Preservation in the Western Hemisphere, which is implemented through Section 8(A)(e) of the Act, and whether they should be considered as candidates for other appropriate agreements.

Requests for copies of the regulations on wildlife, and inquiries regarding them, may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. The reasons for this determination were published in a **Federal Register** notice (48 FR 49244) of October 25, 1983.

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Author

The primary author of this final rule is John L. Paradiso, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture)

Regulations promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

§ 17.11 [Amended]

2. Amend 17.11(h) by adding the following in alphabetical order to the List of Endangered and Threatened Wildlife, under mammals:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
*	*	*	*	*	*	*	
Bat, Bulmer's flying fox fruit.	*Aproteles bulmerae.*	Papua New Guinea	Entire	E		NA	NA.
Bat, bumblebee	*Craseonycteris thonglongyai.*	Thailand	do	E		NA	NA.
Bat, Rodrigues flying fox fruit.	*Pteropus rodricensis.*	Rodrigues Island, Indian Ocean.	do	E		NA	NA.
Bat, Singapore roundleaf horseshoe.	*Hipposideros ridleyi.*	Malaysia	do	E		NA	NA.
Cat, Pakistan sand.	*Felis margarita scheffeli.*	Pakistan	do	E		NA	NA.
Colobus, Preuss's red.	*Colobus badius preussi.*	Cameroon	do	E		NA	NA.
Dog, African wild	*Lycaon pictus*	Sub-Saharan Africa	do	E		NA	NA.
Marmoset, buff-headed.	*Callithrix flaviceps*	Brazil	do	E		NA	NA.
Marmot, Vancouver Island.	*Marmota Vancouverensis.*	Canada (Vancouver Island).	do	E		NA	NA.
Panda, gaint	*Ailuropoda melanoleuca.*	People's Republic of China.	do	E		NA	NA.
*	*	*	*	*	*	*	

Dated: January 15, 1983.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-1721 Filed 1-20-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule to Determine Torreya taxifolia (Florida torreya) to be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Torreya taxifolia* (Florida torreya) to be an endangered species pursuant to the Endangered Species Act. This plant is endemic to the Apalachicola River area in Florida and Georgia. It is endangered by a fungal disease, which kills trees before they reach seed-bearing size. This rule provides *Torreya taxifolia* with the protection of the Endangered Species Act of 1973, as amended. The Service will initiate efforts for this species.

DATES: The effective date of this rule is February 22, 1984.

ADDRESSES: The complete file for this rule is available for inspection, by

appointment, during business hours (7:45 a.m.–4:30 p.m.) at the Service's Endangered Species Field Office, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: Mr. David Wesley, Field Supervisor (904/791–2580) at the above address.

SUPPLEMENTARY INFORMATION:

Background

An evergreen tree reaching 18 meters tall, *Torreya taxifolia* (Florida torreya) was first discovered in 1835 and formally described in 1838 (Arnott, 1838). The Florida torreya and other endemics of the Apalachicola River system have received much attention from scientists and local residents. The relictual nature of this area accounts for the presence of many unique species (James, 1967). During recent glaciations, species migrated southward by way of the Apalachicola River system, which served as a refugium during cooling periods. The Apalachicola River is the only Deep River system that has its head waters in the southern Appalachian Mountains. With the receding of the glaciers, cool moist conditions persisted on the bluffs and ravines of the Apalachicola River after climatic change rendered the surrounding area much drier and warmer. The entire Apalachicola River bluff system today is an extremely diverse and unique ecosystem, of which *Torreya taxifolia* is a part.

Torreya taxifolia is a conifer, with whorled branches and stiff sharp-pointed, needle-like leaves. The trees are conical in overall shape. Dark green, fleshy seeds mature in the midsummer to fall. The leaves of the tree have a strongly pungent or resinous odor when crushed, thus one common name, "stinking cedar."

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Torreya taxifolia* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal.

The Endangered Species Act Amendments of 1978 (Pub. L. 95–632, November 10, 1978) required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice withdrawing the portion of the June 16, 1976, proposal, that had not been subject to final action, along with 4 other proposals that had expired. A 1981 report submitted by the Georgia Plant Program, investigations carried out by Service botanists (Washington Office and Jacksonville Field Office) during the winter of 1981, and a contract completed during 1982 on *Torreya taxifolia* and *Taxus floridana* provided additional biological information. The Service reproposed this species as endangered on April 7, 1983 (48 FR 15168).

