

UNIVERSITY OF HAWAI'I

Adoption of Chapter 20-26
Hawai'i Administrative Rules

(Date)

1. Chapter 20-26, Hawai'i Administrative Rules, entitled "Public and Commercial Activities on Mauna Kea Lands," is adopted to read as follows:

"HAWAI'I ADMINISTRATIVE RULES

TITLE 20

UNIVERSITY OF HAWAI'I

SUBTITLE 1

UNIVERSITY OF HAWAI'I

BOARD OF REGENTS

CHAPTER 26

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SUBCHAPTER 1

GENERAL PROVISIONS

§20-26-1 Purpose. The purpose of these rules is to provide for the proper use, management, and protection of cultural, natural, and scientific resources of the UH management areas; to promote public safety and welfare by regulating public and commercial activity within the UH management areas; to

ensure safe and appropriate access to the UH management areas for the public; and to foster co-management with the department of land and natural resources in UH management areas. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-2 Definitions. As used in these rules, unless context requires otherwise:

"Authorized agent" means a person, persons, or entity authorized by the president, to act on the president's behalf under this chapter.

"Board" means the board of regents of the University of Hawai'i.

"Camping" means the use of UH management areas (other than designated facilities at Halepōhaku) for living accommodation purposes such as sleeping activities, or making preparations to sleep ~~(including but not limited to the laying down of bedding for the purpose of sleeping), or storing personal belongings,~~ ~~or~~ using any tents or shelter or other structure or vehicle for sleeping ~~or carrying on cooking activities~~, between one hour after sunset and sunrise. ~~The activities indicated constitute camping when it reasonably appears, in light of the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaged.~~

"Commercial activity" means a use or purpose designed for profit, which includes the exchange or buying and selling of goods, or the providing of services, or relating to or connected with trade, traffic or commerce in general; provided, however, that the use of land for utility and routine maintenance, operations, and construction purposes shall not be considered a commercial activity. Commercial activities include but are not limited to activities whose base of operations is outside the

boundaries of the UH management areas, or provide transportation to, from, or within the UH management areas.

"Commercial tours" means the transport of people for compensation for the purpose of engaging in public activities within the UH management areas, including but not limited to transport by cars, sport utility vehicles, trucks, taxis, vans or buses.

"Compensation" includes, but is not limited to, monetary payments, barter, or services in-kind. Bona fide sharing of resources or expenses among participants in scientific research-related activities, including but not limited to astronomical observatory operations, does not constitute compensation.

"Comprehensive management plan" means the Mauna Kea Comprehensive Management Plan approved by the board of land and natural resources, dated April 2009, including any sub-plans, as they may be amended.

"Drone" means an unmanned aircraft, ship, or vehicle guided by remote control or onboard computers.

"Forest reserve" means lands set apart as forest reserve pursuant to section 183-11, Hawai'i Revised Statutes.

"Game mammals and birds" means those animals that have been designated as such by the department of land and natural resources.

"Halepōhaku" means the Halepōhaku (also known as Hale Pōhaku) mid-level facilities as described in the lease between the board of land and natural resources and the university.

"Hazardous materials" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (1976), as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq. (1980), as amended, the Federal Clean Water Act, 33 U.S.C. § 1251 et seq. (1972), or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-

law, whether existing as of the date hereof or subsequently enacted.

"Kahu Kū Mauna" means the advisory community-based council that advises the Maunakea Management Board, OMKM, and the chancellor of the University of Hawai'i at Hilo on Hawaiian cultural matters affecting the UH management areas.

"Law enforcement officer(s)" means any federal, state, or county government employee with law enforcement powers.

"Mauna Kea" or "Maunakea" refers to the dormant volcano on the island of Hawai'i standing approximately 4,205 meters above sea level; its peak is the highest point in the state of Hawai'i.

"Maunakea Management Board" or "MKMB" means the community-based advisory body established by the board to provide the Hawai'i Island community with a direct voice to the university for the management of the UH management areas.

"Motorized vehicle" means a vehicle of any shape or form that depends on a gas, electric, or other fuel motor for propulsion.

"Natural area reserve" means an area designated as a part of the Hawai'i natural area reserves system, pursuant to chapter 195, Hawai'i Revised Statutes.

"Non-motorized vehicle" means a vehicle of any shape or form that depends on human, animal, wind, spring, and other non-motorized means for propulsion.

"Office" or "OMKM" means the office of Maunakea management.

"Person" includes individuals eighteen (18) years of age or older, partnerships, corporations, associations, or public or private organizations of any character other than government agencies.

"President" means the president of the university, unless otherwise expressly stated or further designated by the board or the president.

"Private vehicle" means any vehicle not operated for governmental purposes, including but not limited to private cars and trucks, rental cars and trucks, commercial tour vehicles, taxis, limousines, buses, and other transportation for hire. It does not

include vehicles operated by employees or agents of government agencies on official business, but can include any vehicle, including a government vehicle, if operated by an employee or agent of a government agency when not acting in an official capacity.

"Public activities" means activities of the general public that are not governed by contract or other legal agreement with the university, other than a permit issued under these rules or the rules of the department of land and natural resources, if applicable.

"Solicit" means to ask, implore, plead for; to endeavor to obtain by asking; to importune; or to try to obtain.

"UH management areas" are those lands defined as "Mauna Kea lands" under section 304A-1901, Hawai'i Revised Statutes.

"University of Hawai'i", "University", and "UH" means the state university established under article X, section 5 of the Hawai'i Constitution and section 304A-101, Hawai'i Revised Statutes, which is governed by the board.

