

CHAPTER 8910
DEPARTMENT OF TRANSPORTATION
RAILROADS; RIGHT OF FIRST REFUSAL

8910.0100 DEFINITIONS.
8910.0200 PURPOSE.

8910.0300 ELIGIBILITY.
8910.0400 PROCEDURE.

8910.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Abandonment or abandoned.** “Abandonment” or “abandoned” refers to any process by which the railroad interest seeks the approval of the Interstate Commerce Commission for approval to discontinue service on a portion of railroad track, and includes abandonment and petition for exemption from the abandonment procedures before the Interstate Commerce Commission.

Subp. 3. **Appraisal.** “Appraisal” means an estimate of the fair market value of the parcel of property offered for sale but not including those physical improvements owned by the leaseholder. An appraisal may be made by an appraiser or may be in the form of a bona fide offer from an independent third party.

Subp. 4. **Appraiser.** “Appraiser” means a person who is a qualified real estate appraiser available for state contracts as established by the state of Minnesota and may be an employee of the railroad interest if that person has met the qualifications established by the state.

Subp. 5. **Bona fide offer.** “Bona fide offer” means an offer to buy underlying property without leasehold improvements from an independent third party established in a legally enforceable agreement.

Subp. 6. **Commissioner.** “Commissioner” means the Commissioner of the Minnesota Department of Transportation.

Subp. 7. **Erected.** “Erected” means constructed or owned, or both.

Subp. 8. **Leasehold.** “Leasehold” means property for which there is a lease agreement between the railroad interest and the leaseholder, or as defined by mutual agreement of the leaseholder and the railroad interest.

Subp. 9. **Leaseholder.** “Leaseholder” means a person who holds a lease, license, or permit with respect to property within a right-of-way, and who has erected eligible leasehold improvements on the property with a total fair market value of \$7,500 or more.

Subp. 10. **Leasehold improvement.** “Leasehold improvement” means any structure built specifically for the pursuit of business and that has or had direct access to railroad service.

Subp. 11. **Parcel.** “Parcel” means the portion of land that is offered for sale by the railroad interest, which may be the same as, smaller than, or larger than any individual leasehold property.

Subp. 12. **Railroad interest.** “Railroad interest” includes a railroad corporation, its trustee or successor in interest, a railroad corporation that is in proceedings for bankruptcy under federal law, and a nonrailroad holding corporation that owns a controlling interest in a railroad.

Subp. 13. **Right of first refusal.** “Right of first refusal” means the right of a leaseholder to buy the parcel at a fair market price before sale of that property to any other entity.

Statutory Authority: *MS s 222.631 to 222.633*

History: *11 SR 1692' L 1998 c 403 s 29*

MINNESOTA RULES 2003

1305

RAILROADS; RIGHT OF FIRST REFUSAL 8910.0400

8910.0200 PURPOSE.

The purpose of this chapter is to implement Minnesota Statutes, sections 222.631 to 222.633 by establishing a procedure whereby a railroad interest must offer to leaseholders a first opportunity to purchase real property within a right-of-way that is either being abandoned or offered for sale.

Statutory Authority: *MS s 222.631 to 222.633*

History: *11 SR 1692*

8910.0300 ELIGIBILITY.

Subpart 1. **Leaseholders with surface rights.** Only leaseholders with surface rights are eligible for relief under this chapter. Leaseholders with surface rights are those:

A. with property and facilities served by or formerly served by an industry side track that is owned by a railroad interest and that has lost rail service through abandonment; or

B. who have a leasehold from a railroad interest that is in bankruptcy proceedings.

Subp. 2. **Leaseholders of record.** Right of first refusal accrues to leaseholders of record with the railroad interest at the time the parcel is offered for sale by the railroad interest.

Subp. 3. **Fair market value.** The fair market value of a leasehold improvement, for purposes of eligibility under parts 9010.0100 to 9010.0400, is determined according to the latest available property tax assessment.

Subp. 4. **Limitation.** Eligibility under this part is limited to leaseholds located on rail lines that have been abandoned on or after March 22, 1986, and leaseholds that are offered for sale by a railroad interest in bankruptcy, if the offer to sell was made on or after March 23, 1987.

Statutory Authority: *MS s 222.631 to 222.633*

History: *11 SR 1692*

8910.0400 PROCEDURE.

Subpart 1. **Notice of intent to sell.** The railroad interest shall notify the leaseholder when it intends to sell a parcel that includes the leasehold. Notice must include the railroad interest's offering price for the parcel, a description of the parcel being offered, and the following statement: "You have a right of first refusal to purchase the subject property under Minnesota Statutes, sections 222.631 to 222.633. For more information, you may write or call the Commissioner of the Minnesota Department of Transportation." The statement must also contain the address and telephone number of the commissioner. The railroad interest is prohibited from accepting offers to purchase the parcel unless the offer is contingent on the leaseholders' rights of first refusal. The leaseholder has 15 days from receipt of notification to challenge the reasonableness of the packaging of the parcel for sale. The challenge must be served in writing on the commissioner within 15 days. A copy of the challenge must be served on the railroad interest.

