

123. Section 2D1.1(a) is amended by deleting:

"(a) Base Offense Level:

- (1) 43, for an offense that results in death or serious bodily injury with a prior conviction for a similar drug offense; or
- (2) 38, for an offense that results in death or serious bodily injury and involved controlled substances (except Schedule III, IV, and V controlled substances and less than: (A) fifty kilograms of marihuana, (B) ten kilograms of hashish, and (C) one kilogram of hashish oil); or
- (3) For any other offense, the base offense level is the level specified in the Drug Quantity Table below."

and inserting in lieu thereof:

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

- (1) 43, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or
- (2) 38, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or
- (3) the offense level specified in the Drug Quantity Table set forth in subsection (c) below."

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 1 by deleting "'Similar drug offense' as used in §2D1.1(a)(1) means a prior conviction as described in 21 U.S.C. §§ 841(b) or 962(b).", and inserting in lieu thereof "'Mixture or substance' as used in this guideline has the same meaning as in 21 U.S.C. § 841."

The purpose of this amendment is to provide that subsections (a)(1) and (a)(2) apply only in the case of a conviction under circumstances specified in the statutes cited. The amendment also clarifies that the term "mixture or substance" has the same meaning as it has in the statute. **The effective date of this amendment is November 1, 1989.**

124. Section 2D1.1(b) is amended by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "a dangerous weapon (including a firearm)".

The purpose of the amendment is to clarify the guideline. **The effective date of this amendment is November 1, 1989.**

125. Section 2D1.1 is amended by deleting the "Drug Quantity Table" in its entirety, including the title and footnotes, as follows:

"DRUG QUANTITY TABLE

<u>Controlled Substances and Quantity*</u>	<u>Base Offense Level</u>
10 KG Heroin or equivalent Schedule I or II Opiates, 50 KG Cocaine or equivalent Schedule I or II Stimulants, 500 G Cocaine Base, 10 KG PCP or 1 KG Pure PCP, 100 G LSD or equivalent Schedule I or II Hallucinogens, 4 KG Fentanyl or 1 KG Fentanyl Analogue, 10,000 KG Marihuana, 100,000 KG Marihuana Plants, 2000 KG Hashish, 200 KG Hashish Oil (or more of any of the above)	Level 36
3-9.9 KG Heroin or equivalent Schedule I or II Opiates, 15-49.9 KG Cocaine or equivalent Schedule I or II Stimulants, 150-499 G Cocaine Base, 3-9.9 KG PCP or 300-999 G Pure PCP, 30-99 G LSD or equivalent Schedule I or II Hallucinogens, 1.2-3.9 KG Fentanyl or 300-999 G Fentanyl Analogue, 3000-9999 KG Marihuana, 30,000-99,999 KG Marihuana Plants, 600-1999 KG Hashish, 60-199 KG Hashish Oil	Level 34
1-2.9 KG Heroin or equivalent Schedule I or II Opiates, 5-14.9 KG Cocaine or equivalent Schedule I or II Stimulants, 50-149 G Cocaine Base, 1-2.9 KG PCP or 100-299 G Pure PCP, 10-29 G LSD or equivalent Schedule I or II Hallucinogens, .4-1.1 KG Fentanyl or 100-299 G Fentanyl Analogue, 1000-2999 KG Marihuana, 10,000-29,999 KG Marihuana Plants, 200-599 KG Hashish, 20-59.9 KG Hashish Oil	Level 32**
700-999 G Heroin or equivalent Schedule I or II Opiates, 3.5-4.9 KG Cocaine or equivalent Schedule I or II Stimulants, 35-49 G Cocaine Base, 700-999 G PCP or 70-99 G Pure PCP, 7-9.9 G LSD or equivalent Schedule I or II Hallucinogens, 280-399 G Fentanyl or 70-99 G Fentanyl Analogue, 700-999 KG Marihuana, 7000-9999 KG Marihuana Plants, 140-199 KG Hashish, 14-19.9 KG Hashish Oil	Level 30
400-699 G Heroin or equivalent Schedule I or II Opiates, 2-3.4 KG Cocaine or equivalent Schedule I or II Stimulants, 20-34.9 G Cocaine Base, 400-699 G PCP or 40-69 G Pure PCP, 4-6.9 G LSD or equivalent Schedule I or II Hallucinogens, 160-279 G Fentanyl or 40-69 G Fentanyl Analogue, 400-699 KG Marihuana, 4000-6999 KG Marihuana Plants, 80-139 KG Hashish, 8.0-13.9 KG Hashish Oil	Level 28
100-399 G Heroin or equivalent Schedule I or II Opiates, .5-1.9 KG Cocaine or equivalent Schedule I or II Stimulants, 5-19 G Cocaine Base, 100-399 G PCP or 10-39 G Pure PCP, 1-3.9 G LSD or equivalent Schedule I or II Hallucinogens, 40-159 G Fentanyl or 10-39 G Fentanyl Analogue, 100-399 KG Marihuana, 1000-3999 KG Marihuana Plants, 20-79 KG Hashish, 2.0-7.9 KG Hashish Oil	Level 26**
80-99 G Heroin or equivalent Schedule I or II Opiates, 400-499 G Cocaine or equivalent Schedule I or II Stimulants, 4-4.9 G Cocaine Base, 80-99 G PCP or 8-9.9 G Pure PCP, 800-999 MG LSD or equivalent Schedule I or II Hallucinogens, 32-39 G Fentanyl or 8-9.9 G Fentanyl Analogue, 80-99 KG Marihuana, 800-999 KG Marihuana Plants, 16-19.9 KG Hashish, 1.6-1.9 KG Hashish Oil	Level 24
60-79 G Heroin or equivalent Schedule I or II Opiates, 300-399 G Cocaine or equivalent Schedule I or II Stimulants, 3-3.9 G Cocaine Base, 60-79 G PCP or 6-7.9 G Pure PCP, 600-799 MG LSD or equivalent Schedule I or II Hallucinogens, 24-31.9 G Fentanyl or 6-7.9 G Fentanyl Analogue, 60-79 KG Marihuana, 600-799 KG Marihuana Plants, 12-15.9 KG Hashish, 1.2-1.5 KG Hashish Oil	Level 22
40-59 G Heroin or equivalent Schedule I or II Opiates, 200-299 G Cocaine or equivalent Schedule I or II Stimulants, 2-2.9 G Cocaine Base, 40-59 G PCP or 4-5.9 G Pure PCP, 400-599 MG LSD or equivalent Schedule I or II Hallucinogens, 16-23.9 G Fentanyl or 4-5.9 G Fentanyl Analogue, 40-59 KG Marihuana, 400-599 KG Marihuana Plants, 8-11.9 KG Hashish, .8-1.1 KG Hashish Oil, 20 KG+ Schedule III or other Schedule I or II controlled substances	Level 20
20-39 G Heroin or equivalent Schedule I or II Opiates, 100-199 G Cocaine or equivalent Schedule I or II Stimulants, 1-1.9 G Cocaine Base, 20-39 G PCP or 2-3.9 G Pure PCP, 200-399 MG LSD or equivalent Schedule I or II Hallucinogens, 8-15.9 G Fentanyl or 2-3.9 G Fentanyl Analogue, 20-39 KG Marihuana, 200-399 KG Marihuana Plants, 5-7.9 KG Hashish, 500-799 G Hashish Oil, 10-19 KG Schedule III or other Schedule I or II controlled substances	Level 18
10-19 G Heroin or equivalent Schedule I or II Opiates, 50-99 G Cocaine or equivalent Schedule I or II Stimulants, 500-999 MG Cocaine Base, 10-19.9 G PCP or 1-1.9 G Pure PCP, 100-199 MG LSD or equivalent Schedule I or II Hallucinogens, 4-7.9 G Fentanyl or 1-1.9 G Fentanyl Analogue, 10-19 KG Marihuana, 100-199 KG Marihuana Plants, 2-4.9 KG Hashish, 200-499 G Hashish Oil, 5-9.9 KG Schedule III or other Schedule I or II controlled substances	Level 16
5-9.9 G Heroin or equivalent Schedule I or II Opiates, 25-49 G Cocaine or equivalent Schedule I or II Stimulants, 250-499 MG Cocaine Base, 5-9.9 G PCP or 500-999 MG Pure PCP, 50-99 MG LSD or equivalent Schedule I or II Hallucinogens, 2-3.9 G Fentanyl or .5-9 G Fentanyl Analogue, 5-9.9 KG Marihuana, 50-99 KG Marihuana Plants, 1-1.9 KG Hashish, 100-199 G Hashish Oil, 2.5-4.9 KG Schedule III or other Schedule I or II controlled substances	Level 14

