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UNITED STATES  
GENERAL ACCOUNTING OFFICE  
OCT 22 1975

# REPORT TO THE CONGRESS

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## Improvements Needed In The Federal Maritime Commission's Financial Disclosure System For Employees

Standards of ethical conduct for Government officials are prescribed by an Executive Order of the President. In line with this order, the Federal Maritime Commission established a financial disclosure system to monitor the financial interests of certain employees. GAO noted deficiencies in this system and recommends improved procedures for identifying employees who should be required to file financial disclosure statements and for resolving questionable financial interests held by employees.

OCT. 22, 1975

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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-103987, 180228

To the President of the Senate and the  
Speaker of the House of Representatives

Executive Order 11222 prescribed standards of ethical conduct for Government officials and directed the Civil Service Commission to establish guidelines for agency financial disclosure systems. This report discusses improvements needed in the Federal Maritime Commission's financial disclosure system.

We made our review pursuant to requests from several Members of Congress to review the effectiveness of many Federal agencies' financial disclosure systems. We are sending this report to the Congress because of the widespread congressional interest in this area.

We did not obtain formal comments from officials of the Federal Maritime Commission. However, we discussed the report informally with officials responsible for the financial disclosure system and they generally agreed with its contents.

We are sending copies of this report to the Director, Office of Management and Budget; the Chairman, Federal Maritime Commission; and other interested parties.

A handwritten signature in black ink that reads "Thomas B. Staats".

Comptroller General  
of the United States

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ABBREVIATIONS

CSC	Civil Service Commission
FMC	Federal Maritime Commission
GAO	General Accounting Office

D I G E S T

1 / Since the Federal Maritime Commission regulates waterborne shipping in the foreign and domestic offshore commerce of the United States, its employees must maintain the highest standards of ethical conduct. 70

After several congressional requests, GAO reviewed

- the Commission's financial disclosure system's effectiveness,
- the employees' financial interests, and
- whether other agency officials should be filing financial disclosure statements.

A review of financial interests reported by 56 Commission employees as of June 30, 1974, showed that 9 employees owned 27 securities which represented apparent or potential conflicts of interest.

Forty-three employees not currently filing financial disclosure statements have responsibilities affecting the maritime industry and warranting the filing of statements. Also, each Commissioner, Federal Maritime Commission, has a confidential assistant who should be required to file financial disclosure statements based on their responsibilities.

Although the Commission's regulations generally conformed to the Civil Service Commission's financial disclosure guidelines, improvements are still needed. GAO is recommending that the Chairman, Federal Maritime Commission:

- Review, and take remedial action on, the employees' interests identified in this report as being apparent or potential

conflicts of interest violating Federal Maritime Commission's regulations.

- Develop definitive criteria to determine which employees have responsibilities warranting the filing of financial disclosure statements and apply these criteria to all Federal Maritime Commission positions.
- Insure that all required financial disclosure statements are submitted within 30 days of an employee's appointment and are updated annually.
- Develop review procedures that effectively disclose all apparent and potential conflicts of interest that may be listed on employees' financial disclosure statements.
- Develop followup procedures to insure that prompt remedial action is taken on interests questioned during the annual review.

## CHAPTER 1

### INTRODUCTION

The Federal Maritime Commission (FMC) was established as an independent agency by Reorganization Plan No. 7, effective August 12, 1961, (46 U.S.C.A. 1111), to regulate waterborne shipping in the foreign and domestic offshore commerce of the United States. FMC receives its regulatory authority from various statutes including the Shipping Act of 1916, Intercoastal Shipping Act of 1933, Merchant Marine Act of 1920 and 1936, and the Federal Water Pollution Control Act Amendments of 1972. FMC's principal regulatory responsibilities are to

- investigate rates, charges, and practices of (1) common carriers by water in the foreign and domestic offshore commerce, (2) terminal operators, and (3) freight forwarders;
- require evidence of financial responsibility from owners or charterers of large U.S. or foreign passenger vessels to protect passengers from carrier nonperformance;
- require owners, charterers, or operators of certain vessels entering U.S. ports or waters to establish and maintain evidence of financial responsibility for the cleanup of oil or hazardous substances should they be spilled or discharged in U.S. waters; and
- render decisions and issue orders, rules, and regulations governing and affecting common carriers by water in the foreign and domestic offshore commerce, terminal operators, freight forwarders, and other persons subject to shipping statutes.

### SCOPE OF REVIEW

Our review, conducted at FMC headquarters, Washington, D.C., was made pursuant to requests from several Members of Congress. The primary concerns expressed in these requests were whether

- Federal agencies have effective financial disclosure systems for revealing conflicts of interest,
- all required financial disclosure statements were filed promptly and properly, and
- the financial disclosure statements were adequately reviewed and analyzed.

