

Dated: November 2, 1994.

Stephen L. Johnson,
Director, Registration Division, Office of
Pesticide Programs.

Therefore, 40 CFR part 180 is
amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180
continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1054 is revised to read
as follows:

§ 180.1054 Calcium hypochlorite;
exemptions from the requirement of a
tolerance.

(a) Calcium hypochlorite is exempted
from the requirement of a tolerance
when used preharvest or postharvest in
solution on all raw agricultural
commodities.

(b) Calcium hypochlorite is exempted
from the requirement of a tolerance in
or on grapes when used as a fumigant
postharvest by means of a chlorine
generator pad.

[FR Doc. 94-28142 Filed 11-15-94; 8:45 am]

BILLING CODE 5550-50-F

40 CFR Parts 180 and 186

[PP 6F3372 and FAP 6H5497/R2085; FRL-
4917-8]

RIN 2070-AB78

Pesticide Tolerances and Feed Additive Regulations for Triflumizole

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes
tolerances for the combined residues of
the fungicide triflumizole and its
metabolites in or on various agricultural
commodities. Uniroyal Chemical Co.
petitioned for these maximum
permissible levels for residues of the
fungicide.

EFFECTIVE DATE: October 31, 1994.

ADDRESSES: Written objections and
hearing requests, identified by the
document control number, (PP 6F3372
and FAP 6H5497/R2085), may be
submitted to: Hearing Clerk (1900),
Environmental Protection Agency, Rm.
M3708, 401 M St., SW., Washington DC
20460. A copy of any objections and
hearing requests filed with the Hearing
Clerk should be identified by the
document control number and
submitted to: Public Response and
Program Resources Branch, Field
Operations Division (7506C), Office of

Pesticide Programs, Environmental
Protection Agency, 401 M St., SW.,
Washington, DC 20460. In person bring
a copy of the objections and hearing
requests to Rm. 1132, CM #2, 1921
Jefferson Davis Hwy., Arlington, VA
22202. Fees accompanying objections
shall be labeled "Tolerance Petition
Fees" and forwarded to: EPA
Headquarters Accounting Operations
Branch, OPP (Tolerance Fees), P.O. Box
360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By
mail: Leonard S. Cole, Jr., Acting
Product Manager (PM) 21, Registration
Division (7505C), Office of Pesticide
Programs, Environmental Protection
Agency, 401 M St., SW., Washington,
DC 20460. Office location and telephone
number: Rm. 227, CM #2, 1921 Jefferson
Davis Hwy., Arlington, VA 22202, (703)-
305-6900.

SUPPLEMENTARY INFORMATION: EPA
issued a notice, published in the
Federal Register of March 19, 1986 (51
FR 9514), which announced that
Uniroyal Chemical Co. (Uniroyal), 74
Amity Rd., Bethany, CT 06542-3402,
had submitted pesticide petition (PP)
6F3372 proposing to amend 40 CFR part
180 by establishing tolerances for the
combined residues of the fungicide
triflumizole, 1-(1-((4-chloro-2-
(trifluoromethyl)phenyl)imino)-2-
propoxyethyl)-1H-imidazole and its
aniline-containing metabolites 4-chloro-
2-trifluoromethylaniline, N-4-chloro-2-
trifluoromethylaniline and N-(4-chloro-
2-trifluoromethylphenyl)-
propoxyacetamide, in or on the
following commodities: apples at 0.1
part per million (ppm); cattle, fat, meat,
and meat byproducts (mbypr) at 0.05
ppm; grapes at 0.3 ppm; hogs, fat, meat,
and mbypr at 0.05 ppm; milk at 0.05
ppm; pears at 0.1 ppm; and poultry,
eggs, fat, meat, and mbypr at 0.05 ppm.
Uniroyal also submitted feed additive
petition (FAP) 6H5497 proposing to
amend 21 CFR part 193 (redesignated in
the Federal Register of June 29, 1988
(53 FR 24666), as 40 CFR part 186) by
establishing a regulation permitting the
combined residues of the fungicide
described above in or on the following
commodities: apples, dried at 3.0 ppm;
apple pomace, dry at 1.0 ppm; apple
pomace, wet at 3.0 ppm; grape juice at
1.0 ppm; grape pomace, dry at 1.0 ppm;
grape pomace, wet at 4.0 ppm; raisins at
1.0 ppm; and raisin waste at 2.0 ppm.

Uniroyal amended these petitions, as
announced in the Federal Registers of
October 5, 1988 (53 FR 39131), March
10, 1993 (58 FR 13262), and October 21,
1993 (58 FR 54350). These amendments
changed the tolerances to the following:
apples at 0.5 ppm; grapes at 2.5 ppm;

pears at 0.5 ppm; meat of cattle, goats,
hogs, horses, poultry, and sheep at 0.05
ppm; milk, eggs, and poultry fat at 0.05
ppm; meat byproducts of poultry at 0.1
ppm; meat by-products and fat of cattle,
goats, hogs, horses, and sheep at 0.5
ppm; apple pomace at 2.0 ppm; grape
pomace at 15.0 ppm; and raisin waste at
10.0 ppm. Uniroyal also changed the
chemical expression for the fungicide to
combined residues of the fungicide
triflumizole, 1-(1-((4-chloro-2-
(trifluoromethyl)phenyl)imino)-2-
propoxyethyl)-1H-imidazole, the
metabolite 4-chloro-2-hydroxy-6-
trifluoromethylaniline sulfate (in raw
agricultural commodities of animal
origin only), and other metabolites
containing the 4-chloro-2-
trifluoromethylaniline moiety,
calculated as the parent compound.

