CHAPTER TWO

OFFENSE CONDUCT

Introductory Commentary

Chapter Two pertains to offense conduct. The chapter is organized by offenses and divided into parts and related sections that may cover one statute or many. Each offense has a corresponding base offense level and may have one or more specific offense characteristics that adjust the offense level upward or downward. Certain factors relevant to the offense that are not covered in specific guidelines in Chapter Two are set forth in Chapter Three, Parts A (Victim-Related Adjustments), B (Role in the Offense), and C (Obstruction and Related Adjustments); and Chapter Four, Parts B (Career Offenders and Criminal Livelihood) and C (Adjustment for Certain Zero-Point Offenders).

Historical Note	Effective November 1, 1987. Amended effective November 1, 2011 (amendment 758); November 1, 2024 (amendment 831); November 1, 2025 (amendment 836).

PART A — OFFENSES AGAINST THE PERSON

1. HOMICIDE

§2A1.1. First Degree Murder

(a) Base Offense Level: **43**

Commentary

Statutory Provisions: 18 U.S.C. §§ 1111, 1841(a)(2)(C), 1992(a)(7), 2113(e), 2118(c)(2), 2199, 2282A, 2291, 2332b(a)(1), 2340A; 21 U.S.C. § 848(e). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Applicability of Guideline.**—This guideline applies in cases of premeditated killing. This guideline also applies when death results from the commission of certain felonies. For example, this guideline may be applied as a result of a cross reference (*e.g.*, a kidnapping in which death occurs, *see* §2A4.1(c)(1)), or in cases in which the offense level of a guideline is calculated using the underlying crime (*e.g.*, murder in aid of racketeering, *see* §2E1.3(a)(2)).

2. **Offenses Involving Premeditated Killing.**—In the case of premeditated killing, life imprisonment is the appropriate sentence if a sentence of death is not imposed. If a mandatory statutory term of life imprisonment applies, a lesser term of imprisonment is permissible only in cases in which the government files a motion pertaining to the defendant's substantial assistance, as provided in 18 U.S.C. § 3553(e).

3. **Applicability of Guideline When Death Sentence Not Imposed.**—If the defendant is sentenced pursuant to 18 U.S.C. § 3591 *et seq.* or 21 U.S.C. § 848(e), a sentence of death may be

imposed under the specific provisions contained in that statute. This guideline applies when a sentence of death is not imposed under those specific provisions.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 82); November 1, 1990 (amendment 310); November 1, 1993 (amendment 476); November 1, 2002 (amendment 637); November 1, 2004 (amendment 663); November 1, 2006 (amendment 685); November 1, 2007 (amendments 699 and 700); November 1, 2010 (amendment 746); November 1, 2025 (amendment 836).

§2A1.2. Second Degree Murder

(a) Base Offense Level: **38**

Commentary

Statutory Provisions: 18 U.S.C. §§ 1111, 1841(a)(2)(C), 2199, 2282A, 2291, 2332b(a)(1), 2340A. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Historical Note	Effective November 1, 1987. Amended effective November 1, 2002 (amendment 637); November 1, 2004 (amendment 663); November 1, 2006 (amendment 685); November 1, 2007 (amendments 699 and 700); November 1, 2025 (amendment 836).

§2A1.3. Voluntary Manslaughter

(a) Base Offense Level: **29**

Commentary

Statutory Provisions: 18 U.S.C. §§ 1112, 1841(a)(2)(C), 2199, 2291, 2332b(a)(1). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Historical Note	Effective November 1, 1987. Amended effective November 1, 2002 (amendment 637); November 1, 2004 (amendment 663); November 1, 2006 (amendment 685); November 1, 2007 (amendment 699).

§2A1.4. Involuntary Manslaughter

(a) Base Offense Level:

(1) **12**, if the offense involved criminally negligent conduct; or

(2) (Apply the greater):

(A) **18**, if the offense involved reckless conduct; or

(B) **22**, if the offense involved the reckless operation of a means of transportation.

(b) Special Instruction

(1) If the offense involved the involuntary manslaughter of more than one person, subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) shall be applied as if the involuntary manslaughter of each person had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1112, 1841(a)(2)(C), 2199, 2291, 2332b(a)(1). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. **Definitions.—**For purposes of this guideline:

"***Criminally negligent***" means conduct that involves a gross deviation from the standard of care that a reasonable person would exercise under the circumstances, but which is not reckless. Offenses with this characteristic usually will be encountered as assimilative crimes.

"***Means of transportation***" includes a motor vehicle (including an automobile or a boat) and a mass transportation vehicle. "Mass transportation" has the meaning given that term in 18 U.S.C. § 1992(d)(7).

"***Reckless***" means a situation in which the defendant was aware of the risk created by his conduct and the risk was of such a nature and degree that to disregard that risk constituted a gross deviation from the standard of care that a reasonable person would exercise in such a situation. "Reckless" includes all, or nearly all, convictions for involuntary manslaughter under 18 U.S.C. § 1112. A homicide resulting from driving a means of transportation, or similarly dangerous actions, while under the influence of alcohol or drugs ordinarily should be treated as reckless.

Historical Note	Effective November 1, 1987. Amended effective November 1, 2002 (amendment 637); November 1, 2003 (amendment 652); November 1, 2004 (amendment 663); November 1, 2006 (amendment 685); November 1, 2007 (amendment 699); November 1, 2026 (amendment 840).

§2A1.5. Conspiracy or Solicitation to Commit Murder

(a) Base Offense Level: **33**

(b) Specific Offense Characteristic

(1) If the offense involved the offer or the receipt of anything of pecuniary value for undertaking the murder, increase by **4** levels.

(c) Cross References

(1) If the offense resulted in the death of a victim, apply §2A1.1 (First Degree Murder).

(2) If the offense resulted in an attempted murder or assault with intent to commit murder, apply §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder).

Commentary

Statutory Provisions: 18 U.S.C. §§ 351(d), 371, 373, 1117, 1751(d).

Historical Note	Effective November 1, 1990 (amendment 311). Amended effective November 1, 2004 (amendment 663).

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2. ASSAULT

§2A2.1. Assault with Intent to Commit Murder; Attempted Murder

(a) Base Offense Level:

(1) **33**, if the object of the offense would have constituted first degree murder; or

(2) **27**, otherwise.

(b) Specific Offense Characteristics

(1) If (A) the victim sustained permanent or life-threatening bodily injury, increase by **4** levels; (B) the victim sustained serious bodily injury, increase by **2** levels; or (C) the degree of injury is between that specified in subdivisions (A) and (B), increase by **3** levels.

(2) If the offense involved the offer or the receipt of anything of pecuniary value for undertaking the murder, increase by **4** levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 113(a)(1), 351(c), 1113, 1116(a), 1751(c), 1841(a)(2)(C), 1992(a)(7), 2199, 2291. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. **Definitions.**—For purposes of this guideline:

"***First degree murder***" means conduct that, if committed within the special maritime and territorial jurisdiction of the United States, would constitute first degree murder under 18 U.S.C. § 1111.

"***Permanent or life-threatening bodily injury***" and "***serious bodily injury***" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

Background: This section applies to the offenses of assault with intent to commit murder and attempted murder. An attempted manslaughter, or assault with intent to commit manslaughter, is covered under §2A2.2 (Aggravated Assault).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 83 and 84); November 1, 1990 (amendment 311); November 1, 1991 (amendment 391); November 1, 1995 (amendment 534); November 1, 2002 (amendment 637); November 1, 2004 (amendment 663); November 1, 2006 (amendment 685); November 1, 2007 (amendment 699); November 1, 2025 (amendment 836).

§2A2.2. Aggravated Assault

(a) Base Offense Level: **14**

(b) Specific Offense Characteristics

(1) If the assault involved more than minimal planning, increase by **2** levels.

(2) If (A) a firearm was discharged, increase by **5** levels; (B) a dangerous weapon (including a firearm) was otherwise used, increase by **4** levels; (C) a dangerous weapon (including a firearm) was brandished or its use was threatened, increase by **3** levels.

(3) If the victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

	DEGREE OF BODILY INJURY	INCREASE IN LEVEL
(A)	Bodily Injury	add **3**
(B)	Serious Bodily Injury	add **5**
(C)	Permanent or Life-Threatening Bodily Injury	add **7**
(D)	If the degree of injury is between that specified in subdivisions (A) and (B),	add **4** levels; or
(E)	If the degree of injury is between that specified in subdivisions (B) and (C),	add **6** levels.

However, the cumulative adjustments from application of subdivisions (2) and (3) shall not exceed **10** levels.

(4) If the offense involved strangling, suffocating, or attempting to strangle or suffocate a spouse, intimate partner, or dating partner, increase by **3** levels.

However, the cumulative adjustments from application of subdivisions (2), (3), and (4) shall not exceed **12** levels.

(5) If the assault was motivated by a payment or offer of money or other thing of value, increase by **2** levels.

(6) If the offense involved the violation of a court protection order, increase by **2** levels.

(7) If the defendant was convicted under 18 U.S.C. § 111(b) or § 115, increase by **2** levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 111, 112, 113(a)(2), (3), (6), (8), 114, 115(a), (b)(1), 351(e), 1751(e), 1841(a)(2)(C), 1992(a)(7), 2199, 2291, 2332b(a)(1), 2340A. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Aggravated assault***" means a felonious assault that involved (A) a dangerous weapon with intent to cause bodily injury (*i.e.*, not merely to frighten) with that weapon; (B) serious bodily injury; (C) strangling, suffocating, or attempting to strangle or suffocate; or (D) an intent to commit another felony.

"***Brandished***," "***bodily injury***," "***firearm***," "***otherwise used***," "***permanent or life-threatening bodily injury***," and "***serious bodily injury***," have the meaning given those terms in §1B1.1 (Application Instructions), Application Note 1.

"***Dangerous weapon***" has the meaning given that term in §1B1.1, Application Note 1, and includes any instrument that is not ordinarily used as a weapon (*e.g.*, a car, a chair, or an ice pick) if such an instrument is involved in the offense with the intent to commit bodily injury.

"***Strangling***" and "***suffocating***" have the meaning given those terms in 18 U.S.C. § 113.

"***Spouse***," "***intimate partner***," and "***dating partner***" have the meaning given those terms in 18 U.S.C. § 2266.

2. **Application of Subsection (b)(1).**—For purposes of subsection (b)(1), "***more than minimal planning***" means more planning than is typical for commission of the offense in a simple form. "More than minimal planning" also exists if significant affirmative steps were taken to conceal the offense, other than conduct to which §3C1.1 (Obstructing or Impeding the Administration of

Justice) applies. For example, waiting to commit the offense when no witnesses were present would not alone constitute more than minimal planning. By contrast, luring the victim to a specific location or wearing a ski mask to prevent identification would constitute more than minimal planning.

3. **Application of Subsection (b)(2).**—In a case involving a dangerous weapon with intent to cause bodily injury, the court shall apply both the base offense level and subsection (b)(2).

4. **Application of Official Victim Adjustment.**—If subsection (b)(7) applies, §3A1.2 (Official Victim) also shall apply.

Background: This guideline covers felonious assaults that are more serious than other assaults because of the presence of an aggravating factor, *i.e.*, serious bodily injury; the involvement of a dangerous weapon with intent to cause bodily injury; strangling, suffocating, or attempting to strangle or suffocate; or the intent to commit another felony. Such offenses occasionally may involve planning or be committed for hire. Consequently, the structure follows §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder). This guideline also covers attempted manslaughter and assault with intent to commit manslaughter. Assault with intent to commit murder is covered by §2A2.1. Assault with intent to commit rape is covered by §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

An assault that involves the presence of a dangerous weapon is aggravated in form when the presence of the dangerous weapon is coupled with the intent to cause bodily injury. In such a case, the base offense level and the weapon enhancement in subsection (b)(2) take into account different aspects of the offense, even if application of the base offense level and the weapon enhancement is based on the same conduct.

Subsection (b)(7) implements the directive to the Commission in subsection 11008(e) of the 21st Century Department of Justice Appropriations Act (the "Act"), Public Law 107–273. The enhancement in subsection (b)(7) is cumulative to the adjustment in §3A1.2 (Official Victim) in order to address adequately the directive in section 11008(e)(2)(D) of the Act, which provides that the Commission shall consider "the extent to which sentencing enhancements within the Federal guidelines and the authority of the court to impose a sentence in excess of the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by" 18 U.S.C. §§ 111 and 115.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 85 and 86); November 1, 1990 (amendment 311); November 1, 1995 (amendment 534); November 1, 1997 (amendment 549); November 1, 2001 (amendment 614); November 1, 2002 (amendment 637); November 1, 2004 (amendment 663); November 1, 2006 (amendment 685); November 1, 2007 (amendment 699); November 1, 2014 (amendment 781).

§2A2.3. Assault

(a) Base Offense Level:

(1) **7**, if the offense involved physical contact, or if a dangerous weapon (including a firearm) was possessed and its use was threatened; or

(2) **4**, otherwise.

(b) Specific Offense Characteristic

(1) If (A) the victim sustained bodily injury, increase by **2** levels; or (B) the offense resulted in substantial bodily injury to a spouse, intimate partner, or dating partner, or an individual under the age of sixteen years, increase by **4** levels.

(c) Cross Reference

(1) If the conduct constituted aggravated assault, apply §2A2.2 (Aggravated Assault).

Commentary

Statutory Provisions: 18 U.S.C. §§ 112, 113(a)(4), (5), (7), 115(a), 115(b)(1), 351(e), 1751(e), 2199, 2291. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Bodily injury***", "***dangerous weapon***", and "***firearm***" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

"***Spouse***," "***intimate partner***," and "***dating partner***" have the meaning given those terms in 18 U.S.C. § 2266.

"***Substantial bodily injury***" means "bodily injury which involves (A) a temporary but substantial disfigurement; or (B) a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty." *See* 18 U.S.C. § 113(b)(1).

2. **Application of Subsection (b)(1).—**Conduct that forms the basis for application of subsection (a)(1) also may form the basis for application of the enhancement in subsection (b)(1)(A) or (B).

Background: This section applies to misdemeanor assault and battery and to any felonious assault not covered by §2A2.2 (Aggravated Assault).

Historical Note	Effective November 1, 1987. Amended effective October 15, 1988 (amendment 64); November 1, 1989 (amendments 87 and 88); November 1, 1995 (amendment 510); November 1, 2004 (amendment 663); November 1, 2007 (amendment 699); November 1, 2014 (amendment 781).

§2A2.4. Obstructing or Impeding Officers

(a) Base Offense Level: **10**

(b) Specific Offense Characteristics

(1) If (A) the offense involved physical contact; or (B) a dangerous weapon (including a firearm) was possessed and its use was threatened, increase by **3** levels.

(2) If the victim sustained bodily injury, increase by **2** levels.

(c) Cross Reference

(1) If the conduct constituted aggravated assault, apply §2A2.2 (Aggravated Assault).

Commentary

Statutory Provisions: 18 U.S.C. §§ 40A, 111, 1501, 1502, 2237(a)(1), (a)(2)(A), 3056(d). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline, "***bodily injury***", "***dangerous weapon***", and "***firearm***" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

2. **Application of Certain Chapter Three Adjustments.**—The base offense level incorporates the fact that the victim was a governmental officer performing official duties. Therefore, do not apply §3A1.2 (Official Victim) unless, pursuant to subsection (c), the offense level is determined under §2A2.2 (Aggravated Assault). Conversely, the base offense level does not incorporate the possibility that the defendant may create a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement official (although an offense under 18 U.S.C. § 758 for fleeing or evading a law enforcement checkpoint at high speed will often, but not always, involve the creation of that risk). If the defendant creates that risk and no higher guideline adjustment is applicable for the conduct creating the risk, apply §3C1.2 (Reckless Endangerment During Flight).

Historical Note	Effective October 15, 1988 (amendment 64). Amended effective November 1, 1989 (amendments 89 and 90); November 1, 1992 (amendment 443); November 1, 1997 (amendment 550); November 1, 2004 (amendment 663); November 1, 2005 (amendment 679); November 1, 2007 (amendment 699); November 1, 2023 (amendment 815); November 1, 2025 (amendment 836).

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3. CRIMINAL SEXUAL ABUSE AND OFFENSES RELATED TO REGISTRATION AS A SEX OFFENDER

Historical Note	Effective November 1, 1987. Amended effective November 1, 2007 (amendment 701).

§2A3.1. Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse

(a) Base Offense Level:

(1) **38**, if the defendant was convicted under 18 U.S.C. § 2241(c); or

(2) **30**, otherwise.

(b) Specific Offense Characteristics

(1) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b), increase by **4** levels.

(2) If subsection (a)(2) applies and (A) the victim had not attained the age of twelve years, increase by **4** levels; or (B) the victim had attained the age of twelve years but had not attained the age of sixteen years, increase by **2** levels.

(3) If the victim was (A) in the custody, care, or supervisory control of the defendant; or (B) a person held in the custody of a correctional facility, increase by **2** levels.

(4) (A) If the victim sustained permanent or life-threatening bodily injury, increase by **4** levels; (B) if the victim sustained serious bodily injury, increase by **2** levels; or (C) if the degree of injury is between that specified in subparagraphs (A) and (B), increase by **3** levels.

(5) If the victim was abducted, increase by **4** levels.

(6) If, to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, or if, to facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct, the offense involved (A) the knowing misrepresentation of a participant's identity; or (B) the use of a computer or an interactive computer service, increase by **2** levels.

(c) 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), if the resulting offense level is greater than that determined above.

(2) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor 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), if the resulting offense level is greater than that determined above.

(d) Special Instruction

(1) If the offense occurred in the custody or control of a prison or other correctional facility and the victim was a prison official, the offense shall be deemed to have an official victim for purposes of subsection (c)(2) of §3A1.2 (Official Victim).

Commentary

Statutory Provisions: 18 U.S.C. §§ 2241, 2242. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Abducted***", "***permanent or life-threatening bodily injury***", and "***serious bodily injury***" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions). However, for purposes of this guideline, "***serious bodily injury***" means conduct other than criminal sexual abuse, which already is taken into account in the base offense level under subsection (a).

"***Custody or control***" and "***prison official***" have the meaning given those terms in Application Note 4 of the Commentary to §3A1.2 (Official Victim).

"***Child pornography***" has the meaning given that term in 18 U.S.C. § 2256(8).

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Distribution***" means any act, including possession with intent to distribute, production, transportation, and advertisement, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation

of a minor on a website for public viewing, but does not include the mere solicitation of such material by a defendant.

"***Interactive computer service***" has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

"***Minor***" means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

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

"***Prohibited sexual conduct***" (A) means any sexual activity for which a person can be charged with a criminal offense; (B) includes the production of child pornography; and (C) does not include trafficking in, or possession of, child pornography.

"***Victim***" includes an undercover law enforcement officer.

2. **Application of Subsection (b)(1).—**

(A) **Definitions.—**For purposes of subsection (b)(1), "***conduct described in 18 U.S.C. § 2241(a) or (b)***" is engaging in, or causing another person to engage in, a sexual act with another person by: (A) using force against the victim; (B) threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping; (C) rendering the victim unconscious; or (D) administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol.

(B) **Application in Cases Involving a Conviction under 18 U.S.C. § 2241(c).—**If the conduct that forms the basis for a conviction under 18 U.S.C. § 2241(c) is that the defendant engaged in conduct described in 18 U.S.C. § 2241(a) or (b), do not apply subsection (b)(1).

3. **Application of Subsection (b)(3).—**

(A) **Care, Custody, or Supervisory Control.—**Subsection (b)(3) is to be construed broadly 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, babysitters, 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 minor and not simply to the legal status of the defendant-minor relationship.

(B) **Inapplicability of Chapter Three Adjustment.—**If the enhancement in subsection (b)(3) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

4. **Application of Subsection (b)(6).—**

(A) **Misrepresentation of Participant's Identity.**—The enhancement in subsection (b)(6)(A) applies in cases involving the misrepresentation of a participant's identity to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(6)(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)(6)(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)(6)(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 (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

(B) **Use of a Computer or Interactive Computer Service.**—Subsection (b)(6)(B) provides an enhancement if a computer or an interactive computer service was used to (i) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (ii) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(6)(B) is intended to apply only to the use of a computer or an interactive computer service 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 interactive computer service to obtain airline tickets for the minor from an airline's Internet site.

5. **Application of Subsection (c)(2).—**

(A) **In General.**—The cross reference in subsection (c)(2) is to be construed broadly and includes all instances where the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

(B) **Definition.**—For purposes of subsection (c)(2), "***sexually explicit conduct***" has the meaning given that term in 18 U.S.C. § 2256(2).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 91 and 92); November 1, 1991 (amendment 392); November 1, 1992 (amendment 444); November 1, 1993 (amendment 477); November 1, 1995 (amendment 511); November 1, 1997 (amendment 545); November 1, 2000 (amendments 592 and 601); November 1, 2001 (amendment 615); November 1, 2003 (amendment 661); November 1, 2004 (amendment 664); November 1, 2007 (amendment 701); November 1, 2008 (amendment 725); November 1, 2025 (amendment 836); November 1, 2026 (amendment 843).

§2A3.2. Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts

(a) Base Offense Level: **18**

(b) Specific Offense Characteristics

(1) If the minor was in the custody, care, or supervisory control of the defendant, increase by **4** levels.

(2) If (A) subsection (b)(1) does not apply; and (B)(i) the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, or coerce the minor to engage in prohibited sexual conduct; or (ii) a participant otherwise unduly influenced the minor to engage in prohibited sexual conduct, increase by **4** levels.

(3) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce the minor to engage in prohibited sexual conduct, increase by **2** levels.

(c) Cross Reference

(1) If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse (as defined in 18 U.S.C. § 2241 or § 2242), apply §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse). If the victim had not attained the age of 12 years, §2A3.1 shall apply, regardless of the "consent" of the victim.

Commentary

Statutory Provision: 18 U.S.C. § 2243(a). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Interactive computer service***" has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

"***Minor***" means (A) an individual who had not attained the age of 16 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 16 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 16 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).

2. **Custody, Care, or Supervisory Control Enhancement.—**

(A) **In General.—**Subsection (b)(1) is intended to have broad application and is to be applied whenever the minor is 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 minor and not simply to the legal status of the defendant-minor relationship.

(B) **Inapplicability of Chapter Three Adjustment.—**If the enhancement in subsection (b)(1) applies, do not apply subsection (b)(2) or §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

3. **Application of Subsection (b)(2).—**

(A) **Misrepresentation of Identity.—**The enhancement in subsection (b)(2)(B)(i) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, or coerce the minor to engage in prohibited sexual conduct. Subsection (b)(2)(B)(i) is intended to apply only to misrepresentations made directly to the minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(2)(B)(i) 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)(2)(B)(i) 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, or coerce the minor to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

(B) **Undue Influence.—**In determining whether subsection (b)(2)(B)(ii) 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. The voluntariness of the minor's behavior may be compromised without prohibited sexual conduct occurring.

However, subsection (b)(2)(B)(ii) does not apply in a case in which the only "minor" (as defined in Application Note 1) involved in the offense is an undercover law enforcement officer.

In a case in which a participant is at least 10 years older than the minor, there shall be a rebuttable presumption that subsection (b)(2)(B)(ii) applies. 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.

4. **Application of Subsection (b)(3).—**Subsection (b)(3) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce the minor to engage in prohibited sexual conduct. Subsection (b)(3) is intended to apply only to the use of a

computer or an interactive computer service to communicate directly with the minor or with a person who exercises custody, care, or supervisory control of the minor.

5. **Cross Reference.**—Subsection (c)(1) 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 (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 not attained the age of 16 years, and was placed in fear of death, serious bodily injury, or kidnapping (*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 kidnapping (*see* 18 U.S.C. § 2242(1)).

Background: This section applies to offenses involving the criminal sexual abuse of an individual who had not attained the age of 16 years. While this section applies to consensual sexual acts prosecuted under 18 U.S.C. § 2243(a) that would be lawful but for the age of the minor, it also applies to cases, prosecuted under 18 U.S.C. § 2243(a), in which a participant took active measure(s) to unduly influence the minor to engage in prohibited sexual conduct and, thus, the voluntariness of the minor's behavior was compromised. A four-level enhancement is provided in subsection (b)(2) for such cases. It is assumed that at least a four-year age difference exists between the minor and the defendant, as specified in 18 U.S.C. § 2243(a). A four-level enhancement is provided in subsection (b)(1) for a defendant who victimizes a minor under his supervision or care. However, if the minor had not attained the age of 12 years, §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) will apply, regardless of the "consent" of the minor.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 93); November 1, 1991 (amendment 392); November 1, 1992 (amendment 444); November 1, 1995 (amendment 511); November 1, 2000 (amendment 592); November 1, 2001 (amendment 615); November 1, 2004 (amendment 664); November 1, 2009 (amendment 732); November 1, 2010 (amendment 746); November 1, 2025 (amendment 836); November 1, 2026 (amendment 843).

§2A3.3. Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts; Criminal Sexual Abuse of an Individual in Federal Custody

(a) Base Offense Level: **18**

(b) Specific Offense Characteristics

(1) If the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by **2** levels.

(2) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by **2** levels.

(c) Cross Reference

(1) If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse (as defined in 18 U.S.C. § 2241 or § 2242), apply §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse). If the victim had not attained the age of 12 years, §2A3.1 shall apply, regardless of the "consent" of the victim.

Commentary

Statutory Provision: 18 U.S.C. §§ 2243(b), 2243(c). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Interactive computer service***" has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

"***Minor***" means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years; and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

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

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

"***Ward***" means a person in official detention under the custodial, supervisory, or disciplinary authority of the defendant.

2. **Application of Subsection (b)(1).—**The enhancement in subsection (b)(1) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(1) 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.

The misrepresentation to which the enhancement in subsection (b)(1) 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, or coerce a minor to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

3. **Application of Subsection (b)(2).—**Subsection (b)(2) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(2) is intended to apply only to the use of a

computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor.

4. **Inapplicability of §3B1.3.**—Do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 94); November 1, 1995 (amendment 511); November 1, 2000 (amendment 592); November 1, 2001 (amendment 615); November 1, 2004 (amendment 664); November 1, 2007 (amendment 701); November 1, 2010 (amendment 746); November 1, 2023 (amendment 816); November 1, 2026 (amendment 843).

§2A3.4. Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact

(a) Base Offense Level:

(1) **20**, if the offense involved conduct described in 18 U.S.C. § 2241(a) or (b);

(2) **16**, if the offense involved conduct described in 18 U.S.C. § 2242; or

(3) **12**, otherwise.

(b) Specific Offense Characteristics

(1) If the victim had not attained the age of twelve years, increase by **4** levels; but if the resulting offense level is less than **22**, increase to level **22**.

(2) If the base offense level is determined under subsection (a)(1) or (2), and the victim had attained the age of twelve years but had not attained the age of sixteen years, increase by **2** levels.

(3) If the victim was in the custody, care, or supervisory control of the defendant, increase by **2** levels.

(4) If the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by **2** levels.

(5) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by **2** levels.

(c) Cross References

(1) If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse (as defined in 18 U.S.C. § 2241 or § 2242), apply §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

(2) If the offense involved criminal sexual abuse of a minor or attempt to commit criminal sexual abuse of a minor (as defined in 18 U.S.C. § 2243(a)), apply §2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provision: 18 U.S.C. § 2244. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Interactive computer service***" has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

"***Minor***" means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

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

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

2. **Application of Subsection (a)(1).—**For purposes of subsection (a)(1), "***conduct described in 18 U.S.C. § 2241(a) or (b)***" is engaging in, or causing sexual contact with, or by another person by: (A) using force against the victim; (B) threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping; (C) rendering the victim unconscious; or (D) administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct.

3. **Application of Subsection (a)(2).—**For purposes of subsection (a)(2), "***conduct described in 18 U.S.C. § 2242***" is: (A) engaging in, or causing sexual contact with, or by another person by threatening or placing the victim in fear (other than by threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or (B) engaging

in, or causing sexual contact with, or by another person who is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act.

4. **Application of Subsection (b)(3).—**

(A) **Custody, Care, or Supervisory Control.—**Subsection (b)(3) is intended to have broad application and is to be applied whenever the victim is 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.

(B) **Inapplicability of Chapter Three Adjustment.—**If the enhancement in subsection (b)(3) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

5. **Misrepresentation of a Participant's Identity.—**The enhancement in subsection (b)(4) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(4) 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) 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) 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, or coerce a minor to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

6. **Application of Subsection (b)(5).—**Subsection (b)(5) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(5) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor.

Background: This section covers abusive sexual contact not amounting to criminal sexual abuse (criminal sexual abuse is covered under §§2A3.1–3.3). Alternative base offense levels are provided to take account of the different means used to commit the offense.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 95); November 1, 1991 (amendment 392); November 1, 1992 (amendment 444); November 1, 1995 (amendment 511); November 1, 2000 (amendment 592); November 1, 2001 (amendment 615); November 1, 2004 (amendment 664); November 1, 2007 (amendments 701 and 711); November 1, 2026 (amendment 843).

§2A3.5. Failure to Register as a Sex Offender

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

(1) **16**, if the defendant was required to register as a Tier III offender;

(2) **14**, if the defendant was required to register as a Tier II offender; or

(3) **12**, if the defendant was required to register as a Tier I offender.

(b) Specific Offense Characteristics

(1) (Apply the greatest):

If, while in a failure to register status, the defendant committed—

(A) a sex offense against someone other than a minor, increase by **6** levels;

(B) a felony offense against a minor not otherwise covered by subdivision (C), increase by **6** levels; or

(C) a sex offense against a minor, increase by **8** levels.

(2) If the defendant voluntarily (A) corrected the failure to register; or (B) attempted to register but was prevented from registering by uncontrollable circumstances and the defendant did not contribute to the creation of those circumstances, decrease by **3** levels.

Commentary

Statutory Provision: 18 U.S.C. § 2250(a), (b).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Minor***" means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years; and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

"***Sex offense***" has the meaning given that term in 34 U.S.C. § 20911(5).

"***Tier I offender***", "***Tier II offender***", and "***Tier III offender***" have the meaning given the terms "tier I sex offender", "tier II sex offender", and "tier III sex offender", respectively, in 34 U.S.C. § 20911.

2. **Application of Subsection (b)(1).—**For purposes of subsection (b)(1), a defendant shall be deemed to be in a "failure to register status" during the period in which the defendant engaged in conduct described in 18 U.S.C. § 2250(a) or (b).

3. **Application of Subsection (b)(2).—**

(A) **In General.—**In order for subsection (b)(2) to apply, the defendant's voluntary attempt to register or to correct the failure to register must have occurred prior to the time the defendant knew or reasonably should have known a jurisdiction had detected the failure to register.

(B) **Interaction with Subsection (b)(1).—**Do not apply subsection (b)(2) if subsection (b)(1) also applies.

Historical Note	Effective November 1, 2007 (amendments 701 and 711). Amended effective November 1, 2010 (amendment 746); November 1, 2018 (amendments 812 and 813).

§2A3.6. Aggravated Offenses Relating to Registration as a Sex Offender

If the defendant was convicted under—

(a) 18 U.S.C. § 2250(d), the guideline sentence is the minimum term of imprisonment required by statute; or

(b) 18 U.S.C. § 2260A, the guideline sentence is the term of imprisonment required by statute.

Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) shall not apply to any count of conviction covered by this guideline.

Commentary

Statutory Provisions: 18 U.S.C. §§ 2250(d), 2260A.

Application Notes:

1. **In General.—**Section 2250(d) of title 18, United States Code, provides a mandatory minimum term of five years' imprisonment and a statutory maximum term of 30 years' imprisonment. The statute also requires a sentence to be imposed consecutively to any sentence imposed for a conviction under 18 U.S.C. § 2250(a) or (b). Section 2260A of title 18, United States Code, provides a term of imprisonment of 10 years that is required to be imposed consecutively to any sentence imposed for an offense enumerated under that section.

2. **Inapplicability of Chapters Three and Four.—**Do not apply Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) to any offense sentenced under this guideline. Such offenses are excluded from application of those chapters because the guideline sentence for each offense is determined only by the relevant statute. *See* §§3D1.1 (Procedure for Determining Offense Level on Multiple Counts) and 5G1.2 (Sentencing on Multiple Counts of Conviction).

3. **Inapplicability of Chapter Two Enhancement.—**If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense

characteristic that is based on the same conduct as the conduct comprising the conviction under 18 U.S.C. § 2250(d) or § 2260A.

Historical Note	Effective November 1, 2007 (amendment 701). Amended effective November 1, 2018 (amendment 812); November 1, 2025 (amendment 836).

* * * * *

4. KIDNAPPING, ABDUCTION, OR UNLAWFUL RESTRAINT

§2A4.1. Kidnapping, Abduction, Unlawful Restraint

(a) Base Offense Level: **32**

(b) Specific Offense Characteristics

(1) If a ransom demand or a demand upon government was made, increase by **6** levels.

(2) (A) If the victim sustained permanent or life-threatening bodily injury, increase by **4** levels; (B) if the victim sustained serious bodily injury, increase by **2** levels; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by **3** levels.

(3) If a dangerous weapon was used, increase by **2** levels.

(4) (A) If the victim was not released before thirty days had elapsed, increase by **2** levels.

(B) If the victim was not released before seven days had elapsed, increase by **1** level.

(5) If the victim was sexually exploited, increase by **6** levels.

(6) If the victim is a minor and, in exchange for money or other consideration, was placed in the care or custody of another person who had no legal right to such care or custody of the victim, increase by **3** levels.

(7) If the victim was kidnapped, abducted, or unlawfully restrained during the commission of, or in connection with, another offense or escape therefrom; or if another offense was committed during the kidnapping, abduction, or unlawful restraint, increase to—

(A) the offense level from the Chapter Two offense guideline applicable to that other offense if such offense guideline includes an adjustment for kidnapping, abduction, or unlawful restraint, or otherwise takes such conduct into account; or

(B) **4** plus the offense level from the offense guideline applicable to that other offense, but in no event greater than level **43**, in any other case,

if the resulting offense level is greater than that determined above.

(c) Cross Reference

(1) If the 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).

Commentary

Statutory Provisions: 18 U.S.C. §§ 115(b)(2), 351(b), (d), 1201, 1203, 1751(b), 2340A. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. For purposes of this guideline—

   Definitions of "***serious bodily injury***" and "***permanent or life-threatening bodily injury***" are found in the Commentary to §1B1.1 (Application Instructions). However, for purposes of this guideline, "***serious bodily injury***" means conduct other than criminal sexual abuse, which is taken into account in the specific offense characteristic under subsection (b)(5).

2. "***A dangerous weapon was used***" means that a firearm was discharged, or a "firearm" or "dangerous weapon" was "otherwise used" (as defined in the Commentary to §1B1.1 (Application Instructions)).

3. "***Sexually exploited***" includes offenses set forth in 18 U.S.C. §§ 2241–2244, 2251, and 2421–2423.

4. In the case of a conspiracy, attempt, or solicitation to kidnap, §2X1.1 (Attempt, Solicitation, or Conspiracy) requires that the court apply any adjustment that can be determined with reasonable certainty. Therefore, for example, if an offense involved conspiracy to kidnap for the purpose of committing murder, subsection (b)(7) would reference first degree murder (resulting in an offense level of 43, subject to a possible 3-level reduction under §2X1.1(b)).

   Similarly, for example, if an offense involved a kidnapping during which a participant attempted to murder the victim under circumstances that would have constituted first degree murder had death occurred, the offense referenced under subsection (b)(7) would be the offense of first degree murder.

Background: Federal kidnapping cases generally encompass three categories of conduct: limited duration kidnapping where the victim is released unharmed; kidnapping that occurs as part of or to facilitate the commission of another offense (often, sexual assault); and kidnapping for ransom or political demand.

The guideline contains an adjustment for the length of time that the victim was detained. The adjustment recognizes the increased suffering involved in lengthy kidnappings and provides an incentive to release the victim.

An enhancement is provided when the offense is committed for ransom (subsection (b)(1)) or involves another federal, state, or local offense that results in a greater offense level (subsections (b)(7) and (c)(1)).

Section 401 of Public Law 101–647 amended 18 U.S.C. § 1201 to require that courts take into account certain specific offense characteristics in cases involving a victim under eighteen years of age and directed the Commission to include those specific offense characteristics within the guidelines. Where the guidelines did not already take into account the conduct identified by the Act, additional specific offense characteristics have been provided.

Subsections (a) and (b)(5), and the deletion of subsection (b)(4)(C), effective May 30, 2003, implement the directive to the Commission in section 104 of Public Law 108–21.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 96); November 1, 1991 (amendment 363); November 1, 1992 (amendment 445); November 1, 1993 (amendment 478); November 1, 1997 (amendment 545); November 1, 2002 (amendment 637); May 30, 2003 (amendment 650); October 27, 2003 (amendment 651).

§2A4.2. Demanding or Receiving Ransom Money

(a) Base Offense Level: **23**

(b) Cross Reference

(1) If the defendant was a participant in the kidnapping offense, apply §2A4.1 (Kidnapping, Abduction, Unlawful Restraint).

Commentary

Statutory Provisions: 18 U.S.C. §§ 876(a), 877, 1202. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. A "***participant***" is a person who is criminally responsible for the commission of the offense, but need not have been convicted.

Background: This section specifically includes conduct prohibited by 18 U.S.C. § 1202, requiring that ransom money be received, possessed, or disposed of with knowledge of its criminal origins. The actual demand for ransom under these circumstances is reflected in §2A4.1. This section additionally includes

extortionate demands through the use of the United States Postal Service, behavior proscribed by 18 U.S.C. §§ 876–877.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendment 479); November 1, 2023 (amendment 824).

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5. AIR PIRACY AND OFFENSES AGAINST MASS TRANSPORTATION SYSTEMS

Historical Note	Effective November 1, 1987. Amended effective November 1, 2002 (amendment 637).

§2A5.1. Aircraft Piracy or Attempted Aircraft Piracy

(a) Base Offense Level: **38**

Commentary

Statutory Provisions: 49 U.S.C. § 46502(a), (b) (formerly 49 U.S.C. § 1472 (i), (n)). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Background: This section covers aircraft piracy both within the special aircraft jurisdiction of the United States, 49 U.S.C. § 46502(a), and aircraft piracy outside that jurisdiction when the defendant is later found in the United States, 49 U.S.C. § 46502(b). Seizure of control of an aircraft may be by force or violence, or threat of force or violence, or by any other form of intimidation. The presence of a weapon is assumed in the base offense level.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1995 (amendment 534); November 1, 2026 (amendment 837).

§2A5.2. Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Navigation, Operation, or Maintenance of Mass Transportation Vehicle; Unsafe Operation of Unmanned Aircraft

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

(1) **30**, if the offense involved intentionally endangering the safety of: (A) an airport or an aircraft; or (B) a mass transportation facility or a mass transportation vehicle;

(2) **18**, if the offense involved recklessly endangering the safety of: (A) an airport or an aircraft; or (B) a mass transportation facility or a mass transportation vehicle;

(3) if an assault occurred, the offense level from the most analogous assault guideline, §§2A2.1–2A2.4; or

(4) **9**.

(b) Specific Offense Characteristic

(1) If (A) subsection (a)(1) or (a)(2) applies; and (B)(i) a firearm was discharged, increase by **5** levels; (ii) a dangerous weapon was otherwise used, increase by **4** levels; or (iii) a dangerous weapon was brandished or its use was threatened, increase by **3** levels. If the resulting offense level is less than level **24**, increase to level **24**.

(c) Cross References

(1) If death resulted, apply the most analogous guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

(2) If the offense involved possession of, or a threat to use (A) a nuclear weapon, nuclear material, or nuclear byproduct material; (B) a chemical weapon; (C) a biological agent, toxin, or delivery system; or (D) a weapon of mass destruction, apply §2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 39B, 1992(a)(1), (a)(4), (a)(5), (a)(6); 49 U.S.C. §§ 46308, 46503, 46504 (formerly 49 U.S.C. § 1472(c), (j)). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. **Definitions.—**For purposes of this guideline:

"***Biological agent***", "***chemical weapon***", "***nuclear byproduct material***", "***nuclear material***", "***toxin***", and "***weapon of mass destruction***" have the meaning given those terms in Application Note 1 of the Commentary to §2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction).

"***Brandished***", "***dangerous weapon***", "***firearm***", and "***otherwise used***" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

"***Mass transportation***" has the meaning given that term in 18 U.S.C. § 1992(d)(7).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 97 and 303); November 1, 1993 (amendment 480); November 1, 1995 (amendment 534); November 1, 2002 (amendment 637); November 1, 2007 (amendment 699); November 1, 2023 (amendment 815).

§2A5.3. Committing Certain Crimes Aboard Aircraft

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

Commentary

Statutory Provision: 49 U.S.C. § 46506 (formerly 49 U.S.C. § 1472(k)(1)).

Application Note:

1. "***Underlying offense***" refers to the offense listed in 49 U.S.C. § 46506 of which the defendant is convicted.

Historical Note	Effective October 15, 1988 (amendment 65). Amended effective November 1, 1989 (amendment 98); November 1, 1995 (amendment 534); November 1, 2025 (amendment 836).

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6. THREATENING OR HARASSING COMMUNICATIONS, HOAXES, STALKING, AND DOMESTIC VIOLENCE

Historical Note	Effective November 1, 1987. Amended effective November 1, 1997 (amendment 549); November 1, 2006 (amendment 686).

§2A6.1. Threatening or Harassing Communications; Hoaxes; False Liens

(a) Base Offense Level:

(1) **12**; or

(2) **6**, if the defendant is convicted of an offense under 47 U.S.C. § 223(a)(1)(C), (D), or (E) that did not involve a threat to injure a person or property.

(b) Specific Offense Characteristics

(1) If the offense involved any conduct evidencing an intent to carry out such threat, increase by **6** levels.

(2) If (A) the offense involved more than two threats; or (B) the defendant is convicted under 18 U.S.C. § 1521 and the offense involved more than two false liens or encumbrances, increase by **2** levels.

(3) If the offense involved the violation of a court protection order, increase by **2** levels.

(4) If the offense resulted in (A) substantial disruption of public, governmental, or business functions or services; or (B) a substantial expenditure of funds to clean up, decontaminate, or otherwise respond to the offense, increase by **4** levels.

(5) If the defendant (A) is convicted under 18 U.S.C. § 115, (B) made a public threatening communication, and (C) knew or should have known that the public threatening communication created a substantial risk of inciting others to violate 18 U.S.C. § 115, increase by **2** levels.

(6) If (A) subsection (a)(2) and subdivisions (1), (2), (3), (4), and (5) do not apply, and (B) the offense involved a single instance evidencing little or no deliberation, decrease by **4** levels.

(c) Cross Reference

(1) If the offense involved any conduct evidencing an intent to carry out a threat to use a weapon of mass destruction, as defined in 18 U.S.C. § 2332a(c)(2)(B), (C), and (D), apply §2M6.1 (Weapons of Mass Destruction), if the resulting offense level is greater than that determined under this guideline.

Commentary

Statutory Provisions: 18 U.S.C. §§ 32(c), 35(b), 871, 876(c), 877, 878(a), 879, 1038, 1521, 1992(a)(9), (a)(10), 2291(a)(8), 2291(e), 2292, 2332b(a)(2); 47 U.S.C. § 223(a)(1)(C)–(E); 49 U.S.C. § 46507. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Scope of Conduct to Be Considered.**—In determining whether subsections (b)(1), (b)(2), and (b)(3) apply, the court shall consider both conduct that occurred prior to the offense and conduct that occurred during the offense; however, conduct that occurred prior to the offense must be substantially and directly connected to the offense, under the facts of the case taken as a whole. For example, if the defendant engaged in several acts of mailing threatening letters to the same victim over a period of years (including acts that occurred prior to the offense), then for purposes of determining whether subsections (b)(1), (b)(2), and (b)(3) apply, the court shall consider only those prior acts of threatening the victim that have a substantial and direct connection to the offense.

2. **Applicability of Chapter Three Adjustments.**—If the defendant is convicted under 18 U.S.C. § 1521, apply §3A1.2 (Official Victim).

3. **Multiple Counts.**—For purposes of Chapter Three, Part D (Multiple Counts), do not apply subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to multiple

counts involving making a threatening or harassing communication to the same victim, even if those acts occurred on separate occasions. Multiple acts of making a threatening or harassing communication to the same victim are already taken into account in the specific offense characteristics of this guideline.

Background: These statutes cover a wide range of conduct, the seriousness of which depends upon the defendant's intent and the likelihood that the defendant would carry out the threat. The specific offense characteristics are intended to distinguish such cases.

Subsection (b)(5) implements, in a broader form, the directive to the Commission in section 209 of the Court Security Improvement Act of 2007, Public Law 110–177.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendment 480); November 1, 1997 (amendment 549); November 1, 2002 (amendment 637); November 1, 2006 (amendment 686); November 1, 2007 (amendment 699); November 1, 2008 (amendment 718); November 1, 2009 (amendment 729); November 1, 2023 (amendment 824); November 1, 2025 (amendment 836); November 1, 2026 (amendment 840).

§2A6.2. Stalking or Domestic Violence

(a) Base Offense Level: **18**

(b) Specific Offense Characteristic

(1) If the offense involved one of the following aggravating factors: (A) the violation of a court protection order; (B) bodily injury; (C) strangling, suffocating, or attempting to strangle or suffocate; (D) possession, or threatened use, of a dangerous weapon; or (E) a pattern of activity involving stalking, threatening, harassing, or assaulting the same victim, increase by **2** levels. If the offense involved more than one of subdivisions (A), (B), (C), (D), or (E), increase by **4** levels.

(c) Cross Reference

(1) If the offense involved the commission of another criminal offense, apply the offense guideline from Chapter Two, Part A (Offenses Against the Person) most applicable to that other criminal offense, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 2261–2262.

Application Notes:

1. For purposes of this guideline:

"***Bodily injury***" and "***dangerous weapon***" are defined in the Commentary to §1B1.1 (Application Instructions).

"***Pattern of activity involving stalking, threatening, harassing, or assaulting the same victim***" means any combination of two or more separate instances of stalking, threatening, harassing, or assaulting the same victim, whether or not such conduct resulted in a conviction. For example, a single instance of stalking accompanied by a separate instance of threatening, harassing, or assaulting the same victim constitutes a pattern of activity for purposes of this guideline.

"***Stalking***" means conduct described in 18 U.S.C. § 2261A.

"***Strangling***" and "***suffocating***" have the meaning given those terms in 18 U.S.C. § 113.

2. Subsection (b)(1) provides for a two-level or four-level enhancement based on the degree to which the offense involved aggravating factors listed in that subsection. If the offense involved aggravating factors more serious than the factors listed in subsection (b)(1), the cross reference in subsection (c) most likely will apply, if the resulting offense level is greater, because the more serious conduct will be covered by another offense guideline from Chapter Two, Part A. For example, §2A2.2 (Aggravated Assault) most likely would apply pursuant to subsection (c) if the offense involved assaultive conduct in which injury more serious than bodily injury occurred or if a dangerous weapon was used rather than merely possessed.

3. In determining whether subsection (b)(1)(E) applies, the court shall consider, under the totality of the circumstances, any conduct that occurred prior to or during the offense; however, conduct that occurred prior to the offense must be substantially and directly connected to the offense. For example, if a defendant engaged in several acts of stalking the same victim over a period of years (including acts that occurred prior to the offense), then for purposes of determining whether subsection (b)(1)(E) applies, the court shall look to the totality of the circumstances, considering only those prior acts of stalking the victim that have a substantial and direct connection to the offense.

   Prior convictions taken into account under subsection (b)(1)(E) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

4. For purposes of Chapter Three, Part D (Multiple Counts), do not apply subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to multiple counts involving stalking, threatening, or harassing the same victim, even if those acts occurred on separate occasions. Multiple acts of stalking, threatening, harassing, or assaulting the same victim are already taken into account in the specific offense characteristic of this guideline. For example, if the defendant is convicted of two counts of stalking the defendant's ex-spouse under 18 U.S.C. § 2261A and one count of interstate domestic violence involving an assault of the ex-spouse under 18 U.S.C. § 2261, §3D1.1(b) does not apply to the stalking counts.

   Determine the combined offense level for multiple counts that are cross referenced to another offense guideline pursuant to subsection (c) by applying §3D1.1.

Historical Note	Effective November 1, 1997 (amendment 549). Amended effective November 1, 2001 (amendment 616); November 1, 2009 (amendment 737); November 1, 2014 (amendment 781); November 1, 2025 (amendment 836); November 1, 2026 (amendment 840).

PART B — BASIC ECONOMIC OFFENSES

1. THEFT, EMBEZZLEMENT, RECEIPT OF STOLEN PROPERTY, PROPERTY DESTRUCTION, AND OFFENSES INVOLVING FRAUD OR DECEIT

Introductory Commentary

These sections address basic forms of property offenses: theft, embezzlement, fraud, forgery, counterfeiting (other than offenses involving altered or counterfeit bearer obligations of the United States), insider trading, transactions in stolen goods, and simple property damage or destruction. (Arson is dealt with separately in Chapter Two, Part K (Offenses Involving Public Safety)). These guidelines apply to offenses prosecuted under a wide variety of federal statutes, as well as offenses that arise under the Assimilative Crimes Act.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 303); November 1, 2001 (amendment 617).

§2B1.1. Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States

(a) Base Offense Level:

(1) **7**, if (A) the defendant was convicted of an offense referenced to this guideline; and (B) that offense of conviction has a statutory maximum term of imprisonment of 20 years or more; or

(2) **6**, otherwise.

(b) Specific Offense Characteristics

(1) If the loss exceeded $9,000, increase the offense level as follows:

	Loss (Apply the Greatest)	Increase in Level
(A)	$9,000 or less	no increase
(B)	More than $9,000	add **2**
(C)	More than $20,000	add **4**
(D)	More than $55,000	add **6**
(E)	More than $150,000	add **8**
(F)	More than $200,000	add **10**
(G)	More than $350,000	add **12**
(H)	More than $750,000	add **14**
(I)	More than $2,000,000	add **16**

(J)	More than $5,000,000	add **18**
(K)	More than $15,000,000	add **20**
(L)	More than $35,000,000	add **22**
(M)	More than $90,000,000	add **24**
(N)	More than $200,000,000	add **26**
(O)	More than $350,000,000	add **28**
(P)	More than $750,000,000	add **30**.

***Notes to Table:**

(A) **Loss.—**Loss is the greater of actual loss or intended loss.

(B) **Gain.—**The court shall use the gain that resulted from the offense as an alternative measure of loss only if there is a loss but it reasonably cannot be determined.

(C) For purposes of this guideline—

(i) "***Actual loss***" means the reasonably foreseeable pecuniary harm that resulted from the offense.

(ii) "***Intended loss***" (I) means the pecuniary harm that the defendant purposely sought to inflict; and (II) includes intended pecuniary harm that would have been impossible or unlikely to occur (*e.g.*, as in a government sting operation, or an insurance fraud in which the claim exceeded the insured value).

(iii) "***Pecuniary harm***" means harm that is monetary or that otherwise is readily measurable in money. Accordingly, pecuniary harm does not include emotional distress, harm to reputation, or other non-economic harm.

(iv) "***Reasonably foreseeable pecuniary harm***" means pecuniary harm that the defendant knew or, under the circumstances, reasonably should have known, was a potential result of the offense.

(2) (Apply the greatest) If the offense—

(A) (i) involved 10 or more victims; (ii) was committed through mass-marketing; or (iii) resulted in substantial financial hardship to one or more victims, increase by **2** levels;

(B) resulted in substantial financial hardship to five or more victims, increase by **4** levels; or

(C) resulted in substantial financial hardship to 25 or more victims, increase by **6** levels.

(3) If the offense involved a theft from the person of another, increase by **2** levels.

(4) If the offense involved receiving stolen property, and the defendant was a person in the business of receiving and selling stolen property, increase by **2** levels.

(5) If the offense involved theft of, damage to, destruction of, or trafficking in, property from a national cemetery or veterans' memorial, increase by **2** levels.

(6) If (A) the defendant was convicted of an offense under 18 U.S.C. § 1037; and (B) the offense involved obtaining electronic mail addresses through improper means, increase by **2** levels.

(7) If (A) the defendant was convicted of a federal health care offense involving a government health care program; and (B) the loss under subsection (b)(1) to the government health care program was (i) more than $1,000,000, increase by **2** levels; (ii) more than $7,000,000, increase by **3** levels; or (iii) more than $20,000,000, increase by **4** levels.

(8) (Apply the greater) If—

(A) the offense involved conduct described in 18 U.S.C. § 670, increase by **2** levels; or

(B) the offense involved conduct described in 18 U.S.C. § 670, and the defendant was employed by, or was an agent of, an organization in the supply chain for the pre-retail medical product, increase by **4** levels.

(9) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency; (B) a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding; (C) a violation of any prior, specific judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines; or (D) a misrepresentation to a consumer in connection with obtaining, providing, or furnishing financial assistance for an institution of higher education, increase by **2** levels. If the resulting offense level is less than level **10**, increase to level **10**.

(10) If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means, increase by **2** levels. If the resulting offense level is less than level **12**, increase to level **12**.

(11) If the offense involved (A) the possession or use of any (i) device-making equipment, or (ii) authentication feature; (B) the production or trafficking of any (i) unauthorized access device or counterfeit access device, or (ii) authentication feature; or (C)(i) the unauthorized transfer or use of any means of identification unlawfully to produce or obtain any other means of identification, or (ii) the possession of 5 or more means of identification that unlawfully were produced from, or obtained by the use of, another means of identification, increase by **2** levels. If the resulting offense level is less than level **12**, increase to level **12**.

(12) If the offense involved conduct described in 18 U.S.C. § 1040, increase by **2** levels. If the resulting offense level is less than level **12**, increase to level **12**.

(13) If the defendant was convicted under 42 U.S.C. § 408(a), § 1011(a), or § 1383a(a) and the statutory maximum term of ten years' imprisonment applies, increase by **4** levels. If the resulting offense level is less than **12**, increase to level **12**.

(14) (Apply the greater) If the offense involved misappropriation of a trade secret and the defendant knew or intended—

(A) that the trade secret would be transported or transmitted out of the United States, increase by **2** levels; or

(B) that the offense would benefit a foreign government, foreign instrumentality, or foreign agent, increase by **4** levels.

If subparagraph (B) applies and the resulting offense level is less than level **14**, increase to level **14**.

(15) If the offense involved an organized scheme to steal or to receive stolen (A) vehicles or vehicle parts; or (B) goods or chattels that are part of a cargo shipment, increase by **2** levels. If the resulting offense level is less than level **14**, increase to level **14**.

(16) If the offense involved (A) the conscious or reckless risk of death or serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by **2** levels. If the resulting offense level is less than level **14**, increase to level **14**.

(17) (Apply the greater) If—

(A) the defendant derived more than $1,000,000 in gross receipts from one or more financial institutions as a result of the offense, increase by **2** levels; or

(B) the offense (i) substantially jeopardized the safety and soundness of a financial institution; or (ii) substantially endangered the solvency or financial security of an organization that, at any time during the offense, (I) was a publicly traded company; or (II) had 1,000 or more employees, increase by **4** levels.

(C) The cumulative adjustments from application of both subsections (b)(2) and (b)(17)(B) shall not exceed **8** levels, except as provided in subparagraph (D).

(D) If the resulting offense level determined under subparagraph (A) or (B) is less than level **24**, increase to level **24**.

(18) If (A) the defendant was convicted of an offense under 18 U.S.C. § 1030, and the offense involved an intent to obtain personal information, or (B) the offense involved the unauthorized public dissemination of personal information, increase by **2** levels.

(19) (A) (Apply the greatest) If the defendant was convicted of an offense under:

(i) 18 U.S.C. § 1030, and the offense involved a computer system used to maintain or operate a critical infrastructure, or used by or for a government entity in furtherance of the administration of justice, national defense, or national security, increase by **2** levels.

(ii) 18 U.S.C. § 1030(a)(5)(A), increase by **4** levels.

(iii) 18 U.S.C. § 1030, and the offense caused a substantial disruption of a critical infrastructure, increase by **6** levels.

(B) If subparagraph (A)(iii) applies, and the offense level is less than level **24**, increase to level **24**.

(20) If the offense involved—

(A) a violation of securities law and, at the time of the offense, the defendant was (i) an officer or a director of a publicly traded company; (ii) a registered broker or dealer, or a person associated with a broker or dealer; or (iii) an investment adviser, or a person associated with an investment adviser; or

(B) a violation of commodities law and, at the time of the offense, the defendant was (i) an officer or a director of a futures commission merchant or an introducing broker; (ii) a commodities trading advisor; or (iii) a commodity pool operator,

increase by **4** levels.

(c) Cross References

(1) If (A) a firearm, destructive device, explosive material, or controlled substance was taken, or the taking of any such item was an object of the offense; or (B) the stolen property received, transported, transferred, transmitted, or possessed was a firearm, destructive device, explosive material, or controlled substance, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), §2D2.1 (Unlawful Possession; Attempt or Conspiracy), §2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), or §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), as appropriate.

(2) If the offense involved arson, or property damage by use of explosives, apply §2K1.4 (Arson; Property Damage by Use of Explosives), if the resulting offense level is greater than that determined above.

(3) If (A) neither paragraph (1) nor (2) of this subsection applies; (B) the defendant was convicted under a statute proscribing false, fictitious, or fraudulent statements or representations generally (*e.g.*, 18 U.S.C. § 1001, § 1341, § 1342, or § 1343); and (C) the conduct set forth in the count of conviction establishes an offense specifically covered by another guideline in Chapter Two (Offense Conduct), apply that other guideline.

(4) If the offense involved a cultural heritage resource or a paleontological resource, apply §2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful

Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 5 U.S.C. §§ 8345a, 8466a; 7 U.S.C. §§ 6, 6b, 6c, 6h, 6o, 13, 23; 15 U.S.C. §§ 50, 77e, 77q, 77x, 78j, 78ff, 80b-6, 1644, 6821; 18 U.S.C. §§ 38, 220, 225, 285–289, 471–473, 500, 510, 553(a)(1), 641, 656, 657, 659, 662, 664, 1001–1008, 1010–1014, 1016–1022, 1025, 1026, 1028, 1029, 1030(a)(4)–(5), 1031, 1037, 1040, 1341–1344, 1348, 1350, 1361, 1363, 1369, 1702, 1703 (if vandalism or malicious mischief, including destruction of mail, is involved), 1708, 1831, 1832, 1992(a)(1), (a)(5), 2113(b), 2282A, 2282B, 2291, 2312–2317, 2332b(a)(1), 2701; 19 U.S.C. § 2401f; 20 U.S.C. § 1097(a), (b), (d), (e); 29 U.S.C. § 501(c); 42 U.S.C. § 1011; 49 U.S.C. §§ 14915, 30170, 46317(a), 60123(b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Cultural heritage resource***" has the meaning given that term in Application Note 1 of the Commentary to §2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources).

"***Equity security***" has the meaning given that term in section 3(a)(11) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(11)).

"***Federal health care offense***" has the meaning given that term in 18 U.S.C. § 24.

"***Financial institution***" includes any institution described in 18 U.S.C. § 20, § 656, § 657, § 1005, § 1006, § 1007, or § 1014; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medical, or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and any similar entity, whether or not insured by the federal government. "Union or employee pension fund" and "any health, medical, or hospital insurance association," primarily include large pension funds that serve many persons (*e.g.*, pension funds of large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (*e.g.*, medical or hospitalization insurance) to large numbers of persons.

"***Firearm***" and "***destructive device***" have the meaning given those terms in the Commentary to §1B1.1 (Application Instructions).

"***Foreign instrumentality***" and "***foreign agent***" have the meaning given those terms in 18 U.S.C. § 1839(1) and (2), respectively.

"***Government health care program***" means any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by federal or state government. Examples of such programs are the Medicare program, the Medicaid program, and the CHIP program.

"***Means of identification***" has the meaning given that term in 18 U.S.C. § 1028(d)(7), except that such means of identification shall be of an actual (*i.e.*, not fictitious) individual, other than the defendant or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct).

"***National cemetery***" means a cemetery (A) established under section 2400 of title 38, United States Code; or (B) under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.

"***Paleontological resource***" has the meaning given that term in Application Note 1 of the Commentary to §2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources).

