ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

Outer Continental Shelf Air Regulations Update To Include New Jersey State Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the update of the Outer Continental Shelf (OCS) Air Regulations proposed in the Federal Register on October 2, 2009. Requirements applying to OCS sources located within 25 miles of States’ seaward boundaries must be promulgated and updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act (CAA). The portion of the OCS air regulations being updated pertains to the requirements for OCS sources in the State of New Jersey. The intended effect of approving the OCS requirements for the State of New Jersey is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed below are incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Effective Date: This rule is effective on February 22, 2010.

This incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of February 22, 2010.

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IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

B. Paperwork Reduction Act

C. Regulatory Flexibility Act

D. Unfunded Mandates Reform Act

E. Executive Order 13132: Federalism

F. Executive Order 13175: Coordination With Indian Tribal Governments

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

I. National Technology Transfer and Advancement Act

J. Congressional Review Act

K. Petitions for Judicial Review

I. Background Information

Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

On September 4, 1992, EPA promulgated 40 CFR part 55,¹ which established requirements to control air pollution from OCS sources in order to attain and maintain Federal and state ambient air quality standards (AAQS) and to comply with the provisions of Part C of title I of the CAA. 40 CFR part 55 applies to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude.

On October 2, 2009 (74 FR 50939), EPA proposed to approve requirements into the OCS Air Regulations pertaining to the State of New Jersey. EPA has evaluated the proposed regulations to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States’ seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable rules in effect for onshore sources into 40 CFR part 55. This limits EPA’s flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive

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¹ The reader may refer to the Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.
changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA’s state implementation plan (SIP) guidance or certain requirements of the CAA. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

In preparing the Final rule, the following corrections were made to the list of requirements published on October 2, 2009, and are incorporated into this final publication:

1. A section titled “N.J.A.C. 7:27–21.6. Methods to be used for quantifying actual emissions” is inserted at Subchapter 21 of Chapter 27. This insertion rectifies the unintended omission from that proposed rule. Subsequently, Subchapters 21.6, 21.7, 21.8, 21.9, and 21.10 now read 21.7, 21.8, 21.9, 21.10, and 21.11, respectively.

2. The title to Subchapter 31.6 has been edited to now read “Use of allowances by former users of DER credits.”

3. The word “reserve” has been removed from the title of N.J.A.C. 7:27–31.8 which should read “Claims for incentive allowances”.

4. A section titled “N.J.A.C. 7:27B–2.3. Observation principle” is inserted at Subchapter 2 of Chapter 27B. This insertion rectifies the unintended omission from the proposed rule. Subsequently, Subchapters 2.3, 2.4, and 2.5 now read 2.4, 2.5, and 2.6, respectively.

II. Public Comment and EPA Response

EPA’s proposed action provided a 30-day public comment period which closed on November 2, 2009. During this period EPA received no comments on the proposed action.

III. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. EPA is approving the proposed actions under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States’ seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled “Regulatory Planning and Review.”

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant economic impact on a substantial number of small entities. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have had a significant economic impact on a substantial number of small entities. As required by section 328 of the CAA, this action simply incorporates the existing rules in the COA. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 2, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, and tribal governments in the aggregate; or to the private sector, of $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today’s final rule contains no Federal mandates that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. This action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.
F. Executive Order 13175: Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67240, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885 (April 23, 1997)), applies to any rule that: (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use voluntary consensus standards (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable laws or otherwise impractical.

The EPA believes that VCS are inapplicable to this section. Today’s action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, 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 rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This action will be effective February 22, 2010.

K. Petition for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 23, 2010. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.


Judith A. Enck,
Regional Administrator, Region 2.

■ Title 40, chapter I of the Code of Federal Regulations, is to be amended as follows:

PART 55—AMENDED

1. The authority citation for 40 CFR part 55 continues to read as follows:
   Authority: Section 328 of the CAA (42 U.S.C. 7401 et seq.) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising the sixth sentence in paragraph (e) introductory text and paragraph (e)(15)(i)(A) to read as follows:

   § 55.14 Requirements that apply to OCS sources located within 25 miles of States’ seaward boundaries, by State.

   (e) * * * * *

   (15) * * * * * *(A) State of New Jersey Requirements Applicable to OCS Sources, August 13, 2009.

3. Appendix A to Part 55 is amended by revising paragraph (a)(1) under the heading “New Jersey” to read as follows:

   Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

   New Jersey

   (a) * * * * * (1) The following State of New Jersey requirements are applicable to OCS Sources, as of August 13, 2009.

