UNIFORM FINE ASSESSMENT (UFA) 4.0

USER MANUAL

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ACRONYMS

CAPRI: Compliance Analysis & Performance Review Information system

CDL: Commercial Driver's License

CDL HME: Commercial Driver License Hazardous Material Endorsement

CT: Cargo Tank

CTFR: Cargo Tank Facility Review

DCE: Design Certifying Engineer

FMCSA: Federal Motor Carrier Safety Administration

FMCSRs: Federal Motor Carrier Safety Regulations

HHG: Household goods

HMRs: Hazardous Material Regulations

MCSIA: Motor Carrier Safety Improvement Act

NOC: Notice of Claim

NOV: Notice of Violation

OOS: Out of Service

SCR: Security Contact Review

UFA: Uniform Fine Assessment

USDOT: United States Department of Transportation

VCAT: Violation Category

VUU: Violation Utility Update

EXECUTIVE SUMMARY

The Federal Motor Carrier Safety Administration (FMCSA) was established within the Department of Transportation on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 113). Like its predecessor, the Office of Motor Carrier Safety, Federal Highway Administration, FMCSA's primary mission is to prevent commercial motor vehicle-related fatalities and injuries. Activities of the Administration contribute to ensuring safety in motor carrier operations through strong enforcement of safety regulations; targeting high-risk carriers and commercial motor vehicle drivers; improving safety information systems and commercial motor vehicle technologies; strengthening commercial motor vehicle equipment and operating standards; and increasing safety awareness. To accomplish these functions, the Administration works with Federal, State, and local enforcement agencies, the motor carrier industry, labor, safety interest groups, and others. The Agency's strategic framework to improve commercial motor vehicle safety is supported by its three core principles:

1. Raise the bar to enter the industry and operate on our roads;
2. Require motor carriers and drivers to maintain the highest safety standards to continue operations; and
3. Remove the highest risk drivers, vehicles, and carriers from our roads and prevent them from operating.

The Moving Ahead for Progress in the 21st Century Act (MAP-21) includes several important provisions intended to help the Administration in its important mission to reduce crashes, injuries and fatalities involving large trucks and buses. It is important to note that the provisions of MAP-21, related to increased penalties, have been included in the Uniform Fine Assessment (UFA) software.

The UFA software was developed to promote uniformity and consistency in the assessment of civil penalties for violations of the Federal Motor Carrier Commercial Regulations (FMCCRs), Federal Motor Carrier Safety Regulations (FMCSRs), and Hazardous Materials Regulations (HMRs). UFA assists FMCSA staff and its State partners who perform investigations, roadside inspections, hazardous materials package inspections, and other enforcement actions, when calculating civil penalties for violations of our regulations.

The FMCSA is required to consider legislatively mandated factors when assessing a civil penalty against a violator. In calculating a civil penalty, the UFA software takes into consideration all statutory factors, as well as all regulatory requirements and administrative policies.

This UFA User Manual outlines the steps that FMCSA employees or State enforcement staff should take when using the UFA software. In addition, it provides guidance on which selections are most appropriate when completing the fields within the software. This user manual and the updates to the UFA software are intended to improve the uniformity, effectiveness, and transparency of the FMCSA penalty assessment methodology. The overall goal is to induce compliance with the applicable statutes, regulations, and administrative requirements, thereby improving safety for both the public and regulated entities. The UFA algorithm was redesigned to be less complex, and the UFA software will generate an updated report that explains the methodology and penalty calculations.

This user manual serves as a guide for using the UFA software in the enforcement of the regulations under the jurisdiction of FMCSA. No manual can predict or cover all possible scenarios encountered by field personnel. There may be instances where UFA is not appropriate for calculating a civil penalty. Please consult your Service Center before using a method other than UFA to determine a civil penalty.

PURPOSE OF UFA

The purpose of the UFA software is to assist in the calculation of civil penalties for violations of the FMCSRs, HMRs, FMCCRs, and minimum financial responsibility (insurance) violations against motor carriers and individuals. The software is designed to ensure that all statutory, regulatory, and administrative requirements are considered in determining each penalty assessment, to promote uniformity in assessments throughout the Agency, and to create defensible, transparent and easily understood assessments.

Under a long line of administrative rulings, starting with *Alfred Chew & Martha Chew, dba Alfred & Martha Chew Trucking*, FHWA-1996-5323 (Final Order, Feb. 7 1996), FMCSA and its predecessor agency have held that UFA "is presumed to comply with the requirement of 49 U.S.C. 521."

UFA takes into account the factors set forth in Title 49 of the United States Code, sections 521(b) for violations of the FMCSRs, 5123(c) for violations of the HMRs, section 14901 for certain violations concerning transportation of household goods, and sections 31138 and 31139 for violations of regulations related to minimum financial responsibility. For violations of the FMCSRs, these factors are:

1. Nature of the violation;
2. Circumstances of the violation;
3. Extent of the violation;
4. Gravity of the violation;
5. Degree of culpability;
6. History of prior offenses;
7. Effect on ability to continue to do business; and
8. Such other matters as justice and public safety may require.

For violation of the HMRs, the factors considered are:

1. Nature of the violation;
2. Circumstances of the violation;
3. Extent of the violation;
4. Gravity of the violations;
5. Degree of culpability,
6. History of prior violations,
7. Ability to pay,
8. Effect on the ability to continue to do business; and
9. Such other matters as justice and public safety may require

For violations concerning the transportation of household good, the factors considered are:

1. Degree of culpability;
2. History of prior such conduct;
3. Degree of harm to the shipper or shippers,;
4. Ability to pay;
5. Effect on the ability to do business;

6. Whether the shipper has been adequately compensated before institution of the proceeding; and
7. Such other matters as fairness requires.

For violations of the minimum financial responsibility requirements, the factors considered are:
1. Nature of the violation;
2. Circumstances of the violation;
3. Extent of the violation;
4. Gravity of the violations;
5. Degree of culpability,
6. History of prior violations,
7. Ability to pay,
8. Effect on the ability to continue to do business; and
9. Such other matters as justice and public safety may require

Congress has not delineated statutory penalty factors (other than minimum and/or maximum penalties) for violations of operating authority requirements, commercial regulations (49 C.F.R. Parts 370, 371, 373, 374, 376, 377, 378, and 379) and Commercial Driver's License regulations (Part 383). FMCSA has determined that the use of the statutory factors in 49 U.S.C. 521(b) (the factors used to assess penalties for violations of FMCSRs) are appropriate for these violations, as well as for any other regulatory violations where Congress has not specifically identified any factors the Agency is required to consider in proposing civil penalties. Use of the statutory factors promotes uniformity and consistency in civil penalties.

In this version of UFA, FMCSA has included additional violations, simplified the algorithm used to calculate penalties by reducing the number of calculations, and enhanced the UFA report to identify more clearly the calculations used to assess the penalty. In addition, some considerations used in previous versions of UFA have been removed, such as Factor 6 Rating, number of drivers, power units, statutory criteria adjustment score, maximum fine possible, maximum fine possible cap, adjusted gross revenue, and recommended penalty have been removed from the algorithm.

STATUTORY, REGULATORY AND ADMINISTRATIVE REQUIREMENTS OF PENALTIES

Federal statutes require FMCSA to consider specific statutory penalty factors before proposing civil penalties for the majority of regulations it enforces.

Regulations	Applicability	Statute Setting forth Penalty Factors to be Considered
FMCSRs	49 CFR 350-399	49 U.S.C. Section 521(b)(2)(D)
HMRs	49 CFR 171-180; 49 CFR Part 385 - Subpart E (HM Safety Permits), CDL HM Endorsement (49 C.F.R. 383.121); violations of certain HM related out-of-service orders	49 U.S.C. Section 5123(c)
Minimum financial responsibly violations (Insurance)	49 CFR Part 387	49 U.S.C. Sections 31138 and 31139 (same factors for both sections).
HHGs	49 CFR Part 375	49 U.S.C. Section 14901(c)

A statutory minimum or maximum penalty is one that has been set by law and requires FMCSA to issue a penalty for at least or not more than a certain amount. For example, the Agency is required to assess a penalty of at least $25,000 against passenger carriers that operate without authority and not more than $11,000 for carriers that fail to implement a controlled substances and alcohol testing program.

A regulatory minimum or maximum penalty is one that has been set by regulation. Appendices A and B of 49 CFR Part 386, as amended, sets forth the types of violations and outlines the penalty provisions for those violations. The egregious hours of service violation is an example of a regulatory penalty provision. Appendix B states that "a driver who exceeds, and a motor carrier that requires or permits a driver to exceed, by more than 3 hours the driving-time limit in 49 CFR 395.3(a) or 395.5(a), as applicable, shall be deemed to have committed an egregious driving-time limit violation. In instances of an egregious driving-time violation, the Agency will consider the "gravity of the violation," for purposes of 49 U.S.C. 521(b)(2)(D), sufficient to warrant imposition of penalties up to the maximum permitted by law."

FMCSA has also established administrative minimum and maximum penalties, where none are provided by statute. For example, for the same violation of failing to implement a controlled substances and alcohol testing program mentioned above, FMCSA established an administrative minimum of $1,100. FMCSA has established a minimum gross revenue cap of $2,000 within the UFA calculation. These administrative minimum and maximum penalties are established to induce compliance and to deter entities from violating our regulations in the future.

UFA will not calculate penalty to be assessed below the minimum statutory penalty or above the maximum statutory penalty. UFA may, however, assess a penalty below an administrative minimum or above the administrative maximum in the circumstances described in this Manual. One example of this is if a violation is assessed as a result of a Section 222 violation; see Appendix B for the Section 222 policy. This is programmed into the UFA software and cannot be modified by the user. The penalty ranges for each regulation are reflected in the Penalty Assessment Table; see Appendix A for the UFA Fines Table.

EXPLANATION OF THE STATUTORY FACTORS

1. **The Nature of the violation** is considered by assigning the violation to a category based on the violation type, as well as the penalty range for the type of violation. This is accomplished by assigning the violation to a Violation Category (VCAT) within the Violation Utility Update (VUU). These assignments cannot be altered by the user of UFA. Each violation within a category has been assigned a minimum and maximum fine amount. A breakdown of the different categories is shown on the Penalty Assessment Table.

2. **Circumstances** of the violation are considered by evaluating the conditions, factors, and events accompanying the violation that, when present, may serve to increase or decrease a fine determination. These variables are considered cumulatively. **Mitigating** factors are any acts by the violator or situations which are extenuating or explanatory of the violation. **Aggravating** factors are any acts by the violator or situations which exacerbate or worsen the violation. These circumstances must not have been taken into account in any of the other statutory penalty factors. For example, corrective action taken by the motor carrier may be seen as a mitigating factor; while corrective action is already considered in the "Such Other Matters as Justice and Public Safety May Require" criteria.

3. **Extent** is considered by evaluating the magnitude, scope, and frequency of the violations. It measures if the violation is isolated or widespread throughout the company. Extent in UFA is based on the percentage of violations discovered divided by the number checked. The resulting percentage is either High (greater than or equal to 10%) or Low (less than 10%). UFA assigns point levels based on low or high levels of extent. Individual and single incident situations with a 1 of 1 discovered violation rate is considered to have a "low extent". A company having a 1 of 1 discovered violation rate during an investigation is considered to have a "high extent" (100%). An example is failing to implement a drug and alcohol testing program for which UFA traditionally shows a "special case" – 1 of 1 or 100% extent.

4. **Gravity** is considered by evaluating the seriousness of the violation. For the purposes of UFA, it takes into account if a violation caused a crash or HM incident or if the violation is categorized as Low, Medium, or High. If the violation did NOT cause a crash or HM incident, UFA determines if the violation has been classified as "Medium" (Critical, Essential Safety Management or Severe Level II) or "High" (Acute, Fundamental, Severe Level I and violations of OOS orders). Higher points are assigned for these types of violations compared to violations of "Low" (uncategorized regulations). If the violation caused a crash or an HM incident, the highest point value will be assigned. If the violation caused an HM incident which resulted in a fatality, serious injury, illness, or destruction of property, a maximum fine of $175,000 may be assessed, overriding all other aspects of the UFA model. This will be decided by the Field Administrator or Regional Field Administrator, with concurrence with Headquarters.

5. **Culpability** is considered by UFA by evaluating the violator's conduct or actions and knowledge of the conditions, or practices that resulted in the discovered violations. It is an assessment of the Violator, not the individual violation, and determines the knowledge level, accountability, and fault level of the Violator. For UFA, culpability is broken into 3 categories:
   a. Should have known of any of the discovered violation(s)
   b. Knew of any of the violation(s)
   c. Intentionally knew of any discovered violation(s)

   Intentional violations of the regulations are assigned the highest number of points. Points are automatically assigned by UFA based on the selection of knowledge level relative to the conduct of the violator.

