6,000 KG or more of Hashish; M 600 KG or more of Hashish Oil.</p>	Level 38
<p>(2) M At least 10 KG but less than 30 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); M At least 50 KG but less than 150 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); M At least 500 G but less than 1.5 KG of Cocaine Base; M At least 10 KG but less than 30 KG of PCP, or at least 1 KG but less than 3 KG of PCP (actual); M At least 5 KG but less than 15 KG of Methamphetamine, or at least 500 G but less than 1.5 KG of Methamphetamine (actual), or at least 500 G but less than 1.5 KG of "Ice"; M At least 5 KG but less than 15 KG of Amphetamine, or at least 500 G but less than 1.5 KG of Amphetamine (actual); M At least 100 G but less than 300 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); M At least 4 KG but less than 12 KG of Fentanyl; M At least 1 KG but less than 3 KG of a Fentanyl Analogue; M At least 10,000 KG but less than 30,000 KG of Marihuana; M At least 2,000 KG but less than 6,000 KG of Hashish; M At least 200 KG but less than 600 KG of Hashish Oil.</p>	Level 36
<p>(3) M At least 3 KG but less than 10 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); M At least 15 KG but less than 50 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); M At least 150 G but less than 500 G of Cocaine Base; M At least 3 KG but less than 10 KG of PCP, or at least 300 G but less than 1 KG of PCP (actual);</p> <p>M At least 1.5 KG but less than 5 KG of Methamphetamine, or at least 150 G but less than 500 G of Methamphetamine (actual), or at least 150 G but less than</p>	Level 34

- 500 G of "Ice";
- M At least 1.5 KG but less than 5 KG of Amphetamine, or at least 150 G but less than 500 G of Amphetamine (actual);
- M At least 30 G but less than 100 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
- M At least 1.2 KG but less than 4 KG of Fentanyl;
- M At least 300 G but less than 1 KG of a Fentanyl Analogue;
- M At least 3,000 KG but less than 10,000 KG of Marihuana;
- M At least 600 KG but less than 2,000 KG of Hashish;
- M At least 60 KG but less than 200 KG of Hashish Oil.

- (4) M At least 1 KG but less than 3 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 32**
- M At least 5 KG but less than 15 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - M At least 50 G but less than 150 G of Cocaine Base;
 - M At least 1 KG but less than 3 KG of PCP, or at least 100 G but less than 300 G of PCP (actual);
 - M At least 500 G but less than 1.5 KG of Methamphetamine, or at least 50 G but less than 150 G of Methamphetamine (actual), or at least 50 G but less than 150 G of "Ice";
 - M At least 500 G but less than 1.5 KG of Amphetamine, or at least 50 G but less than 150 G of Amphetamine (actual);
 - M At least 10 G but less than 30 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - M At least 400 G but less than 1.2 KG of Fentanyl;
 - M At least 100 G but less than 300 G of a Fentanyl Analogue;
 - M At least 1,000 KG but less than 3,000 KG of Marihuana;
 - M At least 200 KG but less than 600 KG of Hashish;
 - M At least 20 KG but less than 60 KG of Hashish Oil.

- (5) M At least 700 G but less than 1 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 30**
- M At least 3.5 KG but less than 5 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - M At least 35 G but less than 50 G of Cocaine Base;
 - M At least 700 G but less than 1 KG of PCP, or at least 70 G but less than 100 G of PCP (actual);
 - M At least 350 G but less than 500 G of Methamphetamine, or at least 35 G but less than 50 G of Methamphetamine (actual), or at least 35 G but less than 50 G of "Ice";
 - M At least 350 G but less than 500 G of Amphetamine, or at least 35 G but less than 50 G of Amphetamine (actual);
 - M At least 7 G but less than 10 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - M At least 280 G but less than 400 G of Fentanyl;
 - M At least 70 G but less than 100 G of a Fentanyl Analogue;
 - M At least 700 KG but less than 1,000 KG of Marihuana;
- M At least 140 KG but less than 200 KG of Hashish;
 - M At least 14 KG but less than 20 KG of Hashish Oil.

- (6) M At least 400 G but less than 700 G of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 28**

- M At least 2 KG but less than 3.5 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
- M At least 20 G but less than 35 G of Cocaine Base;
- M At least 400 G but less than 700 G of PCP, or at least 40 G but less than 70 G of PCP (actual);
- M At least 200 G but less than 350 G of Methamphetamine, or at least 20 G but less than 35 G of Methamphetamine (actual), or at least 20 G but less than 35 G of "Ice";
- M At least 200 G but less than 350 G of Amphetamine, or at least 20 G but less than 35 G of Amphetamine (actual);
- M At least 4 G but less than 7 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
- M At least 160 G but less than 280 G of Fentanyl;
- M At least 40 G but less than 70 G of a Fentanyl Analogue;
- M At least 400 KG but less than 700 KG of Marihuana;
- M At least 80 KG but less than 140 KG of Hashish;
- M At least 8 KG but less than 14 KG of Hashish Oil.

- (7) M At least 100 G but less than 400 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
- M At least 500 G but less than 2 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
- M At least 5 G but less than 20 G of Cocaine Base;
- M At least 100 G but less than 400 G of PCP, or at least 10 G but less than 40 G of PCP (actual);
- M At least 50 G but less than 200 G of Methamphetamine, or at least 5 G but less than 20 G of Methamphetamine (actual), or at least 5 G but less than 20 G of "Ice";
- M At least 50 G but less than 200 G of Amphetamine, or at least 5 G but less than 20 G of Amphetamine (actual);
- M At least 1 G but less than 4 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
- M At least 40 G but less than 160 G of Fentanyl;
- M At least 10 G but less than 40 G of a Fentanyl Analogue;
- M At least 100 KG but less than 400 KG of Marihuana;
- M At least 20 KG but less than 80 KG of Hashish;
- M At least 2 KG but less than 8 KG of Hashish Oil.

Level 26

- (8) M At least 80 G but less than 100 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
- M At least 400 G but less than 500 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
- M At least 4 G but less than 5 G of Cocaine Base;
- M At least 80 G but less than 100 G of PCP, or at least 8 G but less than 10 G of PCP (actual);

Level 24

- M At least 40 G but less than 50 G of Methamphetamine, or at least 4 G but less than 5 G of Methamphetamine (actual), or at least 4 G but less than 5 G of "Ice";
- M At least 40 G but less than 50 G of Amphetamine, or at least 4 G but less than 5 G of Amphetamine (actual);
- M At least 800 MG but less than 1 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

- M At least 32 G but less than 40 G of Fentanyl;
- M At least 8 G but less than 10 G of a Fentanyl Analogue;
- M At least 80 KG but less than 100 KG of Marihuana;
- M At least 16 KG but less than 20 KG of Hashish;
- M At least 1.6 KG but less than 2 KG of Hashish Oil.

- (9) M At least 60 G but less than 80 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
- M At least 300 G but less than 400 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
- M At least 3 G but less than 4 G of Cocaine Base;
- M At least 60 G but less than 80 G of PCP, or at least 6 G but less than 8 G of PCP (actual);
- M At least 30 G but less than 40 G of Methamphetamine, or at least 3 G but less than 4 G of Methamphetamine (actual), or at least 3 G but less than 4 G of "Ice";
- M At least 30 G but less than 40 G of Amphetamine, or at least 3 G but less than 4 G of Amphetamine (actual);
- M At least 600 MG but less than 800 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
- M At least 24 G but less than 32 G of Fentanyl;
- M At least 6 G but less than 8 G of a Fentanyl Analogue;
- M At least 60 KG but less than 80 KG of Marihuana;
- M At least 12 KG but less than 16 KG of Hashish;
- M At least 1.2 KG but less than 1.6 KG of Hashish Oil.

Level 22

- (10) M At least 40 G but less than 60 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
- M At least 200 G but less than 300 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
- M At least 2 G but less than 3 G of Cocaine Base;
- M At least 40 G but less than 60 G of PCP, or at least 4 G but less than 6 G of PCP (actual);
- M At least 20 G but less than 30 G of Methamphetamine, or at least 2 G but less than 3 G of Methamphetamine (actual), or at least 2 G but less than 3 G of "Ice";
- M At least 20 G but less than 30 G of Amphetamine, or at least 2 G but less than 3 G of Amphetamine (actual);
- M At least 400 MG but less than 600 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
- M At least 16 G but less than 24 G of Fentanyl;
- M At least 4 G but less than 6 G of a Fentanyl Analogue;
- M At least 40 KG but less than 60 KG of Marihuana;
- M At least 8 KG but less than 12 KG of Hashish;
- M At least 800 G but less than 1.2 KG of Hashish Oil;
- M 40,000 or more units of Schedule I or II Depressants or Schedule III substances;
- M 2,500 or more units of Flunitrazepam.

Level 20

- (11) M At least 20 G but less than 40 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
- M At least 100 G but less than 200 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
- M At least 1 G but less than 2 G of Cocaine Base;

Level 18

- M At least 20 G but less than 40 G of PCP, or at least 2 G but less than 4 G of PCP (actual);
- M 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";
- M At least 10 G but less than 20 G of Amphetamine, or at least 1 G but less than 2 G of Amphetamine (actual);
- M At least 200 MG but less than 400 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
- M At least 8 G but less than 16 G of Fentanyl;
- M At least 2 G but less than 4 G of a Fentanyl Analogue;
- M At least 20 KG but less than 40 KG of Marihuana;
- M At least 5 KG but less than 8 KG of Hashish;
- M At least 500 G but less than 800 G of Hashish Oil;
- M At least 20,000 but less than 40,000 units of Schedule I or II Depressants or Schedule III substances;
- M At least 1,250 but less than 2,500 units of Flunitrazepam.

- (12) M At least 10 G but less than 20 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
- M At least 50 G but less than 100 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - M At least 500 MG but less than 1 G of Cocaine Base;
 - M At least 10 G but less than 20 G of PCP, or at least 1 G but less than 2 G of PCP (actual);
 - M 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";
 - M At least 5 G but less than 10 G of Amphetamine, or at least 500 MG but less than 1 G of Amphetamine (actual);
 - M At least 100 MG but less than 200 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - M At least 4 G but less than 8 G of Fentanyl;
 - M At least 1 G but less than 2 G of a Fentanyl Analogue;
 - M At least 10 KG but less than 20 KG of Marihuana;
 - M At least 2 KG but less than 5 KG of Hashish;
 - M At least 200 G but less than 500 G of Hashish Oil;
 - M At least 10,000 but less than 20,000 units of Schedule I or II Depressants or Schedule III substances;
 - M At least 625 but less than 1,250 units of Flunitrazepam.

Level 16

- (13) M At least 5 G but less than 10 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
- M At least 25 G but less than 50 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - M At least 250 MG but less than 500 MG of Cocaine Base;
 - M At least 5 G but less than 10 G of PCP, or at least 500 MG but less than 1 G of PCP (actual);
 - M At least 2.5 G but less than 5 G of Methamphetamine, or at least 250 MG but less than 500 MG of Methamphetamine (actual), or at least 250 MG but less than 500 MG of "Ice";
 - M At least 2.5 G but less than 5 G of Amphetamine, or at least 250 MG but less than 500 MG of Amphetamine (actual);
 - M At least 50 MG but less than 100 MG of LSD (or the equivalent amount of

Level 14

- other Schedule I or II Hallucinogens);
 - M At least 2 G but less than 4 G of Fentanyl;
 - M At least 500 MG but less than 1 G of a Fentanyl Analogue;
 - M At least 5 KG but less than 10 KG of Marihuana;
 - M At least 1 KG but less than 2 KG of Hashish;
 - M At least 100 G but less than 200 G of Hashish Oil;
 - M At least 5,000 but less than 10,000 units of Schedule I or II Depressants or Schedule III substances;
 - M At least 312 but less than 625 units of Flunitrazepam.

- (14) M Less than 5 G of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 12**
 - M Less than 25 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
 - M Less than 250 MG of Cocaine Base;
 - M Less than 5 G of PCP, or less than 500 MG of PCP (actual);
 - M Less than 2.5 G of Methamphetamine, or less than 250 MG of Methamphetamine (actual), or less than 250 MG of "Ice";
 - M Less than 2.5 G of Amphetamine, or less than 250 MG of Amphetamine (actual);
 - M Less than 50 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
 - M Less than 2 G of Fentanyl;
 - M Less than 500 MG of a Fentanyl Analogue;
 - M At least 2.5 KG but less than 5 KG of Marihuana;
 - M At least 500 G but less than 1 KG of Hashish;
 - M At least 50 G but less than 100 G of Hashish Oil;
 - M At least 2,500 but less than 5,000 units of Schedule I or II Depressants or Schedule III substances;
 - M At least 156 but less than 312 units of Flunitrazepam;
 - M 40,000 or more units of Schedule IV substances (except Flunitrazepam).

- (15) M At least 1 KG but less than 2.5 KG of Marihuana; **Level 10**
 - M At least 200 G but less than 500 G of Hashish;
 - M At least 20 G but less than 50 G of Hashish Oil;
 - M At least 1,000 but less than 2,500 units of Schedule I or II Depressants or Schedule III substances;
 - M At least 62 but less than 156 units of Flunitrazepam;
 - M At least 16,000 but less than 40,000 units of Schedule IV substances (except Flunitrazepam).

- (16) M At least 250 G but less than 1 KG of Marihuana; **Level 8**
 - M At least 50 G but less than 200 G of Hashish;
 - M At least 5 G but less than 20 G of Hashish Oil;
 - M At least 250 but less than 1,000 units of Schedule I or II Depressants or Schedule III substances;
 - M Less than 62 units of Flunitrazepam;
 - M At least 4,000 but less than 16,000 units of Schedule IV substances (except Flunitrazepam);
 - M 40,000 or more units of Schedule V substances.

- (17) M Less than 250 G of Marihuana; **Level 6**
 - M Less than 50 G of Hashish;

- M Less than 5 G of Hashish Oil;
- M Less than 250 units of Schedule I or II Depressants or Schedule III substances;
- M Less than 4,000 units of Schedule IV substances (except Flunitrazepam);
- M Less than 40,000 units of Schedule V substances.

*Notes to Drug Quantity Table:

- (A) Unless otherwise specified, the weight of a controlled substance set forth in the table refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance. If a mixture or substance contains more than one controlled substance, the weight of the entire mixture or substance is assigned to the controlled substance that results in the greater offense level.
- (B) The terms "PCP (actual)", "Amphetamine (actual)", and "Methamphetamine (actual)" refer to the weight of the controlled substance, itself, contained in the mixture or substance. For example, a mixture weighing 10 grams containing PCP at 50% purity contains 5 grams of PCP (actual). In the case of a mixture or substance containing PCP, amphetamine, or methamphetamine, use the offense level determined by the entire weight of the mixture or substance, or the offense level determined by the weight of the PCP (actual), amphetamine (actual), or methamphetamine (actual), whichever is greater.
- (C) "Ice," for the purposes of this guideline, means a mixture or substance containing d-methamphetamine hydrochloride of at least 80% purity.
- (D) "Cocaine base," for the purposes of this guideline, means "crack." "Crack" is the street name for a form of cocaine base, usually prepared by processing cocaine hydrochloride and sodium bicarbonate, and usually appearing in a lumpy, rocklike form.
- (E) In the case of an offense involving marihuana plants, treat each plant, regardless of sex, as equivalent to 100 G of marihuana. *Provided*, however, that if the actual weight of the marihuana is greater, use the actual weight of the marihuana.
- (F) In the case of Schedule I or II Depressants, Schedule III substances (except anabolic steroids), Schedule IV substances, and Schedule V substances, one "unit" means one pill, capsule, or tablet. If the substance is in liquid form, one "unit" means 0.5 gm.
- (G) 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).
- (H) In the case of LSD on a carrier medium (e.g., a sheet of blotter paper), do not use the weight of the LSD/carrier medium. Instead, treat each dose of LSD on the carrier medium as equal to 0.4 mg of LSD for the purposes of the Drug Quantity Table.
- (I) Hashish, for the purposes of this guideline, means a resinous substance of cannabis that includes (i) one or more of the tetrahydrocannabinols (as listed in 21 C.F.R. § 1308.11(d)(25)), (ii) at least two of the following: cannabiniol, cannabidiol, or cannabichromene, and (iii) fragments of plant material (such as cystolith fibers).
- (J) Hashish oil, for the purposes of this guideline, means a preparation of the soluble cannabinoids derived from cannabis that includes (i) one or more of the tetrahydrocannabinols (as listed in 21 C.F.R. § 1308.11(d)(25)), (ii) at least two of the following: cannabiniol, cannabidiol, or cannabichromene, and (iii) is essentially free of plant material (e.g., plant fragments). Typically,

hashish oil is a viscous, dark colored oil, but it can vary from a dry resin to a colorless liquid.

Commentary

Statutory Provisions: 21 U.S.C. §§ 841(a), (b)(1)-(3), (7), 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, except as expressly provided. Mixture or substance does not include materials that must be separated from the controlled substance before the controlled substance can be used. Examples of such materials include the fiberglass in a cocaine/fiberglass bonded suitcase, beeswax in a cocaine/beeswax statue, and waste water from an illicit laboratory used to manufacture a controlled substance. If such material cannot readily be separated from the mixture or substance that appropriately is counted in the Drug Quantity Table, the court may use any reasonable method to approximate the weight of the mixture or substance to be counted.*

An upward departure nonetheless may be warranted when the mixture or substance counted in the Drug Quantity Table is combined with other, non-countable material in an unusually sophisticated manner in order to avoid detection.

Similarly, in the case of marihuana having a moisture content that renders the marihuana unsuitable for consumption without drying (this might occur, for example, with a bale of rain-soaked marihuana or freshly harvested marihuana that had not been dried), an approximation of the weight of the marihuana without such excess moisture content is to be used.

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(c)(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). In addition, 18 U.S.C. § 3553(f) provides an exception to the applicability of mandatory minimum sentences in certain cases. *See* §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases).

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.

Note, however, that if an adjustment from subsection (b)(2)(B) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

9. Trafficking in controlled substances, compounds, or mixtures of unusually high purity may warrant an upward departure, except in the case of PCP, amphetamine, 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 marijuana. 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 oxycodone, a Schedule I opiate, is to be treated as the equivalent of five kilograms of marijuana 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 marijuana 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 marijuana 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 marijuana). 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 marijuana equivalency for each schedule separately (subject to the cap, if any, applicable to that schedule). Then add the marijuana equivalencies to determine the combined marijuana 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 56,000 units of a Schedule III substance, 100,000 units of a Schedule IV substance, and 200,000 units 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

SUPPLEMENT TO 2000 GUIDELINES MANUAL - MAY 1, 2001

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
1 gm of Levo-alpha-acetylmethadol (LAAM)=	3 kg of marihuana

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

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

1 gm of Cocaine =	200 gm of marihuana
1 gm of N-Ethylamphetamine =	80 gm of marihuana
1 gm of Fenethylamine =	40 gm of marihuana
1 gm of Amphetamine =	2 kg of marihuana
1 gm of Amphetamine (Actual) =	20 kg of marihuana
1 gm of Dextroamphetamine =	200 gm of marihuana
1 gm of Methamphetamine =	2 kg of marihuana
1 gm of Methamphetamine (Actual) =	20 kg of marihuana
1 gm of "Ice" =	20 kg of marihuana
1 gm of Khat =	.01 gm of marihuana
1 gm of 4-Methylaminorex ("Euphoria")=	100 gm of marihuana
1 gm of Methylphenidate (Ritalin)=	100 gm of marihuana
1 gm of Phenmetrazine =	80 gm of marihuana
1 gm Phenylacetone/P 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

SUPPLEMENT TO 2000 GUIDELINES MANUAL - MAY 1, 2001

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

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

Schedule I Marihuana

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

Flunitrazepam**

1 unit of Flunitrazepam =	16 gm of marihuana
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** *Provided*, that the combined equivalent weight of flunitrazepam, all Schedule I or II depressants, Schedule III substances, Schedule IV substances, and Schedule V substances shall not exceed 99.99 kilograms of marihuana.

The minimum offense level from the Drug Quantity Table for flunitrazepam individually, or in combination with any Schedule I or II depressants, Schedule III substances, Schedule IV substances, and Schedule V substances is level 8.

Schedule I or II Depressants***

1 unit of a Schedule I or II Depressant =	1 gm of marihuana
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****Provided*, that the combined equivalent weight of all Schedule I or II depressants, Schedule III substances, Schedule IV substances (except flunitrazepam), and Schedule V substances shall not exceed 59.99 kilograms of marihuana.

