in a substantial disruption of a critical infrastructure reflects the serious impact such an offense could have on national security, national economic security, national public health or safety, or a combination of any of these matters.

| Historical Note | Effective November 1, 1987. Amended effective June 15, 1988 (amendment 7); November 1, 1989 (amendments 99–101 and 303); November 1, 1990 (amendments 312, 317, and 361); November 1, 1991 (amendments 364, and 393); November 1, 1993 (amendments 481 and 482); November 1, 1995 (amendment 512); November 1, 1997 (amendment 551); November 1, 1998 (amendment 576); November 1, 2000 (amendment 596); November 1, 2001 (amendment 617); November 1, 2002 (amendments 637, 638, and 646); January 25, 2003 (amendment 647); November 1, 2005 (amendments 653, 653, 655, and 656); November 1, 2004 (amendments 665, 666, and 674); November 1, 2005 (amendment 679); November 1, 2006 (amendments 685 and 696); November 1, 2007 (amendments 699, 700, and 702); February 6, 2008 (amendment 714); November 1, 2008 (amendments 719 and 725); November 1, 2009 (amendments 726, 733, and 737); November 1, 2010 (amendments 745 and 747); November 1, 2011 (amendment 749); November 1, 2012 (amendment 761); November 1, 2013 (amendments 771, 772, and 777); November 1, 2015 (amendments 791 and 792). |

| §2B1.2. [Deleted] | Section 2B1.2 (Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property), effective November 1, 1987, amended effective January 15, 1988 (amendment 8), June 15, 1988 (amendment 9), November 1, 1989 (amendments 102–104), and November 1, 1990 (amendments 312 and 361), was deleted by consolidation with §2B1.1 effective November 1, 1993 (amendment 481). |

| §2B1.3. [Deleted] | Section 2B1.3 (Property Damage or Destruction), effective November 1, 1987, amended effective June 15, 1988 (amendment 10), November 1, 1990 (amendments 312 and 313), November 1, 1997 (amendment 551), November 1, 1998 (amendment 576), was deleted by consolidation with §2B1.1 effective November 1, 2001 (amendment 617). |

| §2B1.4. Insider Trading | (a) Base Offense Level: 8

(b) Specific Offense Characteristics

(1) If the gain resulting from the offense exceeded $6,500, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) If the offense involved an organized scheme to engage in insider trading and the offense level determined above is less than level 14, increase to level 14.
Commentary

Statutory Provisions: 15 U.S.C. § 78j and 17 C.F.R. § 240.10b-5. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. Application of Subsection (b)(2).—For purposes of subsection (b)(2), an “organized scheme to engage in insider trading” means a scheme to engage in insider trading that involves considered, calculated, systematic, or repeated efforts to obtain and trade on inside information, as distinguished from fortuitous or opportunistic instances of insider trading.

The following is a non-exhaustive list of factors that the court may consider in determining whether the offense involved an organized scheme to engage in insider trading:

(A) the number of transactions;
(B) the dollar value of the transactions;
(C) the number of securities involved;
(D) the duration of the offense;
(E) the number of participants in the scheme (although such a scheme may exist even in the absence of more than one participant);
(F) the efforts undertaken to obtain material, nonpublic information;
(G) the number of instances in which material, nonpublic information was obtained; and

(H) the efforts undertaken to conceal the offense.

2. Application of §3B1.3.—Section 3B1.3 (Abuse of Position of Trust or Use of Special Skill) should be applied if the defendant occupied and abused a position of special trust. Examples might include a corporate president or an attorney who misused information regarding a planned but unannounced takeover attempt. It typically would not apply to an ordinary “tippee”.

Furthermore, §3B1.3 should be applied if the defendant’s employment in a position that involved regular participation or professional assistance in creating, issuing, buying, selling, or trading securities or commodities was used to facilitate significantly the commission or concealment of the offense. It would apply, for example, to a hedge fund professional who regularly participates in securities transactions or to a lawyer who regularly provides professional assistance in securities transactions, if the defendant’s employment in such a position was used to facilitate significantly the commission or concealment of the offense. It ordinarily would not apply to a position such as a clerical worker in an investment firm, because such a position ordinarily does not involve special skill. See §3B1.3, comment. (n.4).

Background: This guideline applies to certain violations of Rule 10b-5 that are commonly referred to as “insider trading”. Insider trading is treated essentially as a sophisticated fraud. Because the victims and their losses are difficult if not impossible to identify, the gain, i.e., the
total increase in value realized through trading in securities by the defendant and persons acting in concert with the defendant or to whom the defendant provided inside information, is employed instead of the victims' losses.

Certain other offenses, e.g., 7 U.S.C. § 13(e), that involve misuse of inside information for personal gain also appropriately may be covered by this guideline.

Subsection (b)(2) implements the directive to the Commission in section 1079A(a)(1)(A) of Public Law 111–203.

| Historical Note | Effective November 1, 2001 (amendment 617). Amended effective November 1, 2010 (amendment 746); November 1, 2012 (amendment 761); November 1, 2015 (amendment 791). |

§2B1.5. Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources

(a) Base Offense Level: 8

(b) Specific Offense Characteristics

(1) If the value of the cultural heritage resource or paleontological resource (A) exceeded $2,500 but did not exceed $6,500, increase by 1 level; or (B) exceeded $6,500, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) If the offense involved a cultural heritage resource or paleontological resource from, or that, prior to the offense, was on, in, or in the custody of (A) the national park system; (B) a National Historic Landmark; (C) a national monument or national memorial; (D) a national marine sanctuary; (E) a national cemetery or veterans' memorial; (F) a museum; or (G) the World Heritage List, increase by 2 levels.

(3) If the offense involved a cultural heritage resource constituting (A) human remains; (B) a funerary object; (C) cultural patrimony; (D) a sacred object; (E) cultural property; (F) designated archaeological or ethnological material; or (G) a pre-Columbian monumental or architectural sculpture or mural, increase by 2 levels.

(4) If the offense was committed for pecuniary gain or otherwise involved a commercial purpose, increase by 2 levels.