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DRAFT November 28, 1977

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The Honorable James T. McIntyre
Acting Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. McIntyre:

This is in response to your request for a report on H. R. 6249, a bill cited as the "Uniform Federal Research and Development Utilization Act of 1977."

In summary, we do not support the bill because we believe it does not provide sufficient flexibility in allocating rights between the Department and its contractors to inventions resulting from Department supported research and development. Further, the Department is in the process of reviewing its patent policy with the intent of enhancing its effectiveness.

In general, the major provisions of H.R. 6249 are:

Title I, which contains a statement of findings and purposes.

Title II, which provides an institutional framework through OSTP and its subcommittees to assure uniform implementation of the Act's provisions.

Title III, Chapter 1, which would allow grantees and contractors the right to retain title to inventions subject to various limitations and conditions, including a case-by-case right of deviation in individual agencies where, for example, the Government is fully funding the development of a product or process to the point of commercial application.

Title III, Chapter 2, which is an effort to codify the criteria of Executive Order 10096 initially issued by President Truman allocating rights in inventions made by Federal employees in performance of official duties, and which also includes authority for such an incentive awards program covering inventions made by such employees.

Title IV, which provides all Federal agencies authority to license Federally-owned inventions. It also provides the Department of Commerce with certain additional authorities, so that a centralized Government licensing program could be undertaken, although participation in the Commerce program is left to agency discretion, and

Title V, which contains definitions, amendments and repealers of existing statutes.

The bill attempts to provide a government-wide legislative foundation based on uniform principles for the allocation of rights to inventions resulting from federally supported research and development. To date, allocation of such rights has been based on a number of statutes covering individual agencies and research programs, executive orders, presidential statements, and regulations. These authorities allow for differing allocation of invention rights on the basis of agency mission. Further, to the extent that a research program is now governed only by executive order, presidential statement, or regulation, as is the case in this Department, the bill attempts to settle the question raised by litigation not yet resolved, as to whether such a program has the authority to dispose of invention rights without statutory authority.

The bill, with the exception of Title III, Chapter 1, is not considered controversial, since most of its provisions embody precedents and conclusions that have been to some degree agreed upon by the federal agencies. However, controversy over Title III, Chapter 1, is inevitable, since it would supplant approximately 22 different statutory and administrative policies and procedures covering allocation of contractor and grantee inventions with a single patent rights clause