United States Sentencing Commission Public Meeting Minutes
August 27, 2026

Chair Carlton W. Reeves called the meeting to order at 11:10 a.m. in the Commissioners' Conference Room, Suite 2-500, One Columbus Circle, N.E., Washington, D.C. 20002.

The following commissioners were present:

- Carlton W. Reeves, Chair
- Luis Felipe Restrepo, Vice Chair
- Laura E. Mate, Vice Chair
- Claire Murray, Vice Chair
- Candice C. Wong, Commissioner
- Scott Meisler, Ex Officio Commissioner

The following staff participated in the meeting:

- Kenneth P. Cohen, Staff Director
- Matthew Iaconetti, Deputy General Counsel

Chair Reeves welcomed the public to the Commission's public meeting, whether they were attending in person or watching via the Commission's livestream broadcast.

Chair Reeves introduced his fellow commissioners. Sitting to his right were Vice Chair Luis Felipe Restrepo and Commissioner Candice Wong. Sitting to his left were Vice Chair Claire Murray, Vice Chair Laura Mate, and Ex Officio Commissioner Scott Meisler.

Chair Reeves stated that members of Commission staff were also attending. He stated that staff did the research, drafted the policies, and set up the meeting room. On behalf of the Commission and the public, Chair Reeves thanked agency staff for the work they do every day.

Chair Reeves announced that the first item of business was a motion to adopt the April 16, 2026, public meeting minutes. Vice Chair Restrepo moved to adopt the minutes, with Commissioner Wong seconding. Chair Reeves called for discussion on the motion. Hearing no discussion, Chair Reeves called for a vote, and the motion was adopted by voice vote.

Chair Reeves stated that the next item of business was a possible vote to promulgate a proposed amendment on unmanned aircraft. He called on Deputy General Counsel Matthew Iaconetti to advise the Commission on a possible vote concerning a proposed amendment regarding offenses involving the use of an unmanned aircraft.

Deputy General Counsel Iaconetti stated that the proposed Unmanned Aircraft Amendment, attached hereto as Exhibit A, responds to the Safer Skies Act ("the Act"), which contains several provisions relating to the use of an unmanned aircraft. The Act created a new felony offense for

repeat convictions for violating national defense airspace under 49 U.S.C. § 46307 and amended statutory penalties for providing contraband to imprisoned individuals in violation of 18 U.S.C. § 1791. The Act also directed the Commission to promulgate guidelines or amendments to guidelines that substantially increase the sentencing range for all offenses involving the use of an unmanned aircraft. The proposed amendment would implement these provisions by creating a new guideline at §3B1.6, providing a tiered adjustment of six or four levels. The new guideline also includes a special instruction to account for other Chapter Two enhancements or Chapter Three adjustments. Lastly, the proposed amendment would amend Appendix A to provide a reference for 49 U.S.C. § 46307 to §2A5.2 for felony offenses and to §2X5.2 for misdemeanor offenses.

Deputy General Counsel Iaconetti advised that a motion to promulgate the amendment with an effective date of March 15, 2027, and to grant staff technical and conforming amendment authority would be appropriate at that time.

Chair Reeves called for a motion as suggested by Deputy General Counsel Iaconetti. Vice Chair Murray moved to promulgate the proposed amendment, with Commissioner Wong seconding. Chair Reeves called for discussion on the motion. Hearing no discussion, Chair Reeves called for a voice vote. Chair Reeves; Vice Chairs Mate, Murray, and Restrepo; and Commissioner Wong voted in favor of adopting the motion. The motion was adopted by voice vote with at least four commissioners voting in favor of the motion.

Chair Reeves stated that the next item of business was a possible vote to publish in the Federal Register the Commission's final policy priorities for the 2026–2027 amendment cycle. He called on Deputy General Counsel Iaconetti to advise the Commission on a possible vote concerning the publication of final policy priorities for the 2026–2027 amendment cycle.

Deputy General Counsel Iaconetti stated that the Commission published a notice of possible policy priorities in the Federal Register on June 12, 2026, and the Commission received and reviewed public comment pursuant to that notice. A motion to publish in the Federal Register the final notice of policy priorities for the 2026–2027 amendment cycle was appropriate at that time.

Chair Reeves called for a motion to publish in the Federal Register the final notice of policy priorities for the Commission's 2026–2027 amendment cycle as suggested by Deputy General Counsel Iaconetti. Vice Chair Mate moved to publish the final notice of policy priorities in the Federal Register, with Vice Chair Restrepo seconding. Chair Reeves called for discussion on the motion. Hearing no discussion, Chair Reeves called for a voice vote. The motion was adopted by voice vote with at least three commissioners voting in favor of the motion to publish.

Chair Reeves stated that the next item of business was a possible vote to publish in the Federal Register proposed amendments and issues for comment on the Commission's Rules of Practice and Procedure. He called on Deputy General Counsel Iaconetti to advise the Commission on that matter.

Deputy General Counsel Iaconetti stated that the proposed amendment, attached hereto as Exhibit B, revises the Commission's Rules of Practice and Procedure. It was a multipart amendment, and the Commission was considering whether to promulgate any or all parts of the amendment as they were not mutually exclusive.

