

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Murdo, Channel 285A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 98-6513 Filed 3-12-98; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**
**47 CFR Part 73**

[MM Docket No. 97-177; RM-9131]

**Radio Broadcasting Services; Kenova, WV**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Billy R. Evans, allots Channel 250A at Kenova, West Virginia, as the community's first local aural transmission service. See 62 FR 44434, August 21, 1997. Channel 250A can be allotted to Kenova in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.5 kilometers (1.6 miles) south to avoid a short-spacing to the licensed site of Station WZQQ(FM), Channel 250C3, Hyden, Kentucky. The coordinates for Channel 250A at Kenova are North Latitude 48-22-38 and West Longitude 82-34-33. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** April 20, 1998. A filing window for Channel 250A at Kenova, West Virginia, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 97-177, adopted February 25, 1998, and released March 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.  
Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Kenova, Channel 250A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 98-6512 Filed 3-12-98; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**
**Federal Highway Administration**
**49 CFR Part 386**

RIN 2105-AC63

**Civil Penalties**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This document specifies the civil penalties for violating the FHWA regulations, as adjusted for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The inflation adjustments are reflected in this rulemaking. Technical amendments to the regulation are required by the statute which mandates that all civil penalties within the jurisdiction of a Federal agency be adjusted for inflation by regulation.

**DATES:** The effective date is March 13, 1998.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Medalen, Office of the Chief Counsel, FHWA, telephone (202) 366-1354; or David M. Lehrman, Office of Motor Carrier Research and Standards, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590; (202) 366-0994. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**
**Electronic Access**

An electronic copy of this document may be downloaded using a modem and

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**The Debt Collection Improvement Act of 1996**

In order to preserve the remedial impact of civil penalties and foster compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (the Act) (Pub. L. 104-134, 110 Stat. 1321-358, -373), requires Federal agencies to regularly adjust certain civil penalties for inflation. As amended, the law requires each agency to make an initial inflationary adjustment for all applicable civil penalties, and to make further adjustments at least once every four years of these penalty amounts.

The Debt Collection Improvement Act of 1996 further stipulates that any resulting increases in a civil penalty due to the calculated inflation adjustments: (i) Should apply only to violations that occur after October 23, 1996, the Act's effective date; and (ii) should not exceed 10 percent of the penalty indicated in authorizing legislation.

**Method of Calculation**

Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, the inflation adjustment for each applicable civil penalty is determined by increasing the maximum civil penalty amount per violation by the cost-of-living-adjustment. The "cost-of-living" adjustment is defined as the amount by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the year in which the amount of such civil penalty was last set or adjusted pursuant to law. Any calculated increase under this adjustment is subject to a specific rounding formula set forth in the Debt Collection Improvement Act of 1996.

For example, pursuant to 49 U.S.C. 5123, the FHWA may assess a fine for violation of the Federal Hazardous Materials Regulations (HMR) (49 CFR 171-180). The driver, motor carrier, or shipper who violates the HMR is subject to a civil penalty of not less than \$250 and not more than \$25,000 for each violation.

This penalty was last set in 1990. The Consumer Price Index was 156.7 in June 1996, and was approximately 130 in June of 1990. Thus the inflation factor is 156.7/130 or 1.21. The maximum penalty amount after the increase and statutory rounding would thus be the result of multiplying \$25,000  $\times$  1.21 = \$30,250. However, after applying the 10 percent limit on an initial increase, the new maximum penalty amount per violation is \$25,000 plus \$2,500 (i.e., 10 percent of the previous fine), or \$27,500. Therefore, increasing penalty provisions will be limited to 10 percent.

This final rule will be the first publication by regulation of the new penalty structure adjusted for inflation. In the past, Appendix A to part 386 was the sole regulatory source for a penalty schedule. Appendix A is now adjusted for inflation. A new Appendix B, which addresses violations not included in Appendix A, is added with violations and maximum monetary penalties adjusted for inflation.

