

# **07hr\_CRule\_06-136\_AC-Ag\_pt01**



Details:

(FORM UPDATED: 07/12/2010)

## **WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS**

### 2007-08

(session year)

### Assembly

(Assembly, Senate or Joint)

### Committee on ... Agriculture (AC-Ag)

#### **COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

#### **INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt**
- Clearinghouse Rules ... **CRule**
- Hearing Records ... bills and resolutions  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                      (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



State of Wisconsin  
Jim Doyle, Governor

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**Department of Agriculture, Trade and Consumer Protection**  
Rod Nilsestuen, Secretary

**DATE:** April 11, 2007

**TO:** The Honorable Fred Risser  
President, Wisconsin State Senate  
Room 220, South, State Capitol  
PO Box 7882  
Madison WI 53707-7882

The Honorable Mike Huebsch  
Speaker, Wisconsin State Assembly  
Room 211 West, State Capitol  
PO Box 8952  
Madison WI 53708-8952

**FROM:** Rodney J. Nilsestuen, Secretary  
Department of Agriculture, Trade and Consumer Protection

**SUBJECT: Soil Fumigant Rule Pesticides; Final Draft Rule**  
*(Clearinghouse Rule #06-136)*

The Department of Agriculture, Trade and Consumer Protection ("DATCP") is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

**SUMMARY:**

This rule amends current rules related to chloropicrin and metam sodium soil fumigant pesticides. The rule is designed to prevent potentially hazardous off-site movement of volatilized chloropicrin. This will help prevent harm to human beings and sensitive animal species.

This rule does all of the following:

- Creates new regulations for chloropicrin soil fumigants, similar to the current rules for metam sodium.
- Modifies current rules related to metam sodium (the same provisions will also apply to chloropicrin). Among other things, this rule relaxes current post-application monitoring requirements and current setback requirements for "tarped" applications.

*Agriculture generates \$51.5 billion for Wisconsin*

### ***Background***

DATCP administers Wisconsin's pesticide laws. Chloropicrin and metam sodium are soil fumigant pesticides, used mainly by potato growers to control nematodes. Under current DATCP rules, persons using *metam sodium* soil fumigants must take certain steps to prevent human exposure to volatilized fumigant (there are no equivalent rules for *chloropicrin* applications). Under current *metam sodium* rules:

- Applicators must be properly certified.
- No agricultural application may be made within ¼ mile of a hospital, nursing home, jail or prison, or within ¼ mile of a school that will be in session during the application or within 48 hours after the application.
- Agricultural application sites must be covered by a tarp or other impermeable barrier, except when the soil fumigant is injected into the soil or applied by specified chemigation procedures. Application by knife rig injection is prohibited when soil temperatures are too high.
- Applicators must pre-notify county public health authorities, and neighbors within ¼ mile, prior to any "chemigation" application. "Chemigation" applications must comply with specific rule standards.
- Applicators must monitor application sites after the application, and must take appropriate steps to prevent pesticide drift. Applicators must notify Wisconsin emergency management if it appears that pesticide drift may contact residences or public buildings.
- Applicators must keep specified records related to metam sodium applications.

### ***Rule Contents***

This rule regulates *chloropicrin* applications in the same way that current rules regulate *metam sodium* applications (see above). This rule also modifies current metam sodium regulations as follows (the same regulations will apply to chloropicrin):

- For "tarped" agricultural applications, this rule reduces the required minimum setback from schools, hospitals, nursing homes, jails and prisons from 1/4 mile to 1/8 mile. For "untarped" agricultural applications, the required minimum setback remains at 1/4 mile.
- The setback requirements applicable to schools are also made applicable to licensed daycare facilities. An exception is provided for an application to a plant nursery that was in existence prior to the first date the daycare facility was licensed if the nursery operator provides at least 24 hours prior notice of the application to the daycare facility operator.

- This rule relaxes current follow-up monitoring requirements. Under current rules, a certified applicator must inspect the application site 4-6 hours after the application is completed and again 9-12 hours after the application is completed. Under this rule, a certified applicator must only conduct one follow-up inspection, within one hour of sunset on the day of application.
- This rule updates current emergency government references, and makes other minor editorial changes.

### *Federal and Surrounding State Regulations*

#### **Wisconsin's Pesticide Regulatory Program**

States may regulate pesticide applications within their own territory. States may act on their own authority (independent of EPA), and may establish use restrictions that go beyond federal label restrictions. Wisconsin currently has restrictions on the use of metam sodium pesticides that go beyond federal label restrictions.

#### **Federal Programs**

The U.S. Environmental Protection Agency (EPA) regulates pesticides under the Federal Insecticide, Fungicide and Rodenticide Act. Pesticides must be registered with EPA. EPA registers pesticides and pesticide labels for specific uses. The pesticide manufacturer must provide safety, environmental and other data to support the registration. Pesticide labeling must conform to the EPA registration. Federal and state law prohibit sale or use inconsistent with label directions. Wisconsin and other states work with EPA to assure proper use and handling of pesticides.

#### **Surrounding States**

Other states, like Wisconsin, regulate pesticide applications generally. However, none of the states surrounding Wisconsin has adopted specific requirements for metam sodium or chloropicrin applications, beyond requirements specified on the federally-approved pesticide labels.

### *Public Hearings*

DATCP held 2 public hearings on this rule: on January 23, 2007 in Madison and on January 30, 2007 in Plover. One person attended the hearings and registered in support of the rule proposal. The Secretary of the Department of Natural Resources submitted written testimony that expressed concerns about the setback requirements from daycare facilities (DNR was concerned that setback requirements might adversely affect DNR soil fumigant applications to DNR facilities). A summary of the hearings is attached.

