

DATE: January 27, 2010

TO: Jonathan Ela, Chair and John Welter, Vice-Chair

FROM: Matthew J. Frank

SUBJECT: Scope statement relating to creation of ch. NR 188 for an exemption process for the sale of mercury-containing products.

**Objective of the Proposed Rule**

The objective of this proposed rule is to establish procedures by which mercury-containing products may be exempt from the sale ban contained in 2009 Wisconsin Act 44: Products Containing Mercury.

**Description of Policy Issues/Analysis of Policy Alternatives**

On October 6, 2009, Governor Doyle signed into law Act 44, the mercury-added products ban. This ban prohibits the sale of certain mercury-added products including fever thermometers, manometers, thermostats, instruments and measuring devices, switches and relays and certain household items. It also prohibits the use of free-flowing mercury and mercury-added compounds or instruments in schools for which there is no reasonably acceptable, mercury-free alternative. Act 44 also provides for the Department of Natural Resources to make exemptions for the sale of these mercury-added products through a process defined within promulgated rules.

This rule would define the process by which the department would grant exemptions to the ban of mercury-added product sales in Wisconsin. Act 44 does not provide for any alternative to establishing this exemption in Wisconsin's environmental rules. Failure to do so is not only contrary to state statute, but exemptions could also be challenged in court on the basis of due process for policy-making.

**Statutory Authority**

Section 299.49(3)(c), Stats.

**Estimate of Time Needed to Develop the Rule**

The Department estimates that development of these rules will consume approximately 100 hours of work time.

**Description of All Entities Affected by the Rule**

This proposed rule will impact any company which sells the applicable mercury-containing products for which a reasonable and appropriate alternative does not exist for a specific use. Also impacted are businesses that utilize switches, relays, instruments and thermostats in their products that may be interested in an exemption. Other interested parties include environmental organizations which were involved in the development and passage of Act 44.

**Summary and Preliminary Comparison with Existing or Proposed Federal Regulations**

No federal regulations exist or are proposed which are comparable to Act 44.

**Name, Address, Telephone Number and E-Mail Address of Agency Contact Person**

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