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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 342

[Docket No. RM25–2–000]

Supplemental Review of the Oil Pipeline Index Level

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend the index level used to determine annual changes to oil pipeline rate ceilings following the decision of the United States Court of Appeals for the District of Columbia Circuit in *Liquid Energy Pipeline Association* v. *FERC.* In place of the index level established by order issued December 17, 2020, in Docket No. RM20–14–000, the Commission proposes to use the Producer Price Index for Finished Goods (PPI–FG) minus 0.21% as the prospective index level for the remainder of the five-year period that began July 1, 2021. The Commission invites interested persons to submit comments regarding this proposal.

DATES: Initial comments are due November 26, 2024. Reply comments are due December 20, 2024.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures Section of this document contains more detailed filing procedures.

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SUPPLEMENTARY INFORMATION:

1. On December 17, 2020, the Commission issued an order in the 2020 five-year review of the oil pipeline index (Initial Order) establishing an index level of Producer Price Index for Finished Goods plus 0.78% (PPI–FG+0.78%) for the five-year period beginning July 1, 2021 (Initial Index).[1] On January 20, 2022, the Commission issued an order granting rehearing (Rehearing Order) and establishing an index level of PPI–FG–0.21% (Rehearing Index).[2] In *Liquid Energy Pipeline Association* v. *FERC* (*LEPA* v. *FERC*),[3] the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) held that the Commission violated the Administrative Procedure Act (APA) by amending the Initial Index without providing notice and an opportunity to comment. Accordingly, the court vacated the Rehearing Order and ordered the Commission to reinstate the Initial Order.[4] In compliance with this directive, the Commission reinstated the Initial Order by order issued September 17, 2024.[5]

2. As discussed below, we remain concerned that the Commission erred in establishing the Initial Index. Thus, following *LEPA* v. *FERC,* we propose to amend the Initial Index prospectively by adopting a revised index level of PPI–FG–0.21% for the remainder of the five-year period that began on July 1, 2021. We seek comment on this proposal and encourage commenters to address all issues related to the appropriate index level following *LEPA* v. *FERC.*

I. Background

A. Indexing and the Kahn Methodology

3. The Commission adopted the indexing methodology in compliance with the Energy Policy Act of 1992 (EPAct 1992), which required the Commission to streamline its procedures related to oil pipeline rates and establish ''a simplified and generally applicable ratemaking methodology for oil pipelines.''[6] Indexing streamlines and simplifies ratemaking procedures by allowing oil pipelines to change their rates subject to certain ceiling levels, as opposed to making cost-of-service filings. Under this methodology, pipelines may adjust their ceiling levels effective every July 1 by ''multiplying the previous index year's ceiling level by the most recent index published by the Commission.''[7]

4. The Commission reviews the index level every five years.[8] Beginning with Order No. 561 and in each ensuing five-year review, the Commission has adjusted the index level using the Kahn Methodology, which calculates each

[1] *Five-Year Rev. of the Oil Pipeline Index,* 173 FERC ¶ 61,245 (2020).

[2] *Five-Year Rev. of the Oil Pipeline Index,* 178 FERC ¶ 61,078, *reh'g denied,* 179 FERC ¶ 61,100 (2022) (Second Rehearing Order).

[3] 109 F.4th 543 (D.C. Cir. 2024).

[4] Id. at 547–49.

[5] *Revisions to Oil Pipeline Reguls. Pursuant to the Energy Pol'y Act of 1992,* 188 FERC ¶ 61,173 (2024) (Reinstatement Order).

[6] Public Law No. 102–486, 1801(a), 1802(a), 106 Stat. 2776, 3010 (Oct. 24, 1992) (codified at 42 U.S.C. 712 note).

[7] 18 CFR 342.3(d)(1). Oil pipelines may adjust their rates to the ceiling levels pursuant to the Commission's regulations so long as no protest or complaint demonstrates that the index rate change substantially diverges from the pipelines cost changes. *Id.* 343.2(c)(1).

[8] *Revisions to Oil Pipeline Reguls. Pursuant to the Energy Pol'y Act of 1992,* Order No. 561, 58 FR 58753 (Nov. 4, 1993), FERC Stats. & Regs. ¶ 30,985, at 30,941, 30,947, 30,951 (1993) (cross-referenced at 65 FERC ¶ 61,109), *order on reh'g,* Order No. 561–A, 59 FR 40243 (Aug. 8, 1994), FERC Stats. & Regs. ¶ 31,000, at 31,093, 31,099 (1994) (cross-referenced at 68 FERC ¶ 61,138), *aff'd sub nom. Ass'n of Oil Pipe Lines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996) (*AOPL I*).

pipeline's cost change on a per barrel-mile basis over the prior five-year period based on FERC Form No. 6, page 700 summary cost-of-service data. To remove statistical outliers and spurious data, the Kahn Methodology trims the data set by removing an equal number of pipelines at the top and bottom of the data set. Then, the Kahn Methodology averages the median, mean, and weighted mean to determine a composite central tendency, which is compared to the changing value of PPI–FG over the relevant five-year period. The index level is set at PPI–FG plus (or minus) this differential.

B. 2020 Five-Year Review

5. On June 18, 2020, the Commission initiated the 2020 five-year review.[9] The Commission proposed to calculate the index level by (1) trimming the data set to the middle 50% and (2) incorporating the effects of the Commission's 2018 policy change requiring Master Limited Partnership (MLP)-owned pipelines to eliminate the income tax allowance and previously accrued Accumulated Deferred Income Taxes (ADIT) balances from their page 700 summary costs of service (Income Tax Policy Change).[10] Ten commenters filed comments addressing the Commission's proposal.[11] LEPA, Designated Carriers, and Kinder Morgan, Inc. (collectively, Pipelines) supported trimming the data set to the middle 80%, rather than the middle 50%, and adjusting the reported page 700 data to eliminate the effects of the Income Tax Policy Change from the index calculation. By contrast, Joint Commenters, Liquids Shippers Group, and CAPP (collectively, Shippers) argued that the Commission should continue using the middle 50% and reject Pipelines' proposed adjustments to the data set.

6. In the Initial Order, the Commission established the Initial Index of PPI–FG+0.78%.[12] The Commission adopted Pipelines' proposals to use the middle 80% and to remove the effects of the Income Tax Policy Change from the index calculation.[13] On January 19, 2021, Shippers filed requests for rehearing challenging the Commission's determinations, and Pipelines requested rehearing or clarification to correct minor errors in the workpapers underlying the Initial Order.

