

AFM revisions required by this AD on U.S. operators is estimated to be \$600, or \$60 per airplane.

The cost impact figures discussed above are 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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97-16-09 British Aerospace Regional Aircraft (Formerly, Jetstream Aircraft Limited; British Aerospace (Commercial

Aircraft) Limited]; Amendment 39-10101. Docket 96-NM-178-AD.

Applicability: BAe Model ATP airplanes, having constructor's numbers 2002 through 2063 inclusive; on which Jetstream Modification 10303A (Jetstream Service Bulletin ATP 32-41) has been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded application of the brakes during landing, accomplish the following:

(a) Within 60 days of the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Jetstream Service Bulletin ATP-29-12, dated September 9, 1995.

(1) Modify the hydraulic system; and

(2) Revise the Emergency and Abnormal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include the information specified in Temporary Revision No. T/52, Issue 1, dated August 16, 1995, which introduces revised procedures for lowering the landing gear, as specified in the temporary revision; and operate the airplane in accordance with those limitations and procedures.

Note 2: Paragraph 1.K. of Jetstream Service Bulletin ATP-29-12, dated September 9, 1995, references Temporary Revision No. T/52 as an additional source of service information for revising the AFM.

Note 3: This may be accomplished by inserting a copy of Temporary Revision No. T/52 in the AFM. When this temporary revision has been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Temporary Revision No. T/52.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Jetstream Service Bulletin ATP-29-12, dated September 9, 1995; and Temporary Revision No. T/52, Issue 1, dated August 16, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 22, 1997.

Issued in Renton, Washington, on July 29, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-21740 Filed 8-15-97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-65-AD; Amendment 39-10105; AD 97-17-03]

RIN 2120-AA64

Airworthiness Directives; Ayres Corporation S2R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 97-13-11, which currently requires inspecting the 1/4-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking on Ayres S2R series airplanes, and replacing any lower spar cap if fatigue cracking is found. That AD resulted from an accident on an Ayres S2R series airplane where the wing separated from the airplane in flight. AD 97-13-11 incorrectly references the Ayres Model S2R-R1340 airplanes as Model S2R-1340R. This AD requires the same actions as AD 97-13-11, but corrects the designation of the Model S2R-R1340 airplanes. The actions specified by this AD are intended to detect fatigue cracking of the lower spar caps, which, if not corrected, could result in the wing separating from the airplane with

consequent loss of control of the airplane.

DATES: Effective September 5, 1997.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of July 10, 1997 (62 FR 36978).

Comments for inclusion in the Rules Docket must be received on or before October 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 97-CE-65-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Ayres Corporation, P.O. Box 3090, One Rockwell Avenue, Albany, Georgia 31706-3090. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 97-CE-65-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7357; facsimile (404) 305-7348.

SUPPLEMENTARY INFORMATION:

Discussion

AD 97-13-11, Amendment 39-10071 (62 FR 36978, July 10, 1997), currently requires the following on Ayres S2R series airplanes: inspecting the 1/4-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking, and replacing any lower spar cap if fatigue cracking is found. Accomplishment of the inspection is in accordance with Ayres Service Bulletin No. SB-AG-39, dated September 17, 1996. This inspection utilizes magnetic particle procedures and must follow American Society for Testing Materials (ASTM) E1444-94A, using wet particles meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046. This inspection is to be accomplished by a Level 2 or Level 3 inspector certified using the guidelines established by the American Society for Nondestructive Testing or MIL-STD-410.

That AD resulted from an accident on an Ayres S2R series airplane where the wing separated from the airplane in

flight. Investigation of all resources available to the FAA shows nine occurrences of fatigue cracking in the lower spar caps of Ayres S2R airplanes, specifically emanating from the 1/4-inch and 5/16-inch bolt holes. Although the investigation of the above-referenced accident is not complete, the FAA believes that the cause can be attributed to fatigue cracks emanating from the 1/4-inch and 5/16-inch bolt holes in the left lower spar cap.

