

2012, OPRC filed a letter with the Board noting its opposition to the Petition and requesting 30 days to prepare its case in opposition should the Board institute a proceeding. OPRC's letter included no substantive support for why it opposed the Petition and, to date, OPRC has not submitted anything more to the Board.

The Petition requests that the Board find the City is not preempted from enforcing two municipal regulations that the City claims protect the public and ensure the public's health and safety. The regulations prohibit (1) scattering rubbish, and (2) obstructing vehicular and pedestrian traffic. Milwaukie, Or. Mun. Code §§ 8.04.120, 10.44.030 (2011). According to the City, OPRC owns a train maintenance facility on approximately 0.78 acres within the City. The City claims that along the border of OPRC's property, and in the public right of way, OPRC stores rails, railroad ties, piles of gravel, and other large "debris." The City argues that this debris is a hazard for drivers, pedestrians, and cyclists and violates the two above regulations; the City has cited OPRC at least twice.

The City argues that it should be permitted to enforce the regulations for the safety of its citizens and that there is no reason why the regulations should be preempted by federal law. It claims the ordinances are of general applicability, are not directed at or limited to railroads operating within the City, and are not directed at OPRC's use of its own property. It further claims that the regulations are within its traditional police power and that their enforcement will not affect transportation by a rail carrier.

In a letter to the City, OPRC claims "[m]unicipal interference with railroad operations is pre-empted by USC 10501 (b); therefore, the City has no jurisdiction over these matter [sic] as they apply to Interstate Commerce."<sup>1</sup> The record shows that OPRC has contested the second set of citations in the Municipal Court for the City of Milwaukie and that a trial was set for July 23, 2012. No update has been filed with the Board since the scheduled trial date. OPRC has also indicated it intends to appeal the fine for the first set of citations.

The Board has discretionary authority under 5 U.S.C. 554(e) and 49 U.S.C. 721 to issue a declaratory order to eliminate a controversy or remove uncertainty in a matter related to the Board's subject matter jurisdiction.<sup>2</sup> Questions of

preemption are often fact specific determinations, particularly when addressing whether land use restrictions interfere with railroad operations.<sup>3</sup>

The Interstate Commerce Act, as revised by the ICC Termination Act of 1995, vests in the Board broad jurisdiction over "transportation by rail carrier," 49 U.S.C. 10501(a)(1), which extends to property, facilities, instrumentalities, or equipment of any kind related to that transportation, 49 U.S.C. 10102(9). The preemption provision in the Board's governing statute states that "the remedies provided under [49 U.S.C. 10101–11908] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." 49 U.S.C. 10501(b).

The Board will institute a declaratory order proceeding and establish a procedural schedule for the filing of pleadings. This will ensure that the record is complete on the issue of whether the activities occurring in the right-of-way are part of "transportation" by a "rail carrier" and therefore could be preempted by § 10501(b).

The Board will consider this matter under the modified procedure rules at 49 CFR part 1112. The City's detailed Petition will serve as its opening statement. Replies will be due 30 days from the date of service of this decision. The City's rebuttal will be due 45 days from the service date of this decision.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

*It is ordered:*

1. A declaratory order proceeding is instituted.
2. Replies are due by October 10, 2012.
3. The City's rebuttal statement is due by October 25, 2012.
4. This decision is effective on its service date.

Decided: September 7, 2012.

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

**Jeffrey Herzig,**  
Clearance Clerk.

[FR Doc. 2012–22452 Filed 9–11–12; 8:45 am]

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1984); *Delegation of Auth.—Declaratory Order Proceedings*, 5 I.C.C. 2d 675, 675 (1989).

<sup>3</sup> See *Borough of Riverdale—Petition for Declaratory Order—The N.Y. Susquehanna & W. Ry.*, FD 33466, slip op. at 2 (STB served Feb. 27, 2001); *Borough of Riverdale—Petition for Declaratory Order—The N.Y. Susquehanna & W. Ry.*, 4 S.T.B. 380, 387 (1999) ("whether a particular land use restriction interferes with interstate commerce is a fact-bound question").

