



BEFORE THE AIR RESOURCES BOARD OF THE STATE OF CALIFORNIA



FERRARI COMMENT ON THE 15-DAY NOTICE OF 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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Dated: March 7, 2012

SUBMITTED TO:
Clerk of the Board State of California, Air Resources Board
1001 I Street, 23rd Floor
Sacramento, CA 95814



Ferrari SpA and Ferrari North America (collectively, Ferrari) respectfully submits comments on the “Proposed 15-Day Modified Text of the 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,” released by the California Air Resources Board (ARB) for public comment on February 22, 2012. 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.

Ferrari greatly appreciates the inclusion of a definition in the proposed 15-Day Notice regulatory language that would allow a small volume manufacturer (SVM) to demonstrate that it is “operationally independent” from other related manufacturers with which its sales otherwise would have to be aggregated. As explained in detail in our comments dated January 25, 2012, this revision will harmonize the California regulatory program with the national EPA program, create a fair and equitable compliance path for very low-volume manufacturers, and continue to minimize vehicle greenhouse gas (GHG) and other emissions.

While Ferrari overwhelmingly agrees with the proposed language in the 15-Day Notice, we nevertheless urge the Air Resources Board to make two additional changes to the regulatory language before finalizing the text. First, in the definition of “small volume manufacturer” in § 1900(b)(22), Ferrari recommends that the Air Resources Board clarify applicability of the transition period for an SVM that has lost or will lose this status due to a material change or aggregation requirements. We have provided several possible options for achieving this. Second, in the criteria for demonstrating operational independence, Ferrari recommends that (4) be revised to read “the applicant does not use any vehicle powertrains or platforms developed or produced by related manufacturers” in order to clarify the intent of this criterion.

1. Clarifying the Transition from Small Volume Manufacturer Status is Necessary to Protect Current Small-Volume Manufacturers from a Sudden, Drastic Change in Applicable Standards.

Through model year (MY) 2012, Ferrari is considered a SVM for purposes of all applicable California Air Resources Board vehicle regulations. This has been the case for many decades. Although California is our largest market in the U.S., Ferrari sells only 400-500 vehicles per year in California. However, under the proposed 15-Day Notice Modified Text and existing aggregation requirements, it appears that Ferrari immediately could become part of a related manufacturer’s fleet for the 2013 model



year. As such, Ferrari immediately would have to begin complying with more stringent exhaust and evaporative emission standards with little prior notice. As the Air Resources Board is well aware, developing technology and conducting the testing necessary to comply with more stringent standards can take significant amounts of lead time and planning. In addition, Ferrari vehicles would have to be counted as part of the related manufacturers' fleet for purposes of the LEV II, ZEV, and GHG programs for MY 2013, which is less than a calendar year away (and is beginning soon for some manufacturers). Ferrari does not know how and whether the Ferrari fleet could be accommodated by the related manufacturers' fleet for compliance with the LEV II, ZEV, and GHG programs. However, such a drastic change at short notice to the companies involved certainly has the potential to create great logistical difficulties.

Furthermore, if EPA finalizes its regulatory language on operational independence, Ferrari intends to apply for that status for MY2013. Assuming EPA grants this application and California does not clarify the applicability of its own provision, Ferrari could be considered a small volume manufacturer for EPA purposes but will not be for compliance with California regulations. This disparity could pose additional compliance difficulties for Ferrari, as well as related manufacturers. To address this concern, Ferrari has identified four possible options for clarifying how the transition out of SVM status would occur for an SVM that has lost or will lose its eligibility for that status due to a material change affecting fleet aggregation requirements.

