U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

AUG 2 2 2017

James E. Cooling
[redacted]

Re: Operations carried out by limited liability companies under 14 C.F.R. § 91.501(b)(4)

Dear Mr. Cooling:

This is in response to your letter received on July 30, 2015, requesting an interpretation of 14 C.F.R. § 91.501(b)(4).

You asked whether an aircraft owned by a limited liability company (LLC), that in turn is wholly owned and solely managed by an individual (Member), may be operated under § 91.501(b)(4) for the personal transportation of the Member and its guests – without charge – if the Member makes capital contributions to the LLC to cover all of the operating costs of the aircraft.

Section 91.501(b)(4) allows the operator of an airplane to conduct flights "for his personal transportation, or the transportation of his guests when no charge, assessment, or fee is made for the transportation." According to the FAA, the term "operator," as used in § 91.501(b)(4), applies to the personal use of an individual or its guests. The term does not apply to corporations since corporations are business entities that exist for "business purposes" rather than "personal purposes." *See* Legal Interpretation to Elizabeth Wadsworth, from Rebecca MacPherson, Assistant Chief Counsel for Regulations (January 27, 2006).

You state in your letter that "an LLC that is wholly owned and solely managed by an individual is indistinguishable from its owner; thus, such LLC may operate personal flights for its individual owner under § 91.501(b)(4) in the same way that an individual owner could operate his or her own § 91.501(b)(4) flights."

We disagree. An LLC is a type of business entity that has distinct legal personality from its owners and managers. As with corporations, LLCs should not be construed to be alter egos of their owners, even when structured as closely held companies.

You state in your letter that "as the sole Member and the sole manager of the [LLC], the Member ultimately has full ownership and control of, and the sole possessory interest in, the aircraft."

We disagree. As explained above, the LLC is independent from its Member. The first is a natural person and the latter is a legal person. Therefore, what the Member has full ownership and control of – and sole possessory interest in – is the membership interest of the LLC, and not the aircraft. The aircraft is an asset of the LLC and is managed by the manager of the LLC, on behalf and in the best interest of the LLC. The mere fact that the sole Member is also the sole manager of the closely held LLC does not change our assessment of the scenario.

Based on the above, the FAA confirms that LLCs are treated as corporations with regards to § 91.501(b)(4), and Members of an LLC are not operators pursuant to said section. We also reaffirm that, if the primary business of an LLC is to operate an aircraft, then it is a flight department company, subject to part 119 certification. We reiterate that this requirement is valid even when the LLC transports only its Member(s) and Members' guests. *See* Legal Interpretation to Rebecca H. Baritot, by Edward P. Faberman, Assistant Chief Counsel (January 19, 1981); and Legal Interpretation to Elizabeth Wadsworth, from Rebecca MacPherson, Assistant Chief Counsel for Regulations (January 27, 2006).

Lastly, we address your assertion that the aircraft's operation should be viable under § 91.501(b)(4), since the LLC pays for the operating costs of the aircraft from the Member's capital contributions.

Although Members can make capital contributions to an LLC for any legally permissible purpose, we remind you that the FAA construes "compensation or hire" broadly. The receipt of anything of value is compensation. *See* Legal Interpretation to Mr. Joseph A. Kirwan, Ogden, Newell & Welch, PLLC, from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division (May 27, 2005).

Capital contributions by the Member to the LLC, to pay the cost of ownership and operation of the aircraft, constitute "compensation" for the personal transportation of the Member and its guests. *See* Legal Interpretation to James W. Dymond, Esq., Moore & Van Allen PLLC, from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division (March 9, 2007).

Based on the foregoing, we confirm that the proposed aircraft operation is not permissible under § 91.501(b)(4).

We trust the above adequately responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Francisco E. Castillo, Attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation and Commercial Division of the Flight Standards Service.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

DRAFT

U.S. Department of Transportation
Federal Aviation Administration
Reggie Govan
Office of the Chief Counsel
800 Independence Ave., S.W.
Washington, D.C. 20591

Dear Mr. Govan:

We are writing to request a legal interpretation of 14 C.F.R. § 91.501(b)(4) and its application to the proposed operational structure discussed below. Specifically:

> ***Under the facts stated herein, may an aircraft owned by a single-member LLC that is wholly owned and solely managed by an individual natural person (the "Member") be used under 14 C.F.R. § 91.501(b)(4) for the personal transportation of the Member and the Member's guests without charge, when the Member pays all operating costs of the aircraft?***

I. Facts

Our client is a single-member limited liability company, or LLC, (the "Client") that owns a large cabin, ultra-long range business jet (the "Aircraft") as its primary asset. The sole member of the Client (the "Member") is a natural person, not an entity. Under both state law and the Client's limited liability company agreement, the Member of the LLC is also the sole manager of the LLC and has full and complete authority, power and discretion to manage and control the property and affairs of the Client, including plenary powers to operate the Aircraft, to make all decisions regarding operation of the Aircraft and direction of the Client's employees, and to perform any and all other actions or activities customary or incident to the management of the Client's operations.

