occurred in banks having no equity capital due to declines in depositor confidence in such institutions.

Certain commenters questioned the impact on the FDIC funds of the proposed regulation. The OCC anticipates that the FDIC will benefit from the new rule in two ways. First, the FDIC receives the benefit of any amounts held in a failed bank's ALLL intended to cover estimated losses in the bank's loan portfolio. This factor should reduce the FDIC's costs connected with the disposition of the institution. Second, the OCC believes that this final rule will increase the number of potential investors for insolvent national banks. Investor interest should be greater in a bank which is closed before it accrues substantial operating losses in excess of its capital.

Finally, one commenter was concerned that the liquidity factor is too imprecise. The language in the final rule for the liquidity factor is consistent with established practice under 12 U.S.C. 191. *See Smith*, 102 F.2d 638 (3d Cir. 1939); *Franklin*, 381 F. Supp. 1390 (E.D.N.Y. 1974).

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is certified that this amendment will not have a substantial economic impact on a significant number of small entities. As noted above, the OCC will make each determination of insolvency on a case-by-case basis. Under the new regulations, such determination will be based on a national bank's liquidity or equity position, not its size. The new rule is consistent with the intent of the Regulatory Flexibility Act, and the application of the rule will not be unduly burdensome to small banks.

Executive Order 12291

The OCC has determined that this amendment is not a "major rule" and therefore does not require a Regulatory Impact Analysis.

List of Subjects in 12 CFR Part 5

National banks, Banking, Receivership, Conservatorship, Insolvency.

Authority and Insurance:

For the reasons set forth in the preamble, part 5 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 5—[AMENDED]

1. The authority citation for Part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93(a).

2. Section 5.49 is revised to read as follows:

§ 5.49 Receivership.

(a) *Authority.* 12 U.S.C. 191–200.

(b) *Procedures.* Sections 5.8 through 5.14 do not apply to receiverships.

(c) *Receivership.* If the Office becomes satisfied that a national bank is insolvent, it may appoint a receiver for such bank.

(1) *Factors for determining insolvency.* Pursuant to 12 U.S.C. 191, a receiver may be appointed to close up the affairs of a national bank whenever the Office shall become satisfied of the bank's insolvency. In determining whether it is satisfied that a bank is insolvent, the Office may consider the following factors, among others:

(i) *Net worth.* The Office may consiser whether the bank's liabilities exceed its assets. A bank's liabilities shall exceed its assets when its equity capital is eliminated by losses. For the purpose of reaching a determination of insolvency, the bank's equity capital shall consist of:

(A) *Common shareholders' equity.* "Common shareholders; equity" means common stock, common stock surplus, undivided profits, capital reserves, adjustments for the cumulative effect of foreign curency translation, less any net unrealized loss on marketable equity securities.

(B) *Preferred stock and related surplus.*

(ii) *Liquidity.* The Office may deem a national bank insolvent when it is unable to meet its obligations as they mature.

(2) *Federal Deposit Insurance Corporation as receiver.* In cases in which the Office is required to appoint the Federal Deposit Insurance Corporation as receiver, that corporation prescribes the procedures it follows in liquidation of the insolvent bank.

(3) *Other receivers.* In those cases in which the Office does not appoint the Federal Deposit Insurance Corporation as receiver, it may appoint a receiver of its choice. The Office prescribes a form of proof of claim. The receiver appointed by the Office issues a certificate of proof of claim to claimants who prove their claims to the satifisfaction of the Office or establish their claims by litigation.

Dated: November 21, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89-27751 Filed 11-27-89; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-225-AD; Amdt. 39-6402]

Airworthiness Directives; Boeing Model 737-300 and -400 Series Airplanes Equipped With CFM International CFM56-3 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-300 and -400 series airplanes, equipped with CFM International CFM56-3 series engines, which requires modification of the engines idle circuitry to inhibit the in-flight low idle capability. This amendment is prompted by four incidents of engine flameouts that occurred during descent through thunderstorm activity. This condition, if not corrected, could result in additional dual engine flameouts and thus jeopardize safe flight and landing.

