



ADMINISTRATIVE RULES OF MONTANA



4.10.1007 DEGREE OF CARE - MISUSE

- (1) For purposes of these rules implementing civil penalties, conduct that falls within the definition of misuse under 80-8-306(5) (e) (i) , MCA shall constitute misuse per se, without regard to the standard of care exercised. However, the charged party may present evidence of standard of care exercised, which may be considered by the department for purpose of determining and mitigating the amount of penalty [80-8-306(5) (d) , MCA]. Such evidence will be evaluated and categorized as follows:
 - (a) misuse which occurs through little or no negligence of the charged party may mitigate the penalty;
 - (b) misuse which occurs through negligence may have a neutral effect in either mitigating or enhancing the penalty;
 - (c) misuse which occurs as a result of gross negligence may enhance the penalty.
- (2) In further determining the applicability of the above categories, the following definitions will apply:
 - (a) no negligence means an inadvertent violation which was unavoidable by the exercise of reasonable care;
 - (b) negligence means a failure to exercise reasonable care;
 - (c) reasonable care means that degree of care demonstrated with a knowledge of the nature and probable consequences of the act or omission that a prudent man would ordinarily exercise in acting in his own concerns;
 - (d) gross negligence means knowing, intentional or reckless conduct.

Authorizing statute(s): Sec. 80-8-105, MCA

Implementing statute(s): Sec. 80-8-306, MCA

History: NEW, 1986 MAR p. 1013, Eff. 6/13/86; AMD, 1999 MAR p. 404, Eff. 3/12/99.