

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order or rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety-(90-) day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations**

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission under sections 319.100, 319.105, 319.107, 319.109, 319.111, 319.114, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1133-1134). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

SUMMARY OF COMMENTS: A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13,

2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

COMMENT #1: Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

RESPONSE AND EXPLANATION OF CHANGE: The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the amendment nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal

rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

COMMENT #2: Ms. Eighmey testified and stated in her written comments (PSTIF letter comment #6) that they oppose the requirement for tank systems to be double-walled. Ms. Eighmey also stated that there would be an increased cost, making double-walled tanks a disincentive for system replacement. Furthermore, she indicated that no data has been provided to indicate this requirement will reduce the frequency or severity of leaks. And she also stated that this requirement would be a “de facto ban on steel tanks” for a number of reasons. Her comments also indicate that “we know fiberglass tanks [sic] are being deformed...by devices on vent stacks...” Additional supporting comments were also submitted by Mr. Leone, commenter noted above.

RESPONSE: The requirement for double-walled tanks is a requirement in the federal rule.

In regards to the comment about increased cost for double-walled tanks, the department proposed amendment does not require implementation of this requirement until July 1, 2017. Failure to promulgate these rules will almost certainly lead to revocation of our SPA, which would mean the federal rules would be effective as written, with an implementation date for this specific requirement of April 13, 2016. As such, failure to promulgate this amendment could potentially lead to more sites becoming subject to the requirement, sites with tanks already installed. This requirement will become effective in Missouri- either under this regulation or EPA’s.

In response to Ms. Eighmey’s comments about a double-walled tank requirement being a “de facto ban on steel tanks,” it is key to note that, even though this requirement is not yet effective in Missouri, more double-walled steel tanks are being installed here than single-walled tanks (over twice as many double-walled steel tanks were installed thus far in 2016). It is also relevant to note that only about eleven percent (11%) of tanks installed in the past four (4) years were steel tanks, which demonstrates that, even with the single-walled option in place, steel tanks are not the preferred tank system.

At this time, the department has not been provided with any data that demonstrates or proves that fiberglass tanks are being deformed by vapor recovery equipment. We are aware that a vacuum is being created on all tanks. We have proof that the vacuum affects product levels, in both steel and fiberglass tanks. We understand that fiberglass is a plastic that “moves,” even with simple temperature and pressure changes in and around the tank. But the vacuum in tanks will exist whether the tanks are single-walled or double-walled.

The comment also asserted that no proof has been provided that this requirement will reduce the number or severity of leaks. As this is a federal mandate, and EPA has already promulgated this rule without contestation, this requirement will be effective with or without this proposed amendment. But in response to this specific comment, these double-walled tanks are designed so that a “leak” from a primary tank is contained by the secondary, meaning a release to the environment is prevented. In 2014, an owner/operator found liquid between the two walls of their double-walled tank. Upon removal, a hole was found in the primary wall. The product, though, was contained by the secondary wall, meaning that no release of fuel to the environment was found in association with a corrosion hole in the primary wall. This specific example is not an isolated event; each year, the department addresses leaks from portions of the UST’s primary system that do not result in releases because the leak was contained in the secondary system. Ironically, the department, EPA, and PSTIF regularly track and report on “releases” from UST systems. We do not report on “near releases,” leaks or failures that could have been releases to the environment were it not for the second wall. Furthermore, there is support in the data that proves an increased number of double-walled tanks are in use, but the number of releases from tanks has decreased substantially over the years.

COMMENT #3: Ms. Eighmey provided written comments, suggesting language changes and rearrangement of the proposed amendment. **RESPONSE AND EXPLANATION OF CHANGE:** In the first of these comments, Ms. Eighmey suggests that the title of section (4) is confusing and that some of the language in this rule is unnecessary. This language, including the list of requirements for previously deferred tanks, is a mirror of the format and requirements of the EPA language. Since this is not a substantive change being suggested, but a preferred reading language change, and as the current language reflects EPA’s format, no changes are being made in response to these comments, except as noted in the next paragraph.

One (1) of the comments indicated that a compliance date was missing. That missing date was an accidental omission. The compliance dates are detailed, by rule, in 10 CSR 26-2.013. As such, to ensure the correct compliance dates are reflected in this rule, the language for existing systems will be amended to include the reference to compliance dates. The department has made this change in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #4: Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth commented that a plan is in place to permanently close the UST systems at this airport, but the closure might not be complete by July 1, 2019. He requested alternative language to allow extra time.

