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REPORT BY THE

Comptroller General

WMT

OF THE UNITED STATES

The Maritime Administration And The National Maritime Council-- Was Their Relationship Appropriate?

While GAO questioned the Maritime Administration's involvement in and support for the National Maritime Council, GAO did not find that such involvement was totally unauthorized.

Maritime Administration employees performed some National Maritime Council-related functions which GAO believes violated Federal "anti-lobbying" appropriation restrictions and Department of Commerce standards of conduct regulations.

The report was requested by the Chairman, Subcommittee on Commerce, Consumer, and Monetary Affairs, House Committee on Government Operations.



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MAY 18, 1979



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

B-192746

The Honorable Benjamin S. Rosenthal
Chairman, Commerce, Consumer, and
Monetary Affairs Subcommittee
Committee on Government Operations
House of Representatives

File 01501

Dear Mr. Chairman:

In response to your August 7, 1978, request and subsequent agreements with your office, we reviewed the Maritime Administration's (MarAd's) relationship with the National Maritime Council which terminated in July 1978 at the direction of the Secretary of Commerce. As agreed, we reviewed the nature of the MarAd-Council relationship, the cost of MarAd's support of the Council, and the appropriateness of travel vouchers filed by MarAd employees with respect to Council-related travel. Also, we agreed to provide you with our opinion as to the legality and/or appropriateness of the MarAd involvement in and expenditures related to the Council. The specific matters which we agreed with your office to address are listed in appendix II. Additionally, we reviewed several related matters which came to our attention during this assignment.

As discussed with your office during several progress briefings, our review disclosed, among other things, that:

- MarAd employees generally claimed and received the proper reimbursement for their Council-related travel. However, certain MarAd employees received excess per diem payments because they did not reduce their per diem claims when they received meals free of charge from the Council. (See app. I, pp. 2 to 4.)
- During the subcommittee's July 21, 1978, hearings, MarAd underestimated the cost of its support of the Council. (See app. I, pp. 4 to 6.)
- A list of Council-related meetings and functions submitted by MarAd to the subcommittee during its July 21, 1978, hearings was incomplete. (See app. I, pp. 6 and 7.)

- The receipt of free transportation, lodging, and meals by certain MarAd officials and members of their families raises serious questions of possible violations of standards of conduct. (See app. I, pp. 7 and 8.)
- While we questioned MarAd's involvement in and support for the Council, we did not find that such involvement was totally unauthorized. (See app. I, pp. 8 to 10.)
- MarAd employees performed certain publicity and propaganda-related activities which we believe violated Federal "anti-lobbying" appropriation restrictions. (See app. I, pp. 10 to 16.)
- MarAd employees violated Department of Commerce standards of conduct regulations while performing certain Council-related activities. (See app. I, pp. 16 to 21.)

We are recommending that the Secretary of Commerce:

- Collect the per diem overpayments discussed above if the cost of such action does not exceed the amounts to be collected. (See app. I, p. 4.)
- Direct the Department's General Counsel to review the standards of conduct violations found and take any administrative or other action he determines necessary. (See app. I, p. 21.)

In addition, in an April 2, 1979, letter to the Department of Commerce General Counsel, we requested an investigation into the possible standards of conduct violations. In a letter of the same date to the Assistant Secretary for Maritime Affairs, we requested his review and comment as to why specific Council-related meetings and functions were not reported to the subcommittee during its July 21, 1978, hearings. We have provided your office with copies of these letters and have requested the General Counsel and Assistant Secretary to respond to them.

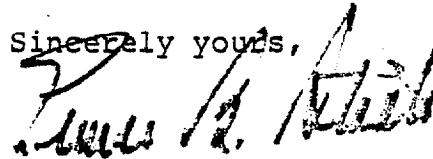
Our work was performed at MarAd headquarters, Washington, D.C., and at three of the four MarAd regions--the eastern, central, and western regions. We examined policies, procedures, and practices; reviewed MarAd and Council records; and interviewed MarAd officials. In addition, we interviewed a former Department of Commerce General Counsel.

Our review was hindered by lack of a central source of detailed data concerning MarAd's support of the Council. In the absence of such a source, it was necessary to review numerous Council and MarAd files to search out pertinent data. We relied extensively on personal interviews with MarAd officials. There is no assurance that all pertinent Council-related documents were available for our review or that MarAd employees' recollections concerning events during the period under review were complete and accurate. Where appropriate, we have qualified our report to reflect these circumstances.

At your request, we did not obtain written agency comments. The matters covered in the report, however, were discussed with agency officials, and their comments were incorporated where appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "James A. Smith". The signature is written in a cursive style with a large, prominent initial "J".

Comptroller General
of the United States

DISCUSSION OF THE MARITIME ADMINISTRATION'S
RELATIONSHIP WITH THE NATIONAL MARITIME COUNCIL

BACKGROUND

Under the Merchant Marine Act of 1936, (46 U.S.C. § 1101 et seq.) the Maritime Administration (MarAd), an agency within the Department of Commerce, is charged with promoting the development of a strong American merchant marine. In furtherance of this objective, MarAd in 1970 organized its Office of Market Development. The mission of the Office of Market Development is to help the U.S. shipping industry to increase its cargo share of U.S. oceanborne trade. To achieve this goal, a major program was initiated to establish direct personal contact with exporters, importers, and other organizations controlling or influencing the routing of cargo. These contacts were to communicate the national objective of assuring increasing cargo support for U.S.-flag ships and to urge these organizations to adopt policies which would actively favor U.S.-flag ships in the routing of their cargo.

