

FARM CREDIT ADMINISTRATION**12 CFR Part 617**

RIN 3052-AB33

Referral of Known or Suspected Criminal Violations**AGENCY:** Farm Credit Administration (FCA).**ACTION:** Final rule.

SUMMARY: The Farm Credit Administration (FCA), by order of the FCA Board, issues a final rule amending its regulations governing the referral of known or suspected criminal violations. The objective of this final regulation is to promote consistency, efficiencies, and timeliness by Farm Credit System (FCS or System) institutions in reporting, investigating, and aiding in the prosecution of known or suspected criminal activities. Therefore, the final regulation requires System institutions to notify law enforcement agencies of known or suspected criminal violations that meet certain reporting thresholds. Generally, a criminal violation must be reported under this part if there is a reasonable basis to conclude that there was an intent to "defraud" a System institution and the amount of the actual or potential loss meets the reporting thresholds.

The final regulation mandates the continued use of the FCA Criminal Referral Form (hereinafter FCA Referral Form), which is located in the FCA *Examination Manual*, for making a criminal referral.

DATES: The regulation shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Eric Howard, Policy Analyst, Regulation Development Division, Office of Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444,

or

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SUPPLEMENTARY INFORMATION:**I. Background**

Pursuant to the Farm Credit Act of 1971, as amended, the FCA regulates and examines FCS institutions for safety and soundness and for compliance with Federal laws and regulations. Violations

of Federal laws and regulations could undermine public confidence in the FCS and affect the safety and soundness of FCS institutions. System institutions have the responsibility to establish and maintain safeguards to detect, deter, and report criminal activity involving the assets, operations, or affairs of the institution. Law enforcement agencies need to receive timely and specific information from FCS institutions on known or suspected criminal violations to determine whether investigations and prosecutions are warranted.

The Interagency Bank Fraud Working Group (BFWG) was formed to address concerns that financial institutions were becoming increasingly vulnerable to insider fraud and prosecutions were not keeping pace with criminality, and to promote cooperation toward the goal of improving the Federal Government's response to white-collar crime in the Nation's federally insured and/or regulated financial institutions. The BFWG consists of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Farm Credit Administration, the Federal Bureau of Investigation, the U.S. Secret Service, the Department of Justice, and the U.S. Department of the Treasury. The objectives of the BFWG were to facilitate the reporting of criminal activity by financial institutions and to enhance the law enforcement agencies' ability to investigate and prosecute the matters reported. To accomplish these objectives, the BFWG developed uniform reporting standards and processes for filing criminal referrals and developed a model regulation.

Following the BFWG's guidance, the FCA proposed a regulation that was published in the **Federal Register** on October 13, 1992 (57 FR 46819). The comment period for the proposed regulation amending part 617 closed on November 12, 1992. Pursuant to the commenters' request, the FCA Board agreed to republish the proposed regulation in order to afford the public another opportunity to comment. The republished regulation was published in the **Federal Register** on June 20, 1994 (59 FR 31562). The FCA considered and addressed all comments to the proposed regulation in the republished regulation.

Following the republished regulation, there were several requests that FCA staff meet with the commenters to discuss issues and problems that arise in the area of criminal referrals. Commenters believed that it would provide a better opportunity for them to present their

views on the republished regulation. Hence, after the comment period closed, FCA staff met with the commenters in Sacramento, California, on September 27, 1995. This meeting was held in compliance with the FCA Board's Policy Statement FCA-PS-37 published in the **Federal Register** on April 1, 1992 (57 FR 11083), which addresses communications with the public during the rulemaking process.

During the meeting, commenters expounded on their written comments. After the meeting, several attendees provided written confirmation of the meeting discussions. No new substantive comments were made at the meeting and, thus, comments made at the meeting are not separately described herein. These follow-up letters and minutes of the meeting are retained in the FCA's rulemaking file and are available for public review.

II. Analysis of Comments to the Reproposed Regulation and FCA Responses**A. The Need for a New Criminal Referral Regulation**

Several commenters questioned the need for a new criminal referral regulation and argued that the existing regulation (found in 12 CFR part 617) is adequate to ensure the proper reporting of criminal referrals. The FCA disagrees and believes that the existing criminal referral regulation should be revised because it is out-of-date and fails to reflect the arms-length relationship between the FCA and the System.

