



Memorandum

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

TO: Dr. John White

DATE: March 1, 1979

FROM: Jim J. Tozzi

SUBJECT: Muskie Hearings on EOP Involvement in Agency Rulemaking

On February 26 and 27, I attended the hearings Senator Muskie chaired on EOP involvement in Agency rulemaking. Mistert Costle, Kahn and Schultze testified on Tuesday, and they were preceded by industry and environmentalists. The bottom line of the environmental testimony was:

- That they either doubt or conclude that existing law did not sanction EOP staff to discuss rulemaking with Agencies after the close of the public comment period.
- That if EOP staff were going to continue this activity, the Administration should, at a minimum, provide a procedure for documentation of its conversations with Agency staff.
- Si Lazarus of the Domestic Policy Staff has drafted a proposed procedure to address Senator Muskie's concerns. Lazarus' proposal addressed one--but not all--of the issues raised in the Congressional Hearings. Si's proposal responds to allegations that EOP staff conversations could serve as a conduit of industry views during Agency rulemaking. His proposal therefore requires that anytime EOP staff speak with Agency officials that EOP staff write a memorandum documenting the content of such conversations.

I think that an alternate approach would be one that would require the Agency to prepare such a memorandum based on calls they received from EOP staff. The EOP staff could also indicate which of the views they are communicating resulted from conversations with industry.

I have discussed this alternative with lawyers from the Justice Department who were involved in getting the District Circuit Court to dismiss a case aimed at precluding additional EOP involvement in the Interior Surface Mining Regulations.

I think the approach I have outlined would be advantageous in that EOP staff (1) would not be burdened with the preparation of the memoranda and (2) would not be held responsible for the completeness of such a memoranda.