No comments were received in
response to any of the above Federal
Register notices.

The scientific data submitted in the
petition and other relevant material
have been evaluated. By way of public
reminder, this notice also reiterates the
registrant's responsibility, under section
6(a)(2) of FIFRA, to submit additional
factual information regarding adverse
effects on the environment and to
human health by the pesticide. The
toxicological data considered in support
of the tolerances include:

1. A 2-year rat feeding chronic
toxicity/carcinogenicity study (negative
for carcinogenicity) with a no-
observable-effect level (NOEL) for liver
effects [lowest dose tested was 100 ppm
(4.1 mg/kg/day)].

2. A 2-year mouse feeding/
carcinogenicity study (negative for
carcinogenicity) with a systemic NOEL
of 100 ppm (16.2 mg/kg/day for males,
21.7 mg/kg/day for females) and an LEL
of 400 ppm (67.4 mg/kg/day for males,
88.1 mg/kg/day for females).

3. A 3-month feeding study in rats
with a NOEL of 200 ppm (10 mg/kg/day)
and a lowest-effect-level (LEL) of 2,000
ppm (100 mg/kg/day).

4. A 3-month feeding study with mice
with a NOEL of 200 ppm (30 mg/kg/day)
and an LEL of 2,000 ppm (300 mg/kg/
day).

5. A 30-day feeding study with rats
with a NOEL of 200 ppm (10 mg/kg/day)
and an LEL of 2,000 ppm (100 mg/kg/
day).

6. A 30-day feeding study with mice
with a NOEL of 200 ppm (30 mg/kg/day)
and an LEL of 2,000 ppm (300 mg/kg/
day).

7. A 1-year feeding study with beagle
dogs with a NOEL of 300 ppm (10.0 mg/
kg/day for males, 10.7 mg/kg/day for
females) and an LEL of 1,000 ppm (34.1

mg/kg/day for males, 35.2 mg/kg/day for females).

8. Three developmental toxicity studies in rats (considered together) with a maternal NOEL of 10 mg/kg/day and maternal LEL of 35 mg/kg/day. The developmental toxicity NOEL was 10 mg/kg/day, and the developmental toxicity LEL was 10 mg/kg/day.

9. Two developmental toxicity studies in rabbits (considered together) with a maternal NOEL of 50 mg/kg/day and a maternal LEL of 100 mg/kg/day. The developmental toxicity NOEL was 50 mg/kg/day and the developmental toxicity LEL was 100 mg/kg/day.

10. Two three-generation reproduction studies in rats (when considered together) with a reproductive toxicity NOEL of 30 ppm (1.5 mg/kg/day) and a reproductive toxicity LEL of 70 ppm (3.5 mg/kg/day). Triflurizole is considered a reproductive toxicant.

11. Triflurizole was negative for mutagenicity in the mitotic gene conversion test, rec assay test, in vitro mouse micronucleus test, reverse mutation in *Salmonella* and *E. coli* test and unscheduled DNA synthesis test.

The Office of Pesticide Programs' Health Effects Division Carcinogenicity Peer Review Committee has classified triflurizole in Group E (evidence of non-carcinogenicity for humans). This classification is based on the Agency's Guidelines for Carcinogen Risk Assessment published in the **Federal Register** of September 24, 1986 (51 FR 33992). The Agency has chosen to use the reference dose calculations based upon chronic toxicity effects to estimate human dietary risk from triflurizole residues since carcinogenicity is not a concern with this chemical. Additionally, an estimate of human dietary risk for acute effects was determined using a reference dose based upon the NOEL taken from three developmental toxicity studies in the rat considered together.

The reference dose (RfD) for chronic effects was established at 0.015 mg/kg body weight/day, based on the NOEL of 1.5 mg/kg/day for the three-generation reproductive toxicity study in rats and an uncertainty factor of 100. The Theoretical Maximum Residue Contribution (TMRC) is estimated at 0.002221 mg/kg bodyweight/day and utilizes 14.8 percent of the RfD for the general population of the 48 States. The percentages of the RfD for the most highly exposed subgroups, nonnursing infants (less than 1 year old) and children (1 to 6 years old), are 61.2% and 41.2%, respectively. The TMRC was calculated based on the assumption that triflurizole occurs at the maximum

legal limit in all of the dietary commodities for which tolerances are proposed. Even with this probable large overestimate of exposure/risk, the TMRC is well below the RfD for the population as a whole and for each of the 22 subgroups considered. Thus, there does not appear to be any dietary concern due to chronic effects.

The acute exposure analysis evaluates individual food consumption and estimates the distribution of single day exposures through the diet for the U.S. population and certain subgroups. The analysis assumes uniform distribution of triflurizole in the commodity supply. Since the toxicological effect to which high end exposure is being compared in this analysis is developmental toxicity, the population group of interest is females aged 13 years and above. This subgroup most closely approximates women of child bearing age. The Margin of Exposure (MOE) is a measure of how closely the high end exposure comes to the NOEL and is calculated as the ratio of the NOEL to the exposure. The Agency is not generally concerned about MOEs of 100 or above when the toxicological endpoint to which the exposure is compared is taken from an animal study. In this acute exposure analysis, the calculated exposure of those individuals most highly exposed (0.02 mg/kg bwt/day) was compared to the NOEL of 10 mg/kg bwt/day to get an MOE of at least 500. This means that those individuals most highly exposed to triflurizole through these proposed uses would receive at most 1/500th of the dose that represents the NOEL in animals for developmental toxicity. Less than 1% of the population of females 13 years and over would be exposed to triflurizole at levels of 0.02 mg/kg bwt/day or greater. Based on the risk estimates arrived at in this analysis, it appears that acute dietary risk from the proposed uses of triflurizole is not of concern.