The existing regulation, first promulgated in 1982, has no minimum reporting thresholds and requires the reporting of all criminal violations. Further, the existing regulation does not contain procedures adequate to ensure consistent System-wide reporting. A 1982 interpretative letter from the FCA to the President of each Farm Credit Bank introduced procedures not included in the regulation at part 617. The letter indicated that dollar-reporting thresholds could be applied in certain circumstances and emphasized the significant discretion District Bank counsel had in reviewing cases of suspected violations. At present, some institutions report all violations and some follow the 1982 interpretative letter and only report criminal violations exceeding certain thresholds, which in some cases is \$50,000. This final rule supersedes the guidelines provided in the 1982 interpretative letter and the existing regulation. The final rule establishes reporting thresholds that all System institutions must follow.

The existing regulation established slightly different procedures for reporting violations allegedly committed by institution personnel and procedures for reporting violations allegedly committed by borrowers. The existing regulation specifically requires that criminal referrals concerning institution personnel be reported to the Chief Examiner of FCA's Office of Examination and that those concerning borrowers be reported to the FCA. The regulation also specifies that the Chief Examiner is to refer cases concerning criminal law violations by institution personnel to the U.S. Attorney, while the general counsel of the Farm Credit district is to refer criminal law violations by borrowers to the U.S. Attorney and report the referral to the FCA's General Counsel. The final regulation makes the reporting procedures for institution personnel and borrowers the same. It requires institutions to make these referrals directly to the appropriate Federal law enforcement authorities and to provide copies of all referrals to the FCA's Office of General Counsel. It is the Office of General Counsel that, in practice, monitors criminal referrals and has primary contact with Federal law enforcement authorities. The final regulation reflects that role in addition to bringing greater consistency to the referral process.

In addition, the existing regulation is not consistent with the BFWG's recommendations concerning reporting thresholds, which have been implemented by the other Federal financial regulatory agencies. The BFWG, which included the FCA, established the same thresholds for all Federal financial regulatory agencies. The BFWG believed that uniform thresholds would enhance the ability of the Federal financial regulatory agencies and the law enforcement agencies to detect, investigate, and prosecute known or suspected criminal violations. The Department of Justice, as a member of the BFWG and oversight agency for the Offices of the U.S. Attorneys, assisted in the establishment of the thresholds. Therefore, as a participant in the BFWG and in concurrence with the Department of Justice's judgment on this matter, the FCA is establishing the reporting thresholds as recommended by the BFWG.

Although the FCA's final regulation has been tailored, as appropriate, to address concerns raised by agricultural lending, it is patterned on the BFWG's model regulation and the rules promulgated by the other Federal financial regulatory agencies. The FCA continues to believe that the FCA

criminal referral regulation should incorporate the core principles of the model regulation.

B. Reporting Threshold Limits

The dollar amount that would trigger the requirement to make a criminal referral has been a matter of some controversy. The proposed and repropoed regulation established reporting thresholds of \$1,000 and \$5,000 for known and unknown suspects, respectively, and \$0 for institution personnel. (The term "unknown suspect" is used where a criminal violation has occurred but no reasonable basis exists for identifying the perpetrator.) Although commenters supported the \$0 reporting threshold for institution personnel, they argued that the FCA should adopt higher reporting thresholds for borrowers. The commenters' principal objection to the \$1,000 and \$5,000 thresholds was that few investigations or prosecutions by Federal law enforcement authorities result from referrals unless the amount at issue is substantial. Several commenters suggested that a \$50,000 reporting threshold for borrowers would be appropriate. One commenter suggested that reporting thresholds should be the same for borrowers and unknown suspects. Another commenter stated that if the FCA was not mandating the use of a Uniform Criminal Referral Form it should not mandate the use of uniform reporting thresholds.

The BFWG first recommended reporting thresholds of \$1,000 for known suspects and \$5,000 for unknown suspects. The BFWG subsequently revised the thresholds and recommended reporting thresholds at \$5,000 for borrowers and \$25,000 for unknown suspects. The BFWG has not changed its recommendation of \$0 for institution personnel. The Federal law enforcement authorities that are part of the BFWG, including the Department of Justice, believe these revised reporting thresholds are appropriate and have specifically stated that they want to receive all criminal referrals meeting these thresholds.