### *Changes from Hearing Draft*

DATCP did not change this rule following public hearings, except that DATCP made minor editorial changes in response to comments from the Legislative Council Rules Clearinghouse.

### *Response to Rules Clearinghouse Comments*

The Legislative Council Rules Clearinghouse made minor editorial comments on the proposed rule. DATCP modified the rule to address the Rules Clearinghouse comments other than the following comments:

**Comment 5.d:** The Rules Clearinghouse asked if certain restrictions on metam sodium related to air temperature, soil temperature, and forecasted rainfall should also apply to chloropicrin. Due to differences in the chemistry of metam sodium and chloropicrin, DATCP does not intend the restrictions to apply to chloropicrin.

**Comment 5.e:** The Rules Clearinghouse asked if the post-application inspection should be made one hour *before* sunset rather than “within one hour of sunset.” DATCP intends that the inspection can be made at any time “within one hour of sunset” (within one hour before *or after* sunset).

### *Environmental Impact*

This rule regulates chloropicrin soil fumigant applications to prevent potentially hazardous off-site movement of volatilized chloropicrin. This will help prevent harm to human beings and sensitive animal species.

This rule will relax some current regulations related to applications of metam sodium soil fumigant (post-application inspection requirements and setbacks for “tarped” applications). However, this relaxation will not significantly reduce current safety protection, and will not have a significant adverse environmental impact. An environmental assessment is attached.

### *Fiscal Impact*

This rule will not have a significant fiscal impact on Wisconsin state or local government. DATCP will incur some costs for compliance monitoring. However, DATCP expects to absorb those costs. The attached fiscal estimate is based on the current use of chloropicrin in Wisconsin. If chloropicrin use increases, as expected, the state fiscal impact could increase accordingly. A fiscal estimate is attached.

### *Business Impact*

#### **Businesses Affected**

This rule regulates commercial pesticide applicators and agricultural producers that apply or receive applications of metam sodium and chloropicrin soil fumigants. Many of the regulated businesses are small businesses, but others are large. Most of the regulated farmers are potato growers.

This rule protects neighboring farms and businesses from adverse effects of improper soil fumigant applications. Many of the protected businesses are small businesses.

#### **Effects on Business**

This rule imposes new regulations on the use of chloropicrin soil fumigants (see above). Approximately 71,000 acres of potatoes were planted in Wisconsin in 2004. Chloropicrin is currently applied on approximately 2,000 acres of potatoes and 25 acres of state-owned seedling nurseries in Wisconsin. Chloropicrin applications are made by commercial pesticide applicators that have the equipment and expertise to handle and apply chloropicrin. Chloropicrin-treated acreage is expected to increase due to pest problems and the efficacy of chloropicrin products.

DATCP estimates that this rule will cost \$8,000 to \$12,000 per year for the industry as a whole, mainly for increased costs of applying chloropicrin to approximately 2,000 acres of potatoes. Increased pesticide applicator costs will generally be passed on to farmers. Most of the farms that use chloropicrin are small businesses, but the single largest user (accounting for approximately 25% of the treated acreage) is not a small business.

This rule relaxes some current requirements related to metam sodium applications (post-application inspection requirements and setbacks for "tarped" applications). Farmers and pesticide application businesses that apply metam sodium soil fumigants may experience a small decrease in costs as a result of these changes.

By establishing clear application standards and procedures, this rule protects neighboring farms, businesses and individuals from improper applications. It also helps protect complying pesticide users from liability for improper applications.

This rule applies to large and small businesses alike. An exemption for small business would undermine the effectiveness of the rule in preventing human exposure to metam sodium and chloropicrin. This rule will not have a significant adverse economic impact on small business. Therefore, it is not subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats. A business impact analysis is attached.

**PROPOSED ORDER  
OF THE STATE OF WISCONSIN DEPARTMENT OF  
AGRICULTURE, TRADE AND CONSUMER PROTECTION  
ADOPTING AND AMENDING RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection  
2 proposes the following order to amend ch. ATCP 30 subch. VI(title), ATCP 30.22(4)(a),  
3 (5)(intro.), (a)3. and 4., (b)1., 2. and (note) and (c), (6)(a)(intro.), (c)(intro.), (c)3. and  
4 (c)3.(note), and (7)(a)(intro.); to repeal and recreate ATCP 30.22(3); and to create ATCP  
5 30.22(1)(am), (f) and (g), relating to soil fumigant pesticides containing chloropicrin or  
6 metam sodium.

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**Analysis Prepared by the Department  
of Agriculture, Trade and Consumer Protection**

This rule regulates the use of soil fumigant pesticides containing chloropicrin or metam sodium active ingredients. This rule does all of the following:

- Creates new rules to regulate the use of chloropicrin soil fumigants.
- Modifies current rules regulating the use of metam sodium soil fumigants. Among other things, this rule relaxes current post-application monitoring requirements and current setback requirements for “tarped” applications.

***Statutory Authority***

Statutory authority: ss. 93.07(1), and 94.69(1)(i), Stats.  
Statutes interpreted: s. 94.69(1)(i), Stats.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) has general authority to adopt rules interpreting statutes under its jurisdiction (*see s. 93.07(1), Stats.*). DATCP is specifically authorized to adopt rules under s. 94.69(1)(i), Stats., to regulate the use of pesticides.

