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## LEGAL UPDATE

Legal Services Division



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### ADMINISTRATIVE RULES REVIEW COMMITTEE MEETING — JANUARY 8, 2021

**Purpose.** *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

#### **ENVIRONMENTAL PROTECTION COMMISSION, *Underground Storage Tanks*, 12/16/20 IAB, ARC 5316C, NOTICE.**

**Background.** This rulemaking includes numerous updates to conform state rules on underground storage tanks to 2015 federal regulations by the Environmental Protection Agency (EPA). The federal regulations were last updated in 1988. The rulemaking also includes other technical updates.

**Commentary.** Committee members asked if there would be a formal process for review of alternative testing methods. Ms. Elaine Douskey, speaking on behalf of the commission, explained that there will be a process for such testing, which will be similar to the commission's waiver process.

Mr. John Maynes, speaking on behalf of FUELlowa, explained that he appreciated the commission's work on this rulemaking, which he acknowledged is necessary to maintain federal conformity. He stated that the rulemaking nonetheless threatens rural fuel distribution networks due to onerous new testing requirements from the EPA. He noted that the commission is statutorily prohibited from adopting rules that are more strict than federal requirements, although the state does have the authority to review alternative test methods. He expressed concern regarding a new requirement in the rulemaking that operator training and examinations be conducted by the Department of Natural Resources (DNR) rather than by third-party training providers, as authorized under current rules. He also stated that a new requirement for an 85 percent passing grade on such examinations is not required under federal law. He further explained that the rulemaking contains a new requirement for periodic testing of certain tanks that restricts who can carry out such testing, while the EPA regulations do not. He urged that the rulemaking not impose restrictions which are not included in federal regulations.

Mr. Patrick Rounds, speaking on behalf of Petroleum Marketers Management Insurance Company (PMMIC), explained that work on these rules has been in process since 2015, based on a federal statute enacted in 2005. He explained that PMMIC performs about 80 percent of the regulatory inspections of underground storage tanks in Iowa and performs similar inspections across the country. He expressed opposition to the rulemaking, or other DNR forms and policies, exceeding federal requirements. He noted that DNR currently has a form online that greatly exceeds the requirements of federal law and EPA recommendations. He asked the committee to encourage the commission to work with PMMIC prior to the adoption of the rulemaking. He noted that about 50 of PMMIC's clients who are small owners go out of business each year, and the new EPA requirements would increase that number significantly. He noted that PMMIC pays the costs if an insured underground storage tank leaks, and he is comfortable with less stringent requirements that will not drive as many small owners out of business.

Committee members agreed that the rulemaking should not exceed the requirements of federal law. Members asked how the rulemaking and federal requirements would affect larger owners. Mr. Rounds explained that PMMIC represents both large and small owners, and both will be affected, but larger owners have easier access to financing, while smaller owners in “fringe” areas will have a harder time accessing financing to deal with the costs of replacing tanks. Members expressed concern about additional regulatory burdens on rural Iowa and urged the commission to continue to work with affected stakeholders and the committee on the rulemaking and to continue to study the federal regulations.

**Action.** No action taken.

**INTERIOR DESIGN EXAMINING BOARD, *Retired Status; Reinstatement to Active Status; Waivers; License Renewal; Continuing Education, 12/30/20 IAB, ARC 5360C, NOTICE.***

**Background.** This rulemaking is required by 2020 Iowa Acts, House File 2627, which included various changes relating to professional licensing, and by the rolling five-year comprehensive agency review of administrative rules required pursuant to Iowa Code section 17A.7(2). The comprehensive review is intended to identify and eliminate agency rules that are outdated, redundant, or inconsistent or incompatible with statute, the agency’s own rules, or those of other agencies.

**Commentary.** Committee members asked why the board created a separate license for retired registered interior designers. Ms. Lori SchraderBachar, speaking on behalf of the board, clarified that it is not a new license; it is just a new status for former registered designers who retire. She noted that the “retired” designation is also used by other boards under the Professional Licensing Bureau including architects, engineers and land surveyors, and landscape architects. Members asked if registered designers in retired status are required to complete continuing education (CE) requirements. She stated that a retired registered designer is not required to complete CE requirements as the designer is not allowed to practice as a registered designer under retired status. Members explained that the Iowa Supreme Court Office of Professional Regulation requires Iowa attorneys to apply for an exemption to licensing requirements each year that an attorney seeks to defer their license. Members suggested that the board look at that approach for exemptions to registration requirements for retired registered designers.

Committee members asked if a registered designer in retired status can pay their fees, catch up on CE, and become an active registered designer. Ms. SchraderBachar confirmed that is correct. She also explained that a person does not need to be registered to conduct business as a designer; however, they must be registered to practice as a registered designer. Committee members expressed concern about having a retired designer designation in the rulemaking.

Committee members noted that all requirements from 2020 Iowa Acts, House File 2627, are not contained in the rulemaking. Ms. SchraderBachar stated that the Professional Licensing Bureau has further rulemaking upcoming next month, and it will include more details about an alternative pathway to licensure and criminal convictions.

**Action.** No action taken.

**Next Meeting.** The next committee meeting will be held at the Statehouse on Friday, February 5, 2021, beginning at 9:00 a.m. Meeting room to be determined. Instructions for participation by videoconference can be found at the committee’s Internet site below.

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