"***Personal information***" means sensitive or private information involving an identifiable individual (including such information in the possession of a third party), including (A) medical records; (B) wills; (C) diaries; (D) private correspondence, including e-mail; (E) financial records; (F) photographs of a sensitive or private nature; or (G) similar information.

"***Pre-retail medical product***" has the meaning given that term in 18 U.S.C. § 670(e).

"***Publicly traded company***" means an issuer (A) with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78l); or (B) that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(d)). "Issuer" has the meaning given that term in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. § 78c).

"***Supply chain***" has the meaning given that term in 18 U.S.C. § 670(e).

"***Theft from the person of another***" means theft, without the use of force, of property that was being held by another person or was within arms' reach. Examples include pick-pocketing and non-forcible purse-snatching, such as the theft of a purse from a shopping cart.

"***Trade secret***" has the meaning given that term in 18 U.S.C. § 1839(3).

"***Veterans' memorial***" means any structure, plaque, statue, or other monument described in 18 U.S.C. § 1369(a).

"***Victim***" means (A) any person who sustained any part of the actual loss determined under subsection (b)(1); or (B) any individual who sustained bodily injury as a result of the offense. "Person" includes individuals, corporations, companies, associations, firms, partnerships, societies, and joint stock companies.

2. **Application of Subsection (a)(1).—**

(A) **"Referenced to this Guideline".—**For purposes of subsection (a)(1), an offense is "***referenced to this guideline***" if (i) this guideline is the applicable Chapter Two guideline specifically referenced in Appendix A (Statutory Index) for the offense of conviction, as determined under the provisions of §1B1.2 (Applicable Guidelines); or (ii) in the case of a conviction for conspiracy, solicitation, or attempt to which §2X1.1 (Attempt, Solicitation, or Conspiracy) applies, this guideline is the appropriate guideline for the offense the defendant was convicted of conspiring, soliciting, or attempting to commit.

(B) **Definition of "Statutory Maximum Term of Imprisonment".**—For purposes of this guideline, "***statutory maximum term of imprisonment***" means the maximum term of imprisonment authorized for the offense of conviction, including any increase in that maximum term under a statutory enhancement provision.

(C) **Base Offense Level Determination for Cases Involving Multiple Counts.**—In a case involving multiple counts sentenced under this guideline, the applicable base offense level is determined by the count of conviction that provides the highest statutory maximum term of imprisonment.

3. **Loss Under Subsection (b)(1).**—This application note applies to the determination of loss under subsection (b)(1).

(A) **Rules of Construction in Certain Cases.**—In the cases described in clauses (i) through (iii), reasonably foreseeable pecuniary harm shall be considered to include the pecuniary harm specified for those cases as follows:

(i) **Product Substitution Cases.**—In the case of a product substitution offense, the reasonably foreseeable pecuniary harm includes the reasonably foreseeable costs of making substitute transactions and handling or disposing of the product delivered, or of retrofitting the product so that it can be used for its intended purpose, and the reasonably foreseeable costs of rectifying the actual or potential disruption to the victim's business operations caused by the product substitution.

(ii) **Procurement Fraud Cases.**—In the case of a procurement fraud, such as a fraud affecting a defense contract award, reasonably foreseeable pecuniary harm includes the reasonably foreseeable administrative costs to the government and other participants of repeating or correcting the procurement action affected, plus any increased costs to procure the product or service involved that was reasonably foreseeable.

(iii) **Offenses Under 18 U.S.C. § 1030.**—In the case of an offense under 18 U.S.C. § 1030, actual loss includes the following pecuniary harm, regardless of whether such pecuniary harm was reasonably foreseeable: any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other damages incurred because of interruption of service.

(B) **Estimation of Loss.**—The court need only make a reasonable estimate of the loss. The sentencing judge is in a unique position to assess the evidence and estimate the loss based upon that evidence. For this reason, the court's loss determination is entitled to appropriate deference. *See* 18 U.S.C. § 3742(e) and (f).

The estimate of the loss shall be based on available information, taking into account, as appropriate and practicable under the circumstances, factors such as the following:

(i) The fair market value of the property unlawfully taken, copied, or destroyed; or, if the fair market value is impracticable to determine or inadequately measures the harm, the cost to the victim of replacing that property.

(ii) In the case of proprietary information (*e.g.*, trade secrets), the cost of developing that information or the reduction in the value of that information that resulted from the offense.

(iii) The cost of repairs to damaged property.

(iv) The approximate number of victims multiplied by the average loss to each victim.

(v) The reduction that resulted from the offense in the value of equity securities or other corporate assets.

(vi) More general factors, such as the scope and duration of the offense and revenues generated by similar operations.

(C) **Exclusions from Loss.**—Loss shall not include the following:

(i) Interest of any kind, finance charges, late fees, penalties, amounts based on an agreed-upon return or rate of return, or other similar costs.

(ii) Costs to the government of, and costs incurred by victims primarily to aid the government in, the prosecution and criminal investigation of an offense.

(D) **Credits Against Loss.**—Loss shall be reduced by the following:

(i) The money returned, and the fair market value of the property returned and the services rendered, by the defendant or other persons acting jointly with the defendant, to the victim before the offense was detected. The time of detection of the offense is the earlier of (I) the time the offense was discovered by a victim or government agency; or (II) the time the defendant knew or reasonably should have known that the offense was detected or about to be detected by a victim or government agency.

(ii) In a case involving collateral pledged or otherwise provided by the defendant, the amount the victim has recovered at the time of sentencing from disposition of the collateral, or if the collateral has not been disposed of by that time, the fair market value of the collateral at the time of sentencing.

(iii) Notwithstanding clause (ii), in the case of a fraud involving a mortgage loan, if the collateral has not been disposed of by the time of sentencing, use the fair market value of the collateral as of the date on which the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere*.

In such a case, there shall be a rebuttable presumption that the most recent tax assessment value of the collateral is a reasonable estimate of the fair market value. In determining whether the most recent tax assessment value is a reasonable estimate of the fair market value, the court may consider, among other factors, the recency of the tax assessment and the extent to which the jurisdiction's tax assessment practices reflect factors not relevant to fair market value.

(E) **Special Rules.**—Notwithstanding subparagraph (A), the following special rules shall be used to assist in determining loss in the cases indicated:

(i) **Stolen or Counterfeit Credit Cards and Access Devices; Purloined Numbers and Codes.**—In a case involving any counterfeit access device or unauthorized access device, loss includes any unauthorized charges made with the counterfeit access device or unauthorized access device and shall be not less than $500 per access device. However, if the unauthorized access device is a means of telecommunications access that identifies a specific telecommunications instrument or telecommunications account (including an electronic serial number/mobile identification number (ESN/MIN)

pair), and that means was only possessed, and not used, during the commission of the offense, loss shall be not less than $100 per unused means. For purposes of this clause, "***counterfeit access device***" and "***unauthorized access device***" have the meaning given those terms in Application Note 10(A).

(ii) **Government Benefits.**—In a case involving government benefits (*e.g.*, grants, loans, entitlement program payments), loss shall be considered to be not less than the value of the benefits obtained by unintended recipients or diverted to unintended uses, as the case may be. For example, if the defendant was the intended recipient of food stamps having a value of $100 but fraudulently received food stamps having a value of $150, loss is $50.

(iii) **Davis–Bacon Act Violations.**—In a case involving a Davis–Bacon Act violation (*i.e.*, a violation of 40 U.S.C. § 3142, criminally prosecuted under 18 U.S.C. § 1001), the value of the benefits shall be considered to be not less than the difference between the legally required wages and actual wages paid.

(iv) **Ponzi and Other Fraudulent Investment Schemes.**—In a case involving a fraudulent investment scheme, such as a Ponzi scheme, loss shall not be reduced by the money or the value of the property transferred to any individual investor in the scheme in excess of that investor's principal investment (*i.e.*, the gain to an individual investor in the scheme shall not be used to offset the loss to another individual investor in the scheme).

(v) **Certain Other Unlawful Misrepresentation Schemes.**—In a case involving a scheme in which (I) services were fraudulently rendered to the victim by persons falsely posing as licensed professionals; (II) goods were falsely represented as approved by a governmental regulatory agency; or (III) goods for which regulatory approval by a government agency was required but not obtained, or was obtained by fraud, loss shall include the amount paid for the property, services or goods transferred, rendered, or misrepresented, with no credit provided for the value of those items or services.

(vi) **Value of Controlled Substances.**—In a case involving controlled substances, loss is the estimated street value of the controlled substances.

(vii) **Value of Cultural Heritage Resources or Paleontological Resources.**—In a case involving a cultural heritage resource or paleontological resource, loss attributable to that resource shall be determined in accordance with the rules for determining the "value of the resource" set forth in Application Note 2 of the Commentary to §2B1.5.

(viii) **Federal Health Care Offenses Involving Government Health Care Programs.**—In a case in which the defendant is convicted of a federal health care offense involving a government health care program, the aggregate dollar amount of fraudulent bills submitted to the government health care program shall constitute prima facie evidence of the amount of the intended loss, *i.e.*, is evidence sufficient to establish the amount of the intended loss, if not rebutted.

(ix) **Fraudulent Inflation or Deflation in Value of Securities or Commodities.**—In a case involving the fraudulent inflation or deflation in the value of a publicly traded security or commodity, the court in determining loss may use any method that is appropriate and practicable under the circumstances. One such method the court

may consider is a method under which the actual loss attributable to the change in value of the security or commodity is the amount determined by—

(I) calculating the difference between the average price of the security or commodity during the period that the fraud occurred and the average price of the security or commodity during the 90-day period after the fraud was disclosed to the market, and

(II) multiplying the difference in average price by the number of shares outstanding.

In determining whether the amount so determined is a reasonable estimate of the actual loss attributable to the change in value of the security or commodity, the court may consider, among other factors, the extent to which the amount so determined includes significant changes in value not resulting from the offense (*e.g.*, changes caused by external market forces, such as changed economic circumstances, changed investor expectations, and new industry-specific or firm-specific facts, conditions, or events).

4. **Application of Subsection (b)(2).—**

(A) **Definition.—**For purposes of subsection (b)(2), "***mass-marketing***" means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce a large number of persons to (i) purchase goods or services; (ii) participate in a contest or sweepstakes; or (iii) invest for financial profit. "Mass-marketing" includes, for example, a telemarketing campaign that solicits a large number of individuals to purchase fraudulent life insurance policies.

(B) **Applicability to Transmission of Multiple Commercial Electronic Mail Messages.—**For purposes of subsection (b)(2), an offense under 18 U.S.C. § 1037, or any other offense involving conduct described in 18 U.S.C. § 1037, shall be considered to have been committed through mass-marketing. Accordingly, the defendant shall receive at least a two-level enhancement under subsection (b)(2) and may, depending on the facts of the case, receive a greater enhancement under such subsection, if the defendant was convicted under, or the offense involved conduct described in, 18 U.S.C. § 1037.

(C) **Undelivered United States Mail.—**

(i) **In General.—**In a case in which undelivered United States mail was taken, or the taking of such item was an object of the offense, or in a case in which the stolen property received, transported, transferred, transmitted, or possessed was undelivered United States mail, "***victim***" means (I) any victim as defined in Application Note 1; or (II) any person who was the intended recipient, or addressee, of the undelivered United States mail.

(ii) **Special Rule.—**A case described in subparagraph (C)(i) of this note that involved—

(I) a United States Postal Service relay box, collection box, delivery vehicle, satchel, or cart, shall be considered to have involved at least 10 victims.

(II) a housing unit cluster box or any similar receptacle that contains multiple mailboxes, whether such receptacle is owned by the United States Postal Service or otherwise owned, shall, unless proven otherwise, be presumed to have involved the number of victims corresponding to the number of mailboxes in each cluster box or similar receptacle.

(iii) **Definition.**—"***Undelivered United States mail***" means mail that has not actually been received by the addressee or the addressee's agent (*e.g.*, mail taken from the addressee's mail box).

(D) **Vulnerable Victims.**—If subsection (b)(2)(B) or (C) applies, an enhancement under §3A1.1(b)(2) shall not apply.

(E) **Cases Involving Means of Identification.**—For purposes of subsection (b)(2), in a case involving means of identification "***victim***" means (i) any victim as defined in Application Note 1; or (ii) any individual whose means of identification was used unlawfully or without authority.

(F) **Substantial Financial Hardship.**—In determining whether the offense resulted in substantial financial hardship to a victim, the court shall consider, among other factors, whether the offense resulted in the victim—

(i) becoming insolvent;

(ii) filing for bankruptcy under the Bankruptcy Code (title 11, United States Code);

(iii) suffering substantial loss of a retirement, education, or other savings or investment fund;

(iv) making substantial changes to his or her employment, such as postponing his or her retirement plans;

(v) making substantial changes to his or her living arrangements, such as relocating to a less expensive home; and

(vi) suffering substantial harm to his or her ability to obtain credit.

5. **Enhancement for Business of Receiving and Selling Stolen Property under Subsection (b)(4).**—For purposes of subsection (b)(4), the court shall consider the following non-exhaustive list of factors in determining whether the defendant was in the business of receiving and selling stolen property:

(A) The regularity and sophistication of the defendant's activities.

(B) The value and size of the inventory of stolen property maintained by the defendant.

(C) The extent to which the defendant's activities encouraged or facilitated other crimes.

(D) The defendant's past activities involving stolen property.

6. **Application of Subsection (b)(6).**—For purposes of subsection (b)(6), "***improper means***" includes the unauthorized harvesting of electronic mail addresses of users of a website, proprietary service, or other online public forum.

7. **Application of Subsection (b)(8)(B).**—If subsection (b)(8)(B) applies, do not apply an adjustment under §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

8. **Application of Subsection (b)(9).—**

(A) **In General.—**The adjustments in subsection (b)(9) are alternative rather than cumulative.

(B) **Misrepresentations Regarding Charitable and Other Institutions.—**Subsection (b)(9)(A) applies in any case in which the defendant represented that the defendant was acting to obtain a benefit on behalf of a charitable, educational, religious, or political organization, or a government agency (regardless of whether the defendant actually was associated with the organization or government agency) when, in fact, the defendant intended to divert all or part of that benefit (*e.g.*, for the defendant's personal gain). Subsection (b)(9)(A) applies, for example, to the following:

(i) A defendant who solicited contributions for a non-existent famine relief organization.

(ii) A defendant who solicited donations from church members by falsely claiming to be a fundraiser for a religiously affiliated school.

(iii) A defendant, chief of a local fire department, who conducted a public fundraiser representing that the purpose of the fundraiser was to procure sufficient funds for a new fire engine when, in fact, the defendant intended to divert some of the funds for the defendant's personal benefit.

(C) **Fraud in Contravention of Prior Judicial Order.—**Subsection (b)(9)(C) provides an enhancement if the defendant commits a fraud in contravention of a prior, official judicial or administrative warning, in the form of an order, injunction, decree, or process, to take or not to take a specified action. A defendant who does not comply with such a prior, official judicial or administrative warning demonstrates aggravated criminal intent and deserves additional punishment. If it is established that an entity the defendant controlled was a party to the prior proceeding that resulted in the official judicial or administrative action, and the defendant had knowledge of that prior decree or order, this enhancement applies even if the defendant was not a specifically named party in that prior case. For example, a defendant whose business previously was enjoined from selling a dangerous product, but who nonetheless engaged in fraudulent conduct to sell the product, is subject to this enhancement. This enhancement does not apply if the same conduct resulted in an enhancement pursuant to a provision found elsewhere in the guidelines (*e.g.*, a violation of a condition of release addressed in §3C1.3 (Commission of Offense While on Release) or a violation of probation addressed in §4A1.1 (Criminal History Category)).

(D) **College Scholarship Fraud.—**For purposes of subsection (b)(9)(D):

"***Financial assistance***" means any scholarship, grant, loan, tuition, discount, award, or other financial assistance for the purpose of financing an education.

"***Institution of higher education***" has the meaning given that term in section 101 of the Higher Education Act of 1954 (20 U.S.C. § 1001).

(E) **Non-Applicability of Chapter Three Adjustments.—**

(i) **Subsection (b)(9)(A).—**If the conduct that forms the basis for an enhancement under subsection (b)(9)(A) is the only conduct that forms the basis for an adjustment under §3B1.3 (Abuse of Position of Trust or Use of Special Skill), do not apply that adjustment under §3B1.3.

(ii) **Subsection (b)(9)(B) and (C).**—If the conduct that forms the basis for an enhancement under subsection (b)(9)(B) or (C) is the only conduct that forms the basis for an adjustment under §3C1.1 (Obstructing or Impeding the Administration of Justice), do not apply that adjustment under §3C1.1.

9. **Application of Subsection (b)(10).—**

(A) **Definition of United States.**—For purposes of subsection (b)(10)(B), "***United States***" means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

(B) **Sophisticated Means Enhancement under Subsection (b)(10)(C).**—For purposes of subsection (b)(10)(C), "***sophisticated means***" means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction ordinarily indicates sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means.

(C) **Non-Applicability of Chapter Three Adjustment.**—If the conduct that forms the basis for an enhancement under subsection (b)(10) is the only conduct that forms the basis for an adjustment under §3C1.1, do not apply that adjustment under §3C1.1.

10. **Application of Subsection (b)(11).—**

(A) **Definitions.**—For purposes of subsection (b)(11):

"***Authentication feature***" has the meaning given that term in 18 U.S.C. § 1028(d)(1).

"***Counterfeit access device***" (i) has the meaning given that term in 18 U.S.C. § 1029(e)(2); and (ii) includes a telecommunications instrument that has been modified or altered to obtain unauthorized use of telecommunications service.

"***Device-making equipment***" (i) has the meaning given that term in 18 U.S.C. § 1029(e)(6); and (ii) includes (I) any hardware or software that has been configured as described in 18 U.S.C. § 1029(a)(9); and (II) a scanning receiver referred to in 18 U.S.C. § 1029(a)(8). "Scanning receiver" has the meaning given that term in 18 U.S.C. § 1029(e)(8).

"***Produce***" includes manufacture, design, alter, authenticate, duplicate, or assemble. "***Production***" includes manufacture, design, alteration, authentication, duplication, or assembly.

"***Telecommunications service***" has the meaning given that term in 18 U.S.C. § 1029(e)(9).

"***Unauthorized access device***" has the meaning given that term in 18 U.S.C. § 1029(e)(3).

(B) **Authentication Features and Identification Documents.**—Offenses involving authentication features, identification documents, false identification documents, and means of identification, in violation of 18 U.S.C. § 1028, also are covered by this guideline. If the primary purpose of the offense, under 18 U.S.C. § 1028, was to violate, or assist another to violate, the law pertaining to naturalization, citizenship, or legal resident status, apply

§2L2.1 (Trafficking in a Document Relating to Naturalization) or §2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization), as appropriate, rather than this guideline.

(C) **Application of Subsection (b)(11)(C)(i).—**

(i) **In General.—**Subsection (b)(11)(C)(i) applies in a case in which a means of identification of an individual other than the defendant (or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct)) is used without that individual's authorization unlawfully to produce or obtain another means of identification.

(ii) **Examples.—**Examples of conduct to which subsection (b)(11)(C)(i) applies are as follows:

(I) A defendant obtains an individual's name and social security number from a source (*e.g.*, from a piece of mail taken from the individual's mailbox) and obtains a bank loan in that individual's name. In this example, the account number of the bank loan is the other means of identification that has been obtained unlawfully.

(II) A defendant obtains an individual's name and address from a source (*e.g.*, from a driver's license in a stolen wallet) and applies for, obtains, and subsequently uses a credit card in that individual's name. In this example, the credit card is the other means of identification that has been obtained unlawfully.

(iii) **Non-Applicability of Subsection (b)(11)(C)(i).—**Examples of conduct to which subsection (b)(11)(C)(i) does not apply are as follows:

(I) A defendant uses a credit card from a stolen wallet only to make a purchase. In such a case, the defendant has not used the stolen credit card to obtain another means of identification.

(II) A defendant forges another individual's signature to cash a stolen check. Forging another individual's signature is not producing another means of identification.

(D) **Application of Subsection (b)(11)(C)(ii).—**Subsection (b)(11)(C)(ii) applies in any case in which the offense involved the possession of 5 or more means of identification that unlawfully were produced or obtained, regardless of the number of individuals in whose name (or other identifying information) the means of identification were so produced or so obtained.

11. **Interaction of Subsection (b)(13) and §3B1.3 (Abuse of Position of Trust or Use of Special Skill).—**If subsection (b)(13) applies, do not apply §3B1.3.

12. **Application of Subsection (b)(15).—**Subsection (b)(15) provides a minimum offense level in the case of an ongoing, sophisticated operation (*e.g.*, an auto theft ring or "chop shop") to steal or to receive stolen (A) vehicles or vehicle parts; or (B) goods or chattels that are part of a cargo shipment. For purposes of this subsection, "***vehicle***" means motor vehicle, vessel, or aircraft. A "***cargo shipment***" includes cargo transported on a railroad car, bus, steamboat, vessel, or airplane.

13. **Gross Receipts Enhancement under Subsection (b)(17)(A).—**

(A) **In General.**—For purposes of subsection (b)(17)(A), the defendant shall be considered to have derived more than $1,000,000 in gross receipts if the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000.

(B) **Definition.**—"***Gross receipts from the offense***" includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. *See* 18 U.S.C. § 982(a)(4).

14. **Application of Subsection (b)(17)(B).—**

(A) **Application of Subsection (b)(17)(B)(i).**—The following is a non-exhaustive list of factors that the court shall consider in determining whether, as a result of the offense, the safety and soundness of a financial institution was substantially jeopardized:

(i) The financial institution became insolvent.

(ii) The financial institution substantially reduced benefits to pensioners or insureds.

(iii) The financial institution was unable on demand to refund fully any deposit, payment, or investment.

(iv) The financial institution was so depleted of its assets as to be forced to merge with another institution in order to continue active operations.

(v) One or more of the criteria in clauses (i) through (iv) was likely to result from the offense but did not result from the offense because of federal government intervention, such as a "bailout".

(B) **Application of Subsection (b)(17)(B)(ii).—**

(i) **Definition.**—For purposes of this subsection, "***organization***" has the meaning given that term in Application Note 1 of §8A1.1 (Applicability of Chapter Eight).

(ii) **In General.**—The following is a non-exhaustive list of factors that the court shall consider in determining whether, as a result of the offense, the solvency or financial security of an organization that was a publicly traded company or that had more than 1,000 employees was substantially endangered:

(I) The organization became insolvent or suffered a substantial reduction in the value of its assets.

(II) The organization filed for bankruptcy under Chapters 7, 11, or 13 of the Bankruptcy Code (title 11, United States Code).

(III) The organization suffered a substantial reduction in the value of its equity securities or the value of its employee retirement accounts.

(IV) The organization substantially reduced its workforce.

(V) The organization substantially reduced its employee pension benefits.

(VI) The liquidity of the equity securities of a publicly traded company was substantially endangered. For example, the company was delisted from its primary listing exchange, or trading of the company's securities was halted for more than one full trading day.

(VII) One or more of the criteria in subclauses (I) through (VI) was likely to result from the offense but did not result from the offense because of federal government intervention, such as a "bailout".

15. **Application of Subsection (b)(19).—**

(A) **Definitions.—**For purposes of subsection (b)(19):

"***Critical infrastructure***" means systems and assets vital to national defense, national security, economic security, public health or safety, or any combination of those matters. A critical infrastructure may be publicly or privately owned. Examples of critical infrastructures include gas and oil production, storage, and delivery systems, water supply systems, telecommunications networks, electrical power delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), transportation systems and services (including highways, mass transit, airlines, and airports), and government operations that provide essential services to the public.

"***Government entity***" has the meaning given that term in 18 U.S.C. § 1030(e)(9).

(B) **Subsection (b)(19)(A)(iii).—**If the same conduct that forms the basis for an enhancement under subsection (b)(19)(A)(iii) is the only conduct that forms the basis for an enhancement under subsection (b)(17)(B), do not apply the enhancement under subsection (b)(17)(B).

16. **Application of Subsection (b)(20).—**

(A) **Definitions.—**For purposes of subsection (b)(20):

"***Commodities law***" means (i) the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*) and 18 U.S.C. § 1348; and (ii) includes the rules, regulations, and orders issued by the Commodity Futures Trading Commission.

"***Commodity pool operator***" has the meaning given that term in section 1a(11) of the Commodity Exchange Act (7 U.S.C. § 1a(11)).

"***Commodity trading advisor***" has the meaning given that term in section 1a(12) of the Commodity Exchange Act (7 U.S.C. § 1a(12)).

"***Futures commission merchant***" has the meaning given that term in section 1a(28) of the Commodity Exchange Act (7 U.S.C. § 1a(28)).

"***Introducing broker***" has the meaning given that term in section 1a(31) of the Commodity Exchange Act (7 U.S.C. § 1a(31)).

"***Investment adviser***" has the meaning given that term in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-2(a)(11)).

"***Person associated with a broker or dealer***" has the meaning given that term in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(18)).

"***Person associated with an investment adviser***" has the meaning given that term in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-2(a)(17)).

"***Registered broker or dealer***" has the meaning given that term in section 3(a)(48) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(48)).

"***Securities law***" (i) means 18 U.S.C. §§ 1348, 1350, and the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(47)); and (ii) includes the rules, regulations, and orders issued by the Securities and Exchange Commission pursuant to the provisions of law referred to in such section.

(B) **In General.**—A conviction under a securities law or commodities law is not required in order for subsection (b)(20) to apply. This subsection would apply in the case of a defendant convicted under a general fraud statute if the defendant's conduct violated a securities law or commodities law. For example, this subsection would apply if an officer of a publicly traded company violated regulations issued by the Securities and Exchange Commission by fraudulently influencing an independent audit of the company's financial statements for the purposes of rendering such financial statements materially misleading, even if the officer is convicted only of wire fraud.

(C) **Nonapplicability of §3B1.3 (Abuse of Position of Trust or Use of Special Skill).**—If subsection (b)(20) applies, do not apply §3B1.3.

17. **Cross Reference in Subsection (c)(3).**—Subsection (c)(3) provides a cross reference to another guideline in Chapter Two (Offense Conduct) in cases in which the defendant is convicted of a general fraud statute, and the count of conviction establishes an offense involving fraudulent conduct that is more aptly covered by another guideline. Sometimes, offenses involving fraudulent statements are prosecuted under 18 U.S.C. § 1001, or a similarly general statute, although the offense involves fraudulent conduct that is also covered by a more specific statute. Examples include false entries regarding currency transactions, for which §2S1.3 (Structuring Transactions to Evade Reporting Requirements) likely would be more apt, and false statements to a customs officer, for which §2T3.1 (Evading Import Duties or Restrictions (Smuggling); Receiving or Trafficking in Smuggled Property) likely would be more apt. In certain other cases, the mail or wire fraud statutes, or other relatively broad statutes, are used primarily as jurisdictional bases for the prosecution of other offenses. For example, a state employee who improperly influenced the award of a contract and used the mails to commit the offense may be prosecuted under 18 U.S.C. § 1341 for fraud involving the deprivation of the intangible right of honest services. Such a case would be more aptly sentenced pursuant to §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions).

18. **Continuing Financial Crimes Enterprise.**—If the defendant is convicted under 18 U.S.C. § 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the "continuing financial crimes enterprise".

19. **Partially Completed Offenses.**—In the case of a partially completed offense (*e.g.*, an offense involving a completed theft or fraud that is part of a larger, attempted theft or fraud), the offense level is to be determined in accordance with the provisions of §2X1.1 (Attempt, Solicitation, or Conspiracy) whether the conviction is for the substantive offense, the inchoate offense (attempt, solicitation, or conspiracy), or both. *See* Application Note 4 of the Commentary to §2X1.1.

20. **Multiple-Count Indictments.**—Some fraudulent schemes may result in multiple-count indictments, depending on the technical elements of the offense. The cumulative loss produced by a

common scheme or course of conduct should be used in determining the offense level, regardless of the number of counts of conviction. *See* subsection (a) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts).

Background: This guideline covers offenses involving theft, stolen property, property damage or destruction, fraud, forgery, and counterfeiting (other than offenses involving altered or counterfeit bearer obligations of the United States).

Because federal fraud statutes often are broadly written, a single pattern of offense conduct usually can be prosecuted under several code sections, as a result of which the offense of conviction may be somewhat arbitrary. Furthermore, most fraud statutes cover a broad range of conduct with extreme variation in severity. The specific offense characteristics and cross references contained in this guideline are designed with these considerations in mind.

The Commission has determined that, ordinarily, the sentences of defendants convicted of federal offenses should reflect the nature and magnitude of the loss caused or intended by their crimes. Accordingly, along with other relevant factors under the guidelines, loss serves as a measure of the seriousness of the offense and the defendant's relative culpability and is a principal factor in determining the offense level under this guideline.

Theft from the person of another, such as pickpocketing or non-forcible purse-snatching, receives an enhanced sentence because of the increased risk of physical injury. This guideline does not include an enhancement for thefts from the person by means of force or fear; such crimes are robberies and are covered under §2B3.1 (Robbery).

A minimum offense level of level 14 is provided for offenses involving an organized scheme to steal vehicles or vehicle parts. Typically, the scope of such activity is substantial, but the value of the property may be particularly difficult to ascertain in individual cases because the stolen property is rapidly resold or otherwise disposed of in the course of the offense. Therefore, the specific offense characteristic of "organized scheme" is used as an alternative to "loss" in setting a minimum offense level.

Use of false pretenses involving charitable causes and government agencies enhances the sentences of defendants who take advantage of victims' trust in government or law enforcement agencies or the generosity and charitable motives of victims. Taking advantage of a victim's self-interest does not mitigate the seriousness of fraudulent conduct; rather, defendants who exploit victims' charitable impulses or trust in government create particular social harm. In a similar vein, a defendant who has been subject to civil or administrative proceedings for the same or similar fraudulent conduct demonstrates aggravated criminal intent and is deserving of additional punishment for not conforming with the requirements of judicial process or orders issued by federal, state, or local administrative agencies.

Offenses that involve the use of financial transactions or financial accounts outside the United States in an effort to conceal illicit profits and criminal conduct involve a particularly high level of sophistication and complexity. These offenses are difficult to detect and require costly investigations and prosecutions. Diplomatic processes often must be used to secure testimony and evidence beyond the jurisdiction of United States courts. Consequently, a minimum offense level of level 12 is provided for these offenses.

Subsection (b)(5) implements the instruction to the Commission in section 2 of Public Law 105–101 and the directive to the Commission in section 3 of Public Law 110–384.

Subsection (b)(7) implements the directive to the Commission in section 10606 of Public Law 111–148.

Subsection (b)(8) implements the directive to the Commission in section 7 of Public Law 112–186.

Subsection (b)(9)(D) implements, in a broader form, the directive in section 3 of the College Scholarship Fraud Prevention Act of 2000, Public Law 106–420.

Subsection (b)(10) implements, in a broader form, the instruction to the Commission in section 6(c)(2) of Public Law 105–184.

Subsections (b)(11)(A)(i) and (B)(i) implement the instruction to the Commission in section 4 of the Wireless Telephone Protection Act, Public Law 105–172.

Subsection (b)(11)(C) implements the directive to the Commission in section 4 of the Identity Theft and Assumption Deterrence Act of 1998, Public Law 105–318. This subsection focuses principally on an aggravated form of identity theft known as "affirmative identity theft" or "breeding", in which a defendant uses another individual's name, social security number, or some other form of identification (the "means of identification") to "breed" (*i.e.*, produce or obtain) new or additional forms of identification. Because 18 U.S.C. § 1028(d) broadly defines "means of identification", the new or additional forms of identification can include items such as a driver's license, a credit card, or a bank loan. This subsection provides a minimum offense level of level 12, in part because of the seriousness of the offense. The minimum offense level accounts for the fact that the means of identification that were "bred" (*i.e.*, produced or obtained) often are within the defendant's exclusive control, making it difficult for the individual victim to detect that the victim's identity has been "stolen." Generally, the victim does not become aware of the offense until certain harms have already occurred (*e.g.*, a damaged credit rating or an inability to obtain a loan). The minimum offense level also accounts for the non-monetary harm associated with these types of offenses, much of which may be difficult or impossible to quantify (*e.g.*, harm to the individual's reputation or credit rating, inconvenience, and other difficulties resulting from the offense). The legislative history of the Identity Theft and Assumption Deterrence Act of 1998 indicates that Congress was especially concerned with providing increased punishment for this type of harm.

Subsection (b)(12) implements the directive in section 5 of Public Law 110–179.

Subsection (b)(14) implements the directive in section 3 of Public Law 112–269.

Subsection (b)(16)(B) implements, in a broader form, the instruction to the Commission in section 110512 of Public Law 103–322.

Subsection (b)(17)(A) implements, in a broader form, the instruction to the Commission in section 2507 of Public Law 101–647.

Subsection (b)(17)(B)(i) implements, in a broader form, the instruction to the Commission in section 961(m) of Public Law 101–73.

Subsection (b)(18) implements the directive in section 209 of Public Law 110–326.

Subsection (b)(19) implements the directive in section 225(b) of Public Law 107–296. The minimum offense level of level 24 provided in subsection (b)(19)(B) for an offense that resulted in a substantial disruption of a critical infrastructure reflects the serious impact such an offense could have on national security, national economic security, national public health or safety, or a combination of any of these matters.

Historical Note	Effective November 1, 1987. Amended effective June 15, 1988 (amendment 7); November 1, 1989 (amendments 99, 100, 101 and 303); November 1, 1990 (amendments 312, 317, and 361); November 1, 1991 (amendments 364, and 393); November 1, 1993 (amendments 481 and 482); November 1, 1995 (amendment 512); November 1, 1997 (amendment 551); November 1, 1998 (amendment 576); November 1, 2000 (amendment 596); November 1, 2001 (amendment 617); November 1, 2002 (amendments 637, 638, and 646); January 25, 2003 (amendment 647); November 1, 2003 (amendments 653, 654, 655, and 661); November 1, 2004 (amendments 665, 666, and 674); November 1, 2005 (amendment 679); November 1, 2006 (amendments 685 and 696); November 1, 2007 (amendments 699, 700, and 702); February 6, 2008 (amendment 714); November 1, 2008 (amendments 719 and 725); November 1, 2009 (amendments 726, 733, and 737); November 1, 2010 (amendments 745 and 747); November 1, 2011 (amendment 749); November 1, 2012 (amendment 761);

	November 1, 2013 (amendments 771, 772, and 777); November 1, 2015 (amendments 791 and 792), November 1, 2018 (amendments 806 and 813); November 1, 2023 (amendment 815); November 1, 2024 (amendments 827 and 831); November 1, 2025 (amendment 836); November 1, 2026 (amendments 838 and 840).

§§2B1.2 – 2B1.3. [Deleted]

Historical Note	Section 2B1.2 (Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property), effective November 1, 1987, and amended effective January 15, 1988 (amendment 8), June 15, 1988 (amendment 9), November 1, 1989 (amendments 102, 103, and 104), and November 1, 1990 (amendments 312 and 361), was deleted by consolidation with §2B1.1 effective November 1, 1993 (amendment 481). Section 2B1.3 (Property Damage or Destruction), effective November 1, 1987, and amended effective June 15, 1988 (amendment 10), November 1, 1990 (amendments 312 and 313), November 1, 1997 (amendment 551), and November 1, 1998 (amendment 576), was deleted by consolidation with §2B1.1 effective November 1, 2001 (amendment 617).

§2B1.4. Insider Trading

(a) Base Offense Level: **8**

(b) Specific Offense Characteristics

(1) If the gain resulting from the offense exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) If the offense involved an organized scheme to engage in insider trading and the offense level determined above is less than level **14**, increase to level **14**.

Commentary

Statutory Provisions: 15 U.S.C. § 78j and 17 C.F.R. § 240.10b-5. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Application of Subsection (b)(2).**—For purposes of subsection (b)(2), an "***organized scheme to engage in insider trading***" means a scheme to engage in insider trading that involves considered, calculated, systematic, or repeated efforts to obtain and trade on inside information, as distinguished from fortuitous or opportunistic instances of insider trading.

   The following is a non-exhaustive list of factors that the court may consider in determining whether the offense involved an organized scheme to engage in insider trading:

   (A) the number of transactions;

   (B) the dollar value of the transactions;

(C) the number of securities involved;

(D) the duration of the offense;

(E) the number of participants in the scheme (although such a scheme may exist even in the absence of more than one participant);

(F) the efforts undertaken to obtain material, nonpublic information;

(G) the number of instances in which material, nonpublic information was obtained; and

(H) the efforts undertaken to conceal the offense.

2. **Application of §3B1.3.**—Section 3B1.3 (Abuse of Position of Trust or Use of Special Skill) should be applied if the defendant occupied and abused a position of special trust. Examples might include a corporate president or an attorney who misused information regarding a planned but unannounced takeover attempt. It typically would not apply to an ordinary "tippee".

Furthermore, §3B1.3 should be applied if the defendant's employment in a position that involved regular participation or professional assistance in creating, issuing, buying, selling, or trading securities or commodities was used to facilitate significantly the commission or concealment of the offense. It would apply, for example, to a hedge fund professional who regularly participates in securities transactions or to a lawyer who regularly provides professional assistance in securities transactions, if the defendant's employment in such a position was used to facilitate significantly the commission or concealment of the offense. It ordinarily would not apply to a position such as a clerical worker in an investment firm, because such a position ordinarily does not involve special skill. *See* §3B1.3, comment. (n.4).

Background: This guideline applies to certain violations of Rule 10b-5 that are commonly referred to as "insider trading". Insider trading is treated essentially as a sophisticated fraud. Because the victims and their losses are difficult if not impossible to identify, the gain, *i.e.*, the total increase in value realized through trading in securities by the defendant and persons acting in concert with the defendant or to whom the defendant provided inside information, is employed instead of the victims' losses.

Certain other offenses, *e.g.*, 7 U.S.C. § 13(e), that involve misuse of inside information for personal gain also appropriately may be covered by this guideline.

Subsection (b)(2) implements the directive to the Commission in section 1079A(a)(1)(A) of Public Law 111–203.

Historical Note	Effective November 1, 2001 (amendment 617). Amended effective November 1, 2010 (amendment 746); November 1, 2012 (amendment 761); November 1, 2015 (amendment 791); November 1, 2026 (amendment 838).

§2B1.5. Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources

(a) Base Offense Level: 8

(b) Specific Offense Characteristics

(1) If the value of the cultural heritage resource or paleontological resource (A) exceeded $3,500 but did not exceed $9,000, increase by **1** level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) If the offense involved a cultural heritage resource or paleontological resource from, or that, prior to the offense, was on, in, or in the custody of (A) the national park system; (B) a National Historic Landmark; (C) a national monument or national memorial; (D) a national marine sanctuary; (E) a national cemetery or veterans' memorial; (F) a museum; or (G) the World Heritage List, increase by **2** levels.

(3) If the offense involved a cultural heritage resource constituting (A) human remains; (B) a funerary object; (C) cultural patrimony; (D) a sacred object; (E) cultural property; (F) designated archaeological or ethnological material; or (G) a pre-Columbian monumental or architectural sculpture or mural, increase by **2** levels.

(4) If the offense was committed for pecuniary gain or otherwise involved a commercial purpose, increase by **2** levels.

(5) If the defendant engaged in a pattern of misconduct involving cultural heritage resources or paleontological resources, increase by **2** levels.

(c) Cross Reference

(1) If the offense involved arson, or property damage by the use of any explosive, explosive material, or destructive device, apply §2K1.4 (Arson; Property Damage by Use of Explosives), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 16 U.S.C. §§ 470aaa–5, 470ee, 668(a), 707(b); 18 U.S.C. §§ 541–546, 554, 641, 661–662, 666, 668, 1163, 1168, 1170, 1361, 1369, 2232, 2314–2315.

Application Notes:

1. **Definitions.—**For purposes of this guideline:

(A) "***Cultural heritage resource***" means any of the following:

(i) A historic property, as defined in 54 U.S.C. § 300308 (*see also* section 16(l) of 36 C.F.R. pt. 800).

(ii) An archaeological resource, as defined in 16 U.S.C. § 470bb(1) (*see also* section 3(a) of 43 C.F.R. pt. 7; 36 C.F.R. pt. 296; 32 C.F.R. pt. 229; 18 C.F.R. pt. 1312).

(iii) A cultural item, as defined in section 2(3) of the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001(3) (*see also* 43 C.F.R. § 10.2(d)).

(iv) A commemorative work. "***Commemorative work***" (I) has the meaning given that term in 40 U.S.C. § 8902(a)(1); and (II) includes any national monument or national memorial.

(v) An object of cultural heritage, as defined in 18 U.S.C. § 668(a)(2).

(vi) Designated ethnological material, as described in 19 U.S.C. §§ 2601(2)(ii), 2601(7), and 2604.

(B) "***Paleontological resource***" has the meaning given such term in 16 U.S.C. § 470aaa.

2. **Value of the Resource Under Subsection (b)(1).**—This application note applies to the determination of the value of the resource under subsection (b)(1).

(A) **General Rule.**—For purposes of subsection (b)(1), the value of the resource shall include, as applicable to the particular resource involved, the following:

(i) The archaeological value. (Archaeological value shall be included in the case of any resource that is an archaeological resource.)

(ii) The commercial value.

(iii) The cost of restoration and repair.

(B) **Estimation of Value.**—For purposes of subsection (b)(1), the court need only make a reasonable estimate of the value of the resource based on available information.

(C) **Definitions.**—For purposes of this application note:

(i) "***Archaeological value***" of a resource means the cost of the retrieval of the scientific information which would have been obtainable prior to the offense, including the cost of preparing a research design, conducting field work, conducting laboratory analysis, and preparing reports, as would be necessary to realize the information potential. (*See, e.g.*, 43 C.F.R. § 7.14(a); 36 C.F.R. § 296.14(a); 32 C.F.R. § 229.14(a); 18 C.F.R. § 1312.14(a).)

(ii) "***Commercial value***" of a resource means the fair market value of the resource at the time of the offense. (*See, e.g.*, 43 C.F.R. § 7.14(b); 36 C.F.R. § 296.14(b); 32 C.F.R. § 229.14(b); 18 C.F.R. § 1312.14(b).)

(iii) "***Cost of restoration and repair***" includes all actual and projected costs of curation, disposition, and appropriate reburial of, and consultation with respect to, the resource; and any other actual and projected costs to complete restoration and repair of the resource, including (I) its reconstruction and stabilization; (II) reconstruction and stabilization of ground contour and surface; (III) research necessary to conduct reconstruction and stabilization; (IV) the construction of physical barriers and other protective devices; (V) examination and analysis of the resource as part of efforts to salvage remaining information about the resource; and (VI) preparation of reports.

(*See, e.g.*, 43 C.F.R. § 7.14(c); 36 C.F.R. § 296.14(c); 32 C.F.R. § 229.14(c); 18 C.F.R. § 1312.14(c).)

(D) **Determination of Value in Cases Involving a Variety of Resources.**—In a case involving a variety of resources, the value of the resources is the sum of all calculations made for those resources under this application note.

3. **Enhancement in Subsection (b)(2).**—For purposes of subsection (b)(2):

(A) "***Museum***" has the meaning given that term in 18 U.S.C. § 668(a)(1) except that the museum may be situated outside the United States.

(B) "***National cemetery***" and "***veterans' memorial***" have the meaning given those terms in Application Note 1 of the Commentary to §2B1.1 (Theft, Property Destruction, and Fraud).

(C) "***National Historic Landmark***" means a property designated as such pursuant to 54 U.S.C. § 302102.

(D) "***National marine sanctuary***" means a national marine sanctuary designated as such by the Secretary of Commerce pursuant to 16 U.S.C. § 1433.

(E) "***National monument or national memorial***" means any national monument or national memorial established as such by Act of Congress or by proclamation pursuant to 54 U.S.C. § 320301.

(F) "***National park system***" has the meaning given that term in 54 U.S.C. § 100501.

(G) "***World Heritage List***" means the World Heritage List maintained by the World Heritage Committee of the United Nations Educational, Scientific, and Cultural Organization in accordance with the Convention Concerning the Protection of the World Cultural and Natural Heritage.

4. **Enhancement in Subsection (b)(3).**—For purposes of subsection (b)(3):

(A) "***Cultural patrimony***" has the meaning given that term in 25 U.S.C. § 3001(3)(D) (*see also* 43 C.F.R. 10.2(d)(4)).

(B) "***Cultural property***" has the meaning given that term in 19 U.S.C. § 2601(6).

(C) "***Designated archaeological or ethnological material***" means archaeological or ethnological material described in 19 U.S.C. § 2601(7) *(see also* 19 U.S.C. §§ 2601(2) and 2604).

(D) "***Funerary object***" means an object that, as a part of the death rite or ceremony of a culture, was placed intentionally, at the time of death or later, with or near human remains.

(E) "***Human remains***" (i) means the physical remains of the body of a human; and (ii) does not include remains that reasonably may be determined to have been freely disposed of or naturally shed by the human from whose body the remains were obtained, such as hair made into ropes or nets.

(F) "***Pre-Columbian monumental or architectural sculpture or mural***" has the meaning given that term in 19 U.S.C. § 2095(3).

(G) "***Sacred object***" has the meaning given that term in 25 U.S.C. § 3001(3)(C) (*see also* 43 C.F.R. § 10.2(d)(3)).

5. **Pecuniary Gain and Commercial Purpose Enhancement Under Subsection (b)(4).—**

(A) **"For Pecuniary Gain".—**For purposes of subsection (b)(4), "***for pecuniary gain***" means for receipt of, or in anticipation of receipt of, anything of value, whether monetary or in goods or services. Therefore, offenses committed for pecuniary gain include both monetary and barter transactions, as well as activities designed to increase gross revenue.

(B) **Commercial Purpose.—**The acquisition of resources for display to the public, whether for a fee or donation and whether by an individual or an organization, including a governmental entity, a private non-profit organization, or a private for-profit organization, shall be considered to involve a "commercial purpose" for purposes of subsection (b)(4).

6. **Pattern of Misconduct Enhancement Under Subsection (b)(5).—**

(A) **Definition.—**For purposes of subsection (b)(5), "***pattern of misconduct involving cultural heritage resources or paleontological resources***" means two or more separate instances of offense conduct involving a resource that did not occur during the course of the offense (*i.e.*, that did not occur during the course of the instant offense of conviction and all relevant conduct under §1B1.3 (Relevant Conduct)). Offense conduct involving a resource may be considered for purposes of subsection (b)(5) regardless of whether the defendant was convicted of that conduct.

(B) **Computation of Criminal History Points.—**A conviction taken into account under subsection (b)(5) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

7. **Multiple Counts.—**For purposes of Chapter Three, Part D (Multiple Counts), apply subsection (a) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to determine the combined offense level for multiple counts involving offenses covered by this guideline.

Historical Note	Effective November 1, 2002 (amendment 638). Amended effective November 1, 2006 (amendment 685); November 1, 2007 (amendment 700); November 1, 2010 (amendments 745 and 746); November 1, 2014 (amendment 781); November 1, 2015 (amendment 791); November 1, 2018 (amendment 813); November 1, 2025 (amendment 836); November 1, 2026 (amendments 837, 838, and 840).

§2B1.6. Aggravated Identity Theft

(a) If the defendant was convicted of violating 18 U.S.C. § 1028A, the guideline sentence is the term of imprisonment required by statute. Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) shall not apply to that count of conviction.

Commentary

Statutory Provision: 18 U.S.C. § 1028A. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Imposition of Sentence.—**

   (A) **In General.—**Section 1028A of title 18, United States Code, provides a mandatory term of imprisonment. Accordingly, the guideline sentence for a defendant convicted under 18 U.S.C. § 1028A is the term required by that statute. Except as provided in subparagraph (B), 18 U.S.C. § 1028A also requires a term of imprisonment imposed under this section to run consecutively to any other term of imprisonment.

   (B) **Multiple Convictions Under Section 1028A.—**Section 1028A(b)(4) of title 18, United States Code, provides that in the case of multiple convictions under 18 U.S.C. § 1028A, the terms of imprisonment imposed on such counts may, in the discretion of the court, run concurrently, in whole or in part, with each other. *See* the Commentary to §5G1.2 (Sentencing on Multiple Counts of Conviction) for guidance regarding imposition of sentence on multiple counts of 18 U.S.C. § 1028A.

2. **Inapplicability of Chapter Two Enhancement.—**If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for the transfer, possession, or use of a means of identification when determining the sentence for the underlying offense. A sentence under this guideline accounts for this factor for the underlying offense of conviction, including any such enhancement that would apply based on conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct). "***Means of identification***" has the meaning given that term in 18 U.S.C. § 1028(d)(7).

3. **Inapplicability of Chapters Three and Four.—**Do not apply Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) to any offense sentenced under this guideline. Such offenses are excluded from application of those chapters because the guideline sentence for each offense is determined only by the relevant statute. *See* §§3D1.1 (Procedure for Determining Offense Level on Multiple Counts) and 5G1.2.

Historical Note	Effective November 1, 2005 (amendment 677). Amended effective November 1, 2024 (amendment 831).

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2. BURGLARY AND TRESPASS

§2B2.1. Burglary of a Residence or a Structure Other than a Residence

(a) Base Offense Level:

(1) **17**, if a residence; or

(2) **12**, if a structure other than a residence.

(b) Specific Offense Characteristics

(1) If the offense involved more than minimal planning, increase by **2** levels.

(2) If the loss exceeded $7,000, increase the offense level as follows:

	LOSS (APPLY THE GREATEST)	INCREASE IN LEVEL
(A)	$7,000 or less	no increase
(B)	More than $7,000	add **1**
(C)	More than $25,000	add **2**
(D)	More than $150,000	add **3**
(E)	More than $700,000	add **4**
(F)	More than $2,000,000	add **5**
(G)	More than $4,000,000	add **6**
(H)	More than $7,000,000	add **7**
(I)	More than $15,000,000	add **8**.

(3) If a firearm, destructive device, or controlled substance was taken, or if the taking of such item was an object of the offense, increase by **1** level.

(4) If a dangerous weapon (including a firearm) was possessed, increase by **2** levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 2113(a), 2115, 2117, 2118(b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. "***Firearm***," "***destructive device***," and "***dangerous weapon***" are defined in the Commentary to §1B1.1 (Application Instructions).

2. "***Loss***" means the value of the property taken, damaged, or destroyed.

3. Subsection (b)(4) does not apply to possession of a dangerous weapon (including a firearm) that was stolen during the course of the offense.

4. **More than Minimal Planning.—**"***More than minimal planning***" means more planning than is typical for commission of the offense in a simple form. "More than minimal planning" also exists if significant affirmative steps were taken to conceal the offense, other than conduct to which §3C1.1 (Obstructing or Impeding the Administration of Justice) applies. "More than minimal planning" shall be considered to be present in any case involving repeated acts over a period of time, unless it is clear that each instance was purely opportune. For example, checking the area to make sure no witnesses were present would not alone constitute more than minimal planning. By contrast, obtaining building plans to plot a particular course of entry, or disabling an alarm system, would constitute more than minimal planning.

Background: The base offense level for residential burglary is higher than for other forms of burglary because of the increased risk of physical and psychological injury. Weapon possession, but not use, is a specific offense characteristic because use of a weapon (including to threaten) ordinarily would make the offense robbery.

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 11); June 15, 1988 (amendment 12); November 1, 1989 (amendments 105 and 106); November 1, 1990 (amendments 315 and 361); November 1, 1993 (amendment 481); November 1, 2001 (amendment 617); November 1, 2014 (amendment 781); November 1, 2015 (amendment 791); November 1, 2025 (amendment 836); November 1, 2026 (amendment 838).

§2B2.2. [Deleted]

Historical Note	Section 2B2.2 (Burglary of Other Structures), effective November 1, 1987, and amended effective June 15, 1988 (amendment 13), November 1, 1989 (amendment 107), and November 1, 1990 (amendments 315 and 361), was deleted by consolidation with §2B2.1 effective November 1, 1993 (amendment 481).

§2B2.3. Trespass

(a) Base Offense Level: **4**

(b) Specific Offense Characteristics

(1) (Apply the greater) If—

(A) the trespass occurred (i) at a secure government facility; (ii) at a nuclear energy facility; (iii) on a vessel or aircraft of the United States; (iv) in a secure area of an airport or a seaport; (v) at a residence; (vi) at Arlington National Cemetery or a cemetery under the control of the National Cemetery Administration; (vii) at any restricted building or grounds; or (viii) on a computer system used (I) to maintain or operate a critical infrastructure; or (II) by or for a government entity in furtherance of the administration of justice, national defense, or national security, increase by **2** levels; or

(B) the trespass occurred at the White House or its grounds, or the Vice President's official residence or its grounds, increase by **4** levels.

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

(c) Cross Reference

(1) If the offense was committed with the intent to commit a felony offense, apply §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that felony offense, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1030(a)(3), 1036, 2199; 38 U.S.C. § 2413; 42 U.S.C. § 7270b. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. **Definitions.—**For purposes of this guideline:

"***Airport***" has the meaning given that term in section 47102 of title 49, United States Code.

"***Critical infrastructure***" means systems and assets vital to national defense, national security, economic security, public health or safety, or any combination of those matters. A critical infrastructure may be publicly or privately owned. Examples of critical infrastructures include gas and oil production, storage, and delivery systems, water supply systems, telecommunications networks, electrical power delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), transportation systems and services (including highways, mass transit, airlines, and airports), and government operations that provide essential services to the public.

"***Felony offense***" means any offense (federal, state, or local) punishable by imprisonment for a term exceeding one year, whether or not a criminal charge was brought or a conviction was obtained.

"***Firearm***" and "***dangerous weapon***" are defined in the Commentary to §1B1.1 (Application Instructions).

"***Government entity***" has the meaning given that term in 18 U.S.C. § 1030(e)(9).

"***Restricted building or grounds***" has the meaning given that term in 18 U.S.C. § 1752.

"***Seaport***" has the meaning given that term in 18 U.S.C. § 26.

Background: Most trespasses punishable under federal law involve federal lands or property. The trespass section provides an enhancement for offenses involving trespass on secure government installations (such as nuclear facilities) and other locations (such as airports and seaports) to protect a significant federal interest. Additionally, an enhancement is provided for trespass at a residence.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 108 and 109); November 1, 1997 (amendment 551); November 1, 2001 (amendment 617); November 1, 2002 (amendment 637); November 1, 2003 (amendment 654); November 1, 2007 (amendments 699 and 703); November 1, 2013 (amendment 777); November 1, 2015 (amendment 791); November 1, 2024 (amendment 827); November 1, 2026 (amendment 837).

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3. ROBBERY, EXTORTION, AND BLACKMAIL

§2B3.1. Robbery

(a) Base Offense Level: **20**

(b) Specific Offense Characteristics

(1) If the property of a financial institution or post office was taken, or if the taking of such property was an object of the offense, increase by **2** levels.

(2) (A) If a firearm was discharged, increase by **7** levels; (B) if a firearm was used to convey a specific (not general) threat of harm (*e.g.*, pointing the firearm at a specific victim or victims; directing the movement of a specific victim or victims with the firearm) or to make physical contact with a victim (*e.g.*, pistol whip; firearm placed against victim's body), increase by **6** levels; (C) if a firearm was brandished or possessed, increase by **5** levels; (D) if a dangerous weapon was otherwise used, increase by **4** levels; (E) if a dangerous weapon was brandished or possessed, increase by **3** levels; or (F) if a threat of death was made, increase by **2** levels.

(3) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

	DEGREE OF BODILY INJURY	INCREASE IN LEVEL
(A)	Bodily Injury	add **2**
(B)	Serious Bodily Injury	add **4**
(C)	Permanent or Life-Threatening Bodily Injury	add **6**
(D)	If the degree of injury is between that specified in subparagraphs (A) and (B),	add **3** levels; or
(E)	If the degree of injury is between that specified in subparagraphs (B) and (C),	add **5** levels.

Provided, however, that the cumulative adjustments from application of paragraphs (2) and (3) shall not exceed **11** levels.

(4) (A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by **4** levels; or (B) if any person's freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up, to facilitate commission of the offense or to facilitate escape, increase by **2** levels.

(5) If the offense involved carjacking, increase by **2** levels.

(6) If a firearm, destructive device, or controlled substance was taken, or if the taking of such item was an object of the offense, increase by **1** level.

(7) If the loss exceeded $25,000, increase the offense level as follows:

	LOSS (APPLY THE GREATEST)	INCREASE IN LEVEL
(A)	$25,000 or less	no increase
(B)	More than $25,000	add **1**
(C)	More than $150,000	add **2**
(D)	More than $700,000	add **3**
(E)	More than $2,000,000	add **4**
(F)	More than $4,000,000	add **5**
(G)	More than $7,000,000	add **6**
(H)	More than $15,000,000	add **7**.

(c) Cross Reference

(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).

Commentary

Statutory Provisions: 18 U.S.C. §§ 1951, 2113, 2114, 2118(a), 2119. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—"***Firearm***," "***destructive device***," "***dangerous weapon***," "***otherwise used***," "***brandished***," "***bodily injury***," "***serious bodily injury***," "***permanent or life-threatening bodily injury***," and "***abducted***" have the meaning given such terms in the Commentary to §1B1.1 (Application Instructions).

   "***Carjacking***" means the taking or attempted taking of a motor vehicle from the person or presence of another by force and violence or by intimidation.

2. **Dangerous Weapon.**—Consistent with Application Note 1(E)(ii) of §1B1.1 (Application Instructions), an object shall be considered to be a dangerous weapon for purposes of subsection (b)(2)(E) if (A) the object closely resembles an instrument capable of inflicting death or serious bodily injury; or (B) the defendant used the object in a manner that created the impression that the object was an instrument capable of inflicting death or serious bodily injury (*e.g.*, a defendant wrapped a hand in a towel during a bank robbery to create the appearance of a gun).

3. **Definition of "Loss".**—"***Loss***" means the value of the property taken, damaged, or destroyed.

4. **Cumulative Application of Subsections (b)(2) and (b)(3).**—The combined adjustments for weapon involvement and injury are limited to a maximum enhancement of 11 levels.

5. **"A Threat of Death".**—"A threat of death," as used in subsection (b)(2)(F), may be in the form of an oral or written statement, act, gesture, or combination thereof. Accordingly, the defendant does not have to state expressly his intent to kill the victim in order for the enhancement to apply. For example, an oral or written demand using words such as "Give me the money or I will kill you", "Give me the money or I will pull the pin on the grenade I have in my pocket", "Give me the money or I will shoot you", "Give me your money or else (where the defendant draws his hand across his throat in a slashing motion)", or "Give me the money or you are dead" would constitute a threat of death. The court should consider that the intent of this provision is to provide an increased offense level for cases in which the offender(s) engaged in conduct that would instill in a reasonable person, who is a victim of the offense, a fear of death.

Background: Possession or use of a weapon, physical injury, and unlawful restraint sometimes occur during a robbery. The guideline provides for a range of enhancements where these factors are present.

Although in pre-guidelines practice the amount of money taken in robbery cases affected sentence length, its importance was small compared to that of the other harm involved. Moreover, because of the relatively high base offense level for robbery, an increase of 1 or 2 levels brings about a considerable increase in sentence length in absolute terms. Accordingly, the gradations for property loss increase more slowly than for simple property offenses.

The guideline provides an enhancement for robberies where a victim was forced to accompany the defendant to another location, or a victim's freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up.

Historical Note	Effective November 1, 1987. Amended effective June 15, 1988 (amendments 14 and 15); November 1, 1989 (amendments 110 and 111); November 1, 1990 (amendments 314, 315, and 361); November 1, 1991 (amendment 365); November 1, 1993 (amendment 483); November 1, 1997 (amendments 545 and 552); November 1, 2000 (amendment 601); November 1, 2001 (amendment 617); November 1, 2010 (amendment 746); November 1, 2015 (amendment 791); November 1, 2018 (amendment 805); November 1, 2024 (amendment 831); November 1, 2025 (amendments 832 and 836); November 1, 2026 (amendment 838).

§2B3.2. Extortion by Force or Threat of Injury or Serious Damage

(a) Base Offense Level: **18**

(b) Specific Offense Characteristics

(1) If the offense involved an express or implied threat of death, bodily injury, or kidnapping, increase by **2** levels.

(2) If the greater of the amount demanded or the loss to the victim exceeded $25,000, increase by the corresponding number of levels from the table in §2B3.1(b)(7).