Summary of Comments and Recommendations

During the public comment period for the proposal to list *Torreya taxifolia*, eight public comments were received. The proposal was supported by Florida's Department of Natural Resources, Game and Fresh Water Fish Commission, and Department of Agriculture and Consumer Services. Georgia's Department of Natural Resources also supported the proposal. The Georgia Department of Agriculture stated that the listing of this species should create no problems in the State. The Jackson County, Florida, Board of County Commissioners supported the proposal. The resource manager for U.S. Army Corps of Engineers lands on which *Torreya taxifolia* occurs commented on the status of this species and made propagation recommendations. The Florida Natural Areas Inventory supported the proposal and provided information on threats to the species from habitat alteration. A plant ecologist made recovery recommendations for *Torreya taxifolia*, and a private individual commented on the historical decline of the species.

All eight comments concurred with the Service's proposed action. No public hearing was requested or held.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) states that the Secretary of the Interior shall determine whether any species is an endangered or a threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to *Torreya taxifolia (Florida torreya)* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Torreya taxifolia* occurs in the ravines along the eastern side of the Apalachicola River from Lake Seminole in Georgia to Bristol, Florida (Southeastern Wildlife Services, 1982). One population also occurs on the margin of Dog Pond (Florida) which lies to the west of the Apalachicola River.

The Georgia population contained 27 trees in 1981 and occurs entirely on public land administered by the U.S. Army Corps of Engineers (COE) on the margins of Lake Seminole (Butler, 1981). The construction of Lake Seminole has been reported to have resulted in the loss of habitat and possibly individuals of *Torreya taxifolia* (Milstead, 1978). The resource manager at Lake Seminole, however, feels that the impoundment level was below the elevation on the ravines where *Torreya taxifolia* occurs (Butler, 1981). The resource manager is sensitive to the need for proper management and protection of the species. Proper management and protection will need to continue and should not conflict with the present recreational use of the area.

The Florida populations occur on a State park, a city park, and privately-owned lands. Torreya State Park was established for the protection of *Torreya taxifolia* and the unique bluff habitats and other species associated with the area. A city park in Chattahoochee also provides some protected habitat for this species. The majority of the area occupied by *Torreya taxifolia* is in private ownership, however, where no protective status exists. Past habitat destruction has occurred due to housing developments (Baker and Smith, 1981). Another COE impoundment planned near Blountstown, Florida, is not expected to affect this species because the proposed high water mark is below the elevations at which *Torreya taxifolia* occurs. The steepness of the bluffs and ravines render them somewhat inappropriate for many types of agriculture, forestry, and housing. Damming the ravines for recreational impoundments, however, is a potential

threat to this species. Proper planning for the protection of this species will be necessary in relation to all COE projects and any other future Federal activities.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable to this species.

C. *Disease or predation.* The major threat facing *Torreya taxifolia* is disease. Since 1962, natural populations have been drastically reduced or eliminated due to a fungal disease (Godfrey, 1962). The fungal disease causes necrosis of the needles and stems and severe defoliation; however, treatment through the application of fungicides seems possible (Alfieri *et al.*, 1967).

All that remains of the species in nature are root sprouts, reaching less than 3 meters in height (Baker and Smith, 1981). Trees formerly reached heights of 18 meters. Cultivated, uninfected, specimens exist in various botanical gardens and can provide seeds and material for future recovery efforts. Through treatment of diseased individuals or breeding resistant strains, *Torreya taxifolia* can possibly be recovered. However, extensive research is needed to determine appropriate disease treatments and investigate the possibilities of breeding trees resistant to the disease.

D. *The inadequacy of existing regulatory mechanisms. Torreya taxifolia* is offered protection under Florida law, Chapter 65–426, Section 855.06, which includes prohibitions concerning taking, transport, and the selling of plants listed under that law. *Torreya taxifolia* is also included under Georgia's Wild Flower Preservation Act of 1973, which prohibits taking from public lands and intrastate transport and sale of certain rare plant species. The Endangered Species Act would offer additional protection for the species through the recovery plan process, the consultation process, and interstate/international trade prohibitions.

E. *Other natural or manmade factors affecting its continued existence.* The very limited range and small size of the populations of this species increase the possibility of loss of all or a significant portion of the species as a result of any accidental or natural catastrophe.

Critical Habitat

The Act requires that critical habitat be designated at the time of listing, to the maximum extent prudent and determinable. The Service has determined that it would not be prudent to determine critical habitat for *Torreya taxifolia* at this time. Increased publicity of localities would increase the extreme vulnerability of this species illegal takings under Federal or State law. The Federal Act does not prohibit the taking of plants, except on areas like Lake Seminole which are under Federal jurisdiction.

