requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. When adjusted for inflation using the Consumer Price Index for All Urban Consumers as the Bureau of Labor Statistics published, the equivalent value of $100,000,000 in year 2012 dollars is $151,000,000.[2] The final rule will not result in the expenditure, in the aggregate, of $151,000,000 or more in any one year, and thus preparation of such a statement is not required. Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355, May 22, 2001. Under the Executive Order, a ''significant energy action'' is defined as ''[a]ny action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.'' FRA has evaluated this final rule under Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

Privacy Act

Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

List of Subjects in 49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, FRA amends part 225 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 225—[AMENDED]

■ 1. The authority citation for part 225 is revised to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. Amend § 225.19 by revising the first sentence of paragraph (c) and revising paragraph (e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(c) *Group II—Rail equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) that result in damages higher than the current reporting threshold (*i.e.,* $6,700 for calendar years 2002 through 2005, $7,700 for calendar year 2006, $8,200 for calendar year 2007, $8,500 for calendar year 2008, $8,900 for calendar year 2009, $9,200 for calendar year 2010, $9,400 for calendar year 2011, $9,500 for calendar year 2012, $9,900 for calendar year 2013, $10,500 for calendar year 2014, and $10,500 for calendar year 2015) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. * * *

* * * * *

(e) The reporting threshold is $6,700 for calendar years 2002 through 2005, $7,700 for calendar year 2006, $8,200 for calendar year 2007, $8,500 for calendar year 2008, $8,900 for calendar year 2009, $9,200 for calendar year 2010, $9,400 for calendar year 2011, $9,500 for calendar year 2012, $9,900 for calendar year 2013, $10,500 for calendar year 2014, and $10,500 for calendar year 2015. The procedure for determining the reporting threshold for calendar years 2006 and beyond appears as paragraphs 1–8 of appendix B to part 225.

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Issued in Washington, DC, on December 18, 2014.

Joseph C. Szabo,

Administrator.

[FR Doc. 2014–30113 Filed 12–23–14; 8:45 am]

BILLING CODE 4910–06–P

[2] *See* U.S. Department of Transportation guidance at, ''Reform Act of 1995,'' February 24, 2014 (update), *http://www.dot.gov/office-policy/transportation-policy/threshold-significant-regulatory-actions-under-unfunded-mandates.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 130402316–4999–02]

RIN 0648–BD02

Vessel Monitoring Systems; Requirements for Enhanced Mobile Transceiver Unit and Mobile Communication Service Type-Approval

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

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule implementing regulations to codify type-approval standards, requirements, procedures, and responsibilities applicable to commercial Enhanced Mobile Transceiver Unit (EMTU) vendors and mobile communications service (MCS) providers seeking to obtain and maintain type-approval by NMFS for EMTU/MTU or MCS, collectively referred to as vessel monitoring systems (VMS), products and services. This rule is necessary to specify NMFS procedures for EMTU/MTU and MCS type-approval, type-approval renewal, and revocation; revise latency standards; and ensure compliance with type-approval standards.

DATES: This final rule is effective January 23, 2015.

ADDRESSES: Electronic copies of the Regulatory Impact Review, Final Regulatory Flexibility Analysis (FRFA), and other related documents are available by contacting the individuals listed below in the **FOR FURTHER INFORMATION CONTACT** section. Other documents relevant to this rule are available from the Office of Law Enforcement Web site at *http://www.nmfs.noaa.gov/ole/about/programs.html.*

FOR FURTHER INFORMATION CONTACT: Kelly Spalding, Vessel Monitoring

System Management Analyst, 301–427–8269; or Eric Teeters, Fishery Regulations Specialist, 301–427–8580.

SUPPLEMENTARY INFORMATION: Fishers must comply with applicable Federal fishery VMS regulations, and in doing so, may select from a variety of EMTU/MCS vendors who have been approved to participate in the VMS program for specific fisheries. Fishers may be cited for violations of the VMS regulations and held accountable for monitoring anomalies not attributable to faults in the EMTU or MCS. EMTUs and MCS must continue to meet the standards for type-approval throughout the service life of the VMS unit. Therefore, type-approval, latency requirements, periodic type-approval renewal, and procedures for revocation of type-approval(s) are essential to establish and maintain uniformly high VMS system integrity and ensure fishers have access to VMS that meet their needs. Regional Fishery Management Councils and NMFS have established VMS programs to support NMFS regulations requiring the use of VMS that typically are designed to manage fisheries resources and protect marine species and ecologically sensitive areas. VMS is also required on U.S. vessels fishing outside the U.S. EEZ pursuant to conservation and management measures adopted by international Regional Fishery Management Organizations to which the United States is a party.

The NMFS Office of Law Enforcement (OLE) maintains VMS specification requirements. On September 9, 2014, NMFS published and requested comments (79 FR 53386) for the proposed regulations that outline the rationale for the actions contained herein. The 45-day comment period on the proposed rule ended on October 24, 2014. A summary of the comments and the responses by NMFS are provided under the Comments and Responses section of this preamble.

Background

A brief summary of the background of this final action is provided below. A detailed review of the provisions of the proposed regulations, the alternatives, and the rationale for these regulations is provided in the preamble to the proposed rule (79 FR 53386, September 9, 2014). Those documents are incorporated by reference and their description of specific requirements and procedures are not repeated here. Additional information regarding, and the proposed rule itself, are available from the NMFS Office of Law Enforcement Web site (see **ADDRESSES**).

Through this final rule, NMFS is codifying procedures and requirements for initial type-approvals for EMTUs, MCS, or EMTU/MTU (''bundle'')(valid for 3 years); renewals of type-approvals; revocations of type-approvals; and appeals. NMFS will no longer issue new type-approvals for MTUs, only for EMTUs. However, as set forth in proposed 50 CFR 600.1512, all MTUs, EMTUs, MCSs, and bundles with valid type-approvals on the effective date of this rule will continue to be type-approved. If a type-approval date is more than 3 years old, the type-approval will expire February 23, 2015.

The final rule will codify the VMS type-approval process and standards, improve enforceability of the type-approval standards, and better ensure all type-approved EMTU/MTUs and MCS remain in compliance with NMFS VMS type-approval standards.

NMFS is implementing substantive requirements for EMTUs and MCS in 50 CFR 600.1502 through 600.1509. Failure to meet these requirements or applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which the EMTU or MCS is type-approved will trigger a Notification Letter and potential revocation procedures. For initial type-approvals and renewals, the type-approval requestor (or holder, in the case of a renewal) will be required, among other things, to certify that the EMTU, MCS, or bundle complies with each requirement set out in 50 CFR 600.1502 through 600.1509, and applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which type-approval/renewal is sought. The final rule relaxes the latency standard, as well as implements procedures for revoking type-approvals, and sets up an appeals process for such type-approvals.

Lastly, this final rule revises existing regulations in the NMFS Greater Atlantic Region's VMS vendor and unit requirements at 50 CFR 648.9 that will otherwise overlap and conflict with the regulations herein. To eliminate this potential conflict in Federal regulations, this final rule revises the regulations at 50 CFR 648.9 so that the NMFS OLE Director will issue type-approvals for all NMFS regions, including the Greater Atlantic Region.

Comments and Responses

During the proposed rule comment period, NMFS received three comment letters with six unique comments. A summary of the relevant comments on the proposed rule is shown below with NMFS' response. All written comments submitted during the comment period can be found at *http://regulations.gov/* by searching for NOAA–NMFS–2014–0019–0002.

