

Whistleblower Protection Enhancement Act of 2012

On November 27, 2012, President Obama signed the Whistleblower Protection Enhancement Act of 2012 (WPEA), which amended the Whistleblower Protection Act of 1989. WPEA provides enhanced protection for government whistleblowers by expanding the scope of protection and judicial review.

The Federal Maritime Commission's (FMC) leadership takes very seriously the protections afforded to whistleblowers under WPEA and has taken several actions to implement WPEA at FMC.

Whistleblower Retaliation Complaint. Whistleblower retaliation is prohibited. Anyone who believes they have been the victim of whistleblower retaliation may file a written complaint (Form OSC-11) with the U.S. Office of Special Counsel, 1730 M Street, NW, Suite 218, Washington, DC 20036-4505 or online through the OSC website at <https://osc.gov>.

Questions regarding the actions or information outlined below, or other aspects of WPEA, can be referred to Paul Schofield in the Office of the General Counsel. The following links provide further information on whistleblowing and whistleblower retaliation.

[Agency Actions and Information Regarding the Whistleblower Protection Enhancement Act of 2012 \(WPEA\)](#)

Nondisclosure Agreements. The WPEA requires that any nondisclosure policy, form or agreement (known as an NDA) now include the statement set out below, and provides that NDAs executed by FMC without the language may be enforced as long as FMC provides notice of this statement. Job applicants and staff of FMC may have been required to sign an NDA to access classified or other information. The Classified Information Nondisclosure Agreement (Standard Form 312) and other NDAs have been revised in accordance with the WPEA to include the language below. However, even if a signed NDA did not include the required new language, the NDA should be read as if the following statement were incorporated into any nondisclosure policy, form, or agreement that may have been signed or which is enforced by the FMC:

"These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to:

**classified information,*

**communications to Congress,*

**the reporting to an Inspector General of a violation of any law, rule or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or*

**any other whistleblower protection.*

The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."

The following executive orders and statutory provisions control in the case of any conflict with an agency NDA:

- Executive Order No. 13526;
- Section 7211 of Title 5, United States Code (governing disclosures to Congress);
- Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military);
- Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act of 1989 (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats);
- Intelligence Identities Protection Act of 1982 (50 U.S.C. § 421 et seq.) (governing disclosures that could expose confidential government agents);
- The statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of Title 18, United States Code; and
- Section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. § 783(b)).

Disclosures Involving Classified Information. The U.S. Office of Special Counsel (OSC) can provide advice on making confidential disclosures, as well as disclosures involving classified information. See more information on OSC's website at <https://osc.gov>. In addition to OSC, classified disclosures may be made to Congress or other person designated to receive such disclosures.