

Proposed chapter 11-280.1, HAR – Explanation of changes made from December 2017 draft to public hearing draft

Note: This document is provided to assist interested parties to compare the previous draft (dated December 20, 2017) to the current draft chapter 11-280.1, Hawaii Administrative Rules, for which the Department is currently seeking public comments. This list is not intended to be exhaustive and may not include all changes made. *Comments directed to the Department regarding the current UST rulemaking effort should address the current draft being proposed by the Department for adoption, rather than previous versions.*

Reorganization since December 2017 draft

- Requirements for under-dispenser containment and secondary containment and alternative tank and piping designs for petroleum UST systems have been moved from section §20 to a new “upgrades” section. [§21]
- Tank and piping design requirements for hazardous substance UST systems have been moved from §20 to a separate section. [§23]
- Secondary containment design specifications have been moved from §20 to a separate section [§24].
- Notification requirements have been moved from §22 to §34, and the titles of subchapter 2 and §34 have been changed to reflect this shift.
- The recordkeeping requirement for “records that the equipment being utilized to monitor or maintain the UST system is designed to produce” has been moved from §34(c)(9) to §45(3).
- Subchapter 11 has been eliminated and its contents redistributed throughout the chapter and placed in the appropriately titled section based upon the subject matter of the relocated material.

Substantive changes since December 2017 draft

(The same change may be listed under more than one heading when applicable.)

Applicability dates for airport hydrant systems and field-constructed tanks installed before the effective date of the rules

- Must meet the requirements of subchapters 4, 8, 10, and 12 no later than one year after the effective date of the rules (changed from three years). [§10(a)(1)(A)]
- Must meet the requirements of subchapter 3 beginning on the effective date of the rules (changed from three years). [§253(b)(1) in December 2017 draft]
- Must meet the requirements of section 11-280.1-20(b) and (c) beginning on the effective date of the rules (changed from three years). This was an error in the December draft. All airport hydrant systems and field-constructed tanks are already required to meet equivalent standards, currently found in §§11-281-12 and 11-281-13.

Therefore, the alternatives to these standards found in §11-280.1-253(b)(2) in the December 2017 draft have been eliminated. [§21(b)(2)(A)]

- Must meet the requirements of section 11-280.1-20(d) no later than one year after the effective date of the rules (changed from three years). [§21(b)(2)(B)]

Applicability dates for UST systems that store fuel solely for use by emergency power generators installed before August 9, 2013

- Must meet requirements of subchapter 4 no later than one year after the effective date of the rules (changed from three years). [§10(a)(1)(B)]

Secondary containment design

- Changed from “Detect the failure of the inner and outer walls” to “Detect the failure of the inner wall”. [§24(b)(2)]

Recordkeeping

- Records (except permanent closure records) must be made available to the department for inspection at the regulated UST site, even if records are stored at an approved alternative location. [§34(e)(2)]
- Walkthrough inspection records must be retained for three years (changed from one year). [§36(b)]
- Records of calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least three years (changed from “one year after the servicing work is completed, or for another reasonable time period determined by the department”; consistent with the existing three-year requirement in §11-281-45(b)(4)). [§45(4)]

Overfill prevention equipment inspection

- Inspection required every three years (changed from annually). This was an error in the December draft. [§35(a)(e)]

Walkthrough inspections

- Walkthrough inspections beginning one year after effective date of rules (changed from beginning on the effective date of the rules). [36(a)]
- Monthly walkthrough inspection interval defined as every thirty-one days (changed from thirty). [§36(a)(1)]
- Removed allowed alternatives to walkthrough inspection requirements listed in rules. [§36(a)(2) and (3) in December 2017 draft]
- Walkthrough inspection records must be retained for three years (changed from one year). [§36(b)]

Under-dispenser containment

- Added requirements for operation, inspection and testing, and recordkeeping for required under-dispenser containment sensors. [§37]
- Dispenser systems installed on or after the effective date for airport hydrant systems and UST systems with field-constructed tanks must have under-dispenser containment. In the December draft, this requirement applied to dispensers installed on or after August 9, 2013 and became effective on the effective date of the rules for tanks installed on or after the effective date of the rules and three years after the effective date of the rules for tanks installed before the effective date of the rules. [§21(c)(2)]

Release detection

- Added “Beginning one year after the effective date of these rules” before the new list of specific components and criteria for test of proper operation. Current requirements in §11-281-51(c) include an annual inspection and servicing of this equipment, but the specific criteria are new. [§40(a)(4)]
- Removed requirement to submit written performance claims for release detection equipment. Documentation must still be retained for the life of the equipment under §11-280.1-45(1). [§40(a)(5) in December 2017 draft]
- Records of calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least three years (changed from “one year after the servicing work is completed, or for another reasonable time period determined by the department”; consistent with the existing three-year requirement in §11-281-45(b)(2) and (3)). [§45(4)]
- Airport hydrant systems and field-constructed tanks installed before the effective date of the rules and UST systems that store fuel solely for use by emergency power generators installed before August 9, 2013 must meet the requirements of subchapter 4 no later than one year after the effective date of the rules (changed from three years). [§10(a)(1)]

Release reporting, investigation, and confirmation

- Report of response actions taken for spill or overfill must be submitted to the department within twenty days (changed from ninety). [§53(c)]

Closure

- Definition of temporary closure changed to when “owners and operators do not deposit regulated substances into the UST or tank system nor dispense regulated substances from the UST or tank system for sixty days or longer” (changed from fifteen days). [§12]
- Removed proposed requirement for permanent closure after one year of temporary closure. The language added to require permanent closure after one year of temporary closure only if the tank does not meet applicable performance standards and upgrade

requirements remains consistent with current regulations and federal regulations.
[§70(c)]

- Clarifying requirement to submit an additional notification form after permanent closure work is completed. [Moved from §74(b) to §71(e)]
- Regarding site assessment at closure or change-in-service, added: “The requirements of this section are satisfied if one of the external release detection methods allowed in section 11-280.1-43(5) and (6) is operating in accordance with the requirements in section 11-280.1-43 at the time of closure, and indicates no release has occurred.” This is consistent with new federal language. [§72(a)]
- Applicability of closure requirements to previously closed UST systems [§73]
 - Corrected the closure cut-off date from January 28, 2000 to December 22, 1988. Between these two dates, federal UST closure regulations (40 CFR part 280 subpart G) would have applied to tank systems in Hawaii, so the 1988 effective date of the federal rules is the correct cut-off date (this is the same as current §11-280.1-84).
 - Added §73(b) to apply subchapter 7 requirements to airport hydrant systems and field-constructed tanks as of the correct closure cut-off/effective date (August 9, 2013). This was omitted from the December draft in error.