CHAPTER 25

Crimes Related to Petroleum Business Act Violation

- Promulgated March 28, 2016. Effective on July 1, 2016.
- Amended on April 24, 2023. Effective on July 1, 2023.

This guideline applies to adult offenders (nineteen years of age or older) who committed any offense violating the Petroleum And Alternative Fuel Business Act (hereinafter 'Petroleum Business Act'), Article 44, subparagraph 3, Article 46, subparagraph 10 (limited to violation of Petroleum Business Act, Article 39, paragraph 1, subparagraphs 2, 3, and 8).

PART A

TYPES OF OFFENSES AND SENTENCING RANGE

1 MANUFACTURING · SELLING, ETC. FAKE PETROLEUM PRODUCTS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Small and Medium Scale (Less than 50,000 liters)	~ 6 mos.	4 mos. ~ 10 mos.	8 mos. ~ 1 yr. 6 mos.
2	Average Scale (50,000 liters or more but less than 500,000 liters)	4 mos. ~ 10 mos.	8 mos. ~ 1 yr. 6 mos.	1 yr. ~ 3 yrs.
3	Large Scale (500,000 liters or more)	8 mos. ~ 1 yr. 6 mos.	1 yr. ~ 3 yrs.	2 yrs. ~ 4 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • Mere participation • The degree of violation of the law is not grievous	• Highly egregious conducts or methods • Serious harm resulting from the offense • Instigating the subordinate to commit the crime
	Offender/ Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities or internal whistle-blowing	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct	• Cases where the actual gain is minor • Not offender's primary business	• Commission of a crime through collusion with inspecting public officials • Attempting to evade inspection • Advertising was conducted, or solicitation was conducted through media with high-dissemination

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
			• Offenses under the Petroleum Business Act, Article 44, subparagraph 5 • Offenses under the Petroleum Business Act, Article 44, subparagraph 6
	Offender/ Etc.	• Measures, such as a disposal, are taken immediately after the detection • Sincere remorse • No prior criminal convictions	• Evidence tampering or attempt to destroy or conceal evidence after an enforcement action • Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense, which do not constitute statutory recidivism (within ten years after the completion of the sentence)

2 SELLING IN VIOLATION OF THE QUANTITY · PURPOSE, ETC.

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Selling Kerosene and etc. for Other Purposes	- 6 mos.	4 mos. - 10 mos.	8 mos. - 1 yr. 6 mos.
2	Selling Less Than the Exact Quantity · Selling with Fraudulently Increased Volume	- 8 mos.	6 mos. - 1 yr.	10 mos. - 1 yr. 6 mos.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • Mere participation • Very low sales volume	• Highly egregious conducts or methods • Serious harm resulting from the offense (Type 1) • Instigating the subordinate to commit the crime
	Offender/ Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities or internal whistle-blowing	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct	• Cases where the actual gain is minor • Not the offender's primary business (Type 1)	• Commission of crime through collusion with inspecting public officials • Attempting to evade inspection • Enticing by using advertisement or media with a high-dissemination (Type 1) • Offense under the Petroleum Business Act, Article 46, subparagraph 10 and Article 39, paragraph 1, subparagraph 4 (Type 2)
	Offender/ Etc.	• Sincere remorse • No prior criminal convictions	• Evidence tampering or attempt to destroy or conceal evidence after an enforcement action • Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense, which do not constitute statutory recidivism (within ten years after the completion of the sentence)

DEFINITION OF OFFENSES

1 MANUFACTURING · SELLING, ETC. FAKE PETROLEUM PRODUCTS

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law.

ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCING RANGE BY LAW
Manufacturing, importing, storing, transporting, keeping, or selling fake petroleum products	Petroleum Business Act, Article 44, subparagraph 3, Article 29, paragraph 1, subparagraph 1	Imprisonment Not Exceeding 5 Years or Fine Not Exceeding 200 million
Supplying, selling, storing, transporting, or keeping petroleum products and others in order to use them in manufacturing fake petroleum products or using them as fake petroleum products	Petroleum Business Act, Article 44, subparagraph 3, Article 29, paragraph 1, subparagraph 3	

(unit: KRW)

1. TYPE 1 — SMALL AND MEDIUM SCALE

- Type 1 cases are offenses of selling less than 50,000 liters of volume of fake petroleum products and others.
- The 'volume of fake petroleum products and others' means the volume of fake petroleum products manufactured, distributed, imported, stored, transported, kept, or sold. The overlapping quantities across above acts shall not be counted more than once (hereinafter the same).

