U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

DEC 21 2015

Mr. Glen Williams
Chief Inspector
Valair Aviation
7301 N.W. 50th Street
Oklahoma City, OK 73132

Re: Whether an Aircraft Type Certificate Data Sheet Note Referencing a Maintenance Manual as the Source for Life-Limited Components and Associated Retirement Times Makes the Referenced Section an FAA-Approved Airworthiness Limitations Section

Dear Mr. Williams:

This responds to your February 11, 2013 letter seeking legal clarification on whether the portion of an aircraft manufacturer's maintenance manual that is referenced in the aircraft Type Certificate Data Sheet (TCDS) as the source for replacement ("retirement") times is considered an FAA-approved Airworthiness Limitations section (ALS) of that manual. You provided supplemental information to this office in September 2014 and April 2015 to assist us in responding to your inquiry. Your specific reference is to Note 3 in TCDS No. A2SW for Westwind Model 1124A, an airplane model currently being maintained by Valair Aviation. That Note states:

> Note 3 Information essential to the proper servicing and maintenance of the aircraft is contained in Manufacturer's Maintenance Manuals.
>
> Life-limited components and associated retirement times are presented in Chapter 27 of the 1123 Maintenance Manual and Chapter 5 of the 1124/1124A Maintenance Manual.

The answer to your question is no—the replacement times contained in Chapter 5 of the Westwind 1124/1124A Maintenance Manual are not considered part of an FAA-approved ALS and, absent an Airworthiness Directive (AD) or some other FAA-issued rule requiring that those times be followed, they are not mandatory.

The referenced section of the Westwind Maintenance Manual is not an FAA-approved ALS for at least two reasons. First, the requirement for an FAA-approved ALS for airplanes came into

being in 1980, and is a section included in the then newly-established Instructions for Continued Airworthiness (ICA) set forth in 14 C.F.R. § 21.50(b).[1] Section H25.4 of appendix H to 14 C.F.R. part 25 states, in pertinent part, that the ALS "must contain a legible statement in a prominent location that reads: 'The Airworthiness Limitations section is FAA-approved and specifies maintenance required under §§ 43.16 and 91.403 of the Federal Aviation Regulations, ...'" The Westwind 1124/1124A Maintenance Manual contains no such section. Second, the ICA requirements of § 21.50(b) apply only to aircraft, engines, or propellers for which application for a type certificate or supplemental type certificate was made after January 28, 1981. The TCDS for the Westwind 1124/1124A model airplanes is dated April 17, 1980; accordingly, application for that type certificate predated the applicability date of January 28, 1981. Therefore, an FAA-approved ALS does not apply to these airplanes.

Please note that for large airplanes, such as the Westwind1124A, § 91.409(e) provides, in pertinent part:

> No person may operate a large airplane, turbojet multiengine airplane . . . unless the replacement times for life-limited parts specified in the aircraft specifications, type data sheets, or other documents approved by the Administrator are complied with . . . .

Concerning this requirement and your question regarding Note 3 in the TCDS, we note that no specific replacement times are specified in Note 3—it references only the manufacturer's maintenance manual, a document that is not FAA-approved. Manufacturers occasionally revise portions of their maintenance manuals,[2] and these changes must be only acceptable to the FAA, except for the ALS of ICA, which must be FAA-approved.

If the referenced Chapter 5 replacement times were mandatory for operators of these aircraft, the requirement would amount to a rule of general applicability. Such a rule may be adopted only through notice and comment procedures required by the Administrative Procedure Act (APA), 5 U.S.C. § 553. Accordingly, viewing these manufacturer-imposed replacement times as mandatory would run afoul of the APA. It would mean that FAA regulations effectively authorize manufacturers to issue "substantive rules," as that term is used in the APA, *i.e.*, it would enable them to impose legal requirements on the public. This would be objectionable for at least two reasons. First, and most significantly, the FAA does not have authority to delegate its rulemaking authority to manufacturers. Second, "substantive rules" can be adopted only in accordance with the notice-and-comment procedures of the APA, which does not apply to manufacturers.

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[1] See 45 FR 60170, Sept. 11, 1980. The same rulemaking promulgated § 25.1529 Instructions for Continued Airworthiness for part 25 airplanes, and also the associated appendix H to part 25 which, in section H25.4 Airworthiness Limitations section, sets forth the ALS requirements.

[2] For example, the section of Chapter 5 of the Westwind Maintenance Manual you sent with your inquiry, show various dates ranging from July 31, 2012 to January 31, 2014.

For your convenience we are enclosing a copy of FAA Order No. 8620.2A (Applicability and Enforcement of Manufacturer's Data) (11/5/07), which outlines the agency's position on issues similar to the one you raised.

I trust this letter is responsive to your questions. We apologize for the delay in responding to your original inquiry. This response was prepared by Edmund Averman, an attorney in the Regulations Division in the Office of the Chief Counsel, and coordinated with the Aircraft Maintenance Division (AFS-300) in the FAA's Flight Standards Service. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Lorelei Peter
Acting Assistant Chief Counsel for Regulations

Enclosure