RULES OF PRACTICE AND PROCEDURE

(As amended on November 13, 2026)*

About the Commission

The United States Sentencing Commission is an independent agency in the judicial branch of government. Its principal purposes are:

(1) to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes;

(2) to advise and assist Congress and the executive branch in the development of effective and efficient crime policy; and

(3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues, serving as an information resource for Congress, the executive branch, the courts, criminal justice practitioners, the academic community, and the public.

PART I. PURPOSE OF RULES; RULES AMENDMENT PROCEDURE

Rule 1.1 – Application and Purpose

Pursuant to 28 U.S.C. § 995(a)(1) and other applicable provisions of its organizational statute, the United States Sentencing Commission ("the Commission") has established these rules governing its usual operating practices.

The Commission, an agency within the judicial branch of government, is subject to only that provision of the Administrative Procedures Act, section 553 of title 5, United States Code, relating to publication in the *Federal Register* and a public hearing procedure, with regard to proposed sentencing guidelines or amendments thereto. *See* 28 U.S.C. § 994(x). The Commission is not subject to a variety of other statutes, such as the Federal Advisory Committee Act (5 U.S.C. App.), the Government in the Sunshine Act (5 U.S.C. § 552b), and the Freedom of Information Act (5 U.S.C. § 552), typically applicable to rulemaking agencies in the executive branch. The Commission nevertheless desires to involve interested members of the public in its work to the maximum extent practicable.

* *Editorial Note:* These rules were originally adopted by the Commission on July 11,1997, and amended on November 14, 2001, August 29, 2007, August 18, 2016, and November 13, 2026.

Accordingly, these rules are issued for the purpose of more fully informing interested persons of opportunities and procedures for becoming aware of and participating in the public business of the Commission. These rules are not intended to create or enlarge legal rights for any person.

Rule 1.2 – Rules Amendment Procedure

(a) Except as provided in subsection (b), amendment of these rules shall require the affirmative vote in a public meeting of a majority (and not less than three) of the voting members then serving. Any such amendment shall be adopted only after notice and reasonable opportunity for public comment.

(b) The Commission temporarily may suspend any rule contained herein and/or adopt a supplemental or superseding rule by affirmative vote in a public meeting of a majority of the voting members then serving.

PART II – ACTION BY THE COMMISSION

Rule 2.1 – Members

For purposes of the voting procedures set forth in these Rules, "member" of the Commission shall mean a voting member and shall not include an *ex-officio*, non-voting member. *Ex-officio* members may not vote or make or second motions.

Rule 2.2 – Voting Rules for Action by the Commission

(a) Except as otherwise provided in these rules or by law, action by the Commission requires the affirmative vote of a majority of the members at a public meeting at which a quorum is present. A quorum shall consist of a majority of the members then serving. Members shall be deemed "present" and may participate and vote in meetings from remote locations by electronic means, including telephone, satellite, and video conference devices.

(b) Promulgation of guidelines, policy statements, official commentary, and amendments thereto shall require the affirmative vote of at least four members at a public meeting. *See* 28 U.S.C. § 994(a).

Publication for comment of proposed amendments to guidelines, policy statements, or official commentary shall require the affirmative vote of at least three members at a public meeting.

Approval of a notice of priorities shall require the affirmative vote, at a public meeting, of a majority of the members then serving.

Adoption or revision of the minutes of a public meeting shall require the affirmative vote, at a public meeting, of a majority of the members then serving.

(c) Action on other matters may be taken (1) at a nonpublic meeting; or (2) without a meeting by written or oral communication (*e.g.*, by "notation voting"), and shall be based on the affirmative vote of a majority of the members then serving. Such matters include the approval of budget requests, administrative and personnel issues, decisions on contracts and cooperative agreements, decisions on workshops and training programs, decisions on publishing reports and making recommendations to Congress, decisions to hold hearings and call witnesses, decisions on litigation and administrative proceedings involving the Commission, decisions relating to the formation and membership of advisory groups, the approval pursuant to 28 U.S.C. § 994(w) of a statement of reasons form, notices of proposed priorities, extensions of public comment periods, notices of proposed amendments to these rules, approval of technical and clerical amendments to these rules, and decisions to hold a nonpublic meeting. The Commission is not precluded from acting on such matters at a public meeting.

(d) A motion to reconsider Commission action may be made only by a commissioner on the prevailing side of the vote for which reconsideration is sought, or who did not vote on the matter. Four votes are necessary to reconsider a Commission vote on any question on which a four-vote majority is required.

