The Secretary of Transportation has delegated responsibility for matters falling under 5 U.S.C. Section 1213(d) to the General Counsel. FAA, through its Office of Audit and Evaluation (AAE), investigated the allegations and prepared the Report of Investigation (ROI) in this matter. I enclose the ROI with this letter.

The referral required investigation into two allegations. The investigation partially substantiated the first allegation, that FAA has not ensured foreign corporations with aircraft on the Registry comply with FAA regulations governing registered aircraft. AAE found that the Registry effectively tracks compliance with the reporting requirements for maintaining aircraft on the Registry and renders registrations “ineffective” where appropriate. However, the investigation also found that the Registry lacks adequate written procedures, does not act to ensure the return of ineffective registrations, and does not work with FAA’s Flight Standards Division (AFX) on potential compliance and enforcement actions to address regulatory violations. The investigation substantiated the second allegation, that some aircraft owned by foreign corporations are operating within the United States without effective registrations. Specifically, the investigation found that of the 1,831 foreign-owned aircraft listed on the Registry, FAA has not received the required periodic reports for 103 of them, and although FAA notified the relevant
corporations that their registrations are ineffective, 29 of the 103 aircraft continued to conduct operations.

The report includes three recommendations for corrective action to FAA’s Associate Administrator for Aviation Safety. These recommendations include, among others, enhanced efforts to retrieve ineffective registrations and coordination with AFX on potential compliance and enforcement actions to address violations of FAA regulations governing the Registry.

We have appreciated the opportunity to review this important matter and the whistleblower’s diligence in raising their concerns.

Sincerely,

John E. Putnam
General Counsel

Enclosure
Federal Aviation Administration
Report of Investigation
To the Office of the Secretary of Transportation

In response to:

U.S. Office of Special Counsel (OSC)
File DI-22-000586

Acting Director, Office of Audit and Evaluation (AAE-1)
Federal Aviation Administration
Washington, D.C.

OCTOBER 28, 2022
Executive Summary

On June 28, 2022, Special Counsel Henry J. Kerner referred to the Secretary of Transportation for investigation a U.S. Office of Special Counsel (OSC) whistleblower disclosure (OSC File No. DI-22-000586).

On July 1, 2022, the Office of the Secretary of Transportation delegated the investigation to the Federal Aviation Administration (FAA), Office of Audit and Evaluation (AAE). AAE is an independent office with the statutory authority to conduct impartial investigations of aviation-related whistleblower disclosures. This disclosure alleged that some foreign corporations with aircraft listed on the FAA Aircraft Registry (Registry) have failed to provide the FAA with reports showing the aircraft operate primarily within the United States, as required by FAA regulations governing the Registry. The whistleblower further alleged that despite this failure, the aircraft continue to operate within the United States, potentially without effective registrations in violation of FAA’s regulations. The whistleblower did not consent to the use of their name in the agency report.

The whistleblower more specifically alleged that:

- FAA officials have not ensured that foreign corporations who own aircraft registered in the U.S. comply with 14 CFR § 47.9.1
- Aircraft owned by foreign corporations are operating within the United States without effective registrations in violation of 14 CFR § 47.41 and 14 CFR § 91.203.2

The investigation found 1,831 aircraft are registered in the U.S. to non-citizen corporations. Of those, the Registry has not received periodic reports required by 14 CFR § 47.9(f) for 103 aircraft. Even though the FAA Aircraft Registry has notified those owners that their aircrafts’ registration are “ineffective” or “invalid,” records indicate that 29 aircraft continued to operate in violation of 14 CFR § 91.203(a)(2).

This report includes three recommendations for corrective action to the Associate Administrator for Aviation Safety (AVS-1), including consideration of referring matters for compliance and enforcement action and revision to the Registry’s administrative policy and procedures for managing aircraft registered to non-citizen corporations. A response to AAE on these recommendations is anticipated from AVS by December 20, 2022. Upon receipt of the response, AAE will work with the Office of the FAA Administrator to ensure that appropriate corrective action is taken, including to the satisfaction of the General Counsel, who acts under delegation from the Secretary on OSC matters.