"Written permit" or "written permission" means a permit or permission issued under this chapter by the president. [Eff. _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-3 Applicability and implementation, generally. (a) These rules shall apply to all public activities and commercial activities in the UH management areas as defined in these rules.

(b) These rules do not apply to education and research activities and support functions carried out by:

- (1) The university;
 - (2) Persons under an agreement with the university; or
 - (3) Government entities under an agreement with the university.
- (c) Where overlapping jurisdictions within UH

management areas are present, including but not limited to department of land and natural resources administrative rules pertaining to conservation districts, forest reserves, historic preservation, hunting, and natural area reserves, those rules shall govern.

(d) This chapter shall be implemented in consultation with the department of land and natural resources, to allow hunting and recreation in those areas designated by the department of land and natural resources as regulated by department of land and natural resources hunting rules.

(e) The president may seek the advice of the Maunakea management board and the Kahu Kū Mauna pursuant to the comprehensive management plan and consistent with the timelines and procedures of this chapter.

(f) Native Hawaiian traditional and customary rights as recognized and protected under article XII, section 7, of the Hawai'i State Constitution shall not be abridged. [Eff] (Auth: HRS §§304A-105, 304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-4 Consistency with other rules. These rules shall not be interpreted so as to be inconsistent with other rules applicable within UH management areas, including but not limited to conservation district rules, and where applicable, forest reserves, hunting, historic preservation, and natural area reserves rules. [Eff] (Auth: HRS §§304A-105, 304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-5 Orientation. As set forth in the comprehensive management plan, all persons accessing the UH management areas shall be required to complete an orientation regarding cultural and natural

resources, safety matters, and other relevant information prior to entering the UH management areas. [Eff _____] (Auth: HRS §§304A-105, 304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-6 Fees. Fees, as established by the board, may be charged for permits, services, parking, entrance, and for the use of facilities and programs related to the UH management areas. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-1902, 304A-1903, 304A-2170)

§20-26-7 Mauna Kea lands management special fund. (a) All payments collected pursuant to these rules shall be deposited into the Mauna Kea lands management special fund.

(b) The proceeds of the Mauna Kea lands management special fund shall be used as provided in chapter 304A, Hawai'i Revised Statutes. [Eff _____] (Auth: HRS §§304A-105, 304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-2170)

§20-26-8 Delegation of authority. The board delegates its authority to administer this chapter to the president, who may further delegate that authority to a designee. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§§20-26-9 to 20-26-20 (Reserved).

SUBCHAPTER 2

PUBLIC ACTIVITIES

§20-26-21 Preservation of resources. The following activities are prohibited within the UH management areas:

- (1) Removing, injuring, disturbing, or killing any form of plant or animal life, either in whole or in part, except game mammals and birds hunted according to rules of the department of land and natural resources;
- (2) Introducing any form of plant or animal life, except dogs when permitted by the hunting rules of the department of land and natural resources and legally authorized service animals when accompanying their handlers;
- (3) Removing, damaging, or disturbing any natural feature or resource;
- (4) Removing, damaging, or disturbing any geological or paleontological features or substances;
- (5) Removing, damaging, or disturbing any historic or prehistoric property or remains;
- (6) Removing, damaging, or disturbing any private or university property, sign, marker, or structure;
- (7) Entering into any cave, as defined in section 6D-1, Hawai'i Revised Statutes, or any portion thereof, except as allowed by the department of land and natural resources;
- (8) Having or possessing the following tools, equipment or implements: cutting or harvesting tools or gear, including but not limited to chainsaws, axes, loppers, any mechanized or manual sawtooth tool, seed pickers, or machete, that may be used for the taking, injuring, or killing of plant life, and hunting gear or tools that may be used for the taking, injuring, or killing of

- wildlife; except as permitted by the hunting rules of the department of land and natural resources or in accordance with a special term or condition of a written permit;
- (9) Engaging in any improvement or construction, except as authorized by written permit and, if applicable, a permit issued by the department of land and natural resources, or by the board of land and natural resources;
 - (10) Hiking, conducting nature study, or conducting any activity on pu'u (cinder cones) unless on designated trails or roads, except by written permit; or
 - (11) Introducing any materials from outside the UH management areas, including but not limited to manmade and natural items such as balls, plastic flowers, glass, metal and rocks, except by written permit and, if applicable, a permit issued by the department of land and natural resources.
[Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-22 Preservation of property. The following activities are prohibited within the UH management areas:

- (1) Entering, occupying, or using any building, structure, facility, motorized vehicle, machine, equipment, or tool without permission from its owner or the university;
- (2) Removing, damaging, disturbing, defacing, or attempting to remove, damage, disturb or deface any building, structure, facility, motorized vehicle, machine, equipment, or tool without permission from its owner or the university; or
- (3) Entering and remaining within any portion of the UH management areas developed or used by the university for educational or research

purposes, after being asked to leave the area by an authorized agent or law enforcement officer. [Eff]
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-23 Preservation of scientific and educational resources. The following activities are prohibited within the UH management areas north of Halepōhaku:

- (1) Using any radio transmitter, including but not limited to two-way radios, Wi-Fi and Bluetooth devices, and cellular telephones; provided that, cellular telephones may be used for emergency purposes or when radio transmission is suspended, for example by using airplane mode;
- (2) Directing artificial illumination, for example, lasers and flashlights, at or near observatories; or
- (3) Conducting any other activity that materially interferes with the scientific and educational operations of the astronomical facilities or research equipment or with the protection of the scientific resources. [Eff]
(Auth: HRS §§304A-105, 304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-24 Litter and sanitation. The following activities are prohibited within the UH management areas:

