

How to Answer Question 5 on the OPA Form Petition

Question 5 on the form petition for commutation asks the applicant to “provide a complete and detailed account of the offense for which you seek commutation, including the full extent of your involvement.” The Notice to Inmates states: “Please note that the Pardon Attorney may consult with prosecuting authorities and the judge involved in your case when considering the appropriateness of your petition, and as such, your full candor in this application is critical and will impact the likelihood of the success of your petition.”

In the past, the answer to Question 5 played an important role in whether commutation was granted. An attorney who crafted a well-worded, accurate, and appropriate answer to Question 5 may have spent many hours parsing trial transcripts, the PSR, sentencing transcripts, and other case documents, perhaps going through several drafts and re-drafts and involving extensive discussions with the client. However, the answer to Question 5 is not the focus of this initiative. Instead, the focus is the criteria announced on May 5, 2014, which you will address in your Memorandum in Support of Petition for Commutation of Sentence.

The answer should be as plain and simple as possible, and *you* should draft it. It should state only the bare facts necessary to support the elements of the offense of conviction contained in the Judgment, except for drug quantity.¹ Doing so will ensure safety and efficiency:

- You will avoid making any factual statements that could jeopardize pending or future litigation, or the commutation petition itself.
- The client will not have an opportunity to minimize or deny facts that appear in the PSR or that the prosecutor may recall differently; doing so could result in denial of the commutation petition.
- You will not spend unnecessary time and energy crafting an elaborate account of the offense that will satisfy the Pardon Attorney, the prosecutor, and the client, when that time is better spent analyzing the relevant criteria in your Memorandum.

If the client went to trial, the essential facts are among many in the trial transcript. But witness testimony is often conflicting and unclear, so look to the jury instructions for the essential facts the jury had to find in order to convict. If the client pled guilty, the essential facts will be in the agreed factual basis in the plea agreement (if there was one) and transcript of the plea colloquy.

Do not rely on “facts” that are simply alleged in the PSR. The PSR describes the details of the offense as understood by the Probation Officer and in most instances comes solely from the prosecutor’s version of the offense, sometimes supplemented by law enforcement reports. As Justice Scalia observed, the PSR’s version of the facts may be no more than “hearsay-riddled”

¹ Though drug quantity is now recognized as an element of the offense because it increases the statutory minimum penalty, *Alleyne v. United States*, 133 S. Ct. 2151, 2161 (2013), you generally should not mention it for the reasons explained in this memo.

allegations.² The sentencing memoranda and sentencing transcript often shed a very different light on the facts of the offense.

The “facts” relied upon by the judge (such as drug quantity), in addition to being proved only by a preponderance of the evidence and often based on multi-level hearsay, may not have been subject to adversarial testing at the time of sentencing, and so may not accurately convey the facts of the offense. Most important, if you rely on those facts, you could jeopardize the client’s position in pending or future litigation that depends on facts found in the course of that litigation, which may differ from the facts as set forth in the PSR.

For example, the PSR may have alleged that the client’s offense involved a quantity of drugs many kilograms greater than the quantity triggering the highest base offense level under USSG § 2D1.1(c). Though the quantity alleged was based on hearsay from a confidential informant, the client may not have objected to the quantity because a finding of the true, lower drug quantity would still have been greater than the highest quantity trigger under § 2D1.1, and the client did not want to risk losing acceptance of responsibility, *see* USSG § 3E1.1, cmt. (n.1(A)), or receiving an enhancement for obstruction of justice, *id.* § 3C1.1, by challenging the drug quantity stated in the PSR. At sentencing, the judge may have found, instead of the quantity set forth in the PSR, a quantity *range* above the triggering amount, or that the offense involved “at least” the triggering amount. *See* Fed. R. Crim. P. 32(i)(3)(B) (judge need not resolve a factual dispute when it would make no difference to the sentence). If clemency is denied, an unnecessary concession in Question 5 regarding quantity could jeopardize future relief in proceedings in which quantity becomes important, possibly dispositive. Examples of how to answer Question 5 to avoid jeopardizing litigation in these and other circumstances are set forth below.

In some cases, you may nevertheless choose to state a fact that is not an essential element but supports a criterion for commutation. For example, if the client received a weapon enhancement, you may choose to state that she only possessed a weapon, or someone else possessed or used a weapon, because it is forthright and supports the analysis in your Memorandum that the client herself is a non-violent offender.

Again, caution is advised. The fact may be simply an allegation in the PSR and may never have been objected to, litigated, ruled upon, or found by a judge for any number of reasons.

Finally, on a more practical level, you do not have the time it would take to craft an elaborate account of the offense that will satisfy the Pardon Attorney, the prosecutor, and the client. This is especially true if the client remains attached to his version of the offense. Your time is better spent analyzing the criteria in your Memorandum.

If the client has a pending petition that includes an answer to Question 5 that makes unnecessary and potentially damaging statements, consider withdrawing it and submitting a new one.

² *Booker v. United States*, 543 U.S. 220, 304 (2005) (Scalia, J., dissenting in part).

Example: Client A and a number of others sold small amounts of crack for a neighborhood dealer over a period of approximately two years. In 2003, Client A was convicted by a jury of conspiracy to possess with intent to distribute 50 grams or more of crack. Based on information provided by a confidential informant, the PSR alleged that the amount of crack involved in the conspiracy was 29 kilograms. At the time, 1.5 kilograms or more of crack corresponded to base offense level 38, the highest base offense level under the Drug Quantity Table at USSG § 2D1.1(c) (2003). Client A did not object to the drug quantity in the PSR because he could not dispute that the conspiracy involved at least 1.5 kilograms, and, regardless whether the judge found that the conspiracy involved 2 kilograms or 29 kilograms, his base offense level would be 38. Under these circumstances, he chose not to risk an enhancement for obstruction of justice by contesting drug quantity when it would not affect the outcome. *See* USSG § 3C1.1.

The judge recognized that a precise finding of drug quantity was not necessary, *see* Fed. R. Crim. P. 32(i)(3)(B), and found that the conspiracy involved “at least 20 but not more than 29 kilograms.” At base offense level 38 and in Criminal History Category V, Client A’s mandatory guideline range was 360 months to life. He was sentenced to a mandatory guideline sentence of 360 months.

In 2007, the Commission amended the Drug Quantity Table at § 2D1.1 so that 4.5 kilograms or more of crack was required to trigger the highest base offense level of 38. In 2010, the Commission again increased the quantity so that 8.4 kilograms or more of crack was required to trigger base offense level 38. Because the judge found that Client A was responsible for “at least 20 and not more than 29” kilograms of crack, an amount still higher than the highest quantity triggers of 4.5 kilograms (2007) or 8.4 kilograms (2010), Client A was not eligible for § 3582(c)(2) relief based on these retroactive amendments.

However, the new retroactive amendment to the Drug Quantity Table that will go into effect on November 1, 2014 will require 25.2 kilograms or more of crack to trigger the highest base offense level 38. *See* U.S. Sent’g Comm’n, Amendment 3, Reader Friendly Amendments to the Sentencing Guidelines (eff. Nov. 1, 2014) [2014 Amended Drug Quantity Table].³ Based on the judge’s finding of quantity, Client A’s base offense level will remain 38 *only if* the quantity is actually 25.2 kilograms or more. If the quantity is less than 25.2 kilograms, his base offense level will be reduced by at least 2 levels, and his range will be reduced to 292-365 months.

If you answer Question 5 by stating that his offense involved 29 kilograms of crack based on the amount alleged in the PSR (and within a possible range found by the judge), Client A will have admitted a quantity that will render him ineligible for relief under § 3582(c)(2) based on the 2014 retroactive amendment. Absent that admission, Client A preserves his ability to argue in a future § 3582(c)(2) proceeding, should clemency be denied, that his offense in fact involved less than 25.2 kilograms.

How you might answer Question 5:

For about two years in 2001 and 2002, I sold crack to individuals for a neighborhood drug dealer.

³ The 2014 Amended Drug Quantity Table appears in Appendix 1.

