The United States Sentencing Commission met in the Suite 2-500, One Columbus Circle, N.E., Washington, D.C., at 10:30 a.m., the Honorable William H. Pryor, Jr., Acting Chair, presiding.

PRESENT
WILLIAM H. PRYOR, JR., Acting Chair
RACHEL E. BARKOW, Commissioner
CHARLES R. BREYER, Commissioner
DANNY C. REEVES, Commissioner
ZACHARY BOLITHO, Ex Officio Commissioner

ALSO PRESENT
KENNETH P. COHEN, Staff Director
KATHLEEN C. GRILLI, General Counsel
P-R-O-C-E-E-D-I-N-G-S

10:32 a.m.

ACTING CHAIR PRYOR: This meeting is called to order. I want to thank everyone for attending this public meeting of the United States Sentencing Commission.

The Commission appreciates the attendance of those joining us here as well as those watching our live-stream broadcast on the Commission's website.

As always, we welcome and encourage the significant public interest in Federal sentencing issues and the work of the Commission.

I want to start by introducing the other Members of the Commission. To my immediate left is Professor Rachel Barkow.

Commissioner Barkow is the Siegel Family Professor of Regulatory Law and Policy at the New York University School of Law, and serves as the faculty director of the Center for the Administration of Criminal Law at the law school.

To my immediate right is Judge Charles
Judge Breyer is a Senior District Judge for the Northern District of California and has served as the United States District Judge since 1998.

To my far left is Judge Danny Reeves, who is a District Judge for the Eastern District of Kentucky, and he has served as a United States District Judge since 2001.

And then to my far right is Zachary Bolitho, who is the Ex Officio Commissioner from the Department of Justice.

Commissioner Bolitho serves as Deputy Chief of Staff and as Associate Deputy Attorney General to the Deputy Attorney General of the United States.

The first order of business is a vote to adopt the August 17, 2017 Public Meeting minutes. Is there a motion to do so?

COMMISSIONER BREYER: So moved.

CHAIR PRYOR: Do I have a second?

COMMISSIONER BARKOW: Second.
ACTING CHAIR PRYOR: Is there any discussion on the motion? So, vote on the motion by saying aye.

(Chorus of aye.)

Any nays? The motion is adopted by a voice vote. Before we proceed to the business of today, I would like to update you all on the Commission's work.

Last month, the Commission published its fourth report in its continuing series on recidivism entitled The Effects of Aging on Recidivism Among Federal Offenders, which examines the impact of aging on Federal offender recidivism, and once age is accounted for, the impact of other offense and offender characteristics.

Last year, the Commission also published eleven new reports on issues ranging from mandatory minimum penalties to an analysis of demographic differences and Federal sentencing practices, and look for additional publications regarding mandatory minimums, recidivism, and
other sentencing issues, in the coming weeks and months.

In August, the Commission voted to publish several holdover amendments from the previous amendment cycle. These proposals were not able to be fully considered previously because the Commission did not have a quorum for three critical months.

In February, the Commission plans to hold a public hearing on some of these proposed amendments, including those that would implement the Bipartisan Budget Act of 2015 and recommendations from the Commission's Tribal Issues Advisory Group, regarding how tribal convictions are treated under Chapter Four of the guidelines.

In March, the Commission will also hold a public hearing on another proposed amendment that was published in August, the proposed amendment regarding alternatives to incarceration in first offenders.

That hearing in March would also cover
any amendments we vote to publish today, in particular the proposed amendment on synthetic drugs, which we will be voting on in a few minutes. The proposed amendment reflects the information we have learned from public comment and three public hearings we held on synthetic cathinones, cannabinoids, fentanyl, and fentanyl analogues last year.

Before we move to the announcement of our proposed guideline amendments, the Commission would like to thank the numerous individuals and groups who submitted thoughtful comments and recommendations during our most recent public comment periods.

And as we ordinarily do in January, the Commission will now vote on whether to publish proposed amendments for the 2017-2018 amendment cycle.

Our general counsel, Ms. Kathleen Grilli, will now advise else the Commission on the first possible vote concerning a proposed commitment on synthetic drugs.
Ms. Grilli?