Schedule III Substances****

1 unit of a Schedule III Substance =	1 gm of marihuana
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*****Provided*, that the combined equivalent weight of all Schedule III substances, Schedule I or II depressants, Schedule IV substances (except flunitrazepam), and Schedule V substances shall not exceed 59.99 kilograms of marihuana.

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

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

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

Schedule V Substances*****

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

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

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

MDA*	100 mg
Mescaline	500 mg

<i>PCP*</i>	5 mg
<i>Peyote (dry)</i>	12 gm
<i>Peyote (wet)</i>	120 gm
<i>Psilocin*</i>	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

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 an agreement to sell a controlled substance, the agreed-upon quantity of the controlled substance shall be used to determine the offense level unless the sale is completed and the amount delivered more accurately reflects the scale of the offense. For example, a defendant agrees to sell 500 grams of cocaine, the transaction is completed by the delivery of the controlled substance - actually 480 grams of cocaine, and no further delivery is scheduled. In this example, the amount delivered more accurately reflects the scale of the offense. In contrast, in a reverse sting, the agreed-upon quantity of the controlled substance would more accurately reflect the scale of the offense because the amount actually delivered is controlled by the government, not by the defendant. If, however, the defendant establishes that he or she did not intend to provide, or was not reasonably capable of providing, the agreed-upon quantity of the controlled substance, the court shall exclude from the offense level determination the amount of controlled substance that the defendant establishes

that he or she did not intend to provide or was not reasonably capable of providing.

13. *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.*
14. *Where (A) the amount of the controlled substance for which the defendant is accountable under §1B1.3 (Relevant Conduct) results in a base offense level greater than 36, (B) the court finds that this offense level overrepresents the defendant's culpability in the criminal activity, and (C) the defendant qualifies for a mitigating role adjustment under §3B1.2 (Mitigating Role), a downward departure may be warranted. The court may depart to a sentence no lower than the guideline range that would have resulted if the defendant's Chapter Two offense level had been offense level 36. Provided, that a defendant is not eligible for a downward departure under this provision if the defendant:*
- (a) *has one or more prior felony convictions for a crime of violence or a controlled substance offense as defined in §4B1.2 (Definitions of Terms Used in Section 4B1.1);*
 - (b) *qualifies for an adjustment under §3B1.3 (Abuse of Position of Trust or Use of Special Skill);*
 - (c) *possessed or induced another participant to use or possess a firearm in the offense;*
 - (d) *had decision-making authority;*
 - (e) *owned the controlled substance or financed any part of the offense; or*
 - (f) *sold the controlled substance or played a substantial part in negotiating the terms of the sale.*

Example: *A defendant, who the court finds meets the criteria for a downward departure under this provision, has a Chapter Two offense level of 38, a 2-level reduction for a minor role from §3B1.2, and a 3-level reduction for acceptance of responsibility from §3E1.1. His final offense level is 33. If the defendant's Chapter Two offense level had been 36, the 2-level reduction for a minor role and 3-level reduction for acceptance of responsibility would have resulted in a final offense level of 31. Therefore, under this provision, a downward departure not to exceed 2 levels (from level 33 to level 31) would be authorized.*

15. *If, in a reverse sting (an operation in which a government agent sells or negotiates to sell a controlled substance to a defendant), the court finds that the government agent set a price for the controlled substance that was substantially below the market value of the controlled substance, thereby leading to the defendant's purchase of a significantly greater quantity of the controlled substance than his available resources would have allowed him to purchase except for the artificially low price set by the government agent, a downward departure may be warranted.*
16. *LSD on a blotter paper carrier medium typically is marked so that the number of doses ("hits") per sheet readily can be determined. When this is not the case, it is to be presumed that each 1/4 inch by 1/4 inch section of the blotter paper is equal to one dose.*

In the case of liquid LSD (LSD that has not been placed onto a carrier medium), using the weight

of the LSD alone to calculate the offense level may not adequately reflect the seriousness of the offense. In such a case, an upward departure may be warranted.

17. *In an extraordinary case, an upward departure above offense level 38 on the basis of drug quantity may be warranted. For example, an upward departure may be warranted where the quantity is at least ten times the minimum quantity required for level 38. Similarly, in the case of a controlled substance for which the maximum offense level is less than level 38 (e.g., the maximum offense level in the Drug Quantity Table for flunitrazepam is level 20), an upward departure may be warranted if the drug quantity substantially exceeds the quantity for the highest offense level established for that particular controlled substance.*
18. *For purposes of the guidelines, a "plant" is an organism having leaves and a readily observable root formation (e.g., a marihuana cutting having roots, a rootball, or root hairs is a marihuana plant).*
19. *If the offense involved importation of methamphetamine, and an adjustment from subsection (b)(2) applies, do not apply subsection (b)(4).*
20. *Hazardous or Toxic Substances.—Subsection (b)(5) applies if the conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. § 1319(c), or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 5124, 9603(b). In some cases, the enhancement under subsection (b)(5) may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under §5E1.1 (Restitution) and in fashioning appropriate conditions of supervision under §§5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release).*
21. *Substantial Risk of Harm Associated with the Manufacture of Amphetamine and Methamphetamine.—*
 - (A) *Factors to Consider.—In determining, for purposes of subsection (b)(6), whether the offense created a substantial risk of harm to human life or the environment, the court may consider factors such as the following:*
 - (i) *The quantity of any chemicals or hazardous or toxic substances found at the laboratory, or the manner in which the chemicals or substances were stored.*
 - (ii) *The manner in which hazardous or toxic substances were disposed, or the likelihood of release into the environment of hazardous or toxic substances.*
 - (iii) *The duration of the offense, or the extent of the manufacturing operation.*
 - (iv) *The location of the amphetamine or methamphetamine laboratory (e.g., in a residential neighborhood or a remote area) and the number of human lives placed at substantial risk of harm.*
 - (B) *Definitions.—For purposes of subsection (b)(6)(B):*

"Incompetent" means an individual who is incapable of taking care of the individual's self or property because of a mental or physical illness or disability, mental retardation, or

senility.

"Minor" has the meaning given that term in Application Note 1 of the Commentary to §2A3.1 (Criminal Sexual Abuse).

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. Where necessary, this scheme has been modified in response to specific congressional directives to the Commission.

The base offense levels at levels 26 and 32 establish guideline ranges with a lower limit as close to the statutory minimum as possible; e.g., level 32 ranges from 121 to 151 months, where the statutory minimum is ten years or 120 months.

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

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).

Because the weights of LSD carrier media vary widely and typically far exceed the weight of the controlled substance itself, the Commission has determined that basing offense levels on the entire weight of the LSD and carrier medium would produce unwarranted disparity among offenses involving the same quantity of actual LSD (but different carrier weights), as well as sentences disproportionate to those for other, more dangerous controlled substances, such as PCP. Consequently, in cases involving LSD contained in a carrier medium, the Commission has established a weight per dose of 0.4 milligram for purposes of determining the base offense level.

The dosage weight of LSD selected exceeds the Drug Enforcement Administration's standard dosage unit for LSD of 0.05 milligram (i.e., the quantity of actual LSD per dose) in order to assign some weight to the carrier medium. Because LSD typically is marketed and consumed orally on a carrier medium, the inclusion of some weight attributable to the carrier medium recognizes (A) that offense levels for most other

controlled substances are based upon the weight of the mixture containing the controlled substance without regard to purity, and (B) the decision in Chapman v. United States, 111 S.Ct. 1919 (1991) (holding that the term "mixture or substance" in 21 U.S.C. § 841(b)(1) includes the carrier medium in which LSD is absorbed). At the same time, the weight per dose selected is less than the weight per dose that would equate the offense level for LSD on a carrier medium with that for the same number of doses of PCP, a controlled substance that comparative assessments indicate is more likely to induce violent acts and ancillary crime than is LSD. (Treating LSD on a carrier medium as weighing 0.5 milligram per dose would produce offense levels equivalent to those for PCP.) Thus, the approach decided upon by the Commission will harmonize offense levels for LSD offenses with those for other controlled substances and avoid an undue influence of varied carrier weight on the applicable offense level. Nonetheless, this approach does not override the applicability of "mixture or substance" for the purpose of applying any mandatory minimum sentence (see Chapman; §5G1.1(b)).

Subsection (b)(5) implements the instruction to the Commission in section 303 of Public Law 103–237.

Subsection (b)(6) implements the instruction to the Commission in section 102 of Public Law 106–878.

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); November 1, 1993 (see Appendix C, amendments 479, 484-488, and 499); September 23, 1994 (see Appendix C, amendment 509); November 1, 1994 (see Appendix C, amendment 505); November 1, 1995 (see Appendix C, amendments 514-518); November 1, 1997 (see Appendix C, amendments 555 and 556); November 1, 2000 (see Appendix C, amendments 594 and 605); December 16, 2000 (see Appendix C, amendment 608); May 1, 2001 (see Appendix C, amendments 609-611).

§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**.

- (b) Specific Offense Characteristic
 - (1) (Apply the greater):
 - (A) If the offense involved the manufacture of amphetamine or methamphetamine, increase by **3** levels. If the resulting offense level is less than level **27**, increase to level **27**.

 - (B) If the offense (i) involved the manufacture of amphetamine or methamphetamine; and (ii) created a substantial risk of harm to the life of a minor or an incompetent, increase by **6** levels. If the resulting offense level is less than level **30**, increase to level **30**.

Commentary

Statutory Provision: 21 U.S.C. § 858.

Application Note:

1. Substantial Risk of Harm Associated with the Manufacture of Amphetamine and Methamphetamine.—

(A) Factors to Consider.— *In determining, for purposes of subsection (b)(1)(B), whether the offense created a substantial risk of harm to the life of a minor or an incompetent, the court may consider factors such as the following:*

- (i) *The quantity of any chemicals or hazardous or toxic substances found at the laboratory, or the manner in which the chemicals or substances were stored.*
- (ii) *The manner in which hazardous or toxic substances were disposed, or the likelihood of release into the environment of hazardous or toxic substances.*
- (iii) *The duration of the offense, or the extent of the manufacturing operation.*
- (iv) *The location of the amphetamine or methamphetamine laboratory (e.g., in a residential neighborhood or a remote area) and the number of human lives placed at substantial risk of harm.*

(B) Definitions.—*For purposes of subsection (b)(1)(B):*

"Incompetent" means an individual who is incapable of taking care of the individual's self or property because of a mental or physical illness or disability, mental retardation, or senility.

"Minor" has the meaning given that term in Application Note 1 of the Commentary to §2A3.1 (Criminal Sexual Abuse).

Background: *Subsection (b)(1) implements the instruction to the Commission in section 102 of Public Law 106–878.*

Historical Note: Effective November 1, 1989 (see Appendix C, amendment 140). Amended effective November 1, 1992 (see Appendix C, amendment 447); December 16, 2000 (see Appendix C, amendment 608).

§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.

- (3) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (B) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels.

(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)(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;
At least 2 G but less than 4 G of Phenylpropanolamine;
At least 2 G but less than 4 G of Pseudoephedrine. | Level 18 |
| (12) | At least 1 G but less than 2 G of Ephedrine;
At least 1 G but less than 2 G of Phenylpropanolamine;
At least 1 G but less than 2 G of Pseudoephedrine. | Level 16 |
| (13) | At least 500 MG but less than 1 G of Ephedrine;
At least 500 MG but less than 1 G of Phenylpropanolamine;
At least 500 MG but less than 1 G of Pseudoephedrine. | Level 14 |
| (14) | Less than 500 MG of Ephedrine;
Less than 500 MG of Phenylpropanolamine;
Less than 500 MG of Pseudoephedrine. | Level 12 |

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

	Listed Chemicals and Quantity	Base Offense Level
(1)	<u>List I Chemicals</u> 890 G or more 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; 2.2 KG or more of Hydriodic Acid; 320 KG or more of Isosafrole; 200 G or more of Methylamine; 500 KG or more of N-Methylephedrine; 500 KG or more of N-Methylpseudoephedrine; 625 G or more of Nitroethane; 10 KG or more 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.	Level 30
(2)	<u>List I Chemicals</u> At least 267 G but less than 890 G of Benzaldehyde; At least 6 KG but less than 20 KG of Benzyl Cyanide; At least 60 G but less than 200 G of Ergonovine; At least 120 G but less than 400 G of Ergotamine; At least 6 KG but less than 20 KG of Ethylamine; At least 660 G but less than 2.2 KG of Hydriodic Acid; At least 96 KG but less than 320 KG of Isosafrole;	Level 28

At least 60 G but less than 200 G of Methylamine;
 At least 150 KG but less than 500 KG of N-Methylephedrine;
 At least 150 KG but less than 500 KG of N-Methylpseudoephedrine;
 At least 187.5 G but less than 625 G of Nitroethane;
 At least 3 KG but less than 10 KG of Norpseudoephedrine;
 At least 6 KG but less than 20 KG of Phenylacetic Acid;
 At least 3 KG but less than 10 KG of Piperidine;
 At least 96 KG but less than 320 KG of Piperonal;
 At least 480 G but less than 1.6 KG of Propionic Anhydride;
 At least 96 KG but less than 320 KG of Safrole;
 At least 120 KG but less than 400 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

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.

(3) List I Chemicals

Level 26

At least 89 G but less than 267 G of Benzaldehyde;
 At least 2 KG but less than 6 KG of Benzyl Cyanide;
 At least 20 G but less than 60 G of Ergonovine;
 At least 40 G but less than 120 G of Ergotamine;
 At least 2 KG but less than 6 KG of Ethylamine;
 At least 220 G but less than 660 G of Hydriodic Acid;
 At least 32 KG but less than 96 KG of Isosafrole;
 At least 20 G but less than 60 G of Methylamine;
 At least 50 KG but less than 150 KG of N-Methylephedrine;
 At least 50 KG but less than 150 KG of N-Methylpseudoephedrine;
 At least 62.5 G but less than 187.5 G of Nitroethane;
 At least 1 KG but less than 3 KG of Norpseudoephedrine;
 At least 2 KG but less than 6 KG of Phenylacetic Acid;
 At least 1 KG but less than 3 KG of Piperidine;
 At least 32 KG but less than 96 KG of Piperonal;
 At least 160 G but less than 480 G of Propionic Anhydride;
 At least 32 KG but less than 96 KG of Safrole;
 At least 40 KG but less than 120 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

At least 3.3 KG but less than 11 KG of Acetic Anhydride;
 At least 352.5 KG but less than 1175 KG of Acetone;
 At least 6 KG but less than 20 KG of Benzyl Chloride;
 At least 322.5 KG but less than 1075 KG of Ethyl Ether;
 At least 360 KG but less than 1200 KG of Methyl Ethyl Ketone;
 At least 3 KG but less than 10 KG of Potassium Permanganate;
 At least 390 KG but less than 1300 KG of Toluene.

(4) List I Chemicals

Level 24

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

List II Chemicals

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

(5) List I Chemicals

Level 22

At least 35.6 G but less than 62.3 G of Benzaldehyde;
 At least 800 G but less than 1.4 KG of Benzyl Cyanide;
 At least 8 G but less than 14 G of Ergonovine;
 At least 16 G but less than 28 G of Ergotamine;
 At least 800 G but less than 1.4 KG of Ethylamine;
 At least 88 G but less than 154 G of Hydriodic Acid;
 At least 12.8 KG but less than 22.4 KG of Isosafrole;
 At least 8 G but less than 14 G of Methylamine;
 At least 20 KG but less than 35 KG of N-Methylephedrine;
 At least 20 KG but less than 35 KG of N-Methylpseudoephedrine;
 At least 25 G but less than 43.8 G of Nitroethane;
 At least 400 G but less than 700 G of Norpseudoephedrine;
 At least 800 G but less than 1.4 KG of Phenylacetic Acid;
 At least 400 G but less than 700 G of Piperidine;
 At least 12.8 KG but less than 22.4 KG of Piperonal;
 At least 64 G but less than 112 G of Propionic Anhydride;
 At least 12.8 KG but less than 22.4 KG of Safrole;
 At least 16 KG but less than 28 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

At least 726 G but less than 1.1 KG of Acetic Anhydride;
 At least 82.25 KG but less than 117.5 KG of Acetone;
 At least 1.4 KG but less than 2 KG of Benzyl Chloride;

At least 75.25 KG but less than 107.5 KG of Ethyl Ether;
 At least 84 KG but less than 120 KG of Methyl Ethyl Ketone;
 At least 700 G but less than 1 KG of Potassium Permanganate;
 At least 91 KG but less than 130 KG of Toluene.

(6) List I Chemicals

Level 20

At least 8.9 G but less than 35.6 G of Benzaldehyde;
 At least 200 G but less than 800 G of Benzyl Cyanide;
 At least 2 G but less than 8 G of Ergonovine;
 At least 4 G but less than 16 G of Ergotamine;
 At least 200 G but less than 800 G of Ethylamine;
 At least 22 G but less than 88 G of Hydriodic Acid;
 At least 3.2 KG but less than 12.8 KG of Isosafrole;
 At least 2 G but less than 8 G of Methylamine;
 At least 5 KG but less than 20 KG of N-Methylephedrine;
 At least 5 KG but less than 20 KG of N-Methylpseudoephedrine;
 At least 6.3 G but less than 25 G of Nitroethane;
 At least 100 G but less than 400 of Norpseudoephedrine;
 At least 200 G but less than 800 G of Phenylacetic Acid;
 At least 100 G but less than 400 G of Piperidine;
 At least 3.2 KG but less than 12.8 KG of Piperonal;
 At least 16 G but less than 64 G of Propionic Anhydride;
 At least 3.2 KG but less than 12.8 KG of Safrole;
 At least 4 KG but less than 16 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

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

(7) List I Chemicals

Level 18

At least 7.1 G but less than 8.9 G of Benzaldehyde;
 At least 160 G but less than 200 G of Benzyl Cyanide;
 At least 1.6 G but less than 2 G of Ergonovine;
 At least 3.2 G but less than 4 G of Ergotamine;
 At least 160 G but less than 200 G of Ethylamine;
 At least 17.6 G but less than 22 G of Hydriodic Acid;
 At least 2.56 KG but less than 3.2 KG of Isosafrole;
 At least 1.6 G but less than 2 G of Methylamine;
 At least 4 KG but less than 5 KG of N-Methylephedrine;
 At least 4 KG but less than 5 KG of N-Methylpseudoephedrine;
 At least 5 G but less than 6.3 G of Nitroethane;
 At least 80 G but less than 100 G of Norpseudoephedrine;
 At least 160 G but less than 200 G of Phenylacetic Acid;
 At least 80 G but less than 100 G of Piperidine;
 At least 2.56 KG but less than 3.2 KG of Piperonal;
 At least 12.8 G but less than 16 G of Propionic Anhydride;

At least 2.56 KG but less than 3.2 KG of Safrole;
 At least 3.2 KG but less than 4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

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

(8) List I Chemicals

Level 16

3.6 KG or more of Anthranilic Acid;
 At least 5.3 G but less than 7.1 G of Benzaldehyde;
 At least 120 G but less than 160 G of Benzyl Cyanide;
 At least 1.2 G but less than 1.6 G of Ergonovine;
 At least 2.4 G but less than 3.2 G of Ergotamine;
 At least 120 G but less than 160 G of Ethylamine;
 At least 13.2 G but less than 17.6 G of Hydriodic Acid;
 At least 1.92 KG but less than 2.56 KG of Isosafrole;
 At least 1.2 G but less than 1.6 G of Methylamine;
 4.8 KG or more of N-Acetylanthranilic Acid;
 At least 3 KG but less than 4 KG of N-Methylephedrine;
 At least 3 KG but less than 4 KG of N-Methylpseudoephedrine;
 At least 3.8 G but less than 5 G of Nitroethane;
 At least 60 G but less than 80 G of Norpseudoephedrine;
 At least 120 G but less than 160 G of Phenylacetic Acid;
 At least 60 G but less than 80 G of Piperidine;
 At least 1.92 KG but less than 2.56 KG of Piperonal;
 At least 9.6 G but less than 12.8 G of Propionic Anhydride;
 At least 1.92 KG but less than 2.56 KG of Safrole;
 At least 2.4 KG but less than 3.2 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

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

(9) List I Chemicals

Level 14

At least 2.7 KG but less than 3.6 KG of Anthranilic Acid;
 At least 3.6 G but less than 5.3 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 8.8 G but less than 13.2 G of Hydriodic Acid;

At least 1.44 KG but less than 1.92 KG of Isosafrole;
 At least 800 MG but less than 1.2 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 2.5 G but less than 3.8 G of Nitroethane;
 At least 40 G but less than 60 G 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.

