

**§ 301.75–6 [Amended]**

■ 2. Section 301.75–6 is amended as follows:

- a. In paragraph (a), by removing the words “calamondin and”.
- b. In the introductory text of paragraph (b), by removing the words “Calamondin (*Citrus mitis*) and kumquat” and adding the word “Kumquat” in their place.
- c. In paragraph (b)(3), by removing the words “calamondin and”.
- d. In paragraph (b)(6), by removing the words “calamondin and”.
- e. In paragraph (b)(8), by removing the words “calamondin or”.

**§ 301.75–12 [Amended]**

■ 3. In § 301.75–12, the introductory text of paragraph (b)(1) is amended by removing the words “calamondin and”.

Done in Washington, DC, this 6th day of April 2009.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E9–8103 Filed 4–8–09; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE****Food Safety and Inspection Service****9 CFR Part 392**

[Docket No. 00–019F; FDMS Docket No. FSIS–2005–0020]

**RIN 0583–AC81**

**Petitions for Rulemaking**

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending its administrative regulations to add a new part that establishes regulations governing the submission to FSIS of petitions for rulemaking. The new regulations supersede existing guidance on the submission of petitions to FSIS to issue, amend, or repeal its regulations. FSIS is taking this action to help ensure the filing of well-supported petitions that contain information that the Agency needs to proceed with consideration of the requested rulemaking in a timely manner.

**DATES:** *Effective Date:* June 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Rachel Edelstein, Director, Policy Issuances Division, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture; (202) 720–5627.

**SUPPLEMENTARY INFORMATION:****Background**

On January 12, 2006, FSIS published a proposal in the **Federal Register** to establish regulations governing the submission to FSIS of petitions to issue, amend, or repeal a regulation administered by the Agency (71 FR 1988). As discussed in that proposed rulemaking, FSIS had previously published guidelines in 1993 on how to submit petitions for rulemaking to the Agency (58 FR 63570, December 2, 1993). Despite the existence of this guidance, rulemaking petitions are submitted to FSIS in various forms, often without adequate data and supporting documentation for FSIS to properly evaluate the merits of the requested action. The measures proposed in the January 12, 2006, proposed rule are designed to encourage the filing of well-supported petitions that contain information that the Agency needs to evaluate a requested rulemaking in a timely manner. The comment period for the proposed rule closed on March 12, 2006.

**Comments and FSIS Response**

FSIS received only one comment in response to the January 12, 2006, proposal. The comment was generally supportive of the proposed regulations but also expressed the view that when preparing Notices and Directives, FSIS should provide an opportunity for public comment prior to the issuance of these documents. According to the comment, FSIS Notices and Directives may have the same effect on the industry as regulations. The comment recommended that FSIS adopt a rule that would specifically provide opportunity for stakeholders to participate in the development of these documents.

The January 12, 2006, proposed rule proposed to establish regulations for the submission to FSIS of petitions for rulemaking. Establishing a new process for making draft FSIS Notices and Directives available for comment is outside the scope of this rulemaking. Under this final rule, however, persons may certainly petition the Agency to issue, amend or repeal such documents.

The comment also stated that, when evaluating petitions for rulemaking, FSIS must take into account that small and very small establishments have limited resources and may not have access to all of the data that FSIS considers necessary to evaluate a petition for rulemaking.

In the preamble to the proposed rule, FSIS acknowledged that some small entities may not have access to certain

data that is readily available to large companies or industry trade associations. As stated in the preamble, the Agency will take these limitations into consideration when it evaluates petitions submitted by small entities.

**The Final Rule**

In this final rule FSIS is establishing regulations governing the submission to FSIS of petitions for rulemaking. As noted above, the one comment submitted in response to the January 12, 2006, proposed rule raised no objections that were within the scope of the proposed rulemaking. Therefore, FSIS is finalizing the proposed rule without changes.

