

ppm; soybean, seed at 0.05 ppm; wheat, grain at 0.15 ppm; wheat, hay at 16 ppm; wheat, milled byproducts at 0.20 ppm; wheat, straw at 18 ppm.

**VI. Statutory and Executive Order Reviews**

This final rule establishes tolerances under section 408(d) of FFDCa in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCa, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCa. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply

to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

**VII. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

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

Dated: April 15, 2008.

**Daniel Kenny**,  
*Acting Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

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

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.617 is amended by alphabetically adding the following commodities to the table in paragraph (a) and by removing and reserving paragraph (b) with heading to read as follows:

**180.617 Metconazole; tolerances for residues.**

(a) \* \* \*

Commodity	Parts per million
Almond, hulls .....	4.0
Barley, grain .....	2.5
Barley, hay .....	7.0

Commodity	Parts per million
Barley, straw .....	7.0
Beet, sugar, dried pulp ...	0.70
Beet, sugar, molasses ....	0.08
Beet, sugar, roots .....	0.07
Cattle, meat byproducts	0.04
Fruit, stone, group 12 .....	0.20
Goat, meat byproducts ...	0.04
Grain, aspirated grain fractions .....	7.0
Horse, meat byproducts	0.04
Nut, tree, group 14 .....	0.04
Oat, grain .....	1.0
Oat, hay .....	17
Oat, straw .....	6.0
Peanut .....	0.04
Peanut, refined oil .....	0.05
Pistachio .....	0.04
Rye, grain .....	0.25
Rye, straw .....	14
Sheep, meat byproducts	0.04
Soybean, forage .....	3.0
Soybean, hay .....	6.0
Soybean, hulls .....	0.08
Soybean, seed .....	0.05
Wheat, grain .....	0.15
Wheat, hay .....	16
Wheat, milled byproducts	0.20
Wheat, straw .....	18

(b) *Section 18 emergency exemption.*

[Reserved]

\* \* \* \* \*

[FR Doc. E8-8971 Filed 4-25-08; 8:45 am]

BILLING CODE 6560-50-S

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[EPA-HQ-SFUND-1990-0011; FRL-8558-5]

**National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of partial deletion of the Seneca Army Depot Activity Superfund Site from the National Priorities List.

**SUMMARY:** The United States Environmental Protection Agency (EPA) Region 2 announces the deletion from the National Priorities List (NPL) of the following two specific parcels of real property located at the Seneca Army Depot Activity (SEDA) Superfund Site (Site), Romulus, New York: Real Estate Parcel 1, except for a portion of this parcel known as SEAD-24; and the entirety of Real Estate Parcel 2. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300, which is an appendix to the National

Oil and Hazardous Substances Pollution Contingency Plan (NCP). This partial deletion of SEDA parcels is done in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55466 (Nov. 1, 1996). This deletion pertains to all media (surface soils, subsurface soils, structures, surface water, and ground water) within Parcel 1, excluding the SEAD-24 portion of Parcel 1, and Parcel 2.

Parcel 1, also known as the Empire Biofuels Redevelopment area, is located midway on the western edge of SEDA. Most of this Parcel did not require remedial investigations under CERCLA. The two areas within Parcel 1 that were investigated under CERCLA are known as SEAD-58 and SEAD-24. SEAD-58 includes two debris disposal areas that have been found to require no active remediation under CERCLA. SEAD-24 is a two-acre area which underwent a soil removal action in 2004 and is awaiting a determination by EPA that all appropriate response actions have been implemented. SEAD-24 is not included in this deletion and will remain on the NPL.

Parcel 2, also known as the Seneca County Public Safety Building and Jail area, is located along the eastern perimeter of SEDA in the southeast quadrant. The parcel encompasses two sub-parcel areas designated as SEAD-50 and SEAD-54, both of which have been remediated. Subsequent sampling of these two areas confirmed that all appropriate CERCLA response actions were performed. However, SEAD-50 and 54 are subject to institutional controls in the form of deed restrictions which prohibit residential use and use of the groundwater as they are part of the encompassing Planned Industrial Development area.

The rest of SEDA will remain on the NPL, and response activities will continue at the remaining areas determined to be in need of response actions. The EPA and the State of New York, through the New York State Department of Environmental Conservation, have determined that all appropriate response actions under CERCLA have been completed at the parcels proposed for deletion. However, the deletion of these parcels does not preclude future actions under Superfund.