## ***Background***

DATCP administers Wisconsin's pesticide laws. Chloropicrin and metam sodium are soil fumigant pesticides, used mainly by potato growers to control nematodes. Under current DATCP rules, persons using *metam sodium* soil fumigants must take certain steps to prevent human exposure to volatilized fumigant (there are no equivalent rules for *chloropicrin* applications). Under current *metam sodium* rules:

- Applicators must be properly certified.
- No agricultural application may be made within ¼ mile of a hospital, nursing home, jail or prison, or within ¼ mile of a school that will be in session during the application or within 48 hours after the application.
- Agricultural application sites must be covered by a tarp or other impermeable barrier, except when the soil fumigant is injected into the soil or applied by specified chemigation procedures. Application by knife rig injection is prohibited when soil temperatures are too high.
- Applicators must pre-notify county public health authorities, and neighbors within ¼ mile, prior to any "chemigation" application. "Chemigation" applications must comply with specific rule standards.
- Applicators must monitor application sites after the application, and must take appropriate steps to prevent pesticide drift. Applicators must notify Wisconsin emergency management if it appears that pesticide drift may contact residences or public buildings.
- Applicators must keep specified records related to metam sodium applications.

## ***Rule Contents***

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- For "tarped" agricultural applications, this rule reduces the required minimum setback from schools, hospitals, nursing homes, jails and prisons from 1/4 mile to 1/8 mile. For "untarped" agricultural applications, the required minimum setback remains at 1/4 mile.



- The setback requirements applicable to schools are also made applicable to licensed daycare facilities. An exception is provided for an application to a plant nursery that was in existence prior to the first date the daycare facility was licensed if the nursery operator provides at least 24 hours prior notice of the application to the daycare facility operator.
- This rule relaxes current follow-up monitoring requirements. Under current rules, a certified applicator must inspect the application site 4-6 hours after the application is completed and again 9-12 hours after the application is completed. Under this rule, a certified applicator must only conduct one follow-up inspection, within one hour of sunset on the day of application.
- This rule updates current emergency government references, and makes other minor editorial changes.

### ***Federal Regulation***

The U.S. Environmental Protection Agency (EPA) regulates pesticides under the Federal Insecticide, Fungicide and Rodenticide Act. Pesticides must be registered with EPA. EPA registers pesticides and pesticide labels for specific uses. The pesticide manufacturer must provide safety, environmental and other data to support the registration. Pesticide labeling must conform to the EPA registration. Federal and state law prohibit sale or use inconsistent with label directions. Wisconsin and other states work with EPA to assure proper use and handling of pesticides.

States may regulate pesticide applications within their own territory. States may act on their own authority (independent of EPA), and may establish use restrictions that go beyond federal label restrictions. Wisconsin currently has restrictions on the use of metam sodium pesticides that go beyond federal label restrictions.

### ***Surrounding State Regulation***

Other states, like Wisconsin, regulate pesticide applications generally. However, none of the states surrounding Wisconsin has adopted specific requirements for metam sodium or chloropicrin applications, beyond requirements specified on the federally-approved pesticide labels.

### ***Business Impact***

#### **Businesses Affected**

This rule regulates commercial pesticide applicators and agricultural producers that apply or receive applications of metam sodium and chloropicrin soil fumigants. Many of the regulated businesses are small businesses, but others are large. Most of the regulated farmers are potato growers.

This rule protects neighboring farms and businesses from adverse effects of improper soil fumigant applications. Many of the protected businesses are small businesses.

### **Effects on Business**

This rule imposes new regulations on the use of chloropicrin soil fumigants (see above). Approximately 71,000 acres of potatoes were planted in Wisconsin in 2004. Chloropicrin is currently applied on approximately 2,000 acres of potatoes and 25 acres of state-owned seedling nurseries in Wisconsin. Chloropicrin applications are made by commercial pesticide applicators that have the equipment and expertise to handle and apply chloropicrin. Chloropicrin-treated acreage is expected to increase due to pest problems and the efficacy of chloropicrin products.

DATCP estimates that this rule will cost \$8,000 to \$12,000 per year for the industry as a whole, mainly for increased costs of applying chloropicrin to approximately 2,000 acres of potatoes. Increased pesticide applicator costs will generally be passed on to farmers. Most of the farms that use chloropicrin are small businesses, but the single largest user (accounting for approximately 25% of the treated acreage) is not a small business.

This rule relaxes some current requirements related to metam sodium applications (post-application inspection requirements and setbacks for "tarped" applications). Farmers and pesticide application businesses that apply metam sodium soil fumigants may experience a small decrease in costs as a result of these changes.

By establishing clear application standards and procedures, this rule protects neighboring farms, businesses and individuals from improper applications. It also helps protect complying pesticide users from liability for improper applications.

This rule applies to large and small businesses alike. An exemption for small business would undermine the effectiveness of the rule in preventing human exposure to metam sodium and chloropicrin. This rule will not have a significant adverse economic impact on small business. Therefore, it is not subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats. A business impact analysis is attached.

### ***Fiscal Impact***

This rule will not have a significant fiscal impact on Wisconsin state or local government. DATCP will incur some costs for compliance monitoring. However, DATCP expects to absorb those costs. The attached fiscal estimate is based on the current use of chloropicrin in Wisconsin. If chloropicrin use increases, as expected, the state fiscal impact could increase accordingly.

