



1500 SW Arrowhead Road  
Topeka, KS 66604-4027

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<http://kcc.ks.gov/>

Dwight D. Keen, Chair  
Shari Feist Albrecht, Commissioner  
Susan K. Duffy, Commissioner

Laura Kelly, Governor

**NOTICE OF PENALTY ASSESSMENT**  
20-TRAM-009-PEN

July 11, 2019

Brian J. Nisly, Owner  
d/b/a Nisly Construction  
9512 S Salem Rd  
Partridge, KS 67566

This is a notice of a penalty assessment against Brian J. Nisly, d/b/a Nisly Construction (Nisly Construction) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on June 21, 2019, by Kansas Corporation Commission Special Investigator Doug Handy. Penalties are assessed in accordance with the FY 2019 Uniform Penalty Assessment Matrix, approved by the Commission on August 7, 2018. For a full description of the penalty(s) and terms and obligations please refer to the Order attached to this notice.

**IF YOU ACCEPT THE PENALTY:** Nisly Construction has been assessed a \$3,950 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$3,950, through your personal account with the Kansas Corporation Commission's KTRAN system located at <https://puc.kcc.ks.gov/ktran/>. If you have not received a letter from the Transportation Division assigning you a PIN, please contact that Division at 785-271-3145. You must have an account through KTRAN to pay the penalty owed.

The attached Order requires a representative of Nisly Construction to attend a Commission-sponsored safety seminar within ninety (90) days from the date of the Order and to provide the undersigned Litigation Counsel with written proof of attendance. A schedule of dates and locations for safety seminars can be found at the Commission's website [http://www.kcc.state.ks.us/trans/safety\\_meetings.htm](http://www.kcc.state.ks.us/trans/safety_meetings.htm). The Order also requires your company to submit to one follow-up safety compliance review within 18 months from the date of the Order. Transportation Staff will contact your company at a later date to determine an appropriate time for this review.

**IF YOU CONTEST THE PENALTY ORDER: You have the right to request a hearing.** A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Nisly Construction must file, within fifteen (15) days from the date of service of this Order, the request for hearing with the Commission's electronic filing system found at <https://puc.kcc.ks.gov/e-filing/e-express/>, and mail a copy of the request for hearing to the undersigned at the above address. If you do not have access to the internet, you can mail an original and seven copies of the request to the Executive Director at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy to the undersigned Litigation Counsel. K.A.R. 82-1-215; K.S.A. 2018 Supp. 77-542.

**IF YOU FAIL TO ACT:** Failure to pay the penalty of \$3,950 within thirty (30) days from the date of service of the Penalty Order or failure to comply with the terms of the Order, or in the alternative, failure to provide a timely written request for a hearing, will result in the Order becoming final and may result in additional sanctions of suspension and/or revocation of your motor carrier operating authority.

Respectfully,

Ahsan A. Latif  
Litigation Counsel  
(785) 271-3118



to the regulation of such motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.

3. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

## **II. BACKGROUND**

4. Nisly Construction is a private motor carrier which primarily hauls general freight, logs, poles, beams, lumber, building materials, machinery, large objects and construction.

## **III. STATEMENT OF FACTS**

5. Pursuant to the jurisdiction and authority cited above, on June 21, 2019, Commission Staff (Staff) Special Investigator Doug Handy conducted a safety compliance review of the operations of Nisly Construction. A copy of the safety compliance review is included in this Penalty Order as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, the special investigator identified seven (7) violation(s) of the Motor Carrier Safety Regulations.

- a. On April 29, 2019, Nisly Construction required or permitted its driver, Brian J. Nisly, to operate a CDL-required commercial motor vehicle, a 2005 Dodge, VIN ending in 794116, GVWR 11,500 lbs., pulling a 1995 EHRL trailer, VIN ending in 11204, GVWR 24,000 lbs., in intrastate commerce from Partridge, Kansas to St. John, Kansas. This trip is evidenced by Driver/Vehicle Examination Report Number

KSHP04232741, dated April 29, 2019, a copy of which is attached hereto as Attachment “B” and is hereby incorporated by reference. At the time of this transportation, Nisly Construction did not have implemented an alcohol and controlled substance testing program for its CDL driver. The carrier’s failure to establish an alcohol and controlled substances testing program for its CDL driver that complies with the procedures established in 49 C.F.R. 382.105 as adopted by K.A.R. 82-4-3c is a violation of 49 C.F.R. 382.115(a), adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$350.

- b. During the transportation described in paragraph a, above, Nisly Construction failed to keep minimum records of inspection and maintenance on the commercial motor vehicles operated. The carrier’s failure to maintain the required records of vehicle inspection, maintenance, and repair on the commercial motor vehicles owned for 30 days is in violation of 49 C.F.R. 396.3(b), adopted by K.A.R. 82-4-3j, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$750.
- c. During the transportation described in paragraph a, above, Nisly Construction failed to obtain and document a successful periodic (annual) inspection on the commercial motor vehicles during the preceding 12-month period. The carrier’s failure to conduct periodic (annual) inspections on commercial motor vehicles is a violation of 49 C.F.R.

396.17(c), adopted by K.A.R. 82-4-3j, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$750.