PART III – MEETINGS AND HEARINGS

Rule 3.1 – Meetings

(a) The Chair shall call and preside at Commission meetings. *See* 28 U.S.C. § 993(a). In the absence of the Chair, the Chair will designate a Vice Chair to preside.

(b) Members may participate in meetings from remote locations by electronic means, including telephone, satellite, and video conference devices.

(c) In furtherance of the Commission's duty to "consult with authorities on, and individual and institutional representatives of" the groups listed in 28 U.S.C. § 994(o), one representative designated by the Committee on Criminal Law of the Judicial Conference of the United States, and one representative designated by the Sentencing Guidelines Committee for the Federal Public and Community Defenders, shall be invited by the Chair to attend all nonpublic Commission meetings at which Commission staff is present so that they may provide "any observations, comments or questions pertinent to the work of the Commission." *See* 28 U.S.C. § 994(o). To facilitate informed participation, the designated representatives shall receive, at the time of distribution, the same meeting materials distributed to commissioners.

The Chair shall exclude designated representatives from portions of meetings, and withhold from them meeting materials, relating to (1) confidential or sensitive matters involving any

of the following: pending litigation involving the Commission, ethics rules and standards, budgetary allocations or appropriations, personnel and staffing matters, and procurement and contract actions; or (2) a rare and unusual matter the Chair has determined requires the utmost confidentiality and warrants discussion exclusively among the commissioners or between commissioners and staff.

Each designated representative may be accompanied at Commission meetings by one staff member from their respective organization to provide necessary technical, administrative, or advisory support.

Rule 3.2 – Public Meetings

The Commission shall meet on at least two occasions in each calendar quarter to conduct business. *See* 28 U.S.C. § 993(a). Except as provided in Rule 3.3, meetings of the Commission with outside parties shall be conducted in public.

To the extent practicable, the Chair shall issue, through the Office of Staff Director, a public notice of any public meeting at least seven days prior to the date of the meeting. The public notice, to the extent practicable, shall indicate the general purpose(s) of the meeting and include an agenda and any related documents approved by the Chair for public release. The notice shall be made available to the public on the Commission's website.

Any related documents approved for public release shall be made available to the public as soon as practicable (*e.g.*, if not in advance of the meeting, then at the start of the meeting or in a timely manner after the meeting), on the Commission's website.

At the discretion of the Chair, members of the public may be afforded an opportunity to comment on any issue on the agenda of a public meeting.

Rule 3.3 – Nonpublic Meetings

The Chair may call nonpublic meetings for purposes of the following:

(1) To take actions on other matters (*see* Rule 2.2(c)).

(2) To receive information from, and participate in discussions with, Commission staff or any person designated by an *ex officio* Commissioner as support staff for that Commissioner.

(3) To receive information from, and participate in discussions with, (A) members of advisory groups; (B) interested parties within the judicial branch (*e.g.*, federal judges; the Criminal Law Committee; the Federal Public and Community Defenders); or (C) interested parties within the executive or legislative branches.

(4) Upon a decision by a majority of the members then serving, to receive or share information, from or with any other person, that is inappropriate for public disclosure (*e.g.*, classified

information; privileged or confidential information; trade secrets; or information the disclosure of which would interfere with law enforcement proceedings, deprive a person of a right to a fair trial, constitute an unwarranted invasion of personal privacy, compromise a confidential source, disclose law enforcement investigative techniques and procedures, endanger the life or safety of judicial or law enforcement personnel, or be likely to significantly frustrate implementation of a proposed agency action).

(5) Upon a decision by a majority of the members then serving, to receive information from, and participate in discussions with, outside experts, on matters unrelated to the merits of any pending proposed amendment to the guidelines, policy statements, or commentary (*e.g.*, to hold a symposium, convene an expert roundtable, or discuss local practices with a locality's judges and practitioners). At the discretion of the Chair, such a meeting may be held under "Chatham House Rule." Subject to the discretion and control of the Chair, one or more persons may be permitted to attend such a meeting as outside observers. Where the number of outside observers is limited, the Chair may give priority to individuals referred to in subdivision (3).

Rule 3.4 – Public Hearings

The Commission may convene a public hearing on any matter involving the promulgation of sentencing guidelines or any other matter affecting the Commission's business. *See* 28 U.S.C. § 995(a)(21). A request for comment on a proposed matter does not necessarily mean that a public hearing will be held on the matter or that a public hearing, if scheduled, will pertain to all issues raised in the request for comment.

Notice of a public hearing shall be given as soon as practicable. The notice shall include, as applicable, information regarding a procedure for requesting an opportunity to testify, and the availability of documents or reports relevant to the subject of the hearing.