(10) List I Chemicals

Level 12

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

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

Commentary

Statutory Provisions: 21 U.S.C. §§ 841(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 methylamine (a listed chemical) are used together to produce methamphetamine. Determine the offense level under each guideline separately. The offense level for methylamine is determined by using §2D1.11. The offense level for P2P is determined by using §2D1.1 (P2P is listed in the Drug Equivalency Table under Cocaine and Other Schedule I and II Stimulants (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. Cases Involving Multiple Chemicals.—
 - (A) Determining the Base Offense Level for Two or More Chemicals.—*Except as provided in subdivision (B), if the offense involves two or more chemicals, use the quantity of the single chemical that results in the greatest offense level, regardless of whether the chemicals are*

set forth in different tables or in different categories (*i.e.*, list I or list II) under subsection (d) of this guideline.

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

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

Example: The defendant was in possession of 80 grams of ephedrine and 50 grams of phenylpropanolamine, an aggregate quantity of 130 grams of such chemicals. The base offense level corresponding to that aggregate quantity is level 32.

- (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. 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.
6. Subsection (b)(3) applies if the conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. § 1319(c), or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 5124, 9603(b). In some cases, the enhancement under subsection (b)(3) may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under §5E1.1 (Restitution) and in fashioning appropriate conditions of supervision under §§5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release).

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.

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

SUPPLEMENT TO 2000 GUIDELINES MANUAL - MAY 1, 2001

447); November 1, 1995 (see Appendix C, amendment 519); May 1, 1997 (see Appendix C, amendment 541); November 1, 1997 (see Appendix C, amendment 557); November 1, 2000 (see Appendix C, amendments 605 and 606); May 1, 2001 (see Appendix C, amendment 611).

**PART G - OFFENSES INVOLVING PROSTITUTION,
SEXUAL EXPLOITATION OF MINORS, AND OBSCENITY**

1. PROMOTING PROSTITUTION OR PROHIBITED SEXUAL CONDUCT

§2G1.1. Promoting Prostitution or Prohibited Sexual Conduct

- (a) Base Offense Level:
- (1) **19**, if the offense involved a minor; or
 - (2) **14**, otherwise.
- (b) Specific Offense Characteristics
- (1) If the offense involved (A) prostitution; and (B) the use of physical force, or coercion by threats or drugs or in any manner, increase by **4** levels.
 - (2) If the offense involved a victim who had (A) not attained the age of 12 years, increase by **4** levels; or (B) attained the age of 12 years but not attained the age of 16 years, increase by **2** levels.
 - (3) If subsection (b)(2) applies; and—
 - (A) the defendant was a parent, relative, or legal guardian of the victim; or
 - (B) the victim was otherwise in the custody, care, or supervisory control of the defendant,increase by **2** levels.
 - (4) If subsection (b)(3) does not apply; and—
 - (A) the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prostitution; or
 - (B) a participant otherwise unduly influenced a minor to engage in prostitution,increase by **2** levels.
 - (5) If a computer or an Internet-access device was used to (A) persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prostitution; or (B) entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with a minor, increase by **2** levels.

(c) Cross References

- (1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a person less than 18 years of age to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply §2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).
- (2) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, apply §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse). If the offense involved criminal sexual abuse of a minor who had not attained the age of 12 years, §2A3.1 shall apply, regardless of the "consent" of the victim.
- (3) If the offense did not involve promoting prostitution, and neither subsection (c)(1) nor (c)(2) is applicable, apply §2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts) or §2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact), as appropriate.

(d) Special Instruction

- (1) If the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the promoting of prostitution or prohibited sexual conduct in respect to each victim had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 8 U.S.C. § 1328; 18 U.S.C. §§ 1591, 2421, 2422, 2423(a), 2425.

Application Notes:

1. For purposes of this guideline—

"Minor" means an individual who had not attained the age of 18 years.

"Participant" has the meaning given that term in Application Note 1 of §3B1.1 (Aggravating Role).

"Prohibited sexual conduct" has the meaning given that term in Application Note 1 of §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

"Promoting prostitution" means persuading, inducing, enticing, or coercing a person to engage in prostitution, or to travel to engage in, prostitution.

"Victim" means a person transported, persuaded, induced, enticed, or coerced to engage in, or travel for the purpose of engaging in, prostitution or prohibited sexual conduct, whether or not the person consented to the prostitution or prohibited sexual conduct. Accordingly, "victim" may include an undercover law enforcement officer.

2. *Subsection (b)(1) provides an enhancement for physical force, or coercion, that occurs as part of a prostitution offense and anticipates no bodily injury. If bodily injury results, an upward departure may be warranted. See Chapter Five, Part K (Departures). For purposes of subsection (b)(1)(B), "coercion" includes any form of conduct that negates the voluntariness of the behavior of the victim. This enhancement would apply, for example, in a case in which the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol. In the case of an adult victim, rather than a victim less than 18 years of age, this characteristic generally will not apply if the drug or alcohol was voluntarily taken.*

3. *For the purposes of §3B1.1 (Aggravating Role), a victim, as defined in this guideline, is considered a participant only if that victim assisted in the promoting of prostitution or prohibited sexual conduct in respect to another victim.*

4. *For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, prostitution or prohibited sexual conduct is to be treated as a separate victim. Consequently, multiple counts involving more than one victim are not to be grouped together under §3D1.2 (Groups of Closely-Related Counts). In addition, subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes the promoting of prostitution or prohibited sexual conduct in respect to more than one victim, whether specifically cited in the count of conviction, each such victim shall be treated as if contained in a separate count of conviction.*

5. *Subsection (b)(3) is intended to have broad application and includes offenses involving a victim less than 18 years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.*

6. *If the enhancement in subsection (b)(3) applies, do not apply subsection (b)(4) or §3B1.3 (Abuse of Position of Trust or Use of Special Skill).*

7. *The enhancement in subsection (b)(4)(A) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prostitution. Subsection (b)(4)(A) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(4)(A) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.*

The misrepresentation to which the enhancement in subsection (b)(4)(A) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prostitution. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

In determining whether subsection (b)(4)(B) applies, the court should closely consider the facts of the case to determine whether a participant's influence over the minor compromised the voluntariness of the minor's behavior.

In a case in which a participant is at least 10 years older than the minor, there shall be a rebuttable

presumption, for purposes of subsection (b)(4)(B), that such participant unduly influenced the minor to engage in prostitution. In such a case, some degree of undue influence can be presumed because of the substantial difference in age between the participant and the minor.

8. *Subsection (b)(5) provides an enhancement if a computer or an Internet-access device was used to (A) persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prostitution; or (B) entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with a minor. Subsection (b)(5)(A) is intended to apply only to the use of a computer or an Internet-access device to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(5)(A) would not apply to the use of a computer or an Internet-access device to obtain airline tickets for the minor from an airline's Internet site.*

9. *The cross reference in subsection (c)(1) is to be construed broadly to include all instances in which the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a person less than 18 years of age to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct. For purposes of subsection (c)(1), "sexually explicit conduct" has the meaning given that term in 18 U.S.C. § 2256.*

10. *Subsection (c)(2) provides a cross reference to §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) if the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse, as defined in 18 U.S.C. § 2241 or § 2242. For example, the cross reference to §2A3.1 shall apply if the offense involved criminal sexual abuse; and (A) the victim had not attained the age of 12 years (*see* 18 U.S.C. § 2241(c)); (B) the victim had attained the age of 12 years but had not attained the age of 16 years, and was placed in fear of death, serious bodily injury, or kidnaping (*see* 18 U.S.C. § 2241(a),(c)); or (C) the victim was threatened or placed in fear other than fear of death, serious bodily injury, or kidnaping (*see* 18 U.S.C. § 2242(1)).*

11. *The cross reference in subsection (c)(3) addresses the case in which the offense did not involve promoting prostitution, neither subsection (c)(1) nor (c)(2) is applicable, and the offense involved prohibited sexual conduct other than the conduct covered by subsection (c)(1) or (c)(2). In such case, the guideline for the underlying prohibited sexual conduct is to be used; *i.e.*, §2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts) or §2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact).*

12. *Upward Departure Provisions.—An upward departure may be warranted in either of the following circumstances:*
 - (A) *The defendant was convicted under 18 U.S.C. § 1591 and the offense involved a victim who had not attained the age of 14 years.*

 - (B) *The offense involved more than 10 victims.*

Background: This guideline covers offenses under chapter 117 of title 18, United States Code. Those offenses involve promoting prostitution or prohibited sexual conduct through a variety of means. Offenses that involve promoting prostitution under chapter 117 of such title are sentenced under this guideline, unless other prohibited sexual conduct occurs as part of the prostitution offense, in which case one of the cross references would apply. Offenses under chapter 117 of such title that do not involve promoting prostitution are to be sentenced under §2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or

Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse), §2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts) or §2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact), as appropriate, pursuant to the cross references provided in subsection (c).

This guideline also covers offenses under section 1591 of title 18, United States Code. These offenses involve recruiting or transporting a person in interstate commerce knowing either that (1) force, fraud, or coercion will be used to cause the person to engage in a commercial sex act; or (2) the person (A) had not attained the age of 18 years; and (B) will be caused to engage in a commercial sex act.

Historical Note: Effective November 1, 1987. Amended effective November 1, 1989 (see Appendix C, amendments 157 and 158); November 1, 1990 (see Appendix C, amendment 322); November 1, 1996 (see Appendix C, amendment 538); November 1, 2000 (see Appendix C, amendment 592); May 1, 2001 (see Appendix C, amendment 612).

2. SEXUAL EXPLOITATION OF A MINOR

§2G2.1. Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production

- (a) Base Offense Level: **27**
- (b) Specific Offense Characteristics
 - (1) If the offense involved a victim who had (A) not attained the age of twelve years, increase by **4** levels; or (B) attained the age of twelve years but not attained the age of sixteen years, increase by **2** levels.
 - (2) If the defendant was a parent, relative, or legal guardian of the minor involved in the offense, or if the minor was otherwise in the custody, care, or supervisory control of the defendant, increase by **2** levels.
 - (3) If, for the purpose of producing sexually explicit material, the offense involved (A) the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage sexually explicit conduct; or (B) the use of a computer or an Internet-access device to (i) persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct, or to otherwise solicit participation by a minor in such conduct; or (ii) solicit participation with a minor in sexually explicit conduct, increase by **2** levels.
- (c) Special Instruction
 - (1) If the offense involved the exploitation of more than one minor, Chapter Three, Part D (Multiple Counts) shall be applied as if the exploitation of each

minor had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1591, 2251(a), (b), (c)(1)(B), 2260.

Application Notes:

1. *For purposes of this guideline, "minor" means an individual who had not attained the age of 18 years.*
2. *For the purposes of Chapter Three, Part D (Multiple Counts), each minor exploited is to be treated as a separate victim. Consequently, multiple counts involving the exploitation of different minors are not to be grouped together under §3D1.2 (Groups of Closely Related Counts). Special instruction (c)(1) directs that if the relevant conduct of an offense of conviction includes more than one minor being exploited, whether specifically cited in the count of conviction or not, each such minor shall be treated as if contained in a separate count of conviction.*
3. *Subsection (b)(2) is intended to have broad application and includes offenses involving a minor entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this adjustment, the court should look to the actual relationship that existed between the defendant and the child and not simply to the legal status of the defendant-child relationship.*
4. *If the adjustment in subsection (b)(2) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).*
5. *The enhancement in subsection (b)(3)(A) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct for the purpose of producing sexually explicit material. Subsection (b)(3)(A) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(3)(A) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.*

The misrepresentation to which the enhancement in subsection (b)(3)(A) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct for the purpose of producing sexually explicit material. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

Subsection (b)(3)(B)(i) provides an enhancement if a computer or an Internet-access device was used to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct for the purpose of producing sexually explicit material or otherwise to solicit participation by a minor in such conduct for such purpose. Subsection (b)(3)(B)(i) is intended to apply only to the use of a computer or an Internet-access device to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement would not apply to the use of a computer or an Internet-access device to obtain airline tickets for the minor from an airline's Internet site.

6. Upward Departure Provisions.—*An upward departure may be warranted in either of the following circumstances:*
- (A) *The defendant was convicted under 18 U.S.C. § 1591 and the offense involved a victim who had not attained the age of 14 years.*
 - (B) *The offense involved more than 10 victims.*

Historical Note: Effective November 1, 1987. Amended effective November 1, 1989 (see Appendix C, amendment 161); November 1, 1990 (see Appendix C, amendment 324); November 1, 1991 (see Appendix C, amendment 400); November 1, 1996 (see Appendix C, amendment 537); November 1, 1997 (see Appendix C, amendment 575); November 1, 2000 (see Appendix C, amendment 592); May 1, 2001 (see Appendix C, amendment 612).

PART H - OFFENSES INVOLVING INDIVIDUAL RIGHTS

4. PEONAGE, INVOLUNTARY SERVITUDE, AND SLAVE TRADE

§2H4.1. Peonage, Involuntary Servitude, and Slave Trade

- (a) Base Offense Level (Apply the greater):
 - (1) **22**; or
 - (2) **18**, if the defendant was convicted of an offense under 18 U.S.C. § 1592.
- (b) Specific Offense Characteristics
 - (1) (A) If any victim sustained permanent or life-threatening bodily injury, increase by **4** levels; or (B) if any victim sustained serious bodily injury, increase by **2** levels.
 - (2) If (A) a dangerous weapon was used, increase by **4** levels; or (B) a dangerous weapon was brandished, or the use of a dangerous weapon was threatened, increase by **2** levels.
 - (3) If any victim was held in a condition of peonage or involuntary servitude for (A) more than one year, increase by **3** levels; (B) between 180 days and one year, increase by **2** levels; or (C) more than 30 days but less than 180 days, increase by **1** level.
 - (4) If any other felony offense was committed during the commission of, or in connection with, the peonage or involuntary servitude offense, increase to the greater of:
 - (A) **2** plus the offense level as determined above, or
 - (B) **2** plus the offense level from the offense guideline applicable to that other offense, but in no event greater than level **43**.

Commentary

Statutory Provisions: 18 U.S.C. §§ 241, 1581-1590, 1592.

Application Notes:

1. For purposes of this guideline—

"A dangerous weapon was used" means that a firearm was discharged, or that a firearm or other dangerous weapon was otherwise used. "The use of a dangerous weapon was threatened" means that the use of a dangerous weapon was threatened regardless of whether a dangerous weapon was present.

Definitions of "firearm," "dangerous weapon," "otherwise used," "serious bodily injury," and "permanent or life-threatening bodily injury" are found in the Commentary to §1B1.1 (Application Instructions).

2. *Under subsection (b)(4), "any other felony offense" means any conduct that constitutes a felony offense under federal, state, or local law (other than an offense that is itself covered by this subpart). When there is more than one such other offense, the most serious such offense (or group of closely related offenses in the case of offenses that would be grouped together under §3D1.2(d)) is to be used. See Application Note 3 of §1B1.5 (Interpretation of References to other Offense Guidelines).*
3. *If the offense involved the holding of more than ten victims in a condition of peonage or involuntary servitude, an upward departure may be warranted.*

Historical Note: Effective November 1, 1987. Amended effective November 1, 1995 (see Appendix C, amendment 521); May 1, 1997 (see Appendix C, amendment 542); November 1, 1997 (see Appendix C, amendment 559); May 1, 2001 (see Appendix C, amendment 612).

§2H4.2. Willful Violations of the Migrant and Seasonal Agricultural Worker Protection Act

- (a) Base Offense Level: **6**
- (b) Specific Offense Characteristics
 - (1) If the offense involved (i) serious bodily injury, increase by **4** levels; or (ii) bodily injury, increase by **2** levels.
 - (2) If the defendant committed any part of the instant offense subsequent to sustaining a civil or administrative adjudication for similar misconduct, increase by **2** levels.

Commentary

Statutory Provision: 29 U.S.C. § 1851.

Application Notes:

1. Definitions.—*For purposes of subsection (b)(1), "bodily injury" and "serious bodily injury" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).*
2. Application of Subsection (b)(2).—*Section 1851 of title 29, United States Code, covers a wide range of conduct. Accordingly, the enhancement in subsection (b)(2) applies only if the instant offense is*

similar to previous misconduct that resulted in a civil or administrative adjudication under the provisions of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. § 1801 et. seq.).

Historical Note: Effective May 1, 2001 (see Appendix C, amendment 612).

CHAPTER FIVE - DETERMINING THE SENTENCE

PART E - RESTITUTION, FINES, ASSESSMENTS, FORFEITURES

§5E1.1.

Restitution

- (a) In the case of an identifiable victim, the court shall --
 - (1) enter a restitution order for the full amount of the victim's loss, if such order is authorized under 18 U.S.C. § 1593, § 2248, § 2259, § 2264, § 2327, § 3663, or § 3663A; or
 - (2) impose a term of probation or supervised release with a condition requiring restitution for the full amount of the victim's loss, if the offense is not an offense for which restitution is authorized under 18 U.S.C. § 3663(a)(1) but otherwise meets the criteria for an order of restitution under that section.
- (b) *Provided*, that the provisions of subsection (a) do not apply --
 - (1) when full restitution has been made; or
 - (2) in the case of a restitution order under 18 U.S.C. § 3663; a restitution order under 18 U.S.C. § 3663A that pertains to an offense against property described in 18 U.S.C. § 3663A(c)(1)(A)(ii); or a condition of restitution imposed pursuant to subsection (a)(2) above, to the extent the court finds, from facts on the record, that (A) the number of identifiable victims is so large as to make restitution impracticable; or (B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.
- (c) If a defendant is ordered to make restitution to an identifiable victim and to pay a fine, the court shall order that any money paid by the defendant shall first be applied to satisfy the order of restitution.
- (d) In a case where there is no identifiable victim and the defendant was convicted under 21 U.S.C. § 841, § 848(a), § 849, § 856, § 861, or § 863, the court, taking into consideration the amount of public harm caused by the offense and other relevant factors, shall order an amount of community restitution not to exceed the fine imposed under §5E1.2.
- (e) A restitution order may direct the defendant to make a single, lump sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments. See 18 U.S.C. § 3664(f)(3)(A). An in-kind payment may be in the form of (1) return of property; (2) replacement of property; or (3) if the victim agrees, services rendered to the victim or to a person or organization other than the victim. See 18 U.S.C. § 3664(f)(4).
- (f) A restitution order may direct the defendant to make nominal periodic payments if the

court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.

(g) Special Instruction

- (1) This guideline applies only to a defendant convicted of an offense committed on or after November 1, 1997. Notwithstanding the provisions of §1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing), use the former §5E1.1 (set forth in Appendix C, amendment 571) in lieu of this guideline in any other case.

Commentary

Application Note:

1. *The court shall not order community restitution under subsection (d) if it appears likely that such an award would interfere with a forfeiture under Chapter 46 or 96 of Title 18, United States Code, or under the Controlled Substances Act (21 U.S.C. § 801 et seq.). See 18 U.S.C. § 3663(c)(4).*

Furthermore, a penalty assessment under 18 U.S.C. § 3013 or a fine under Subchapter C of Chapter 227 of Title 18, United States Code, shall take precedence over an order of community restitution under subsection (d). See 18 U.S.C. § 3663(c)(5).

Background: Section 3553(a)(7) of Title 18, United States Code, requires the court, "in determining the particular sentence to be imposed," to consider "the need to provide restitution to any victims of the offense." Orders of restitution are authorized under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327, 3663, and 3663A. For offenses for which an order of restitution is not authorized, restitution may be imposed as a condition of probation or supervised release.

Subsection (d) implements the instruction to the Commission in section 205 of the Antiterrorism and Effective Death Penalty Act of 1996. This provision directs the Commission to develop guidelines for community restitution in connection with certain drug offenses where there is no identifiable victim but the offense causes "public harm."

To the extent that any of the above-noted statutory provisions conflict with the provisions of this guideline, the applicable statutory provision shall control.

Historical Note: Effective November 1, 1987. Amended effective January 15, 1988 (see Appendix C, amendment 53); November 1, 1989 (see Appendix C, amendments 278, 279, and 302); November 1, 1991 (see Appendix C, amendment 383); November 1, 1993 (see Appendix C, amendment 501); November 1, 1995 (see Appendix C, amendment 530); November 1, 1997 (see Appendix C, amendment 571); May 1, 2001 (see Appendix C, amendment 612).

APPENDIX A - STATUTORY INDEX

INTRODUCTION

This index specifies the offense guideline section(s) in Chapter Two (Offense Conduct) applicable to the statute of conviction. If more than one guideline section is referenced for the particular statute, use the guideline most appropriate for the offense conduct charged in the count of which the defendant was convicted. For the rules governing the determination of the offense guideline section(s) from Chapter Two, and for any exceptions to those rules, see §1B1.2 (Applicable Guidelines).