In addition, critical habitat is not identifiable at this time. All mature viable trees are located in botanical gardens and arboreta. The wild trees do not now have good long-term survival prospects. The initial focus of recovery will be to address controlling the disease. After the disease has been overcome, recovery efforts would address reintroduction of the species into the wild, and critical habitat could be designated at that time, if it is found prudent to do so. Taking would be reevaluated as a threat at that time and benefits of critical habitat weighed against possible increased threats. Sites on which the species could receive protection and proper management, such as the Army Corps of Engineers land, the State and city park, and other areas will be considered. It is not curently possible to identify which areas would be selected and, therefore, critical habitat designations would be imprudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal and State agencies and private groups and individuals. The Endangered Species Act requires that recovery actions be carried out for all listed species and these are initiated by the Service following listing. The protection required by Federal agencies and taking prohibitions are discussed below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a "may affect" determination is made, the Federal agency must enter into consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions which apply to all endangered plant species. With respect to *Torreya taxifolia*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, will apply. These prohibitions, in part, will make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce.

Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few permits will ever be sought or issued since the species is not common commercially, in cultivation, or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession endangered plant species from areas under Federal jurisdiction. The new prohibition now applies to *Torreya taxifolia*, which occurs on land under Federal jurisdiction (U.S. Army Corps of Engineers) in Decatur County, Georgia. Permits for exceptions to this prohibition are available through Sections 10(a) and 4(d) of the Act, following the general approach of 50 CFR 17.62, until revised regulations are promulgated to incorporate the 1982 amendments to the Act. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and will be finalized following the public comment period.

Requests for copies of the regulations on plants, and inquiries regarding them, may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

References

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Baker, G.S., and E.L. Smith. 1981. Field notes, maps, and report prepared for U.S. Fish and Wildlife Service files. Jacksonville Field Station, Jacksonville, Florida.

Butler, Will. 1981. Status of the Florida torreya in Georgia. Unpublished report prepared by the Georgia Protected Plants/ Natural Areas program.

Godfrey, R.K., and H. Kurz. 1962. The Florida *Torreya* destined for extinction. Science 136:900–902.

James, C.W. 1961. Endemism in Florida. Brittonia 13(3):225–244.

Milstead, Wayne. 1978. Status Report. Prepared for U.S. Fish and Wildlife Service, Atlanta, Georgia.

Southern Wildlife Services. 1982. A Distribution Survey of the Populations of *Taxus floridana* and *Torreya taxifolia* in Florida. Report to U.S. Fish and Wildlife Service, Atlanta, Georgia. 39 p.

Authors

The primary authors of this final rule are Ms. E. LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 and Dr. Michael M. Bentzien, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L 94-359, 90 Stat. 911; Pub. L. 95-632, 92-Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

§ 17.12 [Amended]

2. Amend § 17.12(h) by adding the following, in alphabetical order, to the list of Endangered and Threatened Plants:

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
*	*	*	*	*	*	*
Taxaceae—Yew family:						
Torreya taxifolia	Florida torreya	U.S.A. (FL, GA)	E		na	na.
*	*	*	*	*	*	*

Dated: December 2, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-1722 Filed 1-20-84; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 49, No. 15
Monday, January 23, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 330, 561 and 564

[Resolution No. 84-15]

Brokered Deposits, Limitations on Deposit Insurance

AGENCY: Federal Deposit Insurance Corporation and Federal Home Loan Bank Board.

ACTION: Proposed rulemaking.

SUMMARY: On November 1, 1983, the Federal Deposit Insurance Corporation ("FDIC") and the Federal Home Loan Bank Board ("Board") (as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC") solicited public comments in the **Federal Register** on the issue of deposit brokerage relative to FDIC- and FSLIC-insured institutions. 48 FR 50339. That Advance Notice of Proposed Rulemaking ("Advance Notice") expressed the agencies' concern that the brokering of insured deposits is counterproductive to marketplace discipline in the depository institutions industry and requested comments on the overall practice of deposit brokerage as well as responses to nineteen specific questions on the topic. As the result of an analysis of the information received by the FDIC and the Board on the Advance Notice and other data on brokered deposits assimilated over the past several months, the agencies are proposing amendments to their respective regulations. If adopted, these amendments would limit the insurance coverage afforded to deposits placed by or through a broker with an insured bank or savings associations. The proposed regulations would define deposit brokerage to encompass current business arrangements that the agencies believe facilitate misuses of federal deposit insurance. If the proposed amendments are ultimately adopted as final regulations, the new insurance regulations would apply to deposits placed or renewed on or after October 1, 1984. The FDIC and the Board are interested in receiving comments on these proposed amendments.

DATE: Comments must be received by March 8, 1984.

ADDRESSES: Please direct comments to:

Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th street, NW., Washington, D.C. 20429. Comments may be delivered to Room 6108 on weekdays between 8:30 a.m. and 5:00 p.m. where they will be available for public inspection.

Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be publicly available at this address.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Senior Attorney, Federal Deposit Insurance Corporation, Legal Division, (202) 389-4171, Room 4126B, 550 17th Street, NW. Washington, D.C. 20429 or Robert H. Ledig, Attorney, (202) 377-7057, or Chistopher P. Bolle, Law Clerk, (202) 377-6472, Federal Home Loan Bank Board, Office of General Counsel, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On November 1, 1983, the FDIC and the Board issued an Advance Notice of Proposed Rulemaking soliciting comments on the brokering of deposits of FDIC- and FSLIC-insured institutions. (48 FR 50339, November 1, 1983). The Advance Notice outlined the major types of deposit brokerage, discussed the concerns shared by the FDIC and the Board about deposit brokerage and posed a multitude of questions encompassing the nature of those concerns and the possible means of dealing with them. In summary, the Advance Notice stated that: the most troubling aspect of deposit brokering is that of enabling virtually all institutions to attract large volumes of funds from outside their national market area irrespective of the institutions' managerial and financial characteristics; the ability to obtain *de facto* one-hundred percent insurance through the parcelling of funds eliminates the need for the depositor to analyze an institution's likelihood of continued financial viability; the availability of brokered funds to all institutions, irrespective of financial and managerial soundness, reduces market discipline; although deposit brokering can provide a helpful source of liquidity to institutions, ongoing brokering practices make it possible for poorly managed institutions to continue operating beyond the time at which natural market forces would otherwise have precipitated their failure; and this impediment to natural market forces results in increased costs to the FDIC and the FSLIC in the form of either greater insurance payments or higher assistance expenditures if the institutions are subsequently closed because of insolvency. The nineteen questions posed in the Advance Notice focused on whether the public and industry members perceived any significant problems with deposit brokerage and, if so, what steps the agencies should take to remedy those problems.

Comments Received by the FDIC

The FDIC received 168 comments on the Advance Notice. Eighty-two comments were from banks, thirty-one from savings and loan associations, twenty from brokers and other members of the financial services industry, sixteen from financial industry trade groups, five from state or municipal governmental entities, four from credit unions, eight from other individuals or entities and two from federal government agencies.

Forty-six (or fifty-six percent) of the comments from banks stated that deposit brokerage presents substantial enough problems to warrant additional regulatory or legislative initiatives by the FDIC and the Board. Three of these comments were from money-center banks and forty-three were from smaller institutions. The comments noted that deposit brokerage harms the depository institutions industry by providing funds to weak or mismanaged institutions. Many stated that deposit brokering presents a potential threat to the soundness of participating institutions. The majority of comments suggesting additional action by the agencies favored increased monitoring of the deposit brokerage activities of all federally insured institutions with special attention paid to troubled banks, particularly banks rated composite 4

and 5 under the Uniform Financial Institutions Rating System. 1 FED. DEPOSIT INS. CORP. LAW, REG., RELATED ACTS (FDIC) 5079. Some recommended that a limit be placed on the percentage of brokered deposits comprising an institution's assets, deposit base or net worth. Others suggested that the agencies eliminate the insurance coverage of all brokered deposits.

Thirty-six (or forty-four percent) of the bankers' comments recommended that no additional action be taken by the agencies to limit the borkering of deposits. Six of these comments were from money-center banks and thirty from smaller entities. They commented that deposit brokerage provides a source of liquidity and investment for depository institutions and enables smaller institutions to compete with bigger banks. Many of the comments stated that greater monitoring efforts should be directed at problem institutions, but that no overall action on deposit brokerage should be taken by the agencies.

Eighteen (or fifty-eight percent) of the thirty-one savings and loan associations who commented on the Advanced Notice favored a maintenance of the status quo. They stated that no additional action by the agencies is required because an adequate monitoring mechanism is already in place. The thirteen other associations (forty-two percent) recommended regulatory or legislative actions similar to those recommended by the majority of bankers who commented.

The American Bankers Association stated that money brokers provide a beneficial service to the industry, but acknowledged that deposit brokerage has caused abuses in that some troubled banks have been sought after and exploited. It voiced strong objection, however, to substantial changes to the regulation of money brokers until the agencies have acquired sufficient information to assess the nature and magnitude of the attendant problems. The Independent Bankers Association criticized deposit brokerage as seriously adverse to the industry and recommended that the agencies either prohibit such deposits or render them ineligible for insurance coverage. The National Council of Savings Institutions commented that additional action by the agencies on brokered deposits should be deferred until a more comprehensive study of the issues by the agencies has been accomplished.

The Office of the Comptroller of the Currency stated that no additional regulatory or legislative action is necessary to deal with deposit brokerage. It commented that the risks caused by this activity can be minimized through existing supervisory remedies. The Securities and Exchange Commission said it had continuing concerns about the consumer-protection issues relative to deposit brokering and that it would be pleased to consult with the FDIC and the Board on a regulatory scheme in this regard.

