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ENTERED
Office of Proceedings
May 24, 2013
Part of
Public Record

ROBERT A. WIMBISH

(202) 663-7824 (Direct Dial)
E-Mail: rwimbish@bakerandmiller.com

May 24, 2013

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: *Norfolk Southern Railway Company – Discontinuance of Service Exemption – In Tipton and Howard Counties, Indiana, STB Docket No. AB-290 (Sub-No. 348X)*

Dear Ms. Brown:

Pursuant to the Board's exemption procedures for the discontinuance of rail service over lines with no local business for at least two years (49 C.F.R. § 1152.50), enclosed on behalf of Norfolk Southern Railway Company are an original and 11 copies of a verified discontinuance of service notice of exemption.

A check in the amount of \$3,700.00 is enclosed as the filing fee.

Please acknowledge receipt and filing of this notice of exemption by date-stamping the enclosed eleventh copy and returning it to the courier to return to me.

Sincerely,

A handwritten signature in cursive script that reads "R. A. Wimbish".

Robert A. Wimbish
Counsel for Norfolk Southern Railway Company

Enclosures

cc: Marc Kirchner
Maquiling Parkerson
Ja Wada Pranch

FEE RECEIVED
May 24, 2013
SURFACE
TRANSPORTATION BOARD

FILED
May 24, 2013
SURFACE
TRANSPORTATION BOARD

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

STB DOCKET NO. AB-290 (Sub-No. 348X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN TIPTON AND HOWARD COUNTIES, INDIANA**

EXEMPTION NOTICE



**Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7824
Fax: (202) 663-7849**

**Attorney for Norfolk Southern
Railway Company**

Dated: May 24, 2013

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

STB DOCKET NO. AB-290 (Sub-No. 348X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN TIPTON AND HOWARD COUNTIES, INDIANA**

EXEMPTION NOTICE

Norfolk Southern Railway Company (“NSR”) 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 10.8-mile rail line in Tipton and Howard Counties, Indiana (the “Line”). In accordance with the Board’s regulations at 49 C.F.R. §§ 1152.50(b) and (d), NSR provides the following information in support of its notice:

Certification: 49 C.F.R. § 1152.50(b)

The Line satisfies the criteria for discontinuance under the exemption at 49 C.F.R. part 1152, subpart F. See Verification of R.A. Bartle, General Manager Northern Region – Norfolk Southern Railway Company, 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 July 14, 2013 (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)):

Norfolk Southern Railway Company.

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

NSR is a Class I 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)):

NSR is invoking the Board's two-year-out-of-service class exemption procedures to discontinue service over an approximately 10.8-mile line of railroad (the Line) located in Tipton and Howard Counties, Indiana, and extending from milepost I-41.0 (north of Market Road near Tipton, Indiana), to milepost I-51.8 (near the intersection of E. Lincoln Road and Home Avenue in Kokomo, Indiana).

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 representative (49 C.F.R. § 1152.22(a)(7)):

NSR's representative to whom correspondence regarding this discontinuance should be sent is as follows:

Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7824
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 Codes territories: 46068, 46072, 46901, and 46902.

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

The Line has been dormant for at least two years due to a lack of shipper demand, so NSR 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 NSR'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.¹ But here NSR is filing a notice of exemption to *discontinue service* over the Line, not abandon it, and for this reason NSR has no opinion on whether or not the subject rail property might be appropriate for use for other public purposes. Although of questionable relevance here (because the proposed action does not entail abandonment of a rail line), NSR nevertheless states as follows: based upon the information in its possession, NSR 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.

¹ See, e.g., 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) (“CAGY-Greenwood”) (“Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate”); Norfolk Southern Railway Company—Discontinuance Exemption—in Mahoning County, OH, STB Docket No. AB-290 (Sub-No. 292X), slip op. at 2 n.2 (“NS-Mahoning”) (STB served March 15, 2007) (same); 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 (“CBRA-Livingston”) (STB served Feb 23, 2007) (same).

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 inapplicable here.

Environmental and Historic Report

A notice of exemption to discontinue service over (rather than to abandon) a line of railroad that has been out of service for more than two years does not require the preparation or submission of an Environmental and/or Historic Report.²

Respectfully submitted,



Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7824
Fax: (202) 663-7849

Attorney for Norfolk Southern Railway Company

May 24, 2013

² See, e.g., 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”); CAGY-Greenwood at 2 n.2 (same); NS-Mahoning at 2 n.2 (same); CBRA-Livingston at 2 n.3 (same).

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

STB DOCKET NO. AB-290 (Sub-No. 348X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN TIPTON AND HOWARD COUNTIES, INDIANA**

EXEMPTION NOTICE

EXHIBIT A

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

CERTIFICATION

STATE OF GEORGIA:

ss:

CITY OF ATLANTA:

R.A. Bartle makes oath and says that he is General Manager Northern Region for Norfolk Southern Railway Company; that the Norfolk Southern Railway Company 10.8 miles of rail line between Milepost 1 41.0 in Tipton, Indiana and Milepost 1 51.8 in Kokomo, Indiana, 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.



