

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, 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). 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 and Mr. Greenwalt, commenters 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 rule 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 rule 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 11% of tanks installed in the past 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 rule. 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 rule.

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 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 rule an additional six (6) months to grant extra time, making the compliance date for closure December 31, 2016. 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 change 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 change 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.

(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 [~~July 1, 2019~~]**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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
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 (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.

**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 style="text-align: center;">—</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>
	<p>Total annual public cost:</p>	<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.

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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 rules, 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 rule 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 \$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: 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.

RESPONSE AND EXPLANATION OF CHANGE: 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 UST 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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
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.

**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 style="text-align: center;">—</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>
	<p>Total annual public cost:</p>	<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.

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, 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). 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 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). 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 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 10% or more beneath the surface of the ground.”

There is one word different between the two 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 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:

- 1) 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 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 3.0 gallon per hour leak, as required by the piping release detection regulation).
- 2) DNR and the Missouri Department of Agriculture have an *informal* understanding that, as the Missouri Department of Agriculture inspects dispenser areas two 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 new releases from the dispenser areas. The PSTIF has corresponding claims associated with these five 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 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 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 comments associated with this change will not result in changes to the other, related definitions. We are not changing the definitions, how they are interpreted, or how the department will implement the rules from current practices. A fiscal assessment is not required.

COMMENT #4: Ms. Eighmey suggested deleting “belowground release,” “underground release,” “overflow release,” and “underground 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: Both of 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 term key 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 change 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.

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

(D) Definitions beginning with the letter D.

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**.

7. **“Double-walled tank” means a tank within a tank, where the inner tank is contained within the outer tank to a minimum of 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.

6. “Owner” means any person who owned an underground storage tank immediately before the discontinuation of its use if not in used 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.

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.

U) Definitions beginning with the letter U.

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 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.

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
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.

**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 <u>all</u> of the new, federal regulations</p> <p style="text-align: center;">—</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 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.

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; 319.103; 319.105; 319.107; 319.109; 319.111; 319.114; 319.117; 319.120; 319.123; and 319.137 RSMo, the commission hereby adopts a rule as follows:

10 CSR 26-2.013 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1138). No changes were made to the text of this rule, but 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 new rule 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be

more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test". Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overflow device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged or leaking spill basins are typically one of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues, that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at 83 sites, approximately 10% of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overflow devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not 'containing' the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release

finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: 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 and Mr. Greenwalt, commenters 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 rule 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 rule 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 11% of tanks installed in the past 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 rule. 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 #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 a special exclusion should be created in 10 CSR 26-2.013(2)(B) for airport hydrant fuel distribution systems.

RESPONSE AND EXPLANATION OF CHANGE: The rule that Mr. Landreth provided comments on is a rule specifically designed for airport hydrant fuel distribution systems and field-constructed tank systems. This language, which is from the new federal UST rules, was specifically designed for and applies to airport hydrant fuel distribution systems. The department cannot create language less stringent than the federal requirements in this area. That being said, the department is willing to build into 10 CSR 26-2.010 an additional six (6) months to grant extra time, making the compliance date for closure December 31, 2016. The department has made change in the text of the Order of Rulemaking for 10 CSR 26-2.010 and no change is proposed in *this* rule in response to this comment.

COMMENT #6: 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 a special exclusion should be created in 10 CSR 26-2.013(5) for airport hydrant fuel distribution systems.

RESPONSE: The rule that Mr. Landreth provided comments on is a rule specifically designed for airport hydrant fuel distribution systems and field-constructed tank systems. This language, which is from the new federal UST rules, specifically mentions airport hydrant pits and airport hydrant piping vaults. As such, it is clear that these federal requirements were designed for and apply to airport hydrant fuel distribution systems. The department cannot create language less stringent than the federal requirements in this area. As such, no change is proposed in response to this comment.

COMMENT #7: 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 on 10 CSR 26-2.013 (applicability of closure requirements to previously closed tanks) that the closure requirements in 10 CSR 26-2.060 through 10 CSR 26-2.064 cannot be met at an airport without significant disruption.

RESPONSE: The department is unclear about which specific part of the closure rules Mr. Landreth is including in his statement. He provided another comment on another rule that indicated they would like the option to not completely fill in place all piping that is being permanently closed. His comment seemed to be requesting confirmation 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 cleaned, and as long as all applicable closure standards and subsequent investigations and required remediation activities occur, this piping would be considered permanently closed. If this comment on applicability of closure requirements to previously closed tanks is in reference to this issue, the current practices and documents in place in Missouri appear to address this issue. As such, no change is proposed in response to this comment.

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.013 UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems</i>
Type of Rulemaking	<i>New Rule</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>

II. 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.

III. 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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.013 UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems</i>
Type of Rulemaking	<i>New Rule</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 style="text-align: center;">—</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.

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 RSMo, the commission hereby amends a rule as follows:

10 CSR 26-2.019 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 1139). 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test". Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overflow device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged or leaking spill basins are typically one of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues, that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at 83 sites, approximately 10% of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overflow devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not 'containing' the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: 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 and Mr. Greenwalt, commenters 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 rule 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 rule 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 11% of tanks installed in the past 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 rule. 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 #5: In her verbal testimony and written comments, Ms. Eighmey opposed the proposed, state-specific proposal that would require installers to provide notification prior to installing new piping systems. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: Ms. Eighmey noted that this is not required under the new federal regulations, which is correct. With the new federal regulations, though, the requirements that apply to these new or replaced piping systems are more stringent. If the department is present during the installation, we can address any concerns or necessary changes prior to the piping system being buried and covered. If an installer fails to provide notification, the Department could potentially require changes that would necessitate removal of concrete, shutting down an operating site, and/or more work to the piping, all of which would have been much easier had they been noted at installation rather than after completion. That being said, most installers, owners, and operators already realize the benefit of the installation inspection and provide a courtesy notification. While the department notes the potential problems with not providing notification, we are willing to allow installers and their clients to make that choice, so long as they understand the risks associated with not providing the courtesy notification. Fixing a problem after completion of installation is typically more costly and more complicated.

With that information on record, 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. The fiscal note has been amended.

(1) Any installer who intends to install an underground storage tank (UST) ~~or piping associated with a UST~~ *[or piping associated with a UST]* system for storage of a regulated substance must, at least fourteen (14) days before installing the tank ~~or before piping replacement~~ *[or before piping replacement]*, notify the department by approved form transmitted via email of intent to install a UST, except that this fourteen (14) day notice requirement may be waived by the department when a release is suspected or in other similarly urgent circumstances. The notification must provide the tank owner's name, installer name, the name and location of the facility where the UST ~~or piping~~ *[or piping]* will be installed, the date that the installation is expected to commence, the date that the tank is expected to be brought in use, UST system information, including tank material, size, manufacturer, piping material, piping type, and manufacturer, release detection equipment, and spill and overfill equipment. The installation notice is valid for one hundred eighty (180) days from receipt by the department and only for the UST system(s) listed on the notice. If installation does not commence within one hundred eighty (180) days of the date on which the department received the notice, a new installation notice must be submitted prior to commencing installation activities.

REVISED PUBLIC COST: In response to comments received, the department withdrew the proposed language requiring notification of piping replacement or installation. As such, the fiscal note was revised to remove the costs associated with this state-specific amendment; the

cost for the public sector to comply with the proposed state-specific requirements is \$600 annually for this rule. Additionally, 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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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: In response to comments received, the department withdrew the proposed language requiring notification of piping replacement or installation. As such, the fiscal note was revised to remove the costs associated with this state-specific amendment. As such, the fiscal note was revised to remove the costs associated with this state-specific amendment; the cost for the private sector to comply with the proposed state-specific requirements is \$29,400 annually for this rule. Additionally, 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.019 New Installation Requirements</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>Anticipate less than 15 tanks each year that will need to be tied down that would not have otherwise been tied down</p> <p style="text-align: center;"><i>Specific for this rule</i></p>	<p>\$2,000 per tank for a total of \$30,000 annually</p> <p style="text-align: center;">—</p> <p>Combined annual rule total less than \$30,000 x 98% privately owned = \$29,400 annually</p>
	<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 style="text-align: center;"><i>Covers 25 rules</i></p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <p style="text-align: center;">—</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>
TOTAL ANNUAL COST:		\$2,279,076 annually

III. WORKSHEET

See calculations in Section IV below for the rule-specific changes, specifically the cost to tie-down underground storage tanks (UST) at installation.

Additionally, 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

The department is withdrawing the proposal to require installation notifications for piping installations. The rest of the proposed amendments to this rule remain unchanged.

A proposed change is to require new marinas to comply with the Petroleum Equipment Institute's Recommended Practice 1000-2009, Recommended Practices for the Installation of Marina Fueling Systems. These tanks are in environmentally sensitive areas, where a leak would impact water ecosystems almost immediately. In addition, these systems are uniquely

configured, with the tanks typically above the dispensers, which could allow the tank to be siphoned by the dispensers. These configurations can lead to significant leaks in environmentally sensitive areas. The department has been recommending the use of this guidance document since its publication in 2009. The Missouri Department of Agriculture has been requiring compliance with almost all, if not all of its significant pieces as well. The department is not aware of any marina UST installations that have not complied with this guidance document in the last four years. As such, we do not believe that compliance with this proposed change has a new cost associated with it, but do believe it will ensure clear requirements and environmental protection in the future.

The department is also adding an option for post-installation tightness testing. Currently the regulations only provide one option for testing the tank after installation, a tank tightness test. The proposed regulation will add a second option, testing the tank using the automatic tank gauge with the tank 95% full. As this is a new, second option, it does not add a cost, but instead lowers the cost by creating a new, potentially less costly option for compliance.

The final proposed change in this regulation is to require all new tanks be tied down. In the last three years, we have typically seen less than 10% of the tanks that are not tied down at install. With an average of 155 new tanks installed each year, that means that typically 15 tanks are not tied down. These tanks can float, leak product, cause damage to the site, hinder property sales, cause safety issues, and be a general nuisance. Based on information from installation contractors, the cost of a contractor- manufactured tie-down system is approximately \$2,000. Please note, though, that the costs to address tanks that float are much higher than \$2,000 per tank. They must be removed and leaks addressed. In addition, a tank that has floated can pose a significant safety hazard: it juts out of the ground; they can be difficult to see; they may cause vehicular damage; there are often open holes associated with them.

Of the 386 tanks installed since January 1, 2014, 9 of them (or approximately 2%) were publically/government owned. The remaining 98% were privately owned. For the purposes of this fiscal note, we will use these percentages for the calculations of public and private shares of the costs to the underground storage tank owners for only the state proposed changes within this installation rule. Please note, the percentage of active sites privately and publically owned is different.

