



---

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA – UAW

---

DENNIS D. WILLIAMS, *PRESIDENT*      GARY CASTEEL, *SECRETARY-TREASURER*  
VICE-PRESIDENTS: TERRY DITTES • CINDY ESTRADA • JIMMY SETTLES

June 4, 2018

David Lanier, Secretary  
California Labor & Workforce Development Agency  
800 Capitol Mall, MIC-55  
Sacramento, CA 95814

Mary Nichols, Chair  
California Air Resources Board  
1001 "I" Street  
Sacramento, CA 95814

Re: Comments on Fair and Responsible Certification Concept Paper

We are writing to offer our comments on the concept paper for fair and responsible manufacturer certification procedures developed by CARB and LWDA pursuant to AB 134.

The UAW has more than 400,000 members across the United States. Among those members are 150,000 autoworkers, including workers who are building zero-emissions vehicles (ZEVs) that are essential for meeting greenhouse gas emissions reduction targets and reducing air pollution. The U.S. auto industry has historically created middle-class jobs for blue-collar workers, elevating working conditions and living standards across the manufacturing sector. As we transition to clean cars, the emerging Electric Vehicle industry will play a key role in determining whether 21<sup>st</sup> century auto manufacturing jobs are also safe, quality jobs.

The Clean Vehicle Rebate Program has been integral to growing California's ZEV market into the second largest in the world and will play an important role in helping the state achieve its ambitious emissions reduction targets.

Setting a fair and responsible labor standard presents a unique opportunity to both accelerate ZEV adoption and incentivize EV manufacturers to create quality jobs. We also believe that the state's public investments should help create good jobs that benefit our communities, our economy and the environment.

Indeed, we agree with CARB and LWDA's assessment that the "goals of ZEV market growth and manufacturers' fair treatment of workers are fully compatible."

To that end, we applaud the agencies on a policy concept that is enforceable and practical.

However, we also believe LWDA may be hindered in achieving a determination of whether

manufacturers are fair and responsible without a faster implementation and more comprehensive disclosures and consideration of labor practices.

In the following pages, we highlight what we've identified as the salient strengths of the policy concept as well as our suggestions for additional disclosures of manufacturer employment practices and more timely implementation.

### **Support for Certification Procedures**

The UAW would like to express our support for the following aspects of the procedures as detailed in the concept paper:

- *Disclosures relating to labor practices.* The procedures for provisional certification require that the manufacturer provide documentation of its labor practices in the form of disclosures relating to its injury prevention program; its recordable worker injury rates; its process for addressing worker complaints regarding wages, safety, rights to association and assembly, and nondiscrimination. We appreciate that the procedures require that disclosures go back five years so that LWDA is basing its certification decision on a longitudinal understanding of the manufacturer's labor practices.
- *Accountability.* Manufacturers' applications are signed and submitted under penalty of perjury to ensure they are providing accurate and truthful disclosures and can be held accountable otherwise.
- *Granting of investigatory authority to LWDA.* In order to be provisionally certified, manufacturers must commit to full cooperation in an LWDA investigation, including allowing reasonable access to documents, agents, employees or premises.
- *Public input.* The certification procedures include an opportunity for public comment and a process for receiving and investigating complaints. We look forward to further clarification on how public input will be solicited and considered and have a proposed an addition to that effect below.
- *Public record.* Manufacturers' applications are made publicly available and are easily accessible to the public through the agencies' websites.
- *Supply chain.* Disclosure of manufacturers' policies regarding direct suppliers' compliance with all applicable local, state, and national laws and treaties concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards.