1 14 CFR § 47.9(f) requires non-citizen corporations with aircraft registered in the U.S. to submit reports meeting the requirements of FAA’s requirements for such registrations to the FAA every 6 months.

2 14 CFR § 91.203(a)(2) states that, “no person may operate a civil aircraft unless it has within it the following…(2) An effective U.S. registration certificate issued to its owner” or other documents not relevant here..

3 The terms effective/ineffective and valid/invalid are used synonymously in FAA guidance. However, for a common understanding, in this report we will toggle between the verbiage as appropriate.
Background

14 CFR § 91 specifies the general operating and flight rules for all aircraft operating within the United States. 14 CFR § 91.203(a)(2) prohibits the operation of any civil aircraft unless it has within it an effective U.S. registration certificate, or a registration certification issued under the laws of a foreign country. The rule does not allow aircraft to be registered with multiple countries simultaneously. However, 14 CFR § 47.3(a)(3) does provide for the registration of aircraft owned by non-citizen corporations who are organized and doing business under the laws of the United States where the aircraft is based and primarily used in the United States. For such a registration, 14 CFR § 47.9(a) requires non-citizen corporations to certify that the aircraft will be based and primarily used in the United States, which is defined as at least 60 percent of the total flight hours of the aircraft. Paragraph (f) of the same rule requires that the corporation provide a report to the FAA every six months. Those reports must contain the total time in service accumulated during that reporting period, the total flight hours accumulated within the United States during that same period, or a signed statement that all of the flight hours accumulated during that reporting period were exclusively within the United States. Among the reasons for FAA’s requirements is to prevent foreign corporations from using the United States as a “flag of convenience” to obtain certain benefits, such as (1) a higher aircraft resale value, (2) avoidance of airworthiness checks by foreign authorities, and (3) avoidance of foreign taxes, foreign certification fees, and foreign inspection fees even if the aircraft is not primarily operated within the United States.

Detailed Findings

Allegation 1:

FAA officials have not ensured that foreign corporations who own aircraft registered in the United States comply with 14 CFR § 47.9.

Findings: Partially substantiated.

The whistleblower is concerned that some non-citizen corporations are not complying with the reporting requirements of 14 CFR § 47.9 and that the FAA has failed to ensure such compliance. The whistleblower provided five examples as evidence of the expressed concerns.

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4 14 CFR § 47.3(a) states: “An aircraft may be registered under 49 U.S.C. 44103 only when the aircraft is not registered under the laws of a foreign country.”
The Registry published its internal processes in a document entitled, “FAA Aircraft Registration and Recordation Process.” This document is publicly available on the FAA Aircraft Registry Website.\(^5\) Section 2.1.3(c) states that for aircraft owned by non-citizen corporations:

- Registry reporting of flight hours is administered by [Registration] Branch staff.
- For each six-month reporting period, the “Flight Hour Report for Corporations Not U.S. Citizens” is mailed to these owners for completion.
- The six-month reporting period begins the full month after the aircraft is registered.
- If an owner fails to comply with 14 CFR § 47.9, a Notice of Apparent Ineffectiveness is issued, the registration is placed in suspense, and the status is changed from “Valid” to “Notice Ineff/Inval.”
- To return the status back to “Valid,” the owner may be advised that a new application for registration and $5.00 fee should be submitted.

According to a Registry Supervisory Program Analyst, the process of administering the reporting requirements is accomplished by two full-time employees. A database internal to assigned Registry personnel is utilized to monitor the reporting status of each aircraft and non-citizen corporation.

The instructions in the FAA Aircraft Registration and Recordation Process, Section 2.1.3(c), are brief and do not set out specific procedures for how FAA personnel should administer the process. However, we learned that at the end of each reporting period, the Registry mails AC Form 8050-117 to the applicable aircraft owner. It is accompanied by a form letter requesting that the owner report the hours flown in the specified time period, and return the completed form to the Registry. When the form is returned, Registry personnel evaluate the information. If the information meets the reporting requirements, the database is updated to show that the report is current until the end of the next reporting period. If the returned report is incomplete, or unsatisfactory, it is returned to the owner for corrective action.