Historical Note: Effective November 1, 1987. Amended effective November 1, 1989 (see Appendix C, amendments 296 and 297); November 1, 1993 (see Appendix C, amendment 496); November 1, 2000 (see Appendix C, amendment 591).

INDEX

<u>Statute</u>	<u>Guideline</u>	<u>Statute</u>	<u>Guideline</u>
7 U.S.C. § 6	2F1.1	7 U.S.C. § 195	2N2.1
7 U.S.C. § 6b(A)	2F1.1	7 U.S.C. § 270	2F1.1
7 U.S.C. § 6b(B)	2F1.1	7 U.S.C. § 281	2N2.1
7 U.S.C. § 6b(C)	2F1.1	7 U.S.C. § 472	2N2.1
7 U.S.C. § 6c	2F1.1	7 U.S.C. § 473c-1	2N2.1
7 U.S.C. § 6h	2F1.1	7 U.S.C. § 491	2N2.1
7 U.S.C. § 6o	2F1.1	7 U.S.C. § 499n	2N2.1
7 U.S.C. § 13(a)(1)	2B1.1	7 U.S.C. § 503	2N2.1
7 U.S.C. § 13(a)(2)	2F1.1	7 U.S.C. § 511d	2N2.1
7 U.S.C. § 13(a)(3)	2F1.1	7 U.S.C. § 511i	2N2.1
7 U.S.C. § 13(a)(4)	2F1.1	7 U.S.C. § 516	2N2.1
7 U.S.C. § 13(c)	2C1.3	7 U.S.C. § 610(g)	2C1.3
7 U.S.C. § 13(d)	2F1.2	7 U.S.C. § 2018(c)	2N2.1
7 U.S.C. § 13(f)	2F1.2	7 U.S.C. § 2024(b)	2F1.1
7 U.S.C. § 23	2F1.1	7 U.S.C. § 2024(c)	2F1.1
7 U.S.C. § 87b	2N2.1	7 U.S.C. § 6810	2N2.1
7 U.S.C. § 136	2Q1.2	8 U.S.C. § 1160(b)(7)(A)	2L2.1, 2L2.2
7 U.S.C. § 136j	2Q1.2	8 U.S.C. § 1185(a)(1)	2L1.2
7 U.S.C. § 136k	2Q1.2	8 U.S.C. § 1185(a)(2)	2L1.1
7 U.S.C. § 136l	2Q1.2	8 U.S.C. § 1185(a)(3)	2L2.1, 2L2.2
7 U.S.C. § 149	2N2.1	8 U.S.C. § 1185(a)(4)	2L2.1
7 U.S.C. § 150bb	2N2.1	8 U.S.C. § 1185(a)(5)	2L2.2
7 U.S.C. § 150gg	2N2.1	8 U.S.C. § 1252(e)	2L1.2
7 U.S.C. § 154	2N2.1	8 U.S.C. § 1255a(c)(6)	2L2.1, 2L2.2
7 U.S.C. § 156	2N2.1	8 U.S.C. § 1324(a)	2L1.1
7 U.S.C. § 157	2N2.1	8 U.S.C. § 1325(a)	2L1.2
7 U.S.C. § 158	2N2.1	8 U.S.C. § 1325(b)	2L2.1, 2L2.2
7 U.S.C. § 161	2N2.1	8 U.S.C. § 1325(c)	2L2.1, 2L2.2
7 U.S.C. § 163	2N2.1	8 U.S.C. § 1326	2L1.2

<u>Statute</u>	<u>Guideline</u>	<u>Statute</u>	<u>Guideline</u>
8 U.S.C. § 1327	2L1.1	15 U.S.C. § 1987	2N3.1(for offenses committed prior to July 5, 1994)
8 U.S.C. § 1328	2G1.1		
12 U.S.C. § 631	2F1.1	15 U.S.C. § 1988	2N3.1(for offenses committed prior to July 5, 1994)
15 U.S.C. § 1	2R1.1		
15 U.S.C. § 50	2F1.1, 2J1.1, 2J1.5	15 U.S.C. § 1990c	2N3.1(for offenses committed prior to July 5, 1994)
15 U.S.C. § 77e	2F1.1		
15 U.S.C. § 77q	2F1.1	15 U.S.C. § 2614	2Q1.2
15 U.S.C. § 77x	2F1.1	15 U.S.C. § 2615	2Q1.2
15 U.S.C. § 78j	2F1.1, 2F1.2	16 U.S.C. § 114	2B1.1, 2B1.3
15 U.S.C. § 78dd-1	2B4.1	16 U.S.C. § 117c	2B1.1, 2B1.3
15 U.S.C. § 78dd-2	2B4.1	16 U.S.C. § 123	2B1.1, 2B1.3, 2B2.3
15 U.S.C. § 78ff	2B4.1, 2F1.1	16 U.S.C. § 146	2B1.1, 2B1.3, 2B2.3
15 U.S.C. § 80b-6	2F1.1	16 U.S.C. § 413	2B1.1, 2B1.3
15 U.S.C. § 158	2F1.1	16 U.S.C. § 433	2B1.1, 2B1.3
15 U.S.C. § 645(a)	2F1.1	16 U.S.C. § 668(a)	2Q2.1
15 U.S.C. § 645(b)	2B1.1, 2F1.1	16 U.S.C. § 707(b)	2Q2.1
15 U.S.C. § 645(c)	2B1.1, 2F1.1	16 U.S.C. § 742j-1(a)	2Q2.1
15 U.S.C. § 714m(a)	2F1.1	16 U.S.C. § 773e(a)(2), (3),(4),(6)	2A2.4
15 U.S.C. § 714m(b)	2B1.1, 2F1.1	16 U.S.C. § 773g	2A2.4
15 U.S.C. § 714m(c)	2B1.1	16 U.S.C. § 831t(a)	2B1.1
15 U.S.C. § 1172	2E3.1	16 U.S.C. § 831t(b)	2F1.1
15 U.S.C. § 1173	2E3.1	16 U.S.C. § 831t(c)	2F1.1, 2X1.1
15 U.S.C. § 1174	2E3.1	16 U.S.C. § 916c	2Q2.1
15 U.S.C. § 1175	2E3.1	16 U.S.C. § 916f	2Q2.1
15 U.S.C. § 1176	2E3.1	16 U.S.C. § 973c(a)(8), (10),(11),(12)	2A2.4
15 U.S.C. § 1281	2B1.3(for offenses committed prior to July 5, 1994)	16 U.S.C. § 973e	2A2.4
15 U.S.C. § 1644	2F1.1	16 U.S.C. § 1029	2A2.4
15 U.S.C. § 1681q	2F1.1	16 U.S.C. § 1030	2A2.4
15 U.S.C. § 1693n(a)	2F1.1	16 U.S.C. § 1174(a)	2Q2.1
15 U.S.C. § 1983	2N3.1(for offenses committed prior to July 5, 1994)	16 U.S.C. § 1338(a)	2Q2.1
15 U.S.C. § 1984	2N3.1(for offenses committed prior to July 5, 1994)	16 U.S.C. § 1372	2Q2.1
15 U.S.C. § 1985	2N3.1(for offenses committed prior to July 5, 1994)	16 U.S.C. § 1375(b)	2Q2.1
		16 U.S.C. § 1387	2Q2.1
		16 U.S.C. § 1417(a)(5), (6),(b)(2)	2A2.4
		16 U.S.C. § 1540(b)	2Q2.1
		16 U.S.C. § 1857(1)(D)	2A2.4
15 U.S.C. § 1986	2N3.1(for offenses committed prior to July 5, 1994)	16 U.S.C. § 1857(1)(E)	2A2.4
		16 U.S.C. § 1857(1)(F)	2A2.4

<u>Statute</u>	<u>Guideline</u>	<u>Statute</u>	<u>Guideline</u>
16 U.S.C. § 1857(1)(H)	2A2.4		committed prior to September 13, 1994)
16 U.S.C. § 1859	2A2.4	18 U.S.C. § 113(a)(1)	2A2.1
16 U.S.C. § 2435(4)	2A2.4	18 U.S.C. § 113(a)(2)	2A2.2
16 U.S.C. § 2435(5)	2A2.4	18 U.S.C. § 113(a)(3)	2A2.2
16 U.S.C. § 2435(6)	2A2.4	18 U.S.C. § 113(a)(5) (Class A misdemeanor provisions only)	2A2.3
16 U.S.C. § 2435(7)	2A2.4	18 U.S.C. § 113(a)(6)	2A2.2
16 U.S.C. § 2438	2A2.4	18 U.S.C. § 113(a)(7)	2A2.3
16 U.S.C. § 3373(d)	2Q2.1	18 U.S.C. § 113(b)	2A2.2 (for offenses committed prior to September 13, 1994)
16 U.S.C. § 3606	2A2.4	18 U.S.C. § 113(c)	2A2.2 (for offenses committed prior to September 13, 1994)
16 U.S.C. § 3637(a)(2), (3),(4),(6),(c)	2A2.4	18 U.S.C. § 113(f)	2A2.2 (for offenses committed prior to September 13, 1994)
16 U.S.C. § 4223	2Q2.1	18 U.S.C. § 114	2A2.2
16 U.S.C. § 4224	2Q2.1	18 U.S.C. § 115(a)	2A1.1, 2A1.2, 2A1.3, 2A2.1, 2A2.2, 2A2.3, 2A4.1, 2A6.1, 2X1.1
16 U.S.C. § 4910(a)	2Q2.1	18 U.S.C. § 115(b)(1)	2A2.1, 2A2.2, 2A2.3
16 U.S.C. § 4912(a)(2)(A)	2Q2.1	18 U.S.C. § 115(b)(2)	2A4.1, 2X1.1
16 U.S.C. § 5009(5),(6), (7),(8)	2A2.4	18 U.S.C. § 115(b)(3)	2A1.1, 2A1.2, 2A2.1, 2X1.1
16 U.S.C. § 5010(b)	2A2.4	18 U.S.C. § 115(b)(4)	2A6.1
17 U.S.C. § 506(a)	2B5.3	18 U.S.C. § 152	2B4.1, 2F1.1, 2J1.3
18 U.S.C. § 2	2X2.1	18 U.S.C. § 153	2B1.1, 2F1.1
18 U.S.C. § 3	2X3.1	18 U.S.C. § 155	2F1.1
18 U.S.C. § 4	2X4.1	18 U.S.C. § 201(b)(1)	2C1.1
18 U.S.C. § 32(a),(b)	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A4.1, 2A5.1, 2A5.2, 2B1.3, 2K1.4, 2X1.1	18 U.S.C. § 201(b)(2)	2C1.1
18 U.S.C. § 32(c)	2A6.1	18 U.S.C. § 201(b)(3)	2J1.3
18 U.S.C. § 33	2A2.1, 2A2.2, 2B1.3, 2K1.4	18 U.S.C. § 201(b)(4)	2J1.3
18 U.S.C. § 34	2A1.1, 2A1.2, 2A1.3, 2A1.4	18 U.S.C. § 201(c)(1)	2C1.2
18 U.S.C. § 35(b)	2A6.1	18 U.S.C. § 201(c)(2)	2J1.9
18 U.S.C. § 36	2D1.1	18 U.S.C. § 201(c)(3)	2J1.9
18 U.S.C. § 37	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A3.1, 2A3.4, 2A4.1, 2A5.1, 2A5.2, 2B1.3, 2B3.1, 2K1.4, 2X1.1	18 U.S.C. § 203	2C1.3
18 U.S.C. § 43	2B1.3	18 U.S.C. § 204	2C1.3
18 U.S.C. § 81	2K1.4	18 U.S.C. § 205	2C1.3
18 U.S.C. § 111	2A2.2, 2A2.4	18 U.S.C. § 207	2C1.3
18 U.S.C. § 112(a)	2A2.1, 2A2.2, 2A2.3, 2A4.1, 2B1.3, 2K1.4	18 U.S.C. § 208	2C1.3
18 U.S.C. § 113(a)	2A2.1 (for offenses	18 U.S.C. § 209	2C1.4
		18 U.S.C. § 210	2C1.5

<u>Statute</u>	<u>Guideline</u>	<u>Statute</u>	<u>Guideline</u>
18 U.S.C. § 211	2C1.5	18 U.S.C. § 472	2B5.1, 2F1.1
18 U.S.C. § 212	2C1.6	18 U.S.C. § 473	2B5.1, 2F1.1
18 U.S.C. § 213	2C1.6	18 U.S.C. § 474	2B5.1, 2F1.1
18 U.S.C. § 214	2C1.6	18 U.S.C. § 474A	2B5.1, 2F1.1
18 U.S.C. § 215	2B4.1	18 U.S.C. § 476	2B5.1, 2F1.1
18 U.S.C. § 217	2C1.6	18 U.S.C. § 477	2B5.1, 2F1.1
18 U.S.C. § 219	2C1.3	18 U.S.C. § 478	2F1.1
18 U.S.C. § 224	2B4.1	18 U.S.C. § 479	2F1.1
18 U.S.C. § 225	2B1.1, 2B4.1, 2F1.1	18 U.S.C. § 480	2F1.1
18 U.S.C. § 228	2J1.1	18 U.S.C. § 481	2F1.1
18 U.S.C. § 241	2H1.1, 2H2.1, 2H4.1	18 U.S.C. § 482	2F1.1
18 U.S.C. § 242	2H1.1, 2H2.1	18 U.S.C. § 483	2F1.1
18 U.S.C. § 245(b)	2H1.1, 2H2.1, 2J1.2	18 U.S.C. § 484	2B5.1, 2F1.1
18 U.S.C. § 246	2H1.1	18 U.S.C. § 485	2B5.1, 2F1.1
18 U.S.C. § 247	2H1.1	18 U.S.C. § 486	2B5.1, 2F1.1
18 U.S.C. § 281	2C1.3	18 U.S.C. § 487	2B5.1
18 U.S.C. § 285	2B1.1, 2F1.1	18 U.S.C. § 488	2F1.1
18 U.S.C. § 286	2F1.1	18 U.S.C. § 490	2B5.1
18 U.S.C. § 287	2F1.1	18 U.S.C. § 491	2B5.1, 2F1.1
18 U.S.C. § 288	2F1.1	18 U.S.C. § 493	2B5.1, 2F1.1
18 U.S.C. § 289	2F1.1	18 U.S.C. § 494	2F1.1
18 U.S.C. § 332	2B1.1, 2F1.1	18 U.S.C. § 495	2F1.1
18 U.S.C. § 335	2F1.1	18 U.S.C. § 496	2F1.1, 2T3.1
18 U.S.C. § 342	2D2.3	18 U.S.C. § 497	2F1.1
18 U.S.C. § 351(a)	2A1.1, 2A1.2, 2A1.3, 2A1.4	18 U.S.C. § 498	2F1.1
18 U.S.C. § 351(b)	2A1.1, 2A4.1	18 U.S.C. § 499	2F1.1
18 U.S.C. § 351(c)	2A2.1, 2A4.1	18 U.S.C. § 500	2B1.1, 2B5.1, 2F1.1
18 U.S.C. § 351(d)	2A1.5, 2A4.1	18 U.S.C. § 501	2B5.1, 2F1.1
18 U.S.C. § 351(e)	2A2.2, 2A2.3	18 U.S.C. § 502	2F1.1
18 U.S.C. § 371	2A1.5, 2C1.7, 2T1.9, 2K2.1 (if a conspiracy to violate 18 U.S.C. § 924(c)), 2X1.1	18 U.S.C. § 503	2F1.1
		18 U.S.C. § 505	2F1.1, 2J1.2
		18 U.S.C. § 506	2F1.1
18 U.S.C. § 372	2X1.1	18 U.S.C. § 507	2F1.1
18 U.S.C. § 373	2A1.5, 2X1.1	18 U.S.C. § 508	2F1.1
18 U.S.C. § 401	2J1.1	18 U.S.C. § 509	2F1.1
18 U.S.C. § 403	2J1.1	18 U.S.C. § 510	2F1.1
18 U.S.C. § 440	2C1.3	18 U.S.C. § 511	2B6.1
18 U.S.C. § 442	2C1.3	18 U.S.C. § 513	2F1.1
18 U.S.C. § 470	2B5.1, 2F1.1	18 U.S.C. § 514	2F1.1
18 U.S.C. § 471	2B5.1, 2F1.1	18 U.S.C. § 541	2T3.1

<u>Statute</u>	<u>Guideline</u>	<u>Statute</u>	<u>Guideline</u>
18 U.S.C. § 542	2T3.1	18 U.S.C. § 663	2B1.1, 2F1.1
18 U.S.C. § 543	2T3.1	18 U.S.C. § 664	2B1.1
18 U.S.C. § 544	2T3.1	18 U.S.C. § 665(a)	2B1.1, 2F1.1
18 U.S.C. § 545	2Q2.1, 2T3.1	18 U.S.C. § 665(b)	2B3.3, 2C1.1
18 U.S.C. § 547	2T3.1	18 U.S.C. § 665(c)	2J1.2
18 U.S.C. § 548	2T3.1	18 U.S.C. § 666(a)(1)(A)	2B1.1, 2F1.1
18 U.S.C. § 549	2B1.1, 2T3.1	18 U.S.C. § 666(a)(1)(B)	2C1.1, 2C1.2
18 U.S.C. § 550	2T3.1	18 U.S.C. § 666(a)(2)	2C1.1, 2C1.2
18 U.S.C. § 551	2J1.2, 2T3.1	18 U.S.C. § 667	2B1.1
18 U.S.C. § 552	2G3.1	18 U.S.C. § 668	2B1.1
18 U.S.C. § 553(a)(1)	2B1.1	18 U.S.C. § 669	2B1.1
18 U.S.C. § 553(a)(2)	2B1.1, 2B6.1	18 U.S.C. § 709	2F1.1
18 U.S.C. § 592	2H2.1	18 U.S.C. § 712	2F1.1
18 U.S.C. § 593	2H2.1	18 U.S.C. § 751	2P1.1
18 U.S.C. § 594	2H2.1	18 U.S.C. § 752	2P1.1, 2X3.1
18 U.S.C. § 597	2H2.1	18 U.S.C. § 753	2P1.1
18 U.S.C. § 608	2H2.1	18 U.S.C. § 755	2P1.1
18 U.S.C. § 611	2H2.1	18 U.S.C. § 756	2P1.1
18 U.S.C. § 641	2B1.1	18 U.S.C. § 757	2P1.1, 2X3.1
18 U.S.C. § 642	2B5.1, 2F1.1	18 U.S.C. § 758	2A2.4
18 U.S.C. § 643	2B1.1	18 U.S.C. § 793(a)-(c)	2M3.2
18 U.S.C. § 644	2B1.1	18 U.S.C. § 793(d),(e)	2M3.2, 2M3.3
18 U.S.C. § 645	2B1.1	18 U.S.C. § 793(f)	2M3.4
18 U.S.C. § 646	2B1.1	18 U.S.C. § 793(g)	2M3.2, 2M3.3
18 U.S.C. § 647	2B1.1	18 U.S.C. § 794	2M3.1
18 U.S.C. § 648	2B1.1	18 U.S.C. § 798	2M3.3
18 U.S.C. § 649	2B1.1	18 U.S.C. § 831	2M6.1
18 U.S.C. § 650	2B1.1	18 U.S.C. § 842(a)-(e)	2K1.3
18 U.S.C. § 651	2B1.1	18 U.S.C. § 842(f)	2K1.6
18 U.S.C. § 652	2B1.1	18 U.S.C. § 842(g)	2K1.6
18 U.S.C. § 653	2B1.1	18 U.S.C. § 842(h),(i)	2K1.3
18 U.S.C. § 654	2B1.1	18 U.S.C. § 842(j)	2K1.1
18 U.S.C. § 655	2B1.1	18 U.S.C. § 842(k)	2K1.1
18 U.S.C. § 656	2B1.1, 2F1.1	18 U.S.C. § 842(l)-(o)	2K1.3
18 U.S.C. § 657	2B1.1, 2F1.1	18 U.S.C. § 844(b)	2K1.1
18 U.S.C. § 658	2B1.1	18 U.S.C. § 844(d)	2K1.3
18 U.S.C. § 659	2B1.1, 2F1.1	18 U.S.C. § 844(e)	2A6.1
18 U.S.C. § 660	2B1.1	18 U.S.C. § 844(f)	2K1.4, 2X1.1
18 U.S.C. § 661	2B1.1	18 U.S.C. § 844(g)	2K1.3
18 U.S.C. § 662	2B1.1	18 U.S.C. § 844(h)	2K2.4 (2K1.4 for offenses committed

