



CMTA

CALIFORNIA MANUFACTURERS & TECHNOLOGY ASSOCIATION

June 7, 2018

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

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

RE: May 23rd Draft Concept Paper: Potential Procedures for Certifying Manufacturers' Fair Treatment of Workers for Clean Vehicle Rebate Project Eligibility

Dear Secretary Lanier and Chair Nichols:

The California Manufacturers & Technology Association (CMTA) is writing to submit comments on the Concept Paper: Potential Procedures for Certifying Manufacturers' Fair Treatment of Workers for Clean Vehicle Rebate Project Eligibility.

California continually seeks ways to improve efficiency of vehicles from light-duty cars to heavy-duty trucks to reduce the emission of greenhouse gasses (GHGs). In fact, under this Legislature, California took steps to maintain and improve the most cost-effective GHG emissions reduction system through the 2017 Cap-and-Trade extension deal.

Governor Jerry Brown has also set goals to further reduce tailpipe emissions through increasing the number of zero-emission vehicles on California roads to five million by 2030. When paired with more efficient gasoline and diesel-powered vehicles, California stands to make this state a better place to live and work. The Clean Vehicle Rebate Project (CVRP) provides income-qualifying consumers, including low-income residents, with rebates toward the purchase or lease of a new clean vehicle and is a critical program for achieving these goals.

CMTA member companies support "fair and responsible" treatment of their workers. However, there are several practical issues with the draft certification procedures that demand clarification and modification else we risk creating issues with the CVRP that will impede our clean transportation goals.

CMTA appreciates that the Concept Paper acknowledges that further direction and appropriate authority from the Legislature are required and that the agencies involved follow the Administrative Procedures Act (APA) in the promulgation of regulations. We look forward to working with ARB and LWDA should further legislative direction and authority be provided and hope to continue California's role as the developer and manufacturer of the technological advances that make these goals possible.

The comments below are segmented into issues with the provisional certification and full certification separately as they are organized in the Draft Concept Paper. We appreciate the opportunity to provide these comments even though the comment period was arbitrarily short and limited the ability of CMTA and others to provide thoughtful feedback.

Provisional certification

- Generally, the materials and information required for provisional certification need additional clarity and the factors by which a manufacturer may or may not receive said certification should be clearly spelled out as to remove ambiguity and limit circumstances for confusion.
- With respect to the requirement that manufacturers attest that they comply with "applicable local, state and national laws and treaties concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards," it is important that minor, technical violations do not subject manufacturers to disqualification. While our members, who manufacture vehicles in California and around the world, continually strive to follow applicable laws it is nearly impossible for a manufacturing facility to be 100 percent compliant with every applicable requirement.
- Protection of due process rights require further clarification regarding the provision of the certification information and, most critically, to an appeal of certification removal. It should be made clear upfront to minimize CVRP disruption and company impacts.
- As the Concept Paper indicates that manufacturers are to follow all applicable laws and treaties regarding fair treatment of workers, it should also require that ARB and LWDA treat all information provided under the provisional and full certification processes with the same protection and that confidential business and personal information not be subject to disclosure beyond what is necessary for the agencies to complete their work.
- Required information regarding violations of applicable laws should be limited to final and fully adjudicated decisions and outcomes because allowing allegations, charges, or incomplete investigations in a certification process would not be consistent with fundamental due process protections. Clarity on this point is important.
- Requiring a manufacturer to provide "reasonable access" should not be used to allow searches of facilities without good cause and appropriate legal authority. Greater clarity on the circumstances under which such access is necessary is important. Additionally, it is critical to explain what is required and how it will be executed across the geographic spectrum of manufacturing facilities.

Full certification

- Many of the issues raised above regarding the “provisional certification” procedures also apply to the “full certification” procedures, so where there is overlap it is CMTA’s intent that the same comments apply to clarity, limitation of application, due process and protection of information.
- Additionally, it is important that the full certification not be limited by an annual requirement as the amount of information and time that will likely be required of the process is significant and costly to a manufacturer in time and resources. Any further certification process after provisional certification should occur no more frequently than every two years.
- The possible inclusion of consideration of “complaints from the public” is a concern because it may create the appearance of a problem rather than be proof a substantive one. The Concept Paper seeks to limit this to final judgments, but CMTA believes that the “receive and investigate” language implies something less than final may be counted. Clarification that limits this to final judgments or complaints fully-adjudicated through the appropriate government authority would help minimize this concern.

CMTA appreciates the efforts by ARB and LWDA representatives to provide a clear process and looks forward to the release of a revised and improved concept paper that addresses the issues raised above, and an opportunity to comment on the new version. Should you have further questions regarding our position on this matter, please contact me at mshaw@cmta.net or (916) 498-3328.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Michael Shaw', with a long horizontal stroke extending to the right.

Michael Shaw

Vice President, Government Relations

California Manufacturers & Technology Association