Data accumulated by the FAA indicates that the fatigue cracks on these Ayres S2R series airplanes become detectable at different times based upon the type of engines and design of the airplane. With this in mind, the FAA has categorized these airplanes into three groups:

- Group 1 airplanes have steel spar caps with aluminum webs. These airplanes are capable of carrying heavier loads and data indicates that inspections in the affected areas of the lower spar caps should begin upon the accumulation of 2,700 hours time-in-service (TIS);
- Group 2 airplanes have steel spar caps with steel webs. Because of the steel webs as opposed to aluminum, data indicates that inspections in the affected areas of the lower spar caps should begin upon the accumulation of 4,300 hours TIS; and
- Group 3 airplanes, which are the ones manufactured first, have steel spars with aluminum webs and low horsepower radial engines, and thus do not have the ability to carry as much weight as airplanes in the other two groups. Data indicates that inspections in the affected areas of the lower spar caps should begin upon the accumulation of 9,000 hours TIS.

Manufacture of the affected airplanes began in 1965 with the airplanes incorporating the lower horsepower radial engines. Many of the airplane models referenced in this AD are still currently in production. These airplanes are used in agricultural operations and average 500 hours TIS annually. With this in mind, some of the earlier manufactured airplanes could have as many as 16,000 hours total TIS.

Actions Since Issuance of the Previous Rule

Since issuance of AD 97-13-11, the FAA realizes that it inadvertently referenced Ayres Model S2R-R1340 airplanes as Model S2R-1340R airplanes. Although the FAA believes that most affected operators will realize the intent of this airplane model designation, a few may either choose not to comply because legally they are

not required to or they may not realize that the intent was to include the Model S2R-R1340 airplanes in the Applicability of AD 97-13-11.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken in order to detect fatigue cracking of the lower spar caps, which, if not corrected, could result in the wing separating from the airplane with consequent loss of control of the airplane.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Ayres S2R airplanes of the same type design, this AD supersedes AD 97-13-11 with a new AD. This AD retains the requirements from AD 97-13-11 of inspecting the 1/4-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking, and replacing any lower spar cap where fatigue cracking is found; and changes the designation of the Ayres Model S2R-1340R airplanes to Ayres Model S2R-R1340 airplanes. Accomplishment of the inspection continues to be in accordance with Ayres Service Bulletin No. SB-AG-39, dated September 17, 1996. This inspection utilizes magnetic particle procedures and must follow American Society for Testing Materials (ASTM) E1444-94A, using wet particles meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046. This inspection is to be accomplished by a Level 2 or Level 3 inspector certified using the guidelines established by the American Society for Nondestructive Testing or MIL-STD-410.

Determination of the Effective Date of the AD

Since a situation exists (possible wing separation from the airplane) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or

arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-65-AD." The

postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 97-13-11, Amendment 39-10071 (62 FR 36978, July 10, 1997), and by adding a new airworthiness directive (AD) to read as follows:

97-17-03 Ayres Corporation: Amendment 39-10105; Docket No. 97-CE-65-AD. Supersedes AD 97-13-11; Amendment 39-10071.

Applicability: Airplanes with the following model and serial number designations with or without a -DC suffix, certificated in any category:

GROUP 1 AIRPLANES

Model	Serial Nos.
S-2R	5000R through 5099R.
S2R-R1340	R1340-011, R1340-012, R1340-019, R1340-020, R1340-024, R1340-025, and R1340-027.
S2R-R1820	R1820-001 through 1820-035.
S2R-T34	6000R through 6049R, T34-001 through T34-143, T34-145, T34-147 through T34-167, T34-171, T34-180, and T34-181. ¹
S2R-T15	T15-001 through T15-033. ²
S2R-T11	T11-001 through T11-005.
S2R-G1	G1-101 through G1-108.

