EXCEPT IN MEDICAL AREA, PRIVATE PATENT RIGHTS POSSIBLE ON INVENTIONS GROWING OUT OF GOVT.-SUPPORTED R&D: WHITE HOUSE ISSUES POLICY MEMO

Health patents were excepted from White House instructions to federal dept. heads Oct. 10 that would establish a more-or-less uniform govt. policy encouraging some private development of patents arising from govt.-sponsored research. The special status for health Patents, which virtually rules out private rights, is stated in the President's memo as applying to govt.-supported research where:

> "A principal purpose of the contract (or grant) is for exploration into fields which directly concern the public health or welfare.... the govt. shall normally acquire or reserve the right to acquire the principal or exclusive rights throughout the world...."

A slight loophole in the "uniform" policy, however, would allow for "exceptional cases" in which the contractor or grantee could acquire greater rights to health patents if these rights are "a necessary incentive to call forth private risk capital and expense to bring the invention to the point of practical application."

The basic policy set down by the memo parallels closely the present position of the Dept. of Defense. Where a contractor "has an established non-governmental commercial position," the White House memo states, he "shall normally acquire the principal or exclusive rights thoughout the world in, and to, any resulting inventions, subject to the govt. acquiring at least an irrevocable non-exclusive royalty free license thoughout the world for governmental purposes."

"Steel Curtain" Must Be Used In Joint Drug Industry-Govt. Work: Tishler

The H-E-W Dept./Public Health Service/NIH policy on patent rights, growing out of biomedical research supported by the govt., is so tight that the govt. has claimed discoveries by investigators or groups whose work has been touched in any way by federal funds. The NIH grants manual requires all govt.-supported investigators to make periodic reports on any findings that may be patentable so that the Surgeon General can claim the rights.

> Based on the govt.'s position in the 5-FU patent controversy, the biomedical situation has reached the point where everything "contaminated" by govt. money is now headed for the public domain -- with the possible exception of the special arrangement worked out to encourage industry participation in the Cancer Chemotherapy Natl. Service Center screening program.

When pharmaceutical companies accept govt. research contracts, Dr. Max Tishler, head of Merck-S&D's Research Lab, said in a recent speech, they "must surround these projects with curtains of steel lest one of our discoveries emanating from the 'private sector' of research should inadvertently fall into the area of the public domain."

The H-E-W/PHS/NIH policy is so tight that it has led to protests from public-supported foundations and universities, as well as from pharmaceutical houses. At the moment, a controversy is raging within the H-E-W Patent Board on amending the regulations to permit completion of an agreement worked out between PHS and the American Cancer Society.

Opponents of the agreement are claiming they have blocked its adoption with approval Oct. 7 by the H-E-W Patents Board of a regulation allowing PHS to enter agreements leaving administration of patents with non-profit foundations of the latter's support for the work has been "substantial."