parties have implemented all appropriate response actions as specified in the Unilateral Administrative Orders and Action Memorandums and no further response action by responsible parties is appropriate other than continued maintenance of institutional controls. EPA and MDEQ have also determined through the Five-Year Review that all response actions have been completed such that any release from the block placement area where waste has been left in place poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

The State, through MDEQ, has concurred on the proposed deletion and provided such concurrence in writing. EPA also provided the State 30 working days for review of the partial deletion notice prior to its publication in the **Federal Register**.

V. Partial Deletion Action

The EPA, with concurrence of the State through the MDEQ, has determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. Therefore, EPA is deleting the surface and subsurface soils component of the Mouat Industries Superfund Site from the NPL.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication. This action will be effective May 26, 2009, unless EPA receives adverse comments by April 23, 2009. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the deletion and it will not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

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 10, 2009.

Carol Rushin,

Acting Regional Administrator, Region 8.

■ For the reasons set out in this document, 40 CFR 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 1 of Appendix B to Part 300 is amended by revising the entry under Montana for ''Mouat Industries Superfund Site'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	* *	*
MT	Mouat Industries.	Columbus	*** P
*	*	* *	*

[a] * * *.

***P = sites with deletion(s).

[FR Doc. E9–6142 Filed 3–23–09; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–72

[FMR Amendment 2009–03; FMR Case 2009–102–1; Docket 2009–0002; Sequence 2]

RIN 3090–AI86

Federal Management Regulation; FMR Case 2009–102–1, Delegation of Authority To Perform Ancillary Repair and Alteration Work in Federally Owned Buildings Under the Jurisdiction, Custody or Control of the General Services Administration

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is amending the Federal Management Regulation (FMR) to delegate to Executive agencies the authority to perform ancillary repair and alteration work in federally owned buildings under the jurisdiction, custody or control of GSA in accordance with the terms, conditions and limitations set forth in sections 102–72.66 through 102–72.69.

DATES: *Effective Date:* April 23, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley C. Langfeld, Director, Regulations Management Division, Office of Governmentwide Policy, General Services Administration, at (202) 501–1737, or by e-mail at *stanley.langfeld@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FMR Amendment 2009–03, FMR Case 2009–102–1.

SUPPLEMENTARY INFORMATION:

A. Background

The GSA Federal Acquisition Service established Ancillary Repair and Alterations as a Special Item Number (SIN) in the GSA Multiple Award Schedule. The SIN provides for the acquisition of ancillary repair and alteration services when it is a minor part of a project and is required to support a product or service that is purchased under the same GSA Multiple Award Schedule from the same vendor.

An Executive agency may not perform ancillary repair and alteration work in a federally owned building under the jurisdiction, custody or control of GSA using this SIN without first obtaining a delegation of authority from the Administrator of General Services. To promote efficiency and economy, 41 CFR sections 102–72.66 through 102–72.69 delegate such ancillary repair and alteration authority to all Executive agencies in accordance with the terms, conditions and limitations set forth in those sections.

B. Executive Order 12866

The GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the

approval of the Office of Management and Budget under 44 U.S.C. 3501–3521.

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801, since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–72

Delegation of authority.

Dated: January 23, 2009.

Paul F. Prouty,

Acting Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR part 102–72 as set forth below:

PART 102–72—DELEGATION OF AUTHORITY

■ 1. The authority citation for 41 CFR part 102–72 continues to read as follows:

Authority: 40 U.S.C. 121(c), 40 U.S.C. 3305, 40 U.S.C. 3314.

■ 2. Add sections 102–72.66 through 102–72.69 to read as follows:

§ 102–72.66 Do Executive agencies have a delegation of authority to perform ancillary repair and alteration projects in federally owned buildings under the jurisdiction, custody or control of GSA?

Yes. Executive agencies, as defined in § 102–71.20, are hereby delegated the authority to perform ancillary repair and alteration work in federally owned buildings under the jurisdiction, custody or control of GSA in accordance with the terms, conditions and limitations set forth in §§ 102–72.67 through 102–72.69.

§ 102–72.67 What work is covered under an ancillary repair and alteration delegation?