7. In the Rehearing Order, the Commission granted rehearing in part and adopted the Rehearing Index of PPI–FG–0.21%. The Commission granted Shippers' requests to calculate the index level using the middle 50% and unadjusted page 700 data that reflects the effects of the Income Tax Policy Change.[14] The Commission found that the middle 50% produces a more accurate measure of normal pipeline cost changes than the middle 80%, which includes pipelines with extraordinary cost changes that were unrepresentative of ordinary pipeline operations.[15] Furthermore, the Commission found that the index calculation must incorporate the Income Tax Policy Change to produce just and reasonable rates.[16] The Commission also granted Pipelines' request to calculate the index level using updated page 700 data for 2014 where available.[17]

8. The Commission directed oil pipelines to recompute their ceiling levels to reflect the Rehearing Index and to reduce their rates in accordance with those ceiling levels effective March 1, 2022.[18] Thereafter, Pipelines filed petitions for review of the Rehearing Order with the D.C. Circuit,[19] and Joint Commenters filed a request for rehearing or clarification, which the Commission denied by order issued May 6, 2022.[20]

C. LEPA v. FERC and Reinstatement Order

9. In *LEPA* v. *FERC,* the D.C. Circuit granted Pipelines' petitions and held that the Commission violated the APA by altering the Initial Index on rehearing without providing additional notice and an opportunity for comment. The court found that the Commission adhered to the APA's notice-and-comment requirements when it adopted the Initial Index.[21] However, the court explained that once an agency's rule ''carrie[s] legal consequences,'' the APA generally requires the agency to follow notice-and-comment procedures before amending the rule.[22] The court found that the Initial Index became ''sufficiently final'' by July 1, 2021, ''to require that any amendment undergo notice-and-comment procedures.'' [23] Because the Commission amended the Initial Index without engaging in additional notice-and-comment procedures, the court vacated the Rehearing Order and ordered the Commission to reinstate the Initial Order.[24]

10. On September 17, 2024, the Commission issued an order reinstating the Initial Order in compliance with the court's decision.[25]

II. Commission Proposal

11. Following the vacatur of the Rehearing Order in *LEPA* v. *FERC,* we remain concerned that the Initial Order improperly calculated the index level by using the middle 80%, removing the effects of the Income Tax Policy Change, and using outdated page 700 data for 2014 for certain pipelines. Accordingly, we initiate notice-and-comment procedures to consider whether to amend the Initial Index on a prospective basis.[26]

12. As discussed below, we propose to adopt a revised index level of PPI–FG–0.21% for the remainder of the five-

[9] *Five-Year Rev. of the Oil Pipeline Index,* 171 FERC ¶ 61,239 (2020) (NOI).

[10] *Id.* PP 9–10; *see also Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs,* 162 FERC ¶ 61,227 (Income Tax Policy Statement), *reh'g denied,* 164 FERC ¶ 61,030 (2018), *requests for clarification dismissed,* 168 FERC ¶ 61,136 (2019), *petitions for review dismissed sub nom. Enable Miss. River Transmission, LLC* v. *FERC,* 820 F. App'x 8 (D.C. Cir. 2020).

[11] Comments were filed by: Liquid Energy Pipeline Association (LEPA, formely known as Association of Oil Pipe Lines or AOPL); Buckeye Partners, L.P., Colonial Pipeline Company, Energy Trasfer LP, Enterprise Products Partners L.P., and Plains All American Pipeline, L.P. (collectively, Designated Carriers); Kinder Morgan, Inc.; Airlines for America, Chevron Products Company, National Proprane Gas Association, and Valero Marketing and Supply Company (collectively, Joint Commenters); Apache Corporation Cenovus Energy Marketing Services Ltd., ConocoPhillips Company, Devon Gas Services, L.P., Equinor Marketing & Trading US Inc., Fieldwood Energy LLC, Marathon Oil Company, Murphy Exploration and Production Company—USA, Ovintiv Marketing Inc., and Pioneer Natural Resources USA, Inc. (collectively, Liquids Shippers Group); Canadian Association of Petroleum Producers (CAPP); Pipeline Safety Trust; Energy Infrastructure Council; and Pipeline and Hazardous Materials Safety Administration.

[12] Initial Order, 173 FERC ¶ 61,245 at P 2.

[13] *Id.* PP 16–20, 25–32.

[14] Rehearing Order, 178 FERC ¶ 61,023 at PP 16–36, 43–58; *see also id.* PP 64–70, 78–88, 95–98 (denying rehearing regarding issues raised by Liquids Shippers Group and CAPP).

[15] *Id.* PP 46–50

[16] *Id.* P 17.

[17] *Id.* P 101; *see also id.* P 104 (denying additional proposal raised by Designated Carriers in light of Commission's determination to use unadjusted page 700 data that incorporated effects of Income Tax Policy Change).

[18] *Id.* P 106, ordering para. (B).

[19] Pipelines initially appealed the Rehearing Order to the Unites States Court of Appeals for the Fifth Circuit (Fifth Circuit). However, in May 2022, the Fifth Circuit transferred the appeals to the D.C. Circuit. *Buckeye Partners, L.P.* v. *FERC,* No. 22–601000, 2022 WL 1528311 (5th Cir. May 13, 2022).

[20] Second Rehearing Order, 179 FERC ¶ 61,100. Joint Commenters filed petitions for review of the Second Rehearing Order in the D.C. Circuit, which were consolidated with Pipelines' petitions for review of the Rehearing Order.

[21] *LEPA* v. *FERC,* 109 F.4th at 547.

[22] *Id.* at 548 (quoting *Humane Soc'y* v. *USDA,* 41 F.4th 564, 570 (D.C. Cir. 2022)) (internal quotation marks omitted).

[23] *Id.* at 549.

[24] *Id.* The court held that because it was vacating the Rehearing Order, Joint Commenters' challenges to the Second Rehearing Order were moot. *Id.*

[25] Reinstatement Order, 188 FERC ¶ 61,173 at P 1. The Commission reinstated the Initial Index after the D.C. Circuit issued the mandate associated with *LEPA* v. *FERC* on September 17, 2024.

[26] *See LEPA* v. *FERC,* 109 F.4th at 549; *see also* 49 U.S.C. app. 17(9)(g).

year period that began on July 1, 2021.[27] This proposal is based on the Kahn Methodology as applied to page 700 data from 2014–2019 and results from (1) relying solely on the middle 50%, (2) using unadjusted page 700 data that reflects the effects of the Income Tax Policy Change, and (3) using updated page 700 data for 2014, where available. We seek comments on our proposal and encourage commenters to address all issues related to the appropriate index level following *LEPA* v. *FERC,* including those issues discussed below.[28] Commenters should also renew any arguments raised in requests for rehearing or clarification of the Initial Order that they would like for the Commission to consider.