Comment 1: Support was expressed for the requirement in § 600.1513(c) that a type-approval renewal request letter include vessel position report statistics regarding the processing and transmitting of position reports to the VMS data processing center.

Response: NMFS agrees. By providing these data to NMFS, the type-approval holder will expedite the type-approval process.

Comment 2: For initial type-approval of EMTUs, NMFS should be required to complete its certification testing for marine electronics products in less than the 90 calendars days provided for in § 600.1501(d) of the proposed rule. The commenter believes the testing as outlined in the proposed rule could be completed in 30–40 hours and a response, with adequate documentation, should only take an additional 100–120 hours. Therefore, the commenter suggested the final rule should require NMFS to complete certification testing within 30 days.

Response: Testing of an EMTU for type-approval is conducted in multiple steps, including laboratory and field testing of hardware, software, and communications that may require weeks or months to complete. Requiring NMFS to complete testing within 30 days as suggested by the commenter would not allow NMFS OLE sufficient time to have all aspects of EMTU and communication operation evaluated thoroughly by experts to ensure the devices meet all requirements in all of the NMFS regions for which type-approval is requested. NMFS believes that certification should occur as quickly as possible and, in certain circumstances, NMFS may be able to complete the certification process in less than 90 calendar days, but cannot commit to doing so in all instances. The regulatory text in § 600.1501(d) of this final rule has been changed to reflect the expectation that NMFS will complete certification testing within 90 days of receipt of a complete type-approval request, unless additional time is needed for testing.

Comment 3: In proposed § 600.1502, there is a new requirement that type-approved vendors be able to parse out billing for various features, rather than simply billing customers only for the service they use, without regard for the type of service. A commenter stated that billing should be kept simple and does not need to have the detail and extra expense that parsed billing would require.

Response: The requirement for vendors to parse billing is to distinguish

services billed to the government from services billed to fishermen. If additional polling, increased VMS position reports, or other services are required of the vendor by the government, then those services need to be billed to the government, not to fishermen. Thus this final rule requires that vendors parse billing clearly.

Comment 4: This commenter suggests 50 CFR 600.1508, which requires all VMS vendors to provide 24/7/365 customer service support, would increase fishermen's expenses. The commenter states this additional expense is unnecessary and would only solve a portion of the support issues since vendors do not have access to NOAA's data center, and cannot tell what issues are related to the equipment on the vessels. The commenter believes that additional technical and customer support to fishermen would best be provided by NOAA's OLE Helpdesk.

Response: The requirement for 24-hour customer support for VMS vendors to assist the fisherman in maintaining and repairing their EMTU/MTU, including timely responses to customer support requests, has been in place since January 31, 2008 (see 73 FR 5813). Prior to the January 2008 **Federal Register** notice, NMFS had required that VMS vendors provide some level of customer support, but not 24/7/365 support, as a condition of being type-approved. (see 70 FR 61941, October 27, 2005; 71 FR 3053, January 19, 2006). As such, this 24/7/365 requirement will not add any new or additional financial burden to fishers or VMS vendors, as this requirement has already been built into the vendors' costs for the service being provided to fishers since 2008. Additionally, it is important to note that customer service is provided by VMS vendors to the government as well as fishermen.

Comment 5: Reimbursement of the cost of an EMTU should also include reimbursing the cost of a generator if it is needed to power the EMTU. Also, special consideration should be made for cases when the installation of a generator may not be physically possible due to space or other vessel limitations. Please provide information about currently available resources for reimbursing the cost of an EMTU.

Response: The amount of power that is required to operate the EMTUs that are currently type-approved varies. Several of these EMTUs are operated with battery power on small center console vessels with very little space taken by the EMTU. The range of EMTUs that are currently type-approved provide fishermen with options to determine which EMTU best meets their needs for the fishery in which they participate and the specific characteristics of their vessel without requiring the use of a generator. For information about the EMTU reimbursement program, please go to *http://www.psmfc.org/program/vessel-monitoring-system-reimbursement-program-vms* or call the NOAA OLE VMS Helpdesk at 1–888–219–9228.

Comment 6: NMFS is already monitoring all fish that are caught and it is unfair to further burden fishers with the costs associated with putting cameras on every boat. These additional costs reduce fishers' income and drive up the cost of seafood.

Response: This rule does not directly impose any additional costs or monitoring on fishers or other sectors of the fishing industry; nor does it require the installation of cameras on every boat. This final rule will enable fishers to have increased confidence that EMTUs/MTUs that are type-approved will be capable of complying with type-approval standards established by NMFS.

Changes From the Proposed Rule

Based on public comment, the regulatory text at 50 CFR 600.1501(d) has been changed to read, ''Unless additional time is required for EMTU testing, NMFS OLE will notify the requestor within 90 days after receipt of a complete type-approval request as follows:''.

Based on public comment, the regulatory text at 50 CFR 600.1502(b) has been changed to provide further clarification that billing for messages and communications from an EMTU must be able to be parsed out to enable clear billing of costs to the government and to the owner of a vessel or EMTU, when necessary.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule does not duplicate, conflict, or overlap with any Federal regulations.

The Final Regulatory Flexibility Analysis (FRFA) was prepared pursuant to 5 U.S.C. 604(a) of the Regulatory Flexibility Act (RFA), and incorporated the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and summary of the analyses completed to support the action.

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here. The full FRFA is included below.

Section 604(a)(1) of the RFA requires that the Agency describe the need for, and objectives of, the final rule. A description of the final action, why it is being considered, and the legal basis for this final action are summarized here and described in more detail in the preamble to the proposed rule. The current national process regarding VMS Type-Approval Standards do not adequately address the process for evaluating VMS performance, or procedures for improving VMS performance or revoking VMS type-approvals for failure to meet type-approval requirements at any time after initial approval. The purpose of the final action, therefore, is to codify the VMS type-approval process and standards, improve enforceability of the type-approval standards and better ensure all type-approved EMTU/MTUs and MCS remain in compliance with NMFS VMS type-approval standards. In addition, the final action specifies NMFS procedures for VMS type-approval renewal and revocation. The objective of the proposed action is to revise latency standards, improve the enforceability of the VMS type-approval standards, and to establish type-approval renewal and revocation processes.

Section 604(a)(2) of the RFA requires a summary of the significant issues raised by the public comments in response to the IRFA and statement of any changes made in the final rule as a result of such comments. NMFS received six unique public comments on the proposed rule and IRFA. A summary of these comments and the Agency's responses, including changes as a result of public comment, are included in the preamble above. For the reasons discussed in the response to Comment 2, NMFS is recognizing that initial EMTU type-approval testing and notification to the type-approval requestor may be made in less than 90 days, in some circumstances. As discussed in response to Comment 3, NMFS has provided further clarification about the meaning and purpose of parsing bills for VMS services. Otherwise, there are no substantive changes from the proposed rule as a result of these economic comments. The comments above did not alter the cost analysis in the FRFA and final rule.

Under Section 604(a)(4), Federal agencies must provide an estimate of the

number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States. This rule will impact EMTU vendors and/or MCSP. The rule will directly apply to the existing six NMFS type-approved VMS equipment providers and any companies wishing to obtain VMS type-approval in the future. NMFS has received inquiries from three other companies about seeking type-approval in the past, but have not yet officially sought type-approval. Based on a review of company financial records, NMFS estimates approximately half of the current VMS equipment providers would not be considered small businesses under the SBA size standard for the satellite telecommunications industry. Of the remaining businesses, many of them are privately held businesses that do not publicly report annual revenues, so it is difficult for NMFS to definitively determine whether they are small businesses. NMFS therefore conservatively estimates that this rule will impact three to six small entities.

