



**Homeland
Security**

LIMITED WAIVER OF EXECUTIVE ORDER 13490 FOR
ERNEST MITCHELL

In accordance with Section 3 of Executive Order 13490 (January 21, 2009) (“Executive Order”) and after consultation with the Office of the Counsel to the President, and for the reasons stated below, I hereby certify that it is in the public interest to grant to Ernest Mitchell a limited waiver of the Ethics Pledge restriction in Section 1, paragraph 2, of the Executive Order to enable him to effectively carry out his duties as Fire Administrator, United States Fire Administration, Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS). Absent this waiver, Mr. Mitchell would be restricted for two years following his appointment from participating in any particular matter involving specific parties in which either of his two former clients, the International Association of Fire Chiefs (IAFC) and the International Association of Firefighters (IAFF), is a party or represents a party.

Pursuant to this waiver, Mr. Mitchell may (i) meet or communicate with any individual associated with or representing the IAFC and IAFF, either individually or in group settings, concerning matters under the purview of the USFA including matters relating to fire safety and prevention and emergency preparedness and response; (ii) participate in IAFF and IAFC events as a speaker and interact with attendees; and (iii) interact with IAFC and IAFF officials, representatives and members on ongoing USFA initiatives, education programs, studies, publications, and to obtain consensus on USFA programs and similar activities. Representatives and officials from IAFC or IAFF may be present when Mr. Mitchell meets with large groups, attends or speaks at conferences, ceremonies, and similar events or otherwise interacts with the public regarding fire safety and prevention and emergency preparedness and response. Subject to the limitations set forth below, this waiver will facilitate Mr. Mitchell’s communications with the public as the Fire Administrator, United States Fire Administration, without first being required to determine whether he will be making impermissible contacts or communications with the IAFC or IAFF.

Background

The mission of the United States Fire Administration (USFA) is to provide national leadership for fire prevention and for fire and emergency preparedness and response through collaboration with fire and emergency services professionals, fire departments, stakeholder organizations, and the public. The USFA is responsible for overseeing, coordinating, directing and setting policy for this mission as well as: (1) serving as the national expert for fire protection and emergency response to the Department; (2) acting as the Federal advocate for public and private fire service managers; (3) developing and delivering fire safety and prevention education programs in partnership with the Federal and private sector communities; (4) promoting professional and organization development for government and private sector organizations and professionals; (5) supporting and facilitating the development of new technology; and (6) assisting government entities in collecting and analyzing data.

The Fire Administrator oversees the overall management of the USFA's programs and resources and has primary responsibility to ensure the USFA's mission objectives are carried out through educating the public and overcoming public indifference to fire and fire prevention; conducting an ongoing program for development, testing, evaluating, and deploying new technology and equipment to improve fire rescue and civil defense services; conducting studies to evaluate public and private programs for effective fire prevention; and developing working relationships with public and private sectors to support development of consensus standards, ensure awareness of trends and evolving issues, and to communicate Federal fire programs and policies.

In order to effectively carry out the USFA mission, Mr. Mitchell is required to engage in extensive communications with the public and private sectors. The national fire community includes both fire departments at the state and local level, and public and private code organizations, manufacturers, fire protection engineers and institutions, private industry, and the insurance industry. The Fire Administrator's responsibilities include regular and frequent meetings with individuals, officials, fire and emergency response professionals, and organizations involved in fire and emergency response. Contacts with the national community include informal individual communications as well as formal meetings at FEMA headquarters, and at regional FEMA and DHS offices, and at non-Federal venues. The continuous contact with the national community ensures that the USFA, FEMA, and DHS keep abreast of national trends, concerns, developments, needs, and fosters the ability for the USFA and FEMA to quickly engage with the non-Federal national community in times of emergencies and disasters.

Throughout his professional career, Mr. Mitchell has been actively involved with the national firefighting community. His experience and training give him unique qualifications for the position of Fire Administrator. He holds degrees in Fire Science, as well as a Bachelors and a Masters Degree in Public Administration. From 1971-91, he worked for Compton, CA as a firefighter, fire inspector, arson investigator, fire captain, and Battalion Chief. From 1991 to 1998, he served the City of Monrovia, CA as Fire Chief and Deputy City Manager. From 1998-2003, Mr. Mitchell served the City of Pasadena, CA as the Fire Chief and Assistant Director of Disaster Management.

Following his retirement in 2003, Mr. Mitchell remained active as a volunteer and consultant in the field of fire administration. Mr. Mitchell previously served as President of the IAFC. Mr. Mitchell, along with other past IAFC Presidents, authored a "Rules of Conduct" document for the IAFC membership. Prior to his Federal appointment, Mr. Mitchell was a volunteer member of a group of professionals developing and implementing an IAFC training initiative directed at improving labor/management relations in local fire departments. Mr. Mitchell, like other facilitators of the labor/management initiative, received an honorarium for conducting the program. Therefore, the IAFC qualifies as Mr. Mitchell's "former client" under section 2(j) of the Pledge.

Although Mr. Mitchell is not a member of the IAFF, he has been a member of the Advisory Board to the IAFF HazMat/WMD Training Management Initiative since 2008, primarily reviewing and commenting on the training accomplishments and plans. As he received an honorarium for his work on the initiative, the IAFF qualifies as Mr. Mitchell's "former client" under section 2(j) of the Pledge.