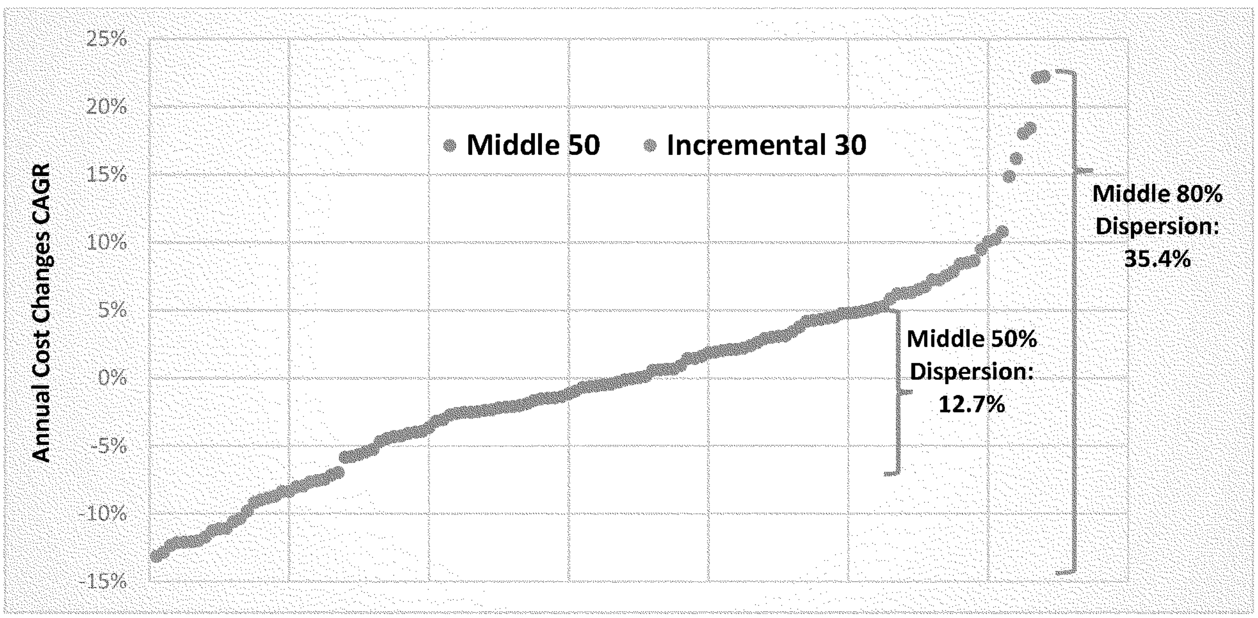
A. Statistical Data Trimming

13. We propose to amend the Initial Index by calculating a revised index level relying solely on the middle 50%. As discussed below, we are concerned that the Commission's use of the middle 80% in the Initial Order departed from established practice and that the record in the 2020 five-year review did not support this change.

14. As an initial matter, the index aims to reflect the cost experience of a typical pipeline during ordinary pipeline operations.[29] The index is not designed to recover extraordinary cost changes,[30] including those resulting from atypical or idiosyncratic circumstances,[31] and the presence of extraordinary cost changes in the data set can inflate the index level.[32]

15. To avoid inflating the index, the Commission excludes pipelines with extraordinary or idiosyncratic cost changes from its analysis. In the 2010 and 2015 Index Reviews, the Commission found that the middle 50% more appropriately adjusts the index level for normal cost changes than the middle 80%, which, by definition, includes pipelines relatively far removed from the median of the data set.[33] The Commission also concluded that pipelines included in the middle 80% but not the middle 50% (*i.e.,* the incremental 30%) are more likely to have cost changes resulting from idiosyncratic factors, such as a rate base expansion, plant retirement, or localized changes in supply and demand, that do not reflect normal industry-wide experience.[34] Thus, the Commission found that the middle 50%, more effectively than the middle 80%, trims pipelines with anomalous cost changes from the data set while avoiding the complexities and distorting effects of manual data trimming methodologies.[35] Following the 2015 Index Review, the D.C. Circuit affirmed the Commission's decision to calculate the index level based solely upon the middle 50%.[36]

16. As discussed above, in the Initial Order, the Commission departed from its prior practice by using the middle 80%, as opposed to the middle 50%. We are concerned, however, that the page 700 data set for the 2014–2019 period does not support this change. The scatter plot below indicates that the middle 80% in this data set includes several pipelines near its upper bound that differ considerably from the other pipelines in the sample.[37]



[27] This supplemental NOPR applies to the current five-year review period. Consistent with its longstanding practice, the Commission will initiate a separate process for establishing the index level for the five-year period starting July 1, 2026.

[28] 5 U.S.C. 553(b)–(c); *see also LEPA* v. *FERC,* 109 F.4th at 549.

[29] *E.g., Five-Year Rev. of Oil Pipeline Pricing Index,* 133 FERC ¶ 61,228, at P 61 (2010) (2010 Index Review), *reh'g denied,* 135 FERC ¶ 61,172 (2011); Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,097 (''The role of an index is to accommodate normal cost changes.'').

[30] Extraordinary cost changes are recovered using the Commission's alternate ratemaking methodologies, rather than through indexing. Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,097 (''Extraordinary costs can be recovered through either of the alternate rate change means—cost of service or settlement rates—as provided in [Order No. 561].'').

[31] Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,097, *aff'd, AOPL I,* 83 F.3d at 1434; *see also* 2010 Index Review, 133 FERC ¶ 61,228 at P 54.

[32] Extraordinary cost changes would affect the composite central tendency of the data sample through the weighted mean and unweighted mean, which, unlike the median, reflect the cost experiences of all pipelines in the sample, including those at the upper and lower bounds.

[33] *Five-Year Rev. of the Oil Pipeline Index,* 153 FERC ¶ 61,312, at PP 43–44 (2015) (2015 Index Review), *aff'd sub nom. Ass'n of Oil Pipe Lines* v. *FERC,* 876 F.3d 336 (D.C. Cir. 2017) (*AOPL III*); 2010 Index Review, 133 FERC ¶ 61,228 at P 61.

[34] 2010 Index Review, 133 FERC ¶ 61,228 at P 61.

