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STATE REGISTER

STATE OF MINNESOTA

EXECUTIVE ORDERS

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VOLUME 3, NUMBER 26

JANUARY 1, 1979

Pages 1345-1360



STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices.	Issue Date
SCHEDULE FOR VOLUME 3			
27	Friday Dec 22	Friday Dec 29	Monday Jan 8
28	Tuesday Jan 2	Monday Jan 8	Monday Jan 15
29	Monday Jan 8	Monday Jan 15	Monday Jan 22
30	Monday Jan 15	Monday Jan 22	Monday Jan 29

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of Public Hearings on proposed rules are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

The *State Register* is published by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$110 per year, and \$85 per year for additional subscriptions, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$2.25 per copy.

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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MCAR AMENDMENTS AND ADDITIONS

The following is a listing of all proposed and adopted rules published in this issue of the *State Register*. The listing is arranged in the same order as the table of contents of the *Minnesota Code of Agency Rules* (MCAR). All adopted rules published in the *State Register* and listed below amend the rules contained in the MCAR set. Both proposed temporary and adopted temporary rules are listed here although they are not printed in the MCAR due to the short term nature of their legal effectiveness. During the term of their legal effectiveness, however, adopted temporary rules do amend the MCAR. A cumulative listing of all proposed and adopted rules in Volume 3 of the *State Register* will be published on a quarterly basis and at the end of the volume year.

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EXECUTIVE ORDERS

Executive Order No. 187

Providing for the Establishment of the Governor's Council on Fire Prevention and Control; Repealing Executive Order No. 126

I, Rudy Perpich, Governor of the State of Minnesota, by virtue of the authority vested in me by the Constitution and applicable statutes, hereby issue this Executive Order:

Whereas, it is vital for state government to encourage the development of the best possible fire protection for the people of the State of Minnesota; and,

Whereas, to achieve this goal requires a concerted effort to improve existing delivery systems at state, federal, and local levels and to provide new services and directions; and,

Whereas, there presently exists a complex array of agencies and organizations involved in the delivery of fire prevention and control services in Minnesota; and,

Whereas, no single state agency coordinates the delivery of these services; and,

Whereas, Minnesota can improve the coordination, quantity, and quality of the delivery of these services by creating a liaison body to the United States Fire Administration,

Now, therefore, I order:

1. That there be established the Governor's Council on Fire Prevention and Control, consisting of 15 members to be appointed by the Governor. Members shall be representatives of persons employed in the fire prevention and control occupations, persons engaged in teaching fire prevention and control, representatives of state and municipal government units, and other special interest groups involved in fire prevention and control on a permanent basis. Members presently serving on the committee created by Executive Order No. 126 shall continue to serve during the pendency of this order. The following individuals or their designees shall serve in an ex-officio, non-voting capacity: The Commissioner of Public Safety, the Director of the Division of Vocational Technical Education in the Department of Education, the Director of the Division of Forestry in the Department of Natural Resources, the Director of the State Building Code Division in the Department of Administration, the Director of the Division of Emergency Services in the Department of Public Safety, the State Fire Marshal, and the Director of the University of Minnesota Fire Center.

2. That membership terms, removal of members, compensation of members, and filling of vacancies be in accordance with Minn. Stat. § 15.0593 (1977 Supp.).

3. That the Council advise the Governor, the Commissioner of Public Safety, and other state agencies and political subdivisions of the development, administration, and scope of fire protection research and fire prevention and control; the needs of Minnesota's fire suppression and control services;

EXECUTIVE ORDERS

the development and provision of coordinated programs of education and training for such fire suppression and control services and for the general public.

4. That the Council, in performing its duties, shall receive assistance from the Minnesota State Fire Marshal, the Minnesota Department of Education, and other state agencies where appropriate.

