(k) Fish for or possess any Hawaii bottomfish or seamount groundfish MUS in the Hancock Seamounts Ecosystem Management Area, in violation of § 665.209.

■ 4. Revise § 665.209 to read as follows:

§ 665.209 Fishing moratorium at Hancock Seamounts.

Fishing for, and possession of, Hawaii bottomfish and seamount groundfish MUS in the Hancock Seamounts Ecosystem Management Area is prohibited until the Regional Administrator determines that the armorhead stock is rebuilt.

[FR Doc. 2010–28413 Filed 11–9–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 080228322–91377–02]

RIN 0648–AW24

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend regulations implementing the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to improve the operational efficiency of the Observer Program, as well as to improve the catch, bycatch, and biological data collected by observers for conservation and management of the North Pacific groundfish fisheries, including those data collected through scientific research activities. The final rule is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective December 10, 2010, except the revision to the definition of a fishing day in § 679.2, which is effective on January 1, 2011.

ADDRESSES: Electronic copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action may be obtained from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and by e-mail to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Brandee Gerke, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries in the Exclusive Economic Zone of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (collectively, the FMPs), respectively. The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Observer Program provides the administrative framework for observers to obtain information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Regulations implementing the Groundfish Observer Program at § 679.50 require observer coverage aboard catcher vessels, catcher/processors, motherships, and shoreside and stationary floating processors that participate in the groundfish fisheries off Alaska. These regulations also establish vessel, processor, and observer provider responsibilities relating to the Observer Program.

This final rule amends regulations at § 679.2 and § 679.50 applicable to observer providers, observers, and industry participants required to obtain observer services. The regulatory amendments are organized under six issues and will remove regulations that are either unnecessary or impractical to apply; revise regulations to allow observer providers to provide observers for exempted fishing permit-based and scientific research permit-based activities; add regulations to prohibit activities that result in non-representative fishing behavior from counting toward an observer coverage day; require observer providers to report to NMFS information about the cost of providing observers; and establish a deadline when observer providers must submit copies of their contracts to NMFS, per the Council's April 2008 motion. This action is necessary to improve the operational efficiency of the existing Observer Program, as well as improve the catch, bycatch, and biological data provided by observers for conservation and management of the North Pacific groundfish fisheries, including data provided through scientific research activities.

A detailed description of and justification for this final rule was presented in the preamble to the proposed rule (74 FR 50155, September 30, 2009). A summary of the final rule is presented below.

Issue 1: Observer Certification and Observer Provider Permitting Process

This final rule clarifies NMFS's discretionary authority to either grant or deny an initial observer certification or observer provider permit by allowing NMFS to consider additional needs and objectives of the Observer Program and other relevant factors when considering whether to issue a new observer provider permit or observer certification. In addition, the appeal process for unsuccessful observer candidates and observer provider applicants is removed from regulations. There is no statutory entitlement to receiving observer certification or an observer provider permit; thus, the granting or denial of observer certifications and observer provider permits are discretionary agency actions. In addition, the existing appeals process has rarely been invoked and requires substantial agency resources to fulfill. These actions will increase NMFS's efficiency in granting or denying certifications and permits. NMFS reiterates that this action does not affect the ability of observers and observer providers to appeal any agency decision to revoke or sanction a certification or permit that already is issued.

Issue 2: Observer Conduct

This final rule removes Federal regulations that attempt to control observer behavior related to activities involving drugs, alcohol, and sexual conduct. NMFS's observer conduct policies established in existing regulations are impractical to apply and unenforceable. Therefore, NMFS is removing these regulations.

Each observer provider will be required to develop and implement an observer conduct policy that address drugs, alcohol, and sexual conduct. Observer providers will be required to provide NMFS a copy of their conduct policies by February 1 of each year and to notify NMFS of a violation within 72 hours after the provider determines that an observer violated the conduct policy.

Issue 3: Providing Observers for Research Activities

Regulatory revisions implemented by this final rule clarify that observer providers are allowed to provide observers or technical staff for purposes of exempted fishing permits, scientific research permits, or other NMFS-sanctioned scientific research activities. While existing regulations do not specifically prohibit observer providers from providing observers or scientific data collectors in support of these activities, they are ambiguous as to whether these activities are allowed under the Observer Program's conflict of interest regulation.

Issue 4: Fishing Day Definition

This final rule revises the regulatory definition of "fishing day" to clarify that an observer must be on board a vessel for all gear retrievals during the 24-hour period to count as a day of observer coverage. This revision is intended to prevent vessel operators from making fishing trips that do not reflect their normal fishing patterns as this non-representative behavior biases the observer-collected information. The definition of "fishing day" is also revised to span from "noon to noon" rather than from "midnight to midnight" as currently defined. This revision is expected to provide a disincentive for operations to conduct non-representative fishing for the sake of satisfying observer coverage requirements during daylight hours.

The revision to the definition of a fishing day affects the calculation of days that an observer is onboard vessels greater than or equal to 60 ft length overall (LOA), but less than 125 ft LOA that are subject to 30 percent observer coverage requirements under § 679.50. These regulations require vessels that participate for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter to carry an observer during at least 30 percent of its fishing days in that calendar quarter and at all times during at least one fishing trip in that calendar quarter for each of groundfish fishery category in which the vessel participates. Because the calculation of the number of fishing days that must be observed is done on a calendar quarter basis, the revision to the definition of fishing day is effective on the first day of the next calendar quarter, which is January 2, 2011.

Issue 5: Observer Cost Information

NMFS is not a party to contracts between the industry and observer providers. Therefore, NMFS has not had access to information about the actual cost of deploying observers in the various sectors of the groundfish fisheries. The MSA authorizes the collection of fees from North Pacific fishery participants to pay for implementing a fisheries research plan, including observer coverage. More accurate information on the cost of the existing Observer Program would help the Council and NMFS determine appropriate fees and the extent of observer coverage afforded by those fees when a fee-based research plan is developed and implemented. This action requires observer providers to submit to NMFS copies of all individual invoices for observer coverage in the groundfish fisheries off Alaska to provide NMFS with information on the costs incurred by the groundfish fishing industry for the current Observer Program. Observer providers will be required to submit these invoices to NMFS on a monthly basis, and within 45 days of the date of the invoice.