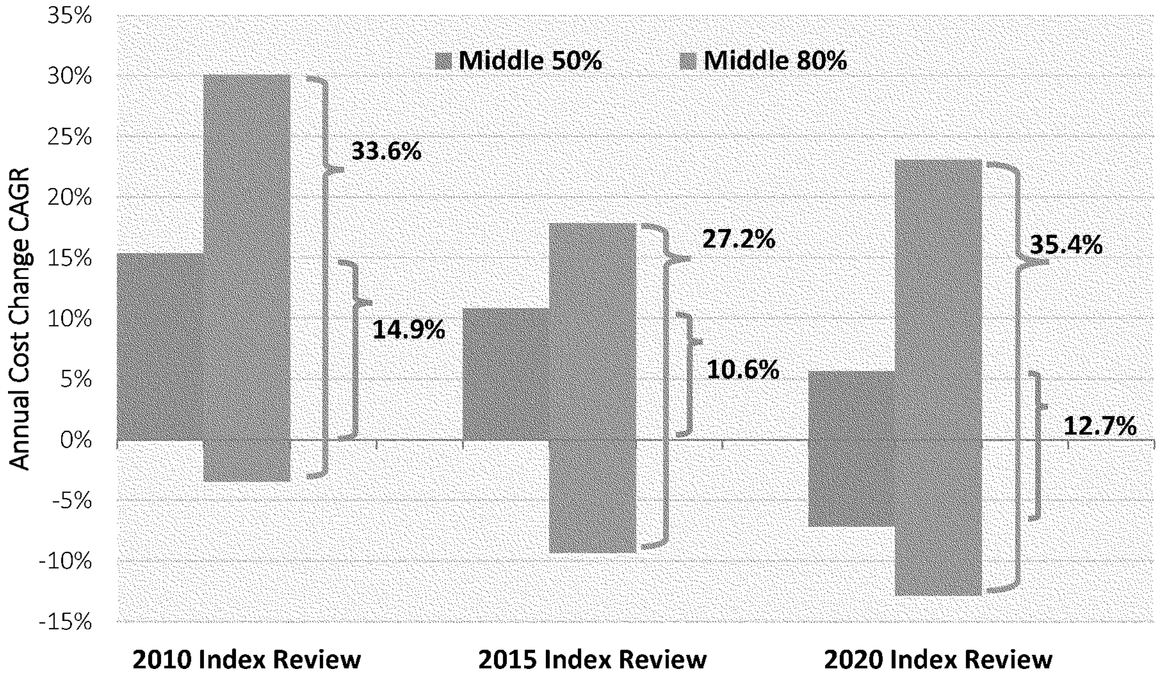
[35] 2015 Index Review, 153 FERC ¶ 61,312 at P 42 (citing 2010 Index Review, 133 FERC ¶ 61,228 at PP 60–63).

[36] *AOPL III,* 876 F.3d at 342 (stating that the court had ''little difficulty in finding that the Commission adequately and reasonably justified its decision not to consider the middle 80[%] of pipelines' cost-change data'' in that proceeding).

[37] This scatter plot modifies a similar chart submitted by Joint Commenters in Docket No. RM20–14–000. Joint Commenters Reply Comments, Brattle Group Report at 19, Figure 3 (scatter plot illustrating dispersion of the middle 50% and middle 80% in the unadjusted 2020 data set). The modifications reflect the adjustments proposed herein to the page 700 data set.

17. Moreover, these pipelines, particularly those at the upper bound of the middle 80% range, exert an outsized influence that inflates the index calculation. The difference between the middle 50% and the middle 80% results primarily from eight pipelines at the upper bound of the middle 80%.[38]

18. Furthermore, the page 700 data set indicates that the middle 80% is even more dispersed than in 2015 or 2010,[39] as illustrated by the bar chart below.[40]



19. In addition, the incremental 30% appears to include pipelines with extraordinary cost changes that are not reflective of ordinary pipeline operations. For example, in the 2020 five-year review, Joint Commenters identified seven pipelines in the incremental 30% whose reported cost changes resulted from irregular circumstances, such as pipeline ruptures or temporary shutdowns.[41]

20. Although the Initial Order identified three reasons for using the middle 80% instead of the middle 50%, we no longer find this reasoning persuasive. First, the mere fact that the middle 80% contains more data does not support departing from the middle 50%.[42] The middle 50% here includes 81% of industry-wide oil pipeline barrel-miles,[43] and thus provides a more representative sample than in 2015 or 2010, when the Commission relied solely on the middle 50%. In particular, the middle 50% in the 2015 and 2010 Index Reviews contained 56% and 76%, respectively of total barrel-miles subject to the index.[44] Thus, omitting the additional pipelines included in the incremental 30% would not deprive the Commission of a robust data sample. Furthermore, we are concerned that any benefits of considering the larger sample in the middle 80% would not outweigh the risk that this additional data will distort the measurement of normal cost changes.

21. Second, contrary to the Initial Order, it is not clear that using the middle 80% would provide a better measure of ''normal'' cost changes in this proceeding.[45] Rather, as discussed above, the middle 80% appears to include anomalous data that would distort the measurement of the central tendency used to calculate the index level.[46] This suggests that the more tailored data sample in the middle 50% provides a superior method of measuring normal cost changes, as opposed to extraordinary or idiosyncratic costs.

22. Third, the Initial Order sought to distinguish the 2015 and 2010 Index Reviews on the basis that, unlike in the 2020 review, commenters in those proceedings ''presented detailed analyses demonstrating that the incremental 30% contained anomalous cost changes . . . .'' [47] However, as in

[38] As discussed above, the Kahn Methodology calculates a composite central tendency by averaging the data sample's median, weighted mean, and unweighted mean. *See supra* P 4. If the top and bottom eight pipelines in the middle 80% are removed from the sample, the composite central tendency would increase by 3 basis points relative to the middle 50%, from −0.21% to −0.18%. By contrast, including the top and bottom eight pipelines in the middle 80% would increase the composite central tendency by an additional 29 basis points, from −0.18% to 0.11%. *See* Attach. A, Ex. 6.

[39] When the data sample is highly dispersed, data at the outer bounds of the middle 80% are further removed from the remaining data and thus can have an outsized and distorting effect if used to measure the central tendency.

[40] The bar chart modifies a similar chart submitted by Joint Commenters in Docket No. RM20–14–000. Joint Commenters Reply Comments, Brattle Group Report at 18, Figure 2 (bar chart illustrating dispersion of middle 50% and middle 80% in 2010, 2015, and the unadjusted 2020 data sets). The modifications reflect the adjustments proposed herein to the page 700 data set.

[41] Joint Commenters Reply Comments, Brattle Group Report at 13–17. For example, MPI Services North America, Inc., reported an inflated 2019 cost of service per barrel-mile due to a temporary shutdown of one of its pipeline segments and Mobil Pipe Line Company experienced a pipeline rupture in 2013 that distorted its 2014 cost-of-service data. *Id.* at 15–17.

[42] *See* Initial Order, 173 FERC ¶ 61,245 at P 26.

[43] *See* attach. A, Ex. 1.

[44] *See* 2015 Index Review, 153 FERC ¶ 61,312 at P 44 n.85; *id.* at attach. A, Ex. 1; 2010 Index Review, 133 FERC ¶ 61,228 at P 63.

[45] *See* Initial Order, 173 FERC ¶ 61,245 at P27.

[46] The Commission stated in the Initial Order that using the middle 80% is appropriate because the index average will be significantly below the relatively high cost changes at the upper bound. *Id.* PP 27, 32. However, even if the index average is not set at the upper bound of the data sample, including the upper bound of the middle 80% could nonetheless produce an index average inflated by anomalous cost experience. *See* 2010 Index Review, 133 FERC ¶ 61,228 at P 61 (''Using the middle 50[%] ensures that pipelines with relatively large cost increases or decreases do not distort the index.'').

