

1.1 **Department of Labor and Industry**

1.2 **Proposed Permanent Rules Relating to Independent Contractor Exemption**  
1.3 **Certificates**

1.4 **5202.0100 SCOPE.**

1.5 Parts 5202.0100 to 5202.0160 govern independent contractor exemption certificates  
1.6 issued to individuals performing public or private sector commercial or residential  
1.7 building construction or improvement services under Minnesota Statutes, section 181.723.

1.8 **5202.0110 DEFINITIONS.**

1.9 Subpart 1. **Scope.** The terms used in parts 5202.0100 to 5202.0160 have the  
1.10 meanings given them in this part.

1.11 Subp. 2. **Applicant.** "Applicant" means an individual who applies for an independent  
1.12 contractor certificate under parts 5202.0100 to 5202.0160, and Minnesota Statutes, section  
1.13 181.723.

1.14 Subp. 3. **Certificate holder.** "Certificate holder" means an individual who has been  
1.15 issued a current independent contractor exemption certificate under Minnesota Statutes,  
1.16 section 181.723.

1.17 Subp. 4. **Commissioner.** "Commissioner" has the meaning given in Minnesota  
1.18 Statutes, section 181.723, subdivision 1.

1.19 Subp. 5. **Department.** "Department" has the meaning given in Minnesota Statutes,  
1.20 section 181.723, subdivision 1.

1.21 Subp. 6. **Document or documents.** "Document" or "documents" has the meaning  
1.22 given in Minnesota Statutes, section 181.723, subdivision 1.

1.23 Subp. 7. **Exemption certificate.** "Exemption certificate" means an independent  
1.24 contractor exemption certificate issued under Minnesota Statutes, section 181.723.

2.1 Subp. 8. **Individual.** "Individual" has the meaning given in Minnesota Statutes,  
2.2 section 181.723, subdivision 1.

2.3 Subp. 9. **Person.** "Person" has the meaning given in Minnesota Statutes, section  
2.4 181.723, subdivision 1.

2.5 **5202.0120 WHO SHALL BE ISSUED AN INDEPENDENT CONTRACTOR**  
2.6 **EXEMPTION CERTIFICATE.**

2.7 Subpart 1. **Individuals.** The department shall issue an exemption certificate only to  
2.8 an individual as described in Minnesota Statutes, section 181.723, subdivision 2. Domestic  
2.9 or foreign business corporations, public service corporations, development corporations,  
2.10 nonprofit corporations, cooperatives, cooperative associations, limited liability companies,  
2.11 limited partnerships, or partnerships created by statute are not individuals.

2.12 Subp. 2. **Manufacture, supply, and sale of products, materials, or merchandise**  
2.13 **excluded.** Individuals who manufacture, supply, or sell products, materials, or  
2.14 merchandise for the construction of public or private commercial or residential buildings,  
2.15 but do not install, connect, attach, or adjust for use the products, materials, or merchandise,  
2.16 are not performing public or private sector commercial or residential building construction  
2.17 or improvement services.

2.18 Subp. 3. **Landscaping services excluded.** Individuals who are performing  
2.19 landscaping services are not performing public sector commercial or residential building  
2.20 construction or improvement services. For purposes of this section, landscaping services  
2.21 means to adorn or improve the land around a building by contouring the land and placing  
2.22 and setting plants, shrubs, and trees.

2.23 **5202.0130 APPLICATION; REQUIRED INFORMATION AND**  
2.24 **DOCUMENTATION; APPROVAL OR DENIAL.**

2.25 Subpart 1. **Complete application; submission of documents.**

3.1 A. An application for an exemption certificate is complete upon the  
3.2 commissioner's receipt of all of the following:

3.3 (1) a signed and dated application on a form approved by the commissioner;

3.4 (2) the information and documentation required in subpart 2; and

3.5 (3) the fee required by Minnesota Statutes, section 181.723, subdivision 14.

3.6 B. The applicant must submit complete and legible copies of the information  
3.7 and documentation required in subpart 2 and must retain the original information and  
3.8 documentation for at least two years after submitting the application. The commissioner  
3.9 must retain the copies of the submitted information and documentation until the  
3.10 information and documentation is stored by imaging or other electronic format and until  
3.11 60 days after there is a final order approving or denying the application under Minnesota  
3.12 Statutes, section 181.723, subdivision 5. After the order is final and the information and  
3.13 documentation is electronically stored, the commissioner may destroy the copies.

