

Office of Inspector General

Semiannual Report to the Congress

Covering the Period
April 1, 2009 to September 30, 2009



FEDERAL MARITIME COMMISSION



FEDERAL MARITIME COMMISSION
Washington, DC 20573

October 30, 2009

Office of Inspector General

The Honorable Richard A. Lidinsky, Jr.
Chairman
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington D.C., 20573

Dear Chairman Lidinsky:

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, 2009, to September 30, 2009. 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 of FMC operations and performed a desktop scan for prohibited (Internet surfing) activities. The OIG also revisited agency fee-setting processes with the Office of Administration and met with the FMC webmaster to discuss best practices regarding webpage design. The OIG performed fieldwork on the annual financial statement audit and the Federal Information Security Management Act evaluation and opened one additional audit of contract administration on two technology-related contracts.

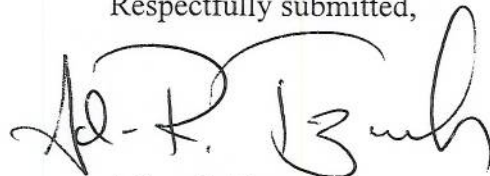
Also during this reporting period, the OIG processed 18 complaints and numerous information requests. Of the 18 complaints received, we forwarded 15 complaints to the appropriate FMC program area for disposition and two complaints to other agency OIGs with jurisdiction over the subject of the complaint. The remaining one complaint led to a preliminary investigation that was closed in the reporting period. The OIG referred no matters to prosecutorial authorities during this period.

The OIG responded to the House Committee on Oversight and Government Reform, Ranking Minority Member's request regarding open (unimplemented) OIG recommendations. On a separate matter, the Inspector General briefed Senate Commerce Committee staff, at staff's request, on background information concerning agency and OIG program activities.

In addition to these audit and investigative activities and outcomes, the Inspector General participated in several activities pertaining to the Council of Inspectors General on Integrity and Efficiency (CIGIE), including actively serving on the Legislation Committee where the IG reviewed and commented on several legislative initiatives affecting the OIG community. The OIG also performed a peer review of a sister OIG at the U.S. Election Assistance Commission. The objectives of a peer review are to determine whether an effective quality control system has been established in the office and if policies, procedures and applicable Government Auditing Standards are being followed.

As in the past, management has been responsive in attempting to implement all OIG 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,

A handwritten signature in black ink, appearing to read "A. R. Trzeciak". The signature is fluid and cursive, with a large loop at the end.

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, 2009, through September 30, 2009. During this period we issued five audits of FMC operations and performed a desktop scan for prohibited (Internet surfing) activities. The OIG also revisited Commission fee-setting processes with the Office of Administration and met with the FMC webmaster to discuss best practices regarding webpage design. The OIG performed fieldwork on the annual financial statement audit and the Federal Information Security Management Act evaluation and opened one additional audit of contract administration on two technology-related contracts.

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Details on these and other activities are provided below.

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) 2009, the Commission was appropriated \$22.8 million to fund 124 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, two at-large area representatives operate from Washington, D.C.

The FMC's Office of Inspector General was established in 1989 as required by the Inspector General Act Amendments of 1988 (5 U.S.C. app. §8G). The OIG is an independent audit and investigative unit headed by an Inspector General (IG) who reports directly to the

Chairman of the FMC. To aid the FMC in accomplishing its mission, the OIG was provided two full-time staff, one part-time staff and a budget of \$572,000 for Fiscal Year 2009.

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, the President of the Senate, the Speaker of the House and FMC's appropriating and authorizing committees. This dual reporting requirement facilitates and ensures the independence of the Office.

AUDITS/EVALUATIONS

During this semiannual period, the OIG issued five audits of select FMC bureau / office time and attendance practices and performed a desktop scan for prohibited (Internet surfing) activities. The OIG also revisited agency fee-setting activities with the Office of Administration and performed fieldwork on the annual financial statement audit and the Federal Information Security Management Act (FISMA) evaluation. Also during this reporting period, the OIG began fieldwork on an audit of contract administration of two technology-related contracts.