[47] *See* Initial Order, 173 FERC ¶ 61,245 at P 28.

those prior reviews, the record in the 2020 review indicates that the middle 80% includes outlying cost increases, reflects significant dispersion, and includes pipelines with idiosyncratic cost changes. To the extent that shippers submitted more detailed analyses in 2015 and 2010, they presented this evidence to support manual data trimming proposals, which the Commission rejected in favor of trimming the data set to the middle 50%.[48] We are concerned that it would be incongruous to reject manual data trimming while at the same time requiring commenters to present similar analyses to justify continued use of the middle 50%.

23. For these reasons, we are no longer persuaded by the Commission's reasoning in the Initial Order for using the middle 80%. Accordingly, we propose to calculate a revised index level using the middle 50% and seek comment on this proposal.

B. Income Tax Policy Change

24. We are concerned that removing the Income Tax Policy Change from the index calculation could result in oil pipeline rates that are unjust and unreasonable. Thus, we propose to revise the index level prospectively by using unadjusted page 700 data that reflects the effects of the Income Tax Policy Change on pipeline cost changes from 2014–2019.

25. Several considerations support this proposal. The D.C. Circuit and the Commission have concluded that allowing MLP pipelines to recover an income tax allowance in addition to a return on equity (ROE) determined using the Discounted Cash Flow (DCF) model results in an impermissible double recovery of investor-level tax costs and produces unjust and unreasonable rates.[49] Although the Income Tax Policy Change eliminated this double recovery by prohibiting MLP pipelines from recovering an income tax allowance, oil pipeline rates have not incorporated this policy change into going forward rates following the vacatur of the Rehearing Order.[50] Because indexing is the Commission's primary ratemaking methodology for oil pipelines and because indexed oil pipeline rates must be just and reasonable, we believe that the index calculation should address the Income Tax Policy Change.

26. Furthermore, the index is intended to reflect changes in costs recoverable under the Opinion No. 154–B methodology,[51] such as the Income Tax Policy Change. The Commission and the D.C. Circuit have long recognized that the index should reflect changes in costs recoverable under the Opinion No. 154–B methodology.[52] The index is the primary means for adjusting rates to recover those costs, and the Commission uses the Opinion No. 154–B methodology cost data reported on page 700 to calculate the index level.[53] Here, the Income Tax Policy Change altered pipelines' recoverable costs by barring MLP pipelines from recovering in 2019 income tax costs that they were permitted to recover in 2014.[54] Thus, by comparing the 2014 data reported on page 700 under the Commission's previous policy with the 2019 data reported under its changed policy, the index calculation will accurately capture the effects of the Income Tax Policy Change on costs recoverable under Opinion No. 154–B.[55]

27. In addition, we believe that incorporating the Income Tax Policy Change into the index complies with EPAct 1992's dual mandates for just and reasonable rates and simplified and streamlined ratemaking.[56] As the Commission's Opinion No. 154–B methodology evolves, oil pipeline rates adjusted via indexing should reflect those changes in order to remain just and reasonable. If the Commission omits the effects of the Income Tax Policy Change from the index calculation, the alternative method for reflecting the elimination of the MLP income tax double recovery in rates would be through cost-of-service litigation.[57] We

[48] 2015 Index Review, 153 FERC ¶ 61,312 at PP 36, 42; 2010 Index Review, 133 FERC ¶ 61,228 at P 62.

[49] *United Airlines, Inc.* v. *FERC,* 827 F.3d 122 (D.C. Cir. 2016), *order on remand, SFPP, L.P.,* Opinion No. 511–C 162 FERC ¶ 61,228, at P 22 (2018), *reh'g denied,* Opinion No. 511–D, 166 FERC ¶ 61,142, at PP 90–95 (2019), *aff'd sub nom. SFPP, L.P.* v. *FERC,* 967 F.3d 788, 793–97, 801–03 (D.C. Cir. 2020); *see also* Income Tax Policy Statement, 162 FERC ¶ 61,227 at P 8. MLP pipelines do not incur income taxes at the entity level, but the Commission justified permitting MLP pipelines to recover an income tax allowance on the basis that their investors pay taxes on their allocated share of the MLP's taxable income. *See Inquiry Regarding Income Tax Allowances,* 111 FERC ¶ 61,139, at P 32 (2005). Because the D.C. Circuit and the Commission concluded that the MLP pipeline's DCF ROE already included investor-level income tax costs, a double recovery resulted from permitting an income tax allowance that recovered those same tax costs. Opinion No. 511–C, 162 FERC ¶ 61,228 at P 22.

[50] With regard to natural gas pipeline rates, the Commission acted to address this double recovery by requiring natural gas pipelines to submit a one-time filing for the purpose of evaluating the impact of the Income Tax Policy Change and the Tax Cuts and Jobs Act on the pipeline's revenue requirement. *Interstate & Intrastate Nat. Gas Pipelines,* Order No. 849, 164 FERC ¶ 61,031, at P 30 (2018), *reh'g denied,* Order No 849–A, 167 FERC ¶ 61,051 (2019). This process allowed for MLP natural gas pipelines to voluntarily reduce their rates in response to the Income Tax Policy Change and for the Commission to initiate rate investigations pursuant to section 5 of the Natural Gas Act where the pipeline appeared to be over-recovering its cost of service as a result of the policy change. *E.g., Stagecoach Pipeline & Storage Co.,* 166 FERC ¶ 61,199 (2019); *N. Nat. Gas Co.,* 166 FERC ¶ 61,033 (2019). As opposed to initiating cost-of-service complaints against oil pipelines, the Commission stated that it would incorporate the effects of the Income Tax Policy Change in the 2020 five-year review. Income Tax Policy Statement, 162 FERC ¶ 61,227 at PP 8, 46.

[51] The Opinion No. 154–B methodology is the cost-of-service ratemaking methodology that the Commission uses for oil pipelines. *Williams Pipe Line Co.,* Opinion No. 154–B, 31 FERC ¶ 61,377, *order on reh'g,* Opinion No. 154–C, 33 FERC ¶ 61,327 (1985). The Opinion No. 154–B methodology is based on trended original costs, whereby the inflationary component of the nominal return is placed in deferred earnings and recovered as part of rate base in future years. *E.g., BP W. Coast Prods., LLC* v. *FERC,* 374 F.3d 1263, 1282–83 (D.C. Cir. 2004).

[52] *AOPL III,* 876 F.3d at 345 (finding that the Commission ''has consistently treated the index as a measure of normal industry-wide cost-of-service changes''); 2015 Index Review, 153 FERC ¶ 61,312 at P 13, *aff'd, AOPL III,* 876 F.3d at 345–46 (''[T]he index is meant to reflect changes to recoverable pipeline costs, and, thus, the calculation of the index should use data that is consistent with the Commission's [Opinion No. 154–B] cost-of-service methodology.''); *see also* Order no. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,096 (stating that the then-existing Form No. 6 provided a ''highly unsatisfactory'' measure of capital cost changes because it did ''not contain the information necessary to compute a trended original cost (TOC) rate base or a starting rate base'' under the Opinion No. 154–B methodology).