- d. During the transportation described in paragraph a, above, Nisly Construction failed to maintain a driver qualification file with the required documentation on its CDL driver. The carrier's failure to maintain a driver qualification file is a violation of 49 C.F.R. 391.51(a), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$350.
- e. During the transportation described in paragraph a, above, Nisly Construction failed to have the commercial motor vehicle properly registered as required by the State of Kansas. The carrier's failure to obtain a commercial registration for its commercial motor vehicle is a violation of 49 C.F.R. 392.2 and K.S.A. 8-142, adopted by K.A.R. 82-4-3(h), and implemented by K.S.A. 66-1,129. Staff recommends a fine of \$500.
- f. During the transportation described in paragraph a, above, Nisly Construction did not have private carrier authority with the Kansas Corporation Commission. The carrier's commercial operations of motor vehicles prior to obtaining and maintaining proper Commission authority is a violation of K.S.A. 2018 Supp. 66-1,111 and 49 C.F.R. 392.2, adopted by K.A.R. 82-4-3h, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$500.

g. During the transportation described in paragraph a, above, Nisly Construction failed to require driver Brian J. Nisly to prepare a record of duty status. The special investigator discovered 30 violations of this type. The carrier's failure to require its drivers to keep records of duty status for each 24-hour period, or in the alternative to maintain and retain time records described in 49 C.F.R. 395.1(e) under the short haul exemption, using the method described in 49 C.F.R. 395.8(a), and to submit the original record to the motor carrier within 13 days of creation is a violation of 49 C.F.R. 395.8(a), adopted by K.A.R. 82-4-3a, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$750.

#### **IV. STAFF'S RECOMMENDATIONS**

6. Based upon the available facts, Staff recommends the Commission finds Nisly Construction committed seven (7) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

7. Additionally, Staff recommends a civil penalty of \$3,950 for seven (7) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

8. Staff further recommends that a representative from Nisly Construction be required to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and provide Litigation Counsel with written proof of attendance. A schedule of the dates and locations for safety seminars can be found on the Commission's website at [http://kcc.ks.gov/trans/safety\\_meetings.htm](http://kcc.ks.gov/trans/safety_meetings.htm).

9. Finally, Staff recommends that Nisly Construction submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

## **V. CONCLUSIONS OF LAW**

10. The Commission finds it has jurisdiction over Nisly Construction because it is a motor carrier as defined in K.A.R. 82-4-1.

11. The Commission finds Nisly Construction committed seven (7) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

### **THE COMMISSION THEREFORE ORDERS THAT:**

A. Brian J. Nisly, d/b/a Nisly Construction, of Partridge, KS is hereby assessed a \$3,950 civil penalty for seven (7) violation(s) of Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

B. Nisly Construction is hereby ordered to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and is to provide Litigation Counsel with written proof of attendance.

C. Carrier is hereby ordered to submit a written, comprehensive corrective action plan (CAP) to Transportation Staff within thirty (30) days of the date of this order.

D. Nisly Construction is ordered to submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the carrier to set up the appointment.

E. Pursuant to K.S.A. 2018 Supp. 77-537 and K.S.A. 77-542, any party may request a hearing on the above issue(s) by submitting a written request setting forth the specific grounds upon which relief is sought. The request may be electronically filed with the Commission's electronic filing system at <https://puc.kcc.ks.gov/e-filing/e-express/>, within fifteen (15) days from the date of service of this Order, and a copy of the request mailed to the Litigation Division. If you do not have access to the internet, you can mail an original and seven copies of the request to the Executive Director at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy of the request to Litigation Counsel. A hearing will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Nisly Construction's right to a hearing, and this Penalty Order will become a Final Order assessing a \$3,950 civil penalty against Nisly Construction, and ordering a representative from Nisly Construction to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order and provide Litigation Counsel with written proof of attendance, and to submit to a safety compliance review within 18 months from the date of this Order.

F. If a request for hearing is filed, attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding \$500, a corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination that such waiver is in the public interest. K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a). For civil penalties less than \$500, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2018 Supp. 66-1,142b(e) and amendments thereto.

G. If you do not request a hearing, the payment of the civil penalty of \$3,950 is due in thirty (30) days from the date of service of this Order. Payment of \$3,950 must be made



through your personal account with the Kansas Corporation Commission's KTRAN system located at <https://puc.kcc.ks.gov/ktran/>. You must have an account through KTRAN to pay the penalty.

H. Failure to pay the \$3,950 civil penalty within thirty (30) days from the date of service of this Penalty Order, *see* K.S.A. 66-1,105, and/or failure to comply with the provisions of this Order, may result in suspension of Nisly Construction's motor carrier operating authority without further notice. Additionally, the Commission may impose further sanctions to include, but not limited to, the issuance and enforcement of revocation of authority and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

I. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders, as necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner


Dated: 07/11/2019



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Lynn M. Retz  
Executive Director

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**ATTACHMENT "A"**

	US DOT # 0000000	Legal: BRIAN J NISLY Operating (DBA): NISLY CONSTRUCTION	
	MC/MX #:	State #: 0000000	Federal Tax ID: [REDACTED] (EIN)
Review Type: Compliance Review (CR)		Territory: F	
Scope: Principal Office	Location of Review/Audit: Company facility in the U. S.		
Operation Types		Business: Individual	
Carrier: N/A	Interstate	HM	Gross Revenue: [REDACTED] for year ending: 12/31/2018
Shipper: N/A	Intrastate	N/A	
Cargo Tank: N/A			
<b>Company Physical Address:</b>			
9512 S Salem Rd Partridge, KS 67566			
Contact Name:	Brian J. Nisly		
Phone numbers: (1) [REDACTED]	Fax		
E-Mail Address:	[REDACTED]		
<b>Company Mailing Address:</b>			
9512 S Salem Rd Partridge, KS 67566			
<b>Carrier Classification</b>			
Private Property			
<b>Cargo Classification</b>			
General Freight	Logs, Poles, Beams, Lumber		Building Materials
Machinery, Large Objects	Construction		
<b>Hazardous Materials</b>			
9 Miscellaneous HM	Carried	Non-Bulk	
<b>Equipment</b>			
	Owned	Term Leased	Trip Leased
Truck	1	0	0
Trailer	1	0	0
Power units used in the U.S.: 1			
Percentage of time used in the U.S.: 100			
Does carrier transport placardable quantities of HM?		No	
Is an HM Permit required?		N/A	
<b>Driver Information</b>			
	Inter	Intra	Average trip leased drivers/month: 0
< 100 Miles:		1	Total Drivers: 1
>= 100 Miles:			CDL Drivers: 1





