

**Laura Zabriskie**

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**From:** DaRonda.McDuffie@dot.gov  
**Sent:** Tuesday, December 06, 2011 10:46 AM  
**To:** MCFIELD2@dot.gov; MCHQ2@dot.gov  
**Subject:** FMCSA News Summary 1497

## PICTURE OF THE DAY



FMCSA's Laredo Field Office and Texas Division, held a Bus Industry Meeting on October 4, 2011, in conjunction with National Passenger Carrier Strikeforce initiatives at the Laredo Community College (International Trade Facility) in Laredo, Texas. Federal and State partners also gave presentations during the meeting. [Photo taken by Inspector Supervisor, Joe Cortez].

Secretary Ray LaHood and Deputy Secretary John Porcari invite all DOT employees to a **Town Hall meeting on Wednesday, December 7 at 2 p.m. EST** in the West Atrium in the Headquarters Building. The Secretary's Town Hall meeting will be held in the headquarters West Atrium building, and by streaming video (with open captioning) at <http://dotnet.dot.gov>.

## NEWS ACCOUNTS OF FATAL CRASHES INVOLVING CMVs

TX, Austin                      2 fatalities (vehicle driver lost control, collided with tt at 3:15 a.m. on Highway 35; weather a contributing factor)  
[http://austin.ynn.com/content/top\\_stories/281821/2-killed-in-early-morning-wreck](http://austin.ynn.com/content/top_stories/281821/2-killed-in-early-morning-wreck)



Photo caption: A father and son were killed when the dump truck they were in drove into the path of an eastbound train near Seymour. / Dean Curtis / News-Leader

MO, Seymour            2 fatalities (dump truck failed to yield, struck by train at 5:23 a.m. on U.S. 60)  
<http://www.news-leader.com/article/20111206/NEWS01/112060351/-1/rss>



Photo caption: TT and car involved in a fiery crash Monday afternoon.

TN, Nashville            1 fatality (vehicle entered roadway colliding with tt bursting into flames at 2:50 p.m. on Interstate 24; alcohol a suspected factor)  
<http://www.wpsdlocal6.com/news/local/Semi-vs-suv-crash-near-Nashville-TN-kills-local-man-135084158.html>

IA, Garner                1 fatality (tt became detached striking SUV head-on at 5:58 a.m. on U.S. Highway 18)  
[http://globegazette.com/news/local/britt-man-killed-in-early-morning-accident/article\\_b8bf0e8e-1f5c-11e1-b8e7-001871e3ce6c.html](http://globegazette.com/news/local/britt-man-killed-in-early-morning-accident/article_b8bf0e8e-1f5c-11e1-b8e7-001871e3ce6c.html)

TX, Sherman            1 fatality (vehicle driver lost control collided into tt at 11:10 a.m. on U.S. Highway 75; speed and weather possible contributing factors)  
<http://www.kxii.com/home/headlines/135007718.html>

VA, Roanoke            1 fatality (tt crashed into stopped vehicle, chain reaction crash at 5:42 a.m. on Orange Avenue; driver distraction a possible factor)  
<http://www2.wsls.com/news/2011/dec/05/2/crews-cleaning-after-major-wreck-williamson-rd-roa-ar-1514876/>

## OTHER NEWS AND FOLLOW-UP

WUSA TV (Washington, DC); Monday, December 5, 2011

**HEADLINE: 12 People Injured In Metro Bus-Trash Truck Accident**

<http://wusa9.com/news/article/178177/373/VIDEO-12-People-Injured-In-Metro-Bus-Trash-Truck-Accident>

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1. The Trucker; Tuesday, December 6, 2011

**HEADLINE: FMCSA sends out warning on drug and alcohol testing**

2. eTrucker; Monday, December 5, 2011

**HEADLINE: Third Mexican carrier completes preliminary audit**

3. Fleet Owner; Monday, December 5, 2011

**HEADLINE: Hours of service, EOBRs focus of webinar**

4. News 14 Carolina (Charlotte, North Carolina); Monday, December 5, 2011

**HEADLINE: AAA driver safety program targets older adults**

5. Land Line; Monday, December 5, 2011

**HEADLINE: TWIC card holders: TSA may have shorted you one digit**

6. Fleet Owner; Monday, December 5, 2011

**HEADLINE: Two plead guilty in mail fraud case targeting truckers**

7. Times Union (Albany, New York); Tuesday, December 6, 2011

**HEADLINE: Shen told to rehire drug test-flunker; Court says driver who tested positive for pot must be returned to job**

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1. The Trucker; Tuesday, December 6, 2011

**HEADLINE: FMCSA sends out warning on drug and alcohol testing**

**FMCSA** doesn't certify trainers or pre-approve curriculums regarding drug testing. It is up to carriers to meet the guidelines.

