



# DUMP TRUCK CARRIERS CONFERENCE

NEWSLETTER

VOL. 59

April 2013

## MORE PARAPROSDOKIANS

*(Winston Churchill loved them) - figures of speech in which the latter part of a sentence or phrase is surprising or unexpected; frequently humorous.)*

1. Where there's a will, I want to be in it.
2. The last thing I want to do is hurt you. But it's still on my list.
3. Since light travels faster than sound, some people appear bright until you hear them speak.
4. We never really grow up; we only learn how to act in public.
5. Knowledge is knowing a tomato is a fruit. Wisdom is not putting it in a fruit salad.
6. They begin the evening news with "Good Evening," then proceed to tell you why it isn't.
7. To steal ideas from one person is plagiarism. To steal from many is research.
8. Women will never be equal to men until they can walk down the street with a bald head and a beer gut, and still think they are sexy.
9. Behind every successful man is his woman. Behind the fall of a successful man is usually another woman.
10. There's a fine line between cuddling and holding someone down so they can't get away.

11. You're never too old to learn something stupid.
12. To be sure of hitting the target, shoot first and call whatever you hit the target.
13. Going to church doesn't make you a Christian any more than standing in a garage makes you a car. Amen.

## DID YOU KNOW? (DOT Guidance)

**Q:** Are carriers liable for the actions of their employees even though the carrier contends that it did not require or permit the violations to occur?

**A:** Yes. Carriers are liable for the actions of their employees. Neither intent to commit, nor actual knowledge of, a violation is a necessary element of that liability. Carriers "permit" violations of the hours-of-service regulations by their employees if they fail to have in place management systems that effectively prevent such violations.

### QUOTABLE

"One of the penalties of not participating in politics is that you will be governed by your inferiors"

- Plato

## **GENERAL INFORMATION**

### **PRE-EMPLOYMENT DRUG TESTING OF LAID-OFF DRIVERS - YES/NO?**

- Q:** Must all drivers who do not work for an extended period of time (such as lay-offs over the winter or summer months) be pre-employment drug tested each season when they return to work?
- A:** If the driver is considered to be an employee of the company during the extended (lay-off) period, a pre-employment test would not be required so long as the driver had been included in the company's random testing program during the lay-off period. However, if the driver was not considered to be an employee of the company at any point during the lay-off period, or was not covered by a program, or was not covered for more than 30 days, then a pre-employment test would be required.

### **DUMP TRUCK CARRIERS CONFERENCE NEWSLETTER**

Published quarterly by  
Dannemiller Associates, Inc.  
7792 Olentangy River Road, Suite F-2  
Columbus, Ohio 43235  
(614) 431-8740  
Fax: (614) 431-8742  
Website: Dannemiller.US  
E-mail: Larry@Dannemiller.US

Material in this Newsletter may not be reprinted without permission.

Submissions by members and interested parties are welcome.

Dump Truck Carriers Conference is a registered trade name of Dannemiller Associates, Inc.

### **STUDYING GPS NAVIGATION**

Recent high-profile "bridge strike" accidents have led independent researchers to begin examining the effectiveness of GPS navigation systems used by commercial drivers.

As part of their study, the American Transportation Research Institute (ATRI) used an online survey to gather information from drivers and motor carriers on their attitudes toward navigation systems, including perceived benefits and risks.

While navigation systems are becoming increasingly commonplace in the nation's commercial vehicles, the impact that these devices have on driver behavior, decision-making, and safety is not fully understood. ATRI states:

"There is mounting anecdotal evidence that GPS navigation units are being blamed for large truck crashes where "bridge strikes" and other crashes in which the truck driver was using a navigation system designed for passenger vehicles have been high profile events.

The results of the research are expected to provide insight on the use of navigation systems and their impact in commercial trucking operations, as well as the impacts of other methods for providing directions to commercial drivers.

ATRI says the results should also help the public sector improve transportation operations and minimize infrastructure damage.

Additional information is available on ATRI's website at [www.atri-online.org](http://www.atri-online.org).

