

**CONCEPT PAPER FOR PUBLIC COMMENT:  
Potential Procedures for Certifying Manufacturers' Fair Treatment of Workers for Clean  
Vehicle Rebate Project Eligibility**

The Budget Act of 2017, as amended by Assembly Bill (AB) 134 (Committee on Budget, Chapter 254, Statutes of 2017), appropriated funds to the California Air Resources Board (CARB) for the Clean Vehicle Rebate Project (CVRP) and directed CARB and the Labor and Workforce Development Agency (LWDA) to develop procedures to certify vehicle manufacturers as fair and responsible in their treatment of workers:

“The State Air Resources Board shall work with the Labor and Workforce Development Agency to develop procedures for certifying manufacturers of vehicles included in the Clean Vehicle Rebate Project as being fair and responsible in the treatment of their workers. It is the intent of the Legislature that beginning in 2018–19 fiscal year, the Labor Secretary shall first certify manufacturers as fair and responsible in the treatment of their workers before their vehicles are included in any rebate program funded with state funds.”<sup>1</sup>

Pursuant to this direction, staff from CARB and LWDA worked together to develop potential manufacturer certification procedures. CARB has focused on the mechanics of CVRP; LWDA has focused on the substantive labor issues. Consistent with the intent expressed in AB 134, these potential procedures could inform further legislative direction and authority.

CARB and LWDA held a joint public work group teleconference on April 9, 2018 seeking input from the public to inform the development of potential certification procedures. Stakeholders raised a range of issues and concerns. To help with identifying specific stakeholder concerns and to better inform any subsequent Legislative direction, LWDA and CARB staff are releasing this concept paper for a public comment as a next step in the development process. Please provide comments on this draft by June 4, 2018 to CARB’s public comment docket at: [https://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=cvrp-labor-2018-ws&comm\\_period=1](https://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=cvrp-labor-2018-ws&comm_period=1)

All public comments submitted can be viewed at: <https://www.arb.ca.gov/lispub/comm2/bccommlog.php?listname=cvrp-labor-2018-ws>

If you have questions, please contact Andrew Panson at [andrew.panson@arb.ca.gov](mailto:andrew.panson@arb.ca.gov) or (916) 323-2809 or Wendy Bryant at [wendy.bryant@labor.ca.gov](mailto:wendy.bryant@labor.ca.gov) or (916) 653-9913. LWDA and CARB staff will consider the public comments on this draft and will provide a revised concept paper for further consideration and possible legislative action.

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<sup>1</sup> [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB134](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB134)

## **Introduction:**

CVRP rebates have been an important factor in driving zero-emission vehicle (ZEV) market growth in California. With the Governor's Executive Order B-48-18<sup>2</sup> directing that all State entities work with the private sector and all appropriate levels of government to put at least 5 million ZEVs on California's roadways by 2030, there is a continuing need for State incentives to help accelerate the ZEV market. California is also committed to ensuring that the workers who build our ZEVs have good jobs and receive fair and responsible treatment. CARB and LWDA believe the goals of ZEV market growth and manufacturers' fair treatment of workers are fully compatible.

CVRP is a voluntary incentive program, both for automobile manufacturers and consumers. If adopted, the conceptual procedures below would only apply to manufacturers that make qualifying vehicles and voluntarily choose to participate in CVRP.

The conceptual procedures discussed here would establish a two-phase certification process for manufacturers of CVRP-eligible vehicles (CVRP manufacturers). LWDA's procedures would specify the certification process; CARB's procedures would adjust CVRP's implementation to respond to LWDA certification decisions. During the first phase, CVRP manufacturers would apply to be provisionally-certified for an initial two fiscal years based on the vehicle manufacturer's:

- 1) attestation that, with respect to the plants where they manufacture CVRP-eligible vehicles, they comply with applicable labor laws and labor-related commitments;
- 2) submission of specified documentation about their labor-related practices; and
- 3) commitment to fully cooperate in an agency investigation reasonably related to their application. The Labor Secretary would review the application for provisional certification based on these submissions and public comment.

In the second phase, CVRP manufacturers would apply annually for full certification per the process outlined on the subsequent pages of this document. The conceptual procedures include an opportunity for public comments related to a provisional or full certification, an opportunity for manufacturers to correct identified deficiencies, and due process procedures for a manufacturer in the event that a certification is denied, or revoked.

This two-phase process would enable LWDA and CARB to put initial certification procedures in place quickly to respond to any Legislative direction while providing additional time to work with stakeholders for the development of further procedures for the second phase of the certification. As discussed above, these conceptual procedures could inform further legislative direction and authority needed to move ahead with the development of the two-phase process.

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<sup>2</sup> Executive Order B-48-18: <https://www.gov.ca.gov/2018/01/26/governor-brown-takes-action-to-increase-zero-emission-vehicles-fund-new-climate-investments/>

## **Phase 1: Provisional CVRP Eligibility for Two Fiscal Years via Attestation and Description of Manufacturer's Labor Practices.**

If provided Legislative direction and appropriate authority as necessary to do so, LWDA and CARB would require that CVRP manufacturers would apply for and receive eligibility for the first two fiscal years through the following process.