The nature of the residue in plants and animals is adequately understood, and adequate analytical methods are available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401

M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

The pesticide is considered useful for the purpose for which the tolerances are sought. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR parts 180 and 186 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal

governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 31, 1994.

Daniel M. Barolo,
Director, Office of Pesticide Programs.

Therefore, chapter I of the title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By adding new § 180.476, to read as follows:

§ 180.476 Triflurazole; tolerances for residues.

(a) Tolerances are established for the combined residues of the fungicide triflurazole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1H-imidazole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on the following raw agricultural commodities:

Commodity	Parts per million
Apples	0.5
Grapes	2.5
Pears	0.5

(b) Tolerances are established for the combined residues of the fungicide triflurazole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1H-imidazole, the metabolite 4-chloro-2-hydroxy-6-trifluoromethylaniline sulfate, and other metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on the following raw agricultural commodities of animal origin:

Commodity	Parts per million
Cattle, fat	0.5
Cattle, meat	0.05
Cattle, mbyp	0.5
Eggs	0.05
Goats, fat	0.5
Goats, meat	0.05
Goats, mbyp	0.5
Hogs, fat	0.5
Hogs, meat	0.05
Hogs, mbyp	0.5
Horses, fat	0.5
Horses, meat	0.05
Horses, mbyp	0.5
Milk	0.05
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, mbyp	0.1
Sheep, fat	0.5
Sheep, meat	0.05
Sheep, mbyp	0.5

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 186.5850, to read as follows:

§ 186.5850 Triflurazole.

Tolerances are established for the combined residues of the fungicide triflurazole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1H-imidazole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on the following processed feed commodities when present therein as a result of application to growing crops:

Commodity	Parts per million
Apple pomace	2.0
Grape pomace	15.0
Raisin waste	10.0

[FR Doc. 94-28141 Filed 11-15-94; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 59a

RIN 0905-AE55

National Library of Medicine Grants

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health is amending the regulations governing certain National Library of Medicine (NLM) grants to conform the maximum award amount set forth in the regulations to the maximum award amount set forth in the NIH Revitalization Act of 1993. The NIH Revitalization Act of 1993 increased the maximum award amount for an NLM grant for basic resources from \$750,000 to \$1,000,000. The regulations are being amended to reflect this statutory change.

EFFECTIVE DATE: This amendment is effective on November 16, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Moore, Regulatory Affairs Officer, National Institutes of Health, Building 31, Room 3B11, 9000 Rockville Pike, Bethesda, Maryland 20892-0001, telephone (301) 496-2832 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The National Institutes of Health is amending the regulations at 42 CFR part 59a, subpart A, governing NLM grants for establishing, expanding, and improving basic medical library resources, authorized by section 474 of the Public Health Service (PHS) Act, as amended, by revising the introductory sentence of paragraph (b) of § 59a.5 to set forth a maximum award amount of \$1,000,000. This action is being taken so that the regulations will accurately reflect the new statutory limit of \$1,000,000 on these grants.

Additionally, Public Law 103-227, enacted on March 31, 1994, prohibits smoking in certain facilities in which minors will be present. The Department of Health and Human Services is now preparing to implement the provisions of that law. Until those implementation plans are in place, PHS continues to strongly encourage all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products.

Under sections 553(b)(3)(B) and 553 (d) (1) and (3) of title 5, United States

Code, notice, public comment, and delayed effective date procedures have been waived for this amendment based on a finding of good cause. These procedures for ensuring public participation in the rulemaking process and time for compliance are unnecessary because the change has already been made by section 1401 of Public Law 103-43 and it relieves the current restriction in the regulations limiting grant award amounts.

Regulatory Impact Statement

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, requires the Department to prepare an analysis for any rule that meets one of the E. O. 12866 criteria for a significant regulatory action; that is, that may—

Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal, governments or communities;

Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, the Department prepares a regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), if the rule is expected to have a significant impact on a substantial number of small entities.

For the reasons outlined below, we do not believe this rule is economically significant nor do we believe that it will have a significant impact on a substantial number of small entities. In addition, this proposed rule is not inconsistent with the actions of any other agency.

This rule merely codifies the maximum award amount established by law for NLM grants awarded under part 59a, subpart A, thereby conforming the regulations governing the grants to the NIH Revitalization Act of 1993. The grant program does not have a significant economic or policy impact on a broad cross-section of the public. Furthermore, this rule would only affect those institutions, organizations, or agencies authorized or qualified to carry on the functions of a medical library that are interested in participating in the program, subject to the normal

accountability requirements for program participation. No institution, organization, or agency is obligated to participate in the program.

For these same reasons, the Secretary certifies this proposed rule will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis, as defined under the Regulatory Flexibility Act of 1980, is not required.

Paperwork Reduction Act of 1980

This final rule does not contain any information collection, recordkeeping, or disclosure requirements subject to Office of management and Budget (OMB) review and approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) numbered program affected by this final rule is: 93.879 Medical Library Assistance.