Subp. 2. **Bona fide offer.** If the railroad interest receives a bona fide offer for a parcel, it shall notify all leaseholders affected of the amount of the bona fide offer and of the parcel for which a bona fide offer exists. In addition, the notice must contain the following statement: "You have a right of first refusal to purchase the subject property under Minnesota Statutes, sections 222.631 to 222.633. For more information, you may write or call the Commissioner of the Minnesota Department of Transportation." The statement must also contain the address and telephone number of the commissioner. The leaseholder has 15 days from receipt of notification to challenge the bona fide nature of the offer or to challenge the reasonableness of the packaging of the parcel for which the offer exists, or both. The challenge must be served in writing on the commissioner within 15 days. A copy must be served on the railroad interest. The

railroad interest shall then immediately serve upon the commissioner a copy of the bona fide offer. The contents of a bona fide offer must be treated as trade secret information under Minnesota Statutes, section 13.37, upon the filing by the data suppliers of the request accompanied by supporting affidavits.

Subp. 3. Challenge; appraiser recommendation; commissioner's order. If there is a challenge, the commissioner will, within 60 days of the original notice by the commissioner or railroad interest, issue an order approving or rejecting the railroad interest's packaging of the parcel or bona fide offer, or both. The commissioner shall establish whether the bona fide offer is legitimate based on the following criteria: (1) offer is made by an independent third party, and (2) offeror has entered into a binding agreement with the railroad interest. The commissioner may engage, at the expense of the leaseholder, an appraiser to evaluate the reasonableness of the packaging of the parcel. The commissioner or the commissioner's designated appraiser may interview the railroad interest officials and examine their supporting documents in preparing the review. The commissioner may require the railroad interest to certify that the offer is an independent third party having no affiliation with the railroad interest. The appraiser shall make a recommendation to the commissioner who will issue an order upon review of the recommendation. The criteria for establishing the reasonableness of the parcel shall include:

A. whether the leasehold can be separated out of the parcel without reducing or inhibiting the railroad interest's ability to receive fair market value for its holdings; and

B. whether a bona fide offer can still be achieved even with the removal of the leasehold from the parcel.

Subp. 4. Leaseholder offer. When a parcel offered for sale by the railroad interest affects more than one leaseholder, the affected leaseholders may make a joint offer or may choose to bid independently for acquisition of the entire parcel offered for sale. The railroad interest may choose which is the most acceptable offer or withdraw the parcel from sale.

Subp. 5. Negotiation; establishing purchase price. A leaseholder has 90 days to negotiate with the railroad and complete the acquisition of the parcel after the ruling by the commissioner on any challenges.

In the case of an offer to sell when a bona fide offer has not been received, the leaseholder may elect within the first 30 days to secure and submit an independent appraisal to the commissioner and the railroad interest. The railroad interest shall then have 30 days to accept the counter offer of the leaseholder, negotiate an agreement with the leaseholder, or to secure its own independent appraisal which it shall then submit to the leaseholder and the commissioner.

If each of the two appraisals submitted to the commissioner is within five percent of their average, the price established by the commissioner must be the average of the two appraisals. If the variance is greater than five percent of the average price, either the leaseholder or the railroad interest may request the commissioner to choose a third appraiser, the costs of which must be split equally between the leaseholder and the railroad interest. The third appraiser shall report within 30 days to the commissioner, railroad interest, and leaseholder. If an agreement cannot be reached by the 90th day of the negotiation period, a notice of dispute may be filed with the commissioner. Within 30 days after filing of the notice of dispute, the commissioner shall issue an order establishing the purchase price.

Subp. 6. Agreement declined; right forfeited. If either party declines to enter into an agreement based on the commissioner's order, the party shall forfeit its right under this chapter; that is, the leaseholder forfeits the right of first refusal if the leaseholder withdraws. The railroad remains under an obligation to offer the right of first refusal.

MINNESOTA RULES 2003

1307

RAILROADS; RIGHT OF FIRST REFUSAL 8910.0400

Subp. 7. **Time variance.** Timelines established under this chapter may be varied by the commissioner in accordance with the commissioner's rules on variances.

Statutory Authority: *MS s 222.631 to 222.633*

History: *11 SR 1692; L 1998 c 403 s 29*

8910.1000 [Repealed, L 2003 1SP19 art 2 s 79]

8910.2000 [Repealed, L 2003 1SP19 art 2 s 79]

8910.2100 [Repealed, L 2003 1SP19 art 2 s 79]

8910.3000 [Repealed, L 2003 1SP19 art 2 s 79]

8910.3100 [Repealed, L 2003 1SP19 art 2 s 79]