

PROPOSED AMENDMENT: METHAMPHETAMINE

Synopsis of Proposed Amendment: *This proposed amendment responds to the Methamphetamine Trafficking Penalty Enhancement Act of 1998, Pub. L. 105–277. That Act effectively increased the mandatory minimum sentences for methamphetamine trafficking offenses by cutting in half the quantities of methamphetamine mixture and methamphetamine substance (i.e., methamphetamine-actual) necessary to trigger the five- and ten-year mandatory minimum statutory penalties applicable to methamphetamine trafficking offenses. Under 21 U.S.C. § 841(b)(1)(B)(viii), as amended by the Act, the 5-year mandatory minimum is triggered if the offense involves 5 grams or more of methamphetamine-actual or 50 grams or more of methamphetamine-mixture. Under 21 U.S.C. § 841(b)(1)(A)(viii), as amended by the Act, the 10-year mandatory minimum is triggered if the offense involves 50 grams or more of methamphetamine-actual or 500 grams or more of methamphetamine-mixture. This proposed amendment presents three options for changes to the guideline for drug trafficking, §2D1.1, particularly the Drug Quantity Table, that would respond to the Act.*

An issue for comment follows the presentation of Options 1 through 3 regarding whether the Commission should consider making changes to the Drug Equivalency Table in §2D1.1, relating to Phenylacetone/P2P, when possessed for the purpose of manufacturing methamphetamine, and whether it should change the Chemical Quantity Table in §2D1.11, relating to any chemical referenced in that table that is used to manufacture methamphetamine, in order to reflect the increased harm associated with methamphetamine offenses.

(1) Option 1

Option 1- Synopsis:

Option 1 presents a minimum approach to respond to the Act. It merely changes the calculations in the Drug Quantity Table in §2D1.1 for methamphetamine substance (i.e., methamphetamine-actual) and “Ice” (i.e., d-methamphetamine hydrochloride of at least 80% purity) to conform the quantities for those drugs to the quantities that now trigger the statutory 5- and 10-year mandatory minimums. (The quantity in the Drug Quantity Table for methamphetamine-mixture is not proposed to be changed because it already is consistent with the new statutory amounts.)

Adopting Option 1 would have the following effects:

- It would be consistent with the overall structure of the Drug Quantity Table and with past practice.*
- It would be consistent with the apparent intent of Congress, inasmuch as some advocates of the legislation justified its adoption based in part on the Commission’s failure in 1997 guideline amendments relating to*

methamphetamine to directly enhance the penalties for methamphetamine-actual at the same time that it enhanced penalties for methamphetamine-mixture.

- *It would remove structural cliffs between the guideline offense levels and the statutory penalties.*
- *It would simplify the overall penalty structure by making the guideline sentence track the statutory penalties. Maintaining the current inconsistency in the Drug Quantity Table with the mandatory minimum quantity thresholds may result in a more complicated sentencing calculation inasmuch as the mandatory minimum penalties would often trump the penalty derived solely from the table.*
- *It would increase sentences for some percentage of methamphetamine-actual offenders.*
- *Longer sentences would result in an increase to the prison population thus incurring additional costs to the Federal Bureau of Prisons.*
- *The new Congressionally established mandatory minimum quantities for all forms of methamphetamine maintain the presumptive 10 percent purity of methamphetamine-mixture originally established in 1988 legislation. Modifying only the methamphetamine-actual portion of the Drug Quantity Table would have the effect of reversing the 1997 amendment by the Commission which raised the presumptive purity of methamphetamine-mixture to 20%.*

Option 1- Proposed Amendment:

§2D1.1. **Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy**

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(c) DRUG QUANTITY TABLE

Controlled Substances and Quantity*

Base Offense Level

(1) * * *

Level 38

M 15 KG or more of Methamphetamine, or 3 1.5 KG or more of Methamphetamine (actual), or 3 1.5 KG or more of "Ice";

* * *

(2) * * * **Level 36**

M At least 5 KG but less than 15 KG of Methamphetamine, or at least ~~1KG~~
500 G but less than ~~3~~1.5 KG of Methamphetamine (actual), or at least ~~1KG~~
500 G but less than ~~3~~1.5 KG of "Ice";

