

Office of Inspector General

Semiannual Report to the Congress

Covering the Period
October 1, 2010—March 31, 2011



FEDERAL MARITIME COMMISSION



FEDERAL MARITIME COMMISSION
Washington, DC 20573

April 28, 2011

Office of Inspector General

Dear Chairman Lidinsky and 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 October 1, 2010, to March 31, 2011. 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 five audits/evaluations of Federal Maritime Commission (FMC) programs or activities, and began one program evaluation. We also commenced planning activities for the OIG's annual information security evaluation pursuant to the Federal Information Security Management Act (FISMA) and began a peer review of the audit operations at another federal OIG.

Also during this reporting period, the OIG received 50 complaints. We responded to 27 of the complaints and forwarded 18 complaints to the appropriate FMC program area for disposition. Five 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 began meetings with various congressional staff with jurisdiction over the FMC. We continue to respond to consumers who were victimized as part of an internet scam operation using FMC indicia, assisted another federal OIG to select financial statement auditors and FISMA evaluators, and worked with the agency's Office of the General Counsel to develop coordination guidelines for investigation of ethics matters and to amend two Commission Orders dealing with OIG activities. I or OIG staff participated in several activities pertaining to the Council of Inspectors General on Integrity and Efficiency (CIGIE), including actively serving on the Legislation Committee and Integrity Committee, the Federal Audit Executive Council and the Council of Counsels to Inspectors General.

At the close of this semi-annual period, there were 22 recommendations that are between 13 and 60 months old that are pending management action to close them. The oldest recommendation, to implement a paperless bill-paying process (identical to those used by most federal agencies - Pay.gov.), is a "green" alternative to the current paper based process that would be more efficient for agency staff and consumers alike.

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 October 1, 2010, through March 31, 2011. During this period we issued five audits/evaluations of FMC programs or activities, and began one program evaluation. We also commenced planning activities for the OIG's annual information security evaluation pursuant to the Federal Information Security Management Act (FISMA) and began a peer review of the audit operations at another federal OIG.

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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) 2011, the Commission operated under a continuing resolution at FY 2010 levels. The FY 2010 appropriation was \$24.1 million.

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 \$750,000.

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 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) information technology security, (ii) data protection and privacy and (iii) docket processing procedures and efficiencies. We completed two audits: the FY 2010 Financial Statement Audit and the accompanying management letter. We also began an evaluation of the transportation intermediary bond program and began planning for the FY 2011 Federal Information Security Management Act compliance evaluation.

Issued Audits and Reviews

<u>Audit Report Number</u>	<u>Subject of Audit</u>
A11-01	Evaluation of FMC Implementation of the Federal Information Security Management Act for FY 2010
A11-01A	Review of FMC's Data Protection and Privacy Act Implementation for FY 2010
A11-02	Audit of FMC's FY 2010 Financial Statements
A11-02A	FY 2010 Management Letter to the Financial Statements
OR11-01	Review of the Office of Consumer Affairs and Dispute Resolution Services, Informal Docket Processing

Summary of Audits and Reviews Issued During the Current Period

In A11-01, *Evaluation of FMC Implementation of the Federal Information Security Management Act for FY 2010*, the objectives were to (1) assess compliance with FISMA and related information security policies, procedures, standards and guidelines. The OIG contracted with information security consultants to perform an independent evaluation of the FMC security program.

The FMC has taken steps to protect the agency's systems – most important is the accreditation two years ago of its Network and SERVCON applications - and has made progress in mitigating weaknesses that led to the prior years' significant deficiencies concerning IT risk and recovery planning. All FMC staff and contractors completed annual computer security awareness training by the end of FY 2010.

On the other hand, two systems remain in production (i.e., operation) without assessment of risk to these systems and the data each houses. The two systems are the agency's "Form-1," an Internet-based form to collect tariff internet addresses and other specific organizational information from ocean common carriers, transportation intermediaries and marine terminal operators; and "Form-18," the agency's internet-based transportation intermediary license application. Without developing certification and accreditation packages for these systems, FMC is unable to identify all of the risks that may be associated with operating these systems. As a result, FMC data may be exposed to unknown vulnerabilities and may not have the safeguards in-place to prevent unauthorized use, disclosure and modification of FMC data.

