

Keys to Grouping under USSG §3D1.2(a) – (d)

Grouping Under Rule (d) - INCLUDED list

These guidelines are on the INCLUDED list (they group under Rule (d) if all counts go to the same guideline):

§2A3.5;
§§2B1.1, 2B1.4, 2B1.5, 2B4.1, 2B5.1, 2B5.3, 2B6.1;
§§2C1.1, 2C1.2, 2C1.8;
§§2D1.1, 2D1.2, 2D1.5, 2D1.11, 2D1.13;
§§2E4.1, 2E5.1;
§§2G2.2, 2G3.1;
§2K2.1;
§§2L1.1, 2L2.1;
§2N3.1;
§2Q2.1;
§2R1.1;
§§2S1.1, 2S1.3;
§§2T1.1, 2T1.4, 2T1.6, 2T1.7, 2T1.9, 2T2.1, 2T3.1.

Grouping Under Rule (d) - EXCLUDED list

These guidelines are on the EXCLUDED list (they don't group under Rule (d), but they might group under Rules (a)(b) or (c) or you might have to add units):

all offenses in Chapter Two, Part A (except §2A3.5);
§§2B2.1, 2B2.3, 2B3.1, 2B3.2, 2B3.3;
§2C1.5;
§§2D2.1, 2D2.2, 2D2.3;
§§2E1.3, 2E1.4, 2E2.1;
§§2G1.1, 2G2.1;
§§2H1.1, 2H2.1, 2H4.1;
§§2L2.2, 2L2.5;
§§2M2.1, 2M2.3, 2M3.1, 2M3.2, 2M3.3, 2M3.4, 2M3.5, 2M3.9;
§§2P1.1, 2P1.2, 2P1.3;
§2X6.1.

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Grouping Under Rule (c)

- There are some commonly-occurring specific offense characteristics (SOC) and Chapter Three adjustments that will result in a Rule (c) grouping:
 - An SOC for injury where an assault is also charged.
 - A firearms SOC (such as in a robbery offense) where possession of the firearm is also charged.
 - An increase for a firearm being used in a felony offense (such as in robbery or a drug trafficking offense) where the other felony offense is also charged.
 - Tax evasion where the income was derived from criminal activity that is also charged.
 - Money laundering where the defendant is also charged with the underlying offense from which the laundered funds were derived.
 - An adjustment for obstruction of justice where obstruction is charged, and the offense with respect to which the obstructive conduct occurred is also charged.

Helpful Application Notes

- §3D1.2 (Grouping of Closely Related Counts) Application Note 2. “For offenses in which there are no identifiable victims (e.g., drug or immigration offenses, where society at large is the victim), the ‘victim’ . . . is the societal interest that is harmed.” An example of a case in which societal harms are closely related is a case in which the defendant unlawfully enters the U.S. and also possesses fraudulent proof of citizenship. An example of a case in which societal harms are distinct is one in which the defendant enters the country illegally and is also carrying a distribution amount of drugs.
- See Application Notes 3 and 4 to §3D1.2 for examples of grouping under Rules (a) and (b).

