December 17, 1970

Mr. T. W. Hanavan
E. I. duPont de Nemours & Co.
1007 Market Street
Wilmington, Delaware 19898

Dear Taylor:

The attached comments were prepared last night in some haste as I am leaving on holiday today for remainder of year. I am confused by the lack of distinction between "food" and "food additive".

Comments are exclusively my own since there has not been time to consult others.

Since I suspect that this proposed regulation may ultimately have considerable significance, suggest we ask for a time extension for greater study.

Merry Christmas!

Sincerely,

W. A. Knapp

WAK:mm

cc: M. M. Hoover
Manufacturing Chemists Association
1825 Connecticut Ave., N. W.
Washington, D. C. 20009

COMMENTS ON PROPOSED § 121.3 (35FR18623)

The presumed and very legitimate purpose of the present study of the GRAS list is to determine, based on present information and judgment whether items presently on the list should (1) remain GRAS, (2) be subject to a use limitation via a specific regulation or (3) be outlawed as a food additive basis known deleterious effects or inadequate information. It is questioned why this purpose cannot be accomplished without any revision of § 121.3. It would be strange if a present GRAS item should lose all status as a food additive other than as a result of (1) new information which casts substantial doubt as to safety or (2) a greatly revised use pattern such that amount presently consumed as compared to that consumed in 1958 is of a different order of magnitude. It is probably a fact that many items presently on the GRAS list are backed mainly by use experience and not be extensive laboratory investigations, particularly via modern protocols. This lack of studies with laboratory animals should not be a single or over-riding cause for rejection. It would not be unreasonable to place specific limits on use i.e. more specific than "good manufacturing practice".

The following comments are made with respect to specific sections of the proposed regulation.

Subpar (a) - This appears to say that only FDA can conclude that there is no significant risk in the use of a food additive whereas the law permits this conclusion to be made by any expert or group of experts. This point should be vigorously contested.

Subpar (b) - It is to be noted that this sub-paragraph concedes that a GRAS conclusion can be based on good scientific evidence or on reasoned judgment.

Subpar (b)(1)(i) - The writer is unable to decide whether "food" means only natural foods or whether it includes food additives. Most food additives are not of "natural biological origin" and hence substantially none can become GRAS via this route. Also, many foods are not consumed for their nutritive properties vis. tea, coffee, condiments, etc. although they may have some limited nutritive value. Finally, the food (or food additive) must have been consumed at least 20 years before January 1, 1958 or for approx. 33 years as of

this date. Thirty-three years is a very long time and therefore suggest 20 years from date of review for GRAS listing purposes i.e. 20 years from now.

Subpar (b)(1)(ii) - Here again thought appears to be directed toward foods rather than food additives. Does the Food Additives Amendment cover conventional food processing? The writer has been under the impression that food processing was not a concern of the law except where a poisonous or deleterious substance might be added (pesticides), where foods might be adulterated or where good manufacturing practice (sanitation) may be violated. Can FDA direct how foods may be processed (excepting its control over additives and radiation processing)?

Subpar (b)(2)(i) - This sub-paragraph appears to cover same materials (foods and/or food additives) as in (b)(1) except that these foods are modified by processes presumably considered unconventional i.e. processes introduced after January 1, 1958.

Subpar (b)(2)(ii) - Does this mean that a new variety of natural food (a new strain of corn or a new cross-breed of turkey) is considered an additive and must have FDA approval? Paragraphs like this add to my confusion as to whether they are talking about foods or food additives.

Subpar (b)(2)(iii) - Agree that isolates, extracts, etc. of foods should be examined for safety because such extracts may be concentrates of natural food toxins. Even extracts from traditional processes might be suspect unless there is extensive use experience.

Subpar (b)(2)(iv) - Does "identical" mean that the synthetic product must be the same optical isomer as the natural product? Heating, a conventional food-processing technique, will convert some optical isomers to the racemic form. The proposed criteria in this complete regulation do not appear to permit GRAS status for any synthetic material which does not have a natural counterpart.

Subpar (c) - The mention of Food Chemical Codex specifications leads to the impression that the present GRAS list review applies only to direct food additives applications since this compendium, to my knowledge and belief, covers only direct additives. Is this true?

Subpar (d) - Does this mean that if FDA does not confirm GRAS status or promulgate a regulation limiting use of present GRAS substance, that manufacture or user of the substance must petition in the normal fashion i.e. make complete collection of data and if there is not enough data conduct toxicological investigations by all the most modern protocols? This would be a very large order, probably for a very large group of chemicals. This paragraph can well be the means by which FDA throws a very large list of compounds back to industry for further proof of safety. It is also the reason why experts other than those at FDA should be permitted to reach a conclusion of safety based in part on judgment.

Subpar (e) - This sub-paragraph sounds more like a policy statement than a regulation.