<u>Statute</u>	<u>Guideline</u>	<u>Statute</u>	<u>Guideline</u>
	prior to November 18, 1988)	18 U.S.C. § 924(h)	2K2.1
18 U.S.C. § 844(i)	2K1.4	18 U.S.C. § 924(i)	2K2.1
18 U.S.C. § 844(m)	2K1.3	18 U.S.C. § 924(j)(1)	2A1.1, 2A1.2
18 U.S.C. § 844(n)	2X1.1	18 U.S.C. § 924(j)(2)	2A1.3, 2A1.4
18 U.S.C. § 844(o)	2K2.4	18 U.S.C. § 924(k)-(o)	2K2.1
18 U.S.C. § 871	2A6.1	18 U.S.C. § 929(a)	2K2.4
18 U.S.C. § 872	2C1.1	18 U.S.C. § 930	2K2.5
18 U.S.C. § 873	2B3.3	18 U.S.C. § 956	2A1.5, 2X1.1
18 U.S.C. § 874	2B3.2, 2B3.3	18 U.S.C. § 970(a)	2B1.3, 2K1.4
18 U.S.C. § 875(a)	2A4.2, 2B3.2	18 U.S.C. § 1001	2F1.1
18 U.S.C. § 875(b)	2B3.2	18 U.S.C. § 1002	2F1.1
18 U.S.C. § 875(c)	2A6.1	18 U.S.C. § 1003	2B5.1, 2F1.1
18 U.S.C. § 875(d)	2B3.2, 2B3.3	18 U.S.C. § 1004	2F1.1
18 U.S.C. § 876	2A4.2, 2A6.1, 2B3.2, 2B3.3	18 U.S.C. § 1005	2F1.1
18 U.S.C. § 877	2A4.2, 2A6.1, 2B3.2, 2B3.3	18 U.S.C. § 1006	2F1.1, 2S1.3
18 U.S.C. § 878(a)	2A6.1	18 U.S.C. § 1007	2F1.1, 2S1.3
18 U.S.C. § 878(b)	2B3.2	18 U.S.C. § 1010	2F1.1
18 U.S.C. § 879	2A6.1	18 U.S.C. § 1011	2F1.1
18 U.S.C. § 880	2B1.1	18 U.S.C. § 1012	2C1.3, 2F1.1
18 U.S.C. § 892	2E2.1	18 U.S.C. § 1013	2F1.1
18 U.S.C. § 893	2E2.1	18 U.S.C. § 1014	2F1.1
18 U.S.C. § 894	2E2.1	18 U.S.C. § 1015	2F1.1, 2J1.3, 2L2.1, 2L2.2
18 U.S.C. § 911	2F1.1, 2L2.2	18 U.S.C. § 1016	2F1.1
18 U.S.C. § 912	2J1.4	18 U.S.C. § 1017	2F1.1
18 U.S.C. § 913	2J1.4	18 U.S.C. § 1018	2F1.1
18 U.S.C. § 914	2F1.1	18 U.S.C. § 1019	2F1.1
18 U.S.C. § 915	2F1.1	18 U.S.C. § 1020	2F1.1
18 U.S.C. § 917	2F1.1	18 U.S.C. § 1021	2F1.1
18 U.S.C. § 922(a)-(p)	2K2.1	18 U.S.C. § 1022	2F1.1
18 U.S.C. § 922(q)	2K2.5	18 U.S.C. § 1023	2B1.1, 2F1.1
18 U.S.C. § 922(r)-(w)	2K2.1	18 U.S.C. § 1024	2B1.1
18 U.S.C. § 922(x)(1)	2K2.1	18 U.S.C. § 1025	2F1.1
18 U.S.C. § 923	2K2.1	18 U.S.C. § 1026	2F1.1
18 U.S.C. § 924(a)	2K2.1	18 U.S.C. § 1027	2E5.3
18 U.S.C. § 924(b)	2K2.1	18 U.S.C. § 1028	2F1.1, 2L2.1, 2L2.2
18 U.S.C. § 924(c)	2K2.4	18 U.S.C. § 1029	2F1.1
18 U.S.C. § 924(e)	2K2.1 (see also 4B1.4)	18 U.S.C. § 1030(a)(1)	2M3.2
18 U.S.C. § 924(f)	2K2.1	18 U.S.C. § 1030(a)(2)	2B1.1
18 U.S.C. § 924(g)	2K2.1	18 U.S.C. § 1030(a)(3)	2B2.3
		18 U.S.C. § 1030(a)(4)	2F1.1

<u>Statute</u>	<u>Guideline</u>	<u>Statute</u>	<u>Guideline</u>
18 U.S.C. § 1030(a)(5)	2B1.3	18 U.S.C. § 1302	2E3.1
18 U.S.C. § 1030(a)(6)	2F1.1	18 U.S.C. § 1303	2E3.1
18 U.S.C. § 1030(a)(7)	2B3.2	18 U.S.C. § 1304	2E3.1
18 U.S.C. § 1030(b)	2X1.1	18 U.S.C. § 1306	2E3.1
18 U.S.C. § 1031	2F1.1	18 U.S.C. § 1341	2C1.7, 2F1.1
18 U.S.C. § 1032	2B4.1, 2F1.1	18 U.S.C. § 1342	2C1.7, 2F1.1
18 U.S.C. § 1033	2B1.1, 2F1.1, 2J1.2	18 U.S.C. § 1343	2C1.7, 2F1.1
18 U.S.C. § 1035	2F1.1	18 U.S.C. § 1344	2F1.1
18 U.S.C. § 1071	2X3.1	18 U.S.C. § 1347	2F1.1
18 U.S.C. § 1072	2X3.1	18 U.S.C. § 1361	2B1.3
18 U.S.C. § 1073	2J1.5, 2J1.6	18 U.S.C. § 1362	2B1.3, 2K1.4
18 U.S.C. § 1082	2E3.1	18 U.S.C. § 1363	2B1.3, 2K1.4
18 U.S.C. § 1084	2E3.1	18 U.S.C. § 1364	2K1.4
18 U.S.C. § 1091	2H1.3	18 U.S.C. § 1365(a)	2N1.1
18 U.S.C. § 1111(a)	2A1.1, 2A1.2	18 U.S.C. § 1365(b)	2N1.3
18 U.S.C. § 1112	2A1.3, 2A1.4	18 U.S.C. § 1365(c)	2N1.2
18 U.S.C. § 1113	2A2.1, 2A2.2	18 U.S.C. § 1365(d)	2N1.2
18 U.S.C. § 1114	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1	18 U.S.C. § 1365(e)	2N1.1
18 U.S.C. § 1115	2A1.4	18 U.S.C. § 1366	2B1.3
18 U.S.C. § 1116	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1	18 U.S.C. § 1422	2C1.2, 2F1.1
18 U.S.C. § 1117	2A1.5	18 U.S.C. § 1423	2L2.2
18 U.S.C. § 1118	2A1.1, 2A1.2	18 U.S.C. § 1424	2L2.2
18 U.S.C. § 1119	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1	18 U.S.C. § 1425	2L2.1, 2L2.2
18 U.S.C. § 1120	2A1.1, 2A1.2, 2A1.3, 2A1.4	18 U.S.C. § 1426	2L2.1, 2L2.2
18 U.S.C. § 1121	2A1.1, 2A1.2	18 U.S.C. § 1427	2L2.1
18 U.S.C. § 1153	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A3.1, 2A3.2, 2A3.3, 2A3.4, 2A4.1, 2B1.1, 2B2.1, 2B3.1, 2K1.4	18 U.S.C. § 1428	2L2.5
18 U.S.C. § 1163	2B1.1	18 U.S.C. § 1429	2J1.1
18 U.S.C. § 1167	2B1.1	18 U.S.C. § 1460	2G3.1
18 U.S.C. § 1168	2B1.1	18 U.S.C. § 1461	2G3.1
18 U.S.C. § 1201(a)	2A4.1	18 U.S.C. § 1462	2G3.1
18 U.S.C. § 1201(c),(d)	2X1.1	18 U.S.C. § 1463	2G3.1
18 U.S.C. § 1202	2A4.2	18 U.S.C. § 1464	2G3.2
18 U.S.C. § 1203	2A4.1, 2X1.1	18 U.S.C. § 1465	2G3.1
18 U.S.C. § 1204	2J1.2	18 U.S.C. § 1466	2G3.1
18 U.S.C. § 1301	2E3.1	18 U.S.C. § 1468	2G3.2
		18 U.S.C. § 1470	2G3.1
		18 U.S.C. § 1501	2A2.2, 2A2.4
		18 U.S.C. § 1502	2A2.4
		18 U.S.C. § 1503	2J1.2
		18 U.S.C. § 1505	2J1.2

<u>Statute</u>	<u>Guideline</u>	<u>Statute</u>	<u>Guideline</u>
18 U.S.C. § 1506	2J1.2	18 U.S.C. § 1708	2B1.1, 2F1.1
18 U.S.C. § 1507	2J1.2	18 U.S.C. § 1709	2B1.1
18 U.S.C. § 1508	2J1.2	18 U.S.C. § 1710	2B1.1
18 U.S.C. § 1509	2J1.2	18 U.S.C. § 1711	2B1.1
18 U.S.C. § 1510	2J1.2	18 U.S.C. § 1712	2F1.1
18 U.S.C. § 1511	2E3.1, 2J1.2	18 U.S.C. § 1716 (felony provisions only)	2K1.3, 2K3.2
18 U.S.C. § 1512(a)	2A1.1, 2A1.2, 2A1.3, 2A2.1	18 U.S.C. § 1716C	2F1.1
18 U.S.C. § 1512(b)	2A1.2, 2A2.2, 2J1.2	18 U.S.C. § 1716D	2Q2.1
18 U.S.C. § 1512(c)	2J1.2	18 U.S.C. § 1720	2F1.1
18 U.S.C. § 1513	2J1.2	18 U.S.C. § 1721	2B1.1
18 U.S.C. § 1516	2J1.2	18 U.S.C. § 1728	2F1.1
18 U.S.C. § 1517	2J1.2	18 U.S.C. § 1735	2G3.1
18 U.S.C. § 1518	2J1.2	18 U.S.C. § 1737	2G3.1
18 U.S.C. § 1541	2L2.1	18 U.S.C. § 1751(a)	2A1.1, 2A1.2, 2A1.3, 2A1.4
18 U.S.C. § 1542	2L2.1, 2L2.2	18 U.S.C. § 1751(b)	2A4.1
18 U.S.C. § 1543	2L2.1, 2L2.2	18 U.S.C. § 1751(c)	2A2.1, 2A4.1, 2X1.1
18 U.S.C. § 1544	2L2.1, 2L2.2	18 U.S.C. § 1751(d)	2A1.5, 2A4.1, 2X1.1
18 U.S.C. § 1546	2L2.1, 2L2.2	18 U.S.C. § 1751(e)	2A2.2, 2A2.3
18 U.S.C. § 1581	2H4.1	18 U.S.C. § 1791	2P1.2
18 U.S.C. § 1582	2H4.1	18 U.S.C. § 1792	2P1.3
18 U.S.C. § 1583	2H4.1	18 U.S.C. § 1831	2B1.1
18 U.S.C. § 1584	2H4.1	18 U.S.C. § 1832	2B1.1
18 U.S.C. § 1585	2H4.1	18 U.S.C. § 1851	2B1.1
18 U.S.C. § 1586	2H4.1	18 U.S.C. § 1852	2B1.1, 2B1.3
18 U.S.C. § 1587	2H4.1	18 U.S.C. § 1853	2B1.1, 2B1.3
18 U.S.C. § 1588	2H4.1	18 U.S.C. § 1854	2B1.1, 2B1.3
18 U.S.C. § 1589	2H4.1	18 U.S.C. § 1855	2K1.4
18 U.S.C. § 1590	2H4.1	18 U.S.C. § 1857	2B1.3, 2B2.3
18 U.S.C. § 1591	2G1.1, 2G2.1	18 U.S.C. § 1860	2R1.1
18 U.S.C. § 1592	2H4.1	18 U.S.C. § 1861	2F1.1
18 U.S.C. § 1621	2J1.3	18 U.S.C. § 1864	2Q1.6
18 U.S.C. § 1622	2J1.3	18 U.S.C. § 1901	2C1.3
18 U.S.C. § 1623	2J1.3	18 U.S.C. § 1902	2F1.2
18 U.S.C. § 1700	2H3.3	18 U.S.C. § 1903	2C1.3
18 U.S.C. § 1702	2B1.1, 2B1.3, 2H3.3	18 U.S.C. § 1905	2H3.1
18 U.S.C. § 1703	2B1.1, 2B1.3, 2H3.3	18 U.S.C. § 1909	2C1.3, 2C1.4
18 U.S.C. § 1704	2B1.1, 2F1.1	18 U.S.C. § 1915	2T3.1
18 U.S.C. § 1705	2B1.3	18 U.S.C. § 1919	2F1.1
18 U.S.C. § 1706	2B1.3	18 U.S.C. § 1920	2F1.1
18 U.S.C. § 1707	2B1.1		

<u>Statute</u>	<u>Guideline</u>	<u>Statute</u>	<u>Guideline</u>
18 U.S.C. § 1923	2F1.1	18 U.S.C. § 2154	2M2.1
18 U.S.C. § 1951	2B3.1, 2B3.2, 2B3.3, 2C1.1	18 U.S.C. § 2155	2M2.3
18 U.S.C. § 1952	2E1.2	18 U.S.C. § 2156	2M2.3
18 U.S.C. § 1952A	2E1.4	18 U.S.C. § 2197	2F1.1
18 U.S.C. § 1952B	2E1.3	18 U.S.C. § 2199	2B1.1, 2B2.3
18 U.S.C. § 1953	2E3.1	18 U.S.C. § 2231	2A2.2, 2A2.3
18 U.S.C. § 1954	2E5.1	18 U.S.C. § 2232	2J1.2
18 U.S.C. § 1955	2E3.1	18 U.S.C. § 2233	2B1.1, 2B3.1
18 U.S.C. § 1956	2S1.1	18 U.S.C. § 2241	2A3.1
18 U.S.C. § 1957	2S1.2	18 U.S.C. § 2242	2A3.1
18 U.S.C. § 1958	2E1.4	18 U.S.C. § 2243(a)	2A3.2
18 U.S.C. § 1959	2E1.3	18 U.S.C. § 2243(b)	2A3.3
18 U.S.C. § 1962	2E1.1	18 U.S.C. § 2244	2A3.4
18 U.S.C. § 1963	2E1.1	18 U.S.C. § 2251(a),(b)	2G2.1
18 U.S.C. § 1991	2A2.1, 2X1.1	18 U.S.C. § 2251(c)(1)(A)	2G2.2
18 U.S.C. § 1992	2A1.1, 2B1.3, 2K1.4, 2X1.1	18 U.S.C. § 2251(c)(1)(B)	2G2.1
18 U.S.C. § 2071	2B1.1, 2B1.3	18 U.S.C. § 2251A	2G2.3
18 U.S.C. § 2072	2F1.1	18 U.S.C. § 2252	2G2.2, 2G2.4
18 U.S.C. § 2073	2F1.1	18 U.S.C. § 2252A	2G2.2, 2G2.4
18 U.S.C. § 2111	2B3.1	18 U.S.C. § 2257	2G2.5
18 U.S.C. § 2112	2B3.1	18 U.S.C. § 2260	2G2.1, 2G2.2
18 U.S.C. § 2113(a)	2B1.1, 2B2.1, 2B3.1, 2B3.2	18 U.S.C. § 2261	2A6.2
18 U.S.C. § 2113(b)	2B1.1	18 U.S.C. § 2261A	2A6.2
18 U.S.C. § 2113(c)	2B1.1	18 U.S.C. § 2262	2A6.2
18 U.S.C. § 2113(d)	2B3.1	18 U.S.C. § 2271	2X1.1
18 U.S.C. § 2113(e)	2A1.1, 2B3.1	18 U.S.C. § 2272	2F1.1
18 U.S.C. § 2114(a)	2B3.1	18 U.S.C. § 2275	2B1.3, 2K1.4
18 U.S.C. § 2114(b)	2B1.1	18 U.S.C. § 2276	2B1.3, 2B2.1
18 U.S.C. § 2115	2B2.1	18 U.S.C. § 2280	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A4.1, 2B1.3, 2B3.1, 2B3.2, 2K1.4, 2X1.1
18 U.S.C. § 2116	2A2.2, 2A2.3, 2B2.1, 2B3.1	18 U.S.C. § 2281	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A4.1, 2B1.3, 2B3.1, 2B3.2, 2K1.4, 2X1.1
18 U.S.C. § 2117	2B2.1		
18 U.S.C. § 2118(a)	2B3.1	18 U.S.C. § 2312	2B1.1
18 U.S.C. § 2118(b)	2B2.1	18 U.S.C. § 2313	2B1.1
18 U.S.C. § 2118(c)(1)	2A2.1, 2A2.2, 2B3.1	18 U.S.C. § 2314	2B1.1, 2F1.1
18 U.S.C. § 2118(c)(2)	2A1.1	18 U.S.C. § 2315	2B1.1, 2F1.1
18 U.S.C. § 2118(d)	2X1.1	18 U.S.C. § 2316	2B1.1
18 U.S.C. § 2119	2B3.1	18 U.S.C. § 2317	2B1.1
18 U.S.C. § 2153	2M2.1		

<u>Statute</u>	<u>Guideline</u>	<u>Statute</u>	<u>Guideline</u>
18 U.S.C. § 2318	2B5.3	20 U.S.C. § 1097(b)	2F1.1
18 U.S.C. § 2319	2B5.3	20 U.S.C. § 1097(c)	2B4.1
18 U.S.C. § 2319A	2B5.3	20 U.S.C. § 1097(d)	2F1.1
18 U.S.C. § 2320	2B5.3	21 U.S.C. § 101	2N2.1
18 U.S.C. § 2321	2B6.1	21 U.S.C. § 102	2N2.1
18 U.S.C. § 2322	2B6.1	21 U.S.C. § 103	2N2.1
18 U.S.C. § 2332(a)	2A1.1, 2A1.2, 2A1.3, 2A1.4	21 U.S.C. § 104	2N2.1
18 U.S.C. § 2332(b)(1)	2A2.1	21 U.S.C. § 105	2N2.1
18 U.S.C. § 2332(b)(2)	2A1.5	21 U.S.C. § 111	2N2.1
18 U.S.C. § 2332(c)	2A2.2	21 U.S.C. § 115	2N2.1
18 U.S.C. § 2332a	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A1.5, 2A2.1, 2A2.2, 2B1.3, 2K1.4	21 U.S.C. § 117	2N2.1
18 U.S.C. § 2342(a)	2E4.1	21 U.S.C. § 120	2N2.1
18 U.S.C. § 2344(a)	2E4.1	21 U.S.C. § 121	2N2.1
18 U.S.C. § 2381	2M1.1	21 U.S.C. § 122	2N2.1
18 U.S.C. § 2421	2G1.1	21 U.S.C. § 124	2N2.1
18 U.S.C. § 2422	2G1.1	21 U.S.C. § 126	2N2.1
18 U.S.C. § 2423(a)	2G1.1	21 U.S.C. § 134a-e	2N2.1
18 U.S.C. § 2423(b)	2A3.1, 2A3.2, 2A3.3	21 U.S.C. § 135a	2N2.1
18 U.S.C. § 2425	2G1.1	21 U.S.C. § 141	2N2.1
18 U.S.C. § 2511	2B5.3, 2H3.1	21 U.S.C. § 143	2N2.1
18 U.S.C. § 2512	2H3.2	21 U.S.C. § 144	2N2.1
18 U.S.C. § 3056(d)	2A2.4	21 U.S.C. § 145	2N2.1
18 U.S.C. § 3146(b)(1)(A)	2J1.6	21 U.S.C. § 151	2N2.1
18 U.S.C. § 3146(b)(1)(B)	2J1.5	21 U.S.C. § 152	2N2.1
18 U.S.C. § 3147	2J1.7	21 U.S.C. § 153	2N2.1
19 U.S.C. § 283	2T3.1	21 U.S.C. § 154	2N2.1
19 U.S.C. § 1304	2T3.1	21 U.S.C. § 155	2N2.1
19 U.S.C. § 1433	2T3.1	21 U.S.C. § 156	2N2.1
19 U.S.C. § 1434	2F1.1, 2T3.1	21 U.S.C. § 157	2N2.1
19 U.S.C. § 1435	2F1.1, 2T3.1	21 U.S.C. § 158	2N2.1
19 U.S.C. § 1436	2F1.1, 2T3.1	21 U.S.C. § 158	2N2.1
19 U.S.C. § 1464	2T3.1	21 U.S.C. § 331	2N2.1
19 U.S.C. § 1465	2T3.1	21 U.S.C. § 333(a)(1)	2N2.1
19 U.S.C. § 1586(e)	2T3.1	21 U.S.C. § 333(a)(2)	2F1.1, 2N2.1
19 U.S.C. § 1707	2T3.1	21 U.S.C. § 333(b)	2N2.1
19 U.S.C. § 1708(b)	2T3.1	21 U.S.C. § 458	2N2.1
19 U.S.C. § 1919	2F1.1	21 U.S.C. § 459	2N2.1
19 U.S.C. § 2316	2F1.1	21 U.S.C. § 459	2N2.1
20 U.S.C. § 1097(a)	2B1.1, 2F1.1	21 U.S.C. § 460	2N2.1
		21 U.S.C. § 461	2N2.1
		21 U.S.C. § 463	2N2.1
		21 U.S.C. § 466	2N2.1

