

**Drug Fact Patterns  
June 2009**

1. Defendant is convicted of one count of conspiracy to manufacture methamphetamine. Defendant and his partner provided 200 grams of ephedrine to an undercover agent, posing as a meth cooker who agreed to manufacture for the defendant. Defendant and his partner were immediately arrested.

Upon searching the defendant's residence a short time later, agents discovered 300 grams of pseudoephedrine, and 20 grams of meth mixture of fifty percent purity. It has been established that the pseudoephedrine was possessed with intent to manufacture methamphetamine and that the methamphetamine mixture was the product of an earlier manufacture arranged by the defendant and his partner as part of the conspiracy.

**What is the quantity of drugs that will be used to determine the defendant's base offense level pursuant to §2D1.1(a)(3)?**

*Answer: The ephedrine, pseudoephedrine, and methamphetamine will all be used to calculate the defendant's base offense level. All drugs must be converted into their respective marijuana equivalents.*

*1 g ephedrine = 10 kg of marihuana  
1 g of pseudoephedrine = 10 kg of marihuana.*

*200 g ephedrine converts to 2,000 kg of marijuana  
300 pseudoephedrine converts to 3,000 kg of marijuana.  
As for the marijuana equivalency for the methamphetamine, Note (B) to the Drug Quantity Table instructs that the greater of meth actual or meth mixture be used.*

*20 grams of methamphetamine mixture has a base offense level of 20, while 10 grams of meth actual has a base offense level of 28. In comparing marijuana equivalencies, 20 grams of meth mixture equals 40 kg of marijuana, and 10 grams of meth actual equals 200 kg of marijuana. Meth actual should be used to calculate the defendant's offense level as it results in the greater offense level. All the drugs involved in the defendant's relevant conduct results in a marijuana*

*equivalency of 5,200 kg of marijuana, which results in a base offense level of 34.*

Upon further search of the defendant's premises, agents discovered a small methamphetamine lab in the defendant's home, where the defendant's children also reside. Agents testified that the lab was capable of producing 50 grams of methamphetamine per month. The lab had been in operation for three months. The defendant's expert witness testifies that the lab was capable of producing no more than 25 grams of methamphetamine per month.

**Should any additional methamphetamine quantities be added to the drug quantities used to determine the base offense level at §2D1.1(a)(3)? If so, how much? How would the base offense level be affected?**

*Answer: If it is determined that the defendant manufactured meth for three months and it was part of the same course of conduct, common scheme or plan as the offense of conviction, then the court would have to determine the quantity of meth to add to the calculation of the base offense level. This is a question of fact for the court to resolve.*

*If the court agreed with the government, then 150 grams of meth would be added to the calculation of the base offense level pursuant to §2D1.1(a)(3). Assuming that the 150 gms of methamphetamine is determined to be part of relevant conduct, the additional seized 300 gms. of pseudoephedrine will be factored in using the Drug Quantity Table. Additionally, if the court determines that the defendant was planning to manufacture additional amounts of meth, then those quantities will also be used in the calculations. Note that if it is determined that the seized 300 grams of pseudoephedrine was to be used in that manufacturing, then it will not be used in both the estimation of meth that could be produced as well as calculated on the Drug Equivalency Table.*

*If the court agreed with the defense that the lab was not capable of producing more than 25 grams of meth per month, then no more than 75 grams of meth would be added to the calculation of the base offense level pursuant to §2D1.1(a)(3).*

*Issues: Should the court use 150 grams of methamphetamine mixture or assume the meth had the same purity as the meth found in the defendant's residence? Base offense level will vary differently depending on whether the court uses the methamphetamine mixture or actual.*

**How would the calculations change if the defendant had been convicted of an additional count charging a violation of 21 U.S.C. § 860a.**

*Answer: Effective November 1, 2007, the Commission added a new enhancement at §2D1.1 (b)(10) (formerly 2D1.1(b)(8)). If the defendant had been convicted of violating 21 U.S.C. § 860a of manufacturing, or possessing with intent to manufacture, methamphetamine on premises where a minor is present or resides, he would be subject to a three-level enhancement and a minimum offense level of 27. In addition, section 860a requires imposition of a mandatory consecutive term of imprisonment of not more than 20 years. Application Note 22 instructs the court to determine the "total punishment" for the offense and then determine the portion of the sentence attributable to the underlying offense and the portion attributable to the section 860a offense.*

**How would the calculations change if the defendant had been convicted of an additional count charging a violation of 21 U.S.C. § 865.**

*Answer: Effective November 1, 2007, the Commission added a new two-level enhancement at §2D1.1 (b)(5) if the defendant is convicted under 21 U.S.C. § 865. In addition, section 865 requires imposition of a mandatory consecutive term of imprisonment of not more than 15 years. Application Note 22 instructs the court to determine the "total punishment" for the offense and then determine the portion of the sentence attributable to the underlying offense and the portion attributable to the section 865 offense.*