Less than the following: 5 G Heroin or equivalent Schedule I or II Opiates, 25 G Cocaine or equivalent Schedule I or II Stimulants, 250 MG Cocaine Base, 5 G PCP or 500 MG Pure PCP, 50 MG LSD or equivalent Schedule I or II Hallucinogens, 2 G Fentanyl or 500 MG Fentanyl Analogue; 2.5-4.9 KG Marihuana, 25-49 Marihuana Plants, 500-999 G Hashish, 50-99 G Hashish Oil, 1.25-2.4 KG Schedule III or other Schedule I or II controlled substances, 20 KG+ Schedule IV	Level 12
1-2.4 KG Marihuana, 10-24 Marihuana Plants, 200-499 G Hashish, 20-49 G Hashish Oil, .50-1.24 KG Schedule III or other Schedule I or II controlled substances, 8-19 KG Schedule IV	Level 10
250-999 G Marihuana, 3-9 Marihuana Plants, 50-199 G Hashish, 10-19 G Hashish Oil, 125-449 G Schedule III or other Schedule I or II controlled substances, 2-7.9 KG Schedule IV, 20 KG+ Schedule V	Level 8
Less than the following: 250 G Marihuana, 3 Marihuana Plants, 50 G Hashish, 10 G Hashish Oil, 125 G Schedule III or other Schedule I or II controlled substances, 2 KG Schedule IV, 20 KG Schedule V	Level 6

* The scale amounts for all controlled substances refer to the total weight of the controlled substance. Consistent with the provisions of the Anti-Drug Abuse Act, if any mixture of a compound contains any detectable amount of a controlled substance, the entire amount of the mixture or compound shall be considered in measuring the quantity. If a mixture or compound contains a detectable amount of more than one controlled substance, the most serious controlled substance shall determine the categorization of the entire quantity.

** Statute specifies a mandatory minimum sentence."

and inserting in lieu thereof:

"(c) DRUG QUANTITY TABLE

<u>Controlled Substances and Quantity*</u>	<u>Base Offense Level</u>
(1) 300 KG or more of Heroin (or the equivalent amount of other Schedule I or II Opiates); 1500 KG or more of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); 15 KG or more of Cocaine Base; 300 KG or more of PCP, or 30 KG or more of Pure PCP; 300 KG or more of Methamphetamine, or 30 KG or more of Pure Methamphetamine; 3 KG or more of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); 120 KG or more of Fentanyl; 30 KG or more of a Fentanyl Analogue; 300,000 KG or more of Marihuana; 60,000 KG or more of Hashish; 6,000 KG or more of Hashish Oil.	Level 42
(2) At least 100 KG but less than 300 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); At least 500 KG but less than 1500 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); At least 5 KG but less than 15 KG of Cocaine Base; At least 100 KG but less than 300 KG of PCP, or at least 10 KG but less than 30 KG of Pure PCP; At least 100 KG but less than 300 KG of Methamphetamine, or at least 10 KG but less than 30 KG of Pure Methamphetamine; At least 1 KG but less than 3 KG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); At least 40 KG but less than 120 KG of Fentanyl; At least 10 KG but less than 30 KG of a Fentanyl Analogue; At least 100,000 KG but less than 300,000 KG of Marihuana; At least 20,000 KG but less than 60,000 KG of Hashish; At least 2,000 KG but less than 6,000 KG of Hashish Oil.	Level 40
(3) At least 30 KG but less than 100 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); At least 150 KG but less than 500 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); At least 1.5 KG but less than 5 KG of Cocaine Base; At least 30 KG but less than 100 KG of PCP, or at least 3 KG but less than 10 KG of Pure PCP; At least 30 KG but less than 100 KG of Methamphetamine, or at least 3 KG but less than 10 KG of Pure Methamphetamine; At least 300 G but less than 1 KG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); At least 12 KG but less than 40 KG of Fentanyl; At least 3 KG but less than 10 KG of a Fentanyl Analogue; At least 30,000 KG but less than 100,000 KG of Marihuana; At least 6,000 KG but less than 20,000 KG of Hashish; At least 600 KG but less than 2,000 KG of Hashish Oil.	Level 38

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| (4) | <p>At least 10 KG but less than 30 KG of Heroin
(or the equivalent amount of other Schedule I or II Opiates);
At least 50 KG but less than 150 KG of Cocaine
(or the equivalent amount of other Schedule I or II Stimulants);
At least 500 G but less than 1.5 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 Pure PCP;
At least 10 KG but less than 30 KG of Methamphetamine, or at least 1 KG but less than 3 KG of Pure Methamphetamine;
At least 100 G but less than 300 G of LSD
(or the equivalent amount of other Schedule I or II Hallucinogens);
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.</p> | Level 36 |
| (5) | <p>At least 3 KG but less than 10 KG of Heroin
(or the equivalent amount of other Schedule I or II Opiates);
At least 15 KG but less than 50 KG of Cocaine
(or the equivalent amount of other Schedule I or II Stimulants);
At least 150 G but less than 500 G 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 Pure PCP;
At least 3 KG but less than 10 KG of Methamphetamine, or at least 300 G but less than 1 KG of Pure Methamphetamine;
At least 30 G but less than 100 G of LSD
(or the equivalent amount of other Schedule I or II Hallucinogens);
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.</p> | Level 34 |
| (6) | <p>At least 1 KG but less than 3 KG of Heroin
(or the equivalent amount of other Schedule I or II Opiates);
At least 5 KG but less than 15 KG of Cocaine
(or the equivalent amount of other Schedule I or II Stimulants);
At least 50 G but less than 150 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 Pure PCP;
At least 1 KG but less than 3 KG of Methamphetamine, or at least 100 G but less than 300 G of Pure Methamphetamine;
At least 10 G but less than 30 G of LSD
(or the equivalent amount of other Schedule I or II Hallucinogens);
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.</p> | Level 32 |
| (7) | <p>At least 700 G but less than 1 KG of Heroin
(or the equivalent amount of other Schedule I or II Opiates);
At least 3.5 KG but less than 5 KG of Cocaine
(or the equivalent amount of other Schedule I or II Stimulants);
At least 35 G but less than 50 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 Pure PCP;
At least 700 G but less than 1 KG of Methamphetamine, or at least 70 G but less than 100 G of Pure Methamphetamine;
At least 7 G but less than 10 G of LSD
(or the equivalent amount of other Schedule I or II Hallucinogens);
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.</p> | Level 30 |
| (8) | <p>At least 400 G but less than 700 G of Heroin
(or the equivalent amount of other Schedule I or II Opiates);
At least 2 KG but less than 3.5 KG of Cocaine
(or the equivalent amount of other Schedule I or II Stimulants);
At least 20 G but less than 35 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 Pure PCP;
At least 400 G but less than 700 G of Methamphetamine, or at least 40 G but less than 70 G of Pure Methamphetamine;
At least 4 G but less than 7 G of LSD
(or the equivalent amount of other Schedule I or II Hallucinogens);
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.</p> | Level 28 |

- (9) At least 100 G but less than 400 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
At least 500 G but less than 2 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
At least 5 G but less than 20 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 Pure PCP;
At least 100 G but less than 400 G of Methamphetamine, or at least 10 G but less than 40 G of Pure Methamphetamine;
At least 1 G but less than 4 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
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. Level 26
- (10) At least 80 G but less than 100 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
At least 400 G but less than 500 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
At least 4 G but less than 5 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 Pure PCP;
At least 80 G but less than 100 G of Methamphetamine, or at least 8 G but less than 10 G of Pure Methamphetamine;
At least 800 MG but less than 1 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
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. Level 24
- (11) At least 60 G but less than 80 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
At least 300 G but less than 400 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
At least 3 G but less than 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 Pure PCP;
At least 60 G but less than 80 G of Methamphetamine, or at least 6 G but less than 8 G of Pure Methamphetamine;
At least 600 MG but less than 800 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
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. Level 22
- (12) At least 40 G but less than 60 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
At least 200 G but less than 300 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
At least 2 G but less than 3 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 Pure PCP;
At least 40 G but less than 60 G of Methamphetamine, or at least 4 G but less than 6 G of Pure Methamphetamine;
At least 400 MG but less than 600 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
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;
20 KG or more of Schedule I or II Depressants or Schedule III substances. Level 20
- (13) At least 20 G but less than 40 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
At least 100 G but less than 200 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
At least 1 G but less than 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 Pure PCP;
At least 20 G but less than 40 G of Methamphetamine, or at least 2 G but less than 4 G of Pure Methamphetamine;
At least 200 MG but less than 400 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
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 10 KG but less than 20 KG of Schedule I or II Depressants or Schedule III substances. Level 18