<u>Statute</u>	<u>Guideline</u>	<u>Statute</u>	<u>Guideline</u>
21 U.S.C. § 610	2N2.1		2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2
21 U.S.C. § 611	2N2.1		
21 U.S.C. § 614	2N2.1	21 U.S.C. § 848(a)	2D1.5
21 U.S.C. § 617	2N2.1	21 U.S.C. § 848(b)	2D1.5
21 U.S.C. § 619	2N2.1	21 U.S.C. § 848(e)	2A1.1
21 U.S.C. § 620	2N2.1	21 U.S.C. § 849	2D1.2
21 U.S.C. § 622	2C1.1	21 U.S.C. § 854	2S1.2
21 U.S.C. § 642	2N2.1	21 U.S.C. § 856	2D1.8
21 U.S.C. § 643	2N2.1	21 U.S.C. § 857	2D1.7
21 U.S.C. § 644	2N2.1	21 U.S.C. § 858	2D1.10
21 U.S.C. § 675	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3	21 U.S.C. § 859	2D1.2
21 U.S.C. § 676	2N2.1	21 U.S.C. § 860	2D1.2
21 U.S.C. § 841(a)	2D1.1	21 U.S.C. § 861	2D1.2
21 U.S.C. § 841(b)(1)-(3)	2D1.1	21 U.S.C. § 863	2D1.7
21 U.S.C. § 841(b)(4)	2D2.1	21 U.S.C. § 952	2D1.1
21 U.S.C. § 841(b)(7)	2D1.1	21 U.S.C. § 953	2D1.1
21 U.S.C. § 841(d)(1),(2)	2D1.11	21 U.S.C. § 954	2D3.2
21 U.S.C. § 841(d)(3)	2D1.13	21 U.S.C. § 955	2D1.1
21 U.S.C. § 841(e)	2D1.9	21 U.S.C. § 955a(a)-(d)	2D1.1
21 U.S.C. § 841(g)(1)	2D1.11, 2D1.13	21 U.S.C. § 957	2D1.1
21 U.S.C. § 842(a)(1)	2D3.1	21 U.S.C. § 959	2D1.1, 2D1.11
21 U.S.C. § 842(a)(2),(9), (10)	2D3.2	21 U.S.C. § 960(a),(b)	2D1.1
21 U.S.C. § 842(b)	2D3.2	21 U.S.C. § 960(d)(1),(2)	2D1.11
21 U.S.C. § 843(a)(1),(2)	2D3.1	21 U.S.C. § 960(d)(3),(4)	2D1.11
21 U.S.C. § 843(a)(3)	2D2.2	21 U.S.C. § 960(d)(5)	2D1.13
21 U.S.C. § 843(a)(4)(A)	2D1.13	21 U.S.C. § 960(d)(6)	2D3.1
21 U.S.C. § 843(a)(4)(B)	2D1.13	21 U.S.C. § 960(d)(7)	2D1.11
21 U.S.C. § 843(a)(6),(7)	2D1.12	21 U.S.C. § 961	2D3.2
21 U.S.C. § 843(a)(8)	2D1.13	21 U.S.C. § 963	2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2
21 U.S.C. § 843(a)(9)	2D3.1		
21 U.S.C. § 843(b)	2D1.6	22 U.S.C. § 1980(g)	2F1.1
21 U.S.C. § 843(c)	2D3.1	22 U.S.C. § 2197(n)	2F1.1
21 U.S.C. § 844(a)	2D2.1	22 U.S.C. § 2778	2M5.2
21 U.S.C. § 845	2D1.2	22 U.S.C. § 2780	2M5.2
21 U.S.C. § 845a	2D1.2	22 U.S.C. § 4217	2B1.1
21 U.S.C. § 845b	2D1.2	22 U.S.C. § 4221	2F1.1
		25 U.S.C. § 450d	2B1.1, 2F1.1
21 U.S.C. § 846	2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10,	26 U.S.C. § 5148(1)	2T2.1

<u>Statute</u>	<u>Guideline</u>	<u>Statute</u>	<u>Guideline</u>
26 U.S.C. § 5214(a)(1)	2T2.1	26 U.S.C. § 7232	2F1.1
26 U.S.C. § 5273(b)(2)	2T2.1	26 U.S.C. § 7512(b)	2T1.7
26 U.S.C. § 5273(c)	2T2.1	26 U.S.C. § 9012(e)	2B4.1
26 U.S.C. § 5291(a)	2T2.1, 2T2.2	26 U.S.C. § 9042(d)	2B4.1
26 U.S.C. § 5601(a)	2T2.1, 2T2.2	28 U.S.C. § 1826(c)	2P1.1
26 U.S.C. § 5602	2T2.1	28 U.S.C. § 2902(e)	2P1.1
26 U.S.C. § 5603	2T2.1, 2T2.2	29 U.S.C. § 186	2E5.1
26 U.S.C. § 5604(a)	2T2.1, 2T2.2	29 U.S.C. § 431	2E5.3
26 U.S.C. § 5605	2T2.1, 2T2.2	29 U.S.C. § 432	2E5.3
26 U.S.C. § 5607	2T2.1	29 U.S.C. § 433	2E5.3
26 U.S.C. § 5608	2T2.1	29 U.S.C. § 439	2E5.3
26 U.S.C. § 5661	2T2.1, 2T2.2	29 U.S.C. § 461	2E5.3
26 U.S.C. § 5662	2T2.2	29 U.S.C. § 501(c)	2B1.1
26 U.S.C. § 5671	2T2.1, 2T2.2	29 U.S.C. § 530	2B3.2
26 U.S.C. § 5684	2T2.1	29 U.S.C. § 1131	2E5.3
26 U.S.C. § 5685	2K1.3, 2K2.1	29 U.S.C. § 1141	2B3.2, 2F1.1
26 U.S.C. § 5691(a)	2T2.1	29 U.S.C. § 1851	2H4.2
26 U.S.C. § 5751(a)(1),(2)	2T2.1	30 U.S.C. § 1461(a)(3), (4),(5),(7)	2A2.4
26 U.S.C. § 5752	2T2.2	30 U.S.C. § 1463	2A2.4
26 U.S.C. § 5762(a)(1), (2),(4),(5),(6)	2T2.2	31 U.S.C. § 5313	2S1.3
26 U.S.C. § 5762(a)(3)	2T2.1	31 U.S.C. § 5314	2S1.3
26 U.S.C. § 5861(a)-(l)	2K2.1	31 U.S.C. § 5316	2S1.3
26 U.S.C. § 5871	2K2.1	31 U.S.C. § 5322	2S1.3
26 U.S.C. § 7201	2T1.1	31 U.S.C. § 5324	2S1.3
26 U.S.C. § 7202	2T1.6	33 U.S.C. § 403	2Q1.3
26 U.S.C. § 7203	2S1.3, 2T1.1	33 U.S.C. § 406	2Q1.3
26 U.S.C. § 7204	2T1.8	33 U.S.C. § 407	2Q1.3
26 U.S.C. § 7205	2T1.8	33 U.S.C. § 411	2Q1.3
26 U.S.C. § 7206(1),(3), (4),(5)	2S1.3, 2T1.1	33 U.S.C. § 506	2J1.1
26 U.S.C. § 7206(2)	2S1.3, 2T1.4	33 U.S.C. § 1227(b)	2J1.1
26 U.S.C. § 7207	2T1.1	33 U.S.C. § 1232(b)(2)	2A2.4
26 U.S.C. § 7208	2F1.1	33 U.S.C. § 1319(c)(1), (2),(4)	2Q1.2, 2Q1.3
26 U.S.C. § 7210	2J1.1	33 U.S.C. § 1319(c)(3)	2Q1.1
26 U.S.C. § 7211	2T1.1	33 U.S.C. § 1321	2Q1.2, 2Q1.3
26 U.S.C. § 7212(a)	2A2.4	33 U.S.C. § 1342	2Q1.2, 2Q1.3
26 U.S.C. § 7212(a) (omnibus clause)	2J1.2, 2T1.1	33 U.S.C. § 1415(b)	2Q1.2, 2Q1.3
26 U.S.C. § 7212(b)	2B1.1, 2B2.1, 2B3.1	33 U.S.C. § 1517	2Q1.2, 2Q1.3
26 U.S.C. § 7214	2C1.1, 2C1.2, 2F1.1	33 U.S.C. § 1907	2Q1.3
26 U.S.C. § 7215	2T1.7	33 U.S.C. § 1908	2Q1.3

<u>Statute</u>	<u>Guideline</u>	<u>Statute</u>	<u>Guideline</u>
38 U.S.C. § 787	2F1.1	42 U.S.C. § 2000e-13	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3
38 U.S.C. § 3501(a)	2B1.1	42 U.S.C. § 2077	2M6.1
38 U.S.C. § 3502	2F1.1	42 U.S.C. § 2122	2M6.1
41 U.S.C. § 53	2B4.1	42 U.S.C. § 2131	2M6.1
41 U.S.C. § 54	2B4.1	42 U.S.C. § 2272	2M6.1
41 U.S.C. § 423(e)	2C1.1, 2C1.7, 2F1.1	42 U.S.C. § 2273	2M6.2
42 U.S.C. § 261(a)	2D1.1	42 U.S.C. § 2274(a),(b)	2M3.1
42 U.S.C. § 262	2N2.1	42 U.S.C. § 2275	2M3.1
42 U.S.C. § 300h-2	2Q1.2	42 U.S.C. § 2276	2M3.5
42 U.S.C. § 300i-1	2Q1.4, 2Q1.5	42 U.S.C. § 2278a(c)	2B2.3
42 U.S.C. § 408	2F1.1	42 U.S.C. § 2283(a)	2A1.1, 2A1.2, 2A1.3, 2A1.4
42 U.S.C. § 1307(a)	2F1.1	42 U.S.C. § 2283(b)	2A2.2, 2A2.3
42 U.S.C. § 1307(b)	2F1.1	42 U.S.C. § 2284(a)	2M2.1, 2M2.3
42 U.S.C. § 1320a-7b	2B1.1, 2B4.1, 2F1.1	42 U.S.C. § 3220(a)	2F1.1
42 U.S.C. § 1383(d)(2)	2F1.1	42 U.S.C. § 3220(b)	2B1.1, 2F1.1
42 U.S.C. § 1383a(a)	2F1.1	42 U.S.C. § 3426	2F1.1
42 U.S.C. § 1383a(b)	2F1.1	42 U.S.C. § 3611(f)	2J1.1
42 U.S.C. § 1395nn(a)	2F1.1	42 U.S.C. § 3631	2H1.1
42 U.S.C. § 1395nn(b)(1)	2B4.1	42 U.S.C. § 3791	2B1.1, 2F1.1
42 U.S.C. § 1395nn(b)(2)	2B4.1	42 U.S.C. § 3792	2F1.1
42 U.S.C. § 1395nn(c)	2F1.1	42 U.S.C. § 3795	2B1.1, 2F1.1
42 U.S.C. § 1396h(a)	2F1.1	42 U.S.C. § 5157(a)	2F1.1
42 U.S.C. § 1396h(b)(1)	2B4.1	42 U.S.C. § 6928(d)	2Q1.2
42 U.S.C. § 1396h(b)(2)	2B4.1	42 U.S.C. § 6928(e)	2Q1.1
42 U.S.C. § 1713	2F1.1	42 U.S.C. § 7270b	2B2.3
42 U.S.C. § 1760(g)	2B1.1, 2F1.1	42 U.S.C. § 7413(c)(1)-(4)	2Q1.2, 2Q1.3
42 U.S.C. § 1761(o)(1)	2F1.1	42 U.S.C. § 7413(c)(5)	2Q1.1
42 U.S.C. § 1761(o)(2)	2B1.1, 2F1.1	42 U.S.C. § 9151(2),(3), (4),(5)	2A2.4
42 U.S.C. § 1973i(c)	2H2.1	42 U.S.C. § 9152(d)	2A2.4
42 U.S.C. § 1973i(d)	2H2.1	42 U.S.C. § 9603(b)	2Q1.2
42 U.S.C. § 1973i(e)	2H2.1	42 U.S.C. § 9603(c)	2Q1.2
42 U.S.C. § 1973j(a)	2H2.1	42 U.S.C. § 9603(d)	2Q1.2
42 U.S.C. § 1973j(b)	2H2.1	43 U.S.C. § 1350	2Q1.2
42 U.S.C. § 1973j(c)	2X1.1	43 U.S.C. § 1733(a) (43 C.F.R. 4140.1 (b)(1)(i))	2B2.3
42 U.S.C. § 1973aa	2H2.1	43 U.S.C. § 1816(a)	2Q1.2
42 U.S.C. § 1973aa-1	2H2.1	43 U.S.C. § 1822(b)	2Q1.2
42 U.S.C. § 1973aa-1a	2H2.1	45 U.S.C. § 359(a)	2F1.1
42 U.S.C. § 1973aa-3	2H2.1		
42 U.S.C. § 1973bb	2H2.1		
42 U.S.C. § 1973gg-10	2H2.1		

<u>Statute</u>	<u>Guideline</u>	<u>Statute</u>	<u>Guideline</u>
46 U.S.C. § 1276	2F1.1	49 U.S.C. § 11907(b)	2B4.1(for offenses committed prior to January 1, 1996)
46 U.S.C. § 3718(b)	2Q1.2	49 U.S.C. § 14103(b)	2B1.1
46 U.S.C. App. § 1707a (f)(2)	2B1.1	49 U.S.C. § 14905(b)	2B1.1
46 U.S.C. App. § 1903(a)	2D1.1	49 U.S.C. § 14909	2J1.1
46 U.S.C. App. § 1903(g)	2D1.1	49 U.S.C. § 14912	2F1.1
46 U.S.C. App. § 1903(j)	2D1.1	49 U.S.C. § 16102	2F1.1
47 U.S.C. § 223(a)(1)(C)	2A6.1	49 U.S.C. § 16104	2J1.1
47 U.S.C. § 223(a)(1)(D)	2A6.1	49 U.S.C. § 32703	2N3.1
47 U.S.C. § 223(a)(1)(E)	2A6.1	49 U.S.C. § 32704	2N3.1
47 U.S.C. § 223(b)(1)(A)	2G3.2	49 U.S.C. § 32705	2N3.1
47 U.S.C. § 553(b)(2)	2B5.3	49 U.S.C. § 32709(b)	2N3.1
47 U.S.C. § 605	2B5.3, 2H3.1	49 U.S.C. § 46308	2A5.2
49 U.S.C. § 121	2F1.1(for offenses committed prior to July 5, 1994)	49 U.S.C. § 46312	2Q1.2
49 U.S.C. § 1809(b)	2Q1.2(for offenses committed prior to July 5, 1994)	49 U.S.C. § 46502(a),(b)	2A5.1, 2X1.1
49 U.S.C. § 5124	2Q1.2	49 U.S.C. § 46504	2A5.2
49 U.S.C. § 11902	2B4.1	49 U.S.C. § 46505	2K1.5
49 U.S.C. § 11903	2F1.1	49 U.S.C. § 46506	2A5.3
49 U.S.C. § 11904	2F1.1 (2B4.1for offenses committed prior to January 1, 1996)	49 U.S.C. § 60123(d)	2B1.3
49 U.S.C. § 11907(a)	2B4.1(for offenses committed prior to January 1, 1996)	49 U.S.C. § 80116	2F1.1
		49 U.S.C. § 80501	2B1.3
		49 U.S.C. App. § 1687(g)	2B1.3(for offenses committed prior to July 5, 1994)
		50 U.S.C. § 421	2M3.9
		50 U.S.C. § 783(b)	2M3.3
		50 U.S.C. § 783(c)	2M3.3
		50 U.S.C. App. § 462	2M4.1
		50 U.S.C. App. § 2410	2M5.1

Historical Note: Effective November 1, 1987. Amended effective January 15, 1988 (see Appendix C, amendments 60 and 61); June 15, 1988 (see Appendix C, amendments 62 and 63); October 15, 1988 (see Appendix C, amendments 64 and 65); November 1, 1989 (see Appendix C, amendments 297-301); November 1, 1990 (see Appendix C, amendment 359); November 1, 1991 (see Appendix C, amendment 421); November 1, 1992 (see Appendix C, amendment 468); November 1, 1993 (see Appendix C, amendment 496); November 1, 1995 (see Appendix C, amendment 534); November 1, 1996 (see Appendix C, amendment 540); November 1, 1997 (see Appendix C, amendment 575); November 1, 1998 (see Appendix C, amendment 589); November 1, 2000 (see Appendix C, amendment 592); May 1, 2001 (see Appendix C, amendment 612).

SUPPLEMENT TO THE 2000 SUPPLEMENT TO APPENDIX C

This supplement to the 2000 supplement to Appendix C supersedes the supplement that became effective on December 16, 2000. It presents (1) the emergency amendments to §§2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and 2D1.10 (Endangering Human Life While Illegally Manufacturing a Controlled Substance; Attempt or Conspiracy), effective December 16, 2000; (2) the emergency amendments to §§2D1.1, 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), 2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct), 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), 2H4.1 (Peonage, Involuntary Servitude, and Slave Trade), and 5E1.1 (Restitution), and Appendix A (Statutory Index), effective May 1, 2001; and (3) the emergency promulgation of §2H4.2 (Willful Violations of the Migrant and Seasonal Agricultural Worker Protection Act), effective May 1, 2001.

The format under which the amendments are presented in Appendix C, including the December 2000 supplement and this supplement, is designed to facilitate a comparison between previously existing and amended provisions, in the event it becomes necessary to reference the former guideline, policy statement, or commentary language. For amendments to the guidelines, policy statements, and official commentary effective November 1, 2000, and earlier, see the main volume of Appendix C.

AMENDMENT

608. Amendment: Section 2D1.1(b)(5) is amended by striking the comma after "substance" and inserting a semicolon.

Section 2D1.1(b) is amended by redesignating subdivision (6) as subdivision (7); and by inserting after subdivision (5) the following:

"(6) (Apply the greater):

- (A) If the offense (i) involved the manufacture of amphetamine or methamphetamine; and (ii) created a substantial risk of harm to (I) human life other than a life described in subsection (b)(6)(B); or (II) the environment, increase by 3 levels. If the resulting offense level is less than level 27, increase to level 27.
- (B) If the offense (i) involved the manufacture of amphetamine or methamphetamine; and (ii) created a substantial risk of harm to the life of a minor or an incompetent, increase by 6 levels. If the resulting offense level is less than level 30, increase to level 30."

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 20 by inserting "Hazardous or Toxic Substances.—" before "Subsection (b)(5)".

The Commentary to §2D1.1 captioned "Application Notes" is amended by adding at the end the following:

"21. Substantial Risk of Harm Associated with the Manufacture of Amphetamine and Methamphetamine.—

- (A) Factors to Consider.—In determining, for purposes of subsection (b)(6), whether

the offense created a substantial risk of harm to human life or the environment, the court may consider factors such as the following:

- (i) The quantity of any chemicals or hazardous or toxic substances found at the laboratory, or the manner in which the chemicals or substances were stored.
- (ii) The manner in which hazardous or toxic substances were disposed, or the likelihood of release into the environment of hazardous or toxic substances.
- (iii) The duration of the offense, or the extent of the manufacturing operation.
- (iv) The location of the amphetamine or methamphetamine laboratory (e.g., in a residential neighborhood or a remote area) and the number of human lives placed at substantial risk of harm.

(B) Definitions.—For purposes of subsection (b)(6)(B):

‘Incompetent’ means an individual who is incapable of taking care of the individual’s self or property because of a mental or physical illness or disability, mental retardation, or senility.