***Environmental Impact***

This rule regulates chloropicrin soil fumigant applications to prevent potentially hazardous off-site movement of volatilized chloropicrin. This will help prevent harm to human beings and sensitive animal species.

This rule will relax some current regulations related to applications of metam sodium soil fumigant (post-application inspection requirements and setbacks for "tarped" applications). However, this relaxation will not significantly reduce current safety protection, and will not have a significant adverse environmental impact. An environmental assessment is attached.

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1        **SECTION 1.** Chapter ATCP 30, subchapter VI(title) is amended to read:

2                                         **Subchapter VI**  
3                                         **CHLOROPICRIN AND METAM SODIUM PESTICIDES**

4        **SECTION 2.** ATCP 30.22(1)(am), (f) and (g) are created to read:

5            ATCP 30.22(1)(am) "Chloropicrin pesticide" means any soil fumigant or other  
6 pesticide containing chloropicrin.

7            (f) "Tarped application" means an application to a site that is required to be  
8 covered with a tarp or other impermeable barrier, as provided in sub. (4).

9            (g) "Untarped application" means an application other than a tarped application.

10        **SECTION 3.** ATCP 30.22(3) is repealed and recreated to read:

11            ATCP 30.22(3) AGRICULTURAL APPLICATION SITES. (a) *Tarped applications.*

12        No person may make a tarped application of a chloropicrin pesticide or a metam sodium  
13 pesticide for any agricultural purpose within 1/8 mile of any of the following:

- 14            1. A hospital, nursing home, jail or prison.
- 15            2. A school that will be in session during the application or within 48 hours after
- 16 the application is completed.

1           3. A licensed daycare facility that will be in session during the application or  
2 within 48 hours after the application is complete. This subdivision does not apply to an  
3 application to a plant nursery that was in existence prior to the date the daycare was first  
4 licensed if the plant nursery operator provides notice of the application to the daycare  
5 operator at least 24 hours in advance of the application and at a time when the daycare is  
6 in session.

7           **NOTE:** A listing of licensed daycares in each county can be found at  
8                     [http://dhfs.wisconsin.gov/rl\\_dcfs/directories/CC-Directories.HTM](http://dhfs.wisconsin.gov/rl_dcfs/directories/CC-Directories.HTM)  
9

10           (b) *Untarped applications.* Except as provided in par. (a)(3), no person may  
11 make an untarped application of a chloropicrin pesticide or metam sodium pesticide for  
12 any agricultural purpose within 1/4 mile of any structure identified in par. (a).

13           **SECTION 4.** ATCP 30.22(4)(a), (5)(intro.), (a)3. and 4., (b)1., 2. and (note) and  
14 (c), (6)(a)(intro.), (c)(intro.), (c)3. and (c)3.(note), and (7)(a)(intro.) are amended to read:

15           ATCP 30.22(4)(a) A person who applies a chloropicrin pesticide or a metam  
16 sodium pesticide for an agricultural purpose shall cover the application site with a tarp or  
17 other impermeable barrier, as prescribed by the pesticide label, immediately after that  
18 person applies the pesticide to the soil surface or incorporates it into the soil by discing or  
19 tilling.

20           (5)(intro.) A chemigation application of a chloropicrin pesticide or a metam  
21 sodium pesticide shall comply with s. ATCP 29.54 and all of the following:

22           (5)(a)3. The brand name of the chloropicrin pesticide or metam sodium pesticide  
23 that will be applied.

24           (5)(a)4. Notice that eye irritation is an early symptom of chloropicrin or metam  
25 sodium exposure, and that eye irritation may be alleviated by leaving the affected area.

1 (5)(b)1. A copy of the ~~metam sodium~~ pesticide label.

2 (5)(b)2. Metam sodium and chloropicrin toxicology and poisoning manifestations  
3 as described in *Recognition and Management of Pesticide Poisonings*, United States  
4 environmental protection agency, EPA-540/9-88-001 735-R-98-003, March 19899,  
5 ~~fourth~~ fifth edition, or in other materials approved by the department.

6 **NOTE:** The department will provide a free copy of the information under subd.  
7 2, to a person making a metam sodium or chloropicrin pesticide  
8 application. To obtain a copy, you may contact the department at the  
9 following address: Department of Agriculture Trade and Consumer  
10 Protection, Division of Agricultural Resource Management, bureau of  
11 Agrichemical Management, P.O. Box 8911 Madison, WI 53708-8911.

12  
13 (5)(c) ~~An individual certified under s. ATCP 29.29 (2)~~ An applicator certified  
14 according to s. ATCP 29.29(2) shall be present at the chemigation site at all times during  
15 the chemigation application.

16 (6)(a)(intro.) Whenever a chloropicrin pesticide or a metam sodium pesticide is  
17 applied for agricultural purposes, a ~~qualified certified applicator under sub. (2)~~ shall  
18 inspect the application site ~~4 to 6 hours after the application is completed and 9 to 12~~  
19 ~~hours after the application is completed~~ within one hour of sunset on the day of  
20 application.

21 (6)(c)(intro.) If any person making a chloropicrin pesticide or a metam sodium  
22 pesticide application has reason to believe that gas volatilization from the application  
23 may result in significant pesticide drift under s. ATCP 29.50 (2), that person shall  
24 immediately do all of the following:

25 (6)(c)3. Notify ~~the division of emergency government~~ Wisconsin emergency  
26 management if it appears that a residential structure or public building may be exposed to

1 significant pesticide drift under s. ATCP 29.50(2). Notice shall include the location of  
2 the application site and the affected residential structure or public building.