Issue 6: Miscellaneous Revisions

This final rule establishes a deadline by which observer providers must submit an exemplary copy of each type of contract between the provider and the observer, and between the provider and the vessel or plant operator requiring observer services in the groundfish fisheries off Alaska. The final rule also removes an incorrect reference to the Observer Program's Web site from Federal regulations.

Comments and Responses

Detailed information on the management background and need for action is in the preamble to the proposed rule (74 FR 50155, September 30, 2009). Comments on the proposed rule were invited through October 30, 2009. NMFS received six submissions containing 25 separate public comments on the proposed rule. These comments are summarized and responded to below.

Issue 1: Observer Certification and Observer Provider Permitting Process

Comment 1: NMFS should continue to have a strong central role in the oversight of observer providers and observer procedures. NMFS's oversight is necessary to ensure consistency throughout the program and maintain overall program integrity.

Response: NMFS acknowledges support for its continued role in overseeing the permitting and responsibilities of observers and observer providers.

Comment 2: Commenter supports NMFS's efforts to expand its discretion to grant provider permits by tailoring the application time period according to the conditions encountered by each applicant.

Response: NMFS acknowledges support for this regulatory revision.

Comment 3: Commenter supports NMFS's effort to alter the appeal forum for unsuccessful observer provider permit applicants and observer candidates. The current regulations are burdensome and ineffective.

Response: NMFS acknowledges support for this regulatory revision.

Comment 4: Eliminating the regulations regarding revocation and sanction procedures for observers and observer providers should better allocate agency resources while continuing to ensure the integrity of the Observer Program, and due process for observer providers and observers.

Response: This rule does not eliminate regulations regarding revocation and sanction procedures for observer certifications and observer provider permits. It does remove the appeals process for unsuccessful observer candidates and observer provider applicants.

Issue 2: Observer Conduct

Comment 5: NMFS's role in overseeing observer conduct under the proposed rule may hamper the ability of observer providers to effectively deal with employee conduct issues, which should be resolved directly by the observer providers themselves. Observer providers already have incentives to develop employment practices to cope with workplace issues, including drug and alcohol use and sexual misconduct. The role envisioned for NMFS under this new regulation is vague, as is the regulation it will replace. NMFS assesses observer performance and data quality, regardless of each observer's behavior. If NMFS determines that an observer is unable to collect the quality of data demanded by the agency, then the observer should be decertified. NMFS should specify behaviors it believes are likely to impact data quality. Once these behaviors are identified, the observer providers could likely agree on how best NMFS should be involved, though as a general rule, employment practices need to be left to

the providers who actually employ observers.

Response: NMFS believes that observer providers bear primary responsibility for establishing and implementing observer conduct policies. This rule will require observer providers to develop and implement an observer conduct policy and to provide a copy of the policy to NMFS. Further, this rule will require observer providers to inform NMFS of a violation of the observer provider's policy within 72 hours of determining that a violation occurred.

NMFS agrees that an observer whose data do not meet the quality standards should be decertified. Although NMFS intends to continue reviewing observer performance, NMFS does not intend to intervene in any corrective process undertaken by a provider to resolve deficiencies with its employees unless these deficiencies directly affect data quality.

It is important that NMFS is notified of violations of observer provider conduct policies so that NMFS can consider whether those violations adversely affect an observer's ability to perform his or her duties, including the collection of quality data, or compromise workplace safety. NMFS will monitor each observer provider's conduct policy to determine whether it helps to maintain a professional workforce. By keeping aware of observer providers' conduct policies and the extent to which these policies are violated, NMFS may better advise observer providers of the most effective policies, and take further action as needed should a provider's policy or ineffective implementation of its policy generate numerous cases of insufficient data quality.

Comment 6: NMFS should inform all observer applicants during the training process: (1) That most U.S. fishing vessels have zero tolerance policies regarding the use or possession of drugs and alcohol; and (2) that violation of such policies may be grounds for removal from the vessel at the first reasonable opportunity or for refusal to grant permission to board the vessel in the first place.

Response: It is NMFS's practice to inform observer applicants of the zero tolerance policies for drugs and alcohol on board most U.S. fishing vessels and the consequences of violating these policies. NMFS will continue to emphasize this information in observer training.

Comment 7: We acknowledge the difficulty for NMFS to enforce the observer conduct policy. However, because NMFS is responsible for the quality of information used to manage fisheries under its jurisdiction, NMFS must retain some level of observer conduct oversight, even if not through regulations and the administrative review process. The elimination of NMFS's policy creates the potential for widely varying policies among providers, which could result in confusion among observers about what is permitted. NMFS should supply a standardized policy for observer providers to enforce. At the very least, the current policy provides guidance as to what is and is not acceptable behavior.

Response: NMFS believes that observer providers bear primary responsibility for developing and implementing observer conduct policies. However, NMFS has posted drug and alcohol policies on the Fishery Management and Analysis Division's Web site (*http://www.afsc.noaa.gov/FMA/default.htm*). NMFS intends to keep these policies posted to notify observers of NMFS's expectations about use and possession of drugs and alcohol. NMFS will add information to the policies explaining that observer providers have their respective drug and alcohol policies to which their employees are subject. NMFS's policies may also guide observer providers in development of their policies.

Comment 8: NMFS should clarify why it has been impractical to enforce observer conduct before further reducing the agency's responsibility for the welfare and conduct of observers. Zero tolerance policies for drugs and alcohol, similar to ones already imposed by many fishing companies on their crew, are appropriate for the work environment in Alaska's fisheries, including its professional observers. Observers who violate alcohol policies damage the reputation of the observer profession. Alcohol use has been responsible for a range of distasteful and unsafe behavior between deployments and in employer-provided housing, demonstrating that observer providers are unable to effectively ensure compliance. Enforcing observer adherence to a professional code of conduct is of secondary importance to observer providers as their primary focus is fulfilling their business relationships with fishing companies.

