

MINUTES of the one hundred sixty-third meeting of the Directors of the Manufacturing Chemists' Association, Inc., held at The Union Club, New York City, on Tuesday, January 10, 1967, at 11:00 a.m. (EST).

There were present:

John W. Brooks	Donald D. Pascal
F. L. Byrom	Joseph E. Rich
E. E. Chipman	Edward R. Rowley
John L. Christian	Kenneth Rush
Herschel H. Cudd	Charles H. Rybolt
David H. Dawson	Joseph R. Stevens
George H. Decker	Robert C. Swain
Harold W. Fisher	Henry A. Thouron
Irb H. Fooshee	Thomas M. Ware
Alexander Lewis, Jr.	Harry B. Warner
John O. Logan	Jesse Werner
William P. Marsh, Jr.	John E. Wood, III
A. R. Marusi	M. F. Crass, Jr.
M. A. Minnig	

Alternates:

- Archie E. Albright (for Hans Stauffer)
- A. L. Baldock (for Joseph R. Stevens)
- Bland B. Button (for Thomas M. Ware)
- C. O. Davidson (for E. B. Brooks)
- Kenneth H. Hannan (for Kenneth Rush)
- Leonard Hynes (for W. T. D. Ross)
- Harry D. McNeeley (for L. K. Eilers)
- Frank J. Pizzitola (for John W. Brooks)
- William Wishnick (for M. A. Minnig)

General Counsel: Lloyd Symington

Present by Invitation:

- James R. Carnes, MCA
- Charles S. Munson, Air Reduction Company
- Howard K. Nason, Monsanto Research Corporation
- Thomas S. Nichols, Olin Mathieson Chemical Corporation
- James H. Sterner, M. D., Eastman Kodak Company

I. MINUTES OF DECEMBER 13, 1966, MEETING.

The Minutes of this meeting were duly approved as submitted to the members.

II. REPORT OF THE SECRETARY-TREASURER.

(a) Financial Report -- June 1 - December 31, 1966. The financial report for the seven months ending December 31, 1966, was summarized by the Secretary-Treasurer.

ON MOTION, duly made and seconded, it was

VOTED: That the report be accepted and placed
on file.

(b) 16th Semi-Annual Meeting. The Treasurer reported a balance of \$15,244 with all bills paid. These funds have been transferred to the Operating Account and will be reflected in the financial report for the month of February.

III. BOARD OF DIRECTORS.

(a) Status of Ad Hoc Product Committees. At the December 13, 1966, meeting, a report of the Product Category Activities Study Committee was presented by Mr. Warner. Action on that report was deferred until January 10 in order to give representatives of the Ad Hoc Reactive Metals Advisory Committee an opportunity to appear before the Executive Committee and present recommendations as to tenure and program. Such recommendations were presented to the Executive Committee earlier in the day and, in substance, consisted of the following:

- (1) That the Committee's prior extension on an ad hoc status until May 1, 1968, be reaffirmed.
- (2) That if the Association does not choose to provide continuing and permanent means by which the interests of metals members can be accorded detailed consideration, study will be given to possible affiliation with another association, or to organization of a new association under which this can be done.

Mr. Warner was then requested by the Chairman to present a modified report which had been approved by the Executive Committee following the RMAC presentation. Mr. Warner's report follows:

(1) Ad Hoc Committees. In the future, such committees shall be appointed for one year only.

(2) Reactive Metals Advisory Committee. That the ad hoc status of this committee extend until May 1, 1968. Meanwhile, the Executive Committee will study the overall RMAC proposal as to permanent committee status and will recommend a course of action to the Board not later than the May 9, 1967, meeting.

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(3) Ammonium Nitrate Technical Committee. That this committee be disbanded, effective May 1, 1967, and that any continuing functions be taken over by regularly constituted technical committees subject to the "General Principles Applicable to the Structure and Operations of Committees." Inasmuch as safety considerations are involved, the Safety and Fire Protection Committee will be asked to study the matter and to recommend a mechanism whereby the future needs of the ad hoc Ammonium Nitrate Technical Committee could be handled in accordance with regular committee procedures.

(4) Technical Committee on Rocket Propellant Safety. That the status of this committee be reviewed prior to May 1, 1967, with a view to attachment to the Safety and Fire Protection Committee.

(5) Plastics Committee. That this committee be continued on a permanent basis since it represents a broad product mix with an active participation of approximately 25% of the Association membership.

Following discussion,

ON MOTION, duly made and seconded, it was

VOTED: That the modified Warner Committee Report as set forth above be approved.

(b) Report of Congressional Liaison Study Committee. Mr. Rich reported that his ad hoc committee met with staff representatives on November 21, 1966, and had given careful consideration to the proposal for a Congressional Contact Committee and to alternative means of achieving the purpose underlying this proposal. A copy of Mr. Rich's full report is appended to these minutes as Exhibit A.

Conclusions and recommendations relating to staff government relations procedures, Congressional Contact Committee, management participation in government relations, utilization of MCA legislative bulletins, staff government relations personnel and remuneration, and periodic review of such matters by the Executive Committee had been discussed and endorsed by that Committee at its meeting earlier in the day. Following discussion,

ON MOTION, duly made and seconded, it was

VOTED. That the report be approved as presented.