[53] 2015 Index Review, 153 FERC ¶ 61,312 at PP 12–13 (adopting use of page 700 data to measure oil pipeline cost changes because, among other reasons, page 700 data is consistent with the Opinion No. 154–B methodology).

[54] Although the Income Tax Policy Change applied only to MLP pipelines, and not to non-MLP pipelines, this does not provide a basis for excluding the Income Tax Policy Change from the index calculation. As discussed above, indexing simplifies and streamlines oil pipeline ratemaking by allowing pipelines to adjust their rates based upon a generally applicable index that reflects industry-wide cost experience. *E.g.,* Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,103 (explaining that indexing ''relies upon industry-wide average costs, not company-specific costs, to establish rates''). A policy change affecting the costs recoverable by particular pipelines (such as MLPs) contributes to changes in industry-wide recoverable costs and is thus appropriately reflected in the calculation of the industry-wide index. By contrast, excluding the Income Tax Policy Change from the calculation merely because it applied only MLP pipelines would produce an index level that fails to fully reflect cost-of-service changes across the industry from 2014–2019.

[55] In contrast, adjusting the data set to remove the effects of this policy change would maintain a divergence between indexed rates and Opinion no. 154– B recoverable costs.

[56] EPAct 1992, at 1801(a).

[57] The index calculation for 2021–2026 presents the sole opportunity for addressing the MLP income tax double recovery in indexed rates via the simplified and streamlined five-year review process. As discussed above, the Kahn Methodology calculates the index level based on the change in industry-wide page 700 costs from the first year of the review period to the last. Thus, it is only possible to reflect the Income Tax Policy Change in the instant index calculation, which measures cost changes from 2014 (when MLP pipelines reported

Continued

are concerned that implementing cost-of-service policy changes in this manner would frustrate the statutory goals of efficient and simplified ratemaking embodied in EPAct 1992.[58]

28. We are also concerned that adjusting page 700 data to remove the effects of the Income Tax Policy Change conflicts with the Commission's historical practice. Before the Initial Order, the Commission had not previously adjusted the reported Form No. 6 data used to derive the index level. Rather, Order Nos. 561 and 561–A ''opted for a purely historical analysis'' [59] for measuring pipeline cost changes based on documented cost experience, and in subsequent five-year reviews, the Commission calculated the index level using reported Form No. 6 data without adjustment. Thus, modifying MLP pipelines' reported page 700 data in the Initial Order departed from the purely historical analysis on which the Commission has consistently relied since establishing the indexing regime.

29. Moreover, our proposal would honor the Commission's assurances in the 2018 Income Tax Policy Statement that it would ''incorporate the effects of [the Income Tax Policy Change] . . . in the 2020 five-year review'' so that oil pipeline rates would reflect these reduced costs.[60] Whereas the Commission acted promptly to eliminate the MLP income tax double recovery from natural gas pipeline rates, the Commission deferred adjusting oil pipeline rates until the 2020 five-year review. Failure to incorporate the Income Tax Policy Change into the index level would leave MLP oil pipeline rates unaddressed indefinitely. Furthermore, we recognize that shippers relied upon the Commission's assurances in considering whether to bring challenges against oil pipeline rates following the Income Tax Policy Change.

30. We are no longer persuaded by the reasoning provided in the Initial Order for excluding the Income Tax Policy Change from the index calculation. Contrary to the Initial Order, we do not believe there is a meaningful distinction between changes to the Opinion No. 154–B methodology and changes to the costs that pipelines input into that methodology and end up reported on page 700.[61] Rather, changes to the Opinion No. 154–B methodology produce corresponding changes to the costs that pipelines can recover. Accordingly, for purposes of determining the index, any meaningful measure of changes to recoverable costs between 2014 and 2019 should reflect the Income Tax Policy Change.[62]

31. Additionally, in contrast to the Initial Order, we do not believe that reflecting the Income Tax Policy Change would effectuate a true-up for prior-period over-recoveries.[63] Consistent with the purposes of the five-year review, incorporating the effects of the Income Tax Policy Change in the index calculation would align pipelines' *future* rates with their *future* costs recoverable under Opinion No. 154–B. By failing to reflect the Income Tax Policy Change in the calculation of the prospective index, the approach adopted in the Initial Order would cause future indexed rates to become estranged from future recoverable costs.

32. We likewise question the Initial Order's reasoning that ''[b]ecause no prior index calculation incorporated the [Commission's 2005 policy change] allowing MLP pipelines to recover an income tax allowance, it is not necessary to reflect the policy change denying those pipelines an income tax allowance in the calculation here.'' [64] This statement disregards indexing's purpose and oversimplifies historical Commission practice. Indexed rates have always served as a means for recovering pipeline income tax costs. Accordingly, the five-year review index calculation was always intended to incorporate changes in pipeline income tax costs, even if the Commission previously measured those costs using an imperfect estimate.[65] Now that the Commission uses page 700 data that directly measures income tax costs, we believe that the Commission should not disregard this data when calculating the index level.

33. Moreover, contrary to the findings in the Initial Order,[66] MLP income taxes have been reflected in oil pipeline rates. Before the 2005 income tax policy change, MLP pipelines could include at least a partial income tax allowance in their costs of service.[67] To the extent that prior index calculations did not incorporate the 2005 policy change allowing MLP pipelines to recover a full

a positive income tax allowance) to 2019 (when MLP pipelines reported zero income tax allowance). Capturing this decrease in recoverable income tax costs from 2014 to 2019 will reduce the index level to incorporate the elimination of the MLP income tax double recovery. In contrast, the 2025 five-year review will reflect no change in MLP income tax costs because MLP pipelines will report zero income tax allowances for both the first and last years of the 2019–2024 period.

[58] *See Ass'n of Oil Pipe Lines* v. *FERC,* 281 F.3d 239, 244 (D.C. Cir 2002) (*AOPL II*) (holding that an oil pipeline ratemaking regime based in large part on cost-of-service rate proceedings ''would be inconsistent with Congress's mandate under the EPAct for FERC to establish 'a simplified and generally applicable ratemaking methodology' '' (quoting EPAct 1992, at 1801(a))).

[59] *Id.* at 247 (citing *Five-Year Rev. of Oil Pipeline Pricing Index,* 93 FERC ¶ 61,266, at 61,855 (2000) (2000 Index Review), *aff'd in part and remanded, AOPL II,* 281 F.3d 239, *order on remand,* 102 FERC ¶ 61,195 (2003) (2000 Remand Order); Order No. 561, FERC Stats. & Regs. ¶ 30,985 at 30,951 (explaining that the Commission ''opted for a purely historical analysis'' for calculating the index level and ''has adhered to it'').