Example: Client B, addicted to methamphetamine, helped her boyfriend and his friends sell methamphetamine over a period of several months in 2002. When she and her boyfriend were arrested in a motel room, officers found a small handgun in the drawer of the bedside table. In 2003, Client B pled guilty to conspiracy to possess with intent to distribute 50 grams of methamphetamine (actual). The PSR alleged, based on information from her boyfriend (who cooperated), that the amount of methamphetamine involved in the conspiracy was 6.4 kilograms. At the time, 1.5 kilograms or more of methamphetamine (actual) corresponded to base offense level 38, the highest base offense level on the Drug Quantity Table. USSG § 2D1.1(c) (2002). Client B did not object to the calculation because she could not dispute that the conspiracy involved at least 1.5 kilograms, and did not want to risk losing acceptance of responsibility by contesting relevant conduct when it would not affect the outcome. *See* USSG § 3E1.1 cmt. (n.1).

The PSR stated, based on a law enforcement report, that the gun found in the drawer had both Client B's and her boyfriend's fingerprints on it, and also alleged, based on information from the boyfriend, that the gun belonged to and was placed in the drawer by Client B. Client B objected to the 2-level gun bump under USSG § 2D1.1(b)(1), asserting that the gun did not belong to Client B and she did not put it there. At sentencing, the government put the boyfriend on the stand, who testified that the gun belonged to her and that she put it there.

The judge found that the offense involved "at least 1.5 kilograms" of methamphetamine, which corresponded to base offense level 38. The judge rejected Client B's objection to the gun bump, finding by a preponderance of the evidence that the firearm belonged to her, and in any event, "was possessed." With 3 levels off for acceptance of responsibility and in CHC III, Client B's guideline range was 262-327 months. She was sentenced to 262 months.

The retroactive amendment to the Drug Quantity Table at § 2D1.1 that will go into effect on November 1, 2014 will increase the amount of methamphetamine (actual) that corresponds to base offense level 38 to 4.5 kilograms or more. *See* 2014 Amended Drug Quantity Table. Based on the judge's finding of quantity, Client B's base offense level will remain 38 *only if* the quantity is 4.5 kilograms or more of methamphetamine. If, however, the quantity is at least 1.5 kilograms but less than 4.5 kilograms, her base offense level will be reduced by 2 levels, and her range will go down to 210-262 months.

If you answer Question 5 by stating that the conspiracy involved 6.4 kilograms of methamphetamine, based on the amount alleged in the PSR and because she did not object, Client B will have admitted a quantity that will render her ineligible for relief under § 3582(c)(2) based on the 2014 retroactive amendment. Absent that admission, she preserves her ability to argue in a § 3582(c)(2) proceeding, should clemency be denied, that her offense in fact involved less than 4.5 kilograms of methamphetamine.

How you might answer Question 5:

For several months in 2002, I sold methamphetamine for my boyfriend and his friends. When my boyfriend and I were arrested at a motel, I had a small handgun in the drawer of the bedside table.

Example: In 2005, police were investigating a crack distribution ring in Chattanooga, Tennessee. Based on information obtained from a confidential informant, police were surveilling a house where crack sales were reported to be taking place. They observed Client C enter the house, leave a few minutes later, and then drive away. They followed him a short distance, and pulled him over for failing to wear a seatbelt. They searched his car and found 26 grams of crack.

He was convicted by jury of conspiracy to possess with intent to distribute crack. No quantity was alleged in the indictment, and the jury made no finding regarding quantity. Thus, the statutory penalty range was 0 to 20 years. 21 U.S.C. § 841(b)(1)(C). The PSR alleged that the conspiracy involved 28 kilograms. In its sentencing memorandum and at sentencing, the government argued only that Client C was responsible for more than 1.5 kilograms, the amount established by the plea agreements of four co-defendants. Client C did not object to the PSR calculation because any amount over 1.5 kilograms would result in an offense level 38, and he did not want to risk an enhancement for obstruction of justice. USSG § 3C1.1. The court found that Client C was responsible for “at least 1.5 kilograms” and did not make any more specific finding, noting that “it simply doesn’t matter whether it was 10 kilograms or 28 kilograms.”

Based on information provided by a co-defendant, Client C received an additional 2 levels for being a “manager or supervisor,” USSG § 3B1.1(c), because he got his girlfriend to help deliver crack and gave her directions on where to meet buyers. With a total offense level of 40, and in Criminal History Category I, his guideline range was 292-365 months. Because the statutory maximum of 20 years was below the guideline range, the statutory maximum became the guideline sentence. USSG § 5G1.1(a). The court sentenced him to the guideline sentence of 240 months.

Under the 2007 crack amendment, the Commission amended the Drug Quantity Table so that 4.5 kilograms or more of crack corresponded to the highest base offense level of 38, and so that at least 1.5 kilograms but less than 4.5 kilograms of crack corresponded to a base offense level of 36. *See* USSG § 2D1.1(c) (2008). Under that retroactive amendment, Client C’s base offense level would be reduced from 38 to 36 if the quantity was at least 1.5 kilograms but less than 4.5 kilograms. He filed a *pro se* motion under § 3582(c)(2), arguing that he should be held responsible for no more than 1.5 kilograms, which is what the government argued for and what the court found. That motion remains pending today.

Under the 2010 crack amendment, Client C’s base offense level would be further reduced to 34 if the quantity was at least 1.5 kilograms (as the judge found) but less than 2.8 kilograms. *See* USSG § 2D1.1 (2010) (Supp.). He supplemented his pending § 3582(c)(2) motion to request a reduced sentence within a range of 188-235 months, which corresponds to the reduced base offense level of 34 plus 2 for role, in Criminal History Category I.

The new retroactive amendment to the Drug Quantity Table at § 2D1.1 that will go into effect on November 1, 2014 will require 25.2 kilograms or more of crack to trigger base offense level 38. *See* 2014 Amended Drug Quantity Table. Client C’s base offense level will remain 38 *only if* the quantity is 25.2 kilograms of crack or more. If the quantity is at least 1.5 kilograms (as the judge

found) but less than 2.8 kilograms, his offense level would go down to 32, and his range would go down to 151-188 months.

If you answer Question 5 by stating that his offense involved 28 kilograms of crack, based on the amount alleged in the PSR, Client C will have admitted a quantity that will render him ineligible for relief under § 3582(c)(2), not only with respect to his pending motion based on the 2007 and 2010 retroactive amendments, but any supplemental motion based on the 2014 retroactive amendment. Absent that admission, Client C preserves his ability to argue in his pending § 3582(c)(2) proceeding, should clemency be denied, that his offense in fact involved less than 2.8 kilograms.

How you might answer Question 5:

I and several friends distributed crack to individuals over a period of about one year.

Example: For approximately 11 months, Client D and his father made methamphetamine in the kitchen of a vacant mobile home on his father's property, and Client D sometimes sold small quantities to a confidential informant. In 1998, Client D pled guilty to conspiracy to manufacture at least 50 grams of methamphetamine, which carried a statutory penalty of 10 years to life. 21 U.S.C. § 841(b)(1)(A). The PSR stated that the conspiracy involved 1,610 grams of methamphetamine, which corresponded to a base offense level 36 under the mandatory guidelines. With two levels off for acceptance of responsibility (the court declined to grant the third point because Client D contested the drug quantity), and in Criminal History Category III, his guideline range was 188-235 months.

However, Client D had been previously convicted in state court of two offenses that, under binding circuit precedent, qualified as predicates under the career offender guideline at USSG §§ 4B1.1, 4B1.2. One was a minor drug offense for which he got no jail time and the other was possession of a sawed-off shotgun. The PSR found Client D to be a career offender, and Client D did not object due to the binding circuit precedent. At sentencing, the judge found that the two offenses qualified as "crimes of violence," and thus that the career offender guideline applied. Under that guideline, Client D's offense level was increased to 37. With two levels off for acceptance, and now automatically placed in Criminal History Category VI, the mandatory guideline range increased to 292-365 months. The judge sentenced him to 292 months.