In recent months, FMCSA says it has received "numerous inquiries regarding companies using aggressive marketing tactics to sell supervisor training to employers who may be subject to the **Federal Motor Carrier Safety Administration's** drug and alcohol testing requirements. Please note that the FMCSA is not familiar with these companies or the training they are offering."

49 CFR 382.603 requires supervisors of CDL drivers to take 60 minutes of training on the symptoms of alcohol abuse and another 60 minutes of training on the symptoms of controlled substances use. The purpose is to qualify supervisors for determining when reasonable suspicion testing is needed.

The FMCSA noted that it "does not certify trainers or training companies, nor does it pre-approve the curriculum presented. Employers are responsible for meeting the training requirement of 49 CFR 382.603 — including ensuring that any training company/entity that they purchase training from provides training in the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

"It is up to the employer to select which training to attend, keeping in mind the aforementioned guidelines."

End.

2. eTrucker; Monday, December 5, 2011

**HEADLINE: Third Mexican carrier completes preliminary audit**

Byline: Jill Dunn

While members of Congress and a federal court continue weighing issues concerning the cross-border trucking program with Mexico, a third Mexican carrier has completed its Pre-Authority Screening Audit.

A Nov. 29 Federal Register notice announced Moises Alvarez Perez, doing business as Distribuidora Marina El Pescador, of Tijuana, Baja California, has completed its PASA. The public may submit comment until Dec. 9. More information is available at <http://federalregister.gov/a/2011-30735>.

So far, the agency has granted operating authority to one of three Mexico-based carriers that cleared Pre-Authority Screening Audits. The **FMCSA** conducts these audits on Mexican carrier applicants to verify program compliance.

Transportes Olympic of Apodaca, Nuevo León, made the first crossing under the program on Oct. 21.

The FMCSA's Federal Register Oct. 14 notice responded to public comment on the PASA of Grupo Behr of Apodaca, Nuevo León. The agency had planned to grant authority, but instead announced it would extend review of the carrier to investigate questions raised by groups commenting on its PASA results.

On Nov. 25, the agency also ended its comment period on revisiting the Certificate of Registration, or Form OP-2. The FMCSA sought the Office of Management and Budget's permission to revise this form, required of Mexican carriers seeking to work within the commercial border zone.

The notice and the agency did not state what revision was sought, including in the July 22 Federal Register announcement, which received no comments.

On Oct. 31, Sen. Jay Rockefeller, (D-W.Va.), transportation committee chairman, expressed concern about "lax oversight" of the program in a letter to Transportation Secretary Ray LaHood.

The U.S. Court of Appeals for the D.C. Circuit issued the same briefing schedule for two lawsuits seeking to block the **Federal Motor Carrier Safety Administration's** program, but has not combined the cases. The Teamsters union, Public Citizen and Sierra Club petitioned the court Nov. 15 and the Owner-Operator Independent Drivers Association filed suit July 6.

The petitioners' briefs and appendices are due Dec. 21, the FMCSA's brief on Feb. 1 and the petitioners' reply brief Feb. 22.

Dec. 21 also is the deadline for Department of Homeland Security Secretary Janet Napolitano's response to an inquiry from Republican Reps. Peter King of New York, Homeland Security committee chairman, and Candice Miller of Michigan, chairwoman of the Border and Maritime Security.

The representatives' letter stated Napolitano had not provided enforcement guidance for identifying regulation noncompliance by cross-border commercial traffic. The Safe Port Act of 2006 mandates DHS, in consultation with the Department of Transportation, also require these guidelines to state how noncompliance is to be communicated to federal authorities.

Congress had stipulated the guidance, to be issued by April 2008, be coordinated with FMCSA training and outreach activities. The issue was of particular concern because the cross-border program had been reestablished, they wrote.

"Given the numerous regulations and strict oversight your department places over our domestic trucking industry, we would hope that your department would take an equally active role in foreign carriers operating within the United States," the representatives wrote.

End.

3. Fleet Owner; Monday, December 5, 2011

**HEADLINE: Hours of service, EOBRs focus of webinar**

FleetMentor members are being offered a free webinar to address the upcoming hours-of-service and electronic onboard recorder (EOBR) regulations.

The webinar, to be held Tuesday, Dec. 13, 2011, at 2 p.m. Eastern, will provide updates on the regulations and how the rules could affect fleet operations. The event will include details on any new regulations and also what is being proposed for the future.

A question-and-answer session will follow.