3 **NOTE:** The telephone number for ~~the division of emergency government~~  
4 Wisconsin emergency management is ~~(608) 242-3232~~ 1-800-943-0003.  
5 The telephone number for the department is (608) 224-4500.

6 (7)(a)(intro.) A person applying a chloropicrin pesticide or a metam sodium  
7 pesticide shall keep all of the following records:

8 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first  
9 day of the month following publication in the Wisconsin administrative register, as  
10 provided under s. 227.22(2)(intro.), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Rodney J. Nilsestuen,  
Secretary



State of Wisconsin  
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

## Summary of Public Hearing Testimony on Proposed Amendments to ATCP 30 – Soil Fumigants

### INTRODUCTION

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) held two public hearings to record oral testimony on proposed changes to ch. ATCP 30, Wis. Adm. Code relating to the soil fumigants metam sodium and chloropicrin. The hearings were held in Madison on January 23, 2007 and in Plover on January 30, 2007. DATCP also accepted written testimony until February 9, 2007.

One person attended the public hearing in Plover and registered in favor of the rule proposal. One person submitted written comments expressing some concerns over the setback requirements from daycare facilities.

Informational materials available at the hearing included all the rule making documents related to this rule proposal.

### PUBLIC HEARING TESTIMONY

Madison – January 23, 2007

No one attended this hearing.

Plover – January 30, 2007

Ralph Frederick of AMVAC attended this hearing and registered in support of the proposal.

### WRITTEN HEARING TESTIMONY

Scott Hassert of the Wisconsin Department of Natural Resources provided written testimony during the open hearing record period. The DNR applies soil fumigants including chloropicrin at three tree seedling nurseries in Wisconsin. They are concerned about the requirement for a 1/8 mile setback from daycare facilities for tarped applications of chloropicrin. They note that there has never been an incidence of offsite movement of chloropicrin from a tarped application to a nursery bed where tree seedlings are produced. They feel that the proposed rule provision requiring setbacks from daycare facilities could place the use of chloropicrin at state nurseries unnecessarily at risk.

*Agriculture generates \$51.5 billion for Wisconsin*

**Wisconsin Department of Agriculture, Trade and Consumer Protection**

**Business Impact Analysis**

**Rule Subject:** Chloropicrin and Metam Sodium Soil Fumigants  
**Adm. Code Reference:** ATCP 30  
**Rules Clearinghouse #:** 06-136  
**DATCP Docket #:** 04-R-01

This rule regulates the use of soil fumigant pesticides containing chloropicrin or metam sodium active ingredients. This rule does all of the following:

- Creates new rules to regulate the use of chloropicrin soil fumigants.
- Modifies current rules regulating the use of metam sodium soil fumigants. Among other things, this rule relaxes current post-application monitoring requirements and current setback requirements for “tarped” applications.

***Background***

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- Applicators must pre-notify county public health authorities, and neighbors within ¼ mile, prior to any “chemigation” application. “Chemigation” applications must comply with specific rule standards.
- Applicators must monitor application sites after the application, and must take appropriate steps to prevent pesticide drift. Applicators must notify emergency government if it appears that pesticide drift may contact residences or public buildings.
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### *Rule Contents*

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- For “tarped” agricultural applications, this rule reduces the required minimum setback from schools, hospitals, nursing homes, jails and prisons from 1/4 mile to 1/8 mile. For “untarped” agricultural applications, the required minimum setback remains at 1/4 mile.
- The setback requirements applicable to schools are also made applicable to licensed daycare facilities. An exception is provided for an application to a plant nursery that was in existence prior to the first date the daycare facility was licensed if the nursery operator provides at least 24 hours prior notice of the application to the daycare facility operator.
- This rule relaxes current follow-up monitoring requirements. Under current rules, a certified applicator must inspect the application site 4-6 hours after the application is completed and again 9-12 hours after the application is completed. Under this rule, a certified applicator must only conduct one follow-up inspection, within one hour of sunset on the day of application.

### *Businesses Affected*

This rule regulates commercial pesticide applicators and agricultural producers that apply or receive applications of metam sodium and chloropicrin soil fumigants. Many of the regulated businesses are small businesses, but others are large. Most of the regulated farmers are potato growers.

This rule protects neighboring farms and businesses from adverse effects of improper soil fumigant applications. Many of the protected businesses are small businesses.

### *Effects on Business*

This rule imposes new regulations on the use of chloropicrin soil fumigants (see above). Approximately 71,000 acres of potatoes were planted in Wisconsin in 2004. Chloropicrin is currently applied on approximately 2,000 acres of potatoes and 25 acres of state-owned seedling nurseries in Wisconsin. Chloropicrin applications are made by commercial pesticide applicators that have the equipment and expertise to handle and apply chloropicrin. Chloropicrin-treated acreage is expected to increase due to pest problems and the efficacy of chloropicrin products.

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This rule relaxes some current requirements related to metam sodium applications (post-application inspection requirements and setbacks for “tarped” applications). Farmers and

pesticide application businesses that apply metam sodium soil fumigants may experience a small decrease in costs as a result of these changes.

By establishing clear application standards and procedures, this rule protects neighboring farms, businesses and individuals from improper applications. It also helps protect complying pesticide users from liability for improper applications.

This rule applies to large and small businesses alike. An exemption for small business would undermine the effectiveness of the rule in preventing the human exposure to metam sodium and chloropicrin. This rule will not have a significant adverse economic impact on small business. Therefore, it is not subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats.