2. TYPE 2 — AVERAGE SCALE

- Type 2 cases are offenses of selling 50,000 liters or more but less than 500,000 liters of volume of fake petroleum products and others.

3. TYPE 3 — LARGE SCALE

- Type 3 cases are offenses of selling 500,000 liters or more of volume of fake petroleum products and others.

2 SELLING IN VIOLATION OF THE QUANTITY · PURPOSE, ETC.

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law.

TYPE	ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCING RANGE BY LAW
1	Selling kerosene and etc. as fuel for motor vehicles	Petroleum Business Act, Article 46, subparagraph 10, Article 39, paragraph 1, subparagraph 8	Imprisonment Not Exceeding 2 Years or Fine Not Exceeding 50 million
2	Selling with less than the normal quantity	Petroleum Business Act, Article 46, subparagraph 10, Article 39, paragraph 1, subparagraph 2	
	Selling with fraudulently increased volume	Petroleum Business Act, Article 46, subparagraph 10, Article 39, paragraph 1, subparagraph 3	

(unit: KRW)

DEFINITION OF SENTENCING FACTORS

1 MANUFACTURING · SELLING, ETC. FAKE PETROLEUM PRODUCTS[1)]

1. CASES WITH SPECIAL EXTENUATING CIRCUMSTANCES THAT MITIGATE THE OFFENDER'S INVOLVEMENT

- This applies where one or more of the following are present:
  - The offender participated in the crime under coercion or threats by another person (excluding cases that fall under Article 12 of the Criminal Act).
  - The offender merely agreed to participate in the crime and neither directed nor directly took part in carrying out the offense.
  - Other cases with comparable factors

2. MERE PARTICIPATION

- This applies where one or more of the following are present:
  - Where the offender did not lead, plan, or command the crime but participated in mere conduct during the execution phase of the offense.
  - Where the offender did not play an important role in the manufacturing or distributing of fake petroleum products and merely engaged in transporting, keeping, or storing fake petroleum products in exchange for a small amount of shipping charges or fees
  - Other cases with comparable factors

3. THE DEGREE OF VIOLATION IS NOT GRIEVOUS

- This applies where one or more of the following are present:
  - Where the degree of violation of law is not grievous, such as selling genuine petroleum with a mixture of a small portion of fake petroleum
  - Where the difference in the quality of fake petroleum products and genuine petroleum products is low, and the degree of condemnation is relatively low
  - Other cases with comparable factors

1) Sentencing factors with the same designation that apply to Selling In Violation of the Quantity · Purpose, Etc. have the same definition unless separately defined.

4. HIGHLY EGREGIOUS CONDUCTS OR METHODS

- This applies where one or more of the following are present:
  - Means and methods for the commission of the offense were meticulously premeditated
  - Multiple persons were involved in an organized manner for committing the offense
  - Committed the crime by installing large or high-tech facilities (if the offense falls under Article 44, subparagraph 6 of Offenses under Petroleum Business Act applies, the offense shall not be considered as a multiple offenses, but shall be regarded only as a sentencing factor for adjusting sentencing range)
  - Cases where the fake petroleum products were sold to a large number of buyers by deceiving the fake petroleum products as genuine (however, this factor shall not be applied when a separate offense such as Fraud or other is established and Guidelines On Multiple Offenses are applied)
  - Other cases with comparable factors

5. SERIOUS HARM RESULTING FROM THE OFFENSE

- This applies where one or more of the following are present:
  - Where the crime caused the failure of a large number of vehicles and machines
  - Where the crime resulted in serious air pollution, poisoning and etc.
  - Where a serious accident such as explosion or poisoning occurred in manufacturing, transporting, and storing facilities
  - Other cases with comparable factors

※ However, this factor shall not be applied when a separate offense is established and Guidelines On Multiple Offenses are applied.

6. NOT OFFENDER'S PRIMARY BUSINESS

- This refers to cases where a legitimate petroleum product retailer committed the offense incidentally for the passive purpose of maintaining business operations, such as supplying raw materials to a fake petroleum product manufacturer; where the offense was committed as ancillary to the primary business; where the degree of culpability is relatively low given the scale of profit obtained and the number of offenses committed; or where the offense lacks a commercial intent.