Although the Commission has made the 2014 amendment to the Drug Quantity Table retroactive, Client D will not be eligible for § 3582(c)(2) relief because he was sentenced based on the career offender guideline. His best hope is commutation or, if denied, habeas relief in the event the Supreme Court issues a ruling in the pending *Johnson* case that changes the law of the circuit under which he was sentenced and makes clear that his prior state offense of possession of a sawed-off shotgun does not qualify as a "crime of violence" and he was thus improperly sentenced as a career offender.

If you answer Question 5 by stating that Client D "had two prior convictions for crimes of violence under the career offender guideline," he will have admitted an unnecessary fact that

could be used against him in a future habeas proceeding in which he argues he is actually innocent of the career offender designation.

How you might answer Question 5:

For a little less than a year, my father and I made methamphetamine in a vacant mobile home on his property, and I sometimes sold methamphetamine to a confidential informant.

Example: In 2002, Client E was charged with conspiracy to possess with intent to distribute 1 kilogram or more of heroin under 21 U.S.C. § 841(b)(1)(A), which carries a statutory penalty of 10 years to life. Client E insisted he was not the person seen by surveilling agents at the house where the heroin was packaged or the person speaking in incriminating telephone calls. Because he refused to plead guilty, the prosecutor filed two § 851 notices based on relatively minor state drug convictions for which he was sentenced to little jail time, increasing his statutory penalty to mandatory life. At trial, Client E took the stand and denied his involvement in the conspiracy. He was convicted by the jury.

The PSR set forth the prosecutor's version of events, which was that Client E was seen by surveilling agents frequenting the house where the heroin was packaged, including on the day that a search warrant was executed, and was the person on the telephone calls making arrangements to pick up packages of heroin and sell them at specified prices. At sentencing, Client E continued to dispute that he was the person seen by the agents or heard on the telephone calls. The judge did not address his claims and found, based in part on hearsay from confidential informants, that the conspiracy involved 31 kilograms of heroin. In CHC V, Client E's mandatory guideline range was 360 to life. Due to the two § 851s, however the judge had no choice but to sentence him to life in prison. The applicant lost his direct appeal, and his first and second post-conviction petitions under § 2255 were dismissed.

Meanwhile, Client E has been working to gather evidence that he was not the person in the video or on the telephone calls. He has gotten an affidavit of a voice-recognition expert, and from two co-defendants stating he was not the person on the telephone calls. He also believes the prosecutor kept exculpatory evidence from his attorney, but has not found any proof.

An argument can be made under the August 12, 2013 Holder Memorandum that the prosecutor would not have charged drug quantity today, which would have reduced Client E's statutory range to 0-30 years even with the two § 851s. 21 U.S.C. § 841(b)(1)(C). This alone gives him a strong case for commutation because his sentence would be lower by operation of law today, the most important criteria for this initiative.

He also has a strong argument that the prosecutor would not have filed one or both of the § 851s, which were plainly used here to punish Client E for declining to plead guilty and going to trial. Even if the prosecutor had charged quantity, the statutory range without the § 851s would be reduced to 10 years to life. 21 U.S.C. § 841(b)(1)(A). If the prosecutor had not charged quantity, his statutory range would be only 0-20 years. *Id.* § 841(b)(1)(C).

At the same time, the Commission has made the 2014 amendment to the Drug Quantity Table retroactive. Under that amendment, Client E's guideline range would be reduced to 36, with an amended guideline range of 292-365 months. But because he was sentenced to mandatory statutory life, he is not eligible for relief under § 3582(c)(2). His best hope is commutation. If his petition is denied, his only remaining hope is habeas relief.

If Client E answers Question 5 by stating that he was wrongly convicted at trial, is innocent of the crime, and was unfairly punished by the prosecutor for exercising his right to go to trial, he will not likely be considered for commutation. If, on the other hand, you write that the applicant "conspired with others to possess with intent to distribute 31 kilograms of heroin," based on the essential elements of the offense of conviction and alleged facts in the PSR, you will not only ruin your relationship with the client, you will have admitted facts that will jeopardize any future habeas claim that depends on a showing of "actual innocence" to overcome procedural hurdles.

To avoid these problems, consider stating only that Client E was convicted of the offense and that the judge found the facts underlying the sentence imposed, without admitting them.

How you might answer Question 5:

I was charged with conspiracy to possess with intent to distribute heroin. I chose to go to trial, and the prosecutor filed two § 851 notices based my prior convictions. I took the stand to explain that they had the wrong person, but the jury convicted me. Because of the § 851 notices, the judge was forced to sentence me to life in prison.

APPENDIX 1

USSG § 2D1.1 (effective November 1, 2014)

(c) DRUG QUANTITY TABLE

Controlled Substances and Quantity*	Base Offense Level
(1) ● 90 KG or more of Heroin; ● 450 KG or more of Cocaine; ● 25.2 KG or more of Cocaine Base; ● 90 KG or more of PCP, or 9 KG or more of PCP (actual); ● 45 KG or more of Methamphetamine, or 4.5 KG or more of Methamphetamine (actual), or 4.5 KG or more of "Ice"; ● 45 KG or more of Amphetamine, or 4.5 KG or more of Amphetamine (actual); ● 900 G or more of LSD; ● 36 KG or more of Fentanyl; ● 9 KG or more of a Fentanyl Analogue; ● 90,000 KG or more of Marihuana; ● 18,000 KG or more of Hashish; ● 1,800 KG or more of Hashish Oil; ● 90,000,000 units or more of Ketamine; ● 90,000,000 units or more of Schedule I or II Depressants; ● 5,625,000 units or more of Flunitrazepam.	Level 38
(1)(2) ● At least 30 KG or more but less than 90 KG of Heroin; ● At least 150 KG or more but less than 450 KG of Cocaine; ● At least 8.4 KG or more but less than 25.2 KG of Cocaine Base; ● At least 30 KG or more but less than 90 KG of PCP, or at least 3 KG or more but less than 9 KG of PCP (actual); ● At least 15 KG or more but less than 45 KG of Methamphetamine, or at least 1.5 KG or more but less than 4.5 KG of Methamphetamine (actual), or at least 1.5 KG or more but less than 4.5 KG of "Ice"; ● At least 15 KG or more but less than 45 KG of Amphetamine, or at least 1.5 KG or more but less than 4.5 KG of Amphetamine (actual); ● At least 300 G or more but less than 900 G of LSD; ● At least 12 KG or more but less than 36 KG of Fentanyl; ● At least 3 KG or more but less than 9 KG of a Fentanyl Analogue; ● At least 30,000 KG or more but less than 90,000 KG of Marihuana; ● At least 6,000 KG or more but less than 18,000 KG of Hashish; ● At least 600 KG or more but less than 1,800 KG of Hashish Oil; ● At least 30,000,000 units or more but less than 90,000,000 units of Ketamine; ● At least 30,000,000 units or more but less than 90,000,000 units of Schedule I or II Depressants; ● At least 1,875,000 units or more but less than 5,625,000 units of Flunitrazepam.	Level 3836
(2)(3) ● At least 10 KG but less than 30 KG of Heroin; ● At least 50 KG but less than 150 KG of Cocaine;	Level 3634

- At least 2.8 KG but less than 8.4 KG of Cocaine Base;
- At least 10 KG but less than 30 KG of PCP, or
at least 1 KG but less than 3 KG of PCP (actual);
- At least 5 KG but less than 15 KG of Methamphetamine, or
at least 500 G but less than 1.5 KG of Methamphetamine (actual), or
at least 500 G but less than 1.5 KG of "Ice";
- At least 5 KG but less than 15 KG of Amphetamine, or
at least 500 G but less than 1.5 KG of Amphetamine (actual);
- At least 100 G but less than 300 G of LSD;
- At least 4 KG but less than 12 KG of Fentanyl;
- At least 1 KG but less than 3 KG of a Fentanyl Analogue;
- At least 10,000 KG but less than 30,000 KG of Marihuana;
- At least 2,000 KG but less than 6,000 KG of Hashish;
- At least 200 KG but less than 600 KG of Hashish Oil;
- At least 10,000,000 but less than 30,000,000 units of Ketamine;
- At least 10,000,000 but less than 30,000,000 units of Schedule I or II Depressants;
- At least 625,000 but less than 1,875,000 units of Flunitrazepam.