6. **History** is considered by UFA by evaluating the Violator's enforcement history with the Agency. Enforcement history is a major factor since it provides an indication of both the carrier's or individual's awareness of its safety obligations and its willingness to comply with the regulations. The history criteria relates to the Violator (not the individual violation) and is determined by looking at the Violator's closed enforcement cases, in the previous six years, determining whether violations were established either through adjudication or by admission, and selecting one of the following levels:
   a. No Enforcement History
   b. Penalized for violation(s) in any other part(s)
   c. Penalized for violation(s) in the same part (s)
   d. Penalized for two or more prior cases or prior case for violation of an Order

   UFA automatically assigns points based on the history level indicated.

7. **Ability to Pay and the** 8. **Effect on ability to continue to do business** is considered by capping the proposed penalty based on 2 percent of the Violator's gross revenue. Assessments will be lowered by the software to meet the gross revenue cap, if needed.

9. **Such Other Matters as Justice and Public Safety May Require (Other matters)** are considered by taking into account those factors that are not otherwise specified in the statute, but nevertheless, have some bearing on the proposal of a civil penalty in the interests of justice and public safety, in order to achieve the purposes of compliance. For purposes of UFA, the Agency has determined that corrective actions taken by the violator and the timing of those corrective actions is a matter that is included within this category and may result in a reduction in the penalty.

10. For household goods violations, **harm to shipper** means the monetary impact of the violation to the shipper (owner) of the household goods.

11. For household goods violations, **compensation to shipper** means the compensation to the shipper (owner) of the household goods before the penalty proceedings occurred.

VIOLATION CALCULATIONS

All calculations are made internally within the UFA software based on the entries made by the user and the points assigned. Reductions are often required to meet the gross revenue cap. These calculations were created to proportionally reduce the penalties based upon the ranges for each violation, rather than a percentage of the total fine. Reductions will also be taken into consideration based on statutory and administrative minimum requirements.

1. **Calculated Fine**: This is the initial calculation for each individual violation. It takes into account all required statutory penalty factors by multiplying the range of penalty available by the Violation Factor (Circumstances, Extent and Gravity) and adding back in the Range Minimum to ensure that the penalty does not go below the minimum required. This number is then multiplied by the Subject Factor (Culpability, History, and Other Matters). The final figure is reduced by 20%, if the company is a Small Business (as defined by the Small Business Administration) to meet the requirements of the Small Business Regulatory Enforcement Fairness Act (SBREFA).

   The Calculated Fine will not be greater than the applicable Statutory Maximum nor can it be less than the applicable Statutory Minimum. Administrative minimums can be adjusted. Generally, administrative minimums are adjusted downward when a company is assessed a penalty that exceeds 2% of the company or individual's gross revenue, requiring FMCSA to reduce the penalty.

   [(Range Max – Range Min) x Violation Factor % + Range Min] x (1 + Case Factor %) x 80% (if small business)

2. **Total Reducible Amount**: Calculation of the amount a penalty can be reduced.

   Sum of [(Calculated Fine – Statutory or Administrative Minimum) x Number Charged] for all individual violations.

3. **Total Reduction Amount**: Total reduction amount allowed for the entire penalty to meet the gross revenue cap. This reduces each individual fine so that the total of all violations will not be greater than the gross revenue cap. Individual violation penalty amounts may not go below the statutory minimum levels and cannot be greater than the Total Reducible Amount

   Sum of [(Calculated Fine x Number Charged)] for all individual violations minus the Gross Revenue Cap

4. **Reduced Fine**: Calculation of the final penalty including all allowed reductions.

   Calculated Fine – [(Calculated Fine – Statutory or Administrative Minimum) x Total Reduction Amount / Total Reducible Amount]

CRITERIA TABLES – The points in the following tables are assigned within UFA automatically when the selection associated with the criteria is chosen.

Table 1: VIOLATOR CRITERIA POINTS

Culpability		**History**		**Other Matters**	
Should have known of discovered violation(s)	0	No enforcement history	0	No Corrective Action before NOC	0
Knew of discovered violation(s)	10	Penalized for violations in other Part(s)	20	Corrective Action before Investigation	-20
Intentional for any discovered violation(s)	25	Penalized for violations in the same Part	35	Corrective Action after Investigation and before NOC	-10
		Penalized for two or more prior cases OR prior case for violation of an order (non-222 situation)	50		

Table 2: VIOLATION CRITERIA POINTS

Gravity		**Extent**		**Circumstances**	
Low	10	Low	10	None	0
Medium	25	High	20	Aggravating	10
High	50			Mitigating	-10
Contributed to a crash or HM incident release	70				

Table 3: VIOLATION CRITERIA POINTS (HOUSEHOLD GOODS)

Harm to HHG Shipper		**Compensation to HHG Shipper**		**Circumstances**	
None or unknown	0	No compensation required / not applicable	0	None	0
Inconvenience (e.g., late or partial delivery) / No monetary impact	20	Adequately compensated before institution of civil penalty proceedings	10	Mitigating	-10
Monetary impact	50	Not adequately compensated before institution of civil penalty proceedings	40	Aggravating	10

Table 4: VIOLATOR CRITERIA POINTS (HHG)

Culpability		**History**		**Other Matters**	
Should have known of discovered violation(s)	0	No enforcement history	0	No Corrective Action	0
Knew of discovered violation(s)	10	Penalized for violations in other Part(s)	20	Corrective Action before CR	-20
Intentional for any discovered violation(s)	25	Penalized for violations in the same Part	35	Corrective Action after CR and before NOC	-10
		Penalized for two or more prior cases OR prior case for violation of an order (non-222)	50		

Getting Started with UFA

The UFA software is available on the Information Systems Website (http://infosys.fmcsa.dot.gov) or the Portal (https://portal.fmcsa.dot.gov). UFA can either be upgraded from the preceding version or installed on a new machine without any prior version of UFA. If you have an older version of UFA than the immediate preceding version, uninstall UFA before proceeding with installation of the newest version. The UFA software is designed to work with the most recent version of CAPRI and CaseRite.

Assistance with UFA

For specific questions regarding the UFA system, view the UFA Help document available under the Help menu or contact FMCSA Technical support at: 617-494-3003 or FMCTechSup@dot.gov.

File Menu

The File Menu contains the following options:

- New
- Import
- Open
- Close
- Delete
- Print UFA Report
- Exit

These options are also available as icons on the toolbar.

New

The New option is used to create a new penalty assessment. This will open a blank assessment used to create an assessment that was not imported from CAPRI. Follow the instructions for Steps 1-4 to create a new penalty assessment.

Import

The Import option is used to pull the investigative data from CAPRI to start a new penalty assessment. To import the data, click the import button, which will display a list of subjects available for assessment from CAPRI. Select the subject for which you want to create an assessment, then click OK. Any column can be sorted in ascending or descending order by clicking on the heading. Once you import a subject, use the Open option to start the assessment.

Open

The Open option is used to open a list of subjects for which an assessment has been started or imported from CAPRI. Select the desired subject and click OK. Any of columns can be sorted in ascending or descending order by clicking on the heading.

Close
The Close option is used to close an open assessment. This button will save any progress made to the assessment.

Delete
The Delete option is used to remove the subject and the subject's violations from UFA. This is different from deleting items from your Backup or Archive folders.

To delete a UFA subject
1. Select Delete from the File menu. The UFA Subject List window opens.
2. Select the subject from the list.
3. Click Delete. You are asked to confirm your deletion.
4. Click Close when you have finished.

Print UFA Report
The Print UFA Report option allows you to preview and print the assessment. This option is disabled until the assessment has been completed.
1. Select Print UFA report from the File Menu. The UFA Report Viewer opens. The UFA Report Viewer allows reducing or increasing the viewed document size or selecting a specific page for viewing. The left and right arrows view next or previous pages.
2. Click Print.
3. Select your printing options.
4. Click OK.

Exit
The Exit option closes the UFA program when all assessments are closed.
Note: File Menu Options may be disabled depending on the status of an assessment.

Pages Menu
Allows user to switch between screens in UFA while in an open assessment.

Tools Menu
The Tools menu contains the following options:
- Backup
- Archive
- Restore
- Locate CAPRI
- Database Repair

Backup
The Backup option copies subject/violation information to files in a user-selected folder but leaves the information in UFA. This feature also creates a single, compressed file for ease of transfer via e-mail, removable storage, etc. The single file (Backup.ufa) is created in the user-selected folder.

To backup an assessment
1. Select **Backup** from the **Tools** menu. The Backup window opens
2. Select the subject (or hold down CTRL and click to select multiple subjects) from the list.
3. Click **Backup to...** to select the backup location. Click **Ok** when you have finished.
4. Click **Backup**.

Archive
The Archive option moves subject/violation information to files in a user-selected folder and removes the information from UFA. This feature also creates a single, compressed file for ease of transfer via e-mail, removable storage, etc. The single file (Archive.ufa) is created in the user-selected folder.

To archive an assessment
1. Select **Archive** from the **Tools** menu. The Archive window opens
2. Select the subject (or hold down CTRL and click to select multiple subjects) from the list.
3. Click **Archive to...** to select the archive location. Click **Ok** when you have finished.
4. Click **Archive**.

Restore
The Restore option allows you to copy subject information back into UFA from an Archive or Backup file, or you can delete subject information from the Archive or Backup. If the Archive or Backup location contains a single, compressed file only, it will be automatically decompressed. Also, you cannot restore an Assessment if one with the same name already exists in UFA. In this case, you must first Delete or Archive the Assessment that exists in UFA.

To restore an assessment
1. Select **Restore** from the **Tools** menu. The Restore window opens.
2. Select the subject (or hold down CTRL and click to select multiple subjects) from the list.
3. Click **Restore from...** to select the backup/archive location. Click **Ok** when you have finished.
4. Click **Restore**.

To delete an assessment from the Backup or Archive folders
1. Select **Restore** from the **Tools** menu. The Restore window opens.
2. Select the subject (or hold down CTRL and click to select multiple subjects) from the list.
3. Click **Restore or Delete**.
4. Click **Restore from...** to select the backup/archive location. Click **Ok** when you have finished.
5. Click **Ok**

Locate CAPRI
CAPRI is not required to run the UFA software; however, you cannot import investigations to the UFA software unless CAPRI is loaded on the same computer. The Locate CAPRI browse feature locates the path of the CAPRI application to allow a user to start an assessment from a CAPRI investigation. This menu option will only be available if UFA cannot detect where CAPRI is located.

To Locate CAPRI:
1. Select "Locate CARPI" from the Tools Menu.
2. From the Browse window (left side of the screen) select the drive and folder where the CAPRI database (CapriIBData.gdb) is located.
3. Click OK

Database Repair
If a database error is displayed in UFA, the Database Repair tool allows you to rebuild the database tables.
To repair your database
1. Select **Database Repair** from the **Tools** menu.
2. Click **Rebuild**.

Note: If you receive an error at the end of the Rebuild, an Error window will appear showing the table(s) that could not be repaired. In this case, close UFA and use the **Rebuild UFA Tables** utility.

