Safety and Health Administration Technical Manual.

EFFECTIVE DATE: March 7, 1995. **FOR FURTHER INFORMATION CONTACT:** Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523–8148.

SUPPLEMENTARY INFORMATION:

Background

The Hawaii Occupational Safety and Health Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and Part 1902 of this chapter on January 4, 1974 (39 FR 1010). Part 1953 of this chapter provides procedures for the review and approval of State change supplements by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary).

Description of Supplements

A. Regulations

On September 16, 1982, the State submitted its regulation concerning the Division of Occupational Safety and Health's Access to Employee Medical Records. This regulation is identical to the Federal regulation set out in part 1913 of this Chapter. On March 11, 1988, the State submitted minor editorial revisions to this regulations.

On October 7, 1983, the State submitted a revised version of the Rules of Practice and Procedure of the Hawaii Labor and Industrial Relations Appeals Board. These rules have been reviewed and found to be as effective as the regulations governing the Federal Occupational Safety and Health Review Commission.

On June 27, 1983, the State submitted a revision to its regulation on Recording and Reporting Occupational Injuries and Illnesses (Chapter 52) to incorporate a change in the Federal regulation at Part 1904 of this Chapter concerning an exemption from requirements for recording occupational injuries and illnesses for certain low hazard industries. The State change is identical to the Federal revision. On March 11, 1988, the State submitted minor editorial changes to this regulation.

On June 27, 1983, the State submitted revisions to its regulations on Inspections, Citations, and Proposed Penalties (Chapter 51), to incorporate a change in the Federal regulation at Part 1903 of this Chapter concerning the use of personal sampling devices during inspections. On March 11, 1988, the

State submitted further revisions to this regulation. OSHA's review of an earlier version of this regulation had expressed concern about the provisions for Petition for Modification of Abatement dates (PMAs). (See 43 FR 5820, February 10, 1978.) In response, the State revised its regulation to provide for employee contest of a PMA within ten days of posting of the petition and an opportunity for contest PMAs to be heard by the Appeals Board, with the burden of proof placed on the employer. In addition, the State has issued a Guideline which provides that the employer will be informed of the right to contest the denial of a PMA and that the Director will not grant an uncontested PMA before the ten day contest period has expired. These revisions make the Hawaii regulations at least as effective as the Federal regulations in Part 1903 of this Chapter. This submission also contained a change in the State's provision for filing complaints of discrimination for exercising rights under the Act. The change incorporates a revision to the Federal regulation at Part 1977 of this Chapter concerning time limits for filing such complaints.

On March 11, 1988, Hawaii submitted revisions to its Rules of Practice for Variances (Chapter 53). The State amended its regulations to allow for acceptance of Federally granted variances from standards which are identical to Federal standards.

The March 11, 1988 submission also included minor editorial changes to Hawaii's General Provisions and Definitions (Chapter 50). In addition, on March 13, 1992, the State submitted a revision to this regulation to include a definition of nationally recognized testing laboratories, in response to changes in the Federal definition. On July 13, 1993, the State submitted an updated Guideline on Nationally Recognized Testing Laboratories, which states that Hawaii will not establish its own testing program but will recognize Federally approved laboratories.

B. Amendment to Hawaii Occupational Safety and Health Law

In 1987, the State enacted an amendment to its Occupational Safety and Health Law. The amendment, submitted as a plan supplement on March 13, 1992, expands the type of information that is protected from disclosure in any discovery or civil action arising out of enforcement or administration of the law.

C. Consultation Manual

On June 12, 1987, the State submitted its Consultation Policies and Procedures

Manual. This manual is identical to Part I of the Federal Consultation Policies and Procedures Manual.

D. Industrial Hygiene Technical Manual

On August 8, 1991, the State submitted notice of its adoption of the Federal OSHA Technical Manual, through Change 1. The State manual is identical to the Federal Technical Manual.

E. Revised Plan

On January 28, 1992, Hawaii submitted a reorganized State plan, incorporating the plan supplements approved herein as well as previously approved plan changes and other supplements still under review.

Location of Supplements for Inspection and Copying

A copy of the plan and the supplements may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 415, 71 Stevenson Street, San Francisco, California 94105; Director, Hawaii Department of Labor and Industrial Relations, 830 Punchbowl Street, Honolulu, Hawaii 96813; and the Office of the Director of Federal-State Operations, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210.

Public Participation

Under § 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the Hawaii plan supplements are consistent with Federal requirements and with commitments contained in the plan and previously made available for public comment. Good cause is therefore found for approval of these supplements, and further public participation would be unnecessary.

Decision

After careful consideration and extensive review by the Regional and National Offices, the Hawaii plan supplements described above are found to be in substantial conformance with comparable Federal provisions and are hereby approved under Part 1953 of this chapter. The decision incorporates the requirements and implementing regulations applicable to State plans generally.