- (1) Littering, or depositing any garbage, trash, refuse, waste material, or rubbish in any place other than receptacles provided for this purpose;
- (2) Depositing any bodily waste in areas without comfort stations without digging a hole and

- covering all signs of the waste;
- (3) Depositing any bodily waste, without use of a comfort station, within 200 feet of any body of water, building, road, or trail; or
 - (4) Leaving or abandoning any items, including but not limited to, vehicles, appliances, garbage or trash, or other forms of waste, debris, personal effects, or unattended items. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-25 Fire use restrictions. The following acts are prohibited within the UH management areas: Starting or maintaining a fire or depositing or discarding any potential fire-producing material such as matches, cigarette butts, embers, or coals, except as otherwise provided in this chapter. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-26 Explosives. The following acts are prohibited within the UH management areas: Using or possessing fireworks, firecrackers, or explosive devices. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-27 Firearms or other weapons. Firearms, bows and arrows, knives with blade length greater than three (3) inches, and other weapons are prohibited within the UH management areas, except when permitted by the hunting rules of the department of land and natural resources or for use by law enforcement officers. The use and possession of any such weapons are subject to all applicable federal, state, and county statutes, ordinances, and rules. [Eff _____]

] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-1903)

§20-26-28 Vehicles and transportation. (a) The following acts are prohibited within the UH management areas:

- (1) Exceeding posted speed limits;
- (2) Driving, operating, or using any motorized or non-motorized vehicle in areas and on roads or trails unless designated for that use;
- (3) Launching or landing an air conveyance of any shape or form, including but not limited to aircraft, gliders, hang gliders, helicopters, balloons, parachutes, parasails, or other similar means of transportation in any portion of the UH management areas not designated for that purpose, including but not limited to roads or trails, provided that the department of land and natural resources may allow these uses under its applicable rules after consultation with the university or unless used for emergency purposes;
- (4) Parking any motorized or non-motorized vehicle or trailer except in designated areas;
- (5) Operating any motorized or non-motorized vehicle in violation of existing state or county traffic regulations, including but not limited to having a valid vehicle license plate, registration and safety check as required;
- (6) Operating any motorized or non-motorized vehicle on a closed roadway or in violation of any usage restriction established pursuant to these rules; ~~or~~
- (7) Failing to comply with any posted sign or any posted equipment requirement based on roadway conditions, such as a requirement to

use or carry tire chains when snow or ice is present or anticipated ~~;~~ or

- (8) Use of two-wheel drive motorized vehicles north of Halepōhaku.

(b) The following types of vehicles may be impounded by an authorized agent at any time: (i) vehicles left unattended in closed areas, (ii) vehicles left for longer than forty-eight (48) hours, or (iii) vehicles causing a safety hazard which may be impounded by an authorized agent at any time removed as soon as possible.

(c) All impounded vehicles shall be towed to a place of storage. Towing, storage, and other related costs shall be assessed pursuant to section 290-11, Hawai'i Revised Statutes. [Eff]
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-29 Unmanned aerial vehicles, drones and air toys. The following acts are prohibited within the UH management areas: using or operating unmanned or remote controlled terrestrial vehicles, aerial vehicles, drones, or air toys, including but not limited to kites, balloons, boomerangs, gliders, rockets, and model aircraft. [Eff]
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-30 Outdoor sports activities. The following acts are prohibited within the UH management areas:

- (1) Use of vehicles with two wheels propelled by pedals, for example, a bicycle, north of Halepōhaku, except by written permission; or
- (2) Engaging in any outdoor sport or play involving objects thrown, hit, or driven, of any shape or size that could result in injury to others or damage to existing

structures or equipment, that are likely to be lost or misplaced, or inconsistent with section 20-26-21; or

- (3) Formally or informally organized contests, meets, or competitions. [Eff
] (Auth: HRS §304A-1903)
(Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-31 Hazardous materials. Introducing, using, disposing, releasing, spilling, or transporting any hazardous materials is prohibited within the UH management areas, other than fuel or lubricants contained within a licensed motorized vehicle or as otherwise used in the ordinary course of lawful activities in a manner sanctioned by law and compliant with all applicable legal requirements. [Eff
] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-32 Animals. (a) Dogs, cats, and other animals are prohibited within the UH management areas except for hunting dogs when permitted by department of land and natural resources hunting rules and legally authorized service animals when accompanying their handlers.

(b) All dogs used for hunting shall be crated, caged, leashed or otherwise under restrictive control during transportation while in transit at all times, to and from hunting areas in the UH management areas, except under written authorization by the department of land and natural resources for management activities.

(c) Dogs, cats, or other domestic animals will be removed in the interest of public safety and the protection of resources. [Eff
] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-33 Audio devices and noise. Creating noise or sound within UH management areas using public address systems or other audio amplifying devices, or using electric generating plants or other equipment driven by motors or engines, in a manner and at times that create a nuisance is prohibited. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-34 Public safety. The following acts are prohibited within the UH management areas:

- (1) Disorderly conduct, as defined in section 711-1101, Hawai'i Revised Statutes; or
 - (2) Engaging in activities that would obstruct or impede public or vehicular access, ~~or harass visitors to UH management areas, either verbally or with physical contact.~~
- [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-35 Use of drugs or alcohol. The following acts are prohibited within the UH management areas:

- (1) Using or possessing narcotics or drugs, except as legally prescribed by a physician, or over-the-counter medication in accordance with applicable law; or
 - (2) Using or possessing alcohol in public areas.
- [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-36 Use of Smoking and tobacco use prohibited. The following acts are prohibited within the UH management areas: Smoking and tobacco use, consistent with ~~Act 160, Session Laws of Hawai'i 2018,~~ section ~~2-304A-122, Hawai'i Revised Statutes.~~ [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-122, 304A-1903)

§20-26-37 Camping. Camping is prohibited within the UH management areas. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-38 Access. (a) Roadway access control. Upon approval of the board of land and natural resources, a gate or other access control structure may be installed as set forth in the comprehensive management plan to manage vehicular access to portions of the UH management areas.