EFFECTIVE DATE: December 11, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: There have been four incidents, two recent, of engine flameouts of Model 737-300 series airplanes during inadvertent thunderstorm encounters. In the first of the two recent incidents, an airplane experienced a single engine flameout during descent through 18,000 feet after entering sudden rain and hail. At 11,000 feet, the pilots nosed the airplane over and obtained a successful windmill restart. In the second recent incident, an airplane experienced a dual engine flameout after encountering hail and ice (no rain) at 17,000 feet, during the descent into the destination airport. The

airplane was in the vicinity of thunderstorm activity. The engines recovered from their sub-idle condition without pilot action at 14,000 feet. Both of these incidents were caused by airplane immersion into surrounding thunderstorm activity. This condition, if not corrected, could result in additional dual engine flameouts due to an inadvertent encounter with thunderstorm activity.

The FAA has reviewed and approved Boeing Alert Service Bulletins 737–77A1026 (for the Model 737–300), Revision 2, dated October 27, 1989, and 737–77A1025 (for the Model 737–400), dated October 12, 1989, which describe the modification procedures necessary to inhibit the engines' in-flight low idle capability, thus increasing the engine minimum percent N_1 flight idle to the existing High Idle (approximately 28% to 33% N_1). This modification increases the engines' flameout margin approximately 50%, thus significantly reducing the possibility of engine flameout during an inadvertent thunderstorm encounter. These Alert Service Bulletins provide instructions to add the engine high idle control and indication system on the Model 737–300 series airplanes, and incorporate the minimum high idle modification into the existing engine idle control and indication system on the Model 737–400 series airplanes.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires modification of the engine idle circuitry to remove in-flight low idle capability, in accordance with the alert service bulletins previously described.

This is considered further interim action, in conjunction with AD 88–13–51–R1, Amendment 39–6088 (53 FR 49978; December 13, 1988). That previously issued AD is applicable to Model 737–300 series airplanes and requires, among other things, a revision to the Airplane Flight Manual (AFM) to require operation with an minimum N_1 engine speed of 45 percent; engine ignition in the FLIGHT position when flying in or near moderate to heavy rain, hail, or sleet; and the avoidance of flight in moderate to severe thunderstorm activity. The requirements of that AD action were incorporated into the basic Model 737–400 type design prior to its certification. Experimental engine design solution(s) are currently under evaluation. Pending the result of these engineering evaluations and flight tests, the FAA may consider further rulemaking to require incorporation of a final engine design change into the existing Boeing Model 737–300 and 737–400 fleet.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737–300 and –400 series airplanes, identified in Boeing Alert Service Bulletins 737–77A1026, Revision 2, dated October 27, 1989, and 737–77A1025, dated October 12, 1989, certificated in any category. Compliance required within 60 days after the effective date of this AD, unless previously accomplished.

To reduce the risk of engine flameout during inadvertent airplane immersion into thunderstorm activity, accomplish the following:

A. For Model 737–300 series airplanes: Modify the engine idle circuitry in accordance with Boeing Alert Service Bulletin 737–77A1026, Revision 2, dated October 27, 1989.

Note: This action is in addition to the actions required by AD 88–13–51–R1, Amendment 39–6088, for the Model 737–300 series airplanes.

B. For Model 737–400 series airplanes: Modify the engine idle circuitry in accordance with Boeing Alert Service Bulletin 737–77A1025, dated October 12, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 11, 1989.

Issued in Seattle, Washington, on November 15, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–27832 Filed 11–27–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 175 and 177

[Docket No. 88F–0376]

Indirect Food Additives; Adhesives and Components of Coatings and Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of hydroxybutyltin oxide, monobutyltin tris(2-ethylhexoate), and dibutyltin oxide in the production of polyester resins to be used in resinous and polymeric coatings and cross-linked polyester resins. The polyesters are intended for use in contact with food. This action is in response to a petition filed by M&T Chemicals, Inc.