The Member will be a passenger on virtually all of the Aircraft's flights, and when the Member is not present on a flight, one of the Member's immediate family members will be present. The Member will authorize all of the Aircraft's flights, whether or not the Member is present on those flights. All of the Client's assets and expenditures will be funded by capital contributions from the Member. The Client employs the Aircraft's mechanic, pilots, and flight attendant, which flight crew are selected and managed by the Member and paid from the Member's capital contributions. The Client will never charge the Member, the Member's family, or the Member's guests for air transportation. The Aircraft will, at all times, be operated solely under 14 C.F.R. § 91.1, *et seq*. ("Part 91"). The Aircraft will not be used for any purpose other than the Member's personal transportation, or the transportation of the Member's guests. The Aircraft will be primarily used for travel related to managing the Member's personal investments, business ventures, and eleemosynary efforts; the Aircraft will occasionally be used by the Member and the Member's immediate family for pleasure.

II. Analysis

In support of our position that the Member may use the Aircraft under 14 C.F.R. § 91.501(b)(4) for the personal transportation of the Member and the Member's guests, we offer the following legal analysis.

A. The Member may use the Aircraft under § 91.501(b)(4) for personal transportation of the Member and the Member's guests because the Member will be the "operator" of the Aircraft.

The Member may use the Aircraft under § 91.501(b)(4) for the Member's personal flights because the Member will be the "operator" of the Aircraft, and Section 91.501(b)(4) provides that an "operator of an airplane" may use the airplane "for his personal transportation, or the transportation of his guests when no charge, assessment, or fee is made for the transportation."[1]

"Operator" is used throughout—but not defined in—Part 91. Nonetheless, in construing "operator" under Part 91, administrative courts and FAA Chief Counsel have consistently looked solely to the plain meanings of the statutory and regulatory definitions of "operate," "operate aircraft," and "operation of aircraft."[2] In their analysis, administrative courts and FAA Chief Counsel have confirmed that (1) an "operator" can be someone other than the person actually piloting the aircraft[3] and (2) "operator" is a term *separate and apart* from "operational control."[4] That is, with regard to the distinction between "operator" and "operational control," not only do canons of construction require that two individually defined terms have separate meanings,[5] but administrative courts, FAA regulations,

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[1] 14 C.F.R. § 91.501(b)(4).

[2] 14 C.F.R. § 1.1 ("Operate, with respect to aircraft, means use, cause to use or authorize to use aircraft, for the purpose (except as provided in § 91.13 of this chapter) of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise)."); 49 U.S.C.A. § 40102(a)(35) (West) ("Operate aircraft" and "operation of aircraft" mean using aircraft for the purposes of air navigation, including (A) the navigation of aircraft; and (B) causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft.").

[3] See, e.g., In the Matter of Ronald L. Gatewood, 2001 WL 629390, at *4-5 (finding aircraft owner to be the "operator" of an unairworthy aircraft that had been maintained improperly and flown by the owner's employee); In the Matter of Ramon C. Fenner, 1996 WL 336049, at *3 ("Regardless of whether the pilot was employed by Mr. Fenner or whether agency principles permit a finding of liability, the statutory definition of the term "operate" indicates that Mr. Fenner "operated" the aircraft, because the pilot had permission to use the aircraft."); and Legal Interpretation to John L. Hancock, March 18, 2013, *available at* 2013 WL 1793675 ("[W]ith regard to operating rules in part 91, the FAA has previously held that a person who "operates" an aircraft could be someone other than the pilot flying the aircraft.").