RESPONSE AND EXPLANATION OF CHANGE: The language Mr. Landreth provided indicated that the system must be closed by July 1, 2019, or a plan must be in place for closure. This option for “a plan” is unacceptable because it does not require follow-through on that plan or completion of the closure, under the rule language. That being said, the department is willing to build into the amendment an additional six (6) months to grant extra time, making the compliance date for closure December 31, 2019. In addition, please note that the department could potentially use “enforcement” discretion when it comes to meeting this specific deadline. If the plan is actually being enacted, work is being conducted, and it is evident that closure is moving forward, but will simply miss this specific target date by a relatively short time, the department can agree to not take any enforcement action, but continue to work with the facility to ensure continued steps towards compliance. This site has many factors that would facilitate that decision, including the size of the project, the cost of the project, and that this is a new requirement. As this project begins and continues, please keep the department updated on the status of your progress. That being said, the department has made changes in the text of the order of rulemaking to include the extension for compliance. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #5: Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth commented that a definition of “permanent closure” is not found in 10 CSR 26-2.012 (the definitions rule).

RESPONSE AND EXPLANATION OF CHANGE: Permanent closure and what is required at permanent closure are covered in 10 CSR 26-2.060 through 10 CSR 26-2.064. As such, a reference to these closure rules will be incorporated into 10 CSR 26-2.010 to enhance clarity. The department has made changes in the text of the order of rulemaking to include the extension for compliance. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

10 CSR 26-2.010 Applicability

(4) Previously deferred UST systems. Previously deferred airport hydrant fuel distribution systems, tank systems, and field constructed tanks systems must meet one (1) of the following options for compliance:

(A) Option 1. Owners and operators must document that the previously deferred UST is appropriate for continued use by providing proof of compliance with 10 CSR 26-2.020 through 10 CSR 26-2.048, in accordance with the timeframes allowed in 10 CSR 26-2.013; or

(B) Option 2. Permanent closure of the UST system no later than December 31, 2019, in accordance with 10 CSR 26-2.060 through 10 CSR 26-2.064.

REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.

REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.010 Applicability</i>
Type of Rulemaking	<i>Amendment</i>

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> • Convenience Stores/Gas Stations • Garage/Service Centers • Government facilities • Fleet/shipping/trucking facilities • Hospitals, Nursing or Health Care facilities • Communication facilities and structures • Banks • Food storage facilities • Data storage facilities • Other owners/operators of underground storage tank systems 	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> • Missouri Department of Natural Resources 	<p>The Department of Natural Resources staff review compliance documents for these UST facilities</p>	<p>Estimated \$1,621.44 annually additional costs associated with the new federal regulations</p>
<ul style="list-style-type: none"> • Missouri Petroleum Storage Tank Insurance Fund (PSTIF) 	<p>PSTIF also reviews compliance documents for these UST facilities</p>	<p>Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations</p>
	Total annual public cost:	\$215,750.34/year + one-time \$102,000 added cost

III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an existing process, and with the reports for these new requirements expected to be relatively simple

and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

REVISED FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.010 Applicability</i>
Type of Rulemaking	<i>Amendment</i>

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> • Convenience Stores/Gas Stations • Garages/ Service Centers • Government facilities: fuel dispensing, generator fuel storage • Fleet/shipping/trucking facilities • Hospitals, Nursing or Health Care facilities • Communication facilities and structures (e.g. cellular phone companies) • Banks • Food storage facilities • Data storage facilities • Other owners and operators of underground storage tank systems 	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (c.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
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purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission under sections 319.105 and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.011 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1134–1135). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

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In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

COMMENT #1: Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE AND EXPLANATION OF CHANGE: The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject

to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the amendment nor the associated April 2015 fiscal assessment were challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

COMMENT #2: Ms. Eighmey provided written comments, suggesting language changes and/or deletion of the proposed amended rule. Ms. Eighmey's comment indicates that, as previously deferred tanks are not subject to this rule, and as the requirements for the previously deferred USTs are outlined in other rules, this rule is no longer needed.

