

The Maine State Plan (MEOSH) adopted the 2020 FOM with some exemptions.

https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-00-164_1.pdf

Chapter 1:

Does not apply to MEOSH

Chapter 2:

III. (A) MEOSH does not have a Voluntary Protection Program (VPP). However, they do have a Voluntary Protection Program called SHAPE. The Safety & Health Award for Public Employers is similar to the private-sector SHARP program, but SHAPE is for State, County, Municipal, Quasi-Municipal and Public and Educational Facilities.

III. (C) MEOSH does not have a Safety and Health Achievement Recognition Program (SHARP).

VI. (A) MEOSH does not conduct programmed inspections at construction sites run by private sector employers.

VI. (B) MEOSH does not conduct inspections of maritime employers.

VI. (F) MEOSH does not follow OSHA's Site-Specific Targeting Program. Instead, MEOSH schedules most programmed inspections by using lists (one for state government and one for local government) of all governmental agencies in the state. The manager cycles through the lists so that the next agency assigned for an inspection is the one where the most time has elapsed since the last time it received a programmed inspection. The CSHO prioritizes inspections of the various departments within state and local government entities based on whether they fall under one or more of the targeted industries.

VI. (H) MEOSH does not follow OSHA's Inspection Scheduling and Interface with Cooperative Program Participants with regard to VPP. MEOSH does not follow OSHA's Severe Violator Enforcement Program.

Chapter 3:

II. (C) MEOSH's CSHOs do not follow DOL's Workplace Violence Prevention Programs.

V. (D) Review of Voluntary Compliance Programs does not apply to MEOSH.

VI. (A) (6) Federal Agencies does not apply to MEOSH.

VII (D) Testifying at Hearings does not apply to MEOSH. MEOSH's CSHOs do not testify on OSHA's behalf.

VII (E) Trade Secrets, (J) Multi-Employer Worksites and (K) Administrative Subpoena do not apply to MEOSH.

VIII (B) (2) MEOSH does not furnish employers with the publication, "Employer Rights and Responsibilities Following a Federal OSHA Inspection."

VIII (B) (6) (A) MEOSH's CSHOs do not advise employee representatives that under 29 CFR 2200.20 of the Occupational Safety and Health Review Commission regulations, if an employer contests a citation, the employees have a right to elect "party status" before the Review Commission.

VIII (C) 2-4 MEOSH's informal conference procedures differ from OSHA's.

VIII (D) This section on Penalties does not apply to MEOSH because the State Plan has different a penalty policy.

IX (C) Federal Agency Inspections does not apply to MEOSH.

Chapter 4:

MEOSH does not adopt the OSH Act of 1970. However, we do have a General Duty Clause in State Statute. MEOSH does follow Section III on General Duty Requirements identified in Chapter four.

Title 26: LABOR AND INDUSTRY

Chapter 6: OCCUPATIONAL SAFETY RULES AND REGULATIONS BOARD

Subchapter 1: GENERAL PROVISIONS

§562

§561-A. General duties

1. Employer duties. An employer has the following duties.

A. An employer shall furnish to each employee employment and a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employee. [PL 2013, c. 473, §5 (NEW).]

B. An employer shall comply with occupational safety and health rules adopted under this chapter. [PL 2013, c. 473, §5 (NEW).]

[PL 2013, c. 473, §5 (NEW).]

2. Employee duties. An employee shall comply with occupational safety and health rules and all rules adopted under this chapter that are applicable to the employee's own actions and conduct.

[PL 2013, c. 473, §5 (NEW).]

SECTION HISTORY

PL 2013, c. 473, §5 (NEW).

Chapter 5:

XII (C) Classified and Trade secret Information does not apply to MEOSH.

Chapter 6:

MEOSH does not follow Chapter 6 because it has its own penalty policy as follows:

See Attachment

Chapter 7:

II MEOSH does not follow this section, MEOSH's Informal Conference procedures are as follows:

See Attachment.

XI, XII and XVI MEOSH does not follow these sections.

Chapter 8:

MEOSH does not follow this chapter. MEOSH's does not offer settlement agreements. However, if all items have been abated, and the employer has requested a penalty discussion. Upon proof of hazard abatement, the proposed penalty amount can be adjusted downward as much as 90%.

Chapter 9:

MEOSH does not follow this section

Chapter 10:

Does not apply to MEOSH.

Chapter 11:

III MEOSH does not follow this section.

Chapter 13-17

Do not apply to MEOSH.

Chapter Six (6) Penalties

The Maine Department of Labor, Bureau of Labor Standards (BLS) has adopted the OSHA Field Operation Manual (FOM) except for Chapter 6 on penalties. Attached is the BLS penalty structure.

