Ferrari

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BEFORE THE AIR RESOURCES BOARD OF THE STATE OF CALIFORNIA

FERRARI COMMENT ON THE PROPOSED AMENDMENTS TO THE CALIFORNIA ZERO EMISSION VEHICLE PROGRAM REGULATIONS AND THE PROPOSED "LEVIII" AMENDMENTS TO THE CALIFORNIA GREENHOUSE GAS, CRITERIA POLLUTANT EXHAUST AND EVAPORATIVE EMISSION STANDARDS AND TEST PROCEDURES, AND TO THE ON-BOARD DIAGNOSTIC SYSTEM REQUIREMENTS FOR PASSENGER CARS, LIGHT-DUTY TRUCKS, AND MEDIUM-DUTY VEHICLES, AND TO THE EVAPORATIVE EMISSION REQUIREMENTS FOR HEAVY-DUTY VEHICLES

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SUBMITTED TO:
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I. Introduction and Proposal

Ferrari SpA and Ferrari North America (collectively, Ferrari) respectfully submits comments on the "Initial Statement of Reasons for the 2012 Proposed Amendments to the California Zero Emission Vehicle Program Regulations" (ZEV ISOR) and to the "Initial Statement of Reasons for the Proposed 'LEVIII' Amendments to the California Greenhouse Gas and Criteria Pollutant Exhaust and Evaporative Emission Standards and Test Procedures and to the On-Board Diagnostic System Requirements for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, and to the Evaporative Emission Requirements for Heavy-Duty Vehicles" (LEVIII ISOR) released by the California Air Resources Board (ARB) for 45 day public comment on December 7, 2011. Ferrari is a manufacturer of high-performance motor vehicles based in Maranello, Italy. Total world-wide annual production is approximately 6,000 - 7,000 vehicles, with annual U.S. sales of about 1,500-2,000 vehicles, and approximately 400-500 in California. California is Ferrari's largest U.S. market, and as such, maintaining the ability to sell vehicles in California is critical to Ferrari's presence in the United States vehicle market.

Under the California motor vehicle emission program, a small volume manufacturer (SVM) receives certain flexibility in compliance with applicable regulations. The LEVIII ISOR has proposed that compliance with the LEV III requirements would be deferred for SVMs until the 2022 model year, during which time SVMs with nationwide sales of 5,000 vehicles or less per year may petition ARB for relaxed emission standards. As noted in the ZEV ISOR, SVMs are not required to comply with the ZEV regulations, but they may generate, trade, and sell ZEV credits. Under 13 CCR § 1900(22), the definition of SVM includes an aggregation requirement that could exclude some manufacturers with very low volumes of sales due to their ownership relations, including Ferrari. These manufacturers would thus be subject to the LEVIII tailpipe and greenhouse gas (GHG) standards and the ZEV regulations to the same extent as larger manufacturers, despite their reduced resources and decreased impact to criteria and GHG emissions.

Therefore, although Ferrari supports ARB's proposal to strengthen its LEVIII program and its approach to setting standards for SVMs, Ferrari is proposing that ARB should include in the final statement of reasons a revision to the definition of SVM in 13 CCR § 1900(22). The proposed language would allow a manufacturer to qualify as an SVM on the basis of its own sales if it can show that it is "operationally independent" from related manufacturers with which its sales would otherwise be aggregated. Ferrari's proposed regulatory language would benefit small, operationally-independent vehicle manufacturers while still protecting the environment and minimizing vehicle GHG emissions. Specifically, Ferrari proposes that ARB adopt the operational independence criteria that are included at page 74,992 of the Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA) proposal, *2017 and Later Model*

Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 76 Fed. Reg. 74,854 (Dec. 1, 2011) (Proposed Federal Rule).

