

**REVISED PROPOSED AMENDMENT: AMPHETAMINE
(Proposed Amendment 2 of User Friendly, Volume Two)**

Synopsis of Proposed Amendment: *This revised proposed emergency amendment implements the directive in the Methamphetamine Anti-Proliferation Act of 2000, section 3611 of 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, would result 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.

Originally, the Commission published in the Federal Register two options to implement the directive. Option One proposed to amend only the Drug Equivalency Tables in §2D1.1, which would have required a conversion of amphetamine to its marijuana equivalency to determine the relevant base offense level. Option Two proposed to amend the §2D1.1 specifically to include amphetamine in the Drug Quantity Table. Both options also included references to dextroamphetamine, which is a controlled substance that is similar to amphetamine. Dextroamphetamine currently has the same marijuana equivalency as amphetamine mixture.

This revised proposed amendment eliminates Option One in favor of a slightly modified version of published Option Two. Originally, Option Two included references to dextroamphetamine in the Drug Quantity Table in §2D1.1 and in corresponding application notes. Dextroamphetamine is a controlled substance that is similar to amphetamine. However, for purposes of promulgating an emergency amendment, the revised proposed amendment removes all references to dextroamphetamine because the scope of the Commission's authority under the emergency amendment is limited to providing increases for amphetamine offenses only. When the Commission re-promulgates this amendment as a permanent amendment, it may amend §2D1.1 to provide penalties for dextroamphetamine that are the same as amphetamine.

The revised proposed amendment treats amphetamine and methamphetamine identically, at a 1:1 ratio (i.e., the same quantities of amphetamine and methamphetamine would 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, and are trafficked in a similar manner; (C) share similar methods of use; (D) affect the same parts of the brain; and (E) have similar intoxicating effects. The revised proposed amendment also distinguishes 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, respectively. The revised proposed amendment reflects the view that the 1:1 ratio is appropriate given the seriousness of these two controlled substances. Accordingly, the revised proposed amendment does not provide for an alternative ratio, an issue on which the Commission requested comment in the Federal Register.

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 |
|---|---------------------------|
| <p>(1) * * *</p> <p>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); * * *</p> | Level 38 |
| <p>(2) * * *</p> <p>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);</p> | Level 36 |
| <p>(3) * * *</p> <p>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); * * *</p> | Level 34 |

(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);

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(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);

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(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);

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(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);

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(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);

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(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);

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(10) 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"; **Level 20**
 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);

(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);

(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);

(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);

(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);

*Notes to Drug Quantity Table:

(B) * * *
 The terms "PCP (actual)", "Amphetamine (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, 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), or methamphetamine (actual), whichever is greater.

Commentary

Application Notes:

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9. *Trafficking in controlled substances, compounds, or mixtures of unusually high purity may warrant an upward departure, except in the case of PCP, amphetamine, 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.*

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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 Amphetamine = | 200-2 kg of marihuana |
| 1 gm of Amphetamine (Actual) = | 20 kg of marihuana |

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**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.*

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