Part A of the proposed amendment would make changes to the introduction to the rules to more closely track the statutory requirements set forth in 28 U.S.C. § 991(b). Part B of the proposed amendment would revise Rule 2.2 to provide that the decision to make an amendment available for retroactivity shall require an affirmative vote of at least five members at a public meeting. Part C of the proposed amendment would amend Rules 3.1 and 3.4 to allow a representative from the Committee on Criminal Law of the Judicial Conference and a representative of the Federal Public and Community Defenders to participate in Commission meetings and public hearings. Part D of the proposed amendment would set forth three options for revising Rule 4.3 addressing ex parte communications. Part E of the proposed amendment would amend Rule 5.2 regarding the procedure for setting the agenda for the Commission's policymaking cycle every year. Part F of the proposed amendment would amend Rule 5.3 to require disclosure of certain materials and documents generated for commissioners for public and nonpublic meetings. Part G of the proposed amendment would make several technical and clerical changes. Part H of the proposed amendment would provide an issue for comment on possible further revisions to the rules.

Deputy General Counsel Iaconetti advised that a motion to publish the proposed amendment with a public comment period closing on October 26, 2026, and to grant staff technical and conforming amendment authority would be appropriate at that time.

Chair Reeves called for a motion to publish in the Federal Register the proposed amendment to the Commission's Rules of Practice and Procedure as suggested by Deputy General Counsel Iaconetti. Vice Chair Restrepo moved to publish the proposed amendment, with Vice Chair Mate seconding. Chair Reeves called for discussion on the motion.

Before voting, Chair Reeves stated that these proposals responded to comments received by the Commission over the years about how the Commission does its business. All of the commissioners had spent considerable time thinking about how the Commission could do its work better. Chair Reeves emphasized that these proposals were just that, proposals. They were ideas about the kinds of changes that could be helpful to the Commission's work. That uncertainty was why the Commission was eager to receive public comment and why the Commission would hold a roundtable on these proposals the following month. There, the Commission would hear from many people, including experts in administrative procedure, who could help the commissioners think through these ideas and any other ideas that might improve the Commission's practices and procedures. Chair Reeves noted that there was more work to do and that he looked forward to seeing where this process would take the Commission in the coming months.

Having heard no other discussion on the motion to publish in the Federal Register the proposed amendment to the Commission's Rules of Practice and Procedure, Chair Reeves called for a

vote. The motion was adopted by voice vote with at least three commissioners voting in favor of the motion to publish.

Chair Reeves asked if there was any further business before the Commission and, hearing none, asked if there was a motion to adjourn the meeting. Vice Chair Murray moved to adjourn, with Vice Chair Restrepo seconding. Chair Reeves called for a vote on the motion, and the motion was unanimously adopted by voice vote. Chair Reeves thanked everyone, and the meeting was adjourned at 11:21 a.m.

Exhibit A

PROPOSED AMENDMENT: UNMANNED AIRCRAFT

Synopsis of Proposed Amendment: This proposed amendment responds to the SAFER SKIES Act (title LXXXVI of the National Defense Authorization Act for Fiscal Year 2026, Pub. L. 119–60) (the "Act"), which contains several provisions relating to criminal penalties for offenses involving aircraft. *See* Pub. L. 119–60, § 8605 (2025).

The Act creates a felony offense for repeated convictions for violating national defense airspace under 49 U.S.C. § 46307. Section 46307 establishes a criminal offense when an individual knowingly and willfully violates an order issued pursuant to 49 U.S.C. § 40103(b)(3) that restricts or prohibits civil aircraft in certain navigable airspace "in the interest of national defense." An offense under section 46307 constitutes a Class A misdemeanor, punishable by up to one year in prison. The Act adds to section 46307 a five-year-maximum penalty if a person is convicted of a second or subsequent offense under the section.

The Act also amends the statutory penalties for providing contraband to imprisoned individuals, in violation of 18 U.S.C. § 1791. Section 1791 sets out statutory maximum terms of imprisonment ranging from six months to twenty years depending on the type of contraband provided to the imprisoned individual. The Act increases the maximum penalty by five years "[i]f a defendant who is convicted under section 1791 . . . knowingly used an unmanned aircraft to provide a prohibited object to an inmate of a prison." 6 U.S.C. § 124n-1(d).

In addition to these specific statutory increases, the Act provides more generally that "[i]f a person who is convicted of a felony offense (other than an offense based solely on the operation of an unmanned aircraft) knowingly operated an unmanned aircraft during, in relation to, or in furtherance of such offense," the maximum penalty for that offense is doubled or increased by five years, whichever is less. *Id.* § 124n-1(c).

The Act also directs the Sentencing Commission to "promulgate guidelines, or amendments to guidelines, that substantially increase the sentencing range for all offenses involving the use of an unmanned aircraft." *Id.* § 124n-1(e)(1)(A). Specifically, for offenses in which the enhanced penalties under 6 U.S.C. § 124n-1(c) apply—that is, where the individual knowingly operated an unmanned aircraft during, in relation to, or in furtherance of a felony offense (other than an offense based solely on the operation of an unmanned aircraft)—the guidelines "shall call for an increase of at least 6 levels in the base offense level," and "in all other cases, the base offense level shall be increased by at least 4 levels." *Id.* § 124n-1(e)(2).

The proposed amendment would implement these provisions of the Act.

First, the proposed amendment would create a new guideline at §3B1.6 (Use of Unmanned Aircraft) providing a tiered adjustment of either 6 or 4 levels for offenses involving the use of an unmanned aircraft. Under the proposed amendment, an offense would receive a 6-level increase if the defendant is convicted of an offense to which the

statutory sentencing enhancement under 6 U.S.C. § 124n-1(c) applies, or if the parties stipulate to such an offense for purposes of calculating the guideline range or that the adjustment applies to the offense of conviction.