**NISLY CONSTRUCTION (BRIAN J NISLY dba)**  
U.S. DOT #: 0000000

State #: 0000000

Review Date:  
05/21/2019

**Part A**

QUESTIONS regarding this report or the Federal Motor Carrier Safety or Hazardous Materials rules may be addressed to the Office of Motor Carriers at:

**This report will be used to assess your safety compliance.**

**Person(s) Interviewed**

**Name:** Brian J. Nisly

**Title:** Owner

**Name:**

**Title:**





**NISLY CONSTRUCTION (BRIAN J NISLY dba)**  
U.S. DOT #: 0000000

State #: 0000000

Review Date:  
05/21/2019

**Part B Violations**

1 FEDERAL	Primary: 382.115(a)	Discovered 1	Checked 1	Drivers/Vehicles In Violation	Checked
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**Description**

Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations.

**Example**

Driver Name: Brian Nisly  
Trip Date: 04/29/19  
2005 Dodge, Ks. 720HDW, VIN # [REDACTED] 794116, GVWR 11,500  
1995 EHRL, Ks. 544JWW, VIN # [REDACTED] 112104, GVWR 24,000

Carrier operated in Intrastate Commerce a commercial motor vehicle with a GCWR of 26,001 or more from Partridge, Ks. to St. John, Ks.

2 FEDERAL	Primary: 390.15(b)	Discovered 1	Checked 1	Drivers/Vehicles In Violation	Checked
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**Description**

Failing to maintain, for a period of three years after an accident occurs, an accident register.

**Example**

Driver Name: Brian Nisly  
Trip Date: 04/29/19  
Ks. Level 1 Roadside Inspection: #KSHP04232741 (Post-Accident)  
Accident report #KS2019006427

Carrier was operating in Intrastate Commerce transporting Iron beams from Partridge, Ks. to a construction site South of St. John, Ks. Was involved in a fatality accident on the return trip to Partridge, Ks near Sylvia, Ks. The accident resulted in a DOT Recordable accident with the driver of the other vehicle being fatally wounded.

3 FEDERAL	Primary: 390.21(b)(1)	Discovered 1	Checked 1	Drivers/Vehicles In Violation	Checked
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**Description**

Failing to mark a commercial motor vehicle with the legal name or a single trade name.

**Example**

Driver Name: Brian Nisly  
Trip Date: 04/29/19  
2005 Dodge, Ks. 720HDW, VIN # [REDACTED] 794116, GVWR 11,500  
1995 EHRL, Ks. 544JWW, VIN # [REDACTED] 12104, GVWR 24,000

Carrier operated the commerce motor vehicle in Intrastate commerce without having the commercial motor vehicle properly marked as required by the regulations.





**NISLY CONSTRUCTION (BRIAN J NISLY dba)**  
U.S. DOT #: 0000000

State #: 0000000

Review Date:  
05/21/2019

**Part B Violations**

4 FEDERAL	Primary: 390.19T(a)(1)	Discovered 1	Checked 1	Drivers/Vehicles In Violation	Checked
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**Description**

Failing to file a Motor Carrier Identification Report, Form MCS-150 (Motor Carrier)

Driver Name: Brian Nisly

Trip Date: 04/29/19

Ks. Level 1 Roadside Inspection: #KSHP04232741 (Post-Accident)

Accident report #KS2019006427

Carrier was operating in Intrastate Commerce transporting Iron beams from Partridge, Ks. to a construction site South of St. John, Ks. Was involved in a fatality accident on the return trip to Partridge, Ks near Sylvia, Ks. The accident resulted in a DOT Recordable accident with the driver of the other vehicle being fatally wounded.

5 STATE	Primary: 391.51(a) CFR Equivalent: 391.51(a)	Discovered 1	Checked 1	Drivers/Vehicles In Violation	Checked 1
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**Description**

Failing to maintain driver qualification file on each driver employed.

**Example**

Driver Name: Brian Nisly

Trip Date: 04/29/19

Ks. Level 1 Roadside Inspection: #KSHP04232741 (Post-Accident)

Accident report #KS2019006427

Carrier was operating in Intrastate Commerce transporting Iron beams from Partridge, Ks. to a construction site South of St. John, Ks. Was involved in a fatality accident on the return trip to Partridge, Ks near Sylvia, Ks.

6 STATE	Primary: 392.2 Secondary: K.S.A.8-142 CFR Equivalent: 392.2	Discovered 1	Checked 1	Drivers/Vehicles In Violation	Checked 1
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**Description**

To operate, or for the owner thereof knowingly to permit the operation, upon a highway of any vehicle, as defined in K.S.A. 8-126, and amendments thereto, which is not registered, or for which a certificate of title has not been issued or which does not have attached thereto and displayed thereon the license plate or plates assigned thereto by the division for the current registration year,

**Example**

Driver Name: Brian Nisly

Trip Date: 04/29/19

Ks. Level 1 Roadside Inspection: #KSHP04232741 (Post-Accident)

Accident report #KS2019006427

Carrier was operating in Intrastate Commerce transporting Iron beams from Partridge, Ks. to a construction site South of St. John, Ks. Was involved in a fatality accident on the return trip to Partridge, Ks near Sylvia, Ks.





