

Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on March 9, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95-6362 Filed 3-14-95; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice and request for public comment regarding proposed amendments to sentencing guidelines, policy statements, and commentary.

SUMMARY: The Commission is considering promulgating amendments to the sentencing guidelines, policy statements, and commentary. A synopsis of issues to be addressed is set forth below. The Commission may report amendments to the Congress on or before May 1, 1995. Comment is sought on all proposals, alternative proposals, and any other aspect of the sentencing guidelines, policy statements, and commentary relating to the issues below.

DATES: Public comment should be received by the Commission no later than April 10, 1995, to be considered by the Commission in the promulgation of amendments due to the Congress by May 1, 1995.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2-500, South Lobby, Washington, DC 20002-8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273-4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission is empowered under 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to review and revise periodically guidelines previously promulgated and authorizes it to submit

guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994 (o), (p).

Ordinarily, the Administrative Procedure Act rulemaking requirements are inapplicable to judicial agencies; however, 28 U.S.C. 994(x) makes the Administrative Procedure Act rulemaking provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Commission.

Section 1B1.10 of the United States Sentencing Commission Guidelines Manual sets forth the Commission's policy statement regarding retroactivity of amended guideline ranges. Comment is requested as to whether any of the proposed amendments should be made retroactive under this policy statement.

With the exception of proposed amendment and issue for comment 4, the issues below are derived specifically from the Commission's Special Report to Congress: Cocaine and Federal Sentencing Policy, submitted to Congress on February 28, 1995. In addition to requesting comment on these issues, the Commission invites suggestions for specific amendment language. Publication of an issue for comment reflects only the Commission's determination that the issue is worthy of public comment by interested groups and individuals. Publication should not be regarded as an indication that the Commission or any individual Commissioner has formed a view on the merits of the issue.

Authority: 28 U.S.C. 994 (a), (o), (p), (x).

Richard P. Conaboy,
Chairman.

1. Issue for Comment

On February 28, 1995, the Commission issued a special report to Congress on cocaine and federal sentencing policy. The report recommended that changes be made to the current cocaine sentencing guidelines, including changes to the 100-to-1 quantity ratio between powder cocaine and crack cocaine used in determining sentences. The report indicated that the Commission will investigate the feasibility of creating new guideline enhancements and amending current enhancements to address more fully and fairly the harms associated with cocaine offenses generally and, specifically, the added harms associated with crack cocaine offenses. Based on these new enhancements, the Commission intends to make appropriate adjustments in the guideline quantity ratio.

The Commission requests comment regarding implementation of the

recommendations in the report. Specifically, the Commission requests comment on the appropriateness of adding specific offense characteristics to § 2D1.1 to enhance sentences for violence and other harms associated with some crack and powder cocaine offenses as well as some other drug offenses. In addition, the Commission seeks comment on the usefulness of adding or amending commentary and policy statements regarding possible departures to take account of the increased harms associated with some cocaine offenses. For example, how should the social harm associated with "crack houses" or other establishments where drugs are sold and consumed be taken into account? The Commission previously has requested commentary on what quantity ratio should be substituted for the current 100-to-1 ratio.

In addition, the Commission seeks comment on the timing and scope of guideline amendments for cocaine offenses. For example, if the Commission proceeds with guideline amendments for cocaine offenses in this amendment cycle, should the amendments apply to drug offenses generally or only to cocaine offenses? If new enhancements (e.g., for use of a firearm and victim injury) are made generally applicable to drug offenses, are other changes in the drug guidelines necessary (e.g., in the relative emphasis on drug quantity)? Should any of these changes be made retroactive to cases previously sentenced, and if so, how might this process best be accomplished?

A number of amendment proposals and issues for comment relating to drug sentencing policy were set forth in the **Federal Register** of January 9, 1995. See 60 FR 2430. Additional issues for comment raised by the Special Report on Cocaine Sentencing are set forth below.

2. Issue for Comment

In light of the Commission's report to Congress on cocaine and federal sentencing policy and its recommendations regarding sentences for those convicted of simple possession of crack cocaine, the Commission requests comment on whether and how it should amend § 2D2.1 for offenses involving the simple possession of crack cocaine.

3. Issue for Comment

The Commission invites comment as to whether the enhancements for drug offenses involving underage or pregnant individuals, which are now included in

§ 2D1.2, should instead be made specific offense characteristics under § 2D1.1.

