

**PROMULGATION AND AMENDMENT OF USSG § 2D1.11
FOR OFFENSES INVOLVING METHAMPHETAMINE PRECURSORS
1988-2012**

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
11/18/88	100-690 Chemical Diversion and Trafficking Act, §§ 6053, 6054, 6055 (1988).	<p>Section 6055.</p> <p>Amended 21 U.S.C. § 841(d) (now (c)) to read as follows:</p> <p>(d) Any person who knowingly or intentionally -</p> <p>-</p> <p>(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this title;</p> <p>(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this title . . .</p> <p>shall be fined in accordance</p>		<p>Amend. No. 371 (Nov. 1, 1991)</p> <p>Initial promulgation</p> <ul style="list-style-type: none"> • Promulgated new § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical). • Set base offense levels by reference to a new Chemical Quantity Table, which set base offense levels by quantity of listed precursor chemicals (including ephedrine, phenylpropanolamine, pseudoephedrine, and 3, 4-methylenedioxy-phenethyl-2-propanone), ranging from level 12 (to which, <i>e.g.</i>, less than 120 grams of ephedrine was assigned) to level 28 (to which, <i>e.g.</i>, 20 kilograms or more of ephedrine was assigned). As explained below, the effect was to remove from the court the authority to determine, as an evidentiary matter, the likely yield of the precursors, as they had previously done. Instead, a 50% yield would be presumed based on the Commission’s determinations, which were drawn from information received from the DEA.

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
		<p>with title 18, United States Code, or imprisoned not more than 10 years, or both.</p> <p>Added new subsection to 21 U.S.C. § 841 (now at (f)(1)):</p> <p>(g)(1) Whoever knowingly distributes a listed chemical in violation of this title (other than in violation of a recordkeeping or reporting requirement of section 310) shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.</p> <p>Section 6053.</p> <p>Added new subsection to 21 U.S.C. § 960:</p> <p>(d) Any person who knowingly or intentionally -</p> <p>-</p> <p>(1) imports or exports a listed chemical with intent</p>		<ul style="list-style-type: none"> • Included a 2-level enhancement if a dangerous weapon was possessed. • Included a 3-level reduction for convictions under § 841(d)(2) [currently (c)(2)], (g)(1) [currently (f)(1)], and 960(d)(2) “unless the defendant know or believed that the listed chemical was to be used to manufacture a controlled substance.” In an application note, explained that in situations in which the defendant did not know or actually believe that the listed chemical would be used to manufacture a controlled substance, the 3-level reduction “reflect[s] that the defendant is less culpable than one who possessed or distributed listed chemicals knowing or believing that they would be used to manufacture a controlled substance unlawfully.” • Included a cross-reference to § 2D1.1 or § 2D1.4 (the former guideline for attempts and conspiracies in drug cases) “if the offense involved unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully . . . as appropriate, if the offense level is greater than that determined above.” • In its Reason for Amendment, stated only this: “This amendment adds a guideline to address 21

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
		<p>to manufacture a controlled substance in violation of this title or, in the case of an exportation, in violation of the law of the country to which the chemical is exported; or</p> <p>(2) imports or exports a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance in violation of this title or, in the case of an exportation, in violation of the law of the country to which the chemical is exported;</p> <p>shall be fined in accordance with title 18, United States Code, or imprisoned not more than 10 years, or both.</p> <p>Section 6054. Defined “listed chemical” to mean “any listed precursor</p>		<p>U.S.C. §§ 841(d)(1), (d)(2), (g)(1), 960(d)(1), (d)(2), violations of the Chemical Diversion and Trafficking Act (CDTA) that are not directly addressed by the existing guidelines.”</p> <p>For more information regarding the Commission’s analysis and rationale for structuring the new guideline in this manner, see the Drug Working Group’s Report and Amendment Proposals on Listed Chemicals (1990) [“USSC, 1990 <i>Listed Chemical Report</i>”], which was available for inspection at the time of the proposed new guideline. <i>See</i> 56 Fed. Reg. 1846 (Jan 17, 1991). The report is available at http://www.src-project.org/wp-content/uploads/2009/08/ussc_report_drug_19901113.pdf.</p> <p>According to this report, the base offense levels selected by the Commission were drawn from information provided to it by the DEA regarding potential yield of the precursor chemicals, though representing a 50% theoretical yield rather than the 100% theoretical yield assumed by the DEA. <i>See</i> USSC, 1990 <i>Listed Chemical Report</i> at 10. However, the actual information provided by the DEA is not contained in the report.</p> <p>Also contained in the report is an acknowledgment that the new Chemical Quantity Table will remove from judges the task of determining potential yield</p>

