

Commission approved NYSE's implementation of its signature guarantee program, now referred to as the MSP.<sup>3</sup> At that time, the NYSE specified that participants in the MSP would bear the administrative expenses in connection with the program, which at that time was a charge of \$300.00 to be paid upon filing an application to the program and annually thereafter. The \$300.00 charge to participants in the MSP has remained unchanged since 1992.

In recent years the administrative costs for the MSP have increased substantially. These increases relate not only to internal costs but also to the costs for liability insurance premiums for blanket insurance coverage under the program, and for an outside vendor to provide administrative assistance, and for a website for use by participants in the program. Effective January 2005, the charge to members participating in the MSP will increase to \$1,000.00 and will be payable upon a participant's filing an application to the MSP and annually thereafter. The NYSE will bill MSP participants the increased fee for 2005 in January 2005.

The proposed rule change is consistent with the requirements of Section 6(b)(4) of the Act<sup>4</sup> and the rules and regulations thereunder applicable to the NYSE because it provides for equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments relating to the proposed rule change have been solicited or received. The NYSE will notify the Commission of any written comments received by the NYSE.

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

The foregoing rule change has become effective upon filing pursuant to Section

19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2)<sup>6</sup> thereunder because the proposed rule is establishing or changing a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2005-04 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2005-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE and on the NYSE's

Web site at <http://www.nyse.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2005-06 and should be submitted on or before March 16, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. E5-735 Filed 2-22-05; 8:45 am]

BILLING CODE 8010-01-P

**UNITED STATES SENTENCING COMMISSION**

**Sentencing Guidelines for United States Courts**

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments. Notice of public hearing.

**SUMMARY:** Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the United States Sentencing Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice also provides multiple issues for comment, some of which are contained within proposed amendments.

The specific proposed amendments and issues for comment in this notice are as follows: (1) A proposed amendment to implement sections 2 and 5 of the Identity Theft Penalty Enhancement Act, Public Law 108-275 and a related issue for comment; (2) a proposed amendment to implement the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Public Law 108-237 and related issues for comment; (3) an issue for comment on how to implement the directive to the Commission in section 3 of the Anabolic Steroid Control Act of 2004, Public Law 108-358; and (4) proposed amendments that make various

<sup>3</sup> Securities Exchange Act Release No. 31388 (October 30, 1992), 57 FR 53366 (November 9, 1992), [SR File No. NYSE-92-16] (order approving implementation of a signature guarantee program). The MSP is governed by NYSE Rule 200.

<sup>4</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

technical and conforming amendments to the guidelines.

**DATES:** (1) Proposed Amendments and Issues for Comment.—Written public comment regarding the proposed amendments and issues for comment set forth in this notice should be received by the Commission not later than March 25, 2005.

(2) Public Hearing.—The Commission has scheduled a public hearing on its proposed amendments for April 12, 2005, at the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Washington, DC 20002–8002. 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, 2005. Written testimony for the public hearing must be received by the Commission not later than March 28, 2005. Timely submission of written testimony is a requirement for testifying at the public hearing. The Commission requests that, to the extent practicable, commentators submit an electronic version of the comment and of the testimony for the public hearing. The Commission also reserves the right to select persons to testify at any of the hearings and to structure the hearings as the Commission considers appropriate and the schedule permits. Further information regarding the public hearing, including the time of the hearing, will be provided by the Commission on its Web site at <http://www.ussc.gov>.

**ADDRESSES:** Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs.

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

The Commission seeks comment on the proposed amendments, issues for comment, and any other aspect of the sentencing guidelines, policy statements, and commentary.

The proposed amendments in this notice are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part on comment and suggestions regarding 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. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

The Commission also requests public comment regarding whether the Commission should specify for retroactive application to previously sentenced defendants any of the proposed amendments published in this notice. The Commission requests comment regarding which, if any, of the proposed amendments that may result in a lower guideline range should be made retroactive to previously sentenced defendants pursuant to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range).

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's Web site at <http://www.ussc.gov>.

