

# BAKER & MILLER PLLC

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ENTERED  
Office of Proceedings  
June 27, 2016  
Part of  
Public Record

William A. Mullins

(202) 663-7823 (Direct Dial)  
E-Mail: [wmullins@bakerandmiller.com](mailto:wmullins@bakerandmiller.com)

June 27, 2016

## **BY HAND DELIVERY**

Cynthia T. Brown, Chief  
Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington DC 20423-0001

Re: Chesapeake Western Railway – Discontinuance of Service Exemption – In Rockingham and Shenandoah Counties, VA, AB-290 (Sub-No. 387X)

Dear Ms. Brown:

Enclosed please find an original and eleven copies of a notice of exemption by Chesapeake Western Railway, a wholly-owned subsidiary of Norfolk Southern Railway Company, to discontinue rail service over an approximately 15.1-mile rail line (referred to herein as the "Line") extending from milepost CW 84.4 (at Mt. Jackson, VA) to milepost CW 99.5 (at Broadway, VA) in Rockingham and Shenandoah Counties, VA. Please acknowledge receipt and filing of this notice of exemption by date-stamping the enclosed eleventh copy and returning it to the courier for return to me. This submission also includes an electronic copy of the entire filing and a separate electronic file of a draft Federal Register notice.

Finally, pursuant to 49 C.F.R. § 1002.2(f)(21)(ii), I have enclosed two filing fee checks totaling \$3,900.00. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7823 or by e-mail: [wmullins@bakerandmiller.com](mailto:wmullins@bakerandmiller.com).

Sincerely,



William A. Mullins  
Counsel for Chesapeake Western Railway

FEE RECEIVED  
June 27, 2016  
SURFACE  
TRANSPORTATION BOARD

Enclosures  
cc: Greg Summy, LaWada Poarch, Laura Hoag

FILED  
June 27, 2016  
SURFACE  
TRANSPORTATION BOARD

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**AB-290 (Sub-No. 387X)**

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**CHESAPEAKE WESTERN RAILWAY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN ROCKINGHAM AND SHENANDOAH COUNTIES, VA**

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**NOTICE OF EXEMPTION**

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**Greg Summy  
General Attorney  
NORFOLK SOUTHERN CORPORATION  
Three Commercial Place  
Norfolk, Virginia 23510  
Tel: (757) 533-4939  
Fax: (757) 533-4872**

**William A. Mullins  
Crystal M. Zorbaugh  
BAKER & MILLER PLLC  
2401 Pennsylvania Ave., NW  
Suite 300  
Washington, DC 20037  
Tel: (202) 663-7820  
Fax: (202) 663-7849**

**Attorneys for Chesapeake Western  
Railway**

**June 27, 2016**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**AB-290 (Sub-No. 387X)**

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**CHESAPEAKE WESTERN RAILWAY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN ROCKINGHAM AND SHENANDOAH COUNTIES, VA**

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**NOTICE OF EXEMPTION**

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**INTRODUCTION**

Chesapeake Western Railway (“CW”) hereby submits a notice of exemption pursuant to 49 C.F.R. part 1152, subpart F (Exempt Abandonments and Discontinuances of Service and Trackage Rights) to discontinue service over an approximately 15.1-mile rail line (referred to herein as the “Line”) extending from milepost CW 84.4 (at Mt. Jackson, VA) to milepost CW 99.5 (at Broadway, VA) in Rockingham and Shenandoah Counties, VA. The Line traverses through United States Postal Service Zip Code territories 22842, 22844, 22853, 22815, and 22847. In accordance with the Board’s regulations at 49 C.F.R. §§ 1152.50(b) and (d), CW provides the following information in support of its notice:

**Certification: 49 C.F.R. § 1152.50(b)**

The Line satisfies the criteria for a discontinuance of service exemption under the provisions located at 49 C.F.R. part 1152, subpart F. See Certification of T.L. Reynolds, General Manager Southern Region for Chesapeake Western Railway, attached hereto and made part hereof as Exhibit A.

