**Minnesota Department of Transportation**

**Office of Freight and Commercial Vehicle Operations**
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December 1, 2003

Governor Tim Pawlenty

Representative Steve Sviggum, Chair
Legislative Coordinating Commission

Michele Timmons
Revisor of Statutes

Senator Dean E. Johnson, Chair
Senator Mark Ourada, Ranking Minority Member
Senate Transportation Policy and Budget Division

Representative Ron Erhardt, Chair
Representative Joe Opatz, DFL Lead
House Transportation Policy

Representative William Kuisle, Chair
Representative Bernie Lieder, DFL Lead
House Transportation Finance

Senator Jim Vickerman, Chair
Senator Claire Robling, Ranking Minority Member
Senate State and Local Govt. Operations

Representative Jim Rhodes, Chair
Representative Phyllis Kahn, DFL Lead
House Govt. Operations and Vet. Affair Policy

Re: Annual Report on Obsolete, Unnecessary, or Duplicative Rules, as Required by Minn. Stat. § 14.05, Subd. 5.

Dear Governor Pawlenty, Senators, and Representatives:

I am writing on behalf of the Minnesota Department of Transportation in response to the requirements of Minn. Stat. § 14.05, subd. 5, which provides:

> Subd. 5. Review and repeal of rules. By December 1 of each year, an agency must submit to the governor, the Legislative Coordinating Commission, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, a list of any rules or portions of rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to repeal the obsolete,

unnecessary, or duplicative rule. Such a bill must include proposed authorization to use the expedited procedures of section 14.389 to repeal or amend the obsolete, unnecessary, or duplicative rule. A report submitted under this subdivision must be signed by the person in the agency who is responsible for identifying and initiating repeal of obsolete rules. The report also must identify the status of any rules identified in the prior year's report as obsolete, unnecessary, or duplicative. If none of an agency's rules are obsolete, unnecessary, or duplicative, an agency's December 1 report must state that conclusion.

We have reviewed all department rules and have identified the following obsolete, unnecessary or duplicative rules for this report:

**Chapter 7805 Motor Carrier Tariffs; Accounting**

**7805.0700 Class Determined by Gross Operating Revenues**. This provision is obsolete because the department no longer classifies carriers according to their annual gross operating revenues.

The department proposes to repeal this through future legislation.

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**Chapter 8800 Aeronautics**

The Office of Aeronautics is currently in the process of updating Chapter 8800. Any obsolete rule provisions identified during the rulemaking will be repealed during the rulemaking process.

**Chapter 8840, Special Transportation Services**

**8840.5100 Definitions, subp. 4 Common Carrier.** Subdivision 4 is obsolete because the definition is based upon the definition of "regular route common carrier" in Minn. Stat. §221.011, subd. 9 which as been repealed.

**8840.5300 Scope, subp. 2 Care Facilities and subp. 3 Exemptions.** Subparts 2 and 3 are duplicative of the statutory special transportation service eligibility requirements and are proposed to be repealed from chapter 8840.

**8840.5600 Renewal, subp. 1 Certificate renewal form notification of renewal and subp. 3 New certificate.** Subpart 1 is no longer necessary because special transportation service providers no longer need to request renewal of the certificate of insurance. The department keeps track of the expiration date of the certificate and now sends out the renewal information directly to the provider instead of having them request renewal. The department proposes to repeal subpart 3 because it is duplicative of part 8840.5500, subp. 5.

**8840.5800 Enforcement, subp. 4 Enforcement hearing**. The department proposes to repeal this part because it is duplicative of proposed rule part 8840.6400.

**8840.5900 Driver Qualification Standards, subp. 3 Limited criminal record review.** The department is proposing to repeal subpart 3 because this provision has not been used over the years. There have been no special transportation providers that have substituted the department of human services background check for the department background check; therefore, the provision has become obsolete.

**8840.5910 Driver and Attendant Training Requirements, subp. 3 Training required for drivers after September 28, 1992.** This provision was added in 1992 and was needed to provide a grace period for existing drivers who had no received defensive driver training during the two years preceding the effective date of the 1992 rule amendments. The two-year grace period has now expired, and the provision is no longer necessary.

**8840.6100 subp. 2, Documents required in vehicle.** The subpart 2 is no longer necessary because the documents required by this subpart no longer need to be maintained in the special transportation service vehicle.

The department is currently in the process of updating chapter 8840 pursuant to chapter 14. A hearing has been set for December 16, 2003. It is anticipated that the above rules will be repealed in conjunction with this rulemaking.

