

Relations of the Department of Business and Industry. The Assistant Secretary approved these amendments on August 24, 1995.

(d) *Field Operations Manual.* The State's Field Operations Manual, comparable to the Federal Field Operations Manual, through Change 4, was approved by the Assistant Secretary on August 24, 1995.

(e) *Consultation Manual.* The State's Training and Consultation Section Policies and Procedures Manual was approved by the Assistant Secretary on August 24, 1995.

(f) *Occupational Safety and Health Administration Technical Manual.* The State's adoption of the Federal OSHA Technical Manual, through Change 3, with a cover sheet adapting Federal references to the State's administrative structure, was approved by the Assistant Secretary on August 24, 1995.

(g) *Pre-construction conferences.* A State regulations requiring pre-construction conferences with the Division of Industrial Relations for certain types of construction projects was approved by the Assistant Secretary on August 24, 1995.

(h) *Reorganized Plan.* The reorganization of the Nevada plan was approved by the Assistant Secretary on August 24, 1995.

[59 FR 14556, Mar. 29, 1994, as amended at 60 FR 43972, Aug. 24, 1995]

**Subpart X [Reserved]**

**Subpart Y—Hawaii**

**§ 1952.310 Description of the plan as initially approved.**

(a) The plan designates the Department of Labor and Industrial Relations as the agency responsible for administering the plan throughout the State. It proposes to define the occupational safety and health issues covered by it as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1). All occupational safety and health standards promulgated by the U.S. Secretary of Labor will be adopted under the plan as well as certain standards deemed to be "as effective as" the Federal standards, except those found in 29 CFR parts 1915, 1916, 1917, and 1918 (ship repairing, ship-

building, shipbreaking and longshoring).

(b) Within the plan there is the Hawaii Occupational Safety and Health Law which became law on May 16, 1972. The law as enacted gives the Department of Labor and Industrial Relations the authority to inspect workplaces and to issue citations for the abatement of violations and there is also included a prohibition against advance notice of such inspections. The law is also intended to insure employer and employee representatives an opportunity to accompany inspectors and to call attention to possible violations; notification of employees or their representatives when no compliance action is taken as a result of alleged violations; protection of employees against discharge or discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets. There is provision made for the prompt restraint of imminent danger situations and a system of penalties for violation of the law.

(c) The plan also includes proposed amendments to be considered by the Hawaii Legislature during its 1974 session amending the Occupational Safety and Health Law, and related provisions, to bring them into conformity with the requirements of part 1902.

(d) The Hawaii plan includes the following documents as of the date of approval:

(1) The plan description documents, including the Hawaii Occupational Safety and Health Law, the proposed amendments to the Law and appendices in three (3) volumes;

(2) Letter from Robert K. Hasegawa, Director of the Department of Labor and Industrial Relations, to Jay Arnoldus, Project Officer, Office of Federal and State Operations, December 10, 1973, submitting clarifications to the plan.

(3) Letters from Robert C. Gilkey, Deputy Director of the Department of Labor and Industrial Relations, to Jay Arnoldus, December 3, 1973 and December 4, 1973 submitting clarifications and deletion to the plan.

(4) Letters from Robert K. Hasegawa to Gabriel Gillotti, Assistant Regional Director, January 30, 1973, and June 28, 1973.

(5) Letter from Robert A. Gilkey to John H. Stender, Assistant Secretary of Labor, October 30, 1973.

(6) Letters from Robert K. Hasegawa to John H. Stender, Assistant Secretary of Labor, November 7, 1973 and September 14, 1973 submitting proposed legislative amendments and modifications and clarifications to the plan.

[39 FR 1012, Jan. 4, 1974, as amended at 49 FR 19192, May 4, 1984]

**§ 1952.311 Developmental schedule.**

(a) Introduction of Legislative amendments to State Legislature January 1974.

(b) Hearings on standards promulgation March 1974.

(c) Implementation of the Management Information System by December 1975.

(d) Complete implementation of the occupational health program by July 1975.

(e) Complete State plan implementation December 1976.

[39 FR 1013, Jan. 4, 1974. Redesignated and amended at 39 FR 44752, Dec. 27, 1974; 40 FR 28792, July 9, 1975. Further redesignated at 49 FR 19192, May 4, 1984]

**§ 1952.312 Completion of developmental steps and certification.**

(a) In accordance with § 1952.313(i), specific Legislative amendments were enacted by the State Legislature and signed by the Acting Governor on June 7, 1974, and amended by Act 95 of the 1976 Hawaii Legislative Session.

(b) In accordance with § 1952.313(d), as amended, the Hawaii Occupational Health Plan was submitted to the Assistant Secretary on April 16, 1974, and approved on December 20, 1974, incorporating assurances from the State, by letter dated November 19, 1974.

(c) In accordance with § 1952.313(b), as amended, the Hawaii occupational safety and health standards were promulgated on April 18, 22, 23, 24, and 25, 1975.

(d) In accordance with the requirements of 29 CFR 1952.10, the Hawaii State poster was approved by the Assistant Secretary on February 4, 1975.

(e) In accordance with 29 CFR 1952.313(d), as amended, the Hawaii occupational health program was implemented on July 1, 1975.