(c) Report of Finance Committee. Mr. Stevens stated that his committee had met the previous evening. Thorough review was given the seven-month financial report and the investment program with everything found to be in good order and with no changes recommended.

At this stage, it appears that the year-end will show a substantial surplus accruing from better-than-expected income and unspent funds from the contingency and environmental health accounts. The committee endorsed a staff recommendation that the annual confidential solicitation of chemical sales for 1967-68 dues purposes be scheduled for January 18.

With respect to the Chemical Sales definition, the committee approved several staff suggestions of minor nature relating to clarification. However, the committee recommended to the Board that a special study group be appointed to thoroughly review the definition with particular attention given to the possible inclusion of captive chemical sales as part of the basis for establishing membership fees for fiscal 1968-69. Following discussion,

ON MOTION, duly made and seconded, it was

VOTED: That such study be authorized and that it be referred for handling to the new Finance Committee which will take office at the start of the 1967-68 fiscal year.

(d) Contingency Funds -- Guide for Safety in the Chemical Laboratory. This MCA-sponsored publication is now being updated, and the Safety and Fire Protection and Environmental Health Advisory Committees have recommended that \$3,000 be made available immediately from contingency funds to finance employment of an experienced technical writer to complete the revision. Following discussion,

ON MOTION, duly made and seconded, it was

VOTED: That the request be approved.

(e) Office of Emergency Planning. Request for Consultant. Handed to Directors were copies of correspondence relating to a request by the Office of Emergency Planning (OEP) that the Association nominate several chemical executives from whom OEP could select one for appointment to the dual role of consultant and executive reservist in the development of National Emergency Economic Stabilization Plans. Following discussion, it was the consensus that the Association should comply. The Directors were advised that the names of W. H. Bowman and E. E. Fogle had already been submitted. They were requested to submit the names of additional nominees to the Association's President as promptly as possible.

(f) Industry-Government Co-funding of Research on Environmental Health Projects. Dr. James H. Sterner, Chairman of the Environmental Health Advisory Committee, appeared before the Board and discussed 1966 amendments to the Federal Water Pollution Control Act, which provide matching grants on research devoted to the prevention of pollution of waters by industry. The Water Resources Committee has given preliminary consideration to the possible use of

Manufacturing Chemists' Association, Inc.

(FOUNDED 1872)

1825 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20009

GEORGE H. DECKER
General, U.S.A. (Ret.)
PRESIDENT

December 21, 1966

To Members of the MCA Executive Committee

Dear Sirs:

The Office of Emergency Planning (OEP) in the Executive Office of the President has requested the Association to nominate several executives in the chemical manufacturing industry from whom OEP may select one for appointment to the dual role of an Executive Reservist and a Consultant to OEP representing the chemical manufacturing industry in the development of national emergency economic stabilization plans. Details concerning the caliber of individual desired and the duties he would be called upon to perform are set forth in the attached letter from the Chief, Economic Stabilization, Division of the Office of Emergency Planning.

The following industries and groups are also being requested to provide representatives for this purpose:

Drugs	Forest Products Manufacturers
Electronics	Food Chains
Machine Tools	Automotive Dealers
Textiles	Furniture
Leather	Business Equipment
Automotive	Grain (Agricultural products)
Food Distribution	American Legion in connection
Petroleum	with Veterans
Meat Processing	Consumers in general
Lumber Dealers	Organized Labor

While the assignment may be a relatively burdensome one for the appointee, the OEP request is believed to present an invaluable opportunity to insure that the emergency economic stabilization plans which affect the chemical manufacturing industry will

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be as sound and workable as possible. Inquiries directed by this office to the staffs of other major industry associations, including the American Petroleum Institute, the Automobile Manufacturers Association, and the American Textile Manufacturers Institute, reveal that these organizations have received similar requests from OEP with which they are proceeding to comply as rapidly as circumstances permit.

The nominees will undergo the background check required for issuance of a Top Secret security clearance. OEP has indicated that if nominations should be received in January, the individual selected would probably not be appointed before June or July because of the time required to complete the background check and other processing.

The OEP request will be placed on the agenda for the January 10 meeting of the Executive Committee. It is requested that it receive your consideration in preparation for that meeting, with regard to the desirability of representation from the Chemical Industry and suggestions as to possible nominees.

Sincerely,



G. H. Decker

Attachment

CMA 068627

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF EMERGENCY PLANNING
WASHINGTON, D.C. 20504

December 9, 1966

Mr. James R. Carnes
Director of Governmental Relations
Manufacturing Chemists' Association
1825 Connecticut Avenue, N. W.
Suite 411
Washington, D. C. 20009

Dear Mr. Carnes:

I want to thank you for your kindness and cooperation in meeting with Frank Carney of our staff. We also appreciate your enthusiastic offer to assist this agency with the recruitment of an Executive Reservist--Consultant to represent the chemical manufacturing industry with us.

