

PROPOSED AMENDMENT: MISCELLANEOUS NEW LEGISLATION AND TECHNICAL AMENDMENTS

Synopsis of Proposed Amendment: *This is a two-part proposed amendment.*

First, the proposed amendment addresses miscellaneous legislation enacted during the 106th Congress by (1) adding to Appendix A (Statutory Index) and the statutory provisions of several guidelines references to new statutes; and (2) providing commentary to §2M3.9 that implements the new consecutive sentencing requirement of 50 U.S.C. § 421 (pertaining to the disclosure of information identifying a covert agent). Please note that there were no directives to the Commission contained in any of the acts that created these new offenses.

In each instance, the new Appendix A references are based on a determination that the new offense is sufficiently similar to other offenses covered by the referenced guideline.

The new offenses and proposed guideline references are as follows:

- *7 U.S.C. § 7734 - prohibits knowingly importing, exporting, or moving in interstate commerce any plant pest or noxious weed, or knowingly forging any permit authorizing movement of plant pests or noxious weeds. Referenced to §2N2.1 (Violations of Statutes and Regulations Dealing with Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product).*
- *15 U.S.C. § 6821 - prohibits (A) obtaining or attempting to obtain customer information from a financial institution by false statements, representations, or documents; or (B) requesting another person to obtain customer information knowing the information will be obtained under false pretenses. Referenced to §2F1.1 (Fraud and Deceit).*
- *18 U.S.C. § 38 - prohibits falsifying any material fact, or making any fraudulent representation concerning aircraft or space vehicle parts. Referenced to §2F1.1 (Fraud and Deceit).*
- *18 U.S.C. § 842(p)(2) - prohibits any person to teach or demonstrate the making or use of an explosive, a destructive device, or a weapon of mass destruction, or distribute by any means information pertaining to the manufacture of an explosive, destructive device, or weapon of mass destruction with the intent that the teaching, demonstration, or information will be used for, or in furtherance of any federal crime of violence. Referenced to §2K1.3 (Unlawful Receipts, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials) or §2M6.1 (Unlawful Acquisition, Alteration, Use, Transfer, or Possession of Nuclear Material, Weapons, or Facilities) (if the information pertained to a weapon of mass destruction).*

- *42 U.S.C. § 1011 - knowingly and willfully making of any false statement or representation of a material fact in an application for benefits established by the Social Security Act. Referenced to §2F1.1 (Fraud and Deceit).*
- *49 U.S.C. § 30170 - prohibits violating 18 U.S.C. § 1001 with respect to the reporting requirements of 49 U.S.C. § 30166, with the specific intention of misleading the Secretary of Transportation regarding motor vehicle or motor vehicle equipment safety related defects that have caused death or serious bodily injury to an individual. Referenced to §2F1.1 (Fraud and Deceit).*
- *49 U.S.C. § 46317(a) - prohibits (1) knowingly and willfully serving or attempting to serve as an airman operating an aircraft without an airman's certificate; or (2) knowingly and willfully employing as an airman to operate an aircraft any individual who does not have an airman's certificate. Referenced to §2F1.1 (Fraud and Deceit).*
- *49 U.S.C. § 46317(b) prohibits offenses described in 49 U.S.C. § 46317(a) that relate to transporting a controlled substance by aircraft or aiding or facilitating a controlled substance violation and that transporting, aiding, or facilitating—*
 - *is punishable by imprisonment of more than one year under Federal or State law; or*
 - *is related to a Federal or state controlled substance law (except simple possession) punishable by imprisonment of more than one year.*

Referenced to §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking).

Second, the proposed amendment makes technical and conforming changes as follows: (1) modifies Application Note 3 of the Commentary to §2J1.6 to improve the transition between the first and second paragraphs; (2) adds a reference to 18 U.S.C. § 842(l)-(o) to the Commentary of §2K1.3; and (3) adds a reference to 7 U.S.C. § 6810 to the Commentary of §2N2.1. (With respect to the latter two technical amendments, the statutory provision was listed in Appendix A (Statutory Index) but not in the Commentary of the respective guidelines.)

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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Commentary

Statutory Provisions: 21 U.S.C. §§ 841(a), (b)(1)-(3), (7), 960(a), (b); 49 U.S.C. § 46317(b). For additional statutory provision(s), see Appendix A (Statutory Index).

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§2F1.1. Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States

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Commentary

Statutory Provisions: 7 U.S.C. §§ 6, 6b, 6c, 6h, 6o, 13, 23; 15 U.S.C. §§ 50, 77e, 77q, 77x, 78j, 78ff, 80b-6, 1644; 15 U.S.C. § 6821; 18 U.S.C. §§ 38, 225, 285-289, 471-473, 500, 510, 659, 1001-1008, 1010-1014, 1016-1022, 1025, 1026, 1028, 1029, 1030(a)(4), 1031, 1341-1344, 2314, 2315; 42 U.S.C. § 1011; 49 U.S.C. §§ 30170, 46317(a). For additional statutory provision(s), see Appendix A (Statutory Index).

