Nutl. Productivity
Advisory Council.

Fred -

This is what Norm
needs to ask you about
this afternoon.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO Dan

for your info.

Take necessary action	☐
Approval or signature	☐
Comment	☐
Prepare reply	☐
Discuss with me	☐
For your information	☐
See remarks below	☑

FROM Fred DATE 27 MAY

REMARKS

The attached is an initiative to the Natl. Productivity Advisory Council by Commerce to gain support for what we want to do. — Pls - return

OMB FORM 4
REV AUG 70

Issue: Should the new Federal Acquisition Regulation be written to give R&D contractors primary rights to patent ownership? 1

Background: In 1971 President Nixon signed a memorandum to the heads of agencies directing them to continue to obtain title to most patents on inventions of R&D contractors. While agencies have followed this policy, a presidential memorandum has no binding effect of law.

The Patent and Trademark Amendments of 1980 (Pub. L. 96-517) partially reversed the policy by giving primary patent ownership rights to small business, universities, and other non-profit

organizations that produce inventions as a result of government funding. The government obtains a free use licens on these patents. OMB Circular A-124 prescribes a standard patent clause to be used in grants and contracts with these organizations.

The 1971 Presidential Memorandum is still being followed for large contractor. In addition, the statutes of a few agencies such as NASA and Energy require government ownership of some contractor developed patents.

The Schmitt Bill (S. 1657) would extend primary patent ownership rights to all government contractors. The National Productivity Advisory Council (NPAC) has endorsed the Schmitt Bill.

The Administration has testified in favor of it, thus signaling a complete shift of policy from the 1971 Memorandum. The House version contains provisions opposed by the Administration and legislative action may not be completed by this Congress.

On March 17, 1982, the President signed an Executive Order (which has the force of law) directing agencies to produce a single Federal Acquisition Regulation for all agencies by ~~January~~ December 31, 1982.

It has been proposed to write the patent rights section of the new regulation to give primary patent ownership rights to all R & D contractor except where

there are specific laws to the contrary. The standard patent clause of A-124 that retains a free use license for the government would be followed (as much as possible for many technical and procedural reasons.

Pro

Except for the agencies with special statutory provisions, the Executive Branch can decide who will own patents that result from government funding. The Administration has expressed its position that the economy will benefit more from private than from government ownership.

The new regulation which must comply with P.L. 96-517, provides an

immediate opportunity to extend ownership rights to larger contractors as well. This would both obtain some of the benefits of the Schmitt Bill before it is enacted, and remove opportunities for confusion. The new regulation will go through a formal rule-making process, so there will be ample opportunity for public comment on the policy change.

If the regulation is not written to extend private ownership rights as much as possible, the Administration will miss an opportunity to pursue its policy objective where it has administrative discretion.

The Schmitt Bill will still be

important, both to amend individual agency statutes and to add permanence.

Con

Implementing portions of the Schmitt Bill before it is enacted may reduce pressure for its enactment.

NPAC Action Possibilities:

1. Recommend extension of private ownership rights to contractor patents as much as possible in the new Federal Acquisition Regulation; or,
2. Recommend that private ownership rights be extended as required by P.L. 96-517, but not beyond until enactment of the Schmitt Bill.