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

Office of the Chief Counsel

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

AUG - 6 2010

Mr. Terrence K. Keller, Jr.
16 Patricia Court
Gales Ferry, CT 06335

Dear Mr. Keller:

This responds to your request for a legal interpretation clarifying whether a flight instructor must observe an individual using a flight training device or flight simulator to maintain instrument recency experience under 14 C.F.R. §61.51(g)(4).

Your letter highlights an apparent contradiction between §61.51(g)(4) and the preamble to the final rule on Pilot, Flight Instructor, and Pilot School Certification, published on August 21, 2009. The question you have posed is whether the language of 14 C.F.R. §61.51(g)(4), or the text of the preamble to a rulemaking published in the Federal Register controls when an instructor must be present to observe an individual using a flight training device or flight simulator to maintain instrument recency experience. 14 C.F.R. §61.51(g)(4) states, "A person can use time in a flight simulator, flight training device, or aviation training device for ... instrument recency experience, provided an authorized instructor is present to observe that time..."

The preamble language you quote states, "a person who is instrument current or is within the second 6-calendar month period ... need not have a flight instructor or ground instructor present when accomplishing the approaches, holding, and course intercepting/tracking tasks of §61.57 (c)(1)(i), (ii), and (iii) in an approved flight training device or flight simulator." 74 Federal Register 42500, 42518 (August 21, 2009). The preamble also summarizes comments the Office of Flight Standards has received from the flight instructor and pilot school community. Many instructors and pilot schools believe that if an instructor is not required to be present when an airman is performing the approaches, etc. in an aircraft, then they should not be required to be present when an airman is performing the same tasks on a flight training device or flight simulator.

Preambles to final rules serve two purposes; they explain the reasons for adopting the new rule, including responses to public comments, and they provide interpretive guidance on operation of the rule. However, when the rule and the preamble conflict, the rule controls. Accordingly, the regulatory text of §61.51(g)(4) is clear that in order to log the time an instructor must be present to observe an individual using a flight training device or flight simulator to maintain instrument recency experience. We acknowledge that the preamble language indicates some intent to change the rule. For that reason, this issue has been forwarded to the Flight Standards Service.

We trust the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3072. This response was prepared by Neal O'Hara, an Attorney in Regulations Division of the Office of the Chief Counsel.

Sincerely,

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