(3) * * * **Level 34**

M At least 1.5 KG but less than 5 KG of Methamphetamine, or at least ~~300~~150 G
but less than ~~1KG~~500 G of Methamphetamine (actual), or at least ~~300~~150 G
but less than ~~1KG~~500 G of "Ice";

* * *

(4) * * * **Level 32**

M At least 500 G but less than 1.5 KG of Methamphetamine, or at least ~~100~~50 G
but less than ~~300~~150 G of Methamphetamine (actual), or at least ~~100~~50 G but
less than ~~300~~150 G of "Ice";

* * *

(5) * * * **Level 30**

M At least 350 G but less than 500 G of Methamphetamine, or at least ~~70~~35 G
but less than ~~100~~50 G of Methamphetamine (actual), or at least ~~70~~35 G but
less than ~~100~~50 G of "Ice";

* * *

(6) * * * **Level 28**

M At least 200 G but less than 350 G of Methamphetamine, or at least ~~40~~20 G
but less than ~~70~~35 G of Methamphetamine (actual), or at least ~~40~~20 G but less
than ~~70~~35 G of "Ice";

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(7) * * * **Level 26**

M At least 50 G but less than 200 G of Methamphetamine, or at least ~~10~~5 G but
less than ~~40~~20 G of Methamphetamine (actual), or at least ~~10~~5 G but less than
~~40~~20 G of "Ice";

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(8) * * * **Level 24**

M At least 40 G but less than 50 G of Methamphetamine, or at least ~~8~~4 G but less
than ~~10~~5 G of Methamphetamine (actual), or at least ~~8~~4 G but less than ~~10~~5 G
of "Ice";

* * *

(9) * * * **Level 22**

M At least 30 G but less than 40 G of Methamphetamine, or at least ~~6~~3 G but less than ~~8~~4 G of Methamphetamine (actual), or at least ~~6~~3 G but less than ~~8~~4 G of "Ice";

* * *

(10) * * * **Level 20**

M At least 20 G but less than 30 G of Methamphetamine, or at least ~~4~~2 G but less than ~~6~~3 G of Methamphetamine (actual), or at least ~~4~~2 G but less than ~~6~~3 G of "Ice";

* * *

(11) * * * **Level 18**

M At least 10 G but less than 20 G of Methamphetamine, or at least ~~2~~1 G but less than ~~4~~2 G of Methamphetamine (actual), or at least ~~2~~1 G but less than ~~4~~2 G of "Ice";

* * *

(12) * * * **Level 16**

M At least 5 G but less than 10 G of Methamphetamine, or at least ~~1~~500 MG but less than ~~2~~1 G of Methamphetamine (actual), or at least ~~1~~500 MG but less than ~~2~~1 G of "Ice";

* * *

(13) * * * **Level 14**

M At least 2.5 G but less than 5 G of Methamphetamine, or at least ~~500~~250 MG but less than ~~1~~500 MG of Methamphetamine (actual), or at least ~~500~~250 MG but less than ~~1~~500 MG of "Ice";

* * *

(14) * * * **Level 12**

M Less than 2.5 G of Methamphetamine, or less than ~~500~~250 MG of Methamphetamine (actual), or less than ~~500~~250 MG of "Ice";

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Commentary

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Application Notes:

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DRUG EQUIVALENCY TABLES

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Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)*

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1 gm of Methamphetamine =	2 kg of marihuana
1 gm of Methamphetamine (Actual) =	10 20 kg of marihuana
1 gm of "Ice" =	10 20 kg of marihuana

* * *

**Provided, that the minimum offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12.*

Option 2-

Option 2-Synopsis: *As in Option 1, Option 2 proposes to modify the Drug Quantity Table in §2D1.1 for “methamphetamine-actual” and “Ice” guideline calculations to conform them to the new statutory mandatory minimums. However, if the guideline calculations for methamphetamine mixture currently found in the Drug Quantity Table were not modified (on the rationale that these calculations already are consistent with the statutory quantities), then the presumptive purity of methamphetamine-mixture currently found in the guideline would change from its current level of 20% purity to 10% purity (because of the change in the revised quantities for methamphetamine-actual). Therefore, Option 2 additionally modifies the methamphetamine-mixture guideline calculations in the Drug Quantity Table and the Drug Equivalency Table in order to maintain the 20% presumptive purity currently found in the guideline.*

An issue for comment is included at the end of Option 2 that invites comment on whether the presumptive purity of 20% for methamphetamine-mixture provided for in the option should change to [30%] [40%] [50%]. A change in the presumptive purity for methamphetamine-mixture might be based on recent information from the Drug Enforcement Agency, which indicates a purity of street-level methamphetamine greater than 10% (most recently approximately 27%, but as high as 50%).