[4] 14 C.F.R. § 1.1 ("Operational control, with respect to a flight, means the exercise of authority over initiating, conducting or terminating a flight."); Legal Interpretation to Donna Christensen & Anh Nguyen, Oct. 3, 2001, ("'Operate', *which is not the same as operational control*, is defined in 14 C.F.R. § 1.1 . . . ." (emphasis added)).

and FAA Chief Counsel Interpretations use the terms separately and deliberately; they make no reference to "operational control" when using or construing the term "operator," and vice versa.[6]

Thus, it follows that, because Section 91.501(b)(4) uses only the term "operator" and makes no reference to the term "operational control," one should look to the "operate" definitions—and not the "operational control" definitions—to determine its meaning. In this case, as the sole member and the sole manager of the Client, the Member ultimately has full ownership and control of, and the sole possessory interest in, the Aircraft. The Member authorizes all use of the Aircraft; that is, the pilot is ultimately paid and directed by the Member, and the pilot does not fly the Aircraft unless the Member so authorizes. Moreover, the Member is present on almost all of the Aircraft's flights, and flights conducted without the Member on board take place only with the Member's permission. Where both the statutory and regulatory definitions of "operate" expressly include "cause to use" and "authorize to use" with respect to aircraft, there can be little question that the Member is an "operator" of the Aircraft as administrative courts and FAA Chief Counsel have interpreted the term.

We have found no FAA Interpretation that directly addresses the precise question presented here, *i.e.*, whether an individual natural person who wholly owns and solely manages an LLC that owns the aircraft and employs the aircraft's crew may be the "operator" of the aircraft under § 91.501(b)(4). The Thibodeaux Interpretation[7]—the only published FAA Interpretation that we could find that clearly involves a single-member LLC aircraft owner—does confirm, however, that (1) § 91.501(b)(4) applies to individuals, like the Member, operating an aircraft for personal use and (2) flights on an aircraft owned by a single-member LLC where ownership and control of the aircraft are vested in the same individual (as is the case here) may qualify under § 91.501(b)(4).[8] We believe that the Thibodeaux Interpretation

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[5] United States v. Drury, 344 F.3d 1089, 1099 (11th Cir. 2003) reh'g en banc granted, opinion vacated, 358 F.3d 1280 (11th Cir. 2004) and superseded, 396 F.3d 1303 (11th Cir. 2005) ("A basic premise of statutory construction is that a statute is to be interpreted so that no words shall be discarded as being meaningless, redundant, or mere surplusage.").

[6] See generally In re Gatewood, 2001 WL 629390; In re Fenner, 1996 WL 33604; and Hancock Interpretation, *available at* 2013 WL 1793675 (all construing "operator" as used in Part 91 without any reference to, or mention of, the regulatory definition of "operational control"). *See also* Legal Interpretation to Jerry A. Eichenberger, August 26, 2011, *available at* 2011 WL 3881510 (construing the term "operational control" as used in Part 91 without any reference to, or mention of, the regulatory definitions of "operate," "operate aircraft," or "operation of aircraft"). See also 14 C.F.R. § 91.1011 (specifically defining "*Operational control* responsibilities and delegation") (emphasis added).

[7] Legal Interpretation to Marcie Thibodeaux, April 5, 2011, *available at* 2011 WL 1459995.

[8] *See* Thibodeaux Interpretation at 2, finding that § 91.501(b)(4) would apply if the owner of the LLC had operational control over the aircraft. For the reasons discussed above, we do not see support for a finding that § 91.501(b)(4) flights are premised on "operational control" of the aircraft. Nevertheless, the Member here will clearly have operational control over all Aircraft flights—indeed, as sole member and manager of the Client, the Member is the *only person* with a possessory interest in the Aircraft and with authority over initiating, conducting or terminating a flight. Because an LLC wholly owned and solely managed by an individual consolidates ownership and control in that individual, FAA Chief Counsel Interpretations stating that "corporations have no personal use"

strongly supports the conclusion that an individual who wholly owns and solely manages an LLC that owns an aircraft qualifies as the "operator" of the aircraft and thus § 91.501(b)(4) allows him to conduct flights "for his personal transportation, or the transportation of his guests when no charge, assessment or fee is made for the transportation."

Here, because the Aircraft is owned by a single-member LLC that is wholly owned and solely managed by an individual natural person, the Member qualifies as the Aircraft's "operator" and may use the Aircraft for personal transportation subject to the limitations of § 91.501(b)(4).

B. The Member may use the Aircraft under § 91.501(b)(4) for all personal flights of the Member and the Member's guests even if the Client is the "operator" because the Client is a single-member LLC *wholly owned and solely managed by an individual natural person*.