As was proposed, FSIS is adding a new part 392—Petitions for rulemaking to title 9, subchapter D of the CFR. As stated in § 392.1, part 392 contains provisions governing the submission to FSIS of petitions for rulemaking and applies to all requests to initiate rulemaking, except to the extent that other provisions in the FSIS regulations prescribe procedures for submitting requests to amend a regulation. As discussed in the preamble to the proposed rule, § 392.1 includes this exception because FSIS' regulations already contain procedures on how to submit requests to amend certain sections of the regulations. For example, as noted in the proposal, a request to amend the regulations to authorize a new Reference Amount or Product Category identified in 9 CFR 317.312(b) and 381.412(b) must be submitted as a labeling application in accordance with the provisions of 9 CFR 317.312(g) and 381.412(g).

Section 392.2 defines a “petition” as a written request to issue, amend, or repeal a regulation administered by the Agency. Section 392.2 also provides that a request to issue, amend, or repeal a document that interprets a regulation administered by the Agency, such as an FSIS Directive, Notice, or compliance guide, may be made by petition.

Section 392.3 describes the information that a petition is required to contain to be considered by FSIS. Section 392.3(a) requires that a petition include the name, address and telephone number, and e-mail address (if available) of the person submitting the petition. Section 392.3(b) requires that a petition contain a full statement of the action requested by the petitioner, including the citation and exact wording of any existing regulation affected by the requested action. Section 392.3(c) requires that a petition include a statement of the factual and legal basis for the requested action, including all relevant information known to the

petitioner, both favorable and unfavorable to the petitioner's position. Section 392.3(c) also states that the statement of the factual and legal basis should identify the problem that the requested action is intended to address and explain why the requested action is needed to address the problem.

Section 392.4 describes the information that should be submitted in support of a rulemaking petition. As was discussed in the preamble to the proposal, the documentation described in proposed § 392.4 is not required for a petition to be considered by FSIS. Rather, § 392.4 is intended to provide petitioners with a clear idea of the type of supporting documentation that FSIS considers necessary to evaluate a petition in an efficient and effective manner.

Section 392.4(a) provides that information referred to or relied on in support of a petition should be included in full, and that a copy of any source cited in a petition should be submitted with the petition. Section 392.4(b) lists sources of information that FSIS considers appropriate to use in support of a petition. These sources include, but are not limited to, professional journal articles, official government statistics, official government reports, scientific textbooks, research reports, and industry data.

Section 392.4(c) provides that if original research reports are used to support a petition, the information should be presented in a form that would be acceptable for publication in a peer reviewed scientific or technical journal. Section 392.4(d) states that if quantitative data are used to support a petition, the presentation of these data should include a complete statistical analysis using conventional statistical methods.

Section 392.5 sets out the procedures for filing a rulemaking petition with FSIS. Under § 392.5(a), any interested person may file a petition with FSIS. Section 392.5(a) provides that, for purposes of part 392, an "interested person" means any individual, partnership, corporation, association, or public or private organization. Section 392.5(b) explains that to file a petition with FSIS, a person should submit the petition to the FSIS Docket Clerk at the address provided in that paragraph. Section 392.5(c) states that when FSIS receives a petition, the Agency will stamp it with the date of filing and assign the petition a number. Section 392.5(c) provides that FSIS will inform the petitioner in writing when a petition has been filed with the Agency. Section 392.5(c) also states that FSIS will provide the petitioner with the number

assigned to the petition along with an Agency contact for the petition.

Section 392.5(d) contains procedures for withdrawing a petition. Under § 392.5(d) a petition may be withdrawn at any time. Section 392.5(d) provides that if a petitioner elects to withdraw a petition, the petitioner should inform FSIS in writing. Once a petition is withdrawn, § 392.5(d) permits the petitioner to resubmit the petition at any time.

Section 392.6 provides for public display of rulemaking petitions and any supporting documentation. Section 392.6(a) provides that unless material is exempt from public disclosure under the Freedom of Information Act (FOIA) (5 U.S.C 552 *et seq.*), or under any other applicable laws or regulations, all rulemaking petitions, along with any supporting documentation filed with a petition, will be available for public inspection in the FSIS docket room and posted on the FSIS Web site. Section 392.6(b) provides that if FSIS can not readily determine whether information submitted by a petitioner is privileged or confidential business information, FSIS will request that the petitioner submit a written statement that certifies that the petition does not contain confidential information that should not be put on public display. As explained in the proposed rule, when it issues the request, FSIS will also specify a date by which the petitioner must respond. If the petitioner fails to provide the certification by the specified date, FSIS will assume that the information is confidential.