**Proposed Consummation Date: 49 C.F.R. § 1152.50 (d)(2)**

The subject discontinuance will be consummated on or after August 16, 2016 (50 days after filing the notice of exemption).

**Additional Information Required: 49 C.F.R. §§ 1152.22(a)(1)-(4), (7)-(8) and (e)(4)**

**Exact name of applicant (49 C.F.R. § 1152.22(a)(1)):**

Chesapeake Western Railway

**Whether applicant is a common carrier by railroad (49 C.F.R. § 1152.22(a)(2)):**

CW is a common carrier by railroad subject to the Board's jurisdiction under 49 U.S.C. Subtitle IV.

**Relief sought (49 C.F.R. § 1152.22(a)(3)):**

CW has invoked the Board's two-year-out-of-service class exemption procedures to discontinue rail service over an approximately 15.1-mile rail line extending from milepost CW 84.4 (at Mt. Jackson, VA) to milepost CW 99.5 (at Broadway, VA) in Rockingham and Shenandoah Counties, VA.

**Map (49 C.F.R. § 1152.22(a)(4)):**

A detailed map showing the location of the Line is attached hereto as Exhibit B.

**Applicant's representatives (49 C.F.R. § 1152.22(a)(7)):**

CW's representatives to whom correspondence regarding this discontinuance should be sent is as follows:

William A. Mullins  
Crystal M. Zorbaugh  
BAKER & MILLER PLLC  
2401 Pennsylvania Ave., NW  
Suite 300  
Washington, DC 20037  
Tel: (202) 663-7820  
Fax: (202) 663-7849

**USPS ZIP codes (49 C.F.R. § 1152.22(a)(8)):**

The Line lies within the following U.S. Postal Service ZIP Code territories: 22842, 22847, 22844, 22853, and 22815.

**Rural and Community Impact (49 C.F.R. § 1152.22(e)(4)):**

The Line has been dormant for over two years, so CW anticipates no rural or community impact from the discontinuance of its common carrier obligation. Because the Line has not been used for local rail shipments for over twenty-four (24) months, there will be no effect on regional or local transportation systems and patterns, and no diversion of traffic to other transportation systems or modes would result from CW's action.

The informational requirement of section 1152.22(e)(4) (alternative public uses of rail property) appears to be pertinent only in cases where the railroad proposes to abandon rail property.<sup>1</sup> In this proceeding, CW is filing a notice of exemption to discontinue service over the Line, not abandon it, and for this reason CW has no opinion on whether or not the subject rail property might be appropriate for use for other public purposes. Although the following is of questionable relevance here (because the proposed action does not entail abandonment of a rail line), based on the information in its possession, CW is unaware of any condition that would affect the transfer of title to or the use of the railroad right-of-way for other than rail purposes.

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<sup>1</sup> See Columbus and Greenville Railway Company – Discontinuance of Service Exemption – in Greenwood, MS, STB Docket No. AB-297 (Sub-No. 103X), slip op. at 2 n.2 (STB served July 3, 2007 (“Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate”)); see also, Norfolk Southern Railway Company—Discontinuance Exemption—in Mahoning County, OH, STB Docket No. AB-290 (Sub-No. 292X), slip op. at 2 n.2 (STB served March 15, 2007); Chillicothe-Brunswick Rail Maintenance Authority—Discontinuance Exemption—in Livingston, Linn, and Chariton Counties, MO, STB Docket No. AB-1001X, slip op at 2 n.3 (STB served Feb 23, 2007).

### **Labor Protection**

The interests of affected railroad employees, if any, will be protected by the conditions discussed in Oregon Short Line Railroad —Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

### **Certifications**

Attached hereto as Exhibit C are the Certificates of Service and Publication pursuant to the notice requirements of 49 C.F.R. §§ 1105.12 and 1152.50(d)(1). For reasons set forth in the “Environmental and Historic Report” section below, the certification of service requirement at 49 C.F.R. § 1105.11 (transmittal of Environmental and Historic Reports) is not applicable here.