**DATES:** This rule will be effective April 28, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-HQ-SFUND-1990-0011. All documents in the docket

are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, i.e., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the site information repositories. Locations, contacts, phone numbers and viewing hours are:

Regional Repository, U.S. EPA Region 2 Records Center, 290 Broadway, 18th Floor, New York, NY 10007-1866, Hours: 9 a.m. to 5 p.m.—Monday through Friday. (212) 637-4308.

Local Site Repository, Seneca Army Depot Activity, 5786 State Route 96, Building 123, Romulus, NY 14541, Hours: 9 a.m. to 3:30 p.m.—Monday through Thursday. (607) 869-1494.

**FOR FURTHER INFORMATION CONTACT:** Mr. Julio F. Vazquez, Remedial Project Manager, U.S. EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007-1866, (212) 637-4323.

**SUPPLEMENTARY INFORMATION:** The parcels to be deleted from the NPL are Parcel 1, excluding SEAD-24, and the entirety of Parcel 2 of SEDA. A notice of intent for partial deletion for this site was published in the **Federal Register** on September 11, 2007.

The closing date for comments on the notice of intent for partial deletion was October 20, 2007. Eleven public comments were received, and all the comments relate to the construction of an ethanol plant on Parcel 1. This issue is not related to our finding that Parcel 1, excluding SEAD-24, and Parcel 2 do not present any threat to human health or the environment. A responsiveness summary was prepared and placed in both the docket, EPA-HQ-SFUND-1990-0011, on <http://www.regulations.gov> and in the local repositories listed above.

EPA identifies sites that may present a significant risk to public health, welfare and the environment. The NPL is a list of releases or threatened releases which EPA has determined to be a priority. Deletion of a portion of a site from the NPL does not preclude further remedial action. If a significant release occurs at a site, or any portion thereof, which has been deleted from the NPL, the deleted portions of the site may be restored to the NPL without application of the Hazard Ranking System. Deletion of any portion of a site from the NPL

does not affect responsible party liability for further remedial actions, in the unlikely event that future conditions warrant such actions.

## Responsiveness Summary

### Introduction

A Notice of Intent of Partial Deletion for the Seneca Army Depot Activity (SEDA) Superfund Site was published in the **Federal Register** on September 11, 2007 (72 FR 51758-51762). The publication of this notice was intended to inform the public that EPA planned to delete two specific parcels from the National Priorities List: Real Estate Parcel 1, except for a portion of that parcel known as SEAD-24; and the entirety of Real Estate Parcel 2. The notice also provided a 30-day public comment period on the proposed partial deletion. The closing date for comments on the Notice of Intent to Partially Delete was October 11, 2007. Eleven written comments were received (these comments are available in the Information Repositories); therefore EPA has prepared this Responsiveness Summary. In addition, all public comments were considered in EPA's final decision to delete these parcels (as identified above) of the Site from the NPL.

### Responsiveness Summary

This Responsiveness Summary has been prepared to provide responses to comments submitted to EPA during the 30-day public comment period regarding the Notice of Intent to Partially Delete (72 FR 51762) a portion of Real Estate Parcel 1 and Real Estate Parcel 2 of the SEDA. The original comments are summarized below and available at <http://www.regulations.gov>, Docket ID No. EPA-HQ-SFUND-1990-0001, with the support materials under document type "public submissions" and at the information repositories at the following addresses: U.S. EPA Region 2 Records Center, 290 Broadway—18th Floor, New York, NY 10007-1866, Hours: 9 a.m. to 5 p.m.—Monday through Friday, (212) 637-4308; and Seneca Army Depot Activity, 5786 State Route 96, Building 123, Romulus, NY 14541, Hours: 9 a.m. to 3:30 p.m.—Monday through Thursday, (607) 869-1494.

*Summary of Comment from Mary Anne Kowalski:* The commenter is opposed to the deletion of Parcel 1 because this land is proposed to be used for an ethanol plant that is proceeding without an environmental impact statement, expressing the view that without an environmental impact statement the residents of Seneca

County have no way of determining the impact of this construction on the hazardous materials already there. This deletion action would remove another impediment to construction.

*Response:* In the summer of 2003, EPA concurred with the Finding of Suitability to Transfer (FOST) for the Conservation/Recreation Area. This Area included Parcel 1, except for SEAD-58 and SEAD-24. In 2006, EPA determined that no action under CERCLA was necessary for SEAD-58. Therefore, EPA's determination is that soils in the Parcel 1 area proposed for deletion do not present an unacceptable threat to human health or the environment. Note that a delisting action has no significant effect upon redevelopment activities. An ethanol plant may or may not be constructed regardless of whether the parcel remains listed on the NPL.

