

**DEPARTMENT OF COMMERCE**

**EMERGENCY RULE  
RELATING TO  
NO SMOKING SIGNS**

**Basis for Issuance of Emergency Rules**

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. Implementation of 2009 Wisconsin Act 12, s. 101.123, Stats., is to take effect July 5, 2010.
2. Under the Act, the department is to establish by rule uniform characteristics for no smoking signs.
3. Under the Act, the responsibilities of person in charge of a public conveyance or at a location where smoking is prohibited include the posting of no smoking signs.
4. The department believes that the emergency rules are necessary in order to clarify the minimum no smoking sign characteristics so that persons in charge may fulfill the statutory obligations.

Pursuant to section 227.24 (1) (c), Stats., this rule is adopted as an emergency rule to take effect on July 5, 2010.

Dated at Madison this \_\_\_\_\_  
day of \_\_\_\_\_, 2010,  
by the Department of Commerce.

\_\_\_\_\_  
, Secretary

The Wisconsin Department of Commerce adopts an order to create Comm 62.0400 (5) relating to no smoking signs.

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## **Analysis of Rule**

### **1. Statutes Interpreted**

Statutes Interpreted: s. 101.123 (6), Stats.

### **2. Statutory Authority**

Statutory Authority: ss. 101.02 (1) and 101.123 (6), Stats.

### **3. Related Statute or Rule**

Statutes: 101.123 (2m)

### **4. Explanation of Agency Authority**

2009 Wisconsin Act 12, s. 101.123, Stats., which is to take effect on July 5, 2010, basically prohibits smoking in enclosed places of public buildings and places of employment. The Act directs the department to establish characteristics for no smoking signs which persons in charge are to utilize aboard public conveyances and in public buildings and places of employment.

### **5. Summary of Proposed Rules**

The rules dictate that minimally no smoking signs include the international “No Smoking” symbol consisting of a pictorial burning cigarette enclosed in a red circle with a red bar across the cigarette.

### **6. Summary of, and Comparison with, Existing or Proposed Federal Regulations**

An internet search on U.S. federal regulations and U.S. federal register yielded no results regarding a general national prohibition of smoking in places of employment and public buildings.

### **7. Comparison with Rules in Adjacent States**

The following is a comparison of smoking prohibitions and signage enacted in adjacent states.

**Illinois** The Smoke Free Illinois Act, 410 ILCS 82, as of January 1, 2008 prohibits smoking in a public place or in any place of employment or within 15 feet of any entrance to a public place

or place of employment. Under the Act "No Smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it are to be utilized.

**Iowa** Effective July 1, 2008, Iowa under the Smokefree Air Act no longer allows smoking in almost all public places and enclosed areas within places of employment, as well as some outdoor areas. The law applies to: restaurants, bars, outdoor entertainment events and amphitheaters. It also covers places of employment such as office buildings, health care facilities, and child care facilities. Smoking is allowed on the gaming floor of a licensed casino, as well as designated hotel and motel rooms. Under the law "No Smoking" signs or the international "No Smoking" symbol are to identify no smoking establishments.

**Michigan** Beginning May 1, 2010, smoking is prohibited in most public places in Michigan. The law covers any workplace and any food service establishment. This law covers public places, including, but not limited to, restaurants, bars, shopping malls, bowling alleys, concert halls, arenas, museums, mechanic shops, health facilities, nursing homes, education facilities, and child care centers. Under the Act "No Smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it are to be utilized.

**Minnesota** As of October 1, 2007 Minnesota under the Clean Indoor Air Act prohibits smoking in bars, restaurants, private clubs such as VFWs and American Legion halls, bowling alleys, country club lounges, lobbies of hotels and motels, public transportation, taxis, home offices where employees work or customers visit, home day cares when children are present, and smaller commercial vehicles carrying more than one person. Under the rules administered by the Minnesota Department of Health, s. 4620.0500, whenever the international no smoking symbol is used, the diameter of the outer circle must not be less than three inches.

## **8. Summary of Factual Data and Analytical Methodologies**

The rules were developed as a result of an analysis of 2009 Wisconsin Act 12 and the variety of buildings and structures potentially affected and their circumstances of operation.

## **9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report**

The department does not believe that the proposed rules will increase the effect on small businesses over that imposed by the Act.

An economic impact report has not been required to be prepared.

## **10. Agency Contact.**

James Quast, Program Manager, jim.quast@wisconsin.gov, (608) 266-9292

**11. Public Hearing Comments.**

The hearing record on this emergency rule will remain open until July 30, 2010. Written comments on the proposed may be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

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SECTION 1. Comm 62.0400 (5) is created to read:

**Comm 62.0400 (5) NO-SMOKING SIGNS.** No-smoking signs shall include the international “No Smoking” symbol consisting of a pictorial burning cigarette enclosed in a red circle with a red bar across the cigarette.

**END**

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**EFFECTIVE DATE**

Pursuant to s. 227.24 (1) (c), Stats., this rule shall take effect as an emergency rule on July 5, 2010.

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