(3) (A)(i) If a firearm was discharged, increase by **7** levels; (ii) if a firearm was used to convey a specific (not general) threat of harm (*e.g.*, pointing the firearm at a specific victim or victims; directing the movement of a specific victim or victims with the firearm) or to make physical contact with a victim (*e.g.*, pistol whip; firearm placed against victim's body), increase by **6** levels; (iii) if a firearm was brandished or possessed, increase by **5** levels; (iv) if a dangerous weapon was otherwise used, increase by **4** levels; or (v) if a dangerous weapon was brandished or possessed, increase by **3** levels; or

(B) If (i) the offense involved preparation to carry out a threat of (I) death; (II) serious bodily injury; (III) kidnapping; (IV) product tampering; or (V) damage to a computer system used to maintain or operate a critical infrastructure, or by or for a government entity in furtherance of the administration of justice, national defense, or national security; or (ii) the participant(s) otherwise demonstrated the ability to carry out a threat described in any of clauses (i)(I) through (i)(V), increase by **3** levels.

(4) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

	DEGREE OF BODILY INJURY	INCREASE IN LEVEL
(A)	Bodily Injury	add **2**
(B)	Serious Bodily Injury	add **4**
(C)	Permanent or Life-Threatening Bodily Injury	add **6**
(D)	If the degree of injury is between that specified in subparagraphs (A) and (B),	add **3** levels; or
(E)	If the degree of injury is between that specified in subparagraphs (B) and (C),	add **5** levels.

Provided, however, that the cumulative adjustments from application of paragraphs (3) and (4) shall not exceed **11** levels.

(5) (A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by **4** levels; or (B) if any person's freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up, to facilitate commission of the offense or to facilitate escape, increase by **2** levels.

(c) 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 offense was tantamount to attempted murder, apply §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder) if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 875(b), (d), 876(b), (d), 877, 1030(a)(7), 1951. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Abducted***," "***bodily injury***," "***brandished***," "***dangerous weapon***," "***firearm***," "***otherwise used***," "***permanent or life-threatening bodily injury***," and "***serious bodily injury***" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

"***Critical infrastructure***" means systems and assets vital to national defense, national security, economic security, public health or safety, or any combination of those matters. A critical infrastructure may be publicly or privately owned. Examples of critical infrastructures include gas and oil production, storage, and delivery systems, water supply systems, telecommunications networks, electrical power delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), transportation systems and services (including highways, mass transit, airlines, and airports), and government operations that provide essential services to the public.

"***Government entity***" has the meaning given that term in 18 U.S.C. § 1030(e)(9).

2. **Threat of Injury or Serious Damage.**—This guideline applies if there was any threat, express or implied, that reasonably could be interpreted as one to injure a person or physically damage property, or any comparably serious threat, such as to drive an enterprise out of business. Even if the threat does not in itself imply violence, the possibility of violence or serious adverse consequences may be inferred from the circumstances of the threat or the reputation of the person making it. An ambiguous threat, such as "pay up or else," or a threat to cause labor problems, ordinarily should be treated under this section.

3. **Offenses Involving Public Officials and Other Extortion Offenses.**—Guidelines for bribery involving public officials are found in Part C, Offenses Involving Public Officials. "Extortion under color of official right," which usually is solicitation of a bribe by a public official, is covered under §2C1.1 unless there is use of force or a threat that qualifies for treatment under this section. Certain other extortion offenses are covered under the provisions of Part E, Offenses Involving Criminal Enterprises and Racketeering.

4. **Cumulative Application of Subsections (b)(3) and (b)(4).**—The combined adjustments for weapon involvement and injury are limited to a maximum enhancement of 11 levels.

5. **Definition of "Loss to the Victim".**—"***Loss to the victim***," as used in subsection (b)(2), means any demand paid plus any additional consequential loss from the offense (*e.g.*, the cost of defensive measures taken in direct response to the offense).

6. **Defendant's Preparation or Ability to Carry Out a Threat.**—In certain cases, an extortionate demand may be accompanied by conduct that does not qualify as a display of a dangerous

weapon under subsection (b)(3)(A)(v) but is nonetheless similar in seriousness, demonstrating the defendant's preparation or ability to carry out the threatened harm (*e.g.*, an extortionate demand containing a threat to tamper with a consumer product accompanied by a workable plan showing how the product's tamper-resistant seals could be defeated, or a threat to kidnap a person accompanied by information showing study of that person's daily routine). Subsection (b)(3)(B) addresses such cases.

Background: The Hobbs Act, 18 U.S.C. § 1951, prohibits extortion, attempted extortion, and conspiracy to extort. It provides for a maximum term of imprisonment of twenty years. 18 U.S.C. §§ 875–877 prohibit communication of extortionate demands through various means. The maximum penalty under these statutes varies from two to twenty years. Violations of 18 U.S.C. § 875 involve threats or demands transmitted by interstate commerce. Violations of 18 U.S.C. § 876 involve the use of the United States mails to communicate threats, while violations of 18 U.S.C. § 877 involve mailing threatening communications from foreign countries. This guideline also applies to offenses under 18 U.S.C. § 1030(a)(7) involving a threat to impair the operation of a "protected computer."

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 112, 113, and 303); November 1, 1990 (amendment 316); November 1, 1991 (amendment 366); November 1, 1993 (amendment 479); November 1, 1997 (amendment 551); November 1, 1998 (amendment 586); November 1, 2000 (amendment 601); November 1, 2003 (amendment 654); November 1, 2015 (amendment 791); November 1, 2023 (amendment 824); November 1, 2024 (amendment 831); November 1, 2025 (amendments 832 and 836); November 1, 2026 (amendment 838).

§2B3.3. Blackmail and Similar Forms of Extortion

(a) Base Offense Level: **9**

(b) Specific Offense Characteristic

(1) If the greater of the amount obtained or demanded (A) exceeded $3,500 but did not exceed $9,000, increase by **1** level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(c) Cross References

(1) If the offense involved extortion under color of official right, apply §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions).

(2) If the offense involved extortion by force or threat of injury or serious damage, apply §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage).

Commentary

Statutory Provisions: 18 U.S.C. §§ 873, 875–877, 1951. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. This section applies only to blackmail and similar forms of extortion where there clearly is no threat of violence to person or property. "***Blackmail***" (18 U.S.C. § 873) is defined as a threat to disclose a violation of United States law unless money or some other item of value is given.

Background: Under 18 U.S.C. § 873, the maximum term of imprisonment authorized for blackmail is one year. Extortionate threats to injure a reputation, or other threats that are less serious than those covered by §2B3.2, may also be prosecuted under 18 U.S.C. §§ 875–877, which carry higher maximum sentences.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 114); November 1, 1993 (amendment 479); November 1, 2001 (amendment 617); November 1, 2005 (amendment 679); November 1, 2015 (amendment 791); November 1, 2026 (amendment 838).

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4. COMMERCIAL BRIBERY AND KICKBACKS

§2B4.1. Bribery in Procurement of Bank Loan and Other Commercial Bribery

(a) Base Offense Level: **8**

(b) Specific Offense Characteristics

(1) If the greater of the value of the bribe or the improper benefit to be conferred (A) exceeded $3,500 but did not exceed $9,000, increase by **1** level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) (Apply the greater) If—

(A) the defendant derived more than $1,000,000 in gross receipts from one or more financial institutions as a result of the offense, increase by **2** levels; or

(B) the offense substantially jeopardized the safety and soundness of a financial institution, increase by **4** levels.

If the resulting offense level determined under subdivision (A) or (B) is less than level **24**, increase to level **24**.

(c) Special Instruction for Fines — Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of §8C2.4 (Base Fine), use the greatest of: (A) the value of the unlawful payment; (B) the value of the benefit received or to be received in return for the unlawful payment; or (C) the consequential damages resulting from the unlawful payment.

Commentary

Statutory Provisions: 18 U.S.C. §§ 215, 220, 224, 225; 26 U.S.C. §§ 9012(e), 9042(d); 41 U.S.C. §§ 8702, 8707; 42 U.S.C. §§ 1395nn(b)(1), (2), 1396h(b)(1),(2); 49 U.S.C. § 11902. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. This guideline covers commercial bribery offenses and kickbacks that do not involve officials of federal, state, or local government, foreign governments, or public international organizations. *See* Part C, Offenses Involving Public Officials, if any such officials are involved.

2. The "***value of the improper benefit to be conferred***" refers to the value of the action to be taken or effected in return for the bribe. *See* Commentary to §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions).

3. "***Financial institution***," as used in this guideline, is defined to include any institution described in 18 U.S.C. §§ 20, 656, 657, 1005–1007, and 1014; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medical or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and any similar entity, whether or not insured by the federal government. "Union or employee pension fund" and "any health, medical, or hospital insurance association," as used above, primarily include large pension funds that serve many individuals (*e.g.*, pension funds of large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (*e.g.*, medical or hospitalization insurance) to large numbers of persons.

4. **Gross Receipts Enhancement under Subsection (b)(2)(A).—**

   (A) **In General.—**For purposes of subsection (b)(2)(A), the defendant shall be considered to have derived more than $1,000,000 in gross receipts if the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000.

   (B) **Definition.—**"***Gross receipts from the offense***" includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. *See* 18 U.S.C. § 982(a)(4).

5. **Enhancement for Substantially Jeopardizing the Safety and Soundness of a Financial Institution under Subsection (b)(2)(B).—**For purposes of subsection (b)(2)(B), an offense

shall be considered to have substantially jeopardized the safety and soundness of a financial institution if, as a consequence of the offense, the institution (A) became insolvent; (B) substantially reduced benefits to pensioners or insureds; (C) was unable on demand to refund fully any deposit, payment, or investment; (D) was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or (E) was placed in substantial jeopardy of any of subdivisions (A) through (D) of this note.

6. If the defendant is convicted under 18 U.S.C. § 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the "continuing financial crimes enterprise."

Background: This guideline applies to violations of various federal bribery statutes that do not involve governmental officials. The base offense level is to be enhanced based upon the value of the unlawful payment or the value of the action to be taken or effected in return for the unlawful payment, whichever is greater.

One of the more commonly prosecuted offenses to which this guideline applies is offering or accepting a fee in connection with procurement of a loan from a financial institution in violation of 18 U.S.C. § 215.

As with non-commercial bribery, this guideline considers not only the amount of the bribe but also the value of the action received in return. Thus, for example, if a bank officer agreed to the offer of a $25,000 bribe to approve a $250,000 loan under terms for which the applicant would not otherwise qualify, the court, in increasing the offense level, would use the greater of the $25,000 bribe, and the savings in interest over the life of the loan compared with alternative loan terms. If a gambler paid a player $5,000 to shave points in a nationally televised basketball game, the value of the action to the gambler would be the amount that he and his confederates won or stood to gain. If that amount could not be estimated, the amount of the bribe would be used to determine the appropriate increase in offense level.

This guideline also applies to making prohibited payments to induce the award of subcontracts on federal projects for which the maximum term of imprisonment authorized is ten years. 41 U.S.C. §§ 8702, 8707. Violations of 42 U.S.C. § 1320a-7b involve the offer or acceptance of a payment to refer an individual for services or items paid for under a federal health care program (*e.g.*, the Medicare and Medicaid programs).

This guideline also applies to violations of law involving bribes and kickbacks in expenses incurred for a presidential nominating convention or presidential election campaign. These offenses are prohibited under 26 U.S.C. §§ 9012(e) and 9042(d), which apply to candidates for President and Vice President whose campaigns are eligible for federal matching funds.

This guideline also applies to violations of 18 U.S.C. § 224, sports bribery, as well as certain violations of the Interstate Commerce Act.

Subsection (b)(2)(A) implements, in a broader form, the instruction to the Commission in section 961(m) of Public Law 101–73.

Subsection (b)(2)(B) implements the instruction to the Commission in section 2507 of Public Law 101–647.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 317); November 1, 1991 (amendments 364 and 422); November 1, 1992 (amendment 468); November 1, 1997 (amendment 553); November 1, 2001 (amendment 617); November 1, 2002 (amendments 639 and 646); November 1, 2004 (amendment 666); November 1, 2010 (amendment 746); November 1, 2015 (amendments 791 and 796); November 1, 2023 (amendment 815); November 1, 2026 (amendment 838).

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5. COUNTERFEITING AND INFRINGEMENT OF COPYRIGHT OR TRADEMARK

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendment 481).

§2B5.1. Offenses Involving Counterfeit Bearer Obligations of the United States

(a) Base Offense Level: **9**

(b) Specific Offense Characteristics

(1) If the face value of the counterfeit items (A) exceeded $3,500 but did not exceed $9,000, increase by **1** level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) If the defendant (A) manufactured or produced any counterfeit obligation or security of the United States, or possessed or had custody of or control over a counterfeiting device or materials used for counterfeiting; or (B) controlled or possessed (i) counterfeiting paper similar to a distinctive paper; (ii) genuine United States currency paper from which the ink or other distinctive counterfeit deterrent has been completely or partially removed; or (iii) a feature or device essentially identical to a distinctive counterfeit deterrent, increase by **2** levels.

(3) If subsection (b)(2)(A) applies, and the offense level determined under that subsection is less than level **15**, increase to level **15**.

(4) If a dangerous weapon (including a firearm) was possessed in connection with the offense, increase by **2** levels. If the resulting offense level is less than level **13**, increase to level **13**.

(5) If any part of the offense was committed outside the United States, increase by **2** levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 470–474A, 476, 477, 500, 501, 1003. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

   "***Counterfeit***" refers to an instrument that has been falsely made, manufactured, or altered. For example, an instrument that has been falsely made or manufactured in its entirety is "counterfeit", as is a genuine instrument that has been falsely altered (such as a genuine $5 bill that has been altered to appear to be a genuine $100 bill).

   "***Distinctive counterfeit deterrent***" and "***distinctive paper***" have the meaning given those terms in 18 U.S.C. § 474A(c)(2) and (1), respectively.

   "***United States***" means each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

2. **Applicability to Counterfeit Bearer Obligations of the United States.**—This guideline applies to counterfeiting of United States currency and coins, food stamps, postage stamps, treasury bills, bearer bonds and other items that generally could be described as bearer obligations of the United States, *i.e.*, that are not made out to a specific payee.

3. **Inapplicability to Certain Obviously Counterfeit Items.**—Subsection (b)(2)(A) does not apply to persons who produce items that are so obviously counterfeit that they are unlikely to be accepted even if subjected to only minimal scrutiny.

Background: Possession of counterfeiting devices to copy obligations (including securities) of the United States is treated as an aggravated form of counterfeiting because of the sophistication and planning involved in manufacturing counterfeit obligations and the public policy interest in protecting the integrity of government obligations. Similarly, an enhancement is provided for a defendant who produces, rather than merely passes, the counterfeit items.

Subsection (b)(4) implements, in a broader form, the instruction to the Commission in section 110512 of Public Law 103–322.

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 16); November 1, 1989 (amendment 115); November 1, 1995 (amendment 513); November 1, 1997 (amendment 554); November 1, 1998 (amendment 587); November 1, 2000 (amendments 595 and 605); November 1, 2001 (amendments 617 and 618); November 1, 2009 (amendment 731); November 1, 2015 (amendment 791); November 1, 2026 (amendment 838).

§2B5.2. [Deleted]

Historical Note	Section 2B5.2 (Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), effective November 1, 1987, and amended effective January 15, 1988 (amendment 17) and November 1, 1989 (amendment 116), was deleted by consolidation with §2F1.1 effective November 1, 1993 (amendment 481).

§2B5.3. Criminal Infringement of Copyright or Trademark

(a) Base Offense Level: **8**

(b) Specific Offense Characteristics

(1) If the infringement amount (A) exceeded $3,500 but did not exceed $9,000, increase by **1** level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) If the offense involved the display, performance, publication, reproduction, or distribution of a work being prepared for commercial distribution, increase by **2** levels.

(3) If the (A) offense involved the manufacture, importation, or uploading of infringing items; or (B) defendant was convicted under 17 U.S.C. §§ 1201 and 1204 for trafficking in circumvention devices, increase by **2** levels. If the resulting offense level is less than level **12**, increase to level **12.**

(4) If the offense was not committed for commercial advantage or private financial gain, decrease by **2** levels, but the resulting offense level shall be not less than level **8**.

(5) If the offense involved a drug that uses a counterfeit mark on or in connection with the drug, increase by **2** levels.

(6) If the offense involved (A) the conscious or reckless risk of death or serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by **2** levels. If the resulting offense level is less than level **14**, increase to level **14.**

(7) If the offense involved a counterfeit military good or service the use, malfunction, or failure of which is likely to cause (A) the disclosure of classified information; (B) impairment of combat operations; or (C) other significant harm to (i) a combat operation, (ii) a member of the Armed Forces, or (iii) national security, increase by **2** levels. If the resulting offense level is less than level **14**, increase to level **14**.

Commentary

Statutory Provisions: 17 U.S.C. §§ 506(a), 1201, 1204; 18 U.S.C. §§ 2318–2320, 2511. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Circumvention devices***" are devices used to perform the activity described in 17 U.S.C. §§ 1201(a)(3)(A) and 1201(b)(2)(A).

"***Commercial advantage or private financial gain***" means the receipt, or expectation of receipt, of anything of value, including other protected works.

"***Counterfeit military good or service***" has the meaning given that term in 18 U.S.C. § 2320(f)(4).

"***Drug***" and "***counterfeit mark***" have the meaning given those terms in 18 U.S.C. § 2320(f).

"***Infringed item***" means the copyrighted or trademarked item with respect to which the crime against intellectual property was committed.

"***Infringing item***" means the item that violates the copyright or trademark laws.

"***Uploading***" means making an infringing item available on the Internet or a similar electronic bulletin board with the intent to enable other persons to (A) download or otherwise copy the infringing item; or (B) have access to the infringing item, including by storing the infringing item as an openly shared file. "Uploading" does not include merely downloading or installing an infringing item on a hard drive on a defendant's personal computer unless the infringing item is an openly shared file.

"***Work being prepared for commercial distribution***" has the meaning given that term in 17 U.S.C. § 506(a)(3).

2. **Determination of Infringement Amount.**—This note applies to the determination of the infringement amount for purposes of subsection (b)(1).

(A) **Use of Retail Value of Infringed Item.**—The infringement amount is the retail value of the infringed item, multiplied by the number of infringing items, in a case involving any of the following:

(i) The infringing item (I) is, or appears to a reasonably informed purchaser to be, identical or substantially equivalent to the infringed item; or (II) is a digital or electronic reproduction of the infringed item.

(ii) The retail price of the infringing item is not less than 75% of the retail price of the infringed item.

(iii) The retail value of the infringing item is difficult or impossible to determine without unduly complicating or prolonging the sentencing proceeding.

(iv) The offense involves the illegal interception of a satellite cable transmission in violation of 18 U.S.C. § 2511. (In a case involving such an offense, the "retail value of the infringed item" is the price the user of the transmission would have paid to lawfully receive that transmission, and the "infringed item" is the satellite transmission rather than the intercepting device.)

(v) The retail value of the infringed item provides a more accurate assessment of the pecuniary harm to the copyright or trademark owner than does the retail value of the infringing item.

(vi) The offense involves the display, performance, publication, reproduction, or distribution of a work being prepared for commercial distribution. In a case involving such an offense, the "retail value of the infringed item" is the value of that item upon its initial commercial distribution.

(vii) A case under 18 U.S.C. § 2318 or § 2320 that involves a counterfeit label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature (I) that has not been affixed to, or does not enclose or accompany a good or service; and (II) which, had it been so used, would appear to a reasonably informed purchaser to be affixed to, enclosing or accompanying an identifiable, genuine good or service. In such a case, the "infringed item" is the identifiable, genuine good or service.

(viii) A case under 17 U.S.C. §§ 1201 and 1204 in which the defendant used a circumvention device. In such an offense, the "retail value of the infringed item" is the price the user would have paid to access lawfully the copyrighted work, and the "infringed item" is the accessed work.

(B) **Use of Retail Value of Infringing Item.**—The infringement amount is the retail value of the infringing item, multiplied by the number of infringing items, in any case not covered by subdivision (A) of this Application Note, including a case involving the unlawful recording of a musical performance in violation of 18 U.S.C. § 2319A.

(C) **Retail Value Defined.**—For purposes of this Application Note, the "***retail value***" of an infringed item or an infringing item is the retail price of that item in the market in which it is sold.

(D) **Determination of Infringement Amount in Cases Involving a Variety of Infringing Items.**—In a case involving a variety of infringing items, the infringement amount is the sum of all calculations made for those items under subdivisions (A) and (B) of this Application Note. For example, if the defendant sold both counterfeit videotapes that are identical in quality to the infringed videotapes and obviously inferior counterfeit handbags, the infringement amount, for purposes of subsection (b)(1), is the sum of the infringement amount calculated with respect to the counterfeit videotapes under subdivision (A)(i) (*i.e.*, the quantity of the infringing videotapes multiplied by the retail value of the infringed videotapes) and the infringement amount calculated with respect to the counterfeit handbags under subdivision (B) (*i.e.*, the quantity of the infringing handbags multiplied by the retail value of the infringing handbags).

(E) **Indeterminate Number of Infringing Items.**—In a case in which the court cannot determine the number of infringing items, the court need only make a reasonable estimate of the infringement amount using any relevant information, including financial records.

3. **Application of Subsection (b)(7).**—In subsection (b)(7), "***other significant harm to a member of the Armed Forces***" means significant harm other than serious bodily injury or death. In a case in which the offense involved a counterfeit military good or service the use, malfunction, or failure of which is likely to cause serious bodily injury or death, subsection (b)(6)(A) (conscious or reckless risk of serious bodily injury or death) would apply.

4. **Application of §3B1.3.**—If the defendant de-encrypted or otherwise circumvented a technological security measure to gain initial access to an infringed item, an adjustment under §3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply.

Background: This guideline treats copyright and trademark violations much like theft and fraud. Similar to the sentences for theft and fraud offenses, the sentences for defendants convicted of intellectual property offenses should reflect the nature and magnitude of the pecuniary harm caused by their crimes. Accordingly, similar to the loss enhancement in the theft and fraud guideline, the infringement amount in subsection (b)(1) serves as a principal factor in determining the offense level for intellectual property offenses.

Subsection (b)(1) implements section 2(g) of the No Electronic Theft (NET) Act of 1997, Pub. L. 105–147, by using the retail value of the infringed item, multiplied by the number of infringing items, to determine the pecuniary harm for cases in which use of the retail value of the infringed item is a reasonable estimate of that harm. For cases referred to in Application Note 2(B), the Commission determined that use of the retail value of the infringed item would overstate the pecuniary harm or otherwise be inappropriate. In these types of cases, use of the retail value of the infringing item, multiplied by the number of those items, is a more reasonable estimate of the resulting pecuniary harm.

Subsection (b)(5) implements the directive to the Commission in section 717 of Public Law 112–144.

Section 2511 of title 18, United States Code, as amended by the Electronic Communications Act of 1986, prohibits the interception of satellite transmission for purposes of direct or indirect commercial advantage or private financial gain. Such violations are similar to copyright offenses and are therefore covered by this guideline.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendments 481 and 482); May 1, 2000 (amendment 590); November 1, 2000 (amendment 593); November 1, 2001 (amendment 617); October 24, 2005 (amendment 675); September 12, 2006 (amendment 682); November 1, 2006 (amendment 687); November 1, 2007 (amendment 704); November 1, 2009 (amendment 735); November 1, 2013 (amendment 773); November 1, 2015 (amendment 791); November 1, 2018 (amendment 812); November 1, 2025 (amendment 836); November 1, 2026 (amendment 838).

§2B5.4. [Deleted]

Historical Note	Section 2B5.4 (Criminal Infringement of Trademark), effective November 1, 1987, was deleted by consolidation with §2B5.3 effective November 1, 1993 (amendment 481).

* * * * *

6. MOTOR VEHICLE IDENTIFICATION NUMBERS

§2B6.1. Altering or Removing Motor Vehicle Identification Numbers, or Trafficking in Motor Vehicles or Parts with Altered or Obliterated Identification Numbers

(a) Base Offense Level: **8**

(b) Specific Offense Characteristics

(1) If the retail value of the motor vehicles or parts (A) exceeded $3,500 but did not exceed $9,000, increase by **1** level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) If the defendant was in the business of receiving and selling stolen property, increase by **2** levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 511, 553(a)(2), 2321.

Application Note:

1. The term "***increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount***," as used in subsection (b)(1), refers to the number of levels corresponding to the retail value of the motor vehicles or parts involved.

Background: The statutes covered in this guideline prohibit altering or removing motor vehicle identification numbers, importing or exporting, or trafficking in motor vehicles or parts knowing that the identification numbers have been removed, altered, tampered with, or obliterated. Violations of 18 U.S.C. § 511 carry a maximum of five years imprisonment. Violations of 18 U.S.C. §§ 553(a)(2) and 2321 carry a maximum of ten years imprisonment.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 117, 118, and 119); November 1, 1993 (amendment 482); November 1, 2001 (amendment 617); November 1, 2010 (amendment 746); November 1, 2015 (amendment 791); November 1, 2026 (amendments 837 and 838).

PART C — OFFENSES INVOLVING PUBLIC OFFICIALS AND VIOLATIONS OF FEDERAL ELECTION CAMPAIGN LAWS

Historical Note	Effective November 1, 1987. Amended effective January 25, 2003 (amendment 648). The Introductory Commentary to Part C, effective November 1, 1987, was deleted effective January 25, 2003 (amendment 648) and November 1, 2003 (amendment 656).

§2C1.1. Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions

(a) Base Offense Level:

(1) **14**, if the defendant was a public official; or

(2) **12**, otherwise.

(b) Specific Offense Characteristics

(1) If the offense involved more than one bribe or extortion, increase by **2** levels.

(2) If the value of the payment, the benefit received or to be received in return for the payment, the value of anything obtained or to be obtained by a public official or others acting with a public official, or the loss to the government from the offense, whichever is greatest, exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(3) If the offense involved an elected public official or any public official in a high-level decision-making or sensitive position, increase by **4** levels. If the resulting offense level is less than level **18**, increase to level **18**.

(4) If the defendant was a public official who facilitated (A) entry into the United States for a person, a vehicle, or cargo; (B) the obtaining of a passport or a document relating to naturalization, citizenship, legal entry, or legal resident status; or (C) the obtaining of a government identification document, increase by **2** levels.

(c) Cross References

(1) If the offense was committed for the purpose of facilitating the commission of another criminal offense, apply the offense guideline applicable to a conspiracy to commit that other offense, if the resulting offense level is greater than that determined above.

(2) If the offense was committed for the purpose of concealing, or obstructing justice in respect to, another criminal offense, apply §2X3.1 (Accessory After the Fact) or §2J1.2 (Obstruction of Justice), as appropriate, in respect to that other offense, if the resulting offense level is greater than that determined above.

(3) If the offense involved a threat of physical injury or property destruction, apply §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), if the resulting offense level is greater than that determined above.

(d) Special Instruction for Fines — Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of §8C2.4 (Base Fine), use the greatest of: (A) the value of the unlawful payment; (B) the value of the benefit received or to be received in return for the unlawful payment; or (C) the consequential damages resulting from the unlawful payment.

Commentary

Statutory Provisions: 15 U.S.C. §§ 78dd-1, 78dd-2, 78dd-3; 18 U.S.C. §§ 201(b)(1), (2), 226, 227, 371 (if conspiracy to defraud by interference with governmental functions), 872, 1341 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services of a public official), 1342 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services of a public official), 1343 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services of a public official), 1352, 1951. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Government identification document***" means a document made or issued by or under the authority of the United States Government, a State, or a political subdivision of a State, which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

"***Payment***" means anything of value. A payment need not be monetary.

"***Public official***" shall be construed broadly and includes the following:

(A) "Public official" as defined in 18 U.S.C. § 201(a)(1).

(B) A member of a state or local legislature. "State" means a State of the United States, and any commonwealth, territory, or possession of the United States.

(C) An officer or employee or person acting for or on behalf of a state or local government, or any department, agency, or branch of government thereof, in any official function, under or by authority of such department, agency, or branch of government, or a juror in a state or local trial.

(D) Any person who has been selected to be a person described in subdivisions (A), (B), or (C), either before or after such person has qualified.

(E) An individual who, although not otherwise covered by subdivisions (A) through (D): (i) is in a position of public trust with official responsibility for carrying out a government program or policy; (ii) acts under color of law or official right; or (iii) participates so substantially in government operations as to possess de facto authority to make governmental decisions (*e.g.*, which may include a leader of a state or local political party who acts in the manner described in this subdivision).

2. **More than One Bribe or Extortion.—**Subsection (b)(1) provides an adjustment for offenses involving more than one incident of either bribery or extortion. Related payments that, in essence, constitute a single incident of bribery or extortion (*e.g.*, a number of installment payments for a single action) are to be treated as a single bribe or extortion, even if charged in separate counts.

In a case involving more than one incident of bribery or extortion, the applicable amounts under subsection (b)(2) (*i.e.*, the greatest of the value of the payment, the benefit received or to be received, the value of anything obtained or to be obtained by a public official or others acting with a public official, or the loss to the government) are determined separately for each incident and then added together.

3. **Application of Subsection (b)(2).—**"***Loss***", for purposes of subsection (b)(2), shall be determined in accordance with §2B1.1 (Theft, Property Destruction, and Fraud) and Application Note 3 of the Commentary to §2B1.1. The value of "***the benefit received or to be received***" means the net value of such benefit. **Examples:** (A) A government employee, in return for a $500 bribe, reduces the price of a piece of surplus property offered for sale by the government from $10,000 to $2,000; the value of the benefit received is $8,000. (B) A $150,000 contract on which $20,000 profit was made was awarded in return for a bribe; the value of the benefit received is $20,000. Do not deduct the value of the bribe itself in computing the value of the benefit received or to be received. In the preceding examples, therefore, the value of the benefit received would be the same regardless of the value of the bribe.

4. **Application of Subsection (b)(3).—**

(A) **Definition.—**"***High-level decision-making or sensitive position***" means a position characterized by a direct authority to make decisions for, or on behalf of, a government department, agency, or other government entity, or by a substantial influence over the decision-making process.

(B) **Examples.—**Examples of a public official in a high-level decision-making position include a prosecuting attorney, a judge, an agency administrator, and any other public official with a similar level of authority. Examples of a public official who holds a sensitive position include a juror, a law enforcement officer, an election official, and any other similarly situated individual.

5. **Application of Subsection (c).**—For the purposes of determining whether to apply the cross references in this section, the "***resulting offense level***" means the final offense level (*i.e.*, the offense level determined by taking into account both the Chapter Two offense level and any applicable adjustments from Chapter Three, Parts A–E). *See* §1B1.5(d); Application Note 2 of the Commentary to §1B1.5 (Interpretation of References to Other Offense Guidelines).

6. **Inapplicability of §3B1.3.**—Do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: This section applies to a person who offers or gives a bribe for a corrupt purpose, such as inducing a public official to participate in a fraud or to influence such individual's official actions, or to a public official who solicits or accepts such a bribe.

The object and nature of a bribe may vary widely from case to case. In some cases, the object may be commercial advantage (*e.g.*, preferential treatment in the award of a government contract). In others, the object may be issuance of a license to which the recipient is not entitled. In still others, the object may be the obstruction of justice. Consequently, a guideline for the offense must be designed to cover diverse situations.

In determining the net value of the benefit received or to be received, the value of the bribe is not deducted from the gross value of such benefit; the harm is the same regardless of value of the bribe paid to receive the benefit. In a case in which the value of the bribe exceeds the value of the benefit, or in which the value of the benefit cannot be determined, the value of the bribe is used because it is likely that the payer of such a bribe expected something in return that would be worth more than the value of the bribe. Moreover, for deterrence purposes, the punishment should be commensurate with the gain to the payer or the recipient of the bribe, whichever is greater.

Under §2C1.1(b)(3), if the payment was for the purpose of influencing an official act by certain officials, the offense level is increased by 4 levels.

Under §2C1.1(c)(1), if the payment was to facilitate the commission of another criminal offense, the guideline applicable to a conspiracy to commit that other offense will apply if the result is greater than that determined above. For example, if a bribe was given to a law enforcement officer to allow the smuggling of a quantity of cocaine, the guideline for conspiracy to import cocaine would be applied if it resulted in a greater offense level.

Under §2C1.1(c)(2), if the payment was to conceal another criminal offense or obstruct justice in respect to another criminal offense, the guideline from §2X3.1 (Accessory After the Fact) or §2J1.2 (Obstruction of Justice), as appropriate, will apply if the result is greater than that determined above. For example, if a bribe was given for the purpose of concealing the offense of espionage, the guideline for accessory after the fact to espionage would be applied.

Under §2C1.1(c)(3), if the offense involved forcible extortion, the guideline from §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) will apply if the result is greater than that determined above.

Section 2C1.1 also applies to offenses under 15 U.S.C. §§ 78dd-1, 78dd-2, and 78dd-3. Such offenses generally involve a payment to a foreign public official, candidate for public office, or agent or intermediary, with the intent to influence an official act or decision of a foreign government or political party. Typically, a case prosecuted under these provisions will involve an intent to influence governmental action.

Section 2C1.1 also applies to fraud involving the deprivation of the intangible right to honest services of government officials under 18 U.S.C. §§ 1341–1343 and conspiracy to defraud by interference with governmental functions under 18 U.S.C. § 371. Such fraud offenses typically involve an improper use of government influence that harms the operation of government in a manner similar to bribery offenses.

Offenses involving attempted bribery are frequently not completed because the offense is reported to authorities or an individual involved in the offense is acting in an undercover capacity. Failure to complete the offense does not lessen the defendant's culpability in attempting to use public position for personal gain. Therefore, solicitations and attempts are treated as equivalent to the underlying offense.

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 18); November 1, 1989 (amendments 120, 121, and 122); November 1, 1991 (amendments 367 and 422); November 1, 1997 (amendment 547); November 1, 2001 (amendment 617); November 1, 2002 (amendment 639); November 1, 2003 (amendment 653); November 1, 2004 (amendment 666); November 1, 2007 (amendment 699); November 1, 2008 (amendment 720); November 1, 2010 (amendment 746); November 1, 2015 (amendment 791); November 1, 2024 (amendment 827); November 1, 2025 (amendment 836); November 1, 2026 (amendments 838 and 842).

§2C1.2. Offering, Giving, Soliciting, or Receiving a Gratuity

(a) Base Offense Level:

(1) **11**, if the defendant was a public official; or

(2) **9**, otherwise.

(b) Specific Offense Characteristics

(1) If the offense involved more than one gratuity, increase by **2** levels.

(2) If the value of the gratuity exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(3) If the offense involved an elected public official or any public official in a high-level decision-making or sensitive position, increase by **4** levels. If the resulting offense level is less than level **15**, increase to level **15**.

(4) If the defendant was a public official who facilitated (A) entry into the United States for a person, a vehicle, or cargo; (B) the obtaining of a passport or a document relating to naturalization, citizenship, legal entry, or legal resident status; or (C) the obtaining of a government identification document, increase by **2** levels.

(c) Special Instruction for Fines — Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of §8C2.4 (Base Fine), use the value of the unlawful payment.

Commentary

Statutory Provisions: 18 U.S.C. §§ 201(c)(1), 212–214, 217. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Government identification document***" means a document made or issued by or under the authority of the United States Government, a State, or a political subdivision of a State, which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

"***Public official***" shall be construed broadly and includes the following:

(A) "Public official" as defined in 18 U.S.C. § 201(a)(1).

(B) A member of a state or local legislature. "State" means a State of the United States, and any commonwealth, territory, or possession of the United States.

(C) An officer or employee or person acting for or on behalf of a state or local government, or any department, agency, or branch of government thereof, in any official function, under or by authority of such department, agency, or branch of government, or a juror.

(D) Any person who has been selected to be a person described in subdivisions (A), (B), or (C), either before or after such person has qualified.

(E) An individual who, although not otherwise covered by subdivisions (A) through (D): (i) is in a position of public trust with official responsibility for carrying out a government program or policy; (ii) acts under color of law or official right; or (iii) participates so substantially in government operations as to possess de facto authority to make governmental decisions (*e.g.*, which may include a leader of a state or local political party who acts in the manner described in this subdivision).

2. **Application of Subsection (b)(1).—**Related payments that, in essence, constitute a single gratuity (*e.g.*, separate payments for airfare and hotel for a single vacation trip) are to be treated as a single gratuity, even if charged in separate counts.

3. **Application of Subsection (b)(3).—**

(A) **Definition.—**"***High-level decision-making or sensitive position***" means a position characterized by a direct authority to make decisions for, or on behalf of, a government department, agency, or other government entity, or by a substantial influence over the decision-making process.

(B) **Examples.—**Examples of a public official in a high-level decision-making position include a prosecuting attorney, a judge, an agency administrator, a law enforcement officer, and

any other public official with a similar level of authority. Examples of a public official who holds a sensitive position include a juror, a law enforcement officer, an election official, and any other similarly situated individual.

4. **Inapplicability of §3B1.3.**—Do not apply the adjustment in §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: This section applies to the offering, giving, soliciting, or receiving of a gratuity to a public official in respect to an official act. It also applies in cases involving (1) the offer to, or acceptance by, a bank examiner of a loan or gratuity; (2) the offer or receipt of anything of value for procuring a loan or discount of commercial bank paper from a Federal Reserve Bank; and (3) the acceptance of a fee or other consideration by a federal employee for adjusting or cancelling a farm debt.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 121); November 1, 1991 (amendment 422); November 1, 1995 (amendment 534); November 1, 2001 (amendment 617); November 1, 2004 (amendment 666); November 1, 2010 (amendment 746); November 1, 2015 (amendment 791); November 1, 2026 (amendment 838).

§2C1.3. Conflict of Interest; Payment or Receipt of Unauthorized Compensation

(a) Base Offense Level: **6**

(b) Specific Offense Characteristic

(1) If the offense involved actual or planned harm to the government, increase by **4** levels.

(c) Cross Reference

(1) If the offense involved a bribe or gratuity, apply §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions) or §2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), as appropriate, if the resulting offense level is greater than the offense level determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 203, 205, 207, 208, 209, 1909; 40 U.S.C. § 14309(a), (b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. **Abuse of Position of Trust.**—Do not apply the adjustment in §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1995 (amendment 534); November 1, 2001 (amendment 619); November 1, 2003 (amendment 661); November 1, 2005 (amendment 679).

§2C1.4. [Deleted]

Historical Note	Section 2C1.4 (Payment or Receipt of Unauthorized Compensation), effective November 1, 1987, and amended effective November 1, 1998 (amendment 588), was deleted by consolidation with §2C1.3 effective November 1, 2001 (amendment 619).

§2C1.5. Payments to Obtain Public Office

(a) Base Offense Level: **8**

Commentary

Statutory Provisions: 18 U.S.C. §§ 210, 211.

Application Note:

1. Do not apply the adjustment in §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: Under 18 U.S.C. § 210, it is unlawful to pay, offer, or promise anything of value to a person, firm, or corporation in consideration of procuring appointive office. Under 18 U.S.C. § 211, it is unlawful to solicit or accept anything of value in consideration of a promise of the use of influence in obtaining appointive federal office. Both offenses are misdemeanors for which the maximum term of imprisonment authorized by statute is one year.

Historical Note	Effective November 1, 1987.

§§2C1.6 – 2C1.7. [Deleted]

Historical Note	Section 2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper), effective November 1, 1987, and amended effective November 1, 2001 (amendment 617), was deleted by consolidation with §2C1.2 effective November 1, 2004 (amendment 666). Section 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions), effective November 1, 1991 (amendment 368), and amended effective November 1, 1992 (amendment 468), November 1, 1997 (amendment 547), November 1, 2001 (amendment 617), and November 1, 2003 (amendment 653), was deleted by consolidation with §2C1.1 effective November 1, 2004 (amendment 666).

§2C1.8. Making, Receiving, or Failing to Report a Contribution, Donation, or Expenditure in Violation of the Federal Election Campaign Act; Fraudulently Misrepresenting Campaign Authority; Soliciting or Receiving a Donation in Connection with an Election While on Certain Federal Property

(a) Base Offense Level: **8**

(b) Specific Offense Characteristics

(1) If the value of the illegal transactions exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) (Apply the greater) If the offense involved, directly or indirectly, an illegal transaction made by or received from—

(A) a foreign national, increase by **2** levels; or

(B) a government of a foreign country, increase by **4** levels.

(3) If (A) the offense involved the contribution, donation, solicitation, expenditure, disbursement, or receipt of governmental funds; or (B) the defendant committed the offense for the purpose of obtaining a specific, identifiable non-monetary federal benefit, increase by **2** levels.

(4) If the defendant engaged in 30 or more illegal transactions, increase by **2** levels.

(5) If the offense involved a contribution, donation, solicitation, or expenditure made or obtained through intimidation, threat of pecuniary or other harm, or coercion, increase by **4** levels.

(c) Cross Reference

(1) If the offense involved a bribe or gratuity, apply §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions) or §2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), as appropriate, if the resulting offense level is greater than the offense level determined above.

Commentary

Statutory Provisions: 18 U.S.C. § 607; 52 U.S.C. §§ 30109(d), 30114, 30116, 30117, 30118, 30119, 30120, 30121, 30122, 30123, 30124(a), 30125, 30126. For additional provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Foreign national***" has the meaning given that term in section 319(b) of the Federal Election Campaign Act of 1971, 52 U.S.C. § 30121(b).

"***Government of a foreign country***" has the meaning given that term in section 1(e) of the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(e)).

"***Governmental funds***" means money, assets, or property, of the United States government, of a State government, or of a local government, including any branch, subdivision, department, agency, or other component of any such government. "State" means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa. "Local government" means the government of a political subdivision of a State.

"***Illegal transaction***" means (A) any contribution, donation, solicitation, or expenditure of money or anything of value, or any other conduct, prohibited by the Federal Election Campaign Act of 1971, 52 U.S.C. § 30101 *et seq.*; (B) any contribution, donation, solicitation, or expenditure of money or anything of value made in excess of the amount of such contribution, donation, solicitation, or expenditure that may be made under such Act; and (C) in the case of a violation of 18 U.S.C. § 607, any solicitation or receipt of money or anything of value under that section. The terms "***contribution***" and "***expenditure***" have the meaning given those terms in section 301(8) and (9) of the Federal Election Campaign Act of 1971 (52 U.S.C. § 30101(8) and (9)), respectively.

2. **Application of Subsection (b)(3)(B).**—Subsection (b)(3)(B) provides an enhancement for a defendant who commits the offense for the purpose of achieving a specific, identifiable non-monetary federal benefit that does not rise to the level of a bribe or a gratuity. Subsection (b)(3)(B) is not intended to apply to offenses under this guideline in which the defendant's only motivation for commission of the offense is generally to achieve increased visibility with, or heightened access to, public officials. Rather, subsection (b)(3)(B) is intended to apply to defendants who commit the offense to obtain a specific, identifiable non-monetary federal benefit, such as a presidential pardon or information proprietary to the government.

3. **Application of Subsection (b)(4).**—Subsection (b)(4) shall apply if the defendant engaged in any combination of 30 or more illegal transactions during the course of the offense, whether or not the illegal transactions resulted in a conviction for such conduct.

Historical Note	Effective January 25, 2003 (amendment 648). Amended effective November 1, 2003 (amendment 656); November 1, 2005 (amendment 679); November 1, 2015 (amendments 791 and 796); November 1, 2024 (amendment 831); November 1, 2025 (amendment 836); November 1, 2026 (amendment 838).

PART D — OFFENSES INVOLVING DRUGS AND NARCO-TERRORISM

Historical Note	Effective November 1, 1987. Amended effective November 1, 2007 (amendment 711).

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 (A) the defendant is convicted of an offense 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), to which the mandatory statutory term of life imprisonment applies; or (B) the parties stipulate to (i) such an offense for purposes of calculating the guideline range under §1B1.2 (Applicable Guidelines); or (ii) such base offense level; or

(2) **38**, if (A) the defendant is convicted of an offense 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), to which the statutory term of imprisonment of not less than 20 years to life applies; or (B) the parties stipulate to (i) such an offense for purposes of calculating the guideline range under §1B1.2 (Applicable Guidelines); or (ii) such base offense level; or

(3) **30**, if (A) the defendant is convicted of an offense under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5) to which the statutory maximum term of imprisonment of 30 years applies; or (B) the parties stipulate to (i) such an offense for purposes of calculating the guideline range under §1B1.2 (Applicable Guidelines); or (ii) such base offense level; or

(4) **26**, if (A) the defendant is convicted of an offense under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5) to which the statutory maximum term of imprisonment of 15 years applies; or (B) the parties stipulate to (i) such an offense for purposes of calculating the guideline range under §1B1.2 (Applicable Guidelines); or (ii) such base offense level; or

(5) the offense level specified in the Drug Quantity Table set forth in subsection (c), except that if (A) the defendant receives an adjustment under §3B1.2 (Mitigating Role); and (B) the base offense level under subsection (c) is (i) level **32**, decrease by **2** levels; (ii) level **34**, decrease

by **3** levels; or (iii) above level **34**, decrease to level **32**. If the resulting offense level is greater than level **30** and the defendant receives the **4**-level reduction in §3B1.2(a), decrease to level **30**.

(b) Specific Offense Characteristics

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

(2) If the defendant used violence, made a credible threat to use violence, or directed the use of violence, increase by **2** levels.

(3) If the defendant unlawfully imported or exported a controlled substance under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import or export the controlled substance, (B) a submersible vessel or semi-submersible vessel as described in 18 U.S.C. § 2285 was used, or (C) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, increase by **2** levels. If the resulting offense level is less than level **26**, increase to level **26**.

(4) If the object of the offense was the distribution of a controlled substance in a prison, correctional facility, or detention facility, increase by **2** levels.

(5) If (A) the offense involved the importation of amphetamine or methamphetamine or the manufacture of amphetamine or methamphetamine from listed chemicals that the defendant knew were imported unlawfully, and (B) the defendant is not subject to an adjustment under §3B1.2 (Mitigating Role), increase by **2** levels.

(6) If the defendant is convicted under 21 U.S.C. § 865, increase by **2** levels.

(7) If the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), distributed a controlled substance through mass-marketing by means of an interactive computer service, increase by **2** levels.

(8) If the offense involved the distribution of an anabolic steroid and a masking agent, increase by **2** levels.

(9) If the defendant distributed an anabolic steroid to an athlete, increase by **2** levels.

(10) If the defendant bribed, or attempted to bribe, a law enforcement officer to facilitate the commission of the offense, increase by **2** levels.

(11) If the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance, increase by **2** levels.

(12) If the defendant (A) knowingly misrepresented or knowingly marketed as another substance a mixture or substance containing fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanemide), a fentanyl analogue, or a fentanyl-related substance, increase by **4** levels; or (B) represented or marketed as a legitimately manufactured drug another mixture or substance containing fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), a fentanyl analogue, or a fentanyl-related substance, with reckless disregard that such mixture or substance was not the legitimately manufactured drug, increase by **2** levels. The term "***drug***," as used in subsection (b)(12)(B), has the meaning given that term in 21 U.S.C. § 321(g)(1).

Provided, however, that this enhancement shall only apply in a case involving a fentanyl-related substance if the court applies the offense level specified in the Drug Quantity Table for fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), a fentanyl analogue, or a fentanyl-related substance.

(13) (Apply the greatest):

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

(B) If the defendant was convicted under 21 U.S.C. § 860a of distributing, or possessing with intent to distribute, methamphetamine on premises where a minor is present or resides, increase by **2** levels. If the resulting offense level is less than level **14**, increase to level **14**.

(C) If—

(i) the defendant was convicted under 21 U.S.C. § 860a of manufacturing, or possessing with intent to manufacture, methamphetamine on premises where a minor is present or resides; or

(ii) the offense involved the manufacture of amphetamine or methamphetamine and the offense created a substantial

risk of harm to (I) human life other than a life described in subparagraph (D); or (II) the environment,

increase by **3** levels. If the resulting offense level is less than level **27**, increase to level **27**.

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

(14) If (A) the offense involved the cultivation of marihuana on state or federal land or while trespassing on tribal or private land; and (B) the defendant receives an adjustment under §3B1.1 (Aggravating Role), increase by **2** levels.

(15) If the defendant receives an adjustment under §3B1.1 (Aggravating Role) and the offense involved 1 or more of the following factors:

(A) (i) the defendant used fear, impulse, friendship, affection, or some combination thereof to involve another individual in the illegal purchase, sale, transport, or storage of controlled substances, (ii) the individual received little or no compensation from the illegal purchase, sale, transport, or storage of controlled substances, and (iii) the individual had minimal knowledge of the scope and structure of the enterprise;

(B) the defendant, knowing that an individual was (i) less than 18 years of age, (ii) 65 or more years of age, (iii) pregnant, or (iv) unusually vulnerable due to physical or mental condition or otherwise particularly susceptible to the criminal conduct, distributed a controlled substance to that individual or involved that individual in the offense;

(C) the defendant was directly involved in the importation of a controlled substance;

(D) the defendant engaged in witness intimidation, tampered with or destroyed evidence, or otherwise obstructed justice in connection with the investigation or prosecution of the offense;

(E) the defendant committed the offense as part of a pattern of criminal conduct engaged in as a livelihood,

increase by **2** levels.

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

(A) the defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense;

(B) the defendant received no monetary compensation from the illegal purchase, sale, transport, or storage of controlled substances; and

(C) the defendant had minimal knowledge of the scope and structure of the enterprise,

decrease by **2** levels.

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

[Subsection (c) (Drug Quantity Table) is set forth after subsection (e) (Special Instruction).]

(d) Cross References

(1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder) or §2A1.2 (Second Degree Murder), as appropriate, if the resulting offense level is greater than that determined under this guideline.

(2) If the defendant was convicted under 21 U.S.C. § 841(b)(7) (of distributing a controlled substance with intent to commit a crime of violence), apply §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to the crime of violence that the defendant committed, or attempted or intended to commit, if the resulting offense level is greater than that determined above.

(e) Special Instructions

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

(2) Application of §3B1.2 (Mitigating Role) to §2D1.1 Cases

(A) Determine whether an adjustment under §3B1.2 (Mitigating Role) applies.

(B) In addition to the circumstances identified in §3B1.2, an adjustment under §3B1.2 is generally warranted if the defendant's primary function in the offense was performing a low-level trafficking function.

(i) An adjustment under §3B1.2(a) is generally warranted if the defendant's primary function in the offense was plainly among the lowest level of drug trafficking functions, such as serving as a courier, running errands, sending or receiving phone calls or messages, or acting as a lookout; or

(ii) an adjustment under §3B1.2(b) is generally warranted if the defendant's primary function in the offense was performing another low-level trafficking function, such as distributing controlled substances in user-level quantities for little or no monetary compensation or with a primary motivation other than profit (*e.g.*, the defendant was otherwise unlikely to commit such an offense and was motivated by an intimate or familial relationship, or by threats or fear to commit the offense).

For purposes of subsection (e)(2)(B), the provisions of §3B1.2 apply in determining whether a mitigating role adjustment is warranted, except that the adjustment shall apply regardless of whether the offense involved other participants in addition to the defendant, and regardless of whether the defendant was substantially less culpable than the average participant in the criminal activity. The extent of the adjustment shall be based on the totality of the circumstances and involves a determination that is heavily dependent upon the facts of the particular case.

(C) The mitigating role provisions at subsection (a)(5) and the 2-level reduction at subsection (b)(16) apply regardless of whether the defendant receives the required adjustment from §3B1.2 (Mitigating Role) by direct application of §3B1.2 or by use of the special instruction in subsection (e)(2)(B).

(c) DRUG QUANTITY TABLE

CONTROLLED SUBSTANCES AND QUANTITY*	BASE OFFENSE LEVEL
(1) ● 90 KG or more of Heroin; ● 450 KG or more of Cocaine; ● 25.2 KG or more of Cocaine Base; ● 90 KG or more of PCP, or 9 KG or more of PCP (actual); ● 45 KG or more of Methamphetamine, or 4.5 KG or more of Methamphetamine (actual), or 4.5 KG or more of "Ice"; ● 45 KG or more of Amphetamine, or 4.5 KG or more of Amphetamine (actual); ● 900 G or more of LSD; ● 36 KG or more of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide); ● 9 KG or more of a Fentanyl Analogue; ● 9 KG or more of a Fentanyl-Related Substance; ● 90,000 KG or more of Marihuana; ● 18,000 KG or more of Hashish; ● 1,800 KG or more of Hashish Oil; ● 90,000,000 units or more of Ketamine; ● 90,000,000 units or more of Schedule I or II Depressants; ● 5,625,000 units or more of Flunitrazepam; ● 90,000 KG or more of ***Converted Drug Weight***.	**Level 38**
(2) ● At least 30 KG but less than 90 KG of Heroin; ● At least 150 KG but less than 450 KG of Cocaine; ● At least 8.4 KG but less than 25.2 KG of Cocaine Base; ● At least 30 KG but less than 90 KG of PCP, or at least 3 KG but less than 9 KG of PCP (actual); ● At least 15 KG but less than 45 KG of Methamphetamine, or at least 1.5 KG but less than 4.5 KG of Methamphetamine (actual), or at least 1.5 KG but less than 4.5 KG of "Ice"; ● At least 15 KG but less than 45 KG of Amphetamine, or at least 1.5 KG but less than 4.5 KG of Amphetamine (actual); ● At least 300 G but less than 900 G of LSD; ● At least 12 KG but less than 36 KG of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide); ● At least 3 KG but less than 9 KG of a Fentanyl Analogue; ● At least 3 KG but less than 9 KG of a Fentanyl-Related Substance; ● At least 30,000 KG but less than 90,000 KG of Marihuana; ● At least 6,000 KG but less than 18,000 KG of Hashish; ● At least 600 KG but less than 1,800 KG of Hashish Oil; ● At least 30,000,000 units but less than 90,000,000 units of Ketamine; ● At least 30,000,000 units but less than 90,000,000 units of Schedule I or II Depressants; ● At least 1,875,000 units but less than 5,625,000 units of Flunitrazepam; ● At least 30,000 KG but less than 90,000 KG of ***Converted Drug Weight***.	**Level 36**
(3) ● At least 10 KG but less than 30 KG of Heroin; ● At least 50 KG but less than 150 KG of Cocaine; ● At least 2.8 KG but less than 8.4 KG of Cocaine Base; ● At least 10 KG but less than 30 KG of PCP, or at least 1 KG but less than 3 KG of PCP (actual);	**Level 34**

- At least 5 KG but less than 15 KG of Methamphetamine, or
  at least 500 G but less than 1.5 KG of Methamphetamine (actual), or
  at least 500 G but less than 1.5 KG of "Ice";
- At least 5 KG but less than 15 KG of Amphetamine, or
  at least 500 G but less than 1.5 KG of Amphetamine (actual);
- At least 100 G but less than 300 G of LSD;
- At least 4 KG but less than 12 KG of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
- At least 1 KG but less than 3 KG of a Fentanyl Analogue;
- At least 1 KG but less than 3 KG of a Fentanyl-Related Substance;
- At least 10,000 KG but less than 30,000 KG of Marihuana;
- At least 2,000 KG but less than 6,000 KG of Hashish;
- At least 200 KG but less than 600 KG of Hashish Oil;
- At least 10,000,000 but less than 30,000,000 units of Ketamine;
- At least 10,000,000 but less than 30,000,000 units of Schedule I or II Depressants;
- At least 625,000 but less than 1,875,000 units of Flunitrazepam;
- At least 10,000 KG but less than 30,000 KG of ***Converted Drug Weight***.

(4) **Level 32**

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

(5) **Level 30**

- At least 1 KG but less than 3 KG of Heroin;
- At least 5 KG but less than 15 KG of Cocaine;
- At least 280 G but less than 840 G of Cocaine Base;
- At least 1 KG but less than 3 KG of PCP, or
  at least 100 G but less than 300 G of PCP (actual);
- At least 500 G but less than 1.5 KG of Methamphetamine, or
  at least 50 G but less than 150 G of Methamphetamine (actual), or
  at least 50 G but less than 150 G of "Ice";
- At least 500 G but less than 1.5 KG of Amphetamine, or
  at least 50 G but less than 150 G of Amphetamine (actual);
- At least 10 G but less than 30 G of LSD;

- At least 400 G but less than 1.2 KG of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
- At least 100 G but less than 300 G of a Fentanyl Analogue;
- At least 100 G but less than 300 G of a Fentanyl-Related Substance;
- At least 1,000 KG but less than 3,000 KG of Marihuana;
- At least 200 KG but less than 600 KG of Hashish;
- At least 20 KG but less than 60 KG of Hashish Oil;
- At least 1,000,000 but less than 3,000,000 units of Ketamine;
- At least 1,000,000 but less than 3,000,000 units of Schedule I or II Depressants;
- At least 62,500 but less than 187,500 units of Flunitrazepam;
- At least 1,000 KG but less than 3,000 KG of ***Converted Drug Weight***.

(6) **Level 28**

- At least 700 G but less than 1 KG of Heroin;
- At least 3.5 KG but less than 5 KG of Cocaine;
- At least 196 G but less than 280 G of Cocaine Base;
- At least 700 G but less than 1 KG of PCP, or
  at least 70 G but less than 100 G of PCP (actual);
- At least 350 G but less than 500 G of Methamphetamine, or
  at least 35 G but less than 50 G of Methamphetamine (actual), or
  at least 35 G but less than 50 G of "Ice";
- At least 350 G but less than 500 G of Amphetamine, or
  at least 35 G but less than 50 G of Amphetamine (actual);
- At least 7 G but less than 10 G of LSD;
- At least 280 G but less than 400 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
- At least 70 G but less than 100 G of a Fentanyl Analogue;
- At least 70 G but less than 100 G of a Fentanyl-Related Substance;
- At least 700 KG but less than 1,000 KG of Marihuana;
- At least 140 KG but less than 200 KG of Hashish;
- At least 14 KG but less than 20 KG of Hashish Oil;
- At least 700,000 but less than 1,000,000 units of Ketamine;
- At least 700,000 but less than 1,000,000 units of Schedule I or II Depressants;
- At least 43,750 but less than 62,500 units of Flunitrazepam;
- At least 700 KG but less than 1,000 KG of ***Converted Drug Weight***.

(7) **Level 26**

- At least 400 G but less than 700 G of Heroin;
- At least 2 KG but less than 3.5 KG of Cocaine;
- At least 112 G but less than 196 G of Cocaine Base;
- At least 400 G but less than 700 G of PCP, or
  at least 40 G but less than 70 G of PCP (actual);
- At least 200 G but less than 350 G of Methamphetamine, or
  at least 20 G but less than 35 G of Methamphetamine (actual), or
  at least 20 G but less than 35 G of "Ice";
- At least 200 G but less than 350 G of Amphetamine, or
  at least 20 G but less than 35 G of Amphetamine (actual);
- At least 4 G but less than 7 G of LSD;
- At least 160 G but less than 280 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
- At least 40 G but less than 70 G of a Fentanyl Analogue;
- At least 40 G but less than 70 G of a Fentanyl-Related Substance;
- At least 400 KG but less than 700 KG of Marihuana;
- At least 80 KG but less than 140 KG of Hashish;
- At least 8 KG but less than 14 KG of Hashish Oil;

- At least 400,000 but less than 700,000 units of Ketamine;
- At least 400,000 but less than 700,000 units of Schedule I or II Depressants;
- At least 25,000 but less than 43,750 units of Flunitrazepam;
- At least 400 KG but less than 700 KG of ***Converted Drug Weight***.

(8) **Level 24**

- At least 100 G but less than 400 G of Heroin;
- At least 500 G but less than 2 KG of Cocaine;
- At least 28 G but less than 112 G of Cocaine Base;
- At least 100 G but less than 400 G of PCP, or
  at least 10 G but less than 40 G of PCP (actual);
- At least 50 G but less than 200 G of Methamphetamine, or
  at least 5 G but less than 20 G of Methamphetamine (actual), or
  at least 5 G but less than 20 G of "Ice";
- At least 50 G but less than 200 G of Amphetamine, or
  at least 5 G but less than 20 G of Amphetamine (actual);
- At least 1 G but less than 4 G of LSD;
- At least 40 G but less than 160 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
- At least 10 G but less than 40 G of a Fentanyl Analogue;
- At least 10 G but less than 40 G of a Fentanyl-Related Substance;
- At least 100 KG but less than 400 KG of Marihuana;
- At least 20 KG but less than 80 KG of Hashish;
- At least 2 KG but less than 8 KG of Hashish Oil;
- At least 100,000 but less than 400,000 units of Ketamine;
- At least 100,000 but less than 400,000 units of Schedule I or II Depressants;
- At least 6,250 but less than 25,000 units of Flunitrazepam;
- At least 100 KG but less than 400 KG of ***Converted Drug Weight***.

