Submitted via Regulations.gov

Office of Natural Resources Revenue
Department of the Interior

Attention: RIN 1004-AF05
Docket No: ONRR-2025-0001

Comments of Taxpayers for Common Sense on the Proposed Rule "Federal Oil, Gas, and Coal Amendments"

Taxpayers for Common Sense (TCS) appreciates the opportunity to comment on the Office of Natural Resources Revenue (ONRR) proposed rule "Federal Oil, Gas, and Coal Amendments" that would modify how federal oil, gas, and coal are valued for royalty purposes. Since 1995, TCS has served as a nonpartisan budget watchdog dedicated to ensuring that federal resources are managed responsibly and that taxpayers receive a fair return on public assets. This includes oil, gas, coal, hardrock minerals, wind, solar, and timber. Revenues collected from resource development represent an important source of income for the federal government and must be collected, managed, and accounted for in a fair and accurate manner.

ONRR is responsible for collecting, verifying, and disbursing royalties and other revenue generated from the development of federally owned energy and mineral resources, including oil, gas, and coal. Royalty revenues represent one of the largest non-tax income sources for the federal government. Fair and accurate collection is necessary to ensure taxpayers are receiving what they are owed. Both the oil and gas royalty collection system and the federal coal program have received serious criticism, but ONRR took important steps to better ensure taxpayers receive a fair return from the development of federal resources in the "Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation Reform" final rule ("2016 Rule") published in July 2016. The proposed rule would undercut these important reforms and is estimated to reduce royalty collections by $331.1 million *annually*, or nearly $3 billion over ten years at an annual discount rate of 3%.[1]

TCS strongly opposes several of the changes in the proposed rule and urges ONRR to consider the following taxpayer concerns as it moves forward with this rulemaking. Specifically, we urge ONRR to:

- Preserve the default provision
- Maintain the current valuation method instead of extending the option to elect an index-based valuation method for arm's-length sales, keep the index price at the highest bidweek price, and not increase the transportation deductions for federal gas under the index-based valuation option

[1] Office of Natural Resources Revenue (ONRR), "ONRR FOGCA Regulatory Impact Analysis (RIN 1012-AA39)," July 8, 2026. https://www.regulations.gov/document/ONRR-2025-0001-0003

- Keep the current definition of gathering, continue to exclude gathering costs from transportation allowances, and do not expand eligibility for transportation and processing allowances

Background

In 1982, the Linowes Commission report stated that management of royalties from the nation's energy resources had been a failure for more than twenty years.[2] The Government Accountability Office (GAO) biennial "High Risk List", which identifies programs vulnerable to fraud, waste, abuse, and mismanagement, has included the management of federal oil and gas resources since 2011.[3] GAO found that the Department of the Interior (DOI) did not have reasonable assurance that it was collecting its share of revenue from oil and gas produced on federal lands and waters. Similarly, DOI's coal leasing program has been the subject of repeated cycles of audits, studies, moratoria, legislation, and new regulations, all in the effort to uncover and address problems that cost the government and taxpayers money.

In July 2016, ONRR finalized the "Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation Reform" rule ("2016 Rule", 81 FR 43338) and reformed the process of determining the value of federal oil, gas, and coal for purposes of determining royalties owed. The 2016 rule:

- Established the default provision to address valuation situations where ONRR is unable to reasonably determine the correct value of production
- Changed to a "hard cap" on transportation allowances (50 percent maximum for federal oil and gas) and processing allowances (66.67 percent maximum for federal gas) from the previous "soft cap" system, under which lessees could apply and be granted exceptions to the cap, and disallowed extraordinary processing allowances for federal gas
- Replaced the old valuation system of allowing "benchmarks" for lessee sales to affiliates (non-arm's-length sales) with a new valuation methodology based on the gross proceeds from the first arm's-length sale of the gas, less applicable allowances. The rule also allowed an index price valuation methodology for non-arm's-length transactions based on publicly available index prices, less applicable allowances, in lieu of valuing based on the first arm's-length sale. Other notable changes include:
    - Setting the index price to be the highest bidweek price
    - Increasing transportation deductions for federal gas under the index-based valuation option, from the 5-10% (maximum of $0.3/MMBtu)
- Eliminated the transportation allowance for the movement of oil and gas produced on the Outer Continental Shelf (OCS) from the wellhead to the first platform.