The Commission may specify the format for public hearings, invite witnesses, choose witnesses from among those who request the opportunity to testify, and require that written testimony be submitted in advance of the hearing.

The Commission may exclude from such a hearing any electronic devices that record the voice or image of any or all witnesses, as well as cameras of any kind.

At the request of any witness to turn off any such electronic device(s) during that person's testimony, the Chair of the Commission may order, at his or her discretion, that use of such devices be discontinued during the testimony of that witness.

Rule 3.5 – Live Webcasts and Written Records

To the extent practicable, and at the discretion and control of the Chair, the Commission shall provide a live webcast or audiocast of its public meetings and public hearings, and shall make available a recording of the webcast or audiocast through the Commission's website.

The Commission shall prepare and maintain written minutes of public meetings and make them publicly available after their approval by the Commission. The Commission shall make an audio recording of public meetings and make the recordings publicly available after the approval of the minutes of such meeting. No such recording shall be copied or removed from the Commission's offices.

The Commission shall maintain a written transcription of public hearings that shall be publicly available for inspection.

PART IV – GUIDELINE AMENDMENT PROCESS

Rule 4.1 – Promulgation of Amendments

The Commission may promulgate and submit to Congress amendments to the guidelines after the beginning of a regular session of Congress and not later than May 1 of that year. Amendments shall be accompanied by an explanation or statement of reasons for the amendments. Unless otherwise specified, or unless Congress legislates to the contrary, amendments submitted for review shall take effect on the first day of November of the year in which submitted. 28 U.S.C. § 994(p).

At other times, pursuant to special statutory enactment, the Commission may promulgate amendments to accomplish identified congressional objectives.

Amendments to policy statements and commentary may be promulgated and put into effect at any time. However, to the extent practicable, the Commission shall endeavor to include amendments to policy statements and commentary in any submission of guideline amendments to Congress and put them into effect on the same November 1 date as any guideline amendments issued in the same year.

Rule 4.1A – Retroactive Application of Amendments

Generally, promulgated amendments will be given prospective application only. However, in those cases in which the Commission considers an amendment for retroactive application to previously sentenced, imprisoned defendants (*see* 28 U.S.C. § 994(u); 18 U.S.C. § 3582(c)(2)), the Commission shall—

(1) at the public meeting at which it votes to promulgate the amendment, or in a timely manner thereafter, vote to publish a request for comment on whether to make the amendment available for retroactive application;

(2) instruct staff to prepare a retroactivity impact analysis of the amendment, if practicable, and make such an analysis available in a timely manner to Congress and the public;

(3) hold a public hearing on whether to make the amendment available for retroactive application; and

(4) at a public meeting held at least 60 calendar days before the effective date of the amendment, vote on whether to make the amendment available for retroactive application.

Rule 4.2 – Prison Impact of Amendments

Prior to promulgating amendments to the guidelines, the Commission shall consider the impact of any amendment on available penal and correctional resources, and on other facilities and services. *See* 28 U.S.C. § 994(g). Prison and sentencing impact assessments of amendments to the guidelines shall be made available to the public as soon as practicable, through the Commission's website.

Rule 4.3 – Notice and Comment on Proposed Amendments

In proposing and promulgating guidelines and amendments thereto, the Commission shall comply with the requirements of section 553 of title 5, United States Code, relating to publication in the *Federal Register* and public hearing procedure. 28 U.S.C. § 994(x).

The Commission may promulgate commentary and policy statements, and amendments thereto, without regard to the provisions of 28 U.S.C. § 994(x). Nevertheless, the Commission will endeavor to provide, to the extent practicable, comparable opportunities for public input on proposed policy statements and commentary considered in conjunction with guideline amendments.

Where appropriate, the Commission may divide a comment period into an original comment phase and a reply comment phase. For example, the Commission may divide a comment period of 60 calendar days into an original comment phase of 40 calendar days and a reply comment phase of 20 calendar days. Comments during a reply phase are limited to issues raised in the original comment phase.

Public comment regarding a proposed amendment received after the close of the comment period, and reply comment received on issues not raised in the original comment phase, may not be considered.

The Commission does not intend to solicit ex parte communications (*i.e.*, communications outside the public comment process) on the merits of a proposed amendment from outside parties.

Rule 4.4 – Federal Register Notice of Proposed Amendments

A vote to publish a proposed amendment to a guideline, policy statement, or official commentary in the *Federal Register* shall be deemed to be a request for public comment on the proposed amendment. At the same time the Commission votes to publish proposed amendments for comment, it shall request public comment on whether to make any amendments retroactive.