As Frank cautioned during his discussion with you, we in the Economic Stabilization Division lay the groundwork for the recruitment of Reservist-Consultants to support our program, however, we have no authority over actual appointments. Only our agency Director can make such appointments on the basis of available funds, expertise required, and preliminary security checks. To deal with these preliminary considerations, we need the following information regarding each individual on the panel you are requested to provide:

1. Name and home address
2. Date and place of birth
3. Employer's name and address
4. Title of present position
5. Other important positions held in the chemical manufacturing industry

You requested information concerning the demands that would be placed on the appointee's time. As was explained to you, he would serve in a dual capacity as an OEP Consultant and as an Executive Reservist. In the latter case, we foresee (1) an annual orientation and training session for one or two days held in a major city in his region of the country, (2) a triennial national conference lasting three days for all Federal National Defense Executive Reservists (about 3,600 total) held here in Washington, and (3) in the event of a national emergency requiring

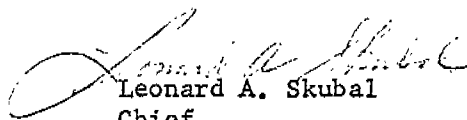
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full mobilization, his full-time assignment to the Emergency Economic Stabilization Program as a Federal employee. As a Consultant without compensation the appointee would assist us in the pre-emergency planning phase of our work. For this activity, we foresee four to six Washington trips a year, each for one day. We will, also be sending him program material to review, edit, or otherwise develop in preparation for the meetings with us.

Another point of interest to you is the type of person we are seeking to fill this appointment. He should be an official thoroughly familiar with the economics of the industry, and he should also enjoy a position of high regard throughout the industry. He should have a clear idea of the problems the industry would encounter in a direct controls situation. The following are a few examples of positions held by executives we have recruited thus far: the President of an iron and steel company, the President of a large dairy company, the Vice President of a cafeteria chain, and a Vice President of a large chain of retail department stores.

May I thank you again for your splendid cooperation.

Sincerely yours,



Leonard A. Skubal
Chief

Economic Stabilization Division ,

such funds in developing its proposals for future research as recently submitted to the Environmental Health Advisory Committee. Informal discussions have indicated that the Department of the Interior may have a possible interest in three MCA-sponsored projects on a joint financial basis.

Following discussion, it was the consensus that government funds could be accepted provided that each project for which such funds would be requested would be developed in sufficient detail to reveal the end purpose and the degree of control expected to be exercised by MCA. Only those projects approved by the Executive Committee and the Board would be eligible for partial government funding.

IV. COMMITTEE APPOINTMENTS.

The following committee appointments were approved:

- (a) Air Quality Committee.
Charles E. Welch, E. I. du Pont de Nemours & Company
(replacing William J. Conner)
- (b) International Trade Committee.
Clinton J. Allen, Jr., Wyandotte Chemicals Corporation
- (c) Occupational Health Committee.
E. E. Christofano, Hercules Incorporated
Dr. George J. Levinskas, American Cyanamid Company
T. R. Torkelson, The Dow Chemical Company
- (d) Water Resources Committee.
Charles E. Welch, E. I. du Pont de Nemours & Company
(replacing William J. Conner)

V. STAFF REPORT.

General Decker presented a summarization of developments in the Association's program of projects and activities since the last meeting. Copy of this report is appended to these Minutes as Exhibit B.

VI. REPORT OF PRESIDENT'S COMMISSION ON PATENT SYSTEM.

Last December, a suggestion was made to the Association by the U. S. Patent Office that a member of the President's Commission on the Patent System appear before the MCA Board of Directors to discuss the Commission's final report. Dr. Howard K. Nason, President of Monsanto Research Corporation and a Commission member, accepted this assignment and presented to the Directors a 25-minute summarization and commentary. His remarks are appended to these Minutes as Exhibit C.

(1077)

There being no further business to come before the meeting, it was unanimously resolved to adjourn.

M. F. Crass, Jr.
Secretary-Treasurer

APPROVED: Kenneth Rush
Chairman

Attachments

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REPORT OF AD HOC SUBCOMMITTEE ON
MCA CONGRESSIONAL RELATIONS

Pursuant to the call of the Chairman, the ad hoc subcommittee to study how the Association's activities, procedures, and staff in the field of congressional relations might be improved and made more effective met at the Chemists' Club in New York City on November 21, 1966. Present were Chairman Joseph E. Rich, Messrs. Harold W. Fisher, Robert B. Semple, and Robert C. Swain, of the subcommittee, and, by invitation, General George H. Decker, President, and Mr. James R. Carnes, Director of Government Relations; Mr. Harold E. Thayer was the only member of the subcommittee not present.

The subcommittee reviewed the proposals before the Executive Committee which led to appointment of the committee, together with those portions of the report of the Policy Study Committee of 1962 pertaining to the subject. The present method of Staff operations in the field of government relations was described by General Decker and Mr. Carnes. In this connection, the subcommittee reviewed a chronological summary and documentation of MCA activities in connection with the recent legislation to suspend the seven percent investment credit. In the discussion which followed, careful consideration was given to the proposal for a Congressional Contact Committee and to alternative means of achieving the purpose underlying this proposal. Upon the basis of the foregoing study, the subcommittee arrived at the following conclusions and recommendations:

a. Staff Government Relations Procedures

The subcommittee concluded that the present government relations procedures of the MCA Staff are soundly conceived and organized and are generally effective. Discussed later in this report are certain recommendations concerning staffing and compensation and the need for compilation by the Staff of information from member companies which would facilitate the Association's legislative activities.