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
		chemical or listed essential chemical” under 21 U.S.C. § 802, and set forth the lists of precursor and essential chemicals in the statute itself.		subject to adversarial testing (as they had when such offenses were charged as conspiracies to manufacture), <i>id.</i> at 4-5; an explanation of the minimum base offense level of 12 to represent “the inherent danger and societal harm when persons act to further the clandestine production of controlled substances” and an assumption regarding comparative seriousness, <i>id.</i> at 11; a discussion of the firearm enhancement as reflecting the “same societal concerns about the association of drugs and firearms,” <i>id.</i> at 12-13; and a discussion of the reduced culpability of defendants who do not know a listed chemical will be used unlawfully, <i>id.</i> at 13-15.
12/17/93	103-200 Domestic Chemical Diversion Act of 1993, secs. 2, 8.	Changed the designations of “listed precursor chemicals” and “listed essential chemicals” to “list I chemicals” and “list II chemicals.” Added pills containing ephedrine as a list I chemical, when only ephedrine itself had previously been listed. Added benzaldehyde and nitroethane to the list I		Amend. No. 519 (Nov. 1, 1995) Chemical Quantity Table – ephedrine tablets, benzaldehyde, nitroethane <ul style="list-style-type: none"> • Added application note to provide that “in a case involving ephedrine tablets, use the weight of the ephedrine contained in the tablets, not the weight of the entire tablets, in calculating the base offense level.” • Explained that it added the note to “avoid unwarranted disparity” because ephedrine purchased from a chemical company is “virtually 100 percent pure,” whereas ephedrine tablets

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
		chemicals.		<p>contain about 25 percent ephedrine.</p> <ul style="list-style-type: none"> Added two new listed chemicals, benzaldehyde and nitroethane, to the Chemical Quantity Table, both of which are used to manufacture methamphetamine. Explained that “the base offense levels for listed chemicals in §2D1.11 are determined by reference to the most common controlled substance the chemical is used to manufacture; consequently, this amendment adds these chemicals to the Chemical Quantity Table based on information provided by the Drug Enforcement Administration regarding their use in the production of methamphetamine.” Under the Chemical Quantity Table, less than 107 grams of benzaldehyde and 75 grams of nitroethane were assigned a base offense level of 12; 17.8 kilograms or more of benzaldehyde and 12.6 kilograms or more of nitroethane were assigned a base offense level of 28.
10/03/96	104-237 Comprehensive Methamphetamine Control Act of 1996,	Subsection 302 (a)-(b). Increased statutory maximum from 10 years to 20 years for offenses involving list I chemicals, currently at 21 U.S.C.	Subsection 302(c). (1) In general.—The United States Sentencing Commission shall, in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987,* as though the authority of that	<p>Amend. No. 541 (May 1, 1997)</p> <p>BOLs</p> <ul style="list-style-type: none"> Amended the Chemical Quantity Table to reduce the quantities assigned to the base offense levels, with the effect of increasing base offense levels

