

ALERT

U.S. Congress Passes 2018 Farm Bill with Significant Provision Relating to Plant Biostimulants

December 14, 2018

On December 11th and 12th, respectively, the Senate and the House of Representatives passed the 2018 Farm Bill conference report. The 2018 Farm Bill is now ready to be signed into law. (See the text of the conference report [here](#).)

Tucked into this massive piece of legislation is a rather short provision on “plant biostimulants.” The plant biostimulants provision requires USDA to prepare a report to the President and Congress within one year with recommendations for future regulatory approaches to biostimulants that will ensure their availability to America’s farmers. While not likely to garner much notice, the plant biostimulants provision could have significant positive impacts on future agricultural productivity in the United States.

Plant biostimulants are chemical inputs that enhance crop yields by physiologically “stimulating” the plant. (Plant biostimulants are different from fertilizers because, rather than simply providing nutrients to plants, they alter the way plants respond to nutrients.) Advances in plant molecular biology are leading to better understanding of the physiological processes that influence and control crop plant productivity. There is substantial interest in developing and marketing plant biostimulant products that take advantage of the increased understanding of the physiology of crop plants. The Farm Bill’s plant biostimulants provision makes it more likely that this can be accomplished.

Practice Areas

Environment & Product Regulation
Food & Drug

A major hurdle to the development and marketing of plant biostimulants is regulatory uncertainty. Due to a quirk in U.S. pesticide law, a substance that alters the physiology of a plant to enhance its “rate of growth or rate of maturation” could be regulated as a pesticide. This could add millions of dollars to the cost of developing such products, and cause significant delays in bringing them to market.

EPA, which regulates pesticides in the U.S., has long stated that it is developing a guidance document for plant biostimulant products to provide clarity on which types or categories of plant biostimulants may or may not be regulated as pesticides. The EPA plant biostimulants guidance document has yet to be released for public comment, and, in its absence, substantial uncertainty remains in the United States as to the regulatory status of plant biostimulants.

The 2018 Farm Bill addresses that uncertainty by tasking USDA with drafting a report to the President and the Congress that provides recommendations as to regulatory and non-regulatory actions that will “ensure the efficient and appropriate review, approval, uniform national labeling, and availability of plant biostimulants products to agricultural producers.” USDA is required to submit this report to the President and the Congress within one year. In drafting this report, USDA is to consult with EPA and “the several States, industry stakeholders, and such other stakeholders” as USDA determines necessary. The consultation requirement provides an excellent opportunity for industry stakeholders to engage substantively in the development of the report.

The provision also defines a plant biostimulant (previously there had been no generally accepted definition of a “plant biostimulant”). Under the 2018 Farm Bill, USDA will consider a plant biostimulant to be “a substance or micro-organism that, when applied to seeds, plants, or the rhizosphere, stimulates natural processes to enhance or benefit nutrient uptake, nutrient efficiency, tolerance to abiotic stress, or crop quality and yield.” USDA may, however, modify this definition, if it determines it appropriate to do so.

Depending on the recommendations crafted by USDA, and whether USDA proposes that legislation is necessary to address and clarify the regulatory status of biopesticides (it is not, and hopefully USDA will not conclude that it is), the 2018 Farm Bill provision could be the first step in a critically needed clarification and re-set of the approach to regulating biostimulants in the United States. It will be incumbent on stakeholders in the agricultural chemicals industry that either are producing or that may produce biostimulants to be involved substantively in the USDA process. By allowing USDA only one year to organize, draft, and complete the plant biostimulants report, Congress has established a very ambitious deadline for the Department. Interested industry stakeholders should take steps immediately to ensure their participation in this process.

Wiley Rein attorney Keith A. Matthews (former Director of EPA’s Biopesticides and Pollution Prevention Division) is particularly well positioned to assist stakeholders with engagement in USDA’s plant biostimulants report process, and in analyzing the nuances of the report once it is drafted and sent to the President and Congress. Should you have any questions on the USDA Plant Biostimulant report, or any other issues concerning biostimulants while the report is being drafted, please contact Keith at Keith A. Matthews (kmatthews@wiley.law).