3.14 C. The commissioner may request the original of any information and  
3.15 documentation required in subpart 2 if the copies submitted under item B are not legible  
3.16 or complete, or as needed to verify the authenticity or accuracy of the information  
3.17 and documentation submitted. The applicant must submit the original information or  
3.18 documentation within five working days after receipt of the commissioner's request for  
3.19 the original. The commissioner must return the originals to the applicant within 30 days  
3.20 after the information or documentation is either copied or stored by imaging or other  
3.21 electronic format.

3.22 Subp. 2. **Required information and documentation.** All applicants for an  
3.23 exemption certificate must provide the information and documentation required in items A  
3.24 to N on a form and in the manner required by the commissioner.

4.1 A. The information in Minnesota Statutes, section 181.723, subdivision 5,  
4.2 paragraph (a), clauses (1) to (6) and (8).

4.3 B. A designation of whether the applicant's business or residential address and  
4.4 business or residential telephone number will be used for purposes of contacting the  
4.5 applicant in connection with the application or exemption certificate and for personal  
4.6 service under Minnesota Statutes, section 181.723, subdivision 10.

4.7 C. The business name under which the applicant intends to operate as an  
4.8 independent contractor. If the business name is not the applicant's full legal name, the  
4.9 applicant must submit a copy of the certificate of assumed name that has been filed with  
4.10 the secretary of state according to Minnesota Statutes, sections 333.001 to 333.065.

4.11 D. A copy of any audit, letter, report, order, decision, determination, certificate,  
4.12 opinion, or ruling issued by any state or federal court or agency, to the applicant or about  
4.13 which the applicant has knowledge, that is related to the applicant's business or the  
4.14 applicant's status as an independent contractor or an employee. The applicant must explain  
4.15 how the audit, letter, report, order, decision, determination, certification, opinion, or ruling  
4.16 supports one or more of the factors in Minnesota Statutes, section 181.723, subdivision 5,  
4.17 paragraph (a), clause (8), or why the applicant should be granted the exemption certificate  
4.18 despite the document's findings.

4.19 E. A copy of any credential held or training completed by the applicant that is  
4.20 related to, or required for, the performance of services for which the applicant is seeking  
4.21 an exemption certificate. Examples of these credentials include a business, professional,  
4.22 or personal license issued by a government entity; a certificate of completion of an  
4.23 apprenticeship or other training program; and a degree issued by an accredited educational  
4.24 institution. The applicant must also explain how the credential or training supports one  
4.25 or more of the factors in Minnesota Statutes, section 181.723, subdivision 5, paragraph  
4.26 (a), clause (8).

5.1 F. Information about whether the applicant employs or intends to employ  
5.2 individuals while acting as independent contractors under the exemption certificate.  
5.3 If the applicant employs or intends to employ individuals, the applicant must also  
5.4 submit documentation of the applicant's unemployment insurance tax account number  
5.5 under Minnesota Statutes, section 268.045, and workers' compensation coverage for  
5.6 the employees under Minnesota Statutes, chapter 176. If the applicant believes that  
5.7 unemployment or workers' compensation insurance is not required, the applicant must  
5.8 explain the legal basis for why unemployment or workers' compensation coverage is not  
5.9 required.

5.10 G. Information about whether, at any time during the two years before the date  
5.11 of the application, the applicant has been employed; has been paid wages; has had wages  
5.12 garnished or withheld; or has received workers' compensation or unemployment insurance  
5.13 benefits. If any of these has occurred, the applicant must explain why these indications of  
5.14 employment do not preclude issuance of an exemption certificate.