List of Subjects in 42 CFR Part 59a

Grant programs—Health; Libraries; Medical research.

Dated: October 28, 1994.

Philip R. Lee,
Assistant Secretary for Health.

Approved: November 9, 1994.

Donna E. Shalala,
Secretary.

For the reasons set out in the preamble, subject A of part 59a, title 42 of the Code of Federal Regulations, is amended as set forth below.

PART 59a—NATIONAL LIBRARY OF MEDICINE GRANTS

Subpart A—Grants for Establishing, Expanding, and Improving Basic Resources

1. The authority citation for subpart A of part 59a continues to read as follows:

Authority: 42 U.S.C. 286b-2, 286b-5.

2. Section 59a.5 is amended by revising the introductory sentence in paragraph (b) to read as follows:

§ 59a.5 Awards.

* * * * *

(b) *Determination of award amount.* An Award may not exceed \$1,000,000 or other amount established by law for any fiscal year. * * *

* * * * *

[FR Doc. 94-28322 Filed 11-15-94; 8:45 am]

BILLING CODE 4140-01-P-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 503, 510, 514, 540, and 583

[Docket No. 94-14]

Update of Existing Filing and Service Fees

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") is revising its fees for (1) filing petitions, complaints, and special docket applications; (2) providing various public information services, such as lists of non-vessel-operating common carriers ("NVOCCs"), record searches, and document copying; (3) filing applications for freight forwarder licenses, performance and casualty certificates for cruise operators, and for admission to practice before the Commission; and (4) providing various services related to the Commission's Automated Tariff Filing and Information System. These revised fees reflect current costs to the Commission.

EFFECTIVE DATE: Effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jeremiah D. Hospital or George S. Smolik, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001, (202) 523-5790.

SUPPLEMENTARY INFORMATION: The Commission published a Notice of Proposed Rulemaking in the Federal Register on July 28, 1994, 59 FR 38411, ("NPR" or "Proposed Rule"),¹ proposing to update its existing filing and service fees. The NPR noted that the Independent Offices Appropriation Act ("IOAA"), 31 U.S.C. 9701, permits it to establish fees for services and benefits that the Commission provides to specific recipients. The NPR also pointed out that the primary guidance for implementation of IOAA is Office of Management and Budget ("OMB") Circular A-25, as revised July 8, 1993. OMB Circular A-25 requires that a reasonable charge be made to each recipient for a measurable unit or amount of Federal Government service from which the recipient derives a benefit, in order that the Government recover the full cost of rendering that

¹ On the same day, the Commission also published in the Federal Register (59 FR 38418) a companion Notice of Proposed Rulemaking in Docket No. 94-15, *New Filing Fees*, proposing to implement new fees for, among other things, tariff and agreement filings.

service. OMB Circular A-25 further provides that costs be determined or estimated from the best available records in the agency, and that cost computations shall cover the direct and indirect costs to the Government of carrying out the activity.

The NPR advised that the FMC's existing filing and service fees have been in effect since 1983, and that they no longer reflected the Commission's actual costs for providing these services. The Commission, accordingly, proposed to update its fees to reflect current costs.

Fourteen entities filed comments in response to the NPR regarding user fees: C V International, Inc.; Tampa Port Authority; Seariders International, Inc.; the Inter-American Discussion Agreement;² Puerto Rico Maritime Shipping Authority; Matson Navigation Company, Inc.; The Joint Carrier Group;³ Hanjin Shipping Co., Ltd.; Cari-Freight Shipping Co. Ltd.; Caribbean Shipowners Association; Lykes Bros. Steamship Co., Inc. ("Lykes"); Transportation Services Incorporated; and the Japan Conferences.⁴ The National Industrial Transportation League ("NIT League")⁵ filed late comments, which are also being considered.

The commenters represent a variety of industry interests: individual ocean common carriers, ocean freight conferences and other aligned agreement parties, ocean freight forwarders, NVOCCs, a tariff publisher, a shipper's group, and a port authority. Generally, the commenters oppose the Commission's proposed fee increases as being unfair and burdensome on the industry.

On specific fee increases, Lykes and the NIT League object to the proposed fee for special docket applications. They argue that the increase from \$25 to \$86 is out of proportion and unfair. Both urge that the Commission consider a more modest increase to avoid a chilling effect on potential applicants. Lykes suggests a fee of \$50 or \$60.

The NIT League opposes proposed fee increases for filing petitions, formal and

informal complaints, and for providing information to the public. The League argues that the proposed fees do not represent a reasonable value for the service provided and that no public policy is served by such fees. The ultimate effect, it claims, could be to discourage petitioners or complainants from raising valid claims or causes with the Commission.

The Japan Conferences oppose the proposed fee increase for special permission applications. They submit that the fee for special permission applications was recently increased to \$100 from \$90, and that they are experiencing an increasing need to seek special permission authority to deviate from the Commission's tariff filing regulations. Further, they argue that these requests benefit shippers and consignees, not carriers.

The only other specific fee increase to elicit a comment is the proposed registration fees for the Commission's Automated Tariff Filing and Information System ("ATFI"). Lykes believes the proposed fees are disproportionately high because it discerned no appreciable increase in the procedures for requesting additional logons for ATFI.

The general statements opposing the proposed increased fees are unpersuasive. As pointed out in the NPR, it has been over eleven years since the Commission last reviewed its costs in providing these services. The proposed fee increases only reflect the increased costs to the Commission in providing these services.