¹ The serial numbers of the Model S2R-T34 airplanes could incorporate T34-xxx, T36-xxx, T41-xxx, or T42-xxx. This AD applies to all of these serial number designations as they are all Model S2R-T34 airplanes.

² The serial numbers of the Model S2R-T15 airplanes could incorporate T15-xx and T27-xx. This AD applies to both of these serial number designations as they are both Model S2R-T15 airplanes.

GROUP 2 AIRPLANES

Model	Serial Nos.
S2R-R1340	R1340-028 through R1340-035.
S2R-R1820	R1820-036.
S2R-T65	T65-001 through T65-017.
S2RHG-T65	T65-002 through T65-017.
S2R-T34	T34-144, T34-146, T34-168, T34-169, T34-172 through T34-179, and T34-189 through T34-226. ¹
S2R-T45	T45-001 through T45-014.
S2R-G6	G6-101 through G6-146.
S2R-G10	G10-101 through G10-138.

GROUP 2 AIRPLANES—Continued

Model	Serial Nos.
S2R-G5	G5-101 through G5-105.

¹ The serial numbers of the Model S2R-T34 airplanes could incorporate T34-xxx, T36-xxx, T41-xxx, or T42-xxx. This AD applies to all of these serial number designations as they are all Model S2R-T34 airplanes.

GROUP 3 AIRPLANES¹

Model	Serial Nos.
600 S2D	All serial numbers beginning with 600-1311D, 1380R and 1416R through 4999R.
S-2R	
S2R-R1340	
S2R-R3S	R1340-001 through R1340-010, R1340-013 through R1340-018, R1340-021 through R1340-023, and R1340-026. R3S-001 through R3S-011.

¹ Any Group 3 airplane that has been modified with a hopper of a capacity over 400 gallons, a piston engine greater than 600 horsepower, or any gas turbine engine makes the airplane a Group 1 airplane for the purposes of this AD. The owner/operator must inspect the airplane at the Group 1 compliance time specified in the Compliance section of this AD.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Inspections required as indicated below and any necessary replacement required prior to further flight as indicated in the body of this AD, unless already accomplished in accordance with AD 97-13-11 (superseded by this AD):

- Group 1 Airplanes: Required upon the accumulation of 2,700 hours time-in-service (TIS) on each lower spar cap or prior to further flight after the effective date of this AD, whichever occurs later.
- Group 2 Airplanes: Required upon the accumulation of 4,300 hours TIS on each lower spar cap or prior to further flight after the effective date of this AD, whichever occurs later.
- Group 3 Airplanes: Required upon the accumulation of 9,000 hours TIS on each lower spar cap or prior to further flight after the effective date of this AD, whichever occurs later.

To detect fatigue cracking of the lower spar caps, which, if not corrected, could result in the wing separating from the airplane with consequent loss of control of the airplane, accomplish the following:

(a) Inspect, using magnetic particle procedures, the 1/4-inch and 5/16-inch bolt hole areas on each lower spar cap for fatigue cracking. Accomplishment of the inspection is in accordance with Ayres Service Bulletin No. SB-AG-39, dated September 17, 1996.

(1) The magnetic particle inspection must follow American Society for Testing

Materials (ASTM) E1444-94A, using wet particle meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046.

(2) This inspection is to be accomplished by a Level 2 or Level 3 inspector certified using the guidelines established by the American Society for Nondestructive Testing or MIL-STD-410.

(b) If any cracking is found during the inspection required by this AD, prior to further flight, replace the affected lower spar cap in accordance with the affected maintenance manual. Upon replacement, total hours TIS starts over for that particular lower spar cap. Use the compliance time specified in the Compliance section of this AD to determine when the inspection is required.