(9) **Level 22**

- At least 80 G but less than 100 G of Heroin;
- At least 400 G but less than 500 G of Cocaine;
- At least 22.4 G but less than 28 G of Cocaine Base;
- At least 80 G but less than 100 G of PCP, or
  at least 8 G but less than 10 G of PCP (actual);
- At least 40 G but less than 50 G of Methamphetamine, or
  at least 4 G but less than 5 G of Methamphetamine (actual), or
  at least 4 G but less than 5 G of "Ice";
- At least 40 G but less than 50 G of Amphetamine, or
  at least 4 G but less than 5 G of Amphetamine (actual);
- At least 800 MG but less than 1 G of LSD;
- At least 32 G but less than 40 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
- At least 8 G but less than 10 G of a Fentanyl Analogue;
- At least 8 G but less than 10 G of a Fentanyl-Related Substance;
- At least 80 KG but less than 100 KG of Marihuana;
- At least 16 KG but less than 20 KG of Hashish;
- At least 1.6 KG but less than 2 KG of Hashish Oil;
- At least 80,000 but less than 100,000 units of Ketamine;
- At least 80,000 but less than 100,000 units of Schedule I or II Depressants;
- At least 5,000 but less than 6,250 units of Flunitrazepam;
- At least 80 KG but less than 100 KG of ***Converted Drug Weight***.

(10) **Level 20**
- At least 60 G but less than 80 G of Heroin;
- At least 300 G but less than 400 G of Cocaine;
- At least 16.8 G but less than 22.4 G of Cocaine Base;
- At least 60 G but less than 80 G of PCP, or
  at least 6 G but less than 8 G of PCP (actual);
- At least 30 G but less than 40 G of Methamphetamine, or
  at least 3 G but less than 4 G of Methamphetamine (actual), or
  at least 3 G but less than 4 G of "Ice";
- At least 30 G but less than 40 G of Amphetamine, or
  at least 3 G but less than 4 G of Amphetamine (actual);
- At least 600 MG but less than 800 MG of LSD;
- At least 24 G but less than 32 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
- At least 6 G but less than 8 G of a Fentanyl Analogue;
- At least 6 G but less than 8 G of a Fentanyl-Related Substance;
- At least 60 KG but less than 80 KG of Marihuana;
- At least 12 KG but less than 16 KG of Hashish;
- At least 1.2 KG but less than 1.6 KG of Hashish Oil;
- At least 60,000 but less than 80,000 units of Ketamine;
- At least 60,000 but less than 80,000 units of Schedule I or II Depressants;
- 60,000 units or more of Schedule III substances (except Ketamine);
- At least 3,750 but less than 5,000 units of Flunitrazepam;
- At least 60 KG but less than 80 KG of ***Converted Drug Weight***.

(11) **Level 18**
- At least 40 G but less than 60 G of Heroin;
- At least 200 G but less than 300 G of Cocaine;
- At least 11.2 G but less than 16.8 G of Cocaine Base;
- At least 40 G but less than 60 G of PCP, or
  at least 4 G but less than 6 G of PCP (actual);
- At least 20 G but less than 30 G of Methamphetamine, or
  at least 2 G but less than 3 G of Methamphetamine (actual), or
  at least 2 G but less than 3 G of "Ice";
- At least 20 G but less than 30 G of Amphetamine, or
  at least 2 G but less than 3 G of Amphetamine (actual);
- At least 400 MG but less than 600 MG of LSD;
- At least 16 G but less than 24 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
- At least 4 G but less than 6 G of a Fentanyl Analogue;
- At least 4 G but less than 6 G of a Fentanyl-Related Substance;
- At least 40 KG but less than 60 KG of Marihuana;
- At least 8 KG but less than 12 KG of Hashish;
- At least 800 G but less than 1.2 KG of Hashish Oil;
- At least 40,000 but less than 60,000 units of Ketamine;
- At least 40,000 but less than 60,000 units of Schedule I or II Depressants;
- At least 40,000 but less than 60,000 units of Schedule III substances (except Ketamine);
- At least 2,500 but less than 3,750 units of Flunitrazepam;
- At least 40 KG but less than 60 KG of ***Converted Drug Weight***.

(12) **Level 16**
- At least 20 G but less than 40 G of Heroin;
- At least 100 G but less than 200 G of Cocaine;
- At least 5.6 G but less than 11.2 G of Cocaine Base;
- At least 20 G but less than 40 G of PCP, or
  at least 2 G but less than 4 G of PCP (actual);

- At least 10 G but less than 20 G of Methamphetamine, or
  at least 1 G but less than 2 G of Methamphetamine (actual), or
  at least 1 G but less than 2 G of "Ice";
- At least 10 G but less than 20 G of Amphetamine, or
  at least 1 G but less than 2 G of Amphetamine (actual);
- At least 200 MG but less than 400 MG of LSD;
- At least 8 G but less than 16 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
- At least 2 G but less than 4 G of a Fentanyl Analogue;
- At least 2 G but less than 4 G of a Fentanyl-Related Substance;
- At least 20 KG but less than 40 KG of Marihuana;
- At least 5 KG but less than 8 KG of Hashish;
- At least 500 G but less than 800 G of Hashish Oil;
- At least 20,000 but less than 40,000 units of Ketamine;
- At least 20,000 but less than 40,000 units of Schedule I or II Depressants;
- At least 20,000 but less than 40,000 units of Schedule III substances (except Ketamine);
- At least 1,250 but less than 2,500 units of Flunitrazepam;
- At least 20 KG but less than 40 KG of ***Converted Drug Weight***.

(13) **Level 14**

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

(14) **Level 12**

- Less than 10 G of Heroin;
- Less than 50 G of Cocaine;
- Less than 2.8 G of Cocaine Base;
- Less than 10 G of PCP, or
  less than 1 G of PCP (actual);
- Less than 5 G of Methamphetamine, or
  less than 500 MG of Methamphetamine (actual), or
  less than 500 MG of "Ice";
- Less than 5 G of Amphetamine, or
  less than 500 MG of Amphetamine (actual);

- Less than 100 MG of LSD;
- Less than 4 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
- Less than 1 G of a Fentanyl Analogue;
- Less than 1 G of a Fentanyl-Related Substance;
- At least 5 KG but less than 10 KG of Marihuana;
- At least 1 KG but less than 2 KG of Hashish;
- At least 100 G but less than 200 G of Hashish Oil;
- At least 5,000 but less than 10,000 units of Ketamine;
- At least 5,000 but less than 10,000 units of Schedule I or II Depressants;
- At least 5,000 but less than 10,000 units of Schedule III substances (except Ketamine);
- At least 312 but less than 625 units of Flunitrazepam;
- 80,000 units or more of Schedule IV substances (except Flunitrazepam);
- At least 5 KG but less than 10 KG of ***Converted Drug Weight***.

(15) **Level 10**
- At least 2.5 KG but less than 5 KG of Marihuana;
- At least 500 G but less than 1 KG of Hashish;
- At least 50 G but less than 100 G of Hashish Oil;
- At least 2,500 but less than 5,000 units of Ketamine;
- At least 2,500 but less than 5,000 units of Schedule I or II Depressants;
- At least 2,500 but less than 5,000 units of Schedule III substances (except Ketamine);
- At least 156 but less than 312 units of Flunitrazepam;
- At least 40,000 but less than 80,000 units of Schedule IV substances (except Flunitrazepam);
- At least 2.5 KG but less than 5 KG of ***Converted Drug Weight***.

(16) **Level 8**
- At least 1 KG but less than 2.5 KG of Marihuana;
- At least 200 G but less than 500 G of Hashish;
- At least 20 G but less than 50 G of Hashish Oil;
- At least 1,000 but less than 2,500 units of Ketamine;
- At least 1,000 but less than 2,500 units of Schedule I or II Depressants;
- At least 1,000 but less than 2,500 units of Schedule III substances (except Ketamine);
- Less than 156 units of Flunitrazepam;
- At least 16,000 but less than 40,000 units of Schedule IV substances (except Flunitrazepam);
- 160,000 units or more of Schedule V substances;
- At least 1 KG but less than 2.5 KG of ***Converted Drug Weight***.

(17) **Level 6**
- Less than 1 KG of Marihuana;
- Less than 200 G of Hashish;
- Less than 20 G of Hashish Oil;
- Less than 1,000 units of Ketamine;
- Less than 1,000 units of Schedule I or II Depressants;
- Less than 1,000 units of Schedule III substances (except Ketamine);
- Less than 16,000 units of Schedule IV substances (except Flunitrazepam);
- Less than 160,000 units of Schedule V substances;
- Less than 1 KG of ***Converted Drug Weight***.

***Notes to Drug Quantity Table:**

(A) Unless otherwise specified, the weight of a controlled substance set forth in the table refers to the entire weight of any mixture or substance containing a detectable

amount of the controlled substance. If a mixture or substance contains more than one controlled substance, the weight of the entire mixture or substance is assigned to the controlled substance that results in the greater offense level.

(B) The terms "***PCP (actual)***", "***Amphetamine (actual)***", and "***Methamphetamine (actual)***" refer to the weight of the controlled substance, itself, contained in the mixture or substance. For example, a mixture weighing 10 grams containing PCP at 50% purity contains 5 grams of PCP (actual). In the case of a mixture or substance containing PCP, amphetamine, or methamphetamine, use the offense level determined by the entire weight of the mixture or substance, or the offense level determined by the weight of the PCP (actual), amphetamine (actual), or methamphetamine (actual), whichever is greater.

The terms "***Hydrocodone (actual)***" and "***Oxycodone (actual)***" refer to the weight of the controlled substance, itself, contained in the pill, capsule, or mixture.

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

(D) "***Cocaine base***," for the purposes of this guideline, means "crack." "***Crack***" is the street name for a form of cocaine base, usually prepared by processing cocaine hydrochloride and sodium bicarbonate, and usually appearing in a lumpy, rocklike form.

(E) In the case of an offense involving marihuana plants, treat each plant, regardless of sex, as equivalent to 100 grams of marihuana. *Provided*, however, that if the actual weight of the marihuana is greater, use the actual weight of the marihuana.

(F) In the case of Schedule I or II Depressants (except gamma-hydroxybutyric acid), Schedule III substances, Schedule IV substances, and Schedule V substances, one "***unit***" means one pill, capsule, or tablet. If the substance (except gamma-hydroxybutyric acid) is in liquid form, one "***unit***" means 0.5 milliliters. For an anabolic steroid that is not in a pill, capsule, tablet, or liquid form (*e.g.*, patch, topical cream, aerosol), the court shall determine the base offense level using a reasonable estimate of the quantity of anabolic steroid involved in the offense. In making a reasonable estimate, the court shall consider that each 25 milligrams of an anabolic steroid is one "unit".

(G) In the case of LSD on a carrier medium (*e.g.*, a sheet of blotter paper), do not use the weight of the LSD/carrier medium. Instead, treat each dose of LSD on the carrier medium as equal to 0.4 milligrams of LSD for the purposes of the Drug Quantity Table.

(H) ***Hashish***, for the purposes of this guideline, means a resinous substance of cannabis that includes (i) one or more of the tetrahydrocannabinols (as listed in 21 C.F.R. § 1308.11(d)(31)), (ii) at least two of the following: cannabinol, cannabidiol, or cannabichromene, and (iii) fragments of plant material (such as cystolith fibers).

(I) ***Hashish oil***, for the purposes of this guideline, means a preparation of the soluble cannabinoids derived from cannabis that includes (i) one or more of the tetrahydrocannabinols (as listed in 21 C.F.R. § 1308.11(d)(31)), (ii) at least two of the following: cannabinol, 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.

(J) ***Fentanyl analogue***, for the purposes of this guideline, means any substance (including any salt, isomer, or salt of isomer thereof), whether a controlled substance or not, that has a chemical structure that is similar to fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide).

(K) The term "***Fentanyl-Related Substance***" is defined in 21 U.S.C. § 812(e). There is a rebuttable presumption that the base offense level specified in the Drug Quantity Table applies to fentanyl-related substances. However, if the defendant establishes either that the fentanyl-related substance (i) functions to block, diminish, or counteract the effect produced by fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) or a fentanyl analogue, or (ii) is significantly less potent than fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), the court should instead determine the base offense level for the fentanyl-related substance using the converted drug weight of the most closely related controlled substance referenced in this guideline (as provided in Application Note 6 below).

(L) The term "***Converted Drug Weight***," for purposes of this guideline, refers to a nominal reference designation that is used as a conversion factor in the Drug Conversion Tables set forth in the Commentary below, to determine the offense level for controlled substances that are not specifically referenced in the Drug Quantity Table or when combining differing controlled substances.

Commentary

Statutory Provisions: 21 U.S.C. §§ 841(a), (b)(1)–(3), (7), (g), 860a, 865, 960(a), (b); 49 U.S.C. § 46317(b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definition of "Plant".—**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).

2. **Application of Subsection (a).—**Subsection (a) provides base offense levels for offenses under 21 U.S.C. §§ 841 and 960 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.

   Subsection (a)(1) provides a base offense level of 43 for offenses 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), to which the mandatory statutory term of life imprisonment applies because death or serious bodily injury resulted from the use of

the controlled substance and the defendant committed the offense after one or more prior convictions for a serious drug felony, serious violent felony, or felony drug offense.

Subsection (a)(2) provides a base offense level of 38 for offenses 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), to which the statutory minimum term of imprisonment of not less than 20 years to life applies because death or serious bodily injury resulted from the use of the controlled substance.

Subsection (a)(3) provides a base offense level of 30 for offenses under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5) to which the statutory maximum term of imprisonment of 30 years applies because death or serious bodily injury resulted from the use of the controlled substance and the defendant committed the offense after one or more prior convictions for a felony drug offense.

Subsection (a)(4) provides a base offense level of 26 for offenses under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5) to which the statutory maximum term of imprisonment of 15 years applies because death or serious bodily injury resulted from the use of the controlled substance.

The terms "serious drug felony," "serious violent felony," and "felony drug offense" are defined in 21 U.S.C. § 802. The base offense levels in subsections (a)(1) through (a)(4) would also apply if the parties stipulate to the applicable offense described in those provisions for purposes of calculating the guideline range under §1B1.2 (Applicable Guidelines) or to any such base offense level.

3. **"Mixture or Substance".—**"***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.

   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.

4. **In General.—**

   (A) **Classification of Controlled Substances.—**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.

   (B) **Applicability to "Counterfeit" Substances.—**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.

5. **Determining Drug Types and Drug Quantities.—**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 the defendant did not intend to provide or purchase, or was not reasonably capable of providing or purchasing, 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 the defendant did not intend to provide or purchase or was not reasonably capable of providing or purchasing.

6. **Analogues and Controlled Substances Not Referenced in this Guideline.**—Except as otherwise provided, any reference to a particular controlled substance in these guidelines includes all salts, isomers, all salts of isomers, and any analogue of that controlled substance. Any reference to cocaine includes ecgonine and coca leaves, except extracts of coca leaves from which cocaine and ecgonine have been removed. Unless otherwise specified, "***analogue***," for purposes of this guideline, has the meaning given the term "controlled substance analogue" in 21 U.S.C. § 802(32). In determining the appropriate sentence, the court also may consider whether the same quantity of analogue produces a greater effect on the central nervous system than the controlled substance for which it is an analogue.

In the case of a controlled substance that is not specifically referenced in this guideline, determine the base offense level using the converted drug weight of the most closely related controlled substance referenced in this guideline. *See* Application Note 8. In determining the most closely related controlled substance, the court shall, to the extent practicable, consider the following:

(A) Whether the controlled substance not referenced in this guideline has a chemical structure that is substantially similar to a controlled substance referenced in this guideline.

(B) Whether the controlled substance not referenced in this guideline has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance referenced in this guideline.

(C) Whether a lesser or greater quantity of the controlled substance not referenced in this guideline is needed to produce a substantially similar effect on the central nervous system as a controlled substance referenced in this guideline.

7. **Multiple Transactions or Multiple Drug Types.**—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.

8. **Use of Drug Conversion Tables.—**

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

(i) Use the Drug Conversion Tables to find the converted drug weight of the controlled substance involved in the offense.

(ii) Find the corresponding converted drug weight in the Drug Quantity Table.

(iii) Use the offense level that corresponds to the converted drug weight determined above as the base offense level for the controlled substance involved in the offense.

(*See also* Application Note 6.) For example, in the Drug Conversion Tables set forth in this Note, 1 gram of a substance containing oxymorphone, a Schedule I opiate, converts to 5 kilograms of converted drug weight. In a case involving 100 grams of oxymorphone, the converted drug weight would be 500 kilograms, which corresponds to a base offense level of 26 in the Drug Quantity Table.

(B) **Combining Differing Controlled Substances.**—The Drug Conversion 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 converted drug weight, 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 converted drug weights assigned in the Drug Conversion Tables are "capped" at specified amounts (*e.g.*, the combined converted weight of all Schedule V controlled substances shall not exceed 2.49 kilograms of converted drug weight). 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 converted drug weight for each schedule separately (subject to the cap, if any, applicable to that schedule). Then add the converted drug weights to determine the combined converted drug weight (subject to the cap, if any, applicable to the combined amounts).

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

(C) **Examples for Combining Differing Controlled Substances.—**

(i) The defendant is convicted of selling 70 grams of a substance containing PCP (Level 20) and 250 milligrams of a substance containing LSD (Level 16). The PCP converts to 70 kilograms of converted drug weight; the LSD converts to 25 kilograms of converted drug weight. The total therefore converts to 95 kilograms of converted drug weight, for which the Drug Quantity Table provides an offense level of 22.

(ii) The defendant is convicted of selling 500 grams of marihuana (Level 6) and 10,000 units of diazepam (Level 6). The marihuana converts to 500 grams of converted drug weight. The diazepam, a Schedule IV drug, converts to 625 grams of converted drug weight. The total, 1.125 kilograms of converted drug weight, has an offense level of 8 in the Drug Quantity Table.

(iii) The defendant is convicted of selling 80 grams of cocaine (Level 14) and 2 grams of cocaine base (Level 12). The cocaine converts to 16 kilograms of converted drug weight, and the cocaine base converts to 7.142 kilograms of converted drug weight. The total therefore converts to 23.142 kilograms of converted drug weight, which has an offense level of 16 in the Drug Quantity Table.

(iv) The defendant is convicted of selling 76,000 units of a Schedule III substance, 200,000 units of a Schedule IV substance, and 600,000 units of a Schedule V substance. The converted drug weight for the Schedule III substance is 76 kilograms (below the cap of 79.99 kilograms of converted drug weight set forth as the maximum converted weight for Schedule III substances). The converted drug weight for the Schedule IV substance is subject to a cap of 9.99 kilograms set forth as the maximum converted weight for Schedule IV substances (without the cap it would have been 12.5 kilograms). The converted drug weight for the Schedule V substance is subject to the cap of 2.49 kilograms set forth as the maximum converted weight for Schedule V substances (without the cap it would have been 3.75 kilograms). The combined converted weight, determined by adding together the above amounts, is subject to the cap of 79.99 kilograms of converted drug weight set forth as the maximum combined converted weight for Schedule III, IV, and V substances. Without the cap, the combined converted weight would have been 88.48 (76 + 9.99 + 2.49) kilograms.

(D) **Drug Conversion Tables.—**

SCHEDULE I OR II OPIATES*	CONVERTED DRUG WEIGHT
1 gm of 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP) =	700 gm
1 gm of 1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP) =	700 gm
1 gm of 6-Monoacetylmorphine =	1 kg
1 gm of Alphaprodine =	100 gm
1 gm of Codeine =	80 gm
1 gm of Dextromoramide =	670 gm
1 gm of Dextropropoxyphene/Propoxyphene-Bulk =	50 gm
1 gm of Dipipanone =	250 gm
1 gm of Ethylmorphine =	165 gm
1 gm of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide) =	2.5 kg
1 gm of a Fentanyl Analogue =	10 kg
1 gm of a Fentanyl-Related Substance =	10 kg
1 gm of Heroin =	1 kg
1 gm of Hydrocodone (actual) =	6,700 gm
1 gm of Hydromorphone/Dihydromorphinone =	2.5 kg
1 gm of Levo-alpha-acetylmethadol (LAAM) =	3 kg
1 gm of Levorphanol =	2.5 kg
1 gm of Meperidine/Pethidine =	50 gm
1 gm of Methadone =	500 gm
1 gm of Mixed Alkaloids of Opium/Papaveretum =	250 gm
1 gm of Morphine =	500 gm
1 gm of Opium =	50 gm
1 gm of Oxycodone (actual) =	6,700 gm
1 gm of Oxymorphone =	5 kg
1 gm of Racemorphan =	800 gm

**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)*	CONVERTED DRUG WEIGHT
1 gm of 4-Methylaminorex ("Euphoria") =	100 gm
1 gm of Aminorex =	100 gm
1 gm of Amphetamine =	2 kg
1 gm of Amphetamine (actual) =	20 kg
1 gm of Cocaine =	200 gm
1 gm of Cocaine Base ("Crack") =	3,571 gm
1 gm of Fenethylline =	40 gm
1 gm of "Ice" =	20 kg
1 gm of Khat =	.01 gm
1 gm of Methamphetamine =	2 kg
1 gm of Methamphetamine (actual) =	20 kg
1 gm of Methylphenidate (Ritalin) =	100 gm
1 gm of N-Benzylpiperazine =	100 gm
1 gm of N-Ethylamphetamine =	80 gm
1 gm of N-N-Dimethylamphetamine =	40 gm
1 gm of Phenmetrazine =	80 gm
1 gm of Phenylacetone (P_2P) (when possessed for the purpose of manufacturing methamphetamine) =	416 gm
1 gm of Phenylacetone (P_2P) (in any other case) =	75 gm

**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.

SYNTHETIC CATHINONES (EXCEPT SCHEDULE III, IV, AND V SUBSTANCES)*	CONVERTED DRUG WEIGHT
1 gm of a Synthetic Cathinone (except a Schedule III, IV, or V substance) =	380 gm

**Provided*, that the minimum offense level from the Drug Quantity Table for any synthetic cathinone (except a Schedule III, IV, or V substance) individually, or in combination with another controlled substance, is level 12.

LSD, PCP, AND OTHER SCHEDULE I AND II HALLUCINOGENS (AND THEIR IMMEDIATE PRECURSORS)*	CONVERTED DRUG WEIGHT
1 gm of 1-Piperidinocyclohexanecarbonitrile (PCC) =	680 gm
1 gm of 2,5-Dimethoxy-4-methylamphetamine (DOM) =	1.67 kg
1 gm of 3,4-Methylenedioxyamphetamine (MDA) =	500 gm
1 gm of 3,4-Methylenedioxymethamphetamine (MDMA) =	500 gm
1 gm of 3,4-Methylenedioxy-N-ethylamphetamine (MDEA) =	500 gm
1 gm of 4-Bromo-2,5-Dimethoxyamphetamine (DOB) =	2.5 kg
1 gm of Bufotenine =	70 gm
1 gm of D-Lysergic Acid Diethylamide/Lysergide (LSD) =	100 kg
1 gm of Diethyltryptamine (DET) =	80 gm
1 gm of Dimethyltryptamine (DM) =	100 gm
1 gm of Mescaline =	10 gm
1 gm of Mushrooms containing Psilocin and/or Psilocybin (dry) =	1 gm
1 gm of Mushrooms containing Psilocin and/or Psilocybin (wet) =	0.1 gm
1 gm of N-ethyl-1-phenylcyclohexylamine (PCE) =	1 kg
1 gm of Paramethoxymethamphetamine (PMA) =	500 gm
1 gm of Peyote (dry) =	0.5 gm
1 gm of Peyote (wet) =	0.05 gm
1 gm of Phencyclidine (PCP) =	1 kg
1 gm of Phencyclidine (PCP) (actual) =	10 kg
1 gm of Psilocin =	500 gm
1 gm of Psilocybin =	500 gm
1 gm of Pyrrolidine Analog of Phencyclidine (PHP) =	1 kg
1 gm of Thiophene Analog of Phencyclidine (TCP) =	1 kg

**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	CONVERTED DRUG WEIGHT
1 gm of Cannabis Resin or Hashish =	5 gm
1 gm of Hashish Oil =	50 gm
1 gm of Marihuana/Cannabis (granulated, powdered, etc.) =	1 gm
1 gm of Tetrahydrocannabinol (organic) =	167 gm
1 gm of Tetrahydrocannabinol (synthetic) =	167 gm

SYNTHETIC CANNABINOIDS (EXCEPT SCHEDULE III, IV, AND V SUBSTANCES)*	CONVERTED DRUG WEIGHT
1 gm of a Synthetic Cannabinoid (except a Schedule III, IV, or V substance) =	167 gm

**Provided*, that the minimum offense level from the Drug Quantity Table for any synthetic cannabinoid (except a Schedule III, IV, or V substance) individually, or in combination with another controlled substance, is level 12.

"***Synthetic Cannabinoid***," for purposes of this guideline, means any synthetic substance (other than synthetic tetrahydrocannabinol) that binds to and activates type 1 cannabinoid receptors (CB_1 receptors).

FLUNITRAZEPAM **	CONVERTED DRUG WEIGHT
1 unit of Flunitrazepam =	16 gm

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

SCHEDULE I OR II DEPRESSANTS (EXCEPT GAMMA-HYDROXYBUTYRIC ACID)	CONVERTED DRUG WEIGHT
1 unit of a Schedule I or II Depressant (except Gamma-hydroxybutyric Acid) =	1 gm

GAMMA-HYDROXYBUTYRIC ACID	CONVERTED DRUG WEIGHT
1 ml of Gamma-hydroxybutyric Acid =	8.8 gm

SCHEDULE III SUBSTANCES (EXCEPT KETAMINE)***	CONVERTED DRUG WEIGHT
1 unit of a Schedule III Substance (except Ketamine) =	1 gm

****Provided*, that the combined converted weight of all Schedule III substances (except ketamine), Schedule IV substances (except flunitrazepam), and Schedule V substances shall not exceed 79.99 kilograms of converted drug weight.

KETAMINE	CONVERTED DRUG WEIGHT
1 unit of Ketamine =	1 gm

SCHEDULE IV SUBSTANCES (EXCEPT FLUNITRAZEPAM)****	CONVERTED DRUG WEIGHT
1 unit of a Schedule IV Substance (except Flunitrazepam) =	0.0625 gm

*****Provided*, that the combined converted weight of all Schedule IV (except flunitrazepam) and V substances shall not exceed 9.99 kilograms of converted drug weight.

SCHEDULE V SUBSTANCES*****	CONVERTED DRUG WEIGHT
1 unit of a Schedule V Substance =	0.00625 gm

******Provided*, that the combined converted weight of Schedule V substances shall not exceed 2.49 kilograms of converted drug weight.

LIST I CHEMICALS (RELATING TO THE MANUFACTURE OF AMPHETAMINE OR METHAMPHETAMINE)******	CONVERTED DRUG WEIGHT
1 gm of Ephedrine =	10 kg
1 gm of Phenylpropanolamine =	10 kg
1 gm of Pseudoephedrine =	10 kg

*******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.

DATE RAPE DRUGS (EXCEPT FLUNITRAZEPAM, GHB, OR KETAMINE)	CONVERTED DRUG WEIGHT
1 ml of 1,4-Butanediol =	8.8 gm
1 ml of Gamma Butyrolactone =	8.8 gm

To facilitate conversions to converted drug weight, 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.

9. **Determining Quantity Based on Doses, Pills, or Capsules.**—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 milligrams per dose = 50 grams 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	
2,5-Dimethoxy-4-methylamphetamine (STP, DOM)*	3 mg
3,4-Methylenedioxyamphetamine (MDA)	250 mg
3,4-Methylenedioxymethamphetamine (MDMA)	250 mg
Mescaline	500 mg
Phencyclidine (PCP)*	5 mg
Peyote (dry)	12 gm
Peyote (wet)	120 gm
Psilocin*	10 mg
Psilocybe mushrooms (dry)	5 gm
Psilocybe mushrooms (wet)	50 gm
Psilocybin*	10 mg

MARIHUANA	
1 marihuana cigarette	0.5 gm

STIMULANTS	
Amphetamine*	10 mg
Methamphetamine*	5 mg
Phenmetrazine (Preludin)*	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.

10. **Determining Quantity of LSD.**—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.

11. **Application of Subsections (b)(1) and (b)(2).—**

(A) **Application of Subsection (b)(1).**—Definitions of "***firearm***" and "***dangerous weapon***" are found in the Commentary to §1B1.1 (Application Instructions). The enhancement for weapon possession in subsection (b)(1) reflects the increased danger of violence when drug traffickers possess weapons. The enhancement 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 the defendant's 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), and 2D1.12(c)(1).

(B) **Interaction of Subsections (b)(1) and (b)(2).**—The enhancements in subsections (b)(1) and (b)(2) may be applied cumulatively (added together), as is generally the case when two or more specific offense characteristics each apply. *See* §1B1.1 (Application Instructions), Application Note 4(A). However, in a case in which the defendant merely possessed a dangerous weapon but did not use violence, make a credible threat to use violence, or direct the use of violence, subsection (b)(2) would not apply.

12. **Application of Subsection (b)(5).**—If the offense involved importation of amphetamine or methamphetamine, and an adjustment from subsection (b)(3) applies, do not apply subsection (b)(5).

13. **Application of Subsection (b)(7).**—For purposes of subsection (b)(7), "***mass-marketing by means of an interactive computer service***" means the solicitation, by means of an interactive computer service, of a large number of persons to induce those persons to purchase a controlled substance. For example, subsection (b)(7) would apply to a defendant who operated a web site to promote the sale of Gamma-hydroxybutyric Acid (GHB) but would not apply to coconspirators who use an interactive computer service only to communicate with one another in furtherance of the offense. "***Interactive computer service***", for purposes of subsection (b)(7) and this note, has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

14. **Application of Subsection (b)(8).**—For purposes of subsection (b)(8), "***masking agent***" means a substance that, when taken before, after, or in conjunction with an anabolic steroid, prevents the detection of the anabolic steroid in an individual's body.

15. **Application of Subsection (b)(9).**—For purposes of subsection (b)(9), "***athlete***" means an individual who participates in an athletic activity conducted by (A) an intercollegiate athletic association or interscholastic athletic association; (B) a professional athletic association; or (C) an amateur athletic organization.

16. **Application of Subsection (b)(10).**—Subsection (b)(10) does not apply if the purpose of the bribery was to obstruct or impede the investigation, prosecution, or sentencing of the defendant. Such conduct is covered by §3C1.1 (Obstructing or Impeding the Administration of Justice) and, if applicable, §2D1.1(b)(15)(D).

17. **Application of Subsection (b)(11).**—Subsection (b)(11) applies to a defendant who knowingly maintains a premises (*i.e.*, a building, room, or enclosure) for the purpose of manufacturing or distributing a controlled substance, including storage of a controlled substance for the purpose of distribution.

    Among the factors the court should consider in determining whether the defendant "maintained" the premises are (A) whether the defendant held a possessory interest in (*e.g.*, owned or rented) the premises and (B) the extent to which the defendant controlled access to, or activities at, the premises.

    Manufacturing or distributing a controlled substance need not be the sole purpose for which the premises was maintained, but must be one of the defendant's primary or principal uses for the premises, rather than one of the defendant's incidental or collateral uses for the premises. In making this determination, the court should consider how frequently the premises was used by the defendant for manufacturing or distributing a controlled substance and how frequently the premises was used by the defendant for lawful purposes.

18. **Application of Subsection (b)(13).—**

    (A) **Hazardous or Toxic Substances (Subsection (b)(13)(A)).**—Subsection (b)(13)(A) applies if the conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d); the Federal Water Pollution Control Act, 33 U.S.C. § 1319(c); the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9603(b); or 49 U.S.C. § 5124 (relating to violations of laws and regulations enforced by the Department of Transportation with respect to the transportation of hazardous material). In determining the amount of restitution under §5E1.1 (Restitution) and in fashioning appropriate conditions of probation and supervision under §§5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release), respectively, any costs of environmental cleanup and harm to individuals or property shall be considered by the court in cases involving the manufacture of amphetamine or methamphetamine and should be considered by the court in cases involving the manufacture of a controlled substance other than amphetamine or methamphetamine. *See* 21 U.S.C. § 853(q) (mandatory restitution for cleanup costs relating to the manufacture of amphetamine and methamphetamine).

(B) **Substantial Risk of Harm Associated with the Manufacture of Amphetamine and Methamphetamine (Subsection (b)(13)(C)–(D)).—**

(i) **Factors to Consider.—**In determining, for purposes of subsection (b)(13)(C)(ii) or (D), whether the offense created a substantial risk of harm to human life or the environment, the court shall include consideration of the following factors:

(I) The quantity of any chemicals or hazardous or toxic substances found at the laboratory, and the manner in which the chemicals or substances were stored.

(II) The manner in which hazardous or toxic substances were disposed, and the likelihood of release into the environment of hazardous or toxic substances.

(III) The duration of the offense, and the extent of the manufacturing operation.

(IV) The location of the laboratory (*e.g.*, whether the laboratory is located in a residential neighborhood or a remote area), and the number of human lives placed at substantial risk of harm.

(ii) **Definitions.—**For purposes of subsection (b)(13)(D):

"***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).

19. **Application of Subsection (b)(14).—**Subsection (b)(14) applies to offenses that involve the cultivation of marihuana on state or federal land or while trespassing on tribal or private land. Such offenses interfere with the ability of others to safely access and use the area and also pose or risk a range of other harms, such as harms to the environment.

The enhancements in subsections (b)(13)(A) and (b)(14) may be applied cumulatively (added together), as is generally the case when two or more specific offense characteristics each apply. *See* §1B1.1 (Application Instructions), Application Note 4(A).

20. **Application of Subsection (b)(15).—**

(A) **Distributing to a Specified Individual or Involving Such an Individual in the Offense (Subsection (b)(15)(B)).—**If the defendant distributes a controlled substance to an individual or involves an individual in the offense, as specified in subsection (b)(15)(B), the individual is not a "vulnerable victim" for purposes of §3A1.1(b).

(B) **Directly Involved in the Importation of a Controlled Substance (Subsection (b)(15)(C)).—**Subsection (b)(15)(C) applies if the defendant is accountable for the importation of a controlled substance under subsection (a)(1)(A) of §1B1.3 (Relevant Conduct (Factors that Determine the Guideline Range)), *i.e.*, the defendant committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused the importation of a controlled substance.

If subsection (b)(3) or (b)(5) applies, do not apply subsection (b)(15)(C).

(C) **Pattern of Criminal Conduct Engaged in as a Livelihood (Subsection (b)(15)(E)).**—For purposes of subsection (b)(15)(E), "***pattern of criminal conduct***" and "***engaged in as a livelihood***" have the meaning given such terms in §4B1.3 (Criminal Livelihood).

21. **Applicability of Subsection (b)(17).**—The applicability of subsection (b)(17) shall be determined without regard to whether the defendant was convicted of an offense that subjects the defendant to a mandatory minimum term of imprisonment. Section 5C1.2(b), which provides that the applicable guideline range shall not be less than 24 to 30 months of imprisonment, is not pertinent to the determination of whether subsection (b)(17) applies.

22. **Application of Subsection (e)(1).**—For purposes of this guideline, "***sexual offense***" means a "sexual act" or "sexual contact" as those terms are defined in 18 U.S.C. § 2246(2) and (3), respectively.

23. **Interaction with §3B1.3.**—A defendant who used special skills in the commission of the offense may be subject to an adjustment 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. Additionally, an enhancement under §3B1.3 ordinarily would apply in a case in which the defendant used his or her position as a coach to influence an athlete to use an anabolic steroid. Likewise, an adjustment under §3B1.3 ordinarily would apply in a case in which the defendant is convicted of a drug offense resulting from the authorization of the defendant to receive scheduled substances from an ultimate user or long-term care facility. *See* 21 U.S.C. § 822(g).

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

24. **Cases Involving Mandatory Minimum Penalties.**—Where a mandatory (statutory) minimum sentence applies, this mandatory minimum sentence may be "waived" and a lower sentence imposed, 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).

25. **Imposition of Consecutive Sentence for 21 U.S.C. § 860a or § 865.**—Sections 860a and 865 of title 21, United States Code, require the imposition of a mandatory consecutive term of imprisonment of not more than 20 years and 15 years, respectively. In order to comply with the relevant statute, the court should determine the appropriate "total punishment" and divide the sentence on the judgment form between the sentence attributable to the underlying drug offense and the sentence attributable to 21 U.S.C. § 860a or § 865, specifying the number of months to be served consecutively for the conviction under 21 U.S.C. § 860a or § 865. For example, if the applicable adjusted guideline range is 151–188 months and the court determines a "total punishment" of 151 months is appropriate, a sentence of 130 months for the underlying offense plus 21 months for the conduct covered by 21 U.S.C. § 860a or § 865 would achieve the "total punishment" in a manner that satisfies the statutory requirement of a consecutive sentence.

26. **Cases Involving "Small Amount of Marihuana for No Remuneration".**—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.

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 30 and 24 in the Drug Quantity Table are the distinctions provided by the Anti-Drug Abuse Act; however, further refinement of drug amounts is essential to provide a logical sentencing structure for drug offenses. To determine these finer distinctions, the Commission consulted numerous experts and practitioners, including authorities at the Drug Enforcement Administration, chemists, attorneys, probation officers, and members of the Organized Crime Drug Enforcement Task Forces, who also advocate the necessity of these distinctions. Where necessary, this scheme has been modified in response to specific congressional directives to the Commission.

The base offense levels at levels 24 and 30 establish guideline ranges such that the statutory minimum falls within the range; *e.g.*, level 30 ranges from 97 to 121 months, where the statutory minimum term is ten years or 120 months.

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

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*, 500 U.S. 453 (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)).

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).

The last sentence of subsection (a)(5) implements the directive to the Commission in section 7(1) of Public Law 111–220.

Subsection (b)(2) implements the directive to the Commission in section 5 of Public Law 111–220.

Subsection (b)(3) is derived from section 6453 of Public Law 100–690.

Subsection (b)(10) implements the directive to the Commission in section 6(1) of Public Law 111–220.

Subsection (b)(11) implements the directive to the Commission in section 6(2) of Public Law 111–220.

Subsection (b)(13)(A) implements the instruction to the Commission in section 303 of Public Law 104–237.

Subsections (b)(13)(C)(ii) and (D) implement, in a broader form, the instruction to the Commission in section 102 of Public Law 106–310.

Subsection (b)(15) implements the directive to the Commission in section 6(3) of Public Law 111–220.

Subsection (b)(16) implements the directive to the Commission in section 7(2) of Public Law 111–220.

The Drug Conversion Tables set forth in Application Note 8 were previously called the Drug Equivalency Tables. In the original 1987 *Guidelines Manual*, the Drug Equivalency Tables provided four conversion factors (or "equivalents") for determining the base offense level in cases involving either a controlled substance not referenced in the Drug Quantity Table or multiple controlled substances: heroin, cocaine, PCP, and marihuana. In 1991, the Commission amended the Drug Equivalency Tables to provide for one substance, marihuana, as the single conversion factor in §2D1.1. *See* USSG App. C, Amendment 396 (effective November 1, 1991). In 2018, the Commission amended §2D1.1 to replace marihuana as the conversion factor with the new term "converted drug weight" and to change the title of the Drug Equivalency Tables to the "Drug Conversion Tables." *See* USSG App. C, Amendment 808 (effective November 1, 2018).

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendments 19, 20, and 21); November 1, 1989 (amendments 123–134, 302, and 303); November 1, 1990 (amendment 318); November 1, 1991 (amendments 369, 370, 371, 394, 395, and 396); November 1, 1992 (amendments 446 and 447); November 1, 1993 (amendments 479, 484, 485, 486, 487, 488, and 499); September 23, 1994 (amendment 509); November 1, 1994 (amendment 505); November 1, 1995 (amendments 514, 515, 516, 517, and 518); November 1, 1997 (amendments 555 and 556); November 1, 2000 (amendments 594 and 605); December 16, 2000 (amendment 608); May 1, 2001 (amendments 609, 610, and 611); November 1, 2001 (amendments 620, 621, 622, 623, 624, and 625); November 1, 2002 (amendment 640); November 1, 2003 (amendment 657); November 1, 2004 (amendments 667, 668, and 674); November 1, 2005 (amendment 679); March 27, 2006 (amendment 681); November 1, 2006 (amendments 684 and 688); November 1, 2007 (amendments 705, 706, and 711); May 1, 2008 (amendment 715); November 1, 2009 (amendments 727 and 728); November 1, 2010 (amendments 746 and 748); November 1, 2011 (amendments 750, 751, and 760); November 1, 2012 (amendments 762 and 770); November 1, 2013 (amendment 777); November 1, 2014 (amendments 782 and 783); November 1, 2015 (amendments 793 and 797); November 1, 2018 (amendments 807 and 808); November 1, 2023 (amendments 817, 818, and 824); November 1, 2024 (amendments 830 and 831); November 1, 2025 (amendments 833 and 836); November 1, 2026 (amendments 837, 839, and 843).

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

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

(1) **2** plus the offense level from §2D1.1 applicable to the quantity of controlled substances directly involving a protected location or an underage or pregnant individual; or

(2) **1** plus the offense level from §2D1.1 applicable to the total quantity of controlled substances involved in the offense; or

(3) **26**, if the offense involved a person less than eighteen years of age; or

(4) **13**, otherwise.

Commentary

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

Application Note:

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

Background: This section implements the direction to the Commission in section 6454 of Public Law 100–690.

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 22); November 1, 1989 (amendment 135); November 1, 1990 (amendment 319); November 1, 1991 (amendment 421); November 1, 1992 (amendment 447); November 1, 2000 (amendment 591); November 1, 2014 (amendment 782); November 1, 2024 (amendment 831).

§§2D1.3 – 2D1.4. [Deleted]

Historical Note	Section 2D1.3 (Distributing Controlled Substances to Individuals Younger than Twenty-One Years, to Pregnant Women, or Within 1000 Feet of a School or College), effective November 1, 1987, and amended effective January 15, 1988 (amendment 23), was deleted by consolidation with §2D1.2 effective November 1, 1989 (amendment 135). Section 2D1.4 (Attempts and Conspiracies), effective November 1, 1987, and mended effective November 1, 1989 (amendments 136, 137, and 138), was deleted by consolidation with the guidelines applicable to the underlying substantive offenses effective November 1, 1992 (amendment 447).

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

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

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

(2) **38**.

Commentary

Statutory Provision: 21 U.S.C. § 848.

Application Notes:

1. **Inapplicability of Chapter Three Adjustment.**—Do not apply any adjustment from Chapter Three, Part B (Role in the Offense).

2. **"Continuing Series of Violations".**—Under 21 U.S.C. § 848, certain conduct for which the defendant has previously been sentenced may be charged as part of the instant offense to establish a "continuing series of violations." A sentence resulting from a conviction sustained prior to the last overt act of the instant offense is to be considered a prior sentence under §4A1.2(a)(1) and not part of the instant offense.

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

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

Historical Note	Effective November 1, 1987. Amended effective October 15, 1988 (amendment 66); November 1, 1989 (amendment 139); November 1, 1992 (amendment 447); November 1, 2024 (amendment 831); November 1, 2025 (amendment 836); November 1, 2026 (amendment 840).

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

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

Commentary

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

Application Note:

1. Where the offense level for the underlying offense is to be determined by reference to §2D1.1, *see* Application Note 5 of the Commentary to §2D1.1 for guidance in determining the scale of the offense. Note that the Drug Quantity Table in §2D1.1 provides a minimum offense level of 12 where the offense involves heroin (or other Schedule I or II opiates), cocaine (or other Schedule I or II stimulants), cocaine base, PCP, methamphetamine, LSD (or other Schedule I or II hallucinogens), fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), fentanyl analogue, or fentanyl-related substance (§2D1.1(c)(14)); a minimum offense level of 8 where the offense involves flunitrazepam (§2D1.1(c)(16)); and a minimum offense level of 6 otherwise (§2D1.1(c)(17)).

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

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 320); November 1, 1992 (amendment 447); November 1, 1994 (amendment 505); November 1, 2009 (amendment 737); November 1, 2012 (amendment 770); November 1, 2018 (amendment 807); November 1, 2026 (amendment 839).

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

(a) Base Offense Level: **12**

(b) Cross Reference

(1) If the offense involved a controlled substance, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) or §2D2.1 (Unlawful Possession), as appropriate, if the resulting offense level is greater than that determined above.

Commentary

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

Historical Note	Effective November 1, 1987. Amended effective November 1, 1991 (amendment 397); November 1, 1992 (amendment 447); November 1, 2025 (amendment 836).

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

(a) Base Offense Level:

(1) The offense level from §2D1.1 applicable to the underlying controlled substance offense, except as provided below.

(2) If the defendant had no participation in the underlying controlled substance offense other than allowing use of the premises, the offense level shall be **4** levels less than the offense level from §2D1.1 applicable to the underlying controlled substance offense, but not greater than level **26**.

(b) Special Instruction

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

Commentary

Statutory Provision: 21 U.S.C. § 856.

Application Note:

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

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

Historical Note	Effective November 1, 1987. Amended effective November 1, 1991 (amendment 394); November 1, 1992 (amendments 447 and 448); November 1, 2002 (amendment 640).

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

(a) Base Offense Level: **23**

Commentary

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

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

Historical Note	Effective November 1, 1987. Amended effective November 1, 1992 (amendment 447); November 1, 2002 (amendment 646).

§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 shall include consideration of the following factors:

      (i) The quantity of any chemicals or hazardous or toxic substances found at the laboratory, and the manner in which the chemicals or substances were stored.

      (ii) The manner in which hazardous or toxic substances were disposed, and the likelihood of release into the environment of hazardous or toxic substances.

      (iii) The duration of the offense, and the extent of the manufacturing operation.

      (iv) The location of the laboratory (*e.g.*, whether the laboratory is located 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 106–310.

Historical Note	Effective November 1, 1989 (amendment 140). Amended effective November 1, 1992 (amendment 447); December 16, 2000 (amendment 608); November 1, 2001 (amendment 620).

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

(a) Base Offense Level: The offense level from the Chemical Quantity Table set forth in subsection (d) or (e), as appropriate, except that if (A) the defendant receives an adjustment under §3B1.2 (Mitigating Role); and (B) the base offense level under subsection (d) is (i) level **32**, decrease by **2** levels; (ii) level **34** or level **36**, decrease by **3** levels; or (iii) level **38**, decrease by **4** levels.

(b) Specific Offense Characteristics

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

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

(3) If the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), distributed a listed chemical through mass-marketing by means of an interactive computer service, increase by **2** levels.

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

(c) Cross Reference

(1) If the offense involved unlawfully manufacturing a controlled substance, or attempting to manufacture a controlled substance unlawfully, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, Trafficking) if the resulting offense level is greater than that determined above.

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

QUANTITY	BASE OFFENSE LEVEL
(1) 9 KG or more of Ephedrine; 9 KG or more of Phenylpropanolamine; 9 KG or more of Pseudoephedrine.	**Level 38**
(2) At least 3 KG but less than 9 KG of Ephedrine; At least 3 KG but less than 9 KG of Phenylpropanolamine; At least 3 KG but less than 9 KG of Pseudoephedrine.	**Level 36**
(3) 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 34**

(4)	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 32**
(5)	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 30**
(6)	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 28**
(7)	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 26**
(8)	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 24**
(9)	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 22**
(10)	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 20**
(11)	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 18**
(12)	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 16**
(13)	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 14**
(14)	Less than 1 G of Ephedrine; Less than 1 G of Phenylpropanolamine; Less than 1 G of Pseudoephedrine.	**Level 12**

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

LISTED CHEMICALS AND QUANTITY	BASE OFFENSE LEVEL
(1) **List I Chemicals** 2.7 KG or more of Benzaldehyde; 60 KG or more of Benzyl Cyanide; 600 G or more of Ergonovine; 1.2 KG or more of Ergotamine; 60 KG or more of Ethylamine; 6.6 KG or more of Hydriodic Acid; 3.9 KG or more of Iodine; 960 KG or more of Isosafrole; 600 G or more of Methylamine; 1500 KG or more of N-Methylephedrine; 1500 KG or more of N-Methylpseudoephedrine; 1.9 KG or more of Nitroethane; 30 KG or more of Norpseudoephedrine; 60 KG or more of Phenylacetic Acid; 30 KG or more of Piperidine; 960 KG or more of Piperonal; 4.8 KG or more of Propionic Anhydride; 960 KG or more of Safrole; 1200 KG or more of 3, 4-Methylenedioxyphenyl-2-propanone; 3406.5 L or more of Gamma-butyrolactone; 2.1 KG or more of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid.	**Level 30**
(2) **List I Chemicals** At least 890 G but less than 2.7 KG of Benzaldehyde; At least 20 KG but less than 60 KG of Benzyl Cyanide; At least 200 G but less than 600 G of Ergonovine; At least 400 G but less than 1.2 KG of Ergotamine; At least 20 KG but less than 60 KG of Ethylamine; At least 2.2 KG but less than 6.6 KG of Hydriodic Acid; At least 1.3 KG but less than 3.9 KG of Iodine; At least 320 KG but less than 960 KG of Isosafrole; At least 200 G but less than 600 G of Methylamine; At least 500 KG but less than 1500 KG of N-Methylephedrine; At least 500 KG but less than 1500 KG of N-Methylpseudoephedrine; At least 625 G but less than 1.9 KG of Nitroethane; At least 10 KG but less than 30 KG of Norpseudoephedrine; At least 20 KG but less than 60 KG of Phenylacetic Acid; At least 10 KG but less than 30 KG of Piperidine; At least 320 KG but less than 960 KG of Piperonal; At least 1.6 KG but less than 4.8 KG of Propionic Anhydride; At least 320 KG but less than 960 KG of Safrole; At least 400 KG but less than 1200 KG of 3, 4-Methylenedioxyphenyl-2-propanone; At least 1135.5 L but less than 3406.5 L of Gamma-butyrolactone; At least 714 G but less than 2.1 KG of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;	**Level 28**

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

(3) **List I Chemicals** **Level 26**
At least 267 G but less than 890 G of Benzaldehyde;
At least 6 KG but less than 20 KG of Benzyl Cyanide;
At least 60 G but less than 200 G of Ergonovine;
At least 120 G but less than 400 G of Ergotamine;
At least 6 KG but less than 20 KG of Ethylamine;
At least 660 G but less than 2.2 KG of Hydriodic Acid;
At least 376.2 G but less than 1.3 KG of Iodine;
At least 96 KG but less than 320 KG of Isosafrole;
At least 60 G but less than 200 G of Methylamine;
At least 150 KG but less than 500 KG of N-Methylephedrine;
At least 150 KG but less than 500 KG of N-Methylpseudoephedrine;
At least 187.5 G but less than 625 G of Nitroethane;
At least 3 KG but less than 10 KG of Norpseudoephedrine;
At least 6 KG but less than 20 KG of Phenylacetic Acid;
At least 3 KG but less than 10 KG of Piperidine;
At least 96 KG but less than 320 KG of Piperonal;
At least 480 G but less than 1.6 KG of Propionic Anhydride;
At least 96 KG but less than 320 KG of Safrole;
At least 120 KG but less than 400 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 340.7 L but less than 1135.5 L of Gamma-butyrolactone;
At least 214 G but less than 714 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

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

(4) **List I Chemicals** **Level 24**
At least 89 G but less than 267 G of Benzaldehyde;
At least 2 KG but less than 6 KG of Benzyl Cyanide;
At least 20 G but less than 60 G of Ergonovine;
At least 40 G but less than 120 G of Ergotamine;
At least 2 KG but less than 6 KG of Ethylamine;
At least 220 G but less than 660 G of Hydriodic Acid;
At least 125.4 G but less than 376.2 G of Iodine;
At least 32 KG but less than 96 KG of Isosafrole;
At least 20 G but less than 60 G of Methylamine;
At least 50 KG but less than 150 KG of N-Methylephedrine;

At least 50 KG but less than 150 KG of N-Methylpseudoephedrine;
At least 62.5 G but less than 187.5 G of Nitroethane;
At least 1 KG but less than 3 KG of Norpseudoephedrine;
At least 2 KG but less than 6 KG of Phenylacetic Acid;
At least 1 KG but less than 3 KG of Piperidine;
At least 32 KG but less than 96 KG of Piperonal;
At least 160 G but less than 480 G of Propionic Anhydride;
At least 32 KG but less than 96 KG of Safrole;
At least 40 KG but less than 120 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 113.6 L but less than 340.7 L of Gamma-butyrolactone;
At least 71 G but less than 214 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

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

(5) **List I Chemicals** **Level 22**
At least 62.3 G but less than 89 G of Benzaldehyde;
At least 1.4 KG but less than 2 KG of Benzyl Cyanide;
At least 14 G but less than 20 G of Ergonovine;
At least 28 G but less than 40 G of Ergotamine;
At least 1.4 KG but less than 2 KG of Ethylamine;
At least 154 G but less than 220 G of Hydriodic Acid;
At least 87.8 G but less than 125.4 G of Iodine;
At least 22.4 KG but less than 32 KG of Isosafrole;
At least 14 G but less than 20 G of Methylamine;
At least 35 KG but less than 50 KG of N-Methylephedrine;
At least 35 KG but less than 50 KG of N-Methylpseudoephedrine;
At least 43.8 G but less than 62.5 G of Nitroethane;
At least 700 G but less than 1 KG of Norpseudoephedrine;
At least 1.4 KG but less than 2 KG of Phenylacetic Acid;
At least 700 G but less than 1 KG of Piperidine;
At least 22.4 KG but less than 32 KG of Piperonal;
At least 112 G but less than 160 G of Propionic Anhydride;
At least 22.4 KG but less than 32 KG of Safrole;
At least 28 KG but less than 40 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 79.5 L but less than 113.6 L of Gamma-butyrolactone;
At least 50 G but less than 71 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

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

(6) **List I Chemicals** **Level 20**

At least 35.6 G but less than 62.3 G of Benzaldehyde;
At least 800 G but less than 1.4 KG of Benzyl Cyanide;
At least 8 G but less than 14 G of Ergonovine;
At least 16 G but less than 28 G of Ergotamine;
At least 800 G but less than 1.4 KG of Ethylamine;
At least 88 G but less than 154 G of Hydriodic Acid;
At least 50.2 G but less than 87.8 G of Iodine;
At least 12.8 KG but less than 22.4 KG of Isosafrole;
At least 8 G but less than 14 G of Methylamine;
At least 20 KG but less than 35 KG of N-Methylephedrine;
At least 20 KG but less than 35 KG of N-Methylpseudoephedrine;
At least 25 G but less than 43.8 G of Nitroethane;
At least 400 G but less than 700 G of Norpseudoephedrine;
At least 800 G but less than 1.4 KG of Phenylacetic Acid;
At least 400 G but less than 700 G of Piperidine;
At least 12.8 KG but less than 22.4 KG of Piperonal;
At least 64 G but less than 112 G of Propionic Anhydride;
At least 12.8 KG but less than 22.4 KG of Safrole;
At least 16 KG but less than 28 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 45.4 L but less than 79.5 L of Gamma-butyrolactone;
At least 29 G but less than 50 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

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

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

At least 8.9 G but less than 35.6 G of Benzaldehyde;
At least 200 G but less than 800 G of Benzyl Cyanide;
At least 2 G but less than 8 G of Ergonovine;
At least 4 G but less than 16 G of Ergotamine;
At least 200 G but less than 800 G of Ethylamine;
At least 22 G but less than 88 G of Hydriodic Acid;
At least 12.5 G but less than 50.2 G of Iodine;
At least 3.2 KG but less than 12.8 KG of Isosafrole;
At least 2 G but less than 8 G of Methylamine;
At least 5 KG but less than 20 KG of N-Methylephedrine;
At least 5 KG but less than 20 KG of N-Methylpseudoephedrine;
At least 6.3 G but less than 25 G of Nitroethane;
At least 100 G but less than 400 G of Norpseudoephedrine;
At least 200 G but less than 800 G of Phenylacetic Acid;
At least 100 G but less than 400 G of Piperidine;
At least 3.2 KG but less than 12.8 KG of Piperonal;
At least 16 G but less than 64 G of Propionic Anhydride;
At least 3.2 KG but less than 12.8 KG of Safrole;

At least 4 KG but less than 16 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 11.4 L but less than 45.4 L of Gamma-butyrolactone;
At least 7 G but less than 29 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

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

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

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

(9) **List I Chemicals** **Level 14**
3.6 KG or more of Anthranilic Acid;
At least 5.3 G but less than 7.1 G of Benzaldehyde;
At least 120 G but less than 160 G of Benzyl Cyanide;
At least 1.2 G but less than 1.6 G of Ergonovine;
At least 2.4 G but less than 3.2 G of Ergotamine;
At least 120 G but less than 160 G of Ethylamine;
At least 13.2 G but less than 17.6 G of Hydriodic Acid;

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

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

(10) **List I Chemicals** **Level 12**
Less than 3.6 KG of Anthranilic Acid;
Less than 5.3 G of Benzaldehyde;
Less than 120 G of Benzyl Cyanide;
Less than 1.2 G of Ergonovine;
Less than 2.4 G of Ergotamine;
Less than 120 G of Ethylamine;
Less than 13.2 G of Hydriodic Acid;
Less than 7.5 G of Iodine;
Less than 1.92 KG of Isosafrole;
Less than 1.2 G of Methylamine;
Less than 4.8 KG of N-Acetylanthranilic Acid;
Less than 3 KG of N-Methylephedrine;
Less than 3 KG of N-Methylpseudoephedrine;
Less than 3.8 G of Nitroethane;
Less than 60 G of Norpseudoephedrine;
Less than 120 G of Phenylacetic Acid;
Less than 60 G of Piperidine;
Less than 1.92 KG of Piperonal;
Less than 9.6 G of Propionic Anhydride;
Less than 1.92 KG of Safrole;
Less than 2.4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
Less than 6.8 L of Gamma-butyrolactone;
Less than 4 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals
Less than 88 G of Acetic Anhydride;
Less than 9.4 KG of Acetone;

Less than 160 G of Benzyl Chloride;
Less than 8.6 KG of Ethyl Ether;
Less than 9.6 KG of Methyl Ethyl Ketone;
Less than 80 G of Potassium Permanganate;
Less than 10.4 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) or (e) of this guideline, as appropriate.

(B) To calculate the base offense level in an offense that involves two or more chemicals each of which is set forth in the Ephedrine, Pseudoephedrine, and Phenylpropanolamine Quantity Table, (i) aggregate the quantities of all such chemicals, and (ii) determine the base offense level corresponding to the aggregate quantity.

(C) In a case involving ephedrine, pseudoephedrine, or phenylpropanolamine tablets, use the weight of the ephedrine, pseudoephedrine, or phenylpropanolamine contained in the tablets, not the weight of the entire tablets, in calculating the base offense level.

Commentary

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

Application Notes:

1. **Cases Involving Multiple Chemicals.—**

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

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

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

Example: The defendant was in possession of 80 grams of ephedrine and 50 grams of phenylpropanolamine, an aggregate quantity of 130 grams of such chemicals. The base offense level corresponding to that aggregate quantity is level 30.

2. **Application of Subsection (b)(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.

3. **Application of Subsection (b)(2).—**Subsection (b)(2) applies if the conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. § 1319(c), the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9603(b), and 49 U.S.C. § 5124 (relating to violations of laws and regulations enforced by the Department of Transportation with respect to the transportation of hazardous material). Any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under §5E1.1 (Restitution) and in fashioning appropriate conditions of supervision under §§5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release).