(b) Closed areas, road closures or usage limitations.

- (1) The president may close or limit access to all or portions of the UH management areas, when needed for protection from hazardous conditions, including but not limited to inclement weather conditions, construction or maintenance activities on or near the roadway or at observatory sites, transportation of wide, heavy, or otherwise hazardous loads, or roadway congestion. Notice of road closures or usage limitations shall be provided through signage, road blocks, closed gates, or other means reasonably calculated to provide public notice of the location and extent of closure. The road shall remain closed until it is determined the hazardous condition no longer exists.

- (2) Access by private vehicles may be restricted for public safety and welfare, for the protection of resources, and to reduce congestion. Restrictions may include, but are not limited to, setting a maximum number of private vehicles allowed within the UH management areas at a time, restricting the areas in which private vehicles may operate, or utilizing shuttle vehicles in lieu of private vehicles.
- (3) No person shall operate a vehicle on a closed roadway or in violation of a usage restriction.

(c) Closed areas, public access hours. Public access hours for the UH management areas shall be adopted as set forth in the comprehensive management plan, provided that hunting shall be allowed pursuant to department of land and natural resources hunting rules. All persons shall abide by the officially posted signs designating public access hours.

- (d) Closed areas, management and public safety.
 - (1) The president may close any portion of the UH management areas as necessary or appropriate for the protection of the resources of the area or the safety and welfare of persons or property, by posting appropriate signs indicating the extent and scope of closure.

- (2) All persons shall abide by the officially posted signs designating closed areas.

(e) Public access policies and procedures. The president may establish policies and procedures for the implementation of this chapter, which shall be posted on the OMKM website and made available for inspection at its offices upon request. [Eff

] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-39 Snow play. (a) Skiing, snowboarding, sledding and other similar winter or snow sports may

be restricted to maintain public safety and welfare, to prevent damage to resources, and to minimize conflicts among visitors.

(b) Skiing, snowboarding, sledding or other forms of snow recreation or snow activities may be prohibited in specific designated zones or areas in order to maintain public safety and welfare, and protect resources.

(c) Formally or informally organized contests, meets, or competitions, snow play tours, or other similar events for skiing, snowboarding, sledding or other forms of snow recreation or snow activities are prohibited.

(d) Operating a snowmobile, an all-terrain vehicle, or other motorized vehicle used for snow recreation is prohibited anywhere in the UH management areas.

(e) Towing persons on skis, sleds, or other sliding devices by any motorized vehicle is prohibited. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-40 Scattering of cremated remains. The scattering of cremated human remains is allowed within the UH management areas, consistent with this chapter and policies and procedures established by the president. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-41 Interference with government function. The following acts are prohibited within the UH management areas:

- (1) Threatening, resisting, intimidating, or intentionally interfering with an authorized agent or law enforcement officer engaged in the performance of his or her official duties under this chapter;
- (2) Disobeying or refusing to heed the lawful

instructions or orders of an authorized agent or law enforcement officer in the performance of his or her official duties to manage public access and movement, to maintain public safety and welfare, or to protect resources;

- (3) Knowingly giving a false or fictitious report or other false information:
 - (A) To a person investigating an accident or violation of these rules, or
 - (B) In an application for a permit; or
- (4) Knowingly giving a false report for the purpose of misleading an authorized agent or law enforcement officer in the conduct of their official duties, or making a false report that causes a response by an authorized agent or law enforcement officer to a fictitious event. [Eff _____]
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-42 Compliance with laws. All persons entering the boundaries of the UH management areas shall comply with all federal, state, and county laws, ordinances, and rules. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-1903)

§§20-26-43 to 20-26-50 (Reserved).

SUBCHAPTER 3

COMMERCIAL ACTIVITIES

§20-26-51 Commercial activities generally.

Soliciting or engaging in commercial activities of any kind within the UH management areas without a written permit is prohibited. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903, 304A-1904)

§20-26-52 Selling, advertising, and solicitation. (a) Selling of goods of any nature is prohibited within the UH management areas.

(b) Posting or distribution of commercial notices or advertising material of any nature, or soliciting the purchase or sale of goods or services, including but not limited to transportation, is prohibited within the UH management areas.

(c) Any commercial notice or advertising material soliciting the purchase or sale of goods or services for a commercial activity that has received a permit pursuant to these rules, including but not limited to transportation, shall conspicuously provide the permit number and the name of the permittee to whom the permit is issued. [Eff] (Auth: HRS §304A-1903) (Imp: §§304A-103, 304A-105, 304A-1903).

§§20-26-53 to 20-26-60 (Reserved).

SUBCHAPTER 4

PERMITS AND REGISTRATION
FOR PUBLIC AND COMMERCIAL ACTIVITIES

§20-26-61 General provisions. (a) The president may issue the following types of permits:

- (1) Research activities not otherwise permitted by, or excluded from, these rules;
- (2) Special use;
- (3) Commercial tour activity; and
- (4) Commercial film and recordings.