[Register here for the free webcast.](https://www.fleetmentor.com/Default.aspx?ReturnUrl=%2fWebCasts%2fUpcomingWebcast.aspx)

(<https://www.fleetmentor.com/Default.aspx?ReturnUrl=%2fWebCasts%2fUpcomingWebcast.aspx>)

If you wish to participate in the webinar but are not a FleetMentor member, you can register for a free, no obligation 30-day FleetMentor trial at [fleetmentor.com](http://fleetmentor.com).

End.

4. News 14 Carolina (Charlotte, North Carolina); Monday, December 5, 2011

**HEADLINE: AAA driver safety program targets older adults**

Byline: McKinsey Harris

There are many programs about teen driver safety, but this week AAA is targeting the other end of the spectrum. It's Older Driver Safety Awareness Week, and aside from things such as avoiding rush hour traffic or not driving at night, they've got some tips for those still behind the wheel at an advanced age.

CHARLOTTE -- There are many programs about teen driver safety, but this week AAA is targeting the other end of the spectrum. It's Older Driver Safety Awareness Week, and aside from things such as avoiding rush hour traffic or not driving at night, they've got some tips for those still behind the wheel at an advanced age.

"I was out yesterday afternoon shopping, so I do use my car. Or go visit friends," said Ann Israel, 83, who began driving 65 years ago.

Israel says she's in good physical shape and does self-assessments of her driving.

"I know there are a lot of older people that should not be driving, they really shouldn't. They don't have the agility to turn the wheel fast or go from the gas to the brake in a hurry, so it is a concern," she said.

Tom Crosby, with AAA Carolinas, said some of these senior drivers are so concerned about having their keys taken away and losing that independence, that they only think about themselves, and not the other drivers on the road.

"There have been some horrendous accidents with older drivers that have driven through crowds and failed to stop, so a self-assessment and a realistic appreciation of how you drive is essential," said Crosby.

He said in less than 10 years, one out of every four drivers will be over the age of 65.

"The big fear is when we get older, we can't see as well, we can't hear as well, our physical ability to react has diminished, so the best thing we have going for us is experience," he said.

AAA recommends these drivers perform self-assessments regularly and, if possible, take driving tests annually or bi-annually. It's something Israel has done, through defensive driving courses, just to make sure she's OK.

"That's what's important to make sure your mind is working quickly and you have to drive defensively most of the time, so it's just important to keep up those skills," said Israel.

But when those skills do start to diminish, she has a plan.

"And I've told my son, okay when you start seeing me not driving well, then I'll quit," she said.

Some senior living facilities offer classes or training for older drivers. On Tuesday, Atria MerryWood Senior Living in Charlotte will be hosting a defensive driving course at 9 a.m. The course is open to the public.

VIDEO: [http://charlotte.news14.com/content/top\\_stories/650585/aaa-driver-safety-program-targets-older-adults](http://charlotte.news14.com/content/top_stories/650585/aaa-driver-safety-program-targets-older-adults)

End.

5. Land Line; Monday, December 5, 2011

## **HEADLINE: TWIC card holders: TSA may have shorted you one digit**

Byline: Charlie Morasch, Land Line staff writer

The Transportation Worker Identification Credential eventually will allow port security with digital card readers to remotely check your authority as you drive onto a port.

Unfortunately for some TWIC cardholders, not everyone got all their digits.

TSA recently announced that TWIC cards issued before April 5, 2011, may be missing a digit of its "Federal Agency Smart Credential Number."

The snafu affects some 26,000 TWICs, TSA said in a statement.

"Due to a card production system error, the number of characters in the FASC-N on some TWICs was shortened, causing readers to not recognize the card as a valid TWIC. TSA will issue a replacement TWIC at no cost to you if you have a card with a truncated FASC-N.

"If your card has this issue it is still valid and provides evidence of your eligibility for unescorted access to secure areas," TSA said in the statement.

To see if your card needs to be replaced, check the 8-digit number on the lower left hand portion of the TWIC backside and compare it to numbers posted here.

TSA has spent \$420 million on TWIC, and the federal government and private sector may spend as much as \$3.2 billion on TWIC during the next 10 years, not including the card readers themselves.

More than 1.9 million U.S. workers have enrolled in TWIC. The program was created after the terrorist attacks on 9/11. The first TWIC enrollments began in 2007 and will start expiring in 2012.

Standard TWIC enrollment costs \$132.50, although workers with “current, comparable” threat assessment background checks such as hazmat endorsements, Merchant Mariner Documents or Free and Secure Trade (FAST) cards may obtain a TWIC card with a shorter lifespan for \$105.25.

Truck drivers have wondered why the expensive cards have been used largely as “flash cards,” even with their ability to be read by remote devices.