The notice of proposed amendments also shall provide, to the extent appropriate and practicable, reasons for consideration of amendments and a summary of or reference to publicly available information that is relevant to the issue(s). In addition, the publication notice shall include a deadline for public comment and may include a notice of any scheduled public hearing(s) or meetings on the issue(s).

In the case of proposed amendments to guidelines or issues for comment that form the basis for possible guidelines amendments, the Commission shall allow, to the extent practicable, a minimum period of public comment of at least 60 calendar days prior to final Commission action on the proposed amendments.

Rule 4.5 – Public Hearing on Proposed Amendments

In the case of "emergency" amendments issued pursuant to special statutory authorization, the Commission ordinarily will not conduct a public hearing on the proposed amendments but will afford such opportunity for written comment as time allows.

In the case of other amendments to guidelines or policy statements issued pursuant to 28 U.S.C. § 994, the Commission shall conduct a public hearing on the proposed amendments, unless the Commission determines that time does not permit a hearing or that a hearing will not substantially assist the amendment process. Notice of the hearing shall be given in the *Federal Register* and by other means designed to inform persons likely to be interested in participating in such a hearing.

PART V – PUBLIC PARTICIPATION IN GUIDELINE AMENDMENT PROCESS

Rule 5.1 – Public Comment File

The Office of Legislative and Public Affairs shall receive and maintain public comment and public hearing testimony received by the Commission. As soon as practicable after the close of the comment period (or the comment phase, as applicable), public comment and public hearing testimony shall be made available to the public through the Commission's website.

"Public comment" means (1) any written comment submitted by an outside party, including an agency represented by an *ex-officio* commissioner, pursuant to or in anticipation of a request for public comment by the Commission; and (2) any other written submission, from an outside party, that the Chair or a majority of the members then serving has not precluded from being made available to the public. "Public comment" does not include any internal communication between and among commissioners, Commission staff, and any person designated by an *ex-officio* commissioner as support staff for that commissioner.

Where appropriate, the Commission may decline to make available public comment that is duplicative and may redact sensitive information from public comment.

Rule 5.2 – Notice of Priorities

(a) The Commission shall publish annually in the *Federal Register*, and make available to the public, a notice of the proposed priorities for future Commission inquiry and possible action, including areas for possible amendments to guidelines, policy statements, and commentary. Any such notice shall include an invitation to, and deadline for, the submission of written public comment on the proposed priorities.

Subsequent to the deadline for comment on the proposed priorities, the Commission shall publish in the *Federal Register,* and make available to the public for inspection, a notice of priorities for Commission inquiry and possible action.

(b) In setting its priorities, the Commission shall consider the impact of the priorities on available penal and correctional resources, and on other facilities and services. *See* 28 U.S.C. § 994(g). The Commission shall also consider, among other factors, the number of defendants potentially involved and the potential impact.

(c) The Commission's priorities may include resolution of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. § 991(b)(1)(B) and *Braxton v. United States*, 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts. The Commission will consider the following non-exhaustive list of factors in deciding whether a particular guideline circuit conflict warrants resolution by the Commission:

(1) potential defendant impact;

(2) potential impact on sentencing disparity;

(3) number of court decisions involved in the conflict and variation in holdings; and

(4) ease of resolution, both as a discrete issue, and in the context of other agenda matters scheduled for consideration during the available amendment cycle.

(d) There may be circumstances in which the Commission receives — before the comment period on the next year's priorities begins — a written submission from an outside party or a petition of a defendant under section 994(s) of title 28, United States Code (*see* Rule 5.6), that raises an issue more appropriately considered for the next year's priorities. In such circumstances, the Commission shall consider that issue when it sets the next year's priorities.

Rule 5.3 – Information Relevant to the Amendment Process

To fulfill Commission priorities and inform consideration of potential amendments, the Staff Director shall direct the preparation of relevant data, reports, and other information for consideration by the Commission. Upon authorization by the Staff Director, the Office of Legislative

and Public Affairs shall make the data, reports, and other information available to the public as soon as practicable.

Rule 5.4 – Advisory Groups

Upon authorization of the Commission, the Staff Director may facilitate the creation, membership, and periodic meeting at the Commission offices and elsewhere, of advisory groups of defense attorneys, academics, probation officers, judges, prosecutors, and others, to facilitate formal and informal input to the Commission.

