

**AGRIBUSINESS COUNCIL OF INDIANA NEWSLETTER**

***Promoting Agribusiness Policy in Indiana***

***March 9, 2018***

**Indiana General Assembly Week 9**

It is crunch time at the Statehouse as the legislative session winds down to finish by its Sine Die date of March 14. The deadline for third readings in each chamber has passed, and conference committee meetings are well underway.

The list of all filed bills is available [here](http://iga.in.gov/legislative/2018/bills/). Bills that ACI is closely monitoring this year, the ACI Bill Track, can be found [here](http://www.hannah-in.com/Report_Custom.aspx?sid=CCbVVObRQ3Y%3d&rid=Us5F5CdyJSY%3d).

**The Statehouse - Bills to Review**

This session, the ACI Government Affairs Team has monitored bills impacting ACI members including items related to food safety regulations, certification programs, transportation and environmental issues, rulemaking from the seed board and more. The following bills of interest are still alive and were taken to conference committee:

* [HB 1227](http://iga.in.gov/legislative/2018/bills/house/1227): Noxious Weeds. This bill specifies that waterhemp, marestail, Palmer amaranth, and poison hemlock are noxious weeds for purposes of the weed control board law, which requires the weed control board to take all necessary and proper steps to control noxious weeds affecting agricultural production in Indiana.
* [HB 1267](http://iga.in.gov/legislative/2018/bills/house/1267): Water Infrastructure Task Force. This bill establishes a water infrastructure task force consisting of two Senators, two Representatives, and several individuals appointed by the Governor and sets forth guidelines concerning the task force.
* [HB 1137](http://iga.in.gov/legislative/2018/bills/house/1137): Study of Industrial Hemp. This bill urges the legislative council to assign to an appropriate interim study committee the task of studying the regulation of industrial hemp and industrial hemp products.
* [HB 1015](http://iga.in.gov/legislative/2018/bills/house/1015): Unlawful Indemnity Agreements. This bill provides that the law concerning indemnity agreements in construction of design contracts applies to certain design-build contracts and defines “sole negligence.” It also urges the legislative council to assign to the appropriate study committee the issue of whether a provision in a professional services contract that requires indemnification or defense of a promise for certain liability is against public policy.

Several bills on the ACI Bill Track have been concurred in and have been sent to the Governor’s desk:

* [SB 331](http://iga.in.gov/legislative/2018/bills/senate/331): Implementation of Federal Food Safety Regulations. This bill recognizes the amendments by the FDA Food Safety Modernization Act.
* [HB 1115](http://iga.in.gov/legislative/2018/bills/house/1115): Landowner Immunity for Trail Access. This bill specifies that with respect to the statute that restricts a landowner’s liability for an injury to a person or property caused by an act or failure to act of another person using the landowner’s premises for certain recreational purposes, those purposes include another person going on or through the premises for the purpose of accessing a trail, a greenway, a park, or another similar area used for recreational purposes. This bill was signed by the Governor on March 8.
* [HB 1285](http://iga.in.gov/legislative/2018/bills/house/1285): Nutritional Assistance. This bill urges the legislative council to assign to an appropriate study committee issues related to eligibility verification and monitoring, identity authentication, and work requirements for participation in the federal SNAP and Medicaid program.
* [SB 105](http://iga.in.gov/legislative/2018/bills/senate/105): State Agriculture and Animal Certification Programs. This bill removes responsibilities concerning the Indiana organic peer review panel from the duties of the Indiana state department of agriculture. It also repeals certain statutes concerning the Indiana organic certification accreditation, certification of agricultural products, and livestock certification. This bill was signed by the Governor on March 7.
* [SB 212](http://iga.in.gov/legislative/2018/bills/senate/212): Vehicle Weight Limits. This bill excludes bulk milk from the definition of “overweight divisible load” and provides that the department of transportation may issue an overweight permit for the transportation of bulk milk up to 100,000 pounds.
* [SB 362](http://iga.in.gov/legislative/2018/bills/senate/362): Regulation of Water and Wastewater Systems. This bill provides that a public utility, conservancy district, or regional water or sewage district that is organized as a legal entity after June 30, 2018, to provide water or wastewater service to the public is subject to the jurisdiction of the Indiana utility regulatory commission for 10 years beginning on the day on which it is organized as a legal entity. It also amends laws concerning the wastewater revolving loan program and the drinking water revolving loan program and establishes new requirements for water treatment plans and wastewater treatment plants.
* [SB 375](http://iga.in.gov/legislative/2018/bills/senate/375): Transport Operator. This bill defines “disposable trailer” and requires the bureau of motor vehicles to issue a transport operator license plate to an operation of a tractor-mobile home rig. It also adds disposable trailers to a list of vehicles that are not required to be registered.