In **A11-01A, *Review of FMC's Data Protection and Privacy Act Implementation for FY 2010***, the OIG oversaw an independent third-party review of agency use of personally identifiable information (PII) and its privacy and data protection policies and procedures. PII is information that can be used alone to distinguish or trace individuals' identity, such as their name, social security number, biometric records, etc., or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. This evaluation satisfies the required third-party review.

The FMC has made progress in implementing privacy and data protection practices since our 2008 review. For example, it updated its Incident Response Policy to include breach-related procedures, prepared draft privacy impact assessment (PIA) policies and templates and completed select PIAs. The Senior Agency Official for Privacy has taken a more active role in

data protection activities and the agency's annual security awareness training includes sections on privacy and data protection.

We also noted areas where improvement is possible. The agency needs to finalize its policies and procedures and perform federally-required PIAs on all agency systems that require a PIA. Further the agency has not performed a risk assessment for FMC-18 (on-line license application form) and there is no assurance that appropriate controls have been implemented.

In **A11-02, *Audit of the Federal Maritime Commission's Financial Statements for the Fiscal Years Ended September 30, 2010 and September 30, 2009***, the objective was to opine on whether the agency's financial statements follow Generally Accepted Accounting Principles and present fairly the financial position of the agency. The statements audited were 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, for the years then ended. This was the seventh consecutive year that the FMC prepared financial statements for audit. As in the six prior years, the agency received an unqualified opinion, the highest opinion given by independent auditors.

In its audit of the Federal Maritime Commission, the independent auditor found that the financial statements were fairly presented, in all material respects, in conformity with generally accepted accounting principles; there were no material weaknesses in internal control over financial reporting (including safeguarding assets) and there was no reportable noncompliance with laws and regulations tested.

The FY 2010 audited statements provide insight into the mission and operations of the agency. The FMC has a single source of funds, Salaries and Expenses, funded by an annual appropriation that is available for commitments and obligations incurred during the fiscal year in which the authority was granted. The FMC's appropriation level for FY 2010 was \$24,135,000. This represents a net increase in appropriation level of \$1,335,000 over FY 2009. Of total authority, approximately 70 percent went to salaries and benefits. The FMC collects remittances for user fees and penalties, but is not authorized to offset any of its budget authority by utilizing

these funds. The collections are deposited directly into the Treasury General Fund, and captured in the Statement of Custodial Activity.

The OIG review of internal control over financial reporting did not find any matters involving the internal control over its operations that were considered material weakness in the systems and processes we tested. On the other hand, the OIG did identify vulnerabilities in agency financial and procurement practices that warranted some corrective actions. These findings are presented in **A11-02A, *FY 2010 Management Letter to the Financial Statements***.

This year's management letter contains the status of five prior-year findings and four current-year findings. Two of the current year findings involved procurement issues, specifically, the failure to follow Federal Acquisition Regulation requirements pertaining to vendor competition and selection.

In **OR11-01, *Review of the Office of Consumer Affairs and Dispute Resolution Services, Informal Docket Processing***, the review objective was to assess how efficiently the Office of Consumer Affairs and Dispute Resolution Services (CADRS) processed informal dockets opened in fiscal years 2005 through 2009. Adjudicated dockets issued between fiscal years 2005 – 2009 resulted in reparations to consumers totaling \$189,739.

We found that CADRS made recent strides in closing backlogged dockets, starting with the decision by the former director to contract with a retired FMC employee to focus on open dockets and the efforts of the current director to convert these dockets into final decisions. CADRS also adopted operating procedures that should help to ensure that dockets are processed uniformly. Written procedures are especially important as CADRS considers staff additions to enhance its outreach mission.

Notwithstanding recent improvements, the OIG believes that further enhancements in processing efficiencies are possible. Many applicants have struggled with the informal docket application, resulting in withdrawn applications or extra staff time to assist applicants. CADRS

also lacked an effective means to keep the informal dockets moving, and to close them.

The OIG made six recommendations to improve docket processing. These involve all areas of the docket lifecycle. Perhaps most importantly, we recommended that the Commission simplify the filing process and that CADRS implement a formalized case management system. Management has already taken steps to address the findings and has begun to implement the OIG's recommendations.

