

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-99-60 and should be submitted by February 8, 2000.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed permanent amendments to the sentencing guidelines, policy statements, and commentary. Request for comment. Notice of public hearing.

SUMMARY: The Commission hereby gives notice of the following actions: (1) Two options for amending § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, Trafficking, or Possession) to increase the penalties for methamphetamine offenses in response to the increased mandatory minimum penalties made by the Methamphetamine Trafficking Penalty Enhancement Act of 1998, Pub. L. 105-277; and (2) two options for amending § 2F1.1 (Fraud and Deceit) to implement the directive in the Identity Theft and Assumption Deterrence Act of 1998, Pub. L. 105-318.

The proposed amendments are presented in one of two formats. First, the amendments are proposed as specific revisions to the relevant guidelines and accompanying commentary. Bracketed text within a proposed amendment indicates that the Commission invites comment and suggestions for alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Second, the Commission has highlighted certain issues for comment and invites suggestions for how the Commission should respond to those issues.

DATES: (1) Proposed amendments.—Comment on the proposed amendments and issues for comment should be received by the Commission not later than March 10, 2000. (2) Public hearing.—The Commission has scheduled a public hearing for March 23, 2000, at the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E. Washington, D.C. 20002-8002 (time to be announced). The scope of the hearing is expected to include all permanent amendments that are proposed for action in this amendment cycle ending May 1, 2000, including the proposed re-promulgation of the temporary, emergency telemarketing fraud amendment described in 64 FR 72129 (1999). A person who desires to testify at the public hearing should notify Michael Courlander, Public Affairs Officer, at (202) 502-4590 not later than March 10, 2000. Written testimony for the hearing must be received by the Commission not later than March 16, 2000. Submission of written testimony is a requirement for testifying at the public hearing.

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

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

SUPPLEMENTARY INFORMATION: Reports and other additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's website at www.ussc.gov.

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure 4.3, 4.4.

Diana E. Murphy,
Chair.

Proposed Amendment: Methamphetamine

(1) Synopsis of Proposed Amendment: This proposed amendment responds to the Methamphetamine Trafficking Penalty Enhancement Act of 1998, Pub. L. 105-277. That Act effectively increased the mandatory minimum sentences for methamphetamine trafficking offenses by cutting in half the quantities of methamphetamine mixture and methamphetamine substance (*i.e.*, methamphetamine-actual) necessary to trigger the five- and ten-year mandatory minimum statutory penalties applicable to methamphetamine trafficking offenses. Under 21 U.S.C. 841(b)(1)(B)(viii), as amended by the Act, the 5-year mandatory minimum is triggered if the offense involves 5 grams or more of methamphetamine-actual or 50 grams or more of methamphetamine-mixture. Under 21 U.S.C. 841(b)(1)(A)(viii), as amended by the Act, the 10-year mandatory minimum is triggered if the offense involves 50 grams or more of methamphetamine-actual or 500 grams or more of methamphetamine-mixture. This proposed amendment presents two options for changes to the guideline for drug trafficking, § 2D1.1, particularly the Drug Quantity Table, that would respond to the Act.

Option 1 changes the calculations in the Drug Quantity Table in § 2D1.1 for methamphetamine substance (*i.e.*, methamphetamine-actual) and "Ice" (*i.e.*, d-methamphetamine hydrochloride of at least 80% purity) to conform the quantities for those drugs to the quantities that now trigger the statutory 5- and 10-year mandatory minimums.

Option 2 generally proposes to eliminate the distinction between methamphetamine-actual and

¹² 17 CFR 200.30-3(a)(12).

methamphetamine-mixture and generally sentence all methamphetamine offenses based on the weight of pure methamphetamine. There are two exceptions to this general rule. The first exception would continue the guideline presumption that "Ice" methamphetamine is 100 percent pure, even though in reality it is typically only 80–90 percent pure. Thus, if the offense involved "Ice", the weight of the entire "Ice" mixture would be used. The second exception would address the situation in which the purity of the methamphetamine-mixture in a given case may not always be known or readily determinable. To handle the contingency of unknown purity, the guidelines could establish a presumptive purity of, perhaps, 50 percent to be used only when purity is unknown.

