

(D) For the purposes of this section, the 'same offense' means the offense conduct (and Chapter Two offense level) for which the defendant is accountable under § 1B1.3 (Relevant Conduct). The determination of whether a defendant is substantially less culpable than a person who committed the same offense without the involvement of any other participant requires a comparative assessment. In a drug trafficking offense, for example, the role and culpability of a defendant who was hired as a lookout for a drug transaction would be compared with the role and culpability of the seller of the same quantity of the controlled substance who acted alone. Similarly, the role and culpability of a defendant who was hired to unload a shipment of marijuana would be compared with that of an importer of the same quantity of marijuana who acted alone. 'Participant' is defined in the Commentary to § 3B1.1 (Aggravating Role).

Examples:

(1) Defendant A was hired by an unindicted participant to assist in unloading a ship carrying 1,000 kilograms of marijuana (having a Chapter Two offense level of Level 32). Defendant A had no decision-making authority, was to be paid \$2,000, had no supervisory authority over another participant, and performed only unsophisticated tasks. The appropriate comparison of relative culpability is with a defendant who, acting alone, imported the same quantity of marijuana (such a defendant would receive a Chapter Two offense level of Level 32 and no aggravating or mitigating role adjustment). On the basis of this comparison, Defendant A is a substantially less culpable participant.

(2) Defendant B was hired by Defendant C to commit an assault on Defendant C's former business partner. Defendant B was told when and where to find the victim alone, was instructed how to proceed, was to be paid \$3,000 to commit the offense, had no supervisory authority over another participant, and performed only unsophisticated tasks. Although Defendant B may be less culpable than Defendant C, Defendant B is not a substantially less culpable participant than a defendant who, acting alone, committed the same assault offense. Therefore, although Defendant C receives an aggravating role adjustment for employing Defendant B, Defendant B does not receive a mitigating role adjustment.

(E) Defendants who qualify as substantially less culpable participants usually will fall into one of the following categories:

(1) a defendant who facilitates the successful commission of an offense but is not essential to that offense (e.g., a lookout in a drug trafficking offense);

(2) a defendant who provides essentially manual labor that is necessary to the successful completion of an offense (e.g., a loader or unloader of contraband, or a deckhand on a ship carrying contraband); or

(3) a defendant who holds or transports contraband for the owner of the contraband (such defendants provide a buffer that reduces the likelihood of the owner being apprehended in possession of the contraband).

(F) Because the determination of whether a defendant qualifies for a mitigating (minimal or minor) role adjustment requires a comparative judgment, the Commission recognizes that it will be heavily dependent upon the facts of each case.

2. The following is a list of characteristics that ordinarily are associated with a mitigating role:

(A) the defendant had no material decision-making authority or responsibility;

(B) the total compensation or benefit to the defendant was very small in comparison to the total profit typically associated with offenses of the same type and scope;

(C) the defendant did not supervise other participant(s); and

(D) the defendant performed only unsophisticated tasks.

In addition, although not determinative, a defendant's lack of knowledge or understanding of the scope and structure of the criminal activity or of the activities of other participants may be indicative of a mitigating role.

3. If the defendant received an adjustment from § 3B1.1 (Aggravating Role), an adjustment for a minimal or minor role is not authorized.

4. With regard to offenses involving contraband (including controlled substances), a defendant who—

(A) sold, or played a substantial part in negotiating the terms of the sale of, the contraband;

(B) had an ownership interest in any portion of the contraband; or

(C) financed any aspect of the offense, shall not receive a mitigating role adjustment below the Chapter Two offense level that the defendant would have received for the quantity of contraband that the defendant sold, negotiated, or owned, or for that aspect of the offense that the defendant financed because, with regard to those acts, the defendant has acted as neither a minimal nor a minor participant.

Thus, for example, a defendant who sells 100 grams of cocaine and who is held accountable under § 1B1.3 (Relevant Conduct) for only that quantity is not eligible for a mitigating role adjustment. In contrast, a defendant who sells 100 grams of cocaine, but who is held accountable under § 1B1.3 for a jointly undertaken criminal activity involving five kilograms of cocaine, if otherwise qualified, may be considered for a mitigating role adjustment in respect to that jointly undertaken criminal activity, but the resulting offense level may not be less than the Chapter Two offense level for the 100 grams of cocaine that the defendant sold.

[5. A defendant who is entrusted with a quantity of contraband for purposes of transporting such contraband (e.g., a courier or mule) shall not receive a minimal role adjustment for the quantity of contraband that the defendant transported. If such a defendant otherwise qualifies for a mitigating role adjustment, consideration may be given to a minor role adjustment.]

[6. A defendant who possessed a firearm or directed or induced another participant to possess a firearm in connection with the offense shall not receive a minimal role adjustment. If such a defendant otherwise qualifies for a mitigating role adjustment, consideration may be given to a minor role adjustment.]”

The Commentary to § 3B1.1 captioned “Application Notes” is amended by inserting the following additional note:

“8. Consistent with the overall structure of the guidelines, the defendant bears the burden of persuasion in establishing entitlement to a mitigating role adjustment. In determining whether a mitigating role adjustment is warranted, the court should consider all of the available facts, including any information arising from the circumstances of the defendant's arrest that may be relevant to a determination of the defendant's role in the offense. In weighing the totality of the circumstances, a court is not required to find, based solely on the defendant's bare assertion, that such a role adjustment is warranted.”

The Commentary to § 3B1.2 captioned “Background” is amended by deleting:

“This section provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant. The determination whether to apply subsection (a) or (b) involves a determination that is heavily dependent upon the facts of the particular case.”,