### **Environmental and Historic Report**

The Board does not normally require a carrier seeking to discontinue service over a particular rail line to prepare and submit for review a combined environmental and historic report.<sup>2</sup> Here, the discontinuance is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49 C.F.R. § 1105.8(b) because CW seeks only to discontinue service. CW does not anticipate engaging in any salvage activities as a result of obtaining discontinuance authority and has no plans to remove any potentially historic structures (such as bridges). Further Board approval is required for CW to

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<sup>2</sup> See Everett Railroad Company – Discontinuance of Service Exemption – In Blair County, PA, STB Docket No. AB-271X slip op. at 2 n.2 (STB served Nov. 16, 2007) (“Because this is a discontinuance proceeding and not an abandonment, . . . no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively”); see also, Columbus and Greenville Railway Company – Discontinuance of Service Exemption – in Greenwood, MS, STB Docket No. AB-297 (Sub-No. 103X), slip op. at 2 n.2 (STB served July 3, 2007); Norfolk Southern Railway Company—Discontinuance Exemption—in Mahoning County, OH, STB Docket No. AB-290 (Sub-No. 292X), slip op. at 2 n.2 (STB served March 15, 2007); and Chillicothe-Brunswick Rail Maintenance Authority—Discontinuance Exemption—in Livingston, Linn, and Chariton Counties, MO, STB Docket No. AB-1001X, slip op at 2 n.3 (STB served Feb 23, 2007).

abandon service on the Line. Accordingly, no environmental or historic report was prepared, and the STB will not prepare an environmental assessment.

Respectfully submitted,



Greg Summy  
General Attorney  
NORFOLK SOUTHERN CORPORATION  
Three Commercial Place  
Norfolk, Virginia 23510  
Tel: (757) 533-4939  
Fax: (757) 533-4872

William A. Mullins  
Crystal M. Zorbaugh  
BAKER & MILLER PLLC  
2401 Pennsylvania Ave., NW  
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Fax: (202) 663-7849

Attorneys for Chesapeake Western Railway

June 27, 2016

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**AB-290 (Sub-No. 387X)**

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**CHESAPEAKE WESTERN RAILWAY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN ROCKINGHAM AND SHENANDOAH COUNTIES, VA**

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**NOTICE OF EXEMPTION**

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**EXHIBIT A**

**CERTIFICATION PURSUANT TO  
49 C.F.R. § 1152.50(b)**

**CERTIFICATION**

STATE OF GEORGIA:

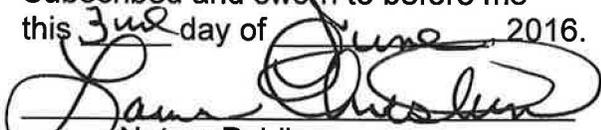
SS:

CITY OF ATLANTA:

T. L. Reynolds makes oath and says that he is General Manager Southern Region for Chesapeake Western Railway, a wholly-owned subsidiary of Norfolk Southern Railway Company; that the rail line between Mileposts CW 99.5 and CW 84.4 over which service is to be discontinued, is subject to his supervision and direction; that no local traffic has moved over the line for at least two years, that no overhead traffic has moved over the line for at least two years and that overhead traffic, if there were any, could be rerouted over other lines; and that no formal complaint filed by a user of rail service on the line or a state or local government entity acting on behalf of such user regarding cessation of service over the line either is pending before the Surface Transportation Board or any U. S. District Court or has been decided in favor of the complainant within the two-year period.

  
\_\_\_\_\_  
T. L. Reynolds

Subscribed and sworn to before me  
this 3rd day of June 2016.