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§2K1.3. Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials

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Commentary

Statutory Provisions: 18 U.S.C. §§ 842(a)-(e), (h), (i), (l)-(o), (p)(2), 844(d), (g), 1716; 26 U.S.C. § 5685.

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§2M3.9. Disclosure of Information Identifying a Covert Agent

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Commentary

Statutory Provision: 50 U.S.C. § 421.

Application Notes:

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3. A term of imprisonment imposed for a conviction under 50 U.S.C. § 421 shall be imposed consecutively to any other term of imprisonment.

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§2M6.1. Unlawful Acquisition, Alteration, Use, Transfer, or Possession of Nuclear Material, Weapons, or Facilities

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Commentary

Statutory Provisions: 42 U.S.C. §§ 2077(b), 2122, 2131. Also, 18 U.S.C. §§ 831 (only whereif the conduct is similar to that proscribed by the aforementioned statutory provisions), 842(p)(2). For additional statutory provision(s), see Appendix A (Statutory Index).

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§2N2.1. Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product

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Commentary

Statutory Provisions: 7 U.S.C. §§ 150bb, 150gg, 6810, 7734; 21 U.S.C. §§ 115, 117, 122, 134-134e, 151-158, 331, 333(a)(1), (a)(2), (b), 458-461, 463, 466, 610, 611, 614, 617, 619, 620, 642-644, 676; 42 U.S.C. § 262. For additional statutory provision(s), see Appendix A (Statutory Index).

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APPENDIX A - STATUTORY INDEX

7 U.S.C. § 6810	2N2.1	* * *
7 U.S.C. § 7734	2N2.1	
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15 U.S.C. § 2614	2Q1.2	
15 U.S.C. § 6821	2F1.1	
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18 U.S.C. § 37	2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A3.1, 2A3.4, 2A4.1, 2A5.1, 2A5.2, 2B1.3, 2B3.1, 2K1.4, 2X1.1	
18 U.S.C. § 38	2F1.1	
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18 U.S.C. § 842(l)-(o)	2K1.3	
18 U.S.C. § 842(p)(2)	2K1.3, 2M6.1	
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42 U.S.C. § 408	2F1.1	
42 U.S.C. § 1011	2F1.1	
		* * *
49 U.S.C. § 16104	2J1.1	

49 U.S.C. § 30170	2F1.1	* * *
49 U.S.C. § 46312	2Q1.2	
49 U.S.C. § 46317(a)	2F1.1	
49 U.S.C. § 46317(b)	2D1.1	

§2J1.6. Failure to Appear by Defendant

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Commentary

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Application Notes:

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3. *In the case of a failure to appear for service of sentence, any term of imprisonment imposed on the failure to appear count is to be imposed consecutively to any term of imprisonment imposed for the underlying offense. See §5G1.3(a). The guideline range for the failure to appear count is to be determined independently and the grouping rules of §§3D1.1-3D1.5 do not apply.*

However, in the case of a conviction on both the underlying offense and the failure to appear, other than a case of failure to appear for service of sentence, the failure to appear is treated under §3C1.1 (Obstructing or Impeding the Administration of Justice) as an obstruction of the underlying offense, and the failure to appear count and the count or counts for the underlying offense are grouped together under §3D1.2(c). (Note that 18 U.S.C. § 3146(b)(2) does not require a sentence of imprisonment on a failure to appear count, although if a sentence of imprisonment on the failure to appear count is imposed, the statute requires that the sentence be imposed to run consecutively to any other sentence of imprisonment. Therefore, unlike a count in which the statute mandates both a minimum and a consecutive sentence of imprisonment, the grouping rules of §§3D1.1-3D1.5 apply. See §3D1.1(b), comment. (n.1), and §3D1.2, comment. (n.1).) The combined sentence will then be constructed to provide a "total punishment" that satisfies the requirements both of §5G1.2 (Sentencing on Multiple Counts of Conviction) and 18 U.S.C. § 3146(b)(2). For example, if the combined applicable guideline range for both counts is 30-37 months and the court determines that a "total punishment" of 36 months is appropriate, a sentence of 30 months for the underlying offense plus a consecutive six months' sentence for the failure to appear count would satisfy these requirements. (Note that the combination of this instruction and increasing the offense level for the obstructive, failure to appear conduct has the effect of ensuring an incremental, consecutive punishment for the failure to appear count, as required by 18 U.S.C. § 3146(b)(2).)