

of the deceased's estate were used to purchase the headstone or marker or, if death occurred prior to December 18, 1989, to have the deceased's identifying information added to an existing headstone or marker, and no executor or administrator has been appointed, payment may be made to a person who will make a distribution of this monetary allowance to the person or persons entitled under the laws governing the distribution of intestate estates in the State of the decedent's personal domicile.

(Authority: 38 U.S.C. 2306(d))

(2) * * *

(i) Actual cost of acquiring a non-Government headstone or marker or, if death occurred prior to December 18, 1989, the actual cost of adding the veteran's identifying information to an existing headstone or marker; or

(Authority: 38 U.S.C. 2306(d))

[FR Doc. 91-30280 Filed 12-18-91; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Parts 3 and 13

RIN 2900-AF07

Limitation on Compensation Benefits for Certain Incompetent Veterans; Computation of Estate

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication and fiduciary activities regulations concerning the payment of compensation benefits to or for certain incompetent veterans, and the computation of those veterans' estates. This amendment is necessary to implement recently enacted legislation. The intended effect of this amendment is to prohibit the payment of compensation to incompetent veterans without dependents whose estates exceed \$25,000, and to clarify how VA will compute the value of the estates of these incompetent veterans.

EFFECTIVE DATE: This amendment is effective November 1, 1990, the date specified in the enacting legislation.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to add a new

§ 3.853 to 38 CFR and to amend §§ 3.501 and 13.109(d)(5) in the *Federal Register* of June 4, 1991 (56 FR 25399-400). Interested persons were invited to submit written comments, suggestions, or objections on or before July 5, 1991. We received one comment from a private individual.

The commenter objected to the proposed regulatory amendments because he believes that, in effect, the statute they implement forces an affected veteran to purchase a home to avoid having his or her benefits terminated. The commenter feels that the regulations should delay termination of benefits until such time as the veteran or his or her fiduciary has exhausted the veteran's procedural due process and appellate rights, or the veteran has an opportunity to purchase a home.

VA does not concur. Section 8001 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, added section 5505 (formerly 3205) to title 38, United States Code to prohibit the payment of compensation benefits to or for an incompetent veteran, having neither spouse, child nor dependent parent, whose estate, excluding the value of the veteran's home, exceeds \$25,000 until the estate has been reduced to less than \$10,000. By excluding the value of the veteran's home from the estate computation, Congress has expressed its intention that no veteran who owns a home should be forced to sell it in order to have sufficient available assets to meet living expenses until the estate has been reduced to less than \$10,000. VA finds no sound basis, however, for inferring that Congress intended different effective dates of termination based on whether or not a veteran owns or purchases a home, whether or not, or to what extent, a veteran elects to exercise his or her procedural due process and appellate rights, or any other reason.

The provisions of 38 CFR 3.105(h)(1) specify that if a request for predetermination hearing is received by VA within 30 days from the date of the notice, benefit payments will continue at the previously established level pending a final determination. If the final determination is that the facts warrant the termination of benefit payments, however, the effective date of termination is governed by the applicable provisions of §§ 3.500 through 3.503. Terminating benefits on the last day of the month in which all factors requiring a statutory termination are present is consistent with VA's regulatory policy for other statutory purposes, e.g., incompetent veterans who are hospitalized, institutionalized

or domiciled by the United States under the provisions of § 3.557.

The commenter also believes that these regulations should treat estates that exceed \$25,000 by a large amount differently than those that exceed \$25,000 by only a small amount since large estates will survive until September 30, 1992, the date that 38 U.S.C. 5505 (formerly 3205) expires, relatively intact.

VA does not concur. The Secretary has broad authority under 38 U.S.C. 501(a) (formerly 210(c)) to make all regulations necessary or appropriate to carry out the laws administered by VA, but only to the extent that these regulations are consistent with the governing statutes. Since 38 U.S.C. 5505 (formerly 3205) makes no distinction based on the amount by which estates exceed \$25,000, it is beyond VA's authority to create such a distinction in the implementing regulations.