b. Congressional Contact Committee

With respect to the proposal that a Congressional Contact or Government Relations Committee be established, it is the opinion of the subcommittee that overwatching of the government relations activities of the Association is of such importance that it should remain a responsibility of the Executive Committee. Another committee for this purpose would interpose

an extra echelon of consideration, with attendant delays, between the Staff and the Executive Committee or Board of Directors, by whom any significant policy decisions in this field must ultimately be made. The Committee believes that a more efficient arrangement is the present one whereby the Staff, under the supervision of the Executive Committee, coordinates the legislative activities of member company representatives in behalf of Association objectives. It is highly desirable under this plan, however, that the Executive Committee and the Board of Directors be kept more closely informed of current and impending developments in the field of government relations. Therefore, it is recommended that either the President or the Director of Government Relations report on a regular basis to the Executive Committee. It is recognized that the President includes legislative developments in his regular report to the Directors. However, this is part of a general report and it is felt that greater emphasis and better appreciation can be achieved if a report is made specifically related to legislative developments. It is further recommended that the President and Government Relations Staff of the Association give continuing attention to means whereby present procedures may be improved to achieve this objective.

c. Management Participation in Government Relations

It has been demonstrated that the most effective representatives of the chemical industry in meetings with members of the Congress are the senior executives of MCA member companies. It is therefore most important that top management of all MCA member companies be encouraged to cultivate cordial and sympathetic relationships with the Senators and Congressmen who represent the states and districts where their home offices and plants are located, with special emphasis in the cases of those who are influential members of committees whose jurisdictions affect significant interests of the chemical industry. The encouragement for such relationships should be extended to include plant officials who can create much good will by inviting members of the Congress to tour chemical industry plants and to visit with key plant officials and employees.

The goodwill developed through cultivation of such wholesome relationships between management and members of the Congress should be so channeled as to benefit the chemical industry in the pursuit of its legislative objectives. To accomplish this, it is recommended that the Association's Government Relations

Staff devise and maintain a readily accessible file on the location of member company facilities according to states and congressional districts and other information of a more specific nature which, as an ideal to aim for, would indicate which particular member company executives would probably be most effective in discussing legislation with certain members of the Congress.

The subcommittee recommends that the Board reaffirm its view of the importance of management participation in government relations and to request such cooperation and information as may be needed to further the objectives discussed in this portion of the subcommittee's report.

d. Utilization of MCA Legislative Bulletin

During its deliberations, the subcommittee discovered that some senior executives of member companies were not aware of the value of the Federal Legislative Bulletin which is published every two weeks by the Association for the purpose of informing the membership of current legislative developments. Upon investigation by the MCA Staff subsequent to the meeting of the Committee, it was ascertained that nearly a third of the member company Executive Contacts are not receiving the Legislative Bulletin. As this bulletin is an essential part of the Association's procedure for obtaining member company reactions to proposed legislation, it is most important that member company executives at the policy-making levels use this bulletin as a tool to be utilized in the process of insuring that the Association Staff is made aware of, and is taking appropriate action to protect, the legislative interests of member companies.

It is recommended that the importance of the Federal Legislative Bulletin be brought to the attention of the Executive Contacts of all member companies urging that, if they do not have time to review the Bulletin themselves, they designate a responsible member of their staff to review it and report personally to them on matters of importance to their companies.

e. Government Relations Staff

During the subcommittee's review of the MCA government relations staff and procedures, it was reported that some difficulties had been experienced during 1966 because of

resignations from two of the four authorized supervisory positions in the Government Relations Department and that one, the position of Deputy Director of Government Relations (Federal), is now unfilled. Substantial inadequacy of compensation for the skills required was the primary reason given for these resignations.

The subcommittee is of the opinion that the Government Relations Department should be adequately staffed for its important role. Moreover, it is believed that compensation for the legislative skills and experience required, which are largely peculiar to the Washington area, should be established at a level at which MCA can compete effectively with the Government and other employers for this expertise.

It is therefore recommended that the existing vacancy in the Government Relations Department be filled, at a rate of compensation appropriate to the skills required, as soon as a qualified applicant can be found. It is further recommended that any additional supervisory positions required to insure an effective MCA government relations activity be authorized when the need therefor becomes apparent, it being recognized that further improvement in present procedures may indicate a need for additional manpower to more fully cover developments in both the Senate and House of Representatives.

f. Periodic Review by Executive Committee

In conclusion, it is recommended that periodic studies, such as that conducted by this subcommittee, be scheduled in the future on a biennial basis to coincide roughly with the conclusion of each Congress. Such reviews would provide the Executive Committee and the Board of Directors with a periodic appraisal of the effectiveness of the Association's government relations efforts, whether they are being carried out in consonance with the desired objectives of the Board of Directors, and what additional guidance or support may be desirable.

January 10, 1967

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STAFF REPORT
January 10, 1967

Presented by G. H. Decker

Federal Legislative Developments. First, I would like to update last month's review of legislative prospects for the session of Congress which convenes at noon today.