5.15 H. All state and federal tax documents that are related to the services the  
5.16 applicant will provide as an independent contractor under the exemption certificate and  
5.17 that have been filed within the two years before the date of the application, including state  
5.18 and federal tax returns, forms, schedules, and other attachments. If the applicant has not  
5.19 filed any tax returns, forms, schedules, or other attachments required by this item for one  
5.20 or both years, the applicant must explain why not. Examples of tax documents that must  
5.21 be submitted under this item, if they have been filed with the Internal Revenue Service,  
5.22 the Minnesota Department of Revenue, or a taxing agency in another jurisdiction, include  
5.23 returns, forms, schedules, and attachments documenting:

5.24 (1) income earned and tax paid and owed, such as Internal Revenue  
5.25 Service tax returns on forms 1040 and 1040 SS, and Minnesota Department of Revenue  
5.26 tax returns on form M1;

- 6.1           (2) itemized deductions, such as Internal Revenue Service Schedule A;
- 6.2           (3) income, profit, or loss from a business, such as Internal Revenue Service
- 6.3 Schedule C or C-EZ;
- 6.4           (4) self-employment tax paid or owed, such as Internal Revenue Service
- 6.5 Schedule SE;
- 6.6           (5) federal unemployment tax paid or owed, such as Internal Revenue
- 6.7 Service form 940;
- 6.8           (6) withholdings from wages, such as Internal Revenue Service employer's
- 6.9 annual or quarterly tax returns on forms 941 and 944 and the Minnesota Department of
- 6.10 Revenue annual withholding return/reconciliation and information returns that show
- 6.11 Minnesota withholding tax;
- 6.12           (7) deduction schedules for depreciation and amortization, such as Internal
- 6.13 Revenue Service form 4562;
- 6.14           (8) the sale of business property, such as Internal Revenue Service form
- 6.15 4797;
- 6.16           (9) reporting cash payments received in a trade or business, such as Internal
- 6.17 Revenue Service form 8300;
- 6.18           (10) expenses for business use of a home, such as Internal Revenue Service
- 6.19 form 8829;
- 6.20           (11) certificates of exemption of payment of sales tax, such as Minnesota
- 6.21 Department of Revenue form ST3; and
- 6.22           (12) wages or payments made by or received by the applicant as shown on
- 6.23 Internal Revenue Service 1099, 1096, W-2, and W-3 forms. The applicant must describe
- 6.24 the services performed by or for the applicant for each 1099 or W-2 form issued or
- 6.25 received.

7.1 I. The applicant's Minnesota tax identification number or an explanation of why  
7.2 the applicant does not need one.

7.3 J. Copies of up to five executed contracts for services the applicant contracted  
7.4 to provide before the date of the application, if any, and template contracts that the  
7.5 applicant intends to use in contracting to provide services as an independent contractor  
7.6 under the exemption certificate.

7.7 K. Additional information and documentation that support the factors in  
7.8 Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), related to  
7.9 the services the applicant will provide as an independent contractor under the exemption  
7.10 certificate. The applicant must explain how each document submitted supports one or  
7.11 more of the factors. Examples of documentation that support one or more factors include:

7.12 (1) tax returns, schedules, attachments, and forms described in item H;

7.13 (2) rental agreements or lease agreements, other than a post office box, for  
7.14 facility space used by the applicant in performing the services for which the applicant is  
7.15 seeking the exemption certificate;

7.16 (3) documentation that establishes the applicant's ownership or control  
7.17 of equipment, tools, materials, or vehicles necessary for the applicant to perform the  
7.18 services for which the applicant is seeking the exemption certificate. Examples of such  
7.19 documentation include contracts, rental or lease agreements, deeds, and receipts;

7.20 (4) a commercial liability insurance policy or bond covering the applicant  
7.21 or the applicant's business, office equipment, and materials;

7.22 (5) a workers' compensation policy covering the applicant;

7.23 (6) business or building permits held or applied for that are related to the  
7.24 applicant's performance of the services for which the applicant is seeking the exemption  
7.25 certificate;

8.1 (7) bills or invoices from and payments made to vendors, suppliers,  
8.2 subcontractors, or other persons;

8.3 (8) contracts with vendors, suppliers, subcontractors, or other persons;

8.4 (9) bank statements and accounting statements showing receipts,  
8.5 expenditures, and profit or loss for the applicant's business;

8.6 (10) trade or professional memberships or affiliations; and

8.7 (11) marketing or advertising materials.

8.8 L. Authorization for or completion of forms authorizing the department to verify  
8.9 that the application and all information and documents submitted with the application  
8.10 are true and correct.

8.11 M. A color copy of a current photo identification document issued to the  
8.12 applicant by the United States or a state or territory of the United States, along with  
8.13 documentation required by any federal electronic verification program, such as the  
8.14 Systematic Alien Verification for Entitlements Program, that assists the department in  
8.15 verifying the applicant's authorization to work in the United States.