To implement the program further, the MarAd western region conceived the idea of a nonprofit organization which would bring together all elements of the maritime industry, such as the carriers, shipbuilders, maritime labor unions, the Government, and others, to cooperate in programs directed at improving the public image of the U.S.-flag merchant marine through advertising and similar means. The private industry participants would fund the program and the Maritime Administration would provide administrative support as part of the region's Office of Market Development effort. The result of this idea was the creation of the U.S. Maritime Industry Foundation, which was incorporated in California in April 1971.

The idea of such an organization was favorably received at MarAd headquarters in Washington, D.C. MarAd headquarters officials believed that such an organization on a national scale would be consistent with MarAd's legislative requirements under section 212 of the Merchant Marine Act of 1936 which provides, in part, for MarAd

"To study, and to cooperate with vessel owners in devising means by which * * * the importers and exporters of the United States can be induced to give preference to vessels under United States registry * * *."

Immediate steps were taken to establish the National Maritime Council which held its first official meeting in September 1971.

The Council was organized on a national and regional basis with an eastern region operating out of New York City, a central region out of New Orleans, a Great Lakes region out of Cleveland, and a western region out of San Francisco. While the eastern, central, and Great Lakes regions were formally part of the Council, the western region retained its original charter and remained the U.S. Maritime Industry Foundation. However, the Foundation acted as a fourth Council region and for all practical purposes was considered the fourth region.

The purposes of the Council, as set forth in its bylaws, are:

"The promotion and development of a strong and efficient merchant marine which shall be privately owned and operated in the waterborne domestic and export-import foreign commerce of the United States."

"The devising of means and the execution of programs by which the United States shippers, importers and exporters or their agents can be induced to give preference to vessels under United States registry."

MarAd, through its Office of Market Development, was established as the Council Executive Secretariat both at the national and regional levels and performed various tasks and services considered to be of a secretariat nature. Generally these functions involved the handling of correspondence, notification of and preparation for programs and meetings, maintenance of general files, and assistance to Council committees concerned with specific Council functions or activities. Funds needed by the Council to pay for its advertising and other promotional functions were generally supplied by its members through annual dues and special assessments. In July 1978, the Secretary of Commerce directed MarAd to withdraw from the Council because of questions raised concerning MarAd's relationship with it.

REVIEW OF MARAD'S COUNCIL-RELATED TRAVEL

As part of our review of MarAd's Council-related activities, we reviewed the travel of selected MarAd employees to identify any instances during the period of January 1, 1975,

through July 31, 1978, in which MarAd employees claimed or received reimbursement for expenditures involving activities of the Council or its members that were actually paid for by the Council or others. We found that MarAd employees generally claimed and received the proper reimbursement for their Council-related travel. However, we found that 21 of the employees whose travel we reviewed did not make proper deductions from their per diem allotment for meals received free of charge at Council-related functions and consequently received per diem funds in excess of the amount they were entitled to.

To review MarAd's Council-related travel, we examined MarAd's Council files and the travel orders and vouchers for 81 MarAd employees. These employees, located at the MarAd headquarters and regional offices, were identified by MarAd as having performed Council-related travel or were selected for review by us as possibly having performed Council-related travel. We also interviewed 66 of the employees whose vouchers we reviewed. Because of the lack of accurate and detailed records concerning meals provided to MarAd employees free of charge while in travel status, it was not possible to identify all meals received by MarAd employees at Council-related functions for which proper per diem deductions were not made.

Per diem overpayments

MarAd travel regulations require reduction of per diem allowance for each meal a traveler receives free of charge while on per diem travel status. Applicable policies and procedures concerning such reductions are contained in chapter 1, section .08 of the MarAd supplement to the "Department of Commerce Handbook of Travel Policies and Procedures" and in "MarAd Bulletins Nos. 75-39 and 75-45." These documents set out precise amounts to be deducted from per diem allowances for meals received free of charge by MarAd personnel on per diem travel status. For example, currently these amounts are \$2.50, \$4.00, and \$6.50 for breakfast, lunch, and dinner, respectively.

For the period January 1, 1975, through July 31, 1978, we found that generally, with the exception of travel vouchers prepared by MarAd western regional office personnel, the vouchers we reviewed did not contain per diem reductions for meals received free of charge at Council-related functions. For 21 MarAd employees we identified as not following MarAd's per diem reduction procedures, we found a total of 121 meals provided at Council-related functions for which required per diem reductions were not made. Multiplying these meals by the applicable standard reduction rate in effect on the

date each meal was received, the total per diem overpayment made to these MarAd employees was \$599.50.

We discussed these overpayments with 10 of the travelers who had not properly reduced their per diems. The two most common reasons given us by these employees for not making the proper reductions were (1) the traveler did not believe the requirement for deductions for meals received free of charge applied to Council-related functions or (2) the traveler was not aware that the requirement existed.