Of primary importance are developments concerning air pollution. The National Conference on Air Pollution which met in Washington, December 12-14, amid ample evidence of a carefully designed public relations effort, is now believed to have been planned with two specific objectives. The first was to play up the adverse health aspects of air pollution, notwithstanding the fact that supporting clinical evidence is presently inadequate. This emphasis may have been intended to bolster the case for retaining air pollution control in the Public Health Service, avoiding its transfer to another department in a repetition of what happened to the Federal Water Pollution Control Administration. It is believed, however, that the main reason for the stress on health was to support the second rather apparent objective of the Conference on Air Pollution, namely, the building of emotional and political support for amending the Clean Air Act this year to provide for regional establishment and enforcement of emission standards for individual sources of pollutants. Because of this buildup, a major part of our federal legislative activity in 1967 will probably involve federal air pollution legislation.

In a letter to all Senate committee chairmen, Majority Leader Mansfield has stated that he does not anticipate requests for sweeping new legislative approaches in this Congress because so much basic legislation was enacted by the 89th Congress. Rather, he said that the Senate committees ought to take a thoroughgoing, second look at major programs for the purpose of making desirable refinements in them. Senator Mansfield's specific mention of "programs for curbing air and water pollution" as likely prospects for such a "second look and refinement" would seem to confirm our anticipation of substantial amendments to the Clean Air Act this year.

State Legislative Outlook. 1967 will be a busy year for State Legislatures with 47 of the 50 holding legislative sessions. Only Kentucky, Mississippi, and Virginia do not meet. Most of the legislatures begin their sessions in January although six do not convene until later. It is expected that among subjects of interest to the chemical industry, environmental health, especially air and water pollution legislation, will dominate the sessions.

New Craft Severance Policy. On December 30, the National Labor Relations Board overturned the craft severance doctrine established in the 1954 American Potash case. This was done through rulings on three petitions filed for separate units of craft employees. In the lead Mallinckrodt case, the Board rejected a request of the International Brotherhood of Electrical Workers to sever twelve instrument mechanics from an overall production and maintenance unit. Inasmuch as the Board is still re-evaluating a number of additional craft severance petitions of great interest to the chemical industry, it is too early to assess what the impact of the major policy change as announced by the Board will be. However, it is reassuring to note the NLRB has now recognized a long-standing contention of MCA that the Board should fully consider integration of operations and the history of collective bargaining in determining whether or not craft unions should be permitted to fractionalize an integrated overall production operation into a number of separate craft bargaining units. Directors will recall that MCA participated actively in the American Potash case in 1954 and petitioned to intervene in the Texas City Refining case in 1964.

Because of the importance of NLRB's new policy to the chemical industry, it is likely that the Association will provide survey material and furnish a witness in an effort to oppose severance of a craft union from the bargaining unit of a member plant at Louisville, Kentucky. The case will be heard before an NLRB panel in that city on January 16.

Technical Department Highlights. Mr. T. C. Stewart, Monsanto Company, recently appeared on MCA's behalf before the Traffic Executives Association (Railroads) in opposition to a proposed capacity loading rule which would result in an unreasonable increase in freight charges.

In early December, the Association addressed a letter to fifteen railroads asking them to take appropriate steps to continue paying tank car mileage allowances on a loaded basis and eliminating equalization requirements rather than letting this provision expire in March, 1967, as now planned.

The staff is concerned about developing an industry position regarding an anticipated proposal by the Interstate Commerce Commission for revising the definition of a flammable liquid by raising the flash point limit. Technical committees are now being consulted on a position MCA should take on behalf of the industry.

The first copies of the second report in the series of MCA/USPHS Joint Chemical Emissions Study concerning nitric acid manufacture are now being distributed.

A meeting of the Task Group on Photoreactivity of Trichloroethylene with the Los Angeles County Air Pollution Control District and representatives of the Stanford Research Institute was held December 19, 1966, in Los Angeles. The control people took sharp issue with the experimental approach proposed by Stanford. As a result, a two-phase program is now being considered: Phase I for the purpose of demonstrating the validity of the Stanford approach (the cost would be limited to a fraction of the total); Phase II would be for the purpose of obtaining the necessary data to complete the project, but would be entered upon only after the successful completion of Phase I.

Workshops will be held on water quality criteria, February 1, and on air pollution control, February 2, in Houston, Texas. These will be in cooperation with the Texas Chemical Council, Houston Chamber of Commerce, and the Texas Manufacturers Association.

A symposium on "The Weatherability of Plastic Materials," co-sponsored by MCA and the National Bureau of Standards, will be held February 8 and 9 in the new National Bureau of Standards complex at Gaithersburg, Maryland. Interested member plastic materials producers are sponsoring a weatherability research project in the Bureau as part of their Industrial Research Associates Program.

Public Relations. A statement on the economic status of the chemical industry in 1966 and a look at the prospects for 1967 was released to the press on December 22, primarily for publications which publish year-end editions.

The statement emphasized that overall growth of the industry in 1966 was good and that new records were set in shipments, production, and capital spending. The outlook for 1967 remains optimistic with a high rate of growth expected. It was pointed out, however, that although overall chemical industry earnings in 1966 were up, based on higher sales, profit margins as a percent of sales did not widen appreciably over the 7.9 percent registered for 1965.

Much of the information released came from government sources or from a recent survey of member company economists. The statement was mailed to the major wire services, trade press, and key daily newspapers across the country.

