

reduced or eliminated when the participant is eligible for Medicare health benefits or for health benefits under a comparable State health benefit plan. Pursuant to the authority contained in section 9 of the Act, and in accordance with the procedures provided therein and in § 1625.30(b) of this part, it is hereby found necessary and proper in the public interest to exempt from all prohibitions of the Act such coordination of retiree health benefits with Medicare or a comparable State health benefit plan.

(c) *Scope of exemption.* This exemption shall be narrowly construed. It does not apply to the use of eligibility for Medicare or a comparable State health benefit plan in connection with any act, practice or benefit of employment not specified in paragraph (b) of this section. Nor does it apply to the use of the age of eligibility for Medicare or a comparable State health benefit plan in connection with any act, practice or benefit of employment not specified in paragraph (b) of this section.

#### **Appendix to § 1625.32—Questions and Answers Regarding Coordination of Retiree Health Benefits with Medicare and State Health Benefits**

Q1. Why is the Commission issuing an exemption from the Act?

A1. The Commission recognizes that while employers are under no legal obligation to offer retiree health benefits, some employers choose to do so in order to maintain a competitive advantage in the marketplace—using these and other benefits to attract and retain the best talent available to work for their organizations. Further, retiree health benefits clearly benefit workers, allowing such individuals to acquire affordable health insurance coverage at a time when private health insurance coverage might otherwise be cost prohibitive. The Commission believes that it is in the best interest of both employers and employees for the Commission to pursue a policy that permits employers to offer these benefits to the greatest extent possible.

Q2. Does the exemption mean that the Act no longer applies to retirees?

A2. No. Only the practice of coordinating retiree health benefits with Medicare (or a comparable State health benefit plan) as specified in paragraph (b) of this section is exempt from the Act. In all other contexts, the Act continues to apply to retirees to the same extent that it did prior to the issuance of this section.

Q3. May employers continue to offer “Medicare carve-out plans” that deduct from the health benefits provided to Medicare-eligible retirees those health benefits that Medicare provides, while continuing to provide to Medicare-eligible retirees those health benefits that Medicare does not provide?

A3. Yes. Employers may continue to offer such “carve-out plans” and make Medicare

the primary payer of health benefits for Medicare-eligible retirees. Employers may also continue to offer “carve-out plans” to those retirees eligible for health benefits pursuant to a comparable State health benefit plan and make the comparable State health plan the primary payer of health benefits for these State-eligible retirees.

Q4. Does the exemption also apply to dependent and/or spousal health benefits that are included as part of the health benefits provided for retired participants?

A4. Yes. Because dependent and/or spousal health benefits are benefits provided to the retired participant, the exemption applies to these benefits, just as it does to the health benefits for the retired participant. However, dependent and/or spousal benefits need not be identical to the health benefits provided for retired participants. Consequently, dependent and/or spousal benefits may be altered, reduced or eliminated pursuant to the exemption whether or not the health benefits provided for retired participants are similarly altered, reduced or eliminated.

Q5. Does the exemption permit employers to use Medicare (or comparable State health benefit plan) eligibility, or the age of Medicare eligibility (or the age of eligibility for a comparable State health benefit plan) as a basis for other acts, practices or decisions regarding retirees?

A5. No. Employer use of Medicare (or comparable State health benefit plan) eligibility or the age of Medicare eligibility (or the age of eligibility for a comparable State health benefit plan) in a manner other than as specified in paragraph (b) of this section likely would be considered reliance upon an age-defined factor. Reliance upon an age-defined factor in making distinctions in employee benefits violates the Act, unless the employer satisfies one of the Act’s specified defenses or exemptions.

Q6. Does the exemption apply to existing, as well as to newly created, employee benefit plans?

A6. Yes. The exemption applies to all retiree health benefits that coordinate with Medicare (or a comparable State health benefit plan) as specified in paragraph (b) of this section, whether those benefits are provided for in an existing or newly created employee benefit plan.

Q7. Does the exemption apply to health benefits that are provided to current employees who are at or over the age of Medicare eligibility (or the age of eligibility for a comparable State health benefit plan)?

A7. No. The exemption applies only to retiree health benefits, not to health benefits that are provided to current employees. Thus, health benefits for current employees must be provided in a manner that comports with the requirements of the Act. Moreover, under the laws governing the Medicare program, an employer must offer to current employees who are at or over the age of Medicare eligibility the same health benefits, under the same conditions, that it offers to any current employee under the age of Medicare eligibility.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 030409081–3081–01; I.D. 032103B]

**RIN 0648–AQ72**

### **Fisheries of the Northeastern United States; Magnuson-Stevens Fishery Conservation and Management Act Provisions; Northeast (NE) Multispecies Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Withdrawal of a portion of a proposed rule.

**SUMMARY:** NMFS withdraws a portion of a proposed emergency rule, published on April 24, 2003, which proposed continuation of NE multispecies management measures implemented on August 1, 2002, and DAS Leasing Program (Program). NMFS will not implement that portion of the proposed emergency rule that proposed the Program.

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#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

On August 1, 2002, NMFS published an interim final rule (67 FR 50292), which implemented the Settlement Agreement in Conservation Law Foundation, et al. v. Evans, et al. Civil No. 00–1134 (D.D.C.). The August 1, 2002, interim final rule was in response to a Remedial Order issued on May 23, 2002, by the U.S. District Court for the District of Columbia (Court). Pursuant to the Court’s Remedial Order, the measures implemented in the August 1, 2002, interim final rule are expected to remain in place until implementation of Amendment 13 to the NE Multispecies Fishery Management Plan (FMP). Because the Court granted an extension of the Amendment 13 implementation date until May 1, 2004, and because the August 1, 2002, interim final rule was to expire on July 27, 2003, NMFS published a proposed emergency rule on April 24, 2003, (68 FR 20096) that would continue the current measures until implementation of Amendment 13.

In addition to continuing the management measures that were first implemented on August 1, 2002, (as