5. That the Council shall serve as Minnesota's principal contact with the United States Fire Administration for purposes for the application and receipt of federal funds issued by the United States Fire Administration and shall facilitate direct and accurate communication with the United States Fire Administration. The Council shall disburse such funds to carry out the purposes for which the funds are received in accordance with all laws of the state except where federal laws, rules, or regulations differ.

6. That this order does not preclude other state agencies from applying for, receiving, accepting, and expending funds available through the above-named federal agency where said agencies are authorized under law and independently of this order to accept such funds.

7. That Executive Order No. 126 be repealed.

Pursuant to Minn. Stat. § 4.035, (1977 Supp.), this order shall be effective 15 days after its publication in the *State Register* and filing with the Secretary of State and shall remain in effect until it is rescinded by proper authority or it expires in accordance with Minn. Stat. §§ 4.035 or 15.0593 (1977 Supp.).

In testimony whereof, I hereunto set my hand on this 15th day of December, 1978.





Minnesota had over 1,300 miles of stagecoach roads in the mid-1800s. This coach ran between Alexandria and Melrose in 1876. Travelers complained of rough rides, dust and mosquitoes, and often had to get out and walk while the horses struggled up hill, or through muddy areas. (Courtesy of Minnesota Historical Society)

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption as proposed and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Labor and Industry Occupational Safety and Health Division

Adopted Rules Relating to Occupational Safety and Health

On July 24, 1978 (3 S.R. 91-98), August 7, 1978 (3 S.R. 185), and September 18, 1978 (3 S.R. 582), the Department of Labor and Industry announced the proposed adoption of Occupational Safety and Health Standards pertaining to construction, elevators, and general industry. The public was given an opportunity to present written data and request a public hearing. No requests for a public hearing were received. Written statements were received relative to the general industry standards; no written statements were received relative to the construction and elevator standards. Therefore,

the Minnesota Occupational Safety and Health Codes re-

RULES

lating to Construction, as published at *State Register*, Volume 3, Number 3, pp. 91 through 93, on July 24, 1978 are adopted with an effective date of January 1, 1979, and are identical in every respect to their proposed form;

the Minnesota Occupational Safety and Health Codes relating to Elevators, as published at *State Register*, Volume 3, Number 3, pp. 93 through 94, on July 24, 1978 are adopted with an effective date of January 1, 1979, and are identical in every respect to their proposed form;

the Minnesota Occupational Safety and Health Codes relating to General Industry, as published at *State Register*, Volume 3, Number 3, pp. 94 through 98 on July 24, 1978 and amended at *State Register*, Volume 3, Number 11, pp. 582 to 583, on September 18, 1978 are adopted with an effective date of January 1, 1979, with the following amendments:

MOSHC 11 Personal protective equipment.

A. High visibility vests and other high visibility equipment.

~~1. Employees (other than police and fire protection personnel covered by paragraph 2, of this section) exposed to vehicular traffic on the right of way of any street, highway, or roadway, or on the berm or medians adjacent to street, highway, or roadway, shall be required to wear red or orange high visibility warning vests or other garments.~~

~~For all night time operations, outside garments shall be reflectorized.~~

1. Employees (other than police and fire protection personnel covered by paragraph 3 of this section) exposed to vehicular traffic when the work area is on the driving lanes or on the shoulders or berms, or on the median adjacent to streets, highways, or roadways shall be provided with and required to wear warning vests or other high visibility garments. For work during the hours of darkness this protective equipment must be made of or marked with reflectorized material.

2. Where employees are continually protected from vehicular traffic by permanent or semi-permanent barricades, high visibility vests or other high visibility equipment are not required.

~~3. Law enforcement and fire protection personnel shall be provided with, and be required to wear, high visibil-~~

~~ity, reflectorized outer garments at any time such personnel are engaged in vehicular traffic control or are otherwise exposed to any hazards presented by vehicular traffic.~~

MOSHC 133 Lockout devices.