If the Registry does not receive a report within sixty days of the end of the reporting period, a notification letter is sent to the owner alerting them that the aircraft may no longer be eligible for registration if it was not based and operated primarily in the United States. The letter also states that if the aircraft is no longer eligible for registration, the aircraft registration is considered to be invalid and should be returned to the Registry within 21 days.\(^6\) The letter concludes that if the

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6 14 CFR Part 47.41(b)(3) (b) states: “The Certificate of Aircraft Registration, with the reverse side completed, must be returned to the Registry--(3) Within 21 days of the termination of the registration, by the holder of the Certificate of Aircraft Registration in all other cases mentioned in paragraph (a) of this section, except in the case of expired certificates, the holder must destroy the expired certificate.”

14 CFR Part 47.41(a) states: “Each Certificate of Aircraft Registration, AC Form 8050-3, issued by the FAA under this subpart is effective, unless registration has ended by reason of having been revoked, canceled, expired, or the ownership is transferred, until the date upon which one of the following events occurs… (6) If the owner is a
requested information is not forwarded within 30 days, the registration may be forwarded for appropriate legal enforcement action.

If a response to the “Sixty Day Letter” is not received within 30 days of sending it, a final letter, referred to as the “30 Day Letter,” is sent. This letter notifies the owner of their failure to submit the required report and that the FAA was unable to determine that the aircraft was based and primarily used in the United States. The letter concludes that the aircraft registration appears to be ineffective and that any operation without an effective registration is a violation of 14 CFR § 91.203(a)(2). The letter also advises that the registration certificate must be returned to the Registry.

Thereafter, the aircraft registry record (and database) for the aircraft is placed in suspense and no further action by the Registry is taken. If the owner wishes to rectify the aircraft registration status, they must submit a new application for aircraft registration and submit it to the Registry along with payment of five dollars.

According to the Supervisory Program Analyst, the Registry does not pursue compliance or enforcement actions against aircraft owners that fail to submit required reports. The Registry itself does not have authority to commence compliance/enforcement actions against those who conduct operations without an effective registration (that authority is housed within FAA’s Flight Standards Division). In addition, the Registry considers making the aircraft registration “ineffective” as sufficient punitive action. Moreover, the Registry does not attempt to recover the registration certificates because of the administrative burden associated with retrieval and its lack of resources.

The Registry considers regulatory compliance for continued operation of the aircraft the responsibility of the owner/operator. There is no further follow-up by the Registry to ensure that the registration certificate is returned. Therefore, the aircraft could potentially continue to operate without a valid registration, until an event causes the FAA or other organization to verify the aircraft’s registration.

There are currently 1,831 aircraft registered in the U.S. to non-citizen corporations. Of those, the registration for 103 aircraft were deemed invalid for failure to submit the required reports. We did not find that compliance or enforcement action was taken for any of the 103 aircraft. We also found that the registration certificates for those aircraft were not returned to the Registry.

corporation other than a corporation which is a citizen of the United States—(ii) A period described in Sec. 47.9(b) ends and the aircraft was not based and primarily used in the United States during that period.”

7 14 CFR § 91.203(a)(2) states: “(a) Except as provided in § 91.715, no person may operate a civil aircraft unless it has within it the following… (2) An effective U.S. registration certificate issued to its owner…” or other documentation not relevant here.

8 Although the evidence does not support the notion that any non-citizen corporations have attempted to circumvent the intent of 14 CFR § 47.9 by seeking a new registration instead of meeting reporting requirements, the Registry should consider whether past failures to report may impact a current application.
Although the Registry is effectively tracking the reporting requirements of non-citizen corporations, making appropriate notifications to the aircraft owners when reports are not received, and taking action to make the registrations “ineffective” for those aircraft, deficiencies in the process were noted. Those deficiencies include a lack of:

- Written procedures that provide specific guidance to FAA personnel on how to process reporting and follow-up action to ensure compliance with 14 CFR § 47.9.
- Follow-up activity to retrieve ineffective aircraft registration certificates from non-citizen corporations who fail to comply with 14 CFR § 47.9.
- A Registry process to consider referring to AFX non-citizen corporations who fail to meet the reporting requirements for compliance with 14 CFR § 47.9 and yet continue to operate aircraft with ineffective registrations.
- Policy and procedures for the Registry to address a non-citizen applicant’s past failure to submit reports required under Section 47.9, where the applicant seeks a “new” registration for the same aircraft involved in past violations.