Response: NMFS must establish a link between the unsanctioned behavior and the collection of reliable fisheries data to take corrective action such as decertifying an observer. Such links are difficult to prove for observer code of conduct violations that occur outside of an observer's working hours. Adherence to observer conduct expectations, especially at observer provider housing, is an observer provider responsibility. Drug and alcohol abuse that results in unacceptable and/or dangerous living situations for other observers between deployments should be reported to the observer provider at a minimum. During observer training, NMFS will continue to emphasize the zero tolerance drug and alcohol policy enforced by most U.S. fishing companies.

Comment 9: NMFS should hold annual performance reviews of observer providers to ensure there is no collusion with the fishing industry and to ensure NMFS's performance standards, including observer conduct standards, are being met. Reviews should be publicly available and should include a list of complaints made by observers against contractors, claims against observers, and should include how NMFS responded to these complaints.

Response: NMFS does not hold contracts with observer provider companies and does not conduct performance reviews as would occur under a contract. However, NMFS regulates the responsibilities of observer providers through Federal regulations at 50 CFR 679.50(i)(2). Observer providers are also subject to conflict of interest regulations at 50 CFR 679.50(i)(3). Non-compliance with these regulations is investigated by the NOAA Office of Law Enforcement (OLE). NOAA OLE can assess civil penalties directly against the violator in the form of Summary Settlements or refer the case to NOAA's Office of General Counsel for Enforcement and Litigation (GCEL). GCEL can assess a civil penalty in the form of a Notice of Permit Sanctions or Notice of Violation and Assessment, or they can refer the case to the U.S. Attorney's Office for criminal proceedings.

Comment 10: NMFS should have enforceable conduct standards for observers that all observer providers are required to enforce because:

- The business relationships between observer provider companies and fishing companies may make observer providers less inclined to investigate and enforce observer conduct violations; and
- Fishing companies could make false claims against observers who, while carrying out their duties, cause inconveniences for the vessel operator or observer provider.

Response: Current regulations specify conduct standards for North Pacific groundfish fishery observers (50 CFR 679.50(j)(2)). As stated above, NMFS cannot enforce observer conduct standards that are unrelated to the collection of quality data for fisheries

management. Through this action, NMFS is removing observer conduct regulations pertaining to use of drugs and alcohol and the prohibition of physical sexual contact with vessel personnel. However, several observer conduct standards, including prohibition of conflict of interest, remain in Federal regulations, and NMFS will continue to enforce compliance with these standards.

Among other types of conduct, Federal regulations prohibit the impediment, intimidation, or interference with an observer (50 CFR 679.7(g)). These regulations are designed to protect observers and allow them to freely perform their duties without harassment, which would include making false accusations against an observer. NMFS enforces these regulations to the fullest extent of the law.

Comment 11: This proposed rule will weaken the protections of observers and an observer's ability to carry out his or her duties to NMFS's standards. Observer sampling to monitor quotas likely results in increased conflicts between vessel personnel and observers. This proposed rule will weaken the integrity of the Observer Program.

Response: NMFS disagrees that the protections for observers, the ability of an observer to objectively do his or her job, or the integrity of the Observer Program will be weakened through the promulgation of this rule. This rule clarifies that the observer providers are responsible for ensuring that observers adhere to a professional code of conduct pertaining to drug and alcohol use and sexual conduct. This rule does not modify Federal regulations that prohibit assaulting, resisting, opposing, intimidating, sexually harassing, or bribing an observer, or interfering with an observer's sampling or samples.

Issue 3: Providing Observers for Research Activities

Comment 12: NMFS received two comments in support of the regulatory amendment clarifying that observer providers can provide scientific data collectors in addition to observers.

Response: NMFS acknowledges the support for this regulatory amendment.

Comment 13: NMFS should consider including language for "catch monitors" in the event that the catch share policy being developed by NMFS includes this job category.

Response: It is not prudent to add the term "catch monitor" to regulations implementing the Observer Program at this time, because this term has not been established nor defined for North Pacific groundfish fisheries and is not relevant to this final rule.

Comment 14: The same standards that apply to observer deployments should apply to deployments of scientific data collectors for Experimental Fishing Permit (EFP) and Scientific Research Permit (SRP) projects, because researchers can influence who is hired by an observer provider to serve as a scientific data collector. Since much of the EFP and scientific research has implications for the fishing industry and is often partially funded by the industry, this could be perceived as a conflict of interest. These activities should be treated with the same code of conduct as in the Observer Program, including random placement of observers and public access to the data collected.

Response: The decision to hire scientific data collectors is based on the nature of the experimental or scientific work being conducted. Sometimes data collectors are hired through an observer provider company. Data collected during EFP and SRP projects are neither submitted to NMFS nor incorporated into official catch accounting. As such, data collected during EFP and SRP projects are not considered to be "observer information" and the scientific data collectors are not considered to be "observers" as defined in the MSA. Therefore, regulations pertaining to observers, observer providers, or observer information do not apply to EFP or SRP projects.

Issue 4: Fishing Day Definition

Comment 15: Observer data need to be collected at times that are representative of an operation's normal fishing activity. However, the proposed change to the fishing day definition will not sufficiently address the problem of vessel operators intentionally altering fishing activities while an observer is onboard. Instead, it merely shifts the start of the fishing day by 12 hours. Vessel operators will still have incentive to try to get small tows in at whatever time of day gets them the extra day of coverage.