Section 604(a)(5) of the RFA requires that the Agency provide a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record. This rule will involve reporting, record keeping, and other compliance requirements for the type-approval application process, notifications for any substantive changes, litigation support, periodic renewal, and possibly responses to revocation notices.

The application process will require a vendor requesting type-approval of an EMTU, MCS, or bundle to make a written request to the NMFS. The written request will require the following information pertaining to the EMTU, MCS, or bundle: Communication class; manufacturer; brand name; model name; model number; software version and date; firmware version number and date; hardware version number and date; antenna type; antenna model number and date; monitor or terminal model number and date; MCS to be used in conjunction with the EMTU; entity providing MCS to the end user; the vendor-approved business entities associated with the EMTU and its use; messaging functionality; position data formats and transmission standards; electronic form and messaging capabilities; details of the customer service that would be provided to NMFS; general durability and reliability of the unit; ability of the unit to comply with any additional requirements specified in the fishery-specific regulations for VMS implementation; and protection of personally identifying information and other protected information for the purchase or activation of an MTU or EMTU from disclosure. In addition, the application must include two EMTUs at no cost to the government for each NOAA region or Federal fishery for which the application is made for approximately 90 calendar days for testing and evaluation. Two EMTUs are needed for testing in each NMFS region or Federal fishery in order to quickly conduct in-office and field trials simultaneously. The application must also include thorough documentation, including EMTU fact sheets, installation guides, user manuals, any necessary interfacing software, satellite coverage, performance specifications, and technical support information. This application process will likely require engineering and product manager expertise for preparation of the application.

This rule will also require type-approval holders to notify NMFS within two calendar days of any substantive changes from the original submission for type-approval.

As a condition of type-approval, the type-approval holder will be required to provide technical and expert support for litigation to substantiate the EMTU, MCS, or bundle capabilities to establish NMFS OLE cases against potential violators, as needed. If the technology has been subject to prior scrutiny in a court of law, the type-approval applicant or holder will be required to provide a brief summary of the litigation and any court finding on the reliability of the technology.

Prior to the end of each 3 year type-approval period, a type-approval holder must request renewal of the type-approval and demonstrate successful compliance with the type-approval standards and requirements. To do so, the type-approval holder must certify that the EMTU, MCS, or bundle remains in compliance with type-approval standards and complete a table or matrix documenting compliance with all applicable standards. This type-approval renewal process will likely require engineering and product manager expertise for preparation of the renewal request.

If NMFS issues a Notification letter indicating intent to revoke a type-approval, the type-approval holder must respond, in writing, within 30 to 120 calendar days from the date specified in the NMFS Notification Letter if the vendor believes the Notification is in error or can propose a solution to correct the issue. This response will likely require engineering and product manager expertise to develop.

Section 604(a)(6) of the RFA requires a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. Additionally, section 603(c) lists four general categories of ''significant'' alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

(1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) Use of performance rather than design standards; and,

(4) Exemptions from coverage of the rule for small entities. In order to meet the objectives of this action, consistent with all legal requirements, NMFS cannot exempt small entities or change the VMS type-approval process and standards only for small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS has strived to clarify and simplify the type-approval process by codifying the type-approval standards, specifications, procedures, and responsibilities for EMTU, MCS and bundle type-approval applicants and holders in this action. In addition, NMFS is implementing performance rather than design standard alternatives for messaging latency standards for EMTUs, MCSs or bundles.

NMFS analyzed several different alternatives in the proposed action and provides the rationale for identifying the preferred alternatives to achieve the desired objective.

Vessel Monitoring System Type-Approval Application Process

Requestors of type-approval must submit a written request to NMFS OLE and a statement that the unit for which approval is sought meets NMFS OLE's type-approval standards. The application process will likely require engineering and product manager expertise for preparation of the application. NMFS estimates that small entities will utilize up to approximately 40 hours engineering labor and 40 hours of product management labor to compile the written request and statement that details how the EMTU, MCS, or bundle

meets the minimum national VMS standards as required by this rule. This estimate also includes the amount of time it would take to compile the documentation and the packaging of the EMTUs to ship to each NOAA region or Federal fisheries for which an application is submitted. Based on the Bureau of Labor Statistics May 2012 National Occupational Employment and Wage Estimates, the mean hourly wage for engineers is approximately $44 per hour and for general and operations managers it is approximately $55 per hour. Therefore, NMFS estimates the total wage costs to be approximately $3,960 per type-approval application.

Type-approval requestors will be required to send two EMTUs for testing to each NMFS region for which type-approval is sought. NMFS estimates that type-approval requestors will likely spend between $85 and $220 per NMFS region for shipping two units based on current ground shipping rates for a package of up to 30 pounds ($77.50–$210 depending on the region), box costs ($2.50), and packaging materials ($5.00). Some requestors may opt to use next day air delivery to expedite the process, which would increase the shipping costs to approximately $250 per package, but that option is not as economical. NMFS estimates that a vendor will send units to five different NOAA regional offices on average. Therefore, the total shipping cost per application is estimated to be $695, based on ground delivery costs of approximately $85 per region in the continental United States and $220 per region for the Alaska and the Pacific Islands offices.

The average cost of an EMTU unit is approximately $3,000. The vendor will be unable to sell the EMTU units as new after providing them to NMFS for testing and evaluation for 90-days. They might only get 60 to 80 percent of the regular retail value on refurbished units. Based on NMFS' estimate that 10 EMTUs that regularly retail for $3,000 new would be sent to 5 regional offices, the reduced retail revenue will total approximately $6,000 to $12,000 per type-approval application. Alternatively, the vendor may opt to use these units as demo units for trade shows and other marketing purposes and therefore considerably lower the costs of providing the evaluation units. It is difficult to estimate the exact costs associated with providing the units to NMFS given the uncertainty associated with what vendors would do with these EMTUs after the 90-day evaluation period.

Latency Requirement

NMFS considered three alternatives to the EMTU latency requirements. These alternatives include no change from the current requirement that 97 percent of each vendor's position reports during each specified 24-hour period must reach NMFS within 15 minutes, for ten out of eleven consecutive days; a 90-percent requirement; and a 50-percent requirement.

Based on NMFS OLE's review of several years of reports, NMFS has determined that the current 97-percent latency standard is not necessary to meet the needs of NMFS OLE and the USCG for near-real-time data. Also, the 97-percent latency standard requirement is the most costly for vendors to achieve. Based on several years of reports, it is clear this latency requirement is difficult for type-approval holders to achieve consistently. Several of the current EMTU type-approval holders would have to take significant corrective actions, at likely significant costs, to achieve the 97-percent standard. The possible corrective actions include deploying new satellites, switching out antennas on all units in order to switch to a more reliable network, or reengineering the communication software or backend hardware to ensure more reliable and efficient data transmission. These solutions would require significant capital investments, which would be particularly challenging to small entities. Some vendors might instead opt out of this market given the potentially significant costs. While the 97-percent requirement would achieve the objective of collecting reliable real-time data for enforcement of Federal fisheries laws and regulations, it is not the most cost effective alternative.