RESPONSE AND EXPLANATION OF CHANGE: Ms. Eighmey's comments identify a problem with the language in the title of this rule. Upon EPA's changes to the list of USTs previously deferred, they amended their rules to include requirements for previously deferred tanks and a new category of UST systems listed under "Partial Exclusions" in 10 CSR 26-2.010. In following EPA's language and rule changes, the title of this rule should have been amended, just as EPA's corresponding rule title was, to indicate that this rule applies to "partially excluded" UST systems, previously known as deferred. Changing the language should alleviate the confusion the existing title creates. As such, to reflect the changes in EPA's rules and to avoid confusion, the title of this rule will be amended as noted below.

In response to this comment, the department has made the requested changes in the title of the rule in the order of rulemaking. The revised title is reprinted below as it will be published in the *Code of State Regulations*.

10 CSR 26-2.011 Installation Requirements for Partially Excluded Underground Storage Tank Systems

REVISED PUBLIC COST: *The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars*

(\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.

REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.011 Installation requirements for partially excluded UST systems</i>
Type of Rulemaking	<i>Amendment</i>

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> • Convenience Stores/Gas Stations • Garage/Service Centers • Government facilities • Fleet/shipping/trucking facilities • Hospitals, Nursing or Health Care facilities • Communication facilities and structures • Banks • Food storage facilities • Data storage facilities • Other owners/operators of underground storage tank systems 	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>—</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> • Missouri Department of Natural Resources 	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> • Missouri Petroleum Storage Tank Insurance Fund (PSTIF) 	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually - \$102,000 one-time for costs associated with implementing the new federal regulations
	Total annual public cost:	\$215,750.34/year + one-time \$102,000 added cost

III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the UST's prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost

calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

**REVISED FISCAL NOTE
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.011 Installation requirements for partially excluded UST systems</i>
Type of Rulemaking	<i>Amendment</i>

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> • Convenience Stores/Gas Stations • Garages/ Service Centers • Government facilities: fuel dispensing, generator fuel storage • Fleet/shipping/trucking facilities • Hospitals, Nursing or Health Care facilities • Communication facilities and structures (e.g. cellular phone companies) • Banks • Food storage facilities • Data storage facilities • Other owners and operators of underground storage tank systems 	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use.

Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission under sections 319.100, 319.105, 319.107, 319.109, 319.111, 319.114, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.012 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1135-1138). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

SUMMARY OF COMMENTS: A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

COMMENT #1: Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE AND EXPLANATION OF CHANGE: The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to

maintain SPA would result in regulated facilities being subject to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the amendment nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

COMMENT #2: Ms. Eighmey suggested changes to definitions related to the use of "underground" with piping in her written comments (PSTIF comment #1 and 10 CSR 26-2.012 Definitions). A similar comment was submitted by Mr. Greenwalt and Mr. Landreth, commenters noted above. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The definition of "underground storage tank" or UST has not changed since 1989, which is when the Missouri Statutory definition of underground storage tank was written in 319.100(16), RSMo. While many other EPA definitions were included in the Missouri rule by reference, this specific definition was not. Instead the rule referenced the Missouri statute.

The original (circa 1986) federal definition of underground storage tank, as provided in 40 CFR 280.12, "means any one or combination of tanks (including *underground* pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground." (Emphasis added)

The original (established 1989) Missouri statutory definition of underground storage tank is "any one or combination of tanks, including pipes connected thereto, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground."

There is one (1) word different between the two (2) definitions- the word in question discussed in Ms. Eighmey's comments. As state statute supersedes state rule, and as the statutory definition was incorporated by reference into the state rule, it is clear that the definition included in this draft is, in fact, the same definition provided in 319.100 of the Revised Statutes of Missouri. In this respect we

agree with Ms. Eighmey's comments: the definition has not changed in twenty-seven (27) years. The definition has remained the same since written into statute in 1989.

Since the definition is not actually changing, Missouri's implementation is not changing. To clarify this, though, please note the following:

The department already regulates aboveground piping associated with UST systems; the PSTIF has required compliance monitoring and/or documentation for some aboveground piping. For example, if an underground tank has pressurized piping that is aboveground, so long as ten percent (10%) or more of the entire system is belowground, the department requires gross monitoring of the line. Both DNR and PSTIF regularly exempt these types of piping from being equipped with line leak detector, but specifically provide a waiver indicating that aboveground pressurized piping that is easily visible while operating could meet this requirement with simple visual detection (meaning that a person in the area would immediately notice a three (3.0) gallon per hour leak, as required by the piping release detection regulation).