**8855 Motor Carrier Insurance**

**8855.0500 Cargo Security, subpart 1. Insurance or bond required.** This rule provision is obsolete because only household goods (HHG) carriers are still required to file a bond with the department. Furthermore, the bond requirement for HHG carriers is now provided for in statute under Minn. Stat. § 221.141, subd. 4 and supercedes the bond amount in rule.

The department proposes to repeal this through future legislation.

**Chapter 8860 Tank Motor Vehicles; Variances**

The variance provisions under chapter 8860 and the relevant statutory language under Minn. Stat. § 221.033, subd. 3 are obsolete. This statute, enacted in 1986, and the accompanying rules allowed Minnesota petroleum tank truck operators to use non-USDOT specification cargo tanks with a capacity of 3000 gallons or less to transport and deliver gasoline exclusively in intrastate commerce. The tanks allowed into the program were manufactured between 1950 and 1975.

In 1997, the USDOT Research and Special Programs Administration (RSPA) issued a final rule titled HM-200, Hazardous Materials in Intrastate Commerce. This regulation was issued by RSPA to comply with the federal hazardous materials law of 1990 (49 USC 5103(b)(1)). The federal law required USDOT to regulate all hazardous materials transportation in the United States, including intrastate transportation. However, the HM-200 regulations (49 CFR 173.8), did allow states to continue to operate cargo tank variance programs, with certain restrictions.

The federal regulation provided that small non-specification cargo tanks may be used for flammable liquids if operated under terms of a state program. However, under the federal regulation, no additional non-specification tanks could be added to a state program after October 1, 1998, and any tanks in a state program would have to meet all the cargo tank test and inspection requirements of 49 CFR part 180 by June 30, 2000. Any tank that could not pass all of the tests was required to be removed from flammable liquid service.

The tanks operated under Minnesota's Cargo Tank Variance Program were non-specification tanks. No tanks built to USDOT specifications were allowed in the program. The tanks could have been built no later than 1975, so the newest tank that could remain in the program today would be 28 years old.

Furthermore, in the mid-1990s, Motor Carrier Services staff found almost none of the tanks that were given a variance under the cargo tank variance program were still in service. Because of these reasons Minn. R. chapter 8860 is obsolete and the enabling statute, Minn. Stat. § 221.033, subd. 3 can be repealed.

Please note that the Cargo Tank Registration Program created under Minn. Stat. § 221.033, subd. 2 would remain the same and would not be changed. The cargo tanks in this program were originally built to USDOT specifications.

The department proposes to repeal Chapter 8860 and Minn. Stat. § 221.033, subd. 3 through future legislation.

**Chapter 8810, Trunk Highway System**

**8810.9000, Definitions, subps. 1 and 7.** Bridge Inspection and Inventory definitions in part 8810.9000, subps. 1 and 7 contain obsolete bridge inspection manual references that will be addressed through rulemaking.

**Chapter 8850 Motor Carrier Safety**

**8850.6900, subp. 20 Definitions. Regular Route Common Carrier**. Subpart 20 is obsolete because the definition is based upon the definition of "regular route common carrier" in Minn. Stat. §221.011, subd. 9 which as been repealed.

The department proposes to repeal this through future legislation.

**Obsolete Rules Repealed in 2003 Legislative Session**

The following rules identified as obsolete in the 2002 Obsolete Rule Report were repealed in Chapter No. 19, H. F.5, 2003 1st Special Session, Article 2, section 79, subd. 2:

**Chapter 7800, Motor Carrier Operations**
7800.0100, subparts 1, 3, and 5; 7800.0500; 7800.0700; 7800.1400; 7800.1500; 7800.1600; 7800.1700; 7800.3100; 7800.3900; 7800.4810.

**Chapter 7805, Tariffs; Accounting**
7805.0800.

**Chapter 8850, Motor Carrier Safety**
8850.6900, subparts 4, 6, 11, 12, and 17; 8850.7000; 8850.7025; 8850.7040; 8850.7100; 8850.7900; 8850.8200; 8850.8900; 8850.9000; 8850.9050, subparts 1 and 2.

**Chapter 8800, Aeronautics**
8800.0100, subparts 7 and 36; 8800.1200, subpart 3; 8800.3500; 8800.3700; 8800.4000.

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**8810.4[illegible] 8810, Trunk Highway System**
.200; 8810.4700; 8810.4800; 8810.4900; 8810.5000; 8810.5100; 8810.5500; 8810.9920; 810.9921.

**Chapter 8910, Railroads, Right of First Refusal**
8910.1000; 8910.2000; 8910.2100; 8910.3000; 8910.3100.

If you have any questions regarding this report, please contact me at 651-405-6083.

Sincerely,

Laura Nehl-Trueman
Mn/DOT Rules Coordinator

cc: Douglas H. Differt, Deputy Commissioner
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