

§2M3.2

- (2) **37**, otherwise.

Commentary

Statutory Provisions: 18 U.S.C. § 794; 42 U.S.C. §§ 2274(a), (b), 2275.

Application Notes:

1. “**Top secret information**” is information that, if disclosed, “reasonably could be expected to cause exceptionally grave damage to the national security.” Executive Order 13526 (50 U.S.C. § 3161 note).
2. The Commission has set the base offense level in this subpart on the assumption that the information at issue bears a significant relation to the nation’s security, and that the revelation will significantly and adversely affect security interests.

Background: Offense level distinctions in this subpart are generally based on the classification of the information gathered or transmitted. This classification, in turn, reflects the importance of the information to the national security.

<i>Historical Note</i>	Effective November 1, 1987. Amended effective November 1, 2010 (amendment 746); November 1, 2013 (amendment 778); November 1, 2014 (amendment 789); November 1, 2025 (amendment 836).
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§2M3.2. Gathering National Defense Information

- (a) Base Offense Level:

- (1) **35**, if top secret information was gathered; or
- (2) **30**, otherwise.

Commentary

Statutory Provisions: 18 U.S.C. §§ 793(a), (b), (c), (d), (e), (g), 1030(a)(1). For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. See Commentary to §2M3.1.
2. If the defendant is convicted under 18 U.S.C. § 793(d) or (e), §2M3.3 may apply. See Commentary to §2M3.3.

Background: The statutes covered in this section proscribe diverse forms of obtaining and transmitting national defense information with intent or reason to believe the information would injure the United States or be used to the advantage of a foreign government.

<i>Historical Note</i>	Effective November 1, 1987. Amended effective November 1, 2003 (amendment 654).
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