



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MEMORANDUM FOR THE RECORD

SUBJECT: Presidential Involvement in Agency Rulemaking

Recently I had the opportunity to attend a meeting sponsored by the National Academy of Science and Environmental Law Institute with respect to ways to improve agency decisionmaking within the Federal Government.

The focus of the discussion was a case study of the EPA regulations which limit the use of lead in gasoline based upon public health considerations.<sup>1</sup> Attendees at the meeting included most of the major participants in the development of the regulation. Two of the attendees were Circuit Court Judges Leventhal and Wright, both of whom were involved in the subsequent judicial review of the regulation.

During the course of the discussion, the issue of "Presidential Involvement" arose. The purpose of this memorandum is to summarize my interpretation of the views of the aforementioned jurists on this subject. (Eventually transcripts of the proceedings will be available and thus provide a basis for an independent assessment of views expressed at the meeting.)

For background, Judge Leventhal has had a major impact on agency rulemaking activities. In his role as Circuit Judge in the D. C. Circuit, he is involved in many, if not most, of the judicial reviews of national environmental standards. Through his opinions he has constantly expanded upon the scope and implementation of the Administrative Procedures Act.

My interpretation of Judge Leventhal's views are as follows:

- ..The President is the only elected official in the Executive Branch
- ..The Constitution requires the President to faithfully execute all the laws of the nation
- ..Notwithstanding statutes which give an agency head authority to promulgate rules, there is nevertheless an authority vested in the President, by the Constitution, to intervene wherever appropriate.
- ..Independent regulatory agencies are exempt from Presidential Involvement.

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<sup>1</sup>These "low-lead" regulations were promulgated in addition to the "no-lead" regulations issued to protect the catalytic converter on new cars. The essence of the "low-lead" regulations is to accelerate the removal rate required under the "no-lead" regulations.

..An independent regulatory agency is a collegial body composed, by statute, of bi-partisan members.

..In the event a President abuses his intervention authority, the Congress always reserves the right to make the effected agencies "independent".

Judge Wright did not take or express a position on "Presidential Involvement". He did state, very strongly, that all views communicated by the President to agency heads should be a part of the record and thus judicially reviewable.

I understand that the American Bar Association will be addressing this issue within the next month.

Jim J. Tozzi