4. **Application of Subsection (b)(3).—**For purposes of subsection (b)(3), "***mass-marketing by means of an interactive computer service***" means the solicitation, by means of an interactive computer service, of a large number of persons to induce those persons to purchase a controlled substance. For example, subsection (b)(3) would apply to a defendant who operated a web site to promote the sale of Gamma-butyrolactone (GBL) but would not apply to coconspirators who use an interactive computer service only to communicate with one another in furtherance of the offense. "***Interactive computer service***", for purposes of subsection (b)(3) and this note, has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

5. **Imposition of Consecutive Sentence for 21 U.S.C. § 865.—**Section 865 of title 21, United States Code, requires the imposition of a mandatory consecutive term of imprisonment of not more than 15 years. In order to comply with the relevant statute, the court should determine the appropriate "total punishment" and, on the judgment form, divide the sentence between the sentence attributable to the underlying drug offense and the sentence attributable to 21 U.S.C. § 865, specifying the number of months to be served consecutively for the conviction under 21 U.S.C. § 865. For example, if the applicable adjusted guideline range is 151–188 months and the court determines a "total punishment" of 151 months is appropriate, a sentence of 130 months for the underlying offense plus 21 months for the conduct covered by 21 U.S.C. § 865 would achieve the "total punishment" in a manner that satisfies the statutory requirement of a consecutive sentence.

6. **Applicability of Subsection (b)(4).—**The applicability of subsection (b)(4) shall be determined without regard to the offense of conviction. If subsection (b)(4) applies, §5C1.2(b) does not apply. *See* §5C1.2(b)(2)(requiring an applicable guideline range of not less than 24 to 30 months of imprisonment if the "statutorily required minimum sentence is at least five years").

7. **Application of Subsection (c)(1).—**"***Offense involved unlawfully manufacturing a controlled substance, or attempting to manufacture a controlled substance unlawfully***," as used in subsection (c)(1), means that the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), completed the actions sufficient to constitute

the offense of unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully.

8. **Offenses Involving Immediate Precursors or Other Controlled Substances Covered Under §2D1.1.**—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 as provided in subsection (c) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts). 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 Conversion Table under Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)). Determine the combined offense level for these offenses by applying subsection (d) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts). 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 5 in the Commentary to §2D1.1).

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 (amendment 371). Amended effective November 1, 1992 (amendment 447); November 1, 1995 (amendment 519); May 1, 1997 (amendment 541); November 1, 1997 (amendment 557); November 1, 2000 (amendments 605 and 606); May 1, 2001 (amendment 611); November 1, 2001 (amendment 625); November 1, 2002 (amendment 646); November 1, 2003 (amendment 661); November 1, 2004 (amendments 667 and 668); November 1, 2005 (amendment 679); November 1, 2007 (amendments 705 and 707); November 1, 2010 (amendments 745 and 746); November 1, 2012 (amendments 763 and 770); November 1, 2014 (amendment 782); November 1, 2015 (amendment 796); November 1, 2018 (amendments 808 and 813); November 1, 2023 (amendment 817); November 1, 2025 (amendment 836); November 1, 2026 (amendments 837, 840, and 843).

§2D1.12. Unlawful Possession, Manufacture, Distribution, Transportation, Exportation, or Importation of Prohibited Flask, Equipment, Chemical, Product, or Material; Attempt or Conspiracy

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

(1) **12**, if the defendant intended to manufacture a controlled substance or knew or believed the prohibited flask, equipment, chemical, product, or material was to be used to manufacture a controlled substance; or

(2) **9**, if the defendant had reasonable cause to believe the prohibited flask, equipment, chemical, product, or material was to be used to manufacture a controlled substance.

(b) Specific Offense Characteristics

(1) If the defendant (A) intended to manufacture methamphetamine, or (B) knew, believed, or had reasonable cause to believe that prohibited flask, equipment, chemical, product, or material was to be used to manufacture methamphetamine, increase by **2** levels.

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

(3) If the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), distributed any prohibited flask, equipment, chemical, product, or material through mass-marketing by means of an interactive computer service, increase by **2** levels.

(c) Cross Reference

(1) If the offense involved unlawfully manufacturing a controlled substance, or attempting to manufacture a controlled substance unlawfully, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) if the resulting offense level is greater than that determined above.

Commentary

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

Application Notes:

1. "***Offense involved unlawfully manufacturing a controlled substance, or attempting to manufacture a controlled substance unlawfully***," as used in subsection (c)(1), means that the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), completed the actions sufficient to constitute the offense of unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully.

2. Subsection (b)(2) applies if the conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. § 1319(c), the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9603(b), and 49 U.S.C. § 5124 (relating to violations of laws and regulations enforced by the Department of Transportation with respect to the transportation of hazardous material). Any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under §5E1.1 (Restitution) and in fashioning appropriate conditions of supervision under §§5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release).

3. **Application of Subsection (b)(3).**—For purposes of subsection (b)(3), "***mass-marketing by means of an interactive computer service***" means the solicitation, by means of an interactive computer service, of a large number of persons to induce those persons to purchase a controlled substance. For example, subsection (b)(3) would apply to a defendant who operated a web site to promote the sale of prohibited flasks but would not apply to coconspirators who use an interactive computer service only to communicate with one another in furtherance of the offense. "***Interactive computer service***", for purposes of subsection (b)(3) and this note, has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

Historical Note	Effective November 1, 1991 (amendment 371). Amended effective November 1, 1992 (amendment 447); November 1, 1995 (amendment 520); November 1, 1997 (amendment 558); November 1, 2000 (amendment 605); November 1, 2001 (amendment 626); November 1, 2004 (amendment 667); November 1, 2010 (amendment 746); November 1, 2025 (amendment 836); November 1, 2026 (amendments 837 and 843).

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

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

(1) The offense level from §2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing a Listed Chemical) if the defendant knew or believed that the chemical was to be used to manufacture a controlled substance unlawfully; or

(2) The offense level from §2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical) reduced by **3** levels if the defendant had reason to believe that the chemical was to be used to manufacture a controlled substance unlawfully; or

(3) **6**, otherwise.

Commentary

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

Application Note:

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

Historical Note	Effective November 1, 1991 (amendment 371). Amended effective November 1, 1992 (amendment 447); November 1, 2002 (amendment 646).

§2D1.14. Narco-Terrorism

(a) Base Offense Level:

(1) The offense level from §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) applicable to the underlying offense, except that §2D1.1(a)(5)(A), (a)(5)(B), and (b)(17) shall not apply.

Commentary

Statutory Provision: 21 U.S.C. § 960a.

Historical Note	Effective November 1, 2007 (amendment 700). Amended effective November 1, 2010 (amendments 746 and 748); November 1, 2011 (amendment 750); November 1, 2014 (amendment 783); November 1, 2018 (amendment 807); November 1, 2026 (amendment 837).

* * * * *

2. UNLAWFUL POSSESSION

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

(a) Base Offense Level:

(1) **8**, if the substance is heroin or any Schedule I or II opiate, an analogue of these, or cocaine base; or

(2) **6**, if the substance is cocaine, flunitrazepam, LSD, or PCP; or

(3) **4**, if the substance is any other controlled substance or a list I chemical.

(b) Cross Reference

(1) If the offense involved possession of a controlled substance in a prison, correctional facility, or detention facility, apply §2P1.2 (Providing or Possessing Contraband in Prison).

Commentary

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

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

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 24); November 1, 1989 (amendment 304); November 1, 1990 (amendment 321); November 1, 1992 (amendment 447); September 23, 1994 (amendment 509); November 1, 1995 (amendment 514); November 1, 1997 (amendments 556 and 558); November 1, 2010 (amendments 746 and 748); November 1, 2011 (amendment 750); November 1, 2025 (amendment 836).

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

(a) Base Offense Level: **8**

Commentary

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

Historical Note	Effective November 1, 1987. Amended effective November 1, 1992 (amendment 447).

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

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

(1) **26**, if death resulted; or

(2) **21**, if serious bodily injury resulted; or

(3) **13**, otherwise.

(b) Special Instruction:

(1) If the defendant is convicted of a single count involving the death or serious bodily injury of more than one person, apply subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) as if the defendant had been convicted of a separate count for each such victim.

Commentary

Statutory Provision: 18 U.S.C. § 342.

Background: This section implements the direction to the Commission in section 6482 of the Anti-Drug Abuse Act of 1988. Offenses covered by this guideline may vary widely with regard to harm and risk of harm. The offense levels assume that the offense involved the operation of a common carrier carrying a number of passengers, *e.g.*, a bus.

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 25); November 1, 1989 (amendment 141); November 1, 2023 (amendment 824); November 1, 2025 (amendment 836); November 1, 2026 (amendment 840).

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3. REGULATORY VIOLATIONS

§2D3.1. Regulatory Offenses Involving Registration Numbers; Unlawful Advertising Relating to Scheduled Substances; Attempt or Conspiracy

(a) Base Offense Level: **6**

Commentary

Statutory Provisions: 21 U.S.C. §§ 842(a)(1), 843(a)(1), (2). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1991 (amendment 421); November 1, 1992 (amendment 447); November 1, 1995 (amendment 534); November 1, 2009 (amendment 727).

§2D3.2. Regulatory Offenses Involving Controlled Substances or Listed Chemicals; Attempt or Conspiracy

(a) Base Offense Level: **4**

Commentary

Statutory Provisions: 21 U.S.C. §§ 842(a)(2), (9), (10), (b), 954, 961. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1991 (amendment 421); November 1, 1992 (amendment 447); November 1, 1993 (amendment 481); November 1, 1995 (amendment 534).

§§2D3.3 – 2D3.5. [Deleted]

Historical Note	Section 2D3.3 (Illegal Use of Registration Number to Distribute or Dispense a Controlled Substance to Another Registrant or Authorized Person; Attempt or Conspiracy), effective November 1, 1987, and amended effective November 1, 1991 (amendment 421) and November 1, 1992 (amendment 447), was deleted by consolidation with §2D3.2 effective November 1, 1993 (amendment 481). Section 2D3.4 (Illegal Transfer or Transshipment of a Controlled Substance; Attempt or Conspiracy), effective November 1, 1987, and amended effective November 1, 1990 (amendment 359) and November 1, 1992 (amendment 447), was deleted by consolidation with §2D3.2 effective November 1, 1993 (amendment 481). Section 2D3.5 (Violation of Recordkeeping or Reporting Requirements for Listed Chemicals and Certain Machines; Attempt or Conspiracy), effective November 1, 1991 (amendment 371), and amended effective November 1, 1992 (amendment 447), was deleted by consolidation with §2D3.2 effective November 1, 1993 (amendment 481).

PART E — OFFENSES INVOLVING CRIMINAL ENTERPRISES AND RACKETEERING

1. RACKETEERING

Introductory Commentary

Because of the jurisdictional nature of the offenses included, this subpart covers a wide variety of criminal conduct. The offense level usually will be determined by the offense level of the underlying conduct.

Historical Note	Effective November 1, 1987.

§2E1.1. Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations

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

(1) **19**; or

(2) the offense level applicable to the underlying racketeering activity.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1962, 1963.

Application Notes:

1. Where there is more than one underlying offense, treat each underlying offense as if contained in a separate count of conviction for the purposes of subsection (a)(2). To determine whether subsection (a)(1) or (a)(2) results in the greater offense level, apply Chapter Three, Parts A, B, C, and D to both (a)(1) and (a)(2). Use whichever subsection results in the greater offense level.

2. If the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used.

3. If the offense level for the underlying racketeering activity is less than the alternative minimum level specified (*i.e.*, 19), the alternative minimum base offense level is to be used.

4. Certain conduct may be charged in the count of conviction as part of a "pattern of racketeering activity" even though the defendant has previously been sentenced for that conduct. Where such previously imposed sentence resulted from a conviction prior to the last overt act of the instant offense, treat as a prior sentence under §4A1.2(a)(1) and not as part of the instant offense. This treatment is designed to produce a result consistent with the distinction between the instant offense and criminal history found throughout the guidelines.

Historical Note	Effective November 1, 1987. Amended effective June 15, 1988 (amendment 26); November 1, 1989 (amendment 142); November 1, 2025 (amendment 836).

§2E1.2. Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise

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

(1) **6**; or

(2) the offense level applicable to the underlying crime of violence or other unlawful activity in respect to which the travel or transportation was undertaken.

Commentary

Statutory Provision: 18 U.S.C. § 1952.

Application Notes:

1. Where there is more than one underlying offense, treat each underlying offense as if contained in a separate count of conviction for the purposes of subsection (a)(2). To determine whether subsection (a)(1) or (a)(2) results in the greater offense level, apply Chapter Three, Parts A, B, C, and D to both (a)(1) and (a)(2). Use whichever subsection results in the greater offense level.

2. If the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used.

3. If the offense level for the underlying conduct is less than the alternative minimum base offense level specified (*i.e.*, 6), the alternative minimum base offense level is to be used.

Historical Note	Effective November 1, 1987. Amended effective June 15, 1988 (amendment 27).

§2E1.3. Violent Crimes in Aid of Racketeering Activity

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

(1) **12**; or

(2) the offense level applicable to the underlying crime or racketeering activity.

Commentary

Statutory Provision: 18 U.S.C. § 1959 (formerly 18 U.S.C. § 1952B).

Application Notes:

1. If the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used.

2. If the offense level for the underlying conduct is less than the alternative minimum base offense level specified (*i.e.*, 12), the alternative minimum base offense level is to be used.

Background: The conduct covered under this section ranges from threats to murder. The maximum term of imprisonment authorized by statute ranges from three years to life imprisonment.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 143).

§2E1.4. Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire

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

(1) **32**; or

(2) the offense level applicable to the underlying unlawful conduct.

Commentary

Statutory Provision: 18 U.S.C. § 1958 (formerly 18 U.S.C. § 1952A).

Application Note:

1. If the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used.

Background: This guideline and the statute to which it applies do not require that a murder actually have been committed.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 144); November 1, 1990 (amendment 311); November 1, 1992 (amendment 449).

§2E1.5. [Deleted]

Historical Note	Section 2E1.5 (Hobbs Act Extortion or Robbery), effective November 1, 1987, and amended effective November 1, 1989 (amendment 145), was deleted by consolidation with §§2B3.1, 2B3.2, 2B3.3, and 2C1.1 effective November 1, 1993 (amendment 481).

* * * * *

2. EXTORTIONATE EXTENSION OF CREDIT

§2E2.1. Making or Financing an Extortionate Extension of Credit; Collecting an Extension of Credit by Extortionate Means

(a) Base Offense Level: **20**

(b) Specific Offense Characteristics

(1) (A) If a firearm was discharged increase by **5** levels; or

(B) if a dangerous weapon (including a firearm) was used to convey a specific (not general) threat of harm (*e.g.*, pointing the weapon at a specific victim or victims; directing the movement of a specific victim or victims with the weapon) or to make physical contact with a victim (*e.g.*, pistol whip; weapon placed against victim's body), increase by **4** levels; or

(C) if a dangerous weapon (including a firearm) was brandished or possessed, increase by **3** levels.

(2) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

	DEGREE OF BODILY INJURY	INCREASE IN LEVEL
(A)	Bodily Injury	add **2**
(B)	Serious Bodily Injury	add **4**
(C)	Permanent or Life-Threatening Bodily Injury	add **6**
(D)	If the degree of injury is between that specified in subparagraphs (A) and (B),	add **3** levels; or
(E)	If the degree of injury is between that specified in subparagraphs (B) and (C),	add **5** levels.

Provided, however, that the combined increase from application of paragraphs (1) and (2) shall not exceed **9** levels.

(3) (A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by **4** levels; or

(B) if any person's freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up, to facilitate commission of the offense or to facilitate escape, increase by **2** levels.

(c) Cross Reference

(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).

Commentary

Statutory Provisions: 18 U.S.C. §§ 892–894.

Application Notes:

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

2. **Interpretation of Specific Offense Characteristics.—***See also* Commentary to §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) regarding the interpretation of the specific offense characteristics.

Background: This section refers to offenses involving the making or financing of extortionate extensions of credit, or the collection of loans by extortionate means. These "loan-sharking" offenses typically involve threats of violence and provide economic support for organized crime. The base offense level for these offenses is higher than the offense level for extortion because loan sharking is in most cases a continuing activity. In addition, the guideline does not include the amount of money involved because the amount of money in such cases is often difficult to determine. Other enhancements parallel those in §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 146, 147, and 148); November 1, 1991 (amendment 398); November 1, 1993 (amendment 479); November 1, 2000 (amendment 601); November 1, 2024 (amendment 831); November 1, 2025 (amendment 832).

* * * * *

3. GAMBLING

Introductory Commentary

This subpart covers a variety of proscribed conduct. The adjustments in Chapter Three, Part B (Role in the Offense) are particularly relevant in providing a measure of the scope of the offense and the defendant's participation.

Historical Note	Effective November 1, 1987.

§2E3.1. Gambling Offenses; Animal Fighting Offenses

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

(1) **16**, if the offense involved an animal fighting venture, except as provided in paragraph (3) below;

(2) **12**, if the offense was (A) engaging in a gambling business; (B) transmission of wagering information; or (C) committed as part of, or to facilitate, a commercial gambling operation;

(3) **10**, if the defendant was convicted under 7 U.S.C. § 2156(a)(2)(B); or

(4) **6**, otherwise.

Commentary

Statutory Provisions: 7 U.S.C. § 2156 (felony provisions only); 15 U.S.C. §§ 1172–1175; 18 U.S.C. §§ 1082, 1301–1304, 1306, 1511, 1953, 1955; 31 U.S.C. § 5363. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. **Definition.**—For purposes of this guideline, "***animal fighting venture***" has the meaning given that term in 7 U.S.C. § 2156(f).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendment 481); November 1, 2007 (amendment 703); November 1, 2008 (amendment 721); November 1, 2016 (amendment 800); November 1, 2024 (amendment 831); November 1, 2025 (amendment 836).

§§2E3.2 – 2E3.3. [Deleted]

Historical Note	Section 2E3.2 (Transmission of Wagering Information), effective November 1, 1987, was deleted by consolidation with §2E3.1 effective November 1, 1993 (amendment 481). Section 2E3.3 (Other Gambling Offenses), effective November 1, 1987, was deleted by consolidation with §2E3.1 effective November 1, 1993 (amendment 481).

* * * * *

4. TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO

Historical Note	Effective November 1, 1987. Amended effective November 1, 2007 (amendment 700).

§2E4.1. Unlawful Conduct Relating to Contraband Cigarettes and Smokeless Tobacco

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

(1) **9**; or

(2) the offense level from the table in §2T4.1 (Tax Table) corresponding to the amount of the tax evaded.

Commentary

Statutory Provisions: 18 U.S.C. §§ 2342(a), 2344(a).

Application Note:

1. "***Tax evaded***" refers to state and local excise taxes.

Background: The conduct covered by this section generally involves evasion of state and local excise taxes. At least 10,000 cigarettes must be involved. Because this offense is basically a tax matter, it is graded by use of the tax table in §2T4.1.

Historical Note	Effective November 1, 1987. Amended effective November 1, 2007 (amendment 700); November 1, 2008 (amendment 724).

* * * * *

5. LABOR RACKETEERING

Introductory Commentary

The statutes included in this subpart protect the rights of employees under the Taft–Hartley Act, members of labor organizations under the Labor-Management Reporting and Disclosure Act of 1959, and participants of employee pension and welfare benefit plans covered under the Employee Retirement Income Security Act.

The base offense levels for many of the offenses in this subpart have been determined by reference to analogous sections of the guidelines. Thus, the base offense levels for bribery, theft, and fraud in this subpart generally correspond to similar conduct under other parts of the guidelines. The base offense levels for bribery and graft have been set higher than the level for commercial bribery due to the particular vulnerability to exploitation of the organizations covered by this subpart.

Historical Note	Effective November 1, 1987.

§2E5.1. Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations

(a) Base Offense Level:

(1) **10**, if a bribe; or

(2) **6**, if a gratuity.

(b) Specific Offense Characteristics

(1) If the defendant was a fiduciary of the benefit plan or labor organization, increase by **2** levels.

(2) If the value of the prohibited payment or the value of the improper benefit to the payer, whichever is greater (A) exceeded $3,500 but did not exceed $9,000, increase by **1** level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(c) Special Instruction for Fines — Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of §8C2.4 (Base Fine), use the greatest of: (A) the value of the unlawful payment; (B) if a bribe, the value of the benefit received or to be received in return for the unlawful payment; or (C) if a bribe, the consequential damages resulting from the unlawful payment.

Commentary

Statutory Provisions: 18 U.S.C. § 1954; 29 U.S.C. § 186.

Application Notes:

1. "***Bribe***" refers to the offer or acceptance of an unlawful payment with the specific understanding that it will corruptly affect an official action of the recipient.

2. "***Gratuity***" refers to the offer or acceptance of an unlawful payment other than a bribe.

3. "***Fiduciary of the benefit plan***" is defined in 29 U.S.C. § 1002(21)(A) to mean a person who exercises any discretionary authority or control in respect to the management of such plan or exercises authority or control in respect to management or disposition of its assets, or who renders investment advice for a fee or other direct or indirect compensation with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or who has any discretionary authority or responsibility in the administration of such plan.

4. "***Value of the improper benefit to the payer***" is explained in the Commentary to §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions).

5. If the adjustment for a fiduciary at §2E5.1(b)(1) applies, do not apply the adjustment at §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: This section covers the giving or receipt of bribes and other unlawful gratuities involving employee welfare or pension benefit plans, or labor organizations. The seriousness of the offense is determined by several factors, including the value of the bribe or gratuity and the magnitude of the loss resulting from the transaction.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 149); November 1, 1991 (amendment 422); November 1, 1993 (amendment 481); November 1, 2001 (amendment 617); November 1, 2004 (amendment 666); November 1, 2015 (amendment 791); November 1, 2026 (amendment 838).

§2E5.2. [Deleted]

Historical Note	Section 2E5.2 (Theft or Embezzlement from Employee Pension and Welfare Benefit Plans), effective November 1, 1987, and amended effective June 15, 1988 (amendment 28), November 1, 1989 (amendment 150), and November 1, 1991 (amendment 399), was deleted by consolidation with §2B1.1 effective November 1, 1993 (amendment 481).

§2E5.3. False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act; Destruction and Failure to Maintain Corporate Audit Records

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

(1) **6**; or

(2) If the offense was committed to facilitate or conceal (A) an offense involving a theft, a fraud, or an embezzlement; (B) an offense involving a bribe or a gratuity; or (C) an obstruction of justice offense, apply §2B1.1 (Theft, Property Destruction, and Fraud), §2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of

an Employee Welfare or Pension Benefit Plan; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations), or §2J1.2 (Obstruction of Justice), as applicable.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1027, 1520; 29 U.S.C. §§ 439, 461, 1131. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Background: This section covers the falsification of documents or records relating to a benefit plan covered by ERISA. It also covers failure to maintain proper documents required by the LMRDA or falsification of such documents. Such violations sometimes occur in connection with the criminal conversion of plan funds or schemes involving bribery or graft. Where a violation under this section occurs in connection with another offense, the offense level is determined by reference to the offense facilitated by the false statements or documents.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 151); November 1, 1993 (amendment 481); January 25, 2003 (amendment 647); November 1, 2003 (amendment 653).

§§2E5.4 – 2E5.6. [Deleted]

Historical Note	Section 2E5.4 (Embezzlement or Theft from Labor Unions in the Private Sector), effective November 1, 1987, and amended effective June 15, 1988 (amendment 29) and November 1, 1989 (amendment 152), was deleted by consolidation with §2B1.1 effective November 1, 1993 (amendment 481). Section 2E5.5 (Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act), effective November 1, 1987, and amended effective November 1, 1989 (amendment 153), was deleted by consolidation with §2E5.3 effective November 1, 1993 (amendment 481). Section 2E5.6 (Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations), effective November 1, 1987, and amended effective November 1, 1991 (amendment 422), was deleted by consolidation with §2E5.1 effective November 1, 1993 (amendment 481).

PART F — [DELETED]

Historical Note	The heading to Part F — Offenses Involving Fraud or Deceit, effective November 1, 1987, was deleted due to the deletion of §§2F1.1 and 2F1.2 effective November 1, 2001 (amendment 617).

§§2F1.1 – 2F1.2. [Deleted]

Historical Note	Section 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), effective November 1, 1987, and amended effective June 15, 1988 (amendment 30), November 1, 1989 (amendments 154, 155, 156 and 303), November 1, 1990 (amendment 317), November 1, 1991 (amendments 364 and 393), November 1, 1992 (amendment 470), November 1, 1993 (amendments 481 and 482), November 1, 1995 (amendment 513), November 1, 1997 (amendment 551), November 1, 1998 (amendments 577 and 587), and November 1, 2000 (amendments 595, 596, and 597), was deleted by consolidation with §2B1.1 effective November 1, 2001 (amendment 617). Section 2F1.2 (Insider Trading), effective November 1, 1987, was deleted by consolidation with §2B1.1 effective November 1, 2001 (amendment 617).

PART G — OFFENSES INVOLVING COMMERCIAL SEX ACTS, SEXUAL EXPLOITATION OF MINORS, AND OBSCENITY

Historical Note	Effective November 1, 1987. Amended effective November 1, 2002 (amendment 641).

1. PROMOTING A COMMERCIAL SEX ACT OR PROHIBITED SEXUAL CONDUCT

Historical Note	Effective November 1, 1987. Amended effective November 1, 2000 (amendment 592); November 1, 2002 (amendment 641).

§2G1.1. Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor

(a) Base Offense Level:

(1) **34**, if the offense of conviction is 18 U.S.C. § 1591(b)(1); or

(2) **14**, otherwise.

(b) Specific Offense Characteristic

(1) If (A) subsection (a)(2) applies; and (B)(i) the offense involved fraud or coercion; or (ii) the offense of conviction is 18 U.S.C. § 2421A(b)(2), increase by **4** levels.

(c) Cross Reference

(1) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b) or 18 U.S.C. § 2242, apply §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

(d) Special Instruction

(1) If the offense involved more than one victim, subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) shall be applied as if the promoting of a commercial sex act 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 (only if the offense involved a victim other than a minor); 18 U.S.C. §§ 1591 (only if the offense involved a victim other than a minor), 2421 (only if the offense

involved a victim other than a minor), 2421A (only if the offense involved a victim other than a minor), 2422(a) (only if the offense involved a victim other than a minor). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

   "***Commercial sex act***" has the meaning given that term in 18 U.S.C. § 1591(e)(3).

   "***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 a commercial sex act***" means persuading, inducing, enticing, or coercing a person to engage in a commercial sex act, or to travel to engage in, a commercial sex act.

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

2. **Application of Subsection (b)(1).—**Subsection (b)(1) provides an enhancement for fraud or coercion that occurs as part of the offense and anticipates no bodily injury. For purposes of subsection (b)(1), "***coercion***" includes any form of conduct that negates the voluntariness 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. This characteristic generally will not apply if the drug or alcohol was voluntarily taken.

3. **Application of Chapter Three Adjustment.—**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 a commercial sex act or prohibited sexual conduct in respect to another victim.

4. **Application of Subsection (c)(1).—**

   (A) **Conduct Described in 18 U.S.C. § 2241(a) or (b).—**For purposes of subsection (c)(1), conduct described in 18 U.S.C. § 2241(a) or (b) is engaging in, or causing another person to engage in, a sexual act with another person by: (i) using force against the victim; (ii) threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping; (iii) rendering the victim unconscious; or (iv) administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol.

   (B) **Conduct Described in 18 U.S.C. § 2242.—**For purposes of subsection (c)(1), conduct described in 18 U.S.C. § 2242 is: (i) engaging in, or causing another person to engage in, a sexual act with another person by threatening or placing the victim in fear (other than by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping); or (ii) engaging in, or causing another person to engage in, a sexual act with a victim who is incapable of appraising the nature of the conduct or who is physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act.

5. **Special Instruction at Subsection (d)(1).**—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, a commercial sex act or prohibited sexual conduct is to be treated as a separate victim. Consequently, multiple counts involving more than one victim are subject to the adjustment under subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts). In addition, subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes the promoting of a commercial sex act 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.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 157 and 158); November 1, 1990 (amendment 322); November 1, 1996 (amendment 538); November 1, 2000 (amendment 592); May 1, 2001 (amendment 612); November 1, 2001 (amendment 627); November 1, 2002 (amendment 641); November 1, 2004 (amendment 664); November 1, 2007 (amendment 701); November 1, 2009 (amendment 737); November 1, 2023 (amendment 815); November 1, 2025 (amendment 836); November 1, 2026 (amendment 840).

§2G1.2. [Deleted]

Historical Note	Section 2G1.2 (Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct), effective November 1, 1987, and amended effective November 1, 1989 (amendments 159 and 160), November 1, 1990 (amendment 323), November 1, 1991 (amendment 400), and November 1, 1992 (amendment 444), was deleted by consolidation with §2G1.1 effective November 1, 1996 (amendment 538).

§2G1.3. Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor

(a) Base Offense Level:

(1) **34**, if the defendant was convicted under 18 U.S.C. § 1591(b)(1);

(2) **30**, if the defendant was convicted under 18 U.S.C. § 1591(b)(2);

(3) **28**, if the defendant was convicted under 18 U.S.C. § 2422(b) or § 2423(a); or

(4) **24**, otherwise.

(b) Specific Offense Characteristics

(1) If (A) the defendant was a parent, relative, or legal guardian of the minor; or (B) the minor was otherwise in the custody, care, or supervisory control of the defendant, increase by **2** levels.

(2) If (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 prohibited sexual conduct; or (B) a participant otherwise unduly influenced a minor to engage in prohibited sexual conduct, increase by **2** levels.

(3) If the offense involved the use of a computer or an interactive computer service to (A) persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct; or (B) entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with the minor, increase by **2** levels. *Provided*, however, that subsection (b)(3)(B) shall not apply if the offense of conviction is 18 U.S.C. § 2421A.

(4) (Apply the greater):

(A) If (i) the offense involved the commission of a sex act or sexual contact; or (ii) subsection (a)(3) or (a)(4) applies and the offense involved a commercial sex act, increase by **2** levels.

(B) If (i) subsection (a)(4) applies; and (ii) the offense of conviction is 18 U.S.C. § 2421A(b)(2), increase by **4** levels.

(5) If (A) subsection (a)(3) or (a)(4) applies; and (B) the offense involved a minor who had not attained the age of 12 years, increase by **8** levels.

(c) Cross References

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor 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), if the resulting offense level is greater than that determined above.

(2) If a minor 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), if the resulting offense level is greater than that determined above.

(3) If the offense involved conduct described in 18 U.S.C. § 2241 or § 2242, apply §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal

Sexual Abuse), if the resulting offense level is greater than that determined above. If the offense involved interstate travel with intent to engage in a sexual act with a minor who had not attained the age of 12 years, or knowingly engaging in a sexual act with a minor who had not attained the age of 12 years, §2A3.1 shall apply, regardless of the "consent" of the minor.

(d) Special Instruction

(1) If the offense involved more than one minor, subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) shall be applied as if the persuasion, enticement, coercion, travel, or transportation to engage in a commercial sex act or prohibited sexual conduct of each victim had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 8 U.S.C. § 1328 (only if the offense involved a minor); 18 U.S.C. §§ 1591 (only if the offense involved a minor), 2421 (only if the offense involved a minor), 2421A (only if the offense involved a minor), 2422 (only if the offense involved a minor), 2423, 2425. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Commercial sex act***" has the meaning given that term in 18 U.S.C. § 1591(e)(3).

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Illicit sexual conduct***" has the meaning given that term in 18 U.S.C. § 2423(f).

"***Interactive computer service***" has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

"***Minor***" means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

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

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

"***Sexual act***" has the meaning given that term in 18 U.S.C. § 2246(2).

"***Sexual contact***" has the meaning given that term in 18 U.S.C. § 2246(3).

2. **Application of Subsection (b)(1).—**

(A) **Custody, Care, or Supervisory Control.—**Subsection (b)(1) 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 minor and not simply to the legal status of the defendant-minor relationship.

(B) **Inapplicability of Chapter Three Adjustment.—**If the enhancement under subsection (b)(1) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

3. **Application of Subsection (b)(2).—**

(A) **Misrepresentation of Participant's Identity.—**The enhancement in subsection (b)(2)(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 prohibited sexual conduct. Subsection (b)(2)(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)(2)(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)(2)(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 prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

(B) **Undue Influence.—**In determining whether subsection (b)(2)(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. The voluntariness of the minor's behavior may be compromised without prohibited sexual conduct occurring.

However, subsection (b)(2)(B) does not apply in a case in which the only "minor" (as defined in Application Note 1) involved in the offense is an undercover law enforcement officer.

In a case in which a participant is at least 10 years older than the minor, there shall be a rebuttable presumption that subsection (b)(2)(B) applies. 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.

4. **Application of Subsection (b)(3)(A).—**Subsection (b)(3)(A) is intended to apply only to the use of a computer or an interactive computer service 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)(3)(A) would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's Internet site.

5. **Application of Subsection (c).—**

(A) **Application of Subsection (c)(1).—**The cross reference in subsection (c)(1) is to be construed broadly and includes all instances in which the offense involved employing, using,

persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice, advertisement or other method, a minor 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(2).

(B) **Application of Subsection (c)(3).**—For purposes of subsection (c)(3), conduct described in 18 U.S.C. § 2241 means conduct described in 18 U.S.C. § 2241(a), (b), or (c). Accordingly, for purposes of subsection (c)(3):

(i) Conduct described in 18 U.S.C. § 2241(a) or (b) is engaging in, or causing another person to engage in, a sexual act with another person: (I) using force against the minor; (II) threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping; (III) rendering the minor unconscious; or (IV) administering by force or threat of force, or without the knowledge or permission of the minor, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the minor to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the minor to appraise or control conduct was substantially impaired by drugs or alcohol.

(ii) Conduct described in 18 U.S.C. § 2241(c) is: (I) interstate travel with intent to engage in a sexual act with a minor who has not attained the age of 12 years; (II) knowingly engaging in a sexual act with a minor who has not attained the age of 12 years; or (III) knowingly engaging in a sexual act under the circumstances described in 18 U.S.C. § 2241(a) and (b) with a minor who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging).

(iii) Conduct described in 18 U.S.C. § 2242 is: (I) engaging in, or causing another person to engage in, a sexual act with another person by threatening or placing the minor in fear (other than by threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping); or (II) engaging in, or causing another person to engage in, a sexual act with a minor who is incapable of appraising the nature of the conduct or who is physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act.

6. **Application of Subsection (d)(1).**—For the purposes of Chapter Three, Part D (Multiple Counts), each minor transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, a commercial sex act or prohibited sexual conduct is to be treated as a separate minor. Consequently, multiple counts involving more than one minor are subject to the adjustment under subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts). In addition, subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes travel or transportation to engage in a commercial sex act or prohibited sexual conduct in respect to more than one minor, whether specifically cited in the count of conviction, each such minor shall be treated as if contained in a separate count of conviction.

Historical Note	Effective November 1, 2004 (amendment 664). Amended effective November 1, 2007 (amendment 701); November 1, 2009 (amendments 732 and 737); November 1, 2018 (amendment 812); November 1, 2023 (amendment 815); November 1, 2025 (amendment 836); November 1, 2026 (amendments 840 and 843).

* * * * *

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: **32**

(b) Specific Offense Characteristics

(1) If the offense involved a minor 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) (Apply the greater) If the offense involved—

(A) the commission of a sexual act or sexual contact, increase by **2** levels; or

(B) (i) the commission of a sexual act; and (ii) conduct described in 18 U.S.C. § 2241(a) or (b), increase by **4** levels.

(3) If the defendant knowingly engaged in distribution, increase by **2** levels.

(4) If the offense involved material that portrays (A) sadistic or masochistic conduct or other depictions of violence; or (B) an infant or toddler, increase by **4** levels.

(5) 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.

(6) If, for the purpose of producing sexually explicit material or for the purpose of transmitting such material live, 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 in sexually explicit conduct; or (B) the use of a computer or an interactive computer service 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) Cross Reference

(1) If the victim was killed in 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), if the resulting offense level is greater than that determined above.

(d) Special Instruction

(1) If the offense involved the exploitation of more than one minor, subsection (b) of §3D1.1 (Procedure for Determining Offense Level on 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)–(c), 2251(d)(1)(B), 2260(a). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Distribution***" means any act, including possession with intent to distribute, production, transmission, advertisement, and transportation, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing but does not include the mere solicitation of such material by a defendant.

"***Interactive computer service***" has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

"***Material***" includes a visual depiction, as defined in 18 U.S.C. § 2256.

"***Minor***" means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

"***Sexually explicit conduct***" has the meaning given that term in 18 U.S.C. § 2256(2).

2. **Application of Subsection (b)(2).—**For purposes of subsection (b)(2):

"***Conduct described in 18 U.S.C. § 2241(a) or (b)***" is: (i) using force against the minor; (ii) threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping; (iii) rendering the minor unconscious; or (iv) administering by force or threat of force, or without the knowledge or permission of the minor, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the minor to appraise

or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the minor to appraise or control conduct was substantially impaired by drugs or alcohol.

"***Sexual act***" has the meaning given that term in 18 U.S.C. § 2246(2).

"***Sexual contact***" has the meaning given that term in 18 U.S.C. § 2246(3).

3. **Application of Subsection (b)(3).**—For purposes of subsection (b)(3), the defendant "knowingly engaged in distribution" if the defendant (A) knowingly committed the distribution, (B) aided, abetted, counseled, commanded, induced, procured, or willfully caused the distribution, or (C) conspired to distribute.

4. **Interaction of Subsection (b)(4)(B) and Vulnerable Victim (§3A1.1(b)).**—If subsection (b)(4)(B) applies, do not apply §3A1.1(b).

5. **Application of Subsection (b)(5).—**

   (A) **In General.**—Subsection (b)(5) 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 minor and not simply to the legal status of the defendant-minor relationship.

   (B) **Inapplicability of Chapter Three Adjustment.**—If the enhancement in subsection (b)(5) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

6. **Application of Subsection (b)(6).—**

   (A) **Misrepresentation of Participant's Identity.**—The enhancement in subsection (b)(6)(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 or for the purpose of transmitting such material live. Subsection (b)(6)(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)(6)(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)(6)(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 or for the purpose of transmitting such material live. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

   (B) **Use of a Computer or an Interactive Computer Service.**—Subsection (b)(6)(B) provides an enhancement if the offense involved the use of a computer or an interactive computer service 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 for

the purpose of transmitting such material live or otherwise to solicit participation by a minor in such conduct for such purposes. Subsection (b)(6)(B) is intended to apply only to the use of a computer or an interactive computer service 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 interactive computer service to obtain airline tickets for the minor from an airline's Internet site.

7. **Application of Subsection (d)(1).**—For the purposes of Chapter Three, Part D (Multiple Counts), each minor exploited is to be treated as a separate minor. Consequently, multiple counts involving the exploitation of different minors are subject to the adjustment under subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts). Subsection (d)(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.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 161); November 1, 1990 (amendment 324); November 1, 1991 (amendment 400); November 1, 1996 (amendment 537); November 1, 1997 (amendment 575); November 1, 2000 (amendment 592); May 1, 2001 (amendment 612); November 1, 2001 (amendment 627); November 1, 2003 (amendment 661); November 1, 2004 (amendment 664); November 1, 2009 (amendments 733, 736, and 737); November 1, 2016 (amendment 801); November 1, 2023 (amendment 824); November 1, 2025 (amendment 836); November 1, 2026 (amendments 840 and 843).

§2G2.2. Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possessing Material Involving the Sexual Exploitation of a Minor

(a) Base Offense Level:

(1) **18**, if the defendant is convicted of 18 U.S.C. § 1466A(b), § 2252(a)(4), § 2252A(a)(5), or § 2252A(a)(7).

(2) **22**, otherwise.

(b) Specific Offense Characteristics

(1) If (A) subsection (a)(2) applies; (B) the defendant's conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor; and (C) the defendant did not intend to traffic in, or distribute, such material, decrease by **2** levels.

(2) If the material involved a prepubescent minor or a minor who had not attained the age of 12 years, increase by **2** levels.

(3) (Apply the greatest):

(A) If the offense involved distribution for pecuniary gain, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the retail value of the material, but by not less than **5** levels.

(B) If the defendant distributed in exchange for any valuable consideration, but not for pecuniary gain, increase by **5** levels.

(C) If the offense involved distribution to a minor, increase by **5** levels.

(D) If the offense involved distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, other than illegal activity covered under subparagraph (E), increase by **6** levels.

(E) If the offense involved distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct, increase by **7** levels.

(F) If the defendant knowingly engaged in distribution, other than distribution described in subparagraphs (A) through (E), increase by **2** levels.

(4) If the offense involved material that portrays (A) sadistic or masochistic conduct or other depictions of violence; or (B) sexual abuse or exploitation of an infant or toddler, increase by **4** levels.

(5) If the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor, increase by **5** levels.

(6) If the offense involved the use of a computer or an interactive computer service for the possession, transmission, receipt, or distribution of the material, or for accessing with intent to view the material, increase by **2** levels.

(7) If the offense involved—

(A) at least 10 images, but fewer than 150, increase by **2** levels;

(B) at least 150 images, but fewer than 300, increase by **3** levels;

(C) at least 300 images, but fewer than 600, increase by **4** levels; and

(D) 600 or more images, increase by **5** levels.

(c) Cross Reference

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct or for the purpose of transmitting a live 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), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1466A, 2252, 2252A(a)–(b), 2260(b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Distribution***" means any act, including possession with intent to distribute, production, transmission, advertisement, and transportation, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing but does not include the mere solicitation of such material by a defendant.

"***Distribution for pecuniary gain***" means distribution for profit.

"***The defendant distributed in exchange for any valuable consideration***" means the defendant agreed to an exchange with another person under which the defendant knowingly distributed to that other person for the specific purpose of obtaining something of valuable consideration from that other person, such as other child pornographic material, preferential access to child pornographic material, or access to a child.

"***Distribution to a minor***" means the knowing distribution to an individual who is a minor at the time of the offense.

"***Interactive computer service***" has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

"***Material***" includes a visual depiction, as defined in 18 U.S.C. § 2256.

"***Minor***" means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

"***Pattern of activity involving the sexual abuse or exploitation of a minor***" means any combination of two or more separate instances of the sexual abuse or sexual exploitation of a minor by the defendant, whether or not the abuse or exploitation (A) occurred during the course of the offense; (B) involved the same minor; or (C) resulted in a conviction for such conduct.

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

"***Sexual abuse or exploitation***" means any of the following: (A) conduct described in 18 U.S.C. § 2241, § 2242, § 2243, § 2251(a)–(c), § 2251(d)(1)(B), § 2251A, § 2260(b), § 2421, § 2422, or § 2423; (B) an offense under state law, that would have been an offense under any such section if the offense had occurred within the special maritime or territorial jurisdiction of the United States; or (C) an attempt or conspiracy to commit any of the offenses under subparagraphs (A) or (B). "Sexual abuse or exploitation" does not include possession, accessing with intent to view, receipt, or trafficking in material relating to the sexual abuse or exploitation of a minor.

2. **Application of Subsection (b)(3)(F).**—For purposes of subsection (b)(3)(F), the defendant "knowingly engaged in distribution" if the defendant (A) knowingly committed the distribution, (B) aided, abetted, counseled, commanded, induced, procured, or willfully caused the distribution, or (C) conspired to distribute.

3. **Application of Subsection (b)(4)(A).**—Subsection (b)(4)(A) applies if the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, regardless of whether the defendant specifically intended to possess, access with intent to view, receive, or distribute such materials.

4. **Interaction of Subsection (b)(4)(B) and Vulnerable Victim (§3A1.1(b)).**—If subsection (b)(4)(B) applies, do not apply §3A1.1(b).

5. **Application of Subsection (b)(5).**—A conviction taken into account under subsection (b)(5) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

6. **Application of Subsection (b)(7).—**

   (A) **Definition of "Images".**—"***Images***" means any visual depiction, as defined in 18 U.S.C. § 2256(5), that constitutes child pornography, as defined in 18 U.S.C. § 2256(8).

   (B) **Determining the Number of Images.**—For purposes of determining the number of images under subsection (b)(7):

      (i) Each photograph, picture, computer or computer-generated image, or any similar visual depiction shall be considered to be one image.

      (ii) Each video, video-clip, movie, or similar visual depiction shall be considered to have 75 images.

7. **Application of Subsection (c)(1).—**

   (A) **In General.**—The cross reference in subsection (c)(1) is to be construed broadly and includes all instances where the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement,

a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting live any visual depiction of such conduct.

(B) **Definition.**—"***Sexually explicit conduct***" has the meaning given that term in 18 U.S.C. § 2256(2).

8. **Cases Involving Adapted or Modified Depictions.**—If the offense involved material that is an adapted or modified depiction of an identifiable minor (*e.g.*, a case in which the defendant is convicted under 18 U.S.C. § 2252A(a)(7)), the term "material involving the sexual exploitation of a minor" includes such material.

Background: Section 401(i)(1)(C) of Public Law 108–21 directly amended subsection (b) to add paragraph (7), effective April 30, 2003.

Historical Note	Effective November 1, 1987. Amended effective June 15, 1988 (amendment 31); November 1, 1990 (amendment 325); November 1, 1991 (amendment 372); November 27, 1991 (amendment 435); November 1, 1996 (amendment 537); November 1, 1997 (amendment 575); November 1, 2000 (amendment 592); November 1, 2001 (amendment 617); April 30, 2003 (amendment 649); November 1, 2003 (amendment 661); November 1, 2004 (amendment 664); November 1, 2009 (amendments 733 and 736); November 1, 2016 (amendment 801); November 1, 2025 (amendment 836); November 1, 2026 (amendment 843).

§2G2.3. Selling or Buying of Children for Use in the Production of Pornography

(a) Base Offense Level: **38**

Commentary

Statutory Provision: 18 U.S.C. § 2251A.

Background: The statutory minimum sentence for a defendant convicted under 18 U.S.C. § 2251A is thirty years imprisonment.

Historical Note	Effective November 1, 1989 (amendment 162). Amended effective November 1, 2009 (amendment 736).

§2G2.4. [Deleted]

Historical Note	Section 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct), effective November 1, 1991 (amendment 372), and amended effective November 27, 1991 (amendment 436), November 1, 1996 (amendment 537), November 1, 2000 (amendment 592), and April 30, 2003 (amendment 649), was deleted by consolidation with §2G2.2 effective November 1, 2004 (amendment 664).

§2G2.5. Recordkeeping Offenses Involving the Production of Sexually Explicit Materials; Failure to Provide Required Marks in Commercial Electronic Email

(a) Base Offense Level: **6**

(b) Cross References

(1) If the offense reflected an effort to conceal a substantive offense that involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor 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 reflected an effort to conceal a substantive offense that involved trafficking in material involving the sexual exploitation of a minor (including receiving, transporting, advertising, or possessing material involving the sexual exploitation of a minor with intent to traffic), apply §2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Advertising, or Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic).

Commentary

Statutory Provisions: 15 U.S.C. § 7704(d); 18 U.S.C. §§ 2257, 2257A.

Historical Note	Effective November 1, 1991 (amendment 372). Amended effective November 1, 2006 (amendment 689); November 1, 2007 (amendment 701).

§2G2.6. Child Exploitation Enterprises

(a) Base Offense Level: **35**

(b) Specific Offense Characteristics

(1) If a victim (A) had not attained the age of 12 years, increase by **4** levels; or (B) had attained the age of 12 years but had not attained the age of 16 years, increase by **2** levels.

(2) If (A) the defendant was a parent, relative, or legal guardian of a minor victim; or (B) a minor victim was otherwise in the custody, care, or supervisory control of the defendant, increase by **2** levels.

(3) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b), increase by **2** levels.

(4) If a computer or an interactive computer service was used in furtherance of the offense, increase by **2** levels.

Commentary

Statutory Provision: 18 U.S.C. § 2252A(g).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Interactive computer service***" has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

"***Minor***" means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years; and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

2. **Application of Subsection (b)(2).—**

(A) **Custody, Care, or Supervisory Control.—**Subsection (b)(2) 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 minor and not simply to the legal status of the defendant-minor relationship.

(B) **Inapplicability of Chapter Three Adjustment.—**If the enhancement under subsection (b)(2) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

3. **Application of Subsection (b)(3).—**For purposes of subsection (b)(3), "***conduct described in 18 U.S.C. § 2241(a) or (b)***" is: (i) using force against the minor; (ii) threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping; (iii) rendering the minor unconscious; or (iv) administering by force or threat of force, or without the knowledge or permission of the minor, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the minor to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the minor to appraise or control conduct was substantially impaired by drugs or alcohol.

Historical Note	Effective November 1, 2007 (amendment 701). Amended effective November 1, 2026 (amendment 843).

* * * * *

3. OBSCENITY

§2G3.1. Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor; Misleading Domain Names

(a) Base Offense Level: **10**

(b) Specific Offense Characteristics

(1) (Apply the Greatest):

(A) If the offense involved distribution for pecuniary gain, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the retail value of the material, but by not less than **5** levels.

(B) If the defendant distributed in exchange for any valuable consideration, but not for pecuniary gain, increase by **5** levels.

(C) If the offense involved distribution to a minor, increase by **5** levels.

(D) If the offense involved distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, other than illegal activity covered under subparagraph (E), increase by **6** levels.

(E) If the offense involved distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct, increase by **7** levels.

(F) If the defendant knowingly engaged in distribution, other than distribution described in subparagraphs (A) through (E), increase by **2** levels.

(2) If, with the intent to deceive a minor into viewing material that is harmful to minors, the offense involved the use of (A) a misleading domain name on the Internet; or (B) embedded words or digital images in the source code of a website, increase by **2** levels.

(3) If the offense involved the use of a computer or an interactive computer service, increase by **2** levels.

(4) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by **4** levels.

(c) Cross Reference

(1) If the offense involved transporting, distributing, receiving, possessing, or advertising to receive material involving the sexual exploitation of a minor, apply §2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possessing Material Involving the Sexual Exploitation of a Minor).

Commentary

Statutory Provisions: 18 U.S.C. §§ 1460–1463, 1465, 1466, 1470, 2252B, 2252C. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Distribution***" means any act, including possession with intent to distribute, production, transmission, advertisement, and transportation, related to the transfer of obscene matter. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing but does not include the mere solicitation of such material by a defendant.

"***Distribution for pecuniary gain***" means distribution for profit.

"***The defendant distributed in exchange for any valuable consideration***" means the defendant agreed to an exchange with another person under which the defendant knowingly distributed to that other person for the specific purpose of obtaining something of valuable consideration from that other person, such as other obscene material, preferential access to obscene material, or access to a child.

"***Distribution to a minor***" means the knowing distribution to an individual who is a minor at the time of the offense.

"***Interactive computer service***" has the meaning given that term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

"***Material that is harmful to minors***" has the meaning given that term in 18 U.S.C. § 2252B(d).

"***Minor***" means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

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

"***Sexually explicit conduct***" has the meaning given that term in 18 U.S.C. § 2256(2).

2. **Application of Subsection (b)(1)(F).—**For purposes of subsection (b)(1)(F), the defendant "knowingly engaged in distribution" if the defendant (A) knowingly committed the distribution, (B) aided, abetted, counseled, commanded, induced, procured, or willfully caused the distribution, or (C) conspired to distribute.

3. **Inapplicability of Subsection (b)(3).—**If the defendant is convicted of 18 U.S.C. § 2252B or § 2252C, subsection (b)(3) shall not apply.

4. **Application of Subsection (b)(4).—**Subsection (b)(4) applies if the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, regardless of whether the defendant specifically intended to possess, receive, or distribute such materials.

Background: Most federal prosecutions for offenses covered in this guideline are directed to offenses involving distribution for pecuniary gain. Consequently, the offense level under this section generally will be at least 15.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 163); November 1, 1990 (amendment 326); November 1, 1991 (amendment 372); November 27, 1991 (amendment 437); November 1, 2000 (amendment 592); November 1, 2001 (amendment 617); November 1, 2004 (amendment 664); November 1, 2007 (amendment 701); November 1, 2009 (amendment 736); November 1, 2010 (amendment 746); November 1, 2016 (amendment 801); November 1, 2026 (amendment 843).

§2G3.2. Obscene Telephone Communications for a Commercial Purpose; Broadcasting Obscene Material

(a) Base Offense Level: **12**

Commentary

Statutory Provisions: 18 U.S.C. §§ 1464, 1468; 47 U.S.C. § 223(b)(1)(A).

Historical Note	Effective November 1, 1989 (amendment 164). Amended effective November 1, 2000 (amendment 592); November 1, 2001 (amendment 617); November 1, 2026 (amendment 837). A former §2G3.2 (Obscene or Indecent Telephone Communications), effective November 1, 1987, was deleted effective November 1, 1989 (amendment 164).

PART H — OFFENSES INVOLVING INDIVIDUAL RIGHTS

1. CIVIL RIGHTS

Historical Note	Introductory Commentary to Part H, Subpart 1, effective November 1, 1987, was deleted effective November 1, 1995 (amendment 521).

§2H1.1. Offenses Involving Individual Rights

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

(1) the offense level from the offense guideline applicable to any underlying offense;

(2) **12**, if the offense involved two or more participants;

(3) **10**, if the offense involved (A) the use or threat of force against a person; or (B) property damage or the threat of property damage; or

(4) **6**, otherwise.

(b) Specific Offense Characteristic

(1) If (A) the defendant was a public official at the time of the offense; or (B) the offense was committed under color of law, increase by **6** levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 241, 242, 245(b), 246–250, 1091; 42 U.S.C. § 3631.

Application Notes:

1. "***Offense guideline applicable to any underlying offense***" means the offense guideline applicable to any conduct established by the offense of conviction that constitutes an offense under federal, state, or local law (other than an offense that is itself covered under Chapter Two, Part H, Subpart 1).

In certain cases, conduct set forth in the count of conviction may constitute more than one underlying offense (*e.g.*, two instances of assault, or one instance of assault and one instance of arson). In such cases, use the following comparative procedure to determine the applicable base offense level: (i) determine the underlying offenses encompassed within the count of conviction as if the defendant had been charged with a conspiracy to commit multiple offenses. *See* Application Note 4 of §1B1.2 (Applicable Guidelines); (ii) determine the Chapter Two offense level (*i.e.*, the base offense level, specific offense characteristics, cross references, and special instructions) for each such underlying offense; and (iii) compare each of the Chapter Two offense levels determined above with the alternative base offense level under subsection (a)(2), (3), or (4). The determination of the applicable alternative base offense level is to be based on the entire conduct

underlying the count of conviction (*i.e.*, the conduct taken as a whole). Use the alternative base offense level only if it is greater than each of the Chapter Two offense levels determined above. Otherwise, use the Chapter Two offense levels for each of the underlying offenses (with each underlying offense treated as if contained in a separate count of conviction). Then apply subsection (b) to the alternative base offense level, or to the Chapter Two offense levels for each of the underlying offenses, as appropriate.

2. "***Participant***" is defined in the Commentary to §3B1.1 (Aggravating Role).

3. The burning or defacement of a religious symbol with an intent to intimidate shall be deemed to involve the threat of force against a person for the purposes of subsection (a)(3)(A).

4. If the finder of fact at trial or, in the case of a plea of guilty or *nolo contendere*, the court at sentencing determines beyond a reasonable doubt that the defendant intentionally selected any victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation of any person, an additional 3-level enhancement from §3A1.1(a) will apply. An adjustment from §3A1.1(a) will not apply, however, if a 6-level adjustment from §2H1.1(b) applies. *See* §3A1.1(c).

5. If subsection (b)(1) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 303); November 1, 1990 (amendments 313 and 327); November 1, 1991 (amendment 430); November 1, 1995 (amendment 521); November 1, 2000 (amendment 591); November 1, 2010 (amendment 743); November 1, 2023 (amendment 816).

§§2H1.2 – 2H1.5. [Deleted]

Historical Note	Section 2H1.2 (Conspiracy to Interfere with Civil Rights), effective November 1, 1987, and amended effective November 1, 1989 (amendment 303), was deleted by consolidation with §2H1.1 effective November 1, 1990 (amendment 327). Section 2H1.3 (Use of Force or Threat of Force to Deny Benefits or Rights in Furtherance of Discrimination; Damage to Religious Real Property), effective November 1, 1987, and amended effective November 1, 1989 (amendment 165), was deleted by consolidation with §2H1.1 effective November 1, 1995 (amendment 521). Section 2H1.4 (Interference with Civil Rights Under Color of Law), effective November 1, 1987, amended effective November 1, 1989 (amendment 166), was deleted by consolidation with §2H1.1 effective November 1, 1995 (amendment 521). Section 2H1.5 (Other Deprivations of Rights or Benefits in Furtherance of Discrimination), effective November 1, 1987, and amended effective November 1, 1989 (amendment 167) and November 1, 1990 (amendment 328), was deleted by consolidation with §2H1.1 effective November 1, 1995 (amendment 521).

* * * * *

2. POLITICAL RIGHTS

§2H2.1. Obstructing an Election or Registration

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

(1) **18**, if the obstruction occurred by use of force or threat of force against person(s) or property; or

(2) **12**, if the obstruction occurred by forgery, fraud, theft, bribery, deceit, or other means, except as provided in paragraph (3) below; or

(3) **6**, if the defendant (A) solicited, demanded, accepted, or agreed to accept anything of value to vote, refrain from voting, vote for or against a particular candidate, or register to vote, (B) gave false information to establish eligibility to vote, or (C) voted more than once in a federal election.

Commentary

Statutory Provisions: 18 U.S.C. §§ 241, 242, 245(b)(1)(A), 592, 593, 594, 597, 1015(f); 52 U.S.C. §§ 10307, 10308(a), (b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Background: Alternative base offense levels cover three major ways of obstructing an election: by force, by deceptive or dishonest conduct, or by bribery. A defendant who is a public official or who directs others to engage in criminal conduct is subject to an enhancement from Chapter Three, Part B (Role in the Offense).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 168); November 1, 1995 (amendment 534); November 1, 2003 (amendment 661); November 1, 2015 (amendment 796); November 1, 2024 (amendment 831); November 1, 2025 (amendment 836).

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3. PRIVACY AND EAVESDROPPING

§2H3.1. Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information

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

(1) **9**; or

(2) **6**, if the offense of conviction has a statutory maximum term of imprisonment of one year or less but more than six months.

(b) Specific Offense Characteristic

(1) If (A) the defendant is convicted under 18 U.S.C. § 1039(d) or (e); or (B) the purpose of the offense was to obtain direct or indirect commercial advantage or economic gain, increase by **3** levels.

(c) Cross Reference

(1) If the purpose of the offense was to facilitate another offense, apply the guideline applicable to an attempt to commit that other offense, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 8 U.S.C. § 1375a(d)(5)(B)(i), (ii); 15 U.S.C. § 9901; 18 U.S.C. §§ 119, 1039, 1905, 2511; 26 U.S.C. §§ 7213(a)(1)–(3), (a)(5), (d), 7213A, 7216; 42 U.S.C. §§ 16962, 16984; 44 U.S.C. § 3572; 47 U.S.C. § 605. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Satellite Cable Transmissions.**—If the offense involved interception of satellite cable transmissions for purposes of commercial advantage or private financial gain (including avoiding payment of fees), apply §2B5.3 (Criminal Infringement of Copyright) rather than this guideline.

2. **Imposition of Sentence for 18 U.S.C. § 1039(d) and (e).**—Subsections 1039(d) and (e) of title 18, United States Code, require a term of imprisonment of not more than 5 years to be imposed in addition to any sentence imposed for a conviction under 18 U.S.C. § 1039(a), (b), or (c). In order to comply with the statute, the court should determine the appropriate "total punishment" and divide the sentence on the judgment form between the sentence attributable to the conviction under 18 U.S.C. § 1039(d) or (e) and the sentence attributable to the conviction under 18 U.S.C. § 1039(a), (b), or (c), specifying the number of months to be served for the conviction under 18 U.S.C. § 1039(d) or (e). For example, if the applicable adjusted guideline range is 15–21 months and the court determines a "total punishment" of 21 months is appropriate, a sentence of 9 months for conduct under 18 U.S.C. § 1039(a) plus 12 months for 18 U.S.C. § 1039(d) conduct would achieve the "total punishment" in a manner that satisfies the statutory requirement.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 169); November 1, 2001 (amendment 628); May 1, 2007 (amendment 697); November 1, 2007 (amendment 708); November 1, 2008 (amendment 718); November 1, 2009 (amendments 726 and 737); November 1, 2014 (amendment 781); November 1, 2023 (amendments 815 and 824); November 1, 2025 (amendment 836); November 1, 2026 (amendments 837 and 842).

