

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its appropriation to be awarded on a non-competitive basis. These funds will be used only to support industry-specific national-scope initiatives and/or regional industry models with high potential for widespread replication.

FMCS reserves the right to retain up to an additional five percent of the FY96 appropriation to contract for program support purposes (such as evaluation) other than administration.

#### *E. Dollar Range and Length of Grants and Continuation Policy*

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued for a limited time at a 40 percent cash match ratio. Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued for a limited time at a 40 percent cash match ratio.

The dollar range of awards is as follows:

- Up to \$35,000 in FMCS funds per annum for existing inplant applicants;
- Up to \$50,000 over 18 months for new in-plant committee applicants;
- Up to \$75,000 in FMCS funds per annum for existing area, industry and public sector committees applicants;
- Up to \$100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources.

#### *F. Match Requirements and Cost Allowability*

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project

costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY96 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

#### *G. Application Submission and Review Process*

Applications should be signed by *both* a labor and management representative and be postmarked no later than May 4, 1996. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Program Services, 2100 K Street, NW., Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more Customer Review Boards. The Board(s) will recommend selected applications for further funding consideration. The Director, Labor-Management Program Services, will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the

only person with whom FMCS will communicate during the application review process.

All FY96 grant applicants will be notified of results and all grant awards will be made before September 30, 1996. Applications submitted after the May 4 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Program Services.

#### *H. Contact*

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits and additional information or clarification can be obtained free of charge by contacting Karen Pierce or Linda Stubbs, Federal Mediation and Conciliation Service, Labor-Management Program Services, 2100 K Street NW., Washington, DC 20427; or by calling 202-606-8181.

John Calhoun Wells,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 96-2736 Filed 2-7-96; 8:45 am]

BILLING CODE 6732-01-M

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## FEDERAL TRADE COMMISSION

[File No. 951 0091]

### Illinois Tool Works Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

**SUMMARY:** This Consent Agreement, accepted subject to final Commission approval, settles alleged violations of federal law prohibiting unfair or deceptive acts and practices and unfair methods of competition arising from the acquisition of all of the voting securities of Hobart Brothers Company by Illinois Tool Works Inc. The proposed complaint alleges that the merger, if consummated, would violate Section 7 of the Clayton Act, as amended, and Section 5 of the FTC Act, as amended, in the markets for industrial power sources and industrial engine drives—which, rated at 250 amperes and above, generate the power to operate arc welding systems—in the United States. Under the terms of the proposed order contained in the Consent Agreement, ITW will be required to divest all of the assets and businesses relating to the industrial power sources and industrial engine drives of Hobart Brothers

Company ("Hobart") to Prestolite Electric Incorporated ("Prestolite"), pursuant to a January 17, 1996, Asset Purchase Agreement, as modified by a January 24, 1996, Undertaking ("Asset Purchase Agreement") or, in the alternative, to an acquirer that meets the Commission's approval.

**DATES:** Comments must be received on or before April 8, 1996.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Ann Malester, FTC/S-2035, Washington, D.C. 20580 (202) 326-2682; or Christina Perez, FTC/S-2214, Washington, D.C. 20580 (202) 326-2682.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

#### Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Illinois Tool Works Inc. ("ITW") of Hobart Brothers Company ("Hobart"), and it now appearing that ITW, hereinafter sometimes referred to as "Proposed Respondent," is willing to enter into an agreement containing an order to divest assets, and providing for certain other relief:

It is hereby agreed by and between Proposed Respondent ITW, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent ITW is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware with its office and principal place of business located at 3600 West Lake Avenue, Glenview, Illinois 60025-5811.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed Respondent waives:

- a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Proposed Respondent's address as stated in the agreement shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not

contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed Respondent has read the proposed complaint and order contemplated hereby. Proposed Respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed Respondent further understands it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "Respondent" or "ITW" means Illinois Tool Works Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Illinois Tool Works Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Hobart" means Hobart Brothers Company, an Ohio corporation, with its principal office and place of business located at 600 West Main Street, Troy, Ohio 45373, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Hobart Brothers Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Commission" means the Federal Trade Commission.

D. "Acquisition" means the acquisition by respondent of all of the issued and outstanding Hobart capital stock, by means of a statutory merger between Hobart and ITW Acquisition Corp., a Delaware corporation which is a wholly-owned subsidiary of ITW.

E. "Industrial Power Sources" means static arc welding power sources rated at 250 amperes or higher, including, but not limited to, any such power sources using inverter technology.

