

applied retroactively to previously sentenced defendants. The Commission also requests comment regarding whether, if it amends § 1B1.10(c) to include either amendment, it also should amend § 1B1.10 to provide guidance to the courts on the procedure to be used when applying an amendment retroactively under 18 U.S.C. 3582(c)(2).

**DATES:** Public comment should be received on or before October 1, 2007.

**ADDRESSES:** Send comments to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2-500, South Lobby, Washington, DC 20002-8002, Attention: Public Affairs-Retroactivity Public Comment.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

**SUPPLEMENTARY INFORMATION:** Section 3582(c)(2) of title 18, United States Code, provides that "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

The Commission lists in § 1B1.10(c) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2). The background commentary to § 1B1.10 lists 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 under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(c). To the extent practicable, public comment should address each of these factors.

The text of the amendments referenced in this notice also may be accessed through the Commission's Web site at [www.ussc.gov](http://www.ussc.gov).

**Authority:** 28 U.S.C. 994(a), (o), (u); USSC Rules of Practice and Procedure 4.1, 4.3.

**Ricardo H. Hinojosa,**  
Chair.

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## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of proposed priorities. Request for public comment.

**SUMMARY:** As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the Commission is seeking comment on possible priority policy issues for the amendment cycle ending May 1, 2008.

**DATES:** Public comment should be received on or before August 23, 2007.

**ADDRESSES:** Send comments to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2-500, South Lobby, Washington, DC 20002-8002, Attention: Public Affairs-Priorities Comment.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The Commission provides this notice to identify tentative priorities for the amendment cycle ending May 1, 2008. 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 of the tentative priorities by the statutory deadline of May 1, 2008. Accordingly, it may be necessary to continue work on some of these issues beyond the amendment cycle ending on May 1, 2008.

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

(1) Implementation of crime legislation enacted during the 110th Congress warranting a Commission response, including (A) the Animal Fighting Prohibition Enforcement Act of

2007, Public Law 110(22 ; and (B) any other legislation authorizing statutory penalties or creating new offenses that requires incorporation into the guidelines.

(2) Continuation of its work with Congress and other interested parties on cocaine sentencing policy to implement the recommendations set forth in the Commission's 2002 and 2007 reports to Congress, both entitled *Cocaine and Federal Sentencing Policy*, and to develop appropriate guideline amendments in response to any related legislation.

(3) Continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on appropriate responses to *United States v. Booker* and *United States v. Rita*, including any appropriate amendments to the guidelines or other changes to the *Guidelines Manual* to reflect those decisions, as well as continuation of its monitoring and analysis of post-*Booker* federal sentencing practices, data, case law, and other feedback, including reasons for departures and variances stated by sentencing courts.

(4) Continuation of its policy work regarding immigration offenses, specifically, offenses sentenced under 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) and 2L1.2 (Unlawfully Entering or Remaining in the United States) and implementation of any immigration legislation that may be enacted.

(5) Continuation of its policy work, in light of the Commission's prior and ongoing research on criminal history, to develop and consider possible options that might improve the operation of Chapter Four (Criminal History).

(6) Continuation of guideline simplification efforts with consideration and possible development of options that might improve the operation of the sentencing guidelines.

(7) Resolution of a number 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.

(8) Preparation and dissemination, pursuant to the Commission's authority under 28 U.S.C. 995(a)(12)-(16), of research reports on various aspects of federal sentencing policy and practice, including information on any amendments that might be appropriate in response to those reports.

The Commission hereby gives notice that it is seeking comment on these tentative priorities and on any other

issues that interested persons believe the Commission should address during the amendment cycle ending May 1, 2008. Further, with respect to items (7) and (8), the Commission requests specific comment regarding what circuit conflict issues it should address and what research topics it should consider.

To the extent practicable, public comment should include the following: (1) A statement of the issue, including scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to a proposed priority; (2) citations to applicable sentencing guidelines, statutes, case law, and constitutional provisions; and (3) a direct and concise statement of why the Commission should make the issue a priority.

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

**Ricardo H. Hinojosa,**  
*Chair.*

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## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2007-0029]

### Social Security Ruling, SSR 07-01p; Titles II and XVI: Evaluating Visual Field Loss Using Automated Static Threshold Perimetry

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Ruling.