(b) All permits shall be subject to the following provisions:

- (1) Permits may be suspended, canceled, revoked or terminated at any time upon violation of these rules or any conditions of the permit, which may include failure to comply with applicable federal, state, or county statutes, ordinances, and rules; or for public safety reasons arising from weather or other natural or human-created conditions in the UH management areas.
- (2) Permits are not transferable.
- (3) Persons to which permits are issued shall be responsible for compliance with all conditions stipulated in the permit.
- (4) All payments of fees and charges, as established under section 20-26-6, shall be in U.S. funds, and by cash, check, cashier's check, certified check, postal money order, bank money order, or other methods approved by the president, provided that personal or business checks may be used to pay for activities that will occur thirty (30) or more days after the date of payment.
- (5) Permits shall be subject to such other procedures, terms, and conditions as may be established from time to time by the president to carry out the provisions of chapter 304A, Hawai'i Revised Statutes, this chapter, or any applicable federal, state, or county statute, ordinance, or rule. Conditions may include, but are not limited to, restricting access to certain areas for public safety, requiring execution of a liability waiver, setting protocols for

invasive species prevention, requiring compliance with protocols to prevent the accidental introduction of non-native species, or designating approved transportation methods.

- (6) All permittees shall, upon request, show the permit to an authorized agent, law enforcement officer, or the president to manage and regulate public and commercial activities within the UH management areas.
- (7) Permits shall not create a property interest in favor of the permittee.
- (8) Persons crossing UH management areas to access the adjacent Mauna Kea Ice Age Natural Area Reserve or Mauna Kea Forest Reserve, shall obtain a permit from the department of land and natural resources, if required, and make said permit available for an authorized agent, law enforcement officer, or the president's inspection upon request.

(c) Permit applications shall be submitted in the form prescribed by the president. The president may determine numbers of permits to be issued based on consideration of impacts of permitted activities on resources, and public safety and welfare.

(d) Permits may be canceled or terminated at any time without advance notice when:

- (1) A state of emergency is declared by the Governor or other proper authority;
- (2) Natural or civil disturbances occur or threaten to occur, including but not limited to, tsunamis, floods, earthquakes, storms, riots, and demonstrations;
- (3) The permittee violates permit conditions or provisions of this chapter;
- (4) The permitted activity damages or threatens serious damage to the integrity of the resources of the UH management areas or threatens the safety of the permittee or the general public;
- (5) Fees are not paid when required; or

(6) Applicant's prior record or conduct within the UH management areas are contrary to university or department of land and natural resources' policy to protect the resources of the UH management areas, including but not limited to failure to pay fines issued under this chapter.

(e) The president may impose fines for failure to comply with the terms of a permit as provided in section 20-26-73.

(f) The department of land and natural resources is not required to obtain permits under this chapter, provided that the department of land and natural resources consults with the president on its activities. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-1903)

§20-26-62 Group use registration. (a) Any group larger than ten (10) members shall be required to register with the president.

(b) A registration form provided by the president for group use shall at minimum, include the following requested information from the person responsible for the group activity:

- (1) Name of person responsible for the group;
- (2) Approximate size of the group;
- (3) Date, time, and duration of the group activity;
- (4) Location of the group activity;
- (5) Certification that group participants have read and understand this chapter; and
- (6) Depending on the potential ~~impact~~impacts to natural, cultural, archeological, historic, or scientific resources, proof of insurance ~~and indemnification of the university~~.

(c) The registration form shall be submitted to the president at least fifteen (15) calendar days in advance of the date the group activity is to occur.

(d) All individuals under eighteen (18) years of age shall be under the direct supervision of one (1)

adult for every ten (10) minors during daylight hours and one (1) adult for every five (5) minors for night hours.

(e) If a registration form is not submitted or the person responsible provides false information on the registration form, participants may be barred from the event or asked to leave UH management areas. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-63 Research permits. (a) Research permits may be issued to engage in activities for scientific, educational, or management purposes, that may otherwise be prohibited by this chapter.

(b) Applications for research permits shall adequately describe the planned research activity, including but not limited to the scope, duration, and location of the research and shall be submitted at least one hundred twenty (120) calendar days in advance of the date the permit is to be in effect.

(c) Applications for research permits shall be evaluated for duplication with existing or previously approved research, for compatibility with the functions and purpose of the UH management areas, for consistency with existing approved management plans; for the potential effect on the surrounding resources, the existing facilities, and the public's use of the UH management areas; for compatibility with existing approved uses; and for the applicant's prior record of non-compliance with permit conditions, or of violations. Additional information may be required from the applicant to make this evaluation. Failure to provide additional information when requested may be grounds for permit denial.

(d) Fees shall be assessed in accordance with section 20-26-6, and additional terms and conditions necessary to protect the resources of the UH management areas and to protect safety and welfare may be imposed. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-64 Special use permits. (a) Special use permits may be issued to engage in activities otherwise prohibited by this chapter.

(b) Special uses are all types of uses, other than registered groups, research, commercial tour activities, and commercial film and recordings which are considered compatible with the functions and purpose of the UH management areas and are consistent with the approved management plans for the UH management areas.

(c) Applications for special use permits shall adequately describe the planned use, including but not limited to the scope, duration, and location of the activity, and shall be submitted at least forty-five (45) calendar days in advance of the date the permit is to be in effect.

(d) Each special use permit application shall be evaluated on its own merits for compatibility with the functions and purpose of the UH management areas, for consistency with existing approved management plans; for the potential effect on the surrounding resources, the existing facilities, and the public's use of the UH management areas; for compatibility with existing approved uses; for compatibility with scheduled or ongoing construction, repairs, or maintenance activities; and for the applicant's prior record of non-compliance with permit conditions, or of violations. Additional information may be required from the applicant to make this evaluation. Failure to provide additional information when requested may be grounds for permit denial.