The proposed amendment would provide a 4-level increase if the offense otherwise involved the use of an unmanned aircraft. The proposed amendment would include a provision expressly stating that "use" does not include mere possession.

Under the proposed amendment, if the use of an unmanned aircraft that forms the basis for an adjustment under the new section is the only conduct that forms the basis for a Chapter Two enhancement or another Chapter Three adjustment, then the court would be instructed to apply the provision that results in the greater offense level.

The proposed amendment would also address the new felony offense for repeated violations of 49 U.S.C. § 46307. Section 46307 is not currently referenced in Appendix A (Statutory Index) to a specific guideline, so a preexisting misdemeanor offense under this section is sentenced under §2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)). The proposed amendment would amend Appendix A to reference 49 U.S.C. § 46307 to §2A5.2 (Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Navigation, Operation, or Maintenance of Mass Transportation Vehicle; Unsafe Operation of Unmanned Aircraft) for felony offenses and §2X5.2 for misdemeanor offenses. Accordingly, courts would continue to use §2X5.2 for misdemeanor violations of section 46307 and would use §2A5.2 for the new felony violation.

Proposed Amendment:

CHAPTER THREE

ADJUSTMENTS

* * *

PART B — ROLE IN THE OFFENSE

* * *

§3B1.6. Use of Unmanned Aircraft

(a) (Apply the greater):

(1) If (A) the defendant is convicted of an offense to which the statutory enhancement under 6 U.S.C. § 124n-1(c) applies; or (B) the parties stipulate (i) to such an offense for purposes of calculating the guideline range under §1B1.2 (Applicable Guidelines); or (ii) that the adjustment in this subsection applies, increase by **6** levels.

(2) If the offense otherwise involved the use of an unmanned aircraft, increase by **4** levels.

(b) For purposes of this guideline:

(1) "***Unmanned aircraft***" has the meaning given that term in 49 U.S.C. § 44801.

(2) "***Use***" does not include mere possession.

(c) Special Instruction

(1) If the use of an unmanned aircraft that forms the basis for an adjustment under this guideline is the only conduct that forms the basis for an enhancement in Chapter Two or another adjustment in Chapter Three, apply the provision that results in the greater offense level.

Commentary

Background: This guideline implements the directive in the SAFER SKIES Act (section 8605(e) of the National Defense Authorization Act for Fiscal Year 2026, Pub. L. 119–60).

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APPENDIX A

STATUTORY INDEX

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49 U.S.C. § 32709(b)	2N3.1
49 U.S.C. § 46307	2A5.2 (for felony offenses), 2X5.2 (for misdemeanor offenses)
49 U.S.C. § 46308	2A5.2

* * *

§2A5.2. Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Navigation, Operation, or Maintenance of Mass Transportation Vehicle; Unsafe Operation of Unmanned Aircraft

(a) Base Offense Level (Apply the greatest):

(1) **30**, if the offense involved intentionally endangering the safety of: (A) an airport or an aircraft; or (B) a mass transportation facility or a mass transportation vehicle;

(2) **18**, if the offense involved recklessly endangering the safety of: (A) an airport or an aircraft; or (B) a mass transportation facility or a mass transportation vehicle;

(3) if an assault occurred, the offense level from the most analogous assault guideline, §§2A2.1–2A2.4; or

(4) **9**.

(b) Specific Offense Characteristic

(1) If (A) subsection (a)(1) or (a)(2) applies; and (B)(i) a firearm was discharged, increase by **5** levels; (ii) a dangerous weapon was otherwise used, increase by **4** levels; or (iii) a dangerous weapon was brandished or its use was threatened, increase by **3** levels. If the resulting offense level is less than level **24**, increase to level **24**.

(c) Cross References

(1) If death resulted, apply the most analogous guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

(2) If the offense involved possession of, or a threat to use (A) a nuclear weapon, nuclear material, or nuclear byproduct material; (B) a chemical weapon; (C) a biological agent, toxin, or delivery system; or (D) a weapon of mass destruction, apply §2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 39B, 1992(a)(1), (a)(4), (a)(5), (a)(6); 49 U.S.C. §§ 46307, 46308, 46503, 46504 (formerly 49 U.S.C. § 1472(c), (j)). For additional statutory provision(s), *see* Appendix A (Statutory Index).

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§2X5.2. Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)

(a) Base Offense Level: **6**

Commentary

Statutory Provisions: 10 U.S.C. § 2733a(g)(2); 18 U.S.C. §§ 39B, 1365(f), 1801, 2259(d)(4); 34 U.S.C. § 12593; 49 U.S.C. §§ 31310, 46307. For additional statutory provision(s), *see* Appendix A (Statutory Index).

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Exhibit B

PROPOSED AMENDMENT: RULES OF PRACTICE AND PROCEDURE

Synopsis of Proposed Amendment: This proposed amendment revises the Commission's Rules of Practice and Procedure. The Rules were issued in 1997 "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." *See* Rule 1.1 of the Commission's Rules of Practice and Procedure. The Commission is undertaking a comprehensive review of its Rules to determine whether any amendments are appropriate to further the Commission's statutory purposes and enhance public engagement with and understanding of the Commission's work. As part of the review, the Commission is examining current practices and considering possible changes to the Rules regarding: (a) what Commission work is conducted in public; (b) what Commission policymaking materials should be made public; (c) how stakeholder and public involvement is structured, including through rules about *ex parte* communications; and (d) what analyses supporting agency policymaking are conducted and released publicly.