Dept. of Labor/Bureau of Labor Standards/Workplace Safety & Health Division
Administrative Guidelines for Issuance of Penalties
Chapter 6

A. Penalties

1. General Policy.

- a. Overview. The penalty structure is set forth in MRSA Title 26, Section 46. It is the policy of Maine Department of Labor, Bureau of Labor Standards, to issue penalties in a manner which is fair and consistent with the following guidelines.
- b. Statutory Authority. Title 26 Section 45 provides the Bureau Director with the statutory authority to propose civil penalties for violations of Board rules.
- c. Failure to cooperate or comply:

Whoever, being duly summoned under Title 26 Section 43, willfully neglects or refuses to attend, or refuses to answer any question propounded to him concerning the subject of such examination as provided in said section 43, or whoever, being furnished by the Bureau Director with a written or printed list of interrogatories, neglects or refuses to answer and return the same under oath, shall be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment for not more than 30 days, or by both. No witness shall be compelled to go outside the county in which he resides to testify.

2. Penalty Structure

- a. Any employer who willfully or repeatedly violates any requirements of Section 45 or any standard, rule or order promulgated pursuant to Section 565 may be assessed a civil penalty of not more than \$1,000 for each day during which such violation continues.
- b. Any employer who has received a citation for a serious violation of the requirements of Section 45 or of any standard, rule or order issued pursuant to Section 565, shall be assessed a civil penalty of up to \$1,000 for each such violation. A serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted, or are in use in such place of employment, unless the employer did not, and could not without exercise of reasonable diligence, know of the presence of the violation.
- c. Any employer who has received a citation for a violation of the requirements of Section 45 or of any standard, rule or order issued pursuant to Section 565, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$1,000 for each such violation. Any employer who fails to correct a violation for which a citation has been issued under Section 45 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the Board in the case of any review proceeding initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than \$1,000 for each day during which such failure or violation continues.
- d. Any employer who willfully or repeatedly violates any standard, rule or order promulgated pursuant to Section 565, and that violation is specifically determined to be a serious violation, shall, upon conviction, be punished by a fine of not more than \$10,000

punishment shall be by a fine of not more than \$20,000, or by imprisonment for not more than one year, or by both.

- e. Any person who gives advance notice of any inspection to be conducted pursuant to this chapter without authority from the Bureau Director shall, upon conviction, be punished by a penalty of not less than \$500 nor more than \$1,000, or by imprisonment for not more than 6 months, or by both.
- f. Any employer who violates any of the posting requirements, as prescribed in Section 45, shall be assessed a penalty of not more than \$1,000 for each violation.
- g. **Minimum Penalties.** The following guidelines apply:
 - (1) When the adjusted proposed penalty for an other-than-serious violation (citation item) would amount to less than \$100, no penalty shall be proposed for that violation.
 - (2) When the adjusted proposed penalty for a serious violation (citation item) would amount to less than \$100, a \$100 penalty shall be proposed for that violation.

3. Payment of Penalty

- a. Civil penalties owed under this Chapter shall be paid to the Bureau Director for deposit with the Treasurer of State, and may be recovered in a civil action in the name of the State brought in the Superior Court of the county where the violation is alleged to have occurred or where the employer has its principal office.
- b. Assessed penalties shall be paid within 30 days of date of receipt of citations unless violation(s) with penalty are appealed. Any penalty amounts due following resolution of an appeal are due within 15 days of receipt of notice of appeal resolution, amended citations, or final orders. Interest shall accrue on such penalties at the rate of 1½% per month except that the interest shall be suspended during the pendency of an appeal.
- c. If payment is not made by the due date, a second notice will be sent to the employer informing them that payment must be received within fifteen days of receipt of this notice or interest will accrue at the rate of 1½% per month from the initial payment due date.

4. Penalty Assessment Factors.

- a. Penalties shall be assessed on the basis of four factors:
 - (1) The gravity of the violation,
 - (2) The size of the business,
 - (3) The good faith of the employer, and
 - (4) The employer's history of previous violations.
- b. **Gravity of Violation.**
 - (1) The gravity of the violation is the primary consideration in determining penalty amounts. It shall be the basis for calculating the basic penalty for both serious and other violations. To determine the gravity of a violation, the following two assessments shall be made:

- (a) The severity of the Injury or illness which could result from the alleged violation.
- (b) The probability that an Injury or illness could occur as a result of the alleged violation.