MS. GRILLI: Thank you, Judge.

The synthetic drug three-part amendment before you is a result of the Commission's multi-year study of offenses involving synthetic cathinones, synthetic cannabinoids, THC, fentanyl, and fentanyl analogues.

Each of the parts could be promulgated as they are not mutually exclusive.

Part A of the proposed amendment would amend the drug equivalency tables in §2D1.1 to adopt a class-based approach to account for synthetic cathinones, and sets forth a single marijuana equivalency for the class, bracketing three possible equivalencies, 1 gram of synthetic cathinone equal to 200, 380, or 500 grams of marijuana.

Part A of the proposed amendment also brackets the possibility of making this class-based marijuana equivalency applicable to methcathinone and establishes a minimum base
offense level of 12 for cases involving synthetic
cathinones, except those in Schedules III, IV, and
V.

Part B of the proposed amendment would
amend the drug equivalency tables in §2D1.1 to
adopt the class-based approach to account for
synthetic cannabinoids, and sets forth a single
marijuana equivalency for the class, bracketing
three possible equivalencies, 1 gram of synthetic
cannabinoid is equal to 167, 334, or 500 grams of
marijuana.

Part B includes a definition of the
term “synthetic cannabinoid” and brackets for
comment a provision establishing a minimum base
offense level of 12 for cases involving synthetic
cannabinoids, except those at Schedules III, IV,
and V.

Part C of the proposed amendment would
amend §2D1.1 in several ways to account for
fentanyl and fentanyl analogues.

First, it would provide penalties for
offenses involving fentanyl that are equivalent
to the higher penalties currently provided for
offenses involving fentanyl analogues.

Second, it would revise §2D1.1 by
providing a definition of the term “fentanyl
analogue”, setting forth the single marijuana
equivalency applicable to all fentanyl analogues
of one gram is equal to ten kilograms of marijuana
and specifying in the Drug Quantity Table that
the penalties relating to fentanyl apply only to
the substance with a specific chemical name.

Finally, Part C of the proposed
amendment would amend §2D1.1 to provide an
enhancement in cases in which fentanyl or
fentanyl analogue is misrepresented or marketed
as another substance.

Finally, each part includes issues for
comment.

A motion to publish the proposed
synthetic drug amendment, with an original
comment period closing on March 6th and a reply
comment period closing on March 28, 2018, and
technical and conforming amendment authority
granted to Staff, would be in order at this time.

ACTING CHAIR PRYOR: Is there a motion to publish the proposed amendment as suggested by our General Counsel?

COMMISSIONER BREYER: So moved.

ACTING CHAIR PRYOR: Is there a second?

COMMISSIONER REEVES: Second.

ACTING CHAIR PRYOR: Is there any discussion on the motion? Vote on the motion by saying aye.

(Chorus of aye.)

Nay? No nays.

The motion is adopted and let the record reflect that at least three Commissioners voted in favor of the motion to publish.

The general counsel will now advise the Commission on a possible vote concerning a proposed amendment on immigration.

MS. GRILLI: Yes, this proposed two-part amendment responds to issues that have arisen regarding application of the illegal re-
entry guideline at §2L1.2., and the Commission is considering whether to promulgate either or both parts, as they are not mutually exclusive.

Part A would amend §2L1.2 by revising subsection (b)(2) so that its applicability turns on whether the defendant engaged in criminal conduct before he or she was first ordered deported or ordered removed, rather than whether the defendant sustained the resulting conviction or convictions before that event.

Part A would also make non-substantive, conforming changes to the language of subsection (b)(3).

Part B of the proposed amendment responds to an issue that has arisen in litigation concerning how §2L1.2's enhancements for prior convictions apply in a situation where a defendant's prior conviction included a term of probation, parole, or supervised release, that was subsequently revoked and an additional term of imprisonment imposed.

This part would revise the definition
of “sentence imposed” in Application Note 2 of
the Commentary to §2L1.2, to clarify that
consistent with the meaning of sentence of
imprisonment under §4A1.2, the phrase, “sentence
imposed”, in §2L1.2 includes any term of
imprisonment given upon revocation of probation,
parole, or supervised release, regardless of when
the revocation occurred.