Exhibit C

REPORT OF
HOWARD K. NASON, MEMBER
THE PRESIDENT'S COMMISSION ON THE PATENT SYSTEM
to the
MCA BOARD OF DIRECTORS
NEW YORK CITY, JANUARY 10, 1967

The American Patent System has performed well its Constitutional mandate "to promote the progress of --- useful arts", and is capable of continuing to provide incentive to research, development and innovation, --- a unique service for which no practical substitute has been discovered.

This unanimous conclusion of the President's Commission is doubly important because of the legitimate questions which have been raised as to the pertinence of the Patent System to today's rapidly changing conditions, and because any serious consideration of modifications to the system would be meaningless in the absence of such a basic conclusion.

President Johnson, upon releasing the text of the Commission's report, stated that "our patent system has been an integral part of America's development --- has increased productivity --- has stimulated economic growth --- has enhanced the standard of living of all our citizens -- has strengthened the competitiveness of our products in world markets". Powerful endorsement of a principle which is as old as our Constitution itself!

My comments this morning will be limited to outlining the main recommendations of the Commission, and to pointing out some details and implications which may not be entirely obvious from a quick reading of the text.

As suggested by the President in his charge to the Commission when he established it, many important changes in the Nation's economic, technological, political and social environments have taken place in the one hundred and thirty years which have gone by since the pattern of our present Patent System was established by the Congress in 1836. The Commission's studies indeed revealed several areas where, in its opinion, the usefulness of the System as a stimulus to creativity and innovation could be enhanced by some changes in principles and procedures without departing from the essential character of a concept which has served our Nation's productive development so long and so well.

After extensive analysis of patent systems, foreign as well as American, and of many comments and proposals made available from numerous sources, the Commission identified the following as principal objectives:

- "1. To raise the quality and reliability of the U.S. patent.
- "2. To shorten the period of pendency of a patent application from filing to final disposition.
- "3. To accelerate public disclosure of technological advances.
- "4. To reduce the expense of obtaining and litigating a patent.
- "5. To make U.S. patent practice more compatible with that of other major countries, wherever consistent with the objectives of the U.S. patent system.
- "6. To prepare the patent system to cope with the continued expansion of technology foreseeable in the decades ahead".

Recognizing that many of the problems related to the attainment of these objectives are interdependent and complexly intertwined, the Commission's recommendations consider the patent system as a whole, and propose revisions by means of a coordinated set of interrelated actions rather than by individual remedial steps. The report contains five charts, which detail the way in which the proposed system would function. This application of linear programming techniques to a complex area of public policy is relatively unique.

At this point I should like to comment parenthetically that the title of this morning's program, "The New Patent Policy", is anticipatory and may appear presumptuous to some. The Commission's proposals are no more than recommendations so far; The President has referred the report for further study to his Science Advisor, to the Attorney General and to the Secretary of Commerce, and their advice will help determine nature and timing of any implementing action. While some of the recommendations can be put into effect immediately through administrative action by the Patent Office (and a few, indeed, already have been so implemented), the adoption of the proposed system, embodying the Commission's principal recommendations would require enabling legislation by the Congress. The existence of the sound background developed during the intensive and exhaustive studies by the McClellan Subcommittee, plus fairly general endorsement of the Commission's plan by bar, trade and professional Associations, lends hope that legislative action could be accomplished during the coming session of the Congress.

It would seem appropriate at this point to outline very briefly the principal features of the system recommended in the report to the President. In general, these are intended to speed up the processes involved in granting a patent, in reducing the cost of obtaining and enforcing a patent, and in strengthening the quality (often referred to as the "presumption of validity") of such patents as are granted. Closer and more detailed interaction between all parties involved in this process -- the applicant, the Patent Office, the

public and the courts -- is an essential feature of the proposed system, and under it much of the "sport" (with accompanying expense) would be taken out of the Patent System by altering those features which encourage the prolongation of a "game" between applicants, attorneys, the Office and the courts.

Improvement in quality and reliability of issued patents is the objective of proposals to introduce the following features into the system:

- a. Inventions to be patentable would have to be novel, useful and unobvious, as at present. However, under the Commission's proposals, prior publication, public use or public disclosure anywhere in the world would constitute prior art. Design patents and patents on living plants are considered incapable of meeting the requirements outlined above, or impractical to examine and enforce under these requirements, and other means than the Patent System are suggested for protecting significant and worthwhile contributions in these areas. A modified form of copyright protection might be appropriate. Computer programs also would be excluded as patentable subjects, and copyright protection might be sought for them.
- b. The burden of persuasion in the prosecution of an application would rest upon the applicant.
- c. Patent Office decision denying a patent claim would be presumed to be correct in judicial reviews of such decisions.
- d. Either the Patent Office or the applicant could appeal to the Court of Appeals for the District of Columbia Circuit for review of decisions from the two courts which now review Patent Office actions.
- e. An effective quality control program would be developed and maintained by the Patent Office (hopefully, its own form of a "Zero Defects" program).
- f. A Statutory Advisory Council would be established, whose members, appointed by and responsible to the Secretary of Commerce, would maintain continuing

surveillance over quality of granted patents (using actions by the courts as one criterion), as well as over other key factors such as pendency.