§2H3.2. Manufacturing, Distributing, Advertising, or Possessing an Eavesdropping Device

(a) Base Offense Level: **6**

(b) Specific Offense Characteristic

(1) If the offense was committed for pecuniary gain, increase by **3** levels.

Commentary

Statutory Provision: 18 U.S.C. § 2512.

Historical Note	Effective November 1, 1987.

§2H3.3. Obstructing Correspondence

(a) Base Offense Level:

(1) **6**; or

(2) if the conduct was theft or destruction of mail, apply §2B1.1 (Theft, Property Destruction, and Fraud).

Commentary

Statutory Provision: 18 U.S.C. § 1702. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Background: The statutory provision covered by this guideline is sometimes used to prosecute offenses more accurately described as theft or destruction of mail. In such cases, §2B1.1 (Theft, Property Destruction, and Fraud) is to be applied.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 313); November 1, 2001 (amendment 617).

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4. PEONAGE, INVOLUNTARY SERVITUDE, SLAVE TRADE, AND CHILD SOLDIERS

Historical Note	Effective November 1, 1987. Amended effective November 1, 2009 (amendment 733).

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

(a) Base Offense Level:

(1) **22**; or

(2) **18**, if (A) the defendant was convicted of an offense under 18 U.S.C. § 1592, or (B) the defendant was convicted of an offense under 18 U.S.C. § 1593A based on an act in violation of 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, 1593A, 2442.

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).

"***Peonage or involuntary servitude***" includes forced labor, slavery, and recruitment or use of a child soldier.

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 offenses to which §3D1.1(a) applies) is to be used. *See* Application Note 3 of §1B1.5 (Interpretation of References to other Offense Guidelines).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1995 (amendment 521); May 1, 1997 (amendment 542); November 1, 1997 (amendment 559); May 1, 2001 (amendment 612); November 1, 2001 (amendment 627); November 1, 2009 (amendments 730 and 733); November 1, 2025 (amendment 836); November 1, 2026 (amendment 840).

§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 (A) serious bodily injury, increase by **4** levels; or (B) 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 (amendment 612). Amended effective November 1, 2001 (amendment 627); November 1, 2010 (amendment 746); November 1, 2015 (amendment 796).

PART I — [NOT USED]

PART J — OFFENSES INVOLVING THE ADMINISTRATION OF JUSTICE

§2J1.1. Contempt

Apply §2X5.1 (Other Offenses).

Commentary

Statutory Provisions: 18 U.S.C. §§ 401, 228. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **In General.**—Because misconduct constituting contempt varies significantly and the nature of the contemptuous conduct, the circumstances under which the contempt was committed, the effect the misconduct had on the administration of justice, and the need to vindicate the authority of the court are highly context-dependent, the Commission has not provided a specific guideline for this offense. In certain cases, the offense conduct will be sufficiently analogous to §2J1.2 (Obstruction of Justice) for that guideline to apply.

2. **Willful Failure to Pay Court-Ordered Child Support.**—For offenses involving the willful failure to pay court-ordered child support (violations of 18 U.S.C. § 228), the most analogous guideline is §2B1.1 (Theft, Property Destruction, and Fraud). The amount of the loss is the amount of child support that the defendant willfully failed to pay. In such a case, do not apply §2B1.1(b)(9)(C) (pertaining to a violation of a prior, specific judicial order). *Note*: This guideline applies to second and subsequent offenses under 18 U.S.C. § 228(a)(1) and to any offense under 18 U.S.C. § 228(a)(2) and (3). A first offense under 18 U.S.C. § 228(a)(1) is not covered by this guideline because it is a Class B misdemeanor.

3. **Violation of Judicial Order Enjoining Fraudulent Behavior.**—In a case involving a violation of a judicial order enjoining fraudulent behavior, the most analogous guideline is §2B1.1. In such a case, §2B1.1(b)(9)(C) (pertaining to a violation of a prior, specific judicial order) ordinarily would apply.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 170 and 171); November 1, 1993 (amendment 496); November 1, 1998 (amendment 588); November 1, 2001 (amendment 617); November 1, 2003 (amendment 653); November 1, 2009 (amendment 736); November 1, 2011 (amendments 752 and 760).

§2J1.2. Obstruction of Justice

(a) Base Offense Level: **14**

(b) Specific Offense Characteristics

(1) (Apply the greatest):

(A) If the (i) defendant was convicted under 18 U.S.C. § 1001; and (ii) statutory maximum term of eight years' imprisonment applies because the matter relates to sex offenses under 18 U.S.C. § 1591 or chapters 109A, 109B, 110, or 117 of title 18, United States Code, increase by **4** levels.

(B) If the offense involved causing or threatening to cause physical injury to a person, or property damage, in order to obstruct the administration of justice, increase by **8** levels.

(C) If the (i) defendant was convicted under 18 U.S.C. § 1001 or § 1505; and (ii) statutory maximum term of eight years' imprisonment applies because the matter relates to international terrorism or domestic terrorism, increase by **12** levels.

(2) If the offense resulted in substantial interference with the administration of justice, increase by **3** levels.

(3) If the offense (A) involved the destruction, alteration, or fabrication of a substantial number of records, documents, or tangible objects; (B) involved the selection of any essential or especially probative record, document, or tangible object, to destroy or alter; or (C) was otherwise extensive in scope, planning, or preparation, increase by **2** levels.

(c) Cross Reference

(1) If the offense involved obstructing the investigation or prosecution of a criminal offense, apply §2X3.1 (Accessory After the Fact) in respect to that criminal offense, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1001 (when the statutory maximum term of eight years' imprisonment applies because the matter relates to international terrorism or domestic terrorism, or to sex offenses under 18 U.S.C. § 1591 or chapters 109A, 109B, 110, or 117 of title 18, United States Code), 1503, 1505–1513, 1516, 1519. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Domestic terrorism***" has the meaning given that term in 18 U.S.C. § 2331(5).

"***International terrorism***" has the meaning given that term in 18 U.S.C. § 2331(1).

"***Records, documents, or tangible objects***" includes (A) records, documents, or tangible objects that are stored on, or that are, magnetic, optical, digital, other electronic, or other storage mediums or devices; and (B) wire or electronic communications.

"***Substantial interference with the administration of justice***" includes a premature or improper termination of a felony investigation; an indictment, verdict, or any judicial determination based upon perjury, false testimony, or other false evidence; or the unnecessary expenditure of substantial governmental or court resources.

2. **Chapter Three Adjustments.—**

   (A) **Inapplicability of §3C1.1.—**For offenses covered under this section, §3C1.1 (Obstructing or Impeding the Administration of Justice) does not apply, unless the defendant obstructed the investigation, prosecution, or sentencing of the obstruction of justice count.

   (B) **Interaction with Terrorism Adjustment.—**If §3A1.4 (Terrorism) applies, do not apply subsection (b)(1)(C).

3. **Subsection (b)(1)(B).—**The inclusion of "property damage" under subsection (b)(1)(B) is designed to address cases in which property damage is caused or threatened as a means of intimidation or retaliation (*e.g.*, to intimidate a witness from, or retaliate against a witness for, testifying). Subsection (b)(1)(B) is not intended to apply, for example, where the offense consisted of destroying a ledger containing an incriminating entry.

Background: This section addresses offenses involving the obstruction of justice generally prosecuted under the above-referenced statutory provisions. Numerous offenses of varying seriousness may constitute obstruction of justice: using threats or force to intimidate or influence a juror or federal officer; obstructing a civil or administrative proceeding; stealing or altering court records; unlawfully intercepting grand jury deliberations; obstructing a criminal investigation; obstructing a state or local investigation of illegal gambling; using intimidation or force to influence testimony, alter evidence, evade legal process, or obstruct the communication of a judge or law enforcement officer; or causing a witness bodily injury or property damage in retaliation for providing testimony, information or evidence in a federal proceeding. The conduct that gives rise to the violation may, therefore, range from a mere threat to an act of extreme violence.

The specific offense characteristics reflect the more serious forms of obstruction. Because the conduct covered by this guideline is frequently part of an effort to avoid punishment for an offense that the defendant has committed or to assist another person to escape punishment for an offense, a cross reference to §2X3.1 (Accessory After the Fact) is provided. Use of this cross reference will provide an enhanced offense level when the obstruction is in respect to a particularly serious offense, whether such offense was committed by the defendant or another person.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 172, 173, and 174); November 1, 1991 (amendment 401); January 25, 2003 (amendment 647); November 1, 2003 (amendment 653); October 24, 2005 (amendment 676); November 1, 2006 (amendment 690); November 1, 2007 (amendment 701); November 1, 2011 (amendment 758); November 1, 2013 (amendment 777); November 1, 2025 (amendment 836); November 1, 2026 (amendment 840).

§2J1.3. Perjury or Subornation of Perjury; Bribery of Witness

(a) Base Offense Level: **14**

(b) Specific Offense Characteristic

(1) If the perjury, subornation of perjury, or witness bribery resulted in substantial interference with the administration of justice, increase by **3** levels.

(c) Cross Reference

(1) If the offense involved perjury, subornation of perjury, or witness bribery in respect to a criminal offense, apply §2X3.1 (Accessory After the Fact) in respect to that criminal offense, if the resulting offense level is greater than that determined above.

(d) Special Instruction

(1) In the case of counts of perjury or subornation of perjury arising from testimony given, or to be given, in separate proceedings, apply subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to the counts.

Commentary

Statutory Provisions: 18 U.S.C. §§ 201(b)(3), (4), 1621–1623. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. "***Substantial interference with the administration of justice***" includes a premature or improper termination of a felony investigation; an indictment, verdict, or any judicial determination based upon perjury, false testimony, or other false evidence; or the unnecessary expenditure of substantial governmental or court resources.

2. For offenses covered under this section, §3C1.1 (Obstructing or Impeding the Administration of Justice) does not apply, unless the defendant obstructed the investigation or trial of the perjury count.

3. "***Separate proceedings***," as used in subsection (d)(1), includes different proceedings in the same case or matter (*e.g.*, a grand jury proceeding and a trial, or a trial and retrial), and proceedings in separate cases or matters (*e.g.*, separate trials of codefendants), but does not include multiple grand jury proceedings in the same case.

Background: This section applies to perjury, subornation of perjury, and witness bribery, generally prosecuted under the referenced statutes. The guidelines provide a higher penalty for perjury than the pre-guidelines practice estimate of ten months imprisonment. The Commission believes that perjury should be treated similarly to obstruction of justice. Therefore, the same considerations for enhancing

a sentence are applied in the specific offense characteristics, and an alternative reference to the guideline for accessory after the fact is made.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 175); November 1, 1991 (amendments 401 and 402); November 1, 1993 (amendment 481); November 1, 2003 (amendment 653); November 1, 2011 (amendment 758); November 1, 2013 (amendment 777); November 1, 2025 (amendment 836); November 1, 2026 (amendments 837 and 840).

§2J1.4. Impersonation

(a) Base Offense Level: **6**

(b) Specific Offense Characteristic

(1) If the impersonation was committed for the purpose of conducting an unlawful arrest, detention, or search, increase by **6** levels.

(c) Cross Reference

(1) If the impersonation was to facilitate another offense, apply the guideline for an attempt to commit that offense, if the resulting offense level is greater than the offense level determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 912, 913.

Background: This section applies to impersonation of a federal officer, agent, or employee; and impersonation to conduct an unlawful search or arrest.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 176).

§2J1.5. Failure to Appear by Material Witness

(a) Base Offense Level:

(1) **6**, if in respect to a felony; or

(2) **4**, if in respect to a misdemeanor.

(b) Specific Offense Characteristic

(1) If the offense resulted in substantial interference with the administration of justice, increase by **3** levels.

Commentary

Statutory Provisions: 18 U.S.C. § 3146(b)(1)(B). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. "***Substantial interference with the administration of justice***" includes a premature or improper termination of a felony investigation; an indictment, verdict, or any judicial determination based upon perjury, false testimony, or other false evidence; or the unnecessary expenditure of substantial governmental or court resources.

2. By statute, a term of imprisonment imposed for an offense under 18 U.S.C. § 3146(b)(1)(B) runs consecutively to any other term of imprisonment imposed. 18 U.S.C. § 3146(b)(2).

Background: This section applies to a failure to appear by a material witness. The base offense level incorporates a distinction as to whether the failure to appear was in respect to a felony or misdemeanor prosecution. The offense under 18 U.S.C. § 3146(b)(1)(B) is a misdemeanor for which the maximum period of imprisonment authorized by statute is one year.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 177); November 1, 1991 (amendment 401); November 1, 2009 (amendment 737).

§2J1.6. Failure to Appear by Defendant

(a) Base Offense Level:

(1) **11**, if the offense constituted a failure to report for service of sentence; or

(2) **6**, otherwise.

(b) Specific Offense Characteristic

(1) If the base offense level is determined under subsection (a)(2), and the underlying offense is—

(A) punishable by death or imprisonment for a term of fifteen years or more, increase by **9** levels; or

(B) punishable by a term of imprisonment of five years or more, but less than fifteen years, increase by **6** levels; or

(C) a felony punishable by a term of imprisonment of less than five years, increase by **3** levels.

Commentary

Statutory Provision: 18 U.S.C. § 3146(b)(1).

Application Notes:

1. "***Underlying offense***" means the offense in respect to which the defendant failed to appear.

2. For offenses covered under this section, §3C1.1 (Obstructing or Impeding the Administration of Justice) does not apply, unless the defendant obstructed the investigation or trial of the failure to appear count.

3. In the case of a failure to appear for service of sentence, any term of imprisonment imposed on the failure to appear count is to be imposed consecutively to any term of imprisonment imposed for the underlying offense. *See* §5G1.3(a). The guideline range for the failure to appear count is to be determined independently and §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) does not apply.

   However, in the case of a conviction on both the underlying offense and the failure to appear, other than a case of failure to appear for service of sentence, the failure to appear is treated under §3C1.1 (Obstructing or Impeding the Administration of Justice) as an obstruction of the underlying offense, and the combined offense level for the failure to appear count and the count or counts for the underlying offense is determined under §3D1.1. (Note that 18 U.S.C. § 3146(b)(2) does not require a sentence of imprisonment on a failure to appear count, although if a sentence of imprisonment on the failure to appear count is imposed, the statute requires that the sentence be imposed to run consecutively to any other sentence of imprisonment. Therefore, unlike a count in which the statute mandates both a minimum and a consecutive sentence of imprisonment, §3D1.1 applies. *See* §3D1.1(e)(1), comment. (n.1).) The combined sentence will then be constructed to provide a "total punishment" that satisfies the requirements both of §5G1.2 (Sentencing on Multiple Counts of Conviction) and 18 U.S.C. § 3146(b)(2). For example, if the combined applicable guideline range for both counts is 30–37 months and the court determines that a "total punishment" of 36 months is appropriate, a sentence of 30 months for the underlying offense plus a consecutive six months' sentence for the failure to appear count would satisfy these requirements. (Note that the combination of this instruction and increasing the offense level for the obstructive, failure to appear conduct has the effect of ensuring an incremental, consecutive punishment for the failure to appear count, as required by 18 U.S.C. § 3146(b)(2).)

4. In some cases, the defendant may be sentenced on the underlying offense (the offense in respect to which the defendant failed to appear) before being sentenced on the failure to appear offense. In such cases, criminal history points for the sentence imposed on the underlying offense are to be counted in determining the guideline range on the failure to appear offense only where the offense level is determined under subsection (a)(1) (*i.e.*, where the offense constituted a failure to report for service of sentence).

Background: This section applies to a failure to appear by a defendant who was released pending trial, sentencing, appeal, or surrender for service of sentence. Where the base offense level is determined under subsection (a)(2), the offense level increases in relation to the statutory maximum of the underlying offense.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 329); November 1, 1991 (amendment 403); November 1, 1998 (amendment 579); November 1, 2001 (amendment 636); November 1, 2005 (amendment 680); November 1, 2011 (amendment 758); November 1, 2013 (amendment 777); November 1, 2025 (amendment 836); November 1, 2026 (amendments 837 and 840).

§§2J1.7 – 2J1.8. [Deleted]

Historical Note	Section 2J1.7 (Commission of Offense While on Release), effective November 1, 1987, and amended effective January 15, 1988 (amendment 32), November 1, 1989 (amendment 178), and November 1, 1991 (amendment 431), was deleted from Chapter Two and replaced by §3C1.3 effective November 1, 2006 (amendment 684). Section 2J1.8 (Bribery of Witness), effective November 1, 1987, and amended effective January 15, 1988 (amendment 33), November 1, 1989 (amendment 179), and November 1, 1991 (amendment 401), was deleted by consolidation with §2J1.3 effective November 1, 1993 (amendment 481).

§2J1.9. Payment to Witness

(a) Base Offense Level: **6**

Commentary

Statutory Provisions: 18 U.S.C. § 201(c)(2), (3).

Application Note:

1. For offenses covered under this section, §3C1.1 (Obstructing or Impeding the Administration of Justice) does not apply unless the defendant obstructed the investigation or trial of the payment to witness count.

Background: This section applies to witness gratuities in federal proceedings.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 180 and 181); November 1, 2011 (amendment 758); November 1, 2013 (amendment 777); November 1, 2026 (amendments 837 and 840).

PART K — OFFENSES INVOLVING PUBLIC SAFETY

1. EXPLOSIVES AND ARSON

§2K1.1. Failure to Report Theft of Explosive Materials; Improper Storage of Explosive Materials

(a) Base Offense Level: **6**

Commentary

Statutory Provisions: 18 U.S.C. §§ 842(j), (k), 844(b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Background: The above-referenced provisions are misdemeanors. The maximum term of imprisonment authorized by statute is one year.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1991 (amendment 404); November 1, 1993 (amendment 481).

§2K1.2. [Deleted]

Historical Note	Section 2K1.2 (Improper Storage of Explosive Materials), effective November 1, 1987, and amended effective November 1, 1991 (amendment 404), was deleted by consolidation with §2K1.1 effective November 1, 1993 (amendment 481).

§2K1.3. Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials

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

(1) **24**, if the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;

(2) **20**, if the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense;

(3) **18**, if the defendant was convicted under 18 U.S.C. § 842(p)(2);

(4) **16**, if the defendant (A) was a prohibited person at the time the defendant committed the instant offense; or (B) knowingly distributed explosive materials to a prohibited person; or

(5) **12**, otherwise.

(b) Specific Offense Characteristics

(1) If the offense involved twenty-five pounds or more of explosive materials, increase as follows:

	Weight of Explosive Material	Increase in Level
(A)	At least 25 but less than 100 lbs.	add **1**
(B)	At least 100 but less than 250 lbs.	add **2**
(C)	At least 250 but less than 500 lbs.	add **3**
(D)	At least 500 but less than 1000 lbs.	add **4**
(E)	1000 lbs. or more	add **5**.

(2) If the offense involved any explosive material that the defendant knew or had reason to believe was stolen, increase by **2** levels.

Provided, that the cumulative offense level determined above shall not exceed level **29**.

(3) If the defendant (A) was convicted under 18 U.S.C. § 842(p)(2); or (B) used or possessed any explosive material in connection with another felony offense; or possessed or transferred any explosive material with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense, increase by **4** levels. If the resulting offense level is less than level **18**, increase to level **18**.

(c) Cross Reference

(1) If the defendant (A) was convicted under 18 U.S.C. § 842(p)(2); or (B) used or possessed any explosive material in connection with the commission or attempted commission of another offense, or possessed or transferred any explosive material with knowledge or intent that it would be used or possessed in connection with another offense, apply—

(A) §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 842(a)–(e), (h), (i), (l)–(o), (p)(2), 844(d), (g), 1716, 2283; 26 U.S.C. § 5685.

Application Notes:

1. "***Explosive material(s)***" include explosives, blasting agents, and detonators. *See* 18 U.S.C. § 841(c). "Explosives" is defined at 18 U.S.C. § 844(j). A destructive device, defined in the Commentary to §1B1.1 (Application Instructions), may contain explosive materials. Where the conduct charged in the count of which the defendant was convicted establishes that the offense involved a destructive device, apply §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) if the resulting offense level is greater.

2. For purposes of this guideline:

   "***Controlled substance offense***" has the meaning given that term in §4B1.2(b) and Application Note 1 of the Commentary to §4B1.2 (Definitions of Terms Used in Section 4B1.1).

   "***Crime of violence***" has the meaning given that term in §4B1.2(a) and Application Note 1 of the Commentary to §4B1.2.

   "***Felony conviction***" means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen years or older is an adult conviction. A conviction for an offense committed prior to age eighteen years is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.*, a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).

3. For purposes of subsection (a)(4), "***prohibited person***" means any person described in 18 U.S.C. § 842(i).

4. "***Felony offense***," as used in subsection (b)(3), means any offense (federal, state, or local) punishable by imprisonment for a term exceeding one year, whether or not a criminal charge was brought, or conviction obtained.

5. For purposes of calculating the weight of explosive materials under subsection (b)(1), include only the weight of the actual explosive material and the weight of packaging material that is necessary for the use or detonation of the explosives. Exclude the weight of any other shipping or packaging materials. For example, the paper and fuse on a stick of dynamite would be included; the box that the dynamite was shipped in would not be included.

6. For purposes of calculating the weight of explosive materials under subsection (b)(1), count only those explosive materials that were unlawfully sought to be obtained, unlawfully possessed, or unlawfully distributed, including any explosive material that a defendant attempted to obtain by making a false statement.

7. If the defendant is convicted under 18 U.S.C. § 842(h) (offense involving stolen explosive materials), and is convicted of no other offenses subject to this guideline, do not apply the adjustment in subsection (b)(2) because the base offense level itself takes such conduct into account.

8. Under subsection (c)(1), the offense level for the underlying offense (which may be a federal, state, or local offense) is to be determined under §2X1.1 (Attempt, Solicitation, or Conspiracy) or, if death results, under the most analogous guideline from Chapter Two, Part A, Subpart 1 (Homicide).

9. For purposes of applying subsection (a)(1) or (2), use only those felony convictions that receive criminal history points under §4A1.1(a), (b), or (c). In addition, for purposes of applying subsection (a)(1), use only those felony convictions that are counted separately under §4A1.1(a), (b), or (c). *See* §4A1.2(a)(2).

   Prior felony conviction(s) resulting in an increased base offense level under subsection (a)(1), (a)(2), or (a)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

10. As used in subsections (b)(3) and (c)(1), "***another felony offense***" and "***another offense***" refer to offenses other than explosives or firearms possession or trafficking offenses.

    In addition, for purposes of subsection (c)(1)(A), "***that other offense***" means, with respect to an offense under 18 U.S.C. § 842(p)(2), the underlying Federal crime of violence.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 183); November 1, 1991 (amendment 373); November 1, 1992 (amendment 471); November 1, 1993 (amendment 478); November 1, 1995 (amendment 534); November 1, 1997 (amendment 568); November 1, 1998 (amendment 586); November 1, 2001 (amendments 629 and 630); November 1, 2002 (amendment 646); November 1, 2003 (amendment 655); November 1, 2007 (amendment 700); November 1, 2010 (amendments 746 and 747); November 1, 2025 (amendment 836).

§2K1.4. Arson; Property Damage by Use of Explosives

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

(1) **24**, if the offense (A) created a substantial risk of death or serious bodily injury to any person other than a participant in the offense, and that risk was created knowingly; or (B) involved the destruction or attempted destruction of a dwelling, an airport, an aircraft, a mass transportation facility, a mass transportation vehicle, a maritime facility, a vessel, or a vessel's cargo, a public transportation system, a state or government facility, an infrastructure facility, or a place of public use;

(2) **20**, if the offense (A) created a substantial risk of death or serious bodily injury to any person other than a participant in the offense; (B) involved the destruction or attempted destruction of a structure other

than (i) a dwelling, or (ii) an airport, an aircraft, a mass transportation facility, a mass transportation vehicle, a maritime facility, a vessel, or a vessel's cargo, a public transportation system, a state or government facility, an infrastructure facility, or a place of public use; or (C) endangered (i) a dwelling, (ii) a structure other than a dwelling, or (iii) an airport, an aircraft, a mass transportation facility, a mass transportation vehicle, a maritime facility, a vessel, or a vessel's cargo, a public transportation system, a state or government facility, an infrastructure facility, or a place of public use;

(3) **16**, if the offense involved the destruction of or tampering with aids to maritime navigation; or

(4) **2** plus the offense level from §2B1.1 (Theft, Property Destruction, and Fraud).

(b) Specific Offense Characteristics

(1) If the offense was committed to conceal another offense, increase by **2** levels.

(2) If the base offense level is not determined under subsection (a)(4), and the offense occurred on a national cemetery, increase by **2** levels.

(c) Cross Reference

(1) If death resulted, or the offense was intended to cause death or serious bodily injury, apply the most analogous guideline from Chapter Two, Part A (Offenses Against the Person) if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 32(a), (b), 33, 81, 844(f), (h) (only in the case of an offense committed prior to November 18, 1988), (i), 1855, 1992(a)(1), (a)(2), (a)(4), 2275, 2282A, 2282B, 2291, 2332a, 2332f; 49 U.S.C. § 60123(b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Aids to maritime navigation***" means any device external to a vessel intended to assist the navigator to determine position or save course, or to warn of dangers or obstructions to navigation.

"***Explosives***" includes any explosive, explosive material, or destructive device.

"***Maritime facility***" means any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States and used, operated, or maintained by a public or private entity, including any contiguous or adjoining property under common ownership or operation.

"***National cemetery***" means a cemetery (A) established under section 2400 of title 38, United States Code; or (B) under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.

"***Mass transportation***" has the meaning given that term in 18 U.S.C. § 1992(d)(7).

"***State or government facility***", "***infrastructure facility***", "***place of public use***", and "***public transportation system***" have the meaning given those terms in 18 U.S.C. § 2332f(e)(3), (5), (6), and (7), respectively.

"***Vessel***" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

2. **Risk of Death or Serious Bodily Injury.**—Creating a substantial risk of death or serious bodily injury includes creating that risk to fire fighters and other emergency and law enforcement personnel who respond to or investigate an offense.

Background: Subsection (b)(2) implements the directive to the Commission in section 2 of Public Law 105–101.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 182, 184, and 185); November 1, 1990 (amendment 330); November 1, 1991 (amendment 404); November 1, 1998 (amendment 576); November 1, 2001 (amendment 617); November 1, 2002 (amendment 637); November 1, 2003 (amendment 655); November 1, 2007 (amendments 699 and 700); November 1, 2014 (amendment 781); November 1, 2024 (amendment 831); November 1, 2025 (amendment 836).

§2K1.5. Possessing Dangerous Weapons or Materials While Boarding or Aboard an Aircraft

(a) Base Offense Level: **9**

(b) Specific Offense Characteristics

(1) (Apply the greater) If—

(A) the offense was committed willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life, increase by **15** levels; or

(B) the defendant was prohibited by another federal law from possessing the weapon or material, increase by **2** levels.

(c) Cross Reference

(1) If the defendant used or possessed the weapon or material in committing or attempting another offense, apply the guideline for such other offense, or §2X1.1 (Attempt, Solicitation, or Conspiracy), as appropriate, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provision: 49 U.S.C. § 46505 (formerly 49 U.S.C. § 1472(l)).

Background: This guideline provides an enhancement where the defendant was a person prohibited by federal law from possession of the weapon or material.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 182, 186, 187, and 303); November 1, 1991 (amendment 404); November 1, 1992 (amendment 443); November 1, 1995 (amendment 534); November 1, 1997 (amendment 560); November 1, 2026 (amendment 837).

§2K1.6. Licensee Recordkeeping Violations Involving Explosive Materials

(a) Base Offense Level: **6**

(b) Cross Reference

(1) If a recordkeeping offense reflected an effort to conceal a substantive explosive materials offense, apply §2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosives Materials; Prohibited Transactions Involving Explosive Materials).

Commentary

Statutory Provisions: 18 U.S.C. § 842(f), (g).

Background: The above-referenced provisions are recordkeeping offenses applicable only to "***licensees***," who are defined at 18 U.S.C. § 841(m).

Historical Note	Effective November 1, 1991 (amendment 373). A former §2K1.6 (Shipping, Transporting, or Receiving Explosives with Felonious Intent or Knowledge; Using or Carrying Explosives in Certain Crimes), effective November 1, 1987, and amended effective November 1, 1989 (amendment 303) and November 1, 1990 (amendment 331), was deleted by consolidation with §2K1.3 effective November 1, 1991 (amendment 373).

§2K1.7. [Deleted]

Historical Note	Section 2K1.7 (Use of Fire or Explosives to Commit a Federal Felony), effective November 1, 1989 (amendment 188), and amended effective November 1, 1990 (amendment 332), was deleted by consolidation with §2K2.4 effective November 1, 1993 (amendment 481).

* * * * *

2. FIREARMS

§2K2.1. Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition

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

(1) **26**, if (A) the offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. § 5845(a); and (B) the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;

(2) **24**, if the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;

(3) **22**, if (A) the offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. § 5845(a); and (B) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense;

(4) **20**, if—

(A) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense; or

(B) the (i) offense involved a (I) semiautomatic firearm that is capable of accepting a large capacity magazine; or (II) firearm that is described in 26 U.S.C. § 5845(a); and (ii) defendant (I) was a prohibited person at the time the defendant committed the instant offense; (II) is convicted under 18 U.S.C. § 922(d), § 932, or § 933; or (III) is convicted under 18 U.S.C. § 922(a)(6) or § 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;

(5) **18**, if the offense involved a firearm described in 26 U.S.C. § 5845(a);

(6) **14**, if the defendant (A) was a prohibited person at the time the defendant committed the instant offense; (B) is convicted under 18 U.S.C. § 922(d), § 932, or § 933; or (C) is convicted under 18 U.S.C. § 922(a)(6) or § 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;

(7) **12**, except as provided below; or

(8) **6**, if the defendant is convicted under 18 U.S.C. § 922(c), (e), (f), (m), (s), (t), or (x)(1), or 18 U.S.C. § 1715.

(b) Specific Offense Characteristics

(1) If the offense involved three or more firearms, increase as follows:

	Number of Firearms	Increase in Level
(A)	3–7	add **2**
(B)	8–24	add **4**
(C)	25–99	add **6**
(D)	100–199	add **8**
(E)	200 or more	add **10**.

(2) If the defendant, other than a defendant subject to subsection (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), possessed all ammunition and firearms solely for lawful sporting purposes or collection, and did not unlawfully discharge or otherwise unlawfully use such firearms or ammunition, decrease the offense level determined above to level **6**.

(3) If the offense involved—

(A) a destructive device that is a portable rocket, a missile, or a device for use in launching a portable rocket or a missile, increase by **15** levels; or

(B) a destructive device other than a destructive device referred to in paragraph (A), increase by **2** levels.

(4) If (A) any firearm was stolen, increase by **2** levels; or (B)(i) any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye; or (ii) the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, increase by **4** levels.

(5) (Apply the Greatest) If the defendant—

(A) (i) possessed four or more machinegun conversion devices; or (ii) transferred or sold any machinegun conversion device to another person, or attempted or conspired to commit such a transfer or sale, increase by **2** levels; or

(B) possessed 30 or more machinegun conversion devices, increase by **4** levels.

For purposes of subsection (b)(5), "***machinegun conversion device***" means any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun (*i.e.,* any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger).

The cumulative offense level determined from the application of subsections (b)(1) through (b)(5) may not exceed level **29**, except if subsection (b)(3)(A) applies.

(6) (Apply the Greatest) If the defendant—

(A) was convicted under 18 U.S.C. § 933(a)(2) or (a)(3), increase by **2** levels;

(B) (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, a firearm or any ammunition knowing or having reason to believe that such conduct would result in the receipt of the firearm or ammunition by an individual who (I) was a prohibited person; or (II) intended to use or dispose of the firearm or ammunition unlawfully; (ii) attempted or conspired to commit the conduct described in clause (i); or (iii) received a firearm or any ammunition as a result of inducing the conduct described in clause (i), increase by **2** levels; or

(C) (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, two or more firearms knowing or having reason to believe that such conduct would result in the receipt of the firearms by an individual who (I) had a prior conviction for a crime of violence, controlled substance offense, or misdemeanor crime of domestic violence; (II) was under a criminal justice sentence at the time of the offense; or (III) intended to use or dispose

of the firearms unlawfully; (ii) attempted or conspired to commit the conduct described in clause (i); or (iii) received two or more firearms as a result of inducing the conduct described in clause (i), increase by **5** levels.

Provided, however, that subsection (b)(6)(C)(i)(I) shall not apply based upon the receipt or intended receipt of the firearms by an individual with a prior conviction for a misdemeanor crime of domestic violence against a person in a dating relationship if, at the time of the instant offense, such individual met the criteria set forth in the proviso of 18 U.S.C. § 921(a)(33)(C).

(7) If the defendant—

(A) possessed any firearm or ammunition while leaving or attempting to leave the United States, or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be transported out of the United States; or

(B) used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense,

increase by **4** levels. If the resulting offense level is less than level **18**, increase to level **18**.

(8) If a recordkeeping offense reflected an effort to conceal a substantive offense involving firearms or ammunition, increase to the offense level for the substantive offense.

(9) If the defendant—

(A) receives an enhancement under subsection (b)(6); and

(B) committed the offense in connection with the defendant's participation in a group, club, organization, or association of five or more persons, knowing or acting with willful blindness or conscious avoidance of knowledge that the group, club, organization, or association had as one of its primary purposes the commission of criminal offenses;

increase by **2** levels.

(10) If the defendant—

(A) receives an enhancement under subsection (b)(6);

(B) does not have more than 1 criminal history point, as determined under §4A1.1 (Criminal History Category) and §4A1.2 (Definitions and Instructions for Computing Criminal History), read together; and

(C) (i) was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense; or (ii) was unusually vulnerable to being persuaded or induced to commit the offense due to a physical or mental condition;

decrease by **2** levels.

(c) Cross Reference

(1) If the defendant used or possessed any firearm or ammunition cited in the offense of conviction in connection with the commission or attempted commission of another offense, or possessed or transferred a firearm or ammunition cited in the offense of conviction with knowledge or intent that it would be used or possessed in connection with another offense, apply—

(A) §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense, if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 922(a)–(p), (r)–(w), (x)(1), 924(a), (b), (e)–(i), (k)–(o), 932, 933, 1715, 2332g; 26 U.S.C. § 5861(a)–(l). For additional statutory provisions, *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Ammunition***" has the meaning given that term in 18 U.S.C. § 921(a)(17)(A).

"***Controlled substance offense***" has the meaning given that term in §4B1.2(b) and Application Note 1 of the Commentary to §4B1.2 (Definitions of Terms Used in Section 4B1.1).

"***Crime of violence***" has the meaning given that term in §4B1.2(a) and Application Note 1 of the Commentary to §4B1.2.

"***Destructive device***" has the meaning given that term in 26 U.S.C. § 5845(f).

"***Felony conviction***" means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen years or older is an adult conviction. A conviction for an offense committed prior to age eighteen years is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.*, a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).

"***Firearm***" has the meaning given that term in 18 U.S.C. § 921(a)(3), unless otherwise specified.

2. **Semiautomatic Firearm That Is Capable of Accepting a Large Capacity Magazine.—** For purposes of subsections (a)(1), (a)(3), and (a)(4), a "***semiautomatic firearm that is capable of accepting a large capacity magazine***" means a semiautomatic firearm that has the ability to fire many rounds without reloading because at the time of the offense (A) the firearm had attached to it a magazine or similar device that could accept more than 15 rounds of ammunition; or (B) a magazine or similar device that could accept more than 15 rounds of ammunition was in close proximity to the firearm. This definition does not include a semiautomatic firearm with an attached tubular device capable of operating only with .22 caliber rim fire ammunition.

3. **Definition of "Prohibited Person".—**For purposes of subsections (a)(4)(B), (a)(6), and (b)(6), "***prohibited person***" means any person described in 18 U.S.C. § 922(g) or § 922(n).

4. **Application of Subsection (a)(7).—**Subsection (a)(7) includes the interstate transportation or interstate distribution of firearms, which is frequently committed in violation of state, local, or other federal law restricting the possession of firearms, or for some other underlying unlawful purpose. In the unusual case in which it is established that neither avoidance of state, local, or other federal firearms law, nor any other underlying unlawful purpose was involved, a reduction in the base offense level to no lower than level 6 may be warranted to reflect the less serious nature of the violation.

5. **Application of Subsection (b)(1).—**For purposes of calculating the number of firearms under subsection (b)(1), count only those firearms that were unlawfully sought to be obtained, unlawfully possessed, or unlawfully distributed, including any firearm that a defendant obtained or attempted to obtain by making a false statement to a licensed dealer.

6. **Application of Subsection (b)(2).—**Under subsection (b)(2), "lawful sporting purposes or collection" as determined by the surrounding circumstances, provides for a reduction to an offense level of 6. Relevant surrounding circumstances include the number and type of firearms, the amount and type of ammunition, the location and circumstances of possession and actual use, the nature of the defendant's criminal history (*e.g.*, prior convictions for offenses involving firearms), and the extent to which possession was restricted by local law. Note that where the base offense level is determined under subsections (a)(1)–(a)(5), subsection (b)(2) is not applicable.

7. **Destructive Devices.—**A defendant whose offense involves a destructive device receives both the base offense level from the subsection applicable to a firearm listed in 26 U.S.C. § 5845(a) (*e.g.*, subsection (a)(1), (a)(3), (a)(4)(B), or (a)(5)), and the applicable enhancement under subsection (b)(3). Such devices pose a considerably greater risk to the public welfare than other National Firearms Act weapons.

8. **Application of Subsection (b)(4).—**

(A) **Interaction with Subsection (a)(7).—**If the only offense to which §2K2.1 applies is 18 U.S.C. § 922(i), (j), or (u), or 18 U.S.C. § 924(l) or (m) (offenses involving a stolen firearm or stolen ammunition) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(A). This is because the base offense level takes into account that the firearm or ammunition was stolen. However, if the offense involved a firearm with a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye, or if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, apply subsection (b)(4)(B)(i) or (ii).

Similarly, if the offense to which §2K2.1 applies is 18 U.S.C. § 922(k) or 26 U.S.C. § 5861(g) or (h) (offenses involving an altered or obliterated serial number) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(B)(i). However, if the offense involved a stolen firearm or stolen ammunition, or if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, apply subsection (b)(4)(A) or (B)(ii).

(B) **Defendant's State of Mind.—**Subsection (b)(4)(A) or (B)(i) applies regardless of whether the defendant knew or had reason to believe that the firearm was stolen or had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye. However, subsection (b)(4)(B)(ii) only applies if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact.

9. **Application of Subsection (b)(8).—**Under subsection (b)(8), if a recordkeeping offense was committed to conceal a substantive firearms or ammunition offense, the offense level is increased to the offense level for the substantive firearms or ammunition offense (*e.g.*, if the defendant falsifies a record to conceal the sale of a firearm to a prohibited person, the offense level is increased to the offense level applicable to the sale of a firearm to a prohibited person).

10. **Prior Felony Convictions.—**For purposes of applying subsection (a)(1), (2), (3), or (4)(A), use only those felony convictions that receive criminal history points under §4A1.1(a), (b), or (c). In addition, for purposes of applying subsections (a)(1) and (a)(2), use only those felony convictions that are counted separately under §4A1.1(a), (b), or (c). *See* §4A1.2(a)(2).

Prior felony conviction(s) resulting in an increased base offense level under subsection (a)(1), (a)(2), (a)(3), (a)(4)(A), (a)(4)(B), or (a)(6) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

11. **Armed Career Criminal.—**A defendant who is subject to an enhanced sentence under the provisions of 18 U.S.C. § 924(e) is an Armed Career Criminal. *See* §4B1.4.

12. **Application of Subsection (b)(6).—**

(A) **Definitions.—**For purposes of this subsection:

"***Crime of violence***" and "***controlled substance offense***" have the meaning given those terms in §4B1.2 (Definitions of Terms Used in Section 4B1.1).

"***Misdemeanor crime of domestic violence***" has the meaning given that term in 18 U.S.C. § 921(a)(33)(A).

The term "***criminal justice sentence***" includes probation, parole, supervised release, imprisonment, work release, or escape status.

The term "***defendant***," consistent with §1B1.3 (Relevant Conduct), limits the accountability of the defendant to the defendant's own conduct and conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.

(B) **Interaction with Other Subsections.—**In a case in which three or more firearms were both possessed and trafficked, apply both subsections (b)(1) and (b)(6). If the defendant used or transferred one of such firearms in connection with another felony offense (*i.e.*, an offense other than a firearms possession or trafficking offense) an enhancement under subsection (b)(7)(B) also would apply.

13. **Application of Subsections (b)(7)(B) and (c)(1).—**

(A) **In General.—**Subsections (b)(7)(B) and (c)(1) apply if the firearm or ammunition facilitated, or had the potential of facilitating, another felony offense or another offense, respectively. However, subsection (c)(1) contains the additional requirement that the firearm or ammunition be cited in the offense of conviction.

(B) **Application When Other Offense is Burglary or Drug Offense.—**Subsections (b)(7)(B) and (c)(1) apply (i) in a case in which a defendant who, during the course of a burglary, finds and takes a firearm, even if the defendant did not engage in any other conduct with that firearm during the course of the burglary; and (ii) in the case of a drug trafficking offense in which a firearm is found in close proximity to drugs, drug-manufacturing materials, or drug paraphernalia. In these cases, application of subsections (b)(7)(B) and, if the firearm was cited in the offense of conviction, (c)(1) is warranted because the presence of the firearm has the potential of facilitating another felony offense or another offense, respectively.

(C) **Definitions.—**

"***Another felony offense***", for purposes of subsection (b)(7)(B), means any federal, state, or local offense, other than the explosive or firearms possession or trafficking offense, punishable by imprisonment for a term exceeding one year, regardless of whether a criminal charge was brought, or a conviction obtained.

"***Another offense***", for purposes of subsection (c)(1), means any federal, state, or local offense, other than the explosive or firearms possession or trafficking offense, regardless of whether a criminal charge was brought, or a conviction obtained.

(D) **Relationship Between the Instant Offense and the Other Offense.**—In determining whether subsections (b)(7)(B) and (c)(1) apply, the court must consider the relationship between the instant offense and the other offense, consistent with relevant conduct principles. *See* §1B1.3(a)(1)–(4) and accompanying commentary.

In determining whether subsection (c)(1) applies, the court must also consider whether the firearm used in the other offense was a firearm cited in the offense of conviction.

For example:

(i) **Firearm Cited in the Offense of Conviction.** Defendant A's offense of conviction is for unlawfully possessing a shotgun on October 15. The court determines that, on the preceding February 10, Defendant A used the shotgun in connection with a robbery. Ordinarily, under these circumstances, subsection (b)(7)(B) applies, and the cross reference in subsection (c)(1) also applies if it results in a greater offense level.

Ordinarily, the unlawful possession of the shotgun on February 10 will be "part of the same course of conduct or common scheme or plan" as the unlawful possession of the same shotgun on October 15. *See* §1B1.3(a)(2) and accompanying commentary (including, in particular, the factors discussed in Application Note 5(B) to §1B1.3). The use of the shotgun "in connection with" the robbery is relevant conduct because it is a factor specified in subsections (b)(7)(B) and (c)(1). *See* §1B1.3(a)(4) ("any other information specified in the applicable guideline").

(ii) **Firearm Not Cited in the Offense of Conviction.** Defendant B's offense of conviction is for unlawfully possessing a shotgun on October 15. The court determines that, on the preceding February 10, Defendant B unlawfully possessed a handgun (not cited in the offense of conviction) and used the handgun in connection with a robbery.

Subsection (b)(7)(B). In determining whether subsection (b)(7)(B) applies, the threshold question for the court is whether the two unlawful possession offenses (the shotgun on October 15 and the handgun on February 10) were "part of the same course of conduct or common scheme or plan". *See* §1B1.3(a)(2) and accompanying commentary (including, in particular, the factors discussed in Application Note 5(B) to §1B1.3).

If they were, then the handgun possession offense is relevant conduct to the shotgun possession offense, and the use of the handgun "in connection with" the robbery is relevant conduct because it is a factor specified in subsection (b)(7)(B). *See* §1B1.3(a)(4) ("any other information specified in the applicable guideline"). Accordingly, subsection (b)(7)(B) applies.

On the other hand, if the court determines that the two unlawful possession offenses were not "part of the same course of conduct or common scheme or plan," then the handgun possession offense is not relevant conduct to the shotgun possession offense and subsection (b)(7)(B) does not apply.

Subsection (c)(1). Under these circumstances, the cross reference in subsection (c)(1) does not apply, because the handgun was not cited in the offense of conviction.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 189); November 1, 1990 (amendment 333); November 1, 1991 (amendment 374); November 1, 1992 (amendment 471); November 1, 1993 (amendment 478); November 1, 1995 (amendment 522); November 1, 1997 (amendments 568 and 575); November 1, 1998 (amendments 578 and 586); November 1, 2000 (amendment 605); November 1, 2001 (amendments 629, 630, and 631); November 1, 2004 (amendment 669); November 1, 2005 (amendments 679

	and 680); November 1, 2006 (amendments 686, 691, and 696); November 1, 2007 (amendment 707); November 1, 2010 (amendment 746); November 1, 2011 (amendment 753); November 1, 2014 (amendment 784); November 1, 2015 (amendments 790 and 797); November 1, 2016 (amendment 804); November 1, 2023 (amendment 819); November 1, 2024 (amendment 828); November 1, 2025 (amendments 834 and 836).

§§2K2.2 – 2K2.3. [Deleted]

Historical Note	Section 2K2.2 (Unlawful Trafficking and Other Prohibited Transactions Involving Firearms), effective November 1, 1987, and amended effective January 15, 1988 (amendment 34), November 1, 1989 (amendment 189), and November 1, 1990 (amendment 333), was deleted by consolidation with §2K2.1 effective November 1, 1991 (amendment 374). Section 2K2.3 (Receiving, Transporting, Shipping or Transferring a Firearm or Ammunition With Intent to Commit Another Offense, or With Knowledge that It Will Be Used in Committing Another Offense), effective November 1, 1989 (amendment 189), was deleted by consolidation with §2K2.1 effective November 1, 1991 (amendment 374). A former §2K2.3 (Prohibited Transactions in or Shipment of Firearms and Other Weapons), effective November 1, 1987, was deleted by consolidation with §2K2.2 effective November 1, 1989 (amendment 189).

§2K2.4. Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes

(a) If the defendant, whether or not convicted of another crime, was convicted of violating section 844(h) of title 18, United States Code, the guideline sentence is the term of imprisonment required by statute. Chapters Three (Adjustments), Parts A through E, and Four (Criminal History and Criminal Livelihood) shall not apply to that count of conviction.

(b) Except as provided in subsection (c), if the defendant, whether or not convicted of another crime, was convicted of violating section 924(c) or section 929(a) of title 18, United States Code, the guideline sentence is the minimum term of imprisonment required by statute. Chapters Three, Parts A through E, and Four shall not apply to that count of conviction.

(c) If the defendant (1) was convicted of violating section 924(c) or section 929(a) of title 18, United States Code; and (2) as a result of that conviction (alone or in addition to another offense of conviction), is determined to be a career offender under §4B1.1 (Career Offender), the guideline sentence shall be determined under §4B1.1(c). Except for §§3E1.1 (Acceptance of Responsibility), 4B1.1, and 4B1.2 (Definitions of Terms Used in Section 4B1.1), Chapters Three, Parts A through E, and Four shall not apply to that count of conviction.

(d) Special Instructions for Fines

(1) Where there is a federal conviction for the underlying offense, the fine guideline shall be the fine guideline that would have been applicable

had there only been a conviction for the underlying offense. This guideline shall be used as a consolidated fine guideline for both the underlying offense and the conviction underlying this section.

Commentary

Statutory Provisions: 18 U.S.C. §§ 844(h), (o), 924(c), 929(a).

Application Notes:

1. **Application of Subsection (a).**—Section 844(h) of title 18, United States Code, provides a mandatory term of imprisonment of 10 years (or 20 years for the second or subsequent offense). Accordingly, the guideline sentence for a defendant convicted under 18 U.S.C. § 844(h) is the term required by that statute. Section 844(h) of title 18, United States Code, also requires a term of imprisonment imposed under this section to run consecutively to any other term of imprisonment.

2. **Application of Subsection (b).**—Sections 924(c) and 929(a) of title 18, United States Code, provide mandatory minimum terms of imprisonment (*e.g.*, not less than five years). Except as provided in subsection (c), in a case in which the defendant is convicted under 18 U.S.C. § 924(c) or § 929(a), the guideline sentence is the minimum term required by the relevant statute. Each of 18 U.S.C. §§ 924(c) and 929(a) also requires that a term of imprisonment imposed under that section shall run consecutively to any other term of imprisonment.

3. **Application of Subsection (c).**—In a case in which the defendant (A) was convicted of violating 18 U.S.C. § 924(c) or 18 U.S.C. § 929(a); and (B) as a result of that conviction (alone or in addition to another offense of conviction), is determined to be a career offender under §4B1.1 (Career Offender), the guideline sentence shall be determined under §4B1.1(c). In a case involving multiple counts, the sentence shall be imposed according to the rules in subsection (e) of §5G1.2 (Sentencing on Multiple Counts of Conviction)

4. **Non-Applicability of Certain Enhancements.**—If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm when determining the sentence for the underlying offense. A sentence under this guideline accounts for any explosive or weapon enhancement for the underlying offense of conviction, including any such enhancement that would apply based on conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct). Do not apply any weapon enhancement in the guideline for the underlying offense, for example, if (A) a co-defendant, as part of the jointly undertaken criminal activity, possessed a firearm different from the one for which the defendant was convicted under 18 U.S.C. § 924(c); or (B) in an ongoing drug trafficking offense, the defendant possessed a firearm other than the one for which the defendant was convicted under 18 U.S.C. § 924(c). However, if a defendant is convicted of two armed bank robberies, but is convicted under 18 U.S.C. § 924(c) in connection with only one of the robberies, a weapon enhancement would apply to the bank robbery which was not the basis for the 18 U.S.C. § 924(c) conviction.

   A sentence under this guideline also accounts for conduct that would subject the defendant to an enhancement under §2D1.1(b)(2) (pertaining to use of violence, credible threat to use violence, or directing the use of violence). Do not apply that enhancement when determining the sentence for the underlying offense.

If the explosive or weapon that was possessed, brandished, used, or discharged in the course of the underlying offense also results in a conviction that would subject the defendant to an enhancement under §2K1.3(b)(3) (pertaining to possession of explosive material in connection with another felony offense) or §2K2.1(b)(7)(B) (pertaining to possession of any firearm or ammunition in connection with another felony offense), do not apply that enhancement. A sentence under this guideline accounts for the conduct covered by these enhancements because of the relatedness of that conduct to the conduct that forms the basis for the conviction under 18 U.S.C. § 844(h), § 924(c) or § 929(a). For example, if in addition to a conviction for an underlying offense of armed bank robbery, the defendant was convicted of being a felon in possession under 18 U.S.C. § 922(g), the enhancement under §2K2.1(b)(7)(B) would not apply.

5. **Chapters Three and Four.**—Except for those cases covered by subsection (c), do not apply Chapter Three (Adjustment), Parts A through E, and Chapter Four (Criminal History and Criminal Livelihood) to any offense sentenced under this guideline. Such offenses are excluded from application of those chapters because the guideline sentence for each offense is determined only by the relevant statute. *See* §§3D1.1 (Procedure for Determining Offense Level on Multiple Counts) and 5G1.2. In determining the guideline sentence for those cases covered by subsection (c): (A) the adjustment in §3E1.1 (Acceptance of Responsibility) may apply, as provided in §4B1.1(c); and (B) no other adjustments in Chapter Three, Parts A through D, and no provisions of Chapter Four, other than §§4B1.1 and 4B1.2, shall apply.

6. **Terms of Supervised Release.**—Imposition of a term of supervised release is governed by the provisions of §5D1.1 (Imposition of a Term of Supervised Release).

7. **Fines.**—Subsection (d) sets forth special provisions concerning the imposition of fines. Where there is also a conviction for the underlying offense, a consolidated fine guideline is determined by the offense level that would have applied to the underlying offense absent a conviction under 18 U.S.C. § 844(h), § 924(c), or § 929(a). This is required because the offense level for the underlying offense may be reduced when there is also a conviction under 18 U.S.C. § 844(h), § 924(c), or § 929(a) in that any specific offense characteristic for possession, brandishing, use, or discharge of a firearm is not applied (*see* Application Note 4). The Commission has not established a fine guideline range for the unusual case in which there is no conviction for the underlying offense, although a fine is authorized under 18 U.S.C. § 3571.

Background: Section 844(h) of title 18, United States Code, provides a mandatory term of imprisonment. Sections 924(c) and 929(a) of title 18, United States Code, provide mandatory minimum terms of imprisonment. A sentence imposed pursuant to any of these statutes must be imposed to run consecutively to any other term of imprisonment. To avoid double counting, when a sentence under this section is imposed in conjunction with a sentence for an underlying offense, any specific offense characteristic for explosive or firearm discharge, use, brandishing, or possession is not applied in respect to such underlying offense.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 190); November 1, 1990 (amendment 332); November 1, 1991 (amendment 405); November 1, 1993 (amendments 481 and 489); November 1, 2000 (amendments 598, 599, and 600); November 1, 2002 (amendment 642); November 1, 2006 (amendment 696); November 1, 2010 (amendment 748); November 1, 2011 (amendments 750 and 760); November 1, 2023 (amendment 824); November 1, 2024 (amendments 828 and 831); November 1, 2025 (amendments 834 and 836); November 1, 2026 (amendment 840).

§2K2.5. Possession of Firearm or Dangerous Weapon in Federal Facility; Possession or Discharge of Firearm in School Zone

(a) Base Offense Level: **6**

(b) Specific Offense Characteristic

(1) If—

(A) the defendant unlawfully possessed or caused any firearm or dangerous weapon to be present in a federal court facility; or

(B) the defendant unlawfully possessed or caused any firearm to be present in a school zone,

increase by **2** levels.

(c) Cross Reference

(1) If the defendant used or possessed any firearm or dangerous weapon in connection with the commission or attempted commission of another offense, or possessed or transferred a firearm or dangerous weapon with knowledge or intent that it would be used or possessed in connection with another offense, apply—

(A) §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 922(q), 930; 40 U.S.C. § 5104(e)(1).

Application Notes:

1. "***Dangerous weapon***" and "***firearm***" are defined in the Commentary to §1B1.1 (Application Instructions).

2. "***Federal court facility***" includes the courtroom; judges' chambers; witness rooms; jury deliberation rooms; attorney conference rooms; prisoner holding cells; offices and parking facilities of the court clerks, the United States attorney, and the United States marshal; probation and parole offices; and adjoining corridors and parking facilities of any court of the United States. *See* 18 U.S.C. § 930(g)(3).

3. "***School zone***" is defined at 18 U.S.C. § 922(q). A sentence of imprisonment under 18 U.S.C. § 922(q) must run consecutively to any sentence of imprisonment imposed for any other offense. *See* 18 U.S.C. § 924(a)(4). In order to comply with the statute, when the guideline range is based on the underlying offense, and the defendant is convicted both of the underlying offense and 18 U.S.C. § 922(q), the court should apportion the sentence between the count for the underlying offense and the count under 18 U.S.C. § 922(q). For example, if the guideline range is 30–37 months and the court determines "total punishment" of 36 months is appropriate, a sentence of 30 months for the underlying offense, plus 6 months under 18 U.S.C. § 922(q) would satisfy this requirement.

Historical Note	Effective November 1, 1989 (amendment 191). Amended effective November 1, 1991 (amendment 374); November 1, 2003 (amendment 661); November 1, 2010 (amendment 746); November 1, 2025 (amendment 836).

§2K2.6. Possessing, Purchasing, or Owning Body Armor by Violent Felons

(a) Base Offense Level: **10**

Commentary

Statutory Provision: 18 U.S.C. § 931.

Historical Note	Effective November 1, 2004 (amendment 670). Amended effective November 1, 2026 (amendment 837).

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3. MAILING INJURIOUS ARTICLES

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendment 481).

§2K3.1. [Deleted]

Historical Note	Section 2K3.1 (Unlawfully Transporting Hazardous Materials in Commerce), effective November 1, 1987, was deleted by consolidation with §2Q1.2 effective November 1, 1993 (amendment 481).

§2K3.2. Feloniously Mailing Injurious Articles

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

(1) If the offense was committed with intent (A) to kill or injure any person, or (B) to injure the mails or other property, apply §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to the intended offense; or

(2) If death resulted, apply the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide).

Commentary

Statutory Provision: 18 U.S.C. § 1716 (felony provisions only).

Background: This guideline applies only to the felony provisions of 18 U.S.C. § 1716. The Commission has not promulgated a guideline for the misdemeanor provisions of this statute.

Historical Note	Effective November 1, 1990 (amendment 334).

PART L — OFFENSES INVOLVING IMMIGRATION, NATURALIZATION, AND PASSPORTS

1. IMMIGRATION

§2L1.1. Smuggling, Transporting, or Harboring an Unlawful Alien

(a) Base Offense Level:

(1) **25**, if the defendant was convicted under 8 U.S.C. § 1327 of a violation involving an alien who was inadmissible under 8 U.S.C. § 1182(a)(3);

(2) **23**, if the defendant was convicted under 8 U.S.C. § 1327 of a violation involving an alien who previously was deported after a conviction for an aggravated felony; or

(3) **12**, otherwise.

(b) Specific Offense Characteristics

(1) If (A) the offense was committed other than for profit, or the offense involved the smuggling, transporting, or harboring only of the defendant's spouse or child (or both the defendant's spouse and child), and (B) the base offense level is determined under subsection (a)(3), decrease by **3** levels.

(2) If the offense involved the smuggling, transporting, or harboring of six or more unlawful aliens, increase as follows:

	Number of Unlawful Aliens Smuggled, Transported, or Harbored	Increase in Level
(A)	6–24	add **3**
(B)	25–99	add **6**
(C)	100 or more	add **9**.

(3) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by **2** levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by **4** levels.

(4) If the offense involved the smuggling, transporting, or harboring of a minor who was unaccompanied by the minor's parent, adult relative, or legal guardian, increase by **4** levels.

(5) (Apply the Greatest):

(A) If a firearm was discharged, increase by **6** levels, but if the resulting offense level is less than level **22**, increase to level **22**.

(B) If a dangerous weapon (including a firearm) was brandished or otherwise used, increase by **4** levels, but if the resulting offense level is less than level **20**, increase to level **20**.

(C) If a dangerous weapon (including a firearm) was possessed, increase by **2** levels, but if the resulting offense level is less than level **18**, increase to level **18**.

(6) If the offense involved intentionally or recklessly creating a substantial risk of death or serious bodily injury to another person, increase by **2** levels, but if the resulting offense level is less than level **18**, increase to level **18**.

(7) If any person died or sustained bodily injury, increase the offense level according to the seriousness of the injury:

	DEATH OR DEGREE OF INJURY	INCREASE IN LEVEL
(A)	Bodily Injury	add **2** levels
(B)	Serious Bodily Injury	add **4** levels
(C)	Permanent or Life-Threatening Bodily Injury	add **6** levels
(D)	Death	add **10** levels.

(8) (Apply the greater):

(A) If an alien was involuntarily detained through coercion or threat, or in connection with a demand for payment, (i) after the alien was smuggled into the United States; or (ii) while the alien was transported or harbored in the United States, increase by **2** levels. If the resulting offense level is less than level **18**, increase to level **18**.

(B) If (i) the defendant was convicted of alien harboring, (ii) the alien harboring was for the purpose of prostitution, and (iii) the defendant receives an adjustment under §3B1.1 (Aggravating Role), increase by **2** levels, but if the alien engaging in the prostitution had not attained the age of 18 years, increase by **6** levels.

(9) If the defendant was convicted under 8 U.S.C. § 1324(a)(4), increase by **2** levels.

(c) Cross Reference

(1) If death resulted, apply the appropriate homicide guideline from Chapter Two, Part A, Subpart 1, if the resulting offense level is greater than that determined under this guideline.

Commentary

Statutory Provisions: 8 U.S.C. §§ 1324(a), 1327. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***The offense was committed other than for profit***" means that there was no payment or expectation of payment for the smuggling, transporting, or harboring of any of the unlawful aliens.