Issued Audits and Reviews

<u>Audit Report Number</u>	<u>Subject of Audit</u>
A09-03	Review of the Office of the General Counsel Time & Attendance Practices
A09-04	Review of the Bureau of Certification and Licensing Time & Attendance Practices
A09-05	Review of the Office of the Secretary Time and Attendance Practices
A09-06	Review of the Bureau of Trade Analysis Time and Attendance Practices
A09-07	Review of the Office of Consumer Affairs and Dispute Resolution Services Time and Attendance Practices

Summary of Audits Issued During the Current Period

In A09-03 through A09-07, (*audits of FMC bureau / office time and attendance practices*), the OIG expanded a review, from the prior reporting period, of one FMC bureau. In that audit, we found internal control vulnerabilities over time and attendance (T&A) reporting that would enable timekeepers to alter attendance records with little or no risk of detection. Based on this and other findings, the OIG broadened its scope to perform similar reviews in other bureaus and offices to determine if similar vulnerabilities existed and to assess compliance with Office of Personnel Management (OPM) and FMC T&A reporting regulations.

The OIG found that agency bureaus and offices generally complied with OPM and agency requirements. We did not identify payroll abuse or fraud, but we did find practices that bypassed controls designed to ensure the integrity of the T&A process. For example, payroll clerks have access to their time and attendance records. While we found only very limited instances where payroll clerks entered their own attendance information into the T&A system

(this was done on an exception basis when alternate timekeepers were not available to enter the information), they could, at any time, access their records to alter, for example, leave usage records. We also identified numerous instances across the offices reviewed where employees did not submit leave slips prior to taking leave. In all instances, staff and office heads told the OIG that, although leave was not recorded on leave slips, it was recorded on daily arrival/departure records submitted by employees at the conclusion of each pay period.

Overall the OIG noted little uniformity among the bureaus / offices in implementing their T&A procedures. Some staff requested leave on OPM leave slips, others used agency arrival / departure records; still others used email to report leave planned or used. The OIG noted outdated employee work schedules on file identifying incorrect arrival / departure times, alternative work schedules and work-at-home schedules. We also identified inadequate guidance for employees on the use of worker's compensation time off requests. The OIG identified two instances where employees erred in following regulations, resulting in the employees using personal sick leave for work-related injuries.

The OIG made several recommendations to address both systemic vulnerabilities that cut across bureaus and offices and those that pertain to individual offices. The OIG is also compiling best practices used among FMC bureaus and offices to efficiently and effectively implement controls over time and attendance reporting. The report will be provided to agency managers and the agency's Office of Financial Management as a source document for planned revisions to the agency's T&A manual.

The OIG also performed an inspection of agency desktop computers to look for abusive practices, to include "surfing" the Internet for pornography and gambling sites. While the FMC allows for *de minimis* usage of agency equipment before or after work, or during lunch breaks, it

has a zero-tolerance policy for use of agency equipment to gamble or view pornographic images. The OIG was assisted on this scan by special agents of the U. S. Social Security Administration OIG.

The OIG selected 27 desktops for review. Due to technical problems concerning the compatibility of the scan tool with select desktop computers, we were only able to thoroughly review 12 (about 10 percent) of the agency's desktops. The OIG found no instances where employees visited either pornographic or gambling sites on agency computers. However, we did note that, unlike many other federal agencies, the FMC does not block any sites, including the aforementioned-forbidden sites. While the results of our inspection indicate that blocking software may not be needed, the OIG notes that the sample included only 10 percent of the employees and plans to do similar scans in the future to ensure compliance with agency prohibitions.

Also during the period, the OIG met with representatives from the Office of the Secretary (OS), at the OS's request, to discuss (i) a large scale acquisition for the agency's webpage reconstruction and (ii) OIG suggestions for improvements of the webpage. Regarding the former, OS managers sought acquisition advice from the OIG to ensure procurement regulations were not violated in a complicated procurement transaction.

