

## **PROPOSED AMENDMENT: AMPHETAMINE**

**Synopsis of Proposed Amendment:** *This proposed amendment implements section 3611 of the Methamphetamine Anti-Proliferation Act of 2000, Pub. L. 106–310 (the "Act"), which directs the Commission to provide, under emergency amendment authority, increased guideline penalties for amphetamine such that those penalties are comparable to the base offense level for methamphetamine.*

*There are no mandatory minimum sentences for amphetamine offenses. 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 100-to-1 respectively.*

*The proposed amendment provides two options for implementing the directive. Both options propose to treat amphetamine and methamphetamine identically, at a 1:1 ratio (i.e., the same quantities of amphetamine and methamphetamine will result in the same base offense level) because of the similarities of the two substances. Specifically, amphetamine and methamphetamine (A) chemically are similar; (B) are produced by a similar method; (C) share similar methods of use; (D) affect the same parts of the brain; and (E) have similar intoxicating effects. Both options also distinguish between pure amphetamine (i.e., amphetamine (actual)) and amphetamine mixture in the same manner, and at the same quantities, as pure methamphetamine (i.e., methamphetamine (actual) and methamphetamine mixture.*

*Although both options ultimately achieve the same penalty increase, the proposed options differ in how they implement the directive. Option One amends the Drug Equivalency Table of §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses; Attempt or Conspiracy). To determine the offense level under this option, the quantity of amphetamine (actual or mixture) is converted to its marijuana weight equivalency using the Drug Equivalency Tables. Option Two, on the other hand, amends §2D1.1 specifically to include amphetamine in the Drug Quantity Table.*

*Included in both options is a reference to the controlled substance dextroamphetamine, which is a substance quite similar to amphetamine. Currently, dextroamphetamine has the same marijuana equivalency as amphetamine mixture. The proposed amendment (A) distinguishes between dextroamphetamine mixture and dextroamphetamine (actual); and (B) provides penalties for the dextroamphetamine mixture and dextroamphetamine (actual) that are the same as amphetamine mixture and amphetamine (actual), respectively.*

*An issue for comment follows the proposed amendment regarding whether the Commission should provide an alternative quantity ratio between amphetamine and methamphetamine.*

**Proposed Amendment:**

**Option 1:**

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

\* \* \*

Commentary

\* \* \*

Application Notes:

10.

\* \* \*

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 Amphetamine (Actual) =	20	kg of marihuana
1 gm of Dextroamphetamine =	200 gm	2 kg of marihuana
1 gm of Dextroamphetamine (Actual) =	20	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.

**Option 2:**

**§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 1.5 KG or more of Methamphetamine (actual), or 1.5 KG or more of "Ice";  
M 15 KG or more of Amphetamine, or 1.5 KG or more of Amphetamine (actual), or 15 KG or more of Dextroamphetamine, or 1.5 KG or more of Dextroamphetamine (actual);

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

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

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

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

\* \* \*

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

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

\* \* \*

(5)

\* \* \*

**Level 30**

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

M At least 350 G but less than 500 G of Amphetamine, or at least 35 G but less than 50 G of Amphetamine (actual), or at least 350 G but less than 500 G of Dextroamphetamine, or at least 35 G but less than 50 G of Dextroamphetamine (actual);

\* \* \*

(6)

\* \* \*

**Level 28**

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

M At least 200 G but less than 350 G of Amphetamine, or at least 20 G but less than 35 G of Amphetamine (actual), or at least 200 G but less than 350 G of Dextroamphetamine, or at least 20 G but less than 35 G of Dextroamphetamine (actual);

\* \* \*

(7)

\* \* \*

**Level 26**

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

M At least 50 G but less than 200 G of Amphetamine, or at least 5 G but less than 20 G of Amphetamine (actual), or at least 50 G but less than 200 G of Dextroamphetamine, or at least 5 G but less than 20 G of Dextroamphetamine (actual);

\* \* \*

(8)

\* \* \*

**Level 24**

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

M At least 40 G but less than 50 G of Amphetamine, or at least 4 G but less than 5 G of Amphetamine (actual), or at least 40 G but less than 50 G of Dextroamphetamine, or at least 4 G but less than 5 G of Dextroamphetamine (actual);

