

Office of Inspector General

Semiannual Report to the Congress

Covering the Period
April 1, 2010—September 30, 2010



FEDERAL MARITIME COMMISSION



FEDERAL MARITIME COMMISSION
Washington, DC 20573

October 29, 2010

Office of Inspector General

Dear Commissioners:

The attached report is submitted in accordance with Section 5 of the Inspector General Act of 1978, as amended. It summarizes the activities of the Office of Inspector General (OIG) for the period April 1, 2010, to September 30, 2010. The Act requires that you transmit the report to the appropriate Congressional committees within 30 days of receipt. Your transmittal should also include any comments you consider appropriate and other statistical tables and reports required by law.

During this period we issued three audits/evaluations of Federal Maritime Commission (FMC) programs or activities, and began three program evaluations and one audit. Also during this period, the OIG received 35 complaints: we responded to five complaints and forwarded 21 complaints to the appropriate FMC program area for disposition. Nine complaints were forwarded to other agency OIGs or programs with jurisdiction over the subject matter of the complaint. The OIG opened no new investigations and referred no matters to prosecutorial authorities during this period.

In addition to these audit and investigative activities and outcomes, the OIG responded to two congressional requests for information pertaining to OIG operations. We issued a fraud alert on the office's webpage after a preliminary investigation revealed that scam artists were using indicia of an official nature, such as FMC letterhead, to perpetrate a scam. We also assisted another federal OIG to hire an attorney, responded to a request for comments to the Office of Special Counsel pertaining to Whistleblower retaliation, worked with agency program staff to review internal controls over office procedures for processing license fee checks and commented on Commission Orders on Privacy Act implementation.

Although management and the OIG have reached agreement on implementation plans for all open recommendations, we are concerned that two recommendations remain unimplemented for 54 and 47 months. Management should do more to close these recommendations. I appreciate management's support and I look forward to working with you in our ongoing efforts to promote economy and efficiency in agency programs.

Respectfully submitted,

/Adam R. Trzeciak/
Inspector General

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EXECUTIVE SUMMARY

This Semiannual Report to the Congress summarizes the activities and accomplishments of the Federal Maritime Commission (FMC or Commission), Office of Inspector General (OIG or Office), for the period April 1, 2010 through September 30, 2010. During this period we issued three audits/evaluations of FMC programs or activities, and began three program evaluations and one audit.

Also during this reporting period, the OIG received 35 complaints: we responded to five complaints and forwarded 21 complaints to the appropriate FMC program area for disposition. Nine complaints were forwarded to other agency OIGs or programs with jurisdiction over the subject matter of the complaint. The OIG opened no new investigations and referred no matters to prosecutorial authorities during this period.

In addition to these audit and investigative activities and outcomes, the OIG responded to two congressional requests for information pertaining to OIG operations, issued a fraud alert on the office's webpage after a preliminary investigation revealed that scam artists were using down-loaded FMC letterhead to perpetrate a scam; assisted another federal OIG to hire an attorney, responded to a request for comments to the Office of Special Counsel pertaining to Whistleblower retaliation, worked with agency program staff to review internal controls over office procedures for processing license fee checks, and commented on a Commission Order on Privacy Act implementation.

BACKGROUND

The FMC is an independent agency responsible for the regulation of ocean-borne transportation in the foreign commerce of the United States. The principal statutes or statutory provisions administered by the Commission are the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998; the Foreign Shipping Practices Act of 1988; and Section 19 of the Merchant Marine Act of 1920.

The FMC is headed by five Commissioners nominated by the President and confirmed by the Senate, each serving five-year terms. For Fiscal Year (FY) 2010, the Commission was appropriated \$24.1 million to fund 129 full-time equivalent positions.

Although the majority of the Commission's personnel are located in Washington, D.C., it also maintains a presence in Los Angeles, Seattle, New York, New Orleans, Houston and South Florida, through area representatives who serve the major ports and transportation centers within their respective geographic areas. In addition, one at-large area representative operates from Washington, D.C.