We reviewed all the employees' financial interests listed on their financial disclosure statements in 1974 and in previous years. The confidentiality of these statements was maintained at all times. The responsibilities of certain employees not currently required to file financial disclosure statements were reviewed to determine whether they should be filing.

Q.

## CHAPTER 2

### FINANCIAL DISCLOSURE REQUIREMENTS AND

#### AGENCY PROHIBITIONS

Executive Order 11222 dated May 8, 1965, prescribed standards of ethical conduct for Government officers and employees, and directed the Civil Service Commission (CSC) to establish implementing regulations. In November 1965, CSC issued instructions requiring each agency to prepare employee conduct standards and establish a review system for employee financial disclosure statements.

In August 1968, FMC issued Commission Order No. 53 (33 F.R. 11767) governing employee responsibilities and conduct. This order established FMC's financial disclosure system for all employees except the Commissioners. In accordance with CSC instructions, an Office of the General Counsel attorney was designated as FMC's ethics counselor to administer regulations governing employee responsibility and conduct. He is responsible for the financial disclosure system and for counseling employees and resolving conflict-of-interest questions. The counselor or deputy counselor is required to review the financial interest statements of occupants of designated positions that must be filed within 30 days after entrance on duty and their supplementary statements that must be filed annually as of June 30.

In addition, when appointed, all employees are required to affirm that they have no holdings which violate the Commission order or the FMC statutory prohibition.

The counselor is required to discuss with the employee any statements found containing evidence of real or apparent conflicts of interest. If the matter is not resolved, the pertinent information is reported to the FMC Chairman. Remedial action provided in the Commission order includes, but is not limited to, changes in assigned duties, the divesting of the conflicting interest, disciplinary action, or disqualification for a particular assignment.

We did not review the financial disclosure statements of the five presidentially appointed Commissioners. Their statements, and those of other high-ranking Government officials, are required by Executive Order 11222 to be filed directly with CSC. We plan to review all the statements held by CSC following our review of Federal agency financial disclosure systems.



Special assistants to the Commissioners file disclosure statements only as determined by the Commissioner they assist. This is discussed further on page 9.

PROHIBITIONS AFFECTING FMC EMPLOYEES

Prohibitions affecting FMC employees' financial holdings and outside employment are included in Commission Order No. 53 and section 301 of Reorganization Plan No. 7 of 1961.

Commission Order No. 53 prohibits employees from having a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with their Government duties and responsibilities. Furthermore, the regulations state that employees shall not engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through their employment.

Under the caption "Conflict of Interest," section 301 of Reorganization Plan No. 7 states that:

"The provisions of the last sentence of section 201(b) of the Merchant Marine Act, 1936, ...(prohibiting the Members of the Federal Maritime Board and all officers and employees of that board or of the Maritime Administration from being in the employ of any other person, firm, or corporation, or from having any pecuniary interest in or holding any official relationship with any carrier by water, ship-builder, contractor, or other person, firm, association, or corporation with whom the Federal Maritime Board or the Maritime Administration may have business relations) shall hereafter be applicable to the Commissioners composing the Commission and all officers and employees of the Commission."

CHAPTER 3

FINANCIAL HOLDINGS OF NINE EMPLOYEES

VIOLATE CONFLICT-OF-INTEREST REGULATIONS

All employees entering duty are required to certify that they have no holdings that violate Commission Order No. 53 governing employee conduct or the statutory prohibition in section 201 of the Merchant Marine Act of 1936. (See ch. 2.) Additionally, incumbents of 56 positions are required to file annual financial disclosure statements listing their financial interests. In reviewing the 56 statements, we found that 9 employees owned 27 interests violating conflict-of-interest regulations.

--Five employees held 18 securities which violated FMC's regulations and were potential conflicts of interest in light of their duties.

--Four employees held nine securities which violated FMC's regulations and were apparent conflicts of interest in light of FMC's responsibilities.

EMPLOYEES' INTERESTS CONSTITUTE  
STATUTORY VIOLATIONS AND APPARENT  
OR POTENTIAL CONFLICTS OF INTEREST

Nine FMC employees owned 27 securities which violated FMC's statutory regulation prohibiting interests in any entities with whom FMC may have business relations. These interests also either created the appearance of a conflict (apparent conflict) in light of FMC's responsibilities, or could possibly conflict with the duties of the employee (potential conflict).

Five of the nine FMC employees held 18 securities which violated the statutory regulation and created a potential conflict of interest in light of the employees' duties.