The Commission is publishing this proposed amendment to inform that review. The proposed amendment contains eight parts (Parts A through H). The Commission is considering whether to promulgate any or all of these parts, as they are not mutually exclusive.

Part A of the proposed amendment would make changes to the introduction ("About the Commission") of the Rules to closely track the statutory purposes of the Commission set forth in 28 U.S.C. § 991(b).

Part B of the proposed amendment would revise Rule 2.2 (Voting Rules for Action by the Commission) to provide that the decision to make an amendment available for retroactive application shall require the affirmative vote of at least five members at a public meeting. An issue for comment is also provided.

Part C of the proposed amendment would amend Rules 3.1 (Meetings) and 3.4 (Public Hearings) to allow a representative of the Committee on Criminal Law of the Judicial Conference of the United States and a representative of the Federal Public and Community Defenders to participate in meetings and public hearings of the Commission.

Part D of the proposed amendment sets forth three options for revising the provision of Rule 4.3 (Notice and Comment on Proposed Amendments) that addresses ex parte communications. Issues for comment are also provided.

Part E of the Proposed Amendment would amend Rule 5.2 (Notice of Priorities) to make the procedure for setting the Commission's policymaking agenda every year more participatory and transparent.

Part F of the proposed amendment would amend Rule 5.3 (Information Relevant to the Amendment Process) to require the public disclosure of (1) meeting materials generated for or given to the commissioners in preparation for a public or nonpublic meeting; (2) written minutes of any public or nonpublic meeting held by the Commission; and (3) any document approved for public release by a majority of commissioners. Issues for comment are also provided.

Part G of the proposed amendment would make technical and clerical changes to Rules 3.2 (Public Meetings), 3.3 (Nonpublic Meetings), and 5.4 (Advisory Groups).

Part H of the proposed amendment provides an issue for comment on possible further revisions to the Rules.

(A) Changes to the Introduction to the Rules

Synopsis of Proposed Amendment: The introduction to the Rules was added in 2016 and intended to provide general background concerning the Commission. The current text of this introduction builds upon previous editions of the Commission's *Annual Report*, each of which includes at the beginning a chapter that provides an overview of the Commission (including its purposes and organization). Part A of the proposed amendment would amend the introduction to the Rules to closely track the statutory purposes of the Commission set forth in 28 U.S.C. § 991(b).

Proposed Amendment:

About the Commission

The United States Sentencing Commission is an independent agency in the judicial branch of government. Its ~~principal~~ purposes as set forth by Congress in 28 U.S.C. § 991(b) are to:

~~(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.~~

(1) establish sentencing policies and practices for the Federal criminal justice system that—

(A) assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(B) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and

(C) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and

(2) develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

* * *

(B) Voting Rules for Commission Action

Synopsis of Proposed Amendment: Rule 2.2 (Voting Rules for Action by the Commission) sets forth the voting rules for action by the Commission. Rule 2.2(a) states that "[e]xcept 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." Consistent with 28 U.S.C. § 995(d), Rule 2.2(a) further provides that "[a] quorum shall consist of a majority of the members then serving."

Rule 2.2(b) sets forth more stringent vote requirements for actions related to the promulgation of amendments to the guidelines, policy statements, and official commentary. Consistent with 28 U.S.C. § 994(a), Rule 2.2(b) provides that "[p]romulgation of guidelines, policy statements, official commentary and amendments thereto shall require the affirmative vote of at least four members at a public meeting." In addition, Rule 2.2(b) provides that "[p]ublication 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."

Rule 2.2(b) also provides that approval of a notice of priorities and the 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."

Rule 2.2(c) provides that "[a]ction 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."

Rule 2.2(d) sets forth the requirements for the reconsideration of any Commission action. It states that "[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." It also requires that "[f]our votes are necessary to reconsider a Commission vote on any question on which a four-vote majority is required."

The Commission is considering whether the voting threshold should be increased for certain Commission actions of heightened significance. Part B of the proposed amendment would amend Rule 2.2(b) to provide that the decision to make an amendment available for retroactive application shall require the affirmative vote of at least five members at a public meeting. It brackets the possibility of adding a provision stating that if there are only four members serving on the Commission, the affirmative vote of four members at a public meeting shall suffice to authorize such action. Part B of the proposed amendment would also make conforming changes to Rule 2.2(d) relating to the votes necessary for the reconsideration of Commission actions.

An issue for comment is also provided.

Proposed Amendment:

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).

Action to make an amendment available for retroactive application to previously sentenced, imprisoned defendants (*see* 28 U.S.C. § 994(u); 18 U.S.C. § 3582(c)(2)) shall require the affirmative vote of at least five members at a public meeting. **[**Provided, however, that if there are only four members serving on the Commission, the affirmative vote of four members at a public meeting shall suffice to authorize such action.**]**

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~~If the underlying action requires the affirmative vote of more than a majority of the members then serving, a motion to reconsider the Commission vote on that specific action shall require the same minimum voting threshold.

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Issue for Comment

1. Part B of the proposed amendment would amend Rule 2.2(b) to provide that the decision to make an amendment available for retroactive application shall require the affirmative vote of at least five members at a public meeting. The Commission seeks comment on whether it should increase the voting threshold for any other Commission action. If so, what Commission actions should require an elevated voting threshold, such as a supermajority requirement? What should the voting threshold be for such Commission actions and why? For example, should the Commission require the affirmative vote of at least five members at a public meeting for amendments to the *Guidelines Manual* (or the affirmative vote of four members if there are only four members serving on the Commission) that may result in increasing a term of imprisonment recommended in the guidelines? Should the Commission instead amend the Rules to provide that promulgation of any guideline, policy statement, official commentary, and amendments thereto shall require the affirmative vote of at least five members at a public meeting (or the affirmative vote of four members if there are only four members serving on the Commission)?

