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

Office of the Chief Counsel
800 Independence Avenue, S.W.
Washington, D.C. 20591

JUL - 9 2010

Wayne A. Forshey
Airways Flying Aircraft Restoration, LLC
227 South Main Street
Woodsfield, OH 43793

Re: Request for Legal Interpretation on the Distinction Between "Approve and Return to Service" and "Approve for Return to Service" in Certain Sections of 14 C.F.R. Parts 43 and 65

Dear Mr. Forshey:

We are responding to your April 21, 2009 letter addressed to Mr. Mark Harden, a General Aviation Safety Inspector in the FAA's Columbus, Ohio Flight Standards District Office. You noted an inconsistency in terminology in several of the FAA's maintenance regulations. Specifically, you noted that in 14 C.F.R. §§ 65.81, 65.85, and 65.87 (which set forth privileges for FAA-certificated mechanics) the phrase "approve *and* return to service" is used (emphasis provided). But in 14 C.F.R. § 65.95 (which sets forth privileges for holders of an inspection authorization), and in 14 C.F.R. §§ 43.5, 43.7, 43.9, 43.11, and 43.15 (which generally address approval sign-offs after maintenance or inspections) the phrase "approve/approved/approval/approving . . . . *for* return to service" is used (emphasis provided). You concluded this presents a conflict, and you asked which regulation takes precedence? You opined that the maintenance regulations in 14 C.F.R. part 43 take precedence and that "maintenance personnel strictly approve *for* return to service" (emphasis added), and that it is the pilot who actually returns an aircraft to service by flying it. Finally, you ask, "how is the hierarchy of the FAR's established?"

Our opinion as to the hierarchy of the FARs (Federal Aviation Regulations) is that there is none—each part (*e.g.*, parts 43 and 65) has it own applicability. Part 65 governs **Certification: Airmen Other Than Flight Crewmembers;** in pertinent part it sets forth the qualifications and privileges of holders of mechanic certificates and inspection authorizations. Part 43 governs **Maintenance, Preventive Maintenance, Rebuilding, and Alteration;** in pertinent part it limits who is authorized to perform maintenance and

sets forth requirements for approving the work performed and authorizing the return to service of articles following maintenance. Both parts must be followed.

Your question points out a seeming inconsistency in the in-artful wording of the phrase "approve and return to service" in the context of privileges of the holder of a mechanic certificate under §§ 65.81, 65.85, and 65.87. Because, as you observed, an aircraft is not in service until it is flown or operated, a mechanic, unless he or she is the holder of a pilot certificate, cannot legally "return the aircraft to service." Flying an aircraft is not a privilege bestowed by any regulation in part 65.

Before it was amended in 1982, § 43.5 contained a similar disconnect. From at least 1964 through 1981, that section was captioned: **Return to service after maintenance, preventive maintenance, rebuilding, or alteration,** and paragraph (a) of the section read: "No person may return to service any aircraft, airframe, aircraft engine, propeller, or appliance, that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless— (1) It has been approved for return to service by a person authorized under § 43.7; . . . ." At least with this regulation, the FAA recognized the incongruity you observed. The agency amended § 43.5 in 1982 to, among other things, insert the phrase "approve for" before the words "return to service" in § 43.5(a) introductory text; and to revise the heading to read: "**Approval for return to service after maintenance, preventive maintenance, rebuilding, or alteration.**" (47 FR 41084, Sept. 16, 1982.)

The Notice proposing the change explained why the change was necessary. It stated:

> This proposal would insert the phrase "approve [approval] for return to service" in the heading and the first sentence of § 43.5(a). The present § 43.5 prescribes a prohibition against return to service of an aircraft after maintenance, unless several procedural steps have been completed. The prohibition relates to both maintenance personnel and the owner/ operator who operates such aircraft. The proposal objective is to place the operations prohibition portion of the rule in §91.167(a)(1) . . . and to retain the maintenance approval procedures in § 43.5. Hence this proposal also inserts the phrase "approve [approval] for return to service" in the heading and the first sentence of § 43.5(a).

(45 FR 76894, Nov. 20, 1980.) It should be clear that nothing in part 65, which prescribes certification requirements and operating rules for airmen other than pilots, authorizes the operation (return to service) of an aircraft by someone who does not hold a pilot certificate. Nor do the sections you cite prohibit such operation by a properly certificated and rated pilot/mechanic after he or she approves the aircraft for return to service following the completion of maintenance. While the wording of the phrase "approve and return to service" in §§ 65.81, 65.85, and 65.87 could be improved by removing the word "and" and replacing it with "for," we do not believe the current text has misled mechanics as to what their privileges are under part 65.

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 Office of Flight Standards If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200