## **GENERAL INFORMATION - CSA UPDATE**

### **CSA AND THE CURRENT STATE OF THE INDUSTRY**

According to an analysis published in J.J. Keller's Motor Carrier Safety Report, of the 777,238 DOT-registered companies tracked in the CSA scoring system as of October 2012, about 9 percent - **71,471 carriers - were on "Alert"** in one of the five safety categories (BASICS) available to the public (the Cargo-Related (now known as HM Compliance) and Crash Indicator BASICS are withheld from public view). **Being on "alert" means the carrier either has a sub-par roadside performance record or a serious audit violation within the previous 12 months.** Other details from the October 2012 data:

- 90,112 carriers (12%) were "ranked" (assigned a percentile) in one or more of the five publicly-disclosed BASICS (most carriers - 687,126 - were unranked in those BASICS because there was insufficient data to rank them);
- 48,408 carriers were assigned a percentile score on Fatigued Driving (now known as HOS Compliance), with 27,546 carriers on Alert;
- 72,534 carriers were assigned a percentile score on Vehicle Maintenance, with 21,797 carriers on Alert;
- 30,772 carriers were assigned a percentile score on Unsafe Driving, with 11,154 carriers on Alert;
- 8,447 carriers were assigned a percentile score on Driver Fitness, with 7,371 carriers on Alert; and
- 2,445 carriers were assigned a percentile score on Drugs & Alcohol, with 3,603 carriers on Alert.

Intervention is likely when a carrier's roadside performance is worse than that of a given percentage of its peers. Carriers that score above the intervention threshold are subject to enforcement action from the FMCSA. The CSA system recalculates scores on a monthly basis.

### **CSA UPDATE: DECEMBER 2012**

In December 2012 the FMCSA released a significant update to its Safety Measurement System (SMS), the "scoring" component of CSA. We issued a Bulletin regarding these changes, which include:

1. Movement of all cargo securement violations from the Cargo-Related BASIC to the Vehicle Maintenance BASIC.
2. Renaming of the Cargo-Related BASIC to the Hazardous Materials (HM) Compliance BASIC to better identify HM-related safety and compliance problems and remove the "flatbed bias" that previously existed in the Cargo-Related BASIC.
3. Better alignment of the SMS with Intermodal Equipment Provider (IEP) regulations, by holding drivers and motor carriers accountable for intermodal equipment violations when those violations should have been caught during a pre-trip inspection.

(Concluded on next page)

## **GENERAL INFORMATION - CSA UPDATE**

### **CSA UPDATE: DECEMBER 2012 (Concluded)**

4. Aligning violations that are included in the SMS with Commercial Vehicle Safety Alliance (CVSA) inspection levels by eliminating vehicle violations found during driver-only inspections and driver violations found during vehicle-only inspections.
5. More accurately identifying carriers that transport significant quantities of hazardous materials.
6. More accurately identifying carriers involved in transporting passengers.
7. Modifying the SMS website display to change current terminology, "inconclusive" and "insufficient data," to fact-based descriptions and to separate crashes with injuries from crashes with fatalities.
8. Removing 1- to 5-mph speeding violations from the scoring process.
9. Lowering the severity weight for speeding violations that do not designate the mph range above the posted speed limit.
10. Aligning the severity weight of paper and electronic logbook violations. With these changes, all violations related to not having a logbook, electronic or paper, now have a severity weight of 5.
11. Changing the name of the Fatigued Driving BASIS to the Hours-Of-Service (HOS) Compliance BASIC.

### **POSSIBLE NEW SAFETY RATING METHOD**

Existing regulations contain the procedures by which the FMCSA rates motor carriers (i.e., determines their "safety fitness," either "Satisfactory," "Conditional," or "Unsatisfactory") and takes action when those ratings are poor. A carrier that is audited and given an "Unsatisfactory" safety rating will be prohibited from operating commercial motor vehicles after 45 to 60 days, depending on whether or not a Haz-Mat carrier. Presently, the FMCSA must first conduct an on-site (audit) before rating a carrier.

The agency wants to be able to rate carriers and drivers based on safety data alone (i.e., crash, roadside inspection, and violation history) rather than the standard on-site audit. Ostensibly, this would allow the agency to rate a larger number of carriers and drivers than is currently possible. However, to do this, the

FMCSA must first change the rules in Part 385, and that process is now underway. This planned action is a BAD idea for carriers and it is discussed at length in our *April 2011 Dump Truck Carrier Conference Newsletter* which is available on our website: [Dannemiller.US](http://Dannemiller.US).