NISLY CONSTRUCTION (BRIAN J NISLY dba)

U.S. DOT #: 0000000

State #: 0000000

Review Date:

05/21/2019

Part B Violations

7 STATE	Primary: 392.2 Secondary: KSA 66-1,112g	Discovered 1	Checked 1	Drivers/Vehicles In Violation	Checked
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Description

Operating a commercial motor vehicle without KCC private carrier (PRI-D) operating Authority.

Driver Name: Brian Nisly

Trip Date: 04/29/19

Ks. Level 1 Roadside Inspection: #KSHP04232741 (Post-Accident)

Accident report #KS2019006427

2005 Dodge Ks. 720HDW VIN # [REDACTED] 794116, GVWR 11,500

1995 EHRL Ks. 544 JWW VIN # [REDACTED] 112104, GVWR 24,000

Carrier was operating in Intrastate Commerce transporting Iron beams from Partridge, Ks. to a construction site South of St. John, Ks. Was involved in a fatality accident on the return trip to Partridge, Ks near Sylvia, Ks.

8 STATE	Primary: 392.9b(a) CFR Equivalent: 392.9b(a)	Discovered 1	Checked 1	Drivers/Vehicles In Violation	Checked
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Description

Operating a commercial motor vehicle in Intrastate commerce without an active USDOT Number.

Example

Driver Name: Brian Nisly

Trip Date: 04/29/19

Ks. Level 1 Roadside Inspection: #KSHP04232741 (Post-Accident)

Accident report #KS2019006427

Carrier was operating in Intrastate Commerce transporting Iron beams from Partridge, Ks. to a construction site South of St. John, Ks. Was involved in a fatality accident on the return trip to Partridge, Ks near Sylvia, Ks. The accident resulted in a DOT Recordable accident with the driver of the other vehicle being fatally wounded.

9 STATE	Primary: 395.8(a) CFR Equivalent: 395.8(a)	Discovered 30	Checked 30	Drivers/Vehicles In Violation	Checked
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Description

Failing to require driver to make a record of duty status.

Example

Driver Name: Brian Nisly

Trip Date: 04/29/19

Ks. Level 1 Roadside Inspection: #KSHP04232741 (Post-Accident)

Accident report #KS2019006427

Carrier was operating in Intrastate Commerce transporting Iron beams from Partridge, Ks. to a construction site South of St. John, Ks. Was involved in a fatality accident on the return trip to Partridge, Ks near Sylvia, Ks. The accident resulted in a DOT Recordable accident with the driver of the other vehicle being fatally wounded.

Carrier operates within a 100 mile radius of Partridge, Ks. The carrier failed to provide or complete time records that met the requirements of the exemption. There were no records of duty status records completed and provided during this investigation.





**NISLY CONSTRUCTION (BRIAN J NISLY dba)**  
U.S. DOT #: 0000000

State #: 0000000

Review Date:  
05/21/2019

**Part B Violations**

10 STATE	Primary: 396.3(b) CFR Equivalent: 396.3(b)	Discovered 2	Checked 2	Drivers/Vehicles In Violation 2	Checked 2
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**Description**

Failing to keep minimum records of inspection and vehicle maintenance.

Driver Name: Brian Nisly

Trip Date: 04/29/19

Ks. Level 1 Roadside Inspection: #KSHP04232741 (Post-Accident)

Accident report #KS2019006427

2005 Dodge Ks. 720HDW VIN # [REDACTED] 794116, GVWR 11,500

1995 EHRL Ks. 544 JWW VIN # [REDACTED] 112104, GVWR 24,000

Carrier was operating in Intrastate Commerce transporting Iron beams from Partridge, Ks. to a construction site South of St. John, Ks. Was involved in a fatality accident on the return trip to Partridge, Ks near Sylvia, Ks.

Carrier had no record of the maintenance that had been performed on the CMV's.

11 STATE	Primary: 396.17(a) CFR Equivalent: 396.17(a)	Discovered 2	Checked 2	Drivers/Vehicles In Violation 2	Checked 2
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**Description**

Using a commercial motor vehicle not periodically inspected.

**Example**

Driver Name: Brian Nisly

Trip Date: 04/29/19

Ks. Level 1 Roadside Inspection: #KSHP04232741 (Post-Accident)

Accident report #KS2019006427

2005 Dodge Ks. 720HDW VIN # [REDACTED] 794116, GVWR 11,500

1995 EHRL Ks. 544 JWW VIN # [REDACTED] 112104, GVWR 24,000

Carrier was operating in Intrastate Commerce transporting Iron beams from Partridge, Ks. to a construction site South of St. John, Ks. Was involved in a fatality accident on the return trip to Partridge, Ks near Sylvia, Ks.

Carrier had no record of the periodic inspection of the CMV's had ever been conducted.