### *Steps to Assist Small Business*

This rule applies to large and small businesses alike. An exemption for small business would undermine the public health purposes of this rule. This rule will not have a significant adverse economic impact on small business, and may benefit small business in some cases.

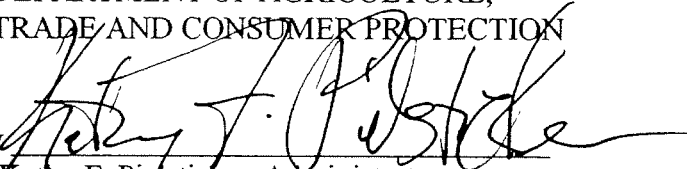
### *Conclusion*

This rule may cause a slight increase in chloropicrin application costs. The cost increase, if any, will be small (estimated at \$8,000-\$12,000 per year for the entire industry). This rule may decrease costs for metam sodium applications. However, the cost savings will also be relatively small. Overall, this rule will not have a significant adverse impact on farmers or pesticide applicators.

This rule will protect neighboring farmers and businesses from pesticide drift. This rule will help avoid lawsuits and liability claims by establishing clear preventive standards for pesticide applicators. This rule applies equally to large and small businesses. An exemption for small business would undermine the public health purpose of this rule. This rule will not have a significant impact on small business.

Dated this 5 day of March, 2007.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By:   
Kathy F. Pielsticker, Administrator,  
Division of Agricultural Resource Management

# Wisconsin Department of Agriculture, Trade and Consumer Protection

## Environmental Assessment of Proposed Rule

**Rule Subject:** Chloropicrin and Metam Sodium Soil Fumigants  
**Administrative Code Reference:** ATCP 30  
**Rules Clearinghouse #:** 06-136  
**DATCP Docket #:** 04-R-01

### *Purpose and Content of Proposed Rule*

#### *Background*

DATCP administers Wisconsin's pesticide laws. Chloropicrin and metam sodium are soil fumigant pesticides, used mainly by potato growers to control nematodes. Under current DATCP rules, persons using *metam sodium* soil fumigants must take certain steps to prevent human exposure to volatilized fumigant (there are no equivalent rules for *chloropicrin* applications). Under current *metam sodium* rules:

- Applicators must be properly certified.
- No agricultural application may be made within ¼ mile of a hospital, nursing home, jail or prison, or within ¼ mile of a school that will be in session during the application or within 48 hours after the application.
- Agricultural application sites must be covered by a tarp or other impermeable barrier, except when the soil fumigant is injected into the soil or applied by specified chemigation procedures. Application by knife rig injection is prohibited when soil temperatures are too high.
- Applicators must pre-notify county public health authorities, and neighbors within ¼ mile, prior to any "chemigation" application. "Chemigation" applications must comply with specific rule standards.
- Applicators must monitor application sites after the application, and must take appropriate steps to prevent pesticide drift. Applicators must notify emergency government if it appears that pesticide drift may contact residences or public buildings.
- Applicators must keep specified records related to metam sodium applications.

#### *Rule Contents*

This rule regulates *chloropicrin* applications in the same way that current rules regulate *metam sodium* applications (see above). This rule also modifies current metam sodium regulations as follows (the same regulations will apply to chloropicrin):

- For “tarped” agricultural applications, this rule reduces the required minimum setback from schools, hospitals, nursing homes, jails and prisons from 1/4 mile to 1/8 mile. For “untarped” agricultural applications, the required minimum setback remains at 1/4 mile.
- The setback requirements applicable to schools are also made applicable to licensed daycare facilities. An exception is provided for an application to a plant nursery that was in existence prior to the first date the daycare facility was licensed if the nursery operator provides at least 24 hours prior notice of the application to the daycare facility operator.
- This rule relaxes current follow-up monitoring requirements. Under current rules, a certified applicator must inspect the application site 4-6 hours after the application is completed and again 9-12 hours after the application is completed. Under this rule, a certified applicator must only conduct one follow-up inspection, within one hour of sunset on the day of application.

The primary purpose of this rule is to prevent human health impacts from the use of the soil fumigants metam sodium and chloropicrin. Chloropicrin is a highly toxic pesticide that has been registered for use by the US Environmental Protection Agency (EPA). It is applied as a soil fumigant to control a range of pests. The EPA approved label for this registration specifies use directions and precautions to be followed by persons making applications. Chloropicrin has been used to a limited extent in Wisconsin to treat fields on which potatoes will be grown. It has also been used on fields used in the production of strawberries, nursery crops and seed beds. It is likely that use of chloropicrin will increase in Wisconsin due to pest problems.

In 2003 several people became ill related to exposure to chloropicrin following an application made to a potato field across the road from the public building they occupied. The EPA approved label directions and precautions appear to be inadequate to fully protect the public from exposure under Wisconsin conditions. The registration for chloropicrin will be reviewed by EPA, but no timeframe for this process has been established by EPA. No other restrictions, outside of the registered label, are in place or proposed by EPA.

Metam sodium is a toxic and corrosive pesticide that is registered for use as a fumigant by the EPA. The EPA approved label for this registration specifies use directions and precautions to be followed by persons applying the pesticide. The compound is used in Wisconsin to treat fields on which potatoes will be grown.

Restrictions on the use of the soil fumigant metam sodium became effective on June 1, 1998 to address human exposure issues similar to the 2003 incident with chloropicrin. The metam sodium related problems that led to the need for the additional restrictions have not reoccurred. However, DATCP has recently received input from the public that some of the current use restrictions and conditions should be modified to further reduce the potential for adverse health effects to humans that could result following the use of the fumigant. The registration for metam sodium is also currently under review by EPA, but no timeline for this process has been established. No other restrictions, outside the registered label, are in place or proposed by EPA.

