

revises the PSE's definition of "foreign broker/dealer" to include those persons or entities which are required to be registered, authorized or licensed by a foreign governmental agency or foreign regulatory organization even if they are not so registered, authorized or licensed.²¹ The Commission finds that Amendment No. 1 strengthens the proposal by including within the Exchange's definition those individuals or entities performing the function of a broker or dealer, but not complying with foreign regulatory requirements to become registered, authorized, or licensed. Essentially, the amendment attempts to avoid a potential loophole under the original proposal whereby a party could assert that it was technically a public customer because it was not formally registered as a foreign broker/dealer, even though it performs broker/dealer functions and is required to be approved for such activity. The Commission believes that the amendment properly provides that an individual or entity attempting to avoid the registration, authorization, or licensing process of a foreign regulator is not deemed a public customer on the Exchange. The Commission also notes that no comments were received on the original PSE proposal, which was subject to the full 21-day comment period. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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, N.W., Washington, D.C. Copies of such filing with also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-96-46 and should be submitted by April 16, 1997.

For the foregoing reasons, the Commission finds that the PSE's proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-PSE-96-46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Jonathan G. Katz,

Secretary.

[FR Doc. 97-7643 Filed 3-25-97; 8:45 am]

BILLING CODE 8010-01-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of promulgation of temporary, "emergency" guideline amendments increasing penalties for alien smuggling, fraudulent use of government-issued documents, and involuntary servitude, peonage, and slave trade offenses and a proposal to re-promulgate these amendments as permanent amendments.

SUMMARY: The Sentencing Commission hereby gives notice of the following actions: (1) Pursuant to its authority under sections 203, 211, and 218 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the Commission is promulgating temporary, emergency amendments to §§ 2L1.1, 2L2.1, 2L2.2, and 2H4.1 and accompanying commentary; and (2) pursuant to section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994(a) and (p)), the Commission further proposes to re-promulgate these amendments as permanent, non-emergency amendments.

DATES: The Commission has specified an effective date of May 1, 1997, for the emergency amendments increasing the penalties for offenses involving alien smuggling (§ 2L1.1), immigration document fraud (§§ 2L2.1, 2L2.2), and involuntary servitude, peonage, and slave trade (§ 2H4.1).

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273-4590.

Authority. 28 U.S.C. 994 (a), (o), (p), (x).

Richard P. Conaboy,
Chairman.

Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary

Emergency Amendment—Alien Smuggling

1. Amendment: Section 2L1.1(a)(1) is amended by deleting "20" and inserting in lieu thereof "23".

Section 2L1.1(a)(2) is amended by deleting "9" and inserting in lieu thereof "12".

Section 2L1.1(b) is amended by deleting subdivision (1) in its entirety and inserting the following in lieu thereof:

"(1) If (A) the defendant committed the offense other than for profit, or the offense involved the smuggling, transporting, or harboring only of the defendant's spouse or child (or both the defendant's spouse and child), and (B) the base offense level is determined under subsection (a)(2), decrease by 3 levels."

Section 2L1.1(b)(2) is amended in the column captioned "Increase in Level" by deleting "2" and inserting in lieu thereof "3"; by deleting "4" and inserting in lieu thereof "6"; and by deleting "6" and inserting in lieu thereof "9".

Section 2L1.1 is amended by deleting (b)(3) in its entirety and by inserting the following in lieu thereof:

"(3) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by 2 levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by 4 levels."

Section 2L1.1(b) is amended by inserting the following additional subdivisions:

"(4) (Apply the greatest):

(A) If a firearm was discharged, increase by 6 levels, but if the resulting offense level is less than level 22, increase to level 22.

(B) If a dangerous weapon (including a firearm) was brandished or otherwise used, increase by 4 levels, but if the resulting offense level is less than level 20, increase to level 20.

(C) If a dangerous weapon (including a firearm) was possessed, increase by 2 levels, but if the resulting offense level is less than level 18, increase to level 18.

(5) If the offense involved intentionally or recklessly creating a substantial risk of death or serious bodily injury to another person, increase

²¹ See note 4, *supra*.

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

by 2 levels, but if the resulting offense level is less than level 18, increase to level 18.

(6) If any person died or sustained bodily injury, increase the offense level according to the seriousness of the injury:

Death or degree of injury	Increase in level
(1) Bodily Injury	Add 2 levels.
(2) Serious Bodily Injury ..	Add 4 levels.
(3) Permanent or Life-Threatening Bodily Injury.	Add 6 levels.
(4) Death	Add 8 levels".

Section 2L1.1 is amended by inserting the following additional subsection:

“(c) Cross Reference

If any person was killed under circumstances that would constitute murder under 18 U.S.C. 1111 had such killing taken place within the special maritime and territorial jurisdiction of the United States, apply the appropriate murder guideline from Chapter Two, Part A, Subpart 1.”.