An issue for comment follows the presentation of the options regarding whether the Commission should consider making changes to the Drug Equivalency Table in § 2D1.1, relating to Phenylacetone/P2P, when possessed for the purpose of manufacturing methamphetamine, and whether it should change the Chemical Quantity Table in § 2D1.11, relating to any chemical referenced in that table that is used to manufacture methamphetamine, in order to reflect the increased harm associated with methamphetamine offenses.

Proposed Amendment—Option 1

Section 2D1.1(c)(1) is amended by striking "3 KG or more" before "of Methamphetamine (actual)" and inserting "1.5 KG or more" and by striking "3 KG or more" before "of 'Ice'" and inserting "1.5 KG or more".

Section 2D1.1(c)(2) is amended by striking "at least 1 KG but less than 3 KG" before "of Methamphetamine (actual)" and inserting "at least 500 G but less than 1.5 KG" and by striking "at least 1 KG but less than 3 KG" before "of 'Ice'" and inserting "at least 500 G but less than 1.5 KG".

Section 2D1.1(c)(3) is amended by striking "at least 300 G but less than 1 KG" before "of Methamphetamine (actual)" and inserting "at least 150 G but less than 500 G" and by striking "at least 300 G but less than 1 KG" before "of 'Ice'" and inserting "at least 150 G but less than 500 G".

Section 2D1.1(c)(4) is amended by striking "at least 100 G but less than 300 G" before "of Methamphetamine (actual)" and inserting "at least 50 G but less than 150 G" and by striking "at least 100 G but less than 300 G" before "of 'Ice'" and inserting "at least 50 G but less than 150 G".

Section 2D1.1(c)(5) is amended by striking "at least 70 G but less than 100 G" before "of Methamphetamine (actual)" and inserting "at least 35 G but less than 50 G" and by striking "at least 70 G but less than 100 G" before "of 'Ice'" and inserting "at least 35 G but less than 50 G".

Section 2D1.1(c)(6) is amended by striking "at least 40 G but less than 70 G" before "of Methamphetamine (actual)" and inserting "at least 20 G but less than 35 G" and by striking "at least 40 G but less than 70 G" before "of 'Ice'" and inserting "at least 20 G but less than 35 G".

Section 2D1.1(c)(7) is amended by striking "at least 10 G but less than 40 G" before "of Methamphetamine (actual)" and inserting "at least 5 G but less than 20 G" and by striking "at least 10 G but less than 40 G" before "of 'Ice'" and inserting "at least 5 G but less than 20 G".

Section 2D1.1(c)(8) is amended by striking "at least 8 G but less than 10 G" before "of Methamphetamine (actual)" and inserting "at least 4 G but less than 5 G" and by striking "at least 8 G but less than 10 G" before "of 'Ice'" and inserting "at least 4 G but less than 5 G".

Section 2D1.1(c)(9) is amended by striking "at least 6 G but less than 8 G" before "of Methamphetamine (actual)" and inserting "at least 3 G but less than 4 G"; and by striking "at least 6 G but less than 8 G" before "of 'Ice'" and inserting "at least 3 G but less than 4 G".

Section 2D1.1(c)(10) is amended by striking "at least 4 G but less than 6 G" before "of Methamphetamine (actual)" and inserting "at least 2 G but less than 3 G" and by striking "at least 4 G but less than 6 G" before "of 'Ice'" and inserting "at least 2 G but less than 3 G".

Section 2D1.1(c)(11) is amended by striking "at least 2 G but less than 4 G" before "of Methamphetamine (actual)" and inserting "at least 1 G but less than 2 G"; and by striking "at least 2 G but less than 4 G" before "of 'Ice'" and inserting "at least 1 G but less than 2 G".