(c) If any cracking is found during the inspection required by this AD, submit a report of inspection findings to the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, Suite 2-160, College Park, Georgia 30337-2748; facsimile (404) 305-7348; at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. The report must include a description of any cracking found, the airplane serial number, and the total number of flight hours on the lower spar cap found cracked. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished in accordance with AD 97-13-11 (superseded by this AD): Submit the report within 10 days after the effective date of this AD, unless already accomplished.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

21.197 and 21.199) to operate the airplane to a location to accomplish the modification requirements of this AD provided the following is followed:

- (1) The hopper is empty.
- (2) Vne is reduced to 126 miles per hour (109 knots).
- (3) Flight into known turbulence is prohibited.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, Suite 2-160, College Park, Georgia 30337-2748.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 97-13-11 (superseded by this action) are considered approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) The inspection required by this AD shall be done in accordance with Ayres Service Bulletin No. SB-AG-39, dated September 17, 1996. This incorporation by reference was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of July 10, 1997 (62 FR 36978). Copies may be obtained from the Ayres Corporation, P.O. Box 3090, One Rockwell Avenue, Albany, Georgia 31706-3090. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39-10105) supersedes AD 97-13-11, Amendment 39-10071.

(h) This amendment (39-10105) becomes effective on September 5, 1997.

Issued in Kansas City, Missouri, on August 11, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-21788 Filed 8-15-97; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Commission's Reparations Jurisdiction Over Commodity Trading Advisors Exempt From Registration Under Section 4m(1) of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Advisory.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is clarifying its reparations jurisdiction over certain commercial agricultural cash market participations and nonprofit general farm organizations referred to in Section 4m(1) of the Commodity Exchange Act ("Act").¹ Provided that these persons furnish commodity trading advice that is solely incidental to the conduct of their business, these persons are exempt from registration as commodity trading advisors ("CTAs") pursuant to Section 4m(1) of the Act, but are subject to reparations proceedings under Section 14 of the Act.

EFFECTIVE DATE: August 18, 1997.

FOR FURTHER INFORMATION CONTACT: Natalie A. Markman, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. Telephone: (202) 418-5450.

SUPPLEMENTARY INFORMATION: Section 4m(1) of the Act provides, among other things, that dealers, processors, brokers or sellers in cash market transactions in the agricultural commodities enumerated in Section 2 of the Act or the products thereof as well as certain nonprofit voluntary membership farm organizations (collectively, "Cash Dealers") are exempt from registration as CTAs but are subject to reparations proceedings under Section 14 of the Act.² Section 14(a)(1) of the Act, which

generally addresses the Commission's reparations jurisdiction, provides that reparations claims may be filed by persons complaining of any violation of the Act or Commission rules against "any person who is registered" under the Act.³ No cross-reference or other acknowledgment of the Section 4m(1) reparations provision is made in Section 14. However, the Commission's reparations rules, which implement Section 14 of the Act, expressly include the Section 4m(1) Cash Dealers as a category of permissible respondents in reparations proceedings.⁴

processor, broker, or seller in cash market transactions of any commodity specifically set forth in [S]ection 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974 (or products thereof) or (2) nonprofit, voluntary membership, general farm organization, who provides advice on the sale or purchase of any commodity specifically set forth in [S]ection 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974; if the advice by the person described in clause (1) or (2) of this sentence as a [CTA] is solely incidental to the conduct of that person's business: *Provided, That such person shall be subject to proceedings under [S]ection 14 of this Act.*

7 U.S.C. § 6m(1) (1994) (emphasis added). Commission Rules 4.14(a) (1) and (2) also provide that Cash Dealers are exempt from CTA registration but make no mention of reparations jurisdiction. Commission rules referred to herein are found at 17 CFR Ch. I (1997).

This Advisory does not address the scope of the exemption from CTA registration under Section 4m(1) of the Act or under Rules 4.14(a) (1) and (2).

³ Section 14(a)(1) provides, in relevant part, that: Any person complaining of any violation of any provision of this Act or any rule, regulation, or order issued pursuant to this Act by *any person who is registered* under this Act may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding—(A) actual damages proximately caused by such violation. * * * and (B) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a contract market, punitive or exemplary damages equal to no more than two times the amount of such actual damages * * *.