The proposed regulation (See 56 FR 25399-400), in error, referred to the resumption of compensation payments when the affected veteran's estate was reduced to \$10,000. The statutory language is clear (See 38 U.S.C. 5505 (formerly 3205)). Compensation payments are to resume when the affected veteran's estate is reduced to less than \$10,000. The final regulation has been appropriately amended.

VA appreciates the comment submitted in response to the proposed rule, which is now adopted with the amendment described above and other minor technical amendments.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

- (1) They will not have an annual effect on the economy of \$100 million or more.
- (2) They will not cause a major increase in costs or prices.
- (3) They will not have significant adverse effects on competition, employment, investment, productivity,

innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 13

Surety bonds, Trusts and trustees, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 and part 13 are amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.501, new paragraph (n) and its authority citation are added to read as follows:

§ 3.501 Veterans.

(n) *Section 3.853. Incompetents; estate over \$25,000.* Incompetent veteran receiving compensation, without spouse, child, or dependent parent, whose estate exceeds \$25,000: Last day of the first month in which the veteran's estate exceeds \$25,000, but not earlier than November 1, 1990.

(Authority: 38 U.S.C. 5505)

3. The undesignated center heading preceding § 3.850 is revised to read as follows:

Incompetents, Guardianship and Institutional Awards

4. Section 3.853 is added to read as follows:

§ 3.853 Incompetents; estate over \$25,000.

(a) Effective November 1, 1990, through September 30, 1992, where a veteran:

- (1) Is rated incompetent by VA, and
- (2) Has neither spouse, child, nor dependent parent, and
- (3) Has an estate, excluding the value of the veteran's home, which exceeds

\$25,000, further payments of compensation shall not be made until the estate is reduced to less than \$10,000. The value of the veteran's estate shall be computed under the provisions of § 13.109 of this chapter. Payment of compensation shall be discontinued the last day of the first month in which the veteran's estate exceeds \$25,000.

(b) Where payment of compensation has been discontinued by reason of paragraph (a) of this section, it shall not be resumed for any period prior to October 1, 1992, until VA has received evidence showing the estate has been reduced to less than \$10,000, or any criterion of paragraph (a) (1) or (2) of this section is no longer met. Payments shall not be made for any period prior to the date on which the estate was reduced to less than \$10,000, or a criterion of paragraph (a) (1) or (2) of this section was no longer met.

(c) If a veteran denied payment of compensation under paragraph (a) of this section is subsequently rated competent for more than 90 days, the withheld compensation shall be paid to the veteran in a lump-sum. However, a lump-sum payment shall not be made to or on behalf of a veteran who, within such 90-day period, dies or is again rated incompetent.

(d) The compensation payments to an incompetent veteran who is hospitalized, institutionalized, or domiciled by the United States, or any political subdivision thereof, are subject to the provisions of § 3.557 of this part.

(Authority: 38 U.S.C. 5505)

PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

5. The authority citation for part 13 is revised to read as follows:

Authority: 72 Stat. 1114, 1232, as amended, 1237; 38 U.S.C. 501(a), 5502, 5503, 5711, unless otherwise noted.

6. Section 13.109 is amended by revising the section heading, paragraph (d)(5), and the authority citation appearing at the end of the section to read as follows:

§ 13.109 Determination of value of estate; 38 U.S.C. 5503(b)(1)(A) and 38 U.S.C. 5505.

(d) The following will not be included as assets:

- (5)(i) *For purposes of determinations under 38 U.S.C. 5503(b)(1)(A).* The value of the veteran's home unless medical prognosis indicates that there is no reasonable likelihood that the veteran will again reside in the home. It may be

presumed that there is no likelihood for return when the veteran is absent from the home for a continuous period of 12 months because of the need for care, and the prognosis is void of any expectation for a return to the home.

(ii) *For purposes of determinations under 38 U.S.C. 5505.* The value of the veteran's home.

(Authority: 38 U.S.C. 5505)

[FR Doc. 91-30281 Filed 12-18-91; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 431

(MB-32-N)

RIN 0938-AF36

Medicaid Program: Medicaid Eligibility Quality Control Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Response to comments on final rule.