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
	sec. 302(a), (b), and (c).	841(c)(1), (c)(2) and 21 U.S.C. § 960(d)(1), (d)(3).	<p>section had not expired, amend the sentencing guidelines to increase by at least two levels the offense level for offenses involving list I chemicals under—</p> <p>(A) section 401(d) (1) and (2) of the Controlled Substances Act (21 U.S.C. 841(d) (1) and (2)); and</p> <p>(B) section 1010(d) (1) and (3) of the Controlled Substance Import and Export Act (21 U.S.C. 960(d) (1) and (3)).</p> <p>(2) Requirement.—In carrying out this subsection, the Commission shall ensure that the offense levels for offenses referred to in paragraph (1) are calculated proportionally on the basis of the quantity of controlled substance that reasonably could have been manufactured in a clandestine setting using the quantity of the list I chemical possessed, distributed, imported, or exported.</p> <p>*Pub. L. No. 100-182, § 21 (Dec. 7, 1987) (authorizing the Commission to promulgate emergency, temporary amendments, for which no notice or comment is required). Amendments promulgated under this authority are to expire unless made permanent during the regular</p>	<p>by two levels. Thus, for example, the amount of ephedrine assigned to BOL 12 was reduced from “less than 120 grams” to “less than 80 grams,” and the amount of ephedrine assigned to level 28 was reduced from 20 kilograms or more to 6 to 20 kilograms, and a new maximum base offense level of 30 was added, to which, <i>e.g.</i>, 20 kilograms or more of ephedrine were assigned.</p> <ul style="list-style-type: none"> • Explained that “[t]his amendment implements section 302 of the Comprehensive Methamphetamine Control Act of 1996, Pub. L. 104-237, 110 Stat. 3099, which directs the Commission to increase by at least two levels the offense levels for offenses involving list I chemicals.” <p>Amend. No. 557 (Nov. 1, 1997)</p> <p>BOLs</p> <ul style="list-style-type: none"> • Repromulgated as permanent Amend. No. 541, explained by the Commission as follows: <p>This amendment implements section 302 of the Comprehensive Methamphetamine Control Act of 1996. That section raises the statutory maximum penalties under 21 U.S.C. 841(d) and 960(d) from ten to</p>

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
			<p>amendment cycle. This section is forth at 28 U.S.C. § 994 note.</p>	<p>twenty years' imprisonment. The Act also instructs the Commission to increase by at least two levels the offense levels for offenses involving list I chemicals under 21 U.S.C. 841(d) (1) and (2) and 960(d) (1) and (3). These offenses involve the possession and importation of listed chemicals knowing, or having reasonable cause to believe, the chemicals will be used to unlawfully manufacture a controlled substance. The Act requires that the offense levels be calculated proportionately on the basis of the quantity of controlled substance that reasonably could be manufactured in a clandestine setting using the quantity of list I chemical possessed, distributed, imported, or exported.</p> <p>The amendment raises the penalties for list I chemicals by two levels. The top of the Chemical Quantity Table for list I chemicals will now be at level 30. The offense level for list II chemicals remains the same. With the new statutory maximum of 20 years, the guidelines will now be able to better take into account aggravating adjustments such as those for role in the offense. Additionally, the increased statutory maximum will allow for higher</p>

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
				<p>sentences for cases convicted under this statute that involve the actual manufacture of a controlled substance.</p> <p>62 Fed. Reg. 8,487, 8,488 (Feb. 25, 1997).</p>
10/03/96	104-237 Comprehensive Methamphetamine Control Act of 1996, sec. 303.		<p>(a) [D]etermine whether the Sentencing Guidelines adequately punish the offenses described in subsection (b) and, if not, promulgate guidelines or amend existing guidelines to provide an appropriate enhancement of the punishment for a defendant convicted of such an offense.</p> <p>(b) Offense.—The offense referred to in subsection (a) is a violation of section 401(d), 401(g)(1), 403(a)(6), or 403(a)(7) of the Controlled Substances Act (21 U.S.C. 841(d), 841(g)(1), 843(a)(6), and 843(a)(7)), in cases in which in the commission of the offense the defendant violated—</p> <p>(1) subsection (d) or (e) of section 3008 of the Solid Waste Disposal Act (relating to handling hazardous waste in a manner inconsistent with Federal or applicable State law);</p> <p>(2) section 103(b) of the Comprehensive</p>	<p>Amend. No. 605 (Nov. 1, 2000)</p> <p>USSG §2D1.11(b)(2) – Unlawful discharge</p> <ul style="list-style-type: none"> • Added 2-level SOC 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.” • In an application note, provided that the enhancement applies “if the conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. § 6938(d), the Federal Water Pollution Control Act, 33 U.S.C. § 1319(c), or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 5124, 9603(b).” • Invited upward departure in cases where “the enhancement under [this subsection] may not