Last year, many online readers of Land Line Magazine’s website said their cards were rarely checked at ports. Thirty-seven percent of respondents in an April 2010 poll said their TWIC cards were checked always or “most of the time” at ports they visit. Twenty-nine percent said rarely, and about one-third of respondents in the unscientific poll said their TWIC cards were never checked at ports they visit.

TSA’s TWIC hotline is available at 866-DHS-TWIC (347-8942), as well as TWIC’s e-mail help desk at [TWIC.Helpdesk@gcrm.com](mailto:TWIC.Helpdesk@gcrm.com). The program’s website is [www.tsa.gov/twic](http://www.tsa.gov/twic).

TSA said TWIC cardholders who visit ports that don’t yet use card readers may not need to replace the cards immediately.

End.

6. Fleet Owner; Monday, December 5, 2011

**HEADLINE: Two plead guilty in mail fraud case targeting truckers**

Byline: Deborah Whistler, contributing editor

Michael J. McMahon, 55, and Dawn C. Velapoldi, 43, pleaded guilty in federal court to conspiracy to commit mail fraud for reporting fake vehicle crashes targeting commercial truckers and receiving more than \$168,000 in insurance claims, according to a press release from the U.S. Dept. of Justice.

According to an indictment returned by a federal grand jury, McMahon and Velapoldi reported fake motor vehicle crashes to fraudulently obtain compensation for damage to vehicles they said was caused by commercial trucks at numerous locations throughout New York.

Since 2006, prosecutors said McMahon and Velapoldi made at least 83 claims to trucking companies about the fake accidents. The claims stated a commercial truck sideswiped a sports utility vehicle, causing damage to the driver’s side of the vehicle. In each case, McMahon and Velapoldi provided the name of a different purported claimant.

Prosecutors allege McMahon and Velapoldi made up names of witnesses, set up 34 mail boxes in 15 states and used phony invoices from nonexistent auto repair shops as part of the scheme.

Both face a maximum sentence of 20 years in prison and will be sentenced in April.

End.

7. Times Union (Albany, New York); Tuesday, December 6, 2011

**HEADLINE: Shen told to rehire drug test-flunker; Court says driver who tested positive for pot must be returned to job**

Byline: TIM O'BRIEN, Staff writer

CLIFTON PARK — A Shenendehowa school bus driver fired after testing positive for marijuana must be returned to the job, an appellate court has ruled.

The state Appellate Division split 3-2 in reversing a Supreme Court decision.

A district driver for nearly 10 years, Cynthia DiDomenicantonio was fired November 10, 2009. Her union, the Civil Service Employees Association, challenged the dismissal, and an arbitrator who heard the case ordered her reinstated without six months of back pay. The district was told to provide follow-up testing and substance-abuse counseling.

The state Supreme Court reversed the order, and CSEA appealed. In a decision dated Thursday, Judges William E. McCarthy, Robert Rose and Leslie Stein ruled the lower court should not substitute its judgment for the arbitrator's.

"Petitioner is reasonably concerned, as are we, about protecting school children from bus drivers who use drugs or alcohol," McCarthy wrote. "The United States Supreme Court has, however, held that a similar arbitration award reinstating a driver who failed a drug test 'violates no specific provision of any law or regulation. It is consistent with (U.S. Department of Transportation) rules requiring completion of substance-abuse treatment before returning to work' and other related requirements."

DiDomenicantonio had a previously unblemished record, had never before failed a drug test and had received excellent evaluations, the court said. Reached for comment on Monday, DiDomenicantonio referred questions to her attorney.

Therese Assalian, spokeswoman for the union, said the district had the option to suspend the driver with or without pay, subject her to testing or take other actions short of firing.

The contract states: "Suspension without pay or discharge may be invoked with less than two (2) written warnings where the employee's conduct creates a danger to the health, safety or welfare of staff, students and/or the general public A positive result in any required drug or alcohol test is considered such a danger."

While the district contended it had a zero-tolerance party for positive drug tests, the court majority ruled it failed to produce one.

In a dissent, Judge E. Michael Kavanagh said the district acted properly. Judge Bernard J. Malone Jr. concurred.

"It is difficult to understand how, on the one hand, the majority can concede that petitioner had the option under the collective bargaining agreement to discharge respondent Cynthia DiDomenicantonio for failing a drug test and, on the other, conclude that petitioner violated the CBA when it chose that option," Kavanagh wrote.

The arbitrator added requirements that the district consider other factors not in the contract, according to Kavanagh.

"For these reasons, and for what we believe are sound public policy considerations implicated by petitioner's legitimate concern that school bus drivers not be substance abusers, we believe that the arbitrator exceeded his authority and issued a determination that violates sound public policy," the judge wrote.

The district is weighing its options and has not reinstated the driver, spokeswoman Kelly DeFeciani said.

End.

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