SUMMARY: This document responds to public comments received by the Department on a final rule issued on May 31, 1990, relating to the Department's decision not to publish regulations on the basis of the results of congressionally mandated studies of the quality control systems for the Aid to Families with Dependent Children (AFDC) program and the Medicaid program. The purpose of the studies, which were required by the Consolidated Omnibus Budget Reconciliation Act of 1985, was to examine how best to operate quality control systems in order to obtain information which would allow program managers to improve the quality of administration and provide reasonable data on which to base withholding Federal matching payments for excessive levels of erroneous State payments.

FOR FURTHER INFORMATION CONTACT: Kathy Rama, (301) 966-5929.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicaid Eligibility Quality Control (MEQC) program is a system developed to identify errors in determinations of Medicaid eligibility and to reduce erroneous expenditures in medical assistance payments by

monitoring eligibility determinations. The system promotes payment accuracy, fiscal responsibility, and program integrity.

On May 31, 1990 (55 FR 22142), we published a final rule that revised certain MEQC requirements. In the preamble to that final rule, we noted that, at the time the notice of proposed rulemaking for the final rule was published (January 26, 1987), certain statutorily required quality control studies had not been completed. The studies were required by section 12301 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99-272, as amended by section 1710 of the Tax Reform Act of 1986, Public Law 99-514. The purpose of the studies was to examine how best to operate quality control systems in order to obtain information which would allow program managers to improve the quality of administration and provide reasonable data on which to base withholding Federal matching payments for excessive levels of erroneous State payments.

As a result of receiving numerous State comments that questioned the appropriateness of issuing a final rule before the results of the studies were known, we delayed issuing the final rule until the findings of the studies were available. After considering the findings of the studies, we concluded and stated in the preamble to the final rule that it would not be appropriate to publish additional regulations. We gave our reasons as follows:

First, the current MEQC program is sound and has proved to be efficient and effective in reducing erroneous payments. The primary purpose of the MEQC program is to ensure that those individuals who receive assistance are eligible for services. The substantial reductions in error rates achieved by States demonstrate significant improvements in payment accuracy over time, thus indicating the effectiveness of the program.

Second, we analyzed the MEQC program to respond to specific, identified problems in the current process—not simply theoretical improvements which often entail considerable new costs and the diversion of resources, but do little to actually enhance the program.

Third, based on our analysis, we concluded that the principles and methods of the current program are valid. The concept of a uniform, national error threshold and shared fiscal responsibility for error is fair and equitable. The use of a double sampling methodology involving a State review of a sample of cases followed by a Federal

re-review of a subsample of those cases is far more practical and efficient than duplicative, separate systems. It also provides an appropriate sharing of responsibilities and costs to achieve both error reduction and fiscal accountability. The sampling procedures and regression estimation methodology provide statistically valid, essentially unbiased and reliable estimates of payment error rates for corrective action and the calculation of disallowances. The definition and measurement of error are also reasonably balanced and complete.

Fourth, the current quality control focus on payment accuracy, fiscal responsibility, and program integrity has been and continues to be necessary and proper, given the appropriate public concern with high levels of erroneous payments. Quality control is, however, only one component of individual State management improvement efforts and the comprehensive Federal monitoring system designed to assess overall program performance. The MEQC program provides States with information on the frequency, magnitude, and sources of error to guide improvement in payment accuracy. The current MEQC program was never intended to be the only source of information about errors, much less provide comprehensive measures of program performance, such as timeliness, service delivery, efficiency, and effectiveness.

To the extent that program improvements are legitimately needed, we indicated that we would address these areas through appropriate statutory and administrative changes. We invited public comments on this approach.

II. Public Comments and Departmental Responses

In response to our request for public comments, we received correspondence from three State agencies, one private health care agency, and one law firm representing 18 public welfare agencies. Three of the commenters raised issues that were not within the scope for which comments were solicited, and as indicated in the preamble to the final rule, we are not addressing them in this document. Our responses to the remaining comments follow:

Comment: Two commenters recommended that the backlog of past "sanctions" in the Medicaid program be eliminated as had been done in the AFDC program.