8.16 N. In addition to the sworn statement required by Minnesota Statutes, section  
8.17 181.723, subdivision 5, paragraph (a), clause (8), a sworn statement that:

8.18 (1) the application and all information and documents submitted with the  
8.19 application are true and correct;

8.20 (2) the applicant is a United States citizen, or, if not a citizen, is authorized  
8.21 to work in the United States under federal immigration law; and

8.22 (3) the applicant has complied with and will continue to comply with  
8.23 federal immigration law in hiring any employees.



9.1 Subp. 3. **Approval or denial.** Applications must be approved or denied according to  
9.2 items A and B, and Minnesota Statutes, section 181.723, subdivision 5, paragraph (c).

9.3 A. The commissioner must issue an exemption certificate if the application  
9.4 is complete according to subpart 1, and if the commissioner determines that all of the  
9.5 information and documentation submitted establishes that the applicant meets or could  
9.6 meet the factors in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a),  
9.7 clause (8), for the services for which the applicant has requested an exemption certificate.

9.8 B. The commissioner must deny an exemption certificate if:

9.9 (1) the application is not complete according to subpart 1; or

9.10 (2) the commissioner determines that all of the information and  
9.11 documentation submitted does not establish that the applicant meets or could meet the  
9.12 factors in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), for  
9.13 the services for which the applicant has requested an exemption certificate.

9.14 **5202.0140 APPLICATION FOR A CORRECTED, RENEWAL, OR AMENDED**  
9.15 **CERTIFICATE; TIME FRAMES FOR SUBMISSION OF INITIAL AND**  
9.16 **RENEWAL APPLICATIONS.**

9.17 Subpart 1. **Obligation to update identifying information.** Within 15 calendar days  
9.18 of the change, each certificate holder or applicant for an exemption certificate must notify  
9.19 the commissioner in writing of any change in the certificate holder's:

9.20 A. legal name;

9.21 B. business name;

9.22 C. business address;

9.23 D. business telephone number;

9.24 E. residential address;

9.25 F. residential telephone number; or

10.1 G. business organization.

10.2 Subp. 2. **No additional fee or documentation.** If the only change submitted under  
10.3 subpart 1 is to the certificate holder's business address, business telephone number,  
10.4 residential address, or residential telephone number, the commissioner must issue an  
10.5 updated exemption certificate within ten business days without requiring an additional fee  
10.6 or documentation.

10.7 Subp. 3. **New application and fee required.** If the change is to the certificate  
10.8 holder's legal name, business name, or business organization, the certificate holder must  
10.9 submit a new complete application and fee according to part 5202.0130.

10.10 Subp. 4. **Application to add new category of service.** A certificate holder must  
10.11 submit a new complete application and fee according to part 5202.0130 to add a new  
10.12 category of service.

10.13 Subp. 5. **Time frames for submission of initial and renewal applications.** An  
10.14 initial application for an exemption certificate must not be submitted before September 2,  
10.15 2008, or before the effective date of these rules, whichever is later. To renew an exemption  
10.16 certificate without a lapse in the certificate, the certificate holder must submit a new  
10.17 complete application and fee according to part 5202.0130 at least 30 days, but no more  
10.18 than 60 days, before the expiration date specified on the applicant's current certificate. An  
10.19 individual who does not file a complete application for renewal at least 30 days before  
10.20 the certificate's expiration date is uncertified as of 11:59:59 p.m. Central Standard Time  
10.21 on the certificate's expiration date and remains uncertified unless and until a renewed  
10.22 certificate is issued by the department.

10.23 **5202.0150 CONTENTS OF APPROVED CERTIFICATE; NOTICE OF**  
10.24 **CERTIFICATE; EFFECTIVE DATE.**

11.1 Subpart 1. **Content of certificate.** If an application is approved, the department shall  
11.2 issue to the applicant an exemption certificate, which shall include at least the following  
11.3 information:

11.4 A. the name of the independent contractor to whom the certificate was issued;

11.5 B. the assumed name of the business if there is one;

11.6 C. the address and telephone number provided in part 5202.0130, subpart  
11.7 2, item B;

11.8 D. the date the certificate was issued and the expiration date;

11.9 E. the service or services that the independent contractor is permitted to perform  
11.10 under the certificate;

11.11 F. the effect of the certificate under Minnesota Statutes, section 181.723,  
11.12 subdivisions 2 to 4; and

11.13 G. how a person may contact the department with questions or to verify that a  
11.14 specific certificate remains current.

