



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

February 27, 2024

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-22-000586

Dear Mr. President:

I am forwarding to you a report transmitted to the U.S. Office of Special Counsel (OSC) by the Department of Transportation (DOT) in response to the Special Counsel's referral of a disclosure of wrongdoing at the Federal Aviation Administration (FAA), Aviation Safety Office, Washington, D.C. I have reviewed the disclosure, the agency report, and the whistleblower comments, and, in accordance with 5 U.S.C. §1213(e), I have determined the report contains the information required by statute and the findings appear reasonable.¹

The whistleblower, who only consented to the release of his name to the DOT in connection with the investigation, alleged that FAA officials have failed to ensure that foreign corporations who own aircraft in the United States comply with regulations governing aircraft registration by non-citizen corporations. Relatedly, the whistleblower alleged that some aircraft owned by foreign corporations have operated in the United States without effective registrations due to the failure of the owner/operators to certify their compliance with the regulatory requirements. As summarized below, the agency partially substantiated the first allegation and substantiated the second.

In relevant part, 14 C.F.R. § 47.9 requires any non-citizen corporation applying for registration of an aircraft on the FAA Aircraft Registry (Registry) to certify that the aircraft will be based and primarily used in the United States.² For the purposes of registration, an aircraft is based and primarily used in the United States if the aircraft accumulates at least 60 percent of its total flight hours in the United States every six months. In addition, the regulation provides that the corporate owners must submit periodic reports to the Registry certifying that the aircraft met the 60-percent threshold in the preceding six-month period, or, alternatively, that the aircraft was operated exclusively in the United States during that period. According to the FAA Aircraft Registration and Recordation Process, if an owner fails to comply with 14 C.F.R. § 47.9, a Notice of Apparent Ineffectiveness is issued, the

¹ The allegations were referred to Secretary of Transportation Pete Buttigieg pursuant to 5 U.S.C. §1213(c) and (d). The DOT Office of Audit and Evaluation investigated the allegations. Secretary Buttigieg delegated the authority to review and sign the report to DOT General Counsel John E. Putnam.

² An aircraft may be registered with the FAA only if it is not registered under the laws of a foreign country and cannot be registered in multiple countries simultaneously. 14 C.F.R. § 47.3(a).

registration is placed in a suspended status, and the status of the registration is changed from “Valid” to “Invalid” until the owner submits a new application.

The agency investigation found that the Registry effectively tracks compliance with the regulatory reporting requirements, placing the registration in a suspended status where appropriate as described above. However, the report noted that the instructions in the Aircraft Registration and Recordation Process are brief, and FAA lacks adequate written procedures for ensuring compliance with 14 C.F.R. § 47.9. Specifically, the Registry does not attempt to recover ineffective registration certificates, does not coordinate with FAA’s Flight Standards Division on any potential enforcement actions, and does not have any procedures for ensuring that aircraft operate with valid registration certificates. Consequently, the agency reported that an aircraft owned by a noncompliant foreign corporation “could potentially continue to operate without a valid registration, until an event causes the FAA or other organization to verify the aircraft’s registration.” The report attributed the deficiencies in this framework to the Registry’s limited resources, the administrative burden associated with retrieval of ineffective registration certificates, and because the Registry considers regulatory compliance the responsibility of the owner/operator.

The investigation revealed that FAA has not received the required periodic reports for 103 of the 1,831 aircraft registered to non-citizen corporations on the Registry. The agency therefore substantiated the whistleblower’s second allegation and confirmed that some aircraft owned by non-citizen corporations and listed on the Registry have operated in the United States without valid registrations. Further, although FAA notified the noncompliant owner/operators of the suspension of their registrations, 29 of the 103 aircraft continued to operate in the United States, in some cases having operated multiple flights without a valid registration at the time of the agency investigation.

The agency conveyed three recommendations for corrective action to address the investigative findings, and OSC requested updates regarding the status of the recommendations. First, the agency recommended that the Registry develop written guidance for FAA personnel to ensure proper reporting, including by implementing written procedures for taking compliance or enforcement action to retrieve ineffective aircraft registration certificates from non-citizen corporations who fail to comply with 14 C.F.R. § 47.9. The agency informed OSC that FAA’s Aviation Safety Division intends to complete the development of the written procedures by June 30, 2024.

In addition, the report stated that FAA should consider developing a policy that prohibits the registration of an aircraft that previously failed to meet the regulatory reporting requirements unless and until the owner/operator has provided proof of compliance for the periods in question. The DOT and FAA continue to discuss the extent to which, consistent with 14 C.F.R. § 47.9(d), the FAA may consider past periods of invalid aircraft registration when reviewing a current application, and whether the FAA, consistent with 49 U.S.C. § 44103(a)(1), can exercise discretion to deny a certificate to a Registry applicant that meets the requirements of 49 U.S.C. § 44102.

Finally, the report concluded with a recommendation that FAA’s Flight Standards Service (AFS), in conjunction with the Registry, conduct follow-up investigations and take compliance and enforcement actions where appropriate regarding the 29 aircraft identified as having continued to operate with ineffective registrations. After the follow-up investigation, six of the 29 aircraft

registrations remained invalid. AFS issued Letters of Investigation to each owner of record where there was no response to Registry notices to return the invalid registration certificates. AFS is developing policy to consider additional compliance and enforcement actions, which the agency plans to issue by June 30, 2024.

In comments on the report, the whistleblower asserted that there is a “degraded safety culture” within the FAA. The whistleblower contended that the FAA has wrongfully allowed certain regulatory compliance to be the responsibility of aircraft owners/operators when the FAA is in the best position to notice potential and actual regulatory violations. Further, the whistleblower will continue to submit safety recommendations and to voice any safety concerns to DOT and FAA officials.³

I thank the whistleblower for bringing these allegations to OSC. As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the agency report, and whistleblower comments to the Chairs and Ranking Members of the Senate Committee on Commerce, Science, and Transportation, and the House Committee on Transportation and Infrastructure. I have also filed redacted copies of these documents and the redacted referral letter in our public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,

A handwritten signature in dark ink, reading "Karen Gorman" with a stylized flourish at the end.

Karen Gorman
Acting Special Counsel

Enclosures

³ As of the date of this letter, the whistleblower has several pending disclosures of wrongdoing that OSC has referred to the DOT Secretary for investigation.