The deposit brokers who commented on the Advance Notice stated that deposit-placement activities are beneficial to the depository institutions industry because they reverse disintermediation, improve competitive positions of regional banks and thrifts, provide access to long-term deposits, foster secondary-market activity, lessen deposit concentration in money-center banks and provide higher interest rates on deposits for individuals. Some brokers conceded that deposit brokerage could have disadvantageous effects upon institutions, but noted that such situations could be handled by increased regulatory monitoring of weaker banks and savings and loan associations.

Of the five state and local governments who commented on the Advance Notice, one emphasized that any limitation on the insurance coverage of brokered deposits would jeopardize the safety of public deposits. The others expressed strong objection to limiting the insurance coverage of pension fund deposits, but did not comment on deposit brokerage. Two credit unions commented that deposit brokerage is undersirable and should be acted against by the FDIC and the Board. Two others noted that a better monitoring mechanism by the agencies would be sufficient to deal with deposit brokerage problems. The Credit Union National Association stated that the agencies should gather more information on brokered deposits before proposing extensive regulatory and legislative changes.

Comments Received by the Board

The Board received seventy-three comments on the Advance Notice. Thirty-five were from savings and loan associations, three from banks, twelve from brokers and other members of the financial services industry, twelve from financial industry trade groups, five from state or municipal governmental entities, three from credit unions, two from federal government entities and one from an individual.

Eight of the comments from savings and loan associations supported the prohibition of, or restriction on, the acceptance of brokered funds by insured institutions. One commenter expressed concern that nationwide money brokers could come to dominate the market for insured accounts, thereby causing many institutions to become dependent on them for funds and also permitting market dynamics to bid up the cost of funds to the detriment of insured institutions. Commenters also suggested that brokers were using FSLIC insurance for a purpose for which it was not intended.

Twenty-seven of the comments from savings and loans opposed actions which would limit the ability of financially and managerially sound institutions to accept brokered funds. Commenters suggested that the agencies focus on the use of funds and the overall funds acquisition policies of institutions rather than on brokered funds alone. Many commenters discussed the benefits of brokered funds such as the opportunity for institutions in capital-deficient areas to obtain funds, and the cost-effective means such deposits provide for an institution to acquire funds of a desired rate and maturity without altering its retail offerings. The three banks which commented expressed similar views.

The United States League of Savings Institutions expressed serious concerns over the current unregulated practices of deposit brokers and concluded that the potential problems outweigh the benefits that might result from permitting the continuation of the current practices. It recommended specific restrictions on the ability of institutions to obtain brokered deposits designed to address the particular problems raised by excessive use of deposit brokerage while preserving the usefulness of brokered deposits in restructuring efforts. The six state and regional savings and loan trade associations which commented expressed the view that financially and managerially should institutions should not be limited in their access to brokered funds.

The deposit brokers and other members of the financial services industry which commented generally opposed any restriction on the acceptance of brokered deposits by sound institutions, while one commenter supported percentage limitations applied to all institutions. The commenters emphasized that it is in a broker's interest to avoid directing customers' funds to institutions which may default. Commenters discussed the economic efficiency of the brokerage function and referred to the extent to which brokerage permits non-money-center institutions to gain access to the national funds market.

Four of the state and local entities which commented stated their opposition to potential changes in the level of insurance coverage available to pension funds and public units. The fifth expressed concern about the use of brokered deposits and stated that if the federal agencies did not take action it would propose legislation to limit the issuance of out-of-state jumbo certificates by banks and savings and loan associations.

A corporate central credit union and a committee of corporate credit union representatives stated their concern about the current lack of risk sensitivity in the placement of deposits, and suggested that either a cost-sharing formula be developed or that brokers be treated as principals for insurance proposes. Two credit unions opposed limitations on the placement of brokered funds with sould institutions. One individual supported a prohibition on the use of brokered funds and stated that institutions should be required to rely on their local markets for deposits.

Proposals

Over the past several months the FDIC and the Board have collected data on banks and savings and loan associations which are involved with deposit brokerage. The data assimilated thus far indicate that, although brokered deposits comprise a modest percentage of total domestic deposits, a significantly greater proportion of poorly rated institutions use brokered deposits than highly rated institutions. Moreover, the seventy-two commercial banks that failed between February 1982 and mid-October 1983 had substantial brokered deposits. These deposits constituted sixteen percent of the total deposits held by the seventy-two banks. Some of the failed banks relied more heavily on brokered funds. In three instances brokered deposits equalled more than sixty percent of the failed bank's total deposits. In nineteen other cases these deposits equalled between twenty and fifty percent of the failed bank's deposits. The FDIC and the Board are continuing to collect information on deposit brokerage. Based on the data assembled to date and an analysis of the comments received on the Advance Notice, however, the agencies have preliminarily determined that deposit brokerage has a sufficiently adverse effect upon the depository institutions industry to warrant remedial regulatory action. At present the approach deemed most desirable by the FDIC and the Board in addressing the problems inherent in deposit brokerage is that of limiting deposit insurance for such deposits.