#### Rulemaking Analyses and Notices

Because these inflation adjustments are statutorily mandated, the FHWA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b). The law requires that Federal agencies adjust certain civil penalties for inflation and make further adjustments at least once every four years. We consider these adjustments to be ministerial acts in compliance with the statute over which agencies have no discretion.

For these reasons, the FHWA has also determined that prior notice and opportunity for comment are not required under the Department of Transportation's regulatory policies and procedures, as we anticipate that such action would not result in the receipt of useful information. Thus, the FHWA is proceeding directly to a final rule and waives the 30-day delay effective date because this action does not require carriers to take any action. This rule merely provides notice required by law of an inflation adjustment to maximum penalties.

#### Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. This final rule sets forth inflationary adjustments that are ministerial acts in compliance with the statute over which agencies have no discretion. We believe that this rule will

not result in a major increase in costs or prices for State or local governments. The law is simply designed to preserve the remedial impact of civil penalties. Consequently, it is anticipated that the economic impact of this final rule will be minimal because it will not substantially change the applicable civil penalty amount. This regulatory action will merely make inflation adjustments for all applicable civil penalties as required by law.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities. The ministerial adjustments for inflation published in this rule do not interfere with implementation of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121, Title II, 110 Stat. 857) which requires penalties for small businesses to be reviewed in a manner designed to provide for waiver and/or reduction of civil penalties under appropriate circumstances. The FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

#### Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

#### Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

#### National Environmental Policy Act

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

#### Unfunded Mandates Reform Act

This rule does not impose unfunded mandates as defined by the Unfunded

Mandates Reform Act of 1995 (Pub. L. 104-4).

#### Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### List of Subjects in 49 CFR Part 386

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

Issued on: March 5, 1998.

**Kenneth R. Wykle,**

*Administrator, Federal Highway Administration.*

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, Chapter III, part 386 as set forth below:

#### PART 386—RULES OF PRACTICE FOR MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS PROCEEDINGS

1. The authority citation is revised to read as follows:

**Authority:** 49 U.S.C. 104(c)(2), 501 *et seq.*, Chapter 51, 31131-31133, 31135-31139, 31142-31147, Chapter 313, 31501 *et seq.*, Pub. L. 104-34, title III, chapter 10, Sec. 31001, par. (s), 110 Stat. 1321-373, and 49 CFR 1.45 and 1.48.

#### Appendix A to Part 386—[Amended]

2. Appendix A to part 386 is amended by revising the figure "\$500" to read as "\$550", the figure "\$1,000" to read as "\$1,100", and the figure "\$10,000" to read as "\$11,000" whenever they appear throughout the appendix.

#### Appendix B to Part 386—[Added]

3. Part 386 is amended by adding appendix B to read as follows:

#### Appendix B to Part 386—Penalty Schedule; Violations and Maximum Monetary Penalties

The Debt Collection Improvement Act of 1996 [Public Law 104-134, title III, chapter 10, Sec. 31001, par. (s), 110 Stat. 1321-373] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust for inflation "each civil monetary penalty provided by law within the jurisdiction of the Federal agency \* \* \*" and to publish that regulation in the **Federal Register**. Pursuant to that authority, the inflation-adjusted civil penalties listed below

supersede the corresponding civil penalty amounts listed in title 49, United States Code.

What are the types of violations and maximum monetary penalties?

(a) *Violations of the Federal Motor Carrier Safety Regulations (FMCSRs).*

(1) *Recordkeeping.* A person or entity that fails to prepare or maintain a record required by Parts 385 and 390-399 of this subchapter, or prepares or maintains a required record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of \$550 for each day the violation continues, up to \$2,750.

(2) *Serious Pattern of safety violations.* These violations of Parts 385 and 390-399 of this subchapter constitute a middle range of violations. They do not include noncompliance with recordkeeping requirements, while substantial health or safety violations are subject to heavier civil penalties. Serious patterns of safety violations are subject to a maximum civil penalty of \$1,100 for each violation in a pattern, up to a maximum of \$11,000 for each pattern.