"***Number of unlawful aliens smuggled, transported, or harbored***" does not include the defendant.

"***Aggravated felony***" has the meaning given that term in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(43)), without regard to the date of conviction for the aggravated felony.

"***Child***" has the meaning set forth in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. § 1101(b)(1)).

"***Spouse***" has the meaning set forth in 101(a)(35) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(35)).

"***Immigration and naturalization offense***" means any offense covered by Chapter Two, Part L.

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

"***Parent***" means (A) a natural mother or father; (B) a stepmother or stepfather; or (C) an adoptive mother or father.

"***Bodily injury***," "***serious bodily injury***," and "***permanent or life-threatening bodily injury***" have the meaning given those terms in the Commentary to §1B1.1 (Application Instructions).

2. **Prior Convictions Under Subsection (b)(3).**—Prior felony conviction(s) resulting in an adjustment under subsection (b)(3) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

3. **Application of Subsection (b)(6).**—Reckless conduct to which the adjustment from subsection (b)(6) applies includes a wide variety of conduct (*e.g.*, transporting persons in the trunk or engine compartment of a motor vehicle; carrying substantially more passengers than the rated capacity of a motor vehicle or vessel; harboring persons in a crowded, dangerous, or inhumane

condition; or guiding persons through, or abandoning persons in, a dangerous or remote geographic area without adequate food, water, clothing, or protection from the elements). If subsection (b)(6) applies solely on the basis of conduct related to fleeing from a law enforcement officer, do not apply an adjustment from §3C1.2 (Reckless Endangerment During Flight). Additionally, do not apply the adjustment in subsection (b)(6) if the only reckless conduct that created a substantial risk of death or serious bodily injury is conduct for which the defendant received an enhancement under subsection (b)(5).

4. **Application of Subsection (b)(7) to Conduct Constituting Criminal Sexual Abuse.**—Consistent with Application Note 1(L) of §1B1.1 (Application Instructions), "serious bodily injury" is deemed to have occurred if the offense involved conduct constituting criminal sexual abuse under 18 U.S.C. § 2241 or § 2242 or any similar offense under state law.

5. **Inapplicability of §3A1.3.**—If an enhancement under subsection (b)(8)(A) applies, do not apply §3A1.3 (Restraint of Victim).

6. **Interaction with §3B1.1.**—For the purposes of §3B1.1 (Aggravating Role), the aliens smuggled, transported, or harbored are not considered participants unless they actively assisted in the smuggling, transporting, or harboring of others. In large scale smuggling, transporting, or harboring cases, an additional adjustment from §3B1.1 typically will apply.

Background: This section includes the most serious immigration offenses covered under the Immigration Reform and Control Act of 1986.

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendments 35, 36, and 37); November 1, 1989 (amendment 192); November 1, 1990 (amendment 335); November 1, 1991 (amendment 375); November 1, 1992 (amendment 450); May 1, 1997 (amendment 543); November 1, 1997 (amendment 561); November 1, 2006 (amendments 686 and 692); November 1, 2007 (amendment 702); November 1, 2009 (amendment 730); November 1, 2014 (amendment 785); November 1, 2016 (amendment 802); November 1, 2018 (amendment 805); November 1, 2025 (amendment 836).

§2L1.2. Unlawfully Entering or Remaining in the United States

(a) Base Offense Level: **8**

(b) Specific Offense Characteristics

(1) (Apply the Greater) If the defendant committed the instant offense after sustaining—

(A) a conviction for a felony that is an illegal reentry offense, increase by **4** levels; or

(B) two or more convictions for misdemeanors under 8 U.S.C. § 1325(a), increase by **2** levels.

(2) (Apply the Greatest) If, before the defendant was ordered deported or ordered removed from the United States for the first time, the defendant engaged in criminal conduct that, at any time, resulted in—

(A) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was five years or more, increase by **10** levels;

(B) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was two years or more, increase by **8** levels;

(C) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed exceeded one year and one month, increase by **6** levels;

(D) a conviction for any other felony offense (other than an illegal reentry offense), increase by **4** levels; or

(E) three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by **2** levels.

(3) (Apply the Greatest) If, after the defendant was ordered deported or ordered removed from the United States for the first time, the defendant engaged in criminal conduct that, at any time, resulted in—

(A) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was five years or more, increase by **10** levels;

(B) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was two years or more, increase by **8** levels;

(C) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed exceeded one year and one month, increase by **6** levels;

(D) a conviction for any other felony offense (other than an illegal reentry offense), increase by **4** levels; or

(E) three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by **2** levels.

Commentary

Statutory Provisions: 8 U.S.C. § 1253, § 1325(a) (second or subsequent offense only), § 1326. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **In General.—**

   (A) **"Ordered Deported or Ordered Removed from the United States for the First Time".—**For purposes of this guideline, a defendant shall be considered "ordered deported or ordered removed from the United States" if the defendant was ordered deported or ordered removed from the United States based on a final order of exclusion, deportation, or removal, regardless of whether the order was in response to a conviction. "For the first time" refers to the first time the defendant was ever the subject of such an order.

   (B) **Offenses Committed Prior to Age Eighteen.—**Subsections (b)(1), (b)(2), and (b)(3) do not apply to a conviction for an offense committed before the defendant was eighteen years of age unless such conviction is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted.

2. **Definitions.—**For purposes of this guideline:

   "***Crime of violence***" means any of the following offenses under federal, state, or local law: murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c), or any other offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another. "Forcible sex offense" includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (A) an offense described in 18 U.S.C. § 2241(c) or (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States. "Robbery" is the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. The phrase "actual or threatened force" refers to force that is sufficient to overcome a victim's resistance. "Extortion" is obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury.

   "***Drug trafficking offense***" means an offense under federal, state, or local law that prohibits the manufacture, import, export, distribution, or dispensing of, or offer to sell a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

   "***Felony***" means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.

   "***Illegal reentry offense***" means (A) an offense under 8 U.S.C. § 1253 or § 1326, or (B) a second or subsequent offense under 8 U.S.C. § 1325(a).

   "***Misdemeanor***" means any federal, state, or local offense punishable by a term of imprisonment of one year or less.

"***Sentence imposed***" has the meaning given the term "sentence of imprisonment" in Application Note 2 and subsection (b) of §4A1.2 (Definitions and Instructions for Computing Criminal History). The length of the sentence imposed includes any term of imprisonment given upon revocation of probation, parole, or supervised release, regardless of when the revocation occurred.

3. **Criminal History Points.**—For purposes of applying subsections (b)(1), (b)(2), and (b)(3), use only those convictions that receive criminal history points under §4A1.1(a), (b), or (c). In addition, for purposes of subsections (b)(1)(B), (b)(2)(E), and (b)(3)(E), use only those convictions that are counted separately under §4A1.2(a)(2).

   A conviction taken into account under subsection (b)(1), (b)(2), or (b)(3) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

4. **Cases in Which Sentences for An Illegal Reentry Offense and Another Felony Offense were Imposed at the Same Time.**—There may be cases in which the sentences for an illegal reentry offense and another felony offense were imposed at the same time and treated as a single sentence for purposes of calculating the criminal history score under §4A1.1(a), (b), and (c). In such a case, use the illegal reentry offense in determining the appropriate enhancement under subsection (b)(1), if it independently would have received criminal history points. In addition, use the prior sentence for the other felony offense in determining the appropriate enhancement under subsection (b)(2) or (b)(3), as appropriate, if it independently would have received criminal history points.

5. **Cases in Which the Criminal Conduct Underlying a Prior Conviction Occurred Both Before and After the Defendant Was First Ordered Deported or Ordered Removed.**—There may be cases in which the criminal conduct underlying a prior conviction occurred both before and after the defendant was ordered deported or ordered removed from the United States for the first time. For purposes of subsections (b)(2) and (b)(3), count such a conviction only under subsection (b)(2).

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 38); November 1, 1989 (amendment 193); November 1, 1991 (amendment 375); November 1, 1995 (amendment 523); November 1, 1997 (amendment 562); November 1, 2001 (amendment 632); November 1, 2002 (amendment 637); November 1, 2003 (amendment 658); November 1, 2007 (amendment 709); November 1, 2008 (amendment 722); November 1, 2010 (amendment 740); November 1, 2011 (amendment 754); November 1, 2012 (amendment 764); November 1, 2014 (amendment 787); November 1, 2015 (amendment 795); November 1, 2016 (amendment 802); November 1, 2018 (amendment 809); November 1, 2023 (amendment 822); November 1, 2025 (amendment 836).

§2L1.3. [Deleted]

Historical Note	Section 2L1.3 (Engaging in a Pattern of Unlawful Employment of Aliens), effective November 1, 1987, was deleted effective November 1, 1989 (amendment 194).

* * * * *

2. NATURALIZATION AND PASSPORTS

§2L2.1. Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law

(a) Base Offense Level: **11**

(b) Specific Offense Characteristics

(1) If the offense was committed other than for profit, or the offense involved the smuggling, transporting, or harboring only of the defendant's spouse or child (or both the defendant's spouse and child), decrease by **3** levels.

(2) If the offense involved six or more documents or passports, increase as follows:

	NUMBER OF DOCUMENTS/PASSPORTS	INCREASE IN LEVEL
(A)	6–24	add **3**
(B)	25–99	add **6**
(C)	100 or more	add **9**.

(3) If the defendant knew, believed, or had reason to believe that a passport or visa was to be used to facilitate the commission of a felony offense, other than an offense involving violation of the immigration laws, increase by **4** levels.

(4) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by **2** levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by **4** levels.

(5) If the defendant fraudulently obtained or used (A) a United States passport, increase by **4** levels; or (B) a foreign passport, increase by **2** levels.

Commentary

Statutory Provisions: 8 U.S.C. §§ 1160(b)(7)(A), 1185(a)(3), (4), 1325(c), (d); 18 U.S.C. §§ 1015, 1028, 1425–1427, 1542, 1544, 1546. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. For purposes of this guideline—

   "***The offense was committed other than for profit***" means that there was no payment or expectation of payment for the smuggling, transporting, or harboring of any of the unlawful aliens.

   "***Immigration and naturalization offense***" means any offense covered by Chapter Two, Part L.

   "***Child***" has the meaning set forth in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. § 1101(b)(1)).

   "***Spouse***" has the meaning set forth in section 101(a)(35) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(35)).

2. Where it is established that multiple documents are part of a set of documents intended for use by a single person, treat the set as one document.

3. Prior felony conviction(s) resulting in an adjustment under subsection (b)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 195); November 1, 1992 (amendment 450); November 1, 1993 (amendment 481); November 1, 1995 (amendment 524); May 1, 1997 (amendment 544); November 1, 1997 (amendment 563); November 1, 2006 (amendment 692); November 1, 2010 (amendment 746); November 1, 2025 (amendment 836).

§2L2.2. Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport

(a) Base Offense Level: **8**

(b) Specific Offense Characteristics

(1) If the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, increase by **2** levels.

(2) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by **2** levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by **4** levels.

(3) If the defendant fraudulently obtained or used (A) a United States passport, increase by **4** levels; or (B) a foreign passport, increase by **2** levels.

(4) (Apply the Greater):

(A) If the defendant committed any part of the instant offense to conceal the defendant's membership in, or authority over, a military, paramilitary, or police organization that was involved in a serious human rights offense during the period in which the defendant was such a member or had such authority, increase by **2** levels. If the resulting offense level is less than level **13**, increase to level **13**.

(B) If the defendant committed any part of the instant offense to conceal the defendant's participation in (i) the offense of incitement to genocide, increase by **6** levels; or (ii) any other serious human rights offense, increase by **10** levels. If clause (ii) applies and the resulting offense level is less than level **25**, increase to level **25**.

(c) Cross Reference

(1) If the defendant used a passport or visa in the commission or attempted commission of a felony offense, other than an offense involving violation of the immigration laws, apply—

(A) §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that felony offense, if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 8 U.S.C. §§ 1160(b)(7)(A), 1185(a)(3), (5), 1325(c), (d); 18 U.S.C. §§ 911, 1015, 1028, 1423–1426, 1542–1544, 1546.

Application Notes:

1. **Definition.**—For purposes of this guideline, "***immigration and naturalization offense***" means any offense covered by Chapter Two, Part L.

2. **Application of Subsection (b)(2).**—Prior felony conviction(s) resulting in an adjustment under subsection (b)(2) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

3. **Application of Subsection (b)(3).—**The term "***used***" is to be construed broadly and includes the attempted renewal of previously-issued passports.

4. **Application of Subsection (b)(4).—**For purposes of subsection (b)(4):

"***Serious human rights offense***" means (A) violations of federal criminal laws relating to genocide, torture, war crimes, and the use or recruitment of child soldiers under sections 1091, 2340, 2340A, 2441, and 2442 of title 18, United States Code, *see* 28 U.S.C. § 509B(e); and (B) conduct that would have been a violation of any such law if the offense had occurred within the jurisdiction of the United States or if the defendant or the victim had been a national of the United States.

"***The offense of incitement to genocide***" means (A) violations of 18 U.S.C. § 1091(c); and (B) conduct that would have been a violation of such section if the offense had occurred within the jurisdiction of the United States or if the defendant or the victim had been a national of the United States.

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 39); November 1, 1989 (amendment 196); November 1, 1992 (amendment 450); November 1, 1993 (amendment 481); November 1, 1995 (amendment 524); May 1, 1997 (amendment 544); November 1, 1997 (amendment 563); November 1, 2004 (amendment 671); November 1, 2006 (amendment 692); November 1, 2010 (amendment 746); November 1, 2012 (amendment 765); November 1, 2025 (amendment 836); November 1, 2026 (amendment 840).

§§2L2.3 – 2L2.4. [Deleted]

Historical Note	Section 2L2.3 (Trafficking in a United States Passport), effective November 1, 1987, and amended effective November 1, 1989 (amendment 197) and November 1, 1992 (amendment 450), was deleted by consolidation with §2L2.1 effective November 1, 1993 (amendment 481). Section 2L2.4 (Fraudulently Acquiring or Improperly Using a United States Passport), effective November 1, 1987, and amended effective January 15, 1988 (amendment 40) and November 1, 1989 (amendment 198), was deleted by consolidation with §2L2.2 effective November 1, 1993 (amendment 481).

§2L2.5. Failure to Surrender Canceled Naturalization Certificate

(a) Base Offense Level: **6**

Commentary

Statutory Provision: 18 U.S.C. § 1428.

Historical Note	Effective November 1, 1987.

PART M — OFFENSES INVOLVING NATIONAL DEFENSE AND WEAPONS OF MASS DESTRUCTION

Historical Note	Effective November 1, 1987. Amended effective November 1, 2001 (amendment 633).

1. TREASON

§2M1.1. Treason

(a) Base Offense Level:

(1) **43**, if the conduct is tantamount to waging war against the United States;

(2) the offense level applicable to the most analogous offense, otherwise.

Commentary

Statutory Provision: 18 U.S.C. § 2381.

Background: Treason is a rarely prosecuted offense that could encompass a relatively broad range of conduct, including many of the more specific offenses in this part. The guideline contemplates imposition of the maximum penalty in the most serious cases, with reference made to the most analogous offense guideline in lesser cases.

Historical Note	Effective November 1, 1987. Amended effective November 1, 2023 (amendment 824).

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2. SABOTAGE

§2M2.1. Destruction of, or Production of Defective, War Material, Premises, or Utilities

(a) Base Offense Level: **32**

Commentary

Statutory Provisions: 18 U.S.C. §§ 2153, 2154; 42 U.S.C. § 2284; 49 U.S.C. § 60123(b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. Violations of 42 U.S.C. § 2284 are included in this section where the defendant was convicted of acting with intent to injure the United States or aid a foreign nation.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendment 481); November 1, 2002 (amendment 637); November 1, 2018 (amendment 813).

§2M2.2. [Deleted]

Historical Note	Section 2M2.2 (Production of Defective War Material, Premises, or Utilities), effective November 1, 1987, was deleted by consolidation with §2M2.1 effective November 1, 1993 (amendment 481).

§2M2.3. Destruction of, or Production of Defective, National Defense Material, Premises, or Utilities

(a) Base Offense Level: **26**

Commentary

Statutory Provisions: 18 U.S.C. §§ 2155, 2156; 42 U.S.C. § 2284; 49 U.S.C. § 60123(b).

Application Note:

1. Violations of 42 U.S.C. § 2284 not included in §2M2.1 are included in this section.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendment 481); November 1, 2002 (amendment 637).

§2M2.4. [Deleted]

Historical Note	Section 2M2.4 (Production of Defective National Defense Material, Premises, or Utilities), effective November 1, 1987, was deleted by consolidation with §2M2.3 effective November 1, 1993 (amendment 481).

* * * * *

3. ESPIONAGE AND RELATED OFFENSES

§2M3.1. Gathering or Transmitting National Defense Information to Aid a Foreign Government

(a) Base Offense Level:

(1) **42**, if top secret information was gathered or transmitted; or

(2) **37**, otherwise.

Commentary

Statutory Provisions: 18 U.S.C. § 794; 42 U.S.C. §§ 2274(a), (b), 2275.

Application Notes:

1. "***Top secret information***" is information that, if disclosed, "reasonably could be expected to cause exceptionally grave damage to the national security." Executive Order 13526 (50 U.S.C. § 3161 note).

2. The Commission has set the base offense level in this subpart on the assumption that the information at issue bears a significant relation to the nation's security, and that the revelation will significantly and adversely affect security interests.

Background: Offense level distinctions in this subpart are generally based on the classification of the information gathered or transmitted. This classification, in turn, reflects the importance of the information to the national security.

Historical Note	Effective November 1, 1987. Amended effective November 1, 2010 (amendment 746); November 1, 2013 (amendment 778); November 1, 2014 (amendment 789); November 1, 2025 (amendment 836).

§2M3.2. Gathering National Defense Information

(a) Base Offense Level:

(1) **35**, if top secret information was gathered; or

(2) **30**, otherwise.

Commentary

Statutory Provisions: 18 U.S.C. §§ 793(a), (b), (c), (d), (e), (g), 1030(a)(1). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. *See* Commentary to §2M3.1.

2. If the defendant is convicted under 18 U.S.C. § 793(d) or (e), §2M3.3 may apply. *See* Commentary to §2M3.3.

Background: The statutes covered in this section proscribe diverse forms of obtaining and transmitting national defense information with intent or reason to believe the information would injure the United States or be used to the advantage of a foreign government.

Historical Note	Effective November 1, 1987. Amended effective November 1, 2003 (amendment 654).

§2M3.3. Transmitting National Defense Information; Disclosure of Classified Cryptographic Information; Unauthorized Disclosure to a Foreign Government or a Communist Organization of Classified Information by Government Employee; Unauthorized Receipt of Classified Information

(a) Base Offense Level:

(1) **29**, if top secret information; or

(2) **24**, otherwise.

Commentary

Statutory Provisions: 18 U.S.C. §§ 793(d), (e), (g), 798; 50 U.S.C. § 783.

Application Notes:

1. *See* Commentary to §2M3.1.

2. If the defendant was convicted of 18 U.S.C. § 793(d) or (e) for the willful transmission or communication of intangible information with reason to believe that it could be used to the injury of the United States or the advantage of a foreign nation, apply §2M3.2.

Background: The statutes covered in this section proscribe willfully transmitting or communicating to a person not entitled to receive it a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense. Proof that the item was communicated with reason to believe that it could be used to the injury of the United States or the advantage of a foreign nation is required only where intangible information is communicated under 18 U.S.C. § 793(d) or (e).

This section also covers statutes that proscribe the disclosure of classified information concerning cryptographic or communication intelligence to the detriment of the United States or for the benefit of a foreign government, the unauthorized disclosure to a foreign government or a communist organization of classified information by a government employee, and the unauthorized receipt of classified information.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendment 481); November 1, 2010 (amendment 746).

§2M3.4. Losing National Defense Information

(a) Base Offense Level:

(1) **18**, if top secret information was lost; or

(2) **13**, otherwise.

Commentary

Statutory Provision: 18 U.S.C. § 793(f).

Application Note:

1. *See* Commentary to §2M3.1.

Background: Offenses prosecuted under this statute generally do not involve subversive conduct on behalf of a foreign power, but rather the loss of classified information by the gross negligence of an employee of the federal government or a federal contractor.

Historical Note	Effective November 1, 1987.

§2M3.5. Tampering with Restricted Data Concerning Atomic Energy

(a) Base Offense Level: **24**

Commentary

Statutory Provision: 42 U.S.C. § 2276.

Application Note:

1. *See* Commentary to §2M3.1.

Historical Note	Effective November 1, 1987.

§§2M3.6 – 2M3.8. [Deleted]

Historical Note	Section 2M3.6 (Disclosure of Classified Cryptographic Information), effective November 1, 1987, was deleted by consolidation with §2M3.3 effective November 1, 1993 (amendment 481). Section 2M3.7 (Unauthorized Disclosure to Foreign Government or a Communist Organization of Classified Information by Government Employee), effective November 1, 1987, was deleted by consolidation with §2M3.3 effective November 1, 1993 (amendment 481). Section 2M3.8 (Receipt of Classified Information), effective November 1, 1987, was deleted by consolidation with §2M3.3 effective November 1, 1993 (amendment 481).

§2M3.9. Disclosure of Information Identifying a Covert Agent

(a) Base Offense Level:

(1) **30**, if the information was disclosed by a person with, or who had authorized access to classified information identifying a covert agent; or

(2) **25**, if the information was disclosed by a person with authorized access only to other classified information.

Commentary

Statutory Provision: 50 U.S.C. § 3121.

Application Notes:

1. *See* Commentary to §2M3.1.

2. This guideline applies only to violations of 50 U.S.C. § 3121 by persons who have or previously had authorized access to classified information. This guideline does not apply to violations of 50 U.S.C. § 3121 by defendants, including journalists, who disclosed such information without having or having had authorized access to classified information. Violations of 50 U.S.C. § 3121 not covered by this guideline may vary in the degree of harm they inflict, and the court should impose a sentence that reflects such harm. *See* §2X5.1 (Other Offenses).

3. A term of imprisonment imposed for a conviction under 50 U.S.C. § 3121 shall be imposed consecutively to any other term of imprisonment. *See* 50 U.S.C. § 3121(d).

Background: The alternative base offense levels reflect a statutory distinction by providing a greater base offense level for a violation of 50 U.S.C. § 3121 by an official who has or had authorized access to classified information identifying a covert agent than for a violation by an official with authorized access only to other classified information. This guideline does not apply to violations of 50 U.S.C. § 3121 by defendants who disclosed such information without having, or having had, authorized access to classified information.

Historical Note	Effective November 1, 1987. Amended effective November 1, 2001 (amendment 636); November 1, 2010 (amendment 746); November 1, 2015 (amendment 796).

* * * * *

4. EVASION OF MILITARY SERVICE

§2M4.1. Failure to Register and Evasion of Military Service

(a) Base Offense Level: **6**

Commentary

Statutory Provision: 50 U.S.C. § 3811.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 336); November 1, 2023 (amendment 824); November 1, 2025 (amendment 836); November 1, 2026 (amendment 837).

* * * * *

5. PROHIBITED FINANCIAL TRANSACTIONS AND EXPORTS, AND PROVIDING MATERIAL SUPPORT TO DESIGNATED FOREIGN TERRORIST ORGANIZATIONS

Historical Note	Effective November 1, 1987. Amended effective November 1, 2002 (amendment 637).

§2M5.1. Evasion of Export Controls; Financial Transactions with Countries Supporting International Terrorism

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

(1) **26**, if (A) national security controls or controls relating to the proliferation of nuclear, biological, or chemical weapons or materials were evaded; or (B) the offense involved a financial transaction with a country supporting international terrorism; or

(2) **14**, otherwise.

Commentary

Statutory Provisions: 18 U.S.C. § 2332d; 22 U.S.C. § 8512; 50 U.S.C. §§ 1705, 4819. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definition.**—For purposes of subsection (a)(1)(B), "***a country supporting international terrorism***" means a country designated under section 1754 of the Export Controls Act of 2018 (50 U.S.C. § 4813).

2. **Additional Penalties.**—In addition to the provisions for imprisonment, 50 U.S.C. § 4819 contains provisions for criminal fines and forfeiture as well as civil penalties.

Historical Note	Effective November 1, 1987. Amended effective November 1, 2001 (amendment 633); November 1, 2002 (amendment 637); November 1, 2011 (amendment 753); November 1, 2023 (amendment 824); November 1, 2024 (amendment 830); November 1, 2025 (amendment 836).

§2M5.2. Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License

(a) Base Offense Level:

(1) **26**, except as provided in subdivision (2) below;

(2) **14**, if the offense involved only (A) non-fully automatic small arms (rifles, handguns, or shotguns), and the number of weapons did not exceed two, (B) ammunition for non-fully automatic small arms, and the number of rounds did not exceed 500, or (C) both.

Commentary

Statutory Provisions: 18 U.S.C. § 554; 22 U.S.C. §§ 2778, 2780, 8512; 50 U.S.C. § 1705.

Application Note:

1. Under 22 U.S.C. § 2778, the President is authorized, through a licensing system administered by the Department of State, to control exports of defense articles and defense services that he deems critical to a security or foreign policy interest of the United States. The items subject to control constitute the United States Munitions List, which is set out in 22 C.F.R. Part 121.1. Included in this list are such things as military aircraft, helicopters, artillery, shells, missiles, rockets, bombs, vessels of war, explosives, military and space electronics, and certain firearms.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 337); November 1, 2001 (amendment 633); November 1, 2007 (amendment 700); November 1, 2011 (amendment 753); November 1, 2025 (amendment 836).

§2M5.3. Providing Material Support or Resources to Designated Foreign Terrorist Organizations or Specially Designated Global Terrorists, or For a Terrorist Purpose

(a) Base Offense Level: **26**

(b) Specific Offense Characteristic

(1) If the offense involved the provision of (A) dangerous weapons; (B) firearms; (C) explosives; (D) funds with the intent, knowledge, or reason to believe such funds would be used to purchase any of the items described in subdivisions (A) through (C); or (E) funds or other material support or resources with the intent, knowledge, or reason to believe they are to be used to commit or assist in the commission of a violent act, increase by **2** levels.

(c) Cross References

(1) If the offense resulted in death, apply §2A1.1 (First Degree Murder) if the death was caused intentionally or knowingly, or §2A1.2 (Second Degree Murder) otherwise, if the resulting offense level is greater than that determined above.

(2) If the offense was tantamount to attempted murder, apply §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder), if the resulting offense level is greater than that determined above.

(3) If the offense involved the provision of (A) a nuclear weapon, nuclear material, or nuclear byproduct material; (B) a chemical weapon; (C) a biological agent, toxin, or delivery system; or (D) a weapon of mass destruction, apply §2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 2283, 2284, 2339B, 2339C(a)(1)(B), (c)(2)(B) (but only with respect to funds known or intended to have been provided or collected in violation of 18 U.S.C. § 2339C(a)(1)(B)); 22 U.S.C. § 8512; 50 U.S.C. § 1705.

Application Note:

1. **Definitions.—**For purposes of this guideline:

"***Biological agent***", "***chemical weapon***", "***nuclear byproduct material***", "***nuclear material***", "***toxin***", and "***weapon of mass destruction***" have the meaning given those terms in Application Note 1 of the Commentary to §2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction).

"***Dangerous weapon***", "***firearm***", and "***destructive device***" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

"***Explosives***" has the meaning given that term in Application Note 1 of the Commentary to §2K1.4 (Arson; Property Damage by Use of Explosives).

"***Foreign terrorist organization***" has the meaning given the term "terrorist organization" in 18 U.S.C. § 2339B(g)(6).

"***Material support or resources***" has the meaning given that term in 18 U.S.C. § 2339B(g)(4).

"***Specially designated global terrorist***" has the meaning given that term in 31 C.F.R. § 594.310.

Historical Note	Effective November 1, 2002 (amendment 637). Amended effective November 1, 2003 (amendment 655); November 1, 2007 (amendment 700); November 1, 2011 (amendment 753); November 1, 2023 (amendment 824); November 1, 2025 (amendment 836).

* * * * *

6. NUCLEAR, BIOLOGICAL, AND CHEMICAL WEAPONS AND MATERIALS, AND OTHER WEAPONS OF MASS DESTRUCTION

Historical Note	Effective November 1, 1987. Amended effective November 1, 2001 (amendment 633).

§2M6.1. Unlawful Activity Involving Nuclear Material, Weapons, or Facilities, Biological Agents, Toxins, or Delivery Systems, Chemical Weapons, or Other Weapons of Mass Destruction; Attempt or Conspiracy

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

(1) **42**, if the offense was committed with intent (A) to injure the United States; or (B) to aid a foreign nation or a foreign terrorist organization;

(2) **28**, if subsections (a)(1), (a)(3), and (a)(4) do not apply;

(3) **22**, if the defendant is convicted under 18 U.S.C. § 175b; or

(4) **20**, if (A) the defendant is convicted under 18 U.S.C. § 175(b); or (B) the offense (i) involved a threat to use a nuclear weapon, nuclear material, or nuclear byproduct material, a chemical weapon, a biological agent, toxin, or delivery system, or a weapon of mass destruction; but (ii) did not involve any conduct evidencing an intent or ability to carry out the threat.

(b) Specific Offense Characteristics

(1) If (A) subsection (a)(2) or (a)(4)(A) applies; and (B) the offense involved a threat to use, or otherwise involved (i) a select biological agent; (ii) a listed precursor or a listed toxic chemical; (iii) nuclear material or nuclear byproduct material; or (iv) a weapon of mass destruction that contains any agent, precursor, toxic chemical, or material referred to in subdivision (i), (ii), or (iii), increase by **2** levels.

(2) If (A) subsection (a)(2), (a)(3), or (a)(4)(A) applies; and (B)(i) any victim died or sustained permanent or life-threatening bodily injury, increase by **4** levels; (ii) any victim sustained serious bodily injury, increase by **2** levels; or (iii) the degree of injury is between that specified in subdivisions (i) and (ii), increase by **3** levels.

(3) If (A) subsection (a)(2), (a)(3), or (a)(4) applies; and (B) the offense resulted in (i) substantial disruption of public, governmental, or business functions or services; or (ii) a substantial expenditure of funds to clean up, decontaminate, or otherwise respond to the offense, increase by **4** levels.

(c) Cross References

(1) If the offense resulted in death, apply §2A1.1 (First Degree Murder) if the death was caused intentionally or knowingly, or §2A1.2 (Second Degree Murder) otherwise, if the resulting offense level is greater than that determined above.

(2) If the offense was tantamount to attempted murder, apply §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder), if the resulting offense level is greater than that determined above.

(d) Special Instruction

(1) If the defendant is convicted of a single count involving (A) conduct that resulted in the death or permanent, life-threatening, or serious bodily injury of more than one victim, or (B) conduct tantamount to the attempted murder of more than one victim, subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) shall be applied as if such conduct in respect to each victim had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 18 U.S.C. §§ 175, 175b, 175c, 229, 831, 832, 842(p)(2) (only with respect to weapons of mass destruction as defined in 18 U.S.C. § 2332a(c)(2)(B), (C), and (D)), 1992(a)(2), (a)(3), (a)(4), (b)(2), 2283, 2291, 2332h; 42 U.S.C. §§ 2077(b), 2122, 2131. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Biological agent***" has the meaning given that term in 18 U.S.C. § 178(1).

"***Chemical weapon***" has the meaning given that term in 18 U.S.C. § 229F(1).

"***Foreign terrorist organization***" (A) means an organization that engages in terrorist activity that threatens the security of a national of the United States or the national security of the United States; and (B) includes an organization designated by the Secretary of State as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act (8 U.S.C. § 1189). "National of the United States" has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(22)).

"***Listed precursor or a listed toxic chemical***" means a precursor or a toxic chemical, respectively, listed in Schedule I of the Annex on Chemicals to the Chemical Weapons Convention. *See* 18 U.S.C. § 229F(6)(B), (8)(B). "Precursor" has the meaning given that term in 18 U.S.C. § 229F(6)(A). "Toxic chemical" has the meaning given that term in 18 U.S.C. § 229F(8)(A).

"***Nuclear byproduct material***" has the meaning given that term in 18 U.S.C. § 831(g)(2).

"***Nuclear material***" has the meaning given that term in 18 U.S.C. § 831(g)(1).

"***Select biological agent***" means a biological agent or toxin identified (A) by the Secretary of Health and Human Services on the select agent list established and maintained pursuant to section 351A of the Public Health Service Act (42 U.S.C. § 262a); or (B) by the Secretary of Agriculture on the list established and maintained pursuant to section 212 of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. § 8401).

"***Toxin***" has the meaning given that term in 18 U.S.C. § 178(2).

"***Weapon of mass destruction***" has the meaning given that term in 18 U.S.C. § 2332a(c)(2)(B), (C), and (D).

2. **Threat Cases.—**Subsection (a)(4)(B) applies in cases that involved a threat to use a weapon, agent, or material covered by this guideline but that did not involve any conduct evidencing an intent or ability to carry out the threat. For example, subsection (a)(4)(B) would apply in a case in which the defendant threatened to contaminate an area with anthrax and also dispersed into the area a substance that appeared to be anthrax but that the defendant knew to be harmless talcum powder. In such a case, the dispersal of talcum powder does not evidence an intent on the defendant's part to carry out the threat. In contrast, subsection (a)(4)(B) would not apply in a case in which the defendant threatened to contaminate an area with anthrax and also dispersed into the area a substance that the defendant believed to be anthrax but that in fact was harmless talcum powder. In such a case, the dispersal of talcum powder was conduct evidencing an intent to carry out the threat because of the defendant's belief that the talcum powder was anthrax.

   Subsection (a)(4)(B) shall not apply in any case involving both a threat to use any weapon, agent, or material covered by this guideline and the possession of that weapon, agent, or material. In such a case, possession of the weapon, agent, or material is conduct evidencing an intent to use that weapon, agent, or material.

3. **Application of Special Instruction.—**Subsection (d) applies in any case in which the defendant is convicted of a single count involving (A) the death or permanent, life-threatening, or serious bodily injury of more than one victim, or (B) conduct tantamount to the attempted murder of more than one victim, regardless of whether the offense level is determined under this guideline or under another guideline in Chapter Two (Offense Conduct) by use of a cross reference under subsection (c).

Historical Note	Effective November 1, 1987. Amended effective November 1, 2001 (amendment 633); November 1, 2002 (amendment 637); November 1, 2003 (amendment 655); November 1, 2005 (amendment 679); November 1, 2006 (amendment 686); November 1, 2007 (amendments 699 and 700); November 1, 2010 (amendment 746); November 1, 2016 (amendment 804); November 1, 2023 (amendment 824); November 1, 2026 (amendment 840).

§2M6.2. Violation of Other Federal Atomic Energy Agency Statutes, Rules, and Regulations

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

(1) **30**, if the offense was committed with intent to injure the United States or to aid a foreign nation; or

(2) **6**.

Commentary

Statutory Provision: 42 U.S.C. § 2273.

Background: This section applies to offenses related to nuclear energy not specifically addressed elsewhere. This provision covers, for example, violations of statutes dealing with rules and regulations, license conditions, and orders of the Nuclear Regulatory Commission and the Department of Energy.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 359).

PART N — OFFENSES INVOLVING FOOD, DRUGS, AGRICULTURAL PRODUCTS, CONSUMER PRODUCTS, AND ODOMETER LAWS

Historical Note	Effective November 1, 1987. Amended effective November 1, 2009 (amendment 733).

1. TAMPERING WITH CONSUMER PRODUCTS

§2N1.1. Tampering or Attempting to Tamper Involving Risk of Death or Bodily Injury

(a) Base Offense Level: **25**

(b) Specific Offense Characteristic

(1) (A) If any victim sustained permanent or life-threatening bodily injury, increase by **4** levels; (B) if any victim sustained serious bodily injury, increase by **2** levels; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by **3** levels.

(c) Cross References

(1) If the offense resulted in death, apply §2A1.1 (First Degree Murder) if the death was caused intentionally or knowingly, or §2A1.2 (Second Degree Murder) in any other case.

(2) If the offense was tantamount to attempted murder, apply §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder) if the resulting offense level is greater than that determined above.

(3) If the offense involved extortion, apply §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) if the resulting offense level is greater than that determined above.

(d) Special Instruction

(1) If the defendant is convicted of a single count involving (A) the death or permanent, life-threatening, or serious bodily injury of more than one victim, or (B) conduct tantamount to the attempted murder of more than one victim, subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) shall be applied as if the defendant had been convicted of a separate count for each such victim.

Commentary

Statutory Provisions: 18 U.S.C. § 1365(a), (e); 21 U.S.C. § 333(b)(7). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. The special instruction in subsection (d)(1) applies whether the offense level is determined under subsection (b)(1) or by use of a cross reference in subsection (c).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 338); November 1, 1991 (amendment 376); November 1, 2023 (amendment 815); November 1, 2025 (amendment 836); November 1, 2026 (amendment 840).

§2N1.2. Providing False Information or Threatening to Tamper with Consumer Products

(a) Base Offense Level: **16**

(b) Cross Reference

(1) If the offense involved extortion, apply §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage).

Commentary

Statutory Provisions: 18 U.S.C. § 1365(c), (d).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 339); November 1, 2025 (amendment 836).

§2N1.3. Tampering With Intent to Injure Business

(a) Base Offense Level: **12**

Commentary

Statutory Provision: 18 U.S.C. § 1365(b).

Historical Note	Effective November 1, 1987. Amended effective November 1, 2025 (amendment 836).

* * * * *

2. FOOD, DRUGS, AGRICULTURAL PRODUCTS, AND CONSUMER PRODUCTS

Historical Note	Effective November 1, 1987. Amended effective November 1, 2009 (amendment 733).

§2N2.1. Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, Agricultural Product, or Consumer Product

(a) Base Offense Level: **6**

(b) Specific Offense Characteristic

(1) If the defendant was convicted under 21 U.S.C. § 331 after sustaining a prior conviction under 21 U.S.C. § 331, increase by **4** levels.

(c) Cross References

(1) If the offense involved fraud, apply §2B1.1 (Theft, Property Destruction, and Fraud).

(2) If the offense was committed in furtherance of, or to conceal, an offense covered by another offense guideline, apply that other offense guideline if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 7 U.S.C. §§ 150bb, 150gg, 6810, 7734, 8313; 21 U.S.C. §§ 115, 117, 122, 134–134e, 151–158, 331, 333(a)(1), (a)(2), (b)(1)–(6), (b)(8), 458–461, 463, 466, 610, 611, 614, 617, 619, 620, 642–644, 676; 42 U.S.C. § 262. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. The cross reference at subsection (c)(1) addresses cases in which the offense involved fraud. The cross reference at subsection (c)(2) addresses cases in which the offense was committed in furtherance of, or to conceal, an offense covered by another offense guideline (*e.g.*, bribery).

2. The Commission has not promulgated a guideline for violations of 21 U.S.C. § 333(e) (offenses involving human growth hormones). Offenses involving anabolic steroids are covered by Chapter Two, Part D (Offenses Involving Drugs and Narco-Terrorism). In the case of an offense involving a substance purported to be an anabolic steroid, but not containing any active ingredient, apply §2B1.1 (Theft, Property Destruction, and Fraud) with "loss" measured by the amount paid, or to be paid, by the victim for such substance.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 340); November 1, 1991 (amendment 432); November 1, 1992 (amendment 451); November 1, 2001 (amendment 617); November 1, 2002 (amendment 646); November 1, 2003 (amendment 661); November 1, 2006 (amendment 685); November 1, 2007 (amendment 711); November 1, 2008 (amendment 723); November 1, 2009 (amendment 733); November 1, 2023 (amendment 815); November 1, 2025 (amendment 836).

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3. ODOMETER LAWS AND REGULATIONS

§2N3.1. Odometer Laws and Regulations

(a) Base Offense Level: **6**

(b) Cross Reference

(1) If the offense involved more than one vehicle, apply §2B1.1 (Theft, Property Destruction, and Fraud).

Commentary

Statutory Provisions: 49 U.S.C. §§ 32703–32705, 32709(b).

Background: The base offense level takes into account the deceptive aspect of the offense assuming a single vehicle was involved. If more than one vehicle was involved, §2B1.1 (Theft, Property Destruction, and Fraud) is to be applied because it is designed to deal with a pattern or scheme.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 199); November 1, 1997 (amendment 553); November 1, 2001 (amendment 617).

PART O — [NOT USED]

PART P — OFFENSES INVOLVING PRISONS AND CORRECTIONAL FACILITIES

§2P1.1. Escape, Instigating or Assisting Escape

(a) Base Offense Level:

(1) **13**, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense;

(2) **8**, otherwise.

(b) Specific Offense Characteristics

(1) If the use or the threat of force against any person was involved, increase by **5** levels.

(2) If the defendant escaped from non-secure custody and returned voluntarily within ninety-six hours, decrease the offense level under §2P1.1(a)(1) by **7** levels or the offense level under §2P1.1(a)(2) by **4** levels. *Provided*, however, that this reduction shall not apply if the defendant, while away from the facility, committed any federal, state, or local offense punishable by a term of imprisonment of one year or more.

(3) If the defendant escaped from the non-secure custody of a community corrections center, community treatment center, "halfway house," or similar facility, and subsection (b)(2) is not applicable, decrease the offense level under subsection (a)(1) by **4** levels or the offense level under subsection (a)(2) by **2** levels. *Provided*, however, that this reduction shall not apply if the defendant, while away from the facility, committed any federal, state, or local offense punishable by a term of imprisonment of one year or more.

Commentary

Statutory Provisions: 18 U.S.C. §§ 751, 752, 755; 28 U.S.C. § 1826. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. "***Non-secure custody***" means custody with no significant physical restraint (*e.g.*, where a defendant walked away from a work detail outside the security perimeter of an institution; where a defendant failed to return to any institution from a pass or unescorted furlough; or where a defendant escaped from an institution with no physical perimeter barrier).

2. "***Returned voluntarily***" includes voluntarily returning to the institution or turning one's self in to a law enforcement authority as an escapee (not in connection with an arrest or other charges).

3. Criminal history points under Chapter Four, Part A (Criminal History) are to be determined independently of the application of this guideline. For example, in the case of a defendant serving a one-year sentence of imprisonment at the time of the escape, criminal history points from §4A1.1(b) (for the sentence being served at the time of the escape) and §4A1.1(e) (custody status) would be applicable.

4. If the adjustment in subsection (b)(1) applies as a result of conduct that involves an official victim, do not apply §3A1.2 (Official Victim).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 200 and 201); November 1, 1990 (amendment 341); November 1, 1991 (amendment 406); November 1, 2010 (amendment 747); November 1, 2023 (amendment 821); November 1, 2025 (amendment 836); November 1, 2026 (amendment 837).

§2P1.2. Providing or Possessing Contraband in Prison

(a) Base Offense Level:

(1) **23**, if the object was a firearm or destructive device.

(2) **13**, if the object was a weapon (other than a firearm or a destructive device), any object that might be used as a weapon or as a means of facilitating escape, ammunition, LSD, PCP, methamphetamine, or a narcotic drug.

(3) **6**, if the object was an alcoholic beverage, United States or foreign currency, a mobile phone or similar device, or a controlled substance (other than LSD, PCP, methamphetamine, or a narcotic drug).

(4) **4**, if the object was any other object that threatened the order, discipline, or security of the institution or the life, health, or safety of an individual.

(b) Specific Offense Characteristic

(1) If the defendant was a law enforcement or correctional officer or employee, or an employee of the Department of Justice, at the time of the offense, increase by **2** levels.

(c) Cross Reference

(1) If the object of the offense was the distribution of a controlled substance, apply the offense level from §2D1.1 (Unlawful Manufacturing,

Importing, Exporting, or Trafficking; Attempt or Conspiracy). *Provided*, that if the defendant is convicted under 18 U.S.C. § 1791(a)(1) and is punishable under 18 U.S.C. § 1791(b)(1), and the resulting offense level is less than level **26**, increase to level **26**.

Commentary

Statutory Provision: 18 U.S.C. § 1791.

Application Notes:

1. In this guideline, the term "***mobile phone or similar device***" means a phone or other device as described in 18 U.S.C. § 1791(d)(1)(F).

2. If the adjustment in §2P1.2(b)(1) applies, no adjustment is to be made under §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

3. In a case in which the defendant is convicted of the underlying offense and an offense involving providing or possessing a controlled substance in prison, determine the combined offense level for the offenses under §3D1.1 (Procedure for Determining Offense Level on Multiple Counts). (Note that 18 U.S.C. § 1791(b) does not require a sentence of imprisonment, although if a sentence of imprisonment is imposed on a count involving providing or possessing a controlled substance in prison, section 1791(c) requires that the sentence be imposed to run consecutively to any other sentence of imprisonment for the controlled substance. Therefore, unlike a count in which the statute mandates both a minimum and a consecutive sentence of imprisonment, §3D1.1 will apply. *See* §3D1.1(e)(1), comment. (n.1).) The combined sentence will then be constructed to provide a "total punishment" that satisfies the requirements both of §5G1.2 (Sentencing on Multiple Counts of Conviction) and 18 U.S.C. § 1791(c). For example, if the combined applicable guideline range for both counts is 30–37 months and the court determines a "total punishment" of 36 months is appropriate, a sentence of 30 months for the underlying offense plus a consecutive six months' sentence for the providing or possessing a controlled substance in prison count would satisfy these requirements.

   Pursuant to 18 U.S.C. § 1791(c), a sentence imposed upon an inmate for a violation of 18 U.S.C. § 1791 shall be consecutive to the sentence being served by the inmate at the time of the violation.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 202 and 203); November 1, 1995 (amendment 525); November 1, 1998 (amendment 579); November 1, 2005 (amendment 680); November 1, 2012 (amendment 769); November 1, 2026 (amendment 840).

§2P1.3. Engaging In, Inciting or Attempting to Incite a Riot Involving Persons in a Facility for Official Detention

(a) Base Offense Level:

   (1) **22**, if the offense was committed under circumstances creating a substantial risk of death or serious bodily injury to any person.

(2) **16**, if the offense involved a major disruption to the operation of an institution.

(3) **10**, otherwise.

Commentary

Statutory Provision: 18 U.S.C. § 1792.

Historical Note	Effective November 1, 1987. Amended effective November 1, 2025 (amendment 836).

§2P1.4. [Deleted]

Historical Note	Section 2P1.4 (Trespass on Bureau of Prisons Facilities), effective November 1, 1987, was deleted effective November 1, 1989 (amendment 204).

PART Q — OFFENSES INVOLVING THE ENVIRONMENT

1. ENVIRONMENT

§2Q1.1. Knowing Endangerment Resulting From Mishandling Hazardous or Toxic Substances, Pesticides or Other Pollutants

(a) Base Offense Level: **24**

Commentary

Statutory Provisions: 18 U.S.C. § 1992(b)(3); 33 U.S.C. § 1319(c)(3); 42 U.S.C. §§ 6928(e), 7413(c)(5). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Background: This section applies to offenses committed with knowledge that the violation placed another person in imminent danger of death or serious bodily injury.

Historical Note	Effective November 1, 1987. Amended effective November 1, 2007 (amendment 699); November 1, 2018 (amendment 813); November 1, 2025 (amendment 836).

§2Q1.2. Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification; Unlawfully Transporting Hazardous Materials in Commerce

(a) Base Offense Level: **8**

(b) Specific Offense Characteristics

(1) (A) If the offense resulted in an ongoing, continuous, or repetitive discharge, release, or emission of a hazardous or toxic substance or pesticide into the environment, increase by **6** levels; or

(B) if the offense otherwise involved a discharge, release, or emission of a hazardous or toxic substance or pesticide, increase by **4** levels.

(2) If the offense resulted in a substantial likelihood of death or serious bodily injury, increase by **9** levels.

(3) If the offense resulted in disruption of public utilities or evacuation of a community, or if cleanup required a substantial expenditure, increase by **4** levels.

(4) If the offense involved transportation, treatment, storage, or disposal without a permit or in violation of a permit, increase by **4** levels.

(5) If the offense involved a simple recordkeeping or reporting violation only, decrease by **2** levels.

(6) If the defendant was convicted under 49 U.S.C. § 5124 or § 46312, increase by **2** levels.

Commentary

Statutory Provisions: 7 U.S.C. §§ 136j–136l; 15 U.S.C. §§ 2614 and 2615; 33 U.S.C. §§ 1319(c)(1), (2), 1321(b)(5), 1517(b); 42 U.S.C. §§ 300h-2, 6928(d), 7413(c)(1)–(4), 9603(b), (c), (d); 43 U.S.C. §§ 1350, 1816(a), 1822(b); 49 U.S.C. §§ 5124, 46312. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. "***Simple recordkeeping or reporting violation***" means a recordkeeping or reporting offense in a situation where the defendant neither knew nor had reason to believe that the recordkeeping offense would significantly increase the likelihood of any substantive environmental harm.

2. This section applies to offenses involving pesticides or substances designated toxic or hazardous at the time of the offense by statute or regulation. A listing of hazardous and toxic substances in the guidelines would be impractical. Several federal statutes (or regulations promulgated thereunder) list toxics, hazardous wastes and substances, and pesticides. These lists, such as those of toxic pollutants for which effluent standards are published under the Federal Water Pollution Control Act (*e.g.*, 33 U.S.C. § 1317) as well as the designation of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (*e.g.*, 42 U.S.C. § 9601(14)), are revised from time to time. "Toxic" and "hazardous" are defined differently in various statutes, but the common dictionary meanings of the words are not significantly different.

3. Subsection (b)(1) assumes a discharge or emission into the environment resulting in actual environmental contamination. A wide range of conduct, involving the handling of different quantities of materials with widely differing propensities, potentially is covered.

4. Subsection (b)(2) applies to offenses where the public health is seriously endangered.

5. Subsection (b)(3) provides an enhancement where a public disruption, evacuation or cleanup at substantial expense has been required.

6. Subsection (b)(4) applies where the offense involved violation of a permit, or where there was a failure to obtain a permit when one was required.

Background: This section applies both to substantive violations of the statute governing the handling of pesticides and toxic and hazardous substances and to recordkeeping offenses. The first four specific offense characteristics provide enhancements when the offense involved a substantive violation. The fifth and sixth specific offense characteristics apply to recordkeeping offenses. Although other sections of the guidelines generally prescribe a base offense level of 6 for regulatory violations, §2Q1.2 prescribes a base offense level of 8 because of the inherently dangerous nature of hazardous and toxic substances and pesticides. A decrease of 2 levels is provided, however, for "simple recordkeeping or reporting violations" under §2Q1.2(b)(5).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendment 481); November 1, 1997 (amendment 553); November 1, 2004 (amendment 672); November 1, 2010 (amendment 746); November 1, 2018 (amendment 813); November 1, 2025 (amendment 836); November 1, 2026 (amendment 837).

§2Q1.3. Mishandling of Other Environmental Pollutants; Recordkeeping, Tampering, and Falsification

(a) Base Offense Level: **6**

(b) Specific Offense Characteristics

(1) (A) If the offense resulted in an ongoing, continuous, or repetitive discharge, release, or emission of a pollutant into the environment, increase by **6** levels; or

(B) if the offense otherwise involved a discharge, release, or emission of a pollutant, increase by **4** levels.

(2) If the offense resulted in disruption of public utilities or evacuation of a community, or if cleanup required a substantial expenditure, increase by **4** levels.

(3) If the offense involved a discharge without a permit or in violation of a permit, increase by **4** levels.

Commentary

Statutory Provisions: 33 U.S.C. §§ 403, 406, 407, 411, 1319(c)(1), (c)(2), 1415(b), 1907, 1908; 42 U.S.C. § 7413(c)(1)–(4). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. If the offense involved mishandling of nuclear material, apply §2M6.2 (Violation of Other Federal Atomic Energy Agency Statutes, Rules, and Regulations) rather than this guideline.

2. Subsection (b)(1) assumes a discharge or emission into the environment resulting in actual environmental contamination. A wide range of conduct, involving the handling of different quantities of materials with widely differing propensities, potentially is covered.

3. Subsection (b)(2) provides an enhancement where a public disruption, evacuation or cleanup at substantial expense has been required.

4. Subsection (b)(3) applies where the offense involved violation of a permit, or where there was a failure to obtain a permit when one was required.

Background: This section parallels §2Q1.2 but applies to offenses involving substances which are not pesticides and are not designated as hazardous or toxic.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 205); November 1, 2018 (amendment 813); November 1, 2025 (amendment 836); November 1, 2026 (amendment 837).

§2Q1.4. Tampering or Attempted Tampering with a Public Water System; Threatening to Tamper with a Public Water System

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

(1) **26**;

(2) **22**, if the offense involved (A) a threat to tamper with a public water system; and (B) any conduct evidencing an intent to carry out the threat; or

(3) **16**, if the offense involved a threat to tamper with a public water system but did not involve any conduct evidencing an intent to carry out the threat.

(b) Cross References

(1) If the offense resulted in death, apply §2A1.1 (First Degree Murder) if the death was caused intentionally or knowingly, or §2A1.2 (Second Degree Murder) in any other case, if the resulting offense level is greater than that determined above.

(2) If the offense was tantamount to attempted murder, apply §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder) if the resulting offense level is greater than that determined above.

(3) If the offense involved extortion, apply §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) if the resulting offense level is greater than that determined above.

(c) Special Instruction

(1) If the defendant is convicted of a single count involving (A) the death, permanent or life-threatening bodily injury, or serious bodily injury of more than one victim; or (B) conduct tantamount to the attempted murder of more than one victim, subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) shall be applied as if the defendant had been convicted of a separate count for each such victim.

Commentary

Statutory Provision: 42 U.S.C. § 300i-1.

Application Notes:

1. **Definitions.—**For purposes of this guideline, "***permanent or life-threatening bodily injury***" and "***serious bodily injury***" have the meaning given those terms in Note 1 of the Commentary to §1B1.1 (Application Instructions).

2. **Application of Special Instruction.—**Subsection (c) applies in any case in which the defendant is convicted of a single count involving (A) the death or permanent, life-threatening, or serious bodily injury of more than one victim; or (B) conduct tantamount to the attempted murder of more than one victim, regardless of whether the offense level is determined under this guideline or under another guideline in Chapter Two (Offense Conduct) by use of a cross reference under subsection (b).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 206); November 1, 2003 (amendment 655); November 1, 2025 (amendment 836); November 1, 2026 (amendments 837 and 840).

§2Q1.5. [Deleted]

Historical Note	Section 2Q1.5 (Threatened Tampering with Public Water System), effective November 1, 1987, and amended effective November 1, 1989 (amendment 207), was deleted by consolidation with §2Q1.4 effective November 1, 2003 (amendment 655).

§2Q1.6. Hazardous or Injurious Devices on Federal Lands

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

(1) If the intent was to violate the Controlled Substances Act, apply §2D1.9 (Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances; Attempt or Conspiracy);

(2) If the intent was to obstruct the harvesting of timber, and property destruction resulted, apply §2B1.1 (Theft, Property Destruction, and Fraud);

(3) If the offense involved reckless disregard to the risk that another person would be placed in danger of death or serious bodily injury under circumstances manifesting extreme indifference to such risk, the offense level from §2A2.2 (Aggravated Assault); or

(4) **6**, otherwise.

Commentary

Statutory Provision: 18 U.S.C. § 1864.

Background: The statute covered by this guideline proscribes a wide variety of conduct, ranging from placing nails in trees to interfere with harvesting equipment to placing anti-personnel devices capable of causing death or serious bodily injury to protect the unlawful production of a controlled substance. Subsections (a)(1)–(a)(3) cover the more serious forms of this offense. Subsection (a)(4) provides a minimum offense level of 6 where the intent was to obstruct the harvesting of timber and little or no property damage resulted.

Historical Note	Effective November 1, 1989 (amendment 208). Amended effective November 1, 1990 (amendment 313); November 1, 2001 (amendment 617); November 1, 2002 (amendment 646); November 1, 2010 (amendment 746).

* * * * *

2. CONSERVATION AND WILDLIFE

§2Q2.1. Offenses Involving Fish, Wildlife, and Plants

(a) Base Offense Level: **6**

(b) Specific Offense Characteristics

(1) If the offense (A) was committed for pecuniary gain or otherwise involved a commercial purpose; or (B) involved a pattern of similar violations, increase by **2** levels.

(2) If the offense (A) involved fish, wildlife, or plants that were not quarantined as required by law; or (B) otherwise created a significant risk of infestation or disease transmission potentially harmful to humans, fish, wildlife, or plants, increase by **2** levels.

(3) (If more than one applies, use the greater):

(A) If the market value of the fish, wildlife, or plants (i) exceeded $3,500 but did not exceed $9,000, increase by **1** level; or (ii) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount; or

(B) If the offense involved (i) marine mammals that are listed as depleted under the Marine Mammal Protection Act (as set forth in 50 C.F.R. § 216.15); (ii) fish, wildlife, or plants that are listed as endangered or threatened by the Endangered Species Act (as set forth in 50 C.F.R. Part 17); or (iii) fish, wildlife, or plants that are

listed in Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna or Flora (as set forth in 50 C.F.R. Part 23), increase by **4** levels.

(c) Cross Reference

(1) If the offense involved a cultural heritage resource or paleontological resource, apply §2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 16 U.S.C. §§ 668(a), 707(b), 1174(a), 1338(a), 1375(b), 1540(b), 3373(d); 18 U.S.C. §§ 545, 554. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. "***For pecuniary gain***" means for receipt of, or in anticipation of receipt of, anything of value, whether monetary or in goods or services. Thus, offenses committed for pecuniary gain include both monetary and barter transactions. Similarly, activities designed to increase gross revenue are considered to be committed for pecuniary gain.

2. The acquisition of fish, wildlife, or plants for display to the public, whether for a fee or donation and whether by an individual or an organization, including a governmental entity, a private nonprofit organization, or a private for-profit organization, shall be considered to involve a "commercial purpose."

3. For purposes of subsection (b)(2), the quarantine requirements include those set forth in 9 C.F.R. Part 92, and 7 C.F.R., Subtitle B, Chapter III. State quarantine laws are included as well.

4. When information is reasonably available, "***market value***" under subsection (b)(3)(A) shall be based on the fair-market retail price. Where the fair-market retail price is difficult to ascertain, the court may make a reasonable estimate using any reliable information, such as the reasonable replacement or restitution cost or the acquisition and preservation (*e.g.*, taxidermy) cost. Market value, however, shall not be based on measurement of aesthetic loss (so called "contingent valuation" methods).

5. For purposes of subsection (c)(1), "***cultural heritage resource***" has the meaning given that term in Application Note 1 of the Commentary to §2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources).

Background: This section applies to violations of the Endangered Species Act, the Bald Eagle Protection Act, the Migratory Bird Treaty, the Marine Mammal Protection Act, the Wild Free-Roaming Horses and Burros Act, the Fur Seal Act, the Lacey Act, and to violations of 18 U.S.C. §§ 545 and 554 if the smuggling activity involved fish, wildlife, or plants.

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 41); November 1, 1989 (amendments 209 and 210); November 1, 1991 (amendment 407); November 1, 1992 (amendment 452); November 1, 1995 (amendment 534); November 1, 2001 (amendment 617); November 1, 2002 (amendment 638); November 1, 2007 (amendment 700); November 1, 2010 (amendment 746); November 1, 2011 (amendment 758); November 1, 2015 (amendment 791); November 1, 2025 (amendment 836); November 1, 2026 (amendment 838).

§2Q2.2. [Deleted]

Historical Note	Section 2Q2.2 (Lacey Act; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants), effective November 1, 1987, was deleted by consolidation with §2Q2.1 effective November 1, 1989 (amendment 209).

PART R — ANTITRUST OFFENSES

§2R1.1. Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors

(a) Base Offense Level: **12**

(b) Specific Offense Characteristics

(1) If the conduct involved participation in an agreement to submit non-competitive bids, increase by **1** level.

(2) If the volume of commerce attributable to the defendant was more than $1,500,000, adjust the offense level as follows:

	VOLUME OF COMMERCE (APPLY THE GREATEST)	ADJUSTMENT TO OFFENSE LEVEL
(A)	More than $1,500,000	add **2**
(B)	More than $15,000,000	add **4**
(C)	More than $70,000,000	add **6**
(D)	More than $150,000,000	add **8**
(E)	More than $400,000,000	add **10**
(F)	More than $800,000,000	add **12**
(G)	More than $1,650,000,000	add **14**
(H)	More than $2,500,000,000	add **16**.