(a) For purposes of this delegation, ancillary repair and alteration projects are those—

(1) Where an Executive agency has placed an order from a vendor under a GSA Multiple Award Schedule and ancillary repair and alteration services also are available from that same vendor as a Special Item Number (SIN);

(2) Where the ancillary repair and alteration work to be performed is associated solely with the repair, alteration, delivery, or installation of products or services also purchased under the same GSA Multiple Award Schedule;

(3) That are routine and non-complex in nature, such as routine painting or carpeting, simple hanging of drywall, basic electrical or plumbing work, landscaping, and similar non-complex services; and

(4) That are necessary to be performed to use, execute or implement successfully the products or services purchased from the GSA Multiple Award Schedule.

(b) Ancillary repair and alteration projects do not include—

(1) Major or new construction of buildings, roads, parking lots, and other facilities;

(2) Complex repair and alteration of entire facilities or significant portions of facilities; or

(3) Architectural and engineering services procured pursuant to 40 U.S.C. 1101–1104.

§ 102–72.68 What preconditions must be satisfied before an Executive agency may exercise the delegated authority to perform an individual ancillary repair and alteration project?

The preconditions that must be satisfied before an Executive agency may perform ancillary repair and alteration work are as follows:

(a) The ordering agency must order both the products or services and the ancillary repair and alteration services under the same GSA Multiple Award Schedule from the same vendor;

(b) The value of the ancillary repair and alteration work must be less than or equal to $100,000 (for work estimated to exceed $100,000, the Executive agency must contact the GSA Assistant Regional Administrator, Public Buildings Service, in the region where the work is to be performed to request a specific delegation);

(c) All terms and conditions applicable to the acquisition of ancillary repair and alteration work as required by the GSA Multiple Award Schedule ordering procedures must be satisfied;

(d) The ancillary repair and alteration work must not be in a facility leased by GSA or in any other leased facility acquired under a lease delegation from GSA; and

(e) As soon as reasonably practicable, the Executive agency must provide the building manager with a detailed scope of work, including cost estimates, and schedule for the project, and such other information as may be reasonably requested by the building manager, so the building manager can determine whether or not the proposed work is reasonably expected to have an adverse effect on the operation and management of the building, the building's structural, mechanical, electrical, plumbing, or heating and air conditioning systems, the building's aesthetic or historic features, or the space or property of any other tenant in the building. The Executive agency must obtain written approval from the building manager prior to placing an order for any ancillary repair and alteration work.

§ 102–72.69 What additional terms and conditions apply to an Executive agencies' delegation of ancillary repair and alteration authority?

(a) Before commencing any ancillary repair and alteration work, the Executive agency shall deliver, or cause its contractor to deliver, to the building manager evidence that the contractor has obtained at least $5,000,000 comprehensive general public liability and property damage insurance policies to cover claims arising from or relating to the contractor's operations that cause damage to persons or property; such insurance shall name the United States as an additional insured.

(b) The Executive agency shall agree that GSA has no responsibility or liability, either directly or indirectly, for any contractual claims or disputes that arise out of or relate to the performance of ancillary repair and alteration work, except to the extent such claim or dispute arises out of or relates to the wrongful acts or negligence of GSA's agents or employees.

(c) The Executive agency shall agree to administer and defend any claims and actions, and shall be responsible for the payment of any judgments rendered or settlements agreed to, in connection with contract claims or other causes of action arising out of or relating to the performance of the ancillary repair and alteration work.

(d) For buildings under GSA's custody and control, GSA shall have the right, but not the obligation, to review the work from time to time to ascertain that it is being performed in accordance with the approved project requirements, schedules, plans, drawings, specifications, and other related construction documents. The Executive agency shall promptly correct, or cause to be corrected, any non-conforming work or property damage identified by GSA, including damage to the space or property of any other tenant in the building, at no cost or expense to GSA.

(e) The Executive agency shall remain liable and financially responsible to GSA for any and all personal or property damage caused, in whole or in part, by the acts or omissions of the Executive agency, its employees, agents, and contractors.

(f) If the cost or expense to GSA to operate the facility is increased as a result of the ancillary repair and alteration project, the Executive agency shall be responsible for any such costs or expenses.

(g) Disputes between the Executive agency and GSA arising out of the ancillary repair and alteration work will, to the maximum extent practicable, be resolved informally at the working level. In the event a dispute cannot be resolved informally, the matter shall be referred to GSA's Public Buildings Service. The Executive agency agrees that, in the event GSA's Public Buildings Service and the Executive agency fail to resolve the dispute, they shall refer it for resolution to the Administrator of General Services, whose decision shall be binding.