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
			<p>Environmental Response, Compensation and Liability Act (relating to failure to notify as to the release of a reportable quantity of a hazardous substance into the environment);</p> <p>(3) section 301(a), 307(d), 309(c)(2), 309(c)(3), 311(b)(3), or 311(b)(5) of the Federal Water Pollution Control Act (relating to the unlawful discharge of pollutants or hazardous substances, the operation of a source in violation of a pretreatment standard, and the failure to notify as to the release of a reportable quantity of a hazardous substance into the water); or</p> <p>(4) section 5124 of title 49, United States Code (relating to violations of laws and regulations enforced by the Department of Transportation with respect to the transportation of hazardous material).</p>	<p>adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel).”</p> <ul style="list-style-type: none"> • Also in commentary, added that “any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under § 5E1.1 (Restitution) and in fashioning appropriate conditions of supervision” • The Commission provided no independent analysis or empirical study of the incidence or harm created by such uncharged conduct, nor did it discuss the constitutionality of punishment for uncharged conduct, or whether sentences for these offenses were inadequate. • Explained that the Commission had “previously intended to amend these guidelines in this manner” when it amended § 2D1.1 in 1997 in response to this directive (Amend. No. 555), “but due to a technical oversight, the final amendment did not implement that intent.”

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
10/17/00	106-310 Children's Health Act of 2000, title XXXVI, sec. 3651 [Methamphetamine Anti-Proliferation Act of 2000].		<p>[A]mend the guidelines for offenses involving List I chemicals with respect to any violation of paragraph (1) or (2) of section 401(d) of the Controlled Substances Act (21 U.S.C. 841(d) [Note: Probably should read 21 U.S.C. § 841(c), relating to offenses involving listed chemicals] and any violation of paragraph (1) or (3) of section 1010(d) of the Controlled Substance Import and Export Act (21 U.S.C. 960(d)).</p> <p>[W]ith respect to each offense described above involving ephedrine, phenylpropanolamine, or pseudoephedrine (including their salts, optical isomers, and salts of optical isomers), review and amend its guidelines to provide for increased penalties such that those penalties corresponded to the quantity of controlled substance that could reasonably have been manufactured using the quantity of ephedrine, phenylpropanolamine, or pseudoephedrine possessed or distributed.</p> <p>[For purposes of amending the guidelines to increase penalties for possession or distribution of ephedrine,</p>	<p>Amend. No. 611 (May 1, 2001)</p> <p>Chemical Quantity Table – methamphetamine and amphetamine precursors</p> <ul style="list-style-type: none"> • Created a new chemical quantity table at §2D1.11 specifically for ephedrine, pseudoephedrine, and amphetamine precursors (PPA), tying the base offense levels to the base offense level for methamphetamine (actual), assuming a 50 percent yield. Explained that it used the higher guideline ranges for meth (actual) because these chemicals produce meth (actual), as opposed to methamphetamine mixture. • Explained that the assumed 50% yield is “based on information provided by the Drug Enforcement Administration (DEA) that the typical yield of these substances for clandestine laboratories is 50 to 75 percent.” • Also provided a maximum offense level of 38 (as opposed to 30 for other precursor chemicals) to “compl[y] with the directive to establish penalties for these precursors that ‘correspond to the quantity of controlled substance that could have reasonably been manufactured using the quantity of ephedrine, phenylpropanolamine, or pseudoephedrine possessed or distributed.’”

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
			<p>phenylpropanolamine, or pseudoephedrine,] “establish a table of manufacturing conversion ratios for determining the quantity of controlled substance that could reasonably have been manufactured, which must be based on scientific, law enforcement, and other data the Sentencing Commission considers appropriate.</p> <p>[With respect to each offense described above involving any list I chemical other than ephedrine, phenylpropanolamine, or pseudoephedrine,] review and amend its guidelines to provide for increased penalties such that those penalties reflect the dangerous nature of such offenses, the need for aggressive law enforcement action to fight such offenses, and the extreme dangers associated with unlawful activity involving methamphetamine and amphetamine, including –</p> <p>(1) the rapidly growing incidence of controlled substance manufacturing;</p> <p>(2) the extreme danger inherent in manufacturing controlled substances;</p>	<ul style="list-style-type: none"> • For offenses involving these three precursors, the amendment had the impact of eliminating the 6-level distinction between offenses involving intent to manufacture methamphetamine (sentenced under §2D1.1) and attempt to manufacture methamphetamine. • Eliminated the Ephedrine Equivalency Table in § 2D1.11 to provide instead “an instruction for the court to determine the base offense level in cases involving multiple precursors (other than ephedrine, pseudoephedrine, or PPA) by using the quantity of the single chemical resulting in the greatest offense level. Also provided for an upward departure when “the offense level does not adequately address the seriousness of the offense.” • Provided an exception for the three primary precursors, so that where two or more of these chemicals are involved, the offense level is determined by using the total quantity of these chemicals involved. This exception was based on “studies conducted by the DEA indicat[ing] that because the manufacturing process for amphetamine and methamphetamine is identical, there are cases in which the different precursors are included in the same batch of drugs.”