(C) Participation in Meetings and Hearings of Representatives from the Committee on Criminal Law and the Federal Public and Community Defenders

Synopsis of Proposed Amendment: Rule 3.1 (Meetings) provides that the "Chair shall call and preside at Commission meetings." It also provides for participation in meetings of commissioners from remote locations. Rule 3.4 (Public Hearings) sets forth provisions relating to how the Commission may convene a public hearing on any matter involving the promulgation of guidelines or any other matter affecting the Commission's business.

The Commission is evaluating whether to expand the involvement of specific judicial branch stakeholders in its meetings and hearings. Part C of the proposed amendment would amend the Rules to allow a representative of the Committee on Criminal Law of the Judicial Conference of the United States and a representative of the Federal Public and Community Defenders to participate in meetings and public hearings of the Commission. Specifically, it would amend Rule 3.1 (Meetings) to allow the attendance of representatives of such institutions in [public meetings and nonpublic briefing sessions of the Commission][all Commission meetings at which Commission staff is present], except for those parts of meetings in which matters not related to policymaking or data are addressed. These representatives would have access to the same materials relating to policymaking provided to commissioners in preparation for meetings. Additionally, Part C of the proposed amendment would amend Rule 3.4 (Public Hearings) to allow these representatives to participate in public hearings alongside commissioners and, as necessary, ask questions to witnesses.

Proposed Amendment:

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) One representative designated by the Committee on Criminal Law of the Judicial Conference of the United States, and one representative designated by the Federal Public and Community Defenders, shall be permitted to attend **[**public meetings and nonpublic briefing sessions of the Commission**][**all Commission meetings at which Commission staff is present**]**. These designated representatives may participate in such meetings by engaging in deliberations with commissioners and other meeting participants, requesting information and documents, and presenting relevant information to the Commission. The representatives designated under this paragraph shall not attend any portion of a meeting dedicated to non-policy, non-data, or internal administrative matters (such as approval of budget requests, administrative and personnel issues, decisions on contracts and cooperative agreements, and decisions on litigation and administrative proceedings involving the Commission) or in which the Commission will receive or share information that is inappropriate for public disclosure. In addition, the representatives designated under this paragraph may not vote or make or second motions at meetings.

To facilitate informed participation, the designated representatives shall receive the same meeting materials distributed to commissioners. However, the meeting materials distributed to the designated representatives shall not include, or shall be redacted to prevent disclosure of, information that is not related to policymaking or data, or is inappropriate for public disclosure, including confidential or sensitive information regarding budgetary allocations or appropriations, personnel and staffing matters, and procurement and contract actions. 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.

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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 representatives of the Committee on Criminal Law of the Judicial Conference of the United States and the Federal Public and Community Defenders, as designated under Rule 3.1(c), shall be permitted to actively participate in such a hearing alongside commissioners and are authorized, as necessary and relevant to the proceeding, to pose questions to any witness called to testify during the hearing. To facilitate informed participation, the designated representatives shall be provided with all written testimony submitted as soon as practicable prior to the commencement of the proceeding.

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.

* * *

(D) Ex Parte Communications

Synopsis of Proposed Amendment: Rule 4.3 (Notice and Comment on Proposed Amendments) contains a provision relating to ex parte communications. It provides that "[t]he 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." The Commission is considering whether to change how the Rules address ex parte communications on the merits of a proposed amendment, during the pendency of the proposed amendment, from outside parties. Three options are provided.

Option 1 would delete the ex parte communications provision currently contained in Rule 4.3. The absence of a formal policy governing ex parte communications in the Rules implies that such communications—whether actively solicited or passively received—are permissible during the pendency of a proposed amendment and exempt from any mandatory disclosure requirements. The absence of a mandatory disclosure requirement would not impede the Commission from voluntarily disclosing any ex parte communications received during the pendency of a proposed amendment.

Option 2 would amend the ex parte communications provision set forth in Rule 4.3 to permit all forms of ex parte communications, including both solicited and unsolicited communications, while requiring public disclosure only of those communications that satisfy a specified standard. It brackets two alternatives for the standard. Option 2 would require that "[a]ny ex parte communications **[**that provides significant, material information addressing the merits of a pending proposed amendment**][**that is of substantial significance and clearly intended to affect the ultimate decision on a pending proposed amendment**]** be treated as public comment and disclosed accordingly." Option 2 would define the term "ex parte communication" as "any written or oral communication by an outside party to an individual member of the Commission, or to the members collectively, concerning the substance of a proposed amendment to the guidelines, policy statements, or commentary that is not transmitted through the formal public comment process." Option 2 also brackets the possibility of adding a provision excluding from the definition of ex parte communications "any communication with: (1) members of Congress, congressional staff, and legislative branch agencies; (2) members of the Federal Judiciary (including the Judicial Conference of the United States and its committees); (3) United States Probation Officers; (4) the Federal Bureau of Prisons; (5) the Criminal Division of the United States Department of Justice; and (6) representatives of the Federal Public and Community Defenders."