NMFS OLE and the U.S. Coast Guard (USCG) have a need for near-real-time fishing vessel location data for enforcement of Federal fisheries laws and regulations. Successful NMFS and USCG enforcement efforts depend on near-real-time vessel location data to responsibly protect resources. For example, NMFS and USCG need to know when a vessel has entered a closed area or other protected or environmentally sensitive area. Receipt of near real-time data also ensures optimal and cost-effective dispatch of enforcement assets for at-sea interception, landing inspections, follow-up, and active investigations of already-suspect vessels.

NMFS determined that the latency requirement can be lowered slightly to 90 percent and still maintain the integrity of the VMS program by providing near real-time data transmission. In light of these findings, NMFS is revising this latency requirement to state that NMFS must receive no less than 90 percent of all messages within 15 minutes or less of the EMTU timestamp, for 10 out of 11 consecutive days (24-hour time periods). This new latency requirement is less burdensome for all current type-approval holders. Also, the 90 percent latency standard requirement is a more cost effective alternative. NMFS, along with its USCG partner, believe that the 90-percent standard can meet the objective of providing near-real-time data on a consistent basis.

While the third alternative, a 50-percent requirement, would be the least burdensome alternative for VMS vendors to achieve, this standard does not meet the objective of providing near real-time VMS data on a consistent basis. VMS-reporting delays will result in less efficient use of government funds, personnel, and other assets. Delayed data delivery is detrimental to fishers as well. Fishers have been delayed in starting fishing trips because VMS latency prevented them from delivering notice to OLE via EMTU/MTU before leaving the dock, or a fisher's days-at-sea were miscalculated due to the delayed reporting of Demarcation-Line crossings. This may result in confusing documentation regarding when a vessel reported the required information via their EMTU, leading to administrative or legal complications. Delayed data delivery may also allow illegal or non-compliant vessel activity to go undetected, which impedes the VMS program's utility in the enforcement of fisheries laws and regulations. Finally, in order for VMS data to carry its proper weight as admissible evidence, the VMS unit must be reliable. Long latency periods draw into question the reliability of the unit and its data, altogether. For these reasons, NMFS has determined it is essential for VMS data to be delivered by the type-approved EMTU/MTUs, MCS and bundles in near real-time for enforcement purposes. Therefore, NMFS does not prefer the 50-percent standard.

Changes or Modifications to Type-Approvals

After a type-approval is issued, the type-approval holder must notify OLE no later than 2 calendar days following any substantive change in the original submission, such as changes to firmware, software or hardware versions, MCS operations or performance, or customer support contacts. Within 60 calendar days of the

receipt of such notice, OLE will notify the type-approval holder if an amended type-approval will be required, including additional testing or provide notice that OLE will initiate the type approval revocation process. NMFS estimates that small entities would utilize up to approximately four hours engineering labor and four hours of product management labor to notify NMFS of any substantive changes to the original type-approval submission and provide the agency with the details of those changes. Based on the National Occupational Employment and Wage Estimates, NMFS estimates the total wage costs to be approximately $396 for the change notification process.

Renewal Process

NMFS considered three alternative periods of time for a type-approval renewal process: 1 year, 3 years, and 10 years. The renewal process would be identical for each of these alternatives, except for the frequency of type-approval renewal.

NMFS believes that a 1-year interval renewal process would result in too short of a renewal cycle because changes in technology are not rapid enough to warrant such a short renewal cycle and 1-year renewals would not provide sufficient time for vendors to maintain a stable service environment. A 1-year interval would also impose an undue burden on type-approval holders and OLE.

A 10-year type-approval renewal process is seen as too long an interval between the time an initial type-approval was issued and when NMFS would take an in-depth look at the type-approval holder's overall compliance record with the regulations set forth in this rule. Significant technological change might also occur over a 10-year period. While this alternative would minimize the economic impacts of preparing renewal applications, it does not meet NMFS objectives of maintaining compliance with the regulatory standards.

NMFS prefers that a type-approval be valid for a period of 3 years. As such, prior to the end of each 3-year period, an EMTU vendor may request renewal by demonstrating successful compliance with the requirements set forth in this final action.

NMFS estimates that this renewal process will involve up to 16 hours of engineering labor and 8 hours of product management labor to certify compliance with the type-approval standards and compile supporting materials. Based on the National Occupational Employment and Wage Estimates previously discussed, NMFS estimates the renewal process will result in up to $1,144 in labor costs. If the type-approval is not renewed by NMFS, the economic costs would be the same as those described below for the revocation process. NMFS estimates that there will be approximately two type-approval renewals conducted each year for a total economic cost of approximately $2,288 annually.

Revocation Process

If a type-approved EMTU/MTU, MCS, or bundle is no longer meeting one or more of the specifications set out in the type-approved standards, NMFS will initiate the type-approval revocation process. If an EMTU, MCS, or bundle fails to meet the type-approval standards in this rule, or if an MTU fails to meet the specifications under which it was type-approved, NMFS will issue a letter to the vendor who holds the type-approval and identify the potential violation. NMFS will set a Response Date between 30 and 120 calendar days from the date of the Notification Letter. If the vendor believes that NMFS is in error, and/or that NMFS has incorrectly defined/described the issue or its urgency and impact, or that NMFS is otherwise in error, then the vendor can deliver its Objection, in writing, before the Response Date. NMFS estimates that this revocation process would potentially involve 16 hours of engineering labor and 8 hours of product management labor to investigate the issues raised by NMFS and prepare a written response. Based on the wage costs previously discussed, NMFS estimates the revocation process could result in approximately $1,144 in labor costs. However, the actual amount of labor costs could vary considerably depending on the complexity of the issues causing the alleged failure NMFS identified. Some type approval holders may decide to not challenge the revocation or may be unable to bring the issue to final resolution to NMFS' satisfaction and then face the revocation of the type-approval for their product. The type-approval holder would then be impacted by the loss of future EMTU sales and monthly data communication fees from vessels required to carry and operate a type-approved EMTU/MTU, MCS, or bundle.

The type-approval holder could also opt to appeal the type-approval revocation. In addition to the costs associated with the engineering and product management support provided during the revocation process, the type-approval holder may also decide to employ legal counsel to challenge the agency's decision. These costs could vary considerably depending on the complexity of the appeal arguments.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of the compliance guide for this final rule are available (see **ADDRESSES**).

List of Subjects

50 CFR Part 600

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 648

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 18, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR parts 600 and 648 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. Add Subpart Q to read as follows:

Subpart Q—Vessel Monitoring System Type-Approval

Sec.

Subpart Q—Vessel Monitoring System Type-Approval

§ 600.1500 Definitions and acronyms.

In addition to the definitions in the Magnuson-Stevens Act and in § 600.10, and the acronyms in § 600.15, the terms and acronyms in this subpart have the following meanings:

Authorized entity means a person, defined at 16 U.S.C. 1802(36), authorized to receive data transmitted by EMTU(s) or MTU(s).

Bench configuration means the EMTU's configuration after the manufactured unit has been customized to meet the Federal VMS requirements.

Bundle means an MCS and EMTU sold as a package and considered one product. If a bundle is type-approved, the requestor will be the type-approval holder for the bundled MCS and EMTU.

Communication class means the satellite communications operator from which satellite communications services originate.

Electronic form means a pre-formatted message transmitted by an EMTU that is required for the collection of data for a specific fishery program (*e.g.;* declaration system, catch effort reporting).

