



## Hearing Health and Safety

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Notice.

**SUMMARY:** Beginning on January 3, 3022, the Federal Mine Safety and Health Review Commission (the “Commission” or “FMSHRC”) resumed in-person hearings in the manner described in an Order dated December 3, 2021, appearing in the Federal Register on December 9, 2021, and posted on the Commission’s website ([www.fmshrc.gov](http://www.fmshrc.gov)). Commission Chief Administrative Law Judge Glynn F. Voisin issued subsequent orders which modified the December 3 Order. On June 16, 2023, the Chief Judge issued an order making further modifications. The June 16 Order is posted on the Commission’s website and contains hyperlinks not included within this notice.

**DATES:** Applicable: June 16, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434-9935.

**SUPPLEMENTARY INFORMATION:** Federal Mine Safety and Health Review Commission Administrative Law Judges are committed to a high standard to protect the health and safety of all persons who may appear before them, during the Coronavirus 2019 (COVID-19) pandemic, while continuing the agency’s mission. As of January 3, 2022, the Commission resumed in-person hearings as described in an order dated December 3, 2021. Commission Chief Administrative Law Judge Glynn F. Voisin issued subsequent orders which modified the December 3 Order. On June 16, 2023, the Chief Judge issued an order making further modifications. The June 16 Order is posted on the Commission’s website and contains hyperlinks not included within this notice. The

contents of the June 16 order are set forth in this notice, and for the duration of the June 16 order, all hearings are subject to its terms.

Commission Judges may, at their sole discretion, hold remote hearings (e.g. via Zoom) and in-person hearings. Judges also have the discretion to hold a hybrid hearing, that includes both in-person and video participation. Commission Judges shall exercise this discretion within uniform parameters as set forth herein. Each Judge shall determine (1) when to use remote hearings in lieu of in-person hearings and (2) specific safety procedures to be used at an in-person hearing.

In determining the type of hearing, Judges will consider current guidance and safety factors on a case-by-case basis. Judges will ensure all parties appearing pro se who are required to participate in a remote hearing have access to equipment, an internet connection, and other appropriate technology. Prior to conducting an in-person hearing, Judges will schedule a conference call with the attorneys and representatives of each of the parties to discuss, among other things, safety considerations for the in-person hearing. Persons who are not comfortable with travel or appearing in person, may request to attend the hearing via remote access (e.g. via Zoom).

The Judge will set a hearing location after considering CDC COVID-19 Hospital Admissions Levels using the tracker and the safety and health rules currently in place by the state and local public health entities. Where community levels are HIGH, individuals who are at high risk of getting very sick should consider avoiding non-essential indoor activities in public where they could be exposed.<sup>1</sup> If in-person participants are traveling to attend a hearing, the Judge shall also consider hospital admission levels from where they are traveling. In choosing a courtroom, the Judge will take into consideration the rules and requirements of the court or hearing facility, as well as all applicable federal, state,

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<sup>1</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/your-health/covid-by-county.html>

and local regulations and guidelines. If the hearing is to be a hybrid hearing, the Judge will also consider the availability of internet and technology needs in the courtroom.

During the prehearing conference, the Judge will consider federal, state, local and courtroom requirements and inform the parties of such requirements. The requirements apply to all persons attending the in-person hearing. The discussion will also address who may enter the courtroom, when, and what safety measures, such as masks and social distancing, must be implemented. No person may enter the courtroom, or the witness room without the permission of the Judge.

The Judge may consider all factors, in totality, in determining if a remote hearing will be held and who may be present for the hearing. No single factor is dispositive.

These procedures shall remain in place until the June 16 is vacated or otherwise modified by subsequent order.

Authority: 30 U.S.C. 823; 29 CFR part 2700.

Dated: June 16, 2023.

**Sarah L. Stewart,**

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*Federal Mine Safety and Health Review Commission.*

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