Section 2D1.1(c)(12) is amended by striking "at least 1 G but less than 2 G" before "of Methamphetamine (actual)" and inserting "at least 500 MG but less than 1 G"; and by striking "at least 1 G but less than 2 G" before "of 'Ice'" and inserting "at least 500 MG but less than 1 G".

Section 2D1.1(c)(13) is amended by striking "at least 500 MG but less than 1 G" before "of Methamphetamine (actual)" and inserting "at least 250 MG but less than 500 MG"; and by striking

"at least 500 MG but less than 1 G" before "of 'Ice'" and inserting "at least 250 MG but less than 500 MG".

Section 2D1.1(c)(14) is amended by striking "less than 500 MG" before "of Methamphetamine (actual)" and inserting "less than 250 MG"; and by striking "less than 500 MG" before "of 'Ice'" and inserting "less than 250 MG".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the subdivision of the "Drug Equivalency Tables" captioned "Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)" in the line referenced to "Methamphetamine (Actual)" by striking "10 kg" and inserting "20 kg".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the subdivision of the "Drug Equivalency Tables" captioned "Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)" in the line referenced to "Ice" by striking "10 kg" and inserting "20 kg".

Option 2

Section 2D1.1(c)(1) is amended by striking the line referenced to "Methamphetamine" in its entirety and inserting:

"1.5 KG or more of Methamphetamine, or 1.5 KG or more of 'Ice';".

Section 2D1.1(c)(2) is amended by striking the line referenced to "Methamphetamine" in its entirety and inserting:

"At least 500 G but less than 1.5 KG of Methamphetamine, or at least 500 G but less than 1.5 KG of 'Ice';".

Section 2D1.1(c)(3) is amended by striking the line referenced to "Methamphetamine" in its entirety and inserting:

"At least 150 G but less than 500 G of Methamphetamine, or at least 150 G but less than 500 G of 'Ice';".

Section 2D1.1(c)(4) is amended by striking the line referenced to "Methamphetamine" in its entirety and inserting:

"At least 50 G but less than 150 G of Methamphetamine, or at least 50 G but less than 150 G of 'Ice';".

Section 2D1.1(c)(5) is amended by striking the line referenced to "Methamphetamine" in its entirety and inserting:

"At least 35 G but less than 50 G of Methamphetamine, or at least 35 G but less than 50 G of 'Ice'"

Section 2D1.1(c)(6) is amended by striking the line referenced to "Methamphetamine" in its entirety and inserting:

"At least 20 G but less than 35 G of Methamphetamine, or at least 20 G but less than 35 G of 'Ice'".

Section 2D1.1(c)(7) is amended by striking the line referenced to "Methamphetamine" in its entirety and inserting:

"At least 5 G but less than 20 G of Methamphetamine, or at least 5 G but less than 20 G of 'Ice';".

Section 2D1.1(c)(8) is amended by striking the line referenced to "Methamphetamine" in its entirety and inserting:

"At least 4 G but less than 5 G of Methamphetamine, or at least 4 G but less than 5 G of 'Ice'";".

Section 2D1.1(c)(9) is amended by striking the line referenced to "Methamphetamine" in its entirety and inserting:

"At least 3 G but less than 4 G of Methamphetamine, or at least 3 G but less than 4 G of 'Ice'";".

Section 2D1.1(c)(10) is amended by striking the line referenced to "Methamphetamine" in its entirety and inserting:

"At least 2 G but less than 3 G of Methamphetamine, or at least 2 G but less than 3 G of 'Ice'";".

Section 2D1.1(c)(11) is amended by striking the line referenced to "Methamphetamine" in its entirety and inserting:

"At least 1 G but less than 2 G of Methamphetamine, or at least 1 G but less than 2 G of 'Ice'";".

Section 2D1.1(c)(12) is amended by striking the line referenced to "Methamphetamine" in its entirety and inserting:

"At least 500 MG but less than 1 G of Methamphetamine, or at least 500 MG but less than 1 G of 'Ice'";".