‘Minor’ has the meaning given that term in Application Note 1 of the Commentary to §2A3.1 (Criminal Sexual Abuse).”.

The Commentary to §2D1.1 captioned "Background" is amended by adding at the end the following:

" Subsection (b)(5) implements the instruction to the Commission in section 303 of Public Law 103–237.

Subsection (b)(6) implements the instruction to the Commission in section 102 of Public Law 106–878.”.

Section 2D1.10 is amended by inserting after subsection (a) the following:

"(b) Specific Offense Characteristic

(1) (Apply the greater):

- (A) If the offense involved the manufacture of amphetamine or methamphetamine, increase by 3 levels. If the resulting offense level is less than level 27, increase to level 27.
- (B) If the offense (i) involved the manufacture of amphetamine or methamphetamine; and (ii) created a substantial risk of harm to the life of a minor or an incompetent, increase by 6 levels. If the resulting offense level is less than level 30, increase to level 30.”.

The Commentary to §2D1.10 is amended by adding at the end the following:

"Application Note:

1. Substantial Risk of Harm Associated with the Manufacture of Amphetamine and Methamphetamine.—

- (A) Factors to Consider.— In determining, for purposes of subsection (b)(1)(B), whether the offense created a substantial risk of harm to the life of a minor or an incompetent, the court may consider factors such as the following:
- (i) The quantity of any chemicals or hazardous or toxic substances found at the laboratory, or the manner in which the chemicals or substances were stored.
 - (ii) The manner in which hazardous or toxic substances were disposed, or the likelihood of release into the environment of hazardous or toxic substances.
 - (iii) The duration of the offense, or the extent of the manufacturing operation.
 - (iv) The location of the amphetamine or methamphetamine laboratory (e.g., in a residential neighborhood or a remote area) and the number of human lives placed at substantial risk of harm.
- (B) Definitions.—For purposes of subsection (b)(1)(B):

‘Incompetent’ means an individual who is incapable of taking care of the individual’s self or property because of a mental or physical illness or disability, mental retardation, or senility.

‘Minor’ has the meaning given that term in Application Note 1 of the Commentary to §2A3.1 (Criminal Sexual Abuse).

Background: Subsection (b)(1) implements the instruction to the Commission in section 102 of Public Law 106–878."

Reason for Amendment: This amendment addresses the directive in section 102 (the "substantial risk directive") of the Methamphetamine and Club Drug Anti-Proliferation Act of 2000 (the "Act"), Pub. L. 106–878.

The Act requires the Commission to promulgate amendments under emergency amendment authority. Although the Act generally provides that the Commission shall promulgate various amendments "as soon as practicable," the substantial risk directive specifically requires that the amendment implementing the directive shall apply "to any offense occurring on or after the date that is 60 days after the date of the enactment" of the Act.

The directive instructs the Commission to amend the federal sentencing guidelines with respect to any offense relating to the manufacture, attempt to manufacture, or conspiracy to manufacture amphetamine or methamphetamine in (1) the Controlled Substances Act (21 U.S.C. § 801 et seq.); (2) the Controlled Substances Import and Export Act (21 U.S.C. § 951 et seq.); or (3) the Maritime Drug Law Enforcement Act (46 U.S.C. App. § 1901 et seq.).

The Act requires the Commission, in carrying out the substantial risk directive, to provide the following enhancements—

(A) if the offense created a substantial risk of harm to human life (other than a life described in subparagraph (B)) or the environment, increase the base offense level for the offense—

(i) by not less than 3 offense levels above the applicable level in effect on the date of the enactment of this Act; or

(ii) if the resulting base offense level after an increase under clause (i) would be less than level 27, to not less than level 27; or

(B) if the offense created a substantial risk of harm to the life of a minor or incompetent, increase the base offense level for the offense—

(i) by not less than 6 offense levels above the applicable level in effect on the date of the enactment of this Act; or

(ii) if the resulting base offense level after an increase under clause (i) would be less than level 30, to not less than level 30.

The pertinent aspects of this amendment are as follows:

(1) Guidelines Amended.—The amendment provides new enhancements in §§2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) and 2D1.10 (Endangering Human Life While Illegally Manufacturing a Controlled Substance) that also apply in the case of an attempt or a conspiracy to manufacture amphetamine or methamphetamine. The amendment does not amend §2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical) or §2D1.12 (Unlawful Possession, Manufacture, Distribution, or Importation or Prohibited Flask or Equipment). Although offenses that involve the manufacture of amphetamine or methamphetamine also are referenced in Appendix (A) (Statutory Index) to §§2D1.11 and 2D1.12, the cross reference in these guidelines, which applies if the offense involved the manufacture of a controlled substance, will result in application of §2D1.1 and accordingly, the new enhancements.

(2) Structure.—The basic structure of the amendment to §§2D1.1 and 2D1.10 tracks the structure of the directive. Accordingly, in §2D1.1, the amendment provides a three-level increase and a minimum offense level of level 27 if the offense (A) involved the manufacture of amphetamine or methamphetamine; and (B) created a substantial risk of either harm to human life or the environment. For offenses that created a substantial risk of harm to the life of a minor or an incompetent, the amendment provides a six-level increase and a minimum offense level of 30.

However, the structure of the amendment in §2D1.10 differs from that in §2D1.1 with respect to the first prong of the enhancement (regarding substantial risk of harm to human life or to the environment). Specifically, the amendment provides a three-level increase and a minimum offense level of level 27 if the offense involved the manufacture of amphetamine or methamphetamine without making application of the enhancement dependent upon whether the offense also involved a substantial risk of either harm to human life or the environment. Consideration of whether the offense involved a substantial risk of harm to human life is unnecessary because §2D1.10 applies only to convictions under 21 U.S.C. § 858, and the creation of a substantial risk of harm to human life is an element of a § 858 offense. Therefore, the base offense level already takes into account

the substantial risk of harm to human life. Consideration of whether the offense involved a substantial risk of harm to the environment is unnecessary because the directive predicated application of the enhancement on substantial risk of harm either to human life or to the environment, and the creation of a substantial risk of harm to human life is necessarily present because it is an element of the offense.

(3) Determining "Substantial Risk of Harm".—Neither the directive nor any statutory provision defines "substantial risk of harm". Based on an analysis of relevant case law that interpreted "substantial risk of harm", the amendment provides commentary setting forth factors that may be relevant in determining whether a particular offense created a substantial risk of harm.

(4) Definitions.—The definition of "incompetent" is modeled after several state statutes, which proved useful for purposes of this amendment.

The definition of "minor" has the meaning given that term in Application Note 1 of the Commentary to §2A3.1 (Criminal Sexual Abuse).

Effective Date: The effective date of this amendment is December 16, 2000.

609. Amendment: The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the Drug Equivalency Tables in the subdivision captioned "LSD, PCP, and Other Schedule I and II Hallucinogens (and their immediate precursors)*" in the line referenced to "MDA" by striking "50 gm" and inserting "500 gm"; in the line referenced to "MDMA" by striking "35 gm" and inserting "500 gm"; in the line referenced "MDEA" by striking "30 gm" and inserting "500 gm"; and by inserting "1 gm of Paramethoxymethamphetamine/PMA = 500 gm of marihuana" after the line referenced to "MDEA".

Reason for Amendment: This amendment addresses the directive in the Ecstasy Anti-Proliferation Act of 2000 (the "Act"), section 3664 of Pub. L. 106–310, which instructs the Commission to provide, under emergency amendment authority, increased penalties for the manufacture, importation, exportation, or trafficking of Ecstasy. The directive specifically requires the Commission to increase the base offense level for 3,4-Methylenedioxyamphetamine (MDMA), 3,4-Methylenedioxyamphetamine (MDA), 3,4-Methylenedioxy-N-ethylamphetamine (MDEA), Paramethoxymethamphetamine (PMA), and any other controlled substance that is marketed as Ecstasy and that has either a chemical structure similar to MDMA or an effect on the central nervous system substantially similar to or greater than MDMA.

The amendment addresses the directive by amending the Drug Equivalency Table in §2D1.1, Application Note 10, to increase substantially the marihuana equivalencies for the specified controlled substances, which has the effect of substantially increasing the penalties for offenses involving Ecstasy. The new penalties for Ecstasy trafficking provide penalties which, gram for gram, are more severe than those for powder cocaine. Currently under the Drug Equivalency Table, one gram of powder cocaine has a marihuana equivalency of 200 grams. This amendment sets the marihuana equivalency for one gram of Ecstasy at 500 grams.

There are a combination of reasons why the Commission has substantially increased the penalties in response to the congressional directive. Much evidence received by the Commission indicated that Ecstasy: (1) has powerful pharmacological effects; (2) has the capacity to cause lasting physical harms, including brain damage; and (3) is being abused by rapidly increasing numbers of teenagers and young adults. Indeed, the market for Ecstasy is overwhelmingly comprised of people under the

age of 25 years.

Before voting to promulgate this amendment, the Commission considered whether the penalty levels for Ecstasy should be set at the same levels as for heroin (i.e., one gram of heroin has a marijuana equivalency of 1000 grams) and decided that somewhat lesser penalties were appropriate for Ecstasy for a number of reasons: (1) the potential for addiction is greater with heroin; (2) heroin distribution often involves violence while, at this time, violence is not reported in Ecstasy markets; (3) because it is a narcotic and is often injected, the risk of death from overdose is much greater from heroin; and (4) because heroin is often injected, there are more secondary health consequences, such as infections and the transmission of the human immunodeficiency virus (HIV) and hepatitis.

Finally, based on information regarding Ecstasy trafficking patterns, the penalty levels chosen are appropriate and sufficient to target serious and high-level traffickers and to provide appropriate punishment, deterrence, and incentives for cooperation. The penalty levels chosen for Ecstasy offenses provide five year sentences for serious traffickers (those whose relevant conduct involved at least 800 pills) and ten year sentences for high-level traffickers (those whose relevant conduct involved at least 8,000 pills).

Effective Date: The effective date of this amendment is May 1, 2001.

610. Amendment: Section 2D1.1(c)(1) is amended by inserting after the fifth entry the following: "15 KG or more of Amphetamine, or 1.5 KG or more of Amphetamine (actual);".

Section 2D1.1(c)(2) is amended by inserting after the fifth entry the following:

"At least 5 KG but less than 15 KG of Amphetamine, or at least 500 G but less than 1.5 KG of Amphetamine (actual);".

Section 2D1.1(c)(3) is amended by inserting after the fifth entry the following:

"At least 1.5 KG but less than 5 KG of Amphetamine, or at least 150 G but less than 500 G of Amphetamine (actual);".

Section 2D1.1(c)(4) is amended by inserting after the fifth entry the following:

"At least 500 G but less than 1.5 KG of Amphetamine, or at least 50 G but less than 150 G of Amphetamine (actual);".

Section 2D1.1(c)(5) is amended by inserting after the fifth entry the following:

"At least 350 G but less than 500 G of Amphetamine, or at least 35 G but less than 50 G of Amphetamine (actual);".

Section 2D1.1(c)(6) is amended by inserting after the fifth entry the following:

"At least 200 G but less than 350 G of Amphetamine, or at least 20 G but less than 35 G of Amphetamine (actual);".

Section 2D1.1(c)(7) is amended by inserting after the fifth entry the following:

"At least 50 G but less than 200 G of Amphetamine, or at least 5 G but less than 20 G of Amphetamine (actual);".

Section 2D1.1(c)(8) is amended by inserting after the fifth entry the following:

"At least 40 G but less than 50 G of Amphetamine, or at least 4 G but less than 5 G of Amphetamine (actual);".

Section 2D1.1(c)(9) is amended by inserting after the fifth entry the following:

"At least 30 G but less than 40 G of Amphetamine, or at least 3 G but less than 4 G of Amphetamine (actual);".

Section 2D1.1(c)(10) is amended by inserting after the fifth entry the following:

"At least 20 G but less than 30 G of Amphetamine, or at least 2 G but less than 3 G of Amphetamine (actual);".

Section 2D1.1(c)(11) is amended by inserting after the fifth entry the following:

"At least 10 G but less than 20 G of Amphetamine, or at least 1 G but less than 2 G of Amphetamine (actual);".

Section 2D1.1(c)(12) is amended by inserting after the fifth entry the following:

"At least 5 G but less than 10 G of Amphetamine, or at least 500 MG but less than 1 G of Amphetamine (actual);".

Section 2D1.1(c)(13) is amended by inserting after the fifth entry the following:

"At least 2.5 G but less than 5 G of Amphetamine, or at least 250 MG but less than 500 MG of Amphetamine (actual);".

Section 2D1.1(c)(14) is amended by inserting after the fifth entry the following:

"Less than 2.5 G of Amphetamine, or less than 250 MG of Amphetamine (actual);".

Section 2D1.1(c) is amended in Note (B) of the "Notes to Drug Quantity Table" by inserting ", 'Amphetamine (actual)'," after "terms 'PCP (actual)';" by inserting ", amphetamine," after "substance containing PCP"; and by inserting ", amphetamine (actual)," after "weight of the PCP (actual)".

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 9 by inserting ", amphetamine," after "PCP".

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the Drug Equivalency Tables in the subdivision captioned "Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)*" by striking "200 gm" after "1 gm of Amphetamine =" and inserting "2 kg"; and by inserting "1 gm of Amphetamine (Actual) = 20 kg of marijuana" after the line referenced to "Amphetamine".

Reason for Amendment: This emergency amendment implements the directive in the Methamphetamine Anti-Proliferation Act of 2000, section 3611 of Pub. L. 106-310 (the "Act"), which directs the Commission to provide, under emergency amendment authority, increased guideline penalties for amphetamine such that those penalties are comparable to the base offense level for methamphetamine.

This amendment revises §2D1.1 to include amphetamine in the Drug Quantity Table. This amendment also treats amphetamine and methamphetamine identically, at a 1:1 ratio (i.e., the same quantities of amphetamine and methamphetamine would result in the same base offense level) because of the similarities of the two substances. Specifically, amphetamine and methamphetamine (1) chemically are similar; (2) are produced by a similar method and are trafficked in a similar manner; (3) share similar methods of use; (4) affect the same parts of the brain; and (5) have similar intoxicating effects. The amendment also distinguishes between pure amphetamine (i.e., amphetamine (actual)) and amphetamine mixture in the same manner, and at the same quantities, as pure methamphetamine (i.e., methamphetamine (actual)) and methamphetamine mixture, respectively. The amendment reflects the view that the 1:1 ratio is appropriate given the seriousness of these two controlled substances.

Effective Date: The effective date of this amendment is May 1, 2001.

611. Amendment: Section 2D1.11 is amended by striking subsection (d), captioned "Chemical Quantity Table*"; and by striking the Notes that follow subsection (d), captioned "*Notes", 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

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|------|---|----------|
| (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;
At least 2 G but less than 4 G of Phenylpropanolamine;
At least 2 G but less than 4 G of Pseudoephedrine. | Level 18 |
| (12) | At least 1 G but less than 2 G of Ephedrine;
At least 1 G but less than 2 G of Phenylpropanolamine;
At least 1 G but less than 2 G of Pseudoephedrine. | Level 16 |
| (13) | At least 500 MG but less than 1 G of Ephedrine;
At least 500 MG but less than 1 G of Phenylpropanolamine;
At least 500 MG but less than 1 G of Pseudoephedrine. | Level 14 |
| (14) | Less than 500 MG of Ephedrine;
Less than 500 MG of Phenylpropanolamine;
Less than 500 MG of Pseudoephedrine. | Level 12 |

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

Listed Chemicals and Quantity	Base Offense Level
(1) <u>List I Chemicals</u> 890 G or more 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; 2.2 KG or more of Hydriodic Acid; 320 KG or more of Isosafrole; 200 G or more of Methylamine;	Level 30

500 KG or more of N-Methylephedrine;
 500 KG or more of N-Methylpseudoephedrine;
 625 G or more of Nitroethane;
 10 KG or more 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.

(2) List I Chemicals

Level 28

At least 267 G but less than 890 G of Benzaldehyde;
 At least 6 KG but less than 20 KG of Benzyl Cyanide;
 At least 60 G but less than 200 G of Ergonovine;
 At least 120 G but less than 400 G of Ergotamine;
 At least 6 KG but less than 20 KG of Ethylamine;
 At least 660 G but less than 2.2 KG of Hydriodic Acid;
 At least 96 KG but less than 320 KG of Isosafrole;
 At least 60 G but less than 200 G of Methylamine;
 At least 150 KG but less than 500 KG of N-Methylephedrine;
 At least 150 KG but less than 500 KG of N-Methylpseudoephedrine;
 At least 187.5 G but less than 625 G of Nitroethane;
 At least 3 KG but less than 10 KG of Norpseudoephedrine;
 At least 6 KG but less than 20 KG of Phenylacetic Acid;
 At least 3 KG but less than 10 KG of Piperidine;
 At least 96 KG but less than 320 KG of Piperonal;
 At least 480 G but less than 1.6 KG of Propionic Anhydride;
 At least 96 KG but less than 320 KG of Safrole;
 At least 120 KG but less than 400 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

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.

(3) List I Chemicals

Level 26

At least 89 G but less than 267 G of Benzaldehyde;
 At least 2 KG but less than 6 KG of Benzyl Cyanide;
 At least 20 G but less than 60 G of Ergonovine;
 At least 40 G but less than 120 G of Ergotamine;
 At least 2 KG but less than 6 KG of Ethylamine;
 At least 220 G but less than 660 G of Hydriodic Acid;
 At least 32 KG but less than 96 KG of Isosafrole;
 At least 20 G but less than 60 G of Methylamine;
 At least 50 KG but less than 150 KG of N-Methylephedrine;
 At least 50 KG but less than 150 KG of N-Methylpseudoephedrine;

At least 62.5 G but less than 187.5 G of Nitroethane;
 At least 1 KG but less than 3 KG of Norpseudoephedrine;
 At least 2 KG but less than 6 KG of Phenylacetic Acid;
 At least 1 KG but less than 3 KG of Piperidine;
 At least 32 KG but less than 96 KG of Piperonal;
 At least 160 G but less than 480 G of Propionic Anhydride;
 At least 32 KG but less than 96 KG of Safrole;
 At least 40 KG but less than 120 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

At least 3.3 KG but less than 11 KG of Acetic Anhydride;
 At least 352.5 KG but less than 1175 KG of Acetone;
 At least 6 KG but less than 20 KG of Benzyl Chloride;
 At least 322.5 KG but less than 1075 KG of Ethyl Ether;
 At least 360 KG but less than 1200 KG of Methyl Ethyl Ketone;
 At least 3 KG but less than 10 KG of Potassium Permanganate;
 At least 390 KG but less than 1300 KG of Toluene.

(4) List I Chemicals

Level 24

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

List II Chemicals

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

(5) List I Chemicals

Level 22

At least 35.6 G but less than 62.3 G of Benzaldehyde;
 At least 800 G but less than 1.4 KG of Benzyl Cyanide;
 At least 8 G but less than 14 G of Ergonovine;

At least 16 G but less than 28 G of Ergotamine;
 At least 800 G but less than 1.4 KG of Ethylamine;
 At least 88 G but less than 154 G of Hydriodic Acid;
 At least 12.8 KG but less than 22.4 KG of Isosafrole;
 At least 8 G but less than 14 G of Methylamine;
 At least 20 KG but less than 35 KG of N-Methylephedrine;
 At least 20 KG but less than 35 KG of N-Methylpseudoephedrine;
 At least 25 G but less than 43.8 G of Nitroethane;
 At least 400 G but less than 700 G of Norpseudoephedrine;
 At least 800 G but less than 1.4 KG of Phenylacetic Acid;
 At least 400 G but less than 700 G of Piperidine;
 At least 12.8 KG but less than 22.4 KG of Piperonal;
 At least 64 G but less than 112 G of Propionic Anhydride;
 At least 12.8 KG but less than 22.4 KG of Safrole;
 At least 16 KG but less than 28 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

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

(6) List I Chemicals

Level 20

At least 8.9 G but less than 35.6 G of Benzaldehyde;
 At least 200 G but less than 800 G of Benzyl Cyanide;
 At least 2 G but less than 8 G of Ergonovine;
 At least 4 G but less than 16 G of Ergotamine;
 At least 200 G but less than 800 G of Ethylamine;
 At least 22 G but less than 88 G of Hydriodic Acid;
 At least 3.2 KG but less than 12.8 KG of Isosafrole;
 At least 2 G but less than 8 G of Methylamine;
 At least 5 KG but less than 20 KG of N-Methylephedrine;
 At least 5 KG but less than 20 KG of N-Methylpseudoephedrine;
 At least 6.3 G but less than 25 G of Nitroethane;
 At least 100 G but less than 400 of Norpseudoephedrine;
 At least 200 G but less than 800 G of Phenylacetic Acid;
 At least 100 G but less than 400 G of Piperidine;
 At least 3.2 KG but less than 12.8 KG of Piperonal;
 At least 16 G but less than 64 G of Propionic Anhydride;
 At least 3.2 KG but less than 12.8 KG of Safrole;
 At least 4 KG but less than 16 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

At least 440 G but less than 726 G of Acetic Anhydride;
 At least 47 KG but less than 82.25 KG of Acetone;
 At least 800 G but less than 1.4 KG of Benzyl Chloride;
 At least 43 KG but less than 75.25 KG of Ethyl Ether;
 At least 48 KG but less than 84 KG of Methyl Ethyl Ketone;

At least 400 G but less than 700 G of Potassium Permanganate;
 At least 52 KG but less than 91 KG of Toluene.

