

SUMMARY OF REVISIONS TO DRAFT I
HAR CHAPTER 20-26, PUBLIC AND COMMERCIAL ACTIVITIES ON MAUNA KEA LANDS
Changes based on Testimony from September 2018 Public Hearings
and Ongoing Comments and Consultation

Rule Topic	Concerns Raised	Revision Notes
Traditional and customary practices	<p>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.</p>	<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.
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 the Department of Land and Natural Resources ("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.
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. • Concern raised regarding public safety and the use of appropriate vehicles above Halepōhaku. 	<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," under HAR § 20-26-30.
Audio devices and noise	<ul style="list-style-type: none"> • Testimony included many concerns about limiting chanting and singing. 	<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 in Draft I were similar to those required by other land management agencies, like Haleakala National Park and DLNR rules. However, testimony included strong opposition to group and assembly permits, which were perceived as interfering with cultural activities, practices, and protests. Revised applicable sections to addresses the safety and supervision of minors after removal of group and public assembly permits from Draft I. 	<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). This section also includes an indemnification provision for large groups to allow people to use the area while protecting the University from liability caused by individuals. Definition of "Person" was revised so that it specifically includes "individuals eighteen (18) years of age or older." This is consistent with DOE policy.
Violations, penalties, costs, administrative fines, sanctions, and collection	<ul style="list-style-type: none"> Testimony included observations that fines in Draft I, although statutory and identical to DLNR fines, were too high. The difference between continuing and repeat violations was unclear. 	<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.
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.