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

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

**1. Proposed Amendment: Aggravated Identity Theft.**

**Synopsis of Proposed Amendment:** This proposed amendment implements sections 2 and 5 of the Identity Theft Penalty Enhancement Act, Public Law 108–275, 118 Stat. 831 (“the Act”), which creates two new criminal offenses and provides a specific directive to the Sentencing Commission regarding the upward adjustment at § 3B1.3 (Abuse of Position of Trust/Special Skill). First, the Act creates a new offense at 18 U.S.C. 1028A(a)(1) that prohibits the unauthorized transfer, use, or possession of a means of identification of another person during, or in relation to, specific enumerated

felonies. These felonies consist of various types of fraud, including false statements and documents in connection with immigration and citizenship laws, passports, visas, the Social Security Act, and the acquisition of firearms. A conviction under 18 U.S.C. 1028A(a)(1) carries a two-year mandatory sentence that must run consecutive to any other term of imprisonment, including the sentence for the underlying felony conviction. The new criminal offense at 18 U.S.C. 1028A(b)(1) prohibits the unauthorized transfer, use, or possession of a means of identification of another person during, or in relation to, specific felonies enumerated in 18 U.S.C. 2332b(g)(5)(B) (“federal crimes of terrorism”). Section 1028A(b)(1) provides a five-year mandatory sentence that must run consecutive to any other term of imprisonment, including the sentence for the underlying felony conviction.

In response to the creation of these new offenses, the proposed amendment creates a new guideline at § 2B1.6 (Aggravated Identity Theft). The proposed guideline is patterned after § 2K2.4 (Use of a Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes). Because the new offenses carry a mandatory consecutive term of imprisonment, the proposed guideline, as does § 2K2.4, provides that the “guideline sentence is the term of imprisonment required by statute”.

Second, section 5 of the Act directs the Commission to amend § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) to include a “defendant [who] exceeds or abuses the authority of his or her position in order to obtain unlawfully or use without authority any means of identification. \* \* \*” The Act also includes a general directive to the Commission to review and amend its guidelines and policy statements to ensure that the guideline offense levels and enhancements appropriately punish identity theft offenses involving an abuse of trust. In response to the directive, the proposed amendment amends § 3B1.3 to ensure that an adjustment under this guideline applies to “a defendant who uses his or her position in order to obtain unlawfully, or use without authority, any means of identification”. To avoid double-counting, the amendment proposes an application note that prohibits the application of any specific offense characteristic for the transfer, possession, or use of a means of identification when determining the sentence for the underlying offense in cases in which a sentence under the

new guideline is imposed in conjunction with a sentence for an underlying offense.

Finally, the proposal simplifies the application of the enhancement at § 2B1.1(b)(10), which currently covers offenses involving identity theft, access devices, and counterfeit devices, by changing it from an enhancement based on relevant conduct to an enhancement based on the offense of conviction. This is in response to comments from practitioners, since the enhancement's promulgation in 1998, that the enhancement in its current form is confusing and applied inconsistently.

*Proposed Amendment:*

Section 2B1.1(b)(10) is amended by striking "offense involved (A)" and all that follows through "of, another means of identification," and inserting "defendant was convicted of an offense under 18 U.S.C. 1028(a)(5), (a)(7), or § 1029(a)(4)."

The Commentary to § 2B1.1 captioned "Application Notes" is amended by striking Application Note 9 and inserting the following:

"9. Application of Subsection (b)(10).—Subsection (b)(10) provides a 2-level increase, and a minimum offense level of level 12, if the defendant was convicted of an offense under 18 U.S.C. 1028(a)(5) or (a)(7), or § 1029(a)(4)."

Chapter Two, part B, subpart 1 is amended by adding at the end the following new guideline and accompanying commentary:

**"§ 2B1.6. Aggravated Identity Theft**

(a) If the defendant was convicted of violating 18 U.S.C. 1028A, the guideline sentence is the term of imprisonment required by statute. Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) shall not apply to that count of conviction.

**Commentary**

*Statutory Provision:* 18 U.S.C. 1028A.