DNR and the Missouri Department of Agriculture have an *informal* understanding that, as the Missouri Department of Agriculture inspects dispenser areas two (2) times and as the fire code, which they enforce, provides extensive and thorough requirements in the dispenser area, DNR does not typically conduct extensive inspections in the dispenser cabinet, above the shear valve.

That being said, though, the department regularly responds to releases from equipment above the shear valve in the dispenser area; PSTIF has claims for releases from equipment in the dispenser area. In Federal Fiscal Year 2016 alone, the department reported five (5) new releases from the dispenser areas. The PSTIF has corresponding claims associated with these five (5) releases.

As repeatedly stated herein, the department does not believe there to be any change in the definition for regulated underground storage tanks. It was previously found only in the statute, but incorporated by reference into the regulation. At this time, the proposed change is simply including the actual statutory language in the rule, so that the definitions may be found in one (1) location. We are not changing the definition, how it is interpreted, or how the department will implement the rule from current practices. A fiscal assessment is not required. This is not a change in definition, merely a change in location for clarity, at the request of the regulated community.

However, a typo was noted in the draft rule language, as it did not exactly match the statutory language. The typo is corrected with the change in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

Ms. Eighmey did note concerns with the definition of dispenser. We can understand that confusion in the language. To ensure that the new definition of dispenser is clear, though, the department has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #3: Ms. Eighmey suggested changes to definitions related to the use of "underground" with piping in her written comments (PSTIF comments 10 CSR 26-2.012 Definitions). These comments are associated with Comment #2 above, and include the definition or ancillary equipment, connected piping, petroleum storage tank and tank system. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: Please see the response to comment #2 above. For the reasons noted above, the definition of underground storage tank is not changing. The definitions "ancillary equipment," "connected piping", and "UST system or tank system" are deleted as they are unnecessary and potentially redundant when the definition of underground storage tank is in statute and rule and cover an underground tank and all piping connected, including dispenser piping, remote fill lines, and other parts of the piping, such as filters, pumps and fit-

tings. Since the department is not changing the definition or implementing it differently than it has in the past, a fiscal assessment is not required.

COMMENT #4: Ms. Eighmey suggested deleting "belowground release," "underground release," and "overflow release" as they are confusing and not used. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: These definitions are EPA definitions. Considering the confusion over the definition of "underground storage tank" as noted in comment #2 above, maintaining these terms, if not directly used in regulations, does appear to be helpful in general conversation and in the application of the suspected release and release response regulations. The term "release" is regularly referred to in the regulations. The different types of "releases" being defined in this rule would appear to be beneficial. Furthermore, as they are EPA definitions which have always been incorporated by reference, this is not a change. Changing the federal language could potentially require new EPA review. As such, no change is proposed in response to this comment.

COMMENT #5: In Ms. Eighmey's written comments, she opposed the definition of "corrosion expert." Specifically, she indicated that a corrosion expert should not require the specialized cathodic protection system training and certification that a simple tester would. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: While this definition seems independent of the definition of cathodic protection tester, a definition supported by Ms. Eighmey that does require appropriate training and certification by the industry experts on UST cathodic protection systems, it is actually not as independent a definition as it appears. The current use of corrosion experts is to provide re-certification of a previously upgraded, cathodically protected tank. It is important to note that these tanks had to meet the upgrade standard no later than 1998. New, cathodically protected tanks have not been installed in many years, but, per the manufacturer, require the same training and certifications to install. So the use of a corrosion expert is limited, and, as it applies to today's UST systems, is used where the corrosion expert is also in a position that s/he must test the system upon completion. If an existing system is repaired or a new system is installed, a passing test is required. Per regulations, and the current definition of tester, that tester must meet certain certification requirements. If these definitions are not consistent, and consistent with the rules under which they are currently, actually applied, then someone without the required training could advertise themselves as experts and then not actually be able to complete the final step of any assessment—the test itself showing the installation or repair is valid. It seems counterintuitive, and was not the intention of the initial certification and training requirement, to confuse or otherwise mislead an owner or operator as he is selecting his corrosion expert. In short, under the currently proposed regulations, the department envisions no situation under which a corrosion expert must not also be a tester, required to meet the training and certification requirements Ms. Eighmey supported in her comments. As such, no change is proposed in response to this comment.

