

problems based upon agreed-upon facts and, where regulation appears necessary, recommend to FRA regulatory options to implement the needed solutions. In September of 1997, FRA proposed that the RSAC accept the task of recommending revisions to part 215 as it pertains to MOW equipment. Had RSAC accepted the task, FRA would have withdrawn the NPRM to permit RSAC to work from a clean slate. The full RSAC could not reach consensus regarding acceptance of the task and, thus, the RSAC rejected the task of revising part 215. Many members of the RSAC did not believe that the issues raised in this proceeding involved a safety priority when compared to other tasks being addressed by the committee. In a late submission to the docket (January 1998), BMWU urged FRA to pursue this issue through traditional rulemaking despite the RSAC's rejection of the task. The BMWU further recommended that an additional amendment be made to part 215 which would prohibit employees or personnel from riding on, occupying, or being transported in equipment not meeting the requirements contained in part 215. BMWU believed this restriction should be imposed on all freight cars including those used exclusively in MOW service. Of course, such requirements would be well beyond the limited scope of the NPRM. After RSAC's rejection of the task, FRA allowed this proceeding to remain open while the agency pursued much higher regulatory priorities, including passenger equipment standards and revised freight power brake rules.

After consideration of all the comments and information noted above and based on general observations made by FRA during the last eight years with regard to MOW equipment and the applicability of part 215 to such equipment, FRA believes that a number of conclusions can be drawn. FRA agrees that the data relied on when developing the NPRM in this proceeding is dated and likely does not represent the condition of MOW equipment currently being operated by most railroads. The data relied on when developing the NPRM was gathered between 1980 and 1987. Thus, much of the data, both inspection and accident, is close to or more than two decades old. Since publication of the NPRM, FRA believes that railroads have made a concerted effort to bring most MOW equipment closer to compliance with the requirements contained in part 215, particularly MOW equipment regularly operated in revenue trains. Moreover, since 1980, FRA is not aware of any

accident or incident involving MOW equipment resulting in injury or fatality in which a contributing cause of the accident or incident was a condition not in compliance with part 215 on a piece of MOW equipment. Consequently, while not intending to imply that there is no need to address the mechanical condition of MOW equipment currently in use on the nation's railroad's, FRA does believe that MOW equipment is maintained in better condition, from a mechanical perspective, than it was 15 to 20 years ago.

FRA further believes that any sustainable approach to the issues raised in this proceeding must be based on current, fact-based data which accurately captures both the safety need and the economic consequences of any course of action. Just as the safety benefits associated with this rulemaking have likely declined over time, similarly the costs of compliance have likely declined, as well. Further, many of the costs of concern to the railroads might very well be mitigated by continuing to exempt such equipment from the 50-year requirement. However, FRA recognizes that such assessments take considerable time and resources. In addition to simply gathering data, the agency must also determine whether the gathered data establishes a need for regulatory action and the form of that action. FRA believes that a rulemaking docket should not be left open and pending indefinitely while the agency determines whether or how such data gathering will be pursued or evaluated. Moreover, it must be stressed that MOW equipment remains subject to the FCSS if it is used in revenue service or is not stenciled and, under all circumstances, is subject to the federal regulations applicable to safety appliances and power brakes contained in parts 231 and 232, respectively. Thus, MOW equipment is continually inspected by railroads and monitored by FRA for compliance with those requirements as well as any other condition that may constitute an imminent safety risk to railroad employees or the public at large.

In addition to FRA's concerns regarding the data relied on in this proceeding, FRA also believes that the NPRM did not fully consider all of the potential economic and operational impacts that the proposed 20-mph speed restriction would have on the industry. FRA believes that several commenters in this proceeding raise valid concerns related to the impact of the proposal on MOW equipment over 50 years in age and the potential impact to the operation of a number of revenue trains. FRA also notes that a number of

alternative approaches to the issues were provided in the comments received in response to the NPRM. Furthermore, several commenters recommended that additional restrictions be placed on certain MOW equipment or raised issues which were not fully explored or discussed in the NPRM which relate to the operation of MOW equipment. Therefore, should FRA develop fresh data and analysis which establishes a need for regulatory action, the content of that action is likely to be significantly different from that proposed in this NPRM and may focus on a variety of issues not contemplated in the current proceeding. Consequently, FRA believes that continuance of the present proceeding is neither productive nor useful at this time.

Termination of Rulemaking

Based on the foregoing discussion, FRA has decided to terminate this rulemaking. While we note that this rulemaking has been useful in raising both FRA's and the industry's awareness of the issues related to the operation and safety of MOW equipment, FRA believes that it is not prudent to pursue this rulemaking, based on its present content, at this time. FRA will continue to monitor the condition and operation of MOW equipment and will assess the need, from a safety perspective, to pursue either regulatory or other less formal methods to ensure the safety of both railroad employees and the public as it relates to the use and operation of this equipment. In light of the foregoing, FRA is hereby terminating this rulemaking.