*Application Note*

1. Inapplicability of Chapter Two Enhancement.—If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for the transfer, possession, or use of a means of identification when determining the sentence for the underlying offense. A sentence under this guideline accounts for this factor for the underlying offense of conviction, including any such enhancement that would apply based on conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). "Means of identification" has

the meaning given that term in 18 U.S.C. 1028(d)(7)."

The Commentary to § 3B1.3 captioned "Application Notes" is amended in Note 1 by inserting "'Public or Private Trust'." before "'Public or private trust' refers to"; and by striking the second paragraph and inserting the following:

"Notwithstanding the preceding paragraph, an abuse of position of trust will apply to—

(A) any employee of the U.S. Postal Service who engages in the theft or destruction of undelivered United States mail, due to the special nature of the United States mail; or

(B) a defendant who uses his or her position in order to obtain unlawfully, or use without authority, any means of identification. "Means of identification" has the meaning given that term in 18 U.S.C. 1028(d)(7)."

The Commentary to § 3B1.3 captioned "Application Notes" is amended by inserting at the end the following:

5. "Inapplicability of Adjustment." Do not apply this adjustment if the defendant is convicted of 18 U.S.C. 1028A or the base offense level or specific offense characteristic in Chapter Two incorporates this factor."

The Statutory Index (Appendix A) is amended by inserting after the line referenced to 18 U.S.C. 1028 the following new line:

"18 U.S.C. 1028A 2B1.6".

*Issue for Comment:* The Commission seeks comment regarding whether, and if so, how, the guidelines should be amended to address section 2 of the Identify Theft Penalty Enhancement Act. For example, is policy guidance at § 5G1.2 (Sentencing on Multiple Counts of Conviction) appropriate to prevent disproportionate sentences that can arise from multiple convictions of statutes carrying mandatory, consecutive penalties sentenced at the same time? Section 2 of the Identity Theft Penalty Enhancement Act amends 18 U.S.C. 1028A(b)(4) to provide that "a term of imprisonment imposed on a person for a violation of this section may, in the discretion of the court, run concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that person for an additional violation of this section, provided that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the Sentencing Commission. \* \* \*

2. *Proposed Amendment:* Antitrust Offenses.

*Synopsis of Proposed Amendment:* This proposed amendment responds to the Antitrust Criminal Penalty

Enhancement and Reform Act of 2004, Public Law 108-237, Title II (the "Act"). Section 215 of the Act increases both the fines and statutory maximum terms of imprisonment for Sections 1, 2, and 3 of the Sherman Antitrust Act. The Act increased the maximum term of imprisonment from 3 years to 10 years, increased the maximum fine for corporations from \$10,000,000 to \$100,000,000, and increased the maximum fine for individuals from \$350,000 to \$1,000,000.

Congress has expressed an expectation that the Commission modify the antitrust guideline, § 2R1.1. The Act's Legislative History states:

This section (Section 215 of the Act) will require the United States Sentencing Commission to revise the existing antitrust sentencing guidelines to increase terms of imprisonment for antitrust violations to reflect the new statutory maximum. No revision in the existing guidelines is called for with respect to fines, as the increases in the Sherman Act statutory maximum fines are intended to permit courts to impose fines for antitrust violations at current guideline levels without the need to engage in damages litigation during the criminal sentencing process. (Supplemental Legislative History, Cong. Rec. H 3658, June 2, 2004).

The proposed amendment provides for a base offense level of level [12][14] at the guideline for antitrust offenses, § 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors). This increase in the base offense level recognizes congressional concern that some of the offenses currently referenced to § 2R1.1 do not receive punishment commensurate with their social impact. The increased base offense level also fosters greater proportionality between § 2R1.1 offenses and fraud offenses sentenced pursuant to § 2B1.1. Sentences for fraud offenses were made more severe due to various changes, notably an expansion of the number of additional offense levels at the "loss table" found at § 2B1.1(b)(1), effective November 1, 2001.

The proposed amendment also eliminates the 1-level increase for "bid-rigging" cases at § 2R1.1(b)(1). Commission data indicate that a significant majority of the cases historically sentenced under § 2R1.1 are "bid-rigging" cases. Because of the demonstrated frequency of such offenses, this aggravating behavior has been incorporated into the new base offense level.