11.15 Subp. 2. **Department list of certificate holders.** The department shall maintain a  
11.16 list of current certificate holders on its official Web site. The Web site shall include the  
11.17 information in subpart 1 and, if applicable, whether the department has received a request  
11.18 to cancel an exemption certificate or has revoked an exemption certificate and the date the  
11.19 exemption certificate is canceled or revoked.

11.20 Subp. 3. **Effective date.** An exemption certificate issued before March 1, 2009, is  
11.21 effective on the date stated on the exemption certificate and shall remain in effect until  
11.22 March 1, 2011, unless revoked by the commissioner or canceled by the certificate holder.  
11.23 An exemption certificate issued on or after March 1, 2009, is effective on the date stated

11.24 on the exemption certificate and remains in effect for two years unless revoked by the  
11.25 commissioner or canceled by the individual. A certificate holder must submit a new  
12.1 complete application and fee under part 5202.0130 in order to obtain a new exemption  
12.2 certificate if the previous exemption certificate has expired, been canceled by the  
12.3 certificate holder, or revoked by the commissioner.

12.4 Subp. 4. **Verification of certificate and identity of certificate holder.** The  
12.5 individual who holds an independent contractor exemption certificate must present current  
12.6 photo identification issued to the individual by the United States or a state or territory of  
12.7 the United States to any person for whom the certificate holder performs services under  
12.8 the exemption certificate. Before permitting the certificate holder to provide services as  
12.9 an independent contractor under a contract, the person for whom a certificate holder is  
12.10 performing services must:

12.11 A. obtain from the department and retain for five years a copy of the department's  
12.12 current exemption certificate for the certificate holder; and

12.13 B. review the photo identification presented by the certificate holder to verify  
12.14 the certificate holder's identity.

12.15 **5202.0160 EXPIRATION, REVOCATION, OR CANCELLATION OF**  
12.16 **CERTIFICATE; NOTICE TO PUBLIC AND CONTRACTORS.**

12.17 Subpart 1. **Notice.** When an exemption certificate expires, is canceled, or is revoked,  
12.18 the department shall indicate that certificate's status on the list of certificate holders on the  
12.19 department's official Web site. After a certificate has expired, is canceled, or is revoked,  
12.20 the department shall maintain the former certificate holder's information on its Web site for  
12.21 at least six months. After six months, the department may remove the expired, canceled,  
12.22 or revoked certificate holder's information from its list of certificate holders. A former  
12.23 certificate holder shall not hold out as an independent contractor for the services listed  
12.24 on the expired, canceled, or revoked exemption certificate. An exemption certificate

12.25 expires or is canceled or revoked as of 11:59:59 p.m. Central Standard Time on the date  
12.26 of expiration, cancellation, or revocation.

13.1 Subp. 2. **Cancellation.** A certificate holder may request that an exemption certificate  
13.2 be canceled by filing a written request, in the form and manner prescribed by the  
13.3 commissioner. The written request must include the current name, address, and telephone  
13.4 number for each person for whom the certificate holder is performing services or intends  
13.5 to perform services under the exemption certificate before its cancellation. In addition,  
13.6 the cancellation request shall include a sworn statement that the certificate holder has  
13.7 provided written notification of the cancellation request to each person named. Within  
13.8 21 days of receipt of the request, the department must serve on the certificate holder  
13.9 and each person the certificate holder has named in the cancellation request an order  
13.10 cancelling the exemption certificate. The effective date of cancellation is seven days  
13.11 after the order is served on the certificate holder and the persons named in the certificate  
13.12 holder's cancellation request.

13.13 Subp. 3. **Revocation notice.** During an action to revoke an exemption certificate, the  
13.14 certificate holder must inform the commissioner of any person for whom the certificate  
13.15 holder is providing services or intends to provide services under the exemption certificate.  
13.16 The department must serve a final order revoking the certificate upon the certificate holder  
13.17 and any person identified by the certificate holder. The effective date of the revocation  
13.18 is seven days after the order is served on the certificate holder and the persons identified  
13.19 by the certificate holder.