

Office of Inspector General

Semiannual Report to the Congress

**Covering the Period
October 1, 2011—March 31, 2012**



FEDERAL MARITIME COMMISSION



FEDERAL MARITIME COMMISSION
Washington, DC 20573

April 27, 2012

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, 2011, to March 31, 2012. 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 four audits/evaluations of FMC programs or activities and began one audit. We identified four management and performance challenges for inclusion in the FMC's FY 2011 Performance and Accountability Report. These assessments were based on information derived from a combination of sources, including OIG audit and inspection work, Commission reports, and a general knowledge of the Commission's programs. We also prepared a new Statement of Work in preparation for recompleting our annual financial statement audit among independent public accounting firms.

During this reporting period, the OIG received seven complaints: We responded to three of the complaints and forwarded four complaints to the appropriate FMC program areas for disposition or 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, OIG staff held information sharing sessions with agency staff to identify and clarify the various OIG activities that assist in accomplishing the OIG's mission to prevent and eliminate waste, fraud, abuse and mismanagement, and to promote efficiency and effectiveness. OIG staff also visited FMC area representatives in South Florida to enhance our understanding of the functions and activities performed by FMC area offices and, while there, gave a presentation to several members of the Miami business community and local government leaders about the role of federal inspectors general. We continued to respond to consumers who were victimized as part of an internet scam operation using FMC indicia and worked with the agency's Office of the General Counsel to draft Commission regulations pertaining to IG reporting requirements as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203).

As of March 31, 2012, 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. Fourteen of these recommendations remain open, i.e., unimplemented, between 16 and 72 months. This represents a 33 percent reduction in open recommendations from the prior period, with the largest decrease occurring in the annual information security reviews. The oldest recommendation, to implement a paperless bill-paying process, is a “green” alternative to the current paper based process that would be more efficient for agency staff and its customers.

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) for the period October 1, 2011 through March 31, 2012. During this period we issued four audits/evaluations of FMC programs or activities and began one audit. We identified four management and performance challenges for inclusion in the FMC's fiscal year (FY) 2011 Performance and Accountability Report. These assessments were based on information derived from a combination of sources, including OIG audit and inspection work, Commission reports, and a general knowledge of the Commission's programs. We also prepared a new Statement of Work in preparation for recompleting our annual financial statement audit among independent public accounting firms.

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BACKGROUND

The FMC is an independent agency responsible for the regulation of oceanborne 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 FY 2012, the Commission was appropriated \$24.1 million and is authorized 132 full-time equivalent positions.

Although the majority of FMC personnel is located in Washington, D.C., the Commission 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 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 \$727,322.

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 helps to ensure the independence of the OIG.

AUDITS/EVALUATIONS

During this semiannual period, the OIG issued two audits of the FMC's financial operations and two program evaluations pertaining to information technology security and select Bureau of Enforcement compliance activities. We also began an evaluation of the transportation subsidy program. Details on these audits and evaluations are provided below.

Issued Audits and Reviews

<u>Audit Report Number</u>	<u>Subject of Audit</u>
A12-01	Audit of FMC's FY 2011 Financial Statements
A12-01A	Management Letter to the FY 2011 Financial Statements
A12-02	Evaluation of FMC Implementation of the Federal Information Security Management Act for FY 2011
OR12-01	Review of the Compliance Audit Program in the Bureau of Enforcement

Summary of Audits and Reviews Issued During the Current Period

In A12-01, *Audit of the Federal Maritime Commission's Financial Statements for the Fiscal Years Ended September 30, 2011 and September 30, 2010*, the objective was to opine on whether the agency's financial statements follow Generally Accepted Accounting Principles

(GAAS) and present fairly the financial position of the agency. The statements audited were the Balance Sheets as of September 30, 2011 and 2010, and the related Statements of Net Cost, Statements of Changes in Net Position, Statements of Budgetary Resources and Statements of Custodial Activity, for the years then ended. This was the eighth consecutive year that the FMC prepared financial statements for audit. As in the seven prior years, the agency received an unqualified opinion, the highest opinion given by independent auditors.

The independent auditor opined that the Federal Maritime Commission's financial statements were fairly presented, in all material respects, in conformity with GAAS; 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 2012 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. Congress approved FY 2011 appropriations in the amount of \$24,086,730. Almost 75 percent of the annual appropriation goes to fund salaries and benefits; most of the remaining appropriated funds is used on rent, government and commercial contracts, furniture, printing and equipment maintenance. Less than one percent is spent on travel expenses. 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, deposited directly into the Treasury General Fund, totaled \$2.43 million in FY 2011, double the collections in the prior year.