**Safety Fitness Rating Information:**

Total Miles Operated 30,000  
Recordable Accidents 1

OOS Vehicle (CR): 0  
Number of Vehicle Inspected (CR): 0  
OOS Vehicle (MCMIS): 0  
Number of Vehicles Inspected (MCMIS): 0

Your proposed safety rating is :

**This Review is not Rated.**







**NISLY CONSTRUCTION (BRIAN J NISLY dba)**  
 U.S. DOT #: 0000000

State #: 0000000

Review Date:  
 05/21/2019

**Part B Requirements and/or Recommendations**

1. Copies of the regulations, forms, interpretations, and manuals are available from a variety of sources. Check the FMCSA website for a current list of suppliers. [www.fmcsa.dot.gov/safety-security/eta/index.htm](http://www.fmcsa.dot.gov/safety-security/eta/index.htm)
2. Cease all interstate/intrastate or foreign transportation until properly registered with the Federal Motor Carrier Safety Administration.
3. If you or your drivers are involved in a recordable commercial motor vehicle accident, you must maintain an accident file for three years from the date of the accident.
4. If you want some drivers to use the 100 air-mile radius exemption, make sure that the drivers meet all terms of the exemption, including being released from duty no more than 12 hours from when they report for duty. Logs must be prepared if a driver does not meet the 12 hour requirement.
5. Establish a systematic maintenance records program for all vehicles. Maintain a complete file for each subject vehicle, recording all repair, maintenance and inspection operations performed.
6. HOS COMPLIANCE BASIC PROCESS BREAKDOWN: Policies and Procedures

**DESCRIPTION OF PROCESS BREAKDOWN:** Brian J. Nisly/DBA Nisly Construction failed to complete a time record that met the 100 air mile exemption. There were no records of duty status records completed when exemption was not met as required by the regulations.

**BASIC SPECIFIC RECOMMENDED REMEDIES**

**Implement Safety Improvement Practices:** The following are recommended practices related to Policies and Procedures.

- Develop a policy and procedure describing how management will monitor and track logs for falsification.
- Establish a policy that prohibits dispatchers from assigning a load to drivers without hours available to complete the load on time.
- Develop a policy stating that drivers should not violate their Hours-of-Service (HOS) Out-of-Service (OOS) order under any circumstances, and immediately contact the carrier when a driver is placed OOS.
- Develop a policy requiring drivers to report their available hours to dispatch during "check-in" calls.
- Develop policies and procedures for ensuring proper retention of Record of Duty Status (RODS) according to regulations.
- Establish a policy requiring drivers to submit copies of all roadside inspections to carrier management within 24 hours.
- Develop a policy stating that drivers are required to submit all Records of Duty Status (RODS) and supporting documentation, such as expense receipts, within 13 days of the end of the trip.
- Establish a policy stating that drivers are required to check with their supervisor, manager, or dispatcher to review their "fit-for-duty" status before starting a job, and that drivers who are ill to the extent that their ability and/or alertness is impaired are prohibited from working on safety-sensitive assignments.
- Develop a written and progressive disciplinary policy focused on taking corrective action to ensure drivers comply with regulations and policies. A progressive disciplinary policy could include, among other things, written warnings, suspensions, or work restrictions, monetary penalties, and termination. This policy should also specify consequences for any carrier official who knowingly and willfully allows Hours-of-Service (HOS) violations.

**Seek Out Resources:**

- You are encouraged to review your company's record at the following website: <http://ai.fmcsa.dot.gov/SMS>. You will need to use your PIN Number that has been provided by the FMCSA.
- Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry.

7. VEHICLE MAINTENANCE BASIC - INSPECTION-REPAIR-MAINTENANCE PROCESS BREAKDOWN: Policies and Procedures





**NISLY CONSTRUCTION (BRIAN J NISLY dba)**  
 U.S. DOT #: 0000000

State #: 0000000

Review Date:  
 05/21/2019

**Part B Requirements and/or Recommendations**

**DESCRIPTION OF PROCESS BREAKDOWN:** Brian J. Nisly/DBA Nisly Construction failed to have maintenance records on each vehicle.

**BASIC SPECIFIC RECOMMENDED REMEDIES**

**Implement Safety Improvement Practices:** The following are recommended practices related to Policies and Procedures.

- Develop a system of preventive maintenance for compliant, safe, and efficient fleet operations, including a schedule for periodic maintenance, inspection, and recordkeeping. This system should be attuned to manufacturer recommendations, the carrier's own experience, and regulatory requirements.
- Develop a procedure ensuring that vehicle defects that impact safety and/or safety compliance are reported, repaired, and certified before the vehicle is operated.
- Develop procedures to ensure that management is notified of vehicle defects through the use of Driver Vehicle Inspection Records (DVIRs) and other communication channels, such as driver call-in and e-mail from mechanics.
- Develop a policy ensuring that drivers are qualified to complete thorough and timely Driver Vehicle Inspection Records (DVIRs) by the end of the day of the trip and prior to a subsequent assignment.
- Establish a policy requiring drivers to submit copies of all roadside inspections to carrier management within 24 hours.
- Develop policies and procedures requiring drivers to immediately notify appropriate management of any roadside vehicle Out-of-Service (OOS) order.
- Develop a written and progressive disciplinary policy focused on taking corrective action to ensure drivers comply with regulations and policies. A progressive disciplinary policy could include, among other things, written warnings, suspensions, or work restrictions, monetary penalties, and termination. This policy should also specify consequences for any carrier official who knowingly and willfully allows vehicle maintenance violations.

**Seek Out Resources:**

- You are encouraged to review your company's record at the following website: <http://ai.fmcsa.dot.gov/SMS>. You will need to use your PIN Number that has been provided by the FMCSA.
- Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry.

**8. CONTROLLED SUBSTANCES AND ALCOHOL BASIC PROCESS BREAKDOWN:** Policies and Procedures

**DESCRIPTION OF PROCESS BREAKDOWN:** Brian J. Nisly/DBA Nisly Construction failed to have implemented an alcohol/controlled substance testing program.

