



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

621 Woodland Square Loop S.E. • Lacey, Washington 98503

P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

Date: October 24, 2024

To: Amy Bonfrisco, Administrative Law Judge, Administrative Law Division

From: Jason Sharp, Motor Carrier Safety Supervisor, Transportation Safety Division

Re: **TV-240672 John Frank LLC**

Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of household goods mover operating authority (THG-070798)

On September 3, 2024, Commission staff (Staff) completed a routine safety investigation of John Frank LLC, (John Frank or Company) which resulted in a proposed unsatisfactory safety rating.

Commission rules prohibit motor carriers from operating beginning on the 61st day after the date of the notice of a proposed unsatisfactory rating. A company may request a change in its safety rating based on evidence that it has taken corrective action to address the identified violations, and that its operations currently meet the safety standard and factors in 49 C.F.R. § 385.5 and 385.7. In this case, John Frank has until November 2, 2024, to come into compliance with applicable laws and rules by obtaining Commission approval of a safety management plan (SMP).

The proposed unsatisfactory safety rating was based on four violations of critical regulations – 49 C.F.R. § 391.45(a), 391.51(b)(2), 395.8(k)(1), and WAC 480-15-555(1).

“**Critical**” regulations are those identified as such where non-compliance relates to management and operational controls. These are indicative of breakdowns in a company's management controls. Patterns of non-compliance with critical regulations are linked to inadequate safety management controls and higher than average accident rates.

Critical violations discovered during investigation:

1. Three violations with 123 occurrences of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.

2. Three violations of 49 C.F.R. § 391.51(b)(2) for failing to maintain inquiries into driver's driving record in driver's qualification file.
3. Four hundred twenty-four violations of 49 C.F.R. § 395.8(k)(1) for failing to preserve driver's record of duty status for six months.
4. Three critical violations of WAC 480-15-555(1) for failure to complete a national criminal background check for an employee.

On September 20, 2024, the Commission issued a penalty assessment against John Frank in the amount of \$12,900 because of violations discovered during the safety investigation. The penalty was calculated as follows:

1. A \$300 penalty for three violations of WAC 480-15-555(1) for failing to complete a national criminal background check for an employee.
2. A \$12,300 penalty for 123 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
3. A \$100 penalty for three violations of 49 C.F.R. § 391.51(b)(2) for failing to maintain inquiries into driver's driving record in driver's qualification file.
4. A \$100 penalty for one violation of 49 C.F.R. § 393.41 for having an inoperative parking brake on of its commercial motor vehicles.
5. A \$100 penalty for 424 violations of 49 C.F.R. § 395.8(k)(1) for failing to preserve driver's record of duty status for six months.

In a September 26, 2024, Notice of Intent to Cancel, the Commission instructed the Company to submit its proposed SMP no later than October 10, 2024.

On October 7, 2024, John Frank filed its response to the penalty assessment, admitting the violations, and requesting that the penalties be mitigated. In the application for mitigation, the Company did not request a hearing, but rather requested the Commission decide based solely on information that it provided in its SMP.

On October 23, 2024, John Frank submitted a SMP addressing each violation noted during the investigation. Staff reviewed the SMP to ensure that it addressed the following seven requirements:

1. The plan must address each acute, critical, or serious violation discovered during the most recent investigation. It must also include corrective actions that address other violations noted during the investigation.
2. Identify why the violations were permitted to occur.

3. Discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. Include actual documentation of this corrective action.
4. Outline actions taken to ensure that similar violations do not reoccur in the future. The plan must demonstrate that the company's operations currently meet safety standards and factors specified in 49 C.F.R. § 385.5 and 385.7. To do so, the plan must demonstrate the company now has adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements.
5. If the request includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, etc., companies must include a detailed description of the activity or training and a schedule of when that activity will commence and when it will be completed.
6. Include any additional documentation relating to motor carrier safety and the prevention of crashes that the company believes supports its request.
7. Include a written statement certifying the company will operate within federal and state regulations and the company's operation currently meets the safety standard and factors specific to 49 C.F.R. § 385.5 and 385.7. A corporate officer, partner, or the owner of the company must sign the statement.

On October 24, 2024, John Frank submitted a "Waiver of Hearing" letter to this docket.

Summary and Recommendations

Staff reviewed John Frank's SMP and concludes it meets the legal requirements of 49 C.F.R. § 385. The plan demonstrates that the Company has taken corrective action to develop a compliant safety program and implemented systems that if followed, should prevent future repeat violations.

Documentation of company policies and procedures, driver qualifications, vehicle maintenance, hours of service records storage, criminal background documents, and updated compliance forms were included in the plan. Additionally, the plan contains calendar reminders for future compliance due dates.

The Company took the required steps to bring its safety operations into compliance with Commission regulations. John Frank submitted a SMP that addresses each violation, identifies how the violations occurred, describes the steps the Company took to correct the violations, and put controls in place to ensure the Company maintains compliance. Staff recommend the Commission:

1. Not cancelling John Franks's provisional permit;
2. Upgrade the Company's unsatisfactory safety rating to conditional; and

3. Extend the Company's provisional period until such a time that John Frank achieves a satisfactory safety rating, or the Commission finds good cause to cancel the Company's operating authority.

In response to the Company's mitigation request, the Company was cooperative throughout the safety investigation, provided staff with evidence that it corrected these first-time violations, and implemented procedures to prevent future occurrences. Staff recommends that the \$12,900 assessed penalty be reduced to \$6,450. Further, Staff recommends \$3,200 of the reduced penalty be suspended for two years and then waived, with the following conditions:

1. John Frank maintains a conditional safety rating;
2. Staff perform a follow-up safety investigation at least six months from the date of the order;
3. The Company does not incur repeat critical violations upon reinspection; and
4. John Frank pays \$3,250 that is not suspended