

Attachment to Executive Order R-23-005

A. Legal Standards

When considering modifications to a project for which an Environmental Analysis (substitute document equivalent to an EIR or negative declaration) has previously been certified, CARB looks to Public Resources Code section 21166 and CEQA Guidelines section 15162 for guidance on the requirements for subsequent or supplemental environmental review.

CEQA Guidelines section 15162 states:

- (a) *When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:*
 - (1) *Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;*
 - (2) *Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or*
 - (3) *New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:*
 - (A) *The project will have one or more significant effects not discussed in the previous EIR or negative declaration;*
 - (B) *Significant effects previously examined will be substantially more severe than shown in the previous EIR;*
 - (C) *Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or*
 - (D) *Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.*

(Cal. Code Regs., tit. 14, § 15162, subd. (a) [Subsequent EIRs and Negative Declarations]; see also Cal. Code Regs., tit. 14, § 15164 [Addendum to an EIR or Negative Declaration].)

B. Basis for Determination

1. Proposed Modifications

CARB has proposed further modifications to the Proposed Amendments to the Airborne Toxic Control Measure for Chromium Electroplating and Chromic Acid Anodizing Operations (Proposed Amendments), through the October 16, 2023 Third Notice of Public Availability of Modified Text (“Third 15-Day Notice”).¹ The proposed modifications to the regulatory language reflected in the Third 15-Day Notice do not change implementation of the Proposed Amendments in a way that would affect the determinations made in the Final Environmental Analysis prepared for the Proposed Amendments to the Airborne Toxic Control Measure for Chromium Electroplating and Chromic Acid Anodizing Operations (Final EA) published on May 19, 2023, and certified on May 25, 2023, when the Board adopted Resolution 23-16. Consequently, none of the conditions described in CEQA Guidelines section 15162 requiring subsequent or supplemental environmental review have occurred, and no changes or additions to the previously certified Final EA are necessary. (See Cal. Code Regs., tit. 14, § 15164, subd. (a); Cal. Code Regs., tit. 17, § 60004.4, subd. (a).)

The proposed modifications set forth in the Third 15-Day Notice provide greater clarity and enforceability to the Proposed Amendments and ensure that the Proposed Amendments are consistent with the Board’s direction and the intent of the original rulemaking proposal as stated in the Initial Statement of Reasons (ISOR) released on November 29, 2022, to phase out hexavalent chromium emissions from chrome plating. These changes are summarized below:

- In section 93102.4, staff made the following revisions:
 - To clarify applicability, staff revised the first paragraph by removing the phrase “except for those Facilities that only operate enclosed hexavalent chromium plating tank”. The purpose of this revision is to make clear that Facilities that only operate enclosed hexavalent chromium plating tanks are subject to that section’s requirements for facilities that use hexavalent chromium. This pre-existing text should have been removed from the regulation when regulatory edits were made to clarify the intent of the provision to subject all chrome plating facilities to the ATCM. This change is necessary to ensure that the Proposed Amendments are consistent with the Board’s direction and the intent of the original rulemaking proposal as stated in the ISOR released on November 29, 2022, to phase out hexavalent chromium emissions from chrome plating.
 - In Table 93102.4 of subsection (c)(1)(B), staff amended the Emission Limitation column where Sensitive Receptor Distance is > 330 feet and Annual Permitted

¹ The Third 15-Day Notice is available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/chromeatcm2023/3rd15daynotice.pdf>.

Ampere-Hours is > 50,000 and ≤ 500,000 (the fifth row and third column) with the phrase “as measured after Add-on Air Pollution Control Device(s)” to clarify where the emission limitation is measured.

