

**Approach 1**

*33. Synopsis of Proposed Amendment:*

In the 1994 amendment cycle, the Commission took a first step in compressing the Drug Quantity Table by eliminating levels 40 and 42 from the table. Three options for compressing the Drug Quantity Table further are shown in Attachment 1. The thrust of this proposed amendment is that although drug quantity (in conjunction with role in the offense) is an appropriate factor in assessing offense seriousness (drug quantity directly measures the scale of the offense and potential for harm) and thus should be retained, the Commission's current guidelines contain too many quantity distinctions. That is, the drug table increases too quickly for small differences in quantity, particularly at certain offense levels. Under this proposal, the Drug Quantity Table would be compressed so that its contribution to the determination of the offense level would be somewhat reduced.

Three options are shown. Although the different options reflect somewhat different rationales, the effect of each option would be to reduce the number of gradations in the Drug Quantity Table, thereby making the guidelines somewhat less sensitive to drug quantity. Note that each one-level increment in offense level changes the final guideline range by about 12 percent above level 19, and increments of more than one level are compounded (e.g., a six-level change roughly doubles or halves the final guideline range). Thus, reductions of 2, 4, or 6 levels, as shown in the various options below, can have a substantial impact on the final guideline range.

For ease of presentation, only the current and proposed offense levels for heroin offenses are shown. Because the controlled substances in the Drug Quantity Table are related by established ratios, the offense levels for the other controlled substances would be conformed accordingly.

Option A. When the Commission initially developed the Drug Quantity Table, it keyed the offense level for 1 KG of heroin (ten-year mandatory minimum) at level 32 (121–151 months for a first offender) and 100 grams of heroin (five-year mandatory minimum) at level 26 (63–78 months for a first offender) because these guideline ranges included, or were close to, the five- and ten-year mandatory minimum sentences. However, offense levels 30 (97–121 months) and 24 (51–63 months) also include the five- and ten-year mandatory minimum sentences, as do offense levels 31 (108–135 months) and

25 (57–71 months). Option A displays how the heroin offense levels would look if the Commission used the offense levels corresponding to the lowest (rather than the highest) guideline ranges that include the statutory minimum sentence. The drug table is compressed because offense levels lower than level 22 are not changed (offense levels 22 and 24 from the current Drug Quantity Table are combined).

Option B. The legislative history of the Anti-Drug Abuse Act of 1986 provides support for the proposition that the heartland of the conduct that the Congress envisioned it was addressing with the ten-year mandatory minimum was the ringleader in large scale drug offenses. Senator Byrd, then the Senate Minority Leader, explained the intent during floor debate:

For the kingpins—the masterminds who are really running these operations—and they can be identified by the amount of drugs with which they are involved—we require a jail term upon conviction. If it is their first conviction, the minimum term is 10 years. \* \* \* Our proposal would also provide mandatory minimum penalties for the middle-level dealers as well. Those criminals would also have to serve time in jail. The minimum sentences would be slightly less than those for the kingpins, but they nevertheless would have to go to jail—a minimum of 5 years for the first offense. 132 Cong. Rec. S. 14300 (Sept. 30, 1986).

See also 132 Cong. Rec. 22993 (Oct. 11, 1986) (statement of Rep. Laffalce) (“the bill \* \* \* acknowledge[s] that there are differing degrees of culpability in the drug world. Thus, separate penalties are established for the biggest traffickers, with another set of penalties for other serious drug pushers”); H.R. Rep. No. 9–845, 99th Cong., 2d Sess., pt. 1 at 11–17 (1986) (construing penalty provisions of a comparable bill, H.R. 5394, similarly).

The typical or heartland role adjustment for kingpins in such large scale offenses is four levels. Thus, the Commission's current drug offense levels (when applied in conjunction with the role in the offense enhancements), in effect, result in double counting. That is, although Congress envisioned a level 32 offense for a first offender, large-scale dealer with one kilogram of heroin (or level 30, see Option A), the Commission has provided a level 36 for the heartland case (level 32 from the Drug Quantity Table plus a four-level increase from §3B1.1). Similarly, the mid-level dealer at whom the five-year mandatory minimum was aimed likely will receive a two-level enhancement for role in the offense. If so, the Commission has

assigned an offense level of 28 (26 from the Drug Quantity Table plus two levels from §3B1.1) to the heartland case for which Congress envisioned an offense level of 26 (or level 24, see discussion at Option A). Option B shows how the heroin offense levels would look if adjusted to avoid this double counting (pegging the reductions to levels 32 and 26, the highest offense levels containing the mandatory minimum penalties).

Option C. This option combines Options A and B, pegging the quantity for the ten-year mandatory minimum at level 26 (level 32 minus two levels from Option A and four levels from Option B) and the quantity for the five-year mandatory minimum at level 22 (level 26 minus two levels from Option A and two levels from Option B). It is to be noted, however, that the resulting offense level for the five-year mandatory minimum quantity minus a four-level adjustment for a minimal role and a three-level adjustment for acceptance of responsibility would produce a guideline range with a minimum of less than 24 months, thus seemingly conflicting with the recent congressional instruction in Section 80001 of the Violent Crime Control and Law Enforcement Act of 1994. In contrast, the lowest offense level provided under Options A and B for such cases has a lower limit (24 months), consistent with this congressional instruction.

*Proposed Amendment:* Section 2D1.1(c) is amended by revision of the quantities associated with offense level 24 and greater as shown in the following chart. Note: The amounts shown are the minimum quantities associated with each offense level offense (e.g., in the current guidelines, offense level 38 covers 30 KG or more of heroin). For simplicity of presentation, only the offense levels for heroin offenses are shown. The offense levels for other controlled substances would be adjusted accordingly (e.g., under §2D1.1(c), 5 kg of cocaine has the same offense level as 1 kg of heroin; the proposed guideline offense levels would maintain this relationship).

**Offense Levels for Heroin Distribution**

OFFENSES (CURRENT GUIDELINES AND OPTIONS A, B, C)

Of- fense level	Cur- rent guide- lines	Option A	Option B	Option C
38 .....	30 KG	.....	.....	
36 .....	10 KG	30 KG	.....	
34 .....	3 KG	10 KG	30 KG	
32 .....	1 KG	3 KG	10 KG	30 KG.