Section 392.6(c) provides that if FSIS determines that information submitted in support of a petition is exempt from public disclosure under the FOIA, or any other applicable laws or regulations, and that the information would provide the basis for granting the petition, FSIS will inform the petitioner in writing. Under § 392.6(c), the petitioner will then have an opportunity to withdraw the petition or the supporting documentation, or modify the supporting documentation to permit public disclosure.

Section 392.7 sets out the procedures for submitting comments on a petition that has been filed with FSIS. Section 392.7(a) provides that any interested person may submit written comments on a petition. Section 392.7(b) provides that comments on a petition should be submitted within 60 days of the posting date of the petition, and that the comments should identify the number assigned to the petition to which the comments refer.

Section 392.7(c) provides that FSIS will consider all comments that are

timely submitted as part of its review of a rulemaking petition. Under § 392.7(d), these comments will become part of the petition file and, like the petition, will be on public display in the FSIS docket room and posted on the FSIS Web site. Section 392.7(e) provides that a comment on a petition that is actually a request for an alternative regulatory action should be submitted as a separate petition rather than as a comment. Under § 392.7(f), if FSIS determines that a comment received on a petition is in fact a request for an alternative action, the Agency will inform the commenter in writing. Section 392.7(f) also provides that FSIS will take no further action on the suggested alternative action unless the commenter submits a petition for rulemaking.

Under § 392.8(a), petitions that request actions that are intended to enhance the public health by removing or reducing foodborne pathogens or other potential food safety hazards that might be present in or on meat, poultry, or egg products qualify for expedited review. Section 392.8(b) provides that for a petition to be considered for expedited review, the petitioner must submit scientific information that demonstrates that the requested action will reduce or remove foodborne pathogens or other potential food safety hazards, and how it will do so. Section 392.8(c) explains that if FSIS determines that a petition should receive expedited review, the Agency will review the petition ahead of other pending petitions. As noted in the proposal, if a petition receives expedited review, the petition will still be subject to all other provisions that apply to rulemaking petitions.

Section 392.9 provides that information related to the submission and processing of petitions for rulemaking may be found on the FSIS Web site. In conjunction with the issuance of this final rule, FSIS has developed a page on its Web site that explains the petition filing process. Also posted on this Web page is a description of the type of information that is required for FSIS to consider a petition for rulemaking and the type of information that FSIS recommends be submitted with a petition for rulemaking. In addition, after this rule becomes effective, all petitions for rulemaking that are submitted to the Agency, and any comments received on the petitions, will be posted on the FSIS Web site.

#### **Information Needed To Conduct Regulatory Analyses**

In the January 12, 2006, proposed rule, FSIS explained that as part of the

regulatory development process, Federal agencies are required by law, Executive Order, and regulation to conduct certain analyses on the impact of proposed and final agency regulations. FSIS briefly described the statutes and Executive orders that most often affect rulemakings conducted by FSIS (*see* 71 FR 1988, 1991).

As discussed in the preamble to the proposed rule, once a petition is granted, the subsequent rulemaking often requires that FSIS expend substantial resources to conduct the prescribed regulatory impact analyses. Therefore, one of the factors that the Agency considers when evaluating a petition for rulemaking is whether it should commit resources to the development of a particular rule and the analyses that would be required if the Agency were to grant the petition.

In the January 12, 2006, proposal, FSIS did not propose to require that petitions include data on the potential impacts of a requested regulatory action. However, FSIS did explain that it may be able to more efficiently and effectively evaluate and act on a petition if the petitioner includes supporting data that FSIS can use in connection with the required impact analyses.