7. OFFENSE UNDER ARTICLE 44, SUBPARAGRAPH 5 OF THE PETROLEUM BUSINESS ACT

※ If this factor applies, the offense shall not be considered as a multiple offenses but shall be regarded only as a sentencing factor for the adjusting sentencing range.

8. OFFENSE UNDER ARTICLE 44, SUBPARAGRAPH 6 OF THE PETROLEUM BUSINESS ACT

- If 'Highly egregious conducts or methods' has already been applied, this factor will not be separately considered as a general aggravating factor.

※ If this factor applies, the offense shall not be considered as a multiple offenses but shall be regarded only as a sentencing factor for the adjusting sentencing range.

9. ATTEMPT TO EVADE INSPECTION

- This applies where one or more of the following are present:
  - Surveillance devices, access control devices, or escape facilities were installed
  - The business was disguised as a legitimate manufacturing facility or factory to evade inspection
  - Other cases with comparable factors
- However, if 'Highly egregious conducts or methods (Special Sentencing Factor)' applies, this factor does not apply.

10. SINCERE REMORSE

- This indicates cases in which, after examining and assessing the specific circumstances surrounding the offender's admission of the offense and any voluntary efforts made toward victim restitution and/or the prevention of re-offending, the offender is deemed to show genuine remorse for the offense.

11. NO PRIOR CRIMINAL CONVICTIONS

- This indicates cases in which, the defendant has never committed a crime even once prior to the relevant offense. However, this excludes cases where crimes were committed repeatedly over a prolonged period.

2 SELLING IN VIOLATION OF THE QUANTITY · PURPOSE, ETC.

1. MERE PARTICIPATION

- This indicates cases in which the offender did not lead, plan, or command the crime but participated in mere conduct during the execution phase of the offense.

2. NOT OFFENDER'S PRIMARY BUSINESS (TYPE 1)

- This refers to cases where a legitimate petroleum product retailer committed the offense incidentally for the passive purpose of maintaining business operations, such as selling kerosene, etc. as fuel for motor vehicles; where the offense was committed as ancillary to the primary business; where the degree of culpability is relatively low given the scale of profit obtained and the number of offenses committed; or where the offense lacks a commercial intent.

3. HIGHLY EGREGIOUS CONDUCTS OR METHODS

- This applies where one or more of the following are present:
  - The sales volume or the amount of benefit is very large
  - Means and methods for the commission of the offense were meticulously done in advance
  - Multiple persons were involved in an organized manner for the purpose of committing the offense
  - Large or high-tech facilities were installed to commit the offense (if Article 46, subparagraph 10 and Article 39, paragraph 1, subparagraph 4 of the Petroleum Business Act applies, the offense shall not be considered as a multiple conviction, but shall be regarded only as a single-count conviction that is a factor for the adjusting sentencing range)
  - The offender sold kerosene and other fuels to a large number of buyers by deceiving the products as genuine (Type 1, however, if the offender is convicted for fraud and other crimes and the offense is considered as a multiple conviction, this factor does not apply)
  - Other cases with comparable factors

4. OFFENSE UNDER ARTICLE 46, SUBPARAGRAPH 10 AND ARTICLE 39, PARAGRAPH 1, SUBPARAGRAPH 4, OF THE PETROLEUM BUSINESS ACT (TYPE 2)

- If 'Highly egregious conducts or methods' is applied, this should not be applied in duplication as the General Aggravating Factor.

  ※ If this factor applies, the offense shall not be considered as a multiple offenses but shall be regarded only as a sentencing factor for the adjusting sentencing range.

PRINCIPLES APPLICABLE TO SENTENCING FACTORS

1 DETERMINING THE SENTENCING RANGE

- When determining the appropriate sentencing range, judges must consider only the Special Sentencing Factors.
- However, where multiple Special Sentencing Factors are present, the applicable sentencing range shall be determined after assessing the factors in accordance with the following principles:
  - ❶ Greater weight is accorded to Conduct Factors than to Offender/Etc. Factors of equal number.
  - ❷ Conduct Factors *inter se*, and Offender/Etc. Factors *inter se*, shall be treated as equivalent.
  - ❸ If the sentencing range applicable cannot be determined by the aforementioned principles in ❶ and ❷, judges are to decide the sentencing range by a comprehensive comparison and assessment of Special Sentencing Factors based on the principles set forth in ❶ and ❷.
- After the assessment of sentencing factors, where aggravating factors outweigh mitigating factors, the aggravating sentencing range is recommended; where mitigating factors outweigh aggravating factors, the mitigating sentencing range is recommended; and in all other cases, the standard sentencing range is recommended.