[60] Income Tax Policy Statement, 162 FERC ¶ 61,227 at P 8; *see also Inquiry Regarding the Effect of the Tax Cuts & Jobs Act on Commission-Jurisdictional Rates,* 162 FERC ¶ 61,223, at P 4 (2018) (''The Commission must ensure that the rates, terms, and conditions of jurisdictional services under the Federal Power Act (FPA), the Natural Gas Act (NGA), and the Interstate Commerce Act are just, reasonable, and not unduly discriminatory or preferential''); *id.* P 8 (directing oil pipelines to report on page 700 an income tax allowance consistent with the Income Tax Policy Change and the Tax Cuts and Jobs Act). As opposed to initiating cost-of-service complaints against oil pipelines, deferring action until the 2020 five-year review best fulfilled EPAct 1992's dual mandates for simplified oil pipeline ratemaking and just and reasonable rates. *See supra* note 59.

[61] Initial Order, 173 FERC ¶ 61,245 at P 17 (stating that ''the purpose of indexing is to allow the indexed rate to keep pace with industry-wide cost changes, not to reflect alterations to the Commission's Opinion No. 154–B cost-of-service methodology'').

[62] In the Initial Order, the Commission stated that ''[j]ust as a business must account for changes to its accounting practices when comparing costs over two different periods, we must make a similar adjustment to the reported page 700 data here to derive an 'apples-to-apples' comparison of pipeline cost changes.'' *Id.* However, this analogy to accounting methods is misplaced. Whereas an accounting methodology simply involves the method of recording costs, as explained above, the Income Tax Policy Change directly affected the costs the MLP pipelines can recover under the Opinion No. 154–B methodology.

[63] *Id.* P 18.

[64] *Id.* P 19.

[65] Before the 2015 Index Review when the Commission began using page 700 data, the Commission estimated pipeline cost changes using a rough proxy based on Form No. 6 accounting data. This accounting data did not directly measure changes in the income tax costs recoverable under Opinion No. 154–B. *Id.; see also* 2015 Index Review, 153 FERC ¶ 61,312 at PP 14–15 (describing this proxy and its deficiencies). The Commission relied on this proxy because direct measures of capital costs and income were not available when the index was first established. 2015 Index Review, 153 FERC ¶ 61,312 at P 14. Before page 700 was created, the Commission lamented that ''the measure of the capital cost component of the cost of service is highly unsatisfactory'' because Form No. 6 did ''not contain the information necessary to compute a trended original cost . . . rate base or a starting rate base as allowed for in [Opinion] No. 154–B.'' Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,096.

[66] Initial Order, 173 FERC ¶ 61,245 at P 19.

[67] *Lakehead Pipe Line Co.,* Opinion No. 397, 71 FERC ¶ 61,338 at 62,314–15 (1995) *reh'g denied,* Opinion No. 397–A, 75 FERC ¶ 61,181 (1996) (permitting partnership entities like MLP pipelines to recover an income tax allowance for income attributable to corporate partners, but not for income attributable to individuals or other non-corporate partners); *see also Riverside Pipeline Co.,* 48 FERC ¶ 61,309, at 62,018 (1989) (applying pre-*Lakehead* policy permitting partnership pipelines to recover a full income tax allowance as if they were corporations).

income tax allowance, we believe that pipeline rates substantially came to reflect that policy over time. In particular, as the number of pipelines in the Commission's data set expanded,[68] all initial rates and non-indexing rate changes would have reflected MLP pipelines' ability to recover a full income tax allowance under the previous 2005 policy. Although we recognize that prior index reviews imperfectly captured the 2005 income tax policy change, the 2005 policy change affected oil pipeline rates over the last 15 years. Thus, we do not believe that the arguments based on the 2005 income tax policy change require excluding the Income Tax Policy Change from the index calculation.

34. For these reasons, we propose to revise the index level prospectively by using unadjusted page 700 data that incorporates the effects of the Income Tax Policy Change on pipeline recoverable costs between 2014 and 2019. We invite comments on this proposal.

C. Appropriate Source of 2014 Page 700 Data

35. Page 700 includes columns for reporting summaries of cost-of-service data for both the current year and previous year.[69] The more recently filed data reported in the previous-year column often updates the data that was filed in the prior year. As a result, for the first year of the index review period in the five-year review, the Commission uses updated page 700 data filed in the following year's Form No. 6, where available.[70]

36. In the Initial Order, the Commission inadvertently departed from its prior practice by using outdated page 700 data for 2014. Although 38 pipelines filed updated 2014 data in April 2016, the Initial Order erroneously relied on those pipelines' originally filed 2014 data as reported in April 2015. Accordingly, we propose to calculate a revised index level using updated 2014, page 700 data, where available, as reported in the previous-year column in the Form No. 6 filings submitted in April 2016. This adjustment would ensure that the index calculation reflects the most current page 700 data for 2014 in accordance with prior Commission practice.[71]

D. Calculating Prospective Ceiling Levels

37. We propose that pipelines recalculate their ceiling levels on a prospective[72] basis as though the revised index level was effective throughout the five-year period.[73] This approach will set the going-forward oil pipeline indexed rates at the proper level in future years. Furthermore, this approach will ensure that future rates reflect the appropriate use of the middle 50% (not the distortions caused by the adoption of the middle 80%) as well as the elimination of the MLP income tax allowance.[74] We also believe that this approach is appropriate given the circumstances of this case resulting from the flaws in the Initial Order, the timely concerns raised by shippers, and the procedural holdings of *LEPA* v. *FERC.* Additionally, this approach would conform to the Commission's practice in the 2000 five-year review, where it adopted a revised index level following a judicial remand.[75] We seek comment upon this proposal. Moreover, commenters may address whether, in the alternative, pipelines' ceiling levels should only reflect a revised index level as of July 1, 2025, rather than for the full five-year period.

III. Request for Comments

38. We invite comments on the Commission's proposal to calculate a revised index level, as described above. Commenters may address any issues regarding the appropriate index level following *LEPA* v. *FERC,* including, but not limited to, whether the Commission should amend the Initial Index by relying solely upon the middle 50%, incorporating the Income Tax Policy Change, and using updated page 700 data for 2014. Commenters may address the calculation of the revised index level. In addition, commenters should renew any arguments raised in requests for rehearing or clarification of the Initial Order that they would like for the Commission to consider in determining the index level for this five-year review period.

39. In their initial comments, commenters may also describe any additional remedial steps not discussed herein that they believe the Commission should take following the vacatur of the Rehearing Order in *LEPA* v. *FERC.* Commenters may also address any potential action that the Commission should take regarding the period between (a) the March 1, 2022 effective date of tariff records filed pursuant to the Rehearing Order and (b) September 17, 2024, when the Commission reinstated the Initial Order.

40. We acknowledge that the Commission has not previously undertaken a supplemental rulemaking to consider revisions to the index level outside of the five-year review process established in Order No. 561. However, in the present circumstances, we believe that it is appropriate to initiate new notice-and-comment procedures given the D.C. Circuit's holdings in *LEPA* v. *FERC* and our ongoing concerns with the Commission's determinations in the Initial Order. Commenters may address any issues or concerns associated with

[68] Notably, 164 of the 277 total oil pipelines in the Commission's data set, or 59% have been added since the 2005 five-year review.