The following assumptions were used in calculating the cost of implementing all of the federal rule package requirements, which includes 25 amended and added rules in this state rule package:

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.

REVISED FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.019 New Installation Requirements</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>Anticipate less than 15 tanks each year that will need to be tied down that would not have otherwise been tied down</p> <p style="text-align: center;"><i>Specific for this rule</i></p>	<p>\$2,000 per tank for a total of \$30,000 annually</p> <p style="text-align: center;">—</p> <p>Combined annual rule total less than \$30,000 x 2% privately owned = \$600 annually</p>
	<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 style="text-align: center;"><i>Covers 25 rules</i></p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p style="text-align: center;">—</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 style="text-align: center;"><i>Covers 25 rules</i></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 	<p>PSTIF also reviews compliance documents for</p>	<p>Estimated \$18,504.90 annually</p>

Fund (PSTIF)	these UST facilities <i>Covers 25 rules</i>	+ \$102,000 one-time for costs associated with implementing the new federal regulations
	Total annual public cost:	\$216,350.34 annually + \$102,000 one-time cost

III. WORKSHEET

For the calculations on the cost of the state proposed changes in this rule, specifically the requirement to tie-down new UST systems at installation, please see the calculations below in Section IV.

Additionally, 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

The department is withdrawing the proposal to require installation notifications for piping installations. The rest of the proposed amendments to this rule remain unchanged.

A proposed change is to require new marinas to comply with the Petroleum Equipment Institute's Recommended Practice 1000-2009, Recommended Practices for the Installation of Marina Fueling Systems. These tanks are in environmentally sensitive areas, where a leak would impact water ecosystems almost immediately. In addition, these systems are uniquely configured, with the tanks typically above the dispensers, which could allow the tank to be siphoned by the dispensers. These configurations can lead to significant leaks in environmentally sensitive areas. The department has been recommending the use of this guidance document since its publication in 2009. The Missouri Department of Agriculture has been requiring compliance with almost all, if not all of its significant pieces as well. The department is not aware of any marina UST installations that have not complied with this guidance document in the last four years. As such, we do not believe that compliance with this proposed change has a new cost associated with it, but do believe it will ensure clear requirements and environmental protection in the future.

The department is also adding an option for post-installation tightness testing. Currently the regulations only provide one option for testing the tank after installation, a tank tightness test. The proposed regulation will add a second option, testing the tank using the automatic tank gauge with the tank 95% full. As this is a new, second option, it does not add a cost, but instead lowers the cost by creating a new, potentially less costly option for compliance.

The final proposed change in this regulation is to require all new tanks be tied down. In the last three years, we have typically seen less than 10% of the tanks that are not tied down at install. With an average of 155 new tanks installed each year, that means that typically 15 tanks are not tied down. These tanks can float, leak product, cause damage to the site, hinder property sales, cause safety issues, and be a general nuisance. Based on information from installation contractors, the cost of a contractor- manufactured tie-down system is approximately \$2,000. Please note, though, that the costs to address tanks that float are much higher than \$2,000 per tank. They must be removed and leaks addressed. In addition, a tank that has floated can pose a significant safety hazard: it juts out of the ground; they can be difficult to see; they may cause vehicular damage; there are often open holes associated with them.

Of the 386 tanks installed since January 1, 2014, 9 of them (or approximately 2%) were publically/government owned. The remaining 98% were privately owned. For the purposes of this fiscal note, we will use these percentages for the calculations of public and private shares of the costs to the underground storage tank owners for only the state proposed changes within this installation rule. Please note, the percentage of active sites that are privately and publically owned is different.

The following assumptions were used in calculating the cost of implementing all of the federal rule package requirements, which includes 25 amended and added rules in this state rule package:

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.

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; 319.107 and 319.137 RSMo, the commission hereby amends a rule as follows:

10 CSR 26-2.020 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 1147). 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test". Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters, noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overflow device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged or leaking spill basins are typically one of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues, that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at 83 sites, approximately 10% of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overflow devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not 'containing' the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on a broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks or sampling based on the finding of broken

equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: 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 and Mr. Greenwalt, commenters, 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 rule 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 rule 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 11% of tanks installed in the past 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 rule. 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 #5: In her written comments, Ms. Eighmey suggested deleting the definition of double-walled tank here and creating one in the definitions rule. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The suggested change is accepted. 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 #6: Ms. Eighmey commented on the use of the word "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. So while we all agree on Missouri's intent, and while we all currently agree on what is a "new" tank, we will leave the EPA language in as drafted, to ensure there are no questions, loopholes or ambiguity for future readers. As such, no change is proposed in response to this comment.

COMMENT #7: Ms. Eighmey commented on the double-walled piping language, indicating that it was found in two different places in the rule. In addition, in a separate comment, Ms. Eighmey also noted that the Missouri regulation uses "within any twelve (12) month period" and suggested deleting this language. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: Yes, there are two places that discuss double-walled piping. The first place is in subsection (B). This specific language outlines *when* the requirement is effective for new and replaced piping. It references paragraph 5 of the subsection, which describes the *what* and *how* of the requirement- what the piping must include and how it must all be installed. These are two separate pieces that are not contradictory, but are necessary to clarify the when, what and how of the double-walled piping requirements.

Ms. Eighmey is correct that the "within any twelve (12) month period" is not in the federal language. The way the federal language is written, if 50% or more of the piping is replaced *ever*, then the entire run must be secondarily contained. Therefore, under the federal requirements if 30% of the piping is replaced and then a different 25% of the piping is replaced three (3) years later, that final 25% being replaced would trigger the requirement for all of the piping to be

replaced. The federal language has open-ended timeframes that could apply over years and years of piping work. The department, owners, operators and contractors would have to track the exact amount of piping repairs each and every time, for the entire operational life of the system, and then potentially be subject to a large, and costly, full replacement at the moment the replacement, over its operational life since the rule became effective, exceeds 50%. The department's language limits the timespan, reduces tracking, and reduces the number of scenarios that would require full piping replacement (and becoming subject to all of the other secondary containment requirements, like sump testing and monitoring as well). As such, no change is proposed in response to these comments.

COMMENT #8: In her written comments, Ms. Eighmey suggested deleting the word "system" from piping systems related to piping replacement. She noted that "piping systems" is not defined. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The suggested change is accepted. 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 #9: Ms. Eighmey commented on the dispenser replacement language, specifically the addition of the word "replaced" as it pertains to equipment installation under the dispenser. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: As noted in response to a previous comment, EPA specifically referenced new or replaced equipment, as it pertains to piping and tank installations, to ensure clarity and avoiding a loophole being created. In this section, the department added the words "or replaced" to ensure consistency with all of the other equipment installation and replacement language, as well to ensure clarity and avoid a potential loophole, satisfying the intent of the federal requirements. Furthermore, this language is different from the federal language, specifically to limit its application (limit the scenarios in which a containment sump is required.) This language was approved by EPA, but they noted it was different from the federal language. The owners/operators requested amended language in this section. Should we opt to change the language at this juncture, we would need to confirm EPA still approves the language. As such, leaving it as is ensures clarity, consistency with the other equipment language, as well as prevents "re-evaluation" of that language by EPA. As such, no change is proposed in response to this comment.

COMMENT #10: In her written comments, Ms. Eighmey suggested replacing the "and" with an "or" in the testing and monitoring component of the dispenser replacement language, found in 10 CSR 26-2.020(1)(E)2. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: All of the relevant rules were reviewed in response to this comment, specifically 10 CSR 26-2.020(1)(E), 10 CSR 26-2.035 (containment sump testing rule), and 10 CSR 26-2.036 (walkthrough inspections rule). Please note, the

language did not mirror EPA's exactly because the language in the relevant rules does not mirror EPA's language. To comply with the EPA rules, a new containment sump required under this rule must comply with the annual walkthrough requirement, which includes required documentation, or comply with the containment sump test requirements. Therefore testing or monitoring is required under the EPA regulations. This comment points out the originally proposed language is too vague. To make the rule more consistent with the federal language and still satisfy the three relevant rules, the department will amend the text in the Order of Rulemaking. The revised text is reprinted below as it will be published in the Code of State Regulations.

COMMENT #11: 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's comment appears to be a request for confirmation that these new system requirements do not apply to existing systems and do not require equipment replacement.

RESPONSE: The secondary containment requirements, which include requirements for double-walled tanks, double-walled piping, containment sumps and/or interstitial monitoring, are only effective when a new UST system, tank or piping is installed or when a tank, piping system, and/or dispenser are replaced. As long as all UST equipment remains in place and is functioning properly, these rules do not require upgrading existing equipment to meet the secondary containment standards. As such, no change is proposed in response to this comment.

(1)

(A) Tanks.

5. Tanks installed on or after July 1, 2017, must be double-walled. ~~*{A double-walled tank is a tank within a tank, where the outer walls and inner walls are separated, the inner tank is contained within the outer tank to a minimum of ninety five percent (95%) containment and has an interstitial space capable of being monitored.}*~~

(D) For new or replaced tanks or piping [systems] installed after July 1, 2017, containment sumps must be installed at each tank top suction piping or submersible turbine pump connection, each piping transition, ball valve or single-walled fitting location, and under each dispenser. The containment sump must be liquid-tight on its sides, bottom, and at any penetrations, with interstitial monitoring in accordance with 10 CSR 26-2.043(1)(H) and sump testing in accordance with 10 CSR 26-2.035;

2. Under-dispenser containment must be liquid-tight on its sides, bottom, and at any penetrations and must ~~*[allow for visual inspection and access to the components in the containment sump and]*~~ **comply with the annual walkthrough inspection requirements in 10 CSR 26-2.036** or be tested or monitored for leaks from the dispenser system in accordance with 10 CSR 26-2.035.

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.020 Performance Standards for New Underground Storage Tank 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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.020 Performance Standards for New Underground Storage Tank 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 style="text-align: center;">—</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.

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; 319.107 and 319.137 RSMo, the commission hereby amends a rule as follows:

10 CSR 26-2.021 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 1150). 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test". Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters, noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overflow device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged or leaking spill basins are typically one of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at 83 sites, approximately 10% of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overflow devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not 'containing' the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks or sampling based on the finding of broken

equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: Ms. Eighmey provided comments, both written and in her verbal testimony, opposing a specific component of the interior lining portion of this rule, specifically the requirement to retain more detailed test reports. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: EPA's new regulations include changes to this interior lining regulation, specifically that any lined tank where the lining cannot simply be patch-repaired must be permanently closed. Missouri UST owners and operators repeatedly expressed their desire to be able to prove that the lined tank was still appropriate for use, even if a complete, new lining is installed. They requested a variance from the EPA requirements. The department discussed with EPA over the course of months options for this specific language. The only way the department is allowed to be different from the EPA, according to the SPA rules for this specific section, is for the department to convince EPA that the Missouri rule will be at least as protective of human health and the environment as the EPA language. That convincing was no small feat on this specific topic. On the contrary, development of "acceptable" language and provisions was a long, thorough process, resulting in the language proposed within this rule. The EPA representatives, though, specifically indicated that the entire interior lining 'language package' was the bare minimum that they would accept. That 'language package' was required to specifically include better and more thorough documentation of the interior lining inspection. Based on historic and recent conversations with EPA staff, if this requirement for more thorough and better documentation is removed from the interior lining rule language, EPA will likely not accept the language as meeting the SPA requirement. Which means the federal language would be the only other option. The federal language would eventually become the state requirement. Missouri owners and operators would lose the options that the department worked diligently to create, at their request.