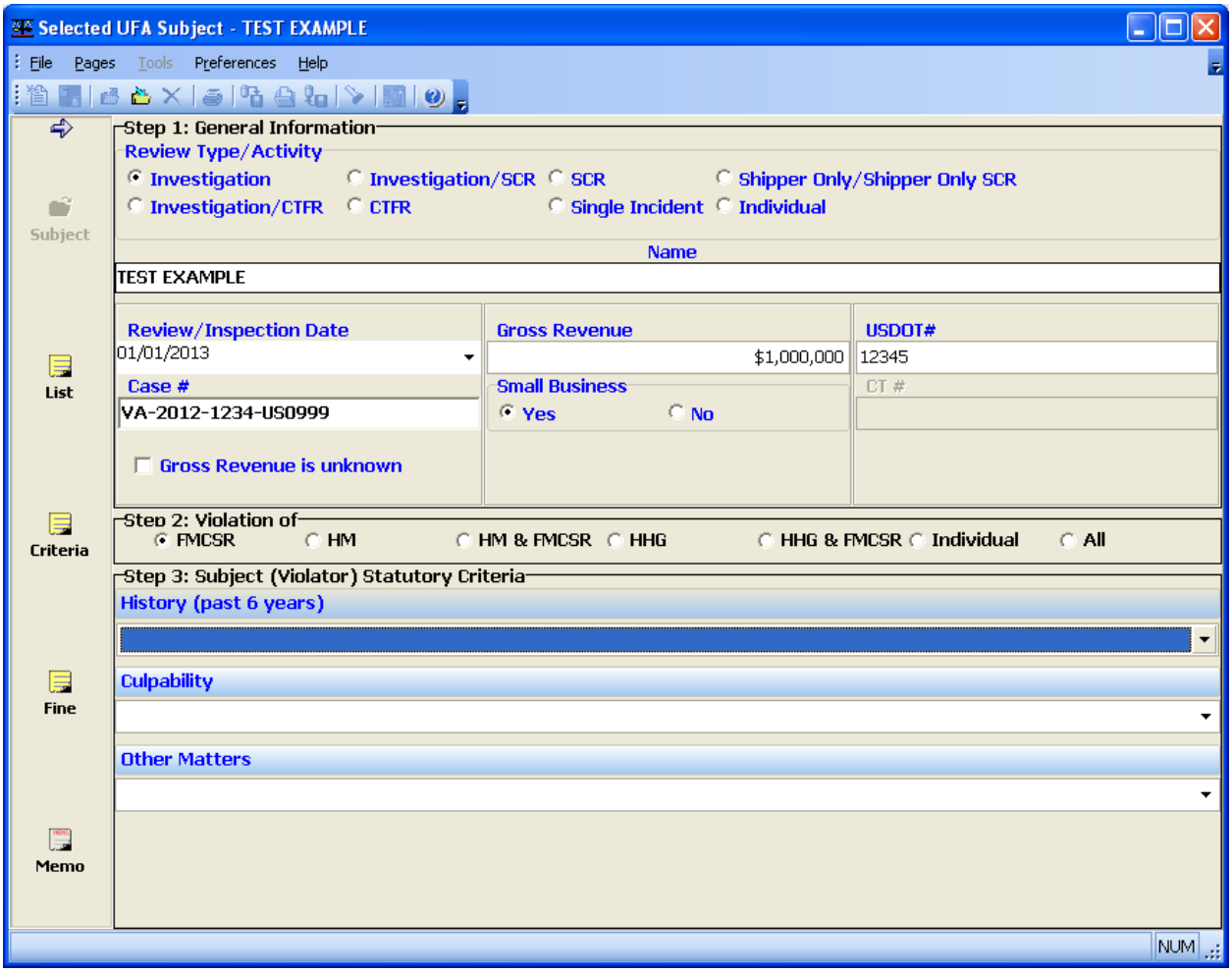
To Rebuild UFA Tables
1. On the Windows taskbar, click **Start**, then click **Programs**, then click **Investigation Systems**, then click **Utilities**, and then click **Rebuild UFA tables**.

Preferences:
The preference option in UFA will enable a user to show or hide the toolbar. To turn on or off the toolbar select Show Toolbars from the Preferences menu. A check mark will appear to the left side of the menu option to indicate that Toolbar is on.

Screen 1: Subject Criteria Screen

Description

The user will use this screen to input general information about the case including the review type, name of the violator (e.g., carrier, driver), review/inspection date, gross revenue, USDOT number, and case number. The screen also serves as the location where users will input data regarding the type of violation (FMCSR, HM, etc.,) as well as the following statutory criteria: History, Culpability, and Other Matters.



Completing the Subject Screen

Step 1 – General Information:

Enter the required information and press ENTER or TAB to move to the next required field. All fields that are labeled in blue are required. Depending upon the review type, the required fields will vary. If the case is being imported from CAPRI, the Review Type/Activity, Name, Review/Inspection Date, Case Number, Gross Revenue, USDOT number, and the Step 2 "Violation Of" fields may be pre-populated.

1. In the **Review Type/Activity** section, select the appropriate review type/activity radio button.

Investigation	This choice is for violations discovered in an investigation, whether comprehensive or focused and regardless of whether the investigation is on-site or off-site.
Investigation/SCR	An investigation with a Security Contact Review (SCR) is a review of a motor carrier's compliance with the applicable safety/hazardous materials regulations that includes a review of the carrier's security policies.
SCR	An investigation with a Security Contact Review (SCR) is a review of a motor carrier's compliance with the applicable safety/hazardous materials regulations that includes a review of the carrier's security policies.
Shipper Only / Shipper Only SCR	An investigation of a hazardous materials company who ships but does not transport hazardous materials.
Investigation/CTFR	An investigation of a motor carrier and a cargo tank facility.
CTFR	A specialized investigation focusing on cargo tank manufacturers, assemblers, repairers, inspectors, design certifying engineers (DCE) and component manufacturers.
Single Incident	A specialized penalty assessment for single incidents. Single incident for the purpose of enforcement is one of the following: Roadside Inspection; Crash Investigation; HM Incident Investigation; HM Package Inspection; Broker; Special Study; or Other.
Individual	A specialized investigation that focuses on employee action or inaction that violates a rule or regulation.

2. Enter the legal name of the violator in the **Name** field.
3. Enter or select the **Review/Inspection Date**
4. Enter the **Case number.**
5. Enter the most recent annual gross revenue figure for the violator in the **Gross Revenue** field. If all attempts to gather the gross revenue are unsuccessful, check the **Gross Revenue is unknown** box.

6. Enter the **USDOT number** assigned to the violator in the **USDOT#**. If the case is against an individual, this is the USDOT # of the individual's employer at the time of the violation.
7. The **Small Business** field will contain the radio buttons **Yes/No**. The default is **Yes**. If the carrier is not a small business, select the **No** radio button. If you cannot determine if a company is a small business, consult with your Service Center.

   The following are NOT small businesses:

   a. For-hire property motor carriers with a gross revenue of more than $25.5 million;
   b. All passenger motor carriers with a gross revenue of more than $14 million;
   c. All carriers of U.S. Mail with a gross revenue of more than $7 million;
   d. All general contractors (construction) with a gross revenue of more than $33.5 million;
   e. All subcontractors (construction) with a gross revenue of more than $14 million;
   f. All motor vehicle towing operators with a gross revenue of more than $7 million.

   Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

8. Enter the assigned number for the Cargo Tank Facility in the **CTF #** field.

Step 2 – Case Type:

1. Select one of the following in the **Violation of** section:
   a. **FMCSR –** This is checked if the only violations documented are of Federal Motor Carrier Safety Regulations.
   b. **HM –** This is checked if the only violations documented are of Hazardous Materials regulations.
   c. **HM & FMCSR --** This is used when the violations documented are a combination of Hazardous Materials and Federal Motor Carrier Safety Regulations.
   d. **HHG --** This is checked if the only violations documented are of Household Goods Regulations.
   e. **HHG & FMCSR --** This is used when the violations documented are a combination of Household Goods and Federal Motor Carrier Safety Regulations.
   f. **Individual --** The Individual model has been incorporated to cover situations where the employee's action or inaction violates a rule or regulation.
   g. **All --** This selection can include all types of violations.

Step 3 – Subject (Violator) Statutory Criteria

For each of the following criteria select the most appropriate descriptor.

1. **History** (past 6 years)

   a. Select the statement which best reflects the violator's "closed" enforcement case history with any U.S. Department of Transportation modal administration within the past 6 years ("Part" refers to the major headings of the regulations such as 171, 391, 395, 396 etc.).

      i. No enforcement history

      ii. Penalized for violation(s) in any other Part(s)

      iii. Penalized for violation(s) in the same Part(s)

      iv. Penalized for two or more prior cases OR prior case for violation of an Order

   b. A closed case means a case:

      i. In which the violator paid the penalty in full,

      ii. That has been settled with admissions language,

      iii. The violator was issued a Notice of Default and Final Agency Order, OR

      iv. The Assistant Administrator or an Administrative Law Judge has determined that the violator was responsible for the violations

   c. In enforcement cases including HHG violations, enforcement history selections should reflect if the past violations are similar in nature to the HHG violations in the current enforcement case, pursuant to 49 U.S.C. §14901(c). For example, do not select "Penalized for violation(s) in any other Part(s), if those Part(s) are safety related (e.g., 391, 395).

2. **Culpability**

   a. Culpability applies to the Violator, not the individual violation. Select the statement which best reflects the violator's highest degree of responsibility for any of the violations discovered.

      i. Should have known of any discovered violation(s)

         - Default selection for any violation committed by employee or agent of the violator.

      ii. Knew of any discovered violation(s)

         - Select if there is evidence the violator had knowledge of at least one of the violations, but made no effort to control or fix the violation. For example, this option should be selected if a motor carrier used a driver before it received a negative pre-employment controlled substances test result. The motor carrier knew that the driver was used before the results were received.

      iii. Intentional for any discovered violation(s)

- Select if the violator directed the violation of at least one of the regulations.

3. **Other matters**

a. Select the statement which describes the violator's corrective actions.

i. No corrective action

ii. Corrective action before Investigation

- Select if the violator has significantly corrected the violation(s) prior to any contact by the investigator that warns the violator that it will be investigated.
- An entry must be made on the Memo Screen describing the corrective action, the date of the action, and the violation to which it applied.

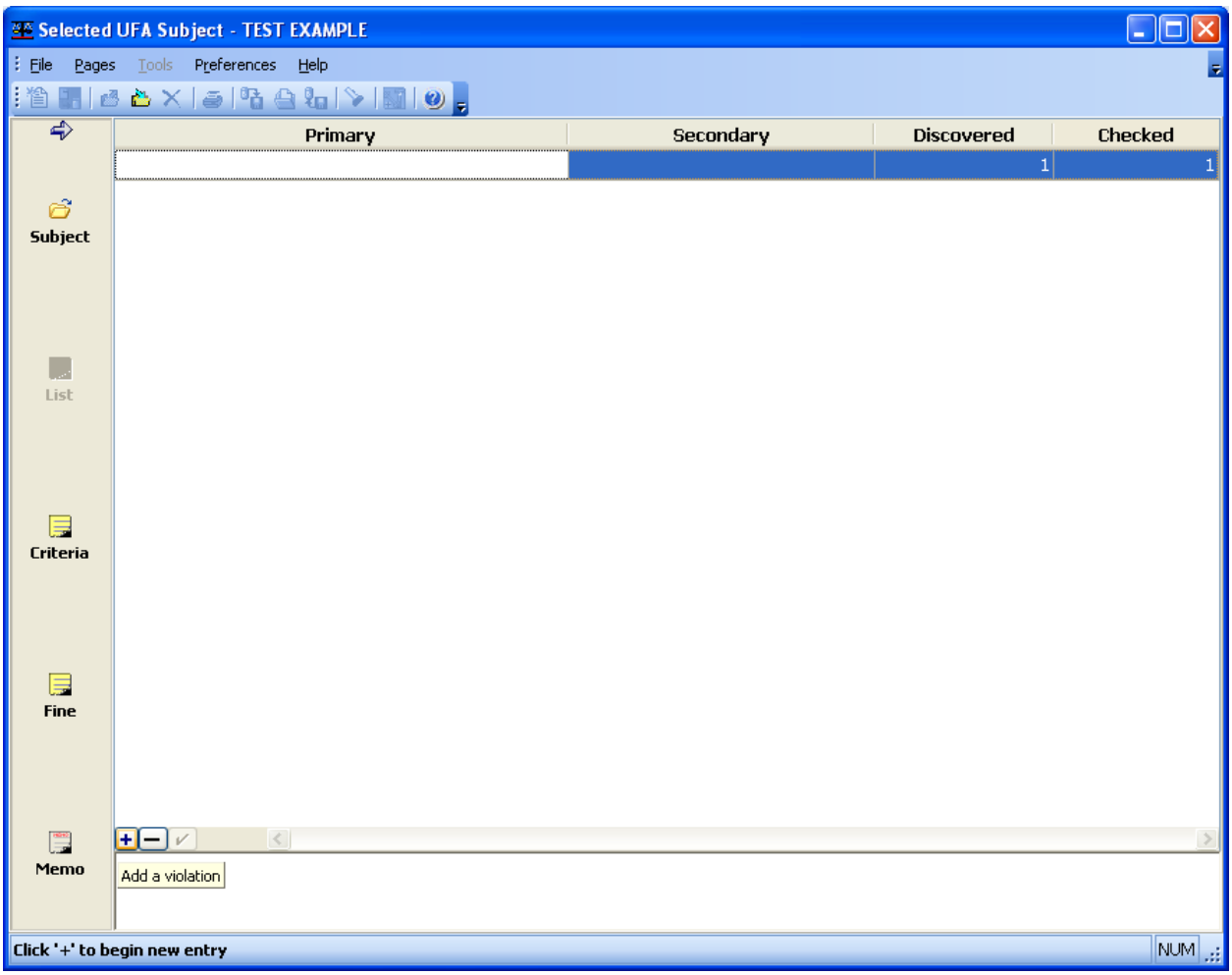
iii. Significant corrective action after Investigation but before NOC

- Select if the violator has significantly corrected the violation(s) after contact by the investigator that warns the violator that it will be investigated and before the NOC was issued.
- An entry must be made on the Memo Screen describing the corrective action, the date of the action, and the violation to which it applied.