(e) Fees shall be assessed in accordance with section 20-26-6, and additional terms and conditions necessary to protect the resources of the UH management areas and to protect safety and welfare may be imposed. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-65 Commercial tour activity permits. (a) Commercial tour activity permits for conducting

commercial tours or transporting passengers for hire within the UH management areas may be issued by the president.

(b) Permits for commercial tours or passenger transportation for hire may be issued pursuant to subsection (c), and under such terms and conditions as shall be determined by the president to carry out the provisions of chapter 304A, Hawai'i Revised Statutes, this chapter, or any applicable federal, state, or county statute, ordinance, or rule.

(c) Each permit application shall be evaluated on its own merits for compatibility with the functions and purpose of UH management areas; for consistency with existing approved management plans; for the potential effect on the surrounding resources, the existing facilities and infrastructure, and the public's use of the UH management areas; for compatibility with existing approved uses; for compatibility with scheduled or ongoing construction, repairs, or maintenance activities; and for the applicant's prior record of non-compliance with permit conditions, or of violations. In addition, each permit application shall also be evaluated for the quality of the educational aspects of the activity, the comprehensiveness of planned staff training, the inclusion of safety protocols, and the extent to which additional practices are incorporated to ensure customer and public safety and welfare and to protect the resources of the UH management areas. Additional information may be required from the applicant to make this evaluation. Failure to provide additional information when requested may be grounds for permit denial.

(d) The president shall establish a number of available permits under this section. If qualified applications outnumber available permits, the permits shall be allocated by drawing or lottery.

(e) The president may elect to manage commercial tour activities through issuance of one (1) or more concession agreements in lieu of, or in addition to, commercial tour activity permits. Any such concession agreements shall be consistent with these rules and

applicable law.

(f) The president may enter into an agreement with another public agency to manage commercial tour activities and transportation of passengers for hire within the UH management areas, on such terms and conditions deemed appropriate, which shall be consistent with these rules and applicable law. Such an agreement may be in lieu of, or in addition to, written permits or concession agreements for such purposes.

(g) Fees shall be assessed in accordance with section 20-26-6 and additional terms and conditions necessary or appropriate to reduce congestion, protect the resources of the UH management areas and protect safety and welfare may be imposed, including but not limited to insurance and licensing requirements, and loading restrictions.

(h) Commercial tour activity permits in force as of the effective date of these rules shall remain in effect through their stated expiration dates or such earlier termination date as may apply in accordance with their terms. Upon expiration, any future application shall be submitted in accordance with these rules. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-66 Commercial film and recordings. (a) Use for commercial purposes of video, digital, film, still photography, or any other visual and audio recordings taken within the UH management areas is prohibited without a written permit issued by the Hawai'i film office of the department of business, economic development and tourism.

(b) The president shall review all permit applications involving the UH management areas that are submitted to the Hawai'i film office of the department of business, economic development and tourism. The president shall recommend approval or denial of each permit application, may require specific conditions, and may request fees, insurance,

performance bonds, or deposits to cover administrative and personnel expenses or potential damages to resources associated with the proposed activity. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-67 Period of validity and renewal of permit. (a) Permits shall be valid for the term set forth therein, as established the president. Upon expiration of the stated term, the permit and all rights of the permittee thereunder shall automatically terminate.

(b) No permit shall be renewed unless the permittee has submitted a timely application to renew the permit, all the conditions or covenants of the original permit, including but not limited to the requirement of prompt payment of fees or charges, have been met, and the rules governing the UH management areas have been fully complied with.

(c) The renewal of an existing permit is discretionary, and applications for renewal of an existing permit shall be evaluated by the criteria provided in these rules for the issuance of new permits. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§§20-26-68 to 20-26-70 (Reserved).

SUBCHAPTER 5

ADMINISTRATION AND ENFORCEMENT

§20-26-71 Purpose of subchapter; statement of policy. This subchapter shall govern the university's practices and procedures relating to the administrative proceedings for civil violations of these rules and the assessment of administrative sanctions for such violations. This subchapter shall effectuate and carry out the purposes and policies of section 304A-1903, Hawai'i Revised Statutes, and shall be construed and interpreted in the manner most favorable to the promotion of justice, expeditious processing, and cost-effective resolution in every case involved. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903, 304A-1904)

§20-26-72 Applicability. (a) This subchapter shall apply to violations of this chapter and permits issued under this chapter.

(b) Any criminal prosecution against a person shall not preclude the university from imposing administrative sanctions pursuant to this subchapter against the same person for any civil violation committed in the same course of conduct.

(c) Any administrative proceeding against a person under this subchapter shall not preclude the state from pursuing a separate criminal prosecution against the same person for a criminal offense committed in the same course of conduct, or any collateral proceeding before the department of land and natural resources. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903, 304A-1904)

§20-26-73 Violations, penalties, costs, administrative fines, sanctions, and collection. (a) An authorized agent, law enforcement officer, or the president shall impose one or more of the following

sanctions for violations of these rules or permits issued pursuant to these rules:

- (1) Immediate expulsion from the UH management areas;
- (2) Exclusion from the UH management areas ~~for a specific period or~~ until the violation has been corrected;
- (3) An administrative fine determined in accordance with subparagraph (b) of this section;
- (4) A monetary assessment to recover costs of mitigation or restoration required as a result of the violation and to recover the costs of enforcement proceedings;
- (5) Revocation or suspension of a permit; and
- (6) Imposition of additional permit conditions.