Section 2D1.1(c)(13) is amended by striking the line referenced to "Methamphetamine" in its entirety and inserting:

"At least 250 MG but less than 500 MG of Methamphetamine, or at least 250 MG but less than 500 MG of 'Ice'";".

Section 2D1.1(c)(14) is amended by striking the line referenced to "Methamphetamine" in its entirety and inserting:

"Less than 250 MG of Methamphetamine, or less than 250 MG of 'Ice'".

Subsection 2D1.1(c) is amended in the part captioned "Notes to the Drug Quantity Table" in Note (B) in the first sentence by striking "and Methamphetamine (actual)"; by striking "refer" and inserting "refers"; and by striking ", itself,"; and in the third sentence by striking "or methamphetamine"; and by striking "or methamphetamine (actual)".

Subsection 2D1.1(c) is amended in the part captioned "Notes to the Drug Quantity Table" by redesignating Notes (C) through (J), as Notes (D) through (K), respectively; and by inserting after Note (B) the following new Note (C):

"(C) The term 'Methamphetamine' refers to the weight of the controlled substance contained in the mixture or substance. For example, a mixture weighing 10 grams containing Methamphetamine at 50% purity contains 5 grams of Methamphetamine. In any case in which the purity of the Methamphetamine contained in a mixture or substance is not known, it shall be presumed that the purity of the mixture or substance is [10%][20%][30%][40%][50%]. To calculate the quantity used to determine the offense level, multiply the entire weight of the mixture or substance by [10%][20%][30%][40%][50%]. The resulting quantity shall be used to determine the offense level."

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the subdivision of the "Drug Equivalency Tables" captioned "Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)" by striking the line referenced to "Methamphetamine" in its entirety.

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the subdivision of the "Drug Equivalency Tables" captioned "Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)" in the line referenced to "Methamphetamine (Actual)" by striking "(Actual)"; and by striking "10 kg" and inserting "20 kg".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the subdivision of the "Drug Equivalency Tables" captioned "Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)" in the line referenced to "Ice" by striking "10 kg" and inserting "20 kg".

Issue for Comment: The Commission invites comment on whether it should change the Drug Equivalency Table in § 2D1.1, relating to Phenylacetone/P2P, when possessed for the purpose of manufacturing Methamphetamine, and whether it should change the Chemical Quantity Table in § 2D1.11, relating to any chemical referenced in that table that is used to manufacture Methamphetamine, in order to reflect the increased harm associated with Methamphetamine offenses. If so, what should those equivalencies be?

Proposed Amendment: Identity Theft

(2) Synopsis of Proposed Amendment: The Identity Theft and Assumption Deterrence Act of 1998 (the "Act"), Pub. L. 105-318, amended 18 U.S.C. § 1028 to criminalize the unauthorized use or transfer of a means of identification with the intent to commit or aid or abet any federal violation or state felony. In addition, the Act directed the Commission to "provide an appropriate penalty for each offense under section 1028 of title 18, United States Code." In carrying out this directive the Act instructed the Commission to consider the following factors:

(1) the extent to which the number of victims (as defined in section 3663A(a) of title 18, United States Code) involved in the offense, including harm to reputation, inconvenience, and other difficulties resulting from the offense, is an adequate measure for establishing penalties under the Federal sentencing guidelines;

(2) the number of means of identification, identification documents, or false identification documents involved in the offense is an adequate measure for establishing penalties under the Federal sentencing guidelines;

(3) the extent to which the value of loss to any individual caused by the offense is an adequate measure for establishing penalties under the Federal sentencing guidelines;

(4) the range of conduct covered by the offense;

(5) the extent to which sentencing enhancements within the Federal sentencing guidelines and the court's authority to sentence above the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offense;

(6) the extent to which Federal sentencing guidelines sentences for the offenses have been constrained by statutory maximum penalties;

(7) the extent to which Federal sentencing guidelines for the offenses adequately achieve the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code; and

(8) any other factor that the United States Sentencing Commission considers to be appropriate.