[69] For example, pipelines' reported cost-of-service data for the 2014 in their page 700s submitted in April 2015 would be listed in the current-year column and cost-of-service data for 2014 would shift to the previous-year column in the page 700s submitted in April 2016.

[70] *Five-Year Rev. of the Oil Pipeline Pricing Index,* 114 FERC ¶ 61,293, at P 40 (2006) (2005 Index Review) (finding that a witness was ''correct to use the data contained in [a] resubmitted FERC Form No. 6'').

[71] *E.g.,* 2015 Index Review, 153 FERC ¶ 61,312 at Workpapers, COSdata Tab (noting that ''[w]here available, data for given year is taken from the 'Previous Year Amount' column of the following year's Form 6 (*e.g.,* 2009 data is from column (c) of the 2010 Form 6''); 2005 Index Review, 114 FERC ¶ 61,293 at P 40.

[72] *See, e.g.,* 5 U.S.C. 551(4) (defining ''rule'' under APA ''as an agency statement of general or particular applicability and *future effect*'' (emphasis added)); *Safari Club Int'l* v. *Zinke,* 878 F.3d 316, 333 (D.C. Cir. 2017) (explaining that ''rules generally have only 'future effect' '' (citations omitted)); *Georgetown Univ. Hosp.* v. *Bowen,* 821 F.2d 750, 758 (D.C. Cir. 1987) (''The . . . suggestion that a retroactive rulemaking is permissible to remedy a procedural defect in a rule would, if accepted, make a mockery of the provisions of the APA. . . . [B]oth the express terms of the APA and the integrity of the rulemaking process demand that the corrected rule, like all other legislative rules, be prospective in effect only.'').

[73] For example, assume that Pipeline A's ceiling level on June 30, 2021, was $5.00 and that Pipeline A has not subsequently revised its rate by a method other than indexing. See 18 CFR 342.3(d)(5). Under our proposal, if the Commission adopts a revised index level of PPI–FG–0.21% in this proceeding, Pipeline A's recomputed ceiling level would be $6.13941 as of June 30, 2025 ($5.00 × (0.984288 × 1.087107 × 1.133194 × 1.012647)). *See* Reinstatement Order, 188 FERC ¶ 61,173 at P 1 (listing index multipliers that result from using index level of PPI–FG–0.21%).

[74] The index is cumulative from year to year, whereby each annual index is applied to the pipeline's ceiling level from the preceding year. 18 CFR 342.3(d)(1); Order no. 561, FERC Stats. & Regs. ¶ 30,985 at 30,954. In the Reinstatement Order, the Commission directed pipelines to recompute their ceiling levels as though the Initial Index applied for the full five-year period. Reinstatement Order, 188 FERC ¶ 61,173 at P 1. As a result, if the Commission adopts a revised index level that incorporates the Income Tax Policy Change, this determination would not be fully reflected in rates unless pipelines' ceiling levels are recomputed as though the revised index level applied for the full five-year-period. By contrast, if ceiling levels were computed as if the revised index level applied as of July 1, 2025, rather than for the full five years, pipeline rates would only partially reflect the Commission's determination to eliminate the MLP income tax allowance from the index calculation.

[75] 2000 Remand Order, 102 FERC ¶ 61,195 at PP 1, 31 (allowing pipelines to recalculate their ceiling levels as though the revised index level adopted on remand was in effect throughout the ongoing five-year period).

the proposal to revise the index level during the five-year period.

IV. Comment Procedures

41. Initial comments are due November 26, 2024. Reply comments are due December 20, 2024. Comments must refer to Docket No. RM25–2–000, and must include the commenter's name, the organization they represent, if applicable, and their address. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

42. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

43. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

V. Document Availability

44. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*).

45. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

46. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Issued: October 17, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–24518 Filed 10–22–24; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Parts 120, 121, and 126

[Public Notice: 12543]

RIN 1400–AE73

International Traffic in Arms Regulations (ITAR): U.S. Munitions List Categories IV and XV

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State (the Department) proposes to amend the International Traffic in Arms Regulations (ITAR) to revise U.S. Munitions List (USML) Categories IV and XV and related sections of the ITAR to clarify and standardize the regulatory text, add items that warrant designation on the USML, and remove those items that no longer warrant designation on the USML. The Department further proposes to add three new license exemptions to the ITAR.

DATES: Send comments on or before November 22, 2024.

ADDRESSES: Interested parties may submit comments to the Department by any of the following methods:

• Visit the *Regulations.gov* website at: *https://www.regulations.gov* and search for the docket number DOS–2024–0035.

• *Email: DDTCPublicComments@state.gov.* Commenting parties must include RIN 1400–AE73 in the subject line of the email message.

See **SUPPLEMENTARY INFORMATION** for other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rasmussen, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2217; email *DDTCCustomerService@state.gov;* SUBJECT: International Traffic in Arms Regulations: USML Categories IV and XV (RIN 1400–AE73).

SUPPLEMENTARY INFORMATION: The Department of State's Directorate of Defense Trade Controls (DDTC) regulates the export, reexport, retransfer, and temporary import of the defense articles and defense services identified on the USML at ITAR § 121.1. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other department or agency of the U.S. Government are subject to the Export Administration Regulations (EAR, 15 CFR parts 730 through 774, which includes the Commerce Control List (CCL) in supplement no. 1 to part 774). The EAR is administered and enforced by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. This rule does not modify the list of defense articles and defense services controlled for purposes of permanent import by the Attorney General, as enumerated on the U.S. Munitions Import List (USMIL) at 27 CFR 447.21.

Section 38 of the Arms Export Control Act (AECA) (22 U.S.C. 2778), the authority from which the ITAR is derived, requires periodic review to determine what articles and services, if any, no longer warrant designation on the U.S. Munitions List at 22 CFR 121.1. In maintaining the USML, DDTC's Office of Defense Trade Controls Policy (DTCP) identifies articles and services for review through a variety of methods, including informal public and interagency comment, commodity jurisdiction reviews, advisory opinions, and technology monitoring. The Department maintains the USML such that it comprises those defense articles or defense services that provide a critical military or intelligence advantage or, in the case of firearms, have an inherently military function. The Department, informed by consultations with its interagency partners, determined that the additional defense articles this rule proposes to designate on the USML warrant ITAR control and those articles it proposes to remove from the USML no longer do. This rule also proposes to amend and clarify certain regulatory text that describes items on the USML.

Further, on December 20, 2023, Vice President Kamala Harris convened the National Space Council to discuss U.S. leadership in space. The Departments of State and Commerce were subsequently tasked to ''review relevant export controls and processes to better enable a globally competitive U.S. space industrial base while protecting our national security and foreign policy interests.'' In addition to clarifying existing controls, the Department identifies three primary methods to meet that objective. First, it presents several updates to the USML's structure, terminology, and concepts. Second, it proposes three new license exemptions within the ITAR and the transition of