

Request for an Early Effective Date

Pursuant To Government Code Section 11343.4(b)(3)

Proposed Amendments to the Airborne Toxic Control Measure for Chromium Electroplating and Chromic Acid Anodizing Operations

The California Air Resources Board (CARB or Board) requests, pursuant to Government Code section 11343.4, subdivision (b)(3), that the Office of Administrative Law (OAL) prescribe an “earlier effective date” for the Proposed Amendments to the Airborne Toxic Control Measure for Chromium Electroplating and Chromic Acid Anodizing Operations that was adopted on November 10, 2023. CARB believes the following demonstrates “good cause” for OAL to prescribe an earlier effective date—i.e., an effective date of January 1, 2024.

Demonstration of Good Cause

The Proposed Amendments require the phase out of hexavalent chromium from use in chrome plating operations in California. Prior to the phase out of hexavalent chromium, beginning January 1, 2024, chrome plating facilities will also be required to reduce direct emissions from hexavalent chromium containing tanks and minimize fugitive emissions. Hexavalent chromium is a toxic air contaminant (TAC) that has the potential to cause cancer with no associated threshold for cancer initiation. This means there is no level of emissions below which exposure to hexavalent chromium would be considered safe. As such, any amount of exposure is considered a threat to human health. In addition, hexavalent chromium has non-cancer health effects that include respiratory irritation, severe nasal and skin ulcerations and lesions, perforation in the nasal septum, liver and kidney failure, and birth defects.

An effective date, later than January 1, 2024, will impede industry’s implementation of the Proposed Amendments, leading to an unreasonable delay in overdue health protection for California residents. Additionally, a later date would unnecessarily shorten the schedule for distributing legislative funds to help with the transition away from hexavalent chromium plating toward a health protective alternative. The information below expands on this reasoning.

- Adoption of the Proposed Amendments will require chrome plating facilities to implement more stringent housekeeping practices by January 1, 2024. These housekeeping practices will minimize fugitive emissions (emissions that escape the facility through windows, doors, or other openings) by ensuring the proper transportation, cleaning, storage, and disposal of hexavalent chromium containing material. Fugitive emissions are not easily quantified but are addressed by the Proposed Amendments through enhanced housekeeping, best management practices, and building enclosure requirements. The early effective date is needed to implement these requirements as soon as possible, which will benefit the disadvantaged communities where these facilities are located and the sensitive receptors surrounding which surround them.


- Many chrome plating facilities are located in close proximity to homes and sensitive receptors, such as schools and daycare facilities, and within disadvantaged communities. Hexavalent chromium is the second most carcinogenic toxin on the State's list of toxic air contaminants. Due to this combination of extreme toxicity and close proximity to members of the public, the early effective date is needed to implement the requirements of the Proposed Amendments as soon as possible.
- Health and Safety Code Section 39666 requires CARB to adopt control measures to reduce emissions of TACs to protect public health. When adopting or amending an Airborne Toxic Control Measure (ATCM), if no safe threshold exposure level is identified for the TAC, the ATCM must reduce emissions to the lowest achievable level through the application of best available control technology (BACT) or a more effective control method unless CARB determines, based on an assessment of risk, that an alternative level of emission reduction is adequate or necessary to prevent an endangerment of public health. Due to the high toxicity level of hexavalent chromium, the health impacts of exposure to hexavalent chromium, the proximity of chrome plating facilities to sensitive receptors and disadvantaged communities, and following evaluation of air monitoring data, the Board determined in Resolution 23-16 that, it is necessary to reduce emissions of hexavalent chromium from the chrome plating industry to zero to prevent an endangerment of public health. The early effective date is needed to ensure that CARB fulfills its statutory mandate to protect public health by reducing the emissions from hexavalent chromium to zero as soon as possible.
- As part of the implementation process, CARB is working toward providing chrome platers with assistance for an early transition to alternative technologies. In Assembly Bill (AB) 211, the Legislature declared that a transition away from hexavalent chromium plating is "necessary" and stated its intent to enact future legislation that would make \$10 million available to CARB to assist with the transition away from the use of hexavalent chromium, and to make this funding available upon CARB's adoption of a rule to fully eliminate hexavalent chromium at all chrome plating facilities statewide. As a result, the Budget Act of 2023, AB 102 (Chapter 38, Statutes of 2023), appropriated \$10 million to transition away from the use of hexavalent chromium in chrome plating operations, including supporting small businesses that convert to trivalent chromium or an equally health protective alternative. Funding for eligible projects is expected to be available until June 2026, with a final expenditure deadline of June 2028. The early effective date is needed to ensure that owners of chrome plating facilities have ample time to acquire and use this funding.
- Since a less toxic alternative technology, trivalent chromium, is available for decorative chrome plating and is under development for functional chrome plating, the Proposed Amendments eliminate the use of hexavalent chromium by the chrome plating industry in order to protect public health. CARB staff

identified several decorative chrome plating facilities that are already successfully using trivalent chromium. The early effective date is needed to implement the requirements of the ATCM as soon as possible, which will benefit all communities, especially those near these facilities. This will also allow facility owners to acquire and use AB 102 funding to convert to a less toxic alternative.

- Two additional environmental benefits are expected from the proposed phase out of hexavalent chromium in chrome plating operations. The first benefit is protecting water quality. Hexavalent chromium can enter the water system through runoff or discharges of chrome plating dusts, wastes, or spills, which can contaminate surface water and groundwater. The second benefit is eliminating the perfluoroalkyl and polyfluoroalkyl substances (PFAS) that are used in chrome plating operations. PFAS are a toxic and highly persistent environmental contaminant that have been linked to harmful health effects in humans and animals. PFAS have been used by chrome plating facilities as mist suppressants added to the chrome plating bath to prevent toxic metal fumes, including hexavalent chromium, from being emitted into the air; however, PFAS are not used in the trivalent chromium plating process. In addition to protecting public health, the early effective date is needed for this environmental benefit.
- Adoption of the Proposed Amendments will ensure that no new chrome plating facilities that use hexavalent chromium will be allowed in California after January 1, 2024. The early effective date is needed to implement these requirements as soon as possible, which will decrease potential cancer risk in California communities and will protect on-site workers.
- The requested early effective date will allow the regulation to maintain its originally-planned effective date of ensuring specific provisions are effective no later than January 1, 2024, providing consistency and assurance to stakeholders. Also, this earlier effective date will allow the regulation to become effective in a similar timeline as if the regulation was approved by OAL in the course of its original standard review, based on its original submittal to OAL on August, 9, 2023.

For the reasons set forth above, CARB believes there is good cause for OAL to prescribe an earlier effective date and hereby requests that OAL approve an earlier effective date of January 1, 2024, pursuant to Government Code section 11343.4, subdivision (b)(3).

Date: November 13, 2023


Kelli Johnson, Attorney