Response: NMFS acknowledges that the revised fishing day definition does not eliminate the potential for operators with a 30 percent observer coverage requirement to intentionally manipulate their observer coverage by altering their fishing behavior solely for the purpose of achieving required coverage levels. As noted in the RIR/IRFA prepared for this action (*see* **ADDRESSES**), the optimum resolution to the problem of vessels conducting non-representative fishing to meet 30 percent observer coverage requirements may be to restructure the service delivery model for the Observer Program such that NMFS would control when and where observers are deployed. NMFS and the Council are working on an analysis to evaluate alternatives for restructuring the Observer Program service delivery model, which may modify how fishing trips are selected for observer coverage. In the interim, NMFS expects the revision of the fishing day definition to reduce the extent to which fishing trips are modified solely to achieve observer coverage due to the economic disincentive of using daylight hours to return to port to drop off observers. NMFS also expects the requirement that an observer be on board a vessel for all retrievals in which groundfish are retained in a 24-hour period to increase the disincentive for either spending a full day conducting non-representative fishing, or to sacrifice a full day of fishing just to make one observer tow so that it counts towards a day of observer coverage. This action is intended to reduce the occurrence of non-representative fishing behavior, though NMFS agrees that it will not eliminate the potential for manipulating the manner in which observer coverage is attained.

Comment 16: To yield representative data, the requirement that 30 percent of an operation's fishing activity be observed should be replaced with a requirement that 30 percent of the estimated total round weight of groundfish brought onboard be observed. It would be simple to track and estimate total round weight harvested by a vessel as current recordkeeping and reporting regulations require vessel operators to record the total estimated weight of groundfish brought onboard each day. This recommendation is similar to the approach adopted by NMFS to address non-representative fishing by vessels using pot gear. Observer coverage requirements previously based on fishing day are now based on pot counts. This proposed solution removes the opportunity for vessels to make observer tows which result in data that represents actual harvest.

Response: Replacing the fishing day definition with a requirement that an observer observe 30 percent of an operation's total catch or retained catch by round weight is unlikely to prevent operations from manipulating fishing behavior to meet observer coverage requirements. The alternative to base observer coverage requirements on harvest weight rather than fishing days was discussed and rejected by the Council's Observer Advisory Committee in May 2007, because catch weight is estimated by vessel operators and

cannot be independently verified on catcher vessels or small catcher processors that discard fish at sea. Basing such a standard on retained catch weighed at the end of a fishing trip could exacerbate the generation of non-representative data from operations intentionally manipulating their discard amounts, recordkeeping and reporting, or other activities to meet coverage requirements. Observer data representing the actual spatial and temporal distribution of the fisheries are needed for reliable parameter estimates to manage the fisheries.

Comment 17: NMFS should continue to pursue restructuring the Observer Program to randomize vessel selection and observer deployment on all vessels subject to less than 100 percent observer coverage. The revised fishing day definition in combination with a restructured Observer Program could virtually eliminate the potential for intentionally manipulating observer coverage requirements.

Response: NMFS agrees that the optimum solution to this problem may be Observer Program restructuring. See response to Comment 15 above.

Comment 18: Changing the fishing day definition from noon to noon increases the difficulty for vessel operators and observer providers to calculate observer coverage rates and does not eliminate the potential for the manipulation of observer coverage as intended. The requirement for the observer to be onboard for the full 24-hour period would solve the problem and there is no need to modify the definition of a day from 0001–2400 to 1201–1200.

Response: NMFS agrees that revising the fishing day definition does not prevent operations from manipulating the manner in which observer coverage requirements are met, and that modifying the fishing day definition from 0001–2400, to 1201–1200 creates the possibility for operations to merely shift the time of day in which they fish solely for observer coverage as discussed in the RIR/IRFA for this action (*see* **ADDRESSES**). However, the RIR/IRFA notes that fishery participants would be less likely to use the time period around noon to take observer tows because daylight hours correspond with better fishing. Anecdotal evidence suggests that participants would be less likely to attempt to manipulate the system during daylight hours because they would risk foregoing key fishing time. The extent of the economic disincentive for fishing solely for observer coverage during daylight hours cannot be quantified. NMFS agrees with the commenter that the component of the fishing day definition likely to have the largest impact on reducing fishing solely for observer coverage is the requirement that an observer be on board for the entire 24-hour period. NMFS expects the change in the time of the fishing day definition to reduce the practice of changing normal fishing operations to manipulate observer coverage.

Comment 19: The proposed revision to the fishing day definition will reduce the intentional practice of "observer tows," non-representative fishing activities that bias observer-collected data which form the basis of bycatch estimates and other scientific assessments. Because unbiased observer information is crucial to the proper management of fisheries in the North Pacific, this proposed action to reduce bias in observer data is an important step.

Response: NMFS acknowledges the support for this amendment.

Comment 20: NMFS should continue to monitor and record uncharacteristic fishing patterns following the implementation of this rule.

Response: NMFS agrees.

Issue 5: Observer Cost Information

Comment 21: The requirement that observer provider invoices contain the name of the observer assigned to the vessel or plant would require observer providers to modify their business practices. Invoicing occurs at the beginning of a month for services in that month. It is not possible to reliably predict the name of the observer that will provide coverage to a particular vessel or plant over the course of the month. Adding the observer's name to invoices would require duplication of billing process solely to comply with this requirement. Because existing regulations require observer providers to submit a weekly roster to NMFS containing the names and assignments of every observer, this requirement would create an additional burden to provide information already made available to NMFS by the observer provider.

Response: NMFS agrees. NMFS proposed to have "observer name" provided on invoices submitted by observer providers to serve as an additional data field to link observer provider invoice information to Observer Program databases containing information about specific observer fishing trips or deployments. The ability to link observer provider invoice information to Observer Program databases is necessary to increase the level of detail for NMFS to analyze costs. For example, this would allow NMFS to know which target fishery is linked to a particular invoice. NMFS recognizes the difficulty that the requirement to include "observer name" would impose on observer providers. As discussed in the RIR/IRFA (*see* **ADDRESSES**), this action was designed with the objective of not modifying the existing billing practices of the directly regulated observer providers affected by this rule. While the inclusion of the observer's name would aid in linking invoice information to the Observer Program database, it is not required to achieve this linkage. Because this provision would require observer providers to substantially modify their billing practices and therefore impose an additional burden, NMSF has modified the final rule to exclude the proposed requirement that observer provider invoices contain the name of the observer.