(7) List I Chemicals Level 18

At least 7.1 G but less than 8.9 G of Benzaldehyde;
 At least 160 G but less than 200 G of Benzyl Cyanide;
 At least 1.6 G but less than 2 G of Ergonovine;
 At least 3.2 G but less than 4 G of Ergotamine;
 At least 160 G but less than 200 G of Ethylamine;
 At least 17.6 G but less than 22 G of Hydriodic Acid;
 At least 2.56 KG but less than 3.2 KG of Isosafrole;
 At least 1.6 G but less than 2 G of Methylamine;
 At least 4 KG but less than 5 KG of N-Methylephedrine;
 At least 4 KG but less than 5 KG of N-Methylpseudoephedrine;
 At least 5 G but less than 6.3 G of Nitroethane;
 At least 80 G but less than 100 G of Norpseudoephedrine;
 At least 160 G but less than 200 G of Phenylacetic Acid;
 At least 80 G but less than 100 G of Piperidine;
 At least 2.56 KG but less than 3.2 KG of Piperonal;
 At least 12.8 G but less than 16 G of Propionic Anhydride;
 At least 2.56 KG but less than 3.2 KG of Safrole;
 At least 3.2 KG but less than 4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

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

(8) List I Chemicals Level 16

3.6 KG or more of Anthranilic Acid;
 At least 5.3 G but less than 7.1 G of Benzaldehyde;
 At least 120 G but less than 160 G of Benzyl Cyanide;
 At least 1.2 G but less than 1.6 G of Ergonovine;
 At least 2.4 G but less than 3.2 G of Ergotamine;
 At least 120 G but less than 160 G of Ethylamine;
 At least 13.2 G but less than 17.6 G of Hydriodic Acid;
 At least 1.92 KG but less than 2.56 KG of Isosafrole;
 At least 1.2 G but less than 1.6 G of Methylamine;
 4.8 KG or more of N-Acetylanthranilic Acid;
 At least 3 KG but less than 4 KG of N-Methylephedrine;
 At least 3 KG but less than 4 KG of N-Methylpseudoephedrine;
 At least 3.8 G but less than 5 G of Nitroethane;
 At least 60 G but less than 80 G of Norpseudoephedrine;
 At least 120 G but less than 160 G of Phenylacetic Acid;
 At least 60 G but less than 80 G of Piperidine;
 At least 1.92 KG but less than 2.56 KG of Piperonal;
 At least 9.6 G but less than 12.8 G of Propionic Anhydride;

At least 1.92 KG but less than 2.56 KG of Safrole;
 At least 2.4 KG but less than 3.2 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

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

(9) List I Chemicals Level 14

At least 2.7 KG but less than 3.6 KG of Anthranilic Acid;
 At least 3.6 G but less than 5.3 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 8.8 G but less than 13.2 G of Hydriodic Acid;
 At least 1.44 KG but less than 1.92 KG of Isosafrole;
 At least 800 MG but less than 1.2 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 2.5 G but less than 3.8 G of Nitroethane;
 At least 40 G but less than 60 G 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.

(10) List I Chemicals Level 12

Less than 2.7 KG of Anthranilic Acid;
 Less than 3.6 G of Benzaldehyde;
 Less than 80 G of Benzyl Cyanide;
 Less than 800 MG of Ergonovine;
 Less than 1.6 G of Ergotamine;
 Less than 80 G of Ethylamine;
 Less than 8.8 G of Hydriodic Acid;

Less than 1.44 KG of Isosafrole;
 Less than 800 MG of Methylamine;
 Less than 3.6 KG of N-Acetylanthranilic Acid;
 Less than 2.25 KG of N-Methylephedrine;
 Less than 2.25 KG of N-Methylpseudoephedrine;
 Less than 2.5 G of Nitroethane;
 Less than 40 G of Norpseudoephedrine;
 Less than 80 G of Phenylacetic Acid;
 Less than 40 G of Piperidine;
 Less than 1.44 KG of Piperonal;
 Less than 7.2 G of Propionic Anhydride;
 Less than 1.44 KG of Safrole;
 Less than 1.8 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

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

The Commentary to §2D1.11 captioned "Application Notes" is amended by striking Note 4 in its entirety and inserting the following:

"4. Cases Involving Multiple Chemicals.—

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

Example: The defendant was in possession of five kilograms of ephedrine and 300

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

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

Example: The defendant was in possession of 80 grams of ephedrine and 50 grams of phenylpropanolamine, an aggregate quantity of 130 grams of such chemicals. The base offense level corresponding to that aggregate quantity is level 32.

- (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."

The Commentary to §2D1.11 captioned "Application Notes" is amended by striking Notes 5 and 6 in their entirety; and by redesignating Notes 7 and 8 as Notes 5 and 6, respectively.

The Commentary to §2D1.11 captioned "Background" is amended in the first sentence by inserting "(including ephedrine, pseudoephedrine, and phenylpropanolamine)" after "list I chemicals".

The Commentary to 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" by inserting after the subdivision captioned "Schedule V Substances*****" the following new subdivision:

"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."

Reason for Amendment: This amendment is in response to 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, this amendment provides a new chemical quantity table specifically for ephedrine, pseudoephedrine, and phenylpropanolamine (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 actual yield of the controlled substance from the chemicals. (Methamphetamine (actual) is used rather than methamphetamine mixture because ephedrine, pseudoephedrine, and PPA produce methamphetamine (actual)). This yield is based on information provided by the Drug Enforcement Administration (DEA) that the typical yield of these substances for clandestine laboratories is 50 to 75 percent.

This new chemical quantity table has a maximum base offense level of level 38 (as opposed to a maximum base offense level of level 30 for all other precursor chemicals). Providing a maximum base offense level of level 38 complies with the directive to establish penalties for these precursors that "correspond to the quantity of controlled substance that could have reasonably been manufactured using the quantity of ephedrine, phenylpropanolamine, or pseudoephedrine possessed or distributed." 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, pseudoephedrine, and PPA.

This amendment eliminates the Ephedrine Equivalency Table in §2D1.11 and, in its place, provides an instruction for the court to determine the base offense level in cases involving multiple precursors (other than ephedrine, pseudoephedrine, or PPA) by using the quantity of the single chemical resulting in the greatest offense level. An upward departure is provided for cases in which the offense level does not adequately address the seriousness of the offense.

However, this amendment provides an exception to the rule for offenses that involve a combination of ephedrine, pseudoephedrine, or PPA 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 these chemicals involved. The purpose of this exception is twofold: (1) any of the three primary precursors in the same table can be combined without difficulty; and (2) studies conducted by the DEA indicate that because the manufacturing process for amphetamine and methamphetamine is identical, there are cases in which the different precursors are included in the same batch of drugs. If the chemical is PPA, amphetamine results; and if the chemical is ephedrine, methamphetamine results.

Second, the amendment adds to the Drug Equivalency Tables in §2D1.1 a conversion table for these precursor chemicals, providing for a 50 percent conversion ratio. This is based on data from the DEA that the actual yield from ephedrine, pseudoephedrine, or PPA typically is in the range of 50 to 75 percent. The purpose of this part of the amendment is to achieve the same punishment level (as is achieved by the first part of this amendment) for an offense involving any of these precursor chemicals when such offense involved the manufacture of methamphetamine and, as a result, is sentenced under §2D1.1 pursuant to the cross reference in §2D1.11.

Third, this amendment increases the base offense level for Benzaldehyde, Hydriodic Acid, Methylamine, Nitroethane, and Norpseudoephedrine by re-calibrating these levels to the appropriate quantity of methamphetamine (actual) that could be produced assuming a 50 percent yield of chemical to drug and retaining a cap at level 30. Previously, these chemicals had been linked to methamphetamine (mixture) penalty levels. Based on a study conducted by the DEA, ephedrine and pseudoephedrine are the primary precursors used to make methamphetamine in the United States. Phenylpropanolamine is the primary precursor used to make amphetamine. Unlike the five additional List I chemicals, the chemical structures of ephedrine, pseudoephedrine, and PPA are so similar to the resulting drug (*i.e.*, methamphetamine or amphetamine) that the manufacture of methamphetamine or amphetamine from ephedrine, pseudoephedrine, or PPA is a very simple one-step synthesis which anyone can perform using a variety of chemical reagents. The manufacture of methamphetamine or

amphetamine from the five additional List I chemicals is a more complex process which requires a heightened level of expertise.

Effective Date: The effective date of this amendment is May 1, 2001.

- 612. Amendment:** The Commentary to §2G1.1 captioned "Statutory Provisions" is amended by inserting "1591," before "2421".

The Commentary to §2G1.1 captioned "Application Notes" is amended in Note 2 in the fourth sentence by adding "(B)" after "purposes of subsection (b)(1)".

The Commentary to §2G1.1 captioned "Application Notes" is amended by adding at the end the following:

- "12. Upward Departure Provisions.—An upward departure may be warranted in either of the following circumstances:
- (A) The defendant was convicted under 18 U.S.C. § 1591 and the offense involved a victim who had not attained the age of 14 years.
 - (B) The offense involved more than 10 victims."

The Commentary to §2G1.1 captioned "Background" is amended by adding at the end the following paragraph:

"This guideline also covers offenses under section 1591 of title 18, United States Code. These offenses involve recruiting or transporting a person in interstate commerce knowing either that (1) force, fraud, or coercion will be used to cause the person to engage in a commercial sex act; or (2) the person (A) had not attained the age of 18 years; and (B) will be caused to engage in a commercial sex act."

The Commentary to §2G2.1 captioned "Statutory Provisions" is amended by inserting "1591," before "2251(a)".

The Commentary to §2G2.1 captioned "Application Notes" is amended by adding at the end the following:

- "6. Upward Departure Provisions.—An upward departure may be warranted in either of the following circumstances:
- (A) The defendant was convicted under 18 U.S.C. § 1591 and the offense involved a victim who had not attained the age of 14 years.
 - (B) The offense involved more than 10 victims."

Section 2H4.1 is amended by striking subsection (a) in its entirety and inserting the following:

- "(a) Base Offense Level (Apply the greater):
- (1) 22; or

- (2) 18, if the defendant was convicted of an offense under 18 U.S.C. § 1592."

Section 2H4.1(b) is amended by striking subdivision (2) in its entirety and inserting the following:

- "(2) If (A) a dangerous weapon was used, increase by 4 levels; or (B) a dangerous weapon was brandished, or the use of a dangerous weapon was threatened, increase by 2 levels."

The Commentary to §2H4.1 captioned "Statutory Provisions" is amended by striking "1588" and inserting "1590, 1592".

The Commentary to §2H4.1 captioned "Application Notes" is amended in Note 1 in the second paragraph by inserting "other" after "that a firearm or"; and by adding after "otherwise used." the following:

"'The use of a dangerous weapon was threatened' means that the use of a dangerous weapon was threatened regardless of whether a dangerous weapon was present."

Chapter Two, Part H, is amended in Subpart 4 by adding at the end the following:

"§2H4.2. Willful Violations of the Migrant and Seasonal Agricultural Worker Protection Act

- (a) Base Offense Level: 6
- (b) Specific Offense Characteristics
- (1) If the offense involved (i) serious bodily injury, increase by 4 levels; or (ii) bodily injury, increase by 2 levels.
- (2) If the defendant committed any part of the instant offense subsequent to sustaining a civil or administrative adjudication for similar misconduct, increase by 2 levels.

Commentary

Statutory Provision: 29 U.S.C. § 1851.

Application Notes:

1. Definitions.—For purposes of subsection (b)(1), 'bodily injury' and 'serious bodily injury' have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).
2. Application of Subsection (b)(2).—Section 1851 of title 29, United States Code, covers a wide range of conduct. Accordingly, the enhancement in subsection (b)(2) applies only if the instant offense is similar to previous misconduct that resulted in a civil or administrative adjudication under the provisions of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. § 1801 et. seq.)."

Section 5E1.1(a)(1) is amended by inserting "§ 1593," after "18 U.S.C."

The Commentary to §5E1.1 captioned "Background" is amended in the first paragraph by inserting

"1593," after "18 U.S.C. §§".

Appendix A (Statutory Index) is amended in the line referenced to "18 U.S.C. § 241" by inserting ", 2H4.1" after "2H2.1".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "18 U.S.C. § 1588" the following new lines:

"18 U.S.C. § 1589	2H4.1
18 U.S.C. § 1590	2H4.1
18 U.S.C. § 1591	2G1.1, 2G2.1
18 U.S.C. § 1592	2H4.1".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "29 U.S.C. § 1141" the following:

"29 U.S.C. § 1851 2H4.2".

Reason for Amendment: In promulgating this amendment, the Commission is cognizant of the extraordinarily serious nature of offenses that involve trafficking in human lives. This amendment is in response to the directive found at section 112(b) of the Victims of Trafficking and Violence Protection Act of 2000 (the "Act"), Pub. L. 106–386. The Commission expects to consider further revisions and additions to the specific offense characteristics and punishment levels for these offenses, such as the possibility of providing an alternative base offense level in §2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct) for convictions under 18 U.S.C. § 1591 involving victims under the age of 14 years.

The directive confers emergency authority on the Commission to amend the federal sentencing guidelines to reflect changes to 18 U.S.C. §§ 1581(a) (Peonage), 1583 (Enticement into Slavery), and 1584 (Sale into Involuntary Servitude). The Commission also is directed to consider how to address four new statutes: 18 U.S.C. §§ 1589 (Forced Labor); 1590 (Trafficking with Respect to Peonage, Involuntary Servitude or Forced Labor); 1591 (Sex Trafficking of Children by Force, Fraud or Coercion); and 1592 (Unlawful Conduct with Respect to Documents in Furtherance of Peonage, Involuntary Servitude or Forced Labor).

Specifically, the Commission is directed to "review and, if appropriate, amend the sentencing guidelines applicable to . . . the trafficking of persons including . . . peonage, involuntary servitude, slave trade offenses, and possession, transfer or sale of false immigration documents in furtherance of trafficking, and the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act."

The Commission further is directed to "take all appropriate measures to ensure that these sentencing guidelines . . . are sufficiently stringent to deter and adequately reflect the heinous nature of these offenses." The Commission also is directed to "consider providing sentencing enhancements" in cases which involve: (1) a large number of victims; (2) a pattern of continued and flagrant violations; (3) the use or threatened use of a dangerous weapon; or (4) the death or bodily injury of any person.

To address this multi-faceted directive, this amendment makes changes to several existing guidelines and creates a new guideline for criminal violations of the Migrant and Seasonal Agricultural Worker Protection Act. Although the directive instructs the Commission to amend the guidelines applicable to the Fair Labor Standards Act (29 U.S.C. § 201 et. seq.), a criminal violation of the Fair Labor Standards Act is only a Class B misdemeanor. See 29 U.S.C. § 216. Thus, the guidelines are not

applicable to those offenses.

The amendment references the new offense at 18 U.S.C. § 1591 to §2G1.1. Section 1591 punishes a defendant who participates in the transporting or harboring of a person, or who benefits from participating in such a venture, with the knowledge that force, fraud, or coercion will be used to cause that person to engage in a commercial sex act or with knowledge that the person is not 18 years old and will be forced to engage in a commercial sex act. Despite the statute's inclusion in a chapter of title 18 devoted mainly to peonage offenses, section 1591 offenses are more analogous to the offenses referenced to the prostitution guideline.

Section 1591 cases alternatively have been referred in Appendix A to §2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production). This has been done in anticipation that some portion of section 1591 cases will involve children being forced or coerced to engage in commercial sex acts for the purpose of producing pornography. Such offenses, as recognized by the higher base offense level at §2G2.1, are more serious because they both involve specific harm to an individual victim and further an additional criminal purpose, namely, commercial pornography.

The amendment maintains the view that §2H4.1 (Peonage, Involuntary Servitude, and Slave Trade) continues to be an appropriate tool for determining sentences for violations of 18 U.S.C. §§ 1581, 1583, and 1584. Section 2H4.1 also is designed to cover offenses under three new statutes, 18 U.S.C. §§ 1589, 1590, and 1592. Section 1589 punishes defendants who provide or obtain the labor or services of another by the use of threats of serious harm or physical restraint against a person, or by a scheme or plan intended to make the person believe that if he or she did not perform the labor or services, he or she would suffer physical restraint or serious harm. This statute also applies to defendants who provide or obtain labor or services of another by abusing or threatening abuse of the law or the legal process. See 18 U.S.C. § 1589.

Section 1590 punishes defendants who harbor, transport, or are otherwise involved in obtaining, a person for labor or services. Section 1592 punishes a defendant who knowingly possesses, destroys, or removes an actual passport, other immigration document, or government identification document of another person in the course of a violation of § 1581 (peonage), § 1583 (enticement into slavery), § 1584 (sale into involuntary servitude), § 1589 (forced labor), § 1590 (trafficking with respect to these offenses), § 1591 (sex trafficking of children by force, fraud or coercion), or § 1594(a) (attempts to violate these offenses). Section 1592 also punishes a defendant who, with intent to violate § 1581, § 1583, § 1584, § 1589, § 1590, or § 1591, knowingly possesses, destroys, or removes an actual passport, other immigration document, or government identification document of another person. These statutes prohibit the types of behaviors that have been traditionally sentenced under §2H4.1.

The amendment provides an alternative, less punitive base offense level of level 18 for those who violate 18 U.S.C. § 1592, an offense which limits participation in peonage cases to the destruction or wrongful confiscation of a passport or other immigration document. This alternative, lower base level reflects the lower statutory maximum sentence for § 1592 offenses (i.e., 5 years).

Section 2H4.1(b)(2) has been expanded to provide a 4-level increase if a dangerous weapon was used and a 2-level increase if a dangerous weapon was brandished or its use was threatened. Currently, only actual use of a dangerous weapon is covered. This change reflects the directive to consider an enhancement for the "use or threatened use of a dangerous weapon." The commentary to §2H4.1 is amended to clarify that the threatened use of a dangerous weapon applies regardless of whether a dangerous weapon was actually present.

The amendment also creates a new guideline, §2H4.2 (Willful Violations of the Migrant and Seasonal Agricultural Worker Protection Act), in response to the directive to amend the guidelines applicable to such offenses. These offenses, which have a statutory maximum sentence of one year imprisonment for first offenses and three years' imprisonment for subsequent offenses, currently are not referred to any specific guideline. The amendment provides a base offense level of level 6 in recognition of the low statutory maximum sentences set for these cases by Congress. Further, these offenses typically involve violations of regulatory provisions. Setting the base offense level at level 6 provides consistency with guidelines for other regulatory offenses. See, e.g., §§2N2.1 (Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product) and 2N3.1 (Odometer Laws and Regulations). Subsections (b)(1), an enhancement for bodily injury, and (b)(2), an enhancement applicable to defendants who commit the instant offense after previously sustaining a civil penalty for similar misconduct, have been established to respond to the directive that the Commission consider sentencing enhancement for these offense characteristics. This section addresses the Department of Justice's and the Department of Labor's concern regarding prior administrative and civil adjudications.

This amendment also addresses that portion of section 112 of the Act that amends chapter 77 of title 18, United States Code, to provide mandatory restitution for peonage and involuntary servitude offenses. The amendment amends §5E1.1 (Restitution) to include a reference to 18 U.S.C. § 1593 in the guideline provision regarding mandatory restitution.

By enactment of various sentencing enhancements and encouraged upward departures for areas of concern identified by Congress, the Commission has provided for more severe sentences for perpetrators of human trafficking offenses in keeping with the conclusion that the offenses covered by this amendment are both heinous in nature and being committed with rapidly increasing frequency.

Effective Date: The effective date of this amendment is May 1, 2001.