Consistent with the proposal, this final rule does not require that petitioners submit data on the impacts of a requested regulatory action. However, FSIS strongly encourages the submission of these data to help make the Agency's review of rulemaking petitions more effective and efficient and to facilitate regulatory development in the event a petition is granted.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This final rule has been reviewed under Executive Order 12866. It has been determined to be non-significant for purposes of E.O. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

This final rule establishes regulations governing the submission of rulemaking petitions to FSIS. It specifies the type of information that must be included in a rulemaking petition if the petition is to be granted and describes the type and quality of data that should be submitted in support of a petition.

This final rule will benefit persons interested in filing a rulemaking petition with FSIS by providing clear guidance on how to prepare and submit a petition to best ensure prompt and appropriate consideration by the Agency. This final rule will also benefit petitioners by promoting a more timely resolution of their requested regulatory actions.

Persons interested in petitioning FSIS to issue, amend, or repeal a regulation will bear the costs associated with preparing a rulemaking petition. These costs will vary depending on the complexity of the requested action and the type of documentation needed to support the petition. However, because the decision to submit a petition for rulemaking is voluntary, persons interested in the issuance, amendment, or repeal of a regulation administered by FSIS will most likely submit a rulemaking petition if the benefits of the requested action outweigh the costs of preparing the petition. By encouraging consistency in the content of rulemaking petitions and the submission of adequate supporting documentation, this final rule will reduce the administrative costs associated with the FSIS' review and evaluation of rulemaking petitions, as well as expedite the time it takes for the Agency to review petitions.

In addition to this final rule, FSIS considered the option of no rulemaking. Under this option, prospective petitioners would continue to rely on the guidelines for the submission, consideration, and disposition of petitions that FSIS published in the 1993 **Federal Register** notice. FSIS rejected this option because the Agency determined that its procedures for submitting petitions need certain clarification, and that the importance of these procedures should be underscored by adopting this final rule and codified to make them readily available to prospective petitioners.

#### **Effect on Small Entities**

The Administrator, FSIS, has determined that this final rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The decision to submit a petition for rulemaking is voluntary, and therefore, small entities are not required to comply with these final regulations unless they choose to submit a rulemaking petition. Furthermore, although FSIS continues to encourage petitioners to submit relevant data needed to prepare the regulatory analyses that would be required should the petition be granted, the submission of this information is not required under this final rule. FSIS is aware that some small entities may not have access to certain data that are readily available to large companies or industry trade associations. FSIS will take this into consideration when evaluating petitions submitted by small entities.

#### **Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### **Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at [http://www.fsis.usda.gov/regulations\\_&\\_policies/2009\\_Interim\\_&\\_Final\\_Rules\\_Index/index.asp](http://www.fsis.usda.gov/regulations_&_policies/2009_Interim_&_Final_Rules_Index/index.asp).

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at [http://www.fsis.usda.gov/news\\_and\\_events/email\\_subscription/](http://www.fsis.usda.gov/news_and_events/email_subscription/). Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

#### **Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or record keeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). This information collection request is at OMB awaiting approval. FSIS will collect no information

associated with this rule until the information collection is approved by OMB.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Ave., SW., Room 3532 South Building, Washington, DC 20250-3700; (202) 720-0345.

### E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601 *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

### List of Subjects

Administrative practice and procedure, Freedom of information.

■ For the reasons discussed in the preamble, FSIS is amending 9 CFR Chapter III as follows:

#### SUBCHAPTER D—FOOD SAFETY AND INSPECTION SERVICE ADMINISTRATIVE PROVISIONS

■ Subchapter D is amended by adding a new part 392 to read as follows:

#### PART 392—PETITIONS FOR RULEMAKING

Sec.

- 392.1 Scope and purpose.
- 392.2 Definition of petition.
- 392.3 Required information.
- 392.4 Supporting documentation.
- 392.5 Filing procedures.
- 392.6 Public display.
- 392.7 Comments.
- 392.8 Expedited review.
- 392.9 Availability of additional guidance.

**Authority:** 5 U.S.C. 553(e), 7 CFR 1.28.

#### § 392.1 Scope and purpose.

This part contains provisions governing the submission of petitions for rulemaking to the Food Safety and Inspection Service (FSIS). The provisions in this part apply to all rulemaking petitions submitted to FSIS, except to the extent that other parts or sections of this chapter prescribe procedures for submitting a request to amend a particular regulation.