A. Any main electrical power disconnect means which controls a source of power or material flow shall be locked out with a lockout device whenever employees are maintaining, cleaning, adjusting, or servicing machinery or equipment, if such ~~work~~ disconnect is not in clear sight of the employee. A "Do Not Start" tag as described in 29 CFR 1910.145(f)(3) shall be affixed to any and all operating controls.

~~B. All pneumatic, hydraulic and other fluid lines shall be bled, drained, or purged to eliminate pressure, contents of both and the line valve holding back any substance in lines which are bled, drained, or purged shall also be locked out.~~

B. The pressure shall be eliminated from any pneumatic and hydraulic lines which activate a mechanism or machine and the valve holding back the activating substance shall be locked out before an employee works on that mechanism or machine.

It is so ordered this 13th day of December, 1978.

E. I. Malone, Commissioner

Pollution Control Agency Notice and Adopted Rule Regarding the Administration of the Construction Grants and Loans Program

Notice

Proposed Minn. Rule WPC 34 was published at *State Register*, Volume 2, Number 37, pp. 1737-1751, March 20, 1978 (2 S.R. 1737). On October 12, 1978, the Attorney General approved the rule, as finally adopted, with the exception of subdivision B.18. Subdivision B.18. was then severed from the rule and the remaining subdivisions were filed with the Secretary of State. Adopted Rule WPC 34, as approved and filed, was published at *State Register*, Volume 3, Number 17, pp. 866-871, October 30, 1978 (3 S.R. 866).

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

RULES

The Minnesota Pollution Control Agency took further action with respect to subdivision B.18. in response to the Attorney General's disapproval of this subdivision. On December 1, 1978, subdivisions B.18. and E.9.1. of the rule were approved by the Attorney General and filed with the Secretary of State. These sections are set out below.

Sandra S. Gardebring
Executive Director

Amendments as Adopted

B.18. "ADEQUATE ERRORS AND OMISSIONS INSURANCE" means a policy of insurance which provides the minimum amount of coverage for the corresponding estimated project construction cost as determined from the following table, which is maintained for a minimum of two years after acceptance of the project by the grantee.

<u>Estimated Project Construction Cost</u>	<u>Minimum Amount of Coverage</u>
<u>less than \$1,000,000</u>	<u>\$250,000</u>
<u>\$1,000,000 to \$2,999,999</u>	<u>\$500,000</u>
<u>\$3,000,000 to \$9,999,999</u>	<u>\$1,000,000</u>
<u>\$10,000,000 or over</u>	<u>\$2,000,000</u>

If an engineer has more than one project, the policy must provide for the minimum coverage applicable to the highest estimated project construction cost. Requests for variances from the requirements of this section shall be governed by section E.9.1.

E.9.1. VARIANCES. Any person may apply for a variance from any requirement of these rules. Such variance shall be applied for and acted upon by the Agency in accordance with Minn. Stat. § 116.07, subd. 5, and other applicable statutes and rules.

SUPREME COURT

Decisions Filed Friday, December 22, 1978

Compiled by John McCarthy, Clerk

48913/283 Willis K. Hughes vs. Dakota County, et al, City of Lakeville and Clinton Anderson, individually and as a member of the Lakeville Police Department, Petitioners, Donald Hamilton, individually, and as a member of the Scott County Sheriff's Department, City of Hastings, et al, and Paul A. McClure vs. Dakota County, et al. Dakota County.

Plaintiff, seeking the identity of a confidential informant in a civil action for false arrest following the state's dismissal of criminal charges rather than disclose the identity of the informant, was not entitled to the informant's identity because he did not demonstrate that this knowledge was essential to the just resolution of the action.

Writ of Prohibition granted and Writ to be issued with the filing of opinion. Kelly, J.

48651/284 State of Minnesota, Petitioner vs. Gerald Allen Osterloh. Supreme Court.

The judicial branch of government has no inherent authority to impose terms or conditions of sentencing for commission of a criminal act. The definition of what constitutes criminal conduct and the proscription of punishment therefor is a legislative function, the exercise of which is delegable to the judges of the court system.