In addition to their concern about the effects of deposit brokerage on troubled institutions, the FDIC and the Board are also concerned about the potential which exists for the abuse of brokered funds by insured institutions generally. The use of these deposits has grown dramatically over the past several years and, if not limited in some way, will likely continue to grow at a rapid pace. Furthermore, the FDIC and the Board believe that deposit brokerage represents an outright misuse of the federal deposit insurance system. Deposit insurance was originally intended to establish stability and to promote confidence in the monetary and banking systems by protecting primarily small, relatively unsophisticated depositors in their relationships with banks and savings associations. It was never intended to protect investors seeking the highest yields available in money markets. The FDIC and the Board believe it is essential that the situation be promptly addressed in view of the recent decontrol of interest rates paid by banks and thrifts. Consideration of soundness should enter into the selection of a bank or thrift, not simply the rate paid on deposits.

The agencies believe the deposit insurance alternative would avoid the constant monitoring of all deposit brokerage activity which would only serve to increase the regulatory burden on depository institutions and the supervisory role of the agencies. Alternatively, a blanket prohibition on the use of brokered deposits would be unduly restrictive and would totally eliminate the benefits to insured institutions of brokered deposits. Limiting the insurance coverage of brokered deposits would not defeat the liquidity benefits of brokered deposits for well-run institutions. Such deposits would still be obtainable, but without a "federal guaranty." Investment decisions would be made on the strength or weakness of the involved depository institution, and not on the federal insurance feature of the deposit.

A result of these proposed amendments would be to instill market discipline by preventing the marketing of federal deposit insurance by non-depository entities in a way that the FDIC and the Board believe is outside the scope of the legislative intent underlying the federal deposit insurance scheme.

Despite the insurance limitations which would result from the proposed amendments, brokered deposits would continue to be afforded insurance coverage up to $100,000 for each broker per insured institution. Any deposits in excess of $100,000, however, would not be insured. An analysis of the depository institution's financial and managerial soundness, therefore, would be the prudent course when depositing funds over $100,000. The proposed amendments would apply to basic brokering programs, certificate-of-deposit participation programs, deposit listing services and financing arrangments where an agent or trustee establishes a deposit or member account for the purpose of enabling the institution to finance a prearranged loan with the proceeds in the account.

If adopted, the proposed rules would afford a maximum of $100,000 insurance coverage per insured bank or savings association for the total deposits placed by or through a single deposit broker. The term "deposit broker" would be defined as any person or entity who is engaged in the business of placing deposits for others and an agent or trustee who establishes a deposit or member account in connection with an agreement with the institution to use the proceeds in the account to fund a prearranged loan. The agencies request comment on whether subsidiaries or networks of depository institutions should be included within the definition of "deposit broker" for purposes of the proposed amendments. They also request comments on what treatment should be accorded to institutions owned either directly or indirectly by business entities which would be within the proposed definition of "deposit broker." Also, as proposed, the term "deposit broker" would not include employees of depository institutions. The agencies are concerned, however, that too broad a definition of "employee" would lead to circumvention of the intent behind the proposed amendments. Therefore, the FDIC and the Board are defining an "employee" of an institution as a person who is employed exclusively by that institution, is paid primarily on a salaried basis, does not share his or her compensation with someone who is engaged in the business of brokering deposits, and uses an office facility which exists exclusively for his or her institution/employer. As proposed, the definition of "deposit broker" would not include the normal activities of trust departments of insured institutions. Activities and arrangements with the purpose and effect of circumventing the intent of the proposed amendments, however, could cause such trust departments to be deemed "deposit brokers."

For purposes or calculating the amount of insurance, the broker would

be deemed the "depositor" or "member" in a deposit brokerage situation. This differs from the current FDIC and Board regulations which, if certain requirements are met, deem the customer of the deposit broker to be the "depositor" or "member." The proposed definition includes not only deposit brokerage arrangements where the broker is the holder of an account for a number of principals, but also where the broker directs or otherwise facilitates the transfer of funds of depositors to an institution without itself becoming a holder of an account; thus, the definition would also apply to deposit listing services and similar arrangments.

The FDIC and the Board do not intend to disturb traditional deposit relationships. Accounts held by agents would remain insured up to $100,000 per principal, provided that the agent is not engaged in the business of placing deposits. Thus, arrangements such as a real estate agent's and attorney's escrow accounts would not be affected by the proposed amendments. Comments are welcomed on the question of what types of activities of agents should or should not be deemed to constitute the business of deposit brokerage if the agencies adopt the proposal. Furthermore, the insurance coverage currently available to pension funds, other employee benefit plans and irrevocable trusts (other than the prearranged loan transaction noted above) would not be affected, where the deposits are not placed by or through a deposit broker. Likewise, the insurance coverage of accounts of public units would not be affected, provided that a deposit broker is not employed to place the funds.