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 identified vulnerabilities in agency financial and procurement practices that warranted some corrective actions. These findings are presented in **A12-01A, *Management Letter to the FY 2011 Financial Statements***. This year's management letter contains the status of seven prior-year findings and three current-year findings.

In A12-02, *Evaluation of FMC Implementation of the Federal Information Security Management Act for FY 2011*, the objective was to evaluate the FMC's security posture by assessing compliance with the Federal Information Security Management Act (FISMA) and related information security policies, procedures, standards and guidelines. The scope of this task included the FMC Network and applications housing service contracts, tariff location filings and FMC license applications. The OIG also assessed management actions to implement the OIG recommendations and documented the status of prior recommendations. The FY 2011 report contains 12 subject matter findings and 20 recommendations for corrective actions.

One particularly noteworthy finding involves the agency's IT contingency planning process. Beginning in FY 2006, the OIG issued security evaluation findings critical of the agency's Continuity of Operations Plan (COOP) and its disaster recovery planning, including the need for plans to address power outages and hardware failures. In November 2007, the OIG reported that the FMC's emergency procedures documentation did not address IT recovery in sufficient detail and omitted the FMC network entirely. We warned that the FMC was likely to experience delays in recovering IT operations after an emergency. In our 2009 evaluation, we again noted that the FMC lacked an adequate contingency planning program, to include policies, procedures, testing and documentation, and in FY 2010 warned management of likely delays when recovering from a system failure due to incomplete and untested contingency planning.

In June 2011, the agency experienced a massive power outage that affected critical business operations because the agency could not rely on its COOP site and its disaster recovery plan to take over for the temporarily non-functioning FMC servers. Commission staff was without email, phones and internet access for over 48 hours. Further, critical online business applications were down. Importantly, no FMC applications were accessible at the COOP site. Only one server – Form FMC-1 – was in place, but it was not connected. No other servers were in place.

At the same time, the agency spent approximately \$24,000 per year over three years to maintain the COOP site in the event of an emergency, even though, unbeknownst to senior

management, it was not functional. When management discovered the situation shortly after the power outage, it cut funding at the site until such time as a disaster recovery plan could be prepared and implemented.

Following the outage, the agency initiated discussions with another federal agency regarding the FMC's disaster recovery plan as a first step in establishing a comprehensive agency-wide COOP plan and, ultimately, addressing its data replication needs.

In **OR12-01, Review of the Compliance Audit Program in the Bureau of Enforcement**, we evaluated controls in place to ensure the accuracy of responses from industry on questionnaires used by the Bureau of Enforcement (BOE) in the audit process, reviewed program performance measures and workflow tracking mechanisms and documented program accomplishments. Finally, we assessed BOE's follow-up processes to validate corrective action.

The compliance audit program enables agency staff to assess Ocean Transportation Intermediary compliance with Commission regulations. The program generally works well, meets program objectives, and produces results: 96 percent of the audits in the OIG's sample found at least one noncompliance issue. Many had multiple findings.

On the other hand, we observed areas where some improvement is possible. The office has not fully transitioned to an automated tracking system. It relies on a manual log to produce quarterly and annual quantitative-based reports. BOE does not capture qualitative information, such as a summation of the compliance issues found in the audits it performs. For example, 63 percent of the audits reviewed by the OIG found tariff compliance issues. Sharing this information with agency decision makers and with other licensees via our website would enable the Commission to broaden its outreach, address recurring issues and educate licensees.

BOE, working with the Bureau of Certification and Licensing, should ensure that all licensees are aware of the compliance audit program. While the regulations state that the licensee must turn over information at the FMC's request, no specific reference is made to the compliance audit. OTIs essentially learn of the program when they are selected for audit. We recommended

that the agency add language in its transmittal letter sent to new licensees to specifically put them on notice that they are subject to audit. Knowing that they may be audited would likely enhance OTI compliance throughout their operations.

Audits or Reviews with Fieldwork Ongoing

The OIG began one program review near the end of the reporting period. In **A12-XX, Audit of the FMC's Implementation of the Transit Subsidy Program**, the objective is to determine whether controls are in place to ensure that (i) Department of Transportation (DOT) invoices accurately reflect the amount of subsidy being distributed to agency staff; (ii) the agency-paid transit subsidy is being properly reflected on the agency's books and records and that monthly adjustments are properly accounted for; (iii) employees are following program guidelines when calculating their monthly subsidy request and receive only the amount of subsidy authorized under the program; and (iv) only eligible authorized agency staff are receiving a subsidy.