Response: The Congress eliminated the backlog of past disallowances in the AFDC quality control program and proposed that the Department revise

tolerance levels for AFDC quality control because the number of States which were liable for disallowances and the amount of past disallowances were very large. We believe that the fact that Congress took no similar action in the case of Medicaid disallowances reflects the fact that Congress believes the imposition of such disallowances to be appropriate. Further, we believe the Medicaid disallowances for prior years were established properly based on a sound review and measurement system which includes a separate Medicaid review of any ineligible case identified in the AFDC stratum to determine whether Medicaid eligibility exists.

Comment: One commenter suggested that, for future years, the performance standards be revised so that only States at the extreme of bad performance are "sanctioned."

Response: We do not believe that revisions to the 3 percent performance standard established by Congress would be appropriate. The 1988 national average error rate was 2.0 percent, with 4 States exceeding the 3-percent tolerance; the 1989 national average error rate was 2.1 percent, with five States exceeding the 3-percent tolerance. The national error rates for 1986 and 1987 were 2.5 and 2.2 percent, respectively. State performance is relatively consistent among States. We believe a national uniform error threshold is fair and equitable to States.

Comment: One commenter proposed that "sanctions" should be kept sufficiently low so that they do not endanger the States' ability to provide Medicaid services and recommended a new method of calculating disallowances similar to the sliding scale used in the AFDC program.

Response: Unlike the AFDC program, where error rates, the number of States liable, and disallowance amounts are high, recent error rates in Medicaid have been consistently low. The 1989 2.1 percent national error rate is evidence that States can maintain low error rates through accurate eligibility determinations and effective program management. We believe that current disallowance amounts are sufficiently low and do not endanger the States' ability to provide services.

Comment: Two commenters recommended that performance thresholds applied to States be adjusted to reflect caseloads that are differentially prone to error.

Response: Again, we do not believe that changes in the 3-percent performance standard established by the Congress would be appropriate. States may target effective corrective

actions to reduce the incidence of errors in error prone cases. Further, research provides no scientific basis to make consistent adjustments for case characteristics. Because so little of the variation in error rates between States can be explained by statistical analysis, the selection of specific characteristics for which to make adjustments cannot be empirically determined. The arbitrary selection of different alternative adjustment factors can result in dramatically different, and therefore inequitable, adjustments for States.

Comment: Two commenters suggested that States be rewarded for good performance. One commenter recommended that States with underpayment rates that are lower than the national average be allowed to offset their error rates with this reduction.

Response: Recent error rates in Medicaid have been consistently below the statutory threshold. For this reason, we believe it is not necessary to replace the disallowance process currently required by statute with an alternative system of incentives and disallowances. However, we are currently studying the feasibility of structuring an accountability system for Medicaid negative case actions. In this context, we may consider an incentive for good performance.

Comment: One commenter believes the method for calculating excess resource errors should be adjusted to avoid multiple counting of errors. That is, an excess resource error should be assigned only to the first month of eligibility or until resources are spent down.

Response: Under section 1902(r)(2) of the Act, States have the option to apply more liberal policies in determining income and resource eligibility of specified eligibility groups. If a State elects this option, it must amend its State Medicaid plan in order for MEQC to review cases in accordance with it. If a State has not chosen to use this option, statutory requirements mandate that an individual is ineligible for each month that he or she holds excess resources.

Comment: Two commenters believe States should not be "sanctioned" for errors that are found on the basis of information not available during the eligibility determination.

Response: We disagree with this comment. Although the source used to identify errors may not have been available during the eligibility determination, the factor causing the error did exist. States need to be aware of all errors to develop methods for identifying the error cause during the

eligibility determination. States are free to use a variety of methods (e.g., collateral contacts) to verify eligibility. The fact that eligibility information was not obtained from one specific source or that data matches may not contain current information is not sufficient reason to hold the State harmless from an error. We recognize that it is unreasonable to hold States accountable for inaccurate, as opposed to outdated, information provided by a Federal agency that is the originating source of the data. Therefore, we have advised States that, effective October 1, 1990, we will not cite errors resulting from erroneous information provided by a Federal agency that is the primary source of verification. However, we believe that not citing errors that are the State's responsibility would undermine the focus of MEQC on fiscal responsibility and payment accuracy.