II. Adopting Operational Independence Criteria is Sound Policy and will Facilitate the Goal of Harmonization of the California and Federal GHG Programs

One of the goals of the current regulatory activity in California and at the federal level is to synchronize the two regulatory programs to the maximum extent possible. The consistency of the two regimes should be a high priority for all agencies involved, so that vehicle manufacturers can look to clear standards that will allow them to adequately focus their resources in order to achieve maximum reduction of criteria pollutant and GHG emissions from new motor vehicles. In the recent Proposed Federal Rule, EPA proposed to amend the limitation for SVM aggregation provisions such that a manufacturer that is more than 10% owned by another manufacturer would be allowed to qualify for SVM status on the basis of its own sales.[1] The manufacturer would be required to demonstrate its operational independence from the large manufacturer owner by showing that it operates its research, design, production, and manufacturing independently from the other company.[2] ARB should include similar language in the final regulations on operational independence because 1) it is sound policy; and 2) in order to keep the California and federal programs uniform.

The proposal to allow an operationally-independent manufacturer to qualify as an SVM on the basis of its own sales under the California motor vehicle program will have very little overall effect on vehicle emissions. Very small historically operationally-independent manufacturers like Ferrari produce a very low volume of vehicles – Ferrari has annual sales in California of approximately 400-500 vehicles. Ferrari produces high-performance vehicles that are not driven very often by consumers - the typical Ferrari is driven between 3,000 - 4,000 miles per year, compared to the U.S. passenger car average of 12,000 miles. In addition, Ferrari is already motivated by the need to differentiate its vehicles from the competition, and is on the leading edge in developing vehicles using advanced vehicle design and lightweight materials. Thus, vehicles made by very small operationally independent manufacturers like Ferrari do not contribute significantly to GHG or criteria emissions in California.

The operational independence language will also be a more fair and reasonable way to treat manufacturers that produce a very low volume of vehicles, even though an upstream corporate owner may produce a much higher number of vehicles. These very small operationally-independent manufacturers historically have not shared the costs of research, design, production, management, or manufacturing with their large manufacturer owners. Thus, just like SVMs under 13 CCR § 1900(22), very small

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[1] *2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards*, 76 Fed. Reg. 74,854 at p. 74,992 (Dec. 1, 2011).
[2] *Id.*

historically operationally-independent manufacturers like Ferrari have limited model lines with which to comply with fleet average requirements and limited investment and engineering resources to meet more stringent emission standards.[3] In addition, manufacturers like Ferrari are at a competitive disadvantage with full line manufacturers who can offset emissions of their low volume high performance vehicles with higher volume, lower emission vehicles.[4] Ferrari has a very limited number of product lines and volume across which to average emissions, and the high performance vehicles manufactured by Ferrari have higher CO2 levels than standard passenger cars. Even if there were readily available technology to reduce vehicle emissions, incorporating these technologies into vehicle designs would be much more expensive for very small operationally-independent manufacturers Ferrari than it would be for larger manufacturers that could spread the cost of the technology over larger volumes.

As noted above, the operational independence criteria are critical for Ferrari. California is Ferrari's largest market - Ferrari has 6 dealers in California, and California sales typically represent 20-25%of Ferrari's total U.S. sales. Without the California market, Ferrari's U.S. presence would be in severe jeopardy. The situation facing Ferrari is an unanticipated (and, Ferrari believes, unintended) result of the transactions that occurred in 2009 between units of Fiat SpA, the U.S. Government, and Chrysler. If this provision is not added to the final rules, Ferrari would be required to comply with the more stringent California standards despite its limited resources and its negligible contribution to traffic and air pollution in the state. However, Ferrari believes it would be considered to be operationally independent from Fiat SpA and Chrysler under the proposed regulatory language suggested below.

For all of the reasons above, California should extend the eligibility for SVM status to very small manufacturers, like Ferrari, that are owned by large manufacturers, but are able to establish that they are operationally independent.