The Commission also does not agree with those comments suggesting that the proposed increase for special docket applications is too high and unfair, and would have a chilling effect on potential applicants. The proposed increase is justified on a cost basis. In cases where the amount to be refunded or waived is less than the filing fee, an applicant can request a waiver of the fee under FMC rules, as revised herein. Therefore, we do not see the revised fee having a chilling effect on potential applicants.

NIT League's comments opposing the increases for filing petitions, formal and informal complaints, and for providing information to the public also are unpersuasive. As with every proposed increase, the proposed increases for these services reflect only the increased cost to the Commission in providing the services. These fees should not create an undue burden nor cause a chilling effect on potential complainants. As noted above, prospective complainants may request a waiver of the specific fees under the Commission's rules, if they

believe an applicable fee causes an undue hardship.

The Japan Conferences' opposition to the fee increase for special permission applications is based on the fact that the fee was recently increased and that these requests benefit shippers and consignees, not carriers. It is immaterial whether or not this application fee was recently increased; the fact remains that the proposed fee reflects the current cost to the Commission for processing these applications. Although there is a benefit for shippers, we find this benefit incidental to the direct benefit a carrier derives for being allowed to deviate from statutory notice requirements.

Lykes' concerns about the increased fees for ATFI registration are unfounded. The proposed fees simply reflect the Commission's costs in processing and verifying the validity of registration requests as well as creating an organizational record for the registrant in the ATFI system.

The other proposed increased fees in this proceeding, for example applications for freight forwarder licenses and passenger vessel certifications, elicited no direct comment and are adopted as final. Appendix B to this document contains a summary list of the revised fees.

Lastly, Lykes raises an additional issue regarding the proposed ATFI fees that deserves comment. Lykes suggests that the Commission set aside a certain percentage of its ATFI user fees for system enhancements. Whatever the merits of this proposal otherwise, the IOAA and OMB Circular A-25 do not permit user fee collections to be used to offset costs of activities that are not related to the specific service the Commission is performing for an identifiable recipient.

In keeping with OMB guidelines, the Commission intends to update its fees on an annual basis. In updating its fees, the Commission will incorporate changes in the wages and salaries of its employees into direct labor costs associated with its services, and recalculate its indirect costs (overhead) based on current level costs.

The Commission, in its latest amendment to 46 CFR Part 502, omitted a reference to "Pub. L. 88-777" in its Authority statement (58 FR 36848, July 19, 1993). This omission is corrected in this document.

The Commission again certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this Final Rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small

² Conferences represented by the Inter-American Discussion Agreement are: the Inter-American Freight Conference; Brazil/Puerto Rico and U.S. Virgin Islands Conference; River Plate/Puerto Rico and U.S. Virgin Islands Conference; and the Inter-American Freight Conference-Pacific Coast Area.

³ See Appendix A to this document.

⁴ The Conferences are: the Trans-Pacific Freight Conference of Japan, the Japan-Atlantic and Gulf Freight Conference, the Japan-Puerto Rico & Virgin Islands Freight Conference, and their member lines.

⁵ The NIT League is a voluntary organization said to represent some 1,400 shippers and groups/associations of shippers conducting industrial and/or commercial enterprises, large, medium, and small, throughout the United States and internationally.

governmental jurisdictions. The Commission recognizes that these revised fees may have an impact on the shipping industry, but not of the magnitude that would be contrary to the requirements of the Regulatory Flexibility Act. For the most part, entities impacted by the revised fees are ocean common carriers, who traditionally have not been viewed as small entities. Fees collected from the general public for Commission information recover the total cost to the Commission for providing specific services. Fees for filing petitions, and formal and informal complaints do not impose an undue burden nor have a chilling effect on filers. Furthermore, Commission regulations provide for waiver of fees for those entities that can make the required showing of undue hardship.

This Final Rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Reporting and recordkeeping requirements.

46 CFR Part 503

Classified information, Freedom of information, Privacy, Sunshine Act.

46 CFR Part 510

Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements, Surety bonds.

46 CFR Part 514

Freight, Harbors, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

46 CFR Part 583

Freight, Maritime carriers, Reporting and recordkeeping requirements, Surety bonds.

Pursuant to 5 U.S.C. 553, the Independent Offices Appropriations Act, 31 U.S.C. § 9701, and section 17 of the Shipping Act of 1984, 46 U.S.C. app. § 1716, the Commission amends title 46 of the Code of Federal Regulations as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 502 is revised to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 12 U.S.C. 1141(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 817, 820, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6469); 21 U.S.C. 853a; and Pub. L. 88–777 (46 U.S.C. app. 817d, 817e).

Subpart E—Proceedings; Pleadings; Motions; Replies

2. Section 502.62(f) is revised to read as follows:

§ 502.62 Complaints and fee.

(f) The complaint shall be accompanied by remittance of a \$166 filing fee.

3. Section 502.68(a)(3) is revised to read as follows:

§ 502.68 Declaratory orders and fee.

(a) * * *

(3) Petitions shall be accompanied by remittance of a \$162 filing fee.

4. Section 502.69(b) is revised to read as follows:

§ 502.69 Petitions—general and fee.

(b) Petitions shall be accompanied by remittance of a \$162 filing fee. [Rule 69.]

Subpart F—Settlement; Prehearing Procedure

5. Section 502.92(a)(3)(ii) is revised to read as follows:

§ 502.92 Special docket applications and fee.

(a) * * *

(3)(i) * * *

(ii) The application for refund or waiver must be accompanied by remittance of an \$86 filing fee.