Comment: One commenter suggested that States should not be "sanctioned" for errors that result from Federal policy interpretations announced for the first time in MEQC reviews. The commenter recommended that the correctness of a payment be determined in accordance with the State plan or a court order and that States be notified of noncomplying State plans before an error is cited, even if the State must enact a law to remove the inconsistency.

Response: Although the comment implies otherwise, Medicaid payment accuracy is determined in accordance with the approved State plan (and approvable plan amendments) since the plan reflects the terms under which Federal matching payments are made to the State. MEQC case reviews are conducted against the approved State plan, regardless of whether or not it has been revised to reflect changes in the statute or regulation, and errors are not cited unless a plan amendment has been disapproved. However, errors are cited when State policy does not conform to the State plan. States can avoid these errors by ensuring that their policies are consistent with State plan provisions.

Regarding payments made under a court order, we determine that a payment is correct if it is made within the scope of the Medicaid program. HCFA does not provide Federal matching payments for services furnished that are beyond the scope of the Medicaid program unless ordered to do so by the court. We are not adopting this recommendation because we do not believe it is reasonable to amend the statute to make available Medicaid funds for court-ordered services that are beyond the scope of the Medicaid program.

Finally, the MEQC program does not interpret or develop Medicaid policy. Medicaid policy interpretations and guidance are available to all States through the State Medicaid Manual as the official HCFA issuance. States also may contact their HCFA Regional Office for technical assistance on correct policy interpretations and correct policy applications.

Comment: One commenter contended that HCFA should assess and report to the States the level of measurement error and sampling error in MEQC reviews.

Response: Since the commenter does not define "measurement error," we are assuming that the term means statistical sampling error (or precision). Estimates of sampling errors (or precision) are provided to the States upon request.

Comment: One commenter suggested that HCFA incorporate broader measures of performance into the MEQC standards.

Response: We agree that States should assess measures of quality and effectiveness against broad program objectives. However, we do not agree that a single comprehensive performance measurement system is necessary to achieve that goal. A comprehensive performance measurement system would be appropriate only if information is unavailable or inadequate for decisionmaking. This is not the case. The MEQC system is but one of several systems that provides program managers with meaningful information. Other procedures include management information reporting systems, management and program evaluations, audits, demonstration projects, and research studies. Further, States are better able to design their own performance measurement systems under current regulations than would be possible under a federally mandated system. Many States oppose the expanded use of performance standards for fiscal liabilities. Therefore, we are not adopting the commenter's suggestion.

Comment: One commenter recommended that we provide a 6-month grace period on "sanctions" after issuance of final regulations.

Response: We disagree with the commenter. We are bound by statutorily set effective dates. The Congress may provide delayed quality control implementation when it chooses and it has done so recently in the care of qualified Medicare beneficiaries. The Administrative Procedure Act requires public opportunity to comment on proposed regulations and provides for a

1-month delayed effective date of final regulations. We believe this regulatory process provides adequate notice for States to anticipate proposed program changes and adequate time to implement provisions of the final rule.

Comment: One commenter believed States should be held harmless from MEQC errors if they relied on erroneous information or advice supplied by Federal agencies.

Response: We agree with the commenter. As stated in an earlier response, we have advised States that, effective October 1, 1990, we will hold them harmless from MEQC errors in situations where erroneous information is provided by a Federal agency that is the primary source of verification (e.g., Supplemental Security Income and Retirement and Survivors Disability Income benefit information from the Social Security Administration). Further, the good faith waiver process of the quality control program has always allowed States to request waivers of errors caused by erroneous information supplied by Federal officials reasonably assumed to be in a position to provide such information.

III. Conclusion

In summary, we are reaffirming our decision not to publish regulations based on the results of the quality control studies required by section 12301 of COBRA, as amended by section 1710 of the Tax Reform Act of 1986.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medical Assistance Programs)

Dated: June 9, 1991.

Gail Wilensky,
Administrator, Health Care Financing
Administration.

Approved: October 18, 1991.

Louis W. Sullivan,
Secretary.

[FR Doc. 91-30352 Filed 12-18-91; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 87-06]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade

AGENCY: Federal Maritime Commission.