There are two options to implement this directive. Option 1 provides a two-prong enhancement, with a two-level increase and a minimum offense level of [10][11][12][13], if the offense involved (A) the use of any identifying information of an individual victim to obtain or make any unauthorized identification means of that individual

victim; or (B) the possession of [5] or more unauthorized identification means. The subject of the term “unauthorized identification means” is the item that is obtained or made by using an individual victim’s identifying information. For example, in a case involving a credit card that was obtained by using an individual victim’s name, date of birth, and social security number, the credit card would be the unauthorized identification means. Option 2 proposes two separate enhancements to implement the directive. The first enhancement provides a two-level increase and minimum offense level of [10][12] for harm to an individual’s reputation or credit standing, inconvenience related to the correction of records or restoration of an individual’s reputation or credit standing, or similar difficulties. The corresponding application note provides that this enhancement only applies if those harms are more than minimal. The second proposed enhancement provides a two-level increase if the offense involved the production or transfer of 6 or more identification documents, false identification documents, or means of identification. This provision specifies that the two-level increase is not to be applied if the defendant’s conduct also resulted in an increase under § 2F1.1(b)(1) (the fraud loss table).

Several issues for comment follow the presentation of the options.

Proposed Amendment—Option 1

Section 2F1.1(b) is amended by redesignating subdivisions (6) and (7) as subdivisions (7) and (8), respectively; and by inserting after subdivision (5) the following new subdivision (6):

(6) If the offense involved (A) the use of any identifying information of an individual victim to obtain or make any unauthorized identification means of that individual victim; or (B) the possession of [5] or more unauthorized identification means, increase by [2] levels. If the resulting offense level is less than level [10][11][12][13], increase to level [10][11][12][13].”

The Commentary to § 2F1.1 captioned “Application Notes” is amended by striking Note 8(c) in its entirety and inserting:

(c) Consequential Damages in Procurement Fraud Cases, Product Substitution Cases, and Cases Involving Unauthorized Identification Means

In contrast to other types of cases, loss in a case involving procurement fraud, product substitution, or unauthorized identification means includes not only direct damages, but also consequential damages that were reasonably

foreseeable. For example, in a case involving a defense product substitution offense, the loss includes the government’s reasonably foreseeable costs of making substitute transactions and handling or disposing of the product delivered or retrofitting the product so that it can be used for its intended purpose, plus the government’s reasonably foreseeable cost of rectifying the actual or potential disruption to government operations caused by the product substitution. In the case of fraud affecting a defense contract award, loss includes the reasonably foreseeable administrative cost to the government and other participants of repeating or correcting the procurement action affected, plus any increased cost to procure the product or service involved that was reasonably foreseeable. Similarly, in a case involving unauthorized identification means, loss includes any reasonably foreseeable, consequential damages incurred by the individual victim. For example, such damages include attorneys fees, travel expenses, costs of duplicating records, long distance phone calls, or any other costs incurred to repair a damaged credit record.

Inclusion of reasonably foreseeable consequential damages directly in the calculation of loss in procurement fraud and product substitution cases reflects that such damages frequently are substantial in such cases. Inclusion of such damages directly in the calculation of loss in an offense involving unauthorized identification means reflects the seriousness of the offense, particularly with respect to the individual victim, regardless of whether the loss to the individual victim is substantial.”

The Commentary to § 2F1.1 captioned “Application Notes” is amended by striking Note 12 in its entirety and inserting:

“12. Offenses involving access devices, in violation of 18 U.S.C. § 1029, are also covered by this guideline. In such a case, an upward departure may be warranted when the actual loss does not adequately reflect the seriousness of the conduct.”