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| (14) | <p>At least 10 G but less than 20 G of Heroin
(or the equivalent amount of other Schedule I or II Opiates);
At least 50 G but less than 100 G of Cocaine
(or the equivalent amount of other Schedule I or II Stimulants);
At least 500 MG but less than 1 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 Pure PCP;
At least 10 G but less than 20 G of Methamphetamine, or at least 1 G but less than 2 G of Pure Methamphetamine;
At least 100 MG but less than 200 MG of LSD
(or the equivalent amount of other Schedule I or II Hallucinogens);
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 5 KG but less than 10 KG of Schedule I or II Depressants or Schedule III substances.</p> | Level 16 |
| (15) | <p>At least 5 G but less than 10 G of Heroin
(or the equivalent amount of other Schedule I or II Opiates);
At least 25 G but less than 50 G of Cocaine
(or the equivalent amount of other Schedule I or II Stimulants);
At least 250 MG but less than 500 MG 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 Pure PCP;
At least 5 G but less than 10 G of Methamphetamine, or at least 500 MG but less than 1 G of Pure Methamphetamine;
At least 50 MG but less than 100 MG of LSD
(or the equivalent amount of other Schedule I or II Hallucinogens);
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 2.5 KG but less than 5 KG of Schedule I or II Depressants or Schedule III substances.</p> | Level 14 |
| (16) | <p>Less than 5 G Heroin (or the equivalent amount of other Schedule I or II Opiates);
Less than 25 G Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
Less than 250 MG of Cocaine Base;
Less than 5 G of PCP, or less than 500 MG of Pure PCP;
Less than 5 G of Methamphetamine, or less than 500 MG of Pure Methamphetamine;
Less than 50 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
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 1.25 KG but less than 2.5 KG of Schedule I or II Depressants or Schedule III substances;
20 KG or more of Schedule IV substances.</p> | Level 12 |
| (17) | <p>At least 1 KG but less than 2.5 KG of Marihuana;
At least 200 G but less than 500 G of Hashish;
At least 20 G but less than 50 G of Hashish Oil;
At least 500 G but less than 1.25 KG of Schedule I or II Depressants or Schedule III substances;
At least 8 KG but less than 20 KG of Schedule IV substances.</p> | Level 10 |
| (18) | <p>At least 250 G but less than 1 KG of Marihuana;
At least 50 G but less than 200 G of Hashish;
At least 5 G but less than 20 G of Hashish Oil;
At least 125 G but less than 500 G of Schedule I or II Depressants or Schedule III substances;
At least 2 KG but less than 8 KG of Schedule IV substances;
20 KG or more of Schedule V substances.</p> | Level 8 |
| (19) | <p>Less than 250 G of Marihuana;
Less than 50 G of Hashish;
Less than 5 G of Hashish Oil;
Less than 125 G of Schedule I or II Depressants or Schedule III substances;
Less than 2 KG of Schedule IV substances;
Less than 20 KG of Schedule V substances.</p> | Level 6 |

*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. In the case of a mixture or substance containing PCP or methamphetamine, use the offense level determined by the entire weight of the mixture or substance or the offense level determined by the weight of the pure PCP or methamphetamine, whichever is greater.

In the case of an offense involving marihuana plants, if the offense involved (A) 50 or more marihuana plants, treat each plant as equivalent to 1 KG of marihuana; (B) fewer than 50 marihuana plants, treat each plant as equivalent to 100 G of marihuana. Provided, however, that if the actual weight of the marihuana is greater, use the actual weight of the marihuana."

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 9 by inserting immediately before the period at the end of the first sentence of the first paragraph:

", except in the case of PCP or methamphetamine for which the guideline itself provides for the consideration of purity (see the footnote to the Drug Quantity Table)",

and by deleting the second paragraph as follows:

"Congress provided an exception to purity considerations in the case of phencyclidine (PCP). 21 U.S.C. § 841(b)(1)(A). The legislation designates amounts of pure PCP and mixtures in establishing mandatory sentences. The first row of the table illustrates this distinction as one kilogram of PCP or 100 grams of pure PCP. Allowance for higher sentences based on purity is not appropriate for PCP."

The Commentary to §2D1.1 captioned "Application Notes" is amended in the first paragraph of Note 10 by inserting "methamphetamine, fentanyl," immediately following "i.e., heroin, cocaine, PCP," and by deleting:

"one gram of a substance containing methamphetamine, a Schedule I stimulant, is to be treated as the equivalent of two grams of a substance containing cocaine in applying the Drug Quantity Table.",

and inserting in lieu thereof:

"one gram of a substance containing oxymorphone, a Schedule I opiate, is to be treated as the equivalent of five grams of a substance containing heroin in applying the Drug Quantity Table."

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10, in the subdivision of the "Drug Equivalency Tables" captioned "Cocaine and Other Schedule I & II Stimulants" by deleting "2.0 gm. of cocaine/0.4 gm of heroin" immediately following "1 gm of Methamphetamine =" and inserting in lieu thereof "5.0 gm of cocaine/1.0 gm of heroin", and by deleting:

"1 gm of Phenylacetone/P₂P
(amphetamine precursor) = 0.375 gm of cocaine/0.075 gm of heroin

1 gm of Phenylacetone/P₂P
(methamphetamine precursor) = 0.833 gm of cocaine/0.167 gm of heroin",

and inserting in lieu thereof:

"1 gm Phenylacetone/P₂P
(when possessed for the
purpose of manufacturing
methamphetamine) = 2.08 gm of cocaine/0.418 gm of heroin

1 gm Phenylacetone/P₂P
(in any other case) = 0.375 gm of cocaine/0.075 gm of heroin".

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10, in the subdivision of the "Drug Equivalency Tables" captioned "Schedule I Marihuana" by deleting:

"1 Marihuana/Cannabis Plant = 0.1 gm of heroin/100 gm of marihuana".

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the second paragraph by deleting "Other Schedule I or II Substances" and inserting in lieu thereof "Schedule I or II Depressants", and in the "Drug Equivalency Tables" by deleting "Other Schedule I or II Substances" and inserting in lieu thereof "Schedule I or II Depressants".

The Commentary to 2D1.1 captioned "Background" is amended in the third paragraph by deleting "with two asterisks represent mandatory minimum sentences established by the Anti-Drug Abuse Act of 1986. These levels reflect sentences" and inserting in lieu thereof "at levels 26 and 32 establish guideline ranges", and by deleting "requirement" and inserting in lieu thereof "minimum".

The purposes of this amendment are to expand the Drug Quantity Table to reflect offenses involving extremely large quantities of controlled substances, to eliminate minor gaps in the Drug Quantity Table, to reflect the statutory change with respect to methamphetamine (Section 6470 of the Anti-Drug Abuse Act of 1988) by inserting specific references to the quantity of this substance for each offense level set forth in the table, to reflect the statutory change with respect to fifty or more marihuana plants (Section 6479 of the Anti-Drug Abuse Act of 1988), to correct anomaly in the relationship of hashish oil to hashish in levels 6 and 8 of the Drug Quantity Table, to delete an unnecessary footnote, and to clarify the operation of the guideline. **The effective date of this amendment is November 1, 1989.**

126. The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the subdivision of the "Drug Equivalency Tables" captioned "Schedule I or II Opiates" on the line beginning "piperidinyl Propanamide) =" by deleting "31.25 gm" and inserting in lieu thereof "2.5 gm"; on the line beginning "1 gm of Alpha-Methylfentanyl" by deleting "100 gm" and inserting in lieu thereof "10 gm"; and on the line beginning "1 gm of 3-Methylfentanyl" by deleting "125 gm" and inserting in lieu thereof "10 gm".

The purpose of this amendment is to conform the equivalency for fentanyl and fentanyl analogues to that set forth in the Drug Quantity Table and statute. **The effective date of this amendment is November 1, 1989.**

127. The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the subdivision of "Dosage Equivalency Table" captioned "Hallucinogens" by deleting "STP (DOM) Dimethoxyamphetamine" and inserting in lieu thereof "2, 5-Dimethoxy-4-methylamphetamine (STP, DOM)".

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the subdivision of the "Dosage Equivalency Table" captioned "Stimulants" by deleting "Preludin 25 mg" and inserting in lieu thereof "Phenmetrazine (Preludin) 75 mg".

The purposes of this amendment are to substitute generic names for two substances and to conform the dosage of Phenmetrazine to that currently being manufactured. **The effective date of this amendment is November 1, 1989.**

128. The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" in the subdivision captioned "Schedule III Substances" by deleting:

"1 gm of Thiohexethal = 2 mg of heroin/2 gm of marihuana",

in the "Dosage Equivalency Table" in the subdivision captioned "Hallucinogens" by deleting:

"Anhalamine 300 mg",
 "Anhalonide 300 mg",
 "Anhalonine 300 mg",
 "Lophophorine 300 mg",
 "Pelotine 300 mg",

and in the "Dosage Equivalency Table" in the subdivision captioned "Depressants" by deleting:

"Brallobarbital 30 mg",
 "Eldoral 100 mg",
 "Eunarcon 100 mg",
 "Hexethel 100 mg",
 "Thiohexethal 60 mg".

The purpose of this amendment is to delete substances that either are not controlled substances or are no longer manufactured. **The effective date of this amendment is November 1, 1989.**

129. The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" in the subdivision captioned "Cocaine and Other Schedule I and II Stimulants" by inserting the following as the eighth and ninth entries:

"1 gm of 4-Methylaminorex ('Euphoria') = 0.5 gm of cocaine/0.1 gm of heroin",
 "1 gm of Methylphenidate (Ritalin) = 0.5gm of cocaine/0.1 gm of heroin",

in the subdivision captioned "LSD, PCP, and Other Schedule I and II Hallucinogens" by inserting the following as the twentieth entry:

"1 gm of 3, 4-Methylenedioxy
 - N - ethylamphetamine/MDEA = 0.03 gm of heroin or PCP",

in the subdivision captioned "Schedule III Substances" by inserting the following as the fourth entry:

"1 gm of Benzphetamine = 4 mg of heroin/4 gm of marihuana",

and in the "Dosage Equivalency Table" in the subdivision captioned "Depressants" by inserting the following in the appropriate place in alphabetical order:

"Glutethimide (Doriden) 500 mg".