Adoption of Option 2 would have the following effects:

- *For the methamphetamine-actual and “Ice” components, it would have the same*

effects as those described in Option 1.

- *Based on the reported purity of street-level methamphetamine, as reported by the Drug Enforcement Administration, it would reduce the sentencing disparity between methamphetamine-actual offenses and methamphetamine-mixture offenses and preserve the intent of the 1997 guideline amendment.*
- *It would increase sentences for some proportion of methamphetamine-mixture offenders.*
- *It would increase the prison population, thus incurring additional costs to the Federal Bureau of Prisons.*
- *It would require establishing a presumptive purity level of 20% for methamphetamine-mixture offenses.*

An issue for comment follows Option 2 that invites comment on the appropriate presumptive purity for methamphetamine-mixture.

Option 2-Proposed Amendment:

§2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy

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(c) DRUG QUANTITY TABLE

Controlled Substances and Quantity*	Base Offense Level
(1) * * * M 15 [7.5] KG or more of Methamphetamine, or 3 1.5 KG or more of Methamphetamine (actual), or 3 1.5 KG or more of "Ice";	Level 38
(2) * * * * * * M At least 5 [2.5] KG but less than 15 [7.5] KG of Methamphetamine, or at least 1 KG 500 G but less than 3 1.5 KG of Methamphetamine (actual), or at least 1 KG 500 G but less than 3 1.5 KG of "Ice";	Level 36
(3) * * *	Level 34

M At least ~~1.5 KG~~[750 G] but less than ~~5~~[2.5] KG of Methamphetamine, or at least ~~300~~150 G but less than ~~1 KG~~500 G of Methamphetamine (actual), or at least ~~300~~150 G but less than ~~1 KG~~500 G of "Ice";

* * *

(4) * * *

Level 32

M At least ~~500~~[250] G but less than ~~1.5 KG~~[750 G] of Methamphetamine, or at least ~~100~~50 G but less than ~~300~~150 G of Methamphetamine (actual), or at least ~~100~~50 G but less than ~~300~~150 G of "Ice";

* * *

(5) * * *

Level 30

M At least ~~350~~[175] G but less than ~~500~~[250] G of Methamphetamine, or at least ~~70~~35 G but less than ~~100~~50 G of Methamphetamine (actual), or at least ~~70~~35 G but less than ~~100~~50 G of "Ice";

* * *

(6) * * *

Level 28

M At least ~~200~~[100] G but less than ~~350~~[175] G of Methamphetamine, or at least ~~40~~20 G but less than ~~70~~35 G of Methamphetamine (actual), or at least ~~40~~20 G but less than ~~70~~35 G of "Ice";

* * *

(7) * * *

Level 26

M At least ~~50~~[25] G but less than ~~200~~[100] G of Methamphetamine, or at least ~~10~~5 G but less than ~~40~~20 G of Methamphetamine (actual), or at least ~~10~~5 G but less than ~~40~~20 G of "Ice";

* * *

(8) * * *

Level 24

M At least ~~40~~[20] G but less than ~~50~~[25] G of Methamphetamine, or at least ~~8~~4 G but less than ~~10~~5 G of Methamphetamine (actual), or at least ~~8~~4 G but less than ~~10~~5 G of "Ice";

* * *

(9) * * *

Level 22

M At least ~~30~~[15] G but less than ~~40~~[20] G of Methamphetamine, or at least ~~6~~3 G but less than ~~8~~4 G of Methamphetamine (actual), or at least ~~6~~3 G but less than ~~8~~4 G of "Ice";

* * *

(10) **Level 20**
M At least ~~20~~[10] G but less than ~~30~~[15] G of Methamphetamine, or at least ~~4~~2 G but less than ~~6~~3 G of Methamphetamine (actual), or at least ~~4~~2 G but less than ~~6~~3 G of "Ice";