#### § 392.2 Definition of petition.

For purposes of this part, a "petition" is a written request to issue, amend, or repeal a regulation administered by FSIS. A request to issue, amend, or repeal a document that interprets a regulation administered by FSIS may also be submitted by petition.

#### § 392.3 Required information.

To be considered by FSIS, a petition must contain the following information:

(a) The name, address, telephone number, and e-mail address (if available) of the person who is submitting the petition;

(b) A full statement of the action requested by the petitioner, including the exact wording and citation of the existing regulation, if any, and the proposed regulation or amendment requested;

(c) A full statement of the factual and legal basis on which the petitioner relies for the action requested in the petition, including all relevant information and views on which the petitioner relies, as well as information known to the petitioner that is unfavorable to the petitioner's position. The statement should identify the problem that the requested action is intended to address and explain why the requested action is necessary to address the problem.

#### § 392.4 Supporting documentation.

(a) Information referred to or relied on in support of a petition should be included in full and should not be incorporated by reference. A copy of any article or other source cited in a petition should be submitted with the petition.

(b) Sources of information that are appropriate to use in support of a petition include, but are not limited to:

- (1) professional journal articles,
- (2) research reports,
- (3) official government statistics,
- (4) official government reports,
- (5) industry data, and
- (6) scientific textbooks.

(c) If an original research report is used to support a petition, the information should be presented in a form that would be acceptable for publication in a peer reviewed scientific or technical journal.

(d) If quantitative data are used to support a petition, the presentation of the data should include a complete statistical analysis using conventional statistical methods.

#### § 392.5 Filing procedures.

(a) Any interested person may file a petition with FSIS. For purposes of this part, an "interested person" is any individual, partnership, corporation, association, or public or private organization.

(b) To file a petition with FSIS, a person should submit the petition to the FSIS Docket Clerk, Department of Agriculture, Food Safety and Inspection Service, Room 2534 South Building, 1400 Independence Ave., SW., Washington, DC 20250-3700.

(c) Once a petition is submitted in accordance with this part, it will be filed by the FSIS Docket Clerk, stamped with the date of filing, and assigned a petition number. Once a petition has been filed, FSIS will notify the petitioner in writing and provide the petitioner with the number assigned to the petition and the Agency contact for the petition. The petition number should be referenced by the petitioner in all contacts with the Agency regarding the petition.

(d) If a petitioner elects to withdraw a petition submitted in accordance with this part, the petitioner should inform FSIS in writing. Once a petition has been withdrawn, the petitioner may re-submit the petition at any time.

#### § 392.6 Public display.

(a) All rulemaking petitions filed with FSIS, along with any documentation submitted in support of a petition, will be available for public inspection in the FSIS docket room and will be posted on the FSIS Web site at <http://www.fsis.usda.gov/>.

(b) If FSIS cannot readily determine whether information submitted in support of a petition is privileged or confidential business information, FSIS will request that the petitioner submit a written statement that certifies that the petition does not contain confidential information that should not be put on public display. If the petitioner fails to submit the certification within a time specified by FSIS, the Agency will consider the information to be confidential.

(c) If FSIS determines that a petition, or any documentation submitted in support of a petition, contains information that is exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*) or any other applicable laws or regulations, and that the information would provide the basis for granting the petition, FSIS will inform the petitioner in writing. FSIS will provide the petitioner an opportunity to withdraw the petition or supporting documentation, or modify the supporting documentation to permit public disclosure.

#### § 392.7 Comments.

(a) Any interested person may submit written comments on a petition filed with FSIS.

(b) Comments on a petition should be submitted within 60 days of the posting date of the petition and should identify the number assigned to the petition to which the comments refer.

(c) FSIS will consider all timely comments on a petition that are submitted in accordance with this

section as part of its review of the petition.

(d) All comments on a petition will become part of the petition file and will be available for public inspection in the FSIS docket room and posted on the FSIS Web site at <http://www.fsis.usda.gov/>.