*Summary of Comment from Sandra L. Dranias:* The commenter expressed concern regarding the potential health hazards that will be unleashed by the premature disturbance of these heavily contaminated soils in the parcels being proposed for deletion. Documents list hazardous materials removed from the site listed as SEAD-24. SEAD-24 is located directly nearby the proposed location of the ethanol refinery. None of the soil surrounding SEAD-24 was ever tested to see if any of these chemicals leached beyond the borders drawn by the Government.

*Response:* SEAD-24, the abandoned powder burning pit, underwent a time-critical removal action between 2004 and 2006. EPA has not made its final determination on the ultimate adequacy of this action. Therefore, this area is retained by the Army until a final determination is made whether this area no longer presents a significant threat to human health or the environment. SEAD-24 is not the subject of this delisting from the NPL.

*Summary of Comment from Tom and Nancy Hooser:* The commenters noted that, if their information is correct, this deletion means that no additional cleanup is necessary at the parcel where an ethanol plant is to be built. We have been provided no environmental impact study, and the prospect of what could happen down the line is enormous. The parcel in question needs to be thoroughly cleaned up before anything as hazardous as an ethanol plant is built in our backyards.

*Response:* It is correct that it has been determined that no additional action is deemed necessary at both Parcel 1, except SEAD-24 (which is not being deleted) and Parcel 2. They do not present an unacceptable threat to

human health or the environment. Parcel 1, SEAD-58, after remedial investigation activities, was found to require no active remediation under CERCLA. Parcel 2, including SEAD-50 and SEAD-54, underwent remediation.

*Summary of Comment from Bobbi Clifford:* The commenter pointed out that 8,300 acres were identified for conservation/recreation uses according to the Preferred Land Use Plan/Seneca Army Depot Reuse Plan. On page 21-7, under 9(c), Environmental: the State criteria require that a "proposed site not contain any wetlands." In the February, 1998 report of the Administrative Final Environmental Impact Statement, the SEDA Wetlands, Fish and Wildlife Plan identifies "87 distinct wetlands on the depot lands." In the Environmental Assessment Form of 11/06 for the ethanol/biomass project, Malcolm Pirnie identified the following: "sixteen wetlands and eight streams were delineated for the ethanol/biomass project site, with the main site having eleven wetlands and two streams. Within the main site, a large wetland system is approximately 60 acres in size." This comment implies that redevelopment of the property proposed for deletion may negatively impact wetlands.

Additionally, the commenter pointed out that during the 1950s and 1960s, classified metallic parts were buried at the Miscellaneous Components burial Site. Because the documentation of the disposal is considered classified by the Army, the exact nature of the buried material has not been disclosed. Results of site investigations indicate that previous activities may have adversely impacted soil and groundwater. The commenter implies that contamination may exist at the parcel proposed for deletion could pose a threat to human health and the environment.

*Response:* In 2003, EPA concurred with the Finding of Suitability to Transfer for the Conservation/Recreation Area. This document served as the basis for the transfer of the 8,300 acre parcel. EPA concurred with this transfer because it had been determined that no further remediation was warranted at this parcel, and none of the investigation performed at this area identified contaminants that would present an unacceptable risk under any land use scenario. The wetlands issue is not related to this de-listing action. EPA's role to oversee the suitability of the property to be de-listed does not include approving any specific redevelopment.

There are many other areas within SEDA that are undergoing investigation and other CERCLA-related efforts,

including the Miscellaneous Components Burial Site. These areas are under the control of the Army and will remain on the NPL until all appropriate response actions are implemented or it is determined that the areas pose no significant threat to public health or the environment.

*Summary of Comment from John Ghidiu:* This commenter objected to the delisting because it was his understanding that solid waste and incinerator ash were disposed of intermittently for 30 years between 1941 and 1979, that radioactive materials were stored in several of the igloos on the south end of SEDA, and herbicides and pesticides were stored there as well. Demilitarization of munitions had also been conducted for forty years by open burning of fuses, projectiles, explosives and propellants directly upon the ground surface. Burial of laboratory wastes occurred between 1940 and 1980 at the Radioactive Waste Burial Sites and the Pitchblende Storage Igloos.