**BASIC SPECIFIC RECOMMENDED REMEDIES**

**Implement Safety Improvement Practices:** The following are recommended practices related to Policies and Procedures.

- Develop a written company policy incorporating by reference all regulations regarding controlled substances and alcohol use, testing, training, and records retention for all employees.
- Develop a policy requiring drivers to submit copies of all citations for moving violations to carrier management within 24 hours.
- Establish a process to ensure that drivers who are randomly tested can be immediately removed if they are found to be positive and that they do not return to safety-sensitive duties until they have complied with the "return-to-duty" process.
- Establish written policies and procedures that promote, verify, and enforce adherence to all controlled-substance and alcohol rules and regulations. Procedures should be tailored to company operations and should provide specific checks and guidelines for interacting with a consortium, if applicable.
- Establish a process to ensure that test results are properly safeguarded from unauthorized disclosure to prospective employers without specific written consent and from disclosure under any circumstances to insurance companies and other nonqualified parties, in accordance with regulations.
- Develop a policy to ensure that all alcohol testing is conducted immediately before or after the period that employees are performing a safety-sensitive function. Drivers can be tested on their day off only for controlled substances. Once notified of their selection, drivers must proceed immediately to the testing facility. If a driver





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**Part B Requirements and/or Recommendations**

refuses to go, this should be considered as equivalent to a positive result.

- Consider developing a driver selection protocol that uses valid random-number-generator software on a monthly basis to select, by driver identification number, 5 to 8 percent of drivers for controlled-substance testing and 2 to 5 percent for alcohol testing. This will ensure selection of 50 percent of drivers for controlled-substances testing and 10 percent for alcohol testing per year, given fluctuations in the driver workforce over the course of the year.
- Develop a written and progressive disciplinary policy focused on taking corrective action to ensure drivers comply with regulations and policies. A progressive disciplinary policy could include, among other things, written warnings, suspensions, or work restrictions, monetary penalties, and termination. This policy should also specify consequences for any carrier official who knowingly and willfully allows controlled-substance and alcohol violations.

**Seek Out Resources:**

- You are encouraged to review your company's record at the following website: <http://ai.fmcsa.dot.gov/SMS>. You will need to use your PIN Number that has been provided by the FMCSA.
- Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry.

**9. CRASH INDICATOR BASIC PROCESS BREAKDOWN: Policies and Procedures**

**DESCRIPTION OF PROCESS BREAKDOWN:** Brian J. Nisly/DBA Nisly Construction failed to have an accident register at the time of this investigation following a DOT Recordable accident that resulted in a fatality.

**BASIC SPECIFIC RECOMMENDED REMEDIES**

**Implement Safety Improvement Practices:** The following are recommended practices related to Policies and Procedures.

- Develop a policy stating that drivers are responsible for adhering to all safe-driving-related Federal, State, and local laws and ordinances, including the wearing of seatbelts.
- Develop a policy requiring drivers to report and submit copies of all roadside inspections, moving violation citations, and crash involvements to carrier management within 24 hours.
- Develop policies and procedures that ensure drivers practice and apply safe, defensive driving techniques and skills.
- Develop a policy that prohibits passengers from being on board non-passenger vehicles without management approval.
- Develop a procedure ensuring that vehicle defects that impact safety and/or compliance are reported, repaired, and certified before the vehicle is operated.
- Develop a written and progressive disciplinary policy focused on taking corrective action to ensure drivers comply with regulations and policies. A progressive disciplinary policy could include, among other things, written warnings, suspensions or work restrictions, monetary penalties, and termination.

**Seek Out Resources:**

- You are encouraged to review your company's record at the following website: <http://ai.fmcsa.dot.gov/SMS>. You will need to use your PIN Number that has been provided by the FMCSA.
- Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry.

**10. DRIVER FITNESS BASIC PROCESS BREAKDOWN: Qualification and Hiring**

**DESCRIPTION OF PROCESS BREAKDOWN:** Brian J. Nisly/DBA Nisly Construction failed to have a driver qualification file on each driver as required by the regulations.

**BASIC SPECIFIC RECOMMENDED REMEDIES**

**Implement Safety Improvement Practices:** The following are recommended practices related to Qualification and Hiring.

- Ensure that Motor Vehicle Records (MVRs) from States issuing Commercial Driver's Licenses (CDLs) are reviewed for driver-fitness-related violations of all prospective drivers for the last three years.





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- Ensure that drivers are qualified by querying applicants, checking with previous employers and references, and obtaining necessary documents regarding driver fitness, such as those pertaining to previous violations, Commercial Driver's License (CDL), medical qualifications, operational qualifications from training, and relevant experience.
- Review and evaluate gaps in employment, frequent job changes, incomplete applications, within-company applications and reassignments, operational limitations such as those pertaining to long-combination vehicles (LCVs) and HAZMAT, physical impairments, and controlled-substance and alcohol involvement.
- Require that drivers fill out the long form for the medical card and be examined by the carrier's preferred doctor to ensure that their medical qualifications are accurate.
- Ensure that the employment application captures all information required by the Federal Motor Carrier Safety Regulations (FMCSRs), such as whether the driver can handle the physical requirements of the job.
- Enhance the recruitment process to identify and attract qualified applicants for the positions of safety director, dispatcher, and driver by using outside resources such as industry affiliations, recruiters, and consultants for employee searches and referrals.

### Seek Out Resources:

- You are encouraged to review your company's record at the following website: <http://ai.fmcsa.dot.gov/SMS>. You will need to use your PIN Number that has been provided by the FMCSA.
- Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry.