(3) *Substantial Health or Safety Violations.* These are violations of Parts 385 and 390-399 of this subchapter which could reasonably lead to, or have resulted in, serious personal injury or death. Substantial health or safety violations are subject to a maximum civil penalty of \$11,000, provided the driver's actions constituted gross negligence or reckless disregard for safety.

(4) *Non-recordkeeping violations by drivers.* A driver who violates Parts 385 or 390-399 of this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed \$1,100, provided the driver's actions constituted gross negligence or reckless disregard for safety.

(5) *Violation of 49 CFR 392.5.* A driver placed out of service for 24 hours for violating the alcohol prohibitions of 49 CFR 392.5(a) or (b) who drives during that period is subject to a civil penalty not to exceed \$2,750 for each violation.

(b) *Commercial driver's license (CDL) violations.* Any person who violates 49 CFR Subparts B, C, E, F, G, or H is subject to a civil penalty of \$2,750.

(c) *Special penalties pertaining to violations of out-of-service orders by CDL-holders.* A CDL-holder who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than \$1,100 nor more than \$2,750. An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes that employee to operate a CMV during any period in which the CDL-holder is subject to an out-of-service order, is subject to a civil penalty of not less than \$2,750 or more than \$11,000.

(d) *Financial responsibility violations.* A motor carrier that fails to maintain the levels of financial responsibility prescribed by Part 387 of this subchapter is subject to a maximum penalty of \$11,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(e) *Violations of the Hazardous Materials Regulations (HMRs).* This paragraph applies to violations by motor carriers, drivers,

shippers and other persons who transport hazardous materials on the highway in commercial motor vehicles or cause hazardous materials to be so transported.

(1) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not less than \$250 and not more than \$27,500 for each violation. Each day of a continuing violation constitutes a separate offense.

(2) All knowing violations of 49 U.S.C. chapter 51 or orders, regulations, or exemptions issued under the authority of that chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair or testing of a packaging or container which is represented, marked, certified or sold as being qualified for use in the transportation or shipment of hazardous materials by commercial motor vehicle on highways, are subject to a civil penalty of not less than \$250 and not more than \$27,500 for each violation.

(3) Whenever regulations issued under the authority of 49 U.S.C. chapter 51 require compliance with the FMCSRs while transporting hazardous materials, any violations of the FMCSRs will be considered a violation of the HMRs and subject to a civil penalty of not less than \$250 and not more than \$27,500.

(f) *Operating with an unsatisfactory safety rating.* A motor carrier knowingly transporting hazardous materials in quantities requiring placarding, or passengers in a vehicle designed or used to transport more than 15 passengers, on the 46th or any subsequent day after receiving an unsatisfactory safety rating, is subject to a civil penalty of not less than \$250 and not more than \$27,500. Each day the transportation of hazardous materials continues constitutes a separate violation.

[FR Doc. 98-6523 Filed 3-12-98; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 971208295-7295-01; I.D. 030698D]

### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the Eastern Regulatory Area of the Gulf of Alaska

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in the Eastern Regulatory Area of the Gulf of Alaska

(GOA). This action is necessary to prevent exceeding the interim specification for pollock in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 9, 1998, until 1200 hrs, A.l.t., December 31, 1998.

**FOR FURTHER INFORMATION CONTACT:** Thomas Pearson, 907-486-6919.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim specification of pollock total allowable catch (TAC) in the Eastern Regulatory Area of the Gulf of Alaska was established by the Interim 1998 Harvest Specifications (62 FR 65622, December 15, 1997) as 2,200 metric tons (mt), determined in accordance with § 679.20(c)(2)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 interim specification of pollock in the Eastern Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,100 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in the Eastern Regulatory Area.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

#### Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the interim 1998 harvest specifications for groundfish for the GOA. It must be implemented immediately to prevent overharvesting the 1998 interim TAC of pollock in the Eastern Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this