The Commentary to § 2F1.1 captioned “Application Notes” is amended by redesignating Notes 16 through 20 as Notes 18 through 22, respectively; and by inserting after Note 15 the following new Notes 16 and 17:

“16. For purposes of subsection (b)(6) and Application Note 8(c)—

‘Identifying information’ means any ‘means of identification’ as that term is defined in 18 U.S.C. § 1028(d)(3).

‘Individual victim’ means an individual, other than the defendant or any individual involved in the jointly undertaken criminal activity, whose identifying information was used to obtain or make an unauthorized identification means. ‘Individual victim’ does not include a fictitious individual.

‘Unauthorized identification means’ means any identifying information that has been obtained or made from any other identifying information without the authorization of the individual victim whose identifying information appears on, or as part of, that unauthorized identification means. For example, in a case involving a credit card that had been obtained by using the name, date of birth, and social security number of an individual victim, the ‘unauthorized identification means’ would be the credit card and the ‘other identifying information’ would be the individual victim’s name, date of birth, and social security number.

17. Offenses involving identification documents and means of identification, in violation of 18 U.S.C. § 1028, are covered by this guideline. If (A) the offense involved unauthorized identification means, or the unlawful production, transfer, possession, or use of an identification document; and (B) the primary purpose of the offense was to violate, or assist another to violate, the law pertaining to naturalization, citizenship, or legal resident status, apply § 2L2.1 or § 2L2.2, as appropriate, rather than § 2F1.1.

Subsection (b)(6)(A) provides an enhancement in any case in which any identifying information of an individual victim is used, without that individual’s authorization, to obtain or make an unauthorized identification means. This subsection would apply, for example, when a defendant obtains another individual’s name and social security number from a source (e.g., from a stolen wallet) and obtains and uses a credit card in that individual’s name, without the individual’s authorization. This subsection would not apply, however, if the defendant uses a credit card from a stolen wallet only to make a purchase. In such a case, the defendant has not used the stolen credit card to obtain or make an unauthorized identification means.

Subsection (b)(6)(B) provides an enhancement in any case in which the offense involved the possession of [five] or more unauthorized identification means. The enhancement applies regardless of whether the possession is with respect to one individual victim or more than one individual victim. For example, the enhancement applies if the offense involved (A) the possession of

[three] unauthorized identification means of one individual victim and [two] unauthorized identification means of another individual victim; or (B) the possession of one unauthorized identification means of [five] individual victims.

In a case involving unauthorized identification means, an upward departure may be warranted if the offense level does not adequately address the seriousness of the offense. Examples may include the following:

(a) an individual victim is erroneously arrested because the defendant used an unauthorized identification means of the victim in connection with some criminal conduct, or the individual victim is denied a job because an arrest record has been made in the victim's name;

(b) the extent of the offense conduct is such that the defendant established or made numerous unauthorized identification means with respect to one individual victim, essentially assuming and living under that victim's identity."

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 20, as redesignated by this amendment (formerly Note 18), by striking "(7)" and inserting "(8)".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 22, as redesignated by this amendment (formerly Note 20), by striking "(b)(7)(A) or (B)" and inserting "(b)(6) or (b)(8)(A) or (B)".

The Commentary to § 2F1.1 captioned "Background" is amended by inserting after the fifth paragraph the following new paragraphs:

"A minimum offense level of [10][11][12][13] is provided in subsection (b)(6) for offenses involving unauthorized identification means, in part, because of the seriousness of the offense. The minimum offense level accounts for the fact that the unauthorized identification means often are within the defendant's exclusive control, making it difficult for the individual victim to detect that his or her identity has been 'stolen' and used to obtain or make unauthorized identification means. Generally, the individual victim does not become aware of the offense until certain harms have already occurred (e.g., a damaged credit rating or inability to obtain a loan). The minimum offense level also is provided because some of the harm to the individual victim whose identifying information is part of the unauthorized identification means may be difficult or impossible to quantify (e.g., harm to the individual victim's reputation or credit rating, inconvenience, and other difficulties resulting from the offense).

Subsection (b)(6) implements the instruction to the Commission in section 4 of Public Law 105-318."