Issued in Washington, DC on March 22, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02-7364 Filed 3-26-02; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. NHTSA-2002-11392]

RIN 2127-A173

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Appendices A, B, and C of 49 CFR part 544, insurer reporting requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices would be required to file three copies of its report for the 1999 calendar year before October 25, 2002. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25.

DATES: Comments must be submitted not later than May 28, 2002. Insurers listed in the appendices are required to submit reports on or before October 25, 2002.

ADDRESSES: Comments on this proposed rule must refer to the docket number referenced in the heading of this notice and submit your comments in writing to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. You may also submit written comments to the docket on a computer diskette. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at <http://dms.dot.gov>. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, by electronic mail hspinner@nhtsa.dot.gov. Ms. Spinner's telephone number is (202) 366-4802. Her fax number is (202) 493-2290.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements:

(1) Issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;

(2) Issuers of motor vehicle insurance policies whose premiums account for 10

percent or more of total premiums written within any one state; and

(3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term "small insurer" is defined, in section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR part 544, NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best publishes in its State/Line Report each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from *Automotive Fleet Magazine* and *Business Travel News*.

C. When a Listed Insurer Must File a Report

Under part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report by October 25, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

II. Proposal

1. Insurers of Passenger Motor Vehicles

Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on October 24, 2001 (66 FR 53731). Based on the 1999 calendar year data market

shares from A.M. Best, we propose to remove American Financial Group from Appendix A and to add Great American P & C Group and Metropolitan Life Auto & Home Group to Appendix A.

Each of the 20 insurers listed in Appendix A is required to file a report before October 25, 2002, setting forth the information required by part 544 for each State in which it did business in the 1999 calendar year. As long as these 20 insurers remain listed, they will be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 1999, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1999 calendar year data for market shares from A.M. Best, we propose to remove Concord Group Insurance Companies (Vermont) from Appendix B.

The eight insurers listed in Appendix B are required to report on their calendar year 1999 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2002, and set forth the information required by part 544. As long as these eight insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. Based on information in *Automotive Fleet Magazine* and *Business Travel News* for 1999, NHTSA proposes to remove A T & T Automotive Services, Inc. from Appendix C and to add Ford Rent-A-Car System to Appendix C. Each of the 17 companies (including franchisees and licensees) listed in Appendix C would be required to file reports for calendar year 1999 no later than October 25, 2002, and set forth the information required by part 544. As long as those 17 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

III. Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and determined that the action is not "significant" within the

meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 2001 (see <http://www.bls.gov/cpi>), the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is \$88,500 for any insurer added to Appendix A, \$35,420 for any insurer added to Appendix B, and \$10,219 for any insurer added to Appendix C. If this proposed rule is made final, for Appendix A, the agency would remove one company and add two companies; for Appendix B, the agency would remove one company; and for Appendix C, the agency would remove one company and add one company. The agency estimates that the net effect of this proposal, if made final, would be \$53,080 to insurers as a group.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86-01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling (202) 366-4949.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127-0547 ("Insurer Reporting Requirements") and approved for use through August 31, 2003, and the agency will seek to extend the approval afterwards.

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory

Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C are construed to be a small entity within the definition of the RFA. "Small insurer" is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

6. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

7. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language

includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposal clearly stated?
- Does the proposal contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

- a. *Mail:* Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590;
- b. *E-mail:* hspinner@nhtsa.dot.gov; or
- c. *Fax:* (202) 493-2290.

IV. Comments

Submission of Comments

1. How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing our rules, NHTSA tries to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide views on our proposal, new data, a discussion of the effects of this proposal on you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning clearly.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you derived the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Include the name, date, and docket number with your comments.

2. How Do I Prepare and Submit Comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not exceed 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments concisely. You may attach necessary documents to your comments. We have no limit on the attachments' length.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at <http://dms.dot.gov>. Click on "Help & Information" or "Help/Info" to obtain instructions for filling the document electronically.

3. How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you, upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will mail the postcard.

4. How Do I Submit Confidential Business Information?

If you wish to submit any information under a confidentiality claim, you should submit three copies of your complete submission, including the information you claim as confidential business information, to the Chief Counsel, Office of Chief Counsel, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter addressing the information specified in our confidential business information regulation (49 CFR part 512).

5. Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider, in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

6. How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above, in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (<http://dms.dot.gov/>).
2. On that page, click on "search."
3. On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number was "NHTSA 1998-1234," you would type "1234." After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. The "pdf" versions of the documents are word searchable.