The FMC/OIG was established in 1989 as required by the Inspector General Act of 1978, as amended (5 U.S.C. app.). The OIG is an independent audit and investigative unit headed by an Inspector General (IG) who reports directly to the Commissioners of the FMC. To aid the FMC in accomplishing its mission, the OIG was provided three full-time staff and a budget of \$762,270 for FY 2010.

The OIG is responsible for conducting audits and investigations relating to the programs and operations of the FMC. Audits are conducted for the purpose of finding and preventing fraud, waste and abuse, and promoting economy, efficiency and effectiveness within the agency. OIG investigations seek out facts related to allegations of wrongdoing on the part of FMC employees and individuals, or entities having contracts with, or obtaining benefits from, the agency. The Inspector General Act provides that the OIG shall have access to all agency records and may subpoena records from entities outside of the agency in connection with an audit or investigation.

The IG is required by law to prepare a report summarizing OIG audits and investigations during the immediately preceding six-month period. The report is sent to the FMC Chairman and Commissioners, the President of the Senate, the Speaker of the House and FMC's appropriating and authorizing committees. This dual reporting requirement facilitates and helps to ensure the independence of the Office.

AUDITS/EVALUATIONS

During this semiannual period, the OIG issued three program evaluations pertaining to (i) best practices for time and attendance (T&A) implementation, (ii) the accuracy of calculations used by the agency to establish user fees for various services and (iii) user satisfaction with the agency's Helpdesk services. We also began the annual financial statement audit, the annual evaluation of information security, a review of Privacy Act implementation and a program evaluation of the Office of Consumer Affairs and Dispute Resolution Services.

Issued Audits and Reviews

<u>Audit Report Number</u>	<u>Subject of Audit</u>
OR10-02	Best Practices for Time and Attendance Implementation
OR10-03	Review of FMC's User Fee Calculations
OR10-04	User Satisfaction Survey of the Office of Information Technology Helpdesk

Summary of Audits and Reviews Issued During the Current Period

In **OR10-02, *Best Practices for Time and Attendance Implementation***, the objective was to consolidate best practices observed in six FMC bureaus / offices. During previous audits, we noted similarities and differences among the bureaus / offices. Some T&A practices seemed to us to work better (i.e., stronger controls, higher compliance rates) than others. Based on these audits, we identified "best practices" to help the agency to comply with T&A requirements and to enhance the efficiency and effectiveness of agency payroll practices.

While we found both similarities and differences among the practices used in FMC bureaus and offices to administer payroll, the most noticeable, and arguably the most inefficient process, was the lack of uniform processes to monitor employee time and attendance among the bureaus / offices. With that in mind, the OIG developed a list of 12 best practices to assist the

agency to standardize its T&A practices. FMC managers provided the OIG with an action plan to address the vulnerabilities we identified in each of the bureaus and offices audited.

In **OR10-03, *Review of FMC's User Fee Calculations***, the OIG analyzed the methodology used by the agency to set user fees for activities that convey special benefits to recipients beyond those accruing to the general public. Guidance for establishing such fees is contained in Office of Management and Budget (OMB) Circular A-25, *User Charges*. The Circular requires user charges to be sufficient to recover the government's full cost. Full cost includes all direct and indirect costs to any part of the federal government of providing a good or service. These costs include, but are not limited to, an appropriate share of: (i) direct and indirect personnel costs, including salaries and fringe benefits, such as medical insurance and retirement; and (ii) physical overhead, consulting and other indirect costs including material and supply costs, utilities, insurance, travel and rents or imputed rents on land, buildings or equipment.

The OIG determined that the agency followed a process that incorrectly calculated its user fees for various mission-related services, resulting in user fees that understated the agency's costs to provide these services. The OIG recommended that the agency either (i) establish user charges that reflect the full cost of the activity provided, as directed in Generally Accepted Accounting Principles and Cost Accounting Standards, or (ii) with the approval of the OMB, set fees below the full cost if the agency determines that recouping full costs would be a financial burden on the industry or the public.