Even if the Client is the "operator," the Member may use the Aircraft under § 91.501(b)(4) for the Member's personal transportation because the Member, an individual, is the Client's sole owner and manager. As stated in the Dymond Interpretation, "Section 91.501(b)(4) is drafted to permit an individual owner . . . to operate an airplane for his own personal transportation."[9] An LLC that is wholly owned and solely managed by an individual is indistinguishable from its owner; thus, such an LLC may operate personal flights for its individual owner under § 91.501(b)(4) in the same way that an individual owner could operate his or her own § 91.501(b)(4) flights.

Indeed, FAA Chief Counsel Interpretations have questioned the application of § 91.501(b)(4) only when the aircraft operator was an entity with *multiple* owners.

For example, in the Wadsworth Interpretation,[10] the entity that owned and operated the aircraft was a corporation with a number of owners—a fundamentally different entity than a single-member LLC that is wholly owned and solely managed by an individual. Likewise, in the Dymond Interpretation, the operating entity was an LLC formed by "U.S. *citizens*"[11]—that is, more than one person. And in the Thibodeaux Interpretation, as in the Wadsworth Interpretation, FAA Chief Counsel again state that

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are inapposite. We recognize that the Thibodeaux Interpretation ultimately concluded that "[y]ou have not provided us with enough information to respond to what impact the proposed LLC structure would have on your continued ability to operate your corporate aircraft under part 91." We believe that the facts posed in our request for a legal interpretation present the *strongest* case for an individual qualifying as the "operator" of an aircraft through ownership and control of an entity.

[9] Legal Interpretation to James W. Dymond, March 9, 2007, *available at* 2007 WL 1035822.

[10] Legal Interpretation to Elizabeth Wadsworth, January 27, 2006, *available at* 2006 WL 3792081.

[11] Dymond Interpretation, *available at* 2007 WL 1035822 (emphasis added). The Dymond Interpretation goes on to refer to a singular "owner" of the LLC, suggesting that those "certain U.S. citizens" in turn formed a corporation or other entity that owned the LLC. Regardless, nothing in the Dymond Interpretation indicates that an aircraft owned by an LLC wholly owned and solely managed *by an individual* could not conduct flights under § 91.501(b)(4) for the personal transportation of that individual or her or his guests.

corporations may not operate under § 91.501(b)(4), *without* any reference to a similar prohibition on operation by an LLC that is wholly owned and solely managed by an individual for his "personal transportation, or the transportation of his guests" under § 91.501(b)(4). In short, and as previously discussed, no FAA Interpretation has squarely addressed whether an LLC whose single member is an individual (not an entity), and whose single member also has sole and complete management authority over the LLC's activities, can provide air transportation to its member and his or her guests, without charge, under § 91.501(b)(4).

Furthermore, FAA Counsel in a later Dymond ("Dymond II") Interpretation permit § 91.501(b)(4) operations by co-owners so long as (1) no owner receives compensation for another owner's personal use and (once again) (2) no owners are "*corporate* entities."[12] That is, the Dymond II Interpretation focuses on whether the proposed § 91.501(b)(4) operation poses a risk that one individual will receive compensation for the transportation of another individual[13]—a risk entirely absent when the aircraft is owned by an LLC that is wholly owned and solely managed by an individual and that does not charge any fee for air transportation. We can conceive of no reason to distinguish such wholly owned and solely managed LLCs from their sole owners for purposes of § 91.501 given that the same individual pays all expenses of the LLC and receives the benefit of personal transportation from the LLC. Thus, even if the Client is the "operator," the Member may use the Aircraft under § 91.501(b)(4) for personal transportation because the Member is the Client's sole owner and manager—and hence is indistinguishable from the Client.

C. In accordance with § 91.501(b)(4), no charge, assessment, or fee will be made for the Member's transportation.

In accordance with § 91.501(b)(4), no charge, assessment or fee will be made for the Member's personal flights and none of the Member's guests will ever pay any amounts for any flight. As discussed, a single-member LLC that is wholly owned and solely managed by an individual is indistinguishable from its owner. The Member will be the only individual paying for Aircraft operations and the Member's payments for such operations will be no different than an individual aircraft owner paying her or his own aircraft operating costs.