Enhanced Mobile Transceiver Unit (EMTU) means a type of MTU that is capable of supporting two-way communication, messaging, and electronic forms transmission via satellite. An EMTU is a transceiver or communications device, including: Antenna; dedicated message terminal and display; and an input device such as a tablet or keyboard installed on fishing vessels participating in fisheries with a VMS requirement.

Latency means the state of untimely delivery of Global Positioning System position reports and electronic forms to NMFS (*i.e.;* information is not delivered to NMFS consistent with timing requirements of this subpart).

Mobile Communications Service (MCS) means the satellite communications services affiliated with particular MTUs/EMTUs.

Mobile Communications Service Provider (MCSP) means the entity that sells VMS satellite communications services to end users.

Mobile Transmitter Unit (MTU) means a communication device capable of transmitting Global Positioning System position reports via satellite.

Notification Letter means a letter issued by NMFS to a type-approval holder identifying an alleged failure of an EMTU, MTU, MCS, or the type-approval holder to comply with requirements of this subpart.

Position report means the unique electronic Global Positioning System report generated by a vessel's EMTU or MTU, which identifies the vessel's latitude/longitude position at a point in time. Position reports are sent from the EMTU or MTU, via MCS, to authorized entities.

Requestor means a vendor seeking type-approval.

Service life means the length of time during which an EMTU/MTU remains fully operational with reasonable repairs.

Sniffing means the unauthorized and illegitimate monitoring and capture, through use of a computer program or device, of data being transmitted over a computer network.

Spoofing means the reporting of a false Global Positioning System position and/or vessel identity.

Time stamp means the time, in hours, minutes, and seconds in a position report. Each position report is time stamped.

Type-approval holder means a vendor whose type-approval request has been approved pursuant to this subpart.

Vendor means a commercial provider of VMS hardware, software, and/or mobile communications services.

Vessel Monitoring System (VMS) means, for purposes of this subpart, a satellite based system designed to monitor the location and movement of vessels using onboard EMTU or MTU units that send Global Positioning System position reports to an authorized entity.

Vessel Monitoring System (VMS) data means the data transmitted to authorized entities by an EMTU or MTU.

Vessel Monitoring System Program means the federal program that manages the vessel monitoring system, data, and associated program-components, nationally and in each NOAA region; it is housed in the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service's Office of Law Enforcement.

§ 600.1501 Vessel Monitoring System type-approval process.

(a) *Application submission.* A requestor must submit a written type-approval request and electronic copies of supporting materials that include the information required under this section to the NMFS Office of Law Enforcement (OLE) at: U.S. Department of Commerce; National Oceanic and Atmospheric Administration; National Marine Fisheries Service; Office of Law Enforcement; Attention: Vessel Monitoring System Office; 1315 East West Highway, SSMC3, Suite 3301, Silver Spring, Maryland 20910.

(b) *Application requirements.* (1) EMTU and MCS Identifying Information: In a type-approval request, the requestor should indicate whether the requestor is seeking approval for an EMTU, MCS, or bundle and must specify identifying characteristics of the EMTU and MCS, as applicable: Communication class; manufacturer; brand name; model name; model number; software version and date; firmware version number and date; hardware version number and date; antenna type; antenna model number and date; tablet, monitor or terminal model number and date; MCS to be used in conjunction with the EMTU; entity providing MCS to the end user; and current satellite coverage of the MCS.

(2) Requestor-approved third party business entities: The requestor must provide the business name, address, phone number, contact name(s), email address, specific services provided, and geographic region covered for the following third party business entities:

(i) Entities providing bench configuration for the EMTU at the warehouse or point of supply.

(ii) Entities distributing/selling the EMTU to end users.

(iii) Entities currently approved by the requestor to install the EMTU onboard vessels.

(iv) Entities currently approved by the requestor to offer a limited warranty.

(v) Entities approved by the requestor to offer a maintenance service agreement.

(vi) Entities approved by the requestor to repair or install new software on the EMTU.

(vii) Entities approved by the requestor to train end users.

(viii) Entities approved by the requestor to advertise the EMTU.

(ix) Entities approved by the requestor to provide other customer services.

(3) Regulatory Requirements and Documentation: In a type-approval request, a requestor must:

(i) Identify the NOAA region(s) and/or Federal fisheries for which the requestor seeks type-approval.

(ii) Include copies of, or citation to, applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries identified under

paragraph (b)(3)(i) of this section that require use of VMS.

(iii) Provide a table with the type-approval request that lists in one column each requirement set out in §§ 600.1502–600.1509 and regulations described under paragraph (b)(3)(ii) of this section. NMFS OLE will provide a template for the table upon request. The requestor must indicate in subsequent columns in the table:

(A) Whether the requirement applies to the type-approval; and

(B) Whether the EMTU, MCS or bundle meets the requirement.

(iv) Certify that the features, components, configuration and services of the requestor's MTU, EMTU, MCS or bundle comply with each requirement set out in §§ 600.1502–600.1509 and the regulations described under paragraph (b)(3)(ii) of this section.

(v) Certify that, if the request is approved, the requestor agrees to be responsible for ensuring compliance with each requirement set out in §§ 600.1502–600.1509 and the regulations described under paragraph (b)(3)(ii) of this section over the course of the type-approval period.

(vi) Provide NMFS OLE with two EMTUs loaded with forms and software for each NOAA region or Federal fishery, with activated MCS, for which a type-approval request is submitted for a minimum of 90 calendar days for testing and evaluation. Copies of forms currently used by NMFS are available upon request. As part of its review, NMFS OLE may perform field tests and at-sea trials that involve demonstrating every aspect of EMTU and communications operation. The requestor is responsible for all associated costs including paying for: Shipping of the EMTU to the required NMFS regional offices or headquarters for testing; the MCS during the testing period; and shipping of the EMTU back to the vendor.

(vii) Provide thorough documentation for the EMTU or MTU and MCS, including: EMTU fact sheets; installation guides; user manuals; any necessary interfacing software; satellite coverage; performance specifications; and technical support information.

(c) *Interoperability.* A requestor seeking type-approval of an EMTU within a communications class, as opposed to type-approval for use with a specific MCS, shall certify that the EMTU meets requirements under this subpart when using at least one qualified MCSP within the same communications class.

(d) *Notification.* Unless additional time is required for EMTU testing, NMFS OLE will notify the requestor within 90 days after receipt of a complete type-approval request as follows:

(1) If a request is approved or partially approved, NMFS OLE will provide notice as described under § 600.1510.

(i) The type-approval letter will serve as official documentation and notice of type-approval.

(ii) NMFS will also publish a notice in the **Federal Register** documenting the type-approval and the dates for which it is effective.

(2) If a request is disapproved or partially disapproved:

(i) OLE will send a letter to the requestor that explains the reason for the disapproval/partial disapproval.

(ii) The requestor may respond to NMFS OLE in writing with additional information to address the reasons for disapproval identified in the NMFS OLE letter. The requestor must submit this response within 21 calendar days of the date of the OLE letter sent under paragraph (d)(2)(i) of this section.

(iii) If any additional information is submitted under paragraph (d)(2)(ii) of this section, NMFS OLE, after reviewing such information, may either take action under paragraph (d)(1) of this section or determine that the request should continue to be disapproved or partially disapproved. In the latter case, the NMFS OLE Director will send a letter to the requestor that explains the reasons for the continued disapproval/partial disapproval. The NMFS OLE Director's decision is final upon issuance of this letter and is not appealable.

§ 600.1502 Communications functionality.