We also discussed these overpayments with the Director of the MarAd Office of Financial Management. He concurred with our opinion that travelers receiving free meals at Council-related functions should have deducted the standard rates for such meals from their per diems. He stated that he had been unaware that the requirement was not being complied with to the extent that we found. At the conclusion of our review, we provided the Director with a listing of the MarAd employees who received overpayments which included applicable travel order or voucher numbers.

Conclusion

During the period we reviewed, January 1, 1975, through July 31, 1978, MarAd employees generally were not reducing their per diems for meals received free of charge at Council-related functions, as required by MarAd regulations. Consequently, some MarAd employees received excessive per diems while traveling on official business when meals were provided free of charge.

Recommendation

We recommend that the Secretary of Commerce collect the per diem overpayments discussed above if the cost of such action does not exceed the amounts to be collected. Such determination by the Secretary should be made pursuant to 4 C.F.R. § 104 which sets forth standards for determining the feasibility of pursuing amounts owed the Government.

COST OF MARAD'S SUPPORT OF THE COUNCIL

The subcommittee asked us to determine the cost of MarAd's support of the Council for the period January 1, 1975, through July 31, 1978. These costs consisted of personnel salaries and fringe benefits, travel expenses, and administrative overhead. Because MarAd did not keep cost records of its support of the Council, we were only able to estimate what MarAd's costs were. Our estimates are higher than the

MarAd estimate of \$168,988 annually that it provided during the subcommittee's July 21, 1978, hearings. The following schedule provides a detailed breakout of our estimates.

<u>Expense</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>Total</u>
				(through 7/31)	
Salary	\$120,824	\$129,989	\$141,731	\$90,939	\$ 483,483
Fringe benefits	31,415	33,797	36,850	23,644	125,706
Administra- tive over- head	115,979	124,776	136,048	87,293	464,096
Travel	<u>18,167</u>	<u>22,363</u>	<u>20,057</u>	<u>6,778</u>	<u>67,365</u>
Total	<u>\$286,385</u>	<u>\$310,925</u>	<u>\$334,686</u>	<u>\$208,654</u>	<u>\$1,140,650</u>

To estimate MarAd salary costs in support of the Council we identified from Council records 31 MarAd employees involved with the Council during the period under review. We then requested from MarAd the percentage of these employees' time devoted to Council activities and their salary grades. Through personal interviews we verified MarAd's estimates of the percentage of time these individuals spent on Council activities. Using this information, we allocated a portion of the involved MarAd employees' salaries for each year to the cost of MarAd's support of the Council.

We added a fringe benefits factor of approximately 26 percent to estimated salary costs. This factor, developed by the Office of Management and Budget, is the governmentwide fringe benefit factor used in contract estimating for cost benefit analysis. It is published in Office of Management and Budget Circular A-76, revised March 29, 1979. We also added an administrative overhead factor of 95.99 percent which was provided by MarAd's Office of Budget and Program Analysis. The administrative overhead includes various costs such as office space, telephones, reproductive services, supplies, and overhead personnel salaries.

MarAd, in presenting its cost estimates to the subcommittee, did not include the fringe benefits factor or administrative overhead. MarAd's rationale to the subcommittee for not using the overhead factor was that these costs would have been the same with or without MarAd's involvement in the Council. MarAd did not comment on the absence of a fringe benefits

factor. We disagree with MarAd's exclusion of overhead and fringe benefits from its Council support cost estimates as MarAd uses overhead and fringe benefit factors in estimating its costs incurred in support of other agencies. Not using such factors is inconsistent with MarAd's normal cost estimating practices and standard accounting practices.

Although there was no precise way to determine the travel cost incurred by MarAd in support of the Council, we did, as shown above, develop an estimate of these costs which compares with the MarAd estimates provided the subcommittee as follows:

MarAd's Council-Related Travel Costs

<u>Year</u>	<u>MarAd estimate</u>	<u>GAO estimate</u>
1975	\$11,136	\$18,167
1976	10,774	22,363
1977	12,886	20,057
1978	<u>4,350</u> (through 6/30)	<u>6,778</u> (through 7/31)
Total	<u>\$39,146</u>	<u>\$67,365</u>

To estimate MarAd's travel expenses related to its support of the Council, we identified various Council meetings and Council-related functions attended by MarAd personnel while on travel status. Unless it was obvious that the sole purpose of a trip was to attend the particular meeting or function, we considered only 50 percent of the total cost of the trip as being Council related, and therefore, we allocated only 50 percent of the trip's cost to our estimates. This was usually the case, as MarAd travelers generally combined their other MarAd duties with their Council-related travel. We did not attempt to reconcile the differences between our estimates and MarAd's because the various approaches used by the MarAd headquarters and its regions precluded such an analysis within our time constraints.

COUNCIL FUNCTIONS ATTENDED BY
MARAD EMPLOYEES

MarAd in its role as Council executive secretariat arranged and/or attended numerous Council meetings and other Council-related functions. The term "Council-related function" includes events which the Council cosponsored with other organizations, such as the Navy League and local transportation-related organizations. Council participation at these

functions was to promote shipping on U.S.-flag vessels. The Council-related functions generally were attended by exporters, importers, and other members of the transportation community.