Analysis

The International Association of Fire Chiefs (IAFC) is a professional association that provides leadership to career and volunteer chiefs, company officers and managers of emergency organizations. The IAFC represents leaders of fire and related emergency services organizations to governmental and non-governmental organizations and acts as a point of international contact for local, state, provincial and national organizations that share the organization's goals. The International Association of Firefighters (IAFF) is a labor organization that represents fire fighters and paramedics. The IAFF and IAFC represent large segments of the nation's career and volunteer firefighters and emergency management service (EMS) personnel. The IAFF and IAFC are active in promoting firefighter safety, fire prevention and related activities that align with the USFA mission. It is essential for the senior official of the USFA to be intimately involved in the activities of the USFA on these issues to provide the government's leadership and guidance in meetings and in the planning process, to maximize the effectiveness of the USFA in the national firefighting community. As the IAFF, the IAFC and the USFA frequently partner on safety studies and often run parallel but coordinated campaigns, it is necessary for the Fire Administrator to exercise leadership in the planning for these efforts. Further, the IAFF and USFA have jointly produced a number of publications, which enable the Fire Administrator to exercise leadership and disseminate firefighter safety information to a broad national audience. Both organizations hold annual conferences, regional meetings and other events that allow the Fire Administrator to reach large audiences of firefighters in furtherance of the USFA mission. Without a waiver the Fire Administrator would not have the ability to interact with these organizations and their members at these and other events. One such event is the jointly sponsored IAFF and IAFC annual Fire/EMS Safety, Health and Survival Week (held in 2011 on June 19-25). The USFA actively participated in this event. Without the waiver, the Fire Administrator would be unable to participate in this joint effort, including sending messages encouraging individual fire departments to step up for safety as part of the IAFF/IAFC led campaign.

The USFA routinely seeks out the collective experience and representation from national and international organizations to gain consensus and input on USFA programs. The USFA is required by statute to seek input from and interact with the fire service community and these organizations

comprise an important voice in representing the views of their members. Without a waiver, the Fire Administrator would be unable to personally gather and consider input from the IAFF and IAFC, and the Fire Administrator would lose valuable information and collaboration sources from two important stakeholders in the national fire community. Direct collaboration between the Fire Administrator and the IAFF and IAFC also serves to further their complimentary goals of firefighter safety, and assists the USFA to determine the impact and success of the USFA programs in improving firefighter safety. Without a waiver, the Fire Administrator would be unable to personally engage with the IAFF and IAFC to continue to improve, expand, and increase the effectiveness of the joint ventures and partnerships between the USFA and the IAFF and IAFC.

Due to the scope of Section 2 of the Executive Order and the definition of “particular matter involving specific parties” in section 2(h), a broad application of this prohibition would be detrimental to both government operations of the USFA and FEMA and the IAFC and IAFF, as it would preclude Mr. Mitchell from speaking with officials, representatives, and members of these organizations in the various individual, small group, or large public settings where these individuals would be expected to be present and from exchanging information with these organizations. Barring such communication would likely have a negative impact on the organization’s ability to implement USFA policies and initiatives. Mr. Mitchell’s recusal from these communications would also deprive members and representatives of these organizations the opportunity to provide input and bring concerns to the attention of the nation’s leading official for fire safety and prevention and emergency preparedness and response.

Conclusion/Limited Scope of Waiver

After consultation with the U.S. Office of Government Ethics and the White House, I have determined that, based on the importance of the position of Fire Administrator, the need for the USFA to freely communicate with all members of the national community engaged in fire safety and prevention and emergency preparedness and response, and Mr. Mitchell’s extraordinary professional expertise and experience in these matters, it is in the public interest to grant a limited waiver of the Executive Order, in accordance with Section 3 of the Executive Order. This waiver is limited to enable Mr. Mitchell to: (i) meet or communicate with any individual associated with or representing the IAFC and IAFF, either individually or in group settings, concerning matters under the purview of the USFA including matters relating to fire safety and prevention and emergency preparedness and response; (ii) participate in IAFF and IAFC events as a speaker and interact with attendees; and (iii) interact with IAFC, and IAFF officials, representatives and members on ongoing USFA initiatives, education programs, studies, publications, and to obtain consensus on USFA programs and similar activities. In all other situations and respects, the restrictions of Section 1, paragraph 2 of the Executive Order will apply. Specifically, Mr. Mitchell will abide by these restrictions when decisions, meetings or communications involve any of the following: (1) pending litigation in judicial or administrative tribunals in which IAFC or IAFF is a party or represents a party; (2) contract, grant, or other funding determinations in which IAFC or IAFF is an offeror, a bidder, or an applicant; or (3) any particular matters involving specific parties in which Mr. Mitchell previously participated as a consultant to or as an active member in the IAFC or IAFF. This

waiver does not otherwise affect Mr. Mitchell's obligation to comply with all other pre-existing government ethics rules.

January 13, 2012

Date

Joseph B. Maher

Joseph B. Maher, Designated Agency Ethics Official
U. S. Department of Homeland Security