In the final regulation reporting thresholds for institution personnel will remain at \$0, so that any criminal act by institution personnel will be reported. After careful evaluation of the BFWG's recommendations and the commenters' concerns, the Agency also believes that the reporting thresholds should be increased for both known and unknown suspects. Thus, the FCA is increasing the threshold for known suspects from \$1,000 to \$5,000. The threshold for unknown suspects is also increased

from \$5,000 to \$25,000. This action responds to the commenters' requests for higher thresholds. It also is consistent with the BFWG's revised recommendations on reporting thresholds, which the BFWG raised in response to commentary after the model regulation was first proposed.

The use of uniform reporting thresholds will enhance the ability of the Federal financial regulatory agencies and the law enforcement agencies to detect, investigate, and prosecute known or suspected criminal activities. Therefore, the final regulation establishes reporting thresholds of \$0 for institution personnel, \$5,000 for known suspects, and \$25,000 for unknown suspects.

C. Compliance Costs

Many of the commenters expressed concern about the cost of compliance with the regulatory requirements for making a criminal referral. The commenters were concerned that criminal referrals are costly and time-consuming, yet rarely result in investigations, much less prosecutions. For example, one commenter indicated that it took 40 hours of an employee's time to investigate an allegation and complete a criminal referral form. Another commenter indicated that legal counsel was necessary to evaluate the sufficiency of evidence or the appropriateness of making certain criminal referrals.

The FCA recognizes that System institutions will incur costs to comply with the final regulation just as they currently incur costs to make a criminal referral. The FCA believes that the benefit of timely and consistent reporting of criminal referrals at the new, higher reporting thresholds will outweigh the expense of compliance. Also, the regulation will standardize the reporting process and ensure that institutions apply uniform standards to all affected parties (borrowers, employees, officers, and directors). However, compliance costs can be minimized. For instance, an institution is not required to conduct an exhaustive investigation of every reported violation. Rather, an institution is only required to conduct an inquiry sufficient to complete the FCA Referral Form.

D. Defining Potential Loss

Several commenters believed that the FCA's discussion of "potential loss" in the preamble to the repropoed regulation needed further clarification. The preamble indicated that potential loss would always equal the amount of the collateral conversion or financial

misstatement. A number of commenters disagreed with this interpretation. They pointed out that in some instances a lender may reasonably expect the potential loss to be smaller or even zero. This could occur, for example, if a financial misstatement, although in excess of \$5,000, was insignificant in light of the borrower's overall financial position. Similarly, a lender might reasonably expect no loss on a loan, despite a conversion of collateral worth more than \$5,000, if the remaining collateral well exceeded the lender's requirements and no other obstacle to full repayment existed. Finally, the commenters argued that if a lender discovered a financial misstatement or collateral conversion only after the loan was repaid as agreed, the absence of any actual loss should take precedence over any retrospective view of potential loss.

The final rule continues to state that lenders must refer crimes when the "actual or potential loss" exceeds the applicable thresholds, but the parenthetical "(before reimbursement or recovery)" has been deleted. Nevertheless, the FCA continues to believe that when an institution experiences an actual loss, the reporting thresholds in § 617.2 govern whether a referral is required and are to be applied before reimbursement or recovery. The fact that a borrower reimburses the institution after the fact or that the converted collateral is recovered is irrelevant in determining whether a criminal referral is required. However, when the amount of any actual loss is not yet known, the FCA has concluded that the lender should make a reasonable assessment of the amount of the potential loss at the time of discovery of the criminal activity and use that amount to determine if a referral is required. The lender may base this assessment on the amount of the collateral conversion or financial misstatement, or on the reasonable estimate of loan loss attributable to the conversion or misstatement, or another method that is reasonable under the circumstances. When an estimate of potential loss is expressed as a range, a referral is required if any part of the range exceeds the applicable threshold.

To further clarify, System institutions are advised that where criminal intent is not suspected, no criminal referral need be made because, in most circumstances, there would be no criminal violation regardless of the actual or potential loss. If it is clear that an act was merely negligent and there was no criminal intent, a referral would be inappropriate. Nor is a criminal referral required if there is clear intent to defraud but no actual or potential loss

results. A loss (or potential loss) over the threshold amount and the requisite intent must coincide before a criminal referral is required.