III. Proposed Regulatory Language

Under 13 CCR § 1900(b)(22), sales of different manufacturers are to be aggregated in various situations. For example, ARB's proposed changes to the regulation state that for the 2018 and subsequent model years, the annual sales from different firms shall be aggregated in when vehicles are produced by two or more firms, one of which is 33.4% or greater part owned by another, or when vehicles are produced by two or more firms having a common corporate officer who is are responsible for the overall direction of the companies.

As proposed in the attached Appendix, manufacturers that would otherwise not be eligible for the SVM standards due to these aggregation provisions should be able to demonstrate that they have California sales of less than 4,500 vehicles based on the average number of vehicles sold for the three previous consecutive model years for

[3] *See* LEVIII ISOR at p. 18.
[4] *Id.* at p. 19.

which a manufacturer seeks certification as an SVM, and that they are operationally independent based on the proposed criteria. At the discretion of the Executive Officer, those manufacturers could be deemed eligible for SVM status. The proposed criteria are meant to establish that a company, though having an ownership interest in another manufacturer, does not benefit operationally or financially from this relationship, and should therefore be considered independent for the purposes of calculating the sales volume for the SVM program. The criteria were adopted from the operational independence criteria that EPA proposed to include in the federal motor vehicle program.[5]

The attached language also includes several provisions that EPA has sought comment on, but has not formally proposed. A manufacturer seeking operationally-independent status must provide an "attest engagement" from an independent auditor, verifying the accuracy of the information contained in the manufacturer's application. If a manufacturer loses its operationally independent status, that manufacturer must begin to comply with the regular emissions standards within three years, but the Executive Officer may renew the status if the manufacturer can show that it has met the criteria for three consecutive years. These provisions will ensure that manufacturers are truly, verifiably operationally independent, and will prevent large manufacturers from arranging their business structures in order to meet the criteria.

The proposed language also contains an option that would allow the Executive Officer to accept the determination made by EPA under the federal regulatory language. Specifically, if EPA approves a manufacturer as an SVM under 40 C.F.R. § 86.1838-01, the Executive Officer may deem the manufacturer an SVM in California. This approach would prevent ARB from expending significant time and resources on making the determination that the operational independence criteria are met.

[5] Proposed Federal Rule at p. 74,992.

Appendix: Proposed California-Specific Regulatory Language

Assuming that ARB amends the California Code of Regulations as proposed in its ISOR, 13 CCR § 1900(b)(22) should be further amended as follows:

(22) "Small volume manufacturer" means, with respect to the 2001 and subsequent model-years, a manufacturer with California sales less than 4,500 new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles and heavy-duty engines based on the average number of vehicles sold for the three previous consecutive model years for which a manufacturer seeks certification as a small volume manufacturer; however, for manufacturers certifying for the first time in California model-year sales shall be based on projected California sales. A manufacturer's California sales shall consist of all vehicles or engines produced by the manufacturer and delivered for sale in California, except that vehicles or engines produced by the manufacturer and marketed in California by another manufacturer under the other manufacturer's nameplate shall be treated as California sales of the marketing manufacturer. Except as provided in the next three paragraphs, for the 2009 through 2017_model years, the annual sales from different firms shall be aggregated in the following situations: (1) vehicles produced by two or more firms, one of which is 10% or greater part owned by another; or (2) vehicles produced by any two or more firms if a third party has equity ownership of 10% or more in each of the firms; or (3) vehicles produced by two or more firms having a common corporate officer(s) who is (are) responsible for the overall direction of the companies; or (4) vehicles imported or distributed by any firms where the vehicles are manufactured by the same entity and the importer or distributor is an authorized agent of the entity.

For purposes of compliance with the zero-emission vehicle requirements, heavy-duty vehicles and engines shall not be counted as part of a manufacturer's sales. For purposes of applying the 2005 through 2017 model year zero-emission vehicle requirements for small-volume manufacturers under sections 1962(b) and 1962.1(b), the annual sales from different firms shall be aggregated in the case of (1) vehicles produced by two or more firms, each one of which either has a greater than 50% equity ownership in another or is more than 50% owned by another; or (2) vehicles produced by any two or more firms if a third party has equity ownership of greater than 50% in each firm.