Comments are also requested on whether any amendments should be made to the current rules on the insurance of negotiable or bearer-form certificates of deposit. At present, for insurance purposes, the "depositor" of a negotiable or bearer-form deposit is the person holding the deposit on the date the institution is closed because of insolvency, 12 CFR 330.11 and 570.11. The agencies are concerned that such deposits may be used to impede the intent of the proposed amendments. Thus, they are requesting comments on what regulatory steps, if any, should be taken to prevent possible misuses of negotiable or bearer-form certificates of deposit to circumvent the proposed amendments. One option is to require that institutions maintain records on the original purchaser of the deposit. This would permit a determination that the certificate was not purchased by or through a deposit broker.

If the proposed amendments are ultimately adopted as final regulations, the effective date would be October 1, 1984. Thus, any deposits either placed or renewed on or after October 1, 1984, would be subject to the new regulations on insurance coverage. Deposits either placed or renewed prior to October 1, 1984, however, would be subject to the current insurance rules until the scheduled maturities of those deposits. The FDIC and the Board welcome comments on this proposed effective date. Additionally, the agencies are concerned that a few insured institutions may have portfolio structures requiring additional time in which to adjust in order to avoid severe disruption. The agencies also request comments on methods by which such disruptive effects may best be alleviated.

Finally, the FDIC and the Board request comments on any other methods by which the objectives of the two agencies might be otherwise achieved.

Paperwork Reduction Act

As proposed, the amendments would not entail any reporting or recordkeeping requirement; therefore, the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520 (1980)) would be inapplicable.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (Sept. 19, 1980), the FDIC and the Board are providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been incorporated elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rules would apply to insured institutions.

3. *Impact of the proposed rules on small institutions.* As brokered deposits do not yet constitute a significant portion of total deposits of most insured institutions, the proposed rules would not have a significant impact on a substantial number of small entities.

4. *Overlapping or conflicting Federal rules.* There are no federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rules.* The proposal would limit federal deposit insurance on brokered deposits. Other alternatives considered, such as increased monitoring and approval mechanisms and blanket prohibitions on brokered deposits, would be more burdensome to the agencies' regulatees or would eliminate the benefits of a regulated activity, including availability of liquidity.

List of Subjects

13 CFR Part 330

Banks, Bank deposit insurance. Banking.

12 CFR Parts 561 and 564

Banks, Bank deposit insurance, Banking, Savings and loan associations.

In consideration of the foregoing, the FDIC hereby proposes to amend Part 330 of Title 12 of the CFR and the Board hereby proposes to amend Parts 561 and 564 of Title 12 of the CFR as follows:

PART 330—CLARIFICATION AND DEFINITION OF DEPOSIT INSURANCE COVERAGE

1. The authority citation for Part 330 is as follows:

Authority: 12 U.S.C. 1813, 1817, 1821, 1822.

2. It is proposed that § 330.0 be amended by revising its heading, redesignating its first paragraph as paragraph (a) and adding paragraphs (b) and (c) as follows:

§ 330.0 Definitions.

(a) For the purpose of this Part 330, the term "insured bank" includes in insured branch of a foreign bank.

(b) For purposes of this Part 330, the term "deposit broker" includes: (1) Any person or entity, other than an insured bank or employee thereof, engaged in the business of either placing or listing for placement deposits of insured banks; and (2) an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured bank to use the proceeds of the account to fund a prearranged loan.

(c) The term "employee," for purposes of this section only, includes only an employee: (1) Who is employed exclusively by the insured bank for which he or she is soliciting deposits; (2) whose primary compensation is in the form of a salary; (3) who does not share his or her compensation with a deposit borker; and (4) whose office space or place of business is used exclusively for the benefit of his or her insured bank/employer.

3. It is proposed that § 330.2 be amended by revising its heading, removing its introductory text, removing the heading of paragraph (a), and removing paragraphs (b) and (c) as follows:

§ 330.2 Individual accounts.

Funds owned by an individual (or by the community between husband and wife of which the individual is a member) and deposited into one or more

deposit accounts in his or her own name shall be insured up to $100,000 in the aggregate.

4. It is proposed that § 330.10 be amended by revising its text as follows:

§ 330.10 Trust accounts.