DATES: Effective November 28, 1989; written objections and requests for a hearing by December 28, 1989.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 7, 1988 (53 FR 49359), FDA announced that a food additive petition (FAP 8B4113) had been filed by M&T Chemicals, Inc., c/o 1150 17th St. NW., Washington, DC 20036, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) and § 177.2420 *Polyester resins, cross-linked* (21 CFR 177.2420) be amended to provide for the safe use of hydrated monobutyltin oxide, monobutyltin trioctoate, and dibutyltin oxide in the production of polyester resins to be used in resinous and polymeric coatings and cross-linked polyester resins. The polyesters are intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency finds that monobutyltin tris-(2-ethylhexoate) and hydroxybutyltin oxide are more specific terms for the additives monobutyltin trioctoate and hydrated butyltin oxide, respectively. Thus, the agency is adopting this preferred nomenclature for the proposed food additives. The agency also concludes that the three catalysts, hydroxybutyltin oxide, monobutyltin tris(2-ethylhexoate), and dibutyltin oxide, are safe for use in the production of polyester resins to be used in resinous and polymeric coatings and cross-linked polyester resins. The agency is amending the food additive regulations by listing these three catalysts in new § 175.300(b)(3)(vii)(*e*) and by including these catalysts in the table in § 177.2420(b), as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before December 28, 1989 file with the Dockets Management Branch (address above) written objections thereto.

Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center the Food Safety and Applied Nutrition, 21 CFR parts 175 and 177 are amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 175.300 is amended by adding new paragraph (b)(3)(vii)(*e*) to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(vii) * * *

(*e*) Catalysts:

Dibutyltin oxide (CAS Reg. No. 818–08–6), not to exceed 0.2 percent of the polyester resin.

Hydroxybutyltin oxide (CAS Reg. No. 2273–43–0), not to exceed 0.2 percent of the polyester resin.

Monobutyltin tris(2-ethylhexoate) (CAS Reg. No. 23850–94–4), not to exceed 0.2 percent of the polyester resin.

* * * * *

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

3. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

4. Section 177.2420 is amended in the table in paragraph (b) by alphabetically adding under item "3. Catalysts:", three new entries to read as follows:

§ 177.2420 Polyester resins, cross-linked.

* * * * *

(b) * * *

List of substances	Limitations (limits of addition expressed as percent by weight of finished resin)
* * * * *	
3. Catalysts:	
* * * * *	

List of substances	Limitations (limits of addition expressed as percent by weight of finished resin)
Dibutyltin oxide (CAS Reg. No. 818-08-6).	For use in the polycondensation reaction at levels not to exceed 0.2 percent of the polyester resin.
* * * * *	
Hydroxybutyltin oxide (CAS Reg. No. 2273-43-0).	For use in the polycondensation reaction at levels not to exceed 0.2 percent of the polyester resin.
* * * * *	
Monobutyltin tris(2-ethylhexoate) (CAS Reg. No. 23850-94-4).	For use in the polycondensation reaction at levels not to exceed 0.2 percent of the polyester resin.
* * * * *	

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Dated: November 16, 1989.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-27809 Filed 11-27-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 436 and 442

[Docket No. 89N-0412]

Antibiotic Drugs; Cephalexin Hydrochloride Monohydrate Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, cephalexin hydrochloride monohydrate tablets. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective December 28, 1989; written comments, notice of participation, and request for hearing by December 28, 1989; data, information, and analyses to justify a hearing by January 29, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, cephalexin hydrochloride monohydrate tablets. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR 436.215 by adding a new entry to the table in paragraph (b) and adding new paragraph (c)(11), and by adding new §§ 436.367, 442.28, and 442.128 to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, becomes effective December 28, 1989. However, interested persons may, on or before December 28, 1989, submit comments to the Dockets Management Branch (address above). 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 Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before December 28, 1989, a written notice of participation and request for hearing, and (2) on or before January 29, 1990, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) whose request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR

Part 436

Antibiotics.

Part 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 436 and 442 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR part 436 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 436.215 is amended by alphabetically adding a new entry to the table in paragraph (b), and by adding a new paragraph (c)(11) to read as follows:

§ 436.215 Dissolution test.

* * * * *

(b) * * *