2 DETERMINING THE SENTENCE TO BE IMPOSED

- The sentence to be imposed shall be determined within the sentencing range established under paragraph 1 above, by comprehensively taking into account both General Sentencing Factors and Special Sentencing Factors.

GENERAL APPLICATION PRINCIPLES

1 SPECIAL ADJUSTMENTS TO THE RECOMMENDED SENTENCING RANGE

❶ After the assessment of Special Sentencing Factors, if a case falls within the Aggravating Sentencing Range and either i) two or more Special Aggravating Factors exist alone, or ii) Special Aggravating Factors outnumber Special Mitigating Factors by two or more, the upper limit of the recommended sentencing range may be increased by up to 1/2.

❷ After the assessment of Special Sentencing Factors, if a case falls within the Mitigating Sentencing Range and either i) two or more Special Mitigating Factors exist alone, or ii) Special Mitigating Factors outnumber Special Aggravating Factors by two or more, the lower limit of the recommended sentencing range may be reduced by up to 1/2.

2 RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE UNDER THE SENTENCING GUIDELINES AND THE APPLICABLE SENTENCING RANGE BY LAW

- Where the sentencing range recommended under this guideline conflicts with the statutory applicable aggravated/mitigated sentencing range, the upper or lower limit of the applicable sentencing range by law shall govern.

3 APPLICATION OF DISCRETIONARY MITIGATING FACTORS BY LAW

- Where a judge declines to apply discretionary statutory mitigating factors listed in the Sentencing Factor Table of this guideline, such factors shall be considered as extenuating circumstances among mitigating factors.

GUIDELINES ON SENTENCING MULTIPLE OFFENSES

1 APPLICABLE RANGE

- This section applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act. However, when concurrent crimes under the first part of Article 37 of the Criminal Act include both an offense set forth in the sentencing guidelines and an offense not covered by the sentencing guidelines, then the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

2 DETERMINING THE BASE OFFENSE

- The "base offense" refers to the offense subject to the most severe punishment after selecting the type of punishment and applying any statutory aggravation and/or mitigation thereto. However, where the upper end of the sentencing range under the sentencing guidelines for an offense covered by this chapter is lower than the upper end of the sentencing range under the sentencing guidelines for the other concurrent offense, the other concurrent offense shall become the base offense.

3 DETERMINING THE SENTENCING RANGE FOR THE CONCURRENT MULTIPLE SAME-OFFENSES

- For concurrent same-offenses among Manufacturing, Selling, Etc. Fake Petroleum Products, the following method of aggravation for multiple offenses shall apply.
  - ❶ The Type of offense shall be determined based on the total volume of fake petroleum products and others. Within that Type, the sentencing range shall be selected by judges after taking into account for all relevant circumstances.
  - ❷ (1) Where the aggregation of the volume of fake petroleum products and others results in an offense Type one level higher than that of the most severe

single offense among offenses of the same Type, the lower end of the sentencing range shall be reduced by 1/3. (2) Where the aggregation of the volume of fake petroleum products and others results in an offense Type two levels or more higher than that of the most severe single offense, the lower end of the sentencing range shall be reduced by 1/2. However, the reduced lower end of the sentencing range shall not fall below the lower end of the sentencing range of the offense Type applicable to the most severe single offense.

- For multiple offenses between Manufacturing, Selling, Etc. Fake Petroleum Products and Selling In Violation of the Quantity, Purpose, Etc., the following methods of 'Determining the Sentencing Range for the Concurrent Offenses of the Different Type' shall apply.