All trust interests for the same beneficiary deposited in deposit accounts established pursuant to valid trust agreements created by the same settlor (gantor) shall be added together and insured up to $100,000 in the aggregate, except time and savings deposits of the same beneficiary which qualify as pension or profit-sharing plans under section 401(d) or 408(a) of the Internal Revenue Code of 1954, as amended. The vested and ascertainable interest (excluding any remainder interest) of each beneficial owner in a time or savings deposit established under either of the above sections, shall be added together and insured to an additional $100,000 maximum for each beneficial owner, notwithstanding the insurance provided in this section to other types of deposit accounts. Except where the trustee is a "deposit broker," as defined in § 330.0(b), the insurance of such trust interests shall be separate from that afforded deposit accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangement.

5. It is proposed that § 330.13 be added as follows:

§ 330.13 Accounts held by or established through intermediaries.

(a) Except as provided in paragraph (b) of this section, funds owned by a principal and deposited into one or more deposit accounts in the name or names of agents or nominees shall be added to any individual accounts of the principal and insured up to $100,000 in the aggregate.

(b) Nothwithstanding any other provision of this Part, funds deposited into one or more deposit accounts by or through a "deposit broker," as defined in § 330.0(b), shall be added to any other deposits placed by or through that deposit broker and insured up to $100,000 in the aggregate.

(c) Funds held by a guardian, custodian or conservator for the benefit of a ward or for the benefit of a minor under a Uniform Gifts to Minors Act and deposited into one or more accounts in the name of the guardian, custodian or conservator shall be added to any individual accounts of the ward or minor and insured up to $100,000 in the aggregate.

PART 561—DEFINITIONS

1. The authority citation for Part 561 is as follows:

Authority: 12 U.S.C. 1724, 1725, 1726, 1728.

2. It is proposed that § 561.2a be added as follows:

§ 561.2a Definition of "deposit broker."

(a) The term "deposit broker" includes: (1) Any person or entity, other than an insured institution or employee thereof, engaged in the business of placing or listing for placement deposits of an insured institution; and (2) an agent or trustee who establishes a member account to facilitate a business arrangement with the institution to use the proceeds of the account to fund a prearranged loan.

(b) The term "employee," for purposes of this section only, includes only an employee: (1) Who is employed exclusively by the institution for which he or she is soliciting deposits; (2) whose primary compensation is in the form of a salary; (3) who does not share his or her compensation with a deposit broker; and (4) whose office space or place of business is used exclusively for the benefit of his or her institution/employer.

PART 564—SETTLEMENT OF INSURANCE

3. The authority citation for Part 564 is as follows:

Authority: 12 U.S.C. 1724, 1725, 1726, 1728.

4. It is proposed that § 564.3 be revised as follows:

§ 564.3 Individual accounts.

Funds owned by an individual (or by the husband-wife community of which the individual is a member) and invested in one or more accounts in his or her own name shall be insured up to $100,000 in the aggregate.

§ 564.10 [Amended]

5. It is proposed that § 564.10 be amended by adding at the end thereof a sentence as follows:

"* * * Except where the trustee is a "deposit broker," as defined in section 561.2a, the insurance of such trust interests shall be separate from that afforded deposit accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangement."

6. It is proposed that § 564.12 be added as follows:

§ 564.12 Accounts held by or established through intermediaries.

(a) Except as provided in paragraph (b) of this section, funds owned by a principal and invested in one or more accounts in the name of agents or nominees shall be added to any individual accounts of the principal and insured up to $100,000 in the aggregate.

(b) Notwithstanding any other provision of this Part, funds invested in one or more accounts by or through a "deposit broker," as defined in § 561.2a, shall be added to any other deposit placed by or through that deposit broker and insured up to $100,000 in the aggregate.

(c) A loan servicer who receives loan payments and places or maintains such payments in an insured institution prior to remittance to the lender or other parties entitled to the funds shall, for insurance-of-accounts purposes, be considered an agent of each borrower.

(d) Funds held by a guardian, custodian or conservator for the benefit of a ward or a minor under a Uniform Gifts to Minors Act, and invested in one or more accounts in the name of the guardian, custodian or conservator, shall be added to any individual accounts of the ward or minor and insured up to $100,000 in the aggregate.

By Order of the Board of Directors, January 16, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

By Order of the Board, January 16, 1984.

Federal Home Loan Bank Board.

J. J. Finn,

Secretary to the Board.

[FR Doc. 84-1703 Filed 1-20-84; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-CE-35-AD]

Airworthiness Directives; Pilatus Aircraft, Ltd., and Fairchild-Hiller PC-6 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM applicable to Docket No. 83-CE-35-AD. This NPRM proposed to adopt an Airworthiness Directive (AD) that would requre the replacement of the aileron/flap mount attachment fittings. Subsequent to the issuance of this Notice, additional evaluation indicates that the proposed action is not warranted at this time. Accordingly, the NPRM is hereby withdrawn.