Subpart K—Shortened Procedure

6. The last sentence of § 502.182 is revised to read as follows:

§ 502.182 Complaint and memorandum of facts and arguments and filing fee.

* * * The complaint shall be accompanied by remittance of a \$166 filing fee. [Rule 182.]

Subpart S—Informal Procedure for Adjudication of Small Claims

7. The last sentence of § 502.304(b) is revised to read as follows:

§ 502.304 Procedure and filing fee.

(b) * * * Such claims shall be accompanied by remittance of a \$68 filing fee.

Subpart U—Conciliation Service

8. The last sentence of § 502.404(a) is revised to read as follows:

§ 502.404 Procedure and fee.

(a) * * * The request shall be accompanied by remittance of a \$61 service fee.

PART 503—PUBLIC INFORMATION

9. The authority citation for Part 503 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167.

Subpart E—Fees

10. The introductory paragraph of § 503.41 is revised to read as follows:

§ 503.41 Policy and services available.

Pursuant to policies established by Congress, the Government's costs for services provided to identifiable persons are to be recovered by the payment of fees (Independent Offices Appropriations Act, 31 U.S.C. 9701 and Freedom of Information Reform Act of 1986, October 27, 1986, 5 U.S.C. 552). Except as otherwise noted, it is the general policy of the Commission not to waive or reduce service and filing fees contained in this chapter. In extraordinary situations, the Commission will accept requests for waivers or fee reductions. Such requests are to be made to the Secretary of the Commission at the time of the information request or the filing of documents and must demonstrate that the waiver or reduction of a fee is in the best interest of the public, or that payment of a fee would impose an undue hardship. The Secretary will notify the requestor of the decision to grant or deny the request for waiver or reduction.

11. In § 503.43, paragraphs (c)(1)(i) and (ii), the first sentence of paragraph (c)(2), paragraph (c)(3)(ii), paragraph (c)(4), paragraphs (d)(1), (2), and (3), and paragraph (e) are revised; paragraphs (f) and (i) are removed; paragraphs (g), (h), and (j) are redesignated paragraphs (f), (g), and (h); and newly designated paragraphs (f) and (g) are revised to read as follows:

§ 503.43 Fees for services.

- (c) * * *
- (1) * * *
- (i) Search will be performed by clerical/administrative personnel at a rate of \$15.00 per hour and by professional/executive personnel at a rate of \$30.00 per hour.
- (ii) Minimum charge for record search is \$15.00.
- (2) Charges for review of records to determine whether they are exempt from disclosure under § 503.35 shall be assessed to recover full costs at the rate of \$63.00 per hour. * * *
- (3) * * *
- (i) * * *
- (ii) By Commission personnel, at the rate of five cents per page (one side) plus \$15.00 per hour.
- (iii) * * *
- (4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at \$70.00 for each certification.
- (d) * * *
- (1) Orders, notices, rulings, and decisions (initial and final) issued by Administrative Law Judges and by the Commission in all formal docketed proceedings before the Federal Maritime Commission are available at an annual subscription rate of \$278.
- (2) Final decisions (only) issued by the Commission in all formal docketed proceedings before the Commission are available at an annual subscription rate of \$223.
- (3) General rules and regulations of the Commission are available at the following rates: (i) Initial set including all current regulations for a fee of \$83, and (ii) an annual subscription rate of \$6 for all amendments to existing regulations and any new regulations issued.
- (e) To have one's name and address placed on the mailing list of a specific docket as an interested party to receive all issuances pertaining to that docket: \$7 per proceeding.
- (f) Loose-leaf reprint of the Commission's complete, current Rules of Practice and Procedure, part 502 of this chapter, for an initial fee of \$9. Future amendments to the reprint are available at an annual subscription rate of \$7.
- (g) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of \$77 pursuant to § 502.27 of this chapter.

Subpart G—Access to Any Record of Identifiable Personal Information

12. In § 503.69, paragraphs (b)(1) and (2) are revised to read as follows:

§ 503.69 Fees.

- (b) * * *
- (1) The copying of records and documents will be available at the rate of five cents per page (one side), limited to size 8 1/4" x 14" or smaller.
- (2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at \$70 for each certification.

PART 510—LICENSING OF OCEAN FREIGHT FORWARDERS

13. The authority citation for Part 510 is revised to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; 21 U.S.C. 853a.

Subpart B—Eligibility and Procedure for Licensing; Bond Requirements

14. Section 510.12(b) is revised to read as follows:

§ 510.12 Application for license.

- (a) * * *
- (b) *Fee.* The application shall be accompanied by a money order, certified check or cashier's check in the amount of \$687 made payable to the Federal Maritime Commission.

15. The penultimate sentence in § 510.14(b) is revised to read as follows:

§ 510.14 Surety bond requirements.

- (a) * * *
- (b) * * * The fee for such supplementary investigation shall be \$213 payable by money order, certified check or cashier's check to the Federal Maritime Commission.

16. The first sentence of § 510.19(e) is revised to read as follows:

§ 510.19 Changes in organization.

- (e) *Application form and fee.* Applications for Commission approval of status changes or for license transfers under paragraph (a) of this section shall be filed in duplicate with the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, on form FMC-18 Rev., together with a processing fee of \$365, made payable by money order, certified

check or cashier's check to the Federal Maritime Commission. * * *

PART 514—TARIFFS AND SERVICE CONTRACTS

17. The authority citation for Part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814-817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702-1712, 1714-1716, 1718, 1721, and 1722; and sec. 2(b) of Pub. L. 101-92, 103 Stat. 601.