By the end of 2013, the FMCSA is expected to publish a proposed rule and accept comments for 60 days. The final rule will be presented to the DOT and White House for approval before finally being published in the *Federal Register*. No date has been projected for the final version.

Although these new rules will focus only on the safety rating process, the FMCSA has indicated that, when the proposed rule is issued, the public will be invited to comment on all aspects of the CSA program, including the violation severity ratings and scoring methodology.

## **GENERAL INFORMATION**

### **BAN ON HAND-HELD CELLULAR PHONES DOT LIST OF FREQUENTLY ASKED QUESTIONS:**

1. **Q:** What is the effective date of the Mobile Telephone rule?

**A:** The effective date of the rule is January 3, 2012.

2. **Q:** Are wired or wireless earpieces allowed?

**A:** Yes. Hands-free use of a mobile telephone is allowed using either a wired or wireless earpiece, or the speakerphone function of the mobile telephone. Wireless connection of the mobile telephone to the vehicle for hands-free operation of the telephone, which would allow the use of single-button controls on the steering wheel or dashboard, would also be allowed.

3. **Q:** Are commercial motor vehicle (CMV) drivers allowed to use push-to-talk mobile communications equipment while driving?

**A:** Yes, provided the driver does not reach for, dial, or hold the actual mobile telephone in his/her hand while driving and the driver is able to touch the button needed to operate the push-to-talk feature from the normal seated position with the safety belt fastened. Generally, the use of this type of communications equipment does not require drivers to take their eyes off of the forward roadway because the button used to enable the driver to communicate can be operated from the normal seated position with the safety belt fastened. For example, if the mobile phone is mounted in a cradle or similar device near the driver, or there is a remote push-to-talk button near the vehicle controls to allow

the driver to communicate without reaching for, dialing, or holding the actual mobile telephone in his/her hands while driving, the equipment may be used.

4. **Q:** Are holders of a commercial driver's license (CDL) subject to the regulation only when driving a CMV, as defined in 49 CFR 383.5, or any vehicle?

**A:** CDL holders are subject to the Federal rule only when driving a CMV.

5. **Q:** What drivers are covered by the Federal rule: Intrastate or Interstate? CDL holders? All CMV's?

**A:** This Federal rule covers both, drivers of CMV's in Interstate Commerce, and also any drivers who operate a vehicle transporting a quantity of hazardous materials requiring placarding under 49 CFR Part 172 of any quantity of a material listed as a select agent or toxin in 42 CFR Part 73.

If a CMV driver is employed by a State or a political subdivision of a State (e.g. county, city, township, etc.), FMCSA safety regulations do not apply, even if the driver is engaged in Interstate transportation. But if a CMV driver employed by a State or a political subdivision of a State is operating a vehicle that requires a CDL, the applicable State traffic laws would govern (e.g., Maryland's prohibition on the use of hand-held phones). The States have 3 years to implement by State law the disqualification provision.

## **GENERAL INFORMATION**

### **BAN ON HAND-HELD CELLULAR PHONES**

#### **DOT LIST OF FREQUENTLY ASKED QUESTIONS: (Cont'd)**

6. **Q:** What is required of the employer in terms of company policy or training?

**A:** The rule does not require motor carriers to establish written policies in terms of company policy or training programs for their drivers. However, employers are prohibited from allowing or requiring their drivers to use hand-held mobile phones. A motor carrier may establish policies or practices that make it clear that the employer does not require or allow hand-held mobile telephone use while driving a CMV in Interstate Commerce. The carrier is responsible for its drivers' conduct.

7. **Q:** Is dialing a phone number allowed under this rule?

**A:** No. Dialing a mobile telephone while operating a CMV in Interstate Commerce is prohibited by the rule. A driver can initiate, answer, or terminate a call by touching a single button on a mobile telephone, earpiece, steering wheel, or

instrument panel - comparable to using vehicle controls or instrument panel functions, such as the radio or climate control system.

8. **Q:** Can a driver reach for a mobile telephone even if he/she intends to use the hands-free function?

**A:** No. In order to comply with this rule, a driver must have his or her mobile telephone located where the driver is able to initiate, answer, or terminate a call by touching a single button while the driver is in the seated driving position and properly restrained by a seat belt. If the mobile telephone is not close to the driver and operable while the driver is restrained by properly installed and adjusted seat belts, then the driver is considered to be reaching for the mobile phone, which is prohibited by the rule.