R. A. Bartle

Subscribed and sworn to before me
this 30th day of April, 2013.



Notary Public

My commission expires:

4/20/15

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

STB DOCKET NO. AB-290 (Sub-No. 348X)

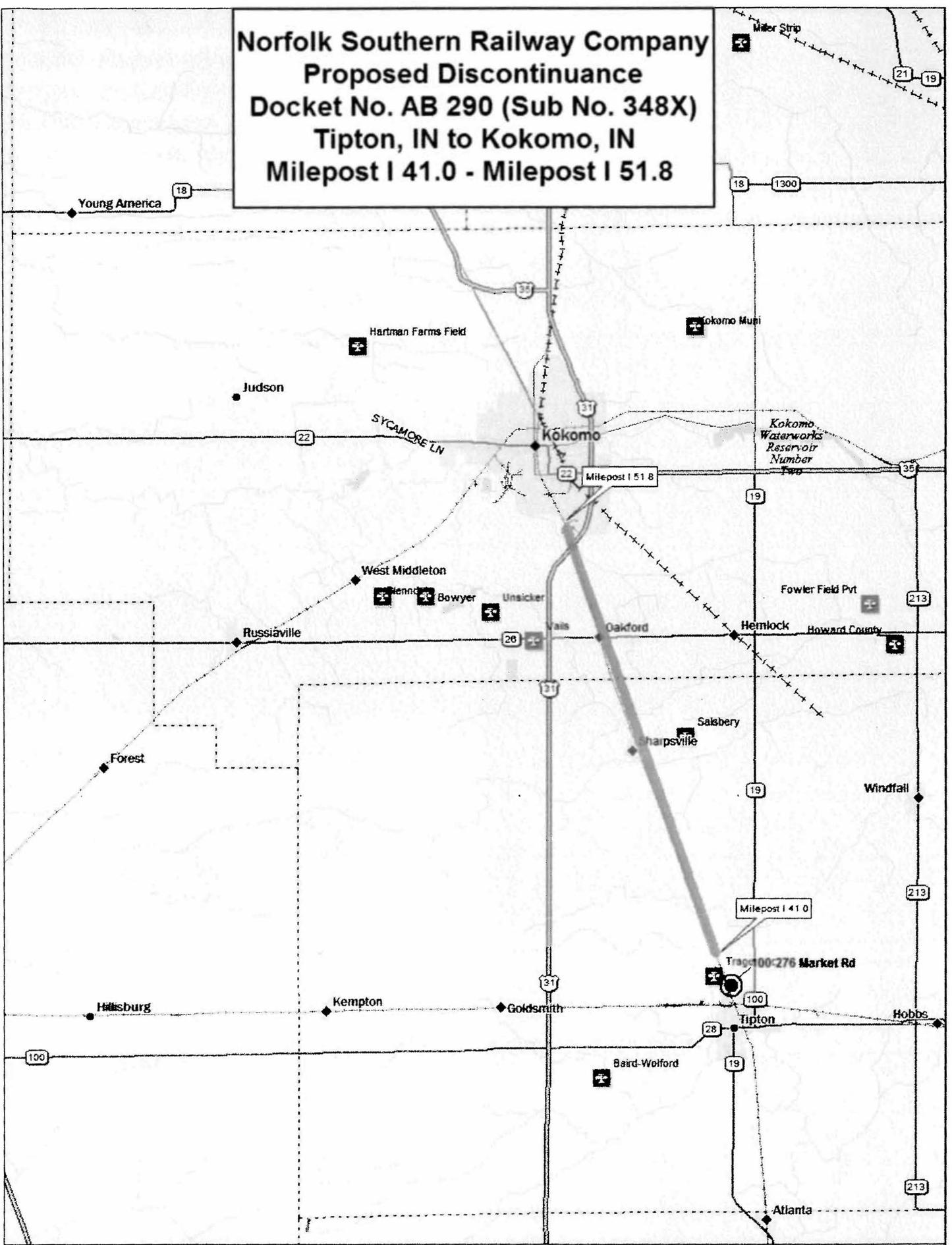
**NORFOLK SOUTHERN RAILWAY COMPANY
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN TIPTON AND HOWARD COUNTIES, INDIANA**

EXEMPTION NOTICE

EXHIBIT B

MAP

**Norfolk Southern Railway Company
Proposed Discontinuance
Docket No. AB 290 (Sub No. 348X)
Tipton, IN to Kokomo, IN
Milepost | 41.0 - Milepost | 51.8**