*Proposed Amendment:*

Section 2R1.1(a) is amended by striking "10" and inserting "[12][14]".

Section 2R1.1(b) is amended by striking subdivision (1); and by redesignating subdivision (2) as subdivision (1).

The Commentary to § 2R1.1 captioned "Background" is amended by striking the fifth paragraph.

*Issues for Comment:*

(1) The Commission seeks comment regarding whether the base offense level in § 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors) for antitrust offenses should be raised and, if so, to what extent.

(2) The Commission requests comment regarding whether the volume of commerce table at subsection (b)(2) of § 2R1.1 should (A) be amended to change the threshold values that trigger the offense level enhancements therein; (B) be modified to reduce the number of levels in the volume of commerce table; and/or (C) be modified to include an additional category or categories for offenses that affect volumes of commerce significantly in excess of \$100,000,000.

*3. Issue for Comment: Anabolic Steroids.*

*Issue for Comment:* Section 3 of the Anabolic Steroid Control Act of 2004, Public Law 108-358 (the "Act"), directs the Commission to:

"(1) review the Federal sentencing guidelines with respect to offenses involving anabolic steroids;

(2) consider amending the Federal sentencing guidelines to provide for increased penalties with respect to offenses involving anabolic steroids in a manner that reflects the seriousness of such offenses and the need to deter anabolic steroid trafficking and use; and

(3) take such other action that the Commission considers necessary to carry out this section."

Anabolic steroids are Schedule III controlled substances under 21 U.S.C. 812. Under 21 U.S.C. 841(b)(1)(D), any person who knowingly or intentionally trafficks in, or possesses with intent to traffic in, a Schedule III controlled substance shall be sentenced to a term of imprisonment of not more than 5 years' imprisonment, or if the person committed the offense after a prior conviction for a felony drug offense has become final, not more than 10 years' imprisonment.

A defendant who has a prior anabolic steroid offense is subject to the 10-year maximum term of imprisonment because section (2)(a)(2) of the Act amended 21 U.S.C. 802(44) to include anabolic steroid offenses within the meaning of "felony drug offense(s)" for purposes of the increased statutory maximum term of imprisonment.

Currently § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) of the guidelines provides in the Drug Equivalency Tables that one unit of a Schedule III substance is the equivalent of one gram of marihuana for purposes of determining the defendant's base offense level under the Drug Quantity Table. For all Schedule III controlled substances except anabolic steroids, one unit equals one tablet or, if in liquid form, 0.5 milliliter. For anabolic steroids, one unit equals 50 tablets, or if in liquid form, 10 cubic centiliters.

The Commission requests comment regarding how the Commission should implement the directive in section 3 of the Act. Specifically, should the Commission amend the Drug Equivalency Tables and/or the Notes to the Drug Quantity Table in § 2D1.1 to provide a heightened marihuana equivalency for anabolic steroids, and, if so, what should be the amended equivalency rate? For example, should the Commission treat anabolic steroids the same as other Schedule III controlled substances so that one tablet of anabolic steroids would equal one unit of Schedule III controlled substance and hence would equal one gram of marihuana?

*4. Proposed Amendment:*  
Miscellaneous Amendments Package.

*Synopsis of Proposed Amendment:*  
This proposed amendment makes changes to various sentencing guidelines as follows:

(A) Makes technical amendments to several guidelines to conform to changes made in the public corruption guidelines in the 2004 amendment cycle (see Appendix C to the Guidelines Manual, Amendment 666). Specifically, the proposed amendment corrects title references to § 2C1.1 in §§ 2B3.3(c)(1), 2C1.3(c)(1), and 2C1.8(c)(1) and strikes references to § 2C1.7 in §§ 3D1.2(d) and 8C2.1.

(B) Clarifies Application Note 15 of the fraud guideline, § 2B1.1, to make clear that, in order for § 2B1.1(c)(3) to apply, the conduct set forth in the count of conviction must establish a fraud or false statement-type offense. Currently, there is some confusion with regard to whether the cross reference is applicable if the defendant only lied about another offense.