The Commentary to § 2F1.1 captioned "Background" is amended in the ninth paragraph (formerly the seventh paragraph) by striking "(6)" and inserting "(7)".

The Commentary to § 2F1.1 captioned "Background" is amended in the tenth paragraph (formerly the eighth paragraph) by striking "(7)" and inserting "(8)".

The Commentary to § 2F1.1 captioned "Background" is amended in the eleventh paragraph (formerly the ninth paragraph) by striking "(7)" and inserting "(8)".

Option 2

Section 2F1.1(b) is amended by redesignating subdivision (7) as subdivision (9); and by inserting after subdivision (6) the following new subdivisions (7) and (8):

(7) If the offense involved (A) harm to an individual's reputation or credit standing, inconvenience related to the correction of records or restoration of an individual's reputation or credit standing, or similar difficulties; and (B) such harm, inconvenience, or difficulties were more than minimal, increase by 2 levels. If the resulting offense level is less than level [10] [12], increase to level [10] [12].

(8) If the offense involved the production or transfer of 6 or more identification documents, false identification documents, or means of identification, increase by 2 levels. Do not apply this increase if the defendant's conduct also resulted in an increase under subdivision (1)."

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 12 in the first sentence by inserting " , means of identification," after "identification documents"; in the second sentence by inserting "or means of identification" after "identification documents"; and in the third sentence by striking "false identification documents or".

The Commentary to § 2F1.1 captioned "Application Notes" is amended by redesignating Notes 16 through 20 as Notes 17 through 21, respectively; and by inserting after Note 15 the following new Note 16:

"16. Subsection (b)(7) provides an upward adjustment of 2 levels and a floor of level [10] [12] for harm to an individual's reputation or credit standing, inconvenience related to the correction of records or restoration of an individual's reputation or credit standing, or similar difficulties. However, such harm, inconvenience, or

similar difficulties must be more than minimal in order to qualify. Thus, for example, neither an individual's speculation about potential harm to his or her reputation or credit standing nor a single, negative credit entry that was corrected in a short time would qualify for the 2-level adjustment under this subsection, but a showing of multiple, negative credit entries or a poor credit rating would. If the offense involved a level of harm, inconvenience, or other difficulty not adequately addressed by subsection (b)(7) or by § 2F1.1 in general, an upward departure may be warranted. For example, if the wrong person were arrested because of the fraudulent use of such person's means of identification by another, or if an individual's identity were completely taken over by another, an upward departure would be warranted to recognize the extraordinary harm to the victim's reputation or the resulting inconvenience in the restoration of his or her reputation or the necessary correction of records. Moreover, harm of the type described in subsection (b)(7) to a significant number of individuals would also warrant an upward departure."

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 19, as redesignated by this amendment (formerly Note 18), by striking "(7)" and inserting "(9)".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 21, as redesignated by this amendment (formerly Note 20), by striking "(7)" and inserting "(9)".

The Commentary to § 2F1.1 captioned "Background" is amended in the eighth and ninth paragraphs by striking "(7)" and inserting "(9)" each place it appears.

Issues for Comment

The Commission invites comment on the following issues pertaining to identity theft:

1. The proposed amendment in Option 1 provides a two-level enhancement in the fraud guideline for the possession of [5] or more unauthorized identification means. The enhancement, as proposed, applies regardless of whether the offense involves the possession of unauthorized identification means of one individual victim or more than one individual victim as long as at least [5] unauthorized identification means were possessed. Should the Commission consider providing an additional part to the proposed enhancement that would increase sentences based on the number of individual victims involved in the offense? If so, on what number of

individual victims should the enhancement be based?

The Commission also invites comment on whether it should provide an additional increase, cumulative to the 2-level increase already proposed in Option 1, for cases involving specified numbers of individual victims or unauthorized identification means. For example, such an enhancement could provide an additional [4-level] enhancement if the offense involved more than [10–25] unauthorized identification means and/or more than [5–25] individual victims. Alternatively, should the Commission provide an upward departure for cases involving a large number of unauthorized identification means and/or a large number of individual victims?