(f) The Rules of Procedure of the Hawaii Division of Occupational Safety and Health were promulgated in September, 1972, and revised in January, 1974. These rules include: Regulations on inspections, citations, and proposed penalties (chapter 102); regulations for recording and reporting occupational injuries and illnesses (chapter 103); rules of practice for variances (chapter 104); regulations concerning administration witnesses and documents in private litigation (chapter 105); and regulations for promulgating, modifying, or revoking occupational safety and health standards (chapter 106).

(g) In accordance with 29 CFR 1952.313(c), as amended, the Hawaii Management Information System was completed and in operation by December 31, 1975.

(h) In accordance with § 1902.34 of this chapter, the Hawaii occupational safety and health plan was certified, effective April 26, 1978 as having completed all developmental steps specified in the plan as approved on December 28, 1973, on or before December 31, 1976.

[39 FR 44203, Dec. 23, 1974, as amended at 39 FR 44752, Dec. 27, 1974; 40 FR 6336, Feb. 11, 1975; 41 FR 26218, June 25, 1976; 43 FR 5821, Feb. 10, 1978; 43 FR 19851, May 9, 1978. Redesignated at 49 FR 19192, May 4, 1984]

**§ 1952.313 Final approval determination.**

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR part 1902, and after a determination that the State met the "fully effective" compliance staffing benchmarks established in response to a Court Order in *AFL-CIO v. Marshall*, (CA 74-406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the Hawaii State plan for a period of at least one year following certification of completion of developmental steps (May 9, 1978, 43 FR 19849). Based on the Evaluation Report for FY 1982 and available FY 1983 data, and after opportunity for public comment and an informal public hearing held on October 27, 1983, in Honolulu, Hawaii, the Assistant Secretary determined that in actual operations, Hawaii is at

least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, the Hawaii plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective April 30, 1984.

(b) The plan which has received final approval covers all activities of employers and all places of employment in Hawaii except that, in the private sector, the plan excludes the issue of maritime safety and health.

(c) Hawaii is required: To maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

[49 FR 19192, May 4, 1984]

**§ 1952.314 Level of Federal enforcement.**

(a) As a result of the Assistant Secretary's determination granting final approval to the Hawaii plan under section 18(e) of the Act, effective April 30, 1984, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Hawaii plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violation of such standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate

criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Hawaii plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR part 1915, shipyard employment; part 1917, marine terminals; part 1918, longshoring; part 1919, gear certification) as well as provisions of general industry standards (29 CFR part 1910) appropriate to hazards found in these employments. Federal jurisdiction also remains in effect with respect to Federal government employers and employees.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor

the operations of the Hawaii State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final determination under section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

[49 FR 19192, May 4, 1984]

**§ 1952.315 Where the plan may be inspected.**

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., room N3700, Washington, DC 20210;

Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 11349 Federal Building, 450 Golden Gate Avenue, San Francisco, CA 94102; and

Office of the Administrator, Hawaii Department of Labor and Industrial Relations, Division of Occupational Safety and Health, 677 Ala Moana, suite 910, Honolulu, HI 96913.

[49 FR 19192, May 4, 1984]

**§ 1952.316 Changes to approved plans.**

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Hawaii's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

(2) [Reserved]

(b)(1) *Regulations.* The State's regulation on the Division of Occupational Safety and Health's Access to Employee Medical Records, and amendments to State regulations covering the Labor and Industrial Relations Appeals Board; General Provisions and Definitions; Recording and Reporting Occupational Injuries and Illnesses; Inspections, Citations, and Proposed Penalties; and Variances, promulgated by the State through March 22, 1991, were

approved by the Assistant Secretary on February 20, 1995.

(2) [Reserved]

(c) *Legislation.* (1) An amendment to the Hawaii Occupational Safety and Health Law, enacted in 1987, which 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, was approved by the Assistant Secretary on February 20, 1995.

(2) [Reserved]

(d) *Consultation Manual.* The State's Consultation Policies and Procedures Manual was approved by the Assistant Secretary on February 20, 1995.

(e) *Occupational Safety and Health Administration Technical Manual.* The State's adoption of the Federal OSHA Technical Manual, through Change 1, was approved by the Assistant Secretary on February 20, 1995.

(f) *Reorganized Plan.* The reorganization of the Hawaii plan was approved by the Assistant Secretary on February 20, 1995.

[59 FR 14556, Mar. 29, 1994 as amended at 60 FR 12419, Mar. 7, 1995]

**Subpart Z—Indiana**

**§ 1952.320 Description of the plan as initially approved.**

(a)(1) The plan identifies the Indiana Division of Labor as the State agency designated to implement and carry out the State plan. Within this structure, the Occupational Safety Standards Commission has the responsibility to adopt standards and dispose of variance applications; the Commissioner of Labor is charged with the administration and enforcement of the Act; and the Board of Safety Review is to conduct and decide contested cases. The State Board of Health, Industrial Hygiene Division, pursuant to an agreement with the Division of Labor will provide laboratory services and will conduct occupational health inspections as scheduled by the Division of Labor.

(2) The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1). Further, Indiana has adopted all Federal safety and health standards contained in 29 CFR parts