Audits and Reviews in Process

The OIG commenced fieldwork on two agency-wide audits and evaluations required by legislation. The objective of the OIG's annual financial statement audit is to opine on whether the FMC's FY 2009 financial statements fairly present the financial position of the agency. As part of the audit, the OIG also reviews internal control over financial reporting and agency compliance with laws and regulations. The OIG also commenced fieldwork on agency compliance with the Federal Information Security Management Act of 2002. The objective of

this evaluation is to provide the FMC with information needed to determine the effectiveness of its information security programs.

In addition to these legislatively-mandated audits / evaluations, the OIG also began fieldwork on a review of two agency contracts. The objective of these reviews is to assess whether contract requirements are being met, the agency exercises sufficient oversight over contractor performance and systems are in place to accurately monitor contractor billing.

Finally, the OIG also reopened a review of various aspects of the FMC's process to set user fees for agency 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.

During the initial review begun in a prior reporting period, the OIG determined that the agency followed a process that incorrectly set its user fees for various mission-related services, resulting in user fees that understated the agency's costs to provide these services. The OIG reported the finding to management who then took immediate steps to reexamine its calculations in light of our findings. This subsequent review will opine on the accuracy of those calculations.

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 18 complaints. We forwarded 15 complaints to the appropriate FMC program area for disposition and two complaints to other agency OIGs with jurisdiction over the subject matter of the complaint. The remaining complaint was investigated by the OIG and was closed without further action.

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 the following proposed and / or enacted pieces of legislation with agency and OIG community impact: the Data Breach Notification Act of 2009, the Whistleblower Protection Enforcement Act of 2009, The Government Efficiency, Effectiveness and Performance Improvement Act of 2009, the Government Charge Card Abuse Prevention Act of 2009, Paperwork Reduction Act Amendments and various proposals to provide inspectors general with testimonial subpoena authority.

The OIG also reviewed a number of Commission Orders / policy guidelines and suggested revisions where appropriate. Most notably the OIG revised an internal Commission Order concerning Audit Follow Up.

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 OIG remains active in the Council of Inspectors General on Integrity and Efficiency, and the IG was appointed to CIGIE's Legislation Committee. The Committee is a centralized point-of-contact and liaison for CIGIE to ensure regular and ongoing communication with Congressional committees, committee staff and 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 Inspector General and Assistant Inspector General continued to participate in CIGIE and the 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.

Also in the reporting period, the OIG completed a peer review of a sister OIG at the U. S. Election Assistance Commission. The objectives of a peer review are to determine whether an effective quality control system has been established in the office and if policies, procedures and applicable Government Auditing Standards are being followed. All 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. Review results are posted to the U.S. Election Assistance Commission webpage.

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 of the conclusion of the reporting period, 25 recommendations remain open, i.e., management and OIG agree as to the action that management needs to take but management has not yet taken the action to close them.

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. To speak to OIG staff about suspected wrongdoing, waste or abuse, FMC employees and the public can call the OIG main line telephone number (202) 523-5863. FMC employees or the public can also report suspected wrongdoing on the OIG's hotline (202) 523-5865 where a confidential message can be left 24 hours a day. Complaints or allegations of fraud, waste or abuse can also be made directly to the inspector general at <https://www2.fmc.gov/OIGComplaints/>. This link enables the sender to remain anonymous.

**INDEX OF INSPECTOR GENERAL REPORTING REQUIREMENTS
(IG Act Section and Semiannual Report Page Number)**

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	10
Section 5(a)(4)	Matters referred to prosecutive authorities	1 - 7
Section 5(a)(5)	Summary of instances where information was refused	10
Section 5(a)(6)	List of audit reports by subject matter	4
Section 5(a)(7)	Summary of each particularly significant report	4 - 6
Section 5(a)(8)	Statistical tables showing number of reports and dollar value of questioned costs	13
Section 5(a)(9)	Statistical tables showing number of reports and dollar value of recommendations that funds be put to better use	14
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	10
Section 5(a)(12)	Significant management decisions with which the inspector general disagrees	10

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

AN ANONYMOUS COMPLAINT TO THE INSPECTOR GENERAL CAN BE MADE ON THE INTERNET AT:

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

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

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