COMMENT #6: Ms. Eighmey suggested deleting the "leak-tight" term from the definition of a containment sump. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: First, this is an EPA definition. Second, Ms. Eighmey indicated that the rules state how these containment sumps must be tested and maintained to be "leak-tight." She further stated, though, that it is an operating condition, not a definition. As such, the language should be changed to "designed to be leak-tight." A containment sump is a system or basin that is designed to catch a leak. If it

is not “leak-tight,” it isn’t serving its function or meeting the requirements of a “containment sump.” In other words, if it is not containing the leak, it is not a containment sump. This is not simply an operating condition. It is part of the definition. Furthermore, the regulations require containment sumps, which by their nature must contain a leak, in certain circumstances as defined in the rules. We feel this definition is appropriate and matches the new federal definition in this area. As such, no change is proposed in response to this comment.

COMMENT #7: Ms. Eighmey suggested incorporating a definition for double-walled tank. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: This comment points out an omission in the rules, specifically a key term in the new regulations. In conjunction with tank manufacturers and tank construction standards, a definition of double-walled tank was added.

The department has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #8: Ms. Eighmey suggested deleting “the field or” from the definition of field-constructed tank. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: While we understand the root of this comment, and agree that EPA’s use of the term “field” in the definition of “field-constructed tank” may not be the best definition, removal of the term field could have potential ramifications. A non-field constructed tank is typically a tank that has a manufacturer, a manufacturing process, a factory, and/or related industry standards. A field-constructed tank is or was a tank that often did not meet such rigorous requirements. They were typically concrete-poured or steel plates sealed and erected to create a large tank. The difference is the construction method, not strictly the location. So if the concrete was poured into forms on the adjacent property and then fitted into the ground at its final location, it would still be considered “field-constructed,” even though it was actually completely made at the location where it will be used to store a regulated substance. Removing these words, then, could limit the intended application of the definition. As such, no change is proposed in response to this comment.

COMMENT #9: Ms. Eighmey indicated that it was unclear whether a UST containing a mixture or petroleum and a hazardous substance is a “petroleum storage tank” or a hazardous substance UST system. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: While we also understand this comment, this ambiguity has been in place since the statutory definition was created. The flexibility, though, allows the department to treat a gasoline tank that contains an additive that may be a hazardous substance as a gasoline tank. Alternatively, there may be hazardous substance tanks that may contain a small amount of diesel, gasoline or other petroleum product, but are used and handled as hazardous substances. The determination typically considers the amount of each substance and the product’s final use. As such, no change is proposed in response to this comment.

COMMENT #10: Ms. Eighmey suggested deleting some terms from the definition that she indicated are not used in the rule, specifically “liquid trap,” “noncommercial purposes,” and “underground area.” A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: These terms are EPA definitions. They are not currently used in the rule, but they are currently used in the statutory definitions found in 319.100, RSMo. These definitions provide clarity, but no changes, to the statutory definitions. As such, no change is proposed in response to this comment.

COMMENT #11: Ms. Eighmey commented that the definition of “out-of-service” and “out-of-use” were in bold in the *Missouri Register* but did not note any changes to the definition. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: This paragraph is in bold simply because it was moved-deleted from one area and moved to the next, because the definitions are numbered but must remain in alphabetical order. This was formally definition 2 under “O” but is now definition 4. Other than numbering, no changes were made to the content or language in the definition. As such, no change is proposed in response to this comment.

COMMENT #12: Ms. Eighmey suggested alternative language on the definition of “owner.” A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: As the language Ms. Eighmey suggests does not change the meaning of the definition and is more consistent with the statutory definition, the suggested language will be used.

The department has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #13: Ms. Eighmey suggested changes to language in the definition of “petroleum storage tank.” A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The definition of “petroleum storage tank” was originally changed at the suggestion of Ms. Eighmey, specifically to tie the definition only to the rules in this chapter. At the time the suggestion was made, Ms. Eighmey was concerned that using the full statutory definition could potentially tie aboveground storage tanks into this chapter, which was not the intent. Based on the suggestions within Ms. Eighmey’s current, written comments, the department will amend the language, although not exactly as suggested, because those suggestions change the definitions and may bring hazardous substance tanks into regulations that had not previously applied.

The department has made changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #14: Ms. Eighmey commented on the definition and need for the term “replaced,” specifically as it pertains to the tank portion of the system. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: While we agree and we, too, consider a new tank simply a new tank, regardless of whether they had been one previously located in the same pit, site, or location, EPA clearly defined this term to avoid ambiguity and a potential loophole to occur. As such, no change is proposed in response to this comment.

