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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 600**

**[Docket No. 160908833-7999-01]**

**RIN 0648-BG34**

**Requirements of the Vessel Monitoring System Type-Approval**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** All owners of vessels participating in a NOAA Vessel Monitoring System (VMS) program are required to acquire a NMFS-approved Enhanced Mobile Transmitting Unit (EMTU) or Mobile Transmitting Unit (MTU) to comply with the Vessel Monitoring System requirements. This proposed action would amend the existing VMS Type-Approval regulations by removing the requirement for VMS vendors to periodically renew their EMTU/MTU type-approvals. This renewal process has proved to be unnecessary, has cost fishermen and approved VMS vendors additional time and expense, and has imposed unnecessary costs on the government. Removing the type-approval renewal requirement will spare fishermen, VMS vendors and the government the time and expense associated with the renewal process.

**DATES:** Comments must be received [*insert date 30 days after date of publication in the Federal Register*].

**ADDRESSES:** You may submit comments on this proposed rule identified by “NOAA-HQ-2017-0141” by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-HQ-2017-0141>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Kelly Spalding, 1315 East West Highway, Room 3207, Silver Spring, MD 20910.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Kelly Spalding, Vessel Monitoring System Program Manager, Headquarters: 301-427-8269 or *Kelly.spalding@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background**

In December 2014, NMFS published a final rule to codify national VMS type-approval standards for the approval by NMFS of an EMTU/MTU, any associated software, and mobile communications service (MCS; collectively referred to as a VMS) before they are authorized for use in the NMFS VMS program. See 79 FR 77399

(December 24, 2014). Those standards are set out in 50 CFR Part 600, Subpart Q, *Vessel Monitoring System Type-Approval*.

Fishers must comply with applicable Federal fishery VMS regulations, and in doing so, may select from a variety of EMTU/MTU vendors that have been approved by NMFS to participate in the VMS program for specific fisheries. The NOAA Office of Law Enforcement (OLE) maintains the list of type-approved VMS units at [http://www.nmfs.noaa.gov/ole/about/our\\_programs/vessel\\_monitoring.html](http://www.nmfs.noaa.gov/ole/about/our_programs/vessel_monitoring.html). The EMTU/MTU allows OLE to determine the geographic position of the vessel at specified intervals or during specific events, via mobile communications services between NMFS OLE and the vessel using a NMFS-approved MCS provider. These communications are secure and the information is only made available to authorized personnel.

This proposed action would remove the two sections of 50 CFR Part 600, Subpart Q, that require VMS type-approval holders (VMS vendors) to periodically renew their type-approvals. Currently, § 600.1512 of the VMS type approval regulations provides that type-approvals are valid for three years from the date on which NMFS publishes a notice in the *Federal Register* of the approval. Prior to the expiration of the three-year type-approval period, the VMS vendor must apply for a type-approval renewal pursuant to § 600.1513. In the nearly three years since the type-approval regulations were issued, NMFS has found that the renewal process is unnecessary, has cost fishermen and approved VMS vendors additional time and expense, and has imposed unnecessary cost on the government. Removing the type-approval renewal requirement will spare fishermen, VMS vendors and the government the time and expense associated with the renewal process without impairing the effectiveness of the VMS program.

Section 600.1513 of Subpart Q sets out the type-approval renewal process. A VMS vendor seeking renewal of a VMS type-approval must submit a written renewal request and supporting materials to NOAA OLE at least 30 days, but not more than six months, prior to the end of the three-year type approval period. To do so, the type-approval holder must submit a written request letter containing the following information and documentation.

The type-approval holder must certify that the features, components, configuration and services of their type-approved EMTU/MTU and/or MCS remain in compliance with the standards set out in 50 CFR 600.1502 through 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 Federal fisheries for which they are type-approved. The type-approval holder must also certify that, since the holder's type-approval or last renewal (whichever was later), there have been no modifications to or replacements of any functional component or piece of their type-approved configuration. The renewal request letter must also include a table that lists in one column each requirement set out in §§ 600.1502-600.1509. The subsequent columns must show for each requirement:

- 1) Whether the requirement applies to their 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.

If the type-approval renewal is for an MCS or EMTU/MTU and MCS combined, the renewal request letter must also include vessel position report statistics regarding the processing and transmission of position reports from the onboard EMTUs and MTUs to the MCS or MCSP's VMS data processing center. At a minimum, the statistics must include successful position report transmission and delivery rates, the rate of position report latencies, and the minimum/maximum/average lengths of time for those latencies. The showing must be demonstrated in graph form, be divided out by each NMFS region and any relevant international agreement area and relevant high seas area, and cover 6 full and consecutive months of data for all of the type-approval holder's U.S. federal fishery customers.

Currently, NMFS reviews all documentation, analyses and data, and addresses any omissions, inconsistencies and failures. Within 30 days of receipt of a complete renewal request letter, NMFS notifies the type-approval holder of the approval or partial approval of the renewal request or send a letter to the type-approval holder that explains the reasons for denial or partial denial of the request.

These type-approval renewal provisions were designed to provide for an in-depth look at the type-approval holder's overall record of compliance with type-approval requirements. However, NMFS' experience with the renewal process has shown that it is cumbersome for both type-approval holders and NMFS OLE. In some cases, type-approval holders have opted to apply for type-approval of newer VMS units rather than seek renewal of their older VMS units. When a type-approval lapses due to non-renewal, fishermen are required to replace their VMS units that are no longer type approved,

despite the fact that the unit may still be functional and compliant with all current VMS standards. Doing so imposes unnecessary cost on fishermen who must purchase a new VMS unit and may lead to lost fishing opportunities while the VMS unit is being replaced.

