



June 25, 2018

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

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

**RE: Concept Paper for Clean Vehicle Rebate Project Potential Procedures for Certifying Manufacturers' Fair Treatment of Workers**

Dear Chair Nichols and Secretary Lanier:

Tesla appreciates the opportunity to submit these supplemental comments on the "Concept Paper for Public Comment: Potential Procedures for Certifying Manufacturers' Fair Treatment of Workers for Clean Vehicle Rebate Project Eligibility" released on May 23, 2018 by staff of the California Air Resources Board (CARB) and the Labor and Workforce Development Agency (LWDA).

Tesla agrees that every employer should treat its employees fairly, regardless of where they are located, and we try our best to do that every day. We don't agree, however, with creating "procedures for certifying manufacturers of vehicles included in the Clean Vehicle Rebate Project (CVRP) as being fair and responsible in the treatment of their workers" that would apply differently to Tesla than they would to every other automaker that currently participates in the CVRP.

Companies with manufacturing operations in California like Tesla already are subject to the strongest labor laws in the country and amongst the strongest in the world to ensure their employees are treated fairly. By focusing on locally applicable laws "concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards," however, the draft certification procedures would disincentivize a manufacturer of CVRP-eligible vehicles from establishing or expanding manufacturing operations for those vehicles in California, where labor standards are higher than in other states and other countries.

Instead, the draft certification procedures should be revised to apply consistently to all automakers that manufacture CVRP-eligible vehicles outside of California in jurisdictions with lesser labor standards. This would support a level playing field for employees at in-state, out-of-state, and out-of-country manufacturing operations, and help ensure that employees outside of California also are treated fairly pursuant to the State's stringent labor standards concerning wages, workplace safety, and nondiscrimination.

The certification procedures should not depend on the labor standards of other states or localities. Rather, they should require that automakers whose customers access CVRP rebates, which are supported by state funds, meet California's labor standards. Accordingly, we request that the draft procedures be revised to address whether automakers have the



policies, procedures, and resources necessary to ensure that their employees are treated fairly with respect to wages, workplace safety, and nondiscrimination, consistent with California law.

The Concept Paper notes that “CVRP is a voluntary incentive program, both for automobile manufacturers and consumers.” As explained in our June 4<sup>th</sup> comments, requiring out-of-state manufacturers who elect to participate in the CVRP to satisfy California’s labor standards is permissible so long as the certification procedures do not impose a heavier regulatory burden on out-of-state manufacturers compared to in-state manufacturers. (*S.D. Myers, Inc. v. City and County of San Francisco* (9th Cir. 2001) 253 F.3d 461, 467 [upholding San Francisco’s equal rights ordinance]; *Alaska Airlines, Inc. v. City of Long Beach* (9th Cir. 1991) 951 F.2d 977, 983 [“For a facially neutral statute to violate the commerce clause, the burdens of the statute must so outweigh the putative benefits as to make the statute unreasonable or irrational. Such is the case where the asserted benefits of the statute are in fact illusory or relate to goals that evidence an impermissible favoritism of in-state industry over out-of-state industry.”]; *Wal-Mart Stores, Inc. v. City of Turlock* (E.D. Cal. 2006) 483 F.Supp.2d 987, 1017-1120 [concluding that local ordinance prohibiting certain discount facilities did not violate the Commerce Clause because it applied equally to all local and foreign retailers, did not erect an economic barrier against out-of-state goods, and the local benefits of the ordinance outweighed any burden on interstate commerce].) Here, the regulatory burden of certification as described above would be the same regardless of where a manufacturer’s operations are located.

Unlike its competitors, Tesla has chosen to locate in California and, in doing so, to be subject to and comply with the most stringent labor standards in the country if not the world. The existing California labor laws, as well as federal laws, already require fair and responsible treatment of employees. While those laws need no supplement, any certification procedures that purport to ensure employees are treated fairly must be consistently applied to automakers outside of California, so that all automakers participating in the CVRP – including those with manufacturing facilities located outside California – are assessed with respect to the same effective standard: California’s standard.

We reserved the right to submit supplemental comments in our June 4, 2018 comments because the 7-business day comment period was unreasonably short and inadequate. For the reasons set forth in those comments, including the legislative history of AB 134, Tesla continues to have serious legal and policy concerns with this undertaking. We reiterate our request for a meaningful opportunity to provide public comment on the revised version of the Concept Paper when it is issued.

Respectfully,



Sanjay Ranchod  
Director and Counsel  
Business Development and Policy