2. The proposed amendment in Option 1 limits the enhancement for identity theft to the fraud guideline. Given the breadth of offense conduct covered by 18 U.S.C. § 1028, should the Commission also provide a similar sentencing increase (including, if appropriate, an enhancement that ties offense level increases to specified numbers of identification means) for identity theft conduct in [any or] all other economic crime guidelines (e.g., § 2B1.1 (Theft), § 2S1.1 (Laundering of Monetary Instruments), § 2T1.4 (Tax Fraud))?

3. Given the breadth of offense conduct covered by 18 U.S.C. § 1028, as an alternative to amending Chapter Two, should the Commission amend Chapter Three of the Guidelines Manual, relating to general adjustments, to provide a new adjustment that would apply in every case that involves the unauthorized use of an identification means? If so, how should that adjustment be structured (e.g., should there be a table or tiered adjustment based on the number of unauthorized identification means involved in the offense)? Should the adjustment also include the unauthorized use of any identification document or the use of any false identification document?

4. As an alternative to a Chapter Three adjustment, should the Commission amend Chapter Five, Part K, of the Guidelines Manual, relating to departures, to encourage a departure above the authorized guideline sentence in any case involving the unauthorized use of an identification means if the guideline range does not adequately reflect the seriousness of the offense conduct?

5. The Treasury Department has recommended that the Commission amend its current minimum loss amount rule for stolen credit card offenses in § 2B1.1 (a minimum loss

amount of \$100 per credit card) to include all access devices, and that the minimum loss amount be increased to \$1000 per access device. Given that the Identity Theft and Assumption Deterrence Act of 1998 included access devices in the definition of “means of identification,” the Commission invites comment on whether it should consider amending that rule to include all access devices (such as debit cards, bank account numbers, electronic serial numbers, and mobile identification numbers) and to place that amended rule in § 2F1.1. Such a rule would have the effect of subjecting an offense that involves an unauthorized identification means that is a credit card number to the same minimum loss amount as an offense that involves the stolen credit card itself. If the Commission should consider such an amendment, should the Commission additionally amend the rule to increase the minimum loss amount per access device, for example [\$500][\$750][\$1000] per access device? (Such an amendment may need to be coordinated with efforts to revise the theft guideline in connection with offenses involving access devices and cellular phone cloning.)

6. Commission data indicate that a high portion of offenders involved in identity theft conduct have previously been convicted of similar offense conduct at either the state or federal level. Although Chapter Four addresses criminal history, the Commission has provided enhancements in certain Chapter Two guidelines for prior similar conduct (e.g., §§ 2L2.1(b)(4) and 2L2.2(b)(2), which provide two- and four-level increases if “the defendant committed any part of the instant offense after sustaining one or more convictions for felony immigration and naturalization offenses”). Should the Commission provide an enhancement in the relevant Chapter Two guideline (§ 2F1.1, if the Commission adopts a limited approach to identity theft) or guidelines (the economic crime guidelines, if the Commission adopts a more expansive approach to identity theft) if the defendant had previously been convicted of conduct similar to identity theft? If so, what is the appropriate number of levels for the enhancement? Should such an enhancement require a minimum offense level?

[FR Doc. 00–1075 Filed 1–14–00; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF STATE

[Public Notice 3205]

Culturally Significant Objects Imported for Exhibition Determinations: “Music in the Age of Confucius”

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition “Music in the Age of Confucius,” imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Smithsonian’s, Freer Gallery of Art and Arthur M. Sackler Gallery, from on or about April 30 to September 17, 2000, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–619–6981). The address is U.S. Department of State, SA–44; 301–4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: January 9, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–1077 Filed 1–14–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 3205]

Culturally Significant Objects Imported for Exhibition Determinations: “The Topkapi Palace: Jewels and Treasures of the Sultans”

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and