Some commenters suggested that extenuating circumstances might argue against prosecution in a situation where a criminal referral is required. An institution may always express its view on whether prosecution does or does not appear to be warranted to the Federal authorities, including a U.S. Attorney or investigatory agency. A well-reasoned recommendation against prosecution in appropriate cases should address any perceived inequities in the criminal referral process without undermining the uniformity that the criminal referral regulations seek to promote.

There may also be situations where a System institution wishes to refer a suspected criminal violation involving a dollar amount under the threshold amount. System institutions should be aware that the final regulation does not affect, in any way, an institution's discretion to make a criminal referral that is below the reporting thresholds to the appropriate law enforcement authorities. Indeed, a System institution should always bear in mind its obligation to uphold the integrity of the Farm Credit System and practice sound credit management. Thus, for example, the repeated conversion of collateral or the conversion of large amounts of collateral should be reported even where the actual or potential loss does not meet the threshold requirements.

E. Discretion To Make a Criminal Referral

The preamble to the repropounded regulation attempted to clarify the extent of an institution's discretion to make a criminal referral. Commenters requested that the substance of the preamble discussion on discretion or the language in the current § 617.7160 be included in the final regulation. Current § 617.7160 provides that "it shall be the function of the general counsel of the Farm Credit district * * * to determine if there is substantial evidence that a violation * * * has occurred * * *." The commenters also believed that further discussion on discretion is necessary in the preamble to the final regulation to avoid unnecessary referrals.

In response to the commenters' request, the FCA has incorporated guidance on discretion in the regulatory text as well as in the preamble. The final regulation incorporates language on discretion in new § 617.1(d), which provides that a System institution is responsible for determining whether

there appears to be a reasonable basis to believe that a criminal violation has occurred and, if so, to report the violation to the proper law enforcement authorities. The FCA did not adopt the language in current § 617.7160 because the term "substantial evidence" may suggest a higher evidentiary standard than may be warranted in determining whether a criminal violation may have occurred.

The FCA reiterates that, generally, a criminal violation that must be reported under this part involves a determination that there is a reasonable basis to believe that a borrower or institution personnel intended to "defraud" an institution through violation of a Federal criminal statute. Institutions, therefore, must seek to determine whether a misrepresentation of assets or a collateral conversion, for example, was done inadvertently or with the intent to defraud the institution. This determination involves the exercise of considerable discretion. In ascertaining whether a criminal referral is appropriate, an institution should consider all facts and circumstances, including those that go to the question of intent. If the institution is persuaded that there is no evidence of intent and, hence, no criminal violation, then it need not make a criminal referral. However, an institution should adequately document the basis for its determination that there was no criminal intent, especially when the institution suffers a loss. While System institutions are not required to consult legal counsel in determining whether an activity involved criminal intent, they may prefer to do so in close cases.

F. Probability of Prosecution

Several commenters urged the FCA to include in the final regulation a provision that would allow System institutions to make a referral determination based on the probability of prosecution of the subject of the criminal referral. Commenters asserted that some U.S. Attorneys have established informal dollar thresholds for prosecution that are much higher than the reporting thresholds established by the BFWG. The commenters stated that in their experience some U.S. Attorneys will not prosecute violations in amounts below these informal thresholds.

The Department of Justice, a participant in the BFWG and the oversight agency for the Office of the U.S. Attorneys, helped establish and fully supports the thresholds. While it is true that prosecution for low dollar amounts is rare, the FCA believes that the new reporting thresholds are

appropriate and that law enforcement agencies should have the chance to determine whether a criminal referral above these amounts is investigated and prosecuted. Thus, the FCA has decided not to incorporate this proposal in the final regulation.

G. Discovery of a Criminal Violation

Several commenters correctly noted an inconsistency in the language of repropoed § 617.2(a) and (b). Repropoed § 617.2(a) required System institutions to refer criminal activity after a "determination" that a violation has occurred. Repropoed § 617.2(b) required forwarding an FCA Referral Form to the FCA after a System institution "has discovered (or should have discovered)" a violation. Commenters also requested that the FCA limit its references to due diligence in the final regulation. Specifically, several commenters requested that the FCA delete the language "(or should have discovered)" from § 617.2(b).