c. **Severity Assessment.**

- (1) The classification of the alleged violations as serious or other-than-serious, is based on the severity of the Injury or illness that could result from the violation. This classification constitutes the first step in determining the gravity of the violation.
- (2) A severity assessment shall be assigned to a hazard to be cited according to the most serious Injury or illness which could reasonably be expected to result from an employee's exposure as follows:
 - (a) **High Severity:** Death from Injury or illness; Injuries involving permanent disability; or chronic, irreversible illnesses.
 - (b) **Medium Severity:** Injuries/illnesses of a temporary nature resulting in hospitalization or a variable but limited period of disability.
 - (c) **Low Severity:** Injuries/illnesses of a temporary nature not resulting in hospitalization and requiring only minor supportive treatment.
 - (d) **Minimal Severity:** Other-than-serious violations. Although such violations reflect conditions which have a direct and immediate relationship to the safety and health of employees, the Injury or illness most likely to result would probably not cause death or serious physical harm.

d. **Probability Assessment.**

- (1) The probability that an injury or illness will result from a hazard has no role in determining the classification of a violation but does affect the amount of the penalty to be proposed.
- (2) **Categorization.** Probability shall be categorized either as greater or as lesser probability as follows:
 - (a) Greater probability results when the likelihood that an injury or illness will occur is judged to be relatively high.
 - (b) Lesser probability results when the likelihood that an Injury or illness will occur is judged to be relatively low.
- (3) **Factors Involved.** Factors to be considered when making probability assessments are:
 - (a) Number of workers exposed.
 - (b) Frequency of exposure or duration of employee overexposure to contaminants.
 - (c) Employee proximity to the hazardous conditions.
 - (d) Use of appropriate personal protective equipment (PPE).

- (e) Medical surveillance program.
- (f) Engineering controls in place
- (g) Administrative controls
- (h) Other pertinent working conditions.

(4) Final Probability Assessment.

- (a) All of the factors outlined above shall be considered together in arriving at a final probability assessment.
- (b) When strict adherence to the probability assessment procedures would result in an unreasonably high or low gravity, the probability may be adjusted as appropriate based on professional judgment.
- (c) Such decisions shall be adequately documented in the case file.

5. Gravity-Based Penalty. The gravity-based penalty (GBP) is an unadjusted penalty and is calculated in accordance with the following procedures:

- a. The GBP for each violation shall be determined based on an appropriate and balanced professional judgment combining the severity assessment and the final probability assessment.
- b. For serious violations, the GBP shall be assigned on the basis of the following scale:
 - (1) The highest gravity classification (high severity and greater probability) shall normally be reserved for the most serious violative conditions, such as those situations involving danger of death or extremely serious injury or illness. If the Bureau Director determines that it is appropriate to achieve the necessary deterrent effect, a GBP of \$1,000 may be issued. The reasons for this determination shall be documented in the case file.
- c. For other-than-serious safety and health violations, there is no severity assessment.
 - (1) The Bureau Director may authorize a penalty between \$0 and \$300 for an other-than-serious violation when it is determined to be appropriate. The reasons for such a determination shall be documented in the case file.
 - (2)

Probability	GBP
Greater	\$100-\$300
Lesser	\$0
 - (3) A GBP may be assigned in some cases without using the severity and the probability assessment procedures outlined in this section when these procedures cannot appropriately be used.
 - (4) The Penalty Table (Table I) may be used for determining appropriate adjusted penalties for serious and other-than-serious violations.

6. Gravity Calculations for Combined or Grouped Violations.

- a. Combined or grouped violations will normally be considered as one violation and shall be assessed one GBP. The following procedures apply to the calculation of penalties for combined and grouped violations:
- b. For combined violations, the following shall be adhered to:
 - (1) The severity and the probability assessments for combined violations shall be based on the instance with the highest gravity.
 - (2) It is not necessary to complete the penalty calculations for each instance or subitem of a combined or grouped violation if it is clear which instance will have the highest gravity.
- c. For grouped violations, the following special guidelines shall be adhered to:
 - (1) **Severity Assessment.** There are two considerations to be kept in mind in calculating the severity of grouped violations:
 - (a) The severity assigned to the grouped violation shall be no less than the severity of the most serious reasonably predictable injury or illness that could result from the violation of any single item.
 - (b) If a more serious injury or illness is reasonably predictable from the grouped items than from any single violation item, the more serious injury or illness shall serve as the basis for the calculation of the severity factor of the grouped violation.
 - (2) **Probability Assessment.** There are two considerations to be kept in mind in calculating the probability of grouped violations:
 - (a) The probability assigned to the grouped violation shall be no less than the probability of the item which is most likely to result in an injury or illness.
 - (b) If the overall probability of injury or illness is greater with the grouped violation than with any single violation item, the greater probability of injury or illness shall serve as the basis for the calculation of the probability assessment of the grouped violation.