*Response:* The areas to be de-listed are not included in any of the areas of concern identified by the commenter. Since 1984, when SEDA was proposed to be included on the NPL, EPA, the Army and the State of New York have been working on various areas of concern including the Ash Landfill (SEAD-03, 06, 08, 14 and 15), the Pitchblende Ore Storage (SEAD-48), and the Radioactive Burial Sites (SEAD-12). Although some of the work is still in progress at these Army-retained areas, the parcels proposed to be de-listed from the NPL are areas where either all appropriate response actions have been implemented or there is no significant threat to public health or the environment.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 14, 2008.

**Alan J. Steinberg,**

*Regional Administrator, Region 2.*

■ For the reasons set forth in the preamble, 40 part 300 is amended as follows.

#### PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

**Appendix B—[Amended]**

■ 2. Table 2 of appendix B to part 300 is amended by revising the entry under

New York for “Seneca Army Depot” to read as follows:

**Appendix B to Part 300—National Priorities List**

\* \* \* \* \*

TABLE 2.—FEDERAL FACILITIES SECTION

St	Site name	City/County	Notes <sup>a</sup>
NY	Seneca Army Depot	Romulus	P

(a) \* \* \*

P = Sites with partial deletion(s).

[FR Doc. E8-9077 Filed 4-25-08; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 071128763-8490-02]

RIN 0648-AW33

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Framework Adjustment 5 to the Monkfish Fishery Management Plan**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS approves and implements new management measures for the monkfish fishery recommended in Framework Adjustment 5 (Framework 5) to the Monkfish Fishery Management Plan (FMP), which has been submitted jointly by the New England (NEFMC) and Mid-Atlantic Fishery Management Councils (Councils). This action approves and implements revised biological reference points in the FMP to be consistent with the recommendations resulting from the most recent stock assessment for this fishery (Northeast Data Poor Stocks Working Group (DPWG, July 2007)), and approves and implements revised management measures to ensure that the monkfish management program succeeds in keeping landings within the target total allowable catch (TAC) levels.

**DATES:** This rule is effective May 1, 2008.

**ADDRESSES:** Copies of the Environmental Assessment (EA), including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), prepared for Framework 5 are available upon request from Paul Howard, Executive Director, NEFMC, 50 Water Street, Newburyport, MA, 01950. The document is also available online at [www.nefmc.org](http://www.nefmc.org). NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the classification section of this rule. The FRFA consists of the IRFA, public comments and responses contained in this final rule, and a summary of impacts and alternatives contained in this final rule. The small entity compliance guide is available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930 2298, and on the Northeast Regional Office’s website at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Tobey Curtis, Fishery Policy Analyst, e-mail [Tobey.Curtis@noaa.gov](mailto:Tobey.Curtis@noaa.gov), phone (978) 281-9273, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

The monkfish fishery is jointly managed by the Councils, with the NEFMC having the administrative lead. The fishery extends from Maine to North Carolina, and is divided into two management units: The Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA).

In July 2007, the DPWG completed and accepted a new monkfish assessment. The results of this assessment indicate that neither stock is overfished, overfishing is no longer occurring, and both stocks are rebuilt based on a new modeling approach and newly recommended biological reference points. In addition to the fact

that this assessment was the first to use a new analytical model, the July 2007 assessment report emphasizes the high degree of uncertainty in the analyses due to the dependence on assumptions about natural mortality, growth rates, and other model inputs. The report concluded that the data-poor nature of this species and the significant uncertainty in assessing the stocks should be considered when developing management measures. Framework 5 implements the revised biological reference points recommended by the DPWG and makes other modifications to the regulations to ensure that the management program succeeds in keeping landings within the target TACs implemented in Framework Adjustment 4 (72 FR 53942; September 21, 2007). The management measures contained in Framework 5 are described in detail in the following paragraphs.

**Framework 5 Management Measures**

*1. Revision to Biological Reference Points*

This action revises the biological reference points contained in the FMP to be consistent with those recommended in the July 2007 assessment report. In that report, the DPWG recommended that  $B_{target}$  for both management areas be set equivalent to the average of the total biomass from 1980 through 2006. Therefore, this final rule establishes a  $B_{target}$  of 92,200 mt for the NFMA and 122,500 mt for the SFMA. In addition, the DPWG recommended that  $B_{threshold}$  for both management areas be set equivalent to the lowest value of total biomass from 1980 through 2006. As a result, this final rule establishes a  $B_{threshold}$  of 65,200 mt for the NFMA and 96,400 mt for the SFMA. The most recent estimate of biomass for each management area ( $B_{2006}$ ) is 118,700 mt for the NFMA and 135,500 mt for the SFMA. Therefore, based upon the revised biological reference points being implemented in