

ISSUE FOR COMMENT: RETROACTIVITY

This document sets forth the unofficial text of an issue for comment promulgated by the Commission, and is provided only for the convenience of the user. Official text of the issue for comment can be found on the Commission's website at www.uscc.gov and will appear in a forthcoming edition of the Federal Register.

Public comment should be received on or before July 7, 2014. For further information, see the full contents of the official notice when it is published in the Federal Register (available at www.uscc.gov).

Public comment should be sent to the Commission by electronic mail or regular mail. The email address for public comment is Public_Comment@uscc.gov. The regular mail address for public comment is United States Sentencing Commission, One Columbus Circle, N.E., Suite 2-500, Washington, D.C. 20002-8002, Attention: Public Affairs-Retroactivity Public Comment.

The issue for comment is as follows:

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On April 30, 2014, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2014, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the Federal Register.

Amendment 3, pertaining to drug offenses, has the effect of lowering guideline ranges. Pursuant to 28 U.S.C. § 994(u), "[i]f the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced."

The Commission intends to consider whether, pursuant to 18 U.S.C. § 3582(c)(2) and 28 U.S.C. § 994(u), this amendment, or any part thereof, should be included in subsection (c) of §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants. In considering whether to do so, the Commission will consider, among other things, a retroactivity impact analysis and public comment. Accordingly, the Commission seeks public comment on whether it should make this amendment available for retroactive application. To help inform public comment, the retroactivity impact analysis will be made available to the public as soon as practicable.

Among the factors that have been considered in the past by the Commission in selecting the amendments included in subsection (c) of §1B1.10 were the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range. See §1B1.10, comment. (backg'd).

Part-By-Part Consideration of Amendment

The Commission seeks comment on whether it should list the entire amendment, or one or more parts of the amendment, in subsection (c) of §1B1.10 as an amendment that may be applied retroactively to previously sentenced defendants. For example, one part of the amendment changes the Drug Quantity Table in §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) across drug types. This has the effect of lowering guideline ranges for certain defendants for offenses involving drugs. Another part of the amendment changes the quantity tables in §2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy) across chemical types. This has the effect of lowering guideline ranges for certain defendants for offenses involving chemical precursors. For each of these parts, the Commission requests comment on whether that part should be listed in subsection (c) of §1B1.10 as an amendment that may be applied retroactively.

Other Guidance or Limitations for the Amendment Pertaining to Drug Offenses

If the Commission does list the entire amendment, or one part of the amendment, in subsection (c) of §1B1.10 as an amendment that may be applied retroactively to previously sentenced defendants, should the Commission provide further guidance or limitations regarding the circumstances in which and the amount by which sentences may be reduced?

For example, should the Commission limit retroactivity only to a particular category or categories of defendants, such as (A) defendants who received an adjustment under the guidelines' "safety valve" provision (currently §2D1.1(b)(16)), or (B) defendants sentenced before United States v. Booker, 543 U.S. 220 (2005)?