V. Conclusion

Based on the foregoing, we are proposing to amend Appendices A, B, and C of 49 CFR 544, insurer reporting requirements.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 is proposed to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is proposed to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (e.g., the report due by October 25, 2002 will contain the required information for the 1999 calendar year).

* * * * *

3. Appendix A to Part 544 is proposed to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American International Group
California State Auto Association
CGU Group

CNA Insurance Companies
 Erie Insurance Group
 Farmers Insurance Group
 Berkshire Hathaway/GEICO Corporation
 Group
 Great American P & C Group¹
 Hartford Insurance Group
 Liberty Mutual Insurance Companies
 Metropolitan Life Auto & Home Group¹
 Nationwide Group
 Progressive Group
 SAFECO Insurance Companies
 St. Paul Companies
 State Farm Group
 Travelers PC Group
 USAA Group

4. Appendix B to Part 544 is proposed to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
 Arbella Mutual Insurance (Massachusetts)
 Auto Club of Michigan Group (Michigan)
 Commerce Group, Inc. (Massachusetts)
 Kentucky Farm Bureau Group (Kentucky)
 New Jersey Manufacturers Group (New Jersey)
 Southern Farm Bureau Group (Arkansas, Mississippi)
 Tennessee Farmers Companies (Tennessee)

5. Appendix C to Part 544 is proposed to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
 ARI (Automotive Resources International)
 Associates Leasing Inc.
 Avis, Rent-A-Car, Inc.
 Budget Rent-A-Car Corporation
 Consolidated Service Corporation
 Dollar Rent-A-Car Systems, Inc.
 Donlen Corporation
 Enterprise Rent-A-Car
 Ford Rent-A-Car System¹
 GE Capital Fleet Services
 Hertz Rent-A-Car Division (subsidiary of The Hertz Corporation)
 Lease Plan USA, Inc.
 National Car Rental System, Inc.
 PHH Vehicle Management Services
 U-Haul International, Inc. (Subsidiary of AMERCO)
 Wheels Inc.

Issued on: March 21, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety, Performance Standards.

[FR Doc. 02–7367 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–59–P

¹ Indicates a newly listed company which must file a report beginning with the report due October 25, 2002.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH01

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Kauai Cave Wolf Spider and Kauai Cave Amphipod

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Kauai cave wolf spider (*Adelocosa anops*) and the Kauai cave amphipod (*Spelaeorchestia koloana*) pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed critical habitat consists of three units whose boundaries encompass an area of approximately 1,697 hectares (ha) (4,193 acres (ac)) on the island of Kauai, Hawaii. Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection.

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species.

Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise or further refine critical habitat boundaries prior to final designation based on new information received during the comment period.

DATES: We will accept comments until the close of business on May 28, 2002. Requests for public hearing must be received by May 13, 2002.

ADDRESSES: Comment submission: If you wish to comment, you may submit your comments and materials as follows:

(1) You may submit written comments and information to Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850.

(2) You may hand-deliver written comments to our Pacific Islands Fish

and Wildlife Office at the address given above.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours in the Pacific Islands Fish and Wildlife Office in Honolulu at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago consists of eight main islands and the numerous shoals and atolls of the northwestern Hawaiian Islands. The islands were formed sequentially by basaltic lava that emerged from a hot spot in the earth's crust located near the current southeastern coast of the island of Hawaii (Stearns 1985). Kauai is the oldest of the main islands, with most of its land mass being formed between 3.6 and 5.6 million years ago (MYA) from a single, large shield volcano, now represented by the Alakai Plateau and adjacent ridges. Younger, secondary eruptions occurred over the eastern portion of the island as recently as the Pleistocene era (approximately 0.6 MYA). Due to the age of the island, the terrain is heavily eroded, with steep water-carved valleys and gulches characterizing the slopes of the Alakai Plateau and other isolated ridges. The Alakai Plateau is one of the wettest places on earth, receiving an average of 1.3 meters (m) (444 inches (in)) of rain annually (Juvik and Juvik 1998). Rain is delivered to the island by prevailing trade winds which come from the northeast. Southern and southwestern portions of the island lie in the rain shadow of the Alakai Plateau, ridges, or other uplands, and receive relatively little rain (22 to 91 centimeters (cm) (9 to 36 in) per year in Waimea Town) (NOAA 1990–1999).

The Koloa District lies in the southeast corner of Kauai and includes the town of Koloa and the community and resort area of Poipu. The area is dry to mesic (moderate rainfall), receiving an average of 107 to 223 cm (42 to 88 in) of rain annually. Although the Koloa District includes upland areas such as ridge lines derived from the Alakai Plateau and Haupu ridge, most human-occupied areas lie between sea level and about 183 m (600 ft) in elevation.

The Koloa area is composed of the youngest rock on Kauai, the Koloa Volcanics (MacDonald *et al.* 1960;