11. Intrastate operation beyond exempt radius in Kansas requires carrier to obtain PRI-D operating authority from Kansas Corporation Commission.
12. Ensure that all commercial motor vehicles, which would include trailers as well as power units, have a current Annual Inspection as required by 396.17. A motor carrier shall not use a commercial motor vehicle unless each component has passed an inspection at least once during the preceding 12 months. The inspection must identify the vehicle, the date of the inspection, and the name and address of the motor carrier or entity where the report is maintained.
13. This report contains citations of regulations that are deemed serious in nature and could result in penalties against your company and/or your drivers.
14. For all Investigations:
  - **Understand Why Compliance Saves Time and Money:** Compliance with FMCSRs will not only save lives, but also saves your business time and money. Tracking how much your business spends on non-compliance activities can help you understand the many benefits of compliance to your business and why safety is good business.
  - **Document and Follow Through on Action Plans:** Document and follow through on action plans to ensure the actions you are taking are creating improvement in safety management and compliance.
  - **NOTICE:** A pattern and/or repeated violations of the same or related acute or critical regulations (violations of the same Part in Title 49, Code of Federal Regulations) will cause the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during any eligible investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period.
  - **NOTICE:** 49 CFR Part 391.23 requires prospective employers to, at a minimum, investigate a driver's employment information, crash record, and alcohol and controlled substances history from all employers the driver worked for within the previous 3 years.

The Pre-Employment Screening Program (PSP) is a screening tool that assists motor carriers in investigating crash





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history and roadside safety performance of prospective drivers. The PSP allows motor carriers to purchase 5 years of crash data and 3 years of roadside inspection data from the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System (MCMIS). Records are available 24 hours a day via Web request. Motor carriers should visit the following website for more information:  
<http://www.psp.fmcsa.dot.gov/Pages/default.aspx>

- All motor carriers and truck drivers are needed to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities.

For all Investigations that could result in a Penalty Order:

- PLEASE NOTE: The violations discovered during this compliance review may affect the civil penalty proposed in any subsequent Penalty Order. In addition, your history of prior violations of the Federal Motor Carrier Safety Regulations, Federal Hazardous Material Regulations or the Federal Motor Carrier Commercial Regulations may also affect the civil penalty proposed in any subsequent Penalty Order. Your signature for receipt of this report acknowledges your understanding that the violations discovered by the KCC during this review may be used to calculate any civil penalty proposed as a result of this review. Your signature is not an admission of the violations identified.

For all Investigations that did not result in a Cooperative Safety Plan:

The KCC requires that you prepare a corrective action plan (CAP), addressing the measures taken to correct all the violations identified within this report. Submit this letter within 30 days outlining the carrier's updated changes to their policies and procedures regarding all listed violations. Explain in detail how, as a carrier representative, you will rectify these deficiencies and prevent their reoccurrence going forward. Include any supporting documentation and evidence as indicated in the recommendations above, (example: vehicle inspections performed, proof of drug and alcohol testing in place, etc.) necessary to prove that corrective action has been taken. Submit the letter along with copies of your supporting evidence to:  
e-mail: [g.davenport@kcc.ks.gov](mailto:g.davenport@kcc.ks.gov)  
FAX: 785-271-3124  
or mail:

Kansas Corporation Commission  
Attn: Gary Davenport  
1500 SW Arrowhead Rd  
Topeka, KS 66604-4027

15. I understand that monetary penalties will be assessed as a result of violations found in this compliance investigation. The penalty schedule can be found at this web site: [http://kcc.ks.gov/trans.penalty\\_assessment\\_table.htm](http://kcc.ks.gov/trans.penalty_assessment_table.htm)

Carrier Name

Carrier Official Name

Date





**ATTACHMENT "B"**



**Kansas Highway Patrol**  
**MOTOR CARRIER SAFETY ASSISTANCE**  
 700 SW Jackson, Ste 704  
 Topeka, KS 66603  
 Phone: (785)296-7189 Fax: (785)296-2858

**Report Number: KSHP04232741**  
**Inspection Date: 04/29/2019**  
**Start: 1:37 PM CT End: 5:00 PM CT**  
**Inspection Level: I - Full**  
**HM Inspection Type: None**

**BRIAN J NISLY DBA: NISLY CONSTRUCTION**      **Driver: NISLY, BRIAN J**  
 9512 S SALEM RD      **License#:** [REDACTED]      **State: KS**  
 PARTRIDGE, KS, 675678      **Date of Birth:** [REDACTED]  
**USDOT:**      **Phone#:** [REDACTED]      **CoDriver:**  
**MC/MX#:**      **Fax#:** [REDACTED]      **License#:**      **State:**  
**State#:**      **Date of Birth:**  
**Location: RENO COUNTY - 155**      **Milepost: 212 Shipper: N/A**  
**Highway: US-50**      **Origin: SYLVIA,KS**      **Bill of Lading: NONE**  
**County: RENO**      **Destination: PARTRIDGE,KS**      **Cargo: DUNANGE**

**VEHICLE IDENTIFICATION**

Unit	Type	Make	Year	State	Plate	Equipment ID	VIN	GVWR	CVSA #	Issued #	QOS Sticker
1	TR	DODG	2005	KS	720HDW		[REDACTED]	794116 115000			151739
2	ST	EHRL	1995	KS	544JWW		[REDACTED]	12104 24000			151740

**BRAKE ADJUSTMENTS**

Axle #	1	2	3	4
Right	N/A	N/A	N/A	N/A
Left	N/A	N/A	N/A	N/A
Chamber	HYDR	HYDR	ELEC	ELEC