(e) Any interested person who wishes to suggest an alternative action to the action requested by the petition should submit a separate petition that complies with these regulations and not submit the alternative as a comment on the petition.

(f) If FSIS determines that a comment received on a petition is in fact a request for an alternative action, the Agency will inform the commenter in writing. The Agency will take no further action on the requested alternative action unless the commenter submits an appropriate petition for rulemaking.

#### **§ 392.8 Expedited review.**

(a) A petition will receive expedited review by FSIS if the requested action is intended to enhance the public health by removing or reducing foodborne pathogens or other potential food safety hazards that might be present in or on meat, poultry, or egg products.

(b) For a petition to be considered for expedited review, the petitioner must submit scientific information that demonstrates that the requested action will reduce or remove foodborne pathogens or other potential food safety hazards that are likely to be present in or on meat, poultry, or egg products, and how it will do so.

(c) If FSIS determines that a petition warrants expedited review, FSIS will review the petition ahead of other pending petitions.

#### **§ 392.9 Availability of additional guidance.**

Information related to the submission and processing of petitions for rulemaking may be found on the FSIS Web site at <http://www.fsis.usda.gov/>.

Done at Washington, DC, on: April 6, 2009.

**Alfred V. Almanza,**  
Administrator.

[FR Doc. E9-8106 Filed 4-8-09; 8:45 am]

**BILLING CODE 3410-DM-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. FAA-2008-0412; Directorate Identifier 2007-NM-346-AD; Amendment 39-15870; AD 2009-07-11]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD), which applies to all Boeing Model 737-300, -400, and -500 series airplanes. That AD currently requires repetitive inspections for discrepancies of the fuselage skin under the dorsal fin assembly, and repairing if necessary. This new AD requires an inspection for any chafing or crack in the fuselage skin and abrasion resistant coating at the dorsal fin landing, an inspection for damage to the dorsal fin seals, attach clip, and seal retainer, and other specified and corrective actions as necessary. The new requirements will end the need for the existing repetitive inspections. This AD results from a report of an 18-inch crack found in the fuselage skin area under the blade seals of the nose cap of the dorsal fin due to previous wear damage, and additional reports of fuselage skin wear. We are issuing this AD to prevent discrepancies of the fuselage skin, which could result in fatigue cracking due to cabin pressurization and consequent rapid in-flight decompression of the airplane fuselage.

**DATES:** This AD becomes effective May 14, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 14, 2009.

On November 12, 2004 (69 FR 62567, October 27, 2004), the Director of the Federal Register approved the incorporation by reference of Boeing Message Number 1-QXO35, dated October 13, 2004.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207; telephone 206-544-9990; fax 206-766-5682; e-mail [DDCS@boeing.com](mailto:DDCS@boeing.com); Internet <https://www.myboeingfleet.com>.

### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

#### **FOR FURTHER INFORMATION CONTACT:**

Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6447; fax (425) 917-6590.

#### **SUPPLEMENTARY INFORMATION:**

#### **Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2004-22-05, amendment 39-13833 (69 FR 62567, October 27, 2004). The existing AD applies to all Boeing Model 737-300, -400, and -500 series airplanes. That NPRM was published in the **Federal Register** on April 24, 2008 (73 FR 22088). That NPRM proposed to continue to require repetitive inspections for discrepancies of the fuselage skin under the dorsal fin assembly, and repairing if necessary. That NPRM also proposed to add an inspection for any chafing or crack in the fuselage skin and abrasion resistant coating at the dorsal fin landing, an inspection for damage to the dorsal fin seals, attach clip, and seal retainer, and other specified and corrective actions as necessary.

#### **Comments**

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

#### **Request To Clarify Certain Language in Paragraph (i) of the NPRM**

Boeing asks that we change certain language in paragraph (i) of the NPRM to add the word "abrasion" as follows: "Do a detailed inspection for any signs of abrasion, chafing, or crack . \* \* \*" Boeing also asks that we change that same paragraph to make the word "retainer" plural as follows: "do a detailed inspection for damage to the