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35674]

#### CSX Transportation, Inc.—Temporary Trackage Rights Exemption—Alabama Great Southern Railroad Company and Meridian Speedway, LLC

Pursuant to a written trackage rights agreement dated August 31, 2012, Alabama Great Southern Railroad Company (AGS) has agreed to grant CSX Transportation, Inc. (CSXT) temporary overhead trackage rights over: (1) AGS South District between the connection of AGS and CSXT in Birmingham, Ala., near 14th Street at milepost 143.5 and the connection with the trackage of The Kansas City Southern Railway Company (KCSR) near 27th Avenue in Meridian, Miss., at milepost 295.4; (2) AGS NO & NE District between the connection with the trackage of Meridian Speedway, LLC (Meridian Speedway) at Meridian, Miss., 27th Avenue, milepost NO–0.4, and New Orleans, La., Oliver Junction, milepost 194.1; and (3) New Orleans Terminal Back Belt Line between New Orleans, La., Oliver Junction, milepost 7.9–NT, and East City Junction at milepost 3.8–NT and between East City Junction at milepost 3.5–A and CN/IC connection in Shrewsbury, La., milepost 0.0–A, a distance of 352.8 miles. Pursuant to a second written trackage rights agreement, Meridian Speedway has agreed to grant CSXT temporary overhead trackage rights over the connection between AGS and Meridian Speedway near 27th Avenue in Meridian, Miss., at milepost 295.4 and the connection between Meridian Speedway and AGS NO & NE District at milepost NO–0.4, a distance of 0.4 miles. The lines in question total 353.2 miles of track.

CSXT explains that the temporary trackage rights will permit it to resume overhead rail service between Pascagoula, Miss., and New Orleans, La., in the aftermath of Hurricane Isaac. CSXT states that as a result of Hurricane Isaac, portions of its track along the Gulf Coast have been damaged and put out of service between Pascagoula, Miss., and New Orleans, La., and CSXT does not expect the line to be operable in the immediate future.

In addition to this verified notice of exemption, CSXT concurrently filed a petition requesting that the Board waive the requirement of 49 CFR 1180.4(g) so that the exemption could become effective immediately. By decision served September 7, 2012, the Board granted CSXT's request. As a result, this

<sup>1</sup> Petition, V.S. Salyers, Exh. I.

<sup>2</sup> See *Bos. & Me. Corp. v. Town of Ayer*, 330 F.3d 12, 14 n.2 (1st Cir. 2003); see also *Intercity Transp. Co. v. United States*, 737 F.2d 103, 106–07 (DC Cir.

exemption is now effective and will expire on December 16, 2012.

As a condition to this exemption, any employees affected by the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway—Trackage Rights—Burlington Northern*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease and Operate—California Western Railroad*, 360 I.C.C. 653 (1980) (*N&W*), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth and Ammon, in Bingham and Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). Because of the nature of the situation, CSXT reports that the unions representing employees of CSXT and AGS have agreed to waive the 20-day notice period under *N&W* before consummation so that operations may start upon the effective date of this exemption.

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption.

An original and 10 copies of all pleadings, referring to Docket No. FD 35674, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at [www.stb.dot.gov](http://www.stb.dot.gov).

Decided: September 7, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**  
Clearance Clerk.

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## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### Additional Designations, Foreign Narcotics Kingpin Designation Act

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") is publishing the name of one individual whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act") (21 U.S.C. 1901-1908, 8 U.S.C. 1182).

**DATES:** The designation by the Director of OFAC of the individual identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on September 6, 2012.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622-2490.

#### SUPPLEMENTARY INFORMATION:

##### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at <http://www.treasury.gov/ofac> or via facsimile through a 24-hour fax-on-demand service at (202) 622-0077.

##### Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On September 6, 2012, the Director of OFAC designated the following individual whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

##### Individual

1. LOPEZ PEREZ, Griselda Natividad (a.k.a. LOPEZ PEREZ, Gricelda; a.k.a. PEREZ ROJO, Karla), Cerro de las Siete Gotas #642, Fraccionamiento Colinas de San Miguel, Culiacan, Sinaloa, Mexico; DOB 19 Aug 1959; alt. DOB 30 Dec 1966; POB Sinaloa, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. LOPG590819MSLPRR04 (Mexico); alt. C.U.R.P. LOPG661230MSLPRR04 (Mexico) (individual) [SDNTK].

Dated: September 6, 2012.

**Adam J. Szubin,**

Director, Office of Foreign Assets Control.

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