Two types of advisory groups are authorized: standing and ad hoc. The following groups are standing advisory groups: the Practitioners Advisory Group, the Probation Officers Advisory Group, the Tribal Issues Advisory Group, and the Victims Advisory Group.

Upon creating an advisory group, the Commission may prescribe such policies regarding the conduct of meetings and operation of the group as the Commission deems necessary or appropriate. The Commission also may delegate to an advisory group the responsibility for developing such policies.

Rule 5.5 – Petitions Filed By Defendants Under Section 994(s)

Pursuant to section 994(s) of title 28, United States Code, a defendant may file a petition with the Commission requesting a modification of the guidelines used in sentencing that defendant. To be covered by section 994(s), the petition must be on the basis of changed circumstances unrelated to the defendant, including changes in (1) the community view of the gravity of the offense; (2) the public concern generated by the offense; and (3) the deterrent effect particular sentences may have on the commission of the offense by others. *See* 28 U.S.C. § 994(s).

The Commission shall give due consideration to petitions covered by section 994(s) when it sets its priorities under Rule 5.2.

As soon as practicable after submission, petitions covered by section 994(s) shall be made available to the public through the Commission's website. Where appropriate, the Commission may redact sensitive information from such petitions.

PART VI – INFORMATION ABOUT THE COMMISSION

Rule 6.1 – Office(s)

The offices of the Commission are located in the Thurgood Marshall Federal Judiciary Building, Suite 2-500, South Lobby, One Columbus Circle, N.E., Washington, D.C. 20002-8002.

The office can be reached by telephone between 8:30 a.m. and 5:30 p.m., Monday through Friday. The main telephone number is (202) 502-4500. The fax number is (202) 502-4699. The e-mail address is pubaffairs@ussc.gov.

Rule 6.2 – Availability of Materials for Public Inspection; Office of Legislative and Public Affairs

The Office of Legislative and Public Affairs is the repository of all materials that are available to the public.

Generally, the Office of Legislative and Public Affairs will maintain for public inspection the following: (1) agendas and schedules for Commission public meetings and public hearings; (2) approved minutes of Commission public meetings; (3) transcripts of public hearings; (4) public comment as defined in Rule 5.1; and (5) data, reports, and other information made available pursuant to Rule 5.3.

The Office of Legislative and Public Affairs also will make available upon request: (1) information available pursuant to the Commission's policy on public access to Commission data; and (2) *A Guide to Publications & Resources* that lists all publications and datasets available from the Commission.

Rule 6.3 – Internet Site and Other Electronic Resources

The Commission maintains and updates information and documents on an Internet website. The website is found at *https://www.ussc.gov*. This resource includes general information, such as background information about the Commission and Commissioners, notices for scheduled meetings and hearings, minutes of recent meetings, transcripts of public hearings, listings of Commission priorities and projects, outstanding public comment solicitations, recently promulgated amendments, the text of numerous reports and resources available from the Commission, and the text of the *Guidelines Manual* and Commission reports.

To the extent practicable, the Commission shall use a variety of electronic means to distribute public meeting notices and provide other information about the Commission. For example, the Office of Legislative and Public Affairs shall, where practicable and appropriate, use social media platforms (such as Twitter) and electronic distribution mechanisms (such as an email listserv). Information about these platforms and mechanisms shall be posted to the Commission's website.

Rule 6.4 – Information at Federal Depository Libraries

Commission publications printed by the Government Printing Office, and other selected documents, are available in hard copy or microfiched form through the Government Printing Office's Depository Library system. The location of the nearest Federal Depository Library can be determined in several ways: (1) by requesting a free copy of the *Directory of Depository Libraries* from the U.S. Government Printing Office, Library Programs Services, Stop: SLLD, Washington, DC

20401; (2) by asking at any local library for the address of the nearest Federal Depository Library; or (3) by using the Internet at *https://ask.gpo.gov/s/FDLD*.

Rule 6.5 – Access to Commission Data

The Commission collects and analyzes a broad array of data from federal courts concerning sentences imposed, and maintains a comprehensive, computerized data collection system of federal sentencing information. The Commission makes various datasets of sentencing information, without individual identifiers, available to the public through the Commission's website.

In addition, the Commission provides its various datasets, excluding individual identifiers, to the University of Michigan's Inter-University Consortium for Political and Social Research (ICPSR). Researchers interested in studying federal sentencing practices through quantitative methods can access Commission sentencing data through this means. Contact ICPSR, P.O. Box 1248, Ann Arbor, MI 48106; or call 1-800-999-0960; or use the following Internet address: *https://www.icpsr.umich.edu/web/ICPSR/series/83*.