  
\_\_\_\_\_  
Notary Public

My commission expires:

4-3-2017

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**AB-290 (Sub-No. 387X)**

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**CHESAPEAKE WESTERN RAILWAY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN ROCKINGHAM AND SHENANDOAH COUNTIES, VA**

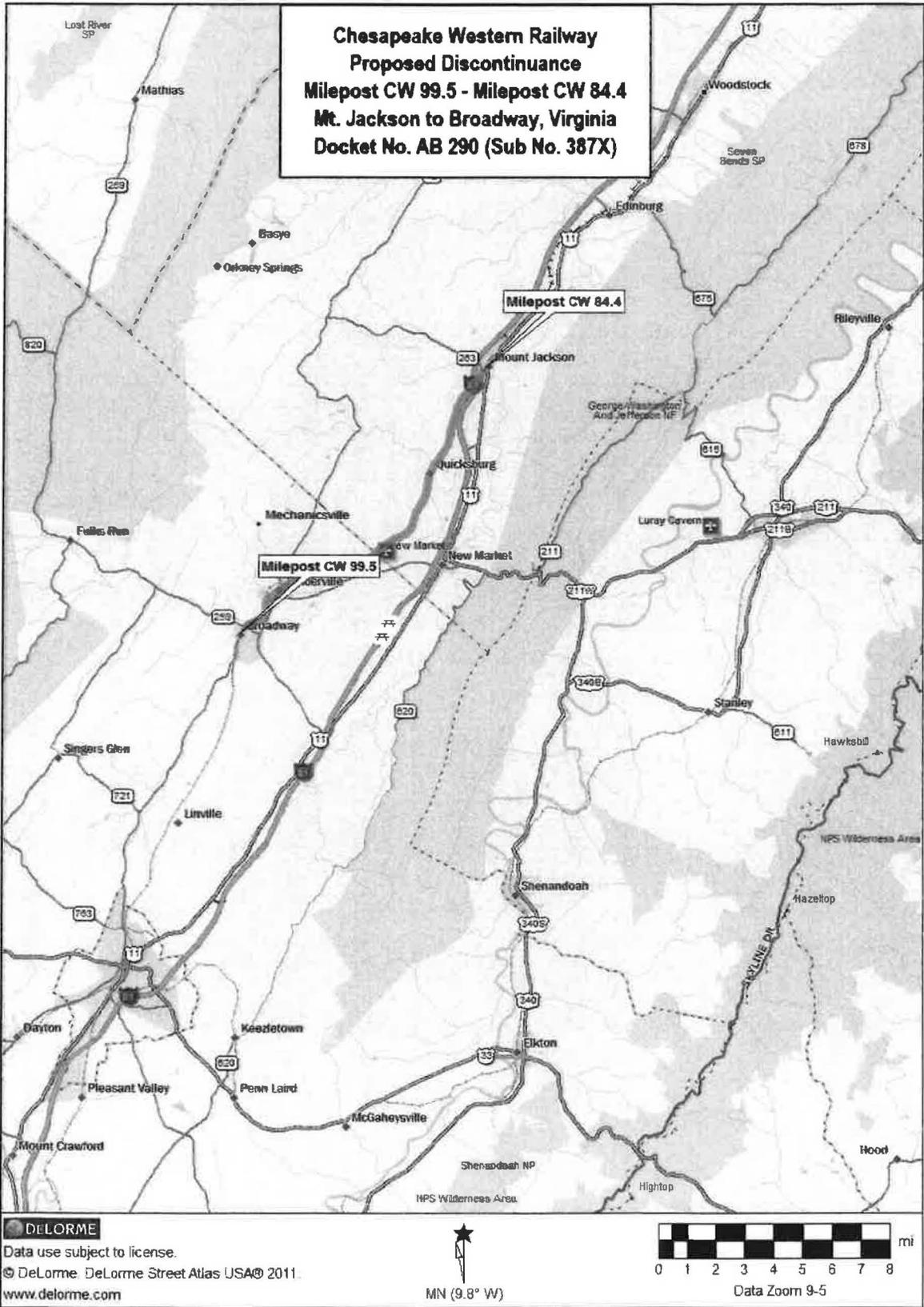
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**NOTICE OF EXEMPTION**