For purposes of this guideline, the volume of commerce attributable to an individual participant in a conspiracy is the volume of commerce done by him or his principal in goods or services that were affected by the violation. When multiple counts or conspiracies are involved, the volume of commerce should be treated cumulatively to determine a single, combined offense level.

(c) Special Instruction for Fines

(1) For an individual, the guideline fine range shall be from one to five percent of the volume of commerce, but not less than $20,000.

(d) Special Instructions for Fines — Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of §8C2.4 (Base Fine), use 20 percent of the volume of affected commerce.

(2) When applying §8C2.6 (Minimum and Maximum Multipliers), neither the minimum nor maximum multiplier shall be less than 0.75.

(3) In a bid-rigging case in which the organization submitted one or more complementary bids, use as the organization's volume of commerce the greater of (A) the volume of commerce done by the organization in the goods or services that were affected by the violation, or (B) the largest contract on which the organization submitted a complementary bid in connection with the bid-rigging conspiracy.

Commentary

Statutory Provisions: 15 U.S.C. §§ 1, 3(a). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Application of Chapter Three (Adjustments).**—Sections 3B1.1 (Aggravating Role), 3B1.2 (Mitigating Role), 3B1.3 (Abuse of Position of Trust or Use of Special Skill), and 3C1.1 (Obstructing or Impeding the Administration of Justice) may be relevant in determining the seriousness of the defendant's offense. For example, if a sales manager organizes or leads the price-fixing activity of five or more participants, the 4-level increase at §3B1.1(a) should be applied to reflect the defendant's aggravated role in the offense. For purposes of applying §3B1.2, an individual defendant should be considered for a mitigating role adjustment only if he were responsible in some minor way for his firm's participation in the conspiracy.

2. **Considerations in Setting Fine for Individuals.**—In setting the fine for individuals, the court should consider the extent of the defendant's participation in the offense, the defendant's role, and the degree to which the defendant personally profited from the offense (including salary, bonuses, and career enhancement). If the court concludes that the defendant lacks the ability to pay the guideline fine, it should impose community service in lieu of a portion of the fine. The community service should be equally as burdensome as a fine.

3. **Fines for Organizations.**—The fine for an organization is determined by applying Chapter Eight (Sentencing of Organizations). In selecting a fine for an organization within the guideline fine range, the court should consider both the gain to the organization from the offense and the loss caused by the organization. It is estimated that the average gain from price-fixing is 10 percent of the selling price. The loss from price-fixing exceeds the gain because, among other things, injury is inflicted upon consumers who are unable or for other reasons do not buy the product at the higher prices. Because the loss from price-fixing exceeds the gain, subsection (d)(1) provides that 20 percent of the volume of affected commerce is to be used in lieu of the pecuniary loss under §8C2.4(a)(3). The purpose for specifying a percent of the volume of commerce is to avoid the time and expense that would be required for the court to determine the actual gain or loss. In cases in which the actual monopoly overcharge appears to be either substantially more or substantially less than 10 percent, this factor should be considered in setting the fine within the guideline fine range.

4. **Another Consideration in Setting Fine.**—Another consideration in setting the fine is that the average level of mark-up due to price-fixing may tend to decline with the volume of commerce involved.

5. **Use of Alternatives Other Than Imprisonment.**—It is the intent of the Commission that alternatives such as community confinement not be used to avoid imprisonment of antitrust offenders.

6. **Understatement of Seriousness.**—Understatement of seriousness is especially likely in cases involving complementary bids. If, for example, the defendant participated in an agreement not to submit a bid, or to submit an unreasonably high bid, on one occasion, in exchange for his being allowed to win a subsequent bid that he did not in fact win, his volume of commerce would be zero, although he would have contributed to harm that possibly was quite substantial. The court should consider sentences near the top of the guideline range in such cases.

7. **Defendant with Previous Antitrust Convictions.**—In the case of a defendant with previous antitrust convictions, a sentence at the maximum of the applicable guideline range may be warranted.

Background: This guideline applies to violations of the antitrust laws. Although they are not unlawful in all countries, there is near universal agreement that restrictive agreements among competitors, such as horizontal price-fixing (including bid-rigging) and horizontal market-allocation, can cause serious economic harm. There is no consensus, however, about the harmfulness of other types of antitrust offenses, which furthermore are rarely prosecuted and may involve unsettled issues of law. Consequently, only one guideline, which deals with horizontal agreements in restraint of trade, has been promulgated.

The agreements among competitors covered by this section are almost invariably covert conspiracies that are intended to, and serve no purpose other than to, restrict output and raise prices, and that are so plainly anticompetitive that they have been recognized as illegal *per se*, *i.e.*, without any inquiry in individual cases as to their actual competitive effect.

Under the guidelines, prison terms for these offenders should be much more common, and usually somewhat longer, than typical under pre-guidelines practice. Absent adjustments, the guidelines require some period of confinement in the great majority of cases that are prosecuted, including all bid-rigging cases. The court will have the discretion to impose considerably longer sentences within the guideline ranges. Adjustments from Chapter Three, Part E (Acceptance of Responsibility) and, in rare instances, Chapter Three, Part B (Role in the Offense), may decrease these minimum sentences; nonetheless, in very few cases will the guidelines not require that some confinement be imposed. Adjustments will not affect the level of fines.

Tying the offense level to the scale or scope of the offense is important in order to ensure that the sanction is in fact punitive and that there is an incentive to desist from a violation once it has begun. The offense levels are not based directly on the damage caused or profit made by the defendant because damages are difficult and time consuming to establish. The volume of commerce is an acceptable and more readily measurable substitute. The limited empirical data available as to pre-guidelines practice showed that fines increased with the volume of commerce and the term of imprisonment probably did as well.

The Commission believes that the volume of commerce is liable to be an understated measure of seriousness in some bid-rigging cases. For this reason, and consistent with pre-guidelines practice, the Commission has specified a 1-level increase for bid-rigging.

Substantial fines are an essential part of the sentence. For an individual, the guideline fine range is from one to five percent of the volume of commerce, but not less than $20,000. For an organization, the guideline fine range is determined under Chapter Eight (Sentencing of Organizations), but pursuant to subsection (d)(2), the minimum multiplier is at least 0.75. This multiplier, which requires a minimum fine of 15 percent of the volume of commerce for the least serious case, was selected to provide an effective deterrent to antitrust offenses. At the same time, this minimum multiplier maintains incentives for desired organizational behavior. Because the Department of Justice has a well-estab-

lished amnesty program for organizations that self-report antitrust offenses, no lower minimum multiplier is needed as an incentive for self-reporting. A minimum multiplier of at least 0.75 ensures that fines imposed in antitrust cases will exceed the average monopoly overcharge.

The Commission believes that most antitrust defendants have the resources and earning capacity to pay the fines called for by this guideline, at least over time on an installment basis.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 211 and 303); November 1, 1991 (amendments 377 and 422); November 1, 2003 (amendment 661); November 1, 2004 (amendment 674); November 1, 2005 (amendment 678); November 1, 2015 (amendment 791); November 1, 2018 (amendment 813); November 1, 2024 (amendment 830); November 1, 2025 (amendment 836); November 1, 2026 (amendment 838).

PART S — MONEY LAUNDERING AND MONETARY TRANSACTION REPORTING

Historical Note	Introductory Commentary to this Part, effective November 1, 1987, was deleted effective November 1, 1990 (amendment 342).

§2S1.1. Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity

(a) Base Offense Level:

(1) The offense level for the underlying offense from which the laundered funds were derived, if (A) the defendant committed the underlying offense (or would be accountable for the underlying offense under subsection (a)(1)(A) of §1B1.3 (Relevant Conduct)); and (B) the offense level for that offense can be determined; or

(2) **8** plus the number of offense levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the value of the laundered funds, otherwise.

(b) Specific Offense Characteristics

(1) If (A) subsection (a)(2) applies; and (B) the defendant knew or believed that any of the laundered funds were the proceeds of, or were intended to promote (i) an offense involving the manufacture, importation, or distribution of a controlled substance or a listed chemical; (ii) a crime of violence; or (iii) an offense involving firearms, explosives, national security, or the sexual exploitation of a minor, increase by **6** levels.

(2) (Apply the Greatest):

(A) If the defendant was convicted under 18 U.S.C. § 1957, increase by **1** level.

(B) If the defendant was convicted under 18 U.S.C. § 1956, increase by **2** levels.

(C) If (i) subsection (a)(2) applies; and (ii) the defendant was in the business of laundering funds, increase by **4** levels.

(3) If (A) subsection (b)(2)(B) applies; and (B) the offense involved sophisticated laundering, increase by **2** levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1956, 1957, 1960 (but only with respect to unlicensed money transmitting businesses as defined in 18 U.S.C. § 1960(b)(1)(C)). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Crime of violence***" has the meaning given that term in subsection (a)(1) of §4B1.2 (Definitions of Terms Used in Section 4B1.1).

"***Criminally derived funds***" means any funds derived, or represented by a law enforcement officer, or by another person at the direction or approval of an authorized federal official, to be derived from conduct constituting a criminal offense.

"***Laundered funds***" means the property, funds, or monetary instrument involved in the transaction, financial transaction, monetary transaction, transportation, transfer, or transmission in violation of 18 U.S.C. § 1956 or § 1957.

"***Laundering funds***" means making a transaction, financial transaction, monetary transaction, or transmission, or transporting or transferring property, funds, or a monetary instrument in violation of 18 U.S.C. § 1956 or § 1957.

"***Sexual exploitation of a minor***" means an offense involving (A) promoting prostitution by a minor; (B) sexually exploiting a minor by production of sexually explicit visual or printed material; (C) distribution of material involving the sexual exploitation of a minor, or possession of material involving the sexual exploitation of a minor with intent to distribute; or (D) aggravated sexual abuse, sexual abuse, or abusive sexual contact involving a minor. "Minor" means an individual under the age of 18 years.

2. **Application of Subsection (a)(1).—**

(A) **Multiple Underlying Offenses.**—In cases in which subsection (a)(1) applies and there is more than one underlying offense, the offense level for the underlying offense is to be determined under the procedures set forth in Application Note 3 of the Commentary to §1B1.5 (Interpretation of References to Other Offense Guidelines).

(B) **Defendants Accountable for Underlying Offense.**—In order for subsection (a)(1) to apply, the defendant must have committed the underlying offense or be accountable for the underlying offense under §1B1.3(a)(1)(A). The fact that the defendant was involved in laundering criminally derived funds after the commission of the underlying offense, without additional involvement in the underlying offense, does not establish that the defendant committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused the underlying offense.

(C) **Application of Chapter Three Adjustments.**—Notwithstanding §1B1.5(c), in cases in which subsection (a)(1) applies, application of any Chapter Three adjustment shall be determined based on the offense covered by this guideline (*i.e.*, the laundering of criminally derived funds) and not on the underlying offense from which the laundered funds were derived.

3. **Application of Subsection (a)(2).—**

(A) **In General.—**Subsection (a)(2) applies to any case in which (i) the defendant did not commit the underlying offense; or (ii) the defendant committed the underlying offense (or would be accountable for the underlying offense under §1B1.3(a)(1)(A)), but the offense level for the underlying offense is impossible or impracticable to determine.

(B) **Commingled Funds.—**In a case in which a transaction, financial transaction, monetary transaction, transportation, transfer, or transmission results in the commingling of legitimately derived funds with criminally derived funds, the value of the laundered funds, for purposes of subsection (a)(2), is the amount of the criminally derived funds, not the total amount of the commingled funds, if the defendant provides sufficient information to determine the amount of criminally derived funds without unduly complicating or prolonging the sentencing process. If the amount of the criminally derived funds is difficult or impracticable to determine, the value of the laundered funds, for purposes of subsection (a)(2), is the total amount of the commingled funds.

(C) **Non-Applicability of Enhancement.—**Subsection (b)(2)(B) shall not apply if the defendant was convicted of a conspiracy under 18 U.S.C. § 1956(h) and the sole object of that conspiracy was to commit an offense set forth in 18 U.S.C. § 1957.

4. **Enhancement for Business of Laundering Funds.—**

(A) **In General.—**The court shall consider the totality of the circumstances to determine whether a defendant who did not commit the underlying offense was in the business of laundering funds, for purposes of subsection (b)(2)(C).

(B) **Factors to Consider.—**The following is a non-exhaustive list of factors that may indicate the defendant was in the business of laundering funds for purposes of subsection (b)(2)(C):

(i) The defendant regularly engaged in laundering funds.

(ii) The defendant engaged in laundering funds during an extended period of time.

(iii) The defendant engaged in laundering funds from multiple sources.

(iv) The defendant generated a substantial amount of revenue in return for laundering funds.

(v) At the time the defendant committed the instant offense, the defendant had one or more prior convictions for an offense under 18 U.S.C. § 1956 or § 1957, or under 31 U.S.C. § 5313, § 5314, § 5316, § 5324 or § 5326, or any similar offense under state law, or an attempt or conspiracy to commit any such federal or state offense. A conviction taken into account under subsection (b)(2)(C) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

(vi) During the course of an undercover government investigation, the defendant made statements that the defendant engaged in any of the conduct described in clauses (i) through (iv).

5. (A) **Sophisticated Laundering under Subsection (b)(3).—**For purposes of subsection (b)(3), "***sophisticated laundering***" means complex or intricate offense conduct pertaining to the execution or concealment of the 18 U.S.C. § 1956 offense.

Sophisticated laundering typically involves the use of—

(i) fictitious entities;

(ii) shell corporations;

(iii) two or more levels (*i.e.*, layering) of transactions, transportation, transfers, or transmissions, involving criminally derived funds that were intended to appear legitimate; or

(iv) offshore financial accounts.

(B) **Non-Applicability of Enhancement.—**If subsection (b)(3) applies, and the conduct that forms the basis for an enhancement under the guideline applicable to the underlying offense is the only conduct that forms the basis for application of subsection (b)(3) of this guideline, do not apply subsection (b)(3) of this guideline.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 212, 213, and 214); November 1, 1991 (amendments 378 and 422); November 1, 2001 (amendment 634); November 1, 2003 (amendment 655); November 1, 2024 (amendment 831); November 1, 2026 (amendment 840).

§2S1.2. [Deleted]

Historical Note	Section 2S1.2 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), effective November 1, 1987, and amended effective November 1, 1989 (amendment 215) and November 1, 1991 (amendment 422), was deleted by consolidation with §2S1.1 effective November 1, 2001 (amendment 634).

§2S1.3. Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports; Bulk Cash Smuggling; Establishing or Maintaining Prohibited Accounts

(a) Base Offense Level:

(1) **8**, if the defendant was convicted under 31 U.S.C. § 5318 or § 5318A; or

(2) **6** plus the number of offense levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the value of the funds, if subsection (a)(1) does not apply.

(b) Specific Offense Characteristics

(1) If (A) the defendant knew or believed that the funds were proceeds of unlawful activity, or were intended to promote unlawful activity; or (B) the offense involved bulk cash smuggling, increase by **2** levels.

(2) If the defendant (A) was convicted of an offense under subchapter II of chapter 53 of title 31, United States Code; and (B) committed the offense while violating another law of the United States or as part of a pattern of unlawful activity involving more than $100,000 in a 12-month period, increase by **2** levels.

(3) If (A) subsection (a)(2) applies and subsections (b)(1) and (b)(2) do not apply; (B) the defendant did not act with reckless disregard of the source of the funds; (C) the funds were the proceeds of lawful activity; and (D) the funds were to be used for a lawful purpose, decrease the offense level to level **6**.

(c) Cross Reference

(1) If the offense was committed for the purposes of violating the Internal Revenue laws, apply the most appropriate guideline from Chapter Two, Part T (Offenses Involving Taxation) if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. § 1960 (but only with respect to unlicensed money transmitting businesses as defined in 18 U.S.C. § 1960(b)(1)(A) and (B)); 26 U.S.C. §§ 7203 (if a violation based upon 26 U.S.C. § 6050I), 7206 (if a violation based upon 26 U.S.C. § 6050I); 31 U.S.C. §§ 5313, 5314, 5316, 5318, 5318A(b), 5322, 5324, 5326, 5331, 5332, 5335, 5336. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definition of "Value of the Funds".**—For purposes of this guideline, "***value of the funds***" means the amount of the funds involved in the structuring or reporting conduct. The relevant statutes require monetary reporting without regard to whether the funds were lawfully or unlawfully obtained.

2. **Bulk Cash Smuggling.**—For purposes of subsection (b)(1)(B), "***bulk cash smuggling***" means (A) knowingly concealing, with the intent to evade a currency reporting requirement under 31 U.S.C. § 5316, more than $10,000 in currency or other monetary instruments; and (B) transporting or transferring (or attempting to transport or transfer) such currency or monetary instruments into or outside of the United States. "United States" has the meaning given that term in Application Note 1 of the Commentary to §2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States).

3. **Enhancement for Pattern of Unlawful Activity.**—For purposes of subsection (b)(2), "***pattern of unlawful activity***" means at least two separate occasions of unlawful activity involving

a total amount of more than $100,000 in a 12-month period, without regard to whether any such occasion occurred during the course of the offense or resulted in a conviction for the conduct that occurred on that occasion.

Background: Some of the offenses covered by this guideline relate to records and reports of certain transactions involving currency and monetary instruments. These reports include Currency Transaction Reports, Currency and Monetary Instrument Reports, Reports of Foreign Bank and Financial Accounts, and Reports of Cash Payments Over $10,000 Received in a Trade or Business.

This guideline also covers offenses under 31 U.S.C. §§ 5318 and 5318A, pertaining to records, reporting and identification requirements, prohibited accounts involving certain foreign jurisdictions, foreign institutions, and foreign banks, and other types of transactions and types of accounts.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 216, 217, and 218); November 1, 1991 (amendments 379 and 422); November 1, 1993 (amendment 490); November 1, 2001 (amendments 617 and 634); November 1, 2002 (amendment 637); November 1, 2003 (amendment 655); November 1, 2023 (amendment 815); November 1, 2024 (amendment 830).

§2S1.4. [Deleted]

Historical Note	Section 2S1.4 (Failure to File Currency and Monetary Instrument Report), effective November 1, 1991 (amendments 379 and 422), was deleted by consolidation with §2S1.3 effective November 1, 1993 (amendment 490).

PART T — OFFENSES INVOLVING TAXATION

1. INCOME TAXES, EMPLOYMENT TAXES, ESTATE TAXES, GIFT TAXES, AND EXCISE TAXES (OTHER THAN ALCOHOL, TOBACCO, AND CUSTOMS TAXES)

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendment 491).

Introductory Commentary

The criminal tax laws are designed to protect the public interest in preserving the integrity of the nation's tax system. Criminal tax prosecutions serve to punish the violator and promote respect for the tax laws. Because of the limited number of criminal tax prosecutions relative to the estimated incidence of such violations, deterring others from violating the tax laws is a primary consideration underlying these guidelines. Recognition that the sentence for a criminal tax case will be commensurate with the gravity of the offense should act as a deterrent to would-be violators.

Historical Note	Effective November 1, 1987.

§2T1.1. Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents

(a) Base Offense Level:

(1) Level from §2T4.1 (Tax Table) corresponding to the tax loss; or

(2) **6**, if there is no tax loss.

(b) Specific Offense Characteristics

(1) If the defendant failed to report or to correctly identify the source of income exceeding $10,000 in any year from criminal activity, increase by **2** levels. If the resulting offense level is less than level **12**, increase to level **12**.

(2) If the offense involved sophisticated means, increase by **2** levels. If the resulting offense level is less than level **12**, increase to level **12**.

(c) Special Instructions

For the purposes of this guideline—

(1) If the offense involved tax evasion or a fraudulent or false return, statement, or other document, the tax loss is the total amount of loss that was the object of the offense (*i.e.*, the loss that would have resulted had the offense been successfully completed).

Notes:

(A) If the offense involved filing a tax return in which gross income was underreported, the tax loss shall be treated as equal to 28% of the unreported gross income (34% if the taxpayer is a corporation) plus 100% of any false credits claimed against tax, unless a more accurate determination of the tax loss can be made.

(B) If the offense involved improperly claiming a deduction or an exemption, the tax loss shall be treated as equal to 28% of the amount of the improperly claimed deduction or exemption (34% if the taxpayer is a corporation) plus 100% of any false credits claimed against tax, unless a more accurate determination of the tax loss can be made.

(C) If the offense involved improperly claiming a deduction to provide a basis for tax evasion in the future, the tax loss shall be treated as equal to 28% of the amount of the improperly claimed deduction (34% if the taxpayer is a corporation) plus 100% of any false credits claimed against tax, unless a more accurate determination of the tax loss can be made.

(D) If the offense involved (i) conduct described in subdivision (A), (B), or (C) of these Notes; and (ii) both individual and corporate tax returns, the tax loss is the aggregate tax loss from the offenses added together.

(2) If the offense involved failure to file a tax return, the tax loss is the amount of tax that the taxpayer owed and did not pay.

Notes:

(A) If the offense involved failure to file a tax return, the tax loss shall be treated as equal to 20% of the gross income (25% if the taxpayer is a corporation) less any tax withheld or otherwise paid, unless a more accurate determination of the tax loss can be made.

(B) If the offense involved (i) conduct described in subdivision (A) of these Notes; and (ii) both individual and corporate tax returns, the tax loss is the aggregate tax loss from the offenses added together.

(3) If the offense involved willful failure to pay tax, the tax loss is the amount of tax that the taxpayer owed and did not pay.

(4) If the offense involved improperly claiming a refund to which the claimant was not entitled, the tax loss is the amount of the claimed refund to which the claimant was not entitled.

(5) The tax loss is not reduced by any payment of the tax subsequent to the commission of the offense.

Commentary

Statutory Provisions: 26 U.S.C. §§ 7201, 7203 (other than a violation based upon 26 U.S.C. § 6050I), 7206 (other than a violation based upon 26 U.S.C. § 6050I or § 7206(2)), and 7207. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Tax Loss.—**"***Tax loss***" is defined in subsection (c). The tax loss does not include interest or penalties, except in willful evasion of payment cases under 26 U.S.C. § 7201 and willful failure to pay cases under 26 U.S.C. § 7203. Although the definition of tax loss corresponds to what is commonly called the "criminal figures," its amount is to be determined by the same rules applicable in determining any other sentencing factor. In some instances, such as when indirect methods of proof are used, the amount of the tax loss may be uncertain; the guidelines contemplate that the court will simply make a reasonable estimate based on the available facts.

   Notes under subsections (c)(1) and (c)(2) address certain situations in income tax cases in which the tax loss may not be reasonably ascertainable. In these situations, the "presumptions" set forth are to be used unless the government or defense provides sufficient information for a more accurate assessment of the tax loss. In cases involving other types of taxes, the presumptions in the notes under subsections (c)(1) and (c)(2) do not apply.

   Example 1: A defendant files a tax return reporting income of $40,000 when his income was actually $90,000. Under Note (A) to subsection (c)(1), the tax loss is treated as $14,000 ($90,000 of actual gross income minus $40,000 of reported gross income = $50,000 x 28%) unless sufficient information is available to make a more accurate assessment of the tax loss.

   Example 2: A defendant files a tax return reporting income of $60,000 when his income was actually $130,000. In addition, the defendant claims $10,000 in false tax credits. Under Note (A) to subsection (c)(1), the tax loss is treated as $29,600 ($130,000 of actual gross income minus $60,000 of reported gross income = $70,000 x 28% = $19,600, plus $10,000 of false tax credits) unless sufficient information is available to make a more accurate assessment of the tax loss.

   Example 3: A defendant fails to file a tax return for a year in which his salary was $24,000, and $2,600 in income tax was withheld by his employer. Under the note to subsection (c)(2), the tax loss is treated as $2,200 ($24,000 of gross income x 20% = $4,800, minus $2,600 of tax withheld) unless sufficient information is available to make a more accurate assessment of the tax loss.

   In determining the tax loss attributable to the offense, the court should use as many methods set forth in subsection (c) and this commentary as are necessary given the circumstances of the particular case. If none of the methods of determining the tax loss set forth fit the circumstances of

the particular case, the court should use any method of determining the tax loss that appears appropriate to reasonably calculate the loss that would have resulted had the offense been successfully completed.

2. **Total Tax Loss Attributable to the Offense.**—In determining the total tax loss attributable to the offense (*see* §1B1.3(a)(2)), all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated. The following examples are illustrative of conduct that is part of the same course of conduct or common scheme or plan: (A) there is a continuing pattern of violations of the tax laws by the defendant; (B) the defendant uses a consistent method to evade or camouflage income, *e.g.*, backdating documents or using off-shore accounts; (C) the violations involve the same or a related series of transactions; (D) the violation in each instance involves a false or inflated claim of a similar deduction or credit; and (E) the violation in each instance involves a failure to report or an understatement of a specific source of income, *e.g.*, interest from savings accounts or income from a particular business activity. These examples are not intended to be exhaustive.

3. **Unclaimed Credits, Deductions, and Exemptions.**—In determining the tax loss, the court should account for the standard deduction and personal and dependent exemptions to which the defendant was entitled. In addition, the court should account for any unclaimed credit, deduction, or exemption that is needed to ensure a reasonable estimate of the tax loss, but only to the extent that (A) the credit, deduction, or exemption was related to the tax offense and could have been claimed at the time the tax offense was committed; (B) the credit, deduction, or exemption is reasonably and practicably ascertainable; and (C) the defendant presents information to support the credit, deduction, or exemption sufficiently in advance of sentencing to provide an adequate opportunity to evaluate whether it has sufficient indicia of reliability to support its probable accuracy (*see* §6A1.3 (Resolution of Disputed Factors) (Policy Statement)).

   However, the court shall not account for payments to third parties made in a manner that encouraged or facilitated a separate violation of law (*e.g.*, "under the table" payments to employees or expenses incurred to obstruct justice).

   The burden is on the defendant to establish any such credit, deduction, or exemption by a preponderance of the evidence. *See* §6A1.3, comment.

4. **Application of Subsection (b)(1) (Criminal Activity).**—"***Criminal activity***" means any conduct constituting a criminal offense under federal, state, local, or foreign law.

5. **Application of Subsection (b)(2) (Sophisticated Means).**—For purposes of subsection (b)(2), "***sophisticated means***" means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts ordinarily indicates sophisticated means.

6. **Other Definitions.**—For purposes of this section:

   A "***credit claimed against tax***" is an item that reduces the amount of tax directly. In contrast, a "***deduction***" is an item that reduces the amount of taxable income.

   "***Gross income***" has the same meaning as it has in 26 U.S.C. § 61 and 26 C.F.R. § 1.61-1.

7. **Aggregation of Individual and Corporate Tax Loss.**—If the offense involved both individual and corporate tax returns, the tax loss is the aggregate tax loss from the individual tax offense and the corporate tax offense added together. Accordingly, in a case in which a defendant fails to

report income derived from a corporation on both the defendant's individual tax return and the defendant's corporate tax return, the tax loss is the sum of (A) the unreported or diverted amount multiplied by (i) 28%; or (ii) the tax rate for the individual tax offense, if sufficient information is available to make a more accurate assessment of that tax rate; and (B) the unreported or diverted amount multiplied by (i) 34%; or (ii) the tax rate for the corporate tax offense, if sufficient information is available to make a more accurate assessment of that tax rate. For example, the defendant, the sole owner of a subchapter C corporation, fraudulently understates the corporation's income in the amount of $100,000 on the corporation's tax return, diverts the funds to the defendant's own use, and does not report these funds on the defendant's individual tax return. For purposes of this example, assume the use of 34% with respect to the corporate tax loss and the use of 28% with respect to the individual tax loss. The tax loss attributable to the defendant's corporate tax return is $34,000 ($100,000 multiplied by 34%). The tax loss attributable to the defendant's individual tax return is $28,000 ($100,000 multiplied by 28%). The tax loss for the offenses are added together to equal $62,000 ($34,000 + $28,000).

Background: This guideline relies most heavily on the amount of loss that was the object of the offense. Tax offenses, in and of themselves, are serious offenses; however, a greater tax loss is obviously more harmful to the Treasury and more serious than a smaller one with otherwise similar characteristics. Furthermore, as the potential benefit from the offense increases, the sanction necessary to deter also increases.

Under pre-guidelines practice, roughly half of all tax evaders were sentenced to probation without imprisonment, while the other half received sentences that required them to serve an average prison term of twelve months. This guideline is intended to reduce disparity in sentencing for tax offenses and to somewhat increase average sentence length. As a result, the number of purely probationary sentences will be reduced. The Commission believes that any additional costs of imprisonment that may be incurred as a result of the increase in the average term of imprisonment for tax offenses are inconsequential in relation to the potential increase in revenue. According to estimates current at the time this guideline was originally developed (1987), income taxes are underpaid by approximately $90 billion annually. Guideline sentences should result in small increases in the average length of imprisonment for most tax cases that involve less than $100,000 in tax loss. The increase is expected to be somewhat larger for cases involving more taxes.

Failure to report criminally derived income is included as a factor for deterrence purposes. Criminally derived income is generally difficult to establish, so that the tax loss in such cases will tend to be substantially understated. An enhancement for offenders who violate the tax laws as part of a pattern of criminal activity from which they derive a substantial portion of their income also serves to implement the mandate of 28 U.S.C. § 994(i)(2).

Although tax offenses always involve some planning, unusually sophisticated efforts to conceal the offense decrease the likelihood of detection and therefore warrant an additional sanction for deterrence purposes.

The guideline does not make a distinction for an employee who prepares fraudulent returns on behalf of his employer. The adjustments in Chapter Three, Part B (Role in the Offense) should be used to make appropriate distinctions.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 219, 220, 221, 222, and 223); November 1, 1990 (amendment 343); November 1, 1992 (amendment 468); November 1, 1993 (amendment 491); November 1, 1998 (amendment 577); November 1, 2001 (amendment 617); November 1, 2002 (amendment 646); November 1, 2013 (amendment 774); November 1, 2023 (amendment 824).

§§2T1.2 – 2T1.3. [Deleted]

Historical Note	Section 2T1.2 (Willful Failure To File Return, Supply Information, or Pay Tax), effective November 1, 1987, and amended effective November 1, 1989 (amendments 224, 225, 226, and 227), November 1, 1990 (amendment 343), and November 1, 1991 (amendment 408), was deleted by consolidation with §2T1.1 effective November 1, 1993 (amendment 491). Section 2T1.3 (Fraud and False Statements Under Penalty of Perjury), effective November 1, 1987, and amended effective November 1, 1989 (amendments 228, 229, and 230), November 1, 1990 (amendment 343), and November 1, 1991 (amendment 426), was deleted by consolidation with §2T1.1 effective November 1, 1993 (amendment 491).

§2T1.4. Aiding, Assisting, Procuring, Counseling, or Advising Tax Fraud

(a) Base Offense Level:

(1) Level from §2T4.1 (Tax Table) corresponding to the tax loss; or

(2) **6**, if there is no tax loss.

For purposes of this guideline, the "tax loss" is the tax loss, as defined in §2T1.1, resulting from the defendant's aid, assistance, procurance or advice.

(b) Specific Offense Characteristics

(1) If (A) the defendant committed the offense as part of a pattern or scheme from which he derived a substantial portion of his income; or (B) the defendant was in the business of preparing or assisting in the preparation of tax returns, increase by **2** levels.

(2) If the offense involved sophisticated means, increase by **2** levels. If the resulting offense level is less than level **12**, increase to level **12**.

Commentary

Statutory Provision: 26 U.S.C. § 7206(2) (other than a violation based upon 26 U.S.C. § 6050I).

Application Notes:

1. For the general principles underlying the determination of tax loss, *see* §2T1.1(c) and Application Note 1 of the Commentary to §2T1.1 (Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents). In certain instances, such as promotion of a tax shelter scheme, the defendant may advise other persons to violate their tax obligations through filing returns that find no support in the tax laws. If this type of conduct can be shown to have resulted in the filing of false returns (regardless of whether the principals were aware of their falsity), the misstatements in all such returns will contribute to one aggregate "tax loss."

2. Subsection (b)(1) has two prongs. The first prong applies to persons who derive a substantial portion of their income through the promotion of tax schemes, *e.g.*, through promoting fraudulent tax shelters. The second prong applies to persons who regularly prepare or assist in the preparation of tax returns for profit. If an enhancement from this subsection applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

3. **Sophisticated Means.**—For purposes of subsection (b)(2), "***sophisticated means***" means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts ordinarily indicates sophisticated means.

Background: An increased offense level is specified for those in the business of preparing or assisting in the preparation of tax returns and those who make a business of promoting tax fraud because their misconduct poses a greater risk of revenue loss and is more clearly willful. Other considerations are similar to those in §2T1.1.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 231 and 303); November 1, 1990 (amendment 343); November 1, 1993 (amendment 491); November 1, 1998 (amendment 577); November 1, 2001 (amendment 617).

§2T1.5. [Deleted]

Historical Note	Section 2T1.5 (Fraudulent Returns, Statements, or Other Documents), effective November 1, 1987, was deleted by consolidation with §2T1.1 effective November 1, 1993 (amendment 491).

§2T1.6. Failing to Collect or Truthfully Account for and Pay Over Tax

(a) Base Offense Level: Level from §2T4.1 (Tax Table) corresponding to the tax not collected or accounted for and paid over.

(b) Cross Reference

(1) Where the offense involved embezzlement by withholding tax from an employee's earnings and willfully failing to account to the employee for it, apply §2B1.1 (Theft, Property Destruction, and Fraud) if the resulting offense level is greater than that determined above.

Commentary

Statutory Provision: 26 U.S.C. § 7202.

Application Note:

1. In the event that the employer not only failed to account to the Internal Revenue Service and pay over the tax, but also collected the tax from employees and did not account to them for it, it is both tax evasion and a form of embezzlement. Subsection (b)(1) addresses such cases.

Background: The failure to collect or truthfully account for the tax must be willful, as must the failure to pay. Where no effort is made to defraud the employee, the offense is a form of tax evasion, and is treated as such in the guidelines.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 232); November 1, 1991 (amendment 409); November 1, 2001 (amendment 617); November 1, 2016 (amendment 804).

§2T1.7. Failing to Deposit Collected Taxes in Trust Account as Required After Notice

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

(1) **4**; or

(2) **5** less than the level from §2T4.1 (Tax Table) corresponding to the amount not deposited.

Commentary

Statutory Provisions: 26 U.S.C. §§ 7215, 7512(b).

Application Notes:

1. If funds are deposited and withdrawn without being paid to the Internal Revenue Service, they should be treated as never having been deposited.

2. It is recommended that the fine be based on the total amount of funds not deposited.

Background: This offense is a misdemeanor that does not require any intent to evade taxes, nor even that taxes have not been paid. The more serious offense is 26 U.S.C. § 7202 (*see* §2T1.6).

This offense should be relatively easy to detect and fines may be feasible. Accordingly, the offense level has been set considerably lower than for tax evasion, although some effort has been made to tie the offense level to the level of taxes that were not deposited.

Historical Note	Effective November 1, 1987.

§2T1.8. Offenses Relating to Withholding Statements

(a) Base Offense Level: **4**

Commentary

Statutory Provisions: 26 U.S.C. §§ 7204, 7205.

Background: The offenses are misdemeanors. Under pre-guidelines practice, imprisonment was unusual.

Historical Note	Effective November 1, 1987. Amended effective November 1, 2004 (amendment 674); November 1, 2025 (amendment 836).

§2T1.9. Conspiracy to Impede, Impair, Obstruct, or Defeat Tax

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

(1) Offense level determined from §2T1.1 or §2T1.4, as appropriate; or

(2) **10**.

(b) Specific Offense Characteristic

(1) If the conduct was intended to encourage persons other than or in addition to co-conspirators to violate the internal revenue laws or impede, impair, obstruct, or defeat the ascertainment, computation, assessment, or collection of revenue, increase by **2** levels. Do not, however, apply this adjustment if an adjustment from §2T1.4(b)(1) is applied.

Commentary

Statutory Provision: 18 U.S.C. § 371.

Application Notes:

1. This section applies to conspiracies to "defraud the United States by impeding, impairing, obstructing and defeating . . . the collection of revenue." *United States v. Carruth*, 699 F.2d 1017, 1021 (9th Cir. 1983), *cert. denied*, 464 U.S. 1038 (1984). *See also United States v. Browning*, 723 F.2d 1544 (11th Cir. 1984); *United States v. Klein*, 247 F.2d 908, 915 (2d Cir. 1957), *cert. denied*, 355 U.S. 924 (1958). It does not apply to taxpayers, such as a husband and wife, who merely evade taxes jointly or file a fraudulent return.

2. The base offense level is the offense level (base offense level plus any applicable specific offense characteristics) from §2T1.1 or §2T1.4 (whichever guideline most closely addresses the harm that would have resulted had the conspirators succeeded in impeding, impairing, obstructing, or defeating the Internal Revenue Service) if that offense level is greater than 10. Otherwise, the base offense level is 10.

3. Subsection (b)(1) is to be applied to the base offense level determined under §2T1.9(a)(1) or (2).

4. Subsection (b)(1) provides an enhancement where the conduct was intended to encourage persons, other than the participants directly involved in the offense, to violate the tax laws (*e.g.*, an offense involving a "tax protest" group that encourages persons to violate the tax laws, or an offense involving the marketing of fraudulent tax shelters or schemes).

Background: This type of conspiracy generally involves substantial sums of money. It also typically is complex and may be far-reaching, making it quite difficult to evaluate the extent of the revenue loss caused. A specific offense characteristic is included because of the potential for these tax conspiracies to subvert the revenue system and the danger to law enforcement agents and the public.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 233 and 234); November 1, 1993 (amendment 491); November 1, 2026 (amendment 837).

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2. ALCOHOL AND TOBACCO TAXES

Introductory Commentary

This subpart deals with offenses contained in parts I–IV of subchapter J of chapter 51 of subtitle E of title 26, United States Code, chiefly 26 U.S.C. §§ 5601–5605, 5607, 5608, 5661, 5671, 5691, and 5762, where the essence of the conduct is tax evasion or a regulatory violation. No effort has been made to provide a section-by-section set of guidelines. Rather, the conduct is dealt with by dividing offenses into two broad categories: tax evasion offenses and regulatory offenses.

Historical Note	Effective November 1, 1987. Amended effective November 1, 2010 (amendment 746); November 1, 2016 (amendment 804); November 1, 2023 (amendment 824).

§2T2.1. Non-Payment of Taxes

(a) Base Offense Level: Level from §2T4.1 (Tax Table) corresponding to the tax loss.

For purposes of this guideline, the "tax loss" is the amount of taxes that the taxpayer failed to pay or attempted not to pay.

Commentary

Statutory Provisions: 15 U.S.C. § 377, 26 U.S.C. §§ 5601–5605, 5607, 5608, 5661, 5671, 5691, 5762, provided the conduct constitutes non-payment, evasion or attempted evasion of taxes. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. The tax loss is the total amount of unpaid taxes that were due on the alcohol and/or tobacco, or that the defendant was attempting to evade.

Historical Note	Effective November 1, 1987. Amended effective November 1, 2012 (amendment 769); November 1, 2016 (amendment 804); November 1, 2025 (amendment 836).

§2T2.2. Regulatory Offenses

(a) Base Offense Level: **4**

Commentary

Statutory Provisions: 15 U.S.C. § 377, 26 U.S.C. §§ 5601, 5603–5605, 5661, 5671, 5762, provided the conduct is tantamount to a record-keeping violation rather than an effort to evade payment of taxes. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 359); November 1, 2012 (amendment 769); November 1, 2016 (amendment 804).

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3. CUSTOMS TAXES

Introductory Commentary

This subpart deals with violations of 18 U.S.C. §§ 496, 541–545, 547, 548, 550, 551, 1915 and 19 U.S.C. §§ 283, 1436, 1464, 1465, 1586(e), 1708(b), and 3907, and is designed to address violations involving revenue collection or trade regulation. It is intended to deal with some types of contraband, such as certain uncertified diamonds, but is not intended to deal with the importation of other types of contraband, such as drugs, or other items such as obscene material, firearms or pelts of endangered species, the importation of which is prohibited or restricted for non-economic reasons. Other, more specific criminal statutes apply to most of these offenses. Importation of contraband or stolen goods not specifically covered by this subpart would be a reason for referring to another, more specific guideline, if applicable.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1992 (amendment 453); November 1, 2004 (amendment 674); November 1, 2006 (amendment 685); November 1, 2023 (amendment 824); November 1, 2025 (amendment 836).

§2T3.1. Evading Import Duties or Restrictions (Smuggling); Receiving or Trafficking in Smuggled Property

(a) Base Offense Level:

(1) The level from §2T4.1 (Tax Table) corresponding to the tax loss, if the tax loss exceeded $2,000; or

(2) **5**, if the tax loss exceeded $300 but did not exceed $2,000; or

(3) **4**, if the tax loss did not exceed $300.

For purposes of this guideline, the "tax loss" is the amount of the duty.

(b) Specific Offense Characteristic

(1) If the offense involved sophisticated means, increase by **2** levels. If the resulting offense level is less than level **12**, increase to level **12**.

(c) Cross Reference

(1) If the offense involves a contraband item covered by another offense guideline, apply that offense guideline if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 496, 541–545, 547, 548, 550, 551, 1915; 19 U.S.C. §§ 283, 1436, 1464, 1465, 1586(e), 1708(b), 3907. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. A sentence at or near the minimum of the guideline range typically would be appropriate for cases involving tourists who bring in items for their own use. Such conduct generally poses a lesser threat to revenue collection.

2. **Sophisticated Means.**—For purposes of subsection (b)(1), "***sophisticated means***" means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts ordinarily indicates sophisticated means.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 235); November 1, 1991 (amendment 410); November 1, 1992 (amendment 453); November 1, 1998 (amendment 577); November 1, 2001 (amendment 617); November 1, 2006 (amendment 685); November 1, 2015 (amendment 791); November 1, 2025 (amendment 836); November 1, 2026 (amendment 838).

§2T3.2. [Deleted]

Historical Note	Section 2T3.2 (Receiving or Trafficking in Smuggled Property), effective November 1, 1987, and amended effective November 1, 1989 (amendment 236) and November 1, 1991 (amendment 410), was deleted by consolidation with §2T3.1 effective November 1, 1992 (amendment 453).

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4. TAX TABLE

§2T4.1. Tax Table

	TAX LOSS (APPLY THE GREATEST)	OFFENSE LEVEL
(A)	$3,500 or less	**6**
(B)	More than $3,500	**8**
(C)	More than $9,000	**10**
(D)	More than $20,000	**12**
(E)	More than $55,000	**14**
(F)	More than $150,000	**16**
(G)	More than $350,000	**18**
(H)	More than $750,000	**20**
(I)	More than $2,000,000	**22**
(J)	More than $5,000,000	**24**
(K)	More than $15,000,000	**26**
(L)	More than $35,000,000	**28**
(M)	More than $90,000,000	**30**
(N)	More than $200,000,000	**32**
(O)	More than $350,000,000	**34**
(P)	More than $750,000,000	**36**.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 237); November 1, 1993 (amendment 491); November 1, 2001 (amendment 617); January 25, 2003 (amendment 647); November 1, 2003 (amendment 653); November 1, 2015 (amendment 791); November 1, 2026 (amendment 838).

PART U — [NOT USED]

PART V — [NOT USED]

PART W — [NOT USED]

PART X — OTHER OFFENSES

1. CONSPIRACIES, ATTEMPTS, SOLICITATIONS

§2X1.1. Attempt, Solicitation, or Conspiracy (Not Covered by a Specific Offense Guideline)

(a) Base Offense Level: The base offense level from the guideline for the substantive offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty.

(b) Specific Offense Characteristics

(1) If an attempt, decrease by **3** levels, unless the defendant completed all the acts the defendant believed necessary for successful completion of the substantive offense or the circumstances demonstrate that the defendant was about to complete all such acts but for apprehension or interruption by some similar event beyond the defendant's control.

(2) If a conspiracy, decrease by **3** levels, unless the defendant or a co-conspirator completed all the acts the conspirators believed necessary on their part for the successful completion of the substantive offense or the circumstances demonstrate that the conspirators were about to complete all such acts but for apprehension or interruption by some similar event beyond their control.

(3) (A) If a solicitation, decrease by **3** levels unless the person solicited to commit or aid the substantive offense completed all the acts he believed necessary for successful completion of the substantive offense or the circumstances demonstrate that the person was about to complete all such acts but for apprehension or interruption by some similar event beyond such person's control.

(B) If the statute treats solicitation of the substantive offense identically with the substantive offense, do not apply subdivision (A) above; *i.e.*, the offense level for solicitation is the same as that for the substantive offense.

(c) Cross Reference

(1) When an attempt, solicitation, or conspiracy is expressly covered by another offense guideline section, apply that guideline section.

(d) Special Instruction

(1) Subsection (b) shall not apply to:

(A) Any of the following offenses, if such offense involved, or was intended to promote, a federal crime of terrorism as defined in 18 U.S.C. § 2332b(g)(5):

18 U.S.C. § 81;
18 U.S.C. § 930(c);
18 U.S.C. § 1362;
18 U.S.C. § 1363;
18 U.S.C. § 1992(a)(1)–(a)(7), (a)(9), (a)(10);
18 U.S.C. § 2339A;
18 U.S.C. § 2340A;
49 U.S.C. § 46504;
49 U.S.C. § 46505; and
49 U.S.C. § 60123(b).

(B) Any of the following offenses:

18 U.S.C. § 32; and
18 U.S.C. § 2332a.

Commentary

Statutory Provisions: 18 U.S.C. §§ 371, 372, 2271, 2282A, 2282B. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. Certain attempts, conspiracies, and solicitations are expressly covered by other offense guidelines.

Offense guidelines that expressly cover attempts include:

§§2A2.1, 2A3.1, 2A3.2, 2A3.3, 2A3.4, 2A4.2, 2A5.1;
§§2C1.1, 2C1.2;
§§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;
§2E5.1;
§2M6.1;
§2N1.1;
§2Q1.4.

Offense guidelines that expressly cover conspiracies include:

§2A1.5;
§§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;
§2H1.1;

§2M6.1;
§2T1.9.

Offense guidelines that expressly cover solicitations include:

§2A1.5;
§§2C1.1, 2C1.2;
§2E5.1.

2. "***Substantive offense***," as used in this guideline, means the offense that the defendant was convicted of soliciting, attempting, or conspiring to commit. Under §2X1.1(a), the base offense level will be the same as that for the substantive offense. But the only specific offense characteristics from the guideline for the substantive offense that apply are those that are determined to have been specifically intended or actually occurred. Speculative specific offense characteristics will not be applied. For example, if two defendants are arrested during the conspiratorial stage of planning an armed bank robbery, the offense level ordinarily would not include aggravating factors regarding possible injury to others, hostage taking, discharge of a weapon, or obtaining a large sum of money, because such factors would be speculative. The offense level would simply reflect the level applicable to robbery of a financial institution, with the enhancement for possession of a weapon. If it was established that the defendants actually intended to restrict the teller's freedom of movement through physical contact or confinement, the specific offense characteristic for such restriction would be added. In an attempted theft, the value of the items that the defendant attempted to steal would be considered.

3. If the substantive offense is not covered by a specific guideline, *see* §2X5.1 (Other Offenses).

4. In certain cases, the participants may have completed (or have been about to complete but for apprehension or interruption) all of the acts necessary for the successful completion of part, but not all, of the intended offense. In such cases, the offense level for the count (or the offense level for the group of counts determined under subsection (a) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts)) is whichever of the following is greater: the offense level for the intended offense minus 3 levels (under §2X1.1(b)(1), (b)(2), or (b)(3)(A)), or the offense level for the part of the offense for which the necessary acts were completed (or about to be completed but for apprehension or interruption). For example, where the intended offense was the theft of $800,000 but the participants completed (or were about to complete) only the acts necessary to steal $30,000, the offense level is the offense level for the theft of $800,000 minus 3 levels, or the offense level for the theft of $30,000, whichever is greater.

   In the case of multiple counts to which §3D1.1(a) does not apply, whether the 3-level reduction under §2X1.1(b)(1), (b)(2), or (b)(3)(A) applies is determined separately for each count.

Background: In most prosecutions for conspiracies or attempts, the substantive offense was substantially completed or was interrupted or prevented on the verge of completion by the intercession of law enforcement authorities or the victim. In such cases, no reduction of the offense level is warranted. Sometimes, however, the arrest occurs well before the defendant or any co-conspirator has completed the acts necessary for the substantive offense. Under such circumstances, a reduction of 3 levels is provided under §2X1.1(b)(1) or (2).

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 42); November 1, 1989 (amendments 238, 239, 240, 241, and 242); November 1, 1990 (amendments 311 and 327); November 1, 1991 (amendment 411); November 1, 1992 (amendments 444 and 447); November 1, 1993 (amendment 496); November 1, 2001 (amendment 633); November 1, 2002 (amendment 637); November 1, 2004 (amendment 669); November 1, 2007 (amendments 699 and 700); November 1, 2025 (amendment 832); November 1, 2026 (amendment 840).

* * * * *

2. AIDING AND ABETTING

§2X2.1. Aiding and Abetting

The offense level is the same level as that for the underlying offense.

Commentary

Statutory Provisions: 18 U.S.C. §§ 2, 2284, 2339, 2339A, 2339C(a)(1)(A).

Application Note:

1. **Definition.**—For purposes of this guideline, "***underlying offense***" means the offense the defendant is convicted of aiding or abetting, or in the case of a violation of 18 U.S.C. § 2339A or § 2339C(a)(1)(A), "underlying offense" means the offense the defendant is convicted of having materially supported or provided or collected funds for, prior to or during its commission.

Background: A defendant convicted of aiding and abetting is punishable as a principal. 18 U.S.C. § 2. This section provides that aiding and abetting the commission of an offense has the same offense level as the underlying offense. An adjustment for a mitigating role (§3B1.2) may be applicable.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 359); November 1, 2002 (amendment 637); November 1, 2003 (amendment 655); November 1, 2007 (amendment 700).

* * * * *

3. ACCESSORY AFTER THE FACT

§2X3.1. Accessory After the Fact

(a) Base Offense Level:

(1) **6** levels lower than the offense level for the underlying offense, except as provided in subdivisions (2) and (3).

(2) The base offense level under this guideline shall be not less than level **4**.

(3) (A) The base offense level under this guideline shall be not more than level **30**, except as provided in subdivision (B).

(B) In any case in which the conduct is limited to harboring a fugitive, other than a case described in subdivision (C), the base offense level under this guideline shall be not more than level **20**.

(C) The limitation in subdivision (B) shall not apply in any case in which (i) the defendant is convicted under 18 U.S.C. § 2339 or § 2339A; or (ii) the conduct involved harboring a person who committed any offense listed in 18 U.S.C. § 2339 or § 2339A or who committed any offense involving or intending to promote a federal crime of terrorism, as defined in 18 U.S.C. § 2332b(g)(5). In such a case, the base offense level under this guideline shall be not more than level **30**, as provided in subdivision (A).

Commentary

Statutory Provisions: 18 U.S.C. §§ 3, 757, 1071, 1072, 2284, 2339, 2339A, 2339C(c)(2)(A), (c)(2)(B) (but only with respect to funds known or intended to have been provided or collected in violation of 18 U.S.C. § 2339C(a)(1)(A)).

Application Notes:

1. **Definition.**—For purposes of this guideline, "***underlying offense***" means the offense as to which the defendant is convicted of being an accessory, or in the case of a violation of 18 U.S.C. § 2339A, "***underlying offense***" means the offense the defendant is convicted of having materially supported after its commission (*i.e.*, in connection with the concealment of or an escape from that offense), or in the case of a violation of 18 U.S.C. § 2339C(c)(2)(A), "***underlying offense***" means the violation of 18 U.S.C. § 2339B with respect to which the material support or resources were concealed or disguised. Apply the base offense level plus any applicable specific offense characteristics that were known, or reasonably should have been known, by the defendant; *see* Application Note 9 of the Commentary to §1B1.3 (Relevant Conduct).

2. **Application of Mitigating Role Adjustment.**—The adjustment from §3B1.2 (Mitigating Role) normally would not apply because an adjustment for reduced culpability is incorporated in the base offense level.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 243); November 1, 1991 (amendment 380); November 1, 1993 (amendment 496); November 1, 2002 (amendment 637); November 1, 2003 (amendment 655); November 1, 2007 (amendment 700); November 1, 2015 (amendments 790 and 797).

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4. MISPRISION OF FELONY

§2X4.1. Misprision of Felony

(a) Base Offense Level: **9** levels lower than the offense level for the underlying offense, but in no event less than **4**, or more than **19**.

Commentary

Statutory Provision: 18 U.S.C. § 4.

Application Notes:

1. "***Underlying offense***" means the offense as to which the defendant is convicted of committing the misprision. Apply the base offense level plus any applicable specific offense characteristics that were known, or reasonably should have been known, by the defendant; *see* Application Note 9 of the Commentary to §1B1.3 (Relevant Conduct).

2. The adjustment from §3B1.2 (Mitigating Role) normally would not apply because an adjustment for reduced culpability is incorporated in the base offense level.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 244); November 1, 1993 (amendment 496); November 1, 2015 (amendments 790 and 797).

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5. ALL OTHER FELONY OFFENSES AND CLASS A MISDEMEANORS

Historical Note	Effective November 1, 1987. Amended effective November 1, 2006 (amendment 685).

§2X5.1. Other Felony Offenses

If the offense is a felony for which no guideline expressly has been promulgated, apply the most analogous offense guideline. If there is not a sufficiently analogous guideline, the provisions of 18 U.S.C. § 3553 shall control, except that any guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline shall remain applicable.

If the defendant is convicted under 18 U.S.C. § 1841(a)(1), apply the guideline that covers the conduct the defendant is convicted of having engaged in, as that conduct is described in 18 U.S.C. § 1841(a)(1) and listed in 18 U.S.C. § 1841(b).

Commentary

Statutory Provision: 18 U.S.C. § 1841(a)(1).

Application Notes:

1. **In General.—**Guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline include: §3F1.1 (Early Disposition Programs (Policy Statement)); §5B1.3 (Conditions of Probation); §5D1.1 (Imposition of a Term of Supervised Release); §5D1.2 (Term of Supervised Release); §5D1.3 (Conditions of Supervised Release); §5E1.1 (Resti-

tution); §5E1.3 (Special Assessments); §5E1.4 (Forfeiture); Chapter Five, Part F (Sentencing Options); §5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment or Anticipated State Term of Imprisonment); Chapter Five, Part J (Relief from Disability); Chapter Five, Part K (Assistance to Authorities); Chapter Six, Part A (Sentencing Procedures); and Chapter Six, Part B (Plea Agreements).

2. **Convictions under 18 U.S.C. § 1841(a)(1).**—If the defendant is convicted under 18 U.S.C. § 1841(a)(1), the Chapter Two offense guideline that applies is the guideline that covers the conduct the defendant is convicted of having engaged in, *i.e.*, the conduct of which the defendant is convicted that violates a specific provision listed in 18 U.S.C. § 1841(b) and that results in the death of, or bodily injury to, a child in utero at the time of the offense of conviction. For example, if the defendant committed aggravated sexual abuse against the unborn child's mother and it caused the death of the child in utero, the applicable Chapter Two guideline would be §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

3. **Application of §2X5.2.**—This guideline applies only to felony offenses not referenced in Appendix A (Statutory Index). For Class A misdemeanor offenses that have not been referenced in Appendix A, apply §2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)).

Background: Many offenses, especially assimilative crimes, are not listed in the Statutory Index or in any of the lists of Statutory Provisions that follow each offense guideline. Nonetheless, the specific guidelines that have been promulgated cover the type of criminal behavior that most such offenses proscribe. The court is required to determine if there is a sufficiently analogous offense guideline, and, if so, to apply the guideline that is most analogous. In a case in which there is no sufficiently analogous guideline, the provisions of 18 U.S.C. § 3553 control.

The sentencing guidelines apply to convictions under 18 U.S.C. § 13 (Assimilative Crimes Act) and 18 U.S.C. § 1153 (Indian Major Crimes Act); *see* 18 U.S.C. § 3551(a), as amended by section 1602 of Public Law 101–647.

Historical Note	Effective November 1, 1987. Amended effective June 15, 1988 (amendment 43); November 1, 1991 (amendment 412); November 1, 1997 (amendment 569); November 1, 2006 (amendment 685); November 1, 2014 (amendment 787); November 1, 2025 (amendment 836).

§2X5.2. Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)

(a) Base Offense Level: **6**

Commentary

Statutory Provisions: 10 U.S.C. § 2733a(g)(2); 18 U.S.C. §§ 39B, 1365(f), 1801, 2259(d)(4); 34 U.S.C. § 12593; 49 U.S.C. § 31310. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. **In General.**—This guideline applies to Class A misdemeanor offenses that are specifically referenced in Appendix A (Statutory Index) to this guideline. This guideline also applies to Class A misdemeanor offenses that have not been referenced in Appendix A. Do not apply this guideline

to a Class A misdemeanor that has been specifically referenced in Appendix A to another Chapter Two guideline.

Historical Note	Effective November 1, 2006 (amendment 685). Amended effective November 1, 2007 (amendment 699); November 1, 2008 (amendment 721); November 1, 2010 (amendment 746); November 1, 2018 (amendment 813); November 1, 2023 (amendment 815).

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6. OFFENSES INVOLVING USE OF A MINOR IN A CRIME OF VIOLENCE

Historical Note	Effective November 1, 2004 (amendment 674).

§2X6.1. Use of a Minor in a Crime of Violence

(a) Base Offense Level: **4** plus the offense level from the guideline applicable to the underlying crime of violence.

Commentary

Statutory Provision: 18 U.S.C. § 25.

Application Notes:

1. **Definition.—**For purposes of this guideline, "***underlying crime of violence***" means the crime of violence as to which the defendant is convicted of using a minor.

2. **Inapplicability of §3B1.4.—**Do not apply the adjustment under §3B1.4 (Using a Minor to Commit a Crime).

3. **Multiple Counts.—**In a case in which the defendant is convicted of multiple counts involving the use of a minor in a crime of violence, apply subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to the counts.

Historical Note	Effective November 1, 2004 (amendment 674). Amended effective November 1, 2026 (amendment 840).

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7. OFFENSES INVOLVING BORDER TUNNELS AND SUBMERSIBLE AND SEMI-SUBMERSIBLE VESSELS

Historical Note	Effective November 1, 2007 (amendment 700). Amended effective November 1, 2009 (amendment 728).

§2X7.1. Border Tunnels and Subterranean Passages

(a) Base Offense Level:

(1) If the defendant was convicted under 18 U.S.C. § 555(c), **4** plus the offense level applicable to the underlying smuggling offense. If the resulting offense level is less than level **16**, increase to level **16**.

(2) **16**, if the defendant was convicted under 18 U.S.C. § 555(a); or

(3) **8**, if the defendant was convicted under 18 U.S.C. § 555(b).

Commentary

Statutory Provision: 18 U.S.C. § 555.

Application Note:

1. **Definition.**—For purposes of this guideline, "***underlying smuggling offense***" means the smuggling offense the defendant committed through the use of the tunnel or subterranean passage.

Historical Note	Effective November 1, 2007 (amendment 700). Amended effective November 1, 2008 (amendment 724).

§2X7.2. Submersible and Semi-Submersible Vessels

(a) Base Offense Level: **26**

(b) Specific Offense Characteristic

(1) (Apply the greatest) If the offense involved—

(A) a failure to heave to when directed by law enforcement officers, increase by **2** levels;

(B) an attempt to sink the vessel, increase by **4** levels; or

(C) the sinking of the vessel, increase by **8** levels.

Commentary

Statutory Provision: 18 U.S.C. § 2285.

Application Note:

1. As identified by Congress in section 103 of Public Law 110–407, the following factors may also warrant consideration in imposing a sentence under this guideline:

   (A) The defendant engaged in a pattern of activity involving use of a submersible vessel or semi-submersible vessel described in 18 U.S.C. § 2285 to facilitate other felonies.

   (B) The offense involved use of the vessel as part of an ongoing criminal organization or enterprise.

Background: This guideline implements the directive to the Commission in section 103 of Public Law 110–407.

Historical Note	Effective November 1, 2009 (amendment 728). Amended effective November 1, 2025 (amendment 836).

PART Y — [NOT USED]

PART Z — [NOT USED]