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

Office of the Chief Counsel

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

SEP 24 2010

Yuri Milner
Vice President
Riverside Flight Center
241 Cessna Dr.
Tulsa, OK 74132

Dear Mr. Milner:

This letter responds to the request for a legal interpretation that you mailed to this office on May 18, 2010. Specifically, you have asked several questions regarding the denial of your application for examining authority under 14 C.F.R. § 141.63. As you stated in your letter, your application for examining authority was denied based on the Aviation Safety Inspector's (ASI) determination that there were sufficient designees in and around the Tulsa area to avoid delays in the scheduling or processing of applicants from your pilot school.

Section 141.9 states that "[t]he FAA issues examining authority to a pilot school for a training course if the pilot school and its training course meet the requirements of subpart D" of part 141. This rule language does not indicate that the FAA has discretion to deny examining authority to a pilot school that has satisfied the requirements set forth in part 141. In an August 2009 final rule, the FAA underscored this view by stating that we "will issue examining authority as long as [the pilot school] meets the qualification requirements of § 141.63 for that specific course of training." 74 FR 42500, 42538, Aug. 21, 2009.

In the case of your denial, it appears that the ASI relied on § 183.11, which permits any local Flight Standards Inspector to select a pilot examiner whenever he determines there is a need for one. 14 C.F.R. § 183.11(b). Because employees who administer flight tests at a part 141 pilot school that holds examining authority are not designated pilot examiners within the context of part 183, they are not subject to the necessity provision of § 183.11. As such, upon your application for examining authority, the ASI should have conducted an investigation in accordance with FAA guidance to determine whether your pilot school and the training courses for which you are seeking examining authority meet the requirements of § 141.63. See FAA Order 8900.1, Vol. 5, Chapter 12, Sec. 4.

In reaching this conclusion, we note that a 1987 legal interpretation from this office stated that "[e]mployees of a certificated pilot school that holds an examining authority who give flight tests to the school's students or graduates are designated examiners" for the purpose of determining whether a pilot school had satisfied the quality of training standard set forth in § 141.83. This interpretation was limited in scope and did not confer any sort of designee

status within the meaning of part 183 upon employees of pilot schools that hold examining authority.

In a related question, you have asked whether a pilot school may apply for examining authority without having an approved Airmen Certification Representative (ACR). FAA guidance clearly indicates that a pilot school need not have an ACR to hold examining authority. FAA Order 8900.1, Vol. 5, Chpt. 12, Sec. 4, 5-1852.

This response was prepared by Anne Moore, an Attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Certification and General Aviation Operations Branch of Flight Standards Service. We hope this response has been helpful to you. 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, Regulations Division