**During the presentence investigation, the probation officer learns that the defendant has been completing graduate work and has taken chemistry courses, although he has not yet earned a graduate degree. Should the Chapter Three adjustment for use of a special skill (§3B1.3) be applied?**

*Answer: The determination of whether the adjustment applies will require the court to consider whether the Defendant used a special skill in a manner that significantly facilitated the commission or concealment of the offense. Application Note 3 instructs that a special skill refers to a skill not possessed by members of the general public and usually requiring substantial education, training or licensing,. A chemist is listed as one of the examples. The court's consideration of the issue in this case will center around whether the defendant's coursework significantly facilitated the offense and whether the coursework gives him a skill not possessed by members of the general public. See, e.g., United States v. Campbell, 61 F.3d 976 (1st Cir. 1995)(applying adjustment to defendant with PhD*

*training in chemistry who was manufacturing P2P, a precursor chemical used to manufacture methamphetamine).*

2. Defendant used 1,000 ecstasy (MDMA) tablets as a down payment for 100 kg of marihuana. Each ecstasy table contains 250 mg of MDMA.

**What is the base offense level under §2D1.1(c), the Drug Quantity Table?**

*Answer: Both drugs should be used to determine the total drug quantity involved in the offense. The tablets contain a total of 250 gm of MDMA (.250 gm X 1,000), which equates to 125,000 gm or 125 kg marihuana (1 gm of MDMA = 500 gm of marihuana). The combined drugs equate to 225 kg marihuana (125 kg + 100 kg). This results in a base offense level of 26.*

3. Defendant is convicted of three counts: possession with intent to distribute heroin; possession with intent to distribute cocaine; and possession with intent to distribute crack cocaine. The respective drug quantities are : one kilogram of heroin; 500 grams of cocaine and 10 grams of crack cocaine.

**What is the quantity of drugs that will be used to determine the defendant's base offense level pursuant to §2D1.1(a)(3)?**

*All drugs must be converted into their respective marihuana equivalents.*

*1 gram of heroin = 1 kg of marijuana.*

*1 gm of cocaine = 200 gm of marijuana.*

*1 gram of cocaine base ("Crack") = 20 kg. of marijuana*

*1 kilogram of heroin converts to 1000 kilograms of marihuana, 500 grams of cocaine converts to 10 kilograms of marijuana, and 10 grams of crack cocaine converts to 200 kilograms of marijuana.*

**How do you determine the defendant's base offense level pursuant to §2D1.1(a)(3)?**

*All the drugs involved in the defendant's relevant conduct results in a marihuana equivalency of 1210 kg of marihuana, which results in a base offense level of 32. Application Note 10(D)(i) then instructs that this combined offense level be reduced by two levels so the base offense level for this defendant is 30.*

*Note: It is important to be mindful of the exceptions to this rule set out in Application Note 10(D)(ii) which provides that the 2-level reduction provided in subdivision (i) shall not apply in a case in which:*

- (I) the offense involved 4.5 kg or more, or less than 250 mg, of cocaine base; or*
- (II) the 2-level reduction results in a combined offense level that is less than the combined offense level that would apply under subdivision (B) of this note if the offense involved only the other controlled substance(s) (i.e., the controlled substance(s) other than cocaine base).*

*The Note lists one example where the exception would apply:*

*The case involves 5 gm of cocaine base and 6 kg of heroin. Under the Drug Equivalency Tables in subdivision (E) of this note, 5 gm of cocaine base converts to 100 kg of marihuana (5 gm x 20 kg = 100 kg), and 6 kg of heroin converts to 6,000 kg of marihuana (6,000 gm x 1 kg = 6,000 kg), which, when added together results in a combined equivalent quantity of 6,100 kg of marihuana. Under the Drug Quantity Table, 6,100 kg of marihuana corresponds to a combined offense level of 34, which is reduced by two levels to 32. For the heroin, the 6,000 kg of marihuana corresponds to an offense level 34 under the Drug Quantity Table. Because the combined offense level for the two drug types after the 2-level reduction is less than the offense level for the heroin, the reduction does not apply and the combined offense level for the two drugs remains level 34.*

- 4. Defendant is convicted of one count of conspiracy to distribute crack cocaine, alleging that he negotiated to sell 5 grams of crack cocaine.**

**What is the defendant's base offense level pursuant to §2D1.1(a)(3)?**

*At least 5 grams but less than 20 grams of cocaine base results in a base offense level of 24. For an offender with a CHC I, the guideline range is 51-63 months.*

*Reminder - the statutory penalty structure is not changed and applicable mandatory minimum sentences still apply. 5 grams of cocaine base triggers a five year mandatory minimum penalty. See 21 U.S.C. §841((b)(1)(B)(iii).*