Comment 22: We support gathering observer cost information through the collection of invoices. Invoices should also be included for research activities that involve observers and the Observer Program.

Response: As explained in response to Comment 14, data collected during experimental or research activities are not considered "observer information," nor are the scientific data collectors considered "observers" per the definition in the MSA. Therefore, regulations applicable to observers, observer providers, and observer information are not applicable to EFP or SRP cruises.

Comment 23: Collection of observer provider invoices will improve analyses of Observer Program costs and benefits. This approach for collecting cost information will—

- Ground-truth industry's claims of overly burdensome economic impacts imposed by observer coverage costs;
- Inform policies to ensure that observer costs do not present an undue burden to industry; and
- Impose no additional burden on the regulated industry as this information is already collected and maintained on file with observer providers.

Response: NMFS acknowledges support for this amendment.

Other Comments

Comment 24: Observers are not effective because they can be threatened with violence.

Response: NMFS disagrees. Observers have provided valuable information for managing the groundfish fisheries off Alaska for over twenty years. See the response to Comment 10.

Comment 25: Cameras should be required on vessels, and vessels should not be allowed to fish without cameras.

Response: This rule addresses administrative changes to the existing Observer Program regulations at 50 CFR 679.50; it does not encompass alternative monitoring sources such as cameras. At its June 2010 meeting, the Council expressed its intent to pursue options for an electronic monitoring program to augment or replace observer coverage on specific vessels and to develop and implement such a program in coordination with the proposed restructured Observer Program under consideration by the Council. NMFS will be coordinating closely with the Council as options for expanded uses of electronic monitoring are developed.

Changes From the Proposed Rule

Four substantive changes were made in the final rule from the proposed rule. NMFS has made changes to Issue 2 Observer Conduct, and Issue 5 Observer Cost Information. The changes under Issue 2 comprise two technical clarifications identified by NMFS. Two changes are also made to Issue 5: One resulting from public comment received on the proposed rule; and one facilitating collection of observer cost information on a continual basis consistent with the purpose and need for the action and with other economic data collection programs adopted by the Council and administered by NMFS. NMFS consulted with the Council on these changes during the December 2009 meeting as required under Section 304(b)(3) of the MSA. The Council concurred with all of NMFS's proposed changes to the proposed rule. The changes are described below.

Under Issue 2, this final rule clarifies that observer providers must implement their policies addressing observer conduct and behavior for their employees that serve as observers. The wording of the proposed rule might have been interpreted to require that observer providers merely develop and maintain a written policy addressing observer conduct and behavior for their employees. The final rule clarifies NMFS's intent that observer providers are responsible for implementing their conduct policies, rather than just maintaining their written policies.

Also under Issue 2, this final rule removes the deadline in the proposed rule that would have required observer providers to provide copies of their observer conduct policies to observer candidates and observers by February 1 of each year. It is not practical for observer providers to comply with the proposed regulation, as all observer candidates and observers may not be known by February 1 of each year. This final rule retains the February 1 deadline for observer providers to submit a copy of their conduct policies to the Observer Program Office; however, it does not specify a deadline for when observer conduct policies must be provided to observer candidates and observers, though this rule requires observers and observer candidates to be provided with the observer provider's policy.

Under Issue 5, the proposed rule would have required observer providers to submit copies of their invoices for services provided in the North Pacific groundfish fisheries to NMFS so that NMFS may understand the industry's observer coverage costs. The proposed rule preserved the intent of the Council's April 2008 motion and stated that observer providers would be required to submit to NMFS invoices on a monthly basis for a full calendar year every third year. The RIR/IRFA prepared for this action (*see* **ADDRESSES**) describes the minimal burden for observer providers to provide this information to NMFS and the shortcomings of an episodic data collection program. In the preamble to the proposed rule, NMFS expressed concerns with the proposed 3-year data collection interval. The preamble highlighted that a 3-year interval would delay NMFS's ability to detect trends in observer coverage costs. Furthermore, a periodic data collection cycle would reduce the precision of any temporal variability evaluation. As noted in the preamble to the proposed rule, the Council's preferred alternative would not allow for a complete, continuous overview of the industry's observer costs due to the 3-year lapse between data collection cycles. Finally, a 3-year lapse in data collection cycles departs from NMFS's other ongoing economic data collection programs, which collect economic data annually. When compared to other annual collection programs, a three-year collection cycle would be an anomaly and less robust.

Although NMFS highlighted its concern with the Council's recommendation to collect the monthly invoices every 3 years in the proposed rule, no public comment was received on this issue. Therefore, for the reasons described above and in the remainder of this paragraph, the final rule requires that observer providers submit copies of their invoices to NMFS on a monthly basis every year rather than on a monthly basis only every 3 years as stated in the proposed rule. Invoices are already maintained by providers and monthly submissions will provide timely information to assess the nature of change in observer costs for purposes of analyses of proposed fishery management and conservation actions. These assessments will become increasingly important if observer coverage in the future is provided under private contract arrangements between NMFS and observer providers; this approach would reflect a significant change in how observers are deployed and currently is under consideration by the Council. Invoices must be submitted to NMFS within 45 days of the date on the invoice. This provides a grace period between the time invoices are prepared and when they must be received by NMFS.

Also under Issue 5, this final rule modifies the elements required to be submitted to NMFS on an observer provider's invoice. The preamble to the proposed rule listed the items required to be contained on the invoices submitted to NMFS. In the preamble, the corresponding observer's name was listed as a required invoice element; however "observer name" was inadvertently excluded from the regulatory text in the proposed rule. During the public comment period one observer provider commented that it would have to substantially modify its billing practice to include "observer name" on a monthly invoice, as it bills clients at the beginning of the month, before an observer is selected and assigned to the client (*see* Comment 21, above). Because this element would impose a substantial compliance burden on the observer provider, and because it is not imperative for NMFS to have the observer's name on the invoice to conduct economic analyses, "observer name" is not included in the list of required invoice elements in the final rule. Also see response to Comment 21.