The FCA agrees that the due diligence standard is already established in § 617.2(a) and therefore applies to all aspects of an institution's criminal referral process. Consequently, the FCA is deleting § 617.2(b) and moving the requirement that an FCA Referral Form be forwarded to the FCA's Office of General Counsel to § 617.2(a).

These changes make it clear that the obligation to make a criminal referral arises when management has determined that there is a known or suspected criminal activity, not when management "has discovered (or should have discovered)" a violation.

H. Time Limit To Make a Criminal Referral

Several commenters requested that the 30-day period during which a System institution must make a criminal referral be amended to reflect the varying complexity of some criminal referrals. Although the FCA recognizes System concerns, the Agency does not believe a change is warranted. The final regulation continues to provide that referrals must be made within 30 days of determining that a criminal violation appears to have occurred. The FCA believes that in the great majority of situations it is reasonable to expect that System institutions will be able to make a criminal referral within 30 days of determining that a violation has occurred. In unusual situations involving complicated facts, a System institution may need more than 30 days to make a complete criminal referral detailing all relevant information to law enforcement authorities. If so, System institutions should make a preliminary

criminal referral to the appropriate law enforcement authorities and follow up as soon as possible to ensure that a complete accounting of the facts and circumstances are reported to the law enforcement authorities. Finally, a System institution should not delay making a complete and accurate criminal referral because it is involved in a sensitive workout with a borrower or the borrower is under bankruptcy protection.

I. Transferring Responsibility for Making Criminal Referrals

Several commenters queried whether the final regulation would allow System institutions that have primary responsibility for making criminal referrals to transfer this activity to their supervising bank. While the institution retains the ultimate accountability for exercising due diligence to ensure the discovery, appropriate investigation, and reporting of criminal activity as required by § 617.2(a) and for ensuring that the criminal referral is made, a criminal referral can be made on the institution's behalf by a supervising System bank. This may be done pursuant to a formal agreement whereby the System bank making the referral is acting as an agent for the institution with primary responsibility.

J. Referrals to State and Local Authorities

One commenter urged the FCA to amend the final regulation so that System institutions are merely encouraged to file copies of the FCA Referral Form with State and local authorities rather than be required to make such a criminal referral. The FCA never intended to require that System institutions use the FCA Referral Form to refer State and local violations to State and local authorities or to inform State and local authorities of Federal violations. Rather, § 617.2(b) (formerly § 617.2(c) in the repropoed regulation) requires a System institution to notify the appropriate State or local law enforcement authorities when there is a known or suspected violation of State or local criminal law. The FCA continues to believe that this is a reasonable requirement that will help ensure the safety and soundness of the institution and the System without imposing an undue burden. A System institution may use whatever means it deems appropriate to make the referral. If a System institution thinks it appropriate, it can recommend that the State or local authorities not pursue a criminal investigation and prosecution.

K. Adding a Section Incorporating the Language of Current § 617.7140

One commenter requested that the language of § 617.7140 of the existing regulation be incorporated in the final regulation. Section 617.7140 outlines the two most common types of malfeasance that System institutions encounter—conversion and false financial statements—and cites the statutory sources in the Federal criminal code. The FCA does not believe that this information needs to be included in the final regulation because it is included in the FCA Referral Form.

L. FCA Referral Form

Commenters expressed some general concern about whether System institutions would be using the FCA Referral Form found in the FCA *Examination Manual* or a Uniform Criminal Referral Form developed by the BFWG. System institutions were concerned that a Uniform Criminal Referral Form would not be appropriate for reporting violations arising from agricultural lending, such as collateral conversions of agricultural products.

The FCA concludes that System institutions should continue to use the FCA Referral Form found in the FCA *Examination Manual* rather than a Uniform Criminal Referral Form developed by the BFWG. The FCA believes that the FCA Referral Form is more closely tailored to the types of crimes most often encountered in agricultural lending. It has been designed to be easy to use and to ensure the proper reporting of all required information. The form itself contains instructions and a brief summary of statutory provisions pertaining to criminal violations that most often occur in the context of agricultural lending. Thus, the final regulation requires System institutions to continue to use the FCA Referral Form for all criminal referrals. The FCA will review the FCA Referral Form periodically as part of its ongoing effort to ensure that System institutions have access to the best guidance possible.

