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

Office of the Chief Counsel

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

JAN 20 2011

Gregory S. Walden
[redacted]

Dear Mr. Walden,

This is in response to your September 20, 2010, letter, written on behalf of Aerial Banners, Inc. ("Aerial Banners") and Aerial Banners North, Inc. ("Aerial Banners North"), requesting an interpretation of the ownership, certification, and leasing rules applicable to the following factual scenario.

Based upon your letter, it appears that Robert Benyo owns 100% of Aerial Banners and Aerial Banners North, and has a financial interest in Tampa Aerial Advertising, d/b/a/ Advertising Air Force ("AAF"). The above three companies are banner-towing operations, each of which has a Certificate of Waiver for banner-towing. Each of these companies has a different "person of responsibility": Dana Benyo is the "person of responsibility" for Aerial Banners, Robert Benyo is the "person of responsibility" for Aerial Banners North, and Kevin Wilson is the "person of responsibility" for AAF. The aircraft operated by Aerial Banners and Aerial Banners North are under the common ownership of Robert Benyo's other companies, some of which are listed on both Certificates of Waiver. AAF leases its aircraft from Aerial Banners under an oral leasing agreement.

Your letter poses the following three questions: (1) whether a single person or entity may own and operate multiple banner-towing companies; (2) whether an aircraft may be listed on the Certificate of Waiver of multiple banner-towing companies; and (3) whether an aircraft may be leased to a banner-towing company under an oral lease agreement.

I. Whether a single person or entity may own and operate multiple banner-towing companies

Your first question deals with whether Mr. Benyo may own and operate multiple banner-towing companies. Banner-towing operations are generally governed by the regulations contained in Part 91. *See* 14 C.F.R. § 119.1(e)(4)(ii) (excluding banner-towing operations from Part 119 certification requirements). Part 91 does not prohibit a single person or entity from owning and operating multiple banner-towing companies. However, an aircraft may not be used in a banner-towing operation without a Certificate of Waiver issued by the FAA. 14 C.F.R. § 91.311 (prohibiting most aircraft towing operations "except in accordance with the terms of a certificate of waiver issued by the Administrator"). A Certificate of Waiver can only be issued to the person or entity that is going to be exerting operational control over the banner-towing operation. *See* FAA Order 8900.1, Vol. 3, Ch. 3, Sec. 1, par. 3-63(c)

(restricting eligibility for a Certificate of Waiver to operators of the aircraft that is to be used in the banner-towing operation).

Operational control is defined as "the exercise of authority over initiating, conducting or terminating a flight." 14 C.F.R. § 1.1. The determination of who has operational control of an aircraft operation is a fact-specific inquiry. *See* Mar. 28, 1989, Letter to John McRainey from Anthony J. Broderick, Associate Administrator for Regulation and Certification (noting that determination of operational control is based on a number of fact-specific factors); *see also Administrator v. M&N Aviation, Inc. & Sky Way Enter., Inc.*, EA-5260 (2006) (engaging in fact-intensive inquiry to determine who had operational control); *Administrator v. Darby Aviation*, EA-5159 (2005) (same).

Under the facts set out in your letter, it does not appear that there is a regulatory prohibition of Mr. Benyo's ownership and financial interests in multiple banner-towing operations, so long as there is a clear delineation of operational control responsibilities, and the person or entity exercising operational control over each banner-towing operation has a Certificate of Waiver for the aircraft that will be used in that operation. However, please be aware that when multiple companies have an identicality of interest and are acting in concert with each other, the FAA may need to ensure that the business structure and relationship is not being used to manipulate the application of aviation regulations. In such a situation, the FAA may treat the companies as a single entity for the purpose of applying its regulations. *See* Jan. 29, 1986 Letter to Charles E. Harris from Kenneth E. Geier, Regional Counsel (noting that when two organizations are acting in concert, the FAA may apply its regulations as if they were a single entity); Mar. 15, 1979 Letter to Rodney J. Arends from Kenneth E. Geier (same). As such, depending on the specifics of the relationship between the companies discussed in your letter, the FAA may treat those companies as a single entity for the purpose of issuing Certificates of Waiver and/or taking an enforcement action.

II. Whether an aircraft may be listed on the Certificate of Waiver of multiple banner-towing companies

Your second question deals with whether a single aircraft may be listed on the Certificate of Waiver of multiple banner-towing companies. As discussed above, a banner-towing operation cannot be conducted without a Certificate of Waiver, and a Certificate of Waiver can only be issued to the entity that exercises operational control over the banner-towing operation. *See* 14 C.F.R. § 91.311; FAA Order 8900.1, Vol. 3, Ch. 3, Sec. 1, par. 3-63(c). The aforementioned definition for operational control is "the exercise of authority over initiating, conducting or terminating a flight." 14 C.F.R. § 1.1. The FAA has clarified that "[a] person has operational control if that person exercises complete control over the phases of aircraft operation requiring aviation expertise." Aug. 2, 1993 Letter to Mr. Star from Donald P. Byrne, Assistant Chief Counsel, Regulations Division. Due to a lack of specification in your letter about the operational/ownership relationship between Mr. Benyo's companies and the banner-towing companies, it is unclear which companies are exercising operational control over the banner-towing operations. However, given the definition of operational control as "*complete control* over the phases of aircraft operation," the FAA would not normally expect more than one company to exercise operational control

over a banner-towing aircraft. *See id.* (emphasis added). Because only a single company normally exercises operational control over a banner-towing aircraft, that aircraft should normally be listed only on a single Certificate of Waiver at any given time.

Depending on the specific facts of Mr. Benyo's situation, if multiple companies are exercising operational control over a single banner-towing aircraft, each of those companies would need to obtain a Certificate of Waiver, and the aircraft in question would need to be listed on the Certificate of Waiver issued to each company. The operational control responsibility for each operation would also need to be clearly delineated. In addition, as discussed above, if multiple companies are acting in concert, the FAA may treat those companies as a single entity for the purpose of applying aviation regulations. *See* Jan. 29, 1986 Letter to Charles E. Harris from Kenneth E. Geier; Mar. 15, 1979 Letter to Rodney J. Arends from Kenneth E. Geier.

III. Whether an aircraft may be leased to a banner-towing company under an oral lease agreement

Your final question deals with whether Aerial Banners is required to have a written lease agreement to lease an aircraft to AAF. There are certain provisions in Part 91 that would require a written lease to the extent that they are applicable. For example, the truth-in-leasing provisions of 14 C.F.R. § 91.23, require that a lease involving large civil aircraft be in writing. Here, because your letter does not provide sufficient information about the companies and aircraft that are involved in the AAF lease, the FAA cannot determine whether the regulations requiring a written lease are applicable to this situation.

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

Sincerely,

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