- g. The provision for citation by the public of prior art pertinent to published applications might add substantially to the quality of the examination, thus reducing the number of issued patents invalidated later because of references which were available but not found during the novelty search. More extensive use of all available methods for information retrieval also would contribute to quality of the search.

Reducing pendency, i.e., the length of time required to process an application to final disposition, would, it is proposed, be favored by the following elements of the Commission's plan:

- a. Early publication of applications would take much of the incentive out of the "game" of keeping applications in the office as long as possible.
- b. The provision that the life of a patent terminate twenty years from the date of the complete application, plus the limited nature of the protection afforded during any interval between publication and issuance, provides additional incentive for processing applications as expeditiously as possible.
- c. Other incentives are provided for expediting the search and for improving its quality.
- d. A provision upon which great difference of opinion exists concerns a deferred examination procedure. Most of the Commission felt that a complete examination system such as we now have in the United States is preferable, provided it can be made to work effectively and efficiently. Recognizing, however, that many factors might be encountered in the future (as they have been in the past) which would result in increased pendency and impaired quality, provision has been made for an optional deferred examination system which could be put into effect quickly if needed and could be discontinued when such need clearly was past. (One of the duties of the Statutory Advisory Council would be to watch this carefully and to recommend adoption of the deferred procedure when and where the need clearly existed). The members of the Commission

could not reach a majority opinion as to whether deferred examination should be adopted immediately in certain areas on a pilot basis or whether it should be left for future application where, when and if the need becomes evident.

- e. Little noticed in most press coverage of the Commission's report, but extremely important to reduction of pendency and improvement of quality, are recommendations relating to Patent Office financing, classification, mechanized information retrieval, and dissemination of information to the public. Dedicated professional personnel with high *esprit de corps* are essential to any patent system, and lacking this no system could function acceptably. Present Patent Office facilities, despite the best efforts of present and past administrations, are hopelessly outmoded and unsuited for current operations, for which they never were designed. First-class new facilities, engineered to accomodate modern equipment, and to facilitate access to such resources, are essential. Not only would quality and pendency benefit, but relative cost also would be reduced. Adoption of the Commission's recommendations on financing would do much to stabilize Patent Office operations and to facilitate the major innovations which increasingly will be required in the future. New quarters for the operation must be provided.
- f. Other provisions which could influence pendency (one way or the other) include issuance to the first to file (thus eliminating interferences), and a technique for preliminary applications which would give the applicant one year to determine whether his invention is truly novel and worthwhile.

Public disclosure of technological advances would be encouraged by the following provisions:

- a. The first-to-file concept would encourage the inventor to file at least a preliminary application just as soon as the nature and scope of his invention was apparent to him. The present right to abandon an application in secrecy would be preserved up to the decision-point for publication. (Other features of the system, however, increase the hazard of a decision to retain a patentable invention as a trade secret).

- b. The provision for preliminary application of simple format substitutes for the present one-year "grace period" in permitting prompt disclosure of science and technology at meetings, in professional and trade publications and the like. Protection against unauthorized disclosure or usurpation of inventions is provided by the voiding of applications based on information derived from others.
- c. Early publication of applications (though hopefully after a first action by the Patent Office) - again with the right to abandon in secrecy -, should speed disclosure of technical information to the public, minimize needless duplication of effort, and promote additional technological advances based on such information.
- d. Creation within the Patent Office of a first-rate facility for information handling, including mechanization of the distribution of documents by subscription or sale, would be a powerful aid to the objective of speeding up the flow of information throughout the world.
- e. Of special interest to the scientific community is the proposal that the format of a patent include an abstract of technical, rather than legal, content, designed for direct incorporation into modern indexing and information handling systems.

Reduction in the cost of obtaining and litigating patents should result from several recommended features:

- a. The preliminary application provision would permit an invention to be protected for one year at little expense while the applicant was deciding whether to file a complete application and thus initiate the full examination. Many applications found lacking in novelty or utility undoubtedly would be abandoned at this stage, thus sparing both applicant and the Office the expense of the complete prosecution.
- b. Some of the same economies are claimed by advocates of a system of optional deferred examination. While an applicant could elect to request examination at any time within five years, there undoubtedly would be many cases where examination never would be requested, thus eliminating the additional costs of full prosecution.

- c. Some economies, especially for large organizations - industrial, institutional or government, would result from the provision that the owner of an invention, as well as the inventor himself, could file the patent application.
- d. Adoption of the first-to-file principle would eliminate most interference proceedings, which not only are frequently very expensive, but also lend themselves to abuses.
- e. Major savings would be realized if the objective of a single international novelty search, acceptable in every country where applications are filed on the same invention, could be attained.
- f. Of course, more desirable still would be an international patent, obtained on a single application and valid in every country adhering to the necessary enabling treaty. Much greater unification in world law, civil as well as patent, would be required before such an ideal could be achieved.
- g. Litigation of an issued patent, which is regarded by many as discriminating against the independent inventor and small entrepreneur because of very high cost and of delays which often are encountered, would be speeded up and made less expensive by several proposals. Offices of "Civil Commissioner" would be created, to supervise and simplify the pretrial phases of patent litigation, reducing the time and expense involved and helping to correct abuses. An expedited adjudication procedure would cut time and expense involved in settling controversies involving limited damage claims. The Patent Office could cancel claims or an entire patent by administrative action, for cause, within three years after issuance. A claim finally held invalid at the highest level of appeal to which the interested parties cared to take it would be treated as cancelled from the patent, and could not be used again in actions in other jurisdictions.