ACTION: Rescission of final rule and termination of proceeding.

SUMMARY: The Federal Maritime Commission ("Commission") published a final rule in this proceeding as 46 CFR 586.2 (1990). In response to a Motion to Terminate Proceedings and Rescind Final Rule filed by Naviera Neptuno, S.A. ("Neptuno"), the Commission is rescinding the final rule and terminating the proceeding.

EFFECTIVE DATES: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Final Rule in this proceeding, issued pursuant to section 19(1)(b), of the Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C. app. 876(1)(b), found conditions unfavorable to shipping to exist in the U.S./Peru trade ("Trade") as a result of the cargo reservation laws, decrees and policies of the Government of Peru ("GOP"). Decree No. 036-82-TC established the GOP cargo reservation system. Although subsequently amended by other decrees which were themselves later repealed by the GOP, Decree No. 036-82-TC remained in effect and provided the underlying basis for reservation of 50% of commercial cargo for movement on Peruvian-flag or associated vessels, thus denying access to major proportions of cargo by third-flag carriers and restricting the service and choice available to U.S. shippers. The Commission's action in this proceeding was based in large part on Decree No. 036-82-TC.

The Commission's final rule, issued on March 28, 1989, assessed a fee of \$50,000 per voyage on several Peruvian-flag carriers. The effective date of the rule was, however, deferred due to political and economic conditions then-existing in Peru, brought to the Commission's attention by the Department of State ("DOS"). See 54 FR 12629 (March 28, 1989); 46 CFR 586.2.

Recent GOP Actions and the Motion

The GOP has recently acted to eliminate the cargo reservation policies and decrees which were the focus of the Commission's proceeding. Supreme Decree No. 020-91-TC, enacted July 3, 1991, cancels a number of previous Supreme Decrees, including *inter alia* Supreme Decree No. 036-82-TC. DOS informed the Commission of these enactments by a letter forwarding a July 15, 1991, Diplomatic Note from the Embassy of Peru in which the GOP suggested that the Commission review and repeal the final rule. Neptuno, a Peruvian-flag carrier subject to the rule, has filed a Motion which describes

these filings and events and requests that the Commission rescind the final rule and terminate the proceeding.

Replies to the Motion

The Motion was served on all of the parties who had filed comments in earlier proceedings in this Docket. Nedlloyd Lines ("Nedlloyd") replied to the Motion. In addition, DOS sent a letter confirming that the GOP's "decrees are in effect and have eliminated all cargo preference."

Nedlloyd states that the decrees appear to be a significant and progressive step by the GOP but, nevertheless, suggests that rescission of the final rule would be premature. The basis for Nedlloyd's concern is a \$100,000 penalty assessed against Nedlloyd earlier this year by the GOP for alleged violations of cargo reservation laws. Nedlloyd states that it is contesting the penalties, and that, although the GOP has taken no action to collect the penalties, they are still "pending." Nedlloyd suggests that the Commission allow a period in which to monitor GOP transition from cargo reservation by directing interested parties to report on conditions in the Trade in sixty days.

Discussion

Nedlloyd states that its asserted liability for penalties based on alleged violations of the cargo reservation scheme remains outstanding. Nedlloyd further advises, however, that this assertion of liability predates the GOP action to remove the cargo reservation scheme itself and that no enforcement efforts have been undertaken by the GOP.¹ In these circumstances, and given Nedlloyd's continuing ability to seek future action by this agency in light of changes in circumstances, we are reluctant to withhold Commission recognition of the GOP's recent actions.

The GOP enactments reflect the intention, expressed in Decree No. 020-91-TC, to "remove the restrictions affecting shipments by exporters and importers, including abolition of Reservation of Freight to promote shipping * * *." Article 1 of the Decree provides for the removal of administrative restrictions of various kinds affecting maritime shipments by

¹ The Commission, of course, would be concerned should efforts be made to belatedly enforce cargo reservation decrees which were the subject of this proceeding. While actual termination of such claims by the GOP would be welcome, the Commission will not speculate further on matters that might concern it in the future in view of the positive achievements in resolving the conditions unfavorable to shipping which were the focus of the proceeding.