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

**Office of the Chief Counsel**

**800 Independence Ave., S.W.
Washington, D.C. 20591**

JUN 2 1 2017

Duane Stroik
Director of Maintenance
Air Cargo Carriers, Inc.
4940 S. Howell Ave.
Milwaukee, WI 53207

Re: Applicability of Life-Limited Components and Associated Retirement Times Specified in an Aircraft Type Certificate Data Sheet

Dear Mr. Stroik:

This responds to your February 24, 2017 letter seeking legal clarification on whether the portion of an aircraft manufacturer's maintenance manual that is referenced in a Note in the aircraft Type Certificate Data Sheet (TCDS) as the source for replacement ("retirement") times is considered mandatory. Specifically, your inquiry concerns Note 3 in TCDS No. A41EU for Short Brothers SD3-30 and SD3-60 aircraft. This Note specifies that service life limits for airplane structural parts that are fatigue critical are listed in Chapter 5 of the corresponding airplane maintenance manuals. You stated that these aircraft are being maintained under 14 C.F.R. § 135.411(a). Because the aircraft inspection program selected by Air Cargo Carriers and approved by the FAA requires that the above-referenced service life limits must be followed, they are mandatory for the carrier.

FAA records show that Air Cargo Carriers' airplanes are maintained under an approved aircraft inspection program (AAIP) approved by the FAA under § 135.419—an option provided in § 135.411(a)(1). This is the inspection program that Air Cargo Carriers must follow without exception, unless a deviation is approved by the FAA. We note that Air Cargo Carriers' AAIP requires adherence to, among other things, the manufacturer's maintenance manuals. Importantly, this program states the following:

> **Exclusions**
> This is an Aircraft Inspection Program and is not intended to prescribe maintenance, time limits, or overhaul functions. *Life limited items will be replaced as required by Chapter 5 of the Maintenance Manual.* (Emphasis added.)

As a result, the replacement times for life-limited parts specified in Chapter 5 of the aircraft manufacturer's maintenance manual that is referenced in Note 3 of the TCDS are mandatory for Air Cargo Carriers' Shorts Brothers SD3-30 and SD3-60 airplanes.

In your letter you argue that if the replacement times set forth in a manufacturer's maintenance manual were mandatory for operators, the requirement would amount to a rule of general applicability and be contrary to the notice and comment procedures requirement set forth in the Administrative Procedure Act (APA) (5 U.S.C. § 553). The regulations at issue here, including the provisions related to an AAIP, were adopted through the notice and comment procedures required by the APA. Air Cargo Carriers submitted its AAIP to the FAA and received approval to maintain its airplanes in accordance with that program. Accordingly, the company is required to follow that program.

In support of your assertion that Air Cargo Carriers is not bound to adhere to the replacement times specified in Chapter 5 of the maintenance manual, you referred to the FAA's letter of legal clarification to Mr. Glenn Williams issued by our office on December 21, 2015.[1] Your reliance on that interpretation is misplaced because your aircraft are operated under part 135 and are being maintained in accordance with an AAIP. The letter to Mr. Williams was in the context of a repair station performing maintenance on a customer's airplane being operated under 14 C.F.R. part 91. The question at issue there did not implicate aircraft being operated under part 135 and being inspected in accordance with an AAIP.

This response was prepared by Edmund Averman and Taria Barron, attorneys in the Regulations Division in the Office of the Chief Counsel, and coordinated with the Aircraft Maintenance Division (AFS-300) of the FAA's Flight Standards Service. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267–3147.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations

[1] Legal interpretation to Glen Williams on "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 Limitation Section," from Assistant Chief Counsel for Regulations, dated December 21, 2015.

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Lorelei A. Peter
Assistant Chief Counsel for Regulations
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Dear Ms. Peter:

Air Cargo Carriers, DATA119D, currently owns a fleet of Short Brothers SD3-30 and SD3-60 aircraft. The aircraft have been converted to an all-cargo configuration and are being operated in accordance with 14 C.F.R. Part 135 on demand requirements. The aircraft have been limited to less than 7500 lbs. payload by incorporation of a Supplemental Type Certificate, (STC) and therefore are being maintained in accordance with 14 C.F.R. Part 135.411(a)(1).

We currently have been questioning the applicability of the Life-Limited Components and Associated Retirement Times, imposed by the aircraft manufacturer in Note 3 of Type Certificate Data Sheet (TCDS) A41EU. In review of FAA Order 8620.2A dated November 5, 2007 and a Legal Clarification provided to Mr. Glen Williams dated December 21, 2015 pertaining to Life Limited Components and Associated Retirement Times, we have determined that the requirements of Note 3 are not mandatory based on the following:

1) Note 3 quotes Chapter 5 of the SD3-30/SD3-60 Maintenance Manual which is not part of an FAA-approved Airworthiness Limitations Section as set forth in 14 C.F.R. Part 21.50(b).
2) Application for TC A41EU for the SD3-30 was made on November 12, 1971 and was ***amended*** on October 29, 1982 with the addition of the SD3-60 model. The ICA requirements of 14 C.F.R. Part 21.50(b) apply only to aircraft, engines, or propellers for which application for a type certificate or supplement type certificate was made after January 28, 1981. Therefore, an FAA-approved ALS does not apply to these aircraft.
3) The requirements set forth in 14 C.F.R Part 91.409(e) are not applicable, as Note 3 does not contain specific replacement times, it references only the manufacturer's maintenance manual, a document that is not FAA-approved.
4) If the referenced Chapter 5 replacement times were mandatory, the requirement would amount to a rule of general applicability and be contrary to the notice and comment procedures required by the Administrative Procedure Act 5 U.S.C. Section 553.

We understand that OEM requirements may become mandatory with the issuance of an Airworthiness Directive or other specific regulatory language. This is true of the Fuel System Airworthiness Limitations Items contained in Chapter 5 of the SD3-30/SD3-60 Maintenance Manual.

We also have concluded that if the Life Limits and Associated Retirement Times are not mandatory as stated above, then said aircraft would be found eligible for issuance of an initial or recurrent Standard Airworthiness Certificate if the current status of these items could not be accurately determined.

We are seeking a legal clarification on whether our determinations as stated above are consistent with current FAR requirements.

We have enclosed a copy of Chapter 5 from both the SD3-30/SD3-60 Maintenance Manual, a copy of TCDS A41EU, and the Letter of Legal Clarification to Mr. Glen Williams dated December 21, 2015, for your review.

Sincerely,

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