As such, the department sees two viable options: 1) the currently proposed Missouri-specific language, which allows options for compliance or 2) EPA's rule language as they drafted it. We cannot take apart pieces of the proposed language. It seems imprudent to promulgate language that it knows will likely result in the loss of SPA in the future. Knowing that these are the two options, and based upon repeated and numerous UST owner/operator requests for state-specific options in this rule, the department will retain the state-specific, proposed language as requested. As such, no change is proposed in response to this comment.

COMMENT #5: Ms. Eighmey provided written comments indicating the proposed language in the interior lining portion of this rule is confusing. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: Based on Ms. Eighmey's comments about confusion and clarity, the department has opted to make changes to some of the language in the rule. One comment indicated that it was unclear when the requirement in subsection (3)(A) becomes effective, because it appears to only be effective after January 1, 2020. That interpretation is correct and that is what the rule states. The department is giving time to lining

manufacturers to get their products UL1856 listed, if not already completed, prior to the requirement going into effect. The rule, though, still requires compliance with all current interior lining standards, at a minimum, until that compliance date. As such, 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 #6: Ms. Eighmey provided written comments raising concerns about allowing multiple repairs to a lining system. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: The regulation requires demonstration that the lining and tank system meets certain standards, continues to function as installed, basically to demonstrate that it is not leaking. As long as the lining system, whether repaired or replaced, continues to be tested, inspected and documented to be functioning properly, the department did not feel it necessary to limit the number of repairs and/or replacements. This decision was supported by the UST owners and operators in the informal outreach leading up to the proposed rule, as they continually requested the ability to prove their system works. Furthermore, a cost estimate associated with requiring permanent closure after two failed linings was not conducted. This would be a significant cost for many small business owners; it was not included in the regulatory impact report or small business review. This proposal should be reviewed prior to future rulemaking efforts, though. As such, no change is proposed in response to this comment.

COMMENT #7: Ms. Eighmey provided a written comment noting that a version of the underwriters laboratory 1856 Outline of Investigation for Underground Fuel Tank Internal Retrofit Systems did not include the version or publication year. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: Ms. Eighmey is correct, as the UL 1856 reference should have been included in the final list of approved codes and standards, but it was accidentally omitted from the list. The department has added the UL standard, with publication date, in the text of the Order of Rulemaking, specifically in subsection (7) which lists approved standards and codes. The revised text is reprinted below as it will be published in the Code of State Regulations.

COMMENT #8: Ms. Eighmey provided written comments providing alternative language for the interior lining rule package. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: Ms. Eighmey's proposed alternative language actually changes the content and requirements of the rule, potentially eliminating some requirements for certain systems. This language is not simply a re-arrangement or change for clarity. As such, no change is proposed in response to this comment.

COMMENT #9: Ms. Eighmey provided a written comment that section (6) seemed out of place and redundant, as it was already provided in 10 CSR 26-2.020. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: This rule, 10 CSR 26-2.021, specifically applies to upgraded UST systems. 10 CSR 26-2.020 applies to “new” (non-upgraded) UST systems. These are two different groups of UST systems. The dispenser replacement language must be applicable to both set of UST systems. This language must be included in this rule to ensure that an upgraded UST system is subject to the same dispenser replacement requirements as any other operating UST system. As such, no change is proposed in response to this comment.

COMMENT #10: Ms. Eighmey provided a written comment that a period was needed in place of a semi-colon at the end of subparagraph (3)(A)1.G. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: This entire subsection (A) is part of a larger list under section (3), with it being the first in a list that includes subsections (A), (B), *and* (C). As such, the period goes at the end of the section, not in the middle of the list, in accordance with the Secretary of State’s formatting requirements. As such, no change is proposed in response to this comment.

(3) Tank Upgrading Requirements.

(A) Interior lining or Tank Retrofit. A tank may be upgraded by internal lining or retrofit if—

1. The lining is installed in accordance with the requirements of 10 CSR 26-2.033 and the lining or retrofit meets the following additional requirements:

F. All linings must be installed, inspected, repaired and maintained in accordance with one of the following:

(I) For UL 1856 Lining systems, single-walled, co-structural systems and linings installed prior to January 1, 2020:

(a) A lining may only be repaired if the [~~steel~~] tank passes an integrity test, including actual [~~steel~~] shell thickness readings **for steel tanks**. Approved integrity test methods are included in section (7) of this rule;

(b) A [~~replacement~~] lining may only be installed if the new lining meets the UL 1856 specifications and the steel tank passes an integrity test, including actual steel shell thickness readings. Approved integrity test methods are included in section (7) of this rule;

(II) For UL 1856 Upgrade systems, double-walled, co-structural systems:

(a) A lining may only be installed or repaired if the [~~steel~~] tank passes an integrity test, including actual [~~steel~~] shell thickness readings **for steel tanks**. Approved integrity test methods are included in section (7) of this rule; and

(~~6~~7) The following codes and standards may be used to comply with this rule:

(E) National Leak Prevention Association Standard 631, *Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection*, revised 1999. This standard may only be used for interior lining application and inspection, not for inspection of the steel tank integrity. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Leak Prevention Association, (815) 301-2785, www.nlpa-online.org; [~~and~~]

(F) Ken Wilcox Associates Recommended Practice, *Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera*, September 28, 1999. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact Ken Wilcox Associates, 1125 Valley Ridge Drive, Grain Valley, MO 64029, (816)443-2494, www.kwaleak.com; and

(G) Underwriters Laboratory (UL) *1856 Outline of Investigation for Underground Fuel Tank Internal Retrofit Systems*, June 2013. This document is incorporated by reference without any later amendments or modifications. **To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com.**

REVISED PUBLIC COST: No changes were made to the costs associated with the state-specific requirements in this rule; as such, the state-specific costs provided in the original fiscal note have not changed, except for correcting the percentage of sites that are privately and publically owned. The cost for the public sector to comply with the proposed state-specific requirements is \$144 annually with an additional \$640 one-time cost for this rule. 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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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: No changes were made to the costs associated with the state-specific requirements in this rule; as such, the state-specific costs provided in the original fiscal note have not changed, except for correcting the percentage of sites that are privately and publically owned. The cost for the private sector to comply with the proposed state-specific requirements is \$1,656 annually with an additional \$7,360 one-time cost for this rule. 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.021 Upgraded Underground Storage Tank 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>Approximately 900 tanks at 425 facilities 92% are privately owned</p> <p>Only one contractor indicated he did not meet the training requirements</p>	<p>\$8,280 (every 5 years) or \$1,656 (annually)</p> <p>\$7,360 one-time cost split between all owners (92% of the one-time cost to one contractor)</p>
	<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><i>Covers 25 rules</i></p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <p>—</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>
TOTAL ANNUAL COST:		\$2,251,332 annually + \$7,360 one-time cost

III. WORKSHEET

See calculations in Section IV below for the rule-specific changes, specifically the cost to tie-down underground storage tanks (UST) at installation.

Additionally, 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

The Department is proposing changes to old, lined tanks that are typically beyond their warranty and life-expectancy. These regulations are being changed to ensure that these tanks are being inspected and repaired in a way that confirms that they remain leak-free as long as they are operational. EPA's UST regulation changes include modifications to the interior lining regulations. Specifically, their regulations require interior lined tanks be closed/replaced if the

interior lining fails. The Department's proposed alternative requirements for interior linings, include:

- (1) Linings must meet the new UL 1856 installation standard,
- (2) Technicians must be certified (technicians must be certified to do work in almost every other aspect of UST service),
- (3) Documentation must include photographs,
- (4) An additional, less costly inspection option,
- (5) A new technology that allows repair of a lined tank that might otherwise, under the federal regulations, have to be closed.

While pieces of this regulation may be more costly than the new regulation, the proposed interior lining rule must be considered in its entirety as an alternative to the EPA federal regulation, including the closure requirement.

Furthermore, the Department is only aware of four companies that conduct interior lining installation and repair work in Missouri. Of those four companies, three of them already comply or are in the process of complying with the proposed regulations. As such, the proposed regulations have no associated increased costs to three of the four (including the two predominant companies) in Missouri. As the cost to permanently close a tank can be around \$15,000-\$20,000, the cost for the alternative interior lining rule package, which includes more detailed interior lining requirements, but doesn't require permanent closure in the event of a failure, is a less costly requirement than the federal version of the same rule package.

The one contractor that does not already meet the proposed regulations indicated that it would cost approximately \$8,000 total to comply with the training and certification requirements. This is a one-time cost, which we assume will be passed down to the tank owners (split between privately public owners). He indicated that he believed his product is already tested to be certified under UL1856; as such, there would be no additional costs to comply with this requirement for his company.

As for the additional documentation requirements, he indicated that he already does the additional documentation at some of the sites where he conducts interior lining inspections and installations. According to state records, he conducted approximately 13% of the interior lining inspections and installation; as he already complies with the additional documentation requirements at some of his sites, the Department used 10% of the lined tanks requiring additional documentation for the purposes of this RIR. The company that would need the additional documentation indicated that this would likely cost around \$250 per *facility* report. As we have about 900 active lined steel tanks at approximately 355 facilities, this would leave approximately 35 lined tank facilities that would need additional documentation for the lining inspections and installations. With an expected 36 facilities needing additional documentation, costing \$250 per facility report, we expect a total cost every five years (the interior lining inspection cycle) of \$9,000, so the average *annual* cost is \$1,800.

Please note, the federal alternative would likely require permanent closure of some of these tanks, which could cost \$15,000-\$20,000 per tank.

Also included in this proposed rule is an additional, alternative interior lining inspection option. Some facilities opt to use interstitial monitoring to comply with tank release detection requirements. This monitoring could be used to meet the interior lining inspection. If a site is using interstitial monitoring, the Department could accept 12 months of interstitial monitoring records in lieu of the standard interior lining inspection. As an interior lining inspection can cost \$2,000-\$5,000 per tank, this is a potential significant cost savings per lined tank.

Based on our data, it appears that 92% of the sites are privately owned; the remaining 8% are publically owned.