For the 2018 and subsequent model years, the annual sales from different firms shall be aggregated in the following situations: (1) vehicles produced by two or more firms, one of which is 33.4% or greater part owned by another; or (2) vehicles produced by any two or more firms if a third party has equity ownership of 33.4% or more in each of

the firms; or (3) vehicles produced by two or more firms having a common corporate officer(s) who is (are) responsible for the overall direction of the companies; or (4) vehicles imported or distributed by any firms where the vehicles are manufactured by the same entity and the importer or distributor is an authorized agent of the entity.

Notwithstanding the provisions of the previous three paragraphs, upon application to the Executive Officer, a manufacturer may be classified as a "small volume manufacturer" for purposes of all applicable regulations in this Title 13 beginning in Model Year 2012 if the Executive Officer determines that it is operationally independent of: (a) the firm that owns 10% or more of the applicant or has a greater than 10% equity ownership in the applicant; (b) the firm that owns 50% or more of the applicant or has a greater than 50% equity ownership in the applicant; or (c) the firm that owns 33.4% or more of the applicant or has greater than 33.4% equity ownership in the applicant. For the purposes of this paragraph, all manufacturers that would be aggregated together under (a), (b), or (c) shall be defined as "related manufacturers." The Executive Officer may make such a determination of operational independence if all of the following criteria are met for at least 24 months preceding the application submittal: (1) for the three years preceding the year in which the initial application is submitted, the average California sales for the applicant does not exceed 4,500 vehicles per year; (2) no financial or other support of economic value is provided by related manufacturers for purposes of design, parts procurement, R&D and production facilities and operation, and any other transactions between related manufacturers are conducted under normal commercial arrangements like those conducted with other parties, at competitive pricing rates to the manufacturer; (3) related manufacturers maintain separate and independent research and development, testing, and production facilities; (4) related manufacturers do not use any vehicle powertrains or platforms developed or produced by related manufacturers; (5) patents are not held jointly with related manufacturers; (6) related manufacturers maintain separate business administration, legal, purchasing, sales, and marketing departments, as well as autonomous decision-making on commercial matters; (7) the overlap of the Board of Directors between related manufacturers is limited to 25% with no sharing of top operational management, including president, chief executive officer, chief financial officer, and chief operating officer, and provided that no individual overlapping director or combination of overlapping directors exercises exclusive management control over either or both companies; (8) parts or components supply between related companies must be established through open market process, and to the extent that the manufacturer sells parts/components to non-related manufacturers, it does so through the open market a competitive pricing. Any manufacturer applying for operational independence must provide an attest engagement from an independent certified public accountant or firm of such accountants verifying the accuracy of the information contained in the application, in accordance with the procedures established in 40 C.F.R. § 80.125, which is incorporated herein by reference. The Executive Officer shall require the applicant to submit information to update any of the criteria as material changes to any of the criteria occur. If there are no material changes to any of the criteria, the applicant shall certify to the Executive Officer on an

annual basis. With respect to any such changes, the Executive Officer may consider extraordinary conditions (e.g., changes to economic conditions, unanticipated market changes, etc.) and may continue to find the applicant to be operationally independent. In the event that a manufacturer loses eligibility as a "small volume manufacturer" after a material change occurs, the manufacturer must begin compliance with the primary emissions program in the third model year after the manufacturer loses its eligibility. The Executive Officer may, in its discretion, re-establish lost "small volume manufacturer" status if the manufacturer shows that it has met the operational independence criteria for three consecutive years. At the discretion of the Executive Officer, a manufacturer may be deemed to be a "small volume manufacturer" for purposes of all applicable regulations in this Title 13 if the manufacturer has qualified as a "small volume manufacturer" under 40 C.F.R. § 86.1838.01(b)(3).