Option 3 would amend the ex parte communications provision set forth in Rule 4.3 to permit all forms of ex parte communications, including both solicited and unsolicited communications, while requiring public disclosure of all such communications. It would provide the same definition of "ex parte communication" as Option 2. In addition, like Option 2, Option 3 brackets the possibility of adding a provision excluding from the definition of ex parte communications "any communication with: (1) members of Congress, congressional staff, and legislative branch agencies; (2) members of the Federal Judiciary (including the Judicial Conference of the United States and its committees); (3) United States Probation Officers; (4) the Federal Bureau of Prisons; (5) the Criminal Division of

the United States Department of Justice; and (6) representatives of the Federal Public and Community Defenders."

Issues for comment are also provided.

Proposed Amendment:

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.

[Option 1 (No Provision Addressing Ex Parte Communications):

~~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.~~**]**

[Option 2 (Permitting Ex Parte Communications But Subject to Certain Disclosure Requirements Based on a Standard):

~~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.~~Any ex parte communication **[**that provides significant, material information addressing the merits of a pending proposed amendment**][**that is of substantial significance and clearly intended to affect the ultimate decision on a pending proposed amendment**]** shall be treated as public comment and its contents (including a record of the date and the substance of the communication) shall be disclosed accordingly as soon as practicable after the communication. For purposes of this provision, an "ex parte communication" means any written or oral communication by an outside party to an individual member of the Commission, or to the members collectively, concerning the substance of a proposed amendment to the guidelines, policy statements, or commentary that is not transmitted through the formal public comment process. **[**This definition does not include any communication with: (1) members of Congress, congressional staff, and legislative branch agencies; (2) members of the

Federal Judiciary (including the Judicial Conference of the United States and its committees); (3) United States Probation Officers; (4) the Federal Bureau of Prisons; (5) the Criminal Division of the United States Department of Justice; and (6) representatives of the Federal Public and Community Defenders.**]]**

[Option 3 (Permitting Ex Parte Communications But Subject to Disclosure):

~~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.~~All ex parte communications shall be treated as public comment and their contents (including a record of the date and the substance of any such communication) shall be disclosed accordingly as soon as practicable after the communication. For purposes of this provision, an "ex parte communication" means any written or oral communication by an outside party to an individual member of the Commission, or to the members collectively, concerning the substance of a proposed amendment to the guidelines, policy statements, or commentary that is not transmitted through the formal public comment process. **[**This definition does not include any communication with: (1) members of Congress, congressional staff, and legislative branch agencies; (2) members of the Federal Judiciary (including the Judicial Conference of the United States and its committees); (3) United States Probation Officers; (4) the Federal Bureau of Prisons; (5) the Criminal Division of the United States Department of Justice; and (6) representatives of the Federal Public and Community Defenders.**]]**

* * *

Issues for Comment

1. Part D of the proposed amendment provides options for amending Rule 4.3 (Notice and Comment on Proposed Amendments) to address ex parte communications on the merits of a proposed amendment to the *Guidelines Manual*, during the pendency of the proposed amendment, from outside parties. The Commission seeks comment on whether it should adopt a provision relating to ex parte communications that applies more broadly to other Commission actions that require a notice-and-comment rulemaking procedure, such as proposed priorities and amendments to the Rules of Practice and Procedure.

2. Option 2 would amend the ex parte communications provision set forth in Rule 4.3 to permit all forms of ex parte communications, including both solicited and unsolicited communications, while requiring public disclosure only of those communications that satisfy a specified standard. It brackets two alternatives for the standard. Option 2 would require that any ex parte communications **[**that provides significant, material information addressing the merits of a pending proposed amendment**] [**that is of substantial significance and clearly intended to affect the ultimate decision on a pending proposed amendment**]** be treated as public comment and disclosed accordingly. The Commission seeks comment on which, if any, of the bracketed alternatives for the standard should the Commission provide to require public disclosure of ex parte communication. Should the Commission provide a different standard? If so, what standard should the Commission provide, and why?

3. Both Options 2 and 3 would require public disclosure of some or all ex parte communications. Both options would require that such communications shall be treated as public comment and their contents (including a record of the date and the substance of any such communication) shall be disclosed accordingly as soon as practicable after the communication. The Commission invites comment regarding the specific elements and substantive content that should be included in the disclosure of ex parte communications.

4. Rulemaking decisions at the Commission are made solely by the voting members of the Commission. Consequently, both Options 2 and 3 would define ex parte communications strictly in relation to individual voting members of the Commission or such members collectively. Communications directed to Commission staff are excluded from this classification. The Commission seeks comment on whether the definition of ex parte communications should also apply to communications directed to Commission staff.

(E) Increasing Transparency and Participation in the Commission's Work Agenda-Setting

Synopsis of Proposed Amendment: The Sentencing Reform Act of 1984 states that guideline amendments may be submitted to Congress during a window that opens once each year. *See* 28 U.S.C. § 994(p). Accordingly, Rule 5.2 (Notice of Priorities) establishes a three-step procedure for setting the Commission's policymaking agenda on an annual basis. First, the Commission publishes for comment a set of "proposed priorities" for future Commission inquiry and possible action, including areas for possible amendments to guidelines, policy statements, and commentary. Second, the Commission receives and considers comment from the public on the proposed priorities. Finally, the Commission selects and publishes a set of "final priorities."

Part E of the proposed amendment would revise these steps to make agenda-setting at the Commission more participatory and transparent. Under revised Rule 5.2 (Notice of Priorities), the Commission would open its agenda-setting process by soliciting proposed priorities from the public, stakeholders, Commission staff, and commissioners themselves. After publishing all those proposals on its website, the Commission would open its annual planning session by soliciting further information about the proposals at a public hearing. Next, the Commission would—during the nonpublic portion of the planning session—deliberate over (and, if necessary, refine) the proposed priorities to craft an agenda that best fulfills the Commission's statutory purposes as set forth at 28 U.S.C. § 991(b). Finally, the Commission would—during a public meeting at the end of the annual planning session—vote to adopt a list of final priorities as the Commission's policymaking agenda.