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the "Dosage Equivalency Table" by inserting the following immediately after the subdivision captioned "Depressants":

"Marihuana

1 marihuana cigarette 0.5 gm".

The purpose of this amendment is to make the Drug Equivalency Tables and Dosage Equivalency Table more comprehensive. **The effective date of this amendment is November 1, 1989.**

130. The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" in the subdivision captioned "Schedule III Substances" by deleting "2 mg of heroin/2 gm of marihuana" immediately following "1 gm of Glutethimide = " and inserting in lieu thereof "0.4 gm of heroin/0.4 gm of marihuana", and by deleting:

"1 gm of Paregoric =	2 mg of heroin/2 gm of marihuana
1 gm of Hydrocodone	
Cough Syrups =	2 mg of heroin/2 gm of marihuana",

and inserting in lieu thereof:

"1 ml of Paregoric =	0.25 mg of heroin/0.25 gm of marihuana
1 ml of Hydrocodone	
Cough Syrup =	1 mg of heroin/1 gm of marihuana".

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the "Dosage Equivalency Table" in the subdivision captioned "Hallucinogens" by deleting ".1 mg" in the line beginning "LSD (Lysergic acid diethylamide)" and inserting in lieu thereof ".05 mg", by deleting "LSD tartrate .05 mg", by deleting "Peyote 12 mg", and by inserting the following in the appropriate place in alphabetical order:

"Peyote (dry)	12 gm",
"Peyote (wet)	120 gm",
"Psilocybe mushrooms (dry)	5 gm",
"Psilocybe mushrooms (wet)	50 gm".

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the "Dosage Equivalency Table" in the subdivision captioned "Stimulants" by deleting "Ethylamphetamine HCL 12 mg" and "Ethylamphetamine SO₄ 12 mg", by deleting "Amphetamines" and inserting in lieu thereof "Amphetamine", by deleting "Methamphetamines" and inserting in lieu thereof "Methamphetamine", and by deleting "Methamphetamine combinations 5 mg".

The purposes of this amendment are to provide more accurate approximations of the equivalencies and dosages for certain controlled substances, and to eliminate unnecessary references. **The effective date of this amendment is November 1, 1989.**

131. The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the subdivision of the "Drug Equivalency Tables" captioned "LSD, PCP, and Other Schedule I and II Hallucinogens" by deleting:

"1 gm of Liquid phencyclidine = 0.1 gm of heroin or PCP".

The purpose of this amendment is to delete an incorrect equivalency. **The effective date of this amendment is November 1, 1989.**

132. The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" by inserting immediately following the captions "Cocaine and Other Schedule I and II Stimulants" and "LSD, PCP, and Other Hallucinogens" in each instance "(and their immediate precursors)".

The purpose of this amendment is to clarify the commentary. **The effective date of this amendment is November 1, 1989.**

133. The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 by deleting:

"The following dosage equivalents for certain common drugs are provided by the Drug Enforcement Administration to facilitate the application of §2D1.1 of the guidelines in cases where the number of doses, but not the weight of the controlled substances are known. The dosage equivalents provided in these tables reflect the amount of the pure drug contained in an average dose.

DOSAGE EQUIVALENCY TABLE",

and inserting in lieu thereof:

"11. If the number of doses, pills, or capsules but not the weight of the controlled substance is known, multiply the number of doses, pills, or capsules by the typical weight per dose to estimate the total weight of the controlled substance (e.g., 100 doses of Bufotenine at 1 mg per dose = 100 mg of Bufotenine). The Typical Weight Per Unit Table, prepared from information provided by the Drug Enforcement Administration, displays the typical weight per dose, pill, or capsule for common controlled substances.

TYPICAL WEIGHT PER UNIT (DOSE, PILL, OR CAPSULE) TABLE".

The Commentary to §2D1.1 captioned "Application Notes" is amended by renumbering the current Note 11 as Note 12.

The purpose of this amendment is to clarify the commentary. **The effective date of this amendment is November 1, 1989.**

134. Section 2D1.1(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics", and by inserting the following additional specific offense characteristic:

"(2) If the defendant is convicted of violating 21 U.S.C. § 960(a) under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import the controlled substance, or (B) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, increase by 2 levels. If the resulting offense level is less than level 26, increase to level 26.";

The Commentary to §2D1.1 captioned "Application Notes" is amended by inserting the following additional note:

"13. If subsection (b)(2)(B) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).";

The Commentary to §2D1.1 captioned "Background" is amended by inserting the following additional paragraph between the third and fourth paragraphs:

" Specific Offense Characteristic (b)(2) is mandated by Section 6453 of the Anti-Drug Abuse Act of 1988."

The purpose of this amendment is to implement the directive to the Commission in Section 6453 of the Anti-Drug Abuse Act of 1988. **The effective date of this amendment is November 1, 1989.**

135. Chapter Two, Part D is amended by deleting §§2D1.2 and 2D1.3 in their entirety as follows:

"§2D1.2. Involving Juveniles in the Trafficking of Controlled Substances

- (a) Base Offense Level:
- (1) Level from §2D1.1, corresponding to triple the drug amount involved, but in no event less than level 13, for involving an individual fourteen years of age or less; or
 - (2) Level from §2D1.1, corresponding to double the drug amount involved, for involving an individual at least fifteen years of age and less than eighteen years of age.

Commentary

Statutory Provision: 21 U.S.C. § 845b.

Application Notes:

1. If multiple drugs or offenses occur and all or some of them involve juveniles, double or triple the drug amounts for those offenses involving juveniles before totalling the amounts. For example, if there are three drug offenses of conviction and only one involves juveniles in trafficking, add the amount from the first and second offense, double the amount for the offense involving juveniles, and total. Use that total to determine the base offense level.
2. The reference to the level from §2D1.1 includes the base offense level plus the specific offense characteristic dealing with a weapon. Under §2D1.1(b)(1) there is a 2-level increase for possession of a firearm or other dangerous weapon during commission of the offense.

Background: The statute addressed by this section punishes any person eighteen years of age or older who knowingly employs or uses any person younger than eighteen to violate or to conceal any violation of any provision of Title 21. Section 845b provides a minimum mandatory period of imprisonment of one year. An increased penalty for the employment or use of persons fourteen years of age or younger reflects the enhanced sentence authorized by 21 U.S.C. § 845b(d).

§2D1.3. Distributing Controlled Substances to Individuals Younger than Twenty-One Years, To Pregnant Women, or Within 1000 Feet of a School or College

(a) Base Offense Level:

- (1) Level from §2D1.1, corresponding to double the drug amount involved, but in no event less than level 13, for distributing a controlled substance to a pregnant woman;
- (2) (A) Level from §2D1.1, corresponding to double the drug amount involved, but in no event less than level 13, for distributing a controlled substance other than five grams or less of marihuana to an individual under the age of twenty-one years; or
(B) Level from §2D1.1, corresponding to double the drug amount involved, but in no event less than level 13, for distributing or manufacturing a controlled substance other than five grams or less of marihuana within 1000 feet of a schoolyard.

Commentary

Statutory Provisions: 21 U.S.C. §§ 845, 845a.

Application Notes:

1. The provisions addressed by this section contain a mandatory minimum period of imprisonment of one year. The base offense level is determined as in §2D1.2. If both subsections (a)(1) and (a)(2) apply to a single distribution (e.g., the distribution of 10 grams of a controlled substance to a pregnant woman under twenty-one years of age), the enhancements are applied cumulatively, i.e., by using four times rather than two times the amount distributed. However, only one of the enhancements in §2D1.3(a)(2) shall apply in a given case.
2. If multiple drugs or offenses occur, determine the offense level as described in the Commentary to §2D1.2.
3. The reference to the level from §2D1.1 includes the base offense level plus the specific offense characteristic dealing with a weapon. Under §2D1.1(b)(1) there is a 2-level increase for possession of a firearm, or other dangerous weapon during the commission of the offense.

Background: The guideline sentences for distribution of controlled substances to individuals under twenty-one years of age or within 1000 feet of a school or college treat the distribution of less than five grams of marihuana less harshly than other controlled substances. This distinction is based on the statutory provisions that specifically exempt convictions for the distribution of less than five grams of marihuana from the mandatory minimum one-year imprisonment requirement."

A replacement guideline with accompanying commentary is inserted as §2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals).