\* \* \*

(9)

\* \* \*

**Level 22**

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

M At least 30 G but less than 40 G of Amphetamine, or at least 3 G but less than 4 G of Amphetamine (actual), or at least 30 G but less than 40 G of Dextroamphetamine, or at least 3 G but less than 4 G of Dextroamphetamine (actual);

\* \* \*

(10)

**Level 20**

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

M At least 20 G but less than 30 G of Amphetamine, or at least 2 G but less than 3 G of Amphetamine (actual), or at least 20 G but less than 30 G of Dextroamphetamine or at least 2 G but less than 3 G of Dextroamphetamine (actual);

\* \* \*

(11)

**Level 18**

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

M At least 10 G but less than 20 G of Amphetamine, or at least 1 G but less than 2 G of Amphetamine (actual), or at least 10 G but less than 20 G of Dextroamphetamine, or at least 1 G but less than 2 G of Dextroamphetamine (actual);

\* \* \*

(12)

\* \* \*

**Level 16**

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

M At least 5 G but less than 10 G of Amphetamine, or at least 500 MG but less than 1 G of Amphetamine (actual), or at least 5 G but less than 10 G of Dextroamphetamine, or at least 500 MG but less than 1 G of Dextroamphetamine (actual);

\* \* \*

(13)

\* \* \*

**Level 14**

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

M At least 2.5 G but less than 5 G of Amphetamine, or at least 250 MG but less than 500 MG of Amphetamine (actual), or at least 2.5 G but less than 5 G of Dextroamphetamine, or at least 250 MG but less than 500 MG of mphetamine (actual);

\* \* \*

(14)

\* \* \*

Level 12

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

M Less than 2.5 G of Amphetamine, or less than 250 MG of Amphetamine (actual), or less than 2.5 G of Dextroamphetamine, or less than 250 MG of Dextraamphetamine (actual);

\* \* \*

\*Notes to Drug Quantity Table:

\* \* \*

(B) The terms "PCP (actual)", "Amphetamine (actual)", "Dextroamphetamine (actual)", and "Methamphetamine (actual)" refer 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, amphetamine, dextroamphetamine, 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), amphetamine (actual), dextroamphetamine (actual), or methamphetamine (actual), whichever is greater.

\* \* \*

Commentary

\* \* \*

Application Notes:

\* \* \*

9. *Trafficking in controlled substances, compounds, or mixtures of unusually high purity may warrant an upward departure, except in the case of PCP, amphetamine, dextroamphetamine, or methamphetamine for which the guideline itself provides for the consideration of purity (see the footnote to the Drug Quantity Table). The purity of the controlled substance, particularly in the case of heroin, may be relevant in the sentencing process because it is probative of the defendant's role or position in the chain of distribution. Since controlled substances are often diluted and combined with other substances as they pass down the chain of distribution, the fact that a defendant is in possession of unusually pure narcotics may indicate a prominent role in the criminal enterprise and proximity to the source of the drugs. As large quantities are normally associated with high purities, this factor is particularly relevant where smaller quantities are involved.*

10.

\* \* \*

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 Amphetamine (Actual) =	20 kg of marihuana
1 gm of Dextroamphetamine =	200 gm 2 kg of marihuana
1 gm of Dextroamphetamine (Actual) =	20 kg of marihuana
1 gm of Methamphetamine =	2 kg of marihuana
1 gm of Methamphetamine (Actual) =	20 kg of marihuana
1 gm of "Ice" =	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.

*Issue for Comment:*

*In response to the directive in the Methamphetamine Anti-Proliferation Act of 2000 that instructs the Commission to provide, under emergency amendment authority, increased guideline penalties for amphetamine such that those penalties are comparable to the base offense level for methamphetamine, the Commission has proposed two amendment options that use a 1:1 ratio between amphetamine and methamphetamine (i.e., the same quantities of amphetamine and methamphetamine will result in the imposition of the same base offense level from the Drug Quantity Table in §2D1.1). The Commission invites comment on whether some alternative ratio should be used instead. For example, should the Commission use a 2:1 ratio or a 5:1 ratio between amphetamine and methamphetamine, and if so, why?*