

December 19, 2008

VIA E-Mail

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RE: Maintaining Pressure Cylinders Under Titles 14 and 49 CFR

Dan:

The Aeronautical Repair Station Association (ARSA) requests that the Federal Aviation Administration (FAA) resolve an issue facing repair stations that perform maintenance of pressure cylinders that includes hydrostatic testing. These activities are controlled under both Titles 14 and 49 of the Code of Federal Regulations (CFR).

Issue

The FAA entered into an agreement with the Pipeline and Hazardous Materials Safety Administration (PHMSA) to allocate oversight control of facilities performing maintenance and testing of pressure cylinders (see Notice 8000.357). The agreement resulted in PHMSA becoming solely responsible for oversight of such facilities and the FAA's cessation of issuing ratings for hydrostatic testing of pressure cylinders (see Order 8900.1, vol. 2, chap. 11). The rationale behind the agreement is that the procedures for certifying facilities and maintaining cylinders are contained in Title 49 CFR for which PHMSA is the controlling agency.

However, once the cylinders are removed from an aircraft, the maintenance must be performed in accordance with Title 14 CFR part 43. Part 43 requires persons performing maintenance, preventive maintenance and alterations on an article to have appropriate authority if it will be installed on an aircraft with a U.S. airworthiness certificate (see 14 CFR § 43.3).

The regulations authorize repair station certificate holders to perform maintenance, preventive maintenance and alterations (14 CFR § 43.3(e)). However, they are not allowed to operate in violation of their certificate, rating or Operations Specifications (14 CFR § 145.5). As a result, a repair station violates 14 CFR parts 43 and 145 when it performs maintenance solely under Title 49 on a cylinder destined for installation on an aircraft with an U.S. airworthiness certificate.

In other words, although Title 49 controls who may perform the work and how a pressure cylinder is maintained (including inspection and tested), when these activities

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are performed for installation on a type certificated product, the work cannot be done outside 14 CFR part 43. There is no exemption from part 43 in Title 49.

While we understand that the expertise for determining the proper persons and methods for maintaining pressure cylinders resides in PHMSA, it does not eliminate the requirement for a repair station to be properly certificated under 14 CFR part 145 to perform the work.

Regulatory Structure

Title 49 CFR

The Hazardous Materials Regulations (HMRs) classify pressure cylinders used in a variety of applications, including supplemental oxygen, fire extinguishers and escape door slide air cylinders as hazardous materials (see 49 CFR §§ 105.5, 172.101). As a result in order to inspect, test, certify, repair or rebuild (i.e., maintain or rebuild) a cylinder a person must receive requisite approval from the under the HMRs (49 CFR § 107.805).

PHMSA approves persons to perform requalification (i.e., inspect, test, certify, repair or rebuild) of cylinders. Thereafter, the facilities must follow the methods contained in 49 CFR §§ 180.205, 180.211, 180.212 (Qualification, Maintenance and Use of Cylinders) to ensure cylinders are inspected and tested and approved for continued use.

Title 14 CFR

When an article is installed on a U.S.-registered and type certificated aircraft it must undergo maintenance in accordance with Title 14 CFR part 43 or 121 (see 14 CFR §§ 43.1, 43.3(f)). Repair stations performing maintenance, preventive maintenance or alterations on these articles must be properly rated (14 CFR § 145.201(a)(1)). Thereafter, it may approve maintenance, preventive maintenance and alteration on articles for return to service only if that work was performed in accordance with 14 CFR part 43. The maintenance release allows the operator to determine whether or not components may be installed on its aircraft.

Solution

To alleviate the problem with repair stations working outside their ratings the FAA should issue a limited rating for accessories to facilities that already have 49 CFR § 107.805 approval from PHMSA to perform maintenance of pressure cylinders under Title 49. The rating would allow the facility to perform work on cylinders in accordance with the requalification process spelled out in 49 CFR § 180.205.

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The FAA expressed its desire to eliminate ratings and limitations for maintenance of pressure cylinders based on the notion that certification of facilities falls under PHMSA's, not the FAA's jurisdiction (see Order 8900.1, vol. 2, chap. 11). However, ARSA's proposed solution would not place the onus of oversight back on the FAA; rather it recognizes that the repair station has shown PHMSA it is qualified (i.e., it has the requisite housing, facilities, equipment, data and personnel) to perform the work and simply transfers that agency's approval into an FAA rating. This eliminates the repair station's concern of working outside its certificate and adds zero oversight responsibility on the FAA.

Further, if the repair station is performing the maintenance activities for 14 CFR part 121 or 135 carriers/operators, it also eliminates concern over compliance with 14 CFR part 43. As long as the carrier's Continuous Airworthiness Maintenance Manual or the Aircraft Maintenance Manual requires the cylinder be maintained in accordance with 49 CFR § 180.205, the repair station is in compliance with 14 CFR §§ 43.3(f) and 145.205. The facility may issue a valid 14 CFR § 43.9 maintenance record and the operator may legally install the pressure cylinder on its aircraft.

Conclusion

ARSA requests the FAA officially allow repair stations with 49 CFR § 107.805 approval to obtain a limited rating for accessories to perform maintenance on pressure cylinders in accordance with 49 CFR § 180.205. This is the best method to ensure that these facilities are not operating in violation of their certificate and performing proper maintenance in accordance with 14 CFR part 43. It also allows operators to legally install the pressure cylinders that are requalified at repair stations. Finally, the rating imposes no additional burden on the FAA, as it simply recognizes an approval for which PHMSA provides initial certification and continued surveillance.

ARSA looks forward to working with the FAA towards the implementation of the proposed resolution.

Kind Regards,

A handwritten signature in blue ink, appearing to read "Colin P. Carroll".

Colin P. Carroll
ARSA Regulatory Counsel