F. "Industrial Engine Drives" means rotating arc welding power sources rated at 250 amperes or higher.

G. "Battery Chargers" means devices used to charge industrial batteries.

H. "Aircraft Ground Power Units" means power conversion devices that provide power to aircraft that are on the ground.

I. "Assets and Businesses" means all assets, businesses and goodwill, tangible and intangible, including, without limitation, the following:

1. all machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;

2. all customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, software licenses, inventions, copyrights, trademarks, trade names (excluding the Hobart trade name), trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;

3. the exclusive right to use the Hobart trade name in connection with the research, development, manufacture and sale of Industrial Power Sources and Industrial Engine Drives.

4. inventory;

5. rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

6. all rights under warranties and guarantees, express or implied;

7. all books, records, and files; and

8. all items of prepaid expense.

J. "Hobart Industrial Welding Equipment Business" means all of the Assets and Businesses used in the research, development, manufacture and sale by Hobart of:

1. Industrial Power Sources;

2. Industrial Engine Drives;

3. Battery Chargers; and

4. Aircraft Ground Power Units.

K. "Hobart Power Conversion Operations" means all of the Assets and Businesses used in the research, development, manufacture and sale by Hobart of:

1. Static arc welding power sources;

2. Rotating arc welding power sources;

3. Battery Chargers; and

4. Aircraft Ground Power Units.

L. "Prestolite" means Prestolite Electric Incorporated, a Delaware corporation, with its principal office and place of business located at 2100 Commonwealth Blvd., Ann Arbor, Michigan 48105.

M. "Marketability, Viability and Competitiveness" of the Hobart Industrial Welding Equipment assets means that the assets when used in conjunction with the assets of the

acquirer are capable of operating a business which is substantially similar to the Hobart Industrial Welding Equipment Business at the time of the acquisition, with substantially similar sales levels and product lines.

## II

It is further ordered that:

A. ITW shall divest, absolutely and in good faith, the Hobart Industrial Welding Equipment Business. The Hobart Industrial Welding Equipment Business shall be divested either:

1. Within one (1) month of the date this order becomes final, to Prestolite, pursuant to the January 17, 1996, Asset Purchase Agreement between Hobart and Prestolite as modified by the January 24, 1996, Undertaking, embodied in Confidential Appendix I [not attached]. If divested to Prestolite, the Hobart Industrial Welding Equipment Business shall exclude Aircraft Ground Power Units; or

2. Within twelve (12) months of the date this order becomes final, to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the event that the acquirer does not choose to acquire the Battery Charger or Ground Power Unit assets and businesses, because the acquirer does not need such assets in order to engage in the Industrial Power Source and Industrial Engine Drive Businesses, respondent shall not be required to divest such assets.

B. The purpose of the divestiture is to ensure the continuation of the Hobart Industrial Welding Equipment Business as an ongoing, viable operation, engaged in the research, development, manufacture and sale of Industrial Power Sources and Industrial Engine Drives, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. Until the Hobart Industrial Welding Equipment Business has been divested, ITW shall:

1. Maintain the Marketability, Viability, and Competitiveness of the Hobart Industrial Welding Equipment Business, and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or business it may have to divest, except in the ordinary course of business and except for ordinary wear and tear, and it shall not sell, transfer, encumber or otherwise impair the Marketability, Viability or Competitiveness of the Hobart Industrial Welding Equipment Business; and

2. Expend funds for research and development, quality control,

manufacturing and marketing of each of the Hobart Industrial Welding Equipment Business products at a level not lower than that budgeted for the 1995 fiscal year, and shall increase such spending as is deemed reasonably necessary in light of competitive conditions.

D. Upon reasonable notice from the acquirer to respondent, respondent shall provide, at no cost, such assistance to the acquirer as is reasonably necessary to enable the acquirer to design and manufacture Industrial Power Sources and Industrial Engine Drives in substantially the same manner and quality employed or achieved by Hobart prior to the Acquisition. Such assistance shall include reasonable consultation with knowledgeable employees of respondent and training at the acquirer's facility for a period of time sufficient to satisfy the acquirer's management that its personnel are appropriately trained in the design and manufacture of Industrial Power Sources and Industrial Engine Drives. Respondent shall convey all know-how necessary to design and manufacture Industrial Power Sources and Industrial Engine Drives in substantially the same manner and quality employed or achieved by Hobart prior to the Acquisition.

However, respondent shall not be required to continue providing such assistance for more than nine (9) months.