In its response to the audit, management agreed to re-evaluate existing user fees and initiate a process to determine the full cost of services for which the agency assesses user fees, in accordance with the OMB requirements and applicable federal financial accounting standards. Once those costs are determined, management will prepare a proposed rule for Commission approval, with the goal of issuing a final rule by December 31, 2010.

In **OR10-04, *User Satisfaction Survey of the Office of Information Technology Helpdesk***, the objectives were to determine whether (i) controls are in place to ensure that all assistance requests made by customers (e.g., agency staff) are documented, assigned and corrected in a timely manner; (ii) customers are notified of progress made to address their requests; and (iii) customer requests are timely cleared. To address the objectives, the OIG sent a data collection instrument to agency staff, interviewed Office of Information Technology (OIT) personnel and reviewed service call tracking summary reports.

The Helpdesk received favorable marks from staff responding to the OIG questionnaire. Almost 70 percent (37 of 53 respondents) said that they were extremely satisfied or very satisfied with the “overall experience.” Eighty-one (81) percent indicated that their last service request was resolved to their satisfaction. Respondents also provided helpful suggestions to enhance Helpdesk performance. The most frequent suggestions centered on the need for follow up by Helpdesk staff to ensure problems are corrected and keeping staff “in the loop” when repairs or “fixes” are spread over several hours or days.

While the results generally speak well of the service the Helpdesk provides, OIG observations and analysis suggest that there is still room for improvement. The Helpdesk has no policies and procedures for technicians to use, for example, when assigning priority levels to calls for assistance. (The priority assigned often determines the response time.) Consequently, the priority assigned to a service call is based on the technician’s own assessment as opposed to objective criteria. We found several instances where identical problems (e.g., “printer down” or “unable to log on to pc”) were assigned different priority levels, depending on the technician taking the call.

We had several concerns with the tracking system used to assign technicians and monitor outcomes. Most notably, we identified blocks of time where no calls were logged in and specific requests that were missing from the log. Without complete information on the number of service requests, the nature of the request, and the time required to respond to the request, the OIT director has an incomplete picture of Helpdesk performance.

Finally, the OIG noted that the tracking software used by the Helpdesk has unused features that could enhance OIT oversight of Helpdesk operations. We believe that staff should be trained in Helpdesk operations and the tracking software currently in use. By using more available features, customers could, for example, enter their service requests into the tracking system and track the status of their service requests, call escalation would occur automatically based on a predetermined time interval and trend analysis reports could be produced showing the kinds of problems staff experienced to determine whether systemic problems exist.

The OIT director told the OIG that he made policy changes in January 2010 to enhance service operations. While the impact of these changes will no doubt take time to materialize, the OIG made seven recommendations to enhance service efficiency and effectiveness in a shorter timeframe.

Audits or Evaluations with Fieldwork Ongoing

The OIG began three program evaluations and one audit during the reporting period.

In **A11-01, *Independent Evaluation Report of FMC's Implementation of FISMA for FY 2010***, the objectives are to (1) evaluate the agency's information system & security program and assess compliance with FISMA and related information security policies, procedures, standards and guidelines, (2) perform a vulnerability scan from an address outside FMC to identify vulnerabilities associated with hardware and software installed facing the Internet (open ports, missing patches, default or missing passwords, etc.), (3) evaluate responses to prior recommendations, and (4) review agency activities associated with its responsibilities under the Privacy Act.

In **OR11-01, *Program Evaluation of the Office of Consumer Affairs and Dispute Resolution Services***, the review objectives are to (i) document CADRS' mediation activities, including training, staff development and certifications; (ii) identify users of mediation services and how CADRS promotes its mediation services to consumers and the shipping industry; (iii) evaluate how CADRS tracks complaints and reports outcomes for its consumer affairs mission;

and (iv) assess the relationship between CADRS' dual consumer affairs and alternative dispute resolution missions. The evaluation was initially planned to begin in March 2010. However, per management's request, the OIG delayed fieldwork until July 2010.