M. Civil Liability for Making a Criminal Referral

Several commenters expressed concern that System institutions and institution personnel did not have immunity from civil liability for making a criminal referral. The FCA's repropoed regulation did not address this issue and no provision has been provided in the final regulation as this matter has been addressed by a statutory amendment.

The Farm Credit System Reform Act of 1996 amended the Farm Credit Act of

1971 to provide System institutions and their personnel with immunity from civil liability for making a criminal referral. See 12 U.S.C. 2219e. Now, FCS institutions and their personnel who disclose to a government authority information proffered in good faith that may be relevant to a possible violation of any law or regulation are not liable to any person under any law of the United States or of any State for the disclosure or for any failure to notify the person involved in the possible violation.

As a result of this statutory change, FCS institutions and their personnel enjoy immunity similar to that of the other financial institutions and their personnel. See 12 U.S.C. 3401, 3403; 31 U.S.C. 5312, 5318. See also 31 CFR part 103, subpart B.

N. Miscellaneous Clarifications

1. Section 617.2(a) was amended to clarify the FCA's intent that, although in the exercise of due diligence it is the direct lender's responsibility to make a criminal referral involving a loan it has made, when a Federal land bank association services a loan made by a Farm Credit Bank, the association must notify the Bank of any known or suspected criminal violation involving that loan.

2. Section 617.2(c) was amended to specify that System institutions must notify both the appropriate Federal law enforcement authorities and the FCA offices in those instances requiring urgent attention.

3. Former § 617.3(a) and (b) were combined for brevity and renumbered as § 617.3(a). That section provides that if a criminal referral involves a member of the board of directors, discretion may be exercised in notifying such member of the criminal referral. The FCA intends the term "exercise of discretion" to mean that the institution must determine whether, under the circumstances, only those members of the board of directors not involved in the criminal violation should be notified of the criminal referral.

4. Former § 617.3(c) has been renumbered as § 617.3(b) and amended to provide that a System institution shall make all required notifications under a surety bond or other contract. A System institution is no longer required to make an initial determination of whether there is a loss prior to notification.

List of Subjects in 12 CFR Part 617

Banks, banking, Criminal referrals, Criminal transactions, Embezzlement, Insider abuse, Investigations, Money laundering, Theft.

For the reasons stated in the preamble, part 617 of chapter VI, title 12 of the Code of Federal Regulations is revised to read as follows:

PART 617—REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

Sec.

617.1 Purpose and scope.

617.2 Referrals.

617.3 Notification of board of directors and bonding company.

617.4 Institution responsibilities.

Authority: Secs. 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2243, 2252).

§ 617.1 Purpose and scope.

(a) This part applies to all institutions of the Farm Credit System as defined in section 1.2(a) of the Farm Credit Act of 1971, as amended, (Act) (12 U.S.C. 2002(a)) including, but not limited to, associations, banks, service corporations chartered under section 4.25 of the Act, the Federal Farm Credit Banks Funding Corporation, the Farm Credit System Financial Assistance Corporation, the Farm Credit Leasing Services Corporation, and the Federal Agricultural Mortgage Corporation (hereinafter, institutions). The purposes of this part are to ensure public confidence in the Farm Credit System, to ensure the reporting of known or suspected criminal activity, to reduce potential losses to institutions, and to ensure the safety and soundness of institutions. This part requires that institutions use the Farm Credit Administration Criminal Referral Form (hereinafter FCA Referral Form) to notify the appropriate Federal authorities when any known or suspected Federal criminal violations of the type described in § 617.2 are discovered by institutions.

(b) The specific referral requirements of this part apply to known or suspected criminal violations of the United States Code involving the assets, operations, or affairs of an institution. This part prescribes procedures for referring those violations to the proper Federal authorities and the Farm Credit Administration. No specific procedural requirements apply to the referral of violations of State or local laws.

(c) Nothing in this part should be construed as reducing in any way an institution's ability to report known or suspected criminal activities to the appropriate investigatory or prosecuting authorities, whether Federal, State, or local, even when the circumstances in which a report is required under § 617.2 are not present.

(d) It shall be the responsibility of each System institution to determine

whether there appears to be a reasonable basis to conclude that a criminal violation has been committed and, if so, to report the matter to the proper law enforcement authorities for consideration of prosecution.