**Administrative Rule on State Seed Commissioner**

There will be a public hearing on March 13 at 10:00 am at the Daniels Turf Center regarding a proposed administrative rule on the state seed commissioner regarding noxious weeds. The proposed rule adopts the USDA Federal Noxious Weed List and also repeals perennial peppergrass and Russian Knapwood from the proposed *prohibited* list.

This rule also prescribes the following list of *restricted* noxious weed seeds: bitter wintercress; buckhorn; cocklebur; corncockle; curled dock; dodder; Eastern black nightshare; field peppergrass; giant foxtail; horsenettle; mustard; oxeye daisy; pennycress; and Palmer Amaranth, waterhemp, and any pigweed seed or Amaranth seed. Amaranthus species that are sold as vegetable seed, edible grains for human consumption, or seed for ornamental landscape, however, are excluded from this rule.

Click here for the [Full House Session Calendar](https://protect-us.mimecast.com/s/AvgSCVO0QnilEmGqFGlhuUk?domain=urldefense.proofpoint.com).

Click here for the [Full Senate Session Calendar](https://protect-us.mimecast.com/s/LSivCW6jqohjQZJrh6vPlPh?domain=urldefense.proofpoint.com).

**Washington Report**

**Congressional tax staffs crafting legislative language to resolve Section 199A tax issue**

*By Randy Gordon, NGFA President – March 9, 2018*

Congressional tax staff members this week are drafting legislative language designed to resolve the Section 199A tax issue, with the intent of including it in the fiscal year 2018 omnibus spending bill that Congress is scheduled to consider this month.

It is believed the legislation will be retroactive to Jan. 1, the start of the 2018 tax year.  The omnibus spending package must be passed by Congress by March 23 to avoid a shutdown of federal government activities.

The crafting of specific legislative language, which still is being finalized, comes after more than two months of consultation and intensive analysis with tax experts representing NGFA and the National Council of Farmer Cooperatives.  The effort now is being led by House Ways and Means Committee Chairman Kevin Brady, R-Texas, and Senate Finance Committee Chairman Orrin Hatch, R-Utah, with participation by the Congressional Joint Committee on Taxation.  Several other congressional offices and their staff tax experts also are heavily involved, including those for Sens. John Thune, R-S.D., Pat Roberts, R-Kan., and Chuck Grassley, R-Iowa – each of whom serve on the Senate Finance Committee.  Sens. John Hoeven, R-N.D., Mike Rounds, R-S.D., and others also are engaged.

Following weeks of meetings with NCFC, during which multiple concepts and drafts of potential legislative language were exchanged, the NGFA in mid-February had formed an eight-member working group of tax experts drawn from NGFA Executive Committee firms – half from cooperatives and half from private/independent firms. This NGFA working group has been instrumental in analyzing proposals and advising members of Congress and their staff on an equitable and balanced solution that is designed to achieve the two objectives that have remained consistent throughout the three months of intensive deliberations:

* Replicate to the greatest extent possible the tax benefits accorded to farmer-owned cooperatives and their farmer-patrons under the previous Section 199 of the tax code, as it existed prior to its repeal in the Tax Cuts and Jobs Act enacted on Dec. 23; and
* Restore the competitive landscape of the marketplace as it existed in December 2017 so that the tax code does not provide an incentive for farmers to do business with a company purely because it is organized as a cooperative or private/independent firm.