Screen 2: Violation List Screen

Description

The Violation List Screen allows the user to select, add and delete violations that will be used in creating a penalty assessment. On this screen, users have the option of adding, deleting, editing, or selecting a violation. If an assessment is initiated outside of CAPRI the user will need to add all violations.



Completing the Violation List Screen

For assessment's started without an import from CAPRI:

1. **Add a violation**:
   a. Click the **Add** button located on the bottom left corner of the screen
   b. Click in the **Primary** column.
   c. Click and select the primary violation from the list, or type the violation cite.
      i. Secondary cites automatically populate and shall not be modified by the user.
   d. Enter the number of violations found in the **Discovered** column.

i. If the assessment is started from CAPRI, the number discovered cannot be modified in UFA. If the number discovered is updated in CAPRI, it will be updated in UFA when UFA is closed and re-opened.

ii. For assessments initiated without CAPRI, you cannot enter a number discovered that is greater than the number checked, nor can the number discovered be equal to zero.

e. Do not amend the violation code or secondary code, or add a secondary code.

f. The UFA system will not accept a custom violation.

i. Do not select a similar violation.

g. Enter the number of records checked in the **Checked** column.

i. If the assessment is started from CAPRI, the number checked cannot be modified in UFA. If the number checked is updated in CAPRI, it will be updated in UFA when UFA is closed and re-opened.

ii. For assessments initiated without CAPRI, you cannot enter a zero number checked.

2. **Delete a violation** (for assessments initiated without CAPRI):

a. Select the violation you want to delete from the list.

b. Click the minus button located on the bottom left corner of the screen

c. Click **OK**.

3. **For assessments imported from CAPRI:**

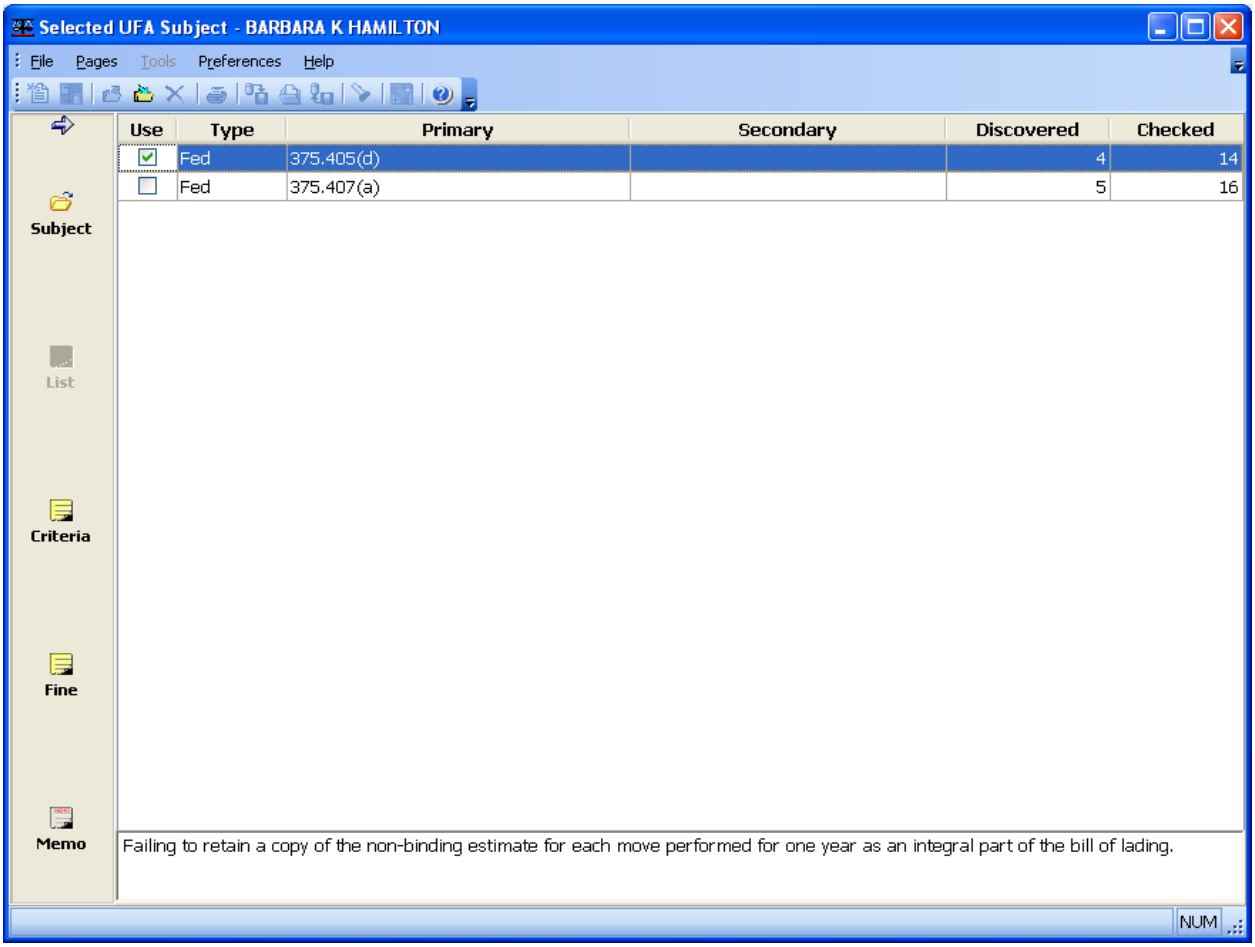
a. Click the **Use** check box next to the violation(s) that you want to use when calculating the fine.

b. No additional violations can be added.

c. Do not amend the violation code or secondary code, or add a secondary code.

d. When you have completed adding violation information, click **Criteria** from the panel or click **Violation Criteria** from the **Pages** menu. This opens the Violation Criteria page.

Screen shot below shows importing from CAPRI with discovered and checked populated and selecting one of the two violations for the enforcement case.

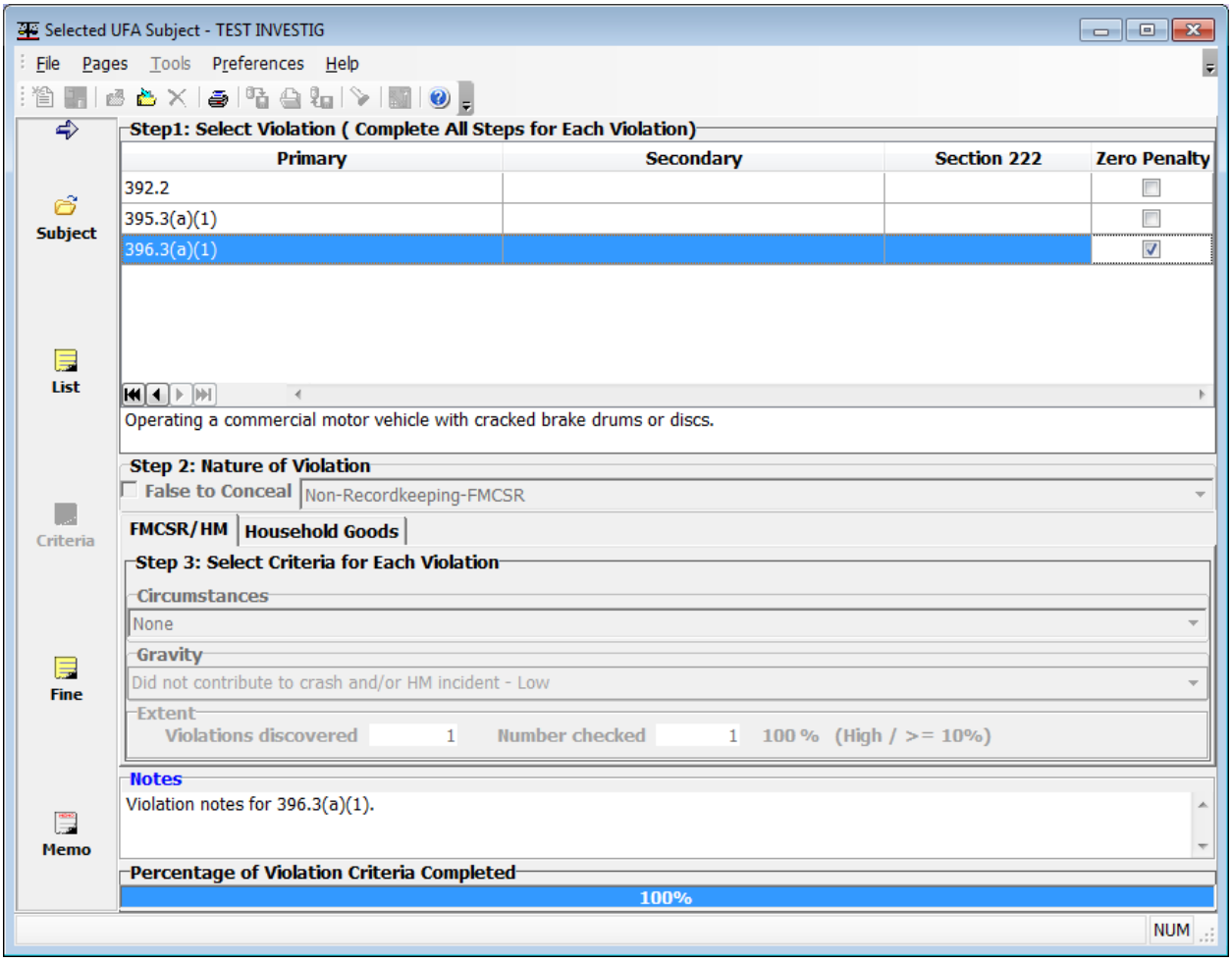


Screen 3: Violation Criteria Screen

Description

The Violation Criteria screen contains four steps that must be completed for each violation - Violation, Nature of Violation, Criteria for Each Violation, and Notes. UFA evaluates the criteria for each entered violation to determine the amount of the penalty.

When you have completed adding violation criteria, the Percentage of Violation Criteria Completed meter will display 100%. Click **Fine** from the panel or click Fine Assessment from the Pages menu. This opens the Fine Assessment screen.



Completing the Violation Criteria Screen

Complete all of the following steps for each violation

Step 1 – Select Violation

1. Select violation from the **Violations** list.

2. Click the **Section 222** and/or **Zero Penalty** box, if it applies to that violation.
   a. "Section 222" refers to "third strike", "two strike", or "pattern" violations. If the violation meets the requirements of a strike/pattern, check the box. Selection of this box will assign the maximum penalty, overriding other aspects of the UFA model. See Section 222 Policy in Appendix A.

   b. "Zero Penalty" is to be selected when the user determines that the violation will NOT incur monetary penalties but will be used solely for the purpose of establishing enforcement history. Users will make the initial determination of when to "zero" out a penalty. Users may "zero" the penalty for circumstances where the statutory minimum penalty and gross revenue cap have already been met with other violations. Users may also determine that using the violation as history is more important than collecting a penalty. In some instances, the user may not know when or if to "zero" out a penalty until all steps are completed and a per violation count is established.

   c. UFA will not allow the user to "zero" out a penalty that has a statutory minimum.

Step 2 – Nature of Violation

1. Nature of violation accounts for the type of violation. For the most part, this is programmed into the VUU and attached to the violation in the Violations List. This assignment cannot be changed by the user.
2. For recordkeeping violations, select the **False to Conceal** box if appropriate. This box is disabled unless the violation is predetermined to be a recordkeeping violation and used when there was a falsification which concealed another more serious violation.

Step 3 – Select Criteria for Each Violation

1. There are different criteria for **FMCSR/HM** or **Household Goods.** Select the appropriate criteria of each of the violation(s).

*For **FMCSR/HM** violations:*

1. Select the appropriate description of the violation **Circumstances**.
   a. None
   b. **Mitigating** circumstances are acts by the violator or situation which is extenuating, explanatory or justifying of the violation
   c. **Aggravating** circumstances are acts by the violator or situation which exasperates, frustrates, or aggravates the violation.
   d. Selection of mitigating or aggravating circumstances requires that a comment be entered justifying the selection
2. Select the appropriate description of the violation **Gravity**.
   a. Did not contribute to a crash or HM Incident release

i. If no fatality crash or HM incident occurred, the system will determine whether the violation is Low Gravity, Medium Gravity (Critical, Essential Safety Management or Severe Level II), or High Gravity (Acute, Fundamental, or Severe Level I). A medium or high gravity violation is considered more serious in gravity and each will increase the penalty, high more than medium.

b. Contributed to crash and/or HM incident
   i. Select if the violation caused a crash or HM incident with a release of HM to occur.
   ii. For HM violations, if a fatality, serious injury, illness, or destruction of property occurred based on this violation, a popup box will appear reminding the user that a maximum fine of $175,000 can be utilized for egregious violations, overriding all other aspects of the UFA model. This will be decided by the Division Administrator, in consultation with the Service Center.
   iii. Requires that information regarding the crash or incident be entered into the Notes section justifying the selection.

