

**UNITED STATES SENTENCING COMMISSION**

**Sentencing Guidelines for United States Courts**

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of final action regarding technical and conforming amendments to federal sentencing guidelines effective November 1, 2007.

**SUMMARY:** On May 1, 2007, the Commission submitted to Congress amendments to the federal sentencing guidelines and published these amendments in the Federal Register on May 21, 2007. See 72 FR 28558. The Commission has made technical and conforming amendments, set forth in this notice, to commentary provisions related to those amendments.

**DATES:** The Commission has specified an effective date of November 1, 2007, for the amendments set forth in this notice.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer,  
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**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission, an independent commission in the judicial branch of the United States government, is authorized by 28 U.S.C. § 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission to review and revise periodically promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. See 28 U.S.C. § 994(o), (p). Absent an affirmative disapproval by Congress within 180 days after the Commission submits its amendments, the amendments become effective on the date specified by the Commission (typically November 1 of the same calendar year). See 28 U.S.C. § 994(p).

Unlike amendments made to sentencing guidelines, amendments to commentary may be made at any time and are not subject to congressional review. To the extent practicable, the Commission endeavors to include amendments to commentary in any submission of guideline amendments to Congress. Occasionally, however, the Commission determines that technical and conforming changes to commentary are necessary in order to execute correctly the amendments submitted to Congress. This notice sets forth technical and conforming amendments to commentary related to the amendments submitted to Congress on May 1, 2007, that will become effective on November 1, 2007, absent congressional action to the contrary.

**AUTHORITY:** USSC Rules of Practice and Procedure 4.1.

Ricardo H. Hinojosa,

Chair

Retroactive Application of Amendment 5 submitted to Congress on May 1, 2007 (see 72 FR 28558; USSG App. C (Amendment 702))

1. Amendment: Section 1B1.10(c) is amended by striking "and" and by inserting ", and 702" before the period.

Reason for Amendment: Amendment 5 submitted to Congress on May 1, 2007 (see 72 FR 28558; USSG App. C (Amendment 702)) corrects typographical errors in subsection (b)(13)(C) of §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) and subsection (b)(1) of §2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien). As stated in the reason for amendment accompanying Amendment 5, this amendment adds Amendment 5 to §1B1.10

(Reduction in Term of Imprisonment as a Result of Amended Guideline Range) as an amendment that the court may consider for retroactive application.

#### Technical and Conforming Amendments

2. Amendment: The Commentary to §2A3.4 captioned "Statutory Provisions" is amended by striking "Provisions" and inserting "Provision".

Section 2A3.5(b)(1)(A), as added by Amendment 4 submitted to Congress on May 1, 2007 (see FR 72 28558; USSG App. C (Amendment 701)), is amended by inserting a comma after "minor".

Chapter Two, Part D is amended in the heading by inserting "AND NARCO-TERRORISM" after "DRUGS".

The Commentary to §2D1.1 captioned "Application Notes", as amended by Amendment 9 submitted to Congress on May 1, 2007 (see 72 FR 28558; USSG App. C (Amendment 706)), is further amended by striking subdivision (D) of Note 10 and inserting the following:

"(D) Determining Base Offense Level in Offenses Involving Cocaine Base and Other Controlled Substances.—

(i) In General.—If the offense involves cocaine base (‘crack’) and one or more other controlled substance, determine the base offense level as follows:

- (I) Determine the base offense level for the quantity of cocaine base involved in the offense.
- (II) Using the marihuana equivalency obtained from the table in this subdivision, convert the quantity of cocaine base involved in the offense to its equivalent quantity of marihuana.

Base Offense Level	Marihuana Equivalency
38	6.7 kg of marihuana per g of cocaine base
36	6.7 kg of marihuana per g of cocaine base
34	6 kg of marihuana per g of cocaine base
32	6.7 kg of marihuana per g of cocaine base
30	14 kg of marihuana per g of cocaine base
28	11.4 kg of marihuana per g of cocaine base
26	5 kg of marihuana per g of cocaine base
24	16 kg of marihuana per g of cocaine base
22	15 kg of marihuana per g of cocaine base

20	13.3 kg of marihuana per g of cocaine base
18	10 kg of marihuana per g of cocaine base
16	10 kg of marihuana per g of cocaine base
14	10 kg of marihuana per g of cocaine base
12	10 kg of marihuana per g of cocaine base

(III) Determine the combined marihuana equivalency for the other controlled substance or controlled substances involved in the offense as provided in subdivision (B) of this note.

(IV) Add the quantity of marihuana determined under subdivisions (II) and (III), and look up the total in the Drug Quantity Table to obtain the combined base offense level for all the controlled substances involved in the offense.

(ii) Example.—The case involves 1.5 kg of cocaine, 10 kg of marihuana, and 20 g of cocaine base. Under the Drug Quantity Table, 20 g of cocaine base corresponds to a base offense level of 26. Pursuant to the table in subdivision (II), the base offense level of 26 corresponds to a marihuana equivalency of 5 kg per gram of cocaine base. Therefore, the equivalent quantity of marihuana for the cocaine base is 100 kg (20 g x 5 kg = 100 kg). Pursuant to subdivision (B), the equivalent quantity of marihuana for

the cocaine and marihuana is 310 kg. (The cocaine converts to an equivalent of 300 kg of marihuana (1.5 kg x 200 g = 300 kg), which, when added to the 10 kg of marihuana, results in an equivalent quantity of 310 kg of marihuana.) Adding the equivalent quantities of marihuana of all three drug types results in a combined quantity of 410 kg of marihuana (100 kg + 310 kg = 410 kg), which corresponds to a combined base offense level of 28 in the Drug Quantity Table."

The Commentary to §2N2.1 captioned "Application Notes" is amended in Note 4 by inserting "and Narco-Terrorism" after "Drugs".

The Commentary to §5B1.3 captioned "Application Note", as added by Amendment 4 submitted to Congress on May 1, 2007 (see 72 FR 28558; USSG App. C (Amendment 701)), is amended by striking "(b)" each place it appears and inserting "(a)".

The Commentary to §5D1.3 captioned "Application Note", as added by Amendment 4 submitted to Congress on May 1, 2007 (see 72 FR 28558; USSG App. C (Amendment 701)), is amended by striking "(b)" each place it appears and inserting "(a)".

Appendix A (Statutory Index) is amended by striking the lines referenced to "50 U.S.C. § 421" and "50 U.S.C. § 783(b)" the first place they appear.

Reason for Amendment: This amendment makes various technical and conforming amendments in order to execute properly amendments submitted to Congress on May 1, 2007, and that will become effective on November 1, 2007. Specifically, the amendment corrects grammatical errors in the commentary to §2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact); amends the commentary to §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy); changes the heading in Chapter Two, Part D and makes the conforming change to §2N2.1 (Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product); corrects typographical errors in §§5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release); and amends Appendix A to remove duplicate listings.