**VIOLATIONS**

Section	Type	Unit	QOS	Citation #	Verify Crash	Violations Discovered
391.41A	F	D	N		N	No medical certificate in driver's possession
392.16	F	D	N		N	Falling to use seat belt while operating a CMV
392.98A- INACTIVEINTRA	F	1	N		N	INTRASTATE CARRIER Operating a commercial motor vehicle in intrastate commerce without an active USDOT number when required.
390.21B	F	1	N		N	Carrier name and/or USDOT Number not displayed as required: NO CARRIER NAME DISPLAYED
396.17C	F	1	N		N	Operating a CMV without proof of a periodic inspection
393.95A	F	1	N		N	No/discharged/unsecured fire extinguisher: NONE
393.95F	F	1	N		N	No / insufficient warning devices: NONE
393.75A	F	1	Y		U	Flat tire or fabric exposed: AXLE 1 RIGHT SIDE - FLAT; HOLE IN SIDEWALL
393.205A	F	1	Y		U	Wheel/rim cracked or broken: AXLE 1 RIGHT
393.9TS	F	1	N		N	Inoperative turn signal: FRONT RIGHT SIDE
393.60D	F	1	N		N	Glazing permits < 70% of light: MEASURED 21%
396.17C	F	2	N		N	Operating a CMV without proof of a periodic inspection: NONE
393.75C	F	2	N		N	Tire-other tread depth less than 2/32 of inch measured in a major tread groove: AXLE 4 RIGHT OUTSIDE TIRE LESS THAN 2/32; INSIDE TREAD GROOVE UNMEASURABLE MIDDLE TREAD GROOVE LESS THAN 2/32
393.43	F	2	Y		U	No/improper breakaway or emergency braking: BREAKAWAY MISSING PIN; NOT CONNECTED TO TRUCK
392.2MI	F	2	N		N	Miscellaneous Traffic Law Violation: SAFETY CHAINS NOT ATTACHED TO TRUCK
393.9	F	2	N		N	Inoperable Required Lamp: SIDE MARKER / CLEARANCE / IDENTIFICATION / TAIL LIGHTS INOPERABLE (RIGHT SIDE ID LIGHT BROKEN / MISSING)
393.9TS	F	2	Y		U	Inoperative turn signal: INOPERABLE
393.25F	F	2	Y		U	Stop lamp violations: BOTH SIDES INOPERABLE
393.70A	F	2	Y		U	Defective coupling device-Improper tracking: ATTACHEMENT BENT

**HazMat: No HM transported**

**Placard:**

**Cargo Tank:**

Special Checks:	Alcohol/Controlled Substance Check	Traffic Enforcement	Post Crash Inspection
	Conducted by Local Jurisdiction	PASA Conducted Inspection	PBBT Inspection
	Size and Weight Enforcement	Drug Interdiction Search	
	eScreen Inspection		



ACCIDENT

DRIVER/VEHICLE EXAMINATION REPORT

inSPECT 1.102.1



Kansas Highway Patrol
MOTOR CARRIER SAFETY ASSISTANCE
700 SW Jackson, Ste 704
Topeka, KS 66603
Phone: (785)296-7189 Fax: (785)296-2858

Report Number: KSHP04232741
Inspection Date: 04/29/2019
Start: 1:37 PM CT End: 5:00 PM CT
Inspection Level: I - Full
HM Inspection Type: None

Pursuant to the authority contained in Title 49, CFR; K.S.A. 66-1, 129, K.C.C. Reg. 82-4-3, I hereby declare the above marked unit(s) as "OUT OF SERVICE." No person and/or carrier shall permit and/or require the removal of the "OUT OF SERVICE" stickers or the operation of the motor vehicle until ALL out of service defects have been corrected. This Out of Service condition may result in the assessment of a Civil Penalty being issued against the carrier indicated on this report. Driver Initials: \_\_\_\_\_

\* NOTE TO MECHANIC: The undersigned certifies that all mechanical defects listed on this report HAVE BEEN CORRECTED at the time of signature.
Signature Of Repairer X: \_\_\_\_\_ Facility: \_\_\_\_\_ Date: \_\_\_\_\_

DRIVER: This form is to be sent to the carrier identified on this report within 24 hours of receipt.
MOTOR CARRIER CERTIFICATION: All defects identified on this report must be corrected or acknowledged PRIOR TO RE-DISPATCH, and then certified by a responsible carrier official who must sign below. RETURN THIS FORM WITHIN 15 DAYS to the Motor Carrier Division of the Kansas Highway Patrol at the address listed at the top of this form. If no violations were discovered, you are not required to sign and return a copy.

NOTE: Challenges to violations may be submitted through the Federal Motor Carrier Safety Administration (FMCSA)'s Data Q Challenge process, at https://dataqs.fmcsa.dot.gov
Signature Of Motor Carrier X: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Report Prepared By: M. Mullen
Badge #: 0423

Copy Received By: BRIAN NISLY

X

X





**CERTIFICATE OF SERVICE**

20-TRAM-009-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail/hand delivered on 07/12/2019.

BRIAN J. NISLY, OWNER  
BRIAN J. NISLY  
D/B/A NISLY CONSTRUCTION  
9512 S SALEM RD  
PARTRIDGE, KS 67566  
briannisly@gmail.com

AHSAN LATIF, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3354  
a.latif@kcc.ks.gov

/S/ DeeAnn Shupe  
\_\_\_\_\_  
DeeAnn Shupe