The purposes of this amendment are to implement the directive in Section 6454 of the Anti-Drug Abuse Act of 1988, and to expand the coverage of the guideline to include the provision of Sections 6458 and 6459 of that Act. The amendment also covers the provisions of 21 U.S.C. § 845, 845a, and 845b not included in the statutory direction to the Commission. **The effective date of this amendment is November 1, 1989.**

136. The Commentary to §2D1.4 captioned "Application Notes" is amended in Note 1 by deleting:

"Where the defendant was not reasonably capable of producing the negotiated amount, the court may depart and impose a sentence lower than the sentence that would otherwise result.",

and inserting in lieu thereof:

"However, where the court finds that the defendant did not intend to produce and was not reasonably capable of producing the negotiated amount, the court shall exclude from the guideline calculation the amount that it finds the defendant did not intend to produce and was not reasonably capable of producing."

Application Note 1 currently provides that the "weight under negotiation in an uncompleted distribution shall be used to calculate the applicable amount." The instruction then provides "Where the defendant was not reasonably capable of producing the negotiated amount the court may depart and impose a sentence lower than the sentence that would otherwise result." This provision may result in inflated offense levels in uncompleted offenses where a defendant is merely "puffing," even though the court is then authorized to address the situation by a downward departure. The purpose of this amendment is to provide a more direct procedure for calculating the offense level where the court finds that the defendant did not intend to produce and was not reasonably capable of producing the negotiated amount. **The effective date of this amendment is November 1, 1989.**

137. The Commentary to §2D1.4 captioned "Application Notes" is amended in Note 1 by deleting "the sentence should be imposed only on the basis of the defendant's conduct or the conduct of co-conspirators in furtherance of the conspiracy that was known to the defendant or was reasonably foreseeable" and inserting in lieu thereof "see Application Note 1 to §1B1.3 (Relevant Conduct)".

The purpose of this amendment is to conform this commentary to the revision of §1B1.3. **The effective date of this amendment is November 1, 1989.**

138. Section 2D1.4(a) is amended by deleting "participating in an incomplete" and inserting in lieu thereof "a".

The purpose of this amendment is to clarify the guideline. **The effective date of this amendment is November 1, 1989.**

139. Section 2D1.5 is amended by deleting: "(a) Base Offense Level: 36" and inserting in lieu thereof:

"(a) Base Offense Level (Apply the greater):

- (1) 4 plus the offense level from §2D1.1 applicable to the underlying offense; or
- (2) 38."

The Commentary to §2D1.5 captioned "Application Notes" is amended in Note 2 by deleting "if the quantity of drugs substantially exceeds that required for level 36 in the drug quantity table," immediately before "or if", and by deleting "is extremely" and inserting in lieu thereof "was extremely".

The Commentary to §2D1.5 captioned "Background" is amended in the first paragraph by deleting "base offense level of 36" and inserting in lieu thereof "minimum base offense level of 38", and in the second paragraph by deleting "for second convictions" and inserting in lieu thereof "for the first conviction, a 30-year minimum mandatory penalty for a second conviction,".

The purpose of this amendment is to reflect the increased mandatory minimum penalty for this offense pursuant to Section 6481 of the Anti-Drug Abuse Act of 1988. **The effective date of this amendment is November 1, 1989.**

140. Chapter Two, Part D is amended by inserting an additional guideline with accompanying commentary as §2D1.10 (Endangering Human Life While Illegally Manufacturing a Controlled Substance).

The purpose of this amendment is to create a guideline covering the new offense in Section 6301 of the Anti-Drug Abuse Act of 1988. **The effective date of this amendment is November 1, 1989.**

141. Section 2D2.3 is amended by deleting : "(a) Base Offense Level: 8" and inserting in lieu thereof:

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

- (1) 26, if death resulted; or
- (2) 21, if serious bodily injury resulted; or
- (3) 13, otherwise.

(b) Special Instruction:

- (1) If the defendant is convicted of a single count involving the death or serious bodily injury of more than one person, apply Chapter Three, Part D (Multiple Counts) as if the defendant had been convicted of a separate count for each such victim."

The Commentary to §2D2.3 is amended by inserting at the end:

"Background: This section implements the direction to the Commission in Section 6482 of the Anti-Drug Abuse Act of 1988. Offenses covered by this guideline may vary widely with regard to harm and risk of harm. The offense levels assume that the offense involved the operation of a common carrier carrying a number of passengers, e.g., a bus. If no or only a few passengers were placed at risk, a downward departure may be warranted. If the offense resulted in the death or serious bodily injury of a large number of persons, such that the resulting offense level under subsection (b) would not adequately reflect the seriousness of the offense, an upward departure may be warranted."

The purpose of this amendment is to implement the directive to the Commission in Section 6482 of the Anti-Drug Abuse Act of 1988. In addition, the base offense level under subsection (a)(3) is increased to reflect the seriousness of the offense. **The effective date of this amendment is November 1, 1989.**

142. The Commentary to §2E1.1 captioned "Application Notes" is amended by inserting the following additional note:

"4. Certain conduct may be charged in the count of conviction as part of a 'pattern of racketeering activity' even though the defendant has previously been sentenced for that conduct. Where such previously imposed sentence resulted from a conviction prior to the last overt act of the instant offense, treat as a prior sentence under §4A1.2(a)(1) and not as part of the instant offense. This treatment is designed to produce a result consistent with the distinction between the instant offense and criminal history found throughout the guidelines. If this treatment produces an anomalous result in a particular case, a guideline departure may be warranted."

The purpose of this amendment is to clarify the treatment of certain conduct for which the defendant previously has been sentenced as either part of the instant offense or prior criminal record. **The effective date of this amendment is November 1, 1989.**

143. The Commentary to §2E1.3 captioned "Statutory Provision" is amended by deleting "1952B" and inserting in lieu thereof "1959 (formerly 18 U.S.C. § 1952B)".

The purpose of this amendment is to reflect the redesignation of this statute. **The effective date of this amendment is November 1, 1989.**

144. The Commentary to §2E1.4 captioned "Statutory Provision" is amended by deleting "1952A" and inserting in lieu thereof "1958 (formerly 18 U.S.C. § 1952A)".

The purpose of this amendment is to reflect the redesignation of this statute. **The effective date of this amendment is November 1, 1989.**

145. Section 2E1.5 is amended by deleting "the guideline provision for extortion or robbery" and inserting in lieu thereof "§2B3.1 (Robbery), §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), §2B3.3 (Blackmail and Similar Forms of Extortion), or §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right)".

The Commentary to §2E1.5 captioned "Application Note" is amended by deleting:

"Application Note:

1. Apply the guideline most applicable to the underlying conduct, which may include §2B3.1 (Robbery), §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), §2B3.3 (Blackmail and Similar Forms of Extortion), or §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe)."

The purpose of this amendment is to move material from the commentary to the guideline where it more appropriately belongs. **The effective date of this amendment is November 1, 1989.**

146. Section 2E2.1 is amended in subsection (b)(1)(B) by deleting "a firearm or a dangerous weapon" and inserting in lieu thereof "a dangerous weapon (including a firearm)", and in subsection (b)(1)(C) by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "a dangerous weapon (including a firearm)".

The purposes of this amendment are to clarify that a firearm is a type of dangerous weapon and to remove the inconsistency in language between specific offense characteristic subdivisions (b)(1)(B) and (b)(1)(C). **The effective date of this amendment is November 1, 1989.**

147. Section 2E2.1(b)(2) is amended by inserting the following additional subdivisions:

- "(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 3 levels; or
- (E) If the degree of injury is between that specified in subdivisions (B) and (C), add 5 levels."

The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury. **The effective date of this amendment is November 1, 1989.**

148. Section 2E2.1(b)(3)(A) is amended by inserting "or" immediately following "4 levels;"

The purpose of this amendment is to correct a clerical error. **The effective date of this amendment is November 1, 1989.**

149. Section 2E5.1 is amended in the title by deleting "Bribery or Gratuity" and inserting in lieu thereof "Offering, Accepting, or Soliciting a Bribe or Gratuity".

The purpose of amending the title of this section is to ensure that attempts and solicitations are expressly covered by this guideline. **The effective date of this amendment is November 1, 1989.**

150. Section 2E5.2 is amended by deleting:

- "(a) Base Offense Level: 4
- (b) Specific Offense Characteristics
 - (1) If the offense involved more than minimal planning, increase by 2 levels.
 - (2) If the defendant had a fiduciary obligation under the Employee Retirement Income Security Act, increase by 2 levels.
 - (3) Increase by corresponding number of levels from the table in §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) according to the loss."

and inserting in lieu thereof:

"Apply §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)."

The Commentary to §2E5.2 captioned "Application Notes" is amended by deleting:

- "1. 'More than minimal planning' is defined in the Commentary to §1B1.1 (Application Instructions). Valuation of loss is discussed in the Commentary to §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)." and

- "3. If the adjustment for a fiduciary obligation at §2E5.2(b)(2) is applied, do not apply the adjustment at §3B1.3 (Abuse of a Position of Trust or Use of a Special Skill).",

and by inserting in lieu of Note 1:

- "1. In the case of a defendant who had a fiduciary obligation under the Employee Retirement Income Security Act, an adjustment under §3B1.3 (Abuse of Position of Trust or Use of Special Skill) would apply."