Inclusion in § 2D1.1 would make these enhancements applicable to all drug defendants whose relevant conduct involved juveniles or pregnant individuals, regardless of whether the defendant was convicted of the particular statutes now indexed to § 2D1.2 (21 U.S.C. 859, 860, and 861). The circuits appear to be split regarding whether conviction under one of these statutes is a prerequisite for application of the § 2D1.2 enhancements. (Compare *United States v. Oppedahl*, 998 F.2d 584 (8th Cir. 1993), with *United States v. Locklear*, 24 F.3d 641 (4th Cir. 1994), cert. denied, 115 S. Ct. 278, 457 (1994).)

4. Synopsis of Proposed Amendment

This amendment inserts additional background commentary explaining the Commission's rationale and authority for § 4B1.1 (Career Offender). The amendment responds to a decision by the United States Court of Appeals for the District of Columbia Circuit in *United States v. Price*, 990 F.2d 1367 (D.C. Cir. 1993). In *Price*, the court invalidated application of the career offender guideline to a defendant convicted of a drug conspiracy because 28 U.S.C. 994(h), which the Commission cites as the mandating authority for the career offender guideline, does not expressly refer to inchoate offenses. The court indicated that it did not foreclose Commission authority to include conspiracy offenses under the career offender guideline by drawing upon its broader guideline promulgation authority in 28 U.S.C. 994(a). See also *United States v. Mendoza-Figueroa*, 28 F.3d 766 (8th Cir. 1994), vacated (Sept. 2, 1994); *United States v. Bellazerius*, 24 F.3d 698 (5th Cir.) cert. denied, 115 S. Ct. 375 (1994). Other circuits have rejected the *Price* analysis and upheld the Commission's definition of "controlled substance offense." The Ninth Circuit considered the legislative history to section 994(h) and determined that the Senate Report clearly indicated that section 994(h) was not the sole enabling statute for the career offender guidelines. *United States v. Heim*, 15 F.3d 830 (9th Cir.) cert. denied, 115 S. Ct. 445 (1994). See also *United States v. Hightower*, 25 F.3d 182 (3d Cir.), cert. denied, 115 S. Ct. 370 (1994). *United States v. Damerville*, 27 F.3d 254 (7th Cir.), cert. denied, 115 S. Ct. 55 (1994).

Proposed Amendment

Application Note 1 of the Commentary to § 4B1.2 is repromulgated without change.

The Commentary to § 4B1.1 captioned "Background" is amended to read as follows:

Background

28 U.S.C. 994(h) mandates that the Commission assure that certain "career" offenders receive a sentence of imprisonment "at or near the maximum term authorized." Section 4B1.1 implements this directive, with the definition of a career offender tracking in large part the criteria set forth in 28 U.S.C. 994(h). However, in accord with its general guideline promulgation authority under 28 U.S.C. 994(a)-(f) and its amendment authority under 28 U.S.C. 994(o) and (p), the Commission has modified this definition in several respects to focus more precisely on the class of recidivist offenders for whom a lengthy term of imprisonment is appropriate and avoid "unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct * * * ." 28 U.S.C. 991(b)(1)(B). The Commission's refinement of this definition over time is consistent with Congress's choice of a directive to the Commission rather than a mandatory minimum sentencing statute ("The [Senate Judiciary] Committee believes that such a directive to the Commission will be more effective; the guidelines development process can assure consistent and rational implementation for the Committee's view that substantial prison terms should be imposed on repeat violent offenders and repeat drug traffickers." S. Rep. No. 225, 98th Cong., 1st Sess. 175 (1983)).

The legislative history of this provision suggests that the phrase "maximum term authorized" should be construed as the maximum term authorized by statute. See S. Rep. No. 225, 98th Cong., 1st Sess. 175 (1983), 128 Cong. Rec. 26,511-12 (1982) (text of "Career Criminals" amendment by Senator Kennedy), id. at 26,515 (brief summary of amendment), id. at 26,517-18 (statement of Senator Kennedy)."

Additional Issue for Comment

The Commission invites comment on whether, as an alternative to, or in addition to, the proposed amendment to § 4B1.1, Chapter I, Part A of the Guidelines Manual should be amended to state that in its promulgation of specific guidelines, the Commission intends in all cases to rely on its general authority under 28 U.S.C. 994(a) as well

as any other more specific grant of statutory authority.

[FR Doc. 95-6330 Filed 3-14-95; 8:45 am]

BILLING CODE 2210-40-P

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: VA MATIC Change, VA Form 29-0165

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273-6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 10102, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 14, 1995.

Dated: March 8, 1995.

By direction of the Secretary.

Donald L. Neilson,
Director, Information Management Service.

Reinstatement

1. VA MATIC Change, VA Form 29-0165
2. The form is used by the insured to request VA to change the account number and/or financial institution from which a VA MATIC deduction was previously authorized.
3. Individuals or households
4. 1,250 hours
5. 15 minutes