   New Jersey State Department of Environmental Protection—New Jersey Administrative Code. The following sections of Title 7:
Chapter 27 Subchapter 20—Used Oil Combustion (Effective 6/19/06)
N.J.A.C. 7:27–20.1. Definitions
N.J.A.C. 7:27–20.2. General provisions
N.J.A.C. 7:27–20.3. Burning of on-specification used oil in space heaters covered by a registration
N.J.A.C. 7:27–20.4. Burning of on-specification used oil in space heaters covered by a permit
N.J.A.C. 7:27–20.5. Demonstration that used oil is on-specification
N.J.A.C. 7:27–20.6. Burning of on-specification oil in other combustion units
N.J.A.C. 7:27–20.7. Burning of off-specification used oil
N.J.A.C. 7:27–20.9. Exception

Chapter 27 Subchapter 21—Emission Statements (Effective 4/20/09)
N.J.A.C. 7:27–21.1. Definitions
N.J.A.C. 7:27–21.2. Applicability
N.J.A.C. 7:27–21.3. General provisions
N.J.A.C. 7:27–21.4. Procedures for submitting an emission statement
N.J.A.C. 7:27–21.5. Required contents of an emission statement
N.J.A.C. 7:27–21.6. Methods to be used for quantifying actual emissions
N.J.A.C. 7:27–21.7. Recordkeeping requirements
N.J.A.C. 7:27–21.9. Request for extensions
N.J.A.C. 7:27–21.10. Notification of non-applicability
N.J.A.C. 7:27–21.11. Severability

Chapter 27 Subchapter 22—Operating Permits (Effective 12/1/08)
N.J.A.C. 7:27–22.1. Definitions
N.J.A.C. 7:27–22.2. Applicability
N.J.A.C. 7:27–22.3. General provisions
N.J.A.C. 7:27–22.4. General application procedures
N.J.A.C. 7:27–22.5. Application procedures for initial operating permits
N.J.A.C. 7:27–22.6. Operating permit application contents
N.J.A.C. 7:27–22.7. Application shield
N.J.A.C. 7:27–22.9. Compliance plans
N.J.A.C. 7:27–22.10. Completeness reviews
N.J.A.C. 7:27–22.11. Public comment
N.J.A.C. 7:27–22.12. EPA comment
N.J.A.C. 7:27–22.13. Final action on an application
N.J.A.C. 7:27–22.15. Temporary facility operating permits
N.J.A.C. 7:27–22.16. Operating permit contents
N.J.A.C. 7:27–22.17. Permit shield
N.J.A.C. 7:27–22.18. Source emissions testing and monitoring
N.J.A.C. 7:27–22.20. Administrative amendments
N.J.A.C. 7:27–22.21. Changes to insignificant source operations
N.J.A.C. 7:27–22.22. Seven-day-notice changes
N.J.A.C. 7:27–22.23. Minor modifications
N.J.A.C. 7:27–22.24A. Reconstruction
N.J.A.C. 7:27–22.25. Department initiated operating permit modifications
N.J.A.C. 7:27–22.26. MACT and GACT standards
N.J.A.C. 7:27–22.27. Operating scenarios
N.J.A.C. 7:27–22.28A. Emissions trading
N.J.A.C. 7:27–22.28B. Facility-specific emissions averaging programs
N.J.A.C. 7:27–22.29. Facilities subject to acid deposition control
N.J.A.C. 7:27–22.30. Renewals
N.J.A.C. 7:27–22.31. Fees
N.J.A.C. 7:27–22.32. Hearings and appeals
N.J.A.C. 7:27–22.33. Preconstruction review
N.J.A.C. 7:27–22.34. Early reduction of HAP emissions
N.J.A.C. 7:27–22.35. Advances in the art of air pollution

APPENDIX
TABLE A
TABLE B

Chapter 27 Subchapter 23—Clean Air Interstate Rule (CAIR) NOx Trading Program (Effective 8/17/07)
N.J.A.C. 7:27–30.1. Purpose and scope
N.J.A.C. 7:27–30.2. Definitions
N.J.A.C. 7:27–30.3. Allocation of CAIR NOx annual allowances & CAIR NOx ozone season allowances
N.J.A.C. 7:27–30.4. The compliance supplement pool
N.J.A.C. 7:27–30.5. Claims for incentive allowances
N.J.A.C. 7:27–30.6. Reporting requirements

Chapter 27 Subchapter 24—NOx Budget Program (Effective 4/5/04)
N.J.A.C. 7:27–31.1. Purpose and scope
N.J.A.C. 7:27–31.2. Definitions
N.J.A.C. 7:27–31.3. Applicability and general provisions
N.J.A.C. 7:27–31.5. Interface with the emission offset program
N.J.A.C. 7:27–31.6. Use of allowances by former users of DER credits
N.J.A.C. 7:27–31.7. Annual allowance allocation
N.J.A.C. 7:27–31.10. Allowance use, transfer and retirement
N.J.A.C. 7:27–31.11. Allowance banking
N.J.A.C. 7:27–31.13. NOx allowance tracking system (NATS)
N.J.A.C. 7:27–31.15. Recordkeeping
N.J.A.C. 7:27–31.20. Program audit

