



# NATIONAL COMMISSION ON FORENSIC SCIENCE

**NIST**  
National Institute of  
Standards and Technology  
U.S. Department of Commerce

## Work Product Development Process November 17, 2016

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**PURPOSE:** To provide Subcommittees of the National Commission on Forensic Science with guidance for developing work products that will be considered by and voted on by the Commission.

**ESTABLISHMENT OF PRIORITIES:** Priority areas to be addressed by the Commission are identified and approved by the Commission and approved by Commission leadership. The Commission Vice-Chairs will designate or establish a Subcommittee to research the issue and develop a work product. Potential work products include: (a) “Recommendations to the Attorney General,” which propose specific acts that the Attorney General should take to further the goals of the Commission<sup>1</sup>; or (b) “Views of the Commission,” which reflect the collective view of the Commissioners but do not request specific action by the Attorney General<sup>2</sup>.

*Note:* The recommendations contained in Recommendation Work Products should be self-contained for consideration by the Attorney General. That is, the recommendations should not incorporate other documents by reference only for the specific acts proposed. This does not preclude citations in the narrative text.

- 1) It is recommended that Subcommittee Co-Chairs develop an abstract for each work product early in its development in order to inform the Commission and staff of its progress and to solicit input on the direction and approach of the proposed work product. The abstract and any status updates should be included in the Subcommittee Report, and should include the following elements: a statement of the issue; a high level synopsis of the direction the Subcommittee plans to undertake, whether the work product is intended to be a View or a Recommendation; and notionally, what a Recommendation might entail.

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<sup>1</sup> The following note will be applied to all Adopted Recommendations Work Products: “*Note: This document includes recommendations developed and adopted by the National Commission on Forensic Science and proposes specific acts that the Attorney General could take to further the goals of the Commission. The portion of the document directly labeled “Recommendations” represents the formal recommendations of the Commission. Information beyond that section is provided for context. This document does not necessarily represent the views of the Department of Justice or the National Institute of Standards and Technology. The National Commission on Forensic Science is a Federal Advisory Committee established by the Department of Justice. For more information, please visit: <https://www.justice.gov/ncfs>.*”

<sup>2</sup> The following note will be applied to all Adopted Views Work Products: “*Note: This document reflects the views of the National Commission on Forensic Science and does not necessarily represent the views of the Department of Justice or the National Institute of Standards and Technology. The portion of the document directly labeled “Views of The Commission” represents the formal Views of the Commission. Information beyond that section is provided for context. Views documents do not request specific action by the Attorney General, and thus do not require further action by the Department of Justice upon their approval by the Commission. The National Commission on Forensic Science is a Federal Advisory Committee established by the Department of Justice. For more information, please visit: <https://www.justice.gov/ncfs>.*”

- 2) Subcommittee co-chairs will oversee the research and analysis of a particular issue and may establish discrete *ad-hoc* work groups, as appropriate, to develop draft work products. *Ad-hoc* work groups should be established with appropriate breadth of substantive expertise to address the issue.

#### **INITIAL DRAFT WORK PRODUCTS:**

- 1) Once an initial draft work product has been finalized (including proper formatting), it should become a consensus product of the Subcommittee before it is presented to the full Commission. A consensus must reflect at least a simple majority affirmative vote of all Subcommittee members. The Co-Chairs of the Subcommittee that developed the Work Product shall determine the number of votes necessary to obtain this consensus. In the event a Subcommittee member does not cast a vote, their vote will be recorded as a non-vote and will not be included in the tally. It is recommended that Subcommittees strive to reach unanimous consensus, and use a mechanism to document/record a vote, if required.
- 2) Subcommittee Co-Chairs will send a properly formatted initial draft work product to the Commission staff no less than 21 calendar days in advance of the meeting where the initial draft work product is to be introduced to ensure all administrative requirements have been met.
- 3) Initial draft work products will be posted at least 14 calendar days in advance of the meeting to allow for the opening of a 30 calendar day public comment period. Draft work products will be available on the Commission website and regulations.gov. Public comments will be received through regulations.gov.
- 4) Subcommittee Co-Chairs or their designees will introduce initial draft work products during an open Commission meeting. The introduction will include a statement of issue, background, and deliberative process at the Subcommittee level to include, to the extent practicable, a summary of public comments received during the first 14 calendar days of the 30 calendar day public comment period.
- 5) Commission Vice-Chairs will facilitate deliberation of draft work products at the Commission meeting.
- 6) Upon completion of the Commission meeting, the public comment period will remain open for an additional 15 calendar days (for a total of 30 calendar days). When the public comment period closes, comments will be adjudicated by the appropriate Subcommittee. Subcommittee Co-Chairs should reference the adjudication guidance document to facilitate the adjudication process within the Subcommittee. A summary of the adjudication process related to a particular draft work product will be made available to the public.
- 7) Once public comments are adjudicated, the initial draft work product will be reviewed by the Subcommittee and appropriately amended (as necessary). Subcommittee Co-Chairs,

in consultation with the Vice-Chairs, will determine whether the initial draft work product requires an additional public comment period.

## **FINAL DRAFT WORK PRODUCTS**

- 1) The goal of developing work products is to obtain consensus of the Subcommittee. If it is determined that the initial draft work product does not require an additional public comment period, it will be put to a vote by the Subcommittee. Consensus of Subcommittee members is required and may not be less than a simple majority. The Subcommittee Co-Chairs must determine the number of votes required. In order for an initial draft work product to become a final draft work product of the Subcommittee, it is recommended that the Subcommittee obtain a 2/3 majority affirmative vote of Subcommittee members. In the event a Subcommittee member does not cast a vote, their vote will be recorded as a non-vote and will not be included in the tally. It is recommended that Subcommittees use a mechanism to document/record the vote, to include a process by which dissenting opinions can be captured.
- 2) If a final draft work product is approved by the Subcommittee, it will be submitted to the Commission staff 21 calendar days in advance of the Commission meeting.
- 3) Fourteen calendar days in advance of the Commission meeting, the final draft work product will be posted to the Commission website for informational purposes - regulations.gov will not be open for public comment on final draft work products.
- 4) Subcommittee Co-Chairs will present the final draft work product to the full Commission during an open meeting, to include an articulation of amendments and summary of adjudicated comments.
- 5) If a vote is to be called, the Vice-Chairs will establish a quorum and call for a vote on the final draft work product. If 2/3 of voting Commissioners vote in the affirmative to adopt the work product, it will become a final work product of the Commission and it will be forwarded to the Attorney General for consideration. TurningPoint response technology will be used to cast and record Commission votes. Commission votes on adoption of final draft work products will be made available to the public.
- 6) If a 2/3 majority affirmative vote is not reached by the Commission, the draft work product shall not be considered a final work product of the Commission, nor shall it be forwarded to the Attorney General for consideration.