--An administrative law judge owned securities in a major oil company and a major automobile manufacturer, both of which operate ocean vessels and have filed financial responsibility statements with FMC. The judge conducted hearings involving all FMC matters.

--A high-level official, who participated in implementing all FMC programs, held a financial interest in a

company whose subsidiary was one of the largest U.S. water cargo carriers, with a fleet of 77 vessels and terminal facilities at 56 ports. This company had filed numerous freight rate tariffs and terminal agreements with FMC.

--A high-level official who provides advice to the FMC Chairman and helps administer the FMC financial disclosure system owned interests in (1) two oil companies which filed financial responsibility statements with FMC, (2) a sugar producer with a shipping company subsidiary which has tariffs on file with FMC, and (3) four other companies that filed tariffs with FMC.

--A general investigator responsible for investigating FMC regulatory, enforcement, and administrative responsibilities owned securities in a company that filed a tariff with FMC, and also in another company which filed a financial responsibility statement with FMC.

The fifth employee, an FMC district office official, held 584 shares of stock in a company which is regulated by FMC and which had maritime operations in his district. The official was formerly employed by this company and was receiving \$25,000 a year from the company for 12 years from the date he terminated his employment with them. At the time of his appointment to FMC, the official signed a statement certifying that he had no interests in conflict with FMC's regulations.

FMC was first made aware of the official's interests during its review of his June 30, 1974, financial disclosure statement. At that time an investigation was initiated and later the FMC Chairman was told of the conflict. However, no action was taken, and the conflict was not resolved. The official subsequently retired during our review.

This same official also had financial interests in five other firms having business relations with FMC. Two of the companies had filed financial responsibility statements with FMC, while three other firms had tariffs on file with FMC. These interests also violated FMC's statutory prohibition.

Four other FMC employees owned nine securities that, while they did not potentially conflict with their assigned duties, were prohibited by FMC's statutory prohibition, and were apparent conflicts because of the nature of FMC's responsibilities. These nine securities involved such companies as shipbuilders and common carriers which are specifically addressed in the agency's statutory prohibition; however,

some of the securities are not directly relatable to the statute. For example, railroads file tariffs whenever they have agreements with shipping companies to participate in the land-sea movement of goods. Thus, an indirect business relationship exists between FMC and the railroad. Similarly, oil companies that operate tankers must file oil pollution responsibility statements with FMC even though they are not classified as common carriers and do not file tariffs. This also establishes a business relationship with FMC.

#### Other questionable financial interests

Five of the nine employees previously mentioned, and 5 other employees, owned 15 interests in 12 companies which participated to a varying degree in the marine industry. These firms included a marine insurance company, a cargo ship operator, a builder of marine vessels, and a company which operates a duty-free export business on cruise ships. We were unable to conclusively determine whether these interests violated FMC's statutory regulation. However, we believe these interests should be fully reviewed by FMC to determine whether violations exist.

## CHAPTER 4

### FURTHER ACTION NEEDED TO STRENGTHEN

#### THE FINANCIAL DISCLOSURE SYSTEM

Although FMC's regulations generally conformed to CSC's financial disclosure guidelines, they could be improved in the following areas:

- Criteria for identifying positions whose incumbents should file financial disclosure statements.
- Improved procedures for collecting and reviewing statements.
- Followup procedures on interests questioned during the annual review of the statements.

#### CRITERIA FOR IDENTIFYING POSITIONS WHOSE INCUMBENTS SHOULD FILE FINANCIAL DISCLOSURE STATEMENTS

FMC regulations require all employees classified at GS-15 or above and certain employees in grades GS-12 through GS-14 to file financial disclosure statements. The incumbents of 56 positions are required to file statements, including the directors of field offices, office and division chiefs, certain transportation industry analysts, and administrative law judges.

To determine the adequacy of FMC's criteria for identifying positions whose incumbents should file financial disclosure statements, we reviewed the responsibilities of 57 incumbents in 28 professional positions GS-12 and above, and their effect on the shipping industry. FMC had not required the incumbents of any of these positions to file statements. We believe 43 of the incumbents have duties which affect the shipping industry and should be required to file financial disclosure statements. These positions included trial attorneys, transportation industry analysts, investigators, and attorney-advisors.

Trial attorneys act as counsel in formal investigations, adjudicatory and rulemaking proceedings, and formal complaint proceedings. Transportation industry analysts examine and recommend action on common carrier tariff filings. FMC investigators conduct surveys for guiding FMC in establishing policy and also investigate violations of the shipping acts. Attorney-advisors represent the Commission in court proceedings and render advice to the Commissioners.