To determine the completeness of a list of all Council-related meetings and functions attended by MarAd personnel during the period January 1, 1975, through July 21, 1978, which MarAd provided to the subcommittee during its July 21, 1978, hearings, we reviewed MarAd and Council files and interviewed MarAd personnel. We identified 379 Council-related meetings and functions attended by 1,334 MarAd personnel. Of these, 78 meetings and functions attended by 186 MarAd personnel were not on the list MarAd provided to the subcommittee. Because of the large number of functions and MarAd attendees not reported to the subcommittee during its hearings, we requested the Assistant Secretary for Maritime Affairs, in a letter dated April 2, 1979, to report to the subcommittee chairman by May 18, 1979, as to why these functions and attendees were not reported. We have provided the subcommittee chairman with a copy of our letter to the Assistant Secretary.

MEALS AND OTHER GIFTS PROVIDED
FREE OF CHARGE TO MARAD EMPLOYEES

We interviewed 87 MarAd employees to determine the type and amount of gifts, including meals and transportation while on official duty, that they received from the Council, others in the maritime industry, or from other sources during the period January 1, 1975, through July 31, 1978. These MarAd employees were selected because of their possible Council affiliations. We found that the type of gift generally received by the MarAd employees we interviewed consisted of meals. For instance, for the period we reviewed we identified for these employees 362 free meals received from the Council, 869 received from others in the maritime industry, and 82 from other job-related sources. On occasion they received free transportation to an official function; "give-a-ways" such as calendars, paperweights, and keychains; and free meals for their wives at Council-related functions.

We also noted three matters which may violate conflict of interest statutes and/or Department of Commerce standards of conduct. One of these matters is currently under review by the Department of Justice. The other two concern transportation, meals, and lodging received free of charge by MarAd officials and members of their families from the maritime industry. As agreed with the subcommittee staff, we sent a letter to the Commerce General Counsel on April 2, 1979, requesting him to investigate these two matters and to report the results of

his investigation to the subcommittee chairman by May 18, 1979. The chairman has been provided a copy of our letter to the Commerce General Counsel.

LEGALITY AND APPROPRIATENESS OF MARAD'S
RELATIONSHIP WITH THE COUNCIL

At the request of the subcommittee chairman, we reviewed the legality and appropriateness of MarAd's relationship with the Council. We found certain irregularities involved in the authorization and establishment of this relationship. However, these irregularities, while serious, did not cause us to conclude that the relationship was entirely unauthorized. We also found that MarAd employees performed functions specifically prohibited by Federal "anti-lobbying" appropriation restrictions and engaged in other practices which violated Department of Commerce standards of conduct regulations. Discussion of these matters follows.

MarAd's Council involvement was extensive

In 1971 and 1972, MarAd took a leading role in organizing and establishing the National Maritime Council. MarAd became a member of the Council and undertook the obligation of providing administrative support and serving as its executive secretariat. The staff of the secretariat, who were MarAd employees, answered correspondence directed to the Council, collected dues and assessments, and arranged for payment of Council expenditures. MarAd in its secretariat capacity also arranged for meetings of various Council committees and often arranged special Council functions, such as dinners for shippers to induce them to use U.S.-flag vessels. We estimate the value of the services that MarAd provided the Council including MarAd's Council-related travel at \$1.1 million for the period January 1975 through July 1978. (See pp. 4 to 6 for a discussion of the cost of MarAd's support of the Council.)

MarAd's justification and our conclusions

MarAd justified its extensive involvement with and support for the Council on the basis of its interpretation of its statutory authority. MarAd is authorized, by 46 U.S.C. § 1122, to cooperate with vessel owners in devising means to induce shippers to give preference to U.S.-flag vessels and to establish and maintain liaison with representative trade organizations throughout the United States concerned with the shipping industry. Also, the declared policy of the Congress, in 46 U.S.C. § 1101, is to foster the development of a modern, efficient merchant marine. MarAd has construed this language

as permitting it to become a member of the Council and perform administrative services for it.

MarAd further contends that the Congress was informed of its relationship with the Council. MarAd officials point out that MarAd's annual reports included a description of Council involvement and that details of its relationship with the Council were provided to the House Committee on Merchant Marine and Fisheries. MarAd points out that, notwithstanding this knowledge, the Congress has continued to appropriate funds each year for its operations without restriction. However, we believe the mere fact that an activity has been disclosed to a committee of the Congress and has not been objected to does not necessarily mean that the activity has been authorized or that funds have been appropriated for it.

Before MarAd became a member of the Council, the MarAd General Counsel forwarded a memorandum dated August 21, 1971, to the General Counsel of the Department of Commerce seeking confirmation of MarAd's legal position that it had authority to maintain full membership in the Council, serve as the Council's executive secretariat, and perform routine Council administrative tasks. The then Commerce General Counsel rejected the MarAd proposal. According to the record, he indicated that both the membership and executive secretariat proposals were inappropriate on the basis of troublesome potential conflicts of interest between a Government agency and a trade association consisting of components of the industry it regulates.