(a) An EMTU must comply with the following requirements:

(1) Be able to transmit all automatically-generated position reports.

(2) Provide visible or audible alarms onboard the vessel to indicate malfunctioning of the EMTU.

(3) Be able to disable non-essential alarms in non-Global Maritime Distress and Safety System (GMDSS) installations.

(4) Be able to send communications that function uniformly throughout the geographic area(s) covered by the type-approval.

(5) Have two-way communications between authorized entities and EMTU via MCS.

(6) Have the capacity to send and receive electronic forms and Internet email messages.

(7) Have messaging and communications that are completely compatible with NMFS vessel monitoring software.

(b) In addition, messages and communications from an EMTU must be able to be parsed out to enable clear billing of costs to the government and to the owner of a vessel or EMTU, when necessary. Also, the costs associated with position reporting and the costs associated with other communications (for example, personal email or communications/reports to non-NMFS Office of Law Enforcement entities) must be parsed out and billed to separate parties, as appropriate.

§ 600.1503 Position report data formats and transmission.

An EMTU, MCSP, or bundle must comply with the following requirements, in addition to providing position information as required by the applicable VMS regulations and requirements in effect for each fishery or region for which the type-approval applies:

(a) An EMTU must be able to transmit all automatically-generated position reports, for vessels managed individually or grouped by fleet, that meet the latency requirement under § 600.1504.

(b) When an EMTU is powered up, it must automatically re-establish its position reporting function without manual intervention.

(c) Position reports must contain all of the following:

(1) Unique identification of an EMTU within the communications class.

(2) Date (year/month/day with century in the year) and time stamp (GMT) of the position fix.

(3) Position fixed latitude and longitude, including the hemisphere of each, which comply with the following requirements:

(i) The position fix precision must be to the decimal minute hundredths.

(ii) Accuracy of the reported position must be within 100 meters.

(d) An EMTU must have the ability to:

(1) Store 1000 position fixes in local, non-volatile memory.

(2) Allow for defining variable reporting intervals between 5 minutes and 24 hours.

(3) Allow for changes in reporting intervals remotely and only by authorized users.

(e) An EMTU must generate specially identified position reports upon:

(1) Antenna disconnection.

(2) Loss of positioning reference signals.

(3) Loss of the mobile communications signals.

(4) Security events, power-up, power down, and other status data.

(5) The vessel crossing a pre-defined geographic boundary.

(6) A request for EMTU status information such as configuration of programming and reporting intervals.

§ 600.1504 Latency requirement.

(a) Ninety percent of all pre-programmed or requested Global Positioning System position reports during each 24-hour period must reach NMFS within 15 minutes or less of the EMTU/MTU timestamp, for 10 out of 11 consecutive days (24-hour time periods).

(b) NMFS will continually examine position reports by region and by type-approval holder.

(c) Exact dates for calculation of latency will be chosen by NMFS. Days in which isolated and documented system outages occur will not be used by NMFS to calculate a type-approval holder's latency.

§ 600.1505 Messaging.

An EMTU must provide for the following capabilities:

(a) Messaging from vessel to shore, and from shore to vessel by authorized entities, must have a minimum supported message length of 1kb.

(b) There must be a confirmation of delivery function that allows a user to ascertain whether a specific message was successfully transmitted to the MCS email server(s).

(c) Notification of failed delivery to the EMTU must be sent to the sender of the message. The failed delivery notification must include sufficient information to identify the specific message that failed and the cause of failure (*e.g.;* invalid address, EMTU switched off, etc.).

(d) The EMTU must have an automatic retry feature in the event that a message fails to be delivered.

(e) The EMTU user interface must:

(1) Support an ''address book'' capability and a function permitting a ''reply'' to a received message without re-entering the sender's address.

(2) Provide the ability to review by date order, or by recipient, messages that were previously sent. The EMTU terminal must support a minimum message history of 50 sent messages—commonly referred to as an ''Outbox'' or ''Sent'' message display.

(3) Provide the ability to review by date order, or by sender, all messages received. The EMTU terminal must support a minimum message history of at least 50 messages in an inbox.

§ 600.1506 Electronic forms.

(a) An EMTU and its forms software must support a minimum of 20 Electronic Forms, and meet the following requirements:

(1) Form Validation: Each field on a form must be capable of being defined as Optional, Mandatory, or Logic Driven. Mandatory fields are those fields that must be entered by the user before the form is complete. Optional fields are those fields that do not require data entry. Logic driven fields have their attributes determined by earlier form selections. Specifically, a logic driven field must allow for selection of options in that field to change the values available as menu selections on a subsequent field within the same form.

(2) A user must be able to select forms from a menu on the EMTU.

(3) A user must be able to populate a form based on the last values used and ''modify'' or ''update'' a prior submission without unnecessary re-entry of data. A user must be able to review a minimum of 20 past form submissions and ascertain for each form when the form was transmitted and whether delivery was successfully sent to the type-approval holder's VMS data processing center. In the case of a transmission failure, a user must be provided with details of the cause and have the opportunity to retry the form submission.

(4) VMS Position Report: Each form must capable of including VMS position data, including latitude, longitude, date and time. Data to populate these fields must be automatically generated by the EMTU and unable to be manually entered or altered.

(5) Delivery Format for Form Data: Delivery of form data to NMFS must employ the same transport security and reliability as VMS position and declaration reports. The SMTP protocol is not permitted for the transmission of data that is delivered to NMFS. The field coding within the data must follow either CSV or XML formatting rules. For CSV format the form must contain an identifier and the version number, and then the fields in the order defined on the form. In the CSV format strings that may contain '','' (comma) characters must be quoted. XML representations must use the field label to define the XML element that contains each field value.

(b) *Updates to Forms.* (1) The EMTU and MCS must be capable of providing updates to forms or adding new form requirements via wireless transmission and without manual installation.

(2) From time to time, NMFS may provide type-approved vendors with requirements for new forms or modifications to existing forms. NMFS may also provide notice of forms and form changes through the NMFS Work Order System. Type-approved vendors will be given at least 60 calendar days to complete their implementation of new or changed forms. Vendors will be capable of, and responsible for translating the requirements into their EMTU-specific forms definitions and wirelessly transmitting the same to all EMTU terminals supplied to fishing vessels.

§ 600.1507 Communications security.

Communications between an EMTU and MCS must be secure from tampering or interception, including the reading of passwords and data. The EMTU and MCS must have mechanisms to prevent to the extent possible:

(a) Sniffing and/or interception during transmission from the EMTU to MCS.

(b) Spoofing.

(c) False position reports sent from an EMTU.

(d) Modification of EMTU identification.

(e) Interference with GMDSS or other safety/distress functions.

(f) Introduction of malware, spyware, keyloggers, or other software that may corrupt, disturb, or disrupt messages, transmission, and the VMS system.

(g) The EMTU terminal from communicating with, influencing, or interfering with the Global Positioning System antenna or its functionality, position reports, or sending of position reports. The position reports must not be altered, corrupted, degraded, or at all affected by the operation of the terminal or any of its peripherals or installed-software.

§ 600.1508 Customer service.

The type-approval holder is responsible for ensuring that customer service includes:

(a) Diagnostic and troubleshooting support to NMFS and fishers, which is available 24 hours a day, seven days per week, and year-round.

(b) Response times for customer service inquiries that shall not exceed 24 hours.

(c) Warranty and maintenance agreements.