International harmonization would be favored by several of the proposals which have been discussed above, e.g., first-to-file, elimination of the "grace period", etc. Progress already is being made by the Patent Offices of the world in exchanging search data,

and continued efforts in this direction, as well as toward the ultimate goal of an international patent, should be pursued diligently. To put American and foreign inventors on an equipable basis, it would be desirable that the life of a U.S. patent be measured from the date of the "convention" application, rather than from the date of the U.S. application. (Otherwise, the patent filed first abroad could enjoy an advantage of up to one year additional protection). This would require amendment of the international convention ("Treaty of Paris"), and the United States should press for such amendment as part of any integrated effort to adopt the Commission's proposed system. Another proposal directed toward greater international harmony would subject products manufactured abroad by a process patented in the U.S. to liability when imported into this country.

The Commission believes that the measures it has proposed would do much to help prepare the U.S. Patent System to meet the needs of our day and of the years ahead, when technology will continue to play an increasingly important role in economic development.

It would be naive, of course, to expect any system to provide a panacea for all of the problems encountered in such a complex area as we are dealing with here, and the members of the President's Commission would be the first to admit that a great many problems are bound to occur when any changes are made. These will have to be worked out one by one, as in any "debugging" process.

Elimination of the "grace period" and granting of the patent to the first-to-file would require extensive changes in attitudes and procedures among those who are accustomed to present patent practices. In fast-moving areas of technology, where inventions are apt to be made almost simultaneously by several inventors in different localities, the rapid evaluation of the essence of the invention and the prompt filing of at least a preliminary application become critical events, which will require greater attention by both inventor and attorney. The "race to the courthouse" (or, more precisely, to the Post Office) will be a reality, and undoubtedly this will result in the filing of many applications, at least in preliminary form, of dubious value. Since no right of prior user is included in the Commission's proposals, the hazards of relying on trade secrets to protect one's interests are magnified considerably. Also, users of processes, particularly, will need to assure themselves that they have filed on all patentable details of any methods they practice, unless such practice clearly constitutes "prior public knowledge".

Some commentators have remarked that adoption of the first-to-file principle would eliminate the necessity of keeping notebooks.

It is suggested that this would be unwise. Some present complications, such as elaborate procedures for witnessing, could be eliminated, but the need for clear recording of experiments and observations may be even greater than before, to aid in prompt identification of inventive matter. And it may be remarked that the keeping of complete and accurate notes is as old as science itself, long antedating the development of any patent system, and is important for the conduct of the work itself.

Some reviews by the press have reported that the Commission recommends that the life of a patent "be extended to twenty years from the present seventeen". It should be noted that the proposed twenty years from date of application is about the same, on the average, as the present seventeen years from date of issuance, and that in many cases, where pendency in the Office becomes extended, the actual effective life would be shortened.

Since the preliminary application may be quite informal in format and need not include claims, an applicant could profit from the one year period available before he would have to file a complete application by claiming in the latter features which became known to him through the work of others during this year. The Patent Office will of necessity be especially diligent to make sure that no claims are allowed in a complete application which are not clearly encompassed by disclosure in the corresponding preliminary application, and the applicant would be well advised to make certain that his preliminary contains full and unambiguous disclosure of what he considers to be his invention. The filing of lectures, reports or technical papers as preliminary applications would seem to be most unwise.

Potential for a similar trap exists in the case of deferred examination, should this be adopted, as an applicant might be tempted to sit back and await development of a technology, then request examination and attempt during the process to refine his claims to cover areas shown to be important by work of others subsequent to his filing date. Here again, the Patent Office undoubtedly would be alert to this potential for abuse and diligent in preventing it.

The citation of prior art by the public, subsequent to publication of an application, appears to be a fine provision to improve the quality of the validity search and of the issued patent. However, experience in other countries where similar provisions exist, most notably Great Britain, has shown that such public participation seldom occurs, even where knowledge of prior art exists. The potential opponent, fearing that such citation would aid the

applicant to reformulate his claims and thus secure a stronger patent, apparently prefers to remain silent, then attack the patent in the courts with good chance of prevailing. The recommendations of the Commission contain provisions to encourage citation and to discourage deliberate withholding of known references, but whether or not these would be adequate to check the potential abuse would be known only after experience had been gained with a deferred examination procedure.

Other potential areas for trouble will be evident to cognoscenti, but it is believed that these can be controlled by administrative or legislative action.

In summary, the President's Commission proposes retention of the basic framework of our American Patent System, with extensive modifications to structure and facade to insure that it will continue to serve as a powerful incentive to creativity, innovation and economic development.

The most likely next step will be consideration by the Congress of legislation designed to implement these recommendations. Full debate, with participation by every interested sector of the public, can and should be a part of this consideration. The preservation of the systems approach to the subject is important, however, and it is hoped that the coming session of the Congress will take action to authorize constructive modification of this institution which is so important to our technological and economic progress.

Note: Interpretive comments in this paper are those of the author and should not be considered as necessarily reflecting the views of other members of the Commission.