

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 130

[Docket No. 98-003-1]

#### Veterinary Services User Fees; Export Certificate Endorsements

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to establish a maximum user fee for the endorsement of export certificates for a single shipment of animals or birds that require verification of tests or vaccinations. Existing user fees for these endorsements are based on the number of animals or birds listed on the certificate and the number of tests or vaccinations that the importing country requires for those animals or birds. We are taking this action in response to requests from industry organizations and from our field and port employees to reconsider the fairness of the current user fees for large export shipments of animals. The proposed maximum user fee would result in lower user fees for large shipments, yet still recover the full cost of providing this service.

**DATES:** We invite you to comment on this docket. We will consider all comments that we receive by November 22, 1999.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 98-003-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 98-003-1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m.,

Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna Ford, Section Head, Financial Systems and Services Branch, BASE, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1232; (301) 734-8351.

#### SUPPLEMENTARY INFORMATION:

##### Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130 (referred to below as the regulations). Section 130.20 lists user fees we charge for endorsing certificates for animals and birds exported from the United States. Importing countries often require these certificates to show that an animal or bird has tested negative to specific animal diseases or that an animal or bird has not been exposed to specific animal diseases. The endorsement indicates that APHIS has reviewed a certificate and believes it to be accurate and reliable. The steps associated with endorsing an export certificate may include reviewing supporting documentation; confirming that the importing country's requirements have been met; verifying laboratory test results for each animal if tests are required; reviewing any certification statements required by the importing country; and endorsing, or signing, the certificates. Our user fees are intended to cover all of the costs associated with endorsing the certificates.

Currently, under § 130.20(b), APHIS charges different user fees to endorse export certificates that require us to verify tests or vaccinations. The user fee varies according to the number of animals or birds listed on the certificate and the number of tests or vaccinations. Currently, there is no maximum user fee; for each additional animal or bird

listed on the certificate the user fee increases.

We propose to set a maximum user fee to cover the cost of APHIS endorsement of export certificates that require us to verify tests or vaccinations for a single shipment of animals or birds. We are taking this action based on a review of our user fees for endorsing export certificates for large shipments. We reviewed our fees at the request of the Livestock Exporters Association. The Livestock Exporters Association suggested that our current user fees were too high for large shipments of animals when the export certificates require verification of tests or vaccinations.

Currently, the flat rate user fee set out in § 130.20(b)(1) for endorsing export certificates is \$52.50, \$64.75, or \$75.75 per endorsement for the first animal or bird on the certificate plus \$3.00, \$5.00, or \$6.00 for each additional animal or bird covered by the certificate. The user fees vary based on the number of tests or vaccinations that we are required to verify. When the importing country requires one or two tests, the user fee is \$52.50 for the first animal or bird and \$3.00 for each additional animal or bird. For example, if we must verify one or two tests or vaccinations per animal or bird for a shipment of 600 animals or birds, the user fee would be \$1,849.50 ( $\$52.50 + (\$3.00 \times 599)$ ). Using the hourly rate user fee of \$56.00 per hour, the flat rate user fee of \$1,849.50 would cover over 31 hours of time for one employee to provide this service during normal work hours. Based on surveys of the veterinary medical officers who commonly do this work, we have determined that it rarely takes more than 12 hours. Therefore, we propose a maximum charge of 12 times the hourly rate user fee. The result would be a maximum user fee of \$672. In the example above, the proposed maximum user fee would apply as it is lower than the calculated user fee charge of \$1,849.50.

In general, we calculate our user fees to recover the average cost of providing our services. When we originally calculated the export certificate user fees, we based them on small export shipments, as there were very few large shipments, and we did not consider maximum charges. Due to changes in international trade, U.S. exporters have

begun exporting large shipments of animals.

There are both fixed and variable costs involved with endorsing export certificates. The current user fee structure takes these fixed and variable costs into consideration. However, the marginal costs per animal or bird decreases as the number of animals or birds increases. Current user fees for endorsing export certificates that require us to verify tests and vaccinations do not take into consideration economies of scale. Based on our review of the services required to endorse export certificates for large shipments, we have determined that a maximum user fee, based on 12 times the hourly rate user fee listed in § 130.21 of the regulations, would recover our costs for services provided to endorse export health certificates requiring the verification of tests or vaccinations for large

shipments. The total charge to the customer would be significantly less than the charge under our current user fee for large shipments of animals or birds.

We considered several alternatives, including setting a different maximum charge for each of the three user fees listed in § 130.20(b)(1). Having one maximum charge for this section appeared to be adequate to recover the costs for our services and be less burdensome administratively.

**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We propose to revise our user fees to implement a maximum user fee for the endorsement of export certificates that require the verification of tests or vaccinations for the animals or birds on the certificate. The proposed maximum user fee would be 12 times the hourly rate user fee listed in § 130.21 of the regulations.

User fees for the endorsement of export certificates would continue to be calculated based on the current user fees. The proposed maximum user fee would be used whenever the calculated user fee was higher than the proposed maximum user fee. This would benefit exporters with large shipments. The following table compares the proposed maximum user fee to the charges for endorsing export certificates for large shipments based on current user fees.