### **Proposed additions to Strengthen the Certification Process**

The UAW would like to propose the following suggested additions to strengthen the certification procedures as detailed in the concept paper, and to prevent the state from endorsing

manufacturers whose labor records indicate lack of compliance with workplace protection laws and policies:

- *Clarify that the Labor Secretary has the discretion to determine whether to certify a manufacturer as fair and responsible on the basis of the information submitted in the application process, including information submitted during public comment.* The Labor Secretary should be able to take into account all information, including both required disclosures and information gathered via public comment and agency investigations, in approving or denying applications. The determination of whether a manufacturer is “fair and responsible” must consider more than the accuracy or inaccuracy of disclosures. Rather, the Labor Secretary should solicit and consider all information, both positive and negative, that informs whether an employer is fair and responsible in the treatment of its workers.
- *Clarify that there will be a robust opportunity for public input – including public comment and a public hearing - in both the provisional and full certification phases.* We believe that public input is critical for the integrity and credibility of the initial certification.
- *One-year provisional certification.* The concept paper proposes that the provisional certification would last for two fiscal years, during which time LWDA and CARB would work with stakeholders to develop further procedures for full certification. Although we believe a two-phase implementation is pragmatic, we maintain that the provisional certification should be reduced to one fiscal year and that full certification should commence no later than July 1, 2019.
- *Comprehensive disclosure of labor practices.* We agree with the concept paper’s proposal that manufacturers submit a list of “any formal citation or charges by a government agency; final orders, decisions, or awards, of back pay, or their equivalent; and prosecutor filed criminal charges; within the past 5 years, related to a violation of laws related to wages, workplace safety, rights to association and assembly, and nondiscrimination standards.”

However, we also believe the policy should provide authorities a more comprehensive labor record that includes all administrative merits determinations, arbitral awards or decisions, civil judgments, settlements, pending administrative charges or proceedings, pending civil lawsuits, or criminal charges, regardless of whether they resulted in an award of back pay or its equivalent, from the previous five years, regarding alleged violations of applicable federal, state, or local labor, employment, or health and safety laws.

California already requires more comprehensive disclosures of labor practices in other subsidy programs. For example, applicants for California’s Alternative Energy and Advanced Transportation Financing Authority tax exclusion program are required to disclose “civil or criminal cases filed in state or federal court; civil or criminal investigations by local, state, or federal law enforcement authorities; and enforcement proceedings or investigations by local, state or federal regulatory agencies.”<sup>1</sup> Through GoBiz, the California Competes Tax Credit

---

<sup>1</sup> <http://www.treasurer.ca.gov/caeatfa/>

requires applicants to disclose involvement in litigation related to federal or state labor laws or occupational health and safety laws in the previous 10 years.<sup>2</sup>

- *Require disclosures regarding use of temporary workers.* We propose including disclosure requirements relating to the manufacturer's use of temporary production and maintenance workers. Increasingly, employers are using temporary staffing agencies as a substitute for direct hiring in order to evade labor laws and worker benefits.<sup>3</sup> A fair and responsible standard should account for poor labor practices borne out of the excessive use of temporary workers.
- *Require disclosures regarding use of forced arbitration agreements.* Manufacturers should be required to disclose any pre-dispute arbitration agreements that employees are requested or required to sign as a condition of employment, especially regarding claims of employment discrimination, sexual harassment, or sexual assault. Many studies show that increased use of mandatory arbitration clauses in employer relationships undermines workers' legal rights and protections.<sup>4</sup>
- *Protection of whistleblowers.* We propose that as part of the legal compliance requirement, manufacturers should disclose their policies and procedures to ensure the protection of whistleblowers. They should also disclose their record of compliance with local, state, and national whistleblower laws.
- *Notification of workplace rights.* We propose that manufacturers be required to disclose whether and how they provide affirmative notice to employees of their workplace rights – including the right to organize – under all applicable federal, state, and local laws.

Thank you for the opportunity to provide public comment.

---

<sup>2</sup> <http://www.business.ca.gov/Programs/CaliforniaCompetesTaxCredit>

<sup>3</sup> Catherine Ruckelshaus et al, "Restoring Accountability for Labor Standards in Outsourced Work," *National Employment Law Project*, May 2014, <http://www.nelp.org/content/uploads/2015/02/Whos-the-Boss-Restoring-Accountability-Labor-Standards-Outsourced-Work-Report.pdf>.

<sup>4</sup> Katherine V.W. Stone and Alexander J.S. Colvin, "The arbitration epidemic: Mandatory arbitration deprives workers and consumers of their rights," *Economic Policy Institute*, Briefing Paper #414, December 7, 2015, <https://www.epi.org/publication/the-arbitration-epidemic/#epi-toc-2>.