One challenge in this effort – which has contributed to the length of time it has taken to resolve – has been to restore Section 199 for agricultural and horticultural cooperatives within the construct of the new Section 199A found in the new tax law.  At this writing, an element of the solution has been to reestablish the mechanism under which cooperatives may pass through a tax deduction to their farmer-patrons.  Great care is being taken to fashion the calculation in such a way as to provide tax relief for farmers as envisioned in the tax-reform law, while maintaining the competitive balance in the marketplace as closely as possible in the new structure.  The concept has been analyzed extensively by tax experts representing both NGFA and NCFC, as well as by congressional tax staff.

As it has throughout this process, NGFA will work to keep its members updated on developments – through periodic Member Alerts and Newsletter articles – while still observing and respecting the requests for confidentiality so that progress can be made in arriving at an equitable solution.

**Court Upholds Ag Coalition Injunction in Glyphosate Case**

*Source: Agriculture Retailers Association*

The United States District Court for the Eastern District of California granted an agricultural coalition's petition to preliminary enjoin California's Prop. 65 requirements that companies selling glyphosate issue a warning that the product "is 'known' to cause cancer."

The court granted the preliminary injunction because the warning requirement would be misleading to the ordinary consumer.

The court found that although the International Agency on Cancer Research classified glyphosate as "'probably carcinogenic' to humans based on evidence that it caused cancer in experimental animals and limited evidence it could cause cancer in humans,... virtually all other government agencies and health organizations that have reviewed studies on the chemical had found there was no evidence that it caused cancer."

The labeling requirement of Prop. 65 would be inherently misleading.

"Given the heavy weight of evidence in the record that glyphosate is not in fact known to cause cancer, the required warning is factually inaccurate and controversial," the court concluded.

Because the warning requirement would compel companies to make false and misleading statements it would violate petitioners' First Amendment rights.

The Agricultural Retailers Association joined the National Association of Wheat Growers Association, National Corn Growers Associations, Western Plant Health Association, CropLife America, and a number of other national and state agricultural groups as plaintiffs in bringing the motion to for a preliminary injunction. The State of California will almost certainly appeal the decision to the Ninth Circuit Court of Appeals.

The plaintiff's also asked the court to enjoin California from simply listing glyphosate as a chemical known to cause cancer. However, the court decided the listing of the chemical was not commercial speech-unlike the warning-but instead it was government speech. Therefore, the listing of the chemical did not violate the plaintiff's First Amendment rights as the warning requirements did.

**Ag Coalition Seeks Improved ESA, FIFRA Coordination**

*Source: Agriculture Retailers Association*

A March 2 letter to the U.S. House of Representatives Agricultural Committee asks for clarification of the roles and process for pesticide regulation between the Environmental Protection Agency and the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

The letter, signed by the Agricultural Retailers Association, CropLife America and others, points out the challenges of assessing pesticide risks through multiple federal agencies, regulations and legislation.

"Unfortunately, the process does not work so smoothly with EPA's registration of pesticides," the letter states. "EPA's registration decisions are federal actions that may require EPA to consult with the Services under section 7 of the Endangered Species Act. EPA and the Services have never been able to agree how these consultations should be conducted, resulting in wasteful duplication of complicated study reviews, inefficient use of federal and private resources, and delays getting new, beneficial products to market, with no additional benefit to species and endless litigation."

Confusion around this process and a path forward has been an issue for decades. Legal challenges, delays and faulty analysis has not protected wildlife, and have created confusion on farms. The uncertainty can cause companies to delay or avoid bringing new products to market, depriving growers and all pesticide users the benefits of those products.

The letter recommends more collaboration between EPA and the services that would leverage each agencies' strengths to achieve a more efficient, timely process, enhanced species review, along with greater regulatory certainty for growers, other users and manufacturers.

"As the agency charged by Congress with regulating the human health and environmental safety of pesticides, EPA has decades of issue area expertise with these products and their impacts on the environment, including their potential toxicity and exposure to wildlife," the letter concludes. "That experience should be supplemented with the species expertise of the Services, but its work should be neither ignored nor duplicated." [Read the letter](https://protect-us.mimecast.com/s/EWCaCgJQ2MuqGxj6CVP0an?domain=click.email.aradc.org)...

***Please contact Mark Shublak at*** ***mark.shublak@icemiller.com*** ***or Lesa Dietrick at*** ***lesa.dietrick@icemiller.com*** ***if you have any questions.***