(3)(4) **Level 3432**

- At least 3 KG but less than 10 KG of Heroin;
- At least 15 KG but less than 50 KG of Cocaine;
- At least 840 G but less than 2.8 KG of Cocaine Base;
- At least 3 KG but less than 10 KG of PCP, or
at least 300 G but less than 1 KG of PCP (actual);
- At least 1.5 KG but less than 5 KG of Methamphetamine, or
at least 150 G but less than 500 G of Methamphetamine (actual), or
at least 150 G but less than 500 G of "Ice";
- At least 1.5 KG but less than 5 KG of Amphetamine, or
at least 150 G but less than 500 G of Amphetamine (actual);
- At least 30 G but less than 100 G of LSD;
- At least 1.2 KG but less than 4 KG of Fentanyl;
- At least 300 G but less than 1 KG of a Fentanyl Analogue;
- At least 3,000 KG but less than 10,000 KG of Marihuana;
- At least 600 KG but less than 2,000 KG of Hashish;
- At least 60 KG but less than 200 KG of Hashish Oil;
- At least 3,000,000 but less than 10,000,000 units of Ketamine;
- At least 3,000,000 but less than 10,000,000 units of Schedule I or II Depressants;
- At least 187,500 but less than 625,000 units of Flunitrazepam.

(4)(5) **Level 3230**

- At least 1 KG but less than 3 KG of Heroin;
- At least 5 KG but less than 15 KG of Cocaine;
- At least 280 G but less than 840 G of Cocaine Base;
- At least 1 KG but less than 3 KG of PCP, or
at least 100 G but less than 300 G of PCP (actual);
- At least 500 G but less than 1.5 KG of Methamphetamine, or
at least 50 G but less than 150 G of Methamphetamine (actual), or
at least 50 G but less than 150 G of "Ice";
- At least 500 G but less than 1.5 KG of Amphetamine, or

- at least 50 G but less than 150 G of Amphetamine (actual);
- At least 10 G but less than 30 G of LSD;
- At least 400 G but less than 1.2 KG of Fentanyl;
- At least 100 G but less than 300 G of a Fentanyl Analogue;
- At least 1,000 KG but less than 3,000 KG of Marihuana;
- At least 200 KG but less than 600 KG of Hashish;
- At least 20 KG but less than 60 KG of Hashish Oil;
- At least 1,000,000 but less than 3,000,000 units of Ketamine;
- At least 1,000,000 but less than 3,000,000 units of Schedule I or II Depressants;
- 1,000,000 units or more of Schedule III Hydrocodone;
- At least 62,500 but less than 187,500 units of Flunitrazepam.

- (5)(6) ● At least 700 G but less than 1 KG of Heroin; **Level 3028**
- At least 3.5 KG but less than 5 KG of Cocaine;
 - At least 196 G but less than 280 G of Cocaine Base;
 - At least 700 G but less than 1 KG of PCP, or
at least 70 G but less than 100 G of PCP (actual);
 - At least 350 G but less than 500 G of Methamphetamine, or
at least 35 G but less than 50 G of Methamphetamine (actual), or
at least 35 G but less than 50 G of "Ice";
 - At least 350 G but less than 500 G of Amphetamine, or
at least 35 G but less than 50 G of Amphetamine (actual);
 - At least 7 G but less than 10 G of LSD;
 - At least 280 G but less than 400 G of Fentanyl;
 - At least 70 G but less than 100 G of a Fentanyl Analogue;
 - At least 700 KG but less than 1,000 KG of Marihuana;
 - At least 140 KG but less than 200 KG of Hashish;
 - At least 14 KG but less than 20 KG of Hashish Oil;
 - At least 700,000 but less than 1,000,000 units of Ketamine;
 - At least 700,000 but less than 1,000,000 units of Schedule I or II Depressants;
 - At least 700,000 or more but less than 1,000,000 units of Schedule III Hydrocodone;
 - At least 43,750 but less than 62,500 units of Flunitrazepam.

- (6)(7) ● At least 400 G but less than 700 G of Heroin; **Level 2826**
- At least 2 KG but less than 3.5 KG of Cocaine;
 - At least 112 G but less than 196 G of Cocaine Base;
 - At least 400 G but less than 700 G of PCP, or
at least 40 G but less than 70 G of PCP (actual);
 - At least 200 G but less than 350 G of Methamphetamine, or
at least 20 G but less than 35 G of Methamphetamine (actual), or
at least 20 G but less than 35 G of "Ice";
 - At least 200 G but less than 350 G of Amphetamine, or
at least 20 G but less than 35 G of Amphetamine (actual);
 - At least 4 G but less than 7 G of LSD;
 - At least 160 G but less than 280 G of Fentanyl;
 - At least 40 G but less than 70 G of a Fentanyl Analogue;
 - At least 400 KG but less than 700 KG of Marihuana;

- At least 80 KG but less than 140 KG of Hashish;
- At least 8 KG but less than 14 KG of Hashish Oil;
- At least 400,000 but less than 700,000 units of Ketamine;
- At least 400,000 but less than 700,000 units of Schedule I or II Depressants;
- At least 400,000 but less than 700,000 units of Schedule III Hydrocodone;
- At least 25,000 but less than 43,750 units of Flunitrazepam.

- (7)(8) **Level 2624**
- At least 100 G but less than 400 G of Heroin;
 - At least 500 G but less than 2 KG of Cocaine;
 - At least 28 G but less than 112 G of Cocaine Base;
 - At least 100 G but less than 400 G of PCP, or at least 10 G but less than 40 G of PCP (actual);
 - At least 50 G but less than 200 G of Methamphetamine, or at least 5 G but less than 20 G of Methamphetamine (actual), or at least 5 G but less than 20 G of "Ice";
 - At least 50 G but less than 200 G of Amphetamine, or at least 5 G but less than 20 G of Amphetamine (actual);
 - At least 1 G but less than 4 G of LSD;
 - At least 40 G but less than 160 G of Fentanyl;
 - At least 10 G but less than 40 G of a Fentanyl Analogue;
 - At least 100 KG but less than 400 KG of Marihuana;
 - At least 20 KG but less than 80 KG of Hashish;
 - At least 2 KG but less than 8 KG of Hashish Oil;
 - At least 100,000 but less than 400,000 units of Ketamine;
 - At least 100,000 but less than 400,000 units of Schedule I or II Depressants;
 - At least 100,000 but less than 400,000 units of Schedule III Hydrocodone;
 - At least 6,250 but less than 25,000 units of Flunitrazepam.

- (8)(9) **Level 2422**
- At least 80 G but less than 100 G of Heroin;
 - At least 400 G but less than 500 G of Cocaine;
 - At least 22.4 G but less than 28 G of Cocaine Base;
 - At least 80 G but less than 100 G of PCP, or at least 8 G but less than 10 G of PCP (actual);
 - At least 40 G but less than 50 G of Methamphetamine, or at least 4 G but less than 5 G of Methamphetamine (actual), or at least 4 G but less than 5 G of "Ice";
 - At least 40 G but less than 50 G of Amphetamine, or at least 4 G but less than 5 G of Amphetamine (actual);
 - At least 800 MG but less than 1 G of LSD;
 - At least 32 G but less than 40 G of Fentanyl;
 - At least 8 G but less than 10 G of a Fentanyl Analogue;
 - At least 80 KG but less than 100 KG of Marihuana;
 - At least 16 KG but less than 20 KG of Hashish;
 - At least 1.6 KG but less than 2 KG of Hashish Oil;
 - At least 80,000 but less than 100,000 units of Ketamine;
 - At least 80,000 but less than 100,000 units of Schedule I or II Depressants;
 - At least 80,000 but less than 100,000 units of Schedule III Hydrocodone;

- At least 5,000 but less than 6,250 units of Flunitrazepam.