---

[2] The Commission on Fiscal Accountability of the Nation's Energy Resources, "Fiscal Accountability of the Nation's Energy Resources," January 1982, https://www.doi.gov/sites/default/files/T-2264.pdf
[3] Government Accountability Office, "High Risk List," Accessed August 2026, https://www.gao.gov/high-risk-list

In 2017, ONRR postponed implementation and eventually repealed the 2016 Rule. Federal courts later ruled that both moves were illegal under the Administrative Procedures Act, and ONRR was forced to re-issue the original 2016 Rule with one small exception in October 2020. In the same month, ONRR also proposed the "2020 Valuation Reform and Civil Penalty Rule" ("2020 Rule") and finalized it in January 2021(86 FR 4312). The 2020 rule rolled back several advances made by the 2016 Rule, undermining the taxpayer interest at a cost then estimated at roughly $290 million over ten years.[4] The 2020 rule would have:

- Removed all "default provisions" established by the 2016 rule, reverting to more ad hoc procedures and "Secretarial discretion" to establish value when royalty value cannot otherwise be determined, and removed the "misconduct" definition added by 2016 rule for when the default provision could be invoked
- Reinstated extraordinary processing allowances for federal gas
- Extended the index pricing valuation method for federal gas sold under non-arm's-length contracts to federal gas sold under arm's-length contracts. Other notable changes would have included:
    - Modifying the index price to the average bidweek price instead of highest bidweek price
    - Increasing transportation deductions for federal gas under the index-based valuation option, from the 5-10% (maximum of $0.3/MMBtu) to 10-15% (maximum of $0.4-$0.5/MMBtu), depending on the location.
- Allowed the costs of gathering – "subsea movement of bulk production before the royalty measurement point" – to be taken as a transportation deduction

In November 2021, ONRR withdrew the 2020 Rule by issuing the "ONRR 2020 Valuation Reform and Civil Penalty Rule: Final Withdrawal Rule" ("2021 Withdrawal Rule", 86 FR 54045). TCS submitted comments in support of ONRR's withdrawal of the 2020 Rule because its provisions and the stated justifications for them are corrosive to the responsible management of taxpayer assets.[5]

ONRR's proposed rule "Federal Oil, Gas, and Coal Amendments" would reinstate many of the provisions included in the 2020 rule, once again threatening the responsible management of publicly owned assets. In fact, the proposed rule would go beyond the 2020 rule by increasing the transportation deductions for federal gas under the index-based valuation option, allowing additional transportation costs to be deducted, and expanding non-arm's length allowances.

---

[4] ONRR, "ONRR 2020 Valuation Reform and Civil Penalty Rule," *Federal Register*, January 15, 2021. https://www.federalregister.gov/d/2021-00217/p-382

[5] Taxpayers for Common Sense (TCS), "Comments to the Office of Natural Resources Revenue on the Proposed Withdrawal of the ONRR 2020 Valuation Reform and Civil Penalty Rule," August 2021. https://www.taxpayer.net/energy-natural-resources/tcs-comments-on-rescinding-trump-era-rule-for-oil-gas-valuation/

TCS urges ONRR to abandon the proposed rule as it will significantly undermine ONRR's ability to fulfill its responsibility to ensure a fair return to taxpayers from development of federal natural resources.

ONRR's Role in Protecting the Return to Taxpayers

The federal government manages federal lands and waters and the extraction of natural resources from them on behalf of the American public. Agencies including DOI are obligated to serve the public interest by protecting taxpayers' financial interest. Congress has consistently affirmed this obligation: regarding onshore development, by making it policy that the federal government receive "fair market value of the use of the public lands and their resources;" for development on the Outer Continental Shelf (OCS), by directing that "[l]easing activities shall be conducted to ensure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government." ONRR reassessed and clarified its responsibilities in the proposed 2021 Withdrawal Rule,

> "Finally, it should be remembered that ONRR's primary functions include ensuring fair return (i.e., fair value) for the public from royalty and revenue collection and disbursement activities. As a result, any decision by ONRR to incentivize or disincentivize production that compromises the attainment of a fair return for the United States would be outside ONRR's primary function." (86 FR 31200)[6]