Option 1. The Air Resources Board could finalize the proposed definition of small volume manufacturer without any additional revisions (aside from the very small change Ferrari recommends to criterion (4)) and explain in the Final Statement of Reasons that the Board generally interprets its regulations as allowing individual SVMs to retain that status for a certain transition period that is consistent with similar transition periods in other portions of the California LEV II and III, ZEV, and GHG regulations. This approach would avoid any additional regulatory changes but also provide a transition period from SVM to part of an aggregated fleet. Both the SVM and related manufacturers would benefit from the additional lead time to determine how the SVM's fleet emissions can be accommodated in the related manufacturers' compliance plans. In addition, providing a transition period would be consistent with other California regulatory programs and ensure consistency in the application of these requirements. For example, under the ZEV program, small volume manufacturers whose status changes as the result of the aggregation requirements are required to begin complying with the ZEV program beginning in the fourth model year after the change in ownership triggering sales aggregation. Likewise, the OBD regulations give a small volume manufacturer three years to begin compliance with the OBD requirements, whether the manufacturer's sales have increased over the SVM threshold or a material change in ownership triggered the fleet aggregation requirements. If the Air Resources Board does not allow a similar transition period for exhaust and evaporative emission standards, then a manufacturer could be in the unique position of having a transition as an SVM for some requirements, but also having to comply



with other, more stringent standards applicable to intermediate- or large-volume manufacturers and designed to reflect these manufacturers' greater ability to average among car lines and models in order to achieve compliance.

Option 2. As a variation of Option 1, the Air Resources Board could interpret the proposed regulatory language at the end of the revised definition of "small volume manufacturer" as providing lead time for the transition from SVM to a part of the related manufacturers' aggregated fleet. In the final paragraph of § 1900(b)(22), the new regulatory language would require a small volume manufacturer that loses its SVM status as a result of a material change to begin complying with the primary emissions program in the third model year after the model year in which the manufacturer loses its eligibility. The Air Resources Board could clarify in the Final Statement of Reasons that this provision takes effect immediately and would apply to a manufacturer, like Ferrari, that is currently considered an SVM but whose vehicle sales, due to a material change, would have to be aggregated with those of related manufacturers in future model years. Providing several years of lead time after a change in status due to the aggregation requirement is consistent with other California regulatory programs, such as the OBD and ZEV regulations.

Option 3. Alternatively, the Board could modify the proposed regulatory language by inserting an additional sentence in the beginning of § 1900(b)(22) clarifying that SVMs are given a three-year transition period to begin complying with the primary emissions program after losing SVM status due to a material change. Ferrari proposes the following addition:

...or (4) vehicles imported or distributed by ~~all~~ any firms where the vehicles are manufactured by the same entity and the importer or distributor is an authorized agent of the entity. In the event that a manufacturer loses eligibility as a "small volume manufacturer" at any time after a material change occurs, the manufacturer must begin compliance with the primary emissions program in the third model year after the model year in which the manufacturer loses its eligibility. Notwithstanding the provisions of this paragraph...

As explained above, providing a transition period for SVMs that have lost or will lose this status due to a material change in ownership structure is consistent with the existing OBD and ZEV regulations. Like Option 1, this revision also will prevent a manufacturer from having to comply with some SVM standards and some standards applicable to larger-volume manufacturers. Attachment 1 contains revised text of this definition with this language in red, bold text.

Option 4. As a final alternative, the Air Resources Board could simply revise the final sentence of the first paragraph of § 1900(b)(22) to read as follows:



Notwithstanding the provisions of this paragraph, upon application to the Executive Officer, a manufacturer may be classified as a “small volume manufacturer” for the 2013 through 2017 model years if the Executive Officer determines that it is operationally independent of the firm that owns 10% or more of the applicant or has a greater than 10% equity ownership in the applicant based on the criteria provided in the last paragraph of this subsection (b)(22).

This revision will allow Ferrari to apply for and obtain operationally independent SVM status and would prevent Ferrari from suddenly losing its current status as an SVM beginning in the 2013 model year. Such a change would clarify that a manufacturer could apply for continued SVM status. Attachment 2 contains revised text of the definition with this proposed revision.