In addition to the 43 incumbents we believe should be required to file statements, we noted that each Commissioner is permitted to hire a confidential assistant. Among their duties, these assistants

- represent the Commissioner at conferences of nongovernmental organizations,
- prepare analyses for, and make recommendations to, the Commissioner, and
- perform research and advisory work of a highly difficult, responsible, and confidential nature.

These assistants were required to file financial disclosure statements only at the Commissioners' discretion. Currently, four of the five Commissioners have assistants. At the start of our review, only one assistant had filed a statement; since then, two other assistants have submitted statements. Based on the highly responsible duties of these assistants, and their effect on the Commission, we believe FMC should require these assistants to file financial disclosure statements.

IMPROVED PROCEDURES NEEDED FOR  
COLLECTING STATEMENTS AND  
RESOLVING QUESTIONABLE INTERESTS

CSC regulations require employees who file financial disclosure statements to update these statements annually as of June 30. During the past 5 years, most FMC employees have not submitted these supplementary statements. In 1972 and 1973, only three incumbents filed the required statements. FMC officials attributed this to the lack of emphasis placed on the financial disclosure system before 1974.

FMC previously questioned many of the various types of interests discussed in this report as possible statutory violations. However, FMC made no final determinations as to whether these interests, such as in oil companies and companies for which combined tariffs are filed, were statutory violations until these interests were again brought to FMC's attention during our review. Subsequently, FMC's General Counsel ruled that the interests were, in fact, prohibited by statutory regulation, and that FMC would take corrective action.

In one case, where an employee had highly questionable interests, FMC conducted extensive research of the matter and notified the FMC Chairman of the apparent conflict.

The situation was allowed to exist for an extended period, and was only resolved by the employee's retirement a year after the investigation had started. (See p. 6.)

#### AGENCY COMMENTS

FMC officials generally agreed with our determinations. Its General Counsel made legal determinations on questions we raised and ruled that they were, in fact, covered by the statutory prohibition, and thereby were conflicts of interest. He stated that action would be taken to correct those situations where conflicts exist.

FMC's employee counselor said that the district office official who was receiving \$25,000 from his former company had since retired. The employee who held an interest in one of the largest cargo carriers by water had been asked to divest of the interest and had agreed to comply with the request.

The FMC General Counsel attributed the existing conflicts to a lack of enforcement by FMC rather than intentional violations by employees. Furthermore, he stated that he had not envisioned it as the intent of the Congress, as expressed in the statute, to strictly enforce the wording of the statute. He added that the law precludes pecuniary interests or relationships with shipbuilders and that FMC has no jurisdiction whatsoever over shipbuilders. Shipbuilders, he believes, come under the jurisdiction of the Maritime Administration of the Department of Commerce. Finally, he said FMC was considering proposing legislation to revise the statute to reflect this fact.

Concerning other holdings we identified as possible statutory violations, the General Counsel and employee counselor agreed to research the companies involved to determine if conflicts exist.

In addition, the officials agreed with the system's deficiencies that were found.

## CHAPTER 5

### CONCLUSIONS AND RECOMMENDATIONS

#### CONCLUSIONS

Because of its regulatory responsibilities, FMC must insure, through the financial disclosure system, that its employees maintain the highest ethical standards. However, FMC did not have adequate procedures to determine which employees should file financial disclosure statements, or for collecting statements that were required. For those statements that were required and collected, FMC did not have an effective procedure for reviewing employees' interests, or for resolving questionable employee interests. These deficiencies must be corrected to insure an effective financial disclosure system.

#### RECOMMENDATIONS

To improve FMC's financial disclosure system's effectiveness, we recommend that the Chairman, FMC:

- Review, and take remedial action on, the employees' interests identified in this report as being apparent or potential conflicts of interest violating FMC's regulations.
- Develop definitive criteria to determine which employees have responsibilities warranting the filing of financial disclosure statements and apply these criteria to all FMC positions.
- Insure that all required financial disclosure statements are submitted within 30 days of an employee's appointment and are updated annually.
- Develop review procedures that effectively disclose all apparent and potential conflicts of interest that may be listed on employees' financial disclosure statements.
- Develop followup procedures to insure that prompt remedial action is taken on interests questioned during the annual review.



PRINCIPAL FEDERAL MARITIME COMMISSION OFFICIAL  
RESPONSIBLE FOR THE ADMINISTRATION OF ACTIVITIES  
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	<u>From</u>	<u>To</u>
CHAIRMAN OF THE COMMISSION: Helen Delich Bentley	Oct. 1969	Present

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