In disregard of the Commerce General Counsel's authority to make conflict of interest determinations pursuant to employee standards of conduct regulations contained in the Department of Commerce regulations (15 C.F.R. § 0.735-38), MarAd's General Counsel characterized the Commerce General Counsel's rejection as a policy and not a legal determination and therefore concluded that MarAd was not bound by the rejection. Hence, MarAd became a permanent member and assumed the responsibility as executive secretariat of the Council. MarAd elected to provide the Council's administrative support requirements in lieu of a cash contribution that other members were obligated to make to support the Council's work.

We question whether MarAd's legislative authority should have been so broadly interpreted as to authorize the support that MarAd provided the Council. Nevertheless, MarAd continued its supporting relationship of the Council for approximately 7 years with the apparent acquiescence of the Department of Commerce and of its oversight congressional committee. In view of this fact, it would be difficult for us to conclude

now that MarAd's involvement with the Council was unauthorized. However, this does not mean that MarAd was free to expend appropriated funds to support activities of a kind for which use of appropriations is specifically prohibited by law, as discussed below.

Violations of Federal "anti-lobbying" statutes

During the period March 1, 1977, through October 19, 1977, legislation was pending in the Congress that concerned MarAd and the U.S. merchant marine. This bill, H.R. 1037, 95th Cong., required that a percentage of U.S. oil imports be carried on U.S.-flag vessels. During hearings on this bill, MarAd endorsed it as being beneficial to the U.S. maritime industry. On October 19, 1977, the bill was defeated in the House of Representatives.

While the Congress was considering cargo preference legislation, MarAd employees directly participated in a National Maritime Council advertising campaign which encouraged the public to contact their congressmen in support of a strong U.S. merchant marine. MarAd also distributed literature and wrote letters to the public making similar suggestions. Such activity when viewed in the aggregate violated Federal "anti-lobbying" statutes against the use of appropriated funds for publicity or propaganda to support or defeat legislation. During our review we were not able to identify the specific amounts expended in lobbying activities, as such expenditures were commingled with the expenditures for MarAd's other functions. However, as indicated below, it appears the amounts were relatively small. A discussion of this matter, including relevant statutes, follows.

MarAd participation in the Council advertising campaign

During the mid-1970s, the Council became interested in promoting the U.S. merchant marine through the media. In October 1975, it commissioned a media consultant firm to conduct a public affairs study for the U.S. merchant marine. Among other things, the study was designed to test the knowledge and attitudes of those who influence the public opinion environment in which the U.S. merchant marine operates.

The consultant's report, completed in February 1976, concluded that the maritime industry needed to do a great deal more to influence favorable legislative action. It suggested that the merchant marine be portrayed as a vital reserve force for those defense-oriented Members of Congress who would

respond to such an approach. The report pointed out that past "lobbying efforts" had been too strongly focused on the House Merchant Marine and Fisheries Committee and the Senate Merchant Marine Subcommittee, and it recommended that efforts be made to educate key legislative officials on the basic merchant marine issues and the industry's current legislative targets. Shortly after receipt of the study report, the Council, on June 17, 1976, decided to initiate an advertising campaign.

In the early summer of 1976, an advertising agency representative contacted the Director of MarAd's Office of Market Development at his MarAd office and indicated an interest in representing the Council. The Director was contacted in his role as Council executive secretary. The representative was given certain material, including a copy of the consultant's report, with which to prepare a proposal.

In September 1976, the agency submitted a proposal for a Council advertising program which was directed at two major audiences. The first was "Official Washington, D.C.," which included the Congress and its staff, the executive branch, and the resident media community. The second was the corporate officers and directors of major U.S. companies. In December 1976, the proposal was accepted by the Council Board of Governors, which included the Assistant Secretary of Commerce for Maritime Affairs. During December 1976 and thereafter, the Council Advertising Committee met periodically to act on and approve proposed advertising submitted by the agency. The Office of Market Development Director attended all these meetings and was familiar with each advertisement and the committee's action on it.

Six page-size advertisements were approved by the Advertising Committee for inclusion in various magazines and newspapers for the 1977 advertising campaign. These advertisements presented the message that the size of the U.S. merchant fleet had shrunk in comparison with other nations and urged shippers to use U.S.-flag ships. Five of the six advertisements went on to urge the reader to contact his Congressman and express his feeling about a strong American merchant marine. Also, the advertisements offered a booklet for readers who wrote to the Council.

At the time these advertisements were being developed and approved, the Director, Office of Market Development, wrote a letter to the advertising agency dated January 5, 1977, for the purpose of correcting a misconception by the agency that the Council was a lobbying organization. The Director explained that the Council did not serve in a

lobbying capacity. However, on February 15, 1977, the Director and other MarAd employees attended a meeting with the agency's representatives and requested that the agency prepare a letter of transmittal for the booklet "U.S. Flag Shipping," which was offered in the advertisements. The report of the meeting prepared by an agency employee indicates that the letter was supposed to urge readers to communicate a desire for a strong U.S. merchant marine to their representatives in Washington, D.C. The MarAd officials subsequently claimed that the advertising agency misinterpreted their instructions. In any event, the report of the meeting indicated that communications with Members of Congress were discussed and considered.