- (9)(10) ● At least 60 G but less than 80 G of Heroin; **Level 2220**
- At least 300 G but less than 400 G of Cocaine;
 - At least 16.8 G but less than 22.4 G of Cocaine Base;
 - At least 60 G but less than 80 G of PCP, or
at least 6 G but less than 8 G of PCP (actual);
 - At least 30 G but less than 40 G of Methamphetamine, or
at least 3 G but less than 4 G of Methamphetamine (actual), or
at least 3 G but less than 4 G of "Ice";
 - At least 30 G but less than 40 G of Amphetamine, or
at least 3 G but less than 4 G of Amphetamine (actual);
 - At least 600 MG but less than 800 MG of LSD;
 - At least 24 G but less than 32 G of Fentanyl;
 - At least 6 G but less than 8 G of a Fentanyl Analogue;
 - At least 60 KG but less than 80 KG of Marihuana;
 - At least 12 KG but less than 16 KG of Hashish;
 - At least 1.2 KG but less than 1.6 KG of Hashish Oil;
 - At least 60,000 but less than 80,000 units of Ketamine;
 - At least 60,000 but less than 80,000 units of Schedule I or II Depressants;
 - At least 60,000 but less than 80,000 units of Schedule III Hydrocodone;
 - 60,000 units or more of Schedule III substances (except Ketamine or Hydrocodone);
 - At least 3,750 but less than 5,000 units of Flunitrazepam.

- (10)(11) ● At least 40 G but less than 60 G of Heroin; **Level 2018**
- At least 200 G but less than 300 G of Cocaine;
 - At least 11.2 G but less than 16.8 G of Cocaine Base;
 - At least 40 G but less than 60 G of PCP, or
at least 4 G but less than 6 G of PCP (actual);
 - At least 20 G but less than 30 G of Methamphetamine, or
at least 2 G but less than 3 G of Methamphetamine (actual), or
at least 2 G but less than 3 G of "Ice";
 - At least 20 G but less than 30 G of Amphetamine, or
at least 2 G but less than 3 G of Amphetamine (actual);
 - At least 400 MG but less than 600 MG of LSD;
 - At least 16 G but less than 24 G of Fentanyl;
 - At least 4 G but less than 6 G of a Fentanyl Analogue;
 - At least 40 KG but less than 60 KG of Marihuana;
 - At least 8 KG but less than 12 KG of Hashish;
 - At least 800 G but less than 1.2 KG of Hashish Oil;
 - At least 40,000 but less than 60,000 units of Ketamine;
 - At least 40,000 but less than 60,000 units of Schedule I or II Depressants;
 - At least 40,000 but less than 60,000 units of Schedule III Hydrocodone;
 - At least 40,000 or more but less than 60,000 units of Schedule III substances (except Ketamine or Hydrocodone);
 - At least 2,500 but less than 3,750 units of Flunitrazepam.

- (H12) ● At least 20 G but less than 40 G of Heroin; **Level 1816**
- At least 100 G but less than 200 G of Cocaine;
 - At least 5.6 G but less than 11.2 G of Cocaine Base;
 - At least 20 G but less than 40 G of PCP, or
at least 2 G but less than 4 G of PCP (actual);
 - At least 10 G but less than 20 G of Methamphetamine, or
at least 1 G but less than 2 G of Methamphetamine (actual), or
at least 1 G but less than 2 G of "Ice";
 - At least 10 G but less than 20 G of Amphetamine, or
at least 1 G but less than 2 G of Amphetamine (actual);
 - At least 200 MG but less than 400 MG of LSD;
 - At least 8 G but less than 16 G of Fentanyl;
 - At least 2 G but less than 4 G of a Fentanyl Analogue;
 - At least 20 KG but less than 40 KG of Marihuana;
 - At least 5 KG but less than 8 KG of Hashish;
 - At least 500 G but less than 800 G of Hashish Oil;
 - At least 20,000 but less than 40,000 units of Ketamine;
 - At least 20,000 but less than 40,000 units of Schedule I or II Depressants;
 - At least 20,000 but less than 40,000 units of Schedule III Hydrocodone;
 - At least 20,000 but less than 40,000 units of Schedule III substances (except
Ketamine or Hydrocodone);
 - At least 1,250 but less than 2,500 units of Flunitrazepam.

- (H13) ● At least 10 G but less than 20 G of Heroin; **Level 1614**
- At least 50 G but less than 100 G of Cocaine;
 - At least 2.8 G but less than 5.6 G of Cocaine Base;
 - At least 10 G but less than 20 G of PCP, or
at least 1 G but less than 2 G of PCP (actual);
 - At least 5 G but less than 10 G of Methamphetamine, or
at least 500 MG but less than 1 G of Methamphetamine (actual), or
at least 500 MG but less than 1 G of "Ice";
 - At least 5 G but less than 10 G of Amphetamine, or
at least 500 MG but less than 1 G of Amphetamine (actual);
 - At least 100 MG but less than 200 MG of LSD;
 - At least 4 G but less than 8 G of Fentanyl;
 - At least 1 G but less than 2 G of a Fentanyl Analogue;
 - At least 10 KG but less than 20 KG of Marihuana;
 - At least 2 KG but less than 5 KG of Hashish;
 - At least 200 G but less than 500 G of Hashish Oil;
 - At least 10,000 but less than 20,000 units of Ketamine;
 - At least 10,000 but less than 20,000 units of Schedule I or II Depressants;
 - At least 10,000 but less than 20,000 units of Schedule III Hydrocodone;
 - At least 10,000 but less than 20,000 units of Schedule III substances (except
Ketamine or Hydrocodone);
 - At least 625 but less than 1,250 units of Flunitrazepam.

- (H14) ● At least 5 G but less **Less** than 10 G of Heroin; **Level 1412**

- At least 25 G but less than 50 G of Cocaine;
- At least 1.4 G but less than 2.8 G of Cocaine Base;
- At least 5 G but less than 10 G of PCP, or
at least 500 MG but less than 1 G of PCP (actual);
- At least 2.5 G but less than 5 G of Methamphetamine, or
at least 250 MG but less than 500 MG of Methamphetamine (actual),
or at least 250 MG but less than 500 MG of "Ice";
- At least 2.5 G but less than 5 G of Amphetamine, or
at least 250 MG but less than 500 MG of Amphetamine (actual);
- At least 50 MG but less than 100 MG of LSD;
- At least 2 G but less than 4 G of Fentanyl;
- At least 500 MG but less than 1 G of a Fentanyl Analogue;
- At least 5 KG but less than 10 KG of Marihuana;
- At least 1 KG but less than 2 KG of Hashish;
- At least 100 G but less than 200 G of Hashish Oil;
- At least 5,000 but less than 10,000 units of Ketamine;
- At least 5,000 but less than 10,000 units of Schedule I or II Depressants;
- At least 5,000 but less than 10,000 units of Schedule III Hydrocodone;
- At least 5,000 but less than 10,000 units of
Schedule III substances (except Ketamine or Hydrocodone);
- At least 312 but less than 625 units of Flunitrazepam;
- 80,000 units or more of Schedule IV substances (except Flunitrazepam).

(1415) ● ~~Less than 5 G of Heroin;~~

Level 1210

- ~~● Less than 25 G of Cocaine;~~
- ~~● Less than 1.4 G of Cocaine Base;~~
- ~~● Less than 5 G of PCP, or less than 500 MG of PCP (actual);~~
- ~~● Less than 2.5 G of Methamphetamine, or
less than 250 MG of Methamphetamine (actual), or
less than 250 MG of "Ice";~~
- ~~● Less than 2.5 G of Amphetamine, or
less than 250 MG of Amphetamine (actual);~~
- ~~● Less than 50 MG of LSD;~~
- ~~● Less than 2 G of Fentanyl;~~
- ~~● Less than 500 MG of a Fentanyl Analogue;~~
- At least 2.5 KG but less than 5 KG of Marihuana;
- At least 500 G but less than 1 KG of Hashish;
- At least 50 G but less than 100 G of Hashish Oil;
- At least 2,500 but less than 5,000 units of Ketamine;
- At least 2,500 but less than 5,000 units of Schedule I or II Depressants;
- At least 2,500 but less than 5,000 units of Schedule III Hydrocodone;
- At least 2,500 but less than 5,000 units of Schedule III substances (except
Ketamine or Hydrocodone);
- At least 156 but less than 312 units of Flunitrazepam;
- At least 40,000 or more but less than 80,000 units of Schedule IV substances (except
Flunitrazepam).