## III

It is further ordered that:

A. If ITW has not divested, absolutely and in good faith and with the Commission's prior approval, the Hobart Industrial Welding Equipment Business within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the Hobart Industrial Welding Equipment Business. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, ITW shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph III. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by ITW to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to

paragraph III.A. of this order, ITW shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of ITW, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in mergers and divestitures. If ITW has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to ITW of the identity of any proposed trustee, ITW shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Hobart Industrial Welding Equipment Business.

3. Within ten (10) days after appointment of the trustee, ITW shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Hobart Industrial Welding Equipment Business, or to any other relevant information, as the trustee may request. ITW shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. ITW shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by ITW shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable

price and terms available in each contract that is submitted to the Commission, subject to ITW's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in Paragraph II. of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by ITW from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of ITW, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of ITW, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of ITW, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Hobart Industrial Welding Equipment Business.

8. ITW shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to

accomplish the divestiture required by this order.

11. The trustee may also divest such additional ancillary assets and businesses of the Hobart Power Conversion Operations and effect such arrangements as are necessary to assure the Marketability, Viability and Competitiveness of the Hobart Industrial Welding Equipment Business.

12. The trustee shall have no obligation or authority to operate or maintain the Hobart Industrial Welding Equipment Business.

13. The trustee shall report in writing to ITW and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

#### IV

It is further ordered that consistent with ITW's obligation to maintain the Marketability, Viability and Competitiveness of the Hobart Industrial Welding Equipment Business, ITW may engage in any business other than the Hobart Industrial Welding Equipment Business, including without limitation, the welding equipment business it is currently operating through its wholly-owned subsidiary, Miller Electric Mfg. Co.

#### V

It is further ordered that within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until ITW has fully complied with Paragraphs II. and III. of this order, ITW shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. and III. of this order. ITW shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. including a description of all substantive contacts or negotiations for the divestiture required by this order, including the identity of all parties contacted. ITW shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

#### VI

It is further ordered that ITW shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other

change in the corporation that may affect compliance obligations arising out of the order.

#### VII

It is further ordered that, for the purpose of determining or securing compliance with this order, ITW shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of ITW, relating to any matters contained in this order; and

B. Upon five (5) days notice to ITW, and without restraint or interference from ITW, to interview officers, directors, or employees of ITW, who may have counsel present, regarding any such matters.

#### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order from Illinois Tool Works Inc. ("ITW"). The proposed Consent Order requires ITW to divest all of the assets and businesses relating to the industrial power sources and industrial engine drives of Hobart Brothers Company ("Hobart") to Prestolite Electric Incorporated ("Prestolite"), pursuant to a January 17, 1996, Asset Purchase Agreement, as modified by a January 24, 1996, Undertaking ("Asset Purchase Agreement") or, in the alternative, to an acquirer that meets the Commission's approval.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

Pursuant to a letter of intent dated May 2, 1995, ITW proposed to acquire all of the voting securities of Hobart for approximately \$225 million in ITW common stock. The proposed complaint alleges that the merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act as amended, 15 U.S.C. § 45, in the markets for industrial power sources and industrial engine drives in the United States.

Industrial power sources are stationary pieces of welding equipment, rated at 250 amperes and above, that generate the power needed to operate an arc welding system by connecting to an existing source of electricity, such as a wall outlet, and transforming that electricity into the precise current and voltage needed for welding. Industrial engine drives are portable power sources, rated at 250 amperes and above, that use gas or diesel fuel, instead of electricity, as a source of power. Industrial power sources and industrial engine drives are critical components of arc welding systems which are used in a broad range of industries, ranging from industrial fabrication to shipbuilding. There are no viable substitutes for either industrial power sources or industrial engine drives. Alternative welding processes and methods of joining metal are only used for specialized applications and could not be used in a cost effective manner for applications where industrial power sources or industrial engine drives are used.

ITW's acquisition of Hobart would reduce the number of significant industrial power source and industrial engine drive competitors in the United States from three to two. In the industrial power source market, the post-acquisition Herfindahl-Hirschman Index ("HHI") would increase by 858 points to 4856. In the industrial engine drive market, the post-acquisition HHI would increase by 298 points to 4538.

New entry into the United States industrial power source and industrial engine drive markets is extremely time consuming, costly and difficult. In addition to designing and developing a line of products, a new entrant must establish the brand reputation and customer acceptance necessary to convince customers to purchase from a company other than the well-established competitors. It takes well in excess of two years to accomplish these steps and achieve a significant market impact.