Each part also includes issues for
comment.

A motion to publish the proposed
amendment with an original comment period closing
March 6th, reply comment period closing March 28,
2018, and technical and conforming amendment
authority granted to Staff, would be in order at
this time.

ACTING CHAIR PRYOR: Is there a motion
to publish the proposed amendment as suggested by
our General Counsel?

COMMISSIONER REEVES: So moved.

ACTING CHAIR PRYOR: Is there a
second?
COMMISSIONER BARKOW: Second.

ACTING CHAIR PRYOR: Any discussion?

All in favor say aye?

(Chorus of aye.)

Any nays? The motion is adopted and let the record reflect that at least three Commissioners voted in favor of the motion to publish.

Our General Counsel will now advise the Commission on a possible vote concerning a proposed technical amendment.

MS. GRILLI: Yes. This proposed amendment makes various technical changes to the Guidelines Manual.

First, the proposed amendment makes technical changes to provide updated references to certain sections in the United States Code that have been restated in legislation, amending §2B1.5 and Appendix A.

Second, the proposed amendment also makes technical changes to reflect the editorial reclassification of certain sections in the
United States Code, making changes to §2A3.5, §2X5.2, §5B1.3, §5D1.3, and Appendix A.

And finally, the proposed amendment revises Subsection §8C2.1 by deleting an outdated reference.

A motion to publish the technical amendment with an original comment period closing on March 6th, a reply comment period closing on March 28, 2018, and with technical and conforming amendment authority granted to Staff, would be in order at this time.

ACTING CHAIR PRYOR: Is there a motion to publish the proposed amendment as suggested by the General Counsel?

COMMISSIONER BARKOW: So moved.

CHAIR PRYOR: Is there a second?

COMMISSIONER REEVES: Second.

ACTING CHAIR PRYOR: Any discussion?

All in favor say aye?

(Chorus of aye.)

Any nays?

The motion is adopted and let the
record reflect that at least three Commissioners voted in favor of the motion to publish.

    I would like to take a moment to discuss briefly some of the proposed amendments.

    First, the Commission is publishing a proposed amendment regarding synthetic drugs, which includes synthetic cathinones, otherwise known as “bath salts”, synthetic cannibanoids including “K2” or “spice”, fentanyl and fentanyl analogues.

    The Commission has spent the last six months publishing various issues for comment and conducting public hearings on this subject.

    The Commission has used the expertise gathered through this process to craft a proposal to appropriately respond to this urgent issue.

    The amendment proposes a class-based approach for synthetic cathinones and cannibanoids, and increases penalties for offenses involving fentanyl, equivalent to the higher penalties currently provided for offenses fentanyl analogues.
The proposed amendment also provides an enhancement in cases where fentanyl or a fentanyl analogue is misrepresented or marketed as another substance.

This month, the Commission will release a public data presentation for the three categories of drugs that are the focus of these amendments. Members of the public may find this information useful when preparing their public comment.

Second, the Commission will publish a proposed amendment that addresses two miscellaneous application issues relating to immigration offenses.

Finally, the Commission will publish a proposed amendment that includes technical changes to the guidelines.

As we wrap up, I would like to mention an upcoming event.

The Commission's National Seminar on the Federal Sentencing Guidelines will be held in San Antonio, Texas, on May 30th through June 1st.
The seminar provides training to probation officers, prosecutors, and defense attorneys, on the guidelines.

Registration for the event will open on January 22nd, so please look for the registration link on our website at that time. The Commission's proposed amendments and issues for comment will also be on our website soon.

We look forward to working with all of you as we move forward for another productive year. Thank you for joining us today.

Is there any further business before the Commission? Hearing none, is there a motion to adjourn?

COMMISSIONER BREYER: So moved.

ACTING CHAIR PRYOR: And is there a second?

COMMISSIONER BARKOW: Second.

ACTING CHAIR PRYOR: Vote on the motion by saying aye.

(Chorus of aye.)

Any nays? The motion is adopted by a
voice vote. The meeting is adjourned.

(Whereupon, the above-entitled matter went off the record at 10:46 a.m.)