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

STB DOCKET NO. AB-290 (Sub-No. 348X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN TIPTON AND HOWARD COUNTIES, INDIANA**

EXEMPTION NOTICE

EXHIBIT C

**CERTIFICATIONS OF
SERVICE/PUBLICATION**

Certificate of Service

49 C.F.R. § 1152.50(d)(1) – Notice

I hereby certify that Norfolk Southern Railway Company supplied written notice of its intent to use the Surface Transportation Board's notice of exemption procedures to discontinue service over approximately 10.8 miles of rail line located in Tipton and Howard Counties, Indiana. Written notice (a representative copy of which is attached), was served on May 9, 2014, upon the following:

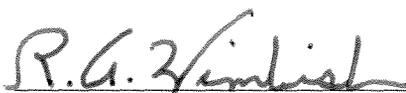
Brenda A. Howe
Secretary of the Commission
Indiana Utility Regulatory Commission
101 West Washington St., Suite 1500 E
Indianapolis, IN 46204

David Dorfman
SDDC TEA-Railroads for National Defense
709 Ward Dr., Bldg. 1990
Scott AFB, IL 62225

Charlie Stockman
National Park Service
Rivers & Trails Conservation Program
1201 Eye Street, NW, 9th Floor
(Org. Code 2220)
Washington, D.C. 20005

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

May 24, 2013



Robert A. Wimbish
Attorney for Norfolk Southern Railway Company

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820

FACSIMILE: (202) 663-7849

ROBERT A. WIMBISH

(202) 663-7824 (Direct Dial)
E-Mail: rwimbish@bakerandmiller.com

May 9, 2013

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

Re: *Norfolk Southern Railway Company – Discontinuance of Service Exemption – In Tipton and Howard Counties, Indiana*, STB Docket No. AB-290 (Sub-No. 348X)

Dear Mr. Tidwell:

On or about May 24, 2013, Norfolk Southern Railway Company (“NSR”) expects to file with the Surface Transportation Board (“STB”) a notice of exemption (“Notice”) pursuant to 49 C.F.R. Part 1152, Subpart F – *Exempt Abandonments and Discontinuances of Service and Trackage Rights*, to discontinue service over a 10.8-mile line of railroad (hereinafter, the “Line”) located in Tipton and Howard Counties, Indiana, extending from milepost I-41.0 (north of Market Road near Tipton, Indiana), to milepost I-51.8 (near the intersection of E. Lincoln Road and Home Avenue in Kokomo, Indiana). The Line traverses United States Postal Service Zip Code territories 46068, 46072, 46901, and 46902. A map depicting the Line is attached hereto as Exhibit A.

This proceeding involves the discontinuance of common carrier service and not abandonment, so NSR understands that the question of whether the Line contains federally-granted rights-of-way is inapplicable. The Line is not suited at this time for alternative public use. Any documentation in the railroad’s possession will be made available promptly to those requesting it.

If you have any questions about the discontinuance Notice that NSR soon plans to file, please review the applicable regulations or contact me or the Surface Transportation Board, 395 E Street, SW Washington, DC 20423-0001; TEL: (202) 245-0230.

Sincerely,



Robert A. Wimbish

Counsel for Norfolk Southern Railway Company

Enclosure

Certificate of Publication

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

I certify that a “Notice of Intent to Discontinue Rail Service” was published in the form prescribed by the Surface Transportation Board for a notice of exemption strictly to discontinue rail service. The notice was published one time each on in the *Tipton Tribune* (May 13, 2013) and *Kokomo Tribune* (May 14, 2013), newspapers of general circulation in Tipton County, Indiana, and Howard County, Indiana, respectively, where the subject Line is located.

May 24, 2013



Robert A. Wimbish
Attorney for Norfolk Southern Railway Company

PROOF OF PUBLICATION

State of Indiana,

Tipton County, ss:

Personally appeared before me,

Robert Nash of
The Elwood Publishing Co., Publishers
of the Tipton Tribune, a daily news-
paper of general circulation, published
in Tipton, Tipton County, Indiana, who,
being duly sworn upon his oath, says
that the notice of which the attached
is a true copy, was duly published in
said

newspaper for 1 successive
weeks.

The first May 13, 2013

The last
Robert Nash

Subscribed and sworn to before me

this 14 day of May 2013

Jane E. Miller Notary Public
Madison County, Indiana
My Commission expires _____

1-29-2016

LEGAL NOTICE

**NOTICE OF INTENT TO
DISCONTINUE RAIL SERVICE
STB DOCKET NO. AB-290
(Sub-No. 348X)**

Norfolk Southern Railway Company ("NSR") gives notice that on or about May 24, 2013, it intends to file with the Surface Transportation 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 NSR to discontinue common carrier service on a 10.8-mile line of railroad in Tipton and Howard Counties, Indiana, extending from milepost I-41.0 (north of Market Road near Tipton, Indiana), to milepost I-51.8 (near the intersection of E. Lincoln Road and Home Avenue in Kokomo, Indiana). The subject rail line traverses United States Postal Service ZIP Code territories 46068, 46072, 46901, and 46902. The proceeding will be docketed as STB Docket No. AB-290 (Sub-No. 348X).