Although foreign industrial power source and industrial engine drive manufacturers offer some products in the United States, these foreign manufacturers lack the necessary product designs and brand reputation and customer acceptance necessary to effectively compete in this country. As a result, these companies have had virtually no competitive impact on the United States markets.

ITW's acquisition of Hobart poses serious antitrust concerns. In the United States markets for industrial power sources and industrial engine drives, the acquisition would eliminate direct

actual competition between ITW and Hobart, enhance the likelihood of coordinated interaction, increase the likelihood that quality and technological innovation would be reduced, and thereby increase the likelihood that consumers would be forced to pay higher prices.

Under the proposed Consent Order, ITW is required to divest the Hobart industrial power source and industrial engine drive assets and businesses to Prestolite within one month of the date the order becomes final pursuant to the Asset Purchase Agreement. Under the terms of the Asset Purchase Agreement, ITW is required to divest all of the assets and businesses used in the research, development, manufacture and sale by Hobart of industrial power sources and industrial engine drives, including an exclusive license of the Hobart trade name for five years. ITW has agreed not to market industrial power sources and industrial engine drives under the Hobart name for seven years and will provide Prestolite with the option to also acquire a non-exclusive license to use the Hobart name for retail, as opposed to industrial, power sources or engine drives, which are rated below 250 amperes. In addition, ITW will be required to provide personnel, assistance and training in order to transfer industrial power source and industrial engine drive technology and know-how to Prestolite.

If the transaction with Prestolite is not consummated within one month of the date the order becomes final, ITW is required to divest the Hobart industrial power source and industrial engine drive assets to an acquirer that receives the prior approval of the Commission and in a manner approved by the Commission within twelve months of the date the order becomes final. The acquirer, at its option, may also acquire the battery charger and aircraft ground power unit assets and businesses of Hobart, if such assets are necessary to engage in the industrial power source and industrial engine drive businesses. If ITW fails to divest the assets within twelve months, a trustee may be appointed to divest the assets, as well as additional ancillary assets included in Hobart's Power Conversion Business. The purpose of the divestiture is to ensure the continuation of the Hobart Industrial Welding Equipment Business as an ongoing, viable operation, engaged in the research, development, manufacture and sale of industrial power sources and industrial engine drives, and to remedy the lessening of competition resulting from the acquisition.

The Order also requires ITW to provide the Commission a report of compliance with the divestiture provisions of the Order within sixty (60) days following the date the Order becomes final, and every sixty (60) days thereafter until ITW has completed the required divestiture.

The purpose of this analysis is to facilitate the public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

By direction of the Commission.  
Donald S. Clark,  
Secretary.  
[FR Doc. 96-2705 Filed 2-7-96; 8:45 am]  
BILLING CODE 6750-01-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 96F-0031]

#### Reichhold Chemicals, Inc.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Reichhold Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,2-benzisothiazolin-3-one as a biocide in rubber latex for use in the manufacture of rubber articles intended for repeated use in contact with food.

**DATES:** Written comments on the petitioner's environmental assessment by March 11, 1996.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4389) has been filed by Reichhold Chemicals, Inc., P.O. Box 13582, Research Triangle Park, NC 27709-3582. The petition proposes to amend the food additive regulations in § 177.2600 *Rubber articles intended for*

*repeated use* (21 CFR 177.2600) to provide for the safe use of 1,2-benzisothiazolin-3-one as a biocide in rubber latex for use in the manufacture of rubber articles intended for repeated use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 11, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: January 22, 1996.  
Alan M. Rulis,  
Director, Office of Premarket Approval,  
Center for Food Safety and Applied Nutrition.  
[FR Doc. 96-2667 Filed 2-7-96; 8:45 am]  
BILLING CODE 4160-01-F

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### Advisory Committees; Notice of Meetings

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1-800-741-8138 or 301-443-0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

**MEETINGS:** The following advisory committee meetings are announced:

#### Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee

*Date, time, and place.* February 26, 1996, 8:30 a.m., Corporate Bldg., 9200 Corporate Blvd., rm. 020B, Rockville, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Marriott Washingtonian Center. Attendees requiring overnight accommodations may contact the hotel at 301-590-0044 and reference FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Sociometrics, Inc., 301-608-2151. The availability of appropriate accommodations cannot be assured unless prior written notification is received.

*Type of meeting and contact person.* Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Alfred W. Montgomery, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1180, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Obstetrics and Gynecology Devices Panel, code 12524.

*General function of the committee.* The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.