Contact our office if you would like us to prepare for you a specific "CELL PHONE POLICY."

### **TOP 10 "ACUTE" VIOLATIONS OF 2012**

Acute violations are considered to be among the most serious violations found during audits, requiring immediate corrective action by the motor carrier. For each acute violation found during an audit, the FMCSA will assign one point against the carrier's audit results, which can ultimately harm the carrier's safety rating.

Rank	Section	Description
1.	382.115(a)	Failing to implement an alcohol and/or drug testing program
2.	392.305	Failing to implement random drug or alcohol testing
3.	383.37(a)	Allowing driver to operate with suspended/revoked CDL
4.	387.7(a)	Inadequate or no financial responsibility
5.	390.35	Requiring, permitting, or making false statements or records
6.	382.215	Using a driver who has tested positive for a drug
7.	396.9(c)(2)	Operating an out-of-service vehicle
8.	172.800(b)	Transporting Haz-mat without a security plan
9.	391.11(a)	Using an unqualified driver
10.	383.51(a)	Driving a CMV (CDL) while disqualified

## **GENERAL INFORMATION**

### **ARE DRIVER QUALIFICATION FILES BURDENSOME?**

The Federal Motor Carrier Safety Administration (FMCSA) says it takes an average of 28 minutes per year per driver to create and maintain a driver qualification file.

What do you think? Is that estimate too low - or high - the agency wants to know about it.

Based on my experience with hundreds of companies, 28 minutes per year is ridiculously low.

As it is periodically required to do, the FMCSA is seeking public input on the estimates it uses for how much time it takes to generate and maintain driver qualification files.

The agency recently updated its estimate for the number of drivers who are subject to the qualification rules: 42,567,200.

In total, the FMCSA estimates that the industry spends 5.2 million hours per year on driver qualification files.

Interstate and Ohio Intrastate motor carriers are required to maintain driver qualification files under 49 CFR Sec. 391.51.

The agency is taking public comments on its estimates - and driver qualification files in general - and will submit its estimates and the public comments to the White House for review.

Comments are being requested on whether driver qualification files are necessary, whether the agency's estimates are accurate, and ways that the recordkeeping burden could be minimized.

Comments are due by May 6, 2013, and may be submitted under docket number FMCSA-

2013-0058 at [www.regulations.gov](http://www.regulations.gov) or by fax to (202) 493-2251.

The announcement appeared in the *Federal Register* on March 5, 2013.

### **REMINDER - PROPOSED DOT JULY 1, 2013 HOURS-OF-SERVICE CHANGES** *(presently being challenged in court)*

**Egregious Violations** - A driver, who exceeds, and/or motor carrier that allows a driver to exceed, the driving time limit by 3 hours or more is considered to have committed an egregious violations and be subject to the maximum civil penalties. The present maximum civil penalty for hours-of-service is \$11,000 per violation.

**Mandatory Rest Break** - Drivers will not be permitted to drive if 8 hours or less have passed since their last break of 30 minutes or more. (Only 1 break may be required depending upon timing).

**Restart** - Any restart period must consist of two consecutive nighttime periods (from 1 a.m. to 5 a.m.), and must be at least 34 consecutive hours long. Drivers are permitted to use the restart provision only once in any seven calendar days.