The Commentary to § 2L1.1 captioned “Application Notes” is amended in Note 1 by inserting at the beginning “For purposes of this guideline”; by deleting the first sentence in its entirety and inserting in lieu thereof “‘The defendant committed the offense other than for profit’ means that there was no payment or expectation of payment for the smuggling, transportation, or harboring of any of the unlawful aliens.”; by inserting as the second paragraph “‘Aggravated felony’ is defined in the Commentary to § 2L1.2 (Unlawfully Entering or Remaining in the United States).”; by inserting as the third paragraph “‘Child’ has the meaning set forth in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)).”; by inserting as the fourth paragraph “‘Spouse’ has the meaning set forth in 101(a)(35) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(35)).”; and by inserting as the fifth paragraph “An ‘immigration and naturalization offense’ means any offense covered by this Part.”.

The Commentary to § 2L1.1 captioned “Application Notes” is amended by deleting Note 3 in its entirety and by redesignating Note 4 as Note 3.

The Commentary to § 2L1.1 captioned “Application Notes” is amended in Note 5 by deleting “dangerous or inhumane treatment, death or bodily injury, possession of a dangerous weapon, or” immediately following “involved”; and by redesignating Note 5 as Note 4.

The Commentary to § 2L1.1 captioned “Application Notes” is amended by deleting Note 6 in its entirety.

The Commentary to § 2L1.1 captioned “Application Notes” is amended by inserting the following additional notes:

“5. Prior felony conviction(s) resulting in an adjustment under subsection (b)(3) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

6. Reckless conduct to which the adjustment from subsection (b)(5) applies includes a wide variety of conduct (e.g., transporting persons in the trunk or engine compartment of a motor vehicle, carrying substantially more passengers than the rated capacity of a motor vehicle or vessel, or harboring persons in a crowded, dangerous, or inhumane condition.) If subsection (b)(5) applies solely on the basis of conduct related to fleeing from a law enforcement officer, do not apply an adjustment from § 3C1.2 (Reckless Endangerment During Flight). Additionally, do not apply the adjustment in subsection (b)(5) if the only reckless conduct that created a substantial risk of death or serious bodily injury is conduct for which the defendant received an enhancement under subsection (b)(4).”.

The Commentary to § 2L1.1 captioned “Background” is amended by deleting the second and third sentences; and, in the last sentence, by inserting “smuggling, transporting, or harboring” immediately following “scale”.

Reason for Amendment: This amendment implements section 203 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which directs the Commission to amend the guidelines for offenses related to smuggling, transporting, or harboring illegal aliens.

Emergency Amendment—Alien Document Fraud

2. Amendment: Section 2L2.1(a) is amended by deleting “9” and inserting “11” in lieu thereof.

Section 2L2.1(b) is amended by deleting subdivision (1) in its entirety and inserting the following in lieu thereof:

“(1) If the defendant committed the offense other than for profit, or the offense involved the smuggling, transporting, or harboring only of the defendant’s spouse or child (or both the defendant’s spouse and child), decrease by 3 levels.”.

Section 2L2.1(b)(2) is amended in the column captioned “Increase in Level” by deleting “2” and inserting in lieu thereof “3”; by deleting “4” and inserting in lieu thereof “6”; and by deleting “6” and inserting in lieu thereof “9”.

Section 2L2.1(b) is amended by inserting the following additional subdivision:

“(4) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by 2 levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by 4 levels.”.

The Commentary to § 2L2.1 captioned “Application Notes” is amended in Note 1 by inserting at the beginning “For purposes of this guideline—”; by deleting the first sentence in its entirety and inserting in lieu thereof “‘The defendant committed the offense other than for profit’ means that there was no payment or expectation of payment for the smuggling, transportation, or harboring of any of the unlawful aliens.”; by inserting as the second paragraph “An ‘immigration and naturalization offense’ means any offense covered by this Part.”; by inserting as the third paragraph “‘Child’ has the meaning set forth in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)).”; and by inserting as the fourth paragraph “‘Spouse’ has the meaning set forth in 101(a)(35) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(35)).”.

The Commentary to § 2L2.1 captioned “Application Notes” is amended by inserting the following additional notes:

“4. Prior felony conviction(s) resulting in an adjustment under subsection (b)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

5. If the offense involved substantially more than 100 documents, an upward departure may be warranted.”.

Section 2L2.2(a) is amended by deleting “6” and inserting in lieu thereof “8”.

Section 2L2.2(b) is amended by deleting “Characteristic” and inserting in lieu thereof “Characteristics”; and by inserting the following additional subdivision:

“(2) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by 2 levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by 4 levels.”.