- (1516) ● At least 1 KG but less than 2.5 KG of Marihuana; **Level 108**
 ● At least 200 G but less than 500 G of Hashish;
 ● At least 20 G but less than 50 G of Hashish Oil;
 ● At least 1,000 but less than 2,500 units of Ketamine;
 ● At least 1,000 but less than 2,500 units of Schedule I or II Depressants;
 ● At least 1,000 but less than 2,500 units of Schedule III Hydrocodone;
 ● At least 1,000 but less than 2,500 units of Schedule III substances (except Ketamine or Hydrocodone);
 ● At least 62 but less Less than 156 units of Flunitrazepam;
 ● At least 16,000 but less than 40,000 units of Schedule IV substances (except Flunitrazepam);
 ● 160,000 units or more of Schedule V substances.

- (1617) ● At least 250 G but less Less than 1 KG of Marihuana; **Level 86**
 ● At least 50 G but less Less than 200 G of Hashish;
 ● At least 5 G but less Less than 20 G of Hashish Oil;
 ● At least 250 but less Less than 1,000 units of Ketamine;
 ● At least 250 but less Less than 1,000 units of Schedule I or II Depressants;
 ● At least 250 but less Less than 1,000 units of Schedule III Hydrocodone;
 ● At least 250 but less Less than 1,000 units of Schedule III substances (except Ketamine or Hydrocodone);
 ● Less than 62 units of Flunitrazepam;
 ● At least 4,000 but less Less than 16,000 units of Schedule IV substances (except Flunitrazepam);
 ● 40,000 or more Less than 160,000 units of Schedule V substances.

- (17) ● Less than 250 G of Marihuana; **Level 6**
 ● Less than 50 G of Hashish;
 ● Less than 5 G of Hashish Oil;
 ● Less than 250 units of Ketamine;
 ● Less than 250 units of Schedule I or II Depressants;
 ● Less than 250 units of Schedule III Hydrocodone;
 ● Less than 250 units of Schedule III substances (except Ketamine or Hydrocodone);
 ● Less than 4,000 units of Schedule IV substances (except Flunitrazepam);
 ● Less than 40,000 units of Schedule V substances.

***Notes to Drug Quantity Table:**

- (A) Unless otherwise specified, the weight of a controlled substance set forth in the table refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance. If a mixture or substance contains more than one controlled substance, the weight of the entire mixture or substance is assigned to the controlled substance that results in the greater offense level.
- (B) The terms "PCP (actual)", "Amphetamine (actual)", and "Methamphetamine (actual)" refer to the weight of the controlled substance, itself, contained in the mixture or substance. For example, a

2 levels.

- (2) If the defendant is convicted of violating 21 U.S.C. § 841(c)(2) or (f)(1), or § 960(d)(2), (d)(3), or (d)(4), decrease by 3 levels, unless the defendant knew or believed that the listed chemical was to be used to manufacture a controlled substance unlawfully.
- (3) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (B) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels.
- (4) If the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), distributed a listed chemical through mass-marketing by means of an interactive computer service, increase by 2 levels.
- (5) If the defendant is convicted under 21 U.S.C. § 865, increase by 2 levels.
- (6) If the defendant meets the criteria set forth in subdivisions (1)-(5) of subsection (a) of §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease by 2 levels.

(c) Cross Reference

- (1) If the offense involved unlawfully manufacturing a controlled substance, or attempting to manufacture a controlled substance unlawfully, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, Trafficking) if the resulting offense level is greater than that determined above.

USSG § 2D1.11 (effective November 1, 2014)

**(d) EPHEDRINE, PSEUDOEPHEDRINE, AND PHENYLPROPANOLAMINE
QUANTITY TABLE*
(Methamphetamine and Amphetamine Precursor Chemicals)**

Quantity	Base Offense Level
(1) 9 KG or more of Ephedrine; 9 KG or more of Phenylpropanolamine; 9 KG or more of Pseudoephedrine.	Level 38
(+) At least 3 KG or more but less than 9 KG of Ephedrine; (2) At least 3 KG or more but less than 9 KG of Phenylpropanolamine; At least 3 KG or More but less than 9 KG of Pseudoephedrine.	Level 3836
(±) At least 1 KG but less than 3 KG of Ephedrine; (3) At least 1 KG but less than 3 KG of Phenylpropanolamine;	Level 3634

	At least 1 KG but less than 3 KG of Pseudoephedrine.	
(3)	At least 300 G but less than 1 KG of Ephedrine;	Level 3432
(4)	At least 300 G but less than 1 KG of Phenylpropanolamine; At least 300 G but less than 1 KG of Pseudoephedrine.	
(4)	At least 100 G but less than 300 G of Ephedrine;	Level 3230
(5)	At least 100 G but less than 300 G of Phenylpropanolamine; At least 100 G but less than 300 G of Pseudoephedrine.	
(5)	At least 70 G but less than 100 G of Ephedrine;	Level 3028
(6)	At least 70 G but less than 100 G of Phenylpropanolamine; At least 70 G but less than 100 G of Pseudoephedrine.	
(6)	At least 40 G but less than 70 G of Ephedrine;	Level 2826
(7)	At least 40 G but less than 70 G of Phenylpropanolamine; At least 40 G but less than 70 G of Pseudoephedrine.	
(7)	At least 10 G but less than 40 G of Ephedrine;	Level 2624
(8)	At least 10 G but less than 40 G of Phenylpropanolamine; At least 10 G but less than 40 G of Pseudoephedrine.	
(8)	At least 8 G but less than 10 G of Ephedrine;	Level 2422
(9)	At least 8 G but less than 10 G of Phenylpropanolamine; At least 8 G but less than 10 G of Pseudoephedrine.	
(9)	At least 6 G but less than 8 G of Ephedrine;	Level 2220
(10)	At least 6 G but less than 8 G of Phenylpropanolamine; At least 6 G but less than 8 G of Pseudoephedrine.	
(10)	At least 4 G but less than 6 G of Ephedrine;	Level 2018
(11)	At least 4 G but less than 6 G of Phenylpropanolamine; At least 4 G but less than 6 G of Pseudoephedrine.	
(11)	At least 2 G but less than 4 G of Ephedrine;	Level 1816
(12)	At least 2 G but less than 4 G of Phenylpropanolamine; At least 2 G but less than 4 G of Pseudoephedrine.	
(12)	At least 1 G but less than 2 G of Ephedrine;	Level 1614
(13)	At least 1 G but less than 2 G of Phenylpropanolamine; At least 1 G but less than 2 G of Pseudoephedrine.	
(13)	At least 500 MG but less Less than 1 G of Ephedrine;	Level 1412
(14)	At least 500 MG but less Less than 1 G of Phenylpropanolamine; At least 500 MG but less Less than 1 G of Pseudoephedrine.	

- (14) ~~Less than 500 MG of Ephedrine;~~ ~~Less than 500 MG of Phenylpropanolamine;~~ ~~Less than 500 MG of Pseudoephedrine.~~ **Level 12**

**(e) CHEMICAL QUANTITY TABLE*
(All Other Precursor Chemicals)**

Listed Chemicals and Quantity

Base Offense Level

(1)	<p><u>List I Chemicals</u> 2.7 KG or more of Benzaldehyde; 60 KG or more of Benzyl Cyanide; 600 G or more of Ergonovine; 1.2 KG or more of Ergotamine; 60 KG or more of Ethylamine; 6.6 KG or more of Hydriodic Acid; 3.9 KG or more of Iodine; 960 KG or more of Isosafrole; 600 G or more of Methylamine; 1500 KG or more of N-Methylephedrine; 1500 KG or more of N-Methylpseudoephedrine; 1.9 KG or more of Nitroethane; 30 KG or more of Norpseudoephedrine; 60 KG or more of Phenylacetic Acid; 30 KG or more of Piperidine; 960 KG or more of Piperonal; 4.8 KG or more of Propionic Anhydride; 960 KG or more of Safrole; 1200 KG or more of 3, 4-Methylenedioxyphenyl-2-propanone; 3406.5 L or more of Gamma-butyrolactone; 2.1 KG or more of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid.</p>	Level 30
(†) (2)	<p><u>List I Chemicals</u> At least 890 G or more but less than 2.7 KG of Benzaldehyde; At least 20 KG or more but less than 60 KG of Benzyl Cyanide; At least 200 G or more but less than 600 G of Ergonovine; At least 400 G or more but less than 1.2 KG of Ergotamine; At least 20 KG or more but less than 60 KG of Ethylamine; At least 2.2 KG or more but less than 6.6 KG of Hydriodic Acid; At least 1.3 KG or more but less than 3.9 KG of Iodine; At least 320 KG or more but less than 960 KG of Isosafrole; At least 200 G or more but less than 600 G of Methylamine; At least 500 KG or more but less than 1500 KG of N-Methylephedrine; At least 500 KG or more but less than 1500 KG of N-Methylpseudoephedrine; At least 625 G or more but less than 1.9 KG of Nitroethane; At least 10 KG or more but less than 30 KG of Norpseudoephedrine;</p>	Level 3028