### **ROADCHECK 2013!**

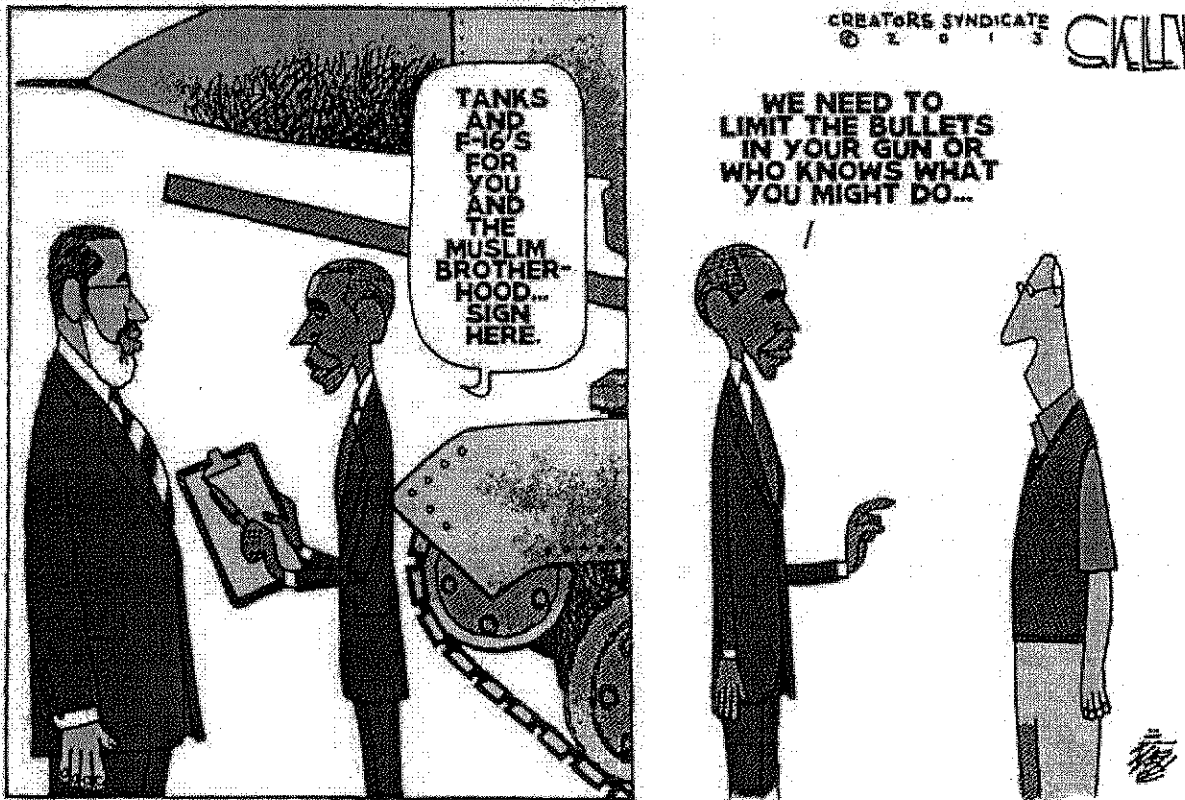
2011 and 2012 statistics show an average of about 14 trucks or buses will be inspected every minute during the 72-hour event being held from June 4-6. It might be tough to avoid a roadside inspection during this time.

This is the largest targeted enforcement program of commercial vehicles in the world. Approximately 10,000 local, state, provincial, and federal inspectors at 1,500 locations across North America perform truck and bus inspections during the event.

# GENERAL INFORMATION

## POLITICS

*DON'T YOU LOVE IT!*



Isn't It Ironic? The food stamp program which is part of the Department of Agriculture, is "pleased" to be distributing the greatest amount of food stamps ever.

However, the Park Service, also part of the Department of Agriculture, orders us to "do not feed the animals" because the animals will grow dependent and not learn to take care of themselves.





# DUMP TRUCK CARRIERS CONFERENCE

## MEMBERSHIP LISTING

### CARRIER MEMBERS

Mr. Aaron Jones  
AARON JONES TRUCKING  
P. O. Box 186  
Spring Valley, Ohio 45370  
(937) 488-2075

Mr. Leroy J. Robbens  
AUGUST ROBBEN SONS, INC.  
6500 Bender Road  
Cincinnati, Ohio 45233  
(513) 941-7500

Mr. Abu Bundu  
BAKARR ENTERPRISES, INC.  
935 Wake Drive  
Westerville, Ohio 43082-8539  
(614) 898-7214

Mr. Jim Knisely  
BERNER TRUCKING, INC.  
P. O. Box 660  
Dover, Ohio 44622  
(330) 343-5812

Mr. Thomas Boyd  
BOYD BROS., INC.  
Box 118  
Fredericktown, Ohio 43019  
(614) 694-5916

Mr. Bill Berger  
CTS, INC.  
420 Howard Street  
Mt. Vernon, Ohio 43050  
(740) 397-9191

Mr. Daniel Zarlenga  
C-Z TRUCKING CO.  
9495 Harvard Boulevard  
Youngstown, Ohio 44514  
(330) 758-2313

Mr. Christopher A. Scala  
CRYSTAL SPRINGS  
MATERIALS, INC.  
9500 Forty Corners Road NW  
Massillon, Ohio 44647  
(330) 494-6455