During 1977, MarAd's Office of Market Development at MarAd headquarters and at its four regional offices maintained a stock of the advertisement reprints for distribution to shippers. The Houston suboffice of MarAd's New Orleans Office of Market Development distributed its stock of reprints by enclosing them with official MarAd correspondence to the public. These reprints urged the reader to tell his Congressman how he felt about a strong U.S. merchant marine. At least one recipient of the Houston reprint distribution considered the advertisement mailing to be a "blatant" lobbying effort by a Federal Government agency and complained to his Senator as follows:

"The enclosed letter copy [dated September 27, 1977] seems to me to be a blatant attempt to influence legislation by an agency of the U.S. Government on government time, using government stationery and postage. It is my understanding that this practice is illegal and I would appreciate your seeing to it that the practice is stopped."

MarAd, at the request of Senator Bentsen, investigated the matter. In responding to the Senator, MarAd admitted that the advertisement should not have been mailed out by the regional office but went on to disclaim that the advertisement constituted lobbying.

The Council's eastern region support
of cargo preference legislation

During our review of MarAd's Council-related files we found an example where the Council, with MarAd involvement, took a position on pending legislation and participated in an industry effort to lobby for congressional support for the legislation. On June 10, 1977, at a Council eastern region

general meeting, held in New York and attended by 3 MarAd representatives and 21 industry representatives, 1 of the participants called attention to the efforts of another organization to obtain congressional support for pending cargo preference legislation through advertisements and other means. Each representative in attendance was urged to complete the forms included in the organization's cargo preference advertisements and return them to the organization. In addition, each company was urged to contact its congressman to support the legislation.

The minutes of the meeting were written by a MarAd employee and included the following account of this comment on the cargo preference legislation.

"Attention was called to the full page advertisement which has been appearing in the papers and on television and are being sponsored by the 'U.S. Maritime Committee to Turn the Tide' in favor of the 30% oil bill. It is not fully known who is on the committee but it is incumbent upon every company to get in touch with their various Congressmen and tell them immediate action should be taken. This is something that means a great deal to the industry and we should not be the ones to standby idle. Labor is working very hard, some industry is working hard. Every company should use the form attached to the ad, fill it out whenever possible and return it to the Committee."

These minutes were circulated to all eastern region members, including seven firms and unions that were not represented at the meeting. These minutes go beyond the mere reporting of what someone else said and amount to an exhortation that "We should not be the ones to stand by idle." This incident indicates that the Council did take positions on pending legislation and participated in an industry effort to lobby for congressional support, again with MarAd assistance.

MarAd's distribution of additional material suggesting that readers contact their Congressmen on behalf of the merchant marine

In 1976, a Council member company sponsored the preparation of a brochure which was designed to correct certain myths or misconceptions concerning the U.S. merchant marine. The brochure was to be published and distributed by the Council. While in draft form the brochure was extensively reviewed and approved by the staff of MarAd's Office of Market

Development. The text of the brochure concluded with a suggestion that readers communicate with Members of Congress on behalf of the merchant marine, as follows:

"MYTH: The U.S. public cannot significantly influence the future of the U.S. Merchant Marine."

"FACT: If the U.S. public is concerned over the future existence of the U.S. Merchant Marine and its economic and military support contributions to the United States, they should write their congressman or senator and ask him or her what they can do to support the U.S. Merchant Marine."

MarAd, as Council executive secretariat, was provided 10,000 copies of this brochure to be distributed by Council members as required. According to MarAd officials 500 copies were provided to each of the four MarAd Council regional executive secretariats' offices. Generally, these brochures were made available to attendees at Council shipper functions and in some instances were left by Office of Market Development staff when calling on exporters and importers.

Legislative "anti-lobbying" restrictions

Since the early 1950s various appropriation acts have contained general provisions prohibiting the use of appropriated funds for "publicity or propaganda." The acts appropriating funds for MarAd do not contain any such restrictions. On the other hand, the Treasury, Postal Service, and General Government Appropriation Act of 1979 (92 Stat. 1000, sec. 607(a)) provides:

"No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress." (Emphasis added).

The prohibition of section 607(a) applies to the use of any appropriation "contained in this or any other Act." Therefore, it is applicable to the use of appropriated funds by MarAd. A prohibition essentially identical to that of section 607(a) has been in annual appropriation acts since MarAd became involved with the Council in 1971.

In interpreting "publicity and propaganda" provisions such as section 607(a), we recognize that every Federal agency has a legitimate interest in communicating with the public and the Congress regarding its policies and activities. If the policy of the administration or of an agency is affected by pending legislation, including appropriation measures, discussion of that policy by agency officials will necessarily, either explicitly or by implication, refer to such legislation and will presumably be either in support of or in opposition to it. An interpretation of section 607(a) which strictly prohibited expenditures of public funds for dissemination of views on pending legislation would consequently preclude virtually any comment by officials on administration or agency policy, a result we do not believe was intended.

In our view, the Congress did not intend, by enactment of section 607(a) and like measures, to prohibit agency officials from expressing their views on pending legislative and appropriation matters. Rather, the prohibition of section 607(a) applies primarily to expenditures involving appeals addressed to members of the public suggesting that they contact their elected representatives and indicate support of or opposition to pending legislation or encourage them to vote in a particular manner.