[FR Doc. E9–6427 Filed 3–23–09; 8:45 am]

BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–31; FCC 08–219]

Reexamination of the Comparative Standards for Noncommercial Educational Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses eight petitions for reconsideration of the *Second Report & Order,* in the closed ''mixed groups'' proceeding. The ''mixed groups'' proceeding sought to establish rules for resolving the situation when an application for an NCE broadcast station is mutually exclusive with an application for a commercial broadcast station. The *Second Report & Order* decided to accept applications for NCE stations on non-reserved channels in ''closed, mixed groups,'' but to dismiss those applications if they are mutually exclusive with applications for commercial stations. This document now affords a discrete group of pending applicants for NCE stations on non-reserved channels in closed, mixed groups that have been pending since the date of the Second Report & Order, a one-time opportunity to amend their applications to apply for a commercial broadcast station in order to avoid dismissal of their applications. This document reaffirms the other decisions in the *Second Report & Order.*

DATES: Effective April 23, 2009.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. For additional information, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Evan Baranoff, of the Media Bureau, Policy Division at *Evan.Baranoff@fcc.gov,* 418–7142.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Third Order on Reconsideration,* MM Docket No. 95–31, FCC 08–219, adopted on September 24, 2008 and released on December 2, 2008. The full text of this document is available on the Internet at the Commission's Web site: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-219A1.doc* . It is also available for inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's copy and duplicating contractor, Best Copy & Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554. BCPI can be contacted at 202–488–5300 (phone), 202–488–5563 (facsimile), or *http://www.BCPIWEB.com.* Please be prepared to provide the appropriate FCC document number (FCC 08–219). To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Memorandum Opinion & Third Order on Reconsideration

I. Introduction

1. In this *Memorandum Opinion & Third Order on Reconsideration,* we resolve eight petitions for reconsideration of the *Second Report & Order,* 68 FR 26220, May 15, 2003. The *Second Report & Order*, among other things, established ''new policies for licensing spectrum that the Commission has not reserved for the exclusive use of broadcast stations that provide or intend to provide noncommercial educational (NCE) service.'' These new policies included the decision to permit applicants for NCE stations to apply for non-reserved channels, but to dismiss such applications should they conflict with applications for commercial stations. One petitioner seeks reconsideration of this decision, which was codified in § 73.5002(b) of the Commission's rules. For the reasons discussed below, we decline to reconsider establishment of this rule and affirm our decision to dismiss applicants for NCE stations for non-reserved channels that conflict with applications for commercial stations. Several other petitioners seek reconsideration of our decision not to accept any amendments to a discrete group of long-pending NCE applications, including amendments to change an applicant's status from NCE to commercial, and request that we not dismiss this specific group of applicants. For the reasons discussed below, we will reconsider the immediate dismissal of this discrete group of applicants for NCE stations, and will afford them a one-time opportunity to amend their long-pending applications to apply for commercial stations to avoid dismissal. Accordingly, we grant reconsideration of our decision not to accept any amendments to the discrete group of long-pending applications for NCE stations, but otherwise deny the petitions and reaffirm our earlier conclusions.

II. Background

2. The *Second Report & Order* established standards to resolve the situation when an application for an NCE broadcast station is mutually exclusive with an application for a commercial broadcast station (*i.e.* , ''mixed groups''). NCE stations can operate both on (1) channels reserved by the Commission specifically for NCE service and (2) non-reserved channels, which are also available to applicants for commercial stations. The Commission has long used different standards to resolve application conflicts for reserved channels, on the one hand, and non-reserved channels, on the other.

3. The Commission initiated this proceeding in 1995 to revise the criteria it used to select among competing applicants for new NCE stations. Subsequently, the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997) amended section 309(j) of the Communications Act of 1934 (the Act), to require the Commission to use competitive bidding to resolve application conflicts, but exempted NCE stations from this process, see 47 U.S.C. 309(j) (exempting stations described in Section 397(6) of the Act). As a result, the Commission in the *Report & Order,* 65 FR 36375, June 8, 2000, decided to use a non-auction, point system to resolve application conflicts for reserved channels, and use competitive bidding to resolve conflicts for non-reserved channels. In *National Public Radio, Inc.* v. *FCC,* 254 F.3d 226, 229 (D.C. Cir. 2001), parties challenged the procedures for non-reserved channels,