At least 20 KG ~~or more~~ but less than 60 KG of Phenylacetic Acid;
At least 10 KG ~~or more~~ but less than 30 KG of Piperidine;
At least 320 KG ~~or more~~ but less than 960 KG of Piperonal;
At least 1.6 KG ~~or more~~ but less than 4.8 KG of Propionic Anhydride;
At least 320 KG ~~or more~~ but less than 960 KG of Safrole;
At least 400 KG ~~or more~~ but less than 1200 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 1135.5 L ~~or more~~ but less than 3406.5 L of Gamma-butyrolactone;
At least 714 G ~~or more~~ but less than 2.1 KG of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid.

List II Chemicals

33 KG or more of Acetic Anhydride;
3525 KG or more of Acetone;
60 KG or more of Benzyl Chloride;
3225 KG or more of Ethyl Ether;
3600 KG or more of Methyl Ethyl Ketone;
30 KG or more of Potassium Permanganate;
3900 KG or more of Toluene.

(2) List I Chemicals

Level 2826

(3) At least 267 G but less than 890 G of Benzaldehyde;
At least 6 KG but less than 20 KG of Benzyl Cyanide;
At least 60 G but less than 200 G of Ergonovine;
At least 120 G but less than 400 G of Ergotamine;
At least 6 KG but less than 20 KG of Ethylamine;
At least 660 G but less than 2.2 KG of Hydriodic Acid;
At least 376.2 G but less than 1.3 KG of Iodine;
At least 96 KG but less than 320 KG of Isosafrole;
At least 60 G but less than 200 G of Methylamine;
At least 150 KG but less than 500 KG of N-Methylephedrine;
At least 150 KG but less than 500 KG of N-Methylpseudoephedrine;
At least 187.5 G but less than 625 G of Nitroethane;
At least 3 KG but less than 10 KG of Norpseudoephedrine;
At least 6 KG but less than 20 KG of Phenylacetic Acid;
At least 3 KG but less than 10 KG of Piperidine;
At least 96 KG but less than 320 KG of Piperonal;
At least 480 G but less than 1.6 KG of Propionic Anhydride;
At least 96 KG but less than 320 KG of Safrole;
At least 120 KG but less than 400 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 340.7 L but less than 1135.5 L of Gamma-butyrolactone;
At least 214 G but less than 714 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

At least 11 KG ~~or more~~ but less than 33 KG of Acetic Anhydride;
At least 1175 KG ~~or more~~ but less than 3525 KG of Acetone;
At least 20 KG ~~or more~~ but less than 60 KG of Benzyl Chloride;

At least 1075 KG ~~or more~~ but less than 3225 KG of Ethyl Ether;
At least 1200 KG ~~or more~~ but less than 3600 KG of Methyl Ethyl Ketone;
At least 10 KG ~~or more~~ but less than 30 KG of Potassium Permanganate;
At least 1300 KG ~~or more~~ but less than 3900 KG of Toluene.

(3) List I Chemicals

Level 2624

(4) At least 89 G but less than 267 G of Benzaldehyde;
At least 2 KG but less than 6 KG of Benzyl Cyanide;
At least 20 G but less than 60 G of Ergonovine;
At least 40 G but less than 120 G of Ergotamine;
At least 2 KG but less than 6 KG of Ethylamine;
At least 220 G but less than 660 G of Hydriodic Acid;
At least 125.4 G but less than 376.2 G of Iodine;
At least 32 KG but less than 96 KG of Isosafrole;
At least 20 G but less than 60 G of Methylamine;
At least 50 KG but less than 150 KG of N-Methylephedrine;
At least 50 KG but less than 150 KG of N-Methylpseudoephedrine;
At least 62.5 G but less than 187.5 G of Nitroethane;
At least 1 KG but less than 3 KG of Norpseudoephedrine;
At least 2 KG but less than 6 KG of Phenylacetic Acid;
At least 1 KG but less than 3 KG of Piperidine;
At least 32 KG but less than 96 KG of Piperonal;
At least 160 G but less than 480 G of Propionic Anhydride;
At least 32 KG but less than 96 KG of Safrole;
At least 40 KG but less than 120 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 113.6 L but less than 340.7 L of Gamma-butyrolactone;
At least 71 G but less than 214 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

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

(4) List I Chemicals

Level 2422

(5) At least 62.3 G but less than 89 G of Benzaldehyde;
At least 1.4 KG but less than 2 KG of Benzyl Cyanide;
At least 14 G but less than 20 G of Ergonovine;
At least 28 G but less than 40 G of Ergotamine;
At least 1.4 KG but less than 2 KG of Ethylamine;
At least 154 G but less than 220 G of Hydriodic Acid;
At least 87.8 G but less than 125.4 G of Iodine;
At least 22.4 KG but less than 32 KG of Isosafrole;

At least 14 G but less than 20 G of Methylamine;
At least 35 KG but less than 50 KG of N-Methylephedrine;
At least 35 KG but less than 50 KG of N-Methylpseudoephedrine;
At least 43.8 G but less than 62.5 G of Nitroethane;
At least 700 G but less than 1 KG of Norpseudoephedrine;
At least 1.4 KG but less than 2 KG of Phenylacetic Acid;
At least 700 G but less than 1 KG of Piperidine;
At least 22.4 KG but less than 32 KG of Piperonal;
At least 112 G but less than 160 G of Propionic Anhydride;
At least 22.4 KG but less than 32 KG of Safrole;
At least 28 KG but less than 40 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 79.5 L but less than 113.6 L of Gamma-butyrolactone;
At least 50 G but less than 71 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

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

(5)

List I Chemicals

Level 2220

(6)

At least 35.6 G but less than 62.3 G of Benzaldehyde;
At least 800 G but less than 1.4 KG of Benzyl Cyanide;
At least 8 G but less than 14 G of Ergonovine;
At least 16 G but less than 28 G of Ergotamine;
At least 800 G but less than 1.4 KG of Ethylamine;
At least 88 G but less than 154 G of Hydriodic Acid;
At least 50.2 G but less than 87.8 G of Iodine;
At least 12.8 KG but less than 22.4 KG of Isosafrole;
At least 8 G but less than 14 G of Methylamine;
At least 20 KG but less than 35 KG of N-Methylephedrine;
At least 20 KG but less than 35 KG of N-Methylpseudoephedrine;
At least 25 G but less than 43.8 G of Nitroethane;
At least 400 G but less than 700 G of Norpseudoephedrine;
At least 800 G but less than 1.4 KG of Phenylacetic Acid;
At least 400 G but less than 700 G of Piperidine;
At least 12.8 KG but less than 22.4 KG of Piperonal;
At least 64 G but less than 112 G of Propionic Anhydride;
At least 12.8 KG but less than 22.4 KG of Safrole;
At least 16 KG but less than 28 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 45.4 L but less than 79.5 L of Gamma-butyrolactone;
At least 29 G but less than 50 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

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

(6)

List I Chemicals

Level 2018

(7)