In the proposed rule, ONRR also stated that "[the agency] is specifically responsible for establishing guidelines and regulations that govern how royalties are calculated and determining the monetary obligations owed to the Federal Government from companies engaged in resource extraction on Federal lands, consistent with the particular lease, Federal statutes, and applicable regulations." And this involves "accounting and oversight to ensure that the royalty calculations reflect the fair value of the resources produced, thereby safeguarding public interests and maximizing revenue generated from Federal energy resources."[7]

<u>Intentionally reducing revenue collections in an attempt to incentivize production, as the proposed rule claims to do, is antithetical to ONRR's fiduciary responsibility.</u> To the extent ONRR has authority to issue rules to incentivize production, the agency must bear an increased burden to justify the issuance of rules that contravene its primary functions. In the 2020 Rule, the agency failed to meet both this threshold and the justification required for any agency action under the Administrative Procedures Act. This failure required ONRR to issue the 2021 Withdrawal Rule which rescinded the revenue-impacting provisions of the 2020 Rule. The proposed rule repeats the central problem of the 2020 rule. ONRR claims that the proposal would reduce costs and burdens for industry and the Federal Government and encourage production, but its own analysis estimates

---

[6] ONRR, "ONRR 2020 Valuation Reform and Civil Penalty Rule: Notification of Proposed Withdrawal," *Federal Register*, June 11, 2021. https://www.federalregister.gov/d/2021-12318/p-67

[7] ONRR, "Federal Oil, Gas, and Coal Amendments," *Federal Register*, June 30, 2026. https://www.federalregister.gov/d/2026-13133/p-12

only $2.572 million in annual administrative savings compared with a $331.106 million annual reduction in royalty collections.[8]

Similar to the 2020 rule, ONRR defends the issuance of the proposed rule and the departure from its founding purpose by citing Executive and Secretarial Orders now in effect to incentivize energy production to justify revenue reducing provisions. The proposed rule states that the goal of reducing cost and administrative burden to industry and ONRR align with the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) stated purpose but is also consistent with the administration's policy of unleashing America's energy potential reducing regulatory burdens on industry set forth in Executive Orders. Reference to FOGRMA's rulemaking authority (30 U.S.C. 1751) is misguided in that there is no clear provision in Chapter 29 of Title 30 of the U.S. Code that provides for encouraging greater production by reducing revenues collected from lessees.[9] This is also a questionable interpretation of the governing statutes, including the Mineral Leasing Act of 1920 (MLA) and the Outer Continental Shelf Lands Act of 1953 (OCSLA), which require the collection of "fair market value," not just any "value" up to ONRR's judgment to promote administration priorities rather than following legal mandates. <u>This diminishment of the standard of return may alone undermine any provisions of the proposed rule justified by a desire to incentivize production.</u>

Detailed Comments to Provisions in the Proposed Rule

1. **ONRR Should Preserve the Default Provision in Current Regulations**

The default provision addresses valuation situations where circumstances result in the Secretary of the Interior's (Secretary) inability to reasonably determine the correct value of production. Such circumstances include, but are not limited to, the lessee's failure to provide documents, the lessee's misconduct, the lessee's breach of the duty to market, or any other situation that significantly compromises the Secretary's ability to reasonably determine the correct value. When default provision conditions have been met, ONRR would exercise "considerable discretion to establish the reasonable value of production using a variety of discretionary factors and any other information the Secretary believes is appropriate". (80 FR 609-610)

The default provision mechanism for determining value of oil, gas, and coal for purposes of royalty calculation and similar provisions to establish the values of a lessee's transportation, processing, and coal washing allowances is consistent with DOI's mandate to capture a fair return use of the public lands and their resources on behalf of taxpayers. In the proposed rule, the agency cites a lack of clarity as its primary justification for removing the default provision.

To ensure the most accurate application of the default provision, ONRR should use its compliance data systems to establish clearer guidelines for when conditions for the default provision are met—not proposing to remove the default provision altogether. Removing the default provision would not eliminate cases in which ordinary valuation methods fail. It would instead return ONRR to more ad

---

[8] ONRR, "Federal Oil, Gas, and Coal Amendments," *Federal Register*, June 30, 2026. https://www.federalregister.gov/d/2026-13133/p-132
[9] 30 U.S.C. Chapter 29 (Sections 1701–1759)

hoc procedures and Secretarial discretion when royalty value cannot otherwise be determined. ONRR should clarify what conditions may invoke the default provision, and all discretionary factors and information that the Secretary may use to establish reasonable value.