The following assumptions were used in calculating the cost of implementing all of the federal rule package requirements, which includes 25 amended and added rules in this state rule package:

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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.021 Upgraded Underground Storage Tank 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>Approximately 900 tanks at 425 facilities 92% are privately owned and 8% are publically owned</p> <p>Only one contractor indicated he did not meet the training requirements</p> <p style="text-align: center;"><i>Specific for this rule</i></p>	<p>\$720 (every 5 years) or \$144 (annual) for the documentation requirements</p> <p>\$640 one-time cost split between all owners (8% of the one-time cost to one contractor)</p>
	<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 style="text-align: center;"><i>Covers 25 rules</i></p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p style="text-align: center;">—</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>

	<i>Covers 25 rules</i>	
<ul style="list-style-type: none"> Missouri Petroleum Storage Tank Insurance Fund (PSTIF) 	PSTIF also reviews compliance documents for these UST facilities <i>Covers 25 rules</i>	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
	Total annual public cost:	\$215,894.34 annually + \$102,640 one-time cost

II. WORKSHEET

For the calculations on the cost of the state proposed changes in this rule, specifically the requirement to tie-down new UST systems at installation, please see the calculations below in Section IV.

Additionally, 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.

III. ASSUMPTIONS

The department is withdrawing the proposal to require installation notifications for piping installations. The remainder of the proposed amendments to this rule remain unchanged.

A proposed change is to require new marinas to comply with the Petroleum Equipment Institute's Recommended Practice 1000-2009, Recommended Practices for the Installation of Marina Fueling Systems. These tanks are in environmentally sensitive areas, where a leak would impact water ecosystems almost immediately. In addition, these systems are uniquely configured, with the tanks typically above the dispensers, which could allow the tank to be siphoned by the dispensers. These configurations can lead to significant leaks in environmentally sensitive areas. The department has been recommending the use of this guidance document since its publication in 2009. The Missouri Department of Agriculture has been requiring compliance with almost all, if not all of its significant pieces as well. The department is not aware of any marina UST installations that have not complied with this guidance document in the last four years. As such, we do not believe that compliance with this proposed change has a new cost associated with it, but do believe it will ensure clear requirements and environmental protection in the future.

The department is also adding an option for post-installation tightness testing. Currently the regulations only provide one option for testing the tank after installation, a tank tightness test. The proposed regulation will add a second option, testing the tank using the automatic tank gauge with the tank 95% full. As this is a new, second option, it does not add a cost, but instead lowers the cost by creating a new, potentially less costly option for compliance.

The final proposed change in this regulation is to require all new tanks be tied down. In the last three years, we have typically seen less than 10% of the tanks that are not tied down at install. With an average of 155 new tanks installed each year, that means that typically 15 tanks are not tied down. These tanks can float, leak product, cause damage to the site, hinder property sales, cause safety issues, and be a general nuisance. Based on information from installation contractors, the cost of a contractor- manufactured tie-down system is approximately \$2,000. Please note, though, that the costs to address tanks that float are much higher than \$2,000 per tank. They must be removed and leaks addressed. In addition, a tank that has floated can pose a significant safety hazard: it juts out of the ground; they can be difficult to see; they may cause vehicular damage; there are often open holes associated with them.

The following assumptions were used in calculating the cost of implementing all of the federal rule package requirements, which includes 25 amended and added rules in this state rule package:

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 a 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.

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 319.103; 319.105; 319.107; 319.111; 319.114; 319.123; and 319.137 RSMo, the commission hereby amends a rule as follows:

10 CSR 26-2.022 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 1159). No changes were made to the text of this rule, but 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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.

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.022 Notification Requirements</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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.022 Notification Requirements</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 style="text-align: center;">—</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 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 a 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.

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; 319.107; and 319.137 RSMo, the commission hereby amends a rule as follows:

10 CSR 26-2.030 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 1159). 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test". Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overflow device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged or leaking spill basins are typically one of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at 83 sites, approximately 10% of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overflow devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not 'containing' the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks or sampling based on the finding of broken

equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: In her written comments, Ms. Eighmey suggested sections (6) and (7) be written in active voice. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: Ms. Eighmey's suggestion might be read to require the owner or operator to actually "conduct" something, a test in this scenario. The department is not requiring an owner or operator to do the work themselves; in fact, owners and operators should not do the test or other work themselves unless they are properly trained in the procedures and knowledgeable in the relevant aspects of the UST system. The department uses passive voice because the owner must have systems that have or are being monitored/ tested, not do it themselves. As such, no change is proposed in response to this comment.

COMMENT #5: In her written comments, Ms. Eighmey noted a typo in the name of the release detection workgroup, which should be National Work Group *on* Leak Detection Evaluations. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The department appreciates Ms. Eighmey's catch of the typo and 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 #6: In her written comments, Ms. Eighmey noted a typo in section (4), specifically that the word "complete" was used twice. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: The department appreciates Ms. Eighmey's catch of the typo and 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 #7: In her written comments, Ms. Eighmey suggested alternative language for section (5), active rather than passive terms. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: Ms. Eighmey's suggestion might be read to require the owner or operator to actually "conduct" something, a test or inspection in this scenario. The department is not requiring an owner or operator do the work themselves; in fact, owners and operators should not do the test, inspection or other work themselves unless they are properly trained in the procedures, by the manufacturer, if required, and are knowledgeable in the relevant aspects of the UST system. The department uses passive voice because the owner/operator must have equipment that have or are being inspected/ tested, not do it themselves. As such, no change is proposed in response to this comment.

COMMENT #8: In her written comments, Ms. Eighmey noted that the alternative test method language in (5)(C) referenced section (3) rather than the current section. She recommended that be changed to reference the requirements contained within the same section, section 5. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: The department appreciates Ms. Eighmey's catch of the typo and 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 #9: In her written comments, Ms. Eighmey suggested alternative language for sections (6) and (7), active rather than passive terms. She also suggested changing "out-of-use" to "out-of-operation." A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: Ms. Eighmey's first suggestion might be read to require the owner or operator to actually "conduct" something, a test or inspection in this scenario. The department is not requiring an owner or operator do the work themselves; in fact, owners and operators should not do the test, inspection or other work themselves unless they are properly trained in the procedures, certified by the manufacturer, if required, and are knowledgeable in the relevant aspects of the UST system. The department uses passive voice because the owner/operator must have equipment that have or are being inspected/ tested, not do it themselves. As such, no change is proposed in response to this comment.

Ms. Eighmey also suggested changing "out-of-use" to "out-of-operation." That would create inconsistent language, as the entire rule applies to *in-use* tanks, at Ms. Eighmey's specific suggestion. As such, a tank that is "out-of-operation" for an extended period of time, but that still contains fuel, is subject to the inspection and/or testing requirements of this rule. As such, no change is proposed in response to this comment.

COMMENT #10: In her written comments, Ms. Eighmey suggested requiring records be maintained for three years or until the next test or inspection is conducted." A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: The currently proposed language is direct from the EPA regulations. The department used their timeframes and submitted this language for pre-review from EPA. Ms. Eighmey's suggestion may be viewed as less stringent than EPA's. As such, no change is proposed in response to this comment.

COMMENT #11: 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's comment is a question concerning whether there are "specific leak test methods for AHS piping."

RESPONSE: This is the spill equipment and overfill prevention equipment rule. This rule does not require testing of piping. We realize that spill and overfill prevention equipment may not be in place at this site as the delivery system is hard-piped into the airport hydrant fuel distribution system. This is not entirely unique and a waiver for alternative spill and overfill prevention is allowed. But this comment pertains to test methods. This rule outlines requirements for spill and overfill prevention and *equipment* testing; as such, the comment about test methods for piping does not appear relevant to this rule. As such, no change is proposed in response to this comment.

(3) Owners and operators must meet one (1) of the following requirements to ensure their spill prevention equipment is operating properly and will prevent releases to the environment:

(B) The spill prevention equipment is tested at least triennially to ensure the spill prevention equipment is liquid tight by using vacuum, pressure or liquid testing in accordance with one of the following:

2. Interstitial test (for double-walled spill basins only) or spill containment test listed by the National Work Group on Leak Detection Evaluations. To obtain copies of equipment certifications, contact the National Work Group ~~[for]~~ **on** Leak Detection Evaluations, www.nwglde.org; or

(4) Spill basins may not be repaired with a partial or spot, field-applied repair kit or product. Repairs must either be a manufacturer-designed replacement insert or a complete factory-built, field-installed ~~[complete]~~ spill basin repair kit. Other repairs may be approved by the department if they are determined to be no less protective of human health and the environment.

(5) Owners and operators must ensure their overfill prevention equipment is operating properly and will prevent releases to the environment. Overfill prevention equipment must be inspected or tested at least triennially. At a minimum, the test or inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in 10 CSR 26-2.020 and will activate when the regulated substance reaches that level. Tests or inspections must be conducted in accordance with one of the following criteria:

(C) Other methods approved by the department, which may include a code of practice developed by a nationally recognized association or independent testing laboratory, determined to be no less protective of human health and the environment than the requirements listed in ~~[paragraphs 1. through 3. of subsection (3)(B)]~~ **subsections (A) or (B) of this section.**

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.030 Spill and Overfill Control for In-Use Underground Storage Tank 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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.030 Spill and Overfill Control for In-Use Underground Storage Tank 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 style="text-align: center;">—</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.

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; 319.107; and 319.137 RSMo, the commission hereby amends a rule as follows:

10 CSR 26-2.031 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 1161). No changes were made to the text of this rule, but 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 a written comment that supports the proposal to require replacement of metal piping if the cathodic protection system has been off for more than 90 days. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: The department appreciates the support, but would like to note that the department believes this is clarifying language, not an actual proposed change in application in the field. The rule had and does state that unprotected systems can only be brought back into use if confirmation of integrity is provided. There are ways to verify integrity of *tanks*, but there is no industry standard or procedure to verify *piping* integrity. As such, we believe replacement has always been required, but are providing better language to clarify that intent. As such, no change is proposed in response to this comment.

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.031 Operation and Maintenance of Corrosion Protection</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.

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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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.031 Operation and Maintenance of Corrosion Protection</i>
Type of Rulemaking	<i>Amendment</i>

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<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
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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.

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IV. ASSUMPTIONS

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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, the commission hereby amends a rule as follows:

10 CSR 26-2.032 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 1162). No changes were made to the text of this rule, but 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 a written comment, requesting the notice for system changes, under this compatibility rule, be reduced from 30 days to 14 days, like the new installation notification requirement was changed. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: The notification requirement in this rule, specifically to notify the department at least 30 days prior to switching to storing a biofuel, is a federal requirement, based on the new federal regulations. The new installation notification requirement, and its associated timeframes, is state-specific and, as such, is not subject to the "cannot be any less stringent" than EPA requirement. On the other hand, this regulation must, at a minimum, meet the federal requirements, including notification timelines. As such, no change is proposed in response to this comment.