The Commentary to §2E5.2 captioned "Background" is amended by deleting the second and third sentences as follows:

"The base offense level corresponds to the base offense level for other forms of theft. Specific offense characteristics address whether a defendant has a fiduciary relationship to the benefit plan, the sophistication of the offense, and the scale of the offense."

The purpose of this amendment is to simplify application of the guidelines. **The effective date of this amendment is November 1, 1989.**

- 151. Section 2E5.3(a)(2) is amended by deleting "false records were used for criminal conversion of funds or a scheme" and inserting in lieu thereof "the offense was committed to facilitate or conceal a theft or embezzlement, or an offense".

The Commentary to §2E5.3 captioned "Application Note" is amended by deleting:

"Application Note:

- 1. 'Criminal conversion' means embezzlement."

The purpose of this amendment is to ensure that subsection (a)(2) covers any conduct engaged in for the purpose of facilitating or concealing a theft or embezzlement, or an offense involving a bribe or gratuity. **The effective date of this amendment is November 1, 1989.**

- 152. Section 2E5.4 is amended by deleting:

"(a) Base Offense Level: 4

(b) Specific Offense Characteristics

- (1) If the offense involved more than minimal planning, increase by 2 levels.
- (2) If the defendant was a union officer or occupied a position of trust in the union, as set forth in 29 U.S.C. § 501(a), increase by 2 levels.
- (3) Increase by the number of levels from the table in §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) corresponding to the loss."

and inserting in lieu thereof:

"Apply §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)."

The Commentary to §2E5.4 captioned "Application Notes" is amended by deleting:

- "1. 'More than minimal planning' is defined in the Commentary to §1B1.1 (Applicable Instructions). Valuation of loss is discussed in the Commentary to §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).
2. If the adjustment for being a union officer or occupying a position of trust in a union at §2E5.4(b)(2) is applied, do not apply the adjustment at §3B1.3 (Abuse of a Position of Trust or Use of a Special Skill).",

and inserting in lieu thereof:

- "1. In the case of a defendant who was a union officer or occupied a position of trust in the union, as set forth in 29 U.S.C. § 501(a), an adjustment under §3B1.3 (Abuse of Position of Trust or Use of Special Skill) would apply."

and by deleting in the caption "Notes" and inserting in lieu thereof "Note".

The Commentary to §2E5.4 captioned "Background" is amended by deleting the last sentence as follows:

"The seriousness of this offense is determined by the amount of money taken, the sophistication of the offense, and the nature of the defendant's position in the union."

The purpose of this amendment is to simplify application of the guidelines. **The effective date of this amendment is November 1, 1989.**

153. Section 2E5.5(a)(2) is amended by deleting "false records were used for criminal conversion of funds or a scheme" and inserting in lieu thereof "the offense was committed to facilitate or conceal a theft or embezzlement, or an offense".

The purpose of this amendment is to ensure that subsection (a)(2) covers any conduct engaged in for the purpose of facilitating or concealing a theft or embezzlement, or an offense involving a bribe or gratuity. **The effective date of this amendment is November 1, 1989.**

154. Section 2F1.1(b)(1) is amended by deleting:

	<u>"Loss</u>	<u>Increase in Level</u>
(A)	\$2,000 or less	no increase
(B)	\$2,001 - \$5,000	add 1
(C)	\$5,001 - \$10,000	add 2
(D)	\$10,001 - \$20,000	add 3
(E)	\$20,001 - \$50,000	add 4
(F)	\$50,001 - \$100,000	add 5
(G)	\$100,001 - \$200,000	add 6
(H)	\$200,001 - \$500,000	add 7
(I)	\$500,001 - \$1,000,000	add 8
(J)	\$1,000,001 - \$2,000,000	add 9
(K)	\$2,000,001 - \$5,000,000	add 10
(L)	over \$5,000,000	add 11",

and inserting in lieu thereof:

	<u>"Loss (Apply the Greatest)</u>	<u>Increase in Level</u>
(A)	\$2,000 or less	no increase
(B)	More than \$2,000	add 1
(C)	More than \$5,000	add 2
(D)	More than \$10,000	add 3
(E)	More than \$20,000	add 4
(F)	More than \$40,000	add 5
(G)	More than \$70,000	add 6
(H)	More than \$120,000	add 7
(I)	More than \$200,000	add 8
(J)	More than \$350,000	add 9
(K)	More than \$500,000	add 10
(L)	More than \$800,000	add 11
(M)	More than \$1,500,000	add 12
(N)	More than \$2,500,000	add 13
(O)	More than \$5,000,000	add 14
(P)	More than \$10,000,000	add 15
(Q)	More than \$20,000,000	add 16
(R)	More than \$40,000,000	add 17
(S)	More than \$80,000,000	add 18."

The purposes of this amendment are to conform the theft and fraud loss tables to the tax evasion table in order to remove an unintended inconsistency between these tables in cases where the amount is greater than \$40,000, to increase the offense levels for offenses with larger losses to provide additional deterrence and better reflect the seriousness of the conduct, and to eliminate minor gaps in the loss table. **The effective date of this amendment is November 1, 1989.**

155. The Commentary to §2F1.1 captioned "Application Notes" is amended beginning in Note 14 by deleting:

"In such instances, although §2F1.1 applies, a departure may be warranted.

15. In certain other cases, the mail or wire fraud statutes, or other relatively broad statutes, are used primarily as jurisdictional bases for the prosecution of other offenses. For example, a state law arson where a fraudulent insurance claim was mailed might be prosecuted as mail fraud. In such cases the most analogous guideline (in the above case, §2K1.4) is to be applied."

and by inserting at the end of Note 14:

"In certain other cases, the mail or wire fraud statutes, or other relatively broad statutes, are used primarily as jurisdictional bases for the prosecution of other offenses. For example, a state arson offense where a fraudulent insurance claim was mailed might be prosecuted as mail fraud. Where the indictment or information setting forth the count of conviction (or a stipulation as described in §1B1.2(a)) establishes an offense more aptly covered by another guideline, apply that guideline rather than §2F1.1. Otherwise, in such cases, §2F1.1 is to be applied, but a departure from the guidelines may be considered."

The Commentary to §2F1.1 captioned "Application Notes" is amended in the second sentence of Note 14 by deleting "in which" and inserting in lieu thereof "for which".

The purposes of this amendment are to ensure that this guideline is interpreted in a manner consistent with §1B1.2 and to correct a clerical error. **The effective date of this amendment is November 1, 1989.**

156. Section 2F1.1(b)(2) is amended by deleting "; (B)" and inserting in lieu thereof ", or (B)", and by deleting "; (C) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious or political organization, or a government agency; or (D) violation of any judicial or administrative order, injunction, decree or process; increase by 2 levels, but if the result is less than level 10, increase to level 10" and inserting in lieu thereof ", increase by 2 levels".

Section 2F1.1(b)(3) is renumbered as (b)(5), and the following are inserted as new subsections:

- "(3) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious or political organization, or a government agency, or (B) violation of any judicial or administrative order, injunction, decree or process, increase by 2 levels. If the resulting offense level is less than level 10, increase to level 10.
- (4) If the offense involved the conscious or reckless risk of serious bodily injury, increase by 2 levels. If the resulting offense level is less than level 13, increase to level 13."

The Commentary to §2F1.1 captioned "Statutory Provisions" is amended by inserting "1031," immediately following "1029,".

The Commentary to §2F1.1 captioned "Application Notes" is amended in Note 4 by deleting "(b)(2)(C)" and inserting in lieu thereof "(b)(3)(A)", in Note 5 by deleting "(b)(2)(D)" and inserting in lieu thereof "(b)(3)(B)", and in Note 9(c) by deleting "or risked" immediately following "caused".

The Commentary to §2F1.1 captioned "Background" is amended in the third paragraph by deleting "not only" immediately following "Accordingly, the guideline", by deleting ", but also specifies that the minimum offense level in such cases shall be 10" immediately following "is present", and by deleting the last sentence as follows:

"A number of special cases are specifically broken out under subdivision (b)(2) to ensure that defendants in such cases are adequately punished."

The Commentary to §2F1.1 captioned "Application Notes" is amended by deleting:

- "10. The adjustments for loss do not distinguish frauds involving losses greater than \$5,000,000. Departure above the applicable guideline may be warranted if the loss substantially exceeds that amount."

and by renumbering Notes 11-14 as 10-13 respectively.

The Commentary to §2F1.1 captioned "Application Notes" is amended in Note 1 by deleting "(b)(2)" and inserting in lieu thereof "(b)(3)", by deleting "several" and inserting in lieu thereof "both", and by deleting "upward" and inserting in lieu thereof "an upward".