(C) Corrects the heading to § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentence in Certain Cases) in Application Note 2 of § 5D1.2 (Terms of Supervised Release).

(D) Corrects a typographical error in § 2M6.1 (Unlawful Production,

Development, Acquisition, Stockpiling, Alteration, Use, Transfer, or Possession of Nuclear Material, Weapons, or Facilities, Biological Agents, Toxins, or Delivery Systems, Chemical Weapons, or Other Weapons of Mass Destruction; Attempt or Conspiracy).

(E) Conforms § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy) to changes made to the drug guideline, § 2D1.1, in the 2004 amendment cycle (see Appendix C to the Guideline Manual, amendment 667). Specifically, the proposed amendment amends the Chemical Quantity Table in § 2D1.11(e) so that the amount of gamma-butyrolactone (GBL), at any particular offense level, is the amount that provides a 100 percent yield of gamma-hydroxybutyric acid (GHB).

(F) Clarifies Application Note 5 in the drug guideline, § 2D1.1, regarding drug analogues. The current note suggests that a drug analogue is less potent than the drug for which it is an analogue; however, by statute, an analogue can only be the same or more potent.

(G) Redesignates incorrect references in a number of Application Notes in the drug guideline, § 2D1.1.

*Proposed Amendment:*

(A) Conforming Amendments Related to Public Corruption Amendments of 2004.

Section 2B3.3(c)(1) is amended by inserting "; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions" after "; Extortion Under Color of Official Right".

Section 2C1.3(c)(1) is amended by inserting "; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions" after "; Extortion Under Color of Official Right".

Section 2C1.8(c)(1) is amended by inserting "; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions" after "; Extortion Under Color of Official Right".

Section 3D1.2(d) is amended by striking "2C1.7."

Section 8C2.1 is amended in subsection (a) by striking ", 2C1.7".

(B) Commentary to Fraud Cross-Reference in § 2B1.1

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 15 in the first sentence by inserting "involving fraudulent conduct that is" before "more aptly covered by another guideline."; in the second sentence by inserting "involves fraudulent conduct

that” before “is also covered by a more specific statute.”; and at the end by inserting the following:

“Subsection (c)(3) does not apply in a case in which a defendant is prosecuted under 18 U.S.C. 1001, or a similar statute, only for making false statements to a probation officer about other criminal conduct.”.

(C) Commentary to § 5D1.2

The Commentary to § 5D1.2 captioned “Application Notes” is amended in Note 2 by inserting “Limitation on” before “Applicability of Statutory”.

(D) Asterisked Note in § 2M6.1(b)(1)(A)

Section 2M6.1(b)(1) is amended in subdivision (A) by striking the asterisk after “(a)(4)” and inserting “(A)”; and after subsection (b)(2) by striking “\*Note: The reference to ‘(a)(4)’ should be to ‘(a)(4)(A)’.”.

(E) Ratio of GBL to GHB in § 2D1.11

Section 2D1.11(e) is amended in subdivision (1) by striking “227.1 L or more of Gamma-butyrolactone;” and inserting “1135.5 L or more of Gamma-butyrolactone;”; in subdivision (2) by striking “At least 681.3 L but less than 227.1 L of Gamma-butyrolactone;” and inserting “At least 340.7 but less than 1135.5 L of Gamma-butyrolactone;”; in subdivision (3) by striking “At least 227.1 L but less than 681.3 L of Gamma-butyrolactone;” and inserting “At least 113.6 L but less than 340.7 L of Gamma-butyrolactone;”; in subdivision (4) by striking “At least 159 L but less than 227.1 L of Gamma-butyrolactone;” and inserting “At least 79.5 L but less than 113.6 L of Gamma-butyrolactone;”; in subdivision (5) by striking “At least 90.8 L but less than 159 L of Gamma-butyrolactone;” and inserting “At least 45.4 L but less than 79.5 L of Gamma-butyrolactone;”; in subdivision (6) by striking “At least 22.7 L but less than 90.8 L of Gamma-butyrolactone;” and inserting “At least 11.4 L but less than 45.4 L of Gamma-butyrolactone;”; in subdivision (7) by striking “At least 18.2 L but less than 22.7 L of Gamma-butyrolactone;” and inserting “At least 9.1 L but less than 11.4 L of Gamma-butyrolactone;”; in subdivision (8) by striking “At least 13.6 L but less than 18.2 L of Gamma-butyrolactone;” and inserting “At least 6.8 L but less than 9.1 L of Gamma-butyrolactone;”; in subdivision (9) by striking “At least 9.1 L but less than 13.6 L of Gamma-butyrolactone;” and inserting “At least 4.5 L but less than 6.8 L of Gamma-butyrolactone;”; and in subdivision (10) by striking “Less than 9.1 of Gamma-butyrolactone;” and inserting “Less than 4.5 of Gamma-butyrolactone;”.