The penal statute most pertinent to lobbying activities of Federal agencies is 18 U.S.C. § 1913, entitled "lobbying with appropriated moneys" which provides certain penalties to Federal personnel who violate or attempt to violate Federal "anti-lobbying" statutes. This statute contains fine and imprisonment provisions, and their enforcement is the responsibility of the Department of Justice and the courts. Accordingly, we do not consider it appropriate to comment on their applicability to particular situations or to speculate as to the conduct or activities that would or would not constitute a violation. Our role in this area is limited to referring matters to the Department of Justice where deemed appropriate.

Conclusions

During the period March 1, 1977, through October 19, 1977, while cargo preference legislation was being considered by the Congress, MarAd employees performed certain publicity and propaganda-related activities which we believe violated Federal "anti-lobbying" appropriation restrictions. These activities included participation in the planning and implementation of the 1977 National Maritime Council advertising which encouraged the public, while cargo preference was being considered by the Congress, to contact their Congressmen in support of a strong U.S. merchant marine. Also during this

period, MarAd personnel distributed literature and wrote letters to the public making similar suggestions.

Actions taken by us concerning expenditures of appropriated funds in violation of law is limited to recovery of the amounts illegally expended. While appropriated funds were used by MarAd in connection with its administrative support of the Council's 1977 advertising campaign during the period March 1, 1977, through October 19, 1977, when legislation favorable to the U.S. merchant marine was pending before the Congress, the amount involved for each violation would have been relatively small and commingled with other MarAd expenditures. Moreover, the activities of individual employees may not amount to lobbying; it was the aggregate of administrative support provided that we find improper. Therefore, in view of the small amounts involved and the difficulty of determining the exact amount expended illegally, it would be inappropriate for us to attempt to effect recovery from each employee who received salary payments to carry out these activities.

Violations of Department of Commerce standards of conduct regulations

Department of Commerce standards of conduct regulations provide specific criteria to guide the actions of Department of Commerce employees. MarAd employees, in the performance of their Council-related functions, violated certain of these regulations. Such violations occurred despite an initial warning by the Department of Commerce General Counsel in 1971 that involvement with the Council could lead to embarrassing conflicts of interest. In addition, a Federal law may have been violated.

Department of Commerce standards of conduct

Concerning standards of conduct required in Federal service, Department of Commerce policy (15 C.F.R. § 0.735-6) states,

"The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government."

More specifically, these standards provide:

"An employee shall avoid any action, whether or not specifically prohibited by this subpart,

which might result in, or create the appearance of:

- (a) Using public office for private gain;
- (b) Giving preferential treatment to any person;
- (c) Impeding Government efficiency or economy;
- (d) Losing complete independence or impartiality;
- (e) Making a Government decision outside official channels; or
- (f) Affecting adversely the confidence of the public in the integrity of the Government."

Additionally, the standards state:

"* * * an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, payment of expenses, fee, compensation, or any other thing of monetary value, for himself or another person, from a person who:

- (1) Has, or is seeking to obtain, contractual or other business or financial relations with the Department of Commerce;
- (2) Conducts operations or activities that are regulated by the Department of Commerce; or
- (3) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty or by actions of the Department."

Further, concerning the use of Government time or property the Commerce standards of conduct state:

"An employee shall not directly or indirectly use, or allow the use of, Government time or property of any kind, including property leased to the Government, for other than officially approved activities."

Warning of possible standards of conduct violations

As stated earlier in this appendix, MarAd's General Counsel in 1971 sought the confirmation of the Department of Commerce General Counsel of MarAd's legal position that it had the authority to maintain full membership in the Council, serve as the Council's executive secretariat, and perform routine Council administrative tasks. After discussions on the matter, the Commerce General Counsel rejected the MarAd proposal. The Commerce Counsel indicated that both the membership and executive secretariat proposals were inappropriate on the basis of troublesome potential conflicts of interest between a Government agency and a trade association consisting of components of the industry it regulates.

In disregard of the Commerce General Counsel's decision, MarAd entered into the relationship with the Council. Discussed below are several situations which we found that violate Department of Commerce standards of conduct. Based on our recent interview with the former Commerce General Counsel, we believe these are the types of situations that concerned him.

In considering these violations, we noted that the MarAd employees involved believed they were acting in their official capacity and that their activities, which we questioned, were authorized and proper. We also considered that these questionable activities were openly performed with the apparent approval of MarAd management.

Reception for MarAd employee paid for by Council members

In January 1977, a MarAd western region official, a GS-13 Trade Specialist, was promoted and transferred to another MarAd region. In his honor, 10 Council members threw a surprise cocktail reception for him onboard one of the member's ships. Although a complete surprise to the transferring official, his immediate supervisors and peers in the region were aware of the reception plans. Also, MarAd western region personnel attended the party. After the reception a MarAd official collected contributions from each of the 10 Council members involved to cover the cost of the party. The checks received by MarAd were then turned over to the Council Treasurer who, in turn, paid the bills for the reception. The total cost of the reception was \$219.37.