7. Penalty Adjustment Factors.

- a. The GBP may be reduced by as much as 45 per cent depending upon the employer's "good faith," and "size". Up to and including 45 percent reduction is permitted for size; up to and including 25 percent reduction for good faith.
- b. Since these adjustment factors are based on the general character of a employer and its safety and health performance, the factors generally shall be calculated only once for each employer. After the classification and probability ratings have been determined for each violation, the adjustment factors shall be applied subject to the limitations indicated in the following paragraphs.
- c. **Overall Limitations:**
 - (1) Penalties assessed for violations that are classified as high severity and greater probability shall be adjusted only for size.

- (2) Penalties assessed for violations that are classified as repeated may be adjusted only for size.
- (3) Penalties assessed for serious violations, which are classified as willful, may be adjusted only for size.
- (4) Penalties assessed for regulatory violations, which are classified as willful, shall be adjusted for size.

NOTE: If one violation is classified as willful, no reduction for good faith can be applied to any of the violations found during the same inspection. The employer cannot be willfully in violation of the Act and at the same time, be acting in good faith.

d. Size and Good Faith.

(1) The rate of penalty reduction for size of employer, and employer's good faith shall be calculated on the basis of the criteria described in the following paragraphs:

(a) **Size.** A maximum penalty reduction of 45 percent is permitted, but not required, for small employers. "Size of employer" shall be measured on the basis of the maximum number of employees of an employer at all workplaces at any one time during the previous 12 months.

(i) The rates of reduction to be applied are as follows:

Employees	Percent reduction (up to and including)
1-25	45
26-100	30
101-250	15
251 or more	None

(ii) When a small employer (1-25 employees) has one or more serious violations of high gravity or a number of serious violations of moderate gravity, indicating a lack of concern for employee safety and health, the BLS inspector may recommend that only a partial or no reduction in penalty shall be permitted for size of employer.

(b) **Good Faith.** A penalty reduction of up to and including 25 percent, based on the BLS inspector's professional judgment, is permitted in recognition of an employer's "good faith".

(i) The 25% credit for "good faith" normally requires a written safety and health program. In exceptional cases, the compliance officer may recommend the full 25% for a smaller employer (1-25 employees) who has implemented an efficient safety and health program, but has not reduced it to writing.

i-a Provides for appropriate management commitment and employee involvement; worksite analysis for the purpose of hazard

identification; hazard prevention and control measures; and safety and health training.

NOTE: One example of a framework for such a program is given in OSHA's voluntary "Safety and Health Program Management Guidelines" (Federal Register, Vol. 54, No. 16, January 26, 1989, pp. 3904-3916, or later revisions as published).

I-b Has deficiencies that are only incidental.

(ii) A reduction of 15 percent shall normally be given if the employer has a documentable and effective safety and health program, but with more than only incidental deficiencies.

(iii) No reduction shall be given to an employer who has no safety and health program or where a willful violation is found.

(iv) Only these percentages (15% or 25%) may be used to reduce penalties due to the employer's good faith. No intermediate percentages shall be used.

(c) **Total.** The total reduction will normally be the sum of the reductions for each adjustment factors.

e. **Effect on Penalties If Employer Immediately Corrects or Initiates Corrective Action.** Appropriate penalties will be proposed with respect to an alleged violation even though, after being informed of such alleged violation by the BLS inspector, the employer immediately corrects or initiates steps to correct the hazard.

8. **Failure to Abate.**

a. **Overviews.** A Notification of Failure to Abate an Alleged Violation shall be issued in cases where violations have not been corrected as required.

b. **Penalties for Failure to Abate.**

(1) Failure to abate penalties shall be applied when an employer has not corrected a previously cited violation which had become a final order of the Bureau Director.

c. **Calculation of Failure to Abate Penalties** When follow up inspections reveal unabated violations, the Bureau Director may issue penalties equal to the original amount multiplied by the number of calendar days that the violation has continued unabated, except as provided in (1)/(2) below. The Bureau Director may issue lesser penalties with the reason for doing so documented in the case file.

(1) The date of reinspection shall not be counted. It will include all calendar days between the abatement date specified in the citation or the final order and the date of reinspection.

(2) The maximum total proposed penalty for failure to abate a particular violation shall not exceed 30 times the amount of the daily proposed penalty.

d. **Partial Abatement.**

- (1) When the citation has been partially abated, the Bureau Director may authorize a reduction of 25 percent to 75 percent to the amount of the proposed penalty.
- (2) When a violation consists of a number of instances and the followup inspection reveals that only some instances of the violation have been corrected, the additional daily proposed penalty shall take into consideration the extent that the violation has been abated.

