

**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, 2015.

**SUMMARY:** On April 30, 2015, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2015, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the Federal Register. 80 FR 25782 (May 5, 2015). The Commission has made technical and conforming amendments, set forth in this notice, to commentary provisions and policy statements related to those amendments.

**DATES:** The Commission has specified an effective date of November 1, 2015, for the amendments set forth in this notice.

**FOR FURTHER INFORMATION CONTACT:** Jeanne Doherty, Public Affairs Officer,  
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**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. § 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. § 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. § 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress). See 28 U.S.C. § 994(p).

Unlike amendments made to sentencing guidelines, amendments to commentary and policy statements 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 and policy statements in any submission of guideline amendments to Congress. Occasionally, however, the Commission determines that technical and conforming changes to commentary and policy statements are necessary. This notice sets forth technical and conforming amendments to commentary and policy statements that will become effective on November 1, 2015.

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

Patti B. Saris,

Chair

1. Amendment:

The Commentary to §1B1.3 captioned “Application Notes”, as amended by Amendment 1 of the amendments submitted to Congress on April 30, 2015, is further amended in Note 1 by inserting as the heading the following: “Sentencing Accountability and Criminal Liability.—”.

The Commentary to §1B1.3 captioned “Application Notes”, as amended by Amendment 1 of the amendments submitted to Congress on April 30, 2015, is further amended by renumbering Notes 5 through 12 according to the following table:

<u>Before Amendment</u>	<u>After Amendment</u>
5	5(A)
11	5(B)
11(A)	5(B)(i)
11(B)	5(B)(ii)
10	5(C)
6	6(A)
7	6(B)
8	7
9	8
12	9

and by rearranging those Notes, as so renumbered, to place them in proper numerical order.

The Commentary to §1B1.3 captioned “Application Notes”, as so renumbered and rearranged, is further amended by inserting headings at the beginning of certain notes, as follows (with Notes referred to by their new numbers):

<u>Note</u>	<u>Heading to Be Inserted at the Beginning</u>
5	<u>Application of Subsection (a)(2).—</u>
5(A)	<u>Relationship to Grouping of Multiple Counts.—</u>
5(B)	<u>“Same Course of Conduct or Common Scheme or Plan”.—</u>
5(C)	<u>Conduct Associated with a Prior Sentence.—</u>
6	<u>Application of Subsection (a)(3).—</u>
6(A)	<u>Definition of “Harm”.—</u>
6(B)	<u>Risk or Danger of Harm.—</u>
7	<u>Factors Requiring Conviction under a Specific Statute.—</u>
8	<u>Partially Completed Offense.—</u>
9	<u>Solicitation, Misprision, or Accessory After the Fact.—</u>

The Commentary to §2D1.1 captioned “Application Notes”, is amended in Note 8(D), in the heading relating to Date Rape Drugs (except flunitrazepam, GHB, or ketamine), by striking “flunitrazepam” and inserting “flunitrazepam”.

The Commentary to §2K2.1 captioned “Application Notes”, as amended by Amendment 1 of the amendments submitted to Congress on April 30, 2015, is further amended in Note 14(E) by striking “Application Note 11” both places such term appears and inserting “Application Note 5(B)”.

The Commentary to §2X3.1 captioned “Application Notes”, as amended by Amendment 1 of the amendments submitted to Congress on April 30, 2015, is further amended in Note 1 by striking “Application Note 12” and inserting “Application Note 9”.

The Commentary to §2X4.1 captioned “Application Notes”, as amended by Amendment 1 of the amendments submitted to Congress on April 30, 2015, is further amended in Note 1 by striking “Application Note 12” and inserting “Application Note 9”.

The Commentary to §8C2.8 captioned “Application Notes” is amended in Note 7 by striking the period at the end and inserting “).”.

Reason for Amendment: This amendment makes certain technical and conforming changes to commentary in the Guidelines Manual.

First, the amendment reorganizes the commentary to §1B1.3 (Relevant Conduct (Factors that Determine the Guideline Range)), so that the order of the application notes better reflects the order of the guideline provisions to which they relate. The Commission had previously reorganized notes 1 and 2 into notes 1 through 4, also redesignating notes 3 through 10 as notes 5 through 12, in a recently promulgated amendment. See Amendment 1 of the amendments submitted by the Commission to Congress on April 30, 2015, 80 Fed. Reg. 25782 (May 5, 2015). This amendment further rearranges the commentary, specifically notes 5 through 12. The following table shows the renumbering of notes 5 through 12 that would result from the amendment in comparison to the current Guidelines Manual and the recently promulgated amendment to §1B1.3.

<u>2014 Guidelines</u>	<u>Recently Promulgated</u>	<u>Technical</u>
<u>Manual</u>	<u>Amendment</u>	<u>Amendment</u>
3	5	5(A)
9	11	5(B)
8	10	5(C)
4	6	6(A)
5	7	6(B)
6	8	7
7	9	8
10	12	9

The amendment also makes stylistic changes to the commentary to §1B1.3, such as adding headings to certain application notes. To reflect the renumbering of application notes in §1B1.3, conforming changes are also made to the commentary to §§2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), 2X3.1 (Accessory After the Fact), and 2X4.1 (Misprision of Felony).

Second, the amendment makes clerical changes to correct typographical errors in Application Note 8(D) to §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and Application Note 7 to §8C2.8 (Determining the Fine Within the Range (Policy Statement)).