**Allegation 2:**

Aircraft owned by foreign corporations are operating within the United States without effective registrations in violation of 14 CFR § 47.41 and 14 CFR § 91.203.9

**Findings:** Substantiated.

The whistleblower is concerned that some aircraft registered to non-citizen corporations may be operating with registrations that are not effective in violation of 14 CFR § 91.203(a). The Registry notified the owners of 103 aircraft registered to non-citizen corporations, which included five aircraft identified by the whistleblower, that their aircraft registration were determined to be invalid due to the owners’ failure to provide the required reports. Those owners were also advised that operation of the aircraft without an “effective” registration is a violation of 14 CFR § 91.203(a)(2).

Of the 103 aircraft identified with invalid registrations, 29 have continued to operate in apparent violation of 14 CFR § 91.203(a)(2). Flight tracking records demonstrate that many of those aircraft have operated on multiple flights and were actively operating at the time of this investigation. Although none of the aircraft operated in commercial passenger carrying service, some were utilized by flight schools. This highlights the importance of ensuring that registration certificates are returned as required by 14 CFR § 47.41. When the registration is no longer valid,

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9 14 CFR § 91.203(a) states that, “no person may operate a civil aircraft unless it has within it the following…(2) An effective U.S. registration certificate issued to its owner…”
but the certificate is not returned to the FAA, a pilot performing a preflight inspection of the aircraft may not be aware that the registration is invalid. This can cause an unintentional violation of 14 CFR § 91.203(a)(2).

A review of FAA Registry and enforcement databases confirmed that the 29 aircraft that operated with an invalid registration were not the subject of any investigation, or compliance/enforcement action.

**Recommendations and Corrective Actions:**

Based upon the findings related to this report, the following recommendations are issued to the Office of Aviation Safety (AVS) and the Flight Standards Service (AFX).

**Recommendation 1:** The FAA Aircraft Registry should develop written procedures that provide specific guidance for FAA personnel on how to ensure proper reporting and take follow-up action to achieve compliance with 14 CFR § 47.9. This process should include:

- Procedures for follow-up action to retrieve ineffective aircraft registration certificates from non-citizen corporations who fail to comply with 14 CFR § 47.9.
- Procedures for considering referrals to AFX of non-citizen corporations who fail to meet the Registry reporting requirements and then operate flights without a valid registration, for potential investigation, and compliance or enforcement action.

**Recommendation 2:** Consider developing a policy that prohibits the registration of an aircraft owned by a non-citizen corporation who previously failed to meet the reporting requirements, unless and until the owner/operator has provided reconciliation (proof of compliance for the periods in question) and otherwise demonstrated to FAA that it will meet the requirements for aircraft registration going forward.

**Recommendation 3:** Coordinating with the Registry, AFX should conduct follow-up investigation, and take compliance and enforcement action as may be appropriate, with respect to the 29 aircraft identified in this report as continuing to operate with an ineffective registration.

**Investigation Methodology**

The investigation was conducted under the authority of the FAA Office of Audit and Evaluation (AAE) under 49 U.S.C. § 106(t) and FAA Order 1100.167B, and by delegation from the Office of the Secretary.

Investigative Team:
• [Redacted], Senior Investigator, Office of Audit and Evaluation
• [Redacted], Investigator, Office of Audit and Evaluation

AAE analyzed records, documents, memorandums, emails, FAA guidance, policy, regulations, orders, notices, and records obtained from the FAA Aircraft Registry, WebOpps and Vital Information Systems (VIS). In addition, interviews and technical discussions were conducted with the whistleblower and FAA Aircraft Registry managers and policy/technical specialists.
List Of Witnesses: Names/Titles

Office of Special Counsel Referral DI-22-000586
(U.S. Department of Transportation)

1. Whistleblower – [Redacted]

2. Registry Supervisory Program Analyst – [Redacted]