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.032 Compatibility</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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.032 Compatibility</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 style="text-align: center;">—</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 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 a 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.

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; 319.107; and 319.137 RSMo, the commission hereby amends a rule as follows:

10 CSR 26-2.033 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 1162). 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test". Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overflow device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged or leaking spill basins are typically one of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at 83 sites, approximately 10% of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overflow devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not 'containing' the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks or sampling based on the finding of broken

equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: In her written comments, Ms. Eighmey suggested deleting the words “that is” in section (E). A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: 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 #5: In her written comments, Ms. Eighmey indicated that “we had not previously seen the proposed language in section (F)...” and suggested a change. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: Ms. Eighmey published this language in the PSTIF Advisory Committee materials for the meeting held on June 14, 2016, (http://www.pstif.org/agenda_advisory_committee.html). The content of the language in her own publication is exactly the same as the rule language published in the Missouri Register on September 15, 2016, with one minor change of a period to a semi-colon made by the Secretary of State’s office.

In response to the suggested change, Ms. Eighmey’s suggested language would require the owner or operator to actually “conduct” something, a test or a repair in this scenario. Some of her suggested language changes would result in a rule that only requires post-repair testing if the owner/operator does the repair himself, but not necessarily if a contractor does the repair. The department is not requiring an owner or operator to do the work themselves; in fact, owners and operators should not do the test, repairs or other work themselves unless they are properly trained in the procedures and knowledgeable in the relevant aspects of the UST system. The department uses passive voice because the owner must have systems that have or are being monitored, tested and properly repaired, not do it themselves. As such, no change is proposed in response to this comment.

(2) The repairs must meet the following requirements:

(E) Repaired tanks and/or piping must be tightness tested in accordance with release detection methods listed in 10 CSR 26-2.043(1)(D) and 10 CSR 26-2.044(1)(B) within thirty (30) days following the date of the completion of the repair, *[except as provided in the following paragraphs:]* **unless tested using another method ~~[that is]~~ determined by the department to be no less protective of human health and the environment.**

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.033 Repairs Allowed</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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.033 Repairs Allowed</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 style="text-align: center;">—</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 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.

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 319.107; 319.111; and 319.137 RSMo, the commission hereby amends a rule as follows:

10 CSR 26-2.034 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 1164). 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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: In her written comments, Ms. Eighmey suggested rephrasing (1)(A)1. so that it is consistent with the other paragraphs. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: The suggested change is accepted. 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: In her written comments, Ms. Eighmey suggested alternative, shorter language for (1)(B)1. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: The suggested change is accepted. 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 #4: Ms. Eighmey suggested deleting the words “and all other ancillary equipment” her written comments, indicating that it ties to her comment opposing the definition of UST system. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above. In Ms. Eighmey’s additional written comments on this topic, she noted that “no explanation has been provided as to why the rulemaking proposes a broader definition.”

RESPONSE: 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). 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 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 10% or more beneath the surface of the ground.”

There is one word different between the two 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 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:

- 1) 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 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 3.0 gallon per hour leak, as required by the piping release detection regulation).

- 2) DNR and the Missouri Department of Agriculture have an *informal* understanding that, as the Missouri Department of Agriculture inspects dispenser areas two 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 new releases from the dispenser areas. The PSTIF has corresponding claims associated with these five 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 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. No change is made in response to this comment.

COMMENT #5: In her written comments, Ms. Eighmey suggested rephrasing (1)(B)5. for clarity. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The suggested change is accepted. 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 #6: In her written comments, Ms. Eighmey suggested alternative language for (1)(B)6, indicating that the rule language does not include recordkeeping timeframes. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

COMMENT #7: In her written comments, Ms. Eighmey suggested alternative language for (1)(B)7, indicating that the rule language does not include recordkeeping timeframes. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE TO COMMENTS 6 AND 7: For both of these referenced rules, the detailed requirements and options for recordkeeping are outlined within the referenced rule. Duplicating that language herein would be duplicative and is unnecessary as the requirement is detailed within the relevant rule itself. Furthermore, shortening the language to the suggested language provided by Ms. Eighmey would make it inconsistent with the more comprehensive language found within the relevant rules. As such, no change is proposed in response to these comments.

COMMENT #8: In her written comments, Ms. Eighmey suggested adding language in this rule to include a reference to the requirement to retain documentation of a valid financial responsibility mechanism, thereby making this a more comprehensive list. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The suggested change is accepted. 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 #9: 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's comment indicates that this rule cites 10 CSR 26-2.078 as a requirement for investigation of soil and groundwater, which references the *Missouri Risk-Based Corrective Action Process for Petroleum Storage Tanks Guidance Document*. Mr. Landreth indicates that the airport cannot meet these requirements and the regulation should allow alternative options.

RESPONSE: First, this rule lists the documentation retention requirements. This is not the rule that requires compliance with 10 CSR 26-2.078, any other investigation or corrective action rules, or the *Missouri Risk-Based Corrective Action Process for Petroleum Storage Tanks Guidance Document* per se. As such, this comment does not appear relevant to this rule.

That being said, airport hydrant fuel distribution systems were previously deferred from compliance with 10 CSR 26-2.020 through 10 CSR 26-2.064. These tanks have not been deferred from any of the "remediation" regulations in 10 CSR 26-2.070 through 10 CSR 26-2.083, which includes the regulation specifically referenced in Mr. Landreth's comment, 10 CSR 26-2.078. So, compliance with 10 CSR 26-2.078 has been required for many years. No change is occurring now.

Furthermore, the airport hydrant fuel distribution system has had at least seven (7) releases, five (5) of which are currently being addressed under the *Missouri Risk-Based Corrective Action Process for Petroleum Storage Tanks Guidance Document*. As this facility has been subject to this rule, and has been conducting investigations and corrective action under the referenced guidance document, it appears that this facility can, in fact, meet these standards. As such, no change is proposed in response to this comment.

COMMENT #10: 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's comment on this rule discusses inspection frequency and the request to amend the inspection procedures for airport hydrant fuel distribution systems.

RESPONSE: Inspection frequency is not covered in this, or any of the other state UST regulations, proposed and open for revision at this time. The inspection frequency is established in the 2005 Energy Policy Act, meaning it is required under federal law. The procedure can be discussed between EPA, the department and the facility. EPA is currently working on an inspection procedure specifically for airport hydrant fuel distribution systems. Furthermore, the

department has already discussed potential inspection issues with facility staff and we expect to continue those discussions in the future. As such, this comment is not relevant to the rule. No change is proposed in response to this comment.

(1) Owners and operators of underground storage tank (UST) systems must cooperate fully with inspections, monitoring, and testing conducted by the department, or the department's authorized representative, as well as requests for document submission, testing, and monitoring[*by the owner or operator*].

(A) Reporting. Owners and operators must submit the following information to the department:

1. Notification for all UST systems [~~by~~ **subject to the notification requirements in**] (10 CSR 26-2.022);

(B) Record Keeping. Owners and operators must maintain the following information:

1. [*A corrosion expert's expert analysis of site corrosion potential if corrosion protection equipment is not used (10 CSR 26-2.020(1)(A)4. And (1)(B)4.;*] Installation records for [~~secondary containment of double-walled equipment, including tanks, piping, containment sumps, and spill basins,~~] any UST system or system component **installed after July 1, 2017**;

5. Documentation demonstrating spill and overflow prevention equipment is being properly maintained[-] **and** inspected [~~and~~ **or** tested (10 CSR 26-2.030);

[5] **9**. Results of the site investigation conducted at permanent closure (10 CSR 26-2.064)[-]; **[and]**

10. Documentation demonstrating compliance with the operator training rule (10 CSR 100-6)[-]; **and**

11. Documentation demonstrating a valid financial responsibility mechanism is in effect (10 CSR 26-3).

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.034 Repairs Allowed</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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.034 Repairs Allowed</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 style="text-align: center;">—</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 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.

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; 319.107; and 319.137 RSMo, the commission hereby adds a rule as follows:

10 CSR 26-2.035 is adopted.

A notice of proposed rulemaking containing the text of the proposed new rule was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1165). 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 new rule 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test". Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overflow device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged or leaking spill basins are typically one of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at 83 sites, approximately 10% of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overflow devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not 'containing' the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on a broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks or sampling based on the finding of broken

equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: Ms. Eighmey's written comment provided alternative language for the entire containment sump testing rule. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: The alternative language provided does not simply provide changes to make it clearer, but in fact, changes the content of the regulation. For example, if a sump has two walls, the inner wall fails, but the outer wall is still leak-tight, under the state language, the outer wall would become the primary wall and could be tested. Under the suggested language, both walls must be monitored or the inner wall can be tested. The suggested language, in a number of ways, is actually more limiting in its application. The comment did cause the department to realize that, the current language, also limits containment sumps that could potentially in the future, have three walls, much like the triple-walled fiberglass tanks that are available. As such, one portion of the language was tweaked to say *at least two walls*. Ms. Eighmey's suggested language separated the portion of the rule that includes the approved procedures. This suggestion is accepted and appropriate changes made. The revised text is reprinted below as it will be published in the Code of State Regulations.

Furthermore, Ms. Eighmey's language indicated that the interstitial integrity assessment must be conducted with an interstitial sensor. Again, that language limits options that could be allowed under the department's language, like a manual check or a single interstitial test conducted with equipment that does not include an interstitial sensor (e.g. vacuum or pressure gauge). As such, no change is proposed in response to this comment.

(1)

(A) The containment sump has at least two (2) walls and an interstitial space and the integrity of two walls is interstitially monitored annually; or

(B) The containment sump primary wall is tested at least triennially to ensure the equipment is liquid-tight by using vacuum, pressure, or liquid testing.

(2) The testing and/or monitoring required by this rule must be conducted in accordance with one (1) of the following:

(A) A tightness test developed and published by the manufacturer (Note: Owners and operators may use this option only if the manufacturer has developed testing requirements.);

(B) An interstitial test or containment sump test listed by the National Work Group on Leak Detection Evaluations. To obtain copies of equipment certifications, contact the National Work Group on Leak Detection Evaluations, www.nwglde.org; or

(C) Petroleum Equipment Institute RP 1200-12, Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494- 9696, www.pei.org; or

(D) Another method approved by department, including code(s) of practice developed by a nationally recognized association(s) or independent testing laboratory(ies), determined to be

no less protective of human health and the environment than the requirements listed in subsections (A) through (C) of this section.

(3) Owners and operators must maintain record(s) of the required containment sump monitoring for twelve (12) months or test(s) required by this rule until the next test is performed.

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.035 Testing of Containment Sumps</i>
Type of Rulemaking	<i>New Rule</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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.035 Testing of Containment Sumps</i>
Type of Rulemaking	<i>New Rule</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 style="text-align: center;">—</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 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.