(b) Administrative fines shall be assessed as indicated in Exhibit A entitled "Public and Commercial Activities on Mauna Kea Lands, Administrative Fines," located at the end of this chapter.

(c) Each 24-hour period that a violation continues shall be a continuing violation for which a daily fine may be assessed at the same amount as the initial fine until the violation stops or is corrected.

(d) The costs of any enforcement proceedings, including the costs of contested case proceedings, may be assessed against a party found to be in violation.

(e) For parking violations, the driver or registered owner of the motorized vehicle, or both, shall be subject to the applicable penalties described above.

(f) All payments shall be in U.S. funds, and by cash, check, cashier's check, certified check, postal money order, bank money order, or other methods approved by the president.

(g) Any action taken to impose or collect penalties provided for in this chapter shall be considered a civil action. [Eff]

(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-1903, 304A-1904)

§20-26-74 Enforcement; citations. An authorized agent or law enforcement officer shall have the power(s) to issue a citation for any violation of the provisions of this chapter:

- ~~(1)~~ ~~Authorized agents or law enforcement officers must first issue a verbal warning before issuing a citation for any violation under subchapter 2, Public Activities, of this chapter, provided that (a) the violation did not result in injury or damage to cultural, natural, or scientific resources; and (b) the violation stops or is corrected immediately;~~
- ~~(2)~~(1) Law enforcement officer(s) may use a form of citation that is authorized for use for violations of Hawai'i Administrative Rules, ordinances, or Hawai'i Revised Statutes;
- ~~(3)~~(2) In every case when a citation is issued, a copy of the same shall be given to the violator or in the case of a parking, standing or stopping violation a copy of the same shall be affixed to the vehicle, as provided in paragraph (5);
- ~~(4)~~(3) Every citation shall be consecutively numbered and each copy shall bear the number of its respective origin;
- ~~(5)~~(4) Whenever a vehicle is in violation of any provision, other than a parking, standing, or stopping provision, of this chapter, any law enforcement officer and any authorized agent shall take the name, address and driver's license number of the alleged violator and the license plate number of the vehicle or vehicle identification number of the vehicle involved, and shall issue to the alleged violator in writing a citation, notifying the alleged violator to answer to the citation in writing at the address provided and by the date indicated; and
- ~~(6)~~(5) Whenever any motor vehicle is parked,

standing, or stopped in violation of this chapter, an authorized agent or the law enforcement officer finding the vehicle shall conspicuously affix to the vehicle a citation. The citation shall be addressed to the registered owner of the vehicle, but need not identify the registered owner by name, so long as the citation identifies the vehicle by its license plate number or vehicle identification number. The citation shall instruct the registered owner to answer to the citation in writing at the address provided and by the date indicated. The registered owner of a vehicle shall be responsible and accountable for the illegal parking, standing, or stopping of the vehicle when:

- (A) The registered owner committed the illegal parking, standing, or stopping of the vehicle; or
- (B) Another person committed the illegal parking, standing, or stopping of the vehicle, but the registered owner gave the person explicit or implicit permission to use the vehicle at the time of the violation.

In any proceeding for violation of a parking, standing, or stopping provision of this chapter, the license plate number or vehicle identification number of the parked, standing, or stopped vehicle shall constitute prima facie evidence that the registered owner of the vehicle was responsible and accountable for the illegal parking, standing, or stopping of the vehicle. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-75 Appeals process, information requests and submittals, and petitions for declaratory rulings.

(a) Requests for informal and formal hearings ~~appeals~~ shall be submitted in writing ~~within seven (7) days after issuance of a citation or the president's written decision regarding a permit~~ on a form to be provided by the president. These forms shall be made available by the president at OMKM's office and on OMKM's website.

~~The following rules of practice including both~~ (b) Practice and procedure for informal and formal procedures are adopted ~~appeals~~:

- (1) Informal procedures. ~~Persons~~ A person who ~~believe~~ believes that they have received a citation in error, whose vehicle was removed by an authorized agent, or who ~~disagree~~ disagrees with a written decision by the president ~~regarding a permit~~ may file a written request for an informal review with the president within fifteen (15) days of the issuance of the citation ~~or of~~, the removal of ~~the~~ vehicle, ~~or the president's written decision~~. Upon review of the written request, the president shall issue a written decision that shall be final and binding. No further appeal is ~~permitted;~~ and allowed.
- (2) Formal procedures. Instead of an informal review, a person ~~requesting a formal hearing~~ who believes that they have received a citation in error or who disagrees with a written decision by the president ~~in accordance with subsection (a)~~ may file a written request for a formal review with the president within fifteen (15) days of the issuance of the citation or the president's written decision. The person shall be afforded an opportunity for hearing after reasonable notice as provided by chapter 91, Hawai'i Revised Statutes. The hearing under this section shall be treated as a contested case hearing under chapter 91, Hawai'i

Revised Statutes, and shall be conducted in accordance with the statutory requirements for contested case hearings, as follows:

- (A) The hearing shall be conducted by the president or a hearing officer appointed by the president;
- (B) Upon receipt of a written request for a formal hearing, the president or the hearing officer shall issue a written notice, which notice shall include a statement of:
 - (i) The date, time, place, and nature of hearing;
 - (ii) The legal authority under which the hearing is to be held;
 - (iii) The particular sections of the statutes, rules, and procedures involved;
 - (iv) An explicit statement in plain language of the issues involved and the facts alleged by the authorized agent or law enforcement officer issuing the citation in support thereof, provided that if the president or the hearing officer is unable to state the issues and facts at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished; and
 - (v) The fact that any party may retain counsel if so desired.