Classification

The Administrator, Alaska Region, NMFS determined that this final rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson-Stevens Act and other applicable law.

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

A final regulatory flexibility analysis (FRFA) was prepared, as required by section 604(a) of the Regulatory Flexibility Act (RFA). The FRFA incorporates the initial regulatory flexibility analysis (IRFA) and provides a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (*see* **ADDRESSES**).

Need for, and Objectives of, the Rule

The need for, and objectives of, this final rule are described in the preamble.

Significant Issues Raised by Public Comment on the IRFA

No public comments were received specifically on the IRFA. However, one change was made to the final rule in response to a comment from an observer provider (a small entity). See response to Comment 21.

Description and Number of Small Entities to Which the Final Rule Would Apply

The directly regulated entities are different under the various issues addressed in this final rule. Since the RFA is applicable to businesses, non-profit organizations, and governments, observers fall outside of the scope of the RFA. Therefore, Issue 1, which affects observers only, is not discussed in the FRFA.

Five companies hold observer provider permits and are active in the North Pacific. These entities will be directly regulated by revisions implemented under Issues 2, 3, 5, and 6 of this final rule. As explained in the FRFA, all of the current observer provider companies are considered small entities under the RFA. Small observer provider firms that in the future obtain a permit to provide observer services will be regulated by observer provider permitting and responsibility regulations revised by this final rule; however, the potential number of these firms cannot be estimated and they are not considered directly regulated under this action.

Trawl and hook-and-line catcher vessels (CV) and catcher/processors (CP) subject to 30 percent observer coverage requirements will be directly regulated by the revision to the definition of "fishing day" under Issue 4 in this final rule. In the BSAI and GOA, with several exceptions for vessels participating in specific programs, these include trawl and hook-and-line catcher vessels between 60 feet and 125 feet length overall (LOA), and hook-and-line CPs between 60 feet and 125 feet LOA. American Fisheries Act (AFA) (16 U.S.C. 1851 note) trawl CVs subject to 30 percent observer coverage requirements are categorized as large entities for the purpose of the RFA under the principles of affiliation, as they are part of the AFA pollock harvest cooperatives. The table below lists the number of directly regulated small entities, by sector, that may be affected by the revised "fishing day" definition. The FRFA likely overestimates the number of directly regulated small entities. NMFS does not have access to data on ownership and other forms of affiliation for most segments of the fishing industry operating off Alaska, nor does NMFS have information on the combined annual gross receipts for each entity by size. Absent these data, a more precise characterization of the size composition of the directly regulated entities impacted by this action cannot be offered.

ESTIMATE OF THE NUMBER OF SMALL ENTITIES POTENTIALLY DIRECTLY REGULATED BY ISSUE 4 OF THE FINAL RULE:

Sector	Number of small entities
Trawl CV > 60′ and ≤ 125′	22
Trawl CP > 60′ and ≤ 125′	1
Hook and Line CV > 60′ and ≤ 125′	78
Hook and Line CP > 60′ and ≤ 125′	2

Projected Reporting, Recordkeeping, and Other Compliance Requirements

Actions under Issue 2 and Issue 5 include additional recordkeeping and reporting requirements for the five observer providers currently supplying services to the Observer Program. Regulatory amendments made under Issue 6 impose a deadline for submission of information that is already required of observer providers in existing regulations.

Revised regulations under Issue 2 require observer providers to have and implement a policy related to observer alcohol, drugs, and sexual contact; provide NMFS a copy of the conduct policy by February 1, of each year; and to notify NMFS of a violation of the observer provider's policy within 72 hours after the provider determines that an observer violated a conduct policy, including the underlying facts and circumstances of the violation. Current regulations at § 679.50(i)(2)(x)(I) require an observer provider to notify NMFS of other types of conduct violations within 24 hours of becoming aware of the alleged violation; this final rule does not substantially alter that reporting requirement. It may take 20 minutes or less for an employee of the observer provider company to report this information to NMFS, as fax or email are acceptable means of communication.

Compliance costs under Issue 4 will be somewhat reduced by the delay in effectiveness to January 1, 2011. The revision to the definition of a fishing day affects the calculation of days that an observer is onboard vessels greater than or equal to 60 ft LOA, but less than 125 ft LOA that are subject to 30 percent observer coverage requirements under § 679.50. Effectiveness of this change in definition is delayed to the first day of the next calendar quarter, which is January 2, 2011. This will delay any costs associated with the need for more observer coverage days each quarter for vessels in the 30 percent observer coverage category as a result of the change in the definition of a fishing day. It also will reduce any administrative costs associated with the additional complexity that would have been caused by changing the method for calculating observer coverage days in the middle of a calendar quarter.

Under Issue 5, this final rule requires observer providers to submit copies of billing invoices to NMFS once a month on a continual basis. This recordkeeping and reporting requirement will not require observer providers to modify or interpret their billing invoices.

Under Issue 6, existing regulations are modified by imposing a February 1 deadline for observer providers to submit to NMFS each type of contract they have entered into with observers or the fishing industry. Because regulations already require observer provider companies to submit this information to NMFS, and because most observer provider companies have been submitting this information by February 1 in the past, this regulatory amendment should impose virtually no additional net burden on the observer provider companies.

Reason for Selecting the Alternatives in the Final Rule

The preferred alternative for each issue was selected as the least economically burdensome alternative that met the purpose and need for action based upon the analysis in the RIR/IRFA and FRFA (*See* **ADDRESSES**). The Council selected the only action alternative available under Issues 1, 2, 3, and 6. Issues 1 and 6 do not affect small entities. The preferred alternative under Issue 2, regarding observer conduct policies, is expected to have a minimal cost to observer providers, as described above. Issue 3, clarifying that observer providers may provide observers or scientific data collectors for research, does not impost costs on small entities.