Part E of the proposed amendment aims to achieve its stated goals in several ways. First, by having all groups (both internal and external to the Commission) propose and justify policymaking priorities in an open fashion, the revised Rule 5.2 would allow the public to better understand and shape the scope of the Commission's potential agenda. Second, by enumerating relevant statutory duties and powers, the revised Rule 5.2 would help the public grasp all the ways the Commission can make policy. Third, by requiring the Commission to use its statutory purposes as the criteria for selecting final priorities, the revised Rule 5.2 would allow the public to understand that the Commission determines its policymaking agenda by looking to Congressional intent for priorities for future Commission inquiry and possible action.

Proposed Amendment:

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.~~

No later than **[**March**][**April**][**May**]** each year, the Commission shall publish a notice in the Federal Register requesting the public to submit proposed priorities to inform future Commission inquiries and potential policymaking actions. Submissions received pursuant to this notice may request the Commission to exercise any of its statutory duties or powers, including holding hearings or other events, collecting or publishing information, undertaking or funding research, issuing instructions to probation officers, conducting training programs for persons connected with the sentencing process, providing recommendations to Congress, and amending guidelines, policy statements, and commentary. *See* 28 U.S.C. §§ 994–95. Proposed priorities may be submitted by individual commissioners, Commission staff, Commission advisory groups, stakeholders in the criminal justice system, and any member of the public. The period for submitting proposed priorities shall be at least **[**30**][**45**][**60**]** days. Within seven days after closing of the submission period, the Commission shall make available to the public all submitted proposed priorities on its website.

(b) No later than **[**June**][**July**][**August**]** each year, the Commission shall hold a planning session to, among other things, prepare an annual policymaking agenda. The planning session shall include: (1) a public hearing wherein commissioners, Commission staff, Commission advisory groups, the Department of Justice, the Federal Public and Community Defenders, the Committee on Criminal Law of the Judicial Conference of the United States, and others may present and discuss proposed priorities; (2) a nonpublic meeting wherein commissioners deliberate over and, if necessary, refine proposed priorities; and (3) a public meeting wherein commissioners vote to adopt a list of priorities as the Commission's policymaking agenda. In determining its final priorities, the Commission shall adopt those priorities that, viewed collectively, best further the Congressional purposes listed at 28 U.S.C. § 991(b).

(~~b~~c) 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~~d) 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~~e) 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.

* * *

(F) Information Relevant to the Amendment Process

Synopsis of Proposed Amendment: Rule 5.3 (Information Relevant to the Amendment Process) provides that data, reports, and other information prepared by Commission staff to inform the Commission's fulfillment of priorities and consideration of potential amendments might be made publicly available. The Commission is considering whether it should make publicly available additional information relevant to the amendment process.

For example, before every Commission meeting (public or nonpublic), commissioners receive a compilation of materials prepared by Commission staff addressing the topics on the agenda for that meeting. Meeting materials include data reports, memoranda discussing policy, legal opinions from the Office of the General Counsel, draft proposed amendments to the *Guidelines Manual*, contracts, requests for cooperative agreements, documents relating to litigation and administrative proceedings involving the Commission, budget requests, draft data reports, documents relating to Commission personnel, and documents relating to advisory groups. The Commission is considering whether some of these materials, as they relate to the Commission's priorities and amendment process, should be publicly disclosed.

In addition, the Commission already publishes on its website the minutes of public meetings after their approval by the Commission at a public meeting. The Commission is considering whether a written record of nonpublic meetings should be also prepared and made publicly available.

Part F of the proposed amendment would amend Rule 5.3 to require the public disclosure of (1) meeting materials generated for or given to the commissioners in preparation for a public or nonpublic meeting; (2) written minutes of any public or nonpublic meeting held by the Commission; and (3) any document approved for public release by a majority of commissioners. The revised rule would also provide that any document authorized for public release shall not include, or shall be redacted to prevent disclosure of, information that is inappropriate for public disclosure, including commissioner deliberations, legal opinions, and any other confidential, privileged, or personal information.

Part F of the proposed amendment also includes conforming changes to Rules 2.2 (Voting Rules for Action by the Commission), 3.5 (Live Webcasts and Written Records), and 6.2 (Availability of Materials for Public Inspection; Office of Legislative and Public Affairs).

Issues for comment are also provided.

Proposed Amendment:

Rule 5.3 – Information Relevant to the Amendment Process

(a) 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.

(b) To ensure transparency, facilitate public observation, and promote meaningful public engagement, the following documents shall be made available to the public and maintained on the Commission's website as provided below.

(1) A public notice of any public or nonpublic meeting, the meeting agenda, and any document, briefing, or information relevant to Commission's priorities or the amendment process generated for or given to the commissioners in preparation for such a meeting shall be made available to the public **[**at least **[**seven days**]** prior to the scheduled date of the meeting**][**no later than **[**seven days**]** following the adjournment of the meeting**]**.

(2) The written minutes of any public or nonpublic meeting held by the Commission shall be made publicly available no later than **[**fourteen days**]** following the adjournment of the meeting. The minutes of each meeting shall contain a list of all participants in attendance, a summary of the topics discussed that are relevant to the Commission's priorities or the amendment process, and a record reflecting the final vote of each member on any action taken by the Commission.