*For **Household Goods** violations:*

1. Select the appropriate description of the **Circumstances**.
   a. None
   b. **Mitigating** circumstances is any act by the violator or situation which is extenuating, explanatory or justifying of the violation
   c. **Aggravating** circumstances is any act by the violator or situation which exasperates, frustrates or aggravates the violation.
   d. Selection of mitigating or aggravating circumstances requires that a comment be entered justifying the selection
2. Select the appropriate description of the **Harm to Shipper**.
   a. Harm to Shipper is the monetary impact of the violation to the shipper (owner) of the household goods
   b. Select one of the following:

      None or unknown

      Inconvenience (e.g., late or partial delivery) / No monetary impact

      Monetary impact

3. Select the appropriate description of the **Compensation to Shipper**.
   a. Determine the compensation, if any, to the shipper (owner) of the household goods before the penalty proceedings occurred
   b. Select one of the following:

      No compensation required / not applicable

      Adequately compensated before institution of civil penalty proceedings

      Not adequately compensated before institution of civil penalty proceedings

Step 4 - Notes Box

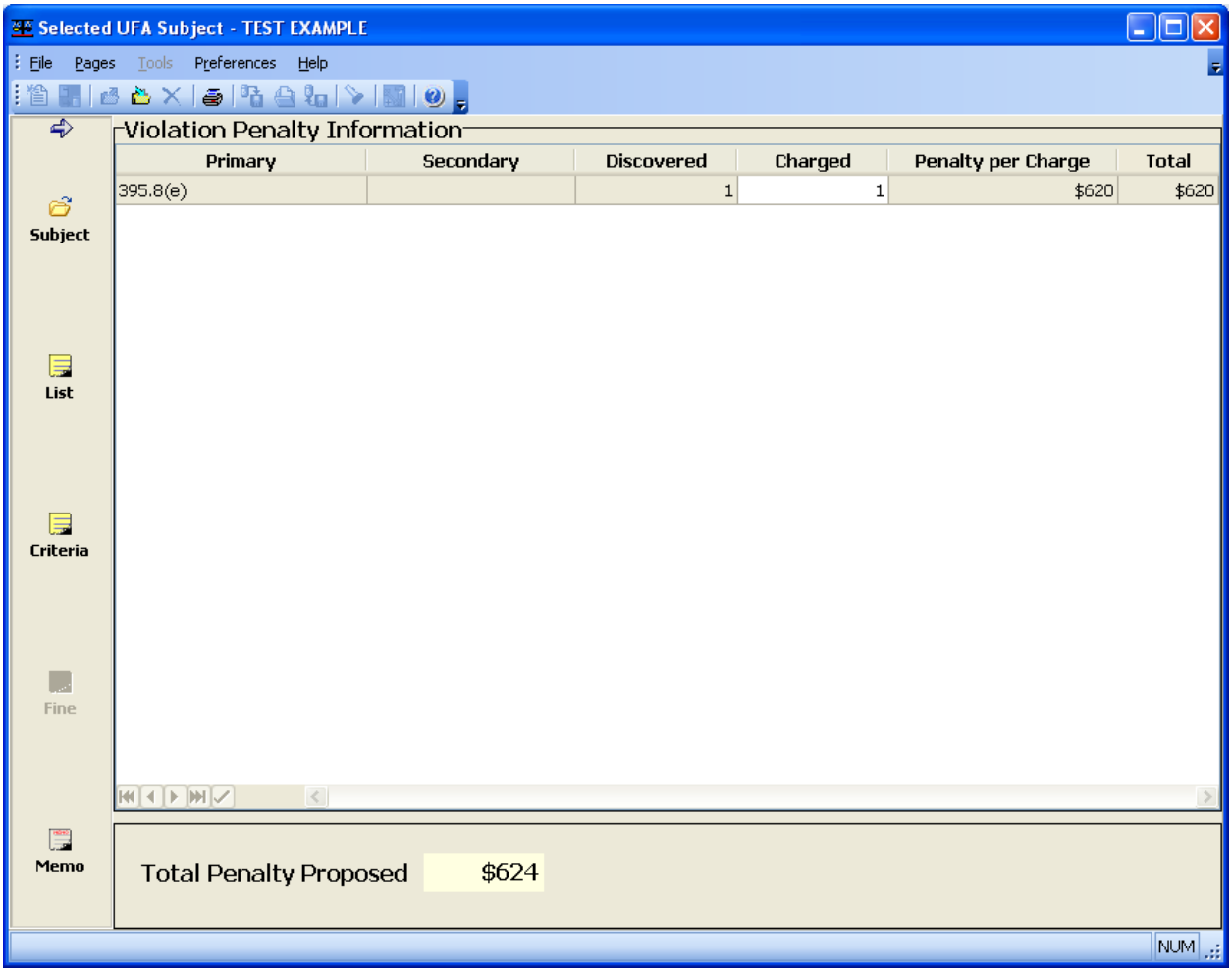
1. Enter any information deemed appropriate to be included in the final UFA report.
    a. Selection of "Contributed to crash and/or HM incident" requires that information regarding the crash or incident be entered into the Notes Box justifying the selection. Information may include:
        i. Date of crash or HM incident
        ii. Location
        iii. Vehicle number, if applicable
        iv. Crash or Incident report number of law enforcement or other agencies
        v. Driver name, if applicable
        vi. Describe crash, material released, etc.
        vii. Number of fatalities, injuries and property damage
    b. Selection of mitigating or aggravating circumstances requires that a comment be entered in the Notes Box justifying the selection.
2. All information entered into the Notes Box will be printed on the final report.

The Extent Box is populated automatically from the calculation of dividing the number checked by the number discovered for each violation. It will show as High or Low. High Extent is greater than or equal to 10% and Low Extent is less than 10%. Individual and single events with a 1 of 1 calculation will show as Low. Review for accuracy. If not accurate, check entries then call Help Desk.

Screen 4: Fine Assessment Screen

Description

The Fine Assessment screen displays the recommended penalty.



Completing the Fine Assessment Screen

1. Review the information to ensure that it matches the violations entered on the **Violation List** Screen, which is automatically populated.
2. Enter the **Number Charged**.
    a. If extent is "High", the system will default the number charged to 10% of the number checked, unless that is more than the number discovered. It will then default to the number discovered. The user can change this number. If the number is changed, the user will need to justify why the change was made.
    b. If extent is "low", the system will default to 3 unless there are less than 3 discovered violations, and then it will default to the number discovered. The user can change

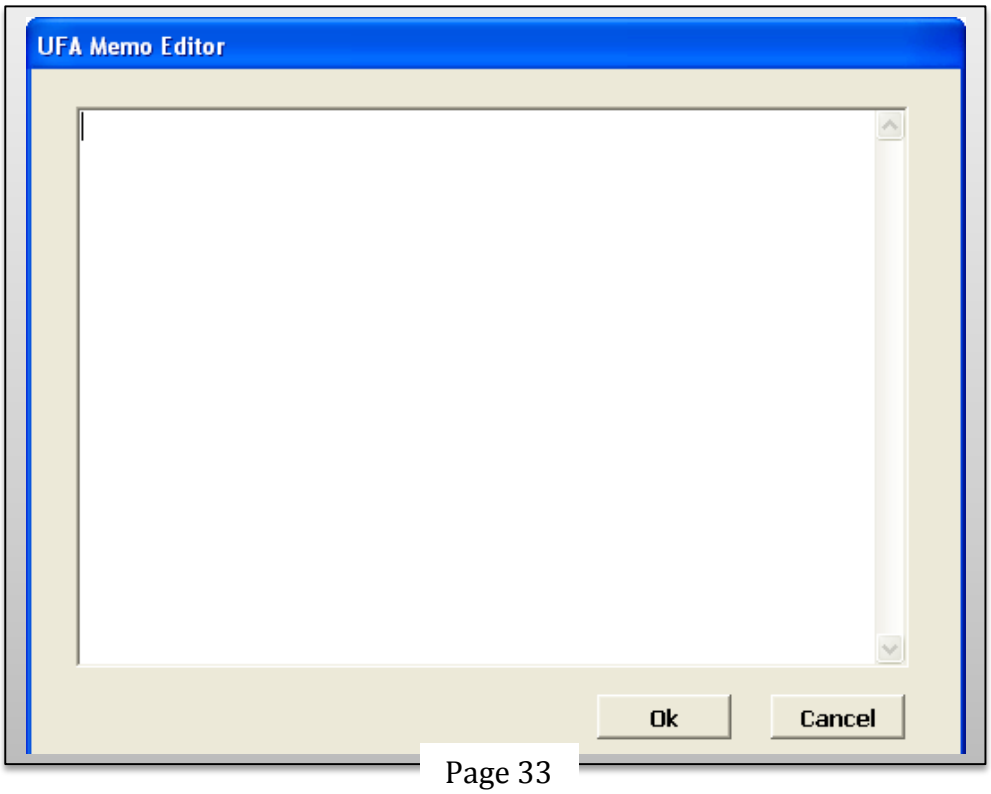
this number. If the number is changed, the user will need to justify why the change was made.

c. The system will default to the number charged for "high" and "low" extent in Section 222 cases also.

Memo Screen

Description

1. The Memo Screen is used to enter information pertaining to the documented fine assessment.
2. It is enabled when the Subject Assessment is opened.
3. Evidence must be provided to substantiate selections from the Violator Criteria Screen. Mandatory entries in Memo section are required for :
   a. History
      i. Case numbers of closed cases
   b. Culpability
      i. Describe how Violator "knew" of violation or "intentionally" violated the regulations
   c. Other matters
      i. Describe in detail the acceptable corrective action taken by the carrier and the timing of the corrective action (before contact with agency, after NOC, etc)
4. The memo will be printed on the UFA report and made available to the subject.



APPENDIX A: POLICIES AND GUIDANCE

Section 222 Policy: Issued March 12, 2009

Attached

Updating the Violation Update Utility

Overview

The Federal Motor Carrier Safety Administration's (FMCSA) field systems are an integral part of its day-to-day enforcement and compliance efforts. One such system is the Violation Update Utility (VUU – pronounced "view"). VUU is a database that stores the violation information used in CAPRI, UFA, CaseRite, and EMIS. In addition, VUU captures information that allows for the calculation of safety ratings and penalty assessments. Without this very important database, our systems would not have uniform and consistent violations. Because of this, it is very important to ensure the database is as up to date as possible.

VUU Updating

There may be instances when field personnel find that there is missing or erroneous information in the field system being used. In those instances, that information should be reported to the appropriate Service Center. If you submit a change, make sure "VUU" is in the subject line of the email.

The following information should be submitted to ensure systems are updated appropriately.