(d) Escalation procedures for resolution of problems.

(e) Established facilities and procedures to assist fishers in maintaining and repairing their EMTU/MTUs.

(f) Assistance to fishers in the diagnosis of the cause of communications anomalies.

(g) Assistance in resolving communications anomalies that are traced to the EMTU/MTU.

(h) Assistance to NMFS Office of Law Enforcement and its contractors, upon request, in VMS system operation, resolving technical issues, and data analyses related to the VMS Program or system. Such assistance will be provided free of charge unless otherwise specified in NMFS-authorized service or

purchase agreements, work orders or contracts.

§ 600.1509 General.

(a) An EMTU must have the durability and reliability necessary to meet all requirements of §§ 600.1502–600.1507 regardless of weather conditions, including when placed in a marine environment where the unit may be subjected to saltwater (spray) in smaller vessels, and in larger vessels where the unit may be maintained in a wheelhouse. The unit, cabling and antenna must be resistant to salt, moisture, and shock associated with sea going vessels in the marine environment.

(b) PII and Other Protected Information. Personally identifying information (PII) and other protected information includes Magnuson-Stevens Act confidential information as provided at 16 U.S.C. 1881a and Business Identifiable Information (BII), as defined in the Department of Commerce Information Technology Privacy Policy. A type-approval holder is responsible for ensuring that:

(1) All PII and other protected information is handled in accordance with applicable state and Federal law.

(2) All PII and other protected information provided to the type-approval holder by vessel owners or other authorized personnel for the purchase or activation of an MTU or EMTU or arising from participation in any federal fishery are protected from disclosure not authorized by NMFS or the vessel owner or other authorized personnel.

(3) Any release of PII or other protected information beyond authorized entities must be requested and approved in writing, as appropriate, by the submitter of the data in accordance with 16 U.S.C. 1881a, or by NMFS.

(4) Any PII or other protected information sent electronically by the type-approval holder to the NMFS Office of Law Enforcement must be transmitted by a secure means that prevents interception, spoofing, or viewing by unauthorized individuals.

§ 600.1510 Notification of type-approval.

(a) If a request made pursuant to § 600.1501 (type-approval) or § 600.1513 (renewal) is approved or partially approved, NMFS will issue a type-approval letter and publish a notice in the **Federal Register** to indicate the specific EMTU model, MCSP, or bundle that is approved for use, the MCS or class of MCSs permitted for use with the type-approved EMTU, and the regions or fisheries in which the EMTU, MCSP, or bundle is approved for use.

(b) The NMFS Office of Law Enforcement will maintain a list of type-approved EMTUs, MCSPs, and bundles on a publicly available Web site and provide copies of the list upon request.

§ 600.1511 Changes or modifications to type-approvals.

Type-approval holders must notify NMFS Office of Law Enforcement (OLE) in writing no later than 2 days following modification to or replacement of any functional component or piece of their type-approved EMTU/MTU configuration, MCS or bundle. If the changes are substantial, NMFS OLE will notify the type-approval holder in writing within 60 calendar days that an amended type-approval is required or that NMFS will initiate the type-approval revocation process.

§ 600.1512 Vessel Monitoring System type-approval period.

A type-approval or type-approval renewal is valid for a period of 3 years from the date of the **Federal Register** notice issued pursuant to § 600.1510, subject to the revocation process at § 600.1514. All MTUs, EMTUs, MCSs, and bundles with valid type-approvals on January 23, 2015 will continue to be type-approved. However, if the type-approval date is more than 3 years old, the type-approval will expire on February 23, 2015. The type-approval holder may request a type-approval renewal as provided in § 600.1513.

§ 600.1513 Type-approval renewal.

At least 30 days, but no more than six months, prior to the end of the type-approval period, a type-approval holder may seek a type-approval renewal by sending a written renewal request letter and information and documentation required under this section to: U.S. Department of Commerce; National Oceanic and Atmospheric Administration; National Marine Fisheries Service; Office of Law Enforcement; Attention: Vessel Monitoring System Office; 1315 East West Highway, Silver Spring, Maryland 20910.

(a) In a type-approval renewal request letter, the type-approval holder should indicate whether the holder is seeking renewal of an MTU, EMTU, MSC, or bundle and must:

(1) Identify the NOAA region(s) or Federal fisheries for which renewal is sought;

(2) Certify that the features, components, configuration and services of the type-approved MTU, EMTU, MCS or bundle remain in compliance with the standards set out in §§ 600.1502–600.1509 (or for an MTU, requirements applicable when the MTU was originally type-approved) and with applicable VMS regulations and requirements in effect for the region(s) and/or Federal fisheries identified under paragraph (a)(1) of this section that require use of VMS; and

(3) Certify that, since the type-approval or last renewal (whichever was later), there have been no modifications to or replacements of any functional component or piece of the type-approved configuration.

(b) The type-approval holder must include a table with the renewal request letter that lists in one column, each requirement set out in §§ 600.1502–600.1509 and regulations described under paragraph (a)(2) of this section. For an MTU, instead of the requirements at §§ 600.1502–600.1509, the table must list any requirements applicable when the MTU was originally type-approved. NMFS' Office of Law Enforcement (OLE) will provide a template for the table upon request. The type-approval holder must indicate in subsequent columns in the table:

(1) Whether the requirement applies to the type-approval;

(2) Whether the requirement is still being met;

(3) Whether any modifications or replacements were made to the type-approved configuration or process since type-approval or the last renewal;

(4) An explanation of any modifications or replacements that were made since type-approval or the last renewal; and

(5) The date that any modifications or replacements were made.

(c) If the type-approval renewal is for an MCS or bundle, the type-approval holder seeking renewal must also provide the following statistical information on the transmission and processing of vessel position reports from onboard EMTUs and MTUs to the MCS or MCSP's VMS data processing center.

(1) The statistical information will, at a minimum, show:

(i) Successful position report transmission and delivery rates;

(ii) The rate of position report latencies; and

(iii) The minimum/maximum/average lengths of time for those latencies.

(2) The statistical information will be demonstrated:

(i) In graph form;

(ii) For each NMFS region and any relevant international agreement area and relevant high seas area; and

(iii) Using data from six full and consecutive months for all of the type-

approval holder's U.S. federal fishery customers.

(d) Within 30 days after receipt of a complete renewal request letter, NMFS OLE will notify the type-approval holder of its decision to approve or partially approve the request as provided in § 600.1510, or send a letter to the type-approval holder that explains the reasons for denial or partial denial of the request.

(e) The type-approval holder may respond to NMFS OLE in writing with additional information to address the reasons for denial or partial denial of the renewal request. The type approval holder must submit this response within 21 calendar days of the date of the NMFS OLE letter sent under paragraph (d) of this section.

(f) If any additional information is submitted under paragraph (e) of this section, NMFS OLE, after reviewing such information, may either notify the type-approval holder of its decision to approve or partially approve the renewal request as provided in § 600.1510 or determine that the renewal request should continue to be disapproved or partially disapproved. In the latter case, the NMFS OLE Director will send a letter to the type-approval holder that explains the reasons for the disapproval/partial disapproval. The NMFS OLE Director's decision is final upon issuance of this letter and is not appealable.

§ 600.1514 Type-approval revocation process.