(11) * * * **Level 18**
M At least ~~10~~[5] G but less than ~~20~~[10] G of Methamphetamine, or at least ~~2~~1 G but less than ~~4~~2 G of Methamphetamine (actual), or at least ~~2~~1 G but less than ~~4~~2 G of "Ice";

(12) * * * **Level 16**
M At least ~~5~~[2.5] G but less than ~~10~~[5] G of Methamphetamine, or at least ~~1~~500 MG but less than ~~2~~1 G of Methamphetamine (actual), or at least ~~1~~500 MG but less than ~~2~~1 G of "Ice";

(13) * * * **Level 14**
M At least ~~2.5~~[1.25] G but less than ~~5~~[2.5] G of Methamphetamine, or at least ~~500~~250 MG but less than ~~1~~500 MG of Methamphetamine (actual), or at least ~~500~~250 MG but less than ~~1~~500 MG of "Ice";

(14) * * * **Level 12**
M Less than ~~2.5~~[1.25] G of Methamphetamine, or less than ~~500~~250 MG of Methamphetamine (actual), or less than ~~500~~250 MG of "Ice";

Commentary

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Application Notes:

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DRUG EQUIVALENCY TABLES

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Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)*

	* * *	
1 gm of Methamphetamine =		24kg of marihuana
1 gm of Methamphetamine (Actual) =		10 20 kg of marihuana
1 gm of "Ice" =		10 20 kg of marihuana

* * *

**Provided*, that the minimum offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12.

Option 2-Issue for Comment:

Option 2 proposes to change the Drug Quantity Table in the drug trafficking guideline, §2D1.1, to (1) conform the calculations for methamphetamine-actual to the new statutory quantities found in 21 U.S.C. § 841; and (2) modify the calculations for methamphetamine-mixture in order to maintain the 20% presumptive purity of methamphetamine-mixture that currently exists in the guideline. Likewise, the Drug Equivalency Table would be modified to maintain the 20% presumptive purity for methamphetamine-mixture. The bracketed quantities for methamphetamine-mixture in Option 2 are the quantities necessary in order to maintain the 20% presumptive purity. However, the quantities are bracketed because the Commission specifically invites comment on whether the presumptive purity should change to [30%] or [40%] or [50%]. A change in the presumptive purity would be based on recent information from the Drug Enforcement Agency, which indicates a purity of street-level methamphetamine greater than 10% (most recently 27%, but as high as 50%).

By way of example, if the Commission were to change the presumptive purity of methamphetamine-mixture to 50%, then at level 26 in the Drug Quantity Table, at least 10 grams, but not less than 40 grams, of methamphetamine mixture would be involved in the offense. In addition, the 50% presumptive purity would call for a change in the Drug Equivalency Table to indicate that 1 gram of methamphetamine (mixture) equals 10 kilograms of marijuana.

Option 3

Option 3-Synopsis: *In light of data indicating substantial, unexplained, and perhaps unwarranted disparity in the determination of methamphetamine sentences (i.e., the determination to sentence the offense using quantities of methamphetamine-actual or using quantities of methamphetamine-mixture), Option 3 generally proposes to eliminate the distinction between methamphetamine-actual and methamphetamine-mixture and generally sentence all methamphetamine offenses based on the weight of pure methamphetamine. There are two exceptions to this general rule. The first exception would continue the guideline presumption that "Ice" methamphetamine is 100 percent pure, even though in reality it is typically only 80-90*

percent pure. Thus, if the offense involved “Ice”, the weight of the entire “Ice” mixture would be used. The second exception would address the practical reality that the purity of the methamphetamine-mixture in a given case may not always be known or readily determinable. To handle the contingency of unknown purity, the guidelines could establish a presumptive purity of, perhaps, 50 percent to be used only when purity is unknown.