COMMENT #15: Ms. Eighmey suggested changes to language in the definition of “upgrade.” The suggestion specifically included the word “or” in the list of equipment included in “upgrade.” A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: Ms. Eighmey’s comment is appreciated as the word “or” was not intentionally omitted. The department has made changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #16: Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth provided a

comment suggesting a definition of “abandonment” be added.

RESPONSE: Mr. Landreth’s definition of abandonment really appears to be a “waiver” from filling the piping portion of the UST system with an inert solid material to be considered permanently closed. He adds this term and appears to use it to ensure that a piping run, permanently closed in place under 10 CSR 26-2.060 through 10 CSR 26-2.064, is “closed” and does not require further closure activities if it is not filled with an inert solid material, but is left in place. The *Missouri Risk-Based Corrective Action Process for Petroleum Storage Tanks Guidance Document* provides Missouri’s written interpretation that a piping can be considered permanently closed if the ends of the piping are “sealed with cement or concrete grout,” rendering them unusable. If the piping is closed in this manner after being emptied of all fuel, and as long as all applicable closure standards and subsequent investigations and required remediation activities occur, this piping would be considered permanently closed. As such, this definition would be unnecessary. And as the term “is abandoned” is used to mean something completely unrelated in the UST community, this definition would appear to be confusing. As such, no change is proposed in response to this comment.

COMMENT #17: Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth provided a comment concerning the definition of “double-walled piping” indicating that airport hydrant system pipelines are not amenable to being double-walled.

RESPONSE: Mr. Landreth’s comment pertains to a definition. This definition does not require action and does not require existing airport hydrant systems to change piping. As such, no change is proposed in response to this comment.

COMMENT #18: Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth commented that a definition of “permanent closure” is not found in 10 CSR 26-2.012 (the definitions rule).

RESPONSE AND EXPLANATION OF CHANGE: Permanent closure and what is required at permanent closure are covered in 10 CSR 26-2.060 through 10 CSR 26-2.064. As such, a reference to these closure rules will be incorporated into 10 CSR 26-2.010 to enhance clarity. The department has made changes in the text of the order of rulemaking for 10 CSR 26-2.010 in response to this comment. No change is made in the text of 10 CSR 26-2.012(1)(D) in response to this comment.

10 CSR 26-2.012 Definitions

(1) Many definitions relevant to this rule are set forth in the underground storage tank (UST) law in section 319.100, RSMo.

(A) Definitions beginning with the letter A.

1. “Aboveground release” means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

2. “Airport hydrant fuel distribution system” (also called airport hydrant system) means a UST system which fuels aircraft and operates under high pressure that typically terminates into one (1) or more hydrants (fill stands). The airport hydrant system begins where fuel enters one (1) or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

3. “Annual” means recurring, done, or performed every three hundred sixty-five (365) days.

4. “Annually” means at least once every three hundred sixty-five (365) days.

(C) Definitions beginning with the letter C.

1. “Cathodic protection” is a technique to prevent corrosion of

a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

2. “Cathodic protection tester” means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must be certified by NACE International, the Steel Tank Institute, or the International Code Council.

3. “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

4. “Compatible” means the ability of two (2) or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

5. “Consumptive use” with respect to heating oil means consumed on the premises for heating purposes, typically in the operation of heating equipment, boilers, and furnaces.

6. “Containment sump” means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area.

7. “Corrosion expert” means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified by NACE International as a CP Technologist, CP Specialist, Senior Corrosion Technologist, or for sti-P3 tanks, a Steel Tank Institute certified Cathodic Protection Inspector.

(D) Definitions beginning with the letter D.

1. “*De minimus*” means—

A. Any volume of regulated substance(s) contained in a tank with a capacity of less than one hundred ten (110) gallons; or

B. A very low concentration of regulated substances; or

C. Any volume of regulated substance(s) contained in an emergency backup tank that holds regulated substances for only a short period of time and is expeditiously emptied after use. (Comment: *De minimus* tanks include: swimming pools, permitted wastewater treatment facilities, and chlorinated, potable water storage tanks. An oil-water separator is not a *de minimus* system unless the tank has a less than one hundred ten (110) gallon capacity.)

2. “Department,” unless otherwise stated, means the Missouri Department of Natural Resources.