The objective of the OIG's annual financial statement audit (A11-02) is to opine on whether the FMC's FY 2010 financial statements follow Generally Accepted Accounting Principles and present fairly the financial position of the agency. The OIG will also review internal control over financial reporting and agency compliance with laws and regulations. The statements to be audited are the Balance Sheets as of September 30, 2010 and 2009, and the related Statements of Net Cost, Statements of Changes in Net Position, Statements of Budgetary Resources, Statements of Financing and Statements of Custodial Activity. This will be the seventh consecutive year that the FMC prepared financial statements for audit.

INVESTIGATIVE ACTIVITIES

The Inspector General Act of 1978, as amended, provides that the IG may receive and investigate complaints or information concerning possible allegations of fraud, waste and abuse occurring within FMC programs and operations. Matters of possible wrongdoing are referred to the OIG in the form of allegations or complaints from a variety of sources, including FMC employees, other government agencies and the general public. During this reporting period, the OIG received 35 complaints. We responded to five of the complaints and forwarded 21 complaints to the appropriate FMC program area for disposition. Nine complaints were forwarded to other agency OIGs or programs with jurisdiction over the subject matter of the complaint.

OTHER OIG ACTIVITIES

Review of Legislation

As required by the Inspector General Act of 1978, as amended, the Office of Inspector General routinely reviews proposed legislation and regulations. The purpose of these reviews is to assess whether the proposed legislation or regulation (1) impacts the economy and efficiency of FMC programs and operations, and (2) contains adequate internal controls to prevent and detect fraud and abuse. During this period, the OIG reviewed various proposals to provide inspectors general with testimonial subpoena authority, to provide ombuds services to whistleblowers under the Whistleblower Protection Enforcement Act of 2009, and to improve public access to federal information, pursuant to the Transparency in Government Act.

The OIG also reviewed the agency's regulations, which were amended to reflect the agency's January 31, 2010 reorganization, and suggested revisions to reflect the appropriate reporting relationship between the inspector general and the agency.

Council of Inspectors General on Integrity and Efficiency Activities

The Council of Inspectors General on Integrity and Efficiency (CIGIE) was established by law as an independent entity by the Inspector General Reform Act of 2008 (P.L. 110-409) to:

- address integrity, economy and effectiveness issues that transcend individual government agencies; and
- increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the Offices of the Inspectors General.

The CIGIE is comprised of all inspectors general whose offices are established under section 2 or section 8G of the Inspector General Act of 1978, i.e., those that are Presidentially-appointed / Senate confirmed and those that are appointed by agency heads (designated federal entities), respectively. The IG is a member of CIGIE's Legislation and Integrity Committees.

The Legislation Committee is a centralized point-of-contact and liaison for CIGIE to ensure regular and ongoing communication with Congressional committees, committee staff and the Government Accountability Office regarding issues of common interest, and provides input to, and receives feedback from, the Congress on legislation affecting the IG community as a whole. The Integrity Committee is charged with receiving, reviewing, and referring for investigation, where appropriate, allegations of administrative (non-criminal) misconduct against inspectors general and designated senior staff members of the OIG. The Committee's membership consists of the Federal Bureau of Investigation's representative to the CIGIE, who serves as its Chairperson; the Special Counsel of the Office of Special Counsel, the Director of the Office of Government Ethics; and four federal inspectors general.

The Assistant Inspector General continues to participate in Federal Audit Executive Council (FAEC) activities. The FAEC is comprised of senior audit staff from agency OIGs that discuss and coordinate issues affecting the federal audit community - with special emphasis on audit policy and operations of interest to FAEC members. The OIG's Counsel participates in the Council of Counsels to the Inspector General (CCIG) activities. The CCIG consists of senior counsel from agency OIGs who discuss various legal issues that affect the OIG community.

The OIG also participated in a CIGIE project to study OIG hotlines. The goal of the study was to provide a basis for an internal CIGIE dialogue regarding hotline and complaint intake, offer recommendations and suggested actions for OIG Hotlines and provide suggestions for the IG Academy Hotline Operator Training Course. The effort resulted in a draft report for best practices, which was adopted by CIGIE to advance to the next phase of OIG hotline review.