Adoption of Option 3 would have the following effects:

- It would reduce apparently unwarranted disparity in the decision of whether to use methamphetamine-mixture or methamphetamine-actual to determine the guideline sentence for methamphetamine offenders.*
- It would simplify guideline calculations by providing a single, uniform methodology for determining the quantity of methamphetamine for purposes of applying the Drug Quantity Table and determining the resulting offense level.*
- Because, in reality, most methamphetamine sentences are determined based on the weight of the methamphetamine-mixture (even though the reverse should be true), this option can be expected to increase average methamphetamine sentences, particularly if coupled with Option 1.*
- It would provide a different rule for determining guideline sentences for methamphetamine than for PCP, which traditionally has been treated the same as methamphetamine under the guidelines and the mandatory minimum statutes (insofar as basing the sentence, alternatively, on the weight of the mixture or the weight of the pure substance in the mixture, whichever achieves the greater sentence).*
- It would provide a different rule for guideline purposes than would apply under the mandatory minimum statutes (although in practice the guideline calculation would usually exceed the mandatory minimum).*
- Overall, it would achieve greater sentence severity, particularly if coupled with Option 1 (as shown below), than minimally necessary to conform the Drug Quantity Table to the 1998 statutory minimums.*
- In theory, slightly lower sentences could result for offenders involved with methamphetamine mixtures less than 10 percent pure. (This is the category of defendants for which the weight of the mixture may yield the greater sentence. Thus, if only the weight of the methamphetamine-actual is considered, the governing quantity under the Drug Quantity Table, and the resulting offense level and guideline penalty range, could be less. Because, in practice, methamphetamine mixtures are typically greater than 10% pure, this category of*

defendants and possible concern is minimal.)

- *It would require the Commission to establish a presumptive purity level for methamphetamine-mixture offenses.*

Option 3-Proposed Amendment:

§2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy

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(c) DRUG QUANTITY TABLE

Controlled Substances and Quantity*	Base Offense Level
(1) * * * M 15 KG or more of Methamphetamine, or 3 1.5 KG or more of Methamphetamine (actual), or 3 1.5 KG or more of "Ice";	Level 38
(2) * * * M At least 5 KG but less than 15 KG of Methamphetamine, or at least 1 KG 500 G but less than 3 1.5 KG of Methamphetamine (actual), or at least 1 KG 500 G but less than 3 1.5 KG of "Ice";	Level 36
(3) * * * M At least 1.5 KG but less than 5 KG of Methamphetamine, or at least 300 150 G but less than 1 KG 500 G of Methamphetamine (actual), or at least 300 150 G but less than 1 KG 500 G of "Ice";	Level 34
(4) * * * M At least 500 G but less than 1.5 KG of Methamphetamine, or at least 100 50 G but less than 300 150 G of Methamphetamine (actual), or at least 100 50 G but less than 300 150 G of "Ice";	Level 32
(5) * * * M At least 350 G but less than 500 G of Methamphetamine, or at least 70 35 G	Level 30

but less than ~~100~~50 G of Methamphetamine-(actual), or at least ~~70~~35G but less than ~~100~~50 G of "Ice";

* * *

(6)

* * *

Level 28

M At least ~~200~~ G but less than ~~350~~ G of Methamphetamine, or at least ~~40~~20 G but less than ~~70~~35 G of Methamphetamine-(actual), or at least ~~40~~20 G but less than ~~70~~35 G of "Ice";

* * *

(7)

* * *

Level 26

M At least ~~50~~ G but less than ~~200~~ G of Methamphetamine, or at least ~~10~~5 G but less than ~~40~~20 G of Methamphetamine-(actual), or at least ~~10~~5 G but less than ~~40~~20 G of "Ice";

* * *

(8)

* * *

Level 24

M At least ~~40~~ G but less than ~~50~~ G of Methamphetamine, or at least ~~8~~4G but less than ~~10~~5 G of Methamphetamine-(actual), or at least ~~8~~4 G but less than ~~10~~5 G of "Ice";

* * *

(9)

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Level 22

M At least ~~30~~ G but less than ~~40~~ G of Methamphetamine, or at least ~~6~~3 G but less than ~~8~~4 G of Methamphetamine-(actual), or at least ~~6~~3 G but less than ~~8~~4 G of "Ice";

* * *

(10)

Level 20

M At least ~~20~~ G but less than ~~30~~ G of Methamphetamine, or at least ~~4~~2 G but less than ~~6~~3 G of Methamphetamine-(actual), or at least ~~4~~2 G but less than ~~6~~3 G of "Ice";

(11)

