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).

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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).

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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).

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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).

* * * * *

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).

* * * * *

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).

* * * * *

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).

* * * * *

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]