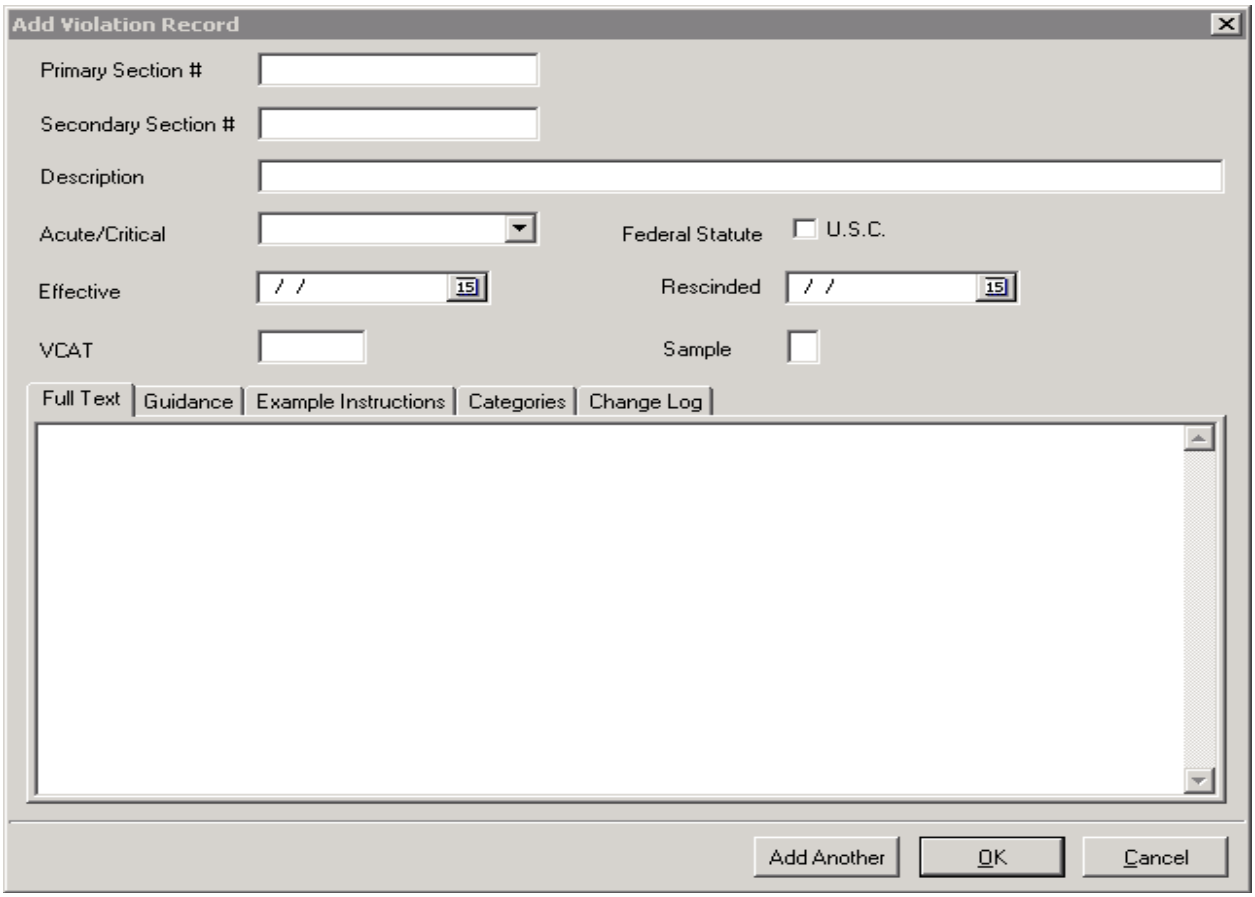
Which systems are affected: ☐ CAPRI ☐ UFA ☐ CaseRite ☐ EMIS	
Is the information: ☐ Missing ☐ Incorrect	
Primary Violation:	Secondary Violation, if appropriate:
Short Description:	Long description:
Abatement Clause:	
Charge Introduction:	
Effective Date:	Rescind Date:
Other relevant information:	

We have designated certain fields to be required fields whenever a violation is entered into the VUU Table. Though other data may be captured in other fields, these required fields must always be completed. These required fields have been identified because they each play an important role in at least one of our proprietary software applications. These fields are:

1. Primary Violation
2. Secondary Violation, if appropriate
3. Short Description of the Violation
4. Long Description of the Violation
5. Abatement Clause
6. Charge Introduction
7. Effective Date
8. Rescind Date

In addition to these required fields, it is highly encouraged that the Guidance/Example field also be completed for each new violation entry. This field captures the information which is displayed in CaseRite and gives general instructions to the SI regarding basic evidentiary requirements for the specific violation.

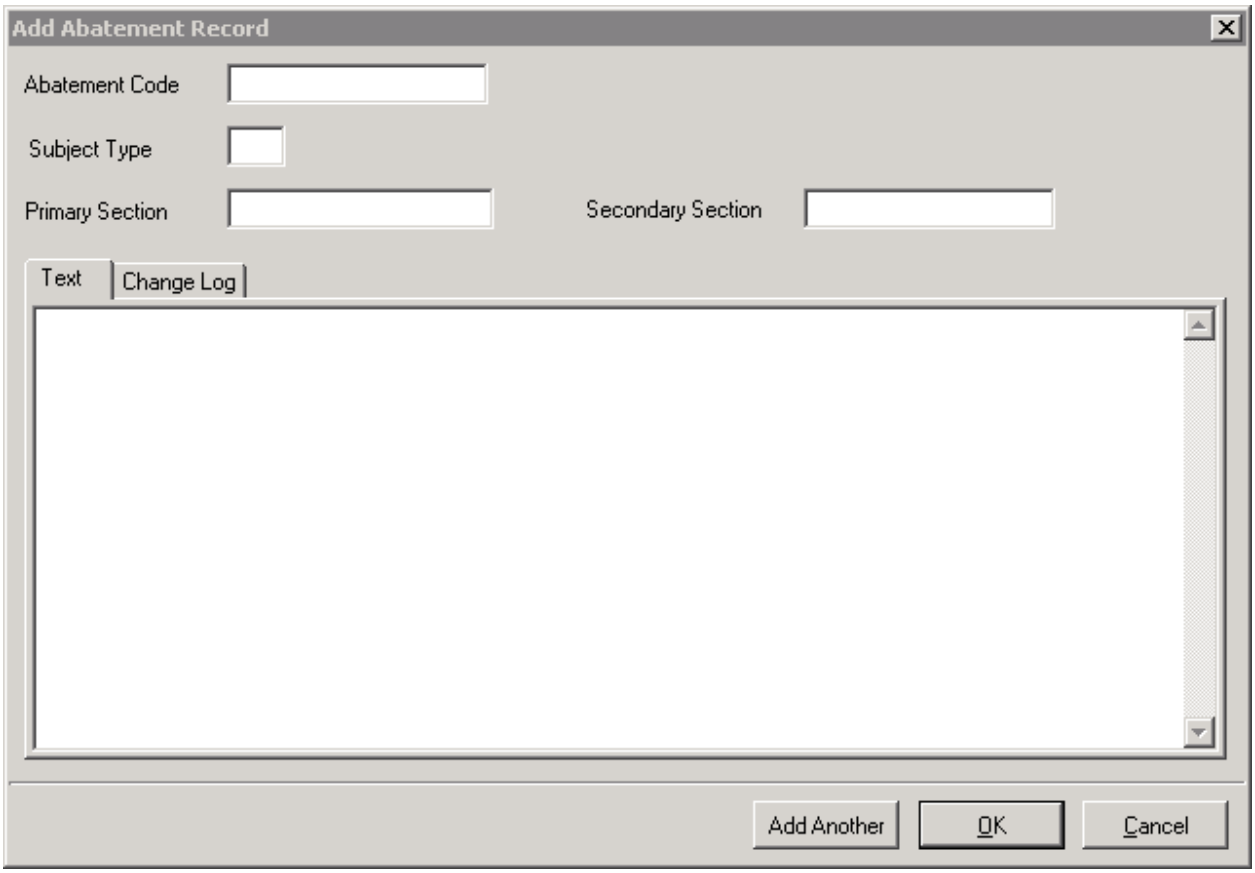
The following is a screenshot of data entry field at the violation level.



Abatement Language

The following is a screenshot of the information that needs to be captured for the abatement language.

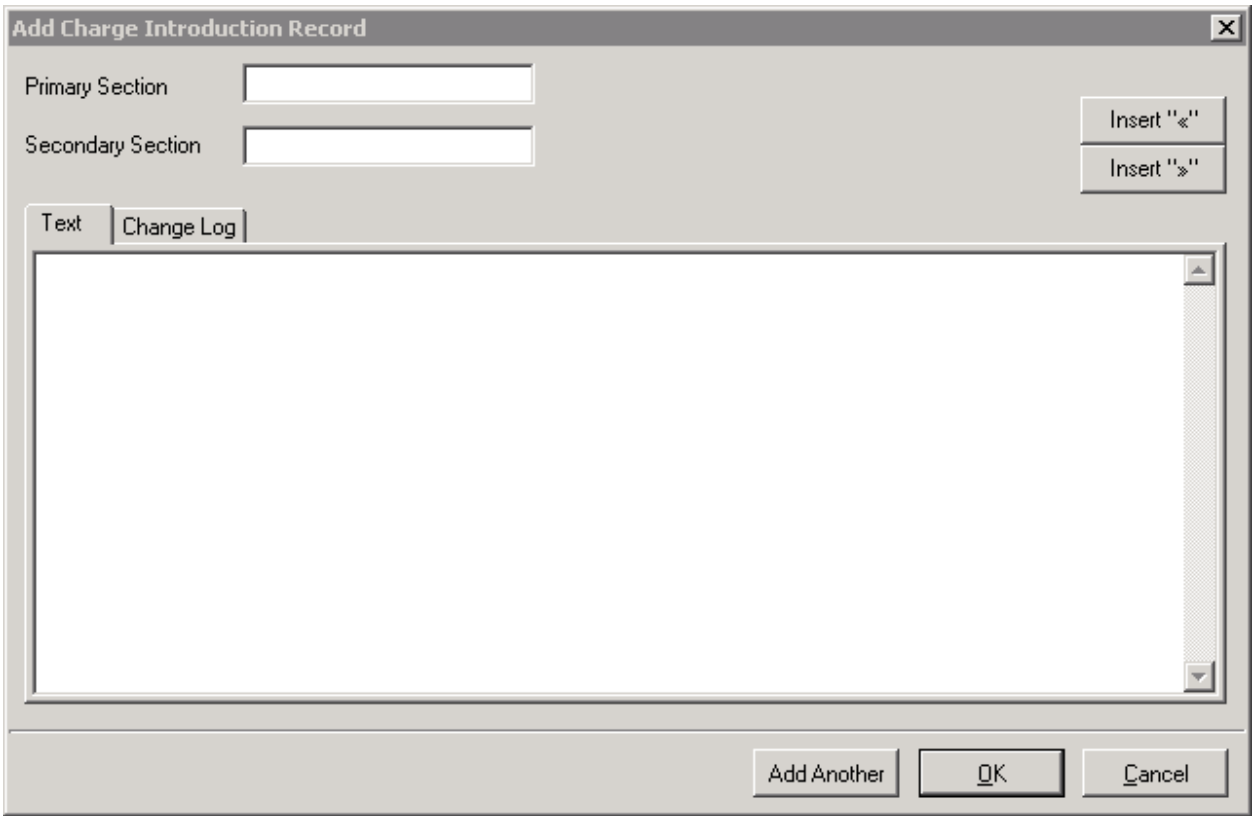
Sample abatement language: Violation: 387.7(a) - Do not operate a motor vehicle unless you have in effect the required minimum level of financial responsibility for the type of commodity transported, in accordance with 49 CFR Part 387.



Charge Introductions

The following is a screenshot of the information that needs to be captured for charge introductions.

Sample charge introduction language: Violation: 387.7(a) - On or about «DATE», «CARRIER» operated a commercial motor vehicle with a gross vehicle weight rating of 10,000 pounds or more and transported property in interstate commerce for compensation from «ORIGIN» to «DESTINATION», without having in effect $750,000 public liability insurance.



U.S. Department
of Transportation

Federal Motor Carrier Safety Administration

Memorandum

MC-ECE-003-09

Subject: **ACTION: Supplemental Policy on Assessing Maximum Fines Under MCSIA Section 222**

Date: MAR 12 2009

From: **Anna J. Amos**
Acting Associate Administrator for Enforcement and Program Delivery

Reply to Attn. of: MC-ECE

To: Assistant Administrator and Chief Safety Officer
Associate Administrator for Field Operations
MC-E Office Directors/Division Chiefs
Office of Chief Counsel, Enforcement and Litigation
Field Administrators/Service Center Directors
Division Administrators/State Directors
National Enforcement Team
National Training Center

PURPOSE

The purpose of this memorandum is to supplement the current policy for assessing maximum penalties under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). This memorandum provides guidance to Federal Motor Carrier Safety Administration (FMCSA) personnel and our State partners on providing notice of Section 222 consequences, documenting "a pattern of violations" or "previously committed violations," assessing maximum civil penalties, and settling maximum penalty cases. This memorandum describes the frrst phase in a ' multi-phased approach to expand Section 222 maximum penalty enforcement. DivisionAdministrators should share this olicy with their State partners who conduct compliancereviews (CRs) and investigations under the Motor Carrier Safety Assistance Program. This policy replaces in its entirety the policy issued on March 10, 2009.

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[1] FMCSA anticipates that its implementation of Section 222 will need to be modified over time as resources permit and in accordance with changes associated with the Comprehensive Safety Analysis (CSA) 2010 initiative.

[2] Section 222 maximum penalty assessments must result from violations of critical and acute regulations discovered during qualifying investigations ("Section 222-eligible investigation"). For investigations completed on or after the effective date of this supplemental policy, Section 222-eligible investigations include rated and unrated compliance reviews, terminal reviews, shipper reviews, focused reviews, on- and off-site assessment investigations, and on- and off-site CSA-2010-based investigations. For investigations completed before the effective date of this supplemental policy, Section 222-eligible investigations include on-site rated and unrated compliance reviews, terminal reviews and shipper reviews. During this phase of the Section 222 implementation, roadside inspections and FMCSA data generated investigations, completed either before or after the effective date of this supplemental policy, are not qualifying investigations for the purposes of assessment of maximum penalties under Section 222.