* * *

Level 18

M At least ~~10~~ G but less than ~~20~~ G of Methamphetamine, or at least ~~2~~1 G but less than ~~4~~2 G of Methamphetamine-(actual), or at least ~~2~~1 G but less than ~~4~~2 G of "Ice";

* * *

(12)

* * *

Level 16

M At least ~~5 G~~ but less than ~~10 G~~ of Methamphetamine, or at least ~~1 G~~ **500 MG** but less than ~~21 G~~ of Methamphetamine (~~actual~~), or at least ~~1 G~~ **500 MG** but less than ~~21 G~~ of "Ice";

(13) * * *
* * * **Level 14**

M At least ~~2.5 G~~ but less than ~~5 G~~ of Methamphetamine, or at least ~~500~~ **250 MG** but less than ~~1 G~~ **500 MG** of Methamphetamine (~~actual~~), or at least ~~500~~ **250 MG** but less than ~~1 G~~ **500 MG** of "Ice";

(14) * * *
* * * **Level 12**

M Less than ~~2.5 G~~ of Methamphetamine, or less than ~~500~~ **250 MG** of Methamphetamine (~~actual~~), or less than ~~500~~ **250 MG** of "Ice";

* * *

*Notes to Drug Quantity Table:

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(B) The terms "PCP (actual)" and "~~Methamphetamine (actual)~~" refers to the weight of the controlled substance, ~~itself~~, contained in the mixture or substance. For example, a mixture weighing 10 grams containing PCP at 50% purity contains 5 grams of PCP (actual). In the case of a mixture or substance containing PCP ~~or methamphetamine~~, use the offense level determined by the entire weight of the mixture or substance, or the offense level determined by the weight of the PCP (~~actual~~) ~~or methamphetamine (actual)~~, whichever is greater.

(C) The term "Methamphetamine" refers to the weight of the controlled substance contained in the mixture or substance. For example, a mixture weighing 10 grams containing Methamphetamine at 50% purity contains 5 grams of Methamphetamine. In any case in which the purity of the methamphetamine contained in a mixture or substance is not known, it shall be presumed that the purity of the mixture or substance is [10%][20%][30%][40%][50%]. To calculate the quantity used to determine the offense level, multiply the entire weight of the mixture or substance by [10%][20%][30%][40%][50%]. The resulting quantity shall be used to determine the offense level.

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[Redesignate Notes C through J, as Notes D through K, respectively.]

Commentary

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Application Notes:

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DRUG EQUIVALENCY TABLES

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Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)*

* * *

1 gm of Methamphetamine =	2 kg of marihuana
1 gm of Methamphetamine (Actual) =	10 20 kg of marihuana
1 gm of "Ice" =	10 20 kg of marihuana

* * *

**Provided, that the minimum offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12.*

Options 1, 2, and 3-Issue for Comment: *The Commission invites comment on whether it should change the Drug Equivalency Table in §2D1.1, relating to Phenylacetone/P2P, when possessed for the purpose of manufacturing methamphetamine, and whether it should change the Chemical Quantity Table in §2D1.11, relating to any chemical referenced in that table that is used to manufacture methamphetamine, in order to reflect the increased harm associated with methamphetamine offenses.*

PROPOSED AMENDMENT: AMPHETAMINE

Synopsis of Proposed Amendment: *Passage of the Methamphetamine Trafficking Penalty Enhancement Act of 1998 has focused the Commission's attention on the many similarities between amphetamine and methamphetamine and the different sentencing results obtained for these substances under the guidelines. Amphetamine and methamphetamine are similar, although not identical, along a range of dimensions: chemically, by illicit production and trafficking methods, methods of use, sites of action in the brain, and intoxicative effects. However, equal quantities of amphetamine and methamphetamine trigger dissimilar guideline penalties.*

Coincidentally, rising concern over amphetamine use, trafficking, and manufacturing came to the attention of 106th Congress which has begun to address this issue within S. 486 (the Methamphetamine Anti-Proliferation Act of 1999). In that pending legislation, passed by the Senate on November 19, 1999, the Commission is instructed to amend the guidelines to make comparable penalties for amphetamine with those for methamphetamine. This legislation currently provides emergency authority to the Commission to act on this issue as well as several related issues. The House has similar legislation which has not been passed.

