

## REVISED AMENDMENT 4: OFFENSES RELATING TO 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 two options for changes to the guideline for drug trafficking, §2D1.1, particularly the Drug Quantity Table, that would respond to the Act.*

*Option 1 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.*

*Option 2 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 situation in which 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, for example, 50 percent to be used only when purity is unknown.*

### Option 1- Proposed Amendment:

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

\* \* \*

### (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 ~~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";

(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 ~~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 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";

\* \* \*

(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 84G but less than 105 G of Methamphetamine (actual), or at least 84 G but less than 105 G of "Ice";

\* \* \*

(9)

\* \* \*

**Level 22**

M At least 30 G but less than 40 G of Methamphetamine, or at least 63 G but less than 84 G of Methamphetamine (actual), or at least 63 G but less than 84 G of "Ice";

\* \* \*

(10)

**Level 20**

M At least 20 G but less than 30 G of Methamphetamine, or at least 42 G but less than 63 G of Methamphetamine (actual), or at least 42 G but less than 63 G of "Ice";

\* \* \*

(11)

**Level 18**

M At least 10 G but less than 20 G of Methamphetamine, or at least 21 G but less than 42 G of Methamphetamine (actual), or at least 21 G but less than 42 G of "Ice";

\* \* \*

(12)

**Level 16**

M At least 5 G but less than 10 G of Methamphetamine, or at least 1G500 MG but less than 21 G of Methamphetamine (actual), or at least 1G500 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 1G500 MG of Methamphetamine (actual), or at least 500250 MG but less than 1G500 MG of "Ice";

\* \* \*

(14)

**Level 12**

M Less than 2.5 G of Methamphetamine, or less than 500250 MG of Methamphetamine (actual), or less than 500250 MG of "Ice";

\* \* \*

Commentary

\* \* \*

Application Notes:

10.

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DRUG EQUIVALENCY TABLES

\* \* \*

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) =	1020 kg of marihuana
1 gm of "Ice" =	1020 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-Proposed Amendment:**

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

\* \* \*

**(c) DRUG QUANTITY TABLE**

<b>Controlled Substances and Quantity*</b>	<b>Base Offense Level</b>
(1) * * * M <del>15 KG or more of Methamphetamine, or 3</del> 1.5 KG or more of Methamphetamine ( <del>actual</del> ), or <del>3</del> 1.5 KG or more of "Ice";	<b>Level 38</b>
(2) * * * M At least <del>5 KG</del> but less than <del>15 KG</del> of Methamphetamine, or at least <del>1 KG</del> 500 G but less than <del>31.5 KG</del> of Methamphetamine ( <del>actual</del> ), or at least <del>1 KG</del> 500 G but less than <del>31.5 KG</del> of "Ice";	<b>Level 36</b>
(3) * * * M At least <del>1.5 KG</del> but less than <del>5 KG</del> of Methamphetamine, or at least <del>300</del> 150 G but less than <del>1 KG</del> 500 G of Methamphetamine ( <del>actual</del> ), or at least <del>300</del> 150 G but less than <del>1 KG</del> 500 G of "Ice";	<b>Level 34</b>

\* \* \*

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

M At least ~~500 G~~ but less than ~~1.5 KG~~ of Methamphetamine, or at least ~~10050 G~~ but less than ~~300150 G~~ of Methamphetamine (actual), or at least ~~10050 G~~ but less than ~~300150 G~~ of "Ice";

\* \* \*

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

M At least ~~350 G~~ but less than ~~500 G~~ of Methamphetamine, or at least ~~7035 G~~ but less than ~~10050 G~~ of Methamphetamine (actual), or at least ~~7035G~~ but less than ~~10050 G~~ of "Ice";

\* \* \*

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

M At least ~~200 G~~ but less than ~~350 G~~ of Methamphetamine, or at least ~~4020 G~~ but less than ~~7035 G~~ of Methamphetamine (actual), or at least ~~4020 G~~ but less than ~~7035 G~~ of "Ice";

\* \* \*

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

M At least ~~50 G~~ but less than ~~200 G~~ of Methamphetamine, or at least ~~105 G~~ but less than ~~4020 G~~ of Methamphetamine (actual), or at least ~~105 G~~ but less than ~~4020 G~~ of "Ice";

\* \* \*

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

M At least ~~40 G~~ but less than ~~50 G~~ of Methamphetamine, or at least ~~84G~~ but less than ~~105 G~~ of Methamphetamine (actual), or at least ~~84 G~~ but less than ~~105 G~~ of "Ice";

\* \* \*

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

M At least ~~30 G~~ but less than ~~40 G~~ of Methamphetamine, or at least ~~63 G~~ but less than ~~84 G~~ of Methamphetamine (actual), or at least ~~63 G~~ but less than ~~84 G~~ of "Ice";

\* \* \*

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

M At least ~~20 G~~ but less than ~~30 G~~ of Methamphetamine, or at least ~~42 G~~ but less than ~~63 G~~ of Methamphetamine (actual), or at least ~~42 G~~ but less than ~~63 G~~ of "Ice";

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

M At least ~~10 G~~ but less than ~~20 G~~ of Methamphetamine, or at least ~~21 G~~ but less than ~~42 G~~ of Methamphetamine-(actual), or at least ~~21 G~~ but less than ~~42 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:

\* \* \*

(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%][40%][50%]. To calculate the quantity used to determine the offense level, multiply the entire weight of the mixture or substance by [10%][20%][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

\* \* \*

Application Notes:

10.

\* \* \*

DRUG EQUIVALENCY TABLES

\* \* \*

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

\* \* \*

<del>1 gm of Methamphetamine</del> =	<del>2 kg of marihuana</del>
1 gm of Methamphetamine (Actual) =	1020 kg of marihuana
1 gm of "Ice" =	1020 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.