II. 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.

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; 319.107; and 319.137 RSMo, the commission hereby adds a rule as follows:

10 CSR 26-2.036 is adopted.

A notice of proposed rulemaking containing the text of the proposed new rule was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1165). 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 new rule 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test". Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overflow device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged or leaking spill basins are typically one of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at 83 sites, approximately 10% of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overflow devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not 'containing' the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks or sampling based on the finding of broken

equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: Ms. Eighmey's written comment provided alternative language for the entire walkthrough inspection rule. She noted that EPA allows a less frequent walkthrough inspection and requested that flexibility. She also requested an option for an alternative procedure. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: EPA's original language indicated that sites that receive deliveries less frequently (deliveries are more than 30 days apart) can comply with the "monthly" walkthrough inspection requirements only immediately before a delivery.

The other suggested language comments did not appear to change content, but simply seemed to be a preference in language. Other than the suggested changes provided in Ms. Eighmey's first section, which make the rule apply to a site rather than a responsible party, the changes are largely made, as suggested, 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.

(1) To properly operate and maintain underground storage tank (UST) systems, owners and operators must ensure the following requirements are met~~[by the timeframes outlined in section (2)]~~:

(A) ~~[Conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified below]~~ **Owners and operators must ensure walkthrough inspections are conducted as follows:**

1. ~~[Every thirty (30) days, owners and operators must~~
~~A. For spill prevention equipment]~~ **Spill prevention equipment must be checked at least once every thirty (30) days, or prior to each delivery for USTs that receive deliveries less frequently than once every thirty (30) days. The person(s) conducting the inspection must** visually check for any damage~~;~~, remove liquid or debris~~;~~, check for and remove obstructions in the fill pipe, check the fill cap to make sure it is securely on the fill pipe~~;~~, and for double-walled spill prevention equipment ~~[with]~~**using** interstitial monitoring, check for a leak in the interstitial area; **and**

~~[B]~~2. ~~[For]~~**Release detection [systems]equipment must be checked at least once every thirty (30) days. The person(s) conducting the inspection must** check to make sure the release detection system is operating with no alarms or other unusual operating conditions present~~;~~ and ensure records of release detection testing are reviewed monthly and are current;

~~[2.]~~**(B) At least [A]annually, owners and operators must[-] ensure the following is done:**

~~[A]~~1. ~~[For e]~~Containment sumps required in 10 CSR 26-2.020 or 10 CSR 26-2.021, including tank top or submersible turbine pump, under-dispenser, and transition or intermediate sumps, [-] **must be** visually checked for any damage, leaks to the containment sump area, or releases to the environment; ~~[remove any]~~liquid or debris **must be removed**; and ~~[for]~~**the interstitial space of double-walled containment sumps[, check for a leak in the interstitial area] must be checked for leaks; and**

~~[(B)]~~2. [For] **Tank gauge sticks or other** hand held release detection equipment [~~—check devices such as tank gauge sticks for—~~] **must be checked for** operability and serviceability.

~~[(2)]~~(C) The first walkthrough inspections in **this** section [~~(1)~~] are due-

~~[(A)]~~1. Immediately upon installation for new UST systems installed after July 1, 2017;
or

~~[(B)]~~2. No later than January 1, 2020, for existing UST systems.

~~[(3)]~~(D) Owners and operators may use the following codes to comply with this rule:

~~[(A)]~~1. Petroleum Equipment Institute RP 500-11, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org ;

~~[(B)]~~2. Petroleum Equipment Institute RP 900-08, Recommended Practices for Inspection and Maintenance of UST Systems. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org.

3. Another method approved by department, including code(s) of practice developed by a nationally recognized association(s) or independent testing laboratory(ies), determined to be no less protective of human health and the environment than the requirements listed in this rule.

~~[(4)]~~(E) Owners and operators must maintain records (in accordance with 10 CSR 26-2.034) of [~~operation and maintenance walkthrough~~] **the inspections required by this rule** for one (1) year. The record must include a list[~~ing~~] of each area checked, whether each area checked was acceptable or needed [~~to have any—~~]action[~~taken~~], and a description of any actions taken [~~to correct an issue~~] **as a result of the inspection.**

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.036 Operation and Maintenance Walkthrough Inspections</i>
Type of Rulemaking	<i>New Rule</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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.036 Operation and Maintenance Walkthrough Inspections</i>
Type of Rulemaking	<i>New Rule</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 style="text-align: center;">—</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 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 a 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.

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; 319.107; 319.111; and 319.137 RSMo, the commission hereby amends a rule as follows:

10 CSR 26-2.040 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 1166). 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be

more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test". Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overflow device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged or leaking spill basins are typically one of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues, that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at 83 sites, approximately 10% of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overflow devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not 'containing' the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release

finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: Ms. Eighmey provided a written comment that the title of the rule indicates the rule applies to *all* UST systems, but the text indicates it is only applicable at *in-use* systems. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: 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 #5: Ms. Eighmey provided a written comment concerning confusion over the term "method" being used in multiple places. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: The department appreciates the comment and understands the concern. In response, 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 #6: Ms. Eighmey provided a written comment concerning the location of the operability requirements. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: Some form of operability requirement applies to almost every release detection method, depending on how it is being conducted. As such, the department believes that this is the most appropriate location for this language. As such, no change is proposed in response to this comment.

COMMENT #7: Ms. Eighmey provided a written comment concerning confusion over the term "existing sites" and proposed alternative language. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: The department appreciates the comment and understands the concern. In response, 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 #8: Ms. Eighmey provided a written comment requesting language be added that clearly states that a battery backup test is not required when the system is monitored remotely. She stated that she understood this to be the department position and requested clarification of this determination. Mr. Greenwalt also submitted a similar comment. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: The department appreciates the comment and understands the concern. The department has previously stated that if the records are stored in an alternative location, one not affected by the power loss at the automatic tank gauge, then that electronic record retention on a backup system satisfies the intent of this rule, which is to ensure records are not lost in the event of memory loss on an electronic monitoring system. Please note, remote *monitoring* was not the basis of this allowance; remote location *storage* of records was the basis of this waiver. In response, 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.

10 CSR 26-2.040 General Requirements for Release Detection for All **In-Use** Underground Storage Tank Systems.

(1) Owners and operators of underground storage tank (UST) systems that are in[-]use must use a method, or combination of methods, [or] of release detection that-

(B) Is installed, calibrated, operated, tested, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition[; and]. If manufacturer's **operability** test [methods]**procedures** are not available, the annual operability test may be conducted in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory or a method approved by the department. Operability test reports must, at a minimum, include facility name and address, components tested, model and serial number (if legible), testing date, test method, technician name and affiliation, and a certification of results;

(C) [For existing sites, t]The first **operability** test is due not later than January 1, 2020 **or immediately upon installation if installed after July 1, 2017**. Electronic and mechanical release detection equipment must be tested annually for proper operation, in accordance with subsection (B) of this section. A test of the proper operation must be performed at least annually and, at a minimum and as applicable to the facility, cover the following components and criteria:

1. Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup **unless records are electronically stored at a remote location;**

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.040 General Requirements for Release Detection for All In-Use Underground Storage Tanks</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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.040 General Requirements for Release Detection for All In-Use Underground Storage Tanks</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 style="text-align: center;">—</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>
	<p>Total annual public cost:</p>	<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.

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; 319.107; and 319.137 RSMo, the commission hereby amends a rule as follows:

10 CSR 26-2.041 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 1167). 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey provided a written comment suggesting removal of the terms "new or upgraded" from (1)(A)1. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: The department appreciates the comment and understands the concern. In response, 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 #4: Ms. Eighmey provided a written comment suggesting removal of the terms "new or upgraded" from (1)(A)1. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: The department appreciates the comment and understands the concern. In response, 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 #5: Ms. Eighmey provided a written comment suggesting language changes to (1)(A)5, specifically suggesting removal or alternative language and noting a typo. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: The department appreciates the comment and understands the concern. In response, 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 #6: Ms. Eighmey provided a written comment suggesting (1)(A)4 is unnecessary and should be deleted. She asserts that this language sets forth performance standards that need only be included in 10 CSR 26-2.043. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: This rule sets forth what methods can be used and when. As such, this appears to be the appropriate place for this specific language as it details when this method is no longer approved for use. This language does not explain how groundwater monitoring is conducted, but simply defines when it is or is not allowed. As such, no change is made in response to this comment.

COMMENT #7: Ms. Eighmey provided a written comment suggesting (1)(A)6. *[sic]* is unnecessary and should be deleted. She asserts that this rule applies to all systems in-use, regardless of when they were installed. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: This rule sets forth what tank monitoring methods can *or must* be used and when. As such, this is the appropriate place for this specific language as it details that a specific method is required for tank systems installed after July 1, 2017. To clarify, this rule makes new tanks subject to a very specific release detection method, specifically 10 CSR 26-2.043 subsection (1)(H), which is interstitial monitoring. This language does not explain how interstitial monitoring is conducted, but simply defines when it is or is not required. As such, the department believes that this is the most appropriate location for this language. As such, no change is made in response to this comment.

COMMENT #8: Ms. Eighmey provided a written comment suggesting (1)(B)1.C. is unnecessary and should be deleted. She asserts that this rule applies to all systems in-use, regardless of when they were installed. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: This rule sets forth what piping monitoring methods can *or must* be used and when. As such, this seems to be the appropriate place for this specific language as it details that a specific method is required for tank systems installed after July 1, 2017. To clarify, this rule makes new piping subject to a very specific release detection method, specifically 10 CSR 26-2.043 subsection (1)(H), which is interstitial monitoring. This language does not explain how interstitial monitoring is conducted, but simply defines when it is or is not required. As such, the department believes that this is the most appropriate location for this language. As such, no change is made in response to this comment.

COMMENT #9: Ms. Eighmey provided a written comment suggesting (1)(B)4. is unnecessary and should be deleted. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: This rule sets forth what piping monitoring methods can be used and when. As such, this seems to be the appropriate place for this specific language as it details what methods are allowed for airport hydrant fuel distribution or field-constructed tank system piping and, if

appropriate, any limitations on their use based on installation date. This language does not explain how those methods are conducted, but simply defines when and what is or is not allowed. As such, the department believes that this is the most appropriate location for this language. As such, no change is made in response to this comment.