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
			<p>(3) the threat to public safety posed by manufacturing controlled substances; and</p> <p>(4) the recent increase in the importation, possession, and distribution of list I chemicals for the purpose of manufacturing controlled substances.</p> <p>Emergency amendment authority: [Promulgate these amendments] as soon as practicable after the date of the enactment of this Act in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (Public Law 100-182), as though the authority under that Act had not expired.*</p> <p>*Pub. L. No. 100-182, § 21 (Dec. 7, 1987) (authorizing the Commission to promulgate emergency, temporary amendments, for which no notice or comment is required). Amendments promulgated under this authority are to expire unless made permanent during the regular amendment cycle. This section is forth at 28 U.S.C. § 994 note.</p>	<ul style="list-style-type: none"> • Added a conversion table at § 2D1.1 for the three primary precursor chemicals providing for a 50% conversion ratio, “based on data from the DEA that the actual yield from ephedrine, pseudoephedrine, or PPA typically is in the range of 50 to 75 percent.” • Increased the base offense level for five other precursor chemicals (benzaldehyde, hydriotic acid, methylamine, nitroethan, and norpseudoephedrine), tying them to an assumed 50 percent yield of methamphetamine (actual) and retaining the cap at level 30. As with ephedrine, psueoephedrine, and phenylpropanolamine (PPA), this represented a change from their previous link to penalties to methamphetamine (mixture) and a significant increase in offense levels. Explained that the change was based on studies “conducted by the DEA” that indicate that “[t]he manufacture of methamphetamine or amphetamine from the five additional List I chemicals is a more complex process which requires a heightened level of expertise.” For example, before the amendment, an offense involving between 107 grams and 142 grams of Benzaldehyde was assigned a base offense level of 16. After the amendment, only 5.3 grams will trigger a base offense level of 16, and 142 grams gets a base offense level of 26.

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
				<p>The assumed 50% yield of methamphetamine from pseudoephedrine is unrealistic for most clandestine labs.</p> <p>Resources:</p> <p>Nicholas G. Powell, <i>Estimating Actual Yield in Clandestine Laboratory Syntheses of Methamphetamine</i>, available at http://www.forensicscience.co.nz/wp-content/uploads/yield.pdf</p> <p>Nila Bremer & Robin J. Woolery, <i>The Yield of Methamphetamine, Unreacted Precursors and Birch By-Products with the Lithium-Ammonia Reduction Method as Employed in Clandestine Laboratories</i>, Mid-Western Association of Forensic Scientists [MAFS] Newsletter (Fall 1999), available at http://txn.fd.org/Bremer%20Meth%20Yield%20Report.pdf.</p> <p>In <i>United States v. Martin</i>, 438 F.3d 621 (6th Cir. 2006), the Sixth Circuit found that the Commission was required to follow the statute's directive to use scientific data in establishing a conversion ratio for pseudoephedrine to methamphetamine, but the defendant there had failed to show that the Commission did not do so.</p>

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
				<p>Amend. No. 625 (Nov. 1, 2001)</p> <ul style="list-style-type: none"> • Repromulgated the emergency amendments promulgated under Amend. No. 611, <i>supra</i>. • Added iodine to the Chemical Quantity Table in § 2D1.11(e) “in response to a recent classification of iodine as a List II chemical.” Explained that “[i]odine is used to produce hydrogen iodide, which, in the presence of water, becomes hydriodic acid, a List I chemical that is a reagent used in the production of amphetamine and methamphetamine. The penalties for iodine were established based upon its conversion to hydriodic acid.”
11/01/03				<p>Amend. No. 661 (Nov. 1, 2003)</p> <p>Chemical Quantity Table – red phosphorous</p> <ul style="list-style-type: none"> • Added red phosphorous to the Chemical Quantity Table as a list I chemical. Less than 3 grams of red phosphorous is assigned a base offense level of 12, and 714 grams or more are assigned a base offense level of 30. • Explained that the amendment was “in response to a recent classification of red phosphorous as a List I chemical.” Gave no explanation for how it determined these base offense levels.

