



LIMITED WAIVER OF EXECUTIVE ORDER 13490 FOR JOSEPH MAIN

In accordance with Section 3 of Executive Order 13490 (January 21, 2009) and after consultation with the Office of the Counsel to the President, I have determined that it is in the public interest to grant to Joseph Main 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 Assistant Secretary of Labor for Mine Safety and Health. Absent this waiver, Mr. Main would be restricted for two years following his appointment from participating in any particular matter involving specific parties in which his former employer, the United Mine Workers of America (UMWA), is a party or represents a party.

Pursuant to this waiver, Mr. Main may meet or communicate with any authorized miner representative, as identified in Section 103(f) of the Federal Mine Safety and Health Act, or any local official of the UMWA, either individually or in a group setting, concerning any matter relating to mine safety and health. Authorized miner representatives or local UMWA officials may typically be present when Mr. Main interacts with miners. Subject to the limitations set forth below, this waiver will therefore serve to facilitate Mr. Main's meetings or communications with miners since he will not be first required to determine whether any miner participating in the meeting or communication is an authorized miner representative or local UMWA official who may be deemed to qualify as his "former employer"¹

Background.

The Mine Safety and Health Administration (MSHA) is an agency established within the United States Department of Labor with the responsibility for safety and health in the Nation's mines. It administers the provisions of the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006. MSHA's mission is to: 1) enforce compliance with mandatory safety and health standards as a means to eliminate fatal accidents; 2) reduce the frequency and severity of nonfatal accidents; 3) minimize health hazards; and 4) promote improved safety and health conditions in the Nation's mines.

The Assistant Secretary for Mine Safety and Health oversees the administration and enforcement of the Mine Safety and Health Act, as amended, and is charged with promoting the safety and health of America's miners by developing and enforcing standards; providing training, outreach and education; establishing alliances; and

¹ I have determined that a miner's membership in the UMWA, standing alone, does not cause a miner to qualify as Mr. Main's "former employer" within the meaning of Section 1, paragraph 2, of Executive Order 13490

encouraging improvement in mining safety and health. The Assistant Secretary also decides appeals of Petitions for Modification of mandatory safety standards when an appeal is filed.

As part of his responsibilities, the Assistant Secretary for MSIIA frequently meets with miners, representatives of the labor unions representing miners, mine owners and operators, and other individuals or organizations involved in mine safety and health. These contacts take place at formal meetings at MSIIA's headquarters in Arlington, Virginia, at MSHA offices throughout the country, and many non-governmental sites. The MSHA Assistant Secretary also frequently visits mine sites and other venues where he can obtain information and directly learn the concerns of individual miners and their representatives. These exchanges provide valuable information to the Assistant Secretary that he might not otherwise receive. Similarly, this may be the most effective means for individual miners to convey this information or raise concerns without the potential inhibition of having their employer present.

Since retiring from the UMWA in 2004, Mr. Main has been self employed as an international mining health and safety advisor/consultant in which he has provided his expertise to a number of organizations, including as a training consultant to the United Mine Workers of America Career Centers, Inc. ("UMWA Career Centers") during 2007-2009. The UMWA Career Centers has the stated mission of offering training programs for new miners, as well as individuals who have been dislocated from employment in the mines.

Due to the scope of Section 2 of the 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 the Mine Safety and Health Administration and individual miners who are members of the UMWA, as it would preclude Mr. Main from speaking with those individual miners in any situation, such as a tour or other site visit, where authorized miner representatives² or local UMWA officials would also be present. Without a limited waiver, Mr. Main would be significantly limited in the performance of critical duties. This would deprive the Department of Labor of the service of an individual who brings unique and extensive relevant experience to the position, and it would also deprive members and representatives of the largest union representing coal miners the opportunity to provide input and raise concerns with the nation's top mine safety and health official.

² It should be noted that authorized miner representatives may or may not be members of the UMWA. In situations where they are UMWA members, there may be circumstances where they are effectively speaking on behalf of the union. Accordingly, the waiver is necessary to cover conversations or meetings between the authorized miner representatives and Mr. Main.

Conclusion/Limited Scope of Waiver.

Accordingly, I have determined that – because of the nature and importance of the position of Assistant Secretary for Mine Safety and Health and Mr. Main’s uniquely suited qualifications – it is in the public interest to grant a limited waiver of the Executive Order, in accordance with Section 3 of that Order. This waiver is limited to enable Mr. Main to meet or communicate with any authorized miner representative or local official of the UMWA, either individually or in a group setting, concerning any matter relating to mine safety and health. In all other situations and respects, the restrictions of Section 1, paragraph 2 of the Order will apply. Specifically, Mr. Main will abide by these restrictions when the meetings or communications involve any: 1) pending litigation in judicial or administrative tribunals to which the UMWA or UMWA Career Centers is a party or represents a party; 2) grant determinations in which either the UMWA or UMWA Career Centers is an applicant; or 3) any particular matters involving specific parties in which Mr. Main previously participated as a consultant to the UMWA and UMWA Career Centers, including regulations and mandatory safety and health standards.

Mr. Main has been, and will continue to be advised on the applicability of all other aspects of the Order, as well as the restrictions imposed by all other ethics laws and regulations, and has agreed to take the necessary steps to be in full compliance with these authorities.

November 10, 2009

R. A. Shapiro

Robert A. Shapiro
Associate Solicitor for Legal Counsel
Alternate Designated Ethics Official