

Application Notes:

1. **Inapplicability of Chapter Three Adjustment.**—Do not apply any adjustment from Chapter Three, Part B (Role in the Offense).
2. **“Continuing Series of Violations”.**—Under 21 U.S.C. § 848, certain conduct for which the defendant has previously been sentenced may be charged as part of the instant offense to establish a “continuing series of violations.” A sentence resulting from a conviction sustained prior to the last overt act of the instant offense is to be considered a prior sentence under §4A1.2(a)(1) and not part of the instant offense.
3. **Multiple Counts.**—Violations of 21 U.S.C. § 848 will be grouped with other drug offenses for the purpose of applying Chapter Three, Part D (Multiple Counts).

Background: Because a conviction under 21 U.S.C. § 848 establishes that a defendant controlled and exercised authority over one of the most serious types of ongoing criminal activity, this guideline provides a minimum base offense level of 38. An adjustment from Chapter Three, Part B is not authorized because the offense level of this guideline already reflects an adjustment for role in the offense.

Section 848 of title 21, United States Code, provides a 20-year minimum mandatory penalty for the first conviction, a 30-year minimum mandatory penalty for a second conviction, and a mandatory life sentence for principal administrators of extremely large enterprises. If the application of the guidelines results in a sentence below the minimum sentence required by statute, the statutory minimum shall be the guideline sentence. *See* §5G1.1(b).

Historical Note

Effective November 1, 1987. Amended effective October 15, 1988 (amendment 66); November 1, 1989 (amendment 139); November 1, 1992 (amendment 447); November 1, 2024 (amendment 831); November 1, 2025 (amendment 836).

§2D1.6. Use of Communication Facility in Committing Drug Offense; Attempt or Conspiracy

- (a) Base Offense Level: the offense level applicable to the underlying offense.

Commentary

Statutory Provision: 21 U.S.C. § 843(b).

Application Note:

1. Where the offense level for the underlying offense is to be determined by reference to §2D1.1, *see* Application Note 5 of the Commentary to §2D1.1 for guidance in determining the scale of the offense. Note that the Drug Quantity Table in §2D1.1 provides a minimum offense level of 12 where the offense involves heroin (or other Schedule I or II opiates), cocaine (or other Schedule I or II stimulants), cocaine base, PCP, methamphetamine, LSD (or other Schedule I or II hallucinogens), fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), or fentanyl analogue (§2D1.1(c)(14)); a minimum offense level of 8 where the offense involves flunitrazepam (§2D1.1(c)(16)); and a minimum offense level of 6 otherwise (§2D1.1(c)(17)).