Audits or Reviews with Fieldwork Ongoing

The OIG began a compliance review near the end of the reporting period. In **OR11-XX, *Review of the Financial Responsibility (Bond) Program in the Bureau of Certification and Licensing***, the objective is to assess processes in place to ensure compliance with Part 515 of the Shipping Act, Subpart C, Financial Responsibility Requirements; Claims Against Ocean Transportation Intermediaries.

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 50 complaints. We responded to 27 of the complaints and forwarded 18 complaints to the appropriate FMC program area for disposition. Five 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.

Additionally, the OIG continues to work with the agency's Office of General Counsel concerning an ongoing Internet scam that attempts to defraud the public by, among other things,

using the agency's official insignia. The OIG also consulted with the agency about its proposed actions in response to an employee who alleged a privacy breach.

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 did not review legislation affecting the FMC. However, we commented on five draft Commission Orders providing internal policy and direction on various internal practices.

Council of Inspectors General on Integrity and Efficiency Activities

The Council of Inspectors General on Integrity and Efficiency (CIGIE) was established by the Inspector General Reform Act of 2008 (P.L. 110-409) as an independent entity 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 that are Presidentially-appointed / Senate confirmed and those that are appointed by agency heads (designated federal entities), respectively.

The OIG remains active in the CIGIE operations. For example, 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 common interest to FAEC members. The Counsel to the Inspector General 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.

Additionally, the OIG counsel participated in a CCIG working group to develop a training course on IG Authorities, which will be sponsored by CIGIE through the CIGIE Training Institute. This was one of two working groups tasked with developing training curricula for OIG attorneys. These two courses are the first in a series of legal courses the CCIG plans to develop. The goal is to provide training to OIG attorneys that will address the unique legal needs of the OIG community. The two courses are expected to launch in the next few months.

Also, during the reporting period, in accordance with the Inspector General Reform Act, FMC/OIG provided legal services, on a reimbursable basis, to both the Architect of the Capitol OIG and the United States Capitol Police OIG, pursuant to a Memorandum of Understanding.

Peer Review Activities

Federal Offices of Inspector General are required by the IG Act to have a peer review performed 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.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111-203, requires federal offices of inspectors 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 March 2010 peer review opinion is available on the OIG's webpage at www.fmc.gov/bureaus_offices/office_of_inspector_general.aspx.

During this reporting period, the OIG initiated a peer review of another federal OIG pursuant to *Government Auditing Standards* requirements. A draft report will be issued to the reviewed-OIG and be reported in the subsequent semiannual report to Congress.

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, 22 of these recommendations remain open past one year.

<u>Short Title</u>	<u>Report Issue Date</u>	<u>Open Rec.(s)</u>	<u>Elapsed Months (as of 3/31/11)</u>
1. FISMA Evaluation for 2009	1/28/10	14	13
2. Bureau Timekeeping Practices	6/30/09	1	21
3. Agency Checkout Process	1/12/09	2	26
4. Privacy & Data Protection	9/22/08	2	30
5. FISMA Evaluation for 2008	9/22/08	1	30
6. FISMA Evaluation for 2006	10/2/06	1	53
7. Accuracy of Enforcement Databases	3/31/06	1	60

The oldest recommendation (60 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 accounts or by credit/debit cards. The FMC still processes the majority of its transactions with customers, including regulated entities, by bank check. In recent updates, management told the OIG that it will implement Pay.gov with other information technology modernization projects. However, in its April 26, 2011, update on open recommendations, management informed that it will now separate Pay.gov implementation from these projects. Pay.gov implementation will commence in May 2011 and be completed in the first quarter of FY 2012.

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 to [**oig@fmc.gov**](mailto:oig@fmc.gov) or to [**https://www2.fmc.gov/oigcomplaints/**](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	12
Section 5(a)(4)	Matters referred to prosecutive authorities	None
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	3-7
Section 5(a)(8)	Statistical tables showing number of reports and dollar value of questioned costs	15
Section 5(a)(9)	Statistical tables showing number of reports and dollar value of recommendations that funds be put to better use	16
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	11

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**