The Commentary to § 2L2.2 captioned “Application Note” is amended by deleting “Note” and inserting in lieu thereof “Notes”; by redesignating Note 1

as Note 2; and by inserting the following as the new Note 1:

"1. For purposes of this guideline—'Immigration and naturalization offense' means any offense covered by Chapter Two, Part L."

The Commentary to § 2L2.2 captioned "Application Note" is amended by inserting the following as Note 3.

"3. Prior felony conviction(s) resulting in an adjustment under subsection (b)(2) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History)."

Reason for Amendment: This amendment implements section 211 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which directs the Commission to amend the guidelines for offenses related to the fraudulent use of government-issued documents.

Emergency Amendment—Involuntary Servitude

3. Amendment: Section 2H4.1(a) is amended by deleting "(Apply the greater)" and inserting in lieu thereof "22"; and by deleting subdivisions (1) and (2) in their entirety.

Section 2H4.1 is amended by inserting the following additional subsection:

"(b) Specific Offense Characteristics
(1)(A) If any victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) if any victim sustained serious bodily injury, increase by 2 levels.

(2) If a dangerous weapon was used, increase by 2 levels.

(3) If any victim was held in a condition of peonage or involuntary servitude for (A) more than one year, increase by 3 levels; (B) between 180 days and one year, increase by 2 levels; or (C) more than 30 days but less than 180 days, increase by 1 level.

(4) If any other felony offense was committed during the commission of, or in connection with, the peonage or involuntary servitude offense, increase to the greater of:

(A) 2 plus the offense level as determined above, or

(B) 2 plus the offense level from the offense guideline applicable to that other offense, but in no event greater than level 43."

The Commentary to § 2H4.1 captioned "Statutory Provisions" is amended by inserting "241," immediately before "1581".

The Commentary to § 2H4.1 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes"; by deleting Note 1 in its entirety and inserting in lieu thereof the following new note:

"1. For purposes of this guideline—'A dangerous weapon was used' means that a firearm was discharged, or that a firearm or dangerous weapon was otherwise used.

Definitions of 'firearm,' 'dangerous weapon,' 'otherwise used,' 'serious bodily injury,' and 'permanent or life-threatening bodily injury' are found in the Commentary to § 1B1.1 (Application Instructions)."; and by inserting the following additional notes:

"2. Under subsection (b)(4), 'any other felony offense' means any conduct that constitutes a felony offense under federal, state, or local law (other than an offense that is itself covered by this subpart). When there is more than one such other offense, the most serious such offense (or group of closely related offenses in the case of offenses that would be grouped together under § 3D1.2(d)) is to be used. See Application Note 3 of § 1B1.5 (Interpretation of References to other Offense Guidelines).

3. If the offense involved the holding of more than ten victims in a condition of peonage or involuntary servitude, an upward departure may be warranted."

The Commentary to § 2H4.1 captioned "Background" is deleted in its entirety.

Reason for Amendment: This amendment implements section 218 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which directs the Commission to review the guideline for peonage, involuntary servitude and slave trade offenses and amend the guideline.

Note: The Commission proposes to re-promulgate and submit to Congress by May 1, 1997, as permanent amendments the forgoing emergency amendments. When the Commission again considers these amendments for re-promulgation as permanent amendments, it may adopt an amended version of § 2L1.1(b)(1)(A) and § 2L2.1(b)(1). The amended version would provide for a three-level decrease if "an offense was committed other than for profit or the offense involved the smuggling, transporting, or harboring only of the defendant's spouse or child (or both the defendant's spouse and child)." Such a change could be expected to restrict somewhat the number of defendants who might otherwise qualify for the offense level reduction. On the other hand, this approach may provide a more realistic measure of whether the overall character of the smuggling offense was a not-for-profit venture.

[FR Doc. 97-7607 Filed 3-25-97; 8:45 am]

BILLING CODE 2210-40-P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before May 27, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202-205-6629.

SUPPLEMENTARY INFORMATION:

Title: "Request for Management and Technical Assistance".

Type of Request: Revision of a Currently Approved Collection.

Form No.: SBA Form 641B.

Description of Respondents: Individuals that use the Business Information Centers (BIC's).

Annual Responses: 60,000.

Annual Burden: 120,000.

Comments: Send all comments regarding this information collection to Eunice Ricks, Business Initiatives Specialist, Office Business Initiatives, Small Business Administration, 409 3rd Street, S.W., Suite 6100 Washington, D.C. 20416. Phone No.: 202-205-7422.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: March 20, 1997.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97-7553 Filed 3-25-97; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 2461]

Office of Defense Trade Controls; Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that Electrodyne Systems Corporation has