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 seven complaints. We responded to four of the complaints and forwarded three complaints to the appropriate FMC program areas for disposition. 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 the General Counsel concerning an ongoing internet scam that attempts to defraud the public by, among other things, using the agency's official insignia to add legitimacy to correspondence with the targeted public.

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.

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 Office of Inspectors General.

The CIGIE is comprised of all inspectors general that are [Presidentially-appointed / Senate confirmed](#) and those that are [appointed by agency heads \(designated federal entities\)](#). The OIG remains active in CIGIE operations. For example, the IG is a member of both the 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 IG also continued to participate in quarterly meetings with other Designated Federal Entity OIGs to discuss issues, outcomes and solutions endemic to smaller IG offices.

The Assistant Inspector General participates 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.

During this semiannual period, the OIG did not review legislation impacting the FMC; however, we did review and comment on IG community-related legislation and other proposals with a direct impact on office of inspectors general operations. We also revised Commission regulations pertaining to OIG reporting responsibilities under the recently-enacted Dodd-Frank Amendments.

Additionally, the OIG counsel prepared a one-hour information session available to all FMC employees on the role and function of the OIG. The presentation touched on the various OIG activities that assist in accomplishing the OIG's mission to eliminate and prevent waste, fraud, abuse and mismanagement, and to promote efficiency and effectiveness. Specifically, counsel discussed the different types of audits and how they are conducted and addressed OIG investigations, the respective employee rights and the duty to cooperate in investigations and audits. Finally, counsel provided employees with a variety of methods by which they could exercise their duty to report misconduct and advised them of the available protections for reporting illegal activities and misconduct.

During the reporting period, in accordance with the Inspector General Reform Act, FMC/OIG also provided legal services, on a reimbursable basis, to the Architect of the Capitol

OIG pursuant to a memorandum of understanding. The OIG also participated in assisting two sister OIGs in providing audit report quality control.

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.

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, 14 of these recommendations remain open past one year. This represents a 33 percent reduction in open recommendations, with the largest decrease occurring in the annual information security reviews:

<u>Short Title</u>	<u>Report Issue Date</u>	<u>Open Rec's</u>	<u>Elapsed Months (as of 3/31/12)</u>
1. FY 2010 Management Letter	11/10/10	3	16
2. Helpdesk Satisfaction Survey	8/6/10	4	19
3. User Fee Calculations	5/27/10	1	22
4. T&A – Capping Report	5/14/10	2	22
5. FISMA Evaluation for 2009	1/28/10	1	26
6. Bureau Timekeeping Practices	6/30/09	1	33
7. Agency Checkout Process	1/12/09	1	38
8. Accuracy of Enforcement Database	3/31/06	1	72

The oldest recommendation (72 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 its most recent open recommendation update, management advised the OIG that it is “making progress” and has planned to meet with agency contractors to discuss technical requirements. However, according to management, the “availability of contractor resource hours remains a concern.” The OIG will review the status of this recommendation during the next financial audit cycle to assess the delays in implementing this labor saving green alternative to current processing procedures.

The second oldest recommendation involves revising existing employee check-out forms to itemize all agency IT systems individuals must be removed from prior to departing the agency. This would help to ensure access to sensitive agency data is safeguarded. The current form identifies “Information Technology” and focuses on physical IT assets, to include computer, monitor and phone card, and Information Security Officer for a security clearance. Management intends to make substantive revisions to the check-out form to include a comprehensive list of the “universe of systems and benefits to which employees have access outside of FMC systems.” This addition has added years to the implementation of a relatively straight-forward solution to targeted problem. Management informed the OIG that the form will be completed by September 30, 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 or to <https://www2.fmc.gov/oigcomplaints/> (if the complainant wishes to remain anonymous).

SUMMARY OF INSPECTOR GENERAL REPORTING REQUIREMENTS

<u>IG Act Reference</u>	<u>Reporting Requirement</u>	<u>Page(s)</u>
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	None
Section 5(a)(5)	Summary of instances where information was refused	None
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	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	1	\$72,000
(i) dollar value of recommendations that were agreed to by management	1	\$72,000
(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**