

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 Phlx. All submissions should refer to File No. Phlx-2002-79 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

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

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.

The specific amendments proposed in this notice are as follows: (1) A proposed amendment to repromulgate the temporary, emergency amendment implementing the Sarbanes-Oxley Act, Public Law. 107-204, as a permanent, non-emergency amendment, and issues for comment; (2) a proposed amendment to repromulgate the temporary, emergency amendment implementing the Bipartisan Campaign Reform Act of 2002, Public Law. 107-155, as a permanent, non-emergency amendment; (3) a proposed amendment implementing section 11009 of the 21st Century Department of Justice

Appropriations Authorization Act, Public Law. 107-273, which directs the Commission to review and amend the sentencing guidelines, as appropriate, to provide an appropriate sentencing enhancement for any crime of violence or drug trafficking crime in which the defendant used body armor; (4) a proposed amendment to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) that provides increased penalties for offenses involving oxycodone; (5) issues for comment addressing section 11008 of the 21st Century Department of Justice Appropriations Authorization Act, Public Law. 107-273, regarding an appropriate enhancement for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a federal judge, magistrate judge, or any other official described in section 111 or section 115 of title 18, United States Code; and (6) an issue for comment regarding section 225 of the Homeland Security Act of 2002 (the Cyber Security Enhancement Act of 2002), Public Law. 107-296, which directs the Commission to review and amend, if appropriate, the sentencing guidelines and policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code. Additional issues for comment regarding the 21st Century Department of Justice Appropriations Authorization Act and the Cyber Security Enhancement Act of 2002 were published in the **Federal Register** on December 18, 2002 (*see* 67 FR 77532).

DATES: Written public comment regarding the proposed amendments set forth in this notice, including public comment regarding retroactive application of any of these proposed amendments, should be received by the Commission not later than March 17, 2003.

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 also may promulgate emergency amendments if required to do so by specific congressional legislation.

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 are presented in this notice 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 for 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. 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 website at <http://www.ussc.gov>.

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

Diana E. Murphy,
Chair.

1. Corporate Fraud

Synopsis of Proposed Amendment

This proposed amendment implements directives to the

⁸ 17 CFR 200.30-3(a)(12).