Number of tests or vaccinations	Current user fee	Current charge for large shipment (300 animals)	Proposed maximum user fee <sup>1</sup>
1 or 2 .....	\$52.50 (first animal) \$3.00 (each additional) .....	\$949.50	\$672
3 to 6 .....	64.75 (first animal) 5.00 (each additional) .....	1,559.75	672
7 or more .....	75.75 (first animal) 6.00 (each additional) .....	1,869.75	672

<sup>1</sup> Based on 12 times \$56 (the current hourly rate user fee).

In fiscal year 1998, APHIS issued 6,245 export certificates that required the verification of tests or vaccinations. Of these, only 80 (1.28 percent) would have benefitted from the proposed maximum user fee. Using the proposed maximum user fee would cost less than the current user fees for any export certificates for a single shipment of:

- 208 or more animals with 1 or 2 tests,
- 123 or more animals with 3 to 6 tests, or
- 101 or more animals with 7 or more tests.

The proposed maximum user fee could affect some exporters of live animals or birds. Any exporters of live animals or birds whose total sales are less than \$5 million annually is a small entity according to the Small Business Administration's criteria. The number of entities exporting live animals or birds that would qualify as small entities under this definition cannot be determined. Data from the 1995 Bureau of the Census indicates the majority of agricultural entities that deal in less valuable animals, such as grade animals, can be considered small entities. This may not be the case for entities dealing exclusively in more valuable animals, such as purebred or registered animals.

Adopting the proposed rule should have a minimal effect on exporters,

whether small or large. Only 1.28 percent of the export certificates requiring the verification of tests or vaccinations that APHIS issued in FY 1998 would have been covered by the maximum user fee for those endorsements. For those entities that do experience a change in the amount, the difference would be a lower charge for the endorsement.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings

will not be required before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Regulatory Reform**

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

**List of Subjects in 9 CFR Part 130**

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR part 130 as follows:

**PART 130—USER FEES**

1. The authority citation for part 130 would be revised to read as follows:

**Authority:** 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114, 114a, 134a, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 130.20, paragraph (b)(1) introductory text would be revised to read as follows:

**§ 130.20 User fees for endorsing export health certificates.**

\* \* \* \* \*

(b)(1) User fees for the endorsement of export health certificates that require the verification of tests or vaccinations are listed in the following table. The user fees apply to each export health certificate<sup>6</sup> endorsed for animals and birds depending on the number of animals or birds covered by the certificate and the number of tests required. However, there will be a maximum user fee of 12 times the hourly rate user fee listed in § 130.21(a) of this part for any single shipment. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with the provisions in §§ 130.50 and 130.51.

\* \* \* \* \*

Done in Washington, DC, this 17th day of September 1999.

**Bobby R. Acord,**

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

[FR Doc. 99-24816 Filed 9-22-99; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 98-CE-84-AD]

RIN 2120-AA64

**Airworthiness Directives; Fairchild Aircraft, Inc. SA226 and SA227 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise Airworthiness Directive (AD) 98-19-15, which currently requires incorporating information into the Limitations Section of the airplane flight manual (AFM) that imposes a speed restriction and a minimum pilot requirement for Fairchild Aircraft, Inc. (Fairchild) SA226 and SA227 series airplanes equipped with Barber-Colman

pitch trim actuators, part number (P/N) 27-19008-001/-004 or P/N 27-19008-002/-005. Since AD 98-19-15 became effective, improved design pitch trim actuators have been developed that, when installed, would eliminate the speed restriction and minimum pilot requirements of the current AD. The proposed AD would incorporate these installations as a method of complying with the current AD. The actions specified by the proposed AD are intended to lessen the possibility of airplane pitch up caused by mechanical failure of the pitch trim actuator, which could result in a pitch upset and structural failure of the airplane.

**DATES:** Comments must be received on or before November 24, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-84-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279-0490; telephone: (800) 577-7273; facsimile: (210) 824-3869. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Werner G. Koch, Aerospace Engineer, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150; telephone: (817) 222-5133; facsimile: (817) 222-5960.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98-CE-84-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-84-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**Discussion**

AD 98-19-15, Amendment 39-10794 (63 FR 50983, September 24, 1998), currently requires incorporating the following information into the applicable AFM on Fairchild SA226 and SA227 airplanes that are equipped with Barber-Colman pitch trim actuators, P/N 27-19008-001/-004 or P/N 27-19008-002/-005:

- "Limit the maximum indicated airspeed to maneuvering airspeed (Va) as shown in the appropriate airplane flight manual (AFM)." and
- "The minimum crew required is two pilots."

The following service information describes the AFM requirements:

- Fairchild Service Letter 226-SL-017, FAA Approved: August 26, 1998; Revised: September 2, 1998;
- Fairchild Service Letter 227-SL-033, FAA Approved: August 26, 1998; Revised: September 2, 1998; and
- Fairchild Service Letter CC7-SL-023, FAA Approved: August 26, 1998; Revised: September 2, 1998.

AD 98-19-15 was the result of reports of two incidents of abrupt movement of the horizontal stabilizer to or near to the full airplane nose-up position. These two incidents involved mechanical failure of these Barber-Colman pitch trim actuators.

The actions specified in AD 98-19-15 are intended to lessen the possibility of airplane pitch up caused by mechanical failure of the pitch trim actuator, which could result in a pitch upset and structural failure of the airplane.

**Actions Since Issuance of Previous Rule**

At the time the FAA issued AD 98-19-15, there was a design alternative to

<sup>6</sup>An export health certificate may need to be endorsed for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS endorses export health certificates as a service.