The purpose of this amendment is to reflect the instruction to the Commission in Section 2(b) of the Major Fraud Act of 1988. The Commission has concluded that a 2-level enhancement with a minimum offense level of 13 should apply to all fraud cases involving a conscious or reckless risk of serious bodily injury. In addition, the amendment divides former subsection (b)(2) into two separate specific offenses characteristics to better reflect their separate nature. **The effective date of this amendment is November 1, 1989.**

157. Section 2G1.1(b)(1) is amended by deleting "defendant used" and inserting in lieu thereof "offense involved the use of", and by deleting "drugs or otherwise" and inserting in lieu thereof "threats or drugs or in any manner".

The Commentary to §2G1.1 captioned "Application Notes" is amended in Note 2 by deleting "by drugs or otherwise" immediately following "coercion".

The purpose of this amendment is to clarify the guideline and commentary. **The effective date of this amendment is November 1, 1989.**

158. Section 2G1.1 is amended by inserting the following additional subsection:

"(c) Special Instruction

- (1) If the offense involves the transportation of more than one person, Chapter Three, Part D (Multiple Counts) shall be applied as if the transportation of each person had been contained in a separate count of conviction."

The purpose of this amendment is to provide a special instruction for the application of the multiple count rule in cases involving the transportation of more than one person. **The effective date of this amendment is November 1, 1989.**

159. Section 2G1.2(b)(1) is amended by deleting "drugs or otherwise" and inserting in lieu thereof "threats or drugs or in any manner".

Section 2G1.2(b)(2) and (3) is amended by deleting "conduct" whenever it appears and inserting in lieu thereof in each instance "offense".

The Commentary to §2G1.2 captioned "Application Notes" is amended in Note 2 by deleting "by drugs or otherwise" immediately following "coercion", and in the caption by deleting "Note" and inserting in lieu thereof "Notes".

The purpose of this amendment is to clarify the guideline and commentary. **The effective date of this amendment is November 1, 1989.**

160. Section 2G1.2 is amended by inserting the following additional subsection:

"(c) Special Instruction

- (1) If the offense involves the transportation of more than one person, Chapter Three, Part D (Multiple Counts) shall be applied as if the transportation of each person had been contained in a separate count of conviction."

The purpose of this amendment is to provide a special instruction for the application of the multiple count rule in cases involving the transportation of more than one person. **The effective date of this amendment is November 1, 1989.**

161. The Commentary to §2G2.1 captioned "Application Note" is amended in Note 1 by deleting ", distinct offense, even if several are exploited simultaneously." and inserting in lieu thereof "victim. Consequently, multiple counts involving the exploitation of different minors are not to be grouped together under §3D1.2 (Groups of Closely-Related Counts).".

The purpose of this amendment is to clarify that multiple counts involving different minors are not grouped under §3D1.2. **The effective date of this amendment is November 1, 1989.**

162. Chapter Two, Part G, is amended by inserting an additional guideline with accompanying commentary as §2G2.3 (Selling or Buying of Children for Use in the Production of Pornography).

The purpose of this amendment is to create a guideline covering the new offense in Section 7512 of the Anti-Drug Abuse Act of 1988. **The effective date of this amendment is November 1, 1989.**

163. The Commentary to §2G3.1 captioned "Statutory Provisions" is amended by deleting "§§1461-1465" and inserting in lieu thereof "§§1460-1463, 1465-1466".

The purposes of this amendment are to conform the Statutory Provisions to the revision of §2G3.2 and to make them more comprehensive. **The effective date of this amendment is November 1, 1989.**

164. Chapter Two, Part G is amended by deleting §2G3.2 in its entirety as follows:

"§2G3.2. Obscene or Indecent Telephone Communications

(a) Base Offense Level: 6

Commentary

Statutory Provision: 47 U.S.C. § 223.

Background: This offense is a misdemeanor for which the maximum term of imprisonment authorized by statute is six months."

A replacement guideline with accompanying commentary is inserted as §2G3.2 (Obscene Telephone Communications for a Commercial Purpose; Broadcasting Obscene Material).

The purposes of this amendment are to delete a guideline covering a petty offense; and to insert a guideline covering felony offenses, including two offenses created by Sections 7523 and 7524 of the Anti-Drug Abuse Act of 1988. **The effective date of this amendment is November 1, 1989.**

165. The title to §2H1.3 is amended by inserting at the end "; Damage to Religious Real Property".

The Commentary to §2H1.3 captioned "Application Notes" is amended in Note 3 by deleting "the adjustment at" immediately before "§3B1.3".

The Commentary to §2H1.3 captioned "Background" is amended in the third sentence by deleting "injury occurs, ten years if injury occurs," and inserting in lieu thereof "bodily injury results, ten years if bodily injury results".

The Commentary to §2H1.3 captioned "Statutory Provisions" is amended by deleting "18 U.S.C. § 245" and inserting in lieu thereof "18 U.S.C. §§ 245, 247".

The purposes of this amendment are to include a recently enacted offense (18 U.S.C. § 247) expressly in the title of this guideline and to make editorial improvements. **The effective date of this amendment is November 1, 1989.**

166. Section 2H1.4(a)(2) is amended by deleting "2 plus" and inserting in lieu thereof "6 plus".

The Commentary to §2H1.4 captioned "Application Notes" is amended in Note 1 by deleting "2 plus" and inserting in lieu thereof "6 plus", and by deleting "is defined" and inserting in lieu thereof "means 6 levels above the offense level for any underlying criminal conduct. See the discussion".

The Commentary to §2H1.4 captioned "Background" is amended in the first paragraph by deleting ", except where death results, in which case the maximum term of imprisonment authorized is life imprisonment" and inserting in lieu thereof "if no bodily injury results, ten years if bodily injury results, and life imprisonment if death results", by deleting "Given this one-year statutory maximum, a" and inserting in lieu thereof "A", by inserting "one-year" immediately following "near the", and by inserting "or bodily injury" immediately following "resulting in death".

The Commentary to §2H1.4 captioned "Background" is amended by inserting the following sentences at the end of the first paragraph:

"The 6-level increase under subsection (a)(2) reflects the 2-level increase that is applied to other offenses covered in this Part plus a 4-level increase for the commission of the offense under actual or purported legal authority. This 4-level increase is inherent in the base offense level of 10 under subsection (a)(1)."

The purpose of this amendment is to correct an anomaly between the offense level under this section and §2H1.5 when the offense level is determined under subsection (a)(2). Section 2H1.4 is similar to §2H1.5 in that it may or may not involve the use of force. Under §2H1.4, however, the offense must involve the abuse of actual or purported legal authority. The base offense level of 10 used in 2H1.4(a)(1) has a built-in 4-level enhancement (which corresponds to the base offense level of 6 under §2H1.5(a)(1) plus the 4-level increase for a public official). There is an anomaly, however, when the base offense level from (a)(2) is used. In such cases, §2H1.4 results in an offense level that is 4 levels less than §2H1.5 when the offense is committed by a public official. The Commentary to §2H1.4 is also amended to reflect the increase in the maximum authorized sentence from one to ten years in cases involving bodily injury. **The effective date of this amendment is November 1, 1989.**

167. The Commentary to §2H1.5 captioned "Application Notes" is amended in Note 1 by deleting "explained" and inserting in lieu thereof "defined".

The Commentary to §2H1.5 captioned "Application Notes" is amended in Note 2 by deleting "§2H1.4(b)(1)" and inserting in lieu thereof "§2H1.5(b)(1)", and by deleting "the adjustment at" immediately before "§3B1.3".

The purposes of this amendment are to correct a clerical error and to make editorial improvements. **The effective date of this amendment is November 1, 1989.**

168. Section 2H2.1(a)(1) is amended by deleting "persons" and inserting in lieu thereof "person(s)".

The Commentary to §2H2.1 captioned "Background" is amended by deleting "Specific offense characteristics" and inserting in lieu thereof "Alternative base offense levels".

The purpose of this amendment is to correct two clerical errors. **The effective date of this amendment is November 1, 1989.**

169. Section 2H3.1 is amended by deleting:

"(a) Base Offense Level (Apply the greater):

(1) 9; or

(2) If the purpose of the conduct was to facilitate another offense, apply the guideline applicable to an attempt to commit that offense.

(b) Specific Offense Characteristic

(1) If the purpose of the conduct was to obtain direct or indirect commercial advantage or economic gain not covered by §2H3.1(a)(2) above, increase by 3 levels.",

and inserting in lieu thereof:

"(a) Base Offense Level: 9

(b) Specific Offense Characteristic

(1) If the purpose of the conduct was to obtain direct or indirect commercial advantage or economic gain, increase by 3 levels.

(c) Cross Reference

(1) If the purpose of the conduct was to facilitate another offense, apply the guideline applicable to an attempt to commit that offense, if the resulting offense level is greater than that determined above."

The purpose of this amendment is to correct an anomaly in §2H3.1. Currently, specific offense characteristic (b)(1) applies only to base offense level (a)(1). Consequently, conduct facilitating an offense for economic gain of level 8 or 9 would result in a greater offense level (11 or 12) than conduct facilitating a more serious (level 10 or 11) offense. **The effective date of this amendment is November 1, 1989.**

170. Section 2J1.1 is amended by deleting:

"If the defendant was adjudged guilty of contempt, the court shall impose a sentence based on stated reasons and the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2).",

and inserting in lieu thereof:

"Apply §2X5.1 (Other Offenses).".