2. ONRR Should Maintain the Current Valuation Method Instead of Extending the Option to Elect Index-Based Valuation Method for Arm's-Length Sales

Under current regulations, ONRR generally determines the value of production based on gross proceeds from arm's-length sales—transactions between unrelated parties—to determine the market value of federal. Determining market value becomes more difficult when resources are sold between affiliated companies through non-arm's-length sales. To address this, ONRR allows operators to elect to use an index-based valuation method—a set, ONRR-approved index price to determine the market value of gas—for non-arm's-length sales.

The proposed rule would extend the Federal gas and Federal NGLs index-based valuation option used for non-arm's-length sales to arm's-length sales, at the election of the lessee. Previously, ONRR decided not to extend the index-based option to arm's-length sales because an "index-based valuation formula generally is not as reliable a measure of royalty value as is the use of actual sales prices, transportation costs, and processing costs obtained or incurred in arm's-length transactions" (86 FR 54057). Although the proposed rule would require lessees to maintain and provide documentation of gross proceeds when requested, it does not clarify when ONRR would compare those proceeds with the index value or how it would determine whether the option remains an accurate representation of value.

The MLA vests responsibility in DOI to charge royalties based on the value of publicly owned minerals. A price established through an arm's-length transaction between unrelated parties is generally the most objective evidence of market value. Index pricing can be useful for non-arm's-length transactions, where affiliated companies may have an incentive to set a lower transfer price. But when an arm's-length sale exists, allowing the lessee to choose between its actual gross proceeds and an index will undoubtably benefit lessees at the expense of taxpayers, as they will always select the method that produces the lower royalty obligation.

TCS believes <u>that gross proceeds from arm's-length contracts are the best indication of market value for purposes of royalty calculation</u>. ONRR should not extend the index-based valuation option to arm's-length sales of Federal gas and Federal NGLs.

2a. ONRR Should Keep the Index Price at the Highest Bidweek Price

The proposed rule would allow lessees electing the index-pricing option to use the average monthly bidweek price instead of the highest monthly bidweek price. ONRR previously explained its decision not to use the average bidweek price when issuing the 2016 Rule by noting the highest bidweek price would protect the interests of the lessor, the Federal Government, and taxpayers, while simplifying reporting for lessees (81 FR 43347).

The proposed rule, on the other hand, stated that the highest bidweek price is unnecessary to protect the interests of the Federal lessor and that using the average bidweek index price would lower administrative burdens. However, in the Regulatory Impact Analysis (RIA) of the proposed rule, ONRR calculated $3 million annual reduction in royalty collections while finding that "there will not be any measurable benefits or costs other than the decrease in royalties because the process for calculating royalties will be unchanged."[10]

The proposed rule's claim of any benefit for taxpayers—that "reducing administrative burden and improving the clarity and transparency of the regulatory requirements is likely to encourage more investment in Federal leases, which could lead to increased bonuses from lease competition"[11]—is speculative at best, as decades of bidding data show that bonus bids are most affected by development potential. Even changes in the royalty rate—the most significant fiscal factor of a lease—are not enough to drive industry interest to where there's little development potential or deter industry interest in high-potential areas.[12] Moreover, even if that assumption were correct, ONRR's estimate of a $2.4 million potential annual increase in bonus bids[13] would not justify the larger accompanying reduction in royalty collections. Therefore, TCS urges ONRR to keep the index price as the highest bidweek price.

2b. ONRR Should Not Increase the Transportation Deductions For Federal Gas Under the Index-Based Valuation Option

The proposed rule would increase the transportation deductions for federal gas under the index-based valuation option from the current 5-10% (maximum of 30 cents/MMBtu) to 13-20% (maximum of 45-74 cents/MMBtu), depending on the location. Increased deductions lower the assessed value of federal resources when the royalty rate is applied, decreasing royalty collections.

TCS has long opposed the deductions for transportation and processing cost, which are well-known and expected costs of doing business. TCS urges ONRR not to increase the transportation deductions for federal gas under the index-based valuation option and instead go beyond the 2016 rule and eliminate all unnecessary and costly transportation and processing allowances.