The proposed action entails the discontinuance of rail common carrier service over the subject rail line, but not abandonment. Accordingly, no environmental and/or historic reports will be prepared as part of this proceeding.

Appropriate offers of financial assistance to subsidize continued rail service can be filed with the Board. An original and 10 copies of any pleading pertaining to offers of financial assistance or responding generally to the proposed discontinuance of service 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 NSR's representative [See 49 C.F.R. § 1104.12(a)]. Questions regarding offers of financial assistance 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 NSR's representative: Robert A. Wimbish, BAKER & MILLER PLLC, 2401 Pennsylvania Ave., N.W., #300, Washington, DC 20037; phone: 202-663-7824; fax 202-663-7849.

PUBLISH: May 13, 2013

L149
hspadp

AFFIDAVIT OF PUBLICATION

STATE OF INDIANA
County of Howard

City of Kokomo

ISSUED:

The subscriber, being duly sworn, deposes and says that
he (she) is the said Angela Lunsford of KOKOMO TRIBUNE
and that the foregoing notice for
NOTICE OF INTENT TO DISC

was published in said newspaper in one editions
of said newspaper issued between 05/14/2013 and 05/14/2013

Cost: 136.50

Angela M Lunsford

SUBSCRIBED AND SWORN BEFORE ME THIS 14th day of May, A.D. 2013

Carolyn Pitts

Notary Public

My Commission Expires October 1, 2016

NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE
STB DOCKET NO. AB-290
(Sub-No. 348X)

Norfolk Southern Railway Company (NSR) gives notice that on or about May 24, 2013, it intends to file with the Surface Transportation 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 NSR to discontinue common carrier service on a 10.8-mile line of railroad in Tipton and Howard Counties, Indiana, extending from milepost 1-41.0 (north of Market Road near Tipton, Indiana), to milepost 1-51.8 (near the intersection of E. Lincoln Road and Home Avenue in Kokomo, Indiana). The subject rail line traverses United States Postal Service ZIP Code territories 46068, 46072, 46901, and 46902. The proceeding will be docketed as STB Docket No. AB-290 (Sub-No. 348X).

The proposed action entails the discontinuance of rail common carrier service over the subject rail line, but not abandonment. Accordingly, no environmental and/or historic reports will be prepared as part of this proceeding.

Appropriate offers of financial assistance to subsidize continued rail service can be filed with the Board. An original and 10 copies of any pleading pertaining to offers of financial assistance or responding generally to the proposed discontinuance of service 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 NSR's representative. [See 49 C.F.R. § 1104.12(a)]. Questions regarding offers of financial assistance 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 NSR's representative: Robert A. Wimbush, BAKER & MILLER P.L.L.C., 2401 M Street, N.W., #300, Washington, DC 20037, phone 202-663-7824, fax 202-663-7849.

K-499 May 14 hseadp

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

STB DOCKET NO. AB-290 (Sub-No. 348X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN TIPTON AND HOWARD COUNTIES, INDIANA**

EXEMPTION NOTICE

**DRAFT FEDERAL REGISTER
NOTICE OF EXEMPTION**

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB-290 (Sub-No. 348X)]

Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Tipton and Howard Counties, Indiana

Norfolk Southern Railway Company (NSR) filed on May 24, 2013, 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 approximately 10.8 miles of railroad in Tipton and Howard Counties, Indiana. The subject rail line extends from milepost I-41.0 (north of Market Road near Tipton, Indiana), to milepost I-51.8 (near the intersection of E. Lincoln Road and Home Avenue in Kokomo, Indiana). The line traverses United States Postal Service Zip Codes 46068, 46072, 46901, and 46902.

NSR has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line that has been, or would need to be, rerouted; (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 2-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 July 14, 2013, 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 June __, 2013.¹ Petitions to reopen must be filed by June __, 2013, 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 NSR's representative: Robert A. Wimbish, 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: _____.

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

¹ Each OFA must be accompanied by the filing fee, which is currently set at \$1,500. See 49 C.F.R. § 1002.2(f)(25). Because this proceeding involves the proposed discontinuance of rail service and not 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**

STB DOCKET NO. AB-290 (Sub-No. 348X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN TIPTON AND HOWARD COUNTIES, INDIANA**

EXEMPTION NOTICE

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 of service notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of NSR in connection with this proceeding before the Surface Transportation Board.

Executed this 17th day of April 2013



John H. Friedmann
Vice President