We believe that MarAd officials, by attending this reception apparently without contributing toward its cost,

accepted entertainment from those they regulate. Moreover, they involved themselves in the solicitation of funds for the reception from components of the industry they are responsible for regulating. Both of these actions violate Department of Commerce standards of conduct which expressly prohibit these types of activities.

Solicitation of funds for
Council dinner-dances

The U.S. Maritime Industry Foundation, the Council's western region, held annual dinner-dances to promote and further the aims of the Foundation. To finance these dinner dances, the Foundation, with the assistance of MarAd officials, solicited contributions from various segments of the U.S. maritime industry. For instance, we found that a MarAd official in 1976 signed letters soliciting funds from maritime industry-related organizations, such as maritime unions and port authorities. MarAd officials, sometimes accompanied by their wives, attended these dinner-dances free of charge.

As discussed above, the solicitation of funds and the acceptance of entertainment by MarAd officials from components of the industry they are responsible for regulating violate Department of Commerce standards of conduct. Further, we believe that such conduct by MarAd officials creates the appearance of a conflict of interest which also violates the Commerce standards of conduct.

Preparation of tax returns

As previously stated, after the formation of the Council, the Council's western region formally retained the name United States Maritime Industry Foundation. Because the Foundation was never officially incorporated into the Council, it was necessary for the Foundation to file its own tax returns. During our review we found that from 1971 through 1974 a MarAd western region official signed the Foundation's Federal tax returns as preparer. Also, from 1975 through 1977 MarAd officials continued to prepare the Foundation's Federal tax returns but did not sign as preparer.

We believe the preparation of trade association Federal tax returns by Federal employees may adversely affect the confidence of the public in the integrity of the Government by suggesting that the relationship of the regulator (MarAd) and the regulated is not at arms length. Therefore, this MarAd activity violated the Department of Commerce standards of conduct.

The preparation of the Foundation's Federal tax returns by MarAd employees also placed these MarAd employees in the position of having to represent the Foundation if it had been selected for audit by the Internal Revenue Service or if a dispute had arisen concerning an item of income or contribution. Federal law (18 U.S.C. §205 (1976)) prohibits Federal employees from representing anyone before another agency in any matter in which the United States is a party or has a direct or substantial interest. Accordingly, we believe that the preparation of the Foundation's Federal tax returns by MarAd employees may be questionable under 18 U.S.C. §205. Inasmuch as this statute contains fine and imprisonment provisions, its enforcement is the responsibility of the Department of Justice and the courts.

Japanese trading community dinners

In this situation MarAd officials hosted three dinners on the west coast for the Japanese trading community. The cost of these dinners, \$4,185.85, was borne entirely by four U.S.-flag carriers who presumably hoped that the Japanese would increase the utilization of their shipping facilities. The MarAd officials hosting the dinners shared the meals but did not contribute to the cost. Although this was considered a Council function, MarAd personnel were the only Council members present.

We believe that acceptance by MarAd officials of entertainment paid for by these carriers and representing these carriers at a dinner created the appearance of giving preferential treatment to these carriers. In fact, it could be inferred by a neutral observer that the MarAd officials were acting as confidential agents for these four carriers since the four carriers were the only Council members to share the cost of the dinner. This apparent impropriety violates Commerce's standards of conduct.

Conclusions

MarAd employees in their relationship with the Council violated Department of Commerce standards of conduct and may have violated a Federal law. In view of the fact that we reviewed only a small part of MarAd's operations over the past several years, we are concerned with the number of standards of conduct violations and other questionable activities we identified. Our overall concern is that the problems noted throughout this report may be indicative of more widespread problems relating to possible conflict of interest or other standards of conduct violations.

Recommendation

We recommend that the Secretary of Commerce direct the Department's General Counsel to review the standards of conduct violations found and take any administrative or other action he determines necessary.

SPECIFIC REQUESTS OF THE CHAIRMAN,
SUBCOMMITTEE ON COMMERCE, CONSUMER, AND
MONETARY AFFAIRS, ADDRESSED IN THIS LETTER

1. Identify any instances during the period January 1, 1975, through July 31, 1978, in which MarAd employees claimed or received reimbursement for any expenditures involving activities of the National Maritime Council or its members, that were actually paid for by the Council or others. (See app. I, pp. 2 to 4.)
2. Estimate by calendar year all MarAd expenses incurred in support of the Council during the period of January 1, 1975, through July 31, 1978. (See app. I, pp. 4 to 6.)
3. Identify all Council functions attended by MarAd employees and compare with those identified in the schedule provided to the subcommittee by the Assistant Secretary for Maritime Affairs at the subcommittee's July 21, 1978, hearings. (See app. I, pp. 6 and 7.)
4. Determine the type of gifts, including meals and transportation, received by selected MarAd employees in their official MarAd capacity during the period January 1, 1975, through July 31, 1978. (See app. I, pp. 7 and 8.)
5. Provide a GAO opinion whether the MarAd expenditures in support of the Council, including its advertising campaign, are lawful and proper expenditures. If any or all of such expenditures are unlawful or improper under relevant statutes, executive orders, judicial or administrative decisions, etc., determine what actions GAO should take to recover the costs of such expenditures. (See app. I, pp. 8 to 21.)

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