EXAMPLE: Where 3 out of 5 instances have been corrected, the daily proposed penalty may be reduced by 60 per cent.

- (3) **Good Faith Effort to Abate.** When the BLS Inspector believes, and so documents in the case file, that the employer has made a good faith effort to correct the violation and had good reason to believe that it was fully abated, the Bureau Director may reduce or eliminate the daily proposed penalty that would otherwise be justified.

9. **Willful or Repeat Violations.**

- a. Title 26, 46 provides that any employer who willfully or repeatedly violates any standard, rule or order promulgated pursuant to Section 565, and that violation is specifically determined to be a serious violation, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than 6 months, or both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000, or by imprisonment for not more than one year, or by both.

b. **Penalty Calculations**

- (1) **Gravity-Based Penalty Factors.** Each violation shall be classified as serious or other-than-serious. A GBP shall then be calculated for repeated violations based on facts noted during the current inspection. Only the adjustment factor for size, appropriate to the facts at the time of the reinspection, shall be applied.
- (2) **Other-Than-Serious, No Initial Penalty.** For a repeated other-than-serious violation that otherwise would have no initial penalty, a GBP penalty of \$200 shall be assessed for the first repeated violation, \$500 if the violation has been cited twice before, and \$1,000 for a third repetition.
- (3) **Regulatory Violations.** For repeated instances of regulatory violations, the initial penalty shall be doubled for the first repeated violation and quintupled if the violation has been cited twice before. If the Bureau Director determines that it is appropriate to achieve the necessary deterrent effect, the initial penalty may be multiplied by 10.

Chapter 7 (Post-Citation Procedures)

The Maine Department of Labor, Bureau of Labor Standards (BLS) has adopted the OSHA Field Operation Manual (FOM) except for Chapter 7 on Post-Citation Procedures. Attachment is on Informal Conferences, Penalty Discussions and Formal Appeals.

Amendment: These procedures are an addition to Chapter 7, Section II (pg. 7-2)

Definitions: Area Director shall mean Director, Bureau of Labor Standards

Regional Solicitors Office shall mean the State Attorney General's Office

OSHA review Commission shall mean Board of Occupational Safety & Health

II (pg. 7-2): Informal Conference: If the employer has questions or would like to discuss citation(s) or penalty amount(s) he/she can meet with the Bureau **within fifteen (15) State of Maine business days** of the receipt of the enforcement citation(s) indicating their request.

Penalty Discussion: If the employer intends to correct all hazards identified during the inspection and wishes to work with the Workplace Safety and Health Division to possibly reduce the penalty amount, the employer may request a "Penalty Discussion." The request for a penalty discussion shall be in writing to the Director of the Bureau **within fifteen (15) State of Maine business days** of the receipt of the enforcement citation(s) indicating their request.

Penalty discussions occur after the abatement date has passed, and abatement verification sheet has been signed by the employer and received by the department. Copies of written programs, training attendance sheets, pictures, invoices are all examples of documentation that the employer can use to show physical abatement of their hazards.

Requesting a Penalty Discussion does not remove the employer's right to a formal appeal with the Board of Occupational Safety & Health (BOSH).

Formal Appeal: The employer may file a formal appeal of any citation, abatement date, or penalty. Formal appeals are presented in a "public hearing format" with the Maine Board of Occupational Safety and Health (BOSH). The request for a formal appeal shall be in writing to the Director of the Bureau **within fifteen (15) State of Maine business days** of the receipt of the enforcement citation(s) indicating their request.

All correspondence should be sent to:

Director, Bureau of Labor Standards
Maine Department of Labor
45 State House Station
Augusta, ME 04333-0045

Amendment 11/2022

MDOL/BLS adopted OSHA Field Operations Manual

Chapter 3

Inspection Procedures

Employer Abatement Assistance.

i. **Policy.**

CSHOs shall offer appropriate abatement assistance during the walkaround to explain how workplace hazards might be eliminated. The information shall provide the employee with guidance to develop acceptable abatement methods or to seek appropriate professional assistance. CSHOs shall not imply OSHA endorsement of any product through use of specific product names when recommending abatement measures. The issuance of citations shall not be delayed.

ii. In addition to the above employer abatement assistance policy, CSHOs will include written abatement-guidance with each citation to assist employers with their abatement process.

iii. **Disclaimers.**

The employer shall be informed that:

1. The employer is not limited to the abatement methods suggested by MEOSH.
2. The methods explained are general and may not be effective in all cases; and
3. The employer is responsible for selecting and carrying out an effective abatement method and maintaining the appropriate documentation.