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**EXHIBIT B**

**MAP**



**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**AB-290 (Sub-No. 387X)**

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**CHESAPEAKE WESTERN RAILWAY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN ROCKINGHAM AND SHENANDOAH COUNTIES, VA**

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**NOTICE OF EXEMPTION**

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**EXHIBIT C**

**CERTIFICATIONS OF SERVICE/PUBLICATION**

**Certificate of Service**

**49 C.F.R. § 1152.50(d)(1) – Notice**

I certify that, on June 15, 2015, in keeping with 49 C.F.R. § 1152.50(d)(1), I caused the following parties to be served with written notice of the intent of Norfolk Southern Railway Company to invoke the Board's notice of exemption procedures to discontinue approximately 15.1 miles of rail line in Rockingham and Shenandoah Counties, VA.

Virginia Department of Transportation  
1401 E. Broad St.  
Richmond, VA 23219

David Dorfman  
Headquarters Military Surface Deployment  
and Distribution Command  
Transportation Engineering Agency  
ATTN: SDTE-SA  
Railroads for National Defense Program  
1 Soldier Way, Building 1900W  
Scott AFB, IL 62225

Thomas L. Tidwell, Chief  
Forest Service  
U.S. Department of Agriculture  
Sidney R. Yates Federal Building  
201 14th Street SW  
Washington, DC 20024

Charlie Stockman  
National Park Service  
Rivers and Trails Conversation Program  
1201 Eye Street, NW, 9th Floor (Org. Code  
2220)  
Washington, DC 20005

Division of Utility and Railroad Safety  
P.O. Box 1197  
Richmond, Virginia 23218

June 27, 2016



William A. Mullins  
Attorney for Chesapeake Western Railway

**Certificate of Publication**

**49 C.F.R. § 1105.12 – Newspaper Notice**

I certify that a “Notice of Intent to Discontinue Rail Service” for Chesapeake Western Railway was published in the form and manner prescribed by the Surface Transportation Board regulations for a notice of exemption to discontinue rail service. The notice was published one time on June 18, 2016 in Daily News Record, a newspaper of general circulation in Rockingham and Shenandoah Counties, VA where the Line is located. Attached is a proof of publication from the Daily News Record.

June 27, 2016



William A. Mullins  
Attorney for Chesapeake Western Railway

DAILY NEWS-RECORD

STATE OF VIRGINIA  
CITY/COUNTY OF ROCKINGHAM

Subscribed and sworn to before me in  
the jurisdiction aforesaid this  
20th day of June, 2016 by

*Judy Ritzke*.....

*Pamela R Smith*

Pamela R Smith - Notary Public  
My commission expires 06/20/2018  
Notary Registration Number: 7040502

Certificate of Publication

PREPAID LEGAL ADS

THIS IS TO CERTIFY that the attached  
advertisement of:

CW NOTICE OF INTENT TO  
DISCONTINUE RAIL SERVICE  
PO#: AB-290 (SUB-NO. 387X)

appeared in the DAILY NEWS-RECORD  
on the following dates:

06/18/2016

At 16.75 per inch, line. Cost \$259.63

DUPLICATE by *Judy Ritzke*.....

**NOTICE OF INTENT  
TO DISCONTINUE  
RAIL SERVICE**

**AB-290 (Sub-No. 387X)**

Chesapeake Western Railway ("CW"), a wholly-owned subsidiary of Norfolk Southern Railway Company, gives notice that on or about June 27, 2016, it intends to file with the Surface Transportation Board ("Board"), Washington, DC 20423, a notice of exemption under 49 C.F.R. Part 1152 Subpart F — Exempt Abandonments and Discontinuances of Service and Trackage Rights permitting CW to discontinue rail service over an approximately 15.1-mile rail line (referred to herein as the "Line") extending from milepost CW 84.4 (at Mt. Jackson, VA) to milepost CW 99.5 (at Broadway, VA) in Rockingham and Shenandoah Counties, VA. The Line traverses through United States Postal Service Zip Code territories 22842, 22847, 22844, 22853, and 22815. There have been no customers on the Line proposed for discontinuance for over two years. The proceeding will be docketed as AB-290 (Sub-No. 387X).