Mr. Gary Nye  
FA NYE & SON'S  
ENTERPRISES  
P. O. Box 398  
Bettsville, Ohio 44815  
(419) 986-5400

Mr. Shawn Henderson  
HENDERSON TRUCKING, INC.  
124 Henderson Court  
Delaware, Ohio 43015  
(740) 369-6100

Mr. Bari Henning  
HENNING TRUCKING  
3618 Bootjack Road  
Williamsburg, Ohio 45176  
(513) 724-2994

Mr. Todd Hiney  
HINEY TRUCKING LTD.  
1101 S. Columbus Street  
Xenia, Ohio 45385  
(937) 372-9960

Mr. John Grattino  
J.T. TRUCKING, INC.  
19070 Haskins Road  
Chagrin Falls, Ohio 44023-605  
(216) 663-7002

Mr. Joe Stenger  
J.W. STENGER TRUCKING, INC.  
61485 Professional Drive  
Barnesville, Ohio 43713  
(800) 837-8364

Mr. Dick Jones, President  
THE JONES FUEL CO.  
350 Frank Road  
Columbus, Ohio 43207  
(614) 443-4611

Mr. Richard E. Jones, Jr.  
JONES TRANSPORTATION CO.  
2610 Crescentville Road  
West Chester, Ohio 45069  
(513) 326-6000

Mr. Bill Kerr  
KERR TRUCKING, INC.  
705 State Route 302  
Ashland, Ohio 44805  
(419) 289-9275

Mr. Bryan Monesi  
MONESI TRUCKING &  
EQUIPMENT REPAIR, INC.  
1715 Atlas Street  
Columbus, Ohio 43228-9648  
(614) 921-9183



# DUMP TRUCK CARRIERS CONFERENCE

## MEMBERSHIP LISTING

### CARRIER MEMBERS

Mr. Tim Patrick  
PATRICK INCORPORATED  
5839 S.R. 5  
Ravenna, Ohio 44266  
(330) 296-7706

Mr. Rick Kuntz  
RICK KUNTZ TRUCKING, INC.  
9056 State Route 88  
Winham, Ohio 44288  
(330) 296-9311

Mrs. Suzette Hamlin  
VIKING TRUCKING, INC.  
Box 25, 19-929 Rd. T  
Ridgeville Corners, Ohio 43555  
(419) 267-3319

Mr. Paul Adelman  
PAUL ADELMAN TRUCKING  
P. O. Box 370  
1250 Hartville Road  
Randolph, Ohio 44265  
(330) 325-7470

Mr. Ben Morabito, Jr.  
S.B. MORABITO TRUCKING  
COMPANY  
3560 East 55th Street  
Cleveland, Ohio 44105  
(216) 441-3070

Mr. Dan Vorst  
VORST PAVING & LEASING,  
INC.  
14373 Road 23M  
Cloverdale, Ohio 45827  
(419) 453-3166

Mr. Mark Carrocce  
R & J TRUCKING  
8063 Southern Boulevard  
P. O. Box 9454  
Youngstown, Ohio 44513  
(330) 758-0841

Mr. Brad Smith  
SMITH MATERIAL SUPPLY,  
INC.  
1571 N. Main Street  
Marion, Ohio 43302  
(740) 382-4148

Mr. Michael D. Hodson  
W.A. HODSON, INC.  
P. O. Box 412  
Leesburg, Ohio 45135  
(937) 780-4272

Mr. Dave Jackson  
REDBANK TRANSPORT, INC.  
910 U.S. Route 50  
Milford, Ohio 45150  
(513) 831-5491

Mr. Kim Testa  
TESTA TRUCKING, INC.  
4381 Newhouse Road  
Ostrander, Ohio 43061  
(740) 666-1920

### ASSOCIATE MEMBERS

#### Legal Services:

John Alden, Esquire  
ALDEN LAW  
One East Livingston Avenue  
Columbus, Ohio 43215-5700  
(614) 221-1306

#### Legal Services:

Mr. L. Christopher Bobbit  
SANBORN, BRANDON, DUVALL  
& BOBBITT CO., L.P.A.  
2515 West Granville Road  
Columbus, Ohio 43235  
(614) 889-2531

#### Medical Services:

Ms. Lorri Smith  
INTEGRITY TESTING &  
SAFETY ADMINISTRATORS  
6015 19 Mile Road  
Sterling Heights, Michigan 48314