BACKGROUND

Section 222 of MCSIA requires FMCSA to "assess the maximum civil penalty for each violation of a [motor carrier safety and/or commercial driver's license law] ... by any person who is found to have committed a pattern of violations of critical or acute regulations issued to carry out such a law or to have previously committed the same or related violation of critical or acute regulations issued to carry out such a law."

FMCSA's initial policy implementing Section 222 defined both "committed a pattern of violations" and "previously committed the same or related violation" as three cases within six years. This is commonly referred to as the three-strikes policy. The three cases must consist of two closed cases containing findings of violation of critical or acute regulations in the same Part followed by discovery of violations of critical or acute regulations in the same Part during a third or subsequent review.

The Office of the Inspector General (OIG) and the Government Accountability Office (GAO), in separate reports, concluded that FMCSA's three-strikes policy did not properly implement Section 222. The OIG recommended that FMCSA strengthen its repeat violator policy by developing a procedure to count for Section 222 purposes all acute and critical violations FMCSA discovers during a CR. The GAO found that FMCSA did not assess the maximum fines against all serious violators, in part because FMCSA does not distinguish between motor carriers with a pattern of serious safety violations and those that repeat a serious violation. The GAO emphasized that FMCSA's policy on maximum fines does not fully meet the requirements of Section 222 and does not carry out the statutory mandate to impose maximum fines in both of those two distinct scenarios. Further, GAO found that the statute requires FMCSA to assess the maximum allowable fine for each serious violation against a motor earner that has previously committed the same serious violation, calling for a two-strikes policy rather than a three-strikes policy. In light of these recommendations, FMCSA reexamined its Section 222 policy.

POLICY

This policy supplements and does not replace the current policy. It is intended to expand FMCSA's implementation of MCSIA Section 222. As a result, cases closed after the issuance of the original September 8, 2000, policy memorandum will continue to count as strikes under the existing three-strikes policy. However, to allow for adequate notice to industry, cases and Section 222-eligible investigations being used to support imposition of maximum fines under this supplemental policy must be initiated on or after the effective date of this policy.

Effective with this policy, FMCSA is defining a "pattern of violations" as the discovery of two or more critical or acute violations[3] in each of three or more different regulatory Parts (i.e., a minimum of six acute and/or critical violations). Thus, a "pattern of violations" does not require previous enforcement and can be found even during a first-time Section 222-eligible investigation. FMCSA is also establishing a "two-strikes" policy. This supplemental two-strikes

[3] Critical and acute regulations are listed in 49 C.F.R. Part 385, Appendix B. "Critical violations" are violations of a critical regulation discovered at or above a 10% violation rate; they involve more than one discovered violation.

policy does differ somewhat from the existing three-strikes policy. Maximum fines will be applied in cases where an acute violation is discovered during a Section 222-eligible investigation within six years of one previously closed case containing a violation of a critical or acute regulation in the same Part. If a pattern of violations or a two-strikes or three-strikes situation is discovered, it must be documented, and maximum fines must be assessed unless the FMCSA determines and documents that "extraordinary circumstances" exist.

In addition, as of the effective date of this policy, every acute violation discovered during a Section 222-eligible investigation must be charged in a Notice of Claim (NOC), either for a proposed penalty or in a new section of the NOC that FMCSA anticipates developing to document "supplementary" violations. This change will capture every such acute violation as a strike.

Pattern:

A pattern of violations of critical or acute regulations is documented through the discovery, during a Section 222-eligible investigation, of two or mc-re critical or acute violations in three or more regulatory Parts where the motor carrier has had previous significant contact with FMCSA, a State partner, or other FMCSA-designated representative on behalf of FMCSA.

Until the Compliance Analysis and Performance Review Information (CAPRI) system has been reprogrammed to identify such a "pattern," investigators should use the Section 222 Maximum Fines Worksheet to help determine whether any Section 222-eligible investigation establishes a pattern of critical or acute violations.

A motor carrier will be subject to maximum fines when a "pattern" of critical or acute violations is discovered after having had previous contact with FMCSA, a State partner, or other FMCSA-designated representative on behalf of FMCSA. This contact may have been a previous New Entrant Safety Audit, Pre-Authorization Safety Audit, Expedited Action Letter, Compliance Review, Notice of Violation, Notice of Claim, Warning Letter or other significant documented contact reasonably likely to have alerted the motor carrier to FMCSA's regulatory and enforcement jurisdiction. This contact may have occurred prior to the effective date of this policy.

If a "pattern of violations," as defined above, is discovered during a Section 222-eligible investigation, the investigator must document one count of each critical and/or acute violation that contributed to the pattern (i.e., the case will contain at least six separate violations). Each violation will be assessed for the maximum statutory penalty. If appropriate, additional violations that did not contribute to the pattern may be included using the Uniform Fine Assessment (UFA) software to calculate an appropriate penalty amount. For those violations that contributed to the pattern, it is not necessary to document the extent of the violation. The "extent" of the violation, as well as the other statutory factors FMCSA must normally take into account when assessing a fine, does not apply when assessment of the statutory maximum penalty is required by Section 222. However, the investigator must document at least the 10 percent violation rate of the critical regulations to establish the pattern. For example, if violations of 49 CFR 395.8(e) - false logs - contributed to the existence of a pattern, the investigator would need to include one count for the purpose of proposed penalty assessment, and document at least 10 percent of the false logs checked to demonstrate that the violation occurred at a critical rate. For acute violations, the investigator would document a single count.

Two-Strikes:

Differing from a three-strikes case, FMCSA is defining a two-strikes case as one based on a Section 222-eligible investigation in which an acute violation has been discovered within six years of the closure of one previous case containing a violation of a critical or acute regulation in the same Part (the previous case must also have resulted from a Section 222-eligible investigation). The important difference is that a motor carrier will be subject to a maximum fine on a second case only if the violation discovered in the second Section 222-eligible investigation is acute. This is consistent with the emphasis FMCSA has placed on these violations.

The same standards applied by FMCSA under the original three-strikes policy will apply to cases being used as a previous strike under this supplemental two-strikes policy. The previous case must have been based on a Section 222-eligible investigation (completed on or after the effective date of this supplemental policy), the case must have been closed[4] within six years prior to the completion of the Section 222-eligible investigation in which the second strike is discovered (but initiated no earlier than the effective date of this policy memo), it must contain one or more violations of critical or acute regulations in the same Part(s), and those violations must have been admitted or adjudicated in accordance with FMCSA's definition of "history" (see Section 222 Maximum Fines Worksheet).

If a second strike is discovered as set forth above, the investigator must document at least one count in every Part that meets the second strike definition. Each such violation will be assessed at the statutory maximum penalty.

Settlement of Maximum Penalty Cases:

Under the existing FMCSA three-strikes policy, proposed penalties subject to Section 222 could not be settled for less than the maximum penalty assessed. Under this supplemental policy, all penalties, including patterns, two-strikes, and three-strikes cases containing violations subject to Section 222, may be settled with a suspension of a portion of the assessed penalty, under appropriate circumstances, such as a significant investment in advanced technology.

IMPLEMENTATION DATE

The effective date for implementation is April 1, 2009. This will allow FMCSA the necessary time to provide training and prepare for implementation.

Should you have any questions or need additional information, please contact David Mancl in the Enforcement and Compliance Division, at (202) 493-0442 (direct line), (202) 366-9699 (main office line), or via e-mail at david.mancl@dot.gov.

[4] Under the September 2000 policy on three-strikes, the six year period was measured from the end of the first to the end of the third compliance review. In the December 2004 clarification issued in the Federal Register, the definition of the six year period was changed to measure enforcement cases closed within six years previous to the closing date of the CR underlying the third enforcement case.

Frequently Asked Questions

General:

Q1. Has eFOTM been updated to reflect this supplemental Section 222 policy?

A1. Yes, this policy will be inserted in Appendix B and supersedes any conflicting guidance in the eFOTM.

Q2. When will the agency IT systems be updated to handle CRs, investigations and cases involving violation(s) subject to § 222?

A2. An IT Systems Change Request Form has been submitted outlining necessary changes to CAPRI, CaseRite, UFA, EMIS, MCMIS, and ASPEN/ISS to support this policy change. These IT changes will be prioritized in accordance with standard agency procedures.

Q3. What notice of this supplemental Section 222 policy must be provided to motor carriers before a maximum fine case may be brought under its provisions?

A3. FMCSA will publish notice in the Federal Register and will post notice on the FMCSA website. In addition, language in the Notice of Claim (NOC) and CAPRI Requirements and Recommendations section has been modified to put motor carriers on notice of this supplemental policy. This meets the agency's obligation to provide notice to motor carriers.

Q4. Why is a phased-in approach necessary?

A4. FMCSA analyzed the workload associated with immediate implementation of all recommendations made by the OIG and GAO and determined that the workload exceeded FMCSA's current capacity to handle the full number of expected new Section 222 cases. In addition, FMCSA anticipates that changes may be necessary to the Section 222 policy based on the implementation of CSA-2010.

Q5. What if a motor carrier is subject to the requirements of Section 222 under more than one provision of Section 222 (e.g., motor carrier is subject under both patterns and two-strikes)?

A5. All violations subject to maximum penalties, whether due to a pattern, a second strike or a third strike, must be included in the NOC. For example, some violations that did not contribute to a pattern may nevertheless be required to be included for maximum penalty because of prior strike(s) in that Part.

Q6. Under what circumstances may an investigator deviate from the policies regarding assessment of maximum penalties under Section 222?

A6. MCSIA Section 222 allows for deviation only under "extraordinary circumstances." Although there is no formal definition of "extraordinary circumstances," the statute lists as an example "when the Secretary [through FMCSA] determines that repetition of [a] violation does not demonstrate a failure to take appropriate remedial action." Such "extraordinary circumstances" must be documented.

For example, a review to determine whether a motor carrier is making progress shortly after institution of an agreement containing consent terms, such as an improvement of hours of service violations, may discover violations at a critical rate, but if the motor carrier is demonstrating significant improvement, the FMCSA may determine that "extraordinary circumstances" exist and decline to assess maximum penalties.

Q7. Who may determine that "extraordinary circumstances" exist justifying a failure to assess the maximum penalty?

A7. With concurrence of the Field Administrator (FA) or his/her designee, the Division Administrator/State Director may determine and document that "extraordinary circumstances" merit the assessment of a civil penalty lower than the maximum penalty. This determination must be made before the NOC is issued and the documentation of the determination must be included in the enforcement case report.

Q8. Why must investigators include ALL acute violations discovered during a CR or other Section 222-eligible investigation in a NOC, whether or not a penalty is sought for that particular violation, as of the effective date of this policy memorandum?

A8. A major OIG criticism was that many motor earners who were in fact repeat violators were not becoming subject to maximum fines because FMCSA had not sought a penalty for all previous critical or acute violations, thus fewer prior "strikes" had been established. In order to document a "strike" for purposes of future cases, the violation must have been included in a closed case. In this first phase, investigators are required to include in the NOC all acute violations. This is in accordance with FMCSA's longstanding policy that acute violations must be enforced absent adequate justification documented in Part C of the CR or other Section 222-eligible investigation. This new requirement may be waived by the Division Administrator/State Director with the concurrence of the FA or his/her designee on a case-by-case basis after determination and documentation of "extraordinary circumstances."

Q9. Must I take enforcement and assess maximum penalties for a violation of a critical regulation even if it has not met the 10 percent critical threshold if there is a previous first and second strike?

A9. No, enforcement is discretionary for violations that have not reached the 10 percent critical rate, but if enforcement is taken, you must assess the maximum statutory fine for that violation. If the violation is discovered at or above the critical 10 percent rate, you must take enforcement and assess the statutory maximum fine absent extraordinary circumstances.

Q10. May an NOC be issued for no penalty if maximum fines are not required?

A10. No. An NOC is the official charging document used by FMCSA to initiate civil penalty proceedings. FMCSA anticipates that it will in the future modify its IT systems to allow individual violations to be taken for no penalty in an NOC charging other violations for penalty. For present purposes, if an acute violation is discovered during a Section 222-eligible investigation, the acute violation must be charged in an NOC unless the Division Administrator determines extraordinary circumstances exist and enforcement is not appropriate for the acute violation with the concurrence of the FA or his/her designee. The DA in such case should document "extraordinary circumstances," and this description should be included in Part C of the CR or other Section 222-eligible investigation.

Q11. At times this policy memorandum uses the term "critical or acute violations" and at times it uses the term "violations of critical or acute regulations." What is the difference?

A11. The term "critical or acute violations" means that, for regulations listed as "critical" in Part 385, Appendix B, the violation must have been discovered at least at the 10 percent rate. The language "violation of a critical or acute regulation" means that a "critical" need not have met the 10 percent rate. If a prior qualifying case enforced a violation of a critical regulation even though it was not discovered at a critical rate, it will still count as a strike under both the two-strikes and three-strikes policy.