4 DETERMINING THE SENTENCING RANGE FOR THE CONCURRENT MULTIPLE DIFFERENT-OFFENSES

- Except for concurrent different-offense that are treated as a single offense under the sentencing guidelines, the following method of aggravation for multiple offenses shall apply.
  - ❶ The sentencing range for multiple offenses involving two offenses shall be determined by adding 1/2 of the upper end of the sentencing range of the other offense to the upper end of the sentencing range of the base offense.
  - ❷ For multiple offenses involving three or more offenses, the upper end of the sentencing range shall be determined by adding the following three figures: (1) the upper end of the sentencing range of the base offense, (2) 1/2 of the upper end of the sentencing range of the offense with the highest upper end of the sentencing range among the other offenses, and (3) 1/3 of the upper end of the sentencing range of the offense with the second highest upper end of the sentencing range among the other offenses.
  - ❸ For multiple offenses where the lower end of the sentencing range of the other offense is higher than the lower end of the sentencing range of the base offense, the lower end of the sentencing range after applying the method of aggravation for multiple offenses shall be the lower end of the sentencing range of the other offense.

- However, where the multiple offenses include concurrent same-offenses of Manufacturing, Selling, Etc. Fake Petroleum Products, the sentencing range shall first be determined by applying the method for concurrent same-offenses involving above offense, and the method of aggravation for multiple different-offenses set out above shall then be applied to that sentencing range.

PART B

GUIDELINE ON SUSPENDING A SENTENCE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Highly egregious conducts or methods • Type 3 (manufacturing and selling fake petroleum products and others) • Serious harm resulting from the offense • Prior convictions for the same-offense [suspended sentence of imprisonment without labor or a more severe punishment imposed within the past five years, or three or more fines (including suspended fine)] • Repeat offense of the same-offense in a short period of time after inspection	• In cases where there are special extenuating circumstances that mitigate the offender's involvement in the offense • Mere participation • Type 1 (Manufacturing, Selling, Etc. Fake Petroleum Products) • Very low sales volume (Selling In Violation of the Quantity, Purpose, Etc.) • The degree of violation of the law is not grievous (manufacturing and selling fake petroleum products and others) • Voluntary surrender to investigative authorities or whistle-blowing • No prior criminal convictions
General Circumstance	• Commission of crime through collusion with inspecting public officials • Attempting to evade inspection • Attracting by using advertisement or media with high-dissemination • An offense under the Petroleum Business Act, Article 44, subparagraph 5, Article 44, subparagraph 6, Article 46, subparagraph 10, and Article 39, paragraph 1, subparagraph 4 • Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Lack of social/family ties • Absence of sincere remorse • Leading role as a co-offender • Evidence tampering or attempt to destroy or conceal evidence after an enforcement action	• Measures, such as a disposal, are taken immediately after the detection (Manufacturing, Selling, Etc. Fake Petroleum Products) • Not offender's primary business • Minor participation as a co-offender • No prior convictions resulting in a suspended sentence of imprisonment without labor, or heavier punishment • Stable social/family ties • Sincere remorse • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on dependent family members

DEFINITIONS OF CIRCUMSTANCES TO CONSIDER WHEN SUSPENDING A SENTENCE

- For identical factors in both Sentencing Factors and the Circumstances for Suspending a Sentence, refer to the definitions set forth in the Definition of Sentencing Factors.
- Calculation of the Period of Prior Criminal Convictions
  - For cases where a suspended sentence of imprisonment or a fine was imposed, the period of a prior conviction is calculated from the date on which the judgment became final to the date of the commission of the offense.
  - For cases where a sentence of imprisonment was executed, the period of a prior conviction is calculated from the date on which the sentence was fully served to the date of the commission of the offense.

PRINCIPLES APPLICABLE TO CIRCUMSTANCES WHEN SUSPENDING A SENTENCE

- When the recommended sentence is imprisonment with labor and judges decide to suspend execution of the sentence, they must give greater weight to the Primary Circumstances than to the General Circumstances, and the following principles should be considered:
  1. When two or more Primary Affirmative Circumstances exist alone, or when Primary Affirmative Circumstances outnumber Primary Adverse Circumstances by two or more, it is recommended to suspend the sentence.
  2. When two or more Primary Adverse Circumstances exist alone, or when Primary Adverse Circumstances outnumber Primary Affirmative Circumstances by two or more, imprisonment is recommended.
  3. In cases in which 1 or 2 apply, but the difference between the number of General Adverse (Affirmative) Circumstances and General Affirmative (Adverse) Circumstances is greater than the difference between the number of Primary Affirmative (Adverse) Circumstances and Primary Adverse (Affirmative) Circumstances, or in cases other than 1 or 2, the judges shall decide whether to suspend the sentence after comparing and assessing all the Circumstances comprehensively.