(a) If at any time, a type-approved EMTU, MCS or bundle fails to meet requirements at §§ 600.1502–600.1509 or applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which the EMTU or MCS is type-approved, or if an MTU fails to meet the requirements under which it was type-approved, the NMFS Office of Law Enforcement (OLE) may issue a Notification Letter to the type-approval holder that:

(1) Identifies the MTU, EMTU, MCS or bundle that allegedly fails to comply with type-approval regulations and requirements;

(2) Identifies the alleged failure to comply with type-approval regulations and requirements, and the urgency and impact of the alleged failure;

(3) Cites relevant regulations and requirements under this subpart;

(4) Describes the indications and evidence of the alleged failure;

(5) Provides documentation and data demonstrating the alleged failure;

(6) Sets a Response Date by which the type-approval holder must submit to NMFS OLE a written response to the Notification Letter, including, if applicable, a proposed solution; and

(7) Explains the type-approval holder's options if the type-approval holder believes the Notification Letter is in error.

(b) NMFS will establish a Response Date between 30 and 120 calendar days from the date of the Notification Letter. The type-approval holder's response must be received in writing by NMFS on or before the Response Date. If the type-approval holder fails to respond by the Response Date, the type-approval will be revoked. At its discretion and for good cause, NMFS may extend the Response Date to a maximum of 150 calendar days from the date of the Notification Letter.

(c) A type-approval holder who has submitted a timely response may meet with NMFS within 21 calendar days of the date of that response to discuss a detailed and agreed-upon procedure for resolving the alleged failure. The meeting may be in person, conference call, or webcast.

(d) If the type-approval holder disagrees with the Notification Letter and believes that there is no failure to comply with the type-approval regulations and requirements, NMFS has incorrectly defined or described the failure or its urgency and impact, or NMFS is otherwise in error, the type-approval holder may submit a written Objection Letter to NMFS on or before the Response Date. Within 21 calendar days of the date of the Objection Letter, the type-approval holder may meet with NMFS to discuss a resolution or redefinition of the issue. The meeting may be in person, conference call, or webcast. If modifications to any part of the Notification Letter are required, then NMFS will issue a revised Notification Letter to the type-approval holder; however, the Response Date or any other timeline in this process would not restart or be modified unless NMFS decides to do so, at its discretion.

(e) The total process from the date of the Notification Letter to the date of final resolution should not exceed 180 calendar days, and may require a shorter time frame, to be determined by NMFS, depending on the urgency and impact of the alleged failure. In rare circumstances, NMFS, at its discretion, may extend the time for resolution of the alleged failure. In such a case, NMFS will provide a written notice to the type-approval holder informing him or her of the extension and the basis for the extension.

(f) If the failure to comply with type-approval regulations and requirements cannot be resolved through this process, the NMFS OLE Director will issue a Revocation Letter to the type-approval holder that:

(1) Identifies the MTU, EMTU, MCS, or bundle for which type-approval is being revoked;

(2) Summarizes the failure to comply with type-approval regulations and requirements, including describing its urgency and impact;

(3) Summarizes any proposed plan, or attempts to produce such a plan, to resolve the failure;

(4) States that revocation of the MTU/EMTU, MCS or bundle's type-approval has occurred;

(5) States that no new installations of the revoked unit will be permitted in any NMFS-managed fishery requiring the use of VMS;

(6) Cites relevant regulations and requirements under this subpart;

(7) Explains why resolution was not achieved;

(8) Advises the type-approval holder that:

(i) The type-approval holder may reapply for a type-approval under the process set forth in § 600.1501, and

(ii) A revocation may be appealed pursuant to the process under § 600.1515.

§ 600.1515 Type-approval revocation appeals process.

(a) If a type-approval holder receives a Revocation Letter pursuant to § 600.1514, the type-approval holder may file an appeal of the revocation to the NMFS Assistant Administrator.

(b) An appeal must be filed within 14 calendar days of the date of the Revocation Letter. A type-approval holder may not request an extension of time to file an appeal.

(c) An appeal must include a complete copy of the Revocation Letter and its attachments and a written statement detailing any facts or circumstances explaining and refuting the failures summarized in the Revocation Letter.

(d) The NMFS Assistant Administrator may, in his or her discretion, affirm, vacate, or modify the Revocation Letter and will send a letter to the type-approval holder explaining his or her determination, within 21 calendar days of receipt of the appeal. The NMFS Assistant Administrator's determination constitutes the final agency decision.

§ 600.1516 Revocation effective date and notification to vessel owners.

(a) Following issuance of a Revocation Letter pursuant to § 600.1514 and any appeal pursuant to § 600.1515, NMFS will provide notice to all vessel owners impacted by the type-approval

revocation via letter and **Federal Register** notice. NMFS will provide information to impacted vessel owners on:

(1) The next steps vessel owners should take to remain in compliance with regional and/or national VMS requirements;

(2) The date, 60–90 calendar days from the notice date, on which the type-approval revocation will become effective;

(3) Reimbursement of the cost of a new type-approved EMTU, should funding for reimbursement be available pursuant to § 600.1518.

§ 600.1517 Litigation support.

(a) All technical aspects of a type-approved EMTU/MTU, MCS or bundle are subject to being admitted as evidence in a court of law, if needed. The reliability of all technologies utilized in the EMTU/MTU, MCS, or bundle may be analyzed in court for, inter alia, testing procedures, error rates, peer review, technical processes and general industry acceptance.

(b) The type-approval holder must, as a requirement of the holder's type-approval, provide technical and expert support for litigation to substantiate the EMTU, MCS or bundle capabilities to establish NMFS Office of Law Enforcement cases against violators, as needed. If the technologies have previously been subject to such scrutiny in a court of law, the type-approval holder must provide NMFS with a brief summary of the litigation and any court findings on the reliability of the technology.

(c) The type-approval holder will be required to sign a non-disclosure agreement limiting the release of certain information that might compromise the effectiveness of the VMS operations.

§ 600.1518 Reimbursement opportunities for revoked Vessel Monitoring System Type-approval products.

(a) Subject to the availability of funds, vessel owners may be eligible for reimbursement payments for a replacement EMTU if:

(1) All eligibility and process requirements specified by NMFS are met as described in NMFS Policy Directive 06–102; and

(2) The replacement type-approved EMTU is installed on the vessel, and reporting to NMFS Office of Law Enforcement; and

(3) The type-approval for the previously installed EMTU has been revoked by NMFS; or

(4) NMFS requires the vessel owner to purchase a new EMTU prior to the end of an existing unit's service life.

(b) The cap for individual reimbursement payments is subject to change. If this occurs, NMFS Office of Law Enforcement will publish a notice in the Federal announcing the change.

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 3. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 4. In § 648.9, revise paragraph (a) and paragraph (d) to read as follows:

§ 648.9 VMS vendor and unit requirements.

(a) *Approval.* The type-approval requirements for VMS MTUs and MCSPs for the Greater Atlantic Region are those as published by the NMFS Office of Law Enforcement (OLE) in the **Federal Register**, and are available upon request. Both the national type-approval requirements at 50 CFR part 600, subpart Q and any established regional standards must be met in order to receive approval for use in the Greater Atlantic Region. The NMFS OLE Director shall approve all MTUs, MCSPs, and bundles including those operating in the Greater Atlantic Region.

* * * * *

(d) *Revocations.* Revocation procedures for type-approvals are at 50 CFR 600.1514. In the event of a revocation, NMFS will provide information to affected vessel owners as explained at 50 CFR 600.1516. In these instances, vessel owners may be eligible for the reimbursement of the cost of a new type-approved EMTU should funding for reimbursement be available.

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