The written notice of hearing shall be provided to all parties to the proceeding at least fifteen (15) days before the hearing;

- (C) Opportunity shall be afforded each party to present evidence and argument on all issues involved. Every party

shall have the right to conduct a cross-examination as may be required for a full and true disclosure of the facts and shall have the right to submit rebuttal evidence;

- (D) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default;
- (E) For the purpose of preserving a record of the proceedings before the president or the hearing officer, the proceedings shall be either tape-recorded or recorded verbatim by a certified shorthand reporter. It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review;
- (F) Within a reasonable time following the closure of the hearing on the contested case, the president or the hearing officer shall prepare findings of fact and conclusions of law, and a decision on the case. The proposed findings, conclusions, and decision shall be served on the parties. A party may file written exceptions and present written or oral arguments to the president or the hearing officer. Any exceptions and written arguments shall be filed not more than fifteen (15) days from the date of the proposed decision with the president;
- (G) In rendering the final decision, the president shall consider the whole record of the contested case or the portions thereof as may be cited by the parties. No matters outside the record shall be considered in making a decision, except as provided in this

chapter;

- (H) Every decision and order adverse to a party to the proceeding shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. Parties to the proceedings shall be notified by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party;
- (I) If a party does not appear at the date, time, and place appointed for the hearing, either before the president or the hearing officer, the party may be denied another hearing on the matter; and
- (J) Judicial appeals from the final decision of the president in a contested case under this chapter shall be in accordance with chapter 91, Hawai'i Revised Statutes.

(b) The public may obtain information or make submittals or requests relative to this chapter by addressing a letter to the president.

(c) Petitions for declaratory rulings as to the applicability of any statutory provision concerning this chapter shall be in the form of a letter to the president stating the interest of the petitioner in the matter, the reasons for requesting the ruling and the specific nature of the ruling being requested. The president shall render in writing a declaratory ruling or other order disposing of the matter. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-76 Enforcement and stay of final decision. (a) Unless otherwise stated in a final decision, payment and performance of all

administrative fines, other monetary assessments, and non-monetary sanctions shall be due and enforceable within thirty (30) calendar days of the service of the final decision imposing such fines and sanctions.

(b) Upon request filed by a party, the president may stay enforcement of a final decision pending a judicial review of the case. The decision as to the request for stay is final.

(c) The university may take any legal action to collect any overdue monetary sanctions or enforce any non-monetary sanctions imposed in an administrative proceeding under this chapter. [Eff]
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1005, 304A-1903, 304A-1904)

§20-26-77 Severability. These rules are declared to be severable and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected." [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1005, 304A-1903, 304A-1904)

2. The adoption of chapter 20-26, Hawai'i Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in Ramseyer format, pursuant to the requirements of section 91-4.1, Hawai'i Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

~~LEE PUTNAM~~

BENJAMIN A. KUDO

Chairperson, Board of Regents
University of Hawai'i

APPROVED AS TO FORM:

University of Hawai'i

Carrie K. S. Okinaga, Esq.
Vice President for Legal Affairs and
University General Counsel

Department of the Attorney General

Name: _____
Deputy Attorney General

Exhibit A

Public and Commercial Activities on
 Mauna Kea Lands, Administrative Fines

Violations Under	Fines
<p>Subchapter 2, Public Activities:</p> <p>§20-26-24 Litter and sanitation §20-26-28 Vehicles and transportation §20-26-32 Animals §20-26-33 Audio devices and noise §20-26-35 Use of drugs or alcohol §20-26-36 Use of Tobacco §20-26-37 Camping §20-26-38 Access §20-26-39 Snow Play §20-26-40 Scattering of cremated remains</p> <p>Subchapter 3, Permits and Registration:</p> <p>§20-26-62 Group use registration</p>	<p>1st violation, <u>not more than</u> \$50-\$400.</p> <p>2nd repeat violation within five years of 1st violation, <u>not more than</u> \$401-\$1,000.</p> <p>3rd repeat violation within five years of 2nd repeat violation and any subsequent violation, <u>not more than</u> \$1,001-2,500.</p>
<p>Subchapter 2, Public Activities:</p> <p>§20-26-21 Preservation of Resources §20-26-22 Preservation of Property §20-26-23 Preservation of scientific and educational resources §20-26-25 Fire use restrictions §20-26-26 Explosives §20-26-27 Firearms or other weapons</p>	<p>1st violation, not more than \$2,500.</p> <p>2nd repeat violation within five years of 1st violation, not more than \$5,000.</p> <p>3rd repeat violation within five years of 2nd repeat violation and any subsequent violation, not more than \$10,000.</p>

<p>§20-26-29 Unmanned aerial vehicles, drones and air toys</p> <p>§20-26-30 Outdoor sports activities</p> <p>§20-26-31 Hazardous materials</p> <p>§20-26-34 Public Safety</p> <p>§20-26-41 Interference with government function</p>	
<p>Subchapter 3, Commercial Activities:</p> <p>§20-26-51 Commercial activities generally</p> <p>§20-26-52 Selling, advertising and solicitation</p> <p>Subchapter 3, Permits and Registration:</p> <p>§20-26-61 General provisions</p> <p>§20-26-63 Research permits</p> <p>§20-26-64 Special Use permits</p> <p>§20-26-65 Commercial tour activity permits</p> <p>§20-26-66 Commercial film and recordings</p>	<p>1st violation, not more than \$2,500.</p> <p>2nd repeat violation within five years of 1st violation, not more than \$5,000.</p> <p>3rd repeat violation within five years of 2nd repeat violation and any subsequent violation, not more than \$10,000.</p>