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Clerk's Office, California Air Resources Board  
1001 I Street,  
Sacramento, CA 95814

Electronic Submittal: <https://www.arb.ca.gov/lispub/comm/bclist.php>

**RE: Proposed Amendments to the Small Off-Road Engine Regulations: Transmission to Zero Emissions**

Dear California Air Resources Board:

Thank you for the opportunity to provide written comments on the California Air Resources Board's ("CARB") "Proposed Amendments to the Small Off-Road Engine Regulations: Transmission to Zero Emissions" ("Proposed Amendments"). The Proposed Amendments would modify the preexisting Small Off-Road Engine Exhaust Emissions Regulations, Off Road Vehicles and Engines Pollution Control Devices and the Small Off Road Engine Evaporative Emission Regulations, Evaporative Emission Requirements for Off Road Equipment ("SORE Regulations").

For the purposes of the Proposed Amendments and the SORE Regulations, our comments reflect the perspective and product scope of the Miller Electric Manufacturing, LLC, ("Miller Electric") which manufactures, among other items, certain welding equipment that contains small gas-powered engines of less than 25 horsepower. Miller Electric is a wholly owned subsidiary of Illinois Tools Works Inc. ("ITW"), a U.S. manufacturer of value-added commercial and industrial-use products, components, and systems. ITW is a Fortune 200 company operating a diverse global portfolio of 84 manufacturing divisions.

**Welding Equipment Preemption to SORE Regulations – Statutory Bases**

After review of the Proposed Amendments to the SORE Regulations, and being mindful of federal statute and applicable regulations, we conclude that the welders manufactured by Miller Electric are clearly preempt from the SORE regulations pursuant to Section 209 of the federal Clean Air Act ("CAA").

The welders manufactured by Miller Electric are generally sold through commercial distributors and equipment dealers. As such, our equipment is overwhelmingly used by commercial contractors at construction sites in California and throughout the United States. As you know, the federal Environmental Protection Agency (EPA) defines "construction equipment or vehicle" at 40 CFR 1074.5, to mean "any internal combustion engine-powered machine primarily [51% or more] used in construction and located on commercial construction sites." *Brackets added.* Moreover, when discussing these provisions, the EPA indicated that the preemption to construction equipment applies by category or type of equipment (e.g., general use of the equipment) rather than to each individual engine or piece of equipment. See Air Pollution Control: Preemption of State Regulation for Nonroad Engine and Vehicle

Standards, 59 Fed. Reg. 36969, 36979. Consequently, the CARB developed a list of specific new construction equipment that is preempted (e.g., "List to Determine Preempt Off-Road Applications"—referred to herein as the "Federally Preempt List") from regulation under the agency's nonroad regulations, including the California flexibility provisions at 13 CCR 2423.

The Federally Preempt List specifically identifies welders as preempted from CARB regulation. As such, we would conclude that our equipment should be specifically out of scope of the SORE Regulations, and we would suggest the CARB consider clarifying amendments to the Proposed Amendments as explained below.

#### **Sections 2400 and 2751(c) – Applicability**

As part of our review of the Proposed Amendments, we note that CARB specifically referenced the CAA preemption in a note within the Proposed Amendment's "Applicability" section at 13 CCR 2400 and in the Proposed Amendment's Notice of Public Hearing.

To add further clarity to the regulatory status of the equipment listed on the Federally Preempt List, we respectfully request that the CARB amend Sections 2400 and 2751(c) to state that the SORE Regulations do not apply to equipment on the Federally Preempt List, such as welders, drills, jackhammers, etc. In the alternative to referencing the Federally Preempt List, we request that the CARB amend Sections 2400 and 2751(c) to include an enumerated list of preempt equipment that includes welders. Miller Electric believes that doing so will provide greater clarity and certainty to welding equipment manufacturers, sellers and end users by allowing manufacturers to easily determine how the regulation applies to their products.

#### **Sections 2401(a)(29) – Definitions**

Similarly, under the SORE Regulations, the term "generator" at section 2401(a)(29) is defined as "off-road equipment that exclusively produces electric power." First, we would, again, respectfully suggest that the CARB consider amending the "generator" definition to ensure federally preempt equipment, such as welders, are clearly outlined. And, in the case of welders, we would also explain an applicable product distinction to prevent otherwise federally preempt welding equipment from being inadvertently considered as within the scope of the Proposed Amendments.

Certain Miller Electric equipment contains a generator as part of a welding power source that the CARB recognizes as federally preempt from regulation. These welding power sources provide support for welding operations, making electricity generation merely another capability of what is manufactured and used as a welder. This equipment is unlike, for example, an emergency generator that has been exclusively manufactured for providing back-up electricity for various applications. Our view is that making these key definitional clarifications to the term "generator" at section 2401(a)(29) of the SORE Regulations will also provide greater certainty and clarity to manufacturers and allow them to easily determine if they are subject to regulation.

In conclusion, we appreciate CARB allowing written comments as you consider the Proposed Amendments. We look forward to our continued partnership and collaboration with CARB.

Respectfully submitted,



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