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

Office of the Chief Counsel

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

MAY 17 2016

Samuel T. Ragland
Chief Flight Instructor
Arizona Aero-Tech
6961 S. Apron Drive
Tucson, AZ 85756

Re: Request for Clarification of 14 C.F.R. §141.63(a) Examining Authority Qualification Requirements

Dear Mr. Ragland:

This is in response to your letter dated March 12, 2016 in which you requested clarification of 14 C.F.R. §141.63 which sets forth the examining authority qualification requirements. Specifically your letter states that you "are being denied examining authority on the basis that [you] do not have a 90% pass rate on 10 different students in each of the courses for which [you] have requested examining authority" and that you do not see this requirement in the language of §141.63.

In the case of your denial, in an e-mail dated March 1, 2016,[1] the POI determined that "[a]t this time you do not qualify for examining authority in any one course since you have not done the required 10 examinations in the last 24 months in any of your approved courses." Section 141.9 states that "the 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. The FAA provides examining authority on a course-by-course basis. This means that if the pilot school makes a specific application for a course, the FAA will issue examining authority as long as it meets the qualification requirements of §141.63 for that specific course of training. 74 FR 42500, 42538, Aug. 21, 2009; Legal Interpretation to Jared Testa dated July 1, 2011.

While all the requirements of §141.63 must be met before the FAA will issue examining authority to a pilot school for a specific training course, your request appears to be specifically requesting clarification of the requirements contained in §141.63(a)(5). Section 141.63(a) provides, in relevant part, that a pilot school must meet the following prerequisites to receive initial approval for examining authority:

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[1] The request for legal interpretation included a copy of Mr. Ragland's application for pilot school certification and examining authority, and the March 1, 2016 e-mail determination.

> (5) Within 24 calendar months before the date of the application for examining authority, that school must meet the following requirements--
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> (i) The school must have trained at least 10 students in the training course for which examining authority is sought and recommend those students for pilot, flight instructor or ground instructor certificate or rating; and
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> (ii) At least 90 percent of those students passed the required practical or knowledge test, or any combination thereof, for the pilot, flight instructor, or ground instructor certificate or training on the first attempt, and that test was given by --
>
> (A) An FAA inspector; or
> (B) An examiner who is not an employee of the school.

You state that you are being denied examining authority because you did not have a pass rate of 90% on 10 different students in each course for which you requested examining authority. As examining authority is issued on a course-by-course basis, each course for which a pilot school requests examining authority is considered individually when determining whether the requirements of §141.63 have been met. In addition to the other requirements of §141.63, the pilot school must satisfy the requirements of §141.63(a)(5)(i) *and* (a)(5)(ii) for *each* course.

To meet the quantity of training standard of §141.63(a)(5)(i), within 24 months prior to the date of its application for examining authority the pilot school must have trained at least 10 students in the training course for which examining authority is sought and recommend those students for pilot, flight instructor or ground instructor certificate or rating. For example, if a pilot school is requesting examining authority in its Private Pilot Airplane Single Engine Land ("Private Pilot course") course, then within 24 months before its application for examining authority, it must train and recommend for the appropriate certificate at least 10 students in the Private Pilot course. If at the same time, the same pilot school requests examining authority in its Commercial Pilot Airplane Single Engine Land course ("Commercial Pilot course"), it must also train and recommend at least 10 students in *that* course within the 24 months before its application for examining authority. However, if a pilot school requesting examining authority had trained and recommended less than 10 students in the particular course for which it was requesting examining authority it would fail to meet the requirement of §141.63(a)(5)(i). In that situation, the pilot school's pass rate for that specific course would be irrelevant because the pilot school failed to meet the minimum threshold for establishing its pass rate for this particular course.

To satisfy the quality of training standard contained in §141.63(a)(5)(ii), at least 90% of the graduates of a flight course in which the school desires to obtain examining authority must pass the required practical or knowledge test (or any combination thereof) given by a FAA inspector or an examiner who is not an employee of the school on the first attempt. 62 FR

16220, 16282, April 4, 1997. In a notice of proposed rulemaking, the application of §141.63(a)(5)(ii) was explained with the following example: "if 40 students graduate from an approved course, but only 10 of those students receive a final test given by an FAA inspector, or by a designated examiner who is not an employee of the school, then 90 percent of those 10 students would have had to have passed the test on the first attempt." 60 FR 41160, 41185, August 11, 1995.

As previously stated, §141.63 examining authority is based upon *individual* training courses. While the language of §141.63(a)(5) does not state explicitly that the 10 students must be different students, express language seem unnecessary as it is unlikely that a person would graduate from a specific training course more than one time.

However, if the pilot school trains the same student in multiple courses for which it is requesting examining authority, that student would count towards the minimum 10 students in each course for which that student is trained and recommended for pilot, flight instructor or ground instructor certificate or rating. For example, a pilot school applies for examining authority in the Private Pilot course and Instrument Rating, Airplane course. Within 24 months before its application for examining authority the pilot school trains Student #1 in the Private Pilot Course and recommends Student #1 for a pilot certificate. Also within 24 months before its application for examining authority, the pilot school trains Student #1 in the Instrument Rating, Airplane course and recommends Student #1 for the appropriate rating Since the FAA issues examining authority on a course-by-course basis Student #1 may be counted towards the minimum quantity of students required to be trained and recommended for the Private Pilot course and for the Instrument Rating course.

Both the quantity of training and the quality of training requirements of §141.63(a)(5) must be met for *each* course for which examining authority is requested. You requested examining authority in 6 different courses. To meet the requirements of §141.63(a)(5)(i), for each of the courses you requested examining authority in you must have trained and recommended for pilot, flight or ground instructor certificate or rating at least 10 students in each course. Based upon the information that you submitted, the POI was correct in stating you had not met the requirements for examining authority in any one course. In no individual course did your school train and recommend for the appropriate certificate or rating at least 10 students within the 24-calendar months before the date of your application.[2] As a result, no individual course you requested examining authority for met the requirements of §141.63.

This response was prepared by Melissa Crain, an attorney in the Regulations Division of the Office of the Chief Counsel and coordinated with the General Aviation and Commercial

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[2] Mr. Ragland's application requested examining authority in 6 different courses: Private Pilot Airplane Single Engine Land; Commercial Pilot Airplane Single Engine Land; Instrument Rating Course, Instrument Airplane; Flight Instructor Course, Airplane Single & Multiengine; Flight Instructor Instrument, Single Engine Land; Additional Aircraft Class Rating, Airplane Multiengine. The documentation shows that in each individual course, less than 10 students were trained and recommend for pilot, flight instructor or ground instructor certificate or rating.

Division of the Flight Standards Service. If you have any additional questions regarding this matter, please contact my office at (202) 267-3073.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations

AERO-TECH

March 12, 2016

Anne Moore, Esq.
FAA Assistant Chief Counsel, Regulations Division
800 Independence Ave., SW
Washington, DC 20591

Dear Ms. Moore,

I read your legal interpretation to Jared Testa, July 1, 2011, and Juri Milner in September 24, 2010 on Part 141 flight training. Our issue is different than in the Milner and Testa cases. We are being denied examining authority on the basis that we do not have a 90% pass rate on 10 different students in each of the courses for which we have requested examining authority (FAA email attached). I do not see this requirement in the language of section 141.63.

I am requesting clarification on this issue and have attached the request if it is of value to you. I know your office is very busy but we would appreciate a timely answer since our renewal is up in June 2016.

Thank you,

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