3. “Dielectric material” means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

4. “Dispenser” means equipment located above the surface of the ground that dispenses regulated substances from the UST system.

5. “Dispenser system” means the dispenser and the equipment necessary to connect the dispenser to the underground portions of the piping system.

6. “Double-walled piping” is a pipe within a pipe, where the outer wall and inner walls are separated, the inner pipe is completely contained within the outer pipe, except for any single wall fittings or ends, which must be open to a leak-tight containment sump, and the space between the two (2) pipes can be used to monitor the integrity of both the inner and outer pipes.

7. “Double-walled tank” means a tank within a tank, where the inner tank is contained within the outer tank to a minimum of ninety-five percent (95%) containment, and the outer wall and inner walls have an interstitial space capable of being monitored for a leak from either tank.

(O) Definitions beginning with the letter O.

1. "On the premises where stored," with respect to heating oil, means UST systems located on the same property where the stored heating oil is used.

2. "Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under 10 CSR 26-2.060-10 CSR 26-2.064.

3. "Operator" means any person in control of, or having responsibility for, the daily operation of a tank.

4. The terms "out-of-service" and "out-of-use" are equivalent and mean that the tank system has been emptied so that no more than one inch (1") of regulated substance or residue or three-tenths percent (0.3%) by weight of the total capacity of the UST system remains.

5. "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in the discharge of the regulated substance to the environment.

6. "Owner" means any person who owned an underground storage tank immediately before the discontinuation of its use if not in use on August 28, 1989, or any person who owns an underground storage tank in use on August 28, 1989, excluding persons who hold indicia of ownership primarily to protect a security interest or lienholders exempted under section 319.100(9), RSMo.

(P) Definitions beginning with the letter P.

1. "Person" means any individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, the state and its political subdivisions, or any interstate body. "Person" also includes any consortium, joint venture, commercial entity, and the government of the United States.

2. "Petroleum" means gasoline, kerosene, diesel, lubricants, and fuel oil. This definition includes motor fuels, aviation gas, jet fuels, distillate fuel oils, residual fuel oils, and petroleum solvents.

3. "Petroleum storage tank," as it pertains to the authority in this chapter, means an underground storage tank system used to contain an accumulation of petroleum.

4. "Pipe or piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

5. "Pipeline facilities" (including gathering lines) are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

(U) Definitions beginning with the letter U.

1. "Under-dispenser containment" or "UDC" means a containment sump underneath a dispenser system designed to prevent dispenser system leaks from reaching soil or groundwater.

2. "Underground area" means an underground room, such as a basement, cellar, shaft, or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

3. "Underground release" means any belowground release.

4. "Underground storage tank" is defined in section 319.100, RSMo and means any one (1) or combination of tanks, including pipes connected thereto, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground, except as exempted in section 319.100(16), RSMo.

5. "Upgrade," means the addition or retrofit of some systems, such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of regulated substance.

ally plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.

REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.

REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annu-

REVISED FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.012 Definitions</i>
Type of Rulemaking	<i>Amendment</i>

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> • Convenience Stores/Gas Stations • Garage/Service Centers • Government facilities • Fleet/shipping/trucking facilities • Hospitals, Nursing or Health Care facilities • Communication facilities and structures • Banks • Food storage facilities • Data storage facilities • Other owners/operators of underground storage tank systems 	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned \$195,624 annually</p>
<ul style="list-style-type: none"> ▪ Missouri Department of Natural Resources 	<p>The Department of Natural Resources staff review compliance documents for these UST facilities</p>	<p>Estimated \$1,621.44 annually additional costs associated with the new federal regulations</p>
<ul style="list-style-type: none"> • Missouri Petroleum Storage Tank Insurance Fund (PSIIF) 	<p>PSIIF also reviews compliance documents for these UST facilities</p>	<p>Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations</p>
Total annual public cost:		<p>\$215,750.34/year + one-time \$102,000 added cost</p>

III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost

calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

REVISED FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.012 Definitions</i>
Type of Rulemaking	<i>Amendment</i>

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> • Convenience Stores/Gas Stations • Garages/ Service Centers • Government facilities: fuel dispensing, generator fuel storage • Fleet/shipping/trucking facilities • Hospitals, Nursing or Health Care facilities • Communication facilities and structures (e.g. cellular phone companies) • Banks • Food storage facilities • Data storage facilities • Other owners and operators of underground storage tank systems 	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use.

Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.