7 U.S.C. § 18(a)(1) (1994) (emphasis added). As amended by the Futures Trading Act of 1978, Section 14(a) provided that a reparations complaint could be filed with the Commission by "[a]ny person complaining of any violation of any provision of this Act or any rule, regulation, or order thereunder by any person who is registered or required to be registered under [S]ection 4d, 4e, 4k, or 4m of this Act * * *." Pub. L. No. 95-405, § 21, 92 Stat. 865, 876-76 (1978) (emphasis added). The Futures Trading Act of 1982 ("1982 Act") subsequently amended Section 14(a) to eliminate reparations jurisdiction over persons "required to be registered" under the Act. Pub. L. No. 97-444, § 231, 96 Stat. 2294, 2319 (1983).

⁴ In 1983, the Commission amended its reparations rules by promulgating interim reparations rules to implement the 1982 Act's amendment of Section 14(a), which eliminated reparations jurisdiction over persons "required to be registered" under the Act. 48 FR 21923 (May 16, 1983). In Rule 12.21 of the interim rules, the Commission retained reparations jurisdiction over registrants but eliminated those persons who were "required to be registered" under the Act as

The Part 12 rules, as promulgated in 1984 and continuing to the present, provide in Rule 12.13(a) that reparations complaints may be filed against any registrant, as defined in Rule 12.2.⁵ Rule 12.2 defines *registrant* as any person who: (1) Was registered at the time of the alleged violation; (2) *is subject to reparations proceedings by virtue of Section 4m*; or (3) is otherwise subject to reparations proceedings.

In a 1985 **Federal Register** release addressing revisions of Part 4 of the Commission's rules, the Commission stated that it did "not intend hereafter to exercise jurisdiction in its reparations program over persons exempt from CTA registration under [S]ection 4m(1)."⁶ The Commission wishes to eliminate any ambiguity that may have been created by the 1985 release by clarifying that, as provided in Section 4m(1), dealers, processors, brokers or sellers in cash market transactions in the agricultural commodities enumerated in Section 2 of the Act or the products thereof and certain nonprofit voluntary membership farm organizations who provide commodity trading advice in a manner incidental to their business are exempt from CTA registration but subject to reparations proceedings pursuant to Section 4m(1) and as provided in Part 12 of the Commission's rules.

Issued in Washington, D.C. on August 12, 1997 by the Commission.

Jean A. Webb,

Secretary of the Commission.

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potential reparations respondents. The Commission also modified Rule 12.21 by adding, for the first time, persons "exempt from registration as [CTAs] by virtue of the second sentence of Section 4m" as a class of potential reparations respondents. *Id.* at 21924. The Commission explained that under Section 4m:

Certain dealers, processors, brokers, or sellers in cash market transactions in agricultural commodities and non-profit general farm organizations who provide advice on agricultural commodities are exempt from having to register as [CTAs]. Nevertheless Section 4m provides that such persons are subject to proceedings in reparations. *Nothing in the 1982 amendments has affected this provision of the Act.* Thus, * * * the Commission will continue to hear reparations claims filed against persons who, at the time of the violation, were exempt from registration pursuant to Section 4m of the Act.

Id. (emphasis added).

⁵ The Commission replaced interim Rule 12.21 with Rule 12.13(a) and moved its list of Part 12 definitions to Rule 12.2. 49 FR 6602, 6622-23, 6626 (February 22, 1984).

⁶ 50 FR 15868, 15881 n. 77 (April 23, 1985); see also 49 FR 4778, 4783 (February 8, 1984) (proposing the Part 4 amendments).

¹ 7 U.S.C. § 1 *et seq.* (1994).

² The second sentence of Section 4m(1) provides that:

The [registration] provisions of this section shall not apply to any [CTA] who is a (1) dealer,