Chapter 27B Subchapter 1—Sampling and Analytical Procedures for Determining Emissions of Particles From Manufacturing Processes and From Combustion of Fuels (Effective 6/1/76)
N.J.A.C. 7:27B–1.1. Definitions
N.J.A.C. 7:27B–1.2. Acceptable test methods
N.J.A.C. 7:27B–1.3. Operating conditions during the test
N.J.A.C. 7:27B–1.4. Sampling facilities to be provided by the person responsible for emissions
N.J.A.C. 7:27B–1.5. Sampling train
N.J.A.C. 7:27B–1.6. Performance test principle
N.J.A.C. 7:27B–1.7. General testing requirements
N.J.A.C. 7:27B–1.8. Required test data
N.J.A.C. 7:27B–1.9. Preparation for sampling
N.J.A.C. 7:27B–1.10. Sampling
N.J.A.C. 7:27B–1.11. Sample recovery
N.J.A.C. 7:27B–1.12. Analysis
N.J.A.C. 7:27B–1.13. Calculations

Chapter 27B Subchapter 2—Procedures for Visual Determination of the Opacity (Percent) and Shade or Appearance (Ringelmann Number) of Emissions From Sources (Effective 6/21/76)
N.J.A.C. 7:27B–2.1. Definitions
N.J.A.C. 7:27B–2.2. Acceptable observation methods
N.J.A.C. 7:27B–2.3. Observation principle
N.J.A.C. 7:27B–2.4. General testing requirements
N.J.A.C. 7:27B–2.5. Required observation data
N.J.A.C. 7:27B–2.6. Certification

REFERENCES
APPENDIX

Chapter 27B Subchapter 3—Air Test Method 3: Sampling and Analytical Procedures for the Determination of Volatile Organic Compounds From Source Operations (Effective 12/1/08)
N.J.A.C. 7:27B–3.1. Definitions
N.J.A.C. 7:27B–3.2. Sampling and analytical protocol; acceptable test methods
N.J.A.C. 7:27B–3.3. Operating conditions during the test
N.J.A.C. 7:27B–3.4. Sampling facilities
N.J.A.C. 7:27B–3.5. Source operations and applicable test methods
N.J.A.C. 7:27B–3.6. Procedures for the determinations of vapor pressures of a single known VOC or mixtures of known and/or unknown VOC
N.J.A.C. 7:27B–3.7. Procedures for the direct measurement of volatile organic compounds using a flame ionization detector (FID), a photoionization detector (PID) or a non-dispersive infrared analyzer (NDIR)
N.J.A.C. 7:27B–3.8. Procedures for the direct measurement of volatile organic compounds using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector
N.J.A.C. 7:27B–3.9. Procedures for the sampling and remote analysis of known volatile organic compounds using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector
N.J.A.C. 7:27B–3.11. Procedures for the determination of volatile organic compounds emitted from transfer operations using a flame ionization detector (FID) or non-dispersive infrared analyzer (NDIR)
N.J.A.C. 7:27B–3.13. Procedures for the determination of leak tightness of gasoline delivery vessels
N.J.A.C. 7:27B–3.15. Procedures for the direct detection of fugitive volatile organic compound leaks from gasoline tank trucks and vapor collection systems using a combustible gas detector

**BILLING CODE 6560–50–P**

**FEDERAL COMMUNICATIONS COMMISSION**

47 CFR Parts 2, 15, and 74

[WT Docket Nos. 08–166, 08–167, and ET Docket No. 10–24; FCC 10–16]

Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this Report and Order and Effective January 22, 2010, the Commission establishes a deadline for the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

**FURTHER INFORMATION CONTACT:** For further information, contact Paul D’Ari, Wireless Telecommunications Bureau, (202) 418–1550, e-mail Paul.Dari@fcc.gov, or Hugh L. Van Tuyl, Office of Engineering and Technology, (202) 418–7506, e-mail Hugh.VanTuyl@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s rules noted in the Report and Order and Public Inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission’s duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor’s Web site, http://www.bcpiweb.com; or by calling (800) 378–3160, facsimile (202) 488–5563, or e-mail FCC504@BCP1WEB.com. Copies of the public notice also may be obtained via the Commission’s Electronic Comment Filing System (ECFS) by entering the docket numbers, WT Docket No. 08–166, WT Docket No. 08–167, and ET Docket No. 10–24. Additionally, the complete item is available on the Federal Communications Commission’s Web site at http://www.fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Paul D’Ari, Wireless Telecommunications Bureau, (202) 418–1550, e-mail Paul.Dari@fcc.gov, or Hugh L. Van Tuyl, Office of Engineering and Technology, (202) 418–7506, e-mail Hugh.VanTuyl@fcc.gov.


It also may be purchased from the Commission’s duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor’s Web site, http://www.bcpiweb.com; or by calling (800) 378–3160, facsimile (202) 488–5563, or e-mail FCC504@BCP1WEB.com. Copies of the public notice also may be obtained via the Commission’s Electronic Comment Filing System (ECFS) by entering the docket numbers, WT Docket No. 08–166, WT Docket No. 08–167, and ET Docket No. 10–24. Additionally, the complete item is available on the Federal Communications Commission’s Web site at http://www.fcc.gov.