(3) Any other document approved for public release by the affirmative vote of a majority of the members then serving shall be made available to the public as soon as practicable.

(c) Documents authorized for public release pursuant to this rule shall not include, or shall be redacted to prevent disclosure of, information that is inappropriate for public disclosure, including commissioner deliberations, legal opinions, and any other confidential, privileged, or personal information.

* * *

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 adoption or revision of the minutes of public and nonpublic meetings, 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.

* * *

Rule 3.5 – Live Webcasts and Written Records of Public Meetings and Public Hearings

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.

* * *

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 and nonpublic 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.

* * *

Issues for Comment

1. Part F of the proposed amendment would add a new provision at Rule 5.3(b)(1) requiring the public release of "[a] public notice of any public or nonpublic meeting, the meeting agenda, and any document, briefing, or information relevant to Commission's priorities or the amendment process generated for or given to the commissioners in preparation for such a meeting." Commission meeting materials sometimes include preliminary, working drafts of proposed amendments for commissioner discussion.

   The Commission seeks comment on what meeting materials relevant to the Commission's priorities or the amendment process should be publicly released. Should the Commission publicly release additional or different documents from the ones listed in Rule 5.3(b)(1)? Should the Commission make available to the public preliminary drafts of proposed amendments regardless of whether such working documents ultimately advance to the formal amendment process? What are the advantages and disadvantages of publicly releasing working drafts of potential proposed amendments?

2. The current Rules of Practice and Procedure contain provisions relating to the preparation and public release of written minutes of public meetings. *See* Rules 2.2(b), 3.5, 6.2, and 6.3 of the Commission's Rules of Practice of Procedure. Part F of the proposed amendment would add a new provision at Rule 5.3(b)(2) requiring the preparation and public release of written minutes of nonpublic meetings held by the Commission that includes a summary of the topics discussed that are relevant to the Commission's priorities or the amendment process.

   The Commission invites comment on whether to establish a practice of preparing and disclosing to the public written records of its nonpublic meetings. If so, what should be the scope of such written records? Should their scope be strictly limited to disclosing information relevant to the Commission's priority and the amendment process, as provided in the proposed amendment? Alternatively, should the scope encompass other topics discussed at nonpublic meetings, provided that confidential, privileged, or personal information is strictly excluded from disclosure? If so, what topics of discussion should be included in such a public written record? Should the Commission rules require a comprehensive written record of all topics discussed in nonpublic meetings, while disclosing to the public only the sections pertinent to the Commission's priorities or amendment proceedings?

The Commission further invites comment concerning the specific format, structure, and level of detail that written records of nonpublic meetings should assume. What should be the content of such records? For example, should they only include a summary of topics discussed and record of final voting on actions taken by the Commission? Should they also include wide-raging items, such as other decisions made, tasks assigned, and follow-up actions agreed upon? To what extent should the written record of a nonpublic meeting differ from the conventional structure of the minutes of public meetings (*i.e.*, documents containing list of participants attending, actions items, topics discussed, voting results, and actions taken)? For example, should the Commission only release to the public a summary of the meeting, a list of topics discussed, or a detailed agenda?

3. The Commission requests comment on whether, rather than establishing a standard practice of preparing and publicly disclosing written records of all nonpublic meetings, it should limit public disclosure to records of specific action matters that may be taken at nonpublic meetings (such as decisions to publish reports or make recommendations to Congress) contingent upon an explicit request by a voting member of the Commission. Should the Commission instead amend the Rules to provide that the decisions on any such matter shall be made at a public meeting upon an explicit request by a voting member of the Commission?

(G) Clerical Changes

Synopsis of Proposed Amendment: Part G of the proposed amendment would make several technical and clerical changes throughout the Rules. First, it would amend the general reference to Rule 3.3 (Nonpublic Meetings) in the first paragraph of Rule 3.2 (Public Meetings) to provide a more specific reference to the applicable provisions of Rule 3.3 relating to meeting with outside parties. Second, it would amend subdivision (1) of Rule 3.3 relating to actions on matters that do not require a public meeting to clarify and reflect the longstanding practice of how Commission interacts with staff at nonpublic meetings. Finally, it would amend Rule 5.4 (Advisory Groups) to add the Sentence Impact Advisory Group to the list of the standing advisory groups and to reflect the change in name of the Victims' Rights Advisory Group.

Proposed Amendment:

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(3)–(5), meetings of the Commission with outside parties shall be conducted in public.

* * *

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,~~meet with Commission staff or any person designated by an *ex officio* Commissioner as support staff for that Commissioner on any matter.

(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 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 Sentence Impact Advisory Group, the Tribal Issues Advisory Group, and the ~~Victims~~Victims' Rights 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.

* * *

(H) Further Revisions to the Commission's Rules of Practice and Procedure

Issue for Comment: The Commission is publishing this proposed amendment to inform its comprehensive review of the Rules of Practices and Procedure. The proposed amendment contains seven parts (Parts A through G) that would make specific changes throughout the Rules and provides issues for comment relating to those proposed changes.

The Commission seeks comment on whether it should further revise its Rules of Practice and Procedure. In particular, the Commission invites the public to propose additional or different amendments to the Rules that are appropriate to advance the Commission's statutory purposes, foster public engagement with the Commission, augment public comprehension of the Commission's work, and improve the Commission's practices and processes. Commenters are encouraged to identify specific rules that should be amended, provide precise text of proposed amendments to the Rules, recommend overarching structural reforms to the Rules, and suggest actionable measures to improve the operational efficiency and transparency of the Commission's internal processes.