(2) In any other case, there shall be a rebuttable presumption that the purity is 50% (i.e., that the weight of the actual controlled substance is 50% of the weight of the mixture or substance containing the controlled substance).

The applicable rebuttable presumption set forth above is to be used unless sufficient case-specific information is available to warrant a more specific determination as to the amount of the actual controlled substance.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended by deleting Note 1 and inserting in lieu thereof:

"1. The rebuttable presumptions set forth in Note (A) will apply unless sufficient case-specific information is available to make a more specific determination as to the weight of the actual controlled substance.

"Generally, more specific weight/ purity information will be obtained from DEA Form 7. In this form, 'total net weight' (Item 32) refers to the amount of the actual controlled substance. This is the weight to be used in calculation of the base offense level from the Drug Quantity Table.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended by deleting Notes 9 and 18; and by renumbering the remaining notes accordingly.

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 9 (formerly Note 10) by deleting "sentences provided in, and equivalences derived from, the statute (21 U.S.C. § 841(b)(1))," and inserting in lieu thereof "equivalences derived from the statute (21 U.S.C. § 841(b)(1))"; and by deleting "of a substance containing".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 (formerly Note 11) by deleting "total" wherever it appears.

The Commentary to § 2D1.1 captioned "Background" is amended by deleting the first, second, third, seventh, and eighth paragraphs.

Additional Issue for Comment: The Commission invites comment, at the request of Families Against Mandatory Minimums, as to whether the ratio for methamphetamine relative to other controlled substances should be changed and, if so by how much.

41. Synopsis of Proposed Amendment: This proposed amendment simplifies the operation of § 2D1.1 with respect to Schedule I and II Depressants and Schedule II, IV, and V controlled substances by applying the Drug Quantity Table according to the number of pills, capsules, or tablets rather than by the gross weight of the pills,

capsules, or tablets. Schedule I and II Depressants and Schedule III, IV, and V substances are almost always in pill, capsule, or tablet form. The current guidelines use the total weight of the pill, tablet, or capsule containing the controlled substance although there is no statutory requirement to do so. This method leads to anomalies because the weight of most pills is determined primarily by the filler rather than the controlled substance. Thus, heavy pills result in higher offense levels even though there is little or no connection between gross weight and the strength of the pill. Moreover, even the weight of the controlled substance in the pill itself has little connection with the strength of the pill for these offenses. Finally, because these categories contain a wide variety of controlled substances, there is little basis on which to compare the strength of different types of pills (unlike, for example, heroin and morphine that can be compared directly).

Because the offense levels for these offenses are generally lower than for other controlled substances, adoption of a more summary measure that references the number of pills, capsules, or tablets, rather than either their gross or net weight or purity, seems the most appropriate solution. Use of this method will simplify guideline application and more clearly show that the purpose of the Drug Quantity Table is as a proxy for the scale of the offense. Historically, this method (counting pills, tablets, capsules) has been used for such substances in the parole guidelines for many years. It is also noted that the sentencing guidelines currently use this method for anabolic steroids.

*Proposed Amendment:* Section 2D1.1(c)(10) is amended by deleting:

"20 KG or more of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except Anabolic Steroids); 40,000 or more units of Anabolic Steroids.",

And by inserting in lieu thereof:
"40,000 or more units of Schedule I
or II Depressants;

40,000 or more units of Schedule III substances.".

Section 2D1.1(c)(11) is amended by deleting:

"At least 10 KG but less than 20 KG of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except Anabolic Steroids);

At least 20,000 but less than 40,000 units of Anabolic Steroids.",

And by inserting in lieu thereof: "At least 20,000 but less than 40,000 units of Schedule I or II Depressants; At least 20,000 but less than 40,000 units of Schedule III substances.".

Section 2D1.1(c)(12) is amended by deleting:

"At least 5 KG but less than 10 KG of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except Anabolic Steroids);

At least 10,000 but less than 20,000 units of Anabolic Steroids.",

And by inserting in lieu thereof: "At least 10,000 but less than 20,000 units of Schedule I or II Depressants;

At least 10,000 but less than 20,000 units of Schedule III substances.".

Section 2D1.1(c)(13) is amended by deleting:

"At least 2.5 KG but less than 5 KG of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except Anabolic Steroids);

At least 5,000 but less than 10,000 units of Anabolic Steroids.",

And by inserting in lieu thereof: "At least 5,000 but less than 10,000 units of Schedule I or II Depressants;

At least 5,000 but less than 10,000 units of Schedule III substances.".

Section 2D1.1(c)(14) is amended by deleting:

"At least 1.25 KG but less than 2.5 KG of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except Anabolic Steroids);

At least 2,500 but less than 5,000 units of Anabolic Steroids;

20 KG or more of Schedule IV substances.",

And inserting in lieu thereof:
"At least 2,500 but less than 5,000
units of Schedule I or II Depressants;

At least 2,500 but less than 5,000 units of Schedule III substances.

40,000 or more units of Schedule IV substances.".

Section 2D1.1(c)(15) is amended by deleting:

"At least 500 G but less than 1.25 KG of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except Anabolic Steroids);

At least 1,000 but less than 2,500 units of Anabolic Steroids;

At least 8 KG but less than 20 KG of Schedule IV substances.",

And inserting in lieu thereof: "At least 1,000 but less than 2,500

units of Schedule I or II Depressants; At least 1,000 but less than 2,500

units of Schedule III substances; At least 16,000 but less than 40,000 or more units of Schedule IV substances.".

Section 2D1.1(c)(16) is amended by deleting:

"At least 125 G but less than 500 G of Secobarbital (or the equivalent