2. A Minor Change to Criterion (4) for Establishing Operational Independence Will Clarify the Intent of the Provision.

In the fourth paragraph of § 1900(b)(22), Ferrari recommends a minor change to criterion (4) for establishing operational independence. Ferrari recommends that this sentence read: “(4) ~~related manufacturers~~ the applicant does not use any vehicle powertrains or platforms developed or produced by related manufacturers.” This revision will clarify the intent of the provision of ensuring that SVM applying for operational independence does not use powertrains or platforms development by related manufacturers. Both Attachments 1 and 2 contain this minor clarifying revision.

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Again, Ferrari greatly appreciates and supports the inclusion of “operational independence” in the revision of the definition of “small volume manufacturer.” Ferrari looks forward to continuing to work with Air Resources Board staff in a productive manner to reduce vehicle emissions in the future.

Amedeo Felisa

A handwritten signature in black ink, appearing to read "Felisa" followed by a stylized flourish.

Chief Executive Officer



ATTACHMENT 1

§ 1900. Definitions.

* * * * *

(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 paragraph, ~~beginning with~~ 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 ~~all~~ any firms where the vehicles are manufactured by the same entity and the importer or distributor is an authorized agent of the entity. **In the event that a manufacturer loses eligibility as a "small volume manufacturer" at any time after a material change occurs, the manufacturer must begin compliance with the primary emissions program in the third model year after the model year in which the manufacturer loses its eligibility.** Notwithstanding the provisions of this paragraph, upon application to the Executive Officer, a manufacturer may be classified as a "small volume manufacturer" for the 2015 through 2017 model years if the Executive Officer determines that it is operationally independent of the firm that owns 10% or more of the applicant or has a greater than 10% equity ownership in the applicant based on the criteria provided in the last paragraph of this subsection (b)(22).

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 ~~and subsequent~~ 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. Notwithstanding the provisions of this paragraph, upon application to the Executive Officer, a manufacturer may be classified as a "small volume manufacturer" for the 2015 through 2017 model years if the Executive Officer determines that it is operationally independent of the firm that owns 50% or more of the applicant or has a greater than 50% equity ownership in the applicant based on the criteria provided in the last paragraph of this subsection (b)(22).



Except as provided in the next paragraph, 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 this paragraph, upon application to the Executive Officer, a manufacturer may be classified as a "small volume manufacturer" for the 2018 and subsequent model years if the Executive Officer determines that it is operationally independent of the firm that owns 33.4% or more of the applicant or has a greater than 33.4% equity ownership in the applicant based on the criteria provided in the last paragraph of this subsection (b)(22).

For the purposes of this paragraph, all manufacturers whose annual sales are aggregated together under the provisions of this subsection (b)(22) shall be defined as "related manufacturers." Notwithstanding such aggregation, the Executive Officer may make 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~~ **the applicant** **does** 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; and (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 submit to ARB an Attestation Engagement from an independent certified public accountant or firm of such accountants verifying the accuracy of the information contained in the application, as defined by and in accordance with the procedures established in 40 C.F.R. §80.125, as last amended January 19, 2007, which is incorporated herein by reference. The applicant must submit information to update any of the above eight criteria as material changes to any of the criteria occur. If there are no material changes to any of the criteria, the applicant must certify that to the Executive Officer annually. 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 model year in which the manufacturer loses its eligibility. The Executive Officer may, in his or her discretion, re-establish lost “small volume manufacturer” status if the manufacturer shows that it has met the operational independence criteria for three consecutive years.



ATTACHMENT 2

§ 1900. Definitions.

* * * * *

(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 paragraph, ~~beginning with~~ 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 all 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 this paragraph, upon application to the Executive Officer, a manufacturer may be classified as a "small volume manufacturer" for the 2015 ~~2013~~ through 2017 model years if the Executive Officer determines that it is operationally independent of the firm that owns 10% or more of the applicant or has a greater than 10% equity ownership in the applicant based on the criteria provided in the last paragraph of this subsection (b)(22).