There was no statutory authority for the court to compel a particular county to pay for confinement at a halfway house at the time of the imposition of sentence.

Constitutional rights of a defendant may not be raised by a third party.

The election of a county to become part of a state-supported halfway house program allows amendment of an original order nunc pro tunc to comply with statutory authority.

Remanded. Todd, J. Took no part, Otis, J.

47757/205 State of Minnesota vs. James Neil Zuehlke, Appellant. Blue Earth County.

Where two convictions, one for a sex crime and the other for a non-sex crime, result from separated incidents, the

trial court may sentence the defendant to a prison term for the non-sex offense to commence on the termination of defendant's commitment for treatment for the sex offense pursuant to Minn. St. 246.43.

Affirmed. Wahl, J.

48262/344 Minnesota Wood Specialties, Inc. vs. Emil L. Mattson, Sr., Appellant, Twin City Acoustics, Inc. Ramsey County.

A lien claimant complies with Minn. St. 514.08, subd. 1(2), by serving a copy of his lien statement on the holder of the legal title and is not required to serve copies on all persons having interests in the property.

Minn. St. 514.13 is construed to require that a defendant challenge a lien claimant's bill of particulars by moving before trial for an order requiring the claimant to furnish a supplemental bill.

Affirmed. Wahl, J. Took no part, Otis, J.

48285/247 State of Minnesota, Appellant vs. Kevin Patrick Gallahue. Dakota County.

Where blood alcohol test results are admissible on a criminal negligence charge but inadmissible on certain other traffic charges because the prejudicial impact outweighs the probative value, the state must elect to try the defendant for criminal negligence alone, using the results of the blood test, or try the defendant on all charges without the test results.

Defendant's statement made after he requested that he be allowed to consult an attorney was correctly suppressed.

Affirmed and remanded for trial. Per Curiam. Took no part, Todd, J.

48378/313 Esther E. Zoet, et al vs. Minnesota Department of Employment Services, Benson Hotel Corp., d.b.a. The Hotel Leamington, Relator. Department of Employment Services.

Because these banquet waitresses are part-time employees who continue to receive substantially equal part-time employment, their employer's experience rating account should not be charged for unemployment compensation benefits paid to them pursuant to Minn. St. 268.06, subd. 5.

Reversed. Per Curiam. Took no part, Sheran, C. J.

STATE CONTRACTS

Department of Economic Security Office of Economic Opportunity

Notice of Request for Proposals for Auditing Services on CSA, DOE and HUD Grants

1. Agency name and address: Minnesota Department of Economic Security, Office of Economic Opportunity, 690 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.

2. Contact Person: Certified Public Accounting Firms wishing to receive this Request for Proposals Package or additional information may write the contracting officer, Marv McNeff, at the above address or call (612) 296-6069.

3. Description: A notice for RFPs is scheduled for issuance on January 1, 1978 for the purpose of contracting audits of U.S. Community Services Administration (CSA), U.S. Department of Energy (DOE) and U.S. Department of Housing and Urban Development (HUD) grants awarded to the Office of Economic Opportunity.

4. Cost: One or more awards will be granted, estimated to exceed \$10,000.00 in aggregate.

5. Final proposals submission date: Proposals must be received by 4:30 p.m. January 22, 1979.

Pursuant to the provisions of Laws of 1978, ch. 480, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Board of Private Detective and Protective Agent Services

Notice of Meetings

During Calendar Year 1979, the Board of Private Detective and Protective Agent Services will meet monthly, on the second Monday of the month, at 9 a.m. at 1246 University Avenue, St. Paul, Minnesota.

Paul J. Tschida
Chairman

Department of Natural Resources Soil and Water Conservation Board

Notice of Meeting

The Minnesota Soil and Water Conservation Board will hold its regular monthly meeting on January 16, 1979 at the Sunwood Inn, St. Cloud, Minnesota.

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