COMMENT #10: Ms. Eighmey provided a written comment on rule 10 CSR 26-2.044(1)(C)2 and 3 suggesting the references to groundwater monitoring and vapor monitoring sunset dates are redundant and does not need to be included in 10 CSR 26-2.044. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: This language is included in 10 CSR 26-2.041, but only in the subsection that pertains to *tank* monitoring, subsection (1)(A). When writing these rules, it was awkward to put this same language into the *pipng* monitoring options within 10 CSR 26-2.041 because there are multiple piping types covered in 4 different paragraphs. In response to parts of this comment, the department notes that 10 CSR 26-2.041 is the appropriate rule to note when and where methods are allowed. As such, the text in 10 CSR 26-2.044 that establishes the sunset dates for groundwater and vapor monitoring would be better suited for 10 CSR 26-2.041, not 10 CSR 26-2.044. As such, 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 #11: Mr. Bob Wright, Wright's Station and Garage, submitted a comment on the language that would sunset groundwater monitoring as a release detection method. He requested the department withdraw this requirement or "grandfather" in his station. The department also had extensive verbal discussions with Mr. Wright to fully understand the concerns raised in his comment.

RESPONSE: Mr. Wright indicated that having to change methods would be costly and a procedural change- something new to learn. EPA's new federal rule includes significant changes to the groundwater monitoring method. In EPA's version, sites would have to be able to provide extensive documentation of well installation, prove wells are installed properly (well logs) and in accordance with their guidance, the original site assessment documenting background levels prior to beginning the method, and more. Unfortunately, the department's review of sites using groundwater monitoring did not find any site in Missouri that likely meet all of these federal requirements. If a site cannot document that they meet all of the federal requirements, under the new EPA regulations, a new well plan would be needed, likely new wells installed that can document proper installation, groundwater levels at the site over the year, and all of this must be signed by a registered geologist or a professional engineer, also an added cost. Furthermore, a new background site assessment would be needed. If contamination is found during that assessment, the finding of contamination but be reported as a suspected release, requiring action, and it is possible the method will not be allowed until the site has been adequately remediated. So, while the rules appear to be different, in application in Missouri, it appears that the effect in reality at the sites will be the same: the least costly and most practical option will be a change in methods. After discussing this with Mr. Wright, he said he appreciated the explanation and had not understood the two options- state or federal regulations. The department also explained that the timeline to comply with EPA's version was shorter. Since the state is establishing a "sunset

date,” EPA allowed the department to give an extended time for compliance with this version, as it appears, in writing if not in actual application, more stringent than the EPA requirement. Mr. Wright said that it sounds like he would be switching methods either way and he much preferred the longer timeframe the state option allows. As such, no change is made in response to this comment.

COMMENT #12: 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’s comment is on 10 CSR 26-2.041(1)(B)4.A. and indicates that the open reference back to subsection B is wrong “as for airport hydrant fuel distribution systems [*sic*] it is the annual or biennial leak testing for pipelines.”

RESPONSE: 10 CSR 26-2.041(1)(B)4 outlines the options for compliance for airport hydrant fuel distribution system and field-constructed tank system piping. It allows these piping systems to be monitored in accordance with the standard piping monitoring options or the special piping monitoring options in 10 CSR 26-2.047. 10 CSR 26-2.047 outlines the special options for annual and biennial leak testing on piping. As such, both options are clearly available under this rule. As such, no change is proposed in response to this comment.

(1) Owners and operators of petroleum underground storage tanks (UST) systems that are in[-]use must provide release detection for tanks and piping as follows:

(A) Tanks. Tanks must be monitored at least every thirty (30) days for releases using one (1) of the methods listed in 10 CSR 26- 2.043(1)(B)-(I), except that-

1. UST systems that meet [~~new or upgraded~~] standards in 10 CSR 26-2.020 or 10 CSR 26-2.021 and the monthly inventory control requirements in 10 CSR 26-2.043(1)(A) may use tank tightness testing (10 CSR 26-2.043(1)(D)) at least every five (5) years until December 22, 1998, or until ten (10) years after the tank is installed or upgraded under 10 CSR 26-2.021(3), whichever is later;

5. Vapor monitoring (10 CSR 26-2.043 subsection (I)(F)) [~~will no longer be valid to monitor for releases~~]**may not be used** after July 1, 2020, **as a release detection method** [~~if~~]**unless it is** used with an added tracer chemical and listed by the National Work Group on Leak Detection Evaluations as a tank tightness test; and

(B) Piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one (1) of the following requirements:

5. Except that –

A. Groundwater monitoring (10 CSR 26-2.043 subsection (I)(G)) will no longer be valid to monitor for releases after July 1, 2020; and

B. Vapor monitoring (10 CSR 26-2.043 subsection (I)(F)) may not be used after July 1, 2020, as a release detection method unless it is used with an added tracer chemical and listed by the National Work Group on Leak Detection Evaluations as a tightness test.

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended

and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.041 Requirements for Petroleum Underground Storage Tank 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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.041 Requirements for Petroleum Underground Storage Tank 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 style="text-align: center;">—</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.

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; 319.107; and 319.137 RSMo, the commission hereby amends a rule as follows:

10 CSR 26-2.042 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 1168). No changes were made to the text of this rule, but 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.042 Requirements for Hazardous Substance Underground Storage Tank 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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.042 Requirements for Hazardous Substance Underground Storage Tank 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:
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<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.

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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.

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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.

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; 319.107; and 319.137 RSMo, the commission hereby amends a rule as follows:

10 CSR 26-2.043 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 1169). 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey provided a written comment suggesting removal of the term "daily data" as it is not in the federal rule. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: This language, concerning the specific requirements for statistical inventory reconciliation, was created in the last amendment of the rule in 2011. Ms. Eighmey has noted a change, though, from the term supporting data to daily data. The department reference to daily data was an attempt to enhance clarity to confirm that each's day's supporting data in that list is required. The department appreciates the comment and will return to using the term originally in the rule. This data has been valuable in assessing the size of a release and confirming operational compliance with the statistical inventory reconciliation. In response to the first part of this comment, 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 #4: Ms. Eighmey provided a written comment indicating that the language in paragraph (1)(E)2 is confusing and offered alternative text. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: The first part of the language confusion that Ms. Eighmey noted was the term "system." The department understands that confusion and will amend the language to state "automatic tank gauge system." The next suggested language, though, is ambiguous as it indicates a test must meet... continuous in-tank leak detection operating on an uninterrupted basis... The ambiguity is that EPA's federal language specifically defines that a test must be performed under certain operating conditions. Continuous monitoring is an operating condition, and is more than just criteria to be met. As such, the department has made changes in response to the first part of this comment 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 #5: Ms. Eighmey provided a written comment noting that, in the interstitial monitoring subsection (H), there is language involving piping monitoring and this rule only pertains to tank monitoring. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

COMMENT #6: Ms. Eighmey provided a written comment noting the use of the term UST systems in (1)(H)2 and 3 and suggested changing it to tank only as this rule only pertains to tank monitoring. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE TO COMMENTS #5 AND #6: Ms. Eighmey is correct. This specific rule defines methods of monitoring for tanks and piping language is included in the proposed language. Unfortunately, the piping release detection rule specifically references some of the tank monitoring rules for details on how to comply with the method. Copying the language in its entirety for each of these methods into the piping release detection rule would create a long rule, with most of the language exactly the same. The piping release detection method specifically references this specific tank interstitial monitoring rule for details on how to conduct interstitial monitoring for piping. As there was only a short part that needed to be added for the piping, it seemed appropriate to add that language herein rather than copy all of the relevant tank release detection methods into the piping release detection rule. This cross-reference between the tank and piping release detection rules has been in place since EPA's first UST regulations. As such, no change is made in response to this comment.

COMMENT #7: Ms. Eighmey provided a written comment noting that the word "and" should be deleted and a period inserted at the end of (1)(H)3. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: The Secretary of State only prints the subsections that have changes. The rule still contains a subsection (I); therefore, the ";and" is the appropriate punctuation as the list continues on and ends with subsection (I). As such, no change is made in response to this comment.

COMMENT #8: Mr. Bob Wright, Wright's Station and Garage, submitted a comment on the language that would sunset groundwater monitoring as a release detection method. He requested the department withdraw this requirement or "grandfather" in his station. The department also had extensive verbal discussions with Mr. Wright to fully understand the concerns he raised in his comment.

RESPONSE: Mr. Wright indicated that having to change methods would be costly and a procedural change- something new to learn. EPA's new federal rule includes significant changes to the groundwater monitoring method. In EPA's version, sites would have to be able to provide extensive documentation of well installation, proof wells are installed properly (well logs) and in accordance with their guidance, the original site assessment documenting background levels prior to beginning the method, and more. Unfortunately, the department's review of sites using groundwater monitoring did not find any site in Missouri that likely meet all of these federal requirements. If a site cannot document that they meet all of the federal requirements, under the new EPA regulations, a new well plan would be needed, likely new wells installed that can

document proper installation, groundwater levels at the site over the year, and all of this must be signed by a registered geologist or a professional engineer, also an added cost. Furthermore, a new background site assessment would be needed. If contamination is found during that assessment, the finding of contamination but be reported as a suspected release, requiring action; and it is possible the method will not be allowed until the site has been adequately remediated. So, while the rules appear to be different, in application in Missouri, it appears that the effect in reality at the sites will be the same: the least costly and most practical option will be a change in methods. After discussing this with Mr. Wright, he said he appreciated the explanation and had not understood the two options- state or federal regulations. The department also explained that the timeline to comply with EPA's version was shorter. Since the state is establishing a "sunset date," EPA allowed the department to give an extended time for compliance with this version, as it appears, in writing if not in actual application, more stringent than the EPA requirement. Mr. Wright said that it sounds like he would be switching methods either way; and, he much preferred the longer timeframe the state option allows. As such, no change is made in response to this comment. Mr. Bob Wright, Wright's Station and Garage, submitted a comment on the language that would sunset groundwater monitoring as a release detection method. He requested the department withdraw this requirement or "grandfather" in his station. The department also had extensive verbal discussions with Mr. Wright to fully understand the concerns he raised in his comment.

(1) Methods of release detection for underground storage tanks (USTs) used to meet the requirements in 10 CSR 26-2.041 must be conducted as follows:

(B) Statistical Inventory Reconciliation (SIR), which is a statistical inventory analysis method that tests for the loss of a regulated substance. SIR must meet the following requirements:

7. The SIR analysis report must include the [~~daily~~] **supporting** data, inventory measurements of the regulated substance and water, delivery data, and analysis or reporting date;

(E) Automatic Tank Gauging. Equipment for automatic tank gauging, that tests for the loss of regulated substance and conducts inventory control, must meet the following requirements:

2. The test must be performed with the **automatic tank gauging** system operating in one of the following modes:

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.043 Methods of Release Detection for Tanks</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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.043 Methods of Release Detection for Tanks</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 style="text-align: center;">—</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 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

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Division 26—Petroleum and Hazardous Substance Storage Tanks
Chapter 2—Underground Storage Tanks- Technical Regulations

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

10 CSR 26-2.044 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 1171). 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey provided a written comment suggesting the heading for subsection (1)(C) was inappropriate as this is the piping release detection rule. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: This subsection (1)(C) is entitled "Applicable Tank Methods" because it describes which of the tank methods, described in detail in 10 CSR 26-2.043, may be applicable for use in monitoring piping. This section specifically ties together release detection methods that may cover all of a UST system (e.g. statistical inventory reconciliation) or methods that can cover either a tank or piping system (e.g. interstitial monitoring). So as not to have to reprint all of that redundant language twice, the piping release detection rule simply details which methods, listed under the tank monitoring rule, can actually be used on piping as well. As such, the heading "Applicable Tank Methods," originally used in EPA's original UST rule, seems to still be appropriate. No change is made in response to this comment.