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 ~~and subsequent~~ 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. Notwithstanding the provisions of this paragraph, upon application to the Executive Officer, a manufacturer may be classified as a "small volume manufacturer" for the 2015 ~~2013~~ through 2017 model years if the Executive Officer determines that it is operationally independent of the firm that owns 50% or more of the applicant or has a greater than 50% equity ownership in the applicant based on the criteria provided in the last paragraph of this subsection (b)(22).

Except as provided in the next paragraph, fFor 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 this paragraph, upon application to the Executive Officer, a manufacturer may be classified as a “small volume manufacturer” for the 2018 and subsequent model years if the Executive Officer determines that it is operationally independent of the firm that owns 33.4% or more of the applicant or has a greater than 33.4% equity ownership in the applicant based on the criteria provided in the last paragraph of this subsection (b)(22).

For the purposes of this paragraph, all manufacturers whose annual sales are aggregated together under the provisions of this subsection (b)(22) shall be defined as “related manufacturers.” Notwithstanding such aggregation, the Executive Officer may make 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~~ **the applicant does** 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; and (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 submit to ARB an Attestation Engagement from an independent certified public accountant or firm of such accountants verifying the accuracy of the information contained in the application, as defined by and in accordance with the procedures established in 40 C.F.R. §80.125, as last amended January 19, 2007, which is incorporated herein by reference. The applicant must submit information to update any of the above eight criteria as material changes to any of the criteria occur. If there are no material changes to any of the criteria, the applicant must certify that to the Executive Officer annually. 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 model year in which the manufacturer loses its eligibility. The Executive Officer may, in his or her discretion, re-establish lost “small volume manufacturer” status if the manufacturer shows that it has met the operational independence criteria for three consecutive years.



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CALIFORNIA 2015 AND SUBSEQUENT MODEL CRITERIA POLLUTANT EXHAUST EMISSION STANDARDS AND TEST PROCEDURES AND 2017 AND SUBSEQUENT MODEL GREENHOUSE GAS EXHAUST EMISSION STANDARDS AND TEST PROCEDURES FOR PASSENGER CARS, LIGHT-DUTY TRUCKS, AND MEDIUM-DUTY VEHICLES

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PART I: GENERAL PROVISIONS FOR CERTIFICATION AND IN-USE VERIFICATION OF EMISSIONS

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B. Definitions, Acronyms and Abbreviations

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2. California Definitions.

“**Small volume manufacturer**” means any manufacturer whose projected or combined California sales of passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles and heavy-duty engines in its product line are fewer than 4,500 units based on the average number of vehicles sold for the three previous consecutive model years for which a manufacturer seeks certification. 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 last paragraph of this definition, Ffor the ~~2015~~**2013** 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.

Except as provided in the last paragraph of this definition, Ffor 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.

For the purposes of this paragraph, all manufacturers whose annual sales are aggregated together under the provisions of this definition shall be defined as “related manufacturers.” Notwithstanding such aggregation, the Executive Officer may make 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~~ **the applicant** does 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; and (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 at competitive pricing. Any manufacturer applying for operational independence must submit to ARB an Attestation Engagement from an independent certified public accountant or firm of such accountants verifying the accuracy of the information contained in the application, as defined by and in accordance with the procedures established in 40 C.F.R. §80.125, as last amended January 19, 2007, which is incorporated by reference in section 1900, title 13, CCR. The applicant must submit information to update any of the above eight criteria as material changes to any of the criteria occur. If there are no material changes to any of the criteria, the applicant must certify that to the Executive Officer annually. 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 model year in which the manufacturer loses its eligibility. The Executive Officer may, in his or her discretion, re-establish lost “small volume manufacturer” status if the manufacturer shows that it has met the operational independence criteria for three consecutive years.