(e) Each referral required by § 617.2(a) shall be made on the FCA Referral Form in accordance with the FCA Referral Form instructions relating to its filing and distribution.

§ 617.2 Referrals.

(a) Each institution and its board of directors shall exercise due diligence to ensure the discovery, appropriate investigation, and reporting of criminal activity. Within 30 calendar days of determining that there is a known or suspected criminal violation of the United States Code involving or affecting its assets, operations, or affairs, the institution shall refer such criminal violation to the appropriate regional offices of the United States Attorney, and the Federal Bureau of Investigation or the United States Secret Service or both, using the FCA Referral Form. A copy of the completed FCA Referral Form, accompanied by any relevant documentation, shall be provided at the same time to the Farm Credit Administration's Office of General Counsel. In the event that a Farm Credit bank makes a loan through a Federal land bank association which services the loan, the Federal land bank association must inform the Farm Credit bank of any known or suspected violation involving that loan and the Farm Credit bank shall refer the violation to Federal law enforcement authorities under this section. A report is required in circumstances where there is:

(1) Any known or suspected criminal activity (e.g., theft, embezzlement), mysterious disappearance, unexplained shortage, misapplication, or other defalcation of property and/or funds, regardless of amount, where an institution employee, officer, director, agent, or other person participating in the conduct of the affairs of such an institution is suspected;

(2) Any known or suspected criminal activity involving an actual or potential loss of \$5,000 or more, through false statements or other fraudulent means, where the institution has a substantial basis for identifying a possible suspect or group of suspects and the suspect(s) is not an institution employee, officer, director, agent, or other person participating in the conduct of the affairs of such an institution;

(3) Any known or suspected criminal activity involving an actual or potential loss of \$25,000 or more, through false

statements or other fraudulent means, where the institution has no substantial basis for identifying a possible suspect or group of suspects; or

(4) Any known or suspected criminal activity involving a financial transaction in which the institution was used as a conduit for such criminal activity (such as money laundering/structuring schemes).

(b) In circumstances where there is a known or suspected violation of State or local criminal law, the institution shall notify the appropriate State or local law enforcement authorities.

(c) In addition to the requirements of paragraph (a) of this section, the institution shall immediately notify by telephone the appropriate Federal law enforcement authorities and FCA offices specified on the FCA Referral Form upon determining that a known or suspected criminal violation of Federal law requiring urgent attention has occurred or is ongoing. Such cases include, but are not limited to, those where:

(1) There is a likelihood that the suspect(s) will flee;

(2) The magnitude or the continuation of the known or suspected criminal violation may imperil the institution's continued operation; or

(3) Key institution personnel are involved.

§ 617.3 Notification of board of directors and bonding company.

(a) The institution's board of directors shall be promptly notified of any criminal referral by the institution, except that if the criminal referral involves a member of the board of directors, discretion may be exercised in notifying such member of the referral.

(b) The institution involved shall promptly make all required notifications under any applicable surety bond or other contract for protection.

§ 617.4 Institution responsibilities.

Each institution shall establish effective policies and procedures designed to ensure compliance with this part, including, but not limited to, adequate internal controls.

Dated: April 25, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.
[FR Doc. 97-11685 Filed 5-5-97; 8:45 am]

BILLING CODE 6705-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-188-AD; Amendment 39-10015; AD 97-10-03]

RIN 2120-AA64

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1-11 200 and 400 series airplanes, that requires repetitive ultrasonic inspections to detect cracking of the lugs of the engine mounting beams, and replacement of the beam with a serviceable part, if necessary. This amendment is prompted by reports of fatigue cracking of the lugs of the engine mounting beams. The actions specified by this AD are intended to detect and correct such cracking of the engine mounting lugs, which could result in reduced structural capability of the engine mount.

DATES: Effective June 10, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 10, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1-11 200 and 400 series airplanes was published in the **Federal Register** on February 14, 1997 (62 FR 6892). That action proposed to require repetitive ultrasonic

inspections to detect cracking of the lugs of the lower forward, lower rear, upper forward, and upper rear engine mounting beams, and replacement of the beam with a serviceable part, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 31 British Aerospace Model BAC 1-11 200 and 400 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$11,160, or \$360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.