Revisions to the definition of a fishing day under Issue 4 could increase costs for vessel owners in some cases because they may need to take longer fishing trips under the revised definition. Longer trips would require them to carry observers for more days than they do under current regulations and pay

more for observer coverage as a result of these additional observer days. However, the objective of the revised definition is to prevent vessel operators from making fishing trips that do not reflect their normal fishing patterns as this non-representative behavior biases the observer-collected information. Therefore, the additional costs that may be incurred by vessel owners are necessary to address a problem that potentially reduces the quality of observer data collected to manage the groundfish fisheries off Alaska.

There were three action alternatives for Issue 5, and the Council selected the least economically burdensome alternative for observer providers by rejecting alternatives that would have required providers to compile annual expense reports summarized by fishery or expense category. The alternative that would require observer providers to submit copies of invoices already prepared as part of their standard bookkeeping was determined to be less burdensome on small entities than the other alternatives.

The Council sought to further reduce the economic burden on observer providers by requiring them to submit copies of their invoices only on a monthly basis for a full calendar year every third year; however, in this final rule, observer providers are required to submit copies of their invoices to NMFS on a monthly basis every year, in line with their present accounting practices. Although this alternative is not the least economically burdensome on the observer providers, NMFS determined that it is necessary because a 3-year interval would delay NMFS's ability to detect trends in observer coverage costs and a periodic data collection cycle would reduce the precision of any temporal variability evaluation. The additional economic burden on the observer providers is expected to be small because invoices are already maintained by providers and monthly submissions will provide timely information to assess the nature of change in observer costs for purposes of analyses of proposed fishery management and conservation actions.

Collection-of-Information

This rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been approved under OMB Control Number 0648–0318. Public reporting burden is estimated to average 30 minutes per individual response for Copies of Invoices; 15 minutes for Observer Provider Contract Copies; two hours for Other Reports; 40 hours for Appeals for Observer Provider Permit Expiration or Denial of Permit (this item is removed with this action); and 40 hours for Observer Conduct and Behavior Policy, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The PRA analysis submitted with this rule estimates the economic impact on each observer provider to range from $148 to $622 per year for copying and submitting copies of billing invoices to NMFS depending on whether the invoices are submitted via e-mail or fax, respectively. The PRA analysis estimates a one-time expense of $1,025 for observer providers to develop observer conduct policies and submit copies of them to NMFS. This is likely an overestimate as all active groundfish observer providers in the North Pacific currently have drug policies and four of the five have alcohol policies. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see* **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 4, 2010.

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 part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

■ 2. In § 679.2, revise the definition of "Fishing day" to read as follows:

§ 679.2 Definitions.

* * * * *

Fishing day means (for purposes of subpart E of this part) a 24-hour period, from 1201 hours, A.l.t. through 1200 hours, A.l.t., in which fishing gear is retrieved and groundfish are retained. An observer must be on board for all gear retrievals during the 24-hour period in order to count as a day of observer coverage. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.

* * * * *

■ 3. In § 679.50:

■ A. Remove and reserve paragraph (i)(1)(iii)(B) and remove paragraphs (i)(1)(iv), (i)(2)(i)(C)(*1*), (j)(1)(iv)(B), and (j)(2)(ii)(D).

■ B. Redesignate paragraphs (i)(1)(v) through (viii) as paragraphs (i)(1)(iv) through (vii), respectively.

■ C. Redesignate paragraphs (i)(2)(i)(C)(*2*) through (*4*) as paragraphs (i)(2)(i)(C)(*1*) through (*3*), respectively.

■ D. Redesignate paragraphs (i)(2)(iii) through (xii) as paragraphs (i)(2)(iv) through (xiii), respectively.

■ E. Redesignate newly redesignated paragraphs (i)(2)(xi)(H) and (I) as paragraphs (i)(2)(xi)(I) and (J), respectively, and further redesignate paragraphs (i)(2)(xi)(J)(*1*) through (*5*) as paragraphs (i)(2)(xi)(J)(*1*)(*i*) through (*v*), respectively.

■ F. Redesignate paragraphs (i)(3)(i) through (iii) as paragraphs (i)(3)(ii) through (iv), respectively.

■ G. Redesignate paragraph (j)(1)(iv)(C) as paragraph (j)(i)(iv)(B).

■ H. Add paragraphs (i)(2)(iii), (i)(2)(xi)(H), (i)(2)(xi)(J)(*1*) introductory text, (i)(2)(xi)(J)(*2*), and (i)(3)(i).

■ I. Revise paragraphs (i)(1)(i)(A), (i)(1)(iii)(A) introductory text, (i)(2)(i)(B), (j)(1)(iii)(B) introductory text, (j)(1)(iv)(A), (j)(2)(ii) introductory text, and (j)(2)(ii)(A) through (C).

■ J. Revise newly redesignated paragraphs (i)(1)(iv), (i)(1)(vi)(B), (i)(2)(xi)(G) first sentence, (i)(2)(xi)(J) introductory text, (i)(2)(xi)(J)(*1*)(*v*), and (i)(3)(ii) introductory text.

The revisions and additions read as follows:

§ 679.50 Groundfish Observer Program.

* * * * *

(i) * * *

(1)* * *

(i) * * *

(A) The Regional Administrator may issue a permit authorizing a person's participation as an observer provider. Persons seeking to provide observer services under this section must obtain an observer provider permit from NMFS.

* * * * *

(iii) * * *

(A) The Regional Administrator will establish an observer provider permit application review board, composed of NMFS staff, to review and evaluate an application submitted under paragraph (i)(1) of this section. The review board will evaluate the completeness of the application, the application's consistency with needs and objectives of the observer program, or other relevant factors, and the following criteria for each owner, or owners, board members, and officers if a corporation:

* * * * *

(iv) *Agency determination on an application.* NMFS will send a written determination to the applicant. If an application is approved, NMFS will issue an observer provider permit to the applicant. If an application is denied, the reason for denial will be explained in the written determination.

