of May each year pursuant to 28 U.S.C. 994(p).

Pursuant to 28 U.S.C. 994(g), the Commission intends to consider the issue of reducing costs of incarceration and overcapacity of prisons, to the extent it is relevant to any identified priority.

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2014. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission’s ability to complete work on any or all of its identified priorities by the statutory deadline of May 1, 2014. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2014.

As so prefaced, the Commission has identified the following priorities:

(1) Continuation of its work with Congress and other interested parties on statutory mandatory minimum penalties to implement the recommendations set forth in the Commission’s 2011 report to Congress, titled Mandatory Minimum Penalties in the Federal Criminal Justice System, including its recommendations regarding the severity and scope of mandatory minimum penalties, consideration of expanding the “safety valve” at 18 U.S.C. 3553(f), and elimination of the mandatory “stacking” of penalties under 18 U.S.C. 924(c), and to develop appropriate guideline amendments in response to any related legislation.

(2) Review, and possible amendment, of guidelines applicable to drug offenses, including possible consideration of amending 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.

(3) Continuation of its work with the congressional, executive, and judicial branches of government, and other interested parties, with respect to the Commission’s December 2012 report to Congress, titled The Continuing Impact of United States v. Booker on Federal Sentencing, and development of appropriate guideline amendments in response to any related legislation.

(4) Continuation of its work on economic crimes, including (A) a comprehensive, multi-year study of § 2B1.1 (Theft, Property Destruction, and Fraud) and related guidelines, including examination of the loss table and the definition of loss, and (B) consideration of any amendments to such guidelines that may be appropriate in light of the information obtained from such study.

(5) Continuation of its multi-year study of statutory and guideline definitions relating to the nature of a defendant’s prior conviction (e.g., “crime of violence,” “aggravated felony,” “violent felony,” and “drug trafficking offense”) and the impact of such definitions on the relevant statutory and guideline provisions (e.g., career offender, illegal reentry, and armed career criminal), possibly including recommendations to Congress on any statutory changes that may be appropriate and development of guideline amendments that may be appropriate.

(6) Continuation of its comprehensive, multi-year study of recidivism, including (A) Examination of circumstances that correlate with increased or reduced recidivism; (B) possible development of recommendations for using information obtained from such study to reduce costs of incarceration and overcapacity of prisons; and (C) consideration of any amendments to the Guidelines Manual that may be appropriate in light of the information obtained from such study.

(7) Undertaking a multi-year review of federal sentencing practices pertaining to violations of conditions of probation and supervised release, including possible consideration of amending the policy statements in Chapter Seven of the Guidelines Manual.

(8) Possible consideration of amending the policy statement pertaining to “compassionate release,” § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons).

(9) Continuation of its work with Congress and other interested parties on child pornography offenses to implement the recommendations set forth in the Commission’s December 2012 report to Congress, titled Federal Child Pornography Offenses, and to develop appropriate guideline amendments in response to any related legislation.


(11) Resolution of circuit conflicts, pursuant to the Commission’s continuing authority and responsibility, under 28 U.S.C. 991(b)(1)(B) and Braxton v. United States, 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts.

(12) Consideration of any miscellaneous guideline application issues coming to the Commission’s attention from case law and other sources.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Patti B. Saris,
Chair.
[FR Doc. 2013–20356 Filed 8–20–13; 8:45 am]
effective on the date specified by the Commission (typically November 1 of the same calendar year). See 28 U.S.C. 994(p).

Unlike amendments made to sentencing guidelines, amendments to commentary and policy statements may be made at any time and are not subject to congressional review. To the extent practicable, the Commission endeavors to include amendments to commentary and policy statements in any submission of guideline amendments to Congress. Occasionally, however, the Commission determines that technical and conforming changes to commentary and policy statements are necessary. This notice sets forth technical and conforming amendments to commentary and policy statements that will become effective on November 1, 2013.


Patti B. Saris, Chair.

1. Amendment

The Commentary to § 1B1.8 captioned “Application Notes” is amended in Note 3 by striking “(Inadmissibility of Pleas)” and inserting “(Pleas).”

The Commentary to § 2M3.1 captioned “Application Notes” is amended in Note 1 by striking “12958” and inserting “13526”.

The Commentary to § 8B2.1 captioned “Background” is amended by striking “805(a)(2)(5)” and inserting “805(a)(5)”.

The Commentary to § 8D1.2 captioned “Application Note” is amended in Note 1 by striking “3561(b)” and inserting “3561(c)”.

Reason for Amendment

This proposed amendment makes certain technical changes to Commentary in the Guidelines Manual. The changes amend—

(1) Application Note 3 to § 1B1.8 (Use of Certain Information) to reflect a change to the heading of Rule 410 of the Federal Rules of Evidence;

(2) Application Note 1 to § 2M3.1 (Gathering or Transmitting National Defense Information to Aid a Foreign Government) to ensure that the Executive Order to which it refers is the most recent Executive Order; and

(3) the Background Commentary to § 8B2.1 (Effective Compliance and Ethics Program) and Application Note 1 to § 8D1.2 (Term of Probation—Organizations) to correct typographical errors in citations to certain statutes.

2. Amendment

The Commentary to § 1B1.11 captioned “Background” is amended in the first paragraph by striking “Although aware” and all that follows through “punishment.” and inserting “However, the Supreme Court has held that the ex post facto clause applies to sentencing guideline amendments that subject the defendant to increased punishment. See Peugh v. United States, 133 S. Ct. 2072, 2078 (2013) (holding that ‘there is an ex post facto violation when a defendant is sentenced under Guidelines promulgated after he committed his criminal acts and the new version provides a higher applicable Guidelines sentencing range than the version in place at the time of the offense.’), and in the paragraph that begins “Subsection (b)(3)” by striking “, cert. denied, 493 U.S. 1062 (1990)”.

Reason for Amendment

The Commission’s policy statement at § 1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing) provides that the court should apply the Guidelines Manual in effect on the date the defendant is sentenced unless the court determines that doing so would violate the ex post facto clause, in which case the court shall apply the Guidelines Manual in effect on the date the offense of conviction was committed. See § 1B1.11(a), (b)(1).

This proposed amendment updates the Background Commentary to § 1B1.11 to reflect the Supreme Court’s decision in Peugh v. United States, 133 S. Ct. 2072 (2013), which held that “there is an ex post facto violation when a defendant is sentenced under Guidelines promulgated after he committed his criminal acts and the new version provides a higher applicable Guidelines sentencing range than the version in place at the time of the offense.” Id. at 2078. The amendment inserts new language to refer to the Supreme Court’s decision in Peugh and deletes obsolete language.