The proposed action entails the discontinuance of rail service over the Line for which further Board approval would be required to abandon service on the Line. Accordingly, this proceeding is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49C.F.R. § 1105.8(b), and the Board will not prepare an environmental assessment.

Appropriate offers of financial assistance ("OFA") to continue rail service under a subsidy can be filed with the Board. Because the proposed action is for the discontinuance of service over, but not the abandonment of the Line, requests for public use conditions and rail banking/trails will not be accepted. An original and 10 copies of any pleading in response to the proposed discontinuance of service (such as offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423 [See 49 C.F.R. §§ 1104.1(a) and 1104.3(a)], and one copy must be served on CW's representative [See 49 CFR § 1104.12(a)]. Questions regarding OFA or other such matters may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at 202-245-0230. Copies of any comments or requests for specific Board action should be served on CW's representative: William A. Mullins, BAKER & MILLER PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037; phone: 202-663-7820; fax 202-663-7849.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**AB-290 (Sub-No. 387X)**

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**CHESAPEAKE WESTERN RAILWAY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN ROCKINGHAM AND SHENANDOAH COUNTIES, VA**

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**NOTICE OF EXEMPTION**

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**DRAFT FEDERAL REGISTER  
NOTICE OF EXEMPTION**

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB-290 (Sub-No. 387X)]

Chesapeake Western Railway —Discontinuance of Service Exemption – in Rockingham and Shenandoah Counties, VA

On June 27, 2016, Norfolk Southern Railway Company (“CW”) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights to discontinue service over an approximately 15.1 miles rail line (referred to herein as the “Line”) extending from milepost CW 84.4 (at Mt. Jackson, VA) to milepost CW 99.5 (at Broadway, VA) in Rockingham and Shenandoah Counties, VA. The Line traverses through United States Postal Service Zip Code territories 22842, 22847, 22844, 22853, and 22815. CW has certified that: (1) no local traffic has moved over the line for at least two years; (2) that no overhead traffic has moved over the line for at least two years and that overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the applicable requirements at 49 C.F.R. § 1105.12 (newspaper publication), and 49 C.F.R. § 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). To

address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. § 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August \_\_, 2016, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 C.F.R. § 1152.27(c)(2) must be filed by \_\_\_\_\_.<sup>1</sup> Petitions to reopen must be filed by \_\_\_\_\_, 2016, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to CW's representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: \_\_\_\_\_, 2016.

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

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<sup>1</sup> Each OFA must be accompanied by the filing fee, which is currently set at \$1,600. See 49 C.F.R. § 1002.2(f)(25). Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**AB-290 (Sub-No. 387X)**

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**CHESAPEAKE WESTERN RAILWAY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN ROCKINGHAM AND SHENANDOAH COUNTIES, VA**

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**NOTICE OF EXEMPTION**

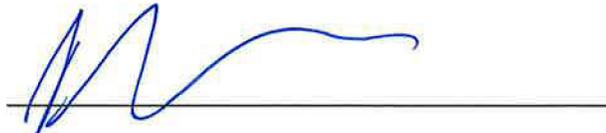
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**VERIFICATION**

## Verification

I, John Friedmann, Vice President for Norfolk Southern Railway Company ("NSR"), hereby verify under penalty of perjury that to the best of my knowledge the foregoing discontinuance notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of Chesapeake Western Railway, a wholly-owned subsidiary for NSR in connection with this proceeding before the Surface Transportation Board.

Executed this day of June 9, 2016.



John H. Friedmann  
Vice President