



025-96

National Grocers Association

March 6, 1996

United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500
Washington, D.C. 20002-8002

Attention: Public Information

RE: Proposed Revisions of Sentencing Guidelines for United States Courts; Food and Drug Offenses, 61 Fed. Reg. 79 (Jan. 2, 1996)

Dear Sir/Madam:

These comments are submitted on behalf of the National Grocers Association (N.G.A.), representing the retail and wholesale grocers who comprise the independent sector of the food distribution industry. This industry segment accounts for nearly one-half of all food store sales in the United States. N.G.A. members are especially opposed to the United States Sentencing Commission's proposal on food and drug offenses published in the January 22, 1996, Federal Register, because the present sentencing guidelines for the Federal Food, Drug and Cosmetic Act (FFDCA), Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) violations are more than adequate.

The Commission's proposal will have unfair and serious negative consequences for the executives and employees of retail and wholesale food distribution companies, as well as the business entities themselves. Rather than sentencing individuals convicted of violating the FFDCA, the FMIA, and the PPIA under the current food and drug Guideline, §2N2.1, the Commission proposes that persons convicted of misdemeanors under the statutes should be sentenced under the fraud Guideline §2F1.1. The increased "fraud" sentencing standard would apply to defendants who did not engage in fraudulent conduct. The Commission's proposal is a substantial deviation from the present standard that grants federal judges the discretion to impose lesser sentences for violations that are merely negligent or inadvertent.

The current Guideline §2F1.1 provides for the application of strong fraud sentencing standards when fraudulent conduct is involved. It is unfair to apply the fraud standard to nonfraudulent conduct. N.G.A. strongly opposes its application in food and drug cases where fraud is not a factor. The effect of the Commission's proposal would be to eliminate judicial discretion by imposing §2F1.1 jail sentences and excessive fines for misdemeanor offenses. There is no record or data that justifies the Commission's proposed change.

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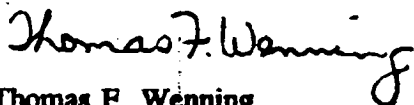
United States Sentencing Commission
March 5, 1996
Page Two.

Under §2F1.1, the Commission would permit an allowance to be made for increased penalties in cases involving conscious or reckless risk of bodily injury. The proposal does not indicate that judges would be allowed any of their present appropriate discretion to issue lower or reduced sentences where negligence or inadvertent violations occur. Under current provision §2N2.1, the judge may have the discretion to impose penalties ranging from several hundred dollars to \$5,000 for such violations, but under §2F1.1 those penalties against individuals are most likely to require fines of anywhere from \$5,000 to \$100,000. In addition, whereas probation may have been granted under §2N2.1, §2F1.1 would require actual incarceration of at least one year. Business entities are now subject to monetary penalties at the judge's discretion under §2N2.1, but under §2F1.1 those money penalties imposed would begin in the hundreds of thousands of dollars. This clearly illustrates the unfairness of imposing the fraud standard in all food and drug law violation cases. Judges should be permitted the flexibility to impose monetary penalties and jail sentences in their discretion, both up and down.

In conclusion, N.G.A. strongly believes that the sentencing guidelines under §2N2.1 should remain in effect. This will allow judges sentencing discretion in food and drug law cases where mere negligence, and not intentional or fraudulent conduct, exists. N.G.A. urges the Commission to eliminate the proposed change in sentencing provisions for food and drug offenses from any recommendation that is submitted to Congress. The current sentencing guidelines contained in §2N2.1 and §2F1.1 provide sufficient deterrence and judicial guidance regarding food and drug offenses.

The National Grocers Association appreciates the opportunity to provide the views of its members on this most important issue and would be pleased to provide any additional information that the Commission may require in its further consideration.

Sincerely,



Thomas F. Wenning
Senior Vice President and
General Counsel

TFW/sh