

PROPOSED AMENDMENT: ANHYDROUS AMMONIA

Synopsis of Proposed Amendment: *This proposed amendment addresses the new offense, at section 423 of the Controlled Substances Act (21 U.S.C. § 864), of stealing or transporting across state lines anhydrous ammonia knowing, intending, or having reasonable cause to believe that such anhydrous ammonia will be used to manufacture a controlled substance. This new offense, created by section 3653 of the Methamphetamine Anti-Proliferation Act of 2000, Pub. L. 106–310, carries the statutory penalties contained in section 403 of the Controlled Substances Act (21 U.S.C. § 843), *i.e.*, not more than four years' imprisonment (or not more than eight years' imprisonment in the case of certain prior convictions) or not more than 10 years' imprisonment (or not more than 20 years' imprisonment in the case of certain prior convictions) if the offense involved the manufacture of methamphetamine.*

The proposed amendment references the new offense to §2D1.12 (Unlawful Possession, Manufacture, Distribution, or Importation of Prohibited Flask or Equipment; Attempt or Conspiracy). Reference to this guideline is appropriate because the new offense is similar to other offenses already referenced to the guideline and having the same penalty structure, such as 21 U.S.C. § 843(a)(6), which among other things makes it unlawful to possess any chemical, product, or material which may be used to manufacture a controlled substance. The proposed amendment also makes minor, non-substantive changes to the guideline in order to fully reference the new and existing offenses into the guideline.

Proposed Amendment:

§2D1.12. Unlawful Possession, Manufacture, Distribution, or Importation of Prohibited Flask or, Equipment, Chemical, Product, or Material; Attempt or Conspiracy

- (a) Base Offense Level (Apply the greater):
 - (1) **12**, if the defendant intended to manufacture a controlled substance or knew or believed the prohibited flask, equipment, chemical, product, or material was to be used to manufacture a controlled substance; or
 - (2) **9**, if the defendant had reasonable cause to believe the prohibited flask, equipment, chemical, product, or material was to be used to manufacture a controlled substance.
- (b) Specific Offense Characteristics
 - (1) If the defendant (A) intended to manufacture methamphetamine, or (B) knew, believed, or had reasonable cause to believe that prohibited flask, equipment, chemical, product, or material was to be used to manufacture methamphetamine, increase by **2** levels.
 - (2) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (B) the unlawful

transportation, treatment, storage, or disposal of a hazardous waste, increase by **2** levels.

(c) Cross Reference

- (1) If the offense involved unlawfully manufacturing a controlled substance, or attempting to manufacture a controlled substance unlawfully, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 21 U.S.C. §§ 843(a)(6), (7), 864.

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APPENDIX A - STATUTORY INDEX

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21 U.S.C. § 863	2D1.7
21 U.S.C. § 864	2D1.12