(F) Analogues of Controlled Substances

The Commentary to Section 2D1.1 captioned “Application Notes” is amended in Note 5 by striking “whether a greater quantity of the analogue is needed to produce a substantially similar effect on the central nervous system as” and inserting “whether the same quantity of analogue produces a greater effect on the central nervous system than”.

(G) Redesignation of Incorrect References in § 2D1.1

The Commentary to § 2D1.1 captioned “Application Notes” is amended in Note 19 by striking “(b)(5)(A)” and inserting “(b)(6)(A)”; in Note 20 by striking “(b)(5)(B) or (C)” and inserting “(b)(6)(B) or (C)”, and by striking “(b)(5)(C)” and inserting “(b)(6)(C)”; and in Note 21 by striking “(b)(6)” each place it appears and inserting “(b)(7)”.

The Commentary to § 2D1.1 captioned “Background” is amended by striking “(b)(5)(A)” and inserting “(b)(6)(A)”, and by striking “(b)(5)(B) and (C)” and inserting “(b)(6)(B) and (C)”.

[FR Doc. 05-3427 Filed 2-22-05; 8:45 am]

BILLING CODE 2210-40-P

## SMALL BUSINESS ADMINISTRATION

### Meridian Venture Partners II, L.P., License No. 03/73-0220; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Meridian Venture Partners II, L.P., 201 King of Prussia Road, Suite 240, Radnor, PA 19087, a Federal Licensee under the Small Business Investment Act of 1958, as amended (“the Act”), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (“SBA”) Rules and Regulations (13 CFR 107.730). Meridian Venture Partners II, L.P. proposes to provide equity/debt security financing to Rufus, Inc.. The financing is contemplated for operating expenses and for general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Meridian Venture Partners and MVP Distributions Partners, both Associates of Meridian Venture Partners II, L.P., own more than ten percent of Rufus, Inc.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration,

409 Third Street, SW., Washington, DC 20416.

Dated: February 15, 2005.

**Jaime Guzman-Fournier,**

*Acting Associate Administrator for Investment.*

[FR Doc. 05-3443 Filed 2-22-05; 8:45 am]

BILLING CODE 8025-01-P

## DEPARTMENT OF STATE

[Public Notice 4998]

### 30-Day Notice of Proposed Information Collection: Form DS-3035, J Visa Recommendation Application; OMB Control Number 1405-0135

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- Title of Information Collection: J Visa Waiver Recommendation Application.
- OMB Control Number: 1405-0135.
- Type of Request: Extension of a Currently Approved Collection.
- Originating Office: CA/VO.
- Form Number: DS-3035.
- Respondents: All J visa waiver applicants.
- Estimated Number of Respondents: 10,000 per year.
- Estimated Number of Responses: 10,000 per year.
- Average Hours Per Response: 1 hour.
- Total Estimated Burden: 10,000 hours per year.
- Frequency: Once per respondent.
- Obligation to Respond: Required to Obtain or Retain a Benefit.

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from February 23, 2005.

**ADDRESSES:** Direct Comments and questions to Alex Hunt, the State Department Desk Officer in Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202-395-7860. You may submit comments by any of the following methods:

- E-mail: [ahunt@omb.eop.gov](mailto:ahunt@omb.eop.gov). You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
- Hand Delivery or Courier: OIRA State Department Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503