Additionally, the OIG learned of a scheme that used the name of the FMC to perpetuate a scam on consumers. Fraudulent e-mails and correspondence, designed to look like the FMC's authentic Web page, informed unsuspecting consumers that they had won a lottery or sweepstakes. However, the "winners" needed to wire money or send a check for an amount between \$1,000 USD and \$10,000 USD before the winnings could be conveyed to settle accounts with the FMC. To protect potential victims from falling prey to this deception, OIG

prepared a scam alert to warn about the fraudulent scheme. The scam alert was posted on both the FMC and OIG websites. Based in part on the alert, the OIG received numerous inquiries from potential victims about the authenticity of the scam pitch. In many instances, we were able to thwart the scammer's intent and advised consumers not to fall prey.

Also, during the reporting period, pursuant to the Reform Act, OIG renewed an Memorandum of Understanding with the Architect of the Capitol OIG to provide legal services on a reimbursable basis.

Peer Review Activities

Federal Offices of Inspector General are required by the IG Act to have a peer review performed on their organization once every three years. These reviews are to be performed only by federal auditors. A committee of the CIGIE schedules the review to ensure that resources are available to perform them and that OIGs do not conduct reciprocal reviews.

The objectives of a peer review are to determine, for the audit function, whether an effective quality control system has been established in the office and if policies, procedures and applicable government auditing standards are being followed.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, was signed into law. Section 989(C) of the Act requires federal offices of inspector general to include in their semiannual reports to Congress, an appendix containing the results of any peer review conducted by another OIG during the reporting period, or if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another OIG. The most recent peer review of the FMC OIG was issued on March 12, 2010, outside of this reporting period. There are no unimplemented recommendations from this or any previous peer review. The peer review opinion is available on the OIG's webpage at www.fmc.gov/bureaus_offices/office_of_inspector_general.aspx.

Significant Management Decisions

If the IG disagrees with any significant management decision, Section 5(a)(12) of the Inspector General Act requires that such disagreement be reported in the semiannual report. Further, Section 5(a)(11) of the Act requires that any decision by management to change its response to a significant resolved audit finding must also be disclosed in the semiannual report.

For this reporting period, there were no significant management decisions made on which the IG disagreed, and management did not revise an earlier decision on an OIG audit recommendation.

Access to Information

The IG is to be provided with ready access to all agency records, information or assistance when conducting an investigation or audit. Section 6(b)(2) of the IG Act requires the IG to report to the agency head, without delay, if the IG believes that access to required information, records or assistance has been unreasonably refused, or otherwise has not been provided. A summary of each report submitted to the agency head in compliance with Section 6(b)(2) must be provided in the semiannual report in accordance with Section 5(a)(5) of the Act.

During the reporting period, the OIG did not encounter any difficulties in obtaining assistance or access to agency records. Consequently, no report was issued by the IG to the agency head in accordance with Section 6(b)(2) of the IG Act.

Audit Resolution

As of the end of this reporting period, all OIG audit recommendations for reports issued in prior periods have been resolved. That is, management and the OIG have reached agreement on what actions need to be taken. As noted below, six of these recommendations remain open past one year.

Inspector General's Semiannual Report to Congress

<u>Short Title</u>	<u>Report Issue Date</u>	<u>Open Rec.(s)</u>	<u>Elapsed Months (as of 9/30/10)</u>
1. Bureau T&A Practices	6/30/09	4	15
2. Privacy & Data Protection	9/22/08	5, 7	24
3. FISMA Evaluation for 2008	9/22/08	9	24
4. FISMA Evaluation for 2006	10/2/06	4	47
5. Accuracy of Enforcement Databases	3/31/06	3	54

The oldest recommendation (54 months) involves “Pay.Gov,” a payment system available to all federal agencies that enables agency customers to make secure electronic payments to the agency directly from their bank account or by credit/debit card. The FMC still processes the majority of its transactions with customers, including regulated entities, by bank check. In its most recent recommendation update, management told the OIG that it will implement Pay.Gov when it implements other information technology modernization projects. Management estimates that this will occur by March 2011.