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
11/01/04				<p>Amend. No. 667 (Nov. 1, 2004)</p> <p>Chemical Quantity Table – white phosphorous, hypophosphorous acid</p> <ul style="list-style-type: none"> • Added white phosphorous and hypophosphorous acid to the Chemical Quantity Table as a list I chemical. • Explained that “both substances are list I substances that can be substituted for red phosphorus in the manufacture of methamphetamine” and that it would have added them at the same time it added red phosphorus but “notice and comment requirements” prevented it from doing so. <p>USSG § 2D1.11(b)(2) – 3-level reduction for reduced culpability</p> <ul style="list-style-type: none"> • Expanded application of the 3-level reduction for reduced culpability to apply to 21 U.S.C. § 960(d)(3) and (d)(4). • Explained that these provisions “similarly require a finding that a person who imports, exports, or serves as a broker for, a listed chemical knows or has a reasonable cause to believe, that the listed chemical will be used to manufacture a controlled

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
				<p>substance.” As with 21 U.S.C. § 841(c)(2), the reduction applies to those who did not have knowledge or actual belief that the list I chemical would be used to manufacture a controlled substance.</p> <p>USSG § 2D1.11(b)(4) – mass marketing</p> <ul style="list-style-type: none"> • Added 2-level enhancement 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.” • Explained that the Commission “identified use of an interactive computer service as a tool providing easier access to illegal products. Use of an interactive computer service enables drug traffickers to market their illegal products more efficiently and anonymously to a wider audience than through traditional drug trafficking means, while making it more difficult for law enforcement authorities to discover the offense and apprehend the offenders.”
11/01/04				<p>Amend. No. 668 (Nov. 1, 2004)</p> <p>USSG § 2D1.11(a) – Mitigating role cap</p>

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
				<ul style="list-style-type: none"> • Added the graduated mitigating role cap to the maximum base offense level.
03/09/06	109-177 USA PATRIOT Improvement and Reauthorization Act of 2005, sec. 731.	<p>21 U.S.C. § 865. New offense for smuggling methamphetamine precursor chemicals while using facilitated entry programs with stat max of 15 years, as follows:</p> <p>(a) The sentence of imprisonment imposed on a person convicted of an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), involving methamphetamine or any listed chemical that is defined in section 102(33) of the Controlled Substances Act (21 U.S.C. 802(33), shall, if the offense is committed under</p>		<p>Amend. No. 705 (Nov. 1, 2007)</p> <p>USSG § 2D1.11(b)(5) – Enhancement and application note for convictions under 21 U.S.C. § 865</p> <ul style="list-style-type: none"> • Added 2-level enhancement “if the defendant is convicted under 21 U.S.C. § 865.” • Added application note explaining how to achieve “total punishment” under the guidelines in a manner that satisfies the statutory requirement of a consecutive sentence. • Explained that it determined a 2-level enhancement “is appropriate because such conduct is analogous to abusing a position of trust, which receives a two-level adjustment under §3B1.3.”

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
		<p>the circumstance described in subsection (b), be increased by a consecutive term of imprisonment of not more than 15 years.</p> <p>(b) Circumstances.--For purposes of subsection (a), the circumstance described in this subsection is that the offense described in subsection (a) was committed by a person who--</p> <p>(1) was enrolled in, or who was acting on behalf of any person or entity enrolled in, any dedicated commuter lane, alternative or accelerated inspection system, or other facilitated entry program administered or approved by the Federal Government for use in entering the United States; and</p> <p>(2) committed the offense</p>		

Date	Congressional Action			Commission Action and Guideline Provisions Affected
	Public Law No.	New Statutory Penalty	Directive to the Commission	
		while entering the United States, using such lane, system, or program.		
11/01/10				<p>Amend. No. 745 (Nov. 1, 2010)</p> <p>Chemical Quantity Table – iodine</p> <ul style="list-style-type: none"> • Moved iodine from list II to list I in the Chemical Quantity Table, “due to a regulatory change in which iodine was upgraded.” Specified the amount of iodine needed (1.3 kilograms) for the maximum base offense level of 30 to apply.