* * * * *

(vi) * * *

(B) The Regional Administrator will provide a written initial administrative determination (IAD) to an observer provider if NMFS's deployment records indicate that the permit has expired. An observer provider who receives an IAD of permit expiration may appeal under § 679.43. A permit holder who appeals the IAD will be issued an extension of the expiration date of the permit until after the final resolution of that appeal.

* * * * *

(2) * * *

(i) * * *

(B) Prior to hiring an observer candidate, the observer provider must provide to the candidate copies of NMFS-provided pamphlets and other literature describing observer duties.

* * * * *

(iii) *Observer conduct.* (A) An observer provider must develop, maintain, and implement a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct regarding:

(*1*) Observer use of alcohol;

(*2*) Observer use, possession, or distribution of illegal drugs; and

(*3*) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(B) An observer provider shall provide a copy of its conduct and behavior policy:

(*1*) To observers, observer candidates; and

(*2*) By February 1 of each year to the Observer Program Office.

* * * * *

(xi) * * *

(G) *Observer provider contracts.* Observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraphs (c) and (d) of this section, by February 1 of each year.

* * *

* * * * *

(H) *Observer provider invoices.* Certified observer providers must submit to the Observer Program Office copies of all invoices for observer coverage required or provided pursuant to paragraphs (c) and (d) of this section.

(*1*) Copies of invoices must be received by the Observer Program Office within 45 days of the date on the invoice and must include all reconciled and final charges.

(*2*) Invoices must contain the following information:

(*i*) Name of each individual catcher/processor, catcher vessel, mothership, stationary floating processor, or shoreside processing plant to which the invoice applies;

(*ii*) Dates of service for each observer on each catcher/processor, catcher vessel, mothership, stationary floating processor, or shoreside processing plant. Dates billed that are not observer coverage days shall be identified on the invoice;

(*iii*) Rate charged in dollars per day (daily rate) for observer services;

(*iv*) Total charge for observer services (number of days multiplied by daily rate);

(*v*) Amount charged for air transportation; and

(*vi*) Amount charged by the provider for any other observer expenses, including but not limited to: Ground transportation, excess baggage, and lodging. Charges for these costs must be separated and identified.

* * * * *

(J) *Other reports.* Reports of the following must be submitted in writing to the Observer Program Office by the observer provider via fax or email:

(*1*) Within 24 hours after the observer provider becomes aware of the following information:

* * * * *

(*v*) Any information, allegations or reports regarding observer conflict of interest or failure to abide by the standards of behavior described at paragraph (j)(2)(i) or (j)(2)(ii) of this section, or;

(*2*) Within 72 hours after the observer provider determines that an observer violated the observer provider's conduct and behavior policy described at paragraph (i)(2)(iii)(A) of this section; these reports shall include the underlying facts and circumstances of the violation.

* * * * *

(3) * * *

(i) Are authorized to provide observer services under an FMP for the waters off the coast of Alaska as required in this part, or scientific data collector and observer services to support NMFS-approved scientific research activities, exempted educational activities, or exempted or experimental fishing as defined in § 600.10 of this chapter.

(ii) Must not have a direct financial interest, other than the provision of observer or scientific data collector services, in a North Pacific fishery managed under an FMP for the waters off the coast of Alaska, including, but not limited to:

* * * * *

(j) * * *

(1) * * *

(iii) * * *

(B) *New observers.* NMFS may certify individuals who, in addition to any other relevant considerations:

* * * * *

(iv) * * *

(A) *Denial of a certification.* The NMFS observer certification official will issue a written determination denying observer certification if the candidate fails to successfully complete training, or does not meet the qualifications for certification for any other relevant reason.

* * * * *

(2) * * *

(ii) *Standards of Behavior.* Observers must:

(A) Perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office;

(B) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment; and

(C) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

* * * * *

§ 679.50 [Amended]

■ 4. At each of the locations shown in the Location column, remove the phrase indicated in the "Remove" column and replace it with the phrase indicated in the "Add" column for the number of times indicated in the "Frequency" column.

Location at § 679.50	Remove	Add	Frequency
Newly redesignated (i)(2)(i)(C)(*3*)	in paragraph (i)(2)(x)(C) of this	in paragraph (i)(2)(xi)(C) of this	1
(i)(2)(ii)(A)	under paragraph (i)(2)(x)(E) of this	under paragraph (i)(2)(xi)(E) of this	1
Newly redesignated (i)(2)(iv)(B)	in paragraph (i)(2)(x)(C) of this	in paragraph (i)(2)(xi)(C) of this	1
Newly redesignated (i)(2)(vii)(B)	in paragraphs (i)(2)(vi)(C) and (i)(2)(vi)(D) of this.	in paragraphs (i)(2)(vii)(C) and (i)(2)(vii)(D) of this.	1
Newly redesignated (i)(2)(xi)(C)	paragraph (i)(2)(i)(B)(*1*) of	paragraph (i)(2)(i)(B) of	1
(j)(1)(iii)(B)(*2*)(*i*)	at paragraphs (i)(2)(x)(A)(*1*)(*iii*) and	at paragraphs (i)(2)(xi)(A)(*1*)(*iii*) and	1
(j)(1)(iii)(B)(*2*)(*ii*)	at paragraph (i)(2)(x)(C)	at paragraph (i)(2)(xi)(C)	1
(j)(1)(iii)(B)(*3*)	and (i)(2)(x)(C)	and (i)(2)(xi)(C)	1
(j)(1)(iii)(B)(*4*)(*ii*)	the candidate failed the training; whether	the candidate failed the training and whether.	1
(j)(1)(iii)(B)(*4*)(*ii*)	in the form of an IAD denying	in the form of a written determination denying.	1
(j)(3)(iii)	will issue a written IAD to the observer	will issue a written initial administrative determination (IAD) to the observer.	1

[FR Doc. 2010–28325 Filed 11–9–10; 8:45 am]

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