Contacting the Office of Inspector General

Employees and the public are encouraged to contact the OIG regarding any incidents of possible waste, fraud or abuse occurring within FMC programs and operations. The OIG telephone number is **(202) 523-5863**. To report suspected wrongdoing, employees or the public may call the OIG Hotline on **(202) 523-5865**. A confidential or anonymous message can be left 24 hours a day. Complaints or allegations of fraud, waste or abuse can also be emailed directly to the Inspector General at oig@fmc.gov or to <https://www2.fmc.gov/oigcomplaints/> (if the complainant wishes to remain anonymous).

SUMMARY OF INSPECTOR GENERAL REPORTING REQUIREMENTS

IG Act Reference	Reporting Requirement	Page(s)
Section 4(a)(2)	Review of legislation and regulations	8
Section 5(a)(1)	Significant problems, abuses and deficiencies	None
Section 5(a)(3)	Prior significant recommendations on which corrective actions have not been made	11
Section 5(a)(4)	Matters referred to prosecutive authorities	7
Section 5(a)(5)	Summary of instances where information was refused	11
Section 5(a)(6)	List of audit reports by subject matter	3
Section 5(a)(7)	Summary of each particularly significant report	3
Section 5(a)(8)	Statistical tables showing number of reports and dollar value of questioned costs	14
Section 5(a)(9)	Statistical tables showing number of reports and dollar value of recommendations that funds be put to better use	15
Section 5(a)(10)	Summary of each audit issued before this reporting period for which no management decision was made by the end of the reporting period	None
Section 5(a)(11)	Significant revised management decisions	None
Section 5(a)(12)	Significant management decisions with which the inspector general disagrees	None

TABLE I

INSPECTOR GENERAL ISSUED REPORTS WITH QUESTIONED COSTS

		<u>Dollar Value</u>	
	<u>Number</u>	<u>Questioned Cost</u>	<u>Unsupported Costs</u>
A. For which no management decision has been made by the commencement of the reporting period	0	0	0
B. Which were issued during the reporting period	0	0	0
Subtotal (A + B)	0	0	0
C. For which a management decision was made during the reporting period	0	0	0
(i) dollar value of disallowed costs	0	0	0
(ii) dollar value of costs not disallowed	0	0	0
D. For which no management decision has been made by the end of the reporting period	0	0	0
E. Reports for which no management decision was made within six months of issuance	0	0	0

TABLE II

**INSPECTOR GENERAL ISSUED REPORTS WITH RECOMMENDATIONS
THAT FUNDS BE PUT TO BETTER USE**

	<u>Number</u>	<u>Dollar Value</u>
A. For which no management decision has been made by the commencement of the reporting period	0	0
B. Which were issued during the reporting period	0	0
Subtotal (A +B)	0	0
C. For which a management decision was made during the reporting period	0	0
(i) dollar value of recommendations that were agreed to by management	0	0
(ii) dollar value of recommendations that were not agreed to by management	0	0
D. For which no management decision has been made by the end of the reporting period	0	0
E. Reports for which no management decision was made within six months of issuance	0	0

HOTLINE COMPLAINTS

The success of the OIG mission to prevent fraud, waste and abuse depends on the cooperation of FMC employees and the public.

A COMPLAINT CAN BE REPORTED BY CALLING OUR 24-HR DIRECT LINE

(202) 523-5865

E-MAIL ADDRESS:

<https://www2.fmc.gov/oigcomplaints/>

TO PLACE A COMPLAINT IN WRITING PLEASE MAIL TO:

**Federal Maritime Commission
Office of Inspector General
Room 1054
800 North Capitol Street, NW
Washington, DC 20573**

To Be Opened By the IG Only

THE INFORMATION YOU PROVIDE IS CONFIDENTIAL AND YOU CAN BE ANONYMOUS

**HOWEVER, CALLERS ARE ENCOURAGED TO ASSIST THE INSPECTOR GENERAL BY
SUPPLYING INFORMATION AS TO HOW THEY MAY BE CONTACTED FOR ADDITIONAL INFORMATION**