In addition to being costly and burdensome for type-approval holders, fishermen and NMFS, the renewal process is not necessary because § 600.1514 sets out an EMTU type-approval revocation process. In the event that a type-approved EMTU model fails to meet the VMS EMTU specifications, NMFS can remove it from the VMS program through this revocation process. The revocation process provides OLE with a timely way to remove an underperforming EMTU/MTU, if necessary. The VMS Program works with the fishermen and VMS industry on a daily basis and is continuously monitoring issues, concerns and anomalies that arise with any EMTU's performance. When an EMTU has performance issues, or anomalies that cannot be resolved informally, NMFS can initiate the type-approval revocation process as provided in § 600.1514. The type-approval period and renewal process at § 600.1512 and § 600.1513 are therefore unnecessary in addition to being burdensome and costly. With the proposed removal of the three-year period for type-approval and the renewal requirement, type-approval would remain valid indefinitely unless NMFS initiates the revocation process pursuant to § 600.1514, or the type-approval holder chooses or agrees to forfeit their type-approval.

### **Classification**

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

This proposed rule is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the accompanying Regulatory Impact Review available from October 2016.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for that determination was summarized in the letter to SBA as follows:

The proposed rule would remove the two sections of Subpart Q that require VMS type-approval holders to periodically renew their type-approvals. Section 600.1512 of the VMS type-approval regulations provides that type-approvals are valid for three years, after which time, the VMS vendor must apply for a type-approval renewal pursuant to section 600.1513.

The objective of the proposed action is to eliminate the unnecessary time and cost to the fishermen, VMS vendors, and the government associated with VMS type-approval renewal process. The type-approval renewal provisions were designed to provide for an in-depth look at the type-approval holder's overall record of compliance with type-approval requirements. However, NMFS' experience with the renewal process has shown that it is cumbersome for both type-approval holders and NMFS OLE. The type-approval holder must certify that the features, components, configuration and services of their type-approved EMTU and/or MCS remain in compliance with the standards set out

in 50 CFR 600.1502 through 600.1509 and with applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which they are type-approved. The type-approval holder must also certify that, since the holder's type-approval or last renewal (whichever was later), there have been no modifications to or replacements of any functional component or piece of their type-approved configuration. The renewal request letter must also include a table that lists each requirement set out in §§ 600.1502-600.1509 and whether those requirements are still being met. Within 30 days of receipt of a complete renewal request letter, NMFS must review the renewal request and notify the type-approval holder of the approval or partial approval of the renewal request or send a letter to the type-approval holder that explains the reasons for denial or partial denial of the request.

The process is not only cumbersome, but also unnecessary because NMFS OLE works with fishermen and the VMS industry on a daily basis and is continuously monitoring issues and anomalies that may arise with the performance and reliability of type-approved VMS units. In the event that NMFS cannot correct the issues through informal discussion with the type-approval holder, section 600.1514 of Subpart Q sets out a VMS type-approval revocation process, which NMFS can initiate to remove a VMS unit from the VMS type-approved list.

The renewal process can also indirectly impose costs on fishers. In some cases, type-approval holders have opted to apply for type-approval of newer VMS units rather than seek renewal of their older VMS units. When a type-approval lapses due to non-renewal, fishermen are required to replace their VMS units that are no longer type approved, despite the fact that the unit may still be functional and compliant with all

current VMS standards. Doing so imposes unnecessary cost on fishermen who must purchase a new VMS unit and may lead to lost fishing opportunities while the VMS unit is being replaced.

The economic effects of this proposed rule would not result in any significant adverse economic impacts on the six existing VMS vendors, and would actually reduce the business costs currently associated with the type-approval renewal process every three years. NMFS estimates that this renewal process involves up to 16 hours of engineering labor and 8 hours of product management labor to compile the compliance report for renewal along with any supporting materials. Based on the Bureau of Labor Statistics May 2016 National Occupational Employment and Wage Estimates, the mean hourly wage for engineers is approximately \$46 per hour and for general and operations managers it is approximately \$59 per hour. Based on those labor rate estimates, NMFS estimates eliminating the renewal process will result in reduced costs of up to \$1,208 per type-approval that would have occurred every three years under the current regulations.

Overall, there would not be a significant economic impact to VMS type-approval holders as a result of this rule. The removal of the type-approval renewal requirement would reduce costs to type-approval holders, fishermen and NMFS associated with the renewal process. The change in the regulations are not expected to place small entities at a significant competitive disadvantage to large entities and removing the type-approval renewal process may in fact help smaller vendors more given their more limited resources for dealing with the administrative and technical costs associated with the current type-approval renewal process.

Thus, NMFS certifies that this proposed rule to remove the type-approval period

and renewal process will not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

NMFS requests public comment on this decision, the associated analysis and all other aspects of this proposed rule. Send comments to NMFS Headquarters at the **ADDRESSES** above.

#### **List of Subjects in 50 CFR Part 600**

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

Dated: November 30, 2017.

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Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600 is proposed to be amended as follows:

#### **PART 600—MAGNUSON-STEVENSON 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. In § 600.1510, revise paragraph (a) to read as follows:

#### **§ 600.1510 Notification of type-approval.**

- (a) If a request made pursuant to § 600.1501 (type-approval) 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.

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**§§ 600.1512 - 600.1518 [Amended]**

3. Remove §§ 600.1512 and 600.1513 and redesignate §§ 600.1514 through 600.1518 as §§ 600.1512 through 600.1516, respectively.

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