## *Who is Affected, and How?*

### **Farmers and Commercial Applicators of the Soil Fumigants Metam-Sodium and Chloropicrin**

This rule applies to farmers with agricultural fields that receive applications of metam sodium or chloropicrin and commercial applicators that apply metam sodium and chloropicrin as soil fumigants.

### *Cost Savings*

Applicators of metam sodium should experience cost savings because of changes in the post application inspection requirements in the rule. These cost savings may be passed on to farmers with fields that receive applications of metam sodium. This rule may lead to cost savings due to a reduction in the need for providing medical treatment to people inadvertently exposed to applications of chloropicrin and metam sodium. The rule may also provide cost savings to DATCP due to a reduction in the number of investigations of off-site movement of these soil fumigants.

### *Costs to Comply*

This rule imposes new regulations on the use of chloropicrin soil fumigants (see above). Approximately 71,000 acres of potatoes were planted in Wisconsin in 2004. Chloropicrin is currently applied on approximately 2,000 acres of potatoes and 25 acres of state-owned seedling nurseries in Wisconsin. Chloropicrin applications are made by commercial pesticide applicators that have the equipment and expertise to handle and apply chloropicrin. Chloropicrin-treated acreage is expected to increase due to pest problems and the efficacy of chloropicrin products.

DATCP estimates that this rule will cost \$8,000 to \$12,000 per year for the industry as a whole, mainly for increased costs of applying chloropicrin to approximately 2,000 acres of potatoes. Increased pesticide applicator costs will generally be passed on to farmers. Most of the farms that use chloropicrin are small businesses, but the single largest user (accounting for approximately 25% of the treated acreage) is not a small business.

This rule relaxes some current requirements related to metam sodium applications (post-application inspection requirements and setbacks for “tarped” applications). Farmers and pesticide application businesses that apply metam sodium soil fumigants may experience a small decrease in costs as a result of these changes.

By establishing clear application standards and procedures, this rule protects neighboring farms, businesses and individuals from improper applications. It also helps protect complying pesticide users from liability for improper applications.

## **General Public**

This rule will benefit the general public, particularly in areas near fields where the soil fumigants chloropicrin and metam sodium are applied. This rule will help to prevent human exposure to metam sodium and chloropicrin pesticides applied to agricultural fields.

### ***Environmental Impact***

This rule will help prevent off-site movement of chloropicrin. Minimizing off-site movement should help prevent impacts to sensitive animal species.

This rule relaxes some current regulations (post-application inspection requirements and setbacks for “tarped” applications) aimed at preventing off-site movement of metam sodium. However, this relaxation will not significantly reduce current safety protection, and will not have a significant adverse environmental impact.

### ***Economic Effects***

This rule will likely result in small cost increases for affected businesses (see above). However, this rule will not have a significant effect on local markets or on the cost of the agricultural commodities produced on fields receiving pesticide applications. This rule will not have a significant effect on the overall economy of this state.

### ***Social and Cultural Effects***

This rule will not have significant social or cultural effects, except that it will help to prevent the disruption of local communities as a result of exposure to metam sodium or chloropicrin pesticides.

### ***Alternatives to this Rule***

#### **No Action**

This rule is designed to minimize off-site movement and human exposure following applications of pesticides containing metam sodium and chloropicrin. If DATCP does not adopt this rule, there may be additional incidences of people becoming ill from exposure to these pesticides. These exposures and illnesses will require medical attention and investigations and other responses from DATCP.

#### **Modify Rule Provisions**

DATCP developed this rule in consultation with an industry advisory committee. The committee generally endorsed the provisions of this rule, which are designed to provide better human health protection than the current pesticide labels. Major changes to the proposed rule provisions may reduce human health protection.

*Controversial Public Issues*

DATCP does not anticipate major public controversy related to this rule. However, some industry members may express concern about possible increased costs, which may affect prices of applications for farmers. This rule will improve protection for the public at large.

*Conclusion*

This rule will have a positive effect on human health and the environment, and will not have any significant negative effects. This rule may increase costs for pesticide applications, but cost increases will be modest and will be outweighed by long-term benefits to public health with associated cost savings. There are no preferable alternatives to this rule. This rule is not a "major action significantly affecting the quality of the environment," for purposes of s. 1.11, Stats. No environmental impact statement is required under s. 1.11, Stats. or ch. ATCP 3, Wis. Adm. Code.

Signed this 5 day of March, 2007.

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By 

Kathy F. Pfelsticker, Administrator

Division of Agricultural Resource Management

<b>FISCAL ESTIMATE</b> DOA-2048 (R 10/94)	<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> CORRECTED	<input type="checkbox"/> UPDATED <input type="checkbox"/> SUPPLEMENTAL	<b>LRB or Bill No. / Adm. Rule No.</b> Ch. ATCP 30 Amendment No. (If Applicable)
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**Subject:**  
Soil fumigants metam sodium and chloropicrin

<b>Fiscal Effect</b> <b>State:</b> <input checked="" type="checkbox"/> No State Fiscal Effect  Check below only if <b>bill</b> makes a direct appropriation or affects a sum sufficient appropriation.  <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Increase Costs –  May be possible to absorb within agency's budget? <input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Decrease Costs
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<b>Local :</b> <input checked="" type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<b>5. Types of Local Gov. Unit Affected:</b> <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Counties <input type="checkbox"/> Cities <input type="checkbox"/> Other <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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<b>Fund Source Affected:</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>Affected Ch. 20 Appropriations:</b> 20.115(7)(qd)
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**Assumptions Used in Arriving at Fiscal Estimate**

