

Natl. 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 Dunn
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

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

Background: In 1974, President Nixon signed a memorandum to the heads of agencies advising 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 license on their patents. OMB Circular

A-124 prescribes a standard patent clause to be used in grants and contracts with these organizations.

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

The Helms Bill (S. 1657) would extend primary patent ownership

rights to all government contractors. The National Productivity Advisory Council (NPAC) has endorsed the Helms Bill.

The Administration has testified in favor of it, thus signaling a complete shift of policy from the 1978 Memorandum. The House version contains provisions approved by the Administration and legislative action may not be completed by the 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 Schmidt
 Bill before it is enacted, and remove
 opportunities for confusion. The
 new regulation will go through a
 formal rule-making process, so that
 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 admin-
 istrative discretion.

The Schmidt 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.

1992 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.