



ADMINISTRATIVE RULES OF MONTANA



17.4.306 TOTAL PENALTY - HISTORY OF VIOLATION

- (1) As provided in this rule, the department may increase the total adjusted penalty based upon the violator's history of violation. Any penalty increases for history of violation must be added to the total adjusted penalty calculated under ARM 17.4.305 to obtain a total penalty.
- (2) The department may calculate a separate increase for each historic violation. The amount of the increase must be calculated by multiplying the base penalty calculated under ARM 17.4.303 by the appropriate percentage from (3). This amount must then be added to the total adjusted penalty calculated under ARM 17.4.305.
- (3) The department shall determine the nature of each historic violation in accordance with ARM 17.4.302(6). The department may increase the total adjusted penalty for history of violation using the following percentages:
 - (a) for each historic violation that, under these rules, would be classified as harming or having the potential to harm human health or the environment, the penalty increase must be 10% of the base penalty calculated under ARM 17.4.303; and
 - (b) for each historic violation that, under these rules, would be classified as adversely impacting the department's administration of the applicable statute or rules, but not harming or having the potential to harm human health or the environment, the penalty increase must be 5% of the base penalty calculated under ARM 17.4.303.
- (4) If a violator has multiple historic violations and one new violation, for which a penalty is being calculated under these rules, the percentages from (3) for each historic violation must be added together. This composite percentage may not exceed 30%. The composite percentage must then be multiplied by the base penalty for the new violation to determine the amount of the increase. The increase must be added to the total adjusted penalty for the new violation calculated under ARM 17.4.305.
- (5) If a violator has one historic violation and multiple new violations, each with a separate penalty calculation under these rules, the base penalties for the new violations calculated under ARM 17.4.303 must be added together. This composite adjusted base penalty must then be multiplied by the percentage from (3) for the historic violation to determine the amount of the increase. The increase must then be added to the sum of the total adjusted penalties calculated for each new violation under ARM 17.4.305.
- (6) If a violator has multiple historic violations and multiple new violations, for which a separate penalty is being calculated under these rules, the percentages from (3) for each historic violation must be added together, not to exceed 30%, and the base penalties for each new violation calculated under ARM 17.4.303 must be added together. The composite base penalties must be

multiplied by the composite percentage to determine the amount of the increase. The increase must be added to the sum of the total adjusted penalties calculated for each violation under ARM 17.4.305.

Authorizing statute(s): 75-2-111, 75-2-112, 75-2-503, 75-5-201, 75-6-104, 75-10-204, 75-10-405, 75-10-503, 75-10-1202, 75-11-204, 75-11-505, 75-20-105, 76-4-104, 82-4-112, 82-4-205, 82-4-321, 82-4-422, MCA

Implementing statute(s): 75-1-1001, 82-4-1001, MCA

History: NEW, 2006 MAR p. 1139, Eff. 5/5/06; AMD, 2024 MAR p. 253, Eff. 2/10/24.