



November 20, 2023

Via Electronic and Certified Mail

The Honorable Michael S. Regan
Administrator
Environmental Protection Agency
Office of the Administrator, MC 1101A
1200 Pennsylvania Avenue NW
Washington, DC 20004

Edward Messina
Director
Office of Pesticide Programs
Environmental Protection Agency
One Potomac Yard
2777 South Crystal Drive
Arlington, VA 22202

Re: Citizen Petition to Define “Nutritional Chemicals” under FIFRA

Dear Administrator Regan and Director Messina:

The Humic Products Trade Association (HPTA) is an industry association with strong scientific knowledge concerning humic substances, including Humic Acids (HAs) and Fulvic Acids (FAs), which are derived therefrom. HAs and FAs are used in agriculture to provide positive effects with plant nutrients, such as reducing nutrient runoff and improving nutrient availability to the plant. As a component of soil organic matter, humic substances are heterogeneous macromolecules that occur naturally in soil and water and act as repositories for plant nutrients. Humic substances are appropriately exempted from FIFRA when used as a soil amendment. However, when applied directly to the plant, they no longer qualify for the described exemption due to the method of use. FIFRA clearly exempts nutritional chemicals as intended by Congress, but for many decades, this exemption has not been available for industry use due to a missing definition.

Pursuant to the right to petition the government clause in the First Amendment to the United States Constitution¹ and the Administrative Procedure Act,² HPTA submits the following petition to the

¹ “Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.” U.S. Const. Amend. I. The right to “petition for a redress of grievances [is] among the most precious of the liberties safeguarded by the Bill of Rights.” *United Mine Workers of Am. Dist. 12 v. Ill. State Bar Ass’n*, 389 U.S. 217, 222 (1967). “The very idea of a government, republican in form, implies a right on the part of its citizens . . . to petition for a redress of grievances.” *United States v. Cruikshank*, 92 U.S. 542, 552-553 (1875).

² HPTA and its members are “interested persons” within the meaning of the Administrative Procedure Act (“APA”). See 5 U.S.C. § 553(e) (granting any “interested person the right to petition for the issuance, amendment, or repeal of a rule”); *see also* 5 U.S.C. § 702 & § 551(13) (providing that “agency action” includes “the whole or a part of an agency rule, . . . or the equivalent or denial thereof, or failure to act”); *id.* § 706(1) & (2)(A) (granting a reviewing court the authority to “compel agency action unlawfully withheld or unreasonably delayed” and/or to “hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion”). Should the EPA fail to respond to this petition in a timely manner, HPTA may pursue relief in federal court.

Environmental Protection Agency (“EPA”) to request that a definition be immediately provided of “nutritional chemicals” under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 2(v).

BACKGROUND

FIFRA Section 2(v) grants an exemption for “nutritional chemicals.” Despite the significance of this exemption, the EPA has yet to provide a clear, meaningful definition for the term “nutritional chemicals” in 40 CFR § 152.6(g) or use guidance in the Pesticide Label Review Manual. This lack of clarity has created uncertainty and regulatory challenges for the agricultural industry, hindering its ability to operate efficiently within interstate commerce. The EPA’s failure to define this term has precluded HPTA, its members, and others in the agricultural industry from utilizing this congressionally specified exemption. As a result, many states have implemented inconsistent regulations from state to state restricting or blocking the legal sale of goods to be used as nutritional chemicals, thus thwarting congressional intent. However, under the Supremacy Clause (Article VI, Paragraph 2) of the Constitution, federal law controls and should preclude state regulators from meddling in this area.

OUR PETITION

We respectfully request the Administrator of the EPA to take the following actions:

Define “nutritional chemicals” in 40 CFR § 152.6(g) as follows: “Nutritional chemicals are compounds or mixtures that interact with plant nutrients in a manner which improves nutrient availability or aids the plant in acquiring or utilizing plant nutrients.”

RATIONALE

Our proposed definition aligns with the spirit and intent of FIFRA Section 2(v). It recognizes the essential role of “nutritional chemicals” in modern agriculture, specifically their ability to enhance plant nutrient utilization. This definition will provide much-needed clarity to industry stakeholders and regulatory agencies, facilitating compliance and promoting responsible use of “nutritional chemicals.”

Conclusion

The Humic Products Trade Association, on behalf of its members and the agricultural community, urges the EPA to consider this petition immediately. We believe that a clear and standardized definition of “nutritional chemicals” will promote environmentally sound practices and benefit both the agricultural industry and the environment.

We look forward to working collaboratively with the EPA to ensure the responsible regulation of “nutritional chemicals” under FIFRA. Please contact us if you require any additional information or clarification regarding this petition.

Sincerely,



Russell D. Taylor, MBA

President

Humic Products Trade Association