Q12. How should I document the calculation of the penalty in a Section 222 case?

A12. For cases involving only violations subject to Section 222, investigators should include a completed Section 222 Maximum Fines Worksheet to support the calculation of the fine amount. For cases that involve both violations subject to Section 222 and violations not subject to Section 222, the investigator should include a copy of the UFA report for only those violations NOT subject to Section 222 and a copy of the Section 222 Maximum Fines Worksheet. The total fine amount will be the amount calculated by UFA added to the amount calculated on the Section 222 Maximum Fines Worksheet.

Q13. Who may sign a NOC containing Section 222 counts?

A13. The Division Administrator/State Director or his/her designee (pursuant to normal designation protocols) may sign and issue Section 222 NOC's, unless other circumstances prescribing issuance by the Field Administrator are present (e.g., DA/SD was directly involved in the investigation).

Q14. Under what circumstances may a case subject to Section 222 be settled at the Service Center?

A14. Cases subject to Section 222 may be settled at the Service Center through suspension of a portion of the penalty on conditions which include the implementation of advanced technology or significant investment in safety personnel. The penalty will be reinstated if the carrier breaches the settlement agreement. Suspensions may be granted in these circumstances if the motor carrier's investment is reasonably calculated to improve the safety of its operations in the areas in which it was found deficient. The terms of the Settlement Agreement should be for a period of no less than three years. Each Settlement Agreement must be specifically approved by the Field Administrator or his/her designee. Unless

extraordinary circumstances are documented by the Field Administrator, suspensions of Section 222 fines should not exceed 80 percent.

Q15. Will EMIS be programmed to alert users to the fact that a case contains violations subject to the requirements of Section 222 so that Enforcement Program Specialists can immediately recognize that the case can be settled only under certain parameters?

A15. Yes, FMCSA is working on identifying a method of clearly differentiating these cases from non-Section 222 cases in EMIS. Pattern:

Pattern:

Q16. Do roadside inspections count as a contact for purposes of determining whether a pattern exists?

A16. No, a roadside inspection is not considered a significant enough contact to alert the motor carrier to the FMCSA's enforcement jurisdiction for purposes of Section 222. However, a NOC resulting from an inspection will qualify as a significant contact.

Q17. Will CAPRI determine if there is a "pattern of violations" of critical or acute regulations?

A17. Not at this time. Until CAPRI is reprogrammed, Safety Investigators may quickly determine whether a motor carrier is subject to maximum fines based on a "pattern" by using the Section 222 Maximum Fines Worksheet and printing out the Safety Fitness Rating Explanation pages to determine if there are two or more critical (10 percent or greater) or acute violations in each of three or more Parts. Most, but not all, of the CRs that document a "pattern" for purposes of MCSIA Section 222 will also result in a proposed UNSATISFACTORY rating.

Q18. How do I document that a "pattern of violations" exists to support the assessment of maximum fines?

A18. Each acute violation that contributes to the pattern and at least 10 percent of the critical violations that contributes to the pattern must be listed on Table 1, which must be provided to the motor carrier at the closeout of the CR and with the NOC.

Q19. How do I document that a violation that contributes to a "pattern of violations" was discovered at a critical rate of 10 percent or greater?

A19. The documentation for these additional violations should be included in a lettered exhibit titled "Documentation to Support a Pattern of Violations under MCSIA Section 222."

Q20. May I stop documenting a violation that contributed to a "pattern" once I reach the 10 percent threshold?

A20. Yes, but if the motor carrier successfully challenges some of the counts and the rate drops below 10 percent, the basis for assessing the maximum fines may be overturned. Thus, it would be prudent to document additional counts when possible.

Q21. If intrastate violations can be counted as part of the requisite number of acute or critical violations to establish a pattern, can enforcement be taken by FMCSA on those intrastate violations?

A21. No. Nothing in this policy changes the FMCSA's jurisdiction over intrastate violations in terms of taking enforcement on other than Part 382, 383, or HM violations.

Strikes:

Q22. Do cases arising from roadside inspections or other non-CR based cases count as a first, second, or third-strike in either the two-strikes or three-strikes policies?

A22. Cases based on Section 222-eligible investigations count as strikes in both two-strikes and three-strike scenarios. For investigations completed on or after the implementation date of this supplemental policy, Section 222-eligible investigations include rated and unrated compliance reviews, terminal reviews, shipper reviews, focused reviews, on- and off-site assessment investigations and on- and off-site CSA-2010-based investigations. Roadside inspections and FMCSA data generated investigations do not qualify as Section 222-eligible investigations.

Q23. Do cases based on off-site investigations completed before the implementation date of this supplemental policy count as strikes in the three-strikes policy?

A23. No. For investigations completed before the implementation date, the case must have resulted from an on-site rated or unrated CR, terminal review, or shipper review to count as a strike.

Q24. Is there a way to program CaseRite or one of FMCSA's other systems to automatically alert an investigator that a motor carrier is subject to a two-strikes or three-strikes case?

A24. FMCSA is looking into the possibility of pulling all necessary elements from MCMIS and EMIS to alert the investigator through CaseRite or UFA that a two-strike or three-strikes case is appropriate.

Q25. In order to support a two-strikes case, must the previous case have involved an acute regulation in the same Part?

A25. No, while the second case must involve an acute regulation, the previous case (first strike) can have cited either an acute or critical regulation in the same Part.

Q26. How do I determine how many counts of a violation subject to Section 222 to include in a second (or subsequent) strike case?

A26. Until UFA is updated to allow investigators to calculate a single penalty amount for cases involving one or more violations subject to Section 222, investigators should run UFA including all violations being included in the case for penalty, whether the violation is subject to maximum fines or not. Based on the penalty recommended by UFA, the investigator should determine how many counts of any given violation would have been taken under normal circumstances. The same number of counts of each violation should be included in the case except that the violations subject to Section 222 will be assessed at the statutory maximum.

For example, an investigator determines that enforcement is warranted after a CR that discovers nine 70-hour violations (49 CFR § 395.3(b)(2)) and three instances of the acute violation of using a positive driver (49 CFR § 382.213(b)). Further, the investigator determines that the 382.213(b) violation is subject to Section 222 because the motor carrier has a previous qualifying case involving another violation of a critical or acute regulation in Part 382. When the investigator runs UFA, the recommended penalty amount would have been met by including four violations of Part 395.3(b)(2) and two violations of Part 382.213(b). The investigator should assess a penalty equal to the sum of the UFA/UPAWs-recommended penalty for the Part 395 violations and the maximum statutory penalty for two violations of Part 382.213(b).

MCSIA § 222 Maximum Fines Worksheet - Phase 1

CARRIER NAME:_____; USDOT #:_____; CASE #: _____

(Instructions: Check the column(s) that apply)

Pattern ☐	2-strikes ☐	3-strikes ☐
*If the answer to any of the questions in this column is NO, the carrier is **not** subject to maximum fines under "pattern."* *Complete a separate worksheet for each CR/Investigation where 6 or more critical or acute violations are discovered.*	*If the answer to any of the questions in this column is NO, the carrier is **not** subject to maximum fines under "2-strikes."* *Complete a separate worksheet for each separate Part where an Acute violation is discovered[1].*	*If the answer to any of the questions in this column is NO, the carrier is **not** subject to maximum fines under "3-strikes"* *Complete a separate worksheet for each separate Part where a Critical or Acute violation is discovered.*
CR/Investigation Completion Date: _____ Was the CR or other 222-eligible investigation completed on or after April 1, 2009[2]? No_____ Yes _____	CR/Investigation Completion Date: _____ Part: _____ Acute Violation(s): _____ Was the CR or other 222-eligible investigation completed on or after April 1, 2009[2]? No_____ Yes _____	CR/Investigation Completion Date: Part: _____ Was the CR or other 222-eligible investigation completed on/after September 8, 2000 (for a CR, terminal review, or shipper review) -OR- April 1, 2009 (all other Section 222-eligible investigations)[2]? No_____ Yes _____
Does the carrier have two or more critical and/or acute violations in each of at least 3 regulatory Parts? No_____ Yes _____	Does the carrier have at least one previous case, closed within six years prior to the date above, that was based on a CR/investigation completed on or after April 1, 2009? No_____ Yes _____ Prior NOC's CR/Investigation Date: _____ Case Closed Date: _____	Does the carrier have at least two previous cases, closed within six years prior to the date above, that were based on a CR, terminal review, or shipper review that was completed on or after September 8, 2000 -OR- any Section 222-eligible investigation on or after April 1, 2009? No_____ Yes _____ 1st NOC's CR/Investigation Date: Case Closed date: _____ 2nd NOC's CR/Investigation Date: Case Closed Date: _____

[1] Note that every Acute violation discovered during a 222-eligible investigation must be included in a Notice of Claim either for monetary penalty or as a supplementary charge, even if it is not subject to the maximum penalty.

[2] Section 222 maximum penalty assessments must result from violations of critical and acute regulations discovered during qualifying investigations ("Section 222-eligible investigation"). Prior to April 1, 2009, Section 222-eligible investigations include rated and unrated compliance reviews, terminal reviews, and shipper reviews. On or after April 1, 2009, Section 222-eligible investigations include rated and unrated compliance reviews, terminal reviews, shipper reviews, focused reviews, on and off-site assessment investigations, and on and off-site CSA-2010-based investigations. During this phase of the Section 222 implementation, roadside inspections and FMCSA-data-generated investigations are not qualifying investigations for the purposes of assessment of maximum penalties under Section 222

Pattern ☐	2-strikes ☐	3-strikes ☐
Parts: _____ _____ _____ _____ _____ _____	Does the prior case involve a violation of a critical or acute regulation in the same Part as the Acute violation(s) in this case as listed above? No_____ Yes _____ Previous violation(s): _____	Do both the prior closed cases involve a violation of a critical or acute regulation in the same Part as the critical or acute violations in the current case? No_____ Yes _____ Previous qualifying violation(s) from 1st case: _____ Previous qualifying violation(s) from 2nd case: _____
Has the agency or its designee (MCSAP Partner/NE Contractor, etc.) had a previous contact with this carrier? No_____ Yes_____: ☐ Safety Audit (date:_____) ☐ PASA (date:_____) ☐ Expedited Action Letter (date:_____) ☐ CR (date:_____) ☐ Prior NOV (date:_____) Prior ☐ NOC (date:_____) ☐ Warning Letter (date:_____) ☐ Other* : _____ (date:_____) * - consult with your Service Center to verify whether the "contact" constitutes adequate basis for application of maximum fines.	Was the case closed with proper "admissions[3]"? No_____ Yes_____(Check One): ☐ payment in full after receiving NOC with admissions language ☐ NDFAO ☐ signed Settlement Agreement, with admissions language, that includes the violation listed above ☐ final AA/ALJ decision finding that the violation listed above occurred	Were the cases closed with proper "admissions[3]"? No_____ Yes_____(Check One): 1st Case: ☐ payment in full after receiving NOC with admissions language ☐ NDFAO ☐ signed Settlement Agreement, with admissions language, that includes the violation listed above ☐ final AA/ALJ decision finding that the violation listed above occurred 2nd Case: ☐ payment in full after receiving NOC with admissions language ☐ NDFAO ☐ signed Settlement Agreement, with admissions language, that includes the violation listed above ☐ final AA/ALJ decision finding that the violation listed above occurred
If the answer to each of the questions in this column is YES, carrier is subject to maximum penalties for one count of every critical or acute violation that contributed to the pattern (i.e., at least 6 violations). Include this worksheet, a copy of the CR, and the document(s) checked above as a lettered exhibit in the current case.	*If the answer to each of the questions in this column is YES, carrier is subject to maximum penalties for each Acute violation in this Part. Include this worksheet, the prior Notice(s) of Claim and the document(s) checked above as a lettered exhibit in the current case.*	*If the answer to each of the questions in this column is YES, carrier is subject to maximum penalties for at least one critical or acute violation in this Part. Include this worksheet, the prior Notices of Claim and the document(s) checked above as a lettered exhibit in the current case.*

[3] Be sure that the closed case constitutes admission for the particular violation relied on to establish a strike. For example, a Settlement Agreement that drops counts under Part 382, but settles violations under Part 383 and Part 395 can only be used as a strike for future violations of Part 383 and 395.

VIOLATIONS SUBJECT TO § 222:	**MAXIMUM PENALTY:**		**# OF COUNTS:**		
	$	X		=	$
	$	X		=	$
	$	X		=	$
	$	X		=	$
	$	X		=	$
	$	X		=	$
	$	X		=	$
	$	X		=	$
	$	X		=	$
	$	X		=	$
	$	X		=	$
SubTotal:					$
UFA/UPAWs generated amount for violations not subject to § 222:				+	$
Total for Notice of Claim:				=	$