The Commentary to §2J1.1 captioned "Application Note" is amended in Note 1 by deleting "See, however, §2X5.1 (Other Offenses)." and inserting in lieu thereof "In certain cases, the offense conduct will be sufficiently analogous to §2J1.2 (Obstruction of Justice) for that guideline to apply."

This section is designated as a guideline, but it is not a guideline contemplated by the Sentencing Reform Act. The purpose of this amendment is to clarify the Commission's original intent by referencing this section to §2X5.1 (Other Offenses). **The effective date of this amendment is November 1, 1989.**

171. The Commentary to §2J1.1 captioned "Statutory Provisions" is amended by deleting "Provisions" and inserting in lieu thereof "Provision", and by deleting "§" and ", 402".

The purpose of this amendment is to delete a reference to a petty offense. **The effective date of this amendment is November 1, 1989.**

172. Section 2J1.2(b)(1) is amended by deleting "defendant obstructed or attempted to obstruct the administration of justice by" and inserting in lieu thereof "offense involved", and by deleting "or property," and inserting in lieu thereof ", or property damage, in order to obstruct the administration of justice".

Section 2J1.2(b)(2) is amended by deleting "defendant substantially interfered" and inserting in lieu thereof "offense resulted in substantial interference".

Section 2J1.2(c)(1) is amended by deleting "conduct was" and inserting in lieu thereof "offense involved", and by deleting "such" and inserting in lieu thereof "that".

The Commentary to §2J1.2 captioned "Application Notes" is amended in Note 1 by deleting "'Substantially interfered" and inserting in lieu thereof "'Substantial interference", and by deleting "offense conduct resulting in" immediately before "a premature".

The purposes of this amendment are to clarify the guideline and to ensure that an attempted obstruction is not excluded from subsection (c) because of the non-parallel language between (b)(1) and (c)(1). **The effective date of this amendment is November 1, 1989.**

173. The Commentary to §2J1.2 captioned "Statutory Provisions" is amended by deleting "1503-" and inserting in lieu thereof "1503, 1505-".

The purpose of this amendment is to delete a reference to a petty offense. **The effective date of this amendment is November 1, 1989.**

174. The Commentary to §2J1.2 captioned "Statutory Provisions" is amended by inserting ", 1516" immediately following "1513".

The purpose of this amendment is to expand the coverage of an existing guideline to include a new offense (Obstruction of a Federal Audit) created by Section 7078 of the Anti-Drug Abuse Act of 1988. **The effective date of this amendment is November 1, 1989.**

175. Section 2J1.3 is amended in the caption by inserting "or Subornation of Perjury" immediately following "Perjury".

Section 2J1.3(b)(1) is amended by deleting "defendant suborned perjury by" and inserting in lieu thereof "offense involved", and by deleting "or property" and inserting in lieu thereof ", or property damage, in order to suborn perjury".

Section 2J1.3(b)(2) is amended by deleting "defendant's" immediately following "If the", and by deleting "substantially interfered" and inserting in lieu thereof "resulted in substantial interference".

Section 2J1.3(c)(1) is amended by deleting "conduct was perjury" and inserting in lieu thereof "offense involved perjury or subornation of perjury", and by deleting "such" and inserting in lieu thereof "that".

The Commentary to §2J1.3 captioned "Application Notes" is amended in Note 1 by deleting "Substantially interfered" and inserting in lieu thereof "Substantial interference", and by deleting "offense conduct resulting in" immediately before "a premature".

The purposes of this amendment are to clarify the guideline and to ensure that subornation of perjury is not excluded from subsection (c) due to a lack of parallel wording in the subsections. **The effective date of this amendment is November 1, 1989.**

176. Section 2J1.4(b)(1) is amended by deleting:

"If the defendant falsely represented himself as a federal officer, agent or employee to demand or obtain any money, paper, document, or other thing of value or to conduct an unlawful arrest or search, increase by 6 levels.",

and inserting in lieu thereof:

"If the impersonation was committed for the purpose of conducting an unlawful arrest, detention, or search, increase by 6 levels.".

Section 2J1.4 is amended by inserting the following additional subsection:

"(c) Cross Reference

- (1) If the impersonation was to facilitate another offense, apply the guideline for an attempt to commit that offense, if the resulting offense level is greater than the offense level determined above."

The purpose of this amendment is to relate the offense levels more directly to the underlying offense where the impersonation is committed for the purpose of facilitating another offense. **The effective date of this amendment is November 1, 1989.**

177. Section 2J1.5(b)(1) is amended by deleting "substantially interfered" and inserting in lieu thereof "resulted in substantial interference".

The Commentary to §2J1.5 captioned "Application Notes" is amended in Note 1 by deleting "Substantially interfered" and inserting in lieu thereof "Substantial interference", and by deleting "offense conduct resulting in" immediately before "a premature".

The purpose of this amendment is to clarify the guideline. **The effective date of this amendment is November 1, 1989.**

178. Chapter Two, Part J is amended by deleting §2J1.7 in its entirety as follows:

"§2J1.7. Commission of Offense While on Release

- (a) Base Offense Level: 6
- (b) Specific Offense Characteristics
 - (1) If the offense committed while on release is punishable by death or imprisonment for a term of fifteen years or more, increase by 6 levels.
 - (2) If the offense committed while on release is punishable by a term of imprisonment of five or more years, but less than fifteen years, increase by 4 levels.
 - (3) If the offense committed while on release is a felony punishable by a maximum term of less than five years, increase by 2 levels.

Commentary

Statutory Provision: 18 U.S.C. § 3147.

Application Notes:

1. This guideline applies whenever a sentence pursuant to 18 U.S.C. § 3147 is imposed.
2. By statute, a term of imprisonment imposed for a violation of 18 U.S.C. § 3147 runs consecutively to any other term of imprisonment. Consequently, a sentence for such a violation is exempt from grouping under the multiple count rules. See §3D1.2.

Background: Because defendants convicted under this section will generally have a prior criminal history, the guideline sentences provided are greater than they otherwise might appear."

A replacement guideline with accompanying commentary is inserted as §2J1.7 (Commission of Offense While on Release).

The purpose of this amendment is to reflect the fact that 18 U.S.C. § 3147 is an enhancement provision, not a distinct offense. Created in 1984 as part of the Comprehensive Crime Control Act, the statute contained interim provisions (mandatory consecutive sentences that were subject to the parole and good

time provisions of prior law) that were to be in effect until the sentencing guidelines took effect. The Senate Report to S.1762 indicates that the mandatory nature of the interim provisions was to be eliminated when the sentencing guidelines took effect ("Section 213(h) [220(g) of the CCCA of 1984] amends the new provision in title I of this Act relating to consecutive enhanced penalties for committing an offense while on release (new 18 U.S.C. § 3147)) by eliminating the mandatory nature of the penalties in favor of utilizing sentencing guidelines" (Senate Report 98-225 at 186). The statute, as amended, however, did not actually eliminate all language referring to mandatory penalties. A mandatory consecutive term of imprisonment is required but, unlike other mandatory provisions, there is no minimum required.

The amendment converts this section into an offense level adjustment for the offense committed while on release, a treatment that is considerably more consistent with the treatment of other offense/offender characteristics. **The effective date of this amendment is November 1, 1989.**

179. Section 2J1.8(b)(1) is amended by deleting "substantially interfered" and inserting in lieu thereof "resulted in substantial interference".

Section 2J1.8(c)(1) is amended by deleting "conduct was" and inserting in lieu thereof "offense involved", and by deleting "such" and inserting in lieu thereof "that".

The Commentary to §2J1.8 captioned "Application Notes" is amended in Note 1 by deleting "Substantially interfered" and inserting in lieu thereof "Substantial interference", and by deleting "offense conduct resulting in" immediately before "a premature".

The Commentary to §2J1.8 captioned "Application Notes" is amended in Note 2 by deleting the first sentence as follows: "This section applies only in the case of a conviction under the above referenced (or equivalent) statute."

The purpose of this amendment is to clarify the guideline. **The effective date of this amendment is November 1, 1989.**

180. The Commentary to §2J1.9 captioned "Application Notes" is amended in Note 2 by deleting the first sentence as follows: "This section applies only in the case of a conviction under the above referenced (or equivalent) statute."

The purpose of this amendment is to clarify the commentary. **The effective date of this amendment is November 1, 1989.**

181. Section 2J1.9(b)(1) is amended by deleting "for refusing to testify" and inserting in lieu thereof "made or offered for refusing to testify or for the witness absenting himself to avoid testifying".

The Commentary to §2J1.9 captioned "Application Notes" is amended by deleting:

"1. 'Refusing to testify' includes absenting oneself for the purpose of avoiding testifying.",

and by renumbering Notes 2 and 3 as 1 and 2 respectively.

The purpose of this amendment is to move material from the commentary to the guideline itself where it more properly belongs. **The effective date of this amendment is November 1, 1989.**