Although FAA Chief Counsel Interpretations have indicated that "compensation" is to be construed broadly and does not require that flight operations generate an actual "profit," income derived specifically from providing air transportation to another is nonetheless a key determinant in whether an operation is for compensation. As FAA Chief Counsel has stated, "[w]here it is doubtful that an operation is for compensation or hire, the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit."[14] To that end,

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[12] Legal Interpretation to James W. Dymond, October 19, 2011, *available at* 2011 WL 5131695 (emphasis added).

[13] *Id.*

[14] Legal Interpretation to Joseph A. Kirwan, May 27, 2005, *available at* 2005 WL 4994728; 14 CFR 1.1 (definition of "Commercial operator").

exceptions to the general Part 91 rule against transportation for hire are intended to allow reimbursement *without income derived specifically from providing air transportation to another individual.*[15] Indeed, in prohibiting corporations and other entities with multiple owners from operating under § 91.501(b)(4), FAA Chief Counsel appear to have prohibited operations only when there is a risk that one corporate owner might profit from providing air transportation to another owner.

Conversely, FAA Chief Counsel have allowed operations when an aircraft owner is simply paying to operate the owner's own aircraft for the owner's personal transportation and the transportation of his or her guests without charge—even though the owner clearly receives benefit from providing such transportation (for example, the goodwill of his or her guests). Accordingly, if operations under § 91.501(b)(4) are prohibited any time an operator realizes an intangible benefit or economic advantage from furnishing transportation, § 91.501(b)(4) will be rendered meaningless because, practically speaking, transportation will rarely (if ever) be furnished completely gratuitously and without any benefit to the operator.

In this case, there is no risk of any person receiving income for—let alone realizing a profit from—the transportation of the Member and the Member's guests, any more than there is in the case of an individual aircraft owner who funds operation of an aircraft titled in her or his own name and used for her or his personal transportation and the transportation of her or his guests without charge. The Member will be the only individual paying for the Aircraft's operations. Thus, the Member's funding of the Aircraft's expenses for the Member's personal use would fall squarely within the stated intent of the § 91.501 exceptions and would be permissible under § 91.501(b)(4).

D. The Aircraft Ownership and Operational Structure Detailed Herein Promotes Safety.

As a final matter, it should be noted that there is no public safety justification for treating an aircraft owned by a single-member LLC that is wholly owned and solely managed by an individual natural person differently than an aircraft titled in the name of that individual. In both cases, the individual owner "operates" the aircraft and has full and complete authority, power and discretion to manage and control the aircraft operations. As we note above, the FAA has long held that an aircraft's "operator" can be someone other than the pilot flying the aircraft. Restricting application of § 91.501(b)(4) to flights where title to the aircraft is held in the name of an individual elevates form over substance and does nothing to promote public safety.

In fact, many of the individuals who own aircraft in single-member LLCs do so to *promote* their and their passengers' safety and privacy via a legitimate and legal veil of anonymity. That is, a number of providers publicly disseminate aircraft real-time flight data via free, searchable portals. However, because allowing third parties with unknown motives to track an aircraft's real-time flight data jeopardizes aircraft operators' privacy and safety, the FAA created the Block Registration Request

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[15] See, e.g., Legal Interpretation to Robert J. Thole, March 15, 2012, *available at* 2012 WL 1080399 ("[S]ubpart F of part 91 was promulgated as an exception to the rules requiring a certificate for commercial operations, and as such has been strictly interpreted to avoid any abuse of these provisions (i.e., conducting an operation *for the purpose of making a profit.*") (emphasis added)).

(BARR) Program, and for years, BARR allowed aircraft operators to protect this real-time data. However, with the advent of ADS-B Out technology (as well as the FAA's recent final ruling requiring that all aircraft be equipped with ADS-B Out by January 1, 2020), BARR could soon become all but obsolete, as countless anonymous persons are placing unauthorized and unregulated receivers around the world and tracking and publishing data received from aircraft equipped with ADS-B Out (which system emits a currently unblockable signal).

The single-member LLC structure detailed herein promotes safety in all respects. The FAA—the entity that *needs to know* full and complete details of the LLC's ownership and management structure—knows exactly who is managing and controlling the LLC and the flight operations via the complete and detailed LLC Statements in Support of Registration that are required to be filed (and, later, regularly updated as necessary) when any aircraft is registered to an LLC. However, the structure safeguards this information from those who *do not need to know* by listing the LLC's unremarkable name (rather than the individual, natural person's name) on the FAA Registry. All real-time data is then linked to the LLC's name; the individual, natural person's name (and privacy) is safeguarded from the general public.