There are no mandatory minimum sentences for amphetamine offenses. Under the current guidelines, amphetamine sentences are calculated using the weight of the drug and any adulterants included in the drug (e.g., if the amphetamine is in pill form, the entire weight of the pill is included). Amphetamine is not specifically identified in the Drug Quantity Table. To determine an offense level, the quantity is converted to marijuana weight using the Drug Equivalency Tables found in §2D1.1. The penalties for Schedule II stimulants are found in the powder cocaine portion of the Table.

Currently, a quantity of amphetamine is sentenced at the same level as an equal quantity of powder cocaine. That is, with no or minimal criminal history, an offender convicted of trafficking 500 grams of amphetamine would receive a guideline range of 63 to 78 months, based solely on the weight of the drug. A weight of 5,000 grams (5 kilograms), and the lowest criminal history category, results in a sentencing range of 121 to 151 months. The mathematical relationships between the weight of amphetamine and the current five- and ten-year quantity thresholds for methamphetamine-mix and methamphetamine-actual are 10-to-1 and 50-to-1 respectively. The relationship between current amphetamine quantity/penalty levels and the new methamphetamine-actual mandatory minimum quantity threshold is 100-to-1.

The proposed amendment amends the Drug Equivalency Table in the drug trafficking guideline, §2D1.1, to treat amphetamine identically to methamphetamine-mixture, thus raising sentences for amphetamine offenses. (The amendment assumes that the Drug Equivalency Table will be amended with respect to methamphetamine actual, to conform to the new statutory changes, but will not be changed with respect to methamphetamine mixture. The Commission could, of course, decide to change the quantity with respect to methamphetamine mixture in order to maintain the current 20% purity.)

The effects of such an amendment are the following:

- It is consistent with the intent of the Senate as expressed in S. 486.
- It would reduce the differences between amphetamine and methamphetamine penalties, thereby treating similar offenses similarly.
- It would increase sentences for amphetamine offenders.
- Longer sentences would result in an increase to the prison population, thus incurring additional costs to the Federal Bureau of Prisons.

Issues for comment follow the proposed amendment that invite specific comment on whether the Commission should make a distinction between amphetamine-actual and amphetamine-mixture and whether the Commission should treat dextroamphetamine, a similar substance, the same as amphetamine is proposed to be treated by the proposed amendment.

Proposed Amendment-Amphetamine

§2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy

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Commentary

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Application Notes:

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DRUG EQUIVALENCY TABLES

* * *

Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)*

1 gm of Amphetamine =	* * *	200 gm 2 kg of marihuana
1 gm of Methamphetamine =	* * *	2 kg of marihuana
	* * *	

**Provided, that the minimum offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12.*

Issues For Comment-Amphetamine:

- (1) *With respect to offenses involving amphetamine, the Commission invites comment on the following:*
 - (A) *The proposed amendment relating to amphetamine establishes a 1:1 ratio between amphetamine-mixture and methamphetamine-mixture. Is this the appropriate ratio to establish, or is some other ratio appropriate?*
 - (B) *Should the Commission distinguish between offenses involving pure amphetamine, i.e., amphetamine-actual (similar to methamphetamine-actual) and offenses involving a mixture of amphetamine (similar to methamphetamine-mixture)? If the Commission were to make such a distinction, the Drug Quantity Table in §2D1.1 most likely would be amended to indicate quantity ranges at the pertinent offense levels.*
 - (C) *If the Commission decides to distinguish between amphetamine-actual and amphetamine-mixture, what is the appropriate ratio between amphetamine-actual and amphetamine-mixture, in terms of the quantity of substance that triggers a particular offense level for each of those substances (i.e., is there an appropriate presumptive purity for amphetamine-mixture)?*
 - (D) *If the Commission decides to distinguish between amphetamine-actual and amphetamine-mixture, how should the relationship between those two substances be established in the guidelines? Should the relationship be established by referencing both substances at every pertinent offense level in the Drug Quantity Table in §2D1.1 (as is currently the case for methamphetamine-actual and methamphetamine-mixture)? Alternatively, of the two substances, should the Drug Quantity Table reference only amphetamine-actual, and should a note to that table be added that sets a presumptive purity for amphetamine-mixture?*
- (2) *Should the Commission treat offenses involving dextroamphetamine, a similar substance, the same as amphetamine is proposed to be treated by the above proposed amendment?*