

299209

Lynch, Ivornette

FRA-2004-18746-11

**From:** Cothen, Grady  
**Sent:** Wednesday, September 29, 2004 10:55 PM  
**To:** Bailey, Tamika; Lynch, Ivornette  
**Cc:** Wilson, James; Herrmann, Thomas  
**Subject:** FW: Pending Waiver Clarifications

OCT 1 10:01 AM '04  
 DEPT OF TRANSPORTATION

Per direction from counsel, please place this in the UP/Laredo docket.

-----Original Message-----

**From:** Frank Hernandez Pantoja [mailto:fphernandez@tfm.com.mx]  
**Sent:** Thursday, September 23, 2004 11:00 AM  
**To:** Cothen, Grady  
**Cc:** Edith Rodriguez Silva; Juanita Arriaga  
**Subject:** Pending Waiver Clarifications

DEAR GRADY,

This Email will serve as a follow up to our recent telephone conversations, wherein I advised you of the fact I would be writing to you to further discuss and clarify some matters, and as you say, "keep the lines of communication open". While I know that these matters have been addressed in the past, they are not necessarily spelled out or made perfectly clear in the text of the pending Class 1 Waiver (Laredo International Bridge).

1. As I have stated from the outset, our sister company, the Texas Mexican Railroad (Tex Mex), is also expecting to be granted relief under the provisions of the pending waiver. While the Tex Mex has not officially requested this relief in writing, I have personally made it known to FRA that they are a party to the waiver and will formally submit a letter at later date, asking to "piggy back" onto the waiver that is granted to UP. This is not unlike what we have done at the past in Laredo. For example, our regular transfer interchanges with the UP are allowed to move to Port Laredo (approximately 10 miles) where they are then inspected, rather than having the UP inspect the cut immediately after it crosses the bridge, which would cause major vehicular congestion in the City of Laredo. FRA granted UP a waiver that allows them to move the transfers/interchanges to Port Laredo and be inspected there. When Tex Mex saw the benefits of the waiver granted UP, they simply asked FRA to allow them the same relief (piggy back) granted UP, which is exactly what FRA did and thus allows Tex Mex to move the transfers/interchanges to their Serrano Yard at MP 9. The letter that Tex Mex will eventually send FRA will be sent sometime AFTER the October 1 public hearing in Washington, which I will be attending. The decision to send the letter after this date will allow for the hearing proceedings to focus solely on the UP and TFM, rather than involve and expose Tex Mex to any unnecessary scrutiny at this time.

2. With regard to the record keeping requirements, which form part of the waiver approval, it is TFM's responsibility to maintain all records that involve the training, certifications, inspections, etc.... our personnel receive in Mexico, the U.S. or other locations, in order to maintain the level of proficiency FRA and we expect of them. As you know, we asked Tex Mex and received their permission to allow us to house our records at Chief Mechanical Officer's office, which is located at the Serrano Yard facility. The location where our (TFM's) records

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are maintained, in order to comply with the requirements of the waiver, should only be considered as a repository and not infer that the company or individual allow use of their facility is in any way responsible for any deficiencies FRA may find in our (TFM's) records. I know that you and I are in agreement on this matter, but I simply want to make sure that there is no misinterpretation as to the role Tex Mex plays with regard to our record keeping compliance obligations. We could have just as easily have housed the records at X-Y-Z Storage, but that would not have allowed FRA to have the ready and easy access we want FRA to have anytime they decide to conduct an audit. Therefore, Tex Mex was our best option.

I believe that about covers everything I mentioned to you during our last conversation. Thanks again for all of the continued support. I look forward to seeing you at the hearing or sooner, if our paths cross happen to cross before then. Say hello to all.

## **ARCHIVO / FRA - ADDITIONAL WAIVER CLARIFICATIONS**

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