- In subsection 93102.5(c), staff clarified the implementation date for housekeeping requirements by adding the phrase “Beginning January 1, 2024, the following housekeeping practices shall be implemented:”. The purpose for adding the date is to clarify when the provision shall be effective.
- In section 93102.6, staff made the following revisions:
 - In subsection (a)(1)(A), staff added “(for Facilities using Trivalent Chromium Plating prior to January 1, 2024) or section 93102.13(d)(2)(B) (for Facilities changing to Trivalent Chromium Plating on or after January 1, 2024,)” to the end of the sentence to improve clarity as to which reporting requirements apply to which facilities. Staff added commas and deleted the word “and” to improve grammar and syntax. Staff also added the phrase “complying with” to clarify the requirements of this subsection.
 - In subsection (a)(1)(B), staff added “(for Facilities using Trivalent Chromium Plating prior to January 1, 2024) or section 93102.13(d)(2)(A) (for Facilities changing to Trivalent Chromium Plating on or after January 1, 2024)” to the end of the sentence to improve clarity as to which reporting requirements apply to which facilities. Staff also added commas to improve the grammar, rephrased the recordkeeping and reporting requirements, and added the phrase “complying with” to clarify the requirements of this subsection.
 - In subsection (b)(2), staff removed the word “only” and removed the phrase “except for the requirements set forth in section 93102.4” to clarify the applicability requirements for facilities that have enclosed hexavalent chromium plating tank(s). This text should have been removed from the regulation as edits were made because it was pre-existing language. Removing this text will clarify the intent of the provision to have all chrome plating facilities subject to the ATCM.
 - Staff removed subsection (b)(3). The subsection (b)(2) amendments eliminated the need for subsection (b)(3) because the information contained in both subsections, although worded differently, has the same meaning.
- In subsection 93102.7(a)(1), staff added the phrase “and section 93102.4(f)(2)” to the end of the sentence to clarify the source test emission limitation requirements.
- Other changes include non-substantial modifications to regulatory text such as corrections to typographical or grammatical errors, and changes in numbering or formatting. These non-substantial modifications clarify, and do not materially alter, the requirements, rights, responsibilities, conditions, or prescriptions contained in the Proposed Amendments.

The proposed modifications do not alter any of the reasonably foreseeable compliance responses included in the Final EA, all of which were subject to adequate environmental review. Additional details related to the proposed modifications are provided below.

2. Discussion

The EA determined that the Proposed Amendments could result in: less-than-significant or no impacts to aesthetics, agriculture and forestry resources, air quality (long-term operational-relates), biological resources, cultural resources (long-term operational-related), energy, geology and soils, greenhouse gas emissions, hydrology and water quality, land use and planning, mineral resources, noise and vibration (long-term operational-related), population and housing, public services, recreation, transportation, tribal cultural resources, utilities and service systems, and wildfire; and potentially significant adverse impacts to air quality (short-term construction-related health impacts), cultural resources (short-term construction-related), hazards and hazardous materials, and noise and vibration (short-term construction-related).

CARB has determined that the proposed modifications do not involve any changes that result in any new significant adverse environmental impacts or a substantial increase in the severity of the significant adverse impacts previously disclosed in the Final EA. Further, there are no changes in circumstances or new information that would otherwise warrant any subsequent or supplemental environmental review pursuant to CEQA Guidelines section 15162.

The modifications described above would not affect any of the conclusions in the Final EA. As described above, the changes in the Third 15-Day Notice were limited to text revisions for clarity, clarifying edits to pre-existing tables, and non-substantial grammar and formatting edits. As discussed above, the pre-existing language was removed to ensure that the Proposed Amendments are consistent with Board direction and the intent of the original rulemaking proposal as stated in the ISOR released on November 29, 2022. On page 5 of the ISOR it states:

“The Proposed Amendments will result in the most stringent regulation of hexavalent chromium emissions from the chrome plating industry (compared to federal standards and District rules), with the goal of eliminating toxic hexavalent chromium emissions from the chrome plating industry in California over time.”

This modification simply clarifies the amended requirements as originally conceived for enclosed tanks. Other minor non-substantial grammar and formatting edits made to the Proposed Amendments would not alter the intent of the Proposed Amendments.

These modifications to the Proposed Amendments reflect the original intent from the start of the rulemaking and do not require changes to the Final EA, nor do they involve new information of substantial importance as defined in CEQA Guidelines section 15162. Therefore, the Final EA adequately addresses the implementation of the Chrome Regulation as modified, and no additional environmental analysis is required.