COMMENT #4: Ms. Eighmey provided a written comment suggesting a change in the text associated with the alternative piping release detection options for airport hydrant fuel distribution tank systems and field-constructed tank systems. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: Ms. Eighmey has pointed out a typo in the regulation language. The rule is supposed to apply to piping systems associated with airport hydrant systems or piping associated with field-constructed tanks, where the tank is larger than 50,000 gallons. We appreciate this catch, as the language in the proposed rule does not currently meet the language in EPA's rule. The proposed language is not exactly in accordance with EPA's proposal, but is closer and draws attention to the problem. As such, 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 #5: Ms. Eighmey provided a written comment on this rule, 10 CSR 26-2.044(1)(C)2 and 3, suggesting the references to groundwater monitoring and vapor monitoring sunset dates is redundant and does not need to be included here. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE AND EXPLANATION OF CHANGE: This language is included in 10 CSR 26-2.041, but only in the subsection that pertains to *tank* monitoring, subsection (1)(A). When writing these rules, it was awkward to put this same language into the *pipng* monitoring options within 10 CSR 26-2.041 because there are multiple piping types covered in 4 different paragraphs. In response to this comment, the department notes that 10 CSR 26-2.041 seems to be the appropriate rule to note when and where methods are allowed. As such, the text in 10 CSR 26-2.044 that establishes the sunset dates for groundwater and vapor monitoring would be better suited for 10 CSR 26-2.041, not 10 CSR 26-2.044. As such, 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 #6: Mr. Bob Wright, Wright's Station and Garage, submitted a comment on the language that would sunset groundwater monitoring as a release detection method. He requested the department withdraw this requirement or "grandfather" in his station. The department also had extensive verbal discussions with Mr. Wright to fully understand the concerns he raised in his comment.

RESPONSE: Mr. Wright indicated that having to change methods would be costly and a procedural change- something new to learn. EPA's new federal rule includes significant changes to the groundwater monitoring method. In EPA's version, sites would have to be able to provide extensive documentation of well installation, proof wells are installed properly (well logs) and in accordance with their guidance, the original site assessment documenting background levels prior to beginning the method, and more. Unfortunately, the department's review of sites using groundwater monitoring did not find any site in Missouri that likely meet all of these federal requirements. If a site cannot document that they meet all of the federal requirements, under the new EPA regulations, a new well plan would be needed, likely new wells installed that can document proper installation, groundwater levels at the site over the year, and all of this must be signed by a registered geologist or a professional engineer, also an added cost. Furthermore, a new background site assessment would be needed. If contamination is found during that assessment, the finding of contamination but be reported as a suspected release, requiring action; and it is possible the method will not be allowed until the site has been adequately remediated. So, while the rules appear to be different, in application in Missouri, it appears that the effect in reality at the sites will be the same: the least costly and most practical option will be a change in methods. After discussing this with Mr. Wright, he said he appreciated the explanation and had not understood the two options- state or federal regulations. The department also explained that the timeline to comply with EPA's version was shorter. Since the state is establishing a "sunset date," EPA allowed the department to give an extended time for compliance with this version, as it appears, in writing if not in actual application, more stringent than the EPA requirement. Mr. Wright said that it sounds like he would be switching methods either way; and, he much preferred the longer timeframe the state option allows. As such, no change is made in response to this comment.

(1) Each method of release detection for piping used to meet the requirements of release detection for underground storage tanks (USTs) in 10 CSR 26-2.041 must be conducted in the following manner:

(C) Applicable Tank Methods. Any of the methods in 10 CSR 26- 2.043(1)(B) and (F)-(I) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances[; and} except-

1. Owners and operators of piping [~~greater than fifty thousand (50,000) gallons~~] associated with field-constructed tanks **greater than fifty thousand (50,000) gallons** or airport hydrant fuel distribution system tanks may comply with 10 CSR 26-2.074 in lieu of the methods of piping leak detection in this rule[;].

~~2. Groundwater monitoring (10 CSR 26-2.043 subsection (1)(G)) can no longer be used after July 1, 2020; and~~

~~3. Vapor monitoring (10 CSR 26-2.043 subsection (1)(F)) can no longer be used after July 1, 2020, unless with an added tracer chemical and listed by the National Work Group on Leak Detection Evaluations as a tightness test; and]~~

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.044 Methods of Release Detection for Piping</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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.044 Methods of Release Detection for Piping</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 style="text-align: center;">—</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 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.

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; 319.107; and 319.137 RSMo, the commission hereby adopts a rule as follows:

10 CSR 26-2.046 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1172), but there was a typo in the rule hearing and comment period dates provided in the announcement. As such, the typo was corrected and the rule was reprinted in the *Missouri Register* on October 3, 2016 (41 Mo Reg 1308). No changes were made to the text of this rule, but 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 new rule 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 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.

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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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be

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In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

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RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overflow device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged or leaking spill basins are typically one of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues, that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at 83 sites, approximately 10% of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overflow devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not 'containing' the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release

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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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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.

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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.046 Alternative Methods of Release Detection for Field-Constructed Tanks</i>
Type of Rulemaking	<i>New Rule</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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.046 Alternative Methods of Release Detection for Field-Constructed Tanks</i>
Type of Rulemaking	<i>New Rule</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 style="text-align: center;">—</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.
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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.

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; 319.107; and 319.137 RSMo, the commission hereby adopts a rule as follows:

10 CSR 26-2.047 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1173), but there was a typo in the rule hearing and comment period dates provided in the announcement. As such, the typo was corrected and the rule was reprinted in the *Missouri Register* on October 3, 2016 (41 Mo Reg 1309). 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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.

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RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overflow device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged or leaking spill basins are typically one of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at 83 sites, approximately 10% of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overflow devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not 'containing' the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release

finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.046 Alternative Methods of Release Detection for Bulk Underground Piping</i>
Type of Rulemaking	<i>New Rule</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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.046 Alternative Methods of Release Detection for Bulk Underground Piping</i>
Type of Rulemaking	<i>New Rule</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 style="text-align: center;">—</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>
	<p>Total annual public cost:</p>	<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.

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; 319.107; and 319.137 RSMo, the commission hereby amends a rule as follows:

10 CSR 26-2.048 is adopted.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1172). No changes were made to the text of this rule, but 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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: In her written comments, Ms. Eighmey suggested that this entire rule should be rescinded and combined with 10 CSR 26-2.034. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter, noted above.

RESPONSE: 10 CSR 26-2.034 is a list of records that must be retained, but many of the items on the list reference another rule, wherein the detailed recordkeeping requirements for that specific rule are found (e.g. the containment sump testing recordkeeping is detailed in 10 CSR 26-2.035 and 10 CSR 26-2.034 simply references the documentation required in 10 CSR 26-2.035.) As such, providing details on a recordkeeping requirement and simply having it referenced in 10 CSR 26-2.034 is consistent with many other rules. There are now seven (7) release detection rules; EPA's original format and the department's format for these rules has been to have the details in a separate rule specific to the release detection rule that covers all seven (7) release detection rules. This rule is referenced in 10 CSR 26-2.034. The format keeps

the recordkeeping rules together with the appropriate requirement; for release detection, having separate recordkeeping rule allows for these requirements to not enlarge the other rules and makes them easier to find. As such, no change is made in response to this comment.

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.048 Release Detection Record Keeping</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:
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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.

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IV. ASSUMPTIONS

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<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

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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.

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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.
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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 section 319.109 RSMo, the commission hereby amends a rule as follows:

10 CSR 26-2.050 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 1174). No changes were made to the text of this rule, but 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test". Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overflow device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged or leaking spill basins are typically one of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at 83 sites, approximately 10% of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overflow devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not 'containing' the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks or sampling based on the finding of broken

equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.050 Reporting of Suspected Releases</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.

**REVISED FISCAL NOTE
PUBLIC COST**

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Rule Number and Name	<i>10 CSR 26-2.050 Reporting of Suspected Releases</i>
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<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.

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Chapter 2—Underground Storage Tanks- Technical Regulations

ORDER OF RULEMAKING

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

10 CSR 26-2.052 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 1174). 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 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 rule are described below, as well as any change made to the text of the proposed rule 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 rules, 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 rule 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 \$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 provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be

more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test". Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overflow device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged or leaking spill basins are typically one of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues, that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at 83 sites, approximately 10% of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overflow devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not 'containing' the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release

finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: Ms. Eighmey provided a written comment suggesting changes to the language in paragraph (1)(A)1. 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 indicated that corrective action was already covered under the site check in subsection (1)(B) and, as such, did not need to be included in the system check language in subsection (1)(A). The department has made changes in response to this comment 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.

(1) Unless corrective action is initiated in accordance with 10 CSR 26-2.070-10 CSR 26-2.083, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 10 CSR 26-2.050 within seven (7) days or another reasonable time period specified by the department using either the following steps or another procedure approved by the department:

(A) System Test. Owners and operators must conduct tests appropriate for the suspected release, using tightness tests listed by the National Work Group on Leak Detection Evaluations and/or approved by the department, or for containment sumps, a test method included in 10 CSR 26-2.035, to determine whether a leak exists in that portion of the tank system that routinely contains a regulated substance or a breach of the interstitial space has occurred. To obtain copies of equipment listings, contact the National Work Group on Leak Detection Evaluations, www.nwglde.org.

1. If the system test confirms a leak into the interstice or a release, owners and operators must repair, replace, upgrade, or close the underground storage tank (UST) system. Owners and operators must ~~[begin]~~**conduct** a site check ~~[in accordance]~~**and comply** with subsection (1)(B) ~~[and corrective action in accordance with 10 CSR 26-2.070-10 CSR 26-2.083]~~ if the test results for the system, tank, or delivery piping indicate that a release has occurred.

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 \$215,750.34 annually plus a one-time \$102,000 added cost to comply with all 25 rules amended and added in is this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all 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 25 rules amended and added in is 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
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.052 Release Investigation and Confirmation Steps</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.

**REVISED FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.052 Release Investigation and Confirmation Steps</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 style="text-align: center;">—</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 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.