Subpart C—Form, Content and Use of Tariff Data

18. In § 514.21, paragraphs (c), (e) introductory text and (e)(1), (f), (j), and (k) are revised to read as follows:

§ 514.21 User charges.

- (c) *Registration for user (filer and/or retriever ID and password (see exhibit 1 to this part and §§ 514.4(d), 514.8(f) and 514.20)):* \$162 for initial registration for firm and one individual; \$136 for additions and changes.
- (d) * * *
- (e) *Certification of batch filing capability (by appointment through the Bureau of Administration) (§ 514.8(l)).*
- (1) *User charge:* \$359 per certification submission (covers all types of tariffs for which the applicant desires to be certified as well as recertification required by substantial changes to the ATFI system).
- (f) *Application for special permission (§ 514.18):* \$146.
- (j) *Database tapes (§ 514.20(d)).* The fees for subscriber tapes, similar to other fees in this section, reflect the cost of providing those copies, including staff time, the cost of duplication, distribution, and user-dedicated equipment, and are:
- (1) *Initial set of full database tapes:* \$336.
- (2) *Daily updates:* \$61.
- (3) *Weekly updates:* \$86.
- (4) *Monthly updates:* \$136.
- Updates of ATFI tapes include a set number of tapes; if more tapes are required, the fee will increase by \$25 per additional tape.
- (k) *Miscellaneous tapes.* The fee for tape data, other than the ATFI database, described in paragraph (j) of this section, shall be \$61 for the initial tape plus \$25 for each additional tape required.

PART 540—SECURITY FOR THE PROTECTION OF THE PUBLIC

19. The authority citation for Part 540 is revised to read as follows:

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; secs. 2 and 3, Pub. L. 89-777, 80 Stat. 1356-1358 (46 U.S.C. app. 817e, 817d); sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); sec. 17 of the Shipping Act of 1984 (46 U.S.C. 1716).

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

20. The last sentence in § 540.4(b) is revised to read as follows:

§ 540.4 Procedure for establishing financial responsibility.

* * * * *

(b) * * * An application for a Certificate (Performance) shall be accompanied by a filing fee remittance of \$1,874.

* * * * *

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

21. The last sentence of § 540.23(b) is revised to read as follows:

§ 540.23 Procedure for establishing financial responsibility.

* * * * *

(b) * * * An application for a Certificate (Casualty) shall be accompanied by a filing fee remittance of \$830.

* * * * *

PART 583—SURETY FOR NON-VESSEL-OPERATING COMMON CARRIERS

22. The authority citation for Part 583 is revised to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710-1712, 1716, and 1721.

23. A new paragraph (d) is added to § 583.7 to read as follows:

§ 583.7 Proof of Compliance.

* * * * *

(d) The fee for providing the list of tariffed and bonded NVOCCs referred to in paragraph (b)(1) of this section is \$122. The list is available in several forms: Hard paper copy, diskette, or tape.

By the Commission.

Joseph C. Polking,
Secretary.

Note: The following appendixes will not appear in the Code of Federal Regulations.

Appendix A—Conferences and Discussion Agreements and the ATFI Working Group Represented by the Joint Carrier Group

Asia North American Eastbound Rate Agreement
Colombia Discussion Agreement
Hispaniola Discussion Agreement
Inter-American Discussion Agreement
Inter-American Freight Conference
Inter-American Freight Conference Pacific Coast Area
Inter-American Freight Conference Puerto Rico and U.S. Virgin Islands

Inter-American Freight Conference River Plate/Puerto Rico and U.S. Virgin Islands/River Plate
Israel Trade Conference
Jamaica Discussion Agreement
Latin American Shipping Services Agreement
Mediterranean/North Pacific Freight Conference
Mediterranean/Puerto Rico Conference
Pacific Coast/Australia-New Zealand Tariff Bureau
PANAM Discussion Agreement
Southeastern Caribbean Discussion Agreement
South Europe American Conference
The 8900 Lines Agreement
Transpacific Westbound Rate Agreement
U.S. Atlantic & Gulf/Australia-New Zealand Conference
U.S. Atlantic & Gulf Hispaniola Freight Association
U.S. Atlantic & Gulf Port/Eastern Mediterranean North Africa Freight Conference
U.S. Atlantic & Gulf/Southeastern Caribbean Freight Agreement
U.S./Panama Freight Association
Venezuelan American Maritime Association
West Coast of South America Agreement
West Coast of South America Discussion Agreement
Westbound Transpacific Stabilization Agreement

ATFI Working Group

American West African Freight Conference
Caribbean and Central America Discussion Agreement
The 8900 Lines Agreement
Inter-American Discussion Agreement
Inter-American Freight Conference
Israel Trade Conference
South Europe American Conference
Trans-Atlantic Agreement
Transpacific Westbound Rate Agreement
U.S. Atlantic & Gulf/Australia-New Zealand Conference

