



## ADMINISTRATIVE RULES OF MONTANA

### 17.4.304 ADJUSTED BASE PENALTY - CIRCUMSTANCES, GOOD FAITH AND COOPERATION, AMOUNTS VOLUNTARILY EXPENDED

- (1) As provided in this rule, the department may consider circumstances, good faith and cooperation, and amounts voluntarily expended to calculate an adjusted base penalty. Circumstances may be used to increase the base penalty. Good faith and cooperation and amounts voluntarily expended may be used to decrease the base penalty. The amount of adjustment for each of the above factors is based upon a percentage of the base penalty. The amount of the adjustment is added to the base penalty to obtain an adjusted base penalty.
- (2) The department may increase a base penalty by up to 30% based upon the circumstances of the violation. To determine the penalty adjustment based upon circumstances, the department shall evaluate a violator's culpability associated with the violation. In determining the amount of increase for circumstances, the department's consideration must include, but not be limited to, the following factors:
  - (a) how much control the violator had over the violation;
  - (b) the foreseeability of the violation;
  - (c) whether the violator took reasonable precautions to prevent the violation;
  - (d) the foreseeability of the impacts associated with the violation; and
  - (e) whether the violator knew or should have known of the requirement that was violated.
- (3) The department may decrease a base penalty by up to 10% based upon the violator's good faith and cooperation. In determining the amount of decrease for good faith and cooperation, the department's consideration must include, but not be limited to, the following factors:
  - (a) the violator's promptness in reporting and correcting the violation, and in mitigating the impacts of the violation;
  - (b) the extent of the violator's voluntary and full disclosure of the facts related to the violation; and
  - (c) the extent of the violator's assistance in the department's investigation and analysis of the violation.
- (4) The department may decrease a base penalty by up to 10% based upon the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or the impacts of the violation. The amount of a decrease is not required to match the amounts voluntarily expended. In determining the amount of decrease for amounts voluntarily

expended, beyond what is required by law or order, the department's consideration must include, but not be limited to, the following factors:

- (a) expenditures for resources, including personnel and equipment, to promptly mitigate the violation or impacts of the violation;
- (b) expenditures of resources to prevent a recurrence of the violation or to eliminate the cause or source of the violation; and
- (c) revenue lost by the violator due to a cessation or reduction in operations that is necessary to mitigate the violation or the impacts of the violation.

**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

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