**SUMMARY:** In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 07-01p. This Ruling clarifies how we use automated static threshold perimetry to determine statutory blindness based on visual field loss.

**EFFECTIVE DATE:** July 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Michelle Hungerman, Office of Disability Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-2289 or TTY 1-800-325-0778.

**SUPPLEMENTARY INFORMATION:** Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this Social Security Ruling, we are doing so in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, special veterans benefits, and black lung benefits programs. Social Security Rulings may

be based on determinations or decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are binding as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program Nos 96.001 Social Security—Disability Insurance; 96.006 Supplemental Security Income.)

Dated: May 30, 2007.

**Michael J. Astrue,**  
*Commissioner of Social Security.*

### Policy Interpretation Ruling

#### *Titles II and XVI: Evaluating Visual Field Loss Using Automated Static Threshold Perimetry*

**Purpose:** To clarify how we use automated static threshold perimetry to evaluate visual field loss.

**Citations (Authority):** Sections 205(a), 216(i)(1), 221, 223(d), 1614(a), 1631(d), and 1633 of the Social Security Act (Act), as amended; Regulations No. 4, subpart P, sections 404.1520, 404.1525, 404.1526, 404.1581, and 2.00A, 2.03, 102.00A, and 102.03 of appendix 1; and Regulations No. 16, subpart I, sections 416.920, 416.924, 416.925, 416.926, and 416.981.

**Pertinent History:** The Act provides for a finding of blindness based on visual field loss when the widest diameter of the visual field in the better eye subtends an angle no greater than 20 degrees. Even when visual field loss does not result in blindness, it may nevertheless be disabling. In sections 2.00A6 and 102.00A6 of the Listing of Impairments in appendix 1 to subpart P of part 404 (the listings) we provide that when we need to measure the extent of visual field loss, we will use visual field measurements obtained with an automated static threshold perimetry test that satisfies our requirements.<sup>1</sup>

<sup>1</sup> Our rules provide that in addition to automated static threshold perimetry we can use comparable visual field measurements obtained with kinetic perimetry, such as Goldmann perimetry. Because we allow for different types of testing, our listings provide comparable criteria that can be used with the different types of test results. Accordingly, only one type of testing is needed to evaluate visual field loss under our listings.

Automated static threshold perimetry measures the retina's sensitivity to light at predetermined locations in the visual field. While the individual focuses on a specific point, called the *point of fixation*, stimuli are presented in random order at each of the predetermined locations within the visual field. The size of the stimulus and the locations tested remain constant, but the intensity (brightness) of the stimulus is varied in order to determine the level at which the individual sees the stimulus. The intensity level where the individual sees the stimulus is referred to as the *threshold*. The threshold for each point tested is reported in decibels (dB).

The results of automated static threshold perimetry are reported on standard charts. (See Exhibits 1 and 2 at the end of this ruling for examples of standard charts that may be found in case records.) These charts:

- Identify the perimeter that was used to perform the test;
- Provide identifying information about the test, such as the date of the test, the type of test used, the size and color of the stimulus, and the background illumination;
- Provide the *mean deviation* (MD);<sup>2</sup> and

- Contain a printout that shows the threshold, in dB, for each of the locations tested. We refer to this printout, examples of which are shown below, as the dB printout.

In this Ruling we explain:

- How to use the information in the standard charts produced as part of automated static threshold perimetry to determine whether the visual field test satisfies our requirements. To illustrate this, we refer to standard charts produced by the Humphrey Field Analyzer. We refer only to the Humphrey Field Analyzer because it is the perimeter most widely used in the United States.

- How to use the MD to determine whether the individual has visual field loss.

- Our process for determining whether the test results show statutory blindness based on visual field loss.<sup>3</sup>

- How to evaluate cases in which severe visual field loss has not resulted in statutory blindness.

<sup>2</sup> The MD represents the average elevation or depression of the individual's visual field when compared to a normal field. This measurement is expressed in dB.

<sup>3</sup> We developed our process to enable us to apply the results of automated static threshold perimetry to the standard for statutory blindness. Health care providers do not use our process in their clinical practices or for treatment purposes.