At least 8.9 G but less than 35.6 G of Benzaldehyde;
At least 200 G but less than 800 G of Benzyl Cyanide;
At least 2 G but less than 8 G of Ergonovine;
At least 4 G but less than 16 G of Ergotamine;
At least 200 G but less than 800 G of Ethylamine;
At least 22 G but less than 88 G of Hydriodic Acid;
At least 12.5 G but less than 50.2 G of Iodine;
At least 3.2 KG but less than 12.8 KG of Isosafrole;
At least 2 G but less than 8 G of Methylamine;
At least 5 KG but less than 20 KG of N-Methylephedrine;
At least 5 KG but less than 20 KG of N-Methylpseudoephedrine;
At least 6.3 G but less than 25 G of Nitroethane;
At least 100 G but less than 400 of Norpseudoephedrine;
At least 200 G but less than 800 G of Phenylacetic Acid;
At least 100 G but less than 400 G of Piperidine;
At least 3.2 KG but less than 12.8 KG of Piperonal;
At least 16 G but less than 64 G of Propionic Anhydride;
At least 3.2 KG but less than 12.8 KG of Safrole;
At least 4 KG but less than 16 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 11.4 L but less than 45.4 L of Gamma-butyrolactone;
At least 7 G but less than 29 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

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

(7)

List I Chemicals

Level 1816

(8)

At least 7.1 G but less than 8.9 G of Benzaldehyde;
At least 160 G but less than 200 G of Benzyl Cyanide;
At least 1.6 G but less than 2 G of Ergonovine;

At least 3.2 G but less than 4 G of Ergotamine;
At least 160 G but less than 200 G of Ethylamine;
At least 17.6 G but less than 22 G of Hydriodic Acid;
At least 10 G but less than 12.5 G of Iodine;
At least 2.56 KG but less than 3.2 KG of Isosafrole;
At least 1.6 G but less than 2 G of Methylamine;
At least 4 KG but less than 5 KG of N-Methylephedrine;
At least 4 KG but less than 5 KG of N-Methylpseudoephedrine;
At least 5 G but less than 6.3 G of Nitroethane;
At least 80 G but less than 100 G of Norpseudoephedrine;
At least 160 G but less than 200 G of Phenylacetic Acid;
At least 80 G but less than 100 G of Piperidine;
At least 2.56 KG but less than 3.2 KG of Piperonal;
At least 12.8 G but less than 16 G of Propionic Anhydride;
At least 2.56 KG but less than 3.2 KG of Safrole;
At least 3.2 KG but less than 4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 9.1 L but less than 11.4 L of Gamma-butyrolactone;
At least 6 G but less than 7 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

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

(8)

List I Chemicals

(9)

3.6 KG or more of Anthranilic Acid;
At least 5.3 G but less than 7.1 G of Benzaldehyde;
At least 120 G but less than 160 G of Benzyl Cyanide;
At least 1.2 G but less than 1.6 G of Ergonovine;
At least 2.4 G but less than 3.2 G of Ergotamine;
At least 120 G but less than 160 G of Ethylamine;
At least 13.2 G but less than 17.6 G of Hydriodic Acid;
At least 7.5 G but less than 10 G of Iodine;
At least 1.92 KG but less than 2.56 KG of Isosafrole;
At least 1.2 G but less than 1.6 G of Methylamine;
4.8 KG or more of N-Acetylanthranilic Acid;
At least 3 KG but less than 4 KG of N-Methylephedrine;
At least 3 KG but less than 4 KG of N-Methylpseudoephedrine;
At least 3.8 G but less than 5 G of Nitroethane;
At least 60 G but less than 80 G of Norpseudoephedrine;
At least 120 G but less than 160 G of Phenylacetic Acid;
At least 60 G but less than 80 G of Piperidine;
At least 1.92 KG but less than 2.56 KG of Piperonal;

Level 1614

At least 9.6 G but less than 12.8 G of Propionic Anhydride;
At least 1.92 KG but less than 2.56 KG of Safrole;
At least 2.4 KG but less than 3.2 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 6.8 L but less than 9.1 L of Gamma-butyrolactone;
At least 4 G but less than 6 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

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

(9) List I Chemicals

Level 1412

(10)

At least 2.7 KG but less Less than 3.6 KG of Anthranilic Acid;
At least 3.6 G but less Less than 5.3 G of Benzaldehyde;
At least 80 G but less Less than 120 G of Benzyl Cyanide;
At least 800 MG but less Less than 1.2 G of Ergonovine;
At least 1.6 G but less Less than 2.4 G of Ergotamine;
At least 80 G but less Less than 120 G of Ethylamine;
At least 8.8 G but less Less than 13.2 G of Hydriodic Acid;
At least 5 G but less Less than 7.5 G of Iodine;
At least 1.44 KG but less Less than 1.92 KG of Isosafrole;
At least 800 MG but less Less than 1.2 G of Methylamine;
At least 3.6 KG but less Less than 4.8 KG of N-Acetylanthranilic Acid;
At least 2.25 KG but less Less than 3 KG of N-Methylephedrine;
At least 2.25 KG but less Less than 3 KG of N-Methylpseudoephedrine;
At least 2.5 G but less Less than 3.8 G of Nitroethane;
At least 40 G but less Less than 60 G of Norpseudoephedrine;
At least 80 G but less Less than 120 G of Phenylacetic Acid;
At least 40 G but less Less than 60 G of Piperidine;
At least 1.44 KG but less Less than 1.92 KG of Piperonal;
At least 7.2 G but less Less than 9.6 G of Propionic Anhydride;
At least 1.44 KG but less Less than 1.92 KG of Safrole;
At least 1.8 KG but less Less than 2.4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 4.5 L but less Less than 6.8 L of Gamma-butyrolactone;
At least 3 G but less Less than 4 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

At least 66 G but less Less than 88 G of Acetic Anhydride;
At least 7.05 KG but less Less than 9.4 KG of Acetone;
At least 120 G but less Less than 160 G of Benzyl Chloride;
At least 6.45 KG but less Less than 8.6 KG of Ethyl Ether;
At least 7.2 KG but less Less than 9.6 KG of Methyl Ethyl Ketone;

At least 60 G but less ~~Less~~ than 80 G of Potassium Permanganate;
At least 7.8 KG but less ~~Less~~ than 10.4 KG of Toluene.

(10) List I Chemicals

Level 12

Less than 2.7 KG of Anthranilic Acid;
Less than 3.6 G of Benzaldehyde;
Less than 80 G of Benzyl Cyanide;
Less than 800 MG of Ergonovine;
Less than 1.6 G of Ergotamine;
Less than 80 G of Ethylamine;
Less than 8.8 G of Hydriodic Acid;
Less than 5 G of Iodine;
Less than 1.44 KG of Isosafrole;
Less than 800 MG of Methylamine;
Less than 3.6 KG of N-Acetylanthranilic Acid;
Less than 2.25 KG of N-Methylephedrine;
Less than 2.25 KG of N-Methylpseudoephedrine;
Less than 2.5 G of Nitroethane;
Less than 40 G of Norpseudoephedrine;
Less than 80 G of Phenylacetic Acid;
Less than 40 G of Piperidine;
Less than 1.44 KG of Piperonal;
Less than 7.2 G of Propionic Anhydride;
Less than 1.44 KG of Safrole;
Less than 1.8 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
Less than 4.5 L of Gamma-butyrolactone;
Less than 3 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

Less than 66 G of Acetic Anhydride;
Less than 7.05 KG of Acetone;
Less than 120 G of Benzyl Chloride;
Less than 6.45 KG of Ethyl Ether;
Less than 7.2 KG of Methyl Ethyl Ketone;
Less than 60 G of Potassium Permanganate;
Less than 7.8 KG of Toluene.

*Notes:

- (A) Except as provided in Note (B), to calculate the base offense level in an offense that involves two or more chemicals, use the quantity of the single chemical that results in the greatest offense level, regardless of whether the chemicals are set forth in different tables or in different categories (i.e., list I or list II) under subsection (d) or (e) of this guideline, as appropriate.
- (B) To calculate the base offense level in an offense that involves two or more chemicals each of which is set forth in the Ephedrine, Pseudoephedrine, and Phenylpropanolamine Quantity Table,