APPENDIX B.—FEDERAL MARITIME COMMISSION, SUMMARY OF REVISED FEES

CFR citation	Application or service	Revised fee
Part 502—Rules of Practice and Procedure:		
502.68(a)(3) and 502.69(b)	Petitions	\$162
502.92(a)(3)	Special Dockets	86
502.62(f) and 502.182	Formal Complaints	166
502.304(b)	Informal Complaints	68
502.404(a)	Conciliation Services	61
Part 503—Public Information:		
503.43(c)	Document Search	15/\$30 @ hr.
	Min. Charge	15
	FOIA Review	63 @ hr.
	Copying by Commission Staff	15 @ hr.
	Document Certification	70 @ cert.
503.43(c) and 503.69(b)(2)	Annual Subscriptions: (1) Orders, notices, etc., all docketed proceedings.	278
503.43(d)	(2) Final Decisions Only	223
	(3)(i) Rules, Initial Set	83
	(3)(ii) Rules, Amendments	7
503.43(e)	Mailing List	7
503.43(f)	Rules of Practice and Procedure—Initial Set	9
	Amendments	7
503.43(g)	Non-Attorney Admission to Practice Before Commission	77
503.69(b)(1)	Copying	0.05 @ page

APPENDIX B.—FEDERAL MARITIME COMMISSION, SUMMARY OF REVISED FEES—Continued

CFR citation	Application or service	Revised fee
Part 510—Licensing of Ocean Freight Forwarders:		
510.12(b)	Application for License	687
510.14(b)	Supplementary Investigation	213
510.14(e)	Status Changes	365
Part 514—Tariffs and Service Contracts:		
514.21(c)	ATFI Registration	162
514.21(e)(1)	Registration Changes	136
514.21(f)	Certification of Software	359
514.21(g)	Special Permission Applications	146
514.21(j)	ATFI Database Tapes:	
	Initial Set	336
	Daily Updates	61
	Weekly Updates	86
	Monthly Updates	136
	Miscellaneous Tapes	61
514.(k)		
Part 540—Security for the Protection of the Public:		
540.4(b)	Certificate (Performance)	1,874
540.23(b)	Certificate (Casualty)	830
Part 583—Surety for Non-Vessel-Operating Common Carriers:		
583.7	NVOCC Listing	122

[FR Doc. 94-28246 Filed 11-15-94; 8:45 am]

BILLING CODE 6730-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC09

Endangered and Threatened Wildlife and Plants; Reclassification of the Virginia Round-Leaf Birch (*Betula Ueber*) From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines that *Betula uber* (Ashe) Fernald (Virginia round-leaf birch) warrants reclassification from endangered to threatened. The determination is based on the substantial improvement in the status of this tree species, which is known from one naturally occurring population in southwestern Virginia. The establishment of 20 additional populations over the past decade has resulted in a dramatic increase in the total population to over 1,400 subadult trees. *Betula uber* seedlings also have been cultivated and distributed to interested parties throughout the United States and to two foreign countries. This rule implements the Federal protection and recovery provisions for threatened species as provided by the Act.

EFFECTIVE DATE: December 16, 1994.**ADDRESSES:** The complete file of this rule is available for inspection, by

appointment, during normal business hours at the Endangered Species Office, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035-9589.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Mignogno at the above address, telephone (413/253-8627) (FAX 413/253-8482).

SUPPLEMENTARY INFORMATION:**Background**

The Virginia round-leaf birch was originally described as a variety of the common sweet birch (*Betula lenta* L.) in 1918 by W.W. Ashe from trees he reported growing along the banks of Dickey Creek in Smyth County, Virginia (Ashe 1918). The taxon was subsequently elevated to the species level by M.L. Fernald. The round-leaf birch was not collected or observed during the 1950s and 1960s, and was assumed to be extinct until it was rediscovered in 1975 along the banks of Cressy Creek, approximately 2 kilometers (1 mile) from the type locality (Ogle and Mazzeo 1976). The general consensus among botanists working with the species is that Ashe probably erred in his original reference to Dickey Creek (Sharik and Ford 1984, Sharik, Feret and Dyer 1990). Since 1975, searches in the Cressy Creek and other watersheds over a three-county area have not revealed any additional populations in the wild.

Several lines of evidence now suggest a close evolutionary relationship between the Virginia round-leaf birch and the sweet birch. Both taxa are apparently diploids, with 28 pairs of chromosomes, and isozymes extracted

from the cambium of both species showing similar patterns (U.S. Fish and Wildlife Service 1990). The taxa overlap completely in flowering times, and they are interfertile (Sharik and Ford 1984, U.S. Fish and Wildlife Service 1990). The offspring of crosses between the two taxa typically possess either the round leaves characteristic of round-leaf birch or the ovate leaf shape typical of sweet birch. Preliminary analysis suggests that this difference in leaf shape may be controlled by a single gene (Sharik *et al.* 1990, U.S. Fish and Wildlife Service 1990). This subject warrants further data collection and analysis to determine the species' proper taxonomic status.

Betula uber is a moderate-sized tree in the Betulaceae family. It grows to 15 meters (45 feet) in height with smooth, dark brown to black, aromatic bark and a compact crown (Ogle and Mazzeo 1976, Sharik and Ford 1984, U.S. Fish and Wildlife Service 1990). Its leaves are round to slightly oblong and alternately arranged. The catkins have long, smooth scales and three broadly divergent lobes. Three winged nutlets or samaras are borne at the base of each scale (Sharik and Ford 1984). *Betula uber* flowers when the leaves emerge from the winter buds in April to early May (U.S. Fish and Wildlife Service 1986).

At the time of its rediscovery in 1975, the only known natural *Betula uber* population consisted of 41 individuals; by 1977 the population had declined to 26 individuals, and it is now down to 11 trees. This population is confined to a 100 meter-wide (100 yard-wide) band of highly disturbed second-growth forest