***Background***

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers Wisconsin's pesticide laws. Chloropicrin and metam sodium are soil fumigant pesticides, used mainly by potato growers to control nematodes. Under current DATCP rules, persons using *metam sodium* soil fumigants must take certain steps to prevent human exposure to volatilized fumigant (there are no equivalent rules for *chloropicrin* applications). Under current *metam sodium* rules:

- Applicators must be properly certified.
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- Applicators must monitor application sites after the application, and must take appropriate steps to prevent pesticide drift. Applicators must notify emergency government if it appears that pesticide drift may contact residences or public buildings.
- Applicators must keep specified records related to metam sodium applications.

<b>Agency/prepared by: (Name &amp; Phone No.)</b> DATCP Lori Bowman    ph. 608-224-4550	<b>Authorized Signature/Telephone No.</b> <i>Barbara Knapp</i> Barb Knapp, ph. 608-224-4746	<b>Date</b> 3-5-07
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### ***Rule Contents***

This rule regulates *chloropicrin* applications in the same way that current rules regulate *metam sodium* applications (see above). This rule also modifies current metam sodium regulations as follows (the same regulations will apply to chloropicrin):

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- This rule relaxes current follow-up monitoring requirements. Under current rules, a certified applicator must inspect the application site 4-6 hours after the application is completed and again 9-12 hours after the application is completed. Under this rule, a certified applicator must only conduct one follow-up inspection, within one hour of sunset on the day of application.

### ***State Government Fiscal Impact***

This rule will not have a significant fiscal impact on state government. DATCP currently regulates metam sodium applications, and this rule creates equivalent rules for chloropicrin applications.

If metam sodium or chloropicrin drifts from the application site and contacts residences or public buildings, the applicator must contact Wisconsin Emergency Management. Wisconsin Emergency Management may implement emergency responses in some cases, as necessary. This is not a change to current practices.

### ***Local Government Fiscal Impact***

This rule will not have a significant fiscal impact on local government. This rule requires applicators of chloropicrin and metam sodium to notify county health agencies of chemigation applications. This is not a change from current regulations related to metam sodium chemigation applications. There are currently no chemigation applications of chloropicrin and this use type would continue to be very limited.



## Ruby, Erin

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**From:** Rep.Ott  
**Sent:** Tuesday, April 24, 2007 10:12 AM  
**To:** Rep.Garthwaite; Rep.Gronemus; Rep.Jorgensen; Rep.Molepske; Rep.Mursau; Rep.Murtha; Rep.Nerison; Rep.Tauchen; Rep.Vruwink; Rep.WilliamsM  
**Cc:** Arrowood, Craig; Cross, William; Gillis, George; Hoelter, Jon; Houdek, Nathan; Junck, Linda; Kent, Christopher; Kraak, Maureen; Langan, Casey; McKinny, Chris; Palese Tony; Patronsky, Mark; Peterson2, Ilsa; Potts, Andrew; Rausch, Scott; Smith-Loomans, Sandra; Sweeney, Rebekah; Wolkomir, Jon; Grothman, Jeffrey; Moll, Keeley A - DATCP; Nilsestuen, Joel; Kleinschmidt, Linda; Pettack, Deanna  
**Subject:** Clearinghouse Rule Referred to Assembly Committee on Agriculture  
**Attachments:** 20070424095454425.pdf

The following Clearinghouse Rule has been referred to the Assembly Committee on Agriculture for a 30 day review period:

**Clearinghouse Rule 06-136:** Soil Fumigant Pesticides (ATCP 30)

A copy of the rule is attached (24 pages). Please contact my office if you have any questions or would like to request a hearing on this rule.

The initial 30 day deadline for committee review is Wednesday, May 23, 2007.



2007042409545442  
5.pdf (1 MB)



DATE: April 23, 2007

TO: Erin Ruby

Committee on Agriculture

FROM: Patrick E. Fuller, Assembly Chief Clerk

RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

### **CLEARINGHOUSE RULE 06-136**

AN ORDER to amend subchapter VI (title) of chapter ATCP 30 and ATCP 30.22 (4) (a), (5) (intro.), (a) 3., and 4., (b) 1., and (c), (6) (a) (intro.), (c) (intro.), 3. and (note), and (7) (a) (intro.); to repeal and recreate ATCP 30.22 (3); and to create ATCP 30.22 (1) (am), (f), and (g), relating to soil fumigant pesticides containing chloropicrin or metam sodium.

Submitted by **Department of Agriculture, Trade and Consumer Protection.**

Report received from Agency on **April 13, 2007.**

To committee on **Agriculture.**

Referred on **Monday, April 23, 2007.**

Last day for action - **Wednesday, May 23, 2007.**

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs choose to do so, you are not required by law or rule to send a copy of the text of the rule to each member at this time. Instead, your notice could state that members should contact you if they wish to receive a hard copy of the rule. Another option would be to email the rule to members. **(Please note that the text of Rules beginning with the prefix "01" is available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Kay Inabnet (6-5550) or your Legislative Council attorney. If you wish to learn more on this subject, read *Review of Administrative Rules* which is part of the Legislative Council's Wisconsin Legislator Briefing Book series, section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.