

SUMMARY OF REVISIONS
HAR CHAPTER 20-26, PUBLIC AND COMMERCIAL ACTIVITIES ON MAUNA KEA LANDS
Changes based on Oral and Written Submissions from
September 2018 and June 2019 Public Hearings

<u>Rule Topic</u>	<u>Concerns Raised</u>	<u>Changes Based on Comments Received from Sept. 2018 Hearings and Additional Outreach</u>	<u>Non-Substantial Changes Based on Comments Received from June 2019 Hearings</u>
Camping	People visiting Maunakea use camping type equipment to facilitate stargazing, e.g., for “protection from the elements.” This definition allows those items for non-camping uses.		<ul style="list-style-type: none"> The definition of “camping” under HAR § 20-26-2, is revised for clarity. Like the Department of Land and Natural Resources’ Natural Area Reserves (“DLNR”) rules (HRS § 13-209-5), although camping is still prohibited, cultural practitioners may seek a special use permit.
Traditional and customary practices	HAR § 20-26-21, was drafted in consultation with the Office of Hawaiian Affairs (OHA) with the intent of addressing OHA's concern that native Hawaiian rights are protected. OHA staff approved of the section. However, there was strong opposition to this section during the hearings, due in part to the perception that it regulated native Hawaiian culture.	<ul style="list-style-type: none"> Removed HAR § 20-26-21. Regardless of whether it is explicitly stated, these rules are subject to the right of native Hawaiians to exercise protected customary and traditional rights as provided for in Article XII, section 7 of the Hawai’i Constitution, consistent with the laws of the State of Hawai’i. Based on further public outreach and comments, a reference to Article XII, section 7, of the Hawai’i Constitution was added to HAR § 20-26-3, entitled “Applicability and implementation, generally.” This language is similar to language in the “Island-Based Fisheries Rules” and “Ha’ena Community-Based Subsistence Fishing Area, Kaua’i” rules adopted by the DLNR. 	

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Preservation of scientific and educational resources	<ul style="list-style-type: none"> Concerns raised about routine maintenance activities in areas already covered by permits issued by DLNR. There was strong opposition to the perception that cell phones and flashlights were banned. 	<ul style="list-style-type: none"> Added "routine maintenance, operations, and construction" under the definition of "commercial activity," to HAR § 20-26-2. Added text to limit prohibited uses to the most sensitive areas, under what is now HAR § 20-26-23. Clarified that cell phone use and use of flashlights are allowed. 	
Public Safety	<ul style="list-style-type: none"> Use of the term "harass" under HAR § 20-26-34 is vague. 		<ul style="list-style-type: none"> Removed "harass" from HAR § 20-26-34.
Snow Play	<ul style="list-style-type: none"> Concerns raised about the restrictive nature of snow play. 	<ul style="list-style-type: none"> Revised HAR § 20-26-39 to allow more flexibility on what is allowed while ensuring public safety. 	
Vehicles and transportation	<ul style="list-style-type: none"> Concerns raised regarding safety north of Halepōhaku. Testifiers were opposed to the 4-wheel drive limitation. Concerns raised regarding public safety and the use of appropriate vehicles above Halepōhaku. Kahu Ku Mauna ("KKM") raised concern that §20-26-28(b) was not clear. 	<ul style="list-style-type: none"> Removed 4-wheel drive prohibition; instead, the section now prohibits 2-wheel drive vehicles north of Halepōhaku, under what is now HAR § 20-26-28. Also, clarified provision related to the removal of abandoned vehicles. Added restriction on the "Use of vehicles with two wheels propelled by pedals, for example, a bicycle, north of Halepōhaku, except by written approval," under HAR § 20-26-30. 	<ul style="list-style-type: none"> §20-26-28(b) revised for clarity as follows: "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 removed as soon as possible."
Audio devices and noise	<ul style="list-style-type: none"> Testimony included many concerns that noise restrictions would limit chanting and singing. These noise restrictions were based on Forest Reserves rules (HAR § 13-104-13). 	<ul style="list-style-type: none"> The noise provisions intend to limit amplified sounds, which can impact resources. Revised prohibition on audio/noise to focus specifically on prohibited uses that impact resources, under what is now HAR § 20-26-33. 	

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Permits for public assemblies and meetings	<ul style="list-style-type: none"> Group and assembly permitting requirements were similar to those required by other land management agencies, like Haleakala National Park and DLNR Natural Area Reserves (HAR § 13-209-4) and Forest Reserves (HAR § 13-104-18(5)) rules. However, testimony included strong opposition to group and assembly permits, which were perceived as interfering with cultural activities, practices, and protests. The following requirement under HAR § 20-26-62 is overly broad, “indemnification of the university.” 	<ul style="list-style-type: none"> Removed "Group use" and "Permits for public assemblies and meetings" from the list of permits under HAR § 20-26-61. Instead of a permit, registration is required so that UH can ensure public safety and manage impacts to resources as required by Act 132 (2009) (also reiterated in the purpose section, HAR § 20-26-1). Definition of "Person" was revised so that it specifically includes "individuals eighteen (18) years of age or older." This is consistent with Department of Education policy. 	<ul style="list-style-type: none"> Removed indemnification requirement for group registration from HAR § 20-26-62(b)(6).
Violations, penalties, costs, administrative fines, sanctions, and collection	<ul style="list-style-type: none"> Testimony included observations that fines, although set by statute (HRS § 304A-1904) and identical to DLNR fines, were too high. The difference between continuing and repeat violations was unclear. Indeterminate exclusion from UH management areas in the enumerated sanctions under HAR § 20-26-73 is vague. ACLU noted that verbal warning before issuing a citation “is confusing and self-contradictory.” 	<ul style="list-style-type: none"> Removed statutory fines from HAR § 20-26-73 and moved it to Exhibit A, where fines are categorized based on the specific violations. Distinguished and clarified “continuing violation” from “repeat violations” in HAR § 20-26-73 and Exhibit A. Based on further public outreach and comments, specifically reduced fines for failure to register large groups and moved commercial fines to the higher category. 	<ul style="list-style-type: none"> Revised HAR § 20-26-73(a)(2), by removing the undefined period of time of exclusion. However, a person violating the rules can still be excluded from UH management areas “until the violation has been corrected.” Revised HAR § 20-26-74 by removing warning provision.
Appeal	ACLU noted that the seven day period to submit an appeal was too short.		<ul style="list-style-type: none"> The time to file an appeal under HAR § 20-26-75 was increased from seven to fifteen days.

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Various Relating to the delegation of rules implementation by the President to a designee	Testifiers were concerned, including OHA, that a specific person/entity was not named for implementing the rules.	<ul style="list-style-type: none"> Revised definition of "president's designee" and revised references to "president or the president's designee" to refer only to the "president." The term "president" was redefined under HAR § 20-26-2. 	
Tobacco and Smoking	KKM noted that §20-26-36 should include vaping or e-cigarettes.		<ul style="list-style-type: none"> §20-26-36 was added when Act 160, Session Laws of Hawai'i 2018 banning smoking and tobacco use at UH. Act 160 has since been codified. §20-26-36 was revised to reference section 304A-122, Hawai'i Revised Statutes, which addresses KKM's concerns.

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