- Within 90 days after the LWDA issues procedures for provisionally certifying manufacturers' fair treatment of workers for CVRP eligibility, and CARB amends CVRP procedures to allow for this certification process, a vehicle manufacturer would be required to submit an application that includes an attestation checklist and material to document its labor practices to receive a provisional certification.
- A manufacturer would complete a checklist attesting that they meet all of the following requirements with respect to each plant where the CVRP-eligible vehicles are built:
  - The manufacturer complies with all applicable local, state, and national laws and treaties concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards;
  - The manufacturer complies with its existing agreements and commitments such as the Sweatfree Code of Conduct, and the California Transparency in Supply Chains Act, with local, state, federal, or international agencies or other parties, that concern wages, workplace safety, rights to association and assembly, and nondiscrimination standards;
- As part of their application, manufacturers would submit the following material to document its labor practices to the Labor Secretary including a list of the location of each plant where the CVRP-eligible vehicles are built, and, with respect to each such plant:
  - The manufacturer's illness and injury prevention program or its equivalent, if any;
  - The manufacturer's recordable worker injury rates, or their equivalent, during the prior 5 years;
  - The manufacturer's policy and procedures for reporting, investigation and resolution of worker complaints about violation of standards related to wages, workplace safety, rights to association and assembly, and nondiscrimination;
  - The manufacturer's agreements such as the Sweatfree Code of Conduct, and the California Transparency in Supply Chains Act, with local, state, federal, or international agencies or other parties, that concern wages, workplace safety, rights to association and assembly, and nondiscrimination standards;
  - The manufacturer's policies in addition to any such agreements, with respect to its 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;
  - 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.

- A senior company official with oversight responsibility for the facilities that build the CVRP-eligible vehicles would be required to sign the application and the form attesting under penalty of perjury that the application, certification, and information submitted are true and correct.
- Upon receipt of the attestation form, the Labor Secretary would notify the manufacturer and CARB that the manufacturer is eligible to participate in CVRP during the application review period. CARB, in turn, would notify the CVRP administrator that the manufacturer's vehicle remains eligible for CVRP.
- The manufacturer must agree to cooperate fully in providing reasonable access to the manufacturer's records, documents, agents or employees, or premises if reasonably required by the Secretary of Labor to determine the manufacturer's compliance with these requirements.
- The applications would be made publicly available, posted on the LWDA web site, and linked from CARB and CVRP websites if appropriate, along with a LWDA contact for questions or comments related to the veracity of the information in the application.
- Labor Secretary would have 90 days to review manufacturer's application for completeness. After reviewing the application for completeness, the Secretary could:
  1. Approve it, and provisionally certify the manufacturer as eligible to have its vehicles included in CVRP during the first two fiscal years of the program.
  2. Request additional information by a specified date.
  3. Deny certification if not supported by the application and any supplemental information provided by the manufacturer.
  4. The manufacturer's provisional CVRP eligibility would expire after this period if it failed to provide the required additional information that was due prior to that date.
- If a manufacturer is provisionally certified as eligible to have its vehicles included in CVRP, the certification would last for:
  - The two relevant fiscal years.
  - Or until superseding procedures are completed, including a process such as the proposal described in the Process for Public Comment and Manufacturer Appeals, below.
  - The manufacturer shall notify the agency of material changes in the information provided.

## **Phase 2: Full Certification for Later Fiscal Years and Annual Renewal of Certification Thereafter.**

- If provided Legislative direction and appropriate authority as necessary to do so, LWDA and CARB would establish a formal process, including regulations and guideline changes as necessary, for manufacturers to apply for full certification by the Labor Secretary for fiscal year 2020-21, and for Labor Secretary decisions to be reflected in CARB's CVRP program, and to renew such certification annually thereafter. The process for evaluating the annual recertification submittal would be similar where appropriate to the process described for provisional certification.
- LWDA would establish criteria for the Labor Secretary's determination to certify a manufacturer as being fair and responsible in the treatment of their workers. The criteria would likely include a requirement that the manufacturer complies with all applicable local, state, and national laws and treaties concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards and that the manufacturer complies with its existing agreements and commitments such as the Sweatfree Code of Conduct, and the California Transparency in Supply Chains Act, with local, state, federal, or international agencies or other parties, that concern wages, workplace safety, rights to association and assembly, and nondiscrimination standards.
- LWDA would establish a formal process to receive and investigate complaints from the public relating to the full certification of a manufacturer. This process would be based on the veracity of the information provided on a manufacturer's application for CVRP eligibility and final judgments and adjudicatory decisions of charges by government agencies or lawsuits. The process would include the reasonable opportunity for a manufacturer to correct any violations before a certification is revoked.
- In the event that a manufacturer loses its certification, consumers would still be eligible for a CVRP rebate if they purchased a vehicle during a time period that the vehicle was eligible as long as the consumer met all CVRP eligibility requirements.
- If the Labor Secretary denies or revokes certification of a manufacturer, the Secretary shall notify the manufacturer of the right to a hearing, if requested, within a reasonable period from the date of the notice. The hearing would be before an administrative law judge of the Office of Administrative Hearings in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.