



ADMINISTRATIVE RULES OF MONTANA



24.17.851 CRITERIA TO DETERMINE PENALTY AND COST IMPOSITION

- (1) The commissioner shall consider the following mitigating and aggravating circumstances when determining the amount of any civil penalty to be assessed against a contractor, subcontractor, or employer found in violation of the terms of the public works contract and shall cite the circumstances the commissioner finds to be applicable:
 - (a) the actions of the contractor, subcontractor or employer in response to previous violations, if any, of statutes and rules;
 - (b) prior violations, if any, of statutes and rules;
 - (c) the opportunity and degree of difficulty to comply;
 - (d) the magnitude and seriousness of the violation, including instances of aggravated or willful violation, or gross negligence; or
 - (e) whether the contractor, subcontractor or employer knew or should have known of the violation.
- (2) It shall be the responsibility of the contractor, subcontractor or employer to provide the commissioner with evidence of any mitigating circumstances set out in (1) of this rule.
- (3) In arriving at the actual amount of the penalty and costs, the commissioner shall consider the amount of the underpayment of wages, if any, in violation of any statute or rule.
- (4) Notwithstanding any other section of this rule, the commissioner shall consider all mitigating circumstances presented by the contractor, subcontractor or employer for the purpose of reducing the amount of the civil penalty to be assessed.

Authorizing statute(s): 18-2-431 and 39-3-202, MCA

Implementing statute(s): 18-2-403, 18-2-407, 18-2-423, 18-2-432 and 39-3-207, MCA

History: NEW, 2002 MAR p. 2446, Eff. 9/13/02.