3. ONRR Should Not Expand Eligibility for Transportation and Processing Allowances

3a. ONRR Should Not Allow Certain Offshore Federal Oil and Gas Gathering Costs to be Deducted as Transportation Allowance

---

[10] ONRR, "ONRR FOGCA Regulatory Impact Analysis (RIN 1012-AA39)," July 8, 2026. https://www.regulations.gov/document/ONRR-2025-0001-0003

[11] ONRR, "Federal Oil, Gas, and Coal Amendments," *Federal Register*, June 30, 2026. https://www.federalregister.gov/d/2026-13133/p-34

[12] TCS, "Federal Leasing Outlook and Analysis," July 2026. https://www.taxpayer.net/energy-natural-resources/federal-leasing-outlook-and-analysis/

[13] ONRR, "Federal Oil, Gas, and Coal Amendments," *Federal Register*, June 30, 2026. https://www.federalregister.gov/d/2026-13133/p-34

The provision with the biggest effect on royalties in the proposed rule concerns what costs producers can deduct from the value of oil and gas produced in the Outer Continental Shelf (OCS) before royalties are collected.

In 1999, the Minerals Management Service, the precursor to ONRR, issued guidance known as the "Deepwater Policy" to operators that 'gathering costs' for leases operating in water more than 200 meters deep could be included as transportation allowances. Transportation costs and gathering costs are different. Gathering costs cover the moving of oil and gas from different wells to a collection point where oil and gas volumes are measured to determine how much royalty is owed. Transportation costs cover the movement of oil and gas from the measuring point to market. In the 2016 Rule, ONRR withdrew the guidance, or "Deepwater Policy," and put the original regulations that disallowed gathering costs as transportation allowances back into force.

The proposed rule would redefine the term "gathering" to allow more costs to instead be considered "transporting", and thus eligible to be deducted as a transportation allowance. These increased deductions lower the perceived value of federal resources when the royalty rate is applied, decreasing royalty collections.

The 2020 rule would have reinstated the Deepwater Policy into the regulations instead of re-issuing it as guidance and would once again allow a deduction of certain deepwater gathering costs as an exception to the gathering rule when certain conditions were met. The proposed rule would go beyond the 2020 rule, effectively allowing the deduction of all deepwater *and shallow water* movement.

Current rules already allow transportation and processing costs to be deducted from the sales value used to calculate royalties due. Expanding those deductions would shift a larger share of development costs to the federal lessor and reduce the incentive for companies to control those costs. From 2016-2025, transportation and processing allowances reduced royalty payments from federal offshore production by $3 billion, equal to roughly 6.3% percent of the total royalties these companies paid during this period, $48 billion.[14] ONRR estimates that the gathering and offshore policy amendments would cost taxpayers $332,510,000 in royalty collection reduction per year, or $3.3 billion over ten years if the annual effect remains constant.[15] That is approximately the same amount that all existing offshore transportation and processing allowances reduced royalty payments from 2016 through 2025—meaning this provision of the proposed rule alone would more than *double* royalty losses due to deductions in the OCS.

The provision would result in significant loss of taxpayer revenue and will severely hinder ONRR's ability to collect a fair return of taxpayer-owned assets in the OCS. The RIA does not estimate $205 million in actual reinvestment.[16] It estimates that industry could retain approximately $205 million

[14] ONRR, "Natural Resources Revenue Data, Federal Sales", Accessed August 31, 2026. https://revenuedata.onrr.gov/downloads/federal-sales/

[15] ONRR, "ONRR FOGCA Regulatory Impact Analysis (RIN 1012-AA39)," July 8, 2026. https://www.regulations.gov/document/ONRR-2025-0001-0003

[16] Ibid.

annually that would be potentially available for reinvestment. The rule would not require companies to reinvest the money, direct it to federal production, or demonstrate that any resulting investment would not have occurred anyway. A certain royalty loss is not justified by a speculative production benefit. <u>TCS urges ONRR to retain the current rule—that movement from the wellhead to the first platform is not defined as "transportation" and is not eligible for deduction.</u>

3b. ONRR Should Not Add Additional Transportation Allowances or Expand Eligibility for Non-Arm's-Length Allowances

In addition to treating more offshore movement from the wellhead toward the first platform as allowable transportation, the proposed rule would also add the following as eligible transportation costs:

- Flow assurance for oil and gas pipelines, which are physical or chemical processes related to ensuring production can flow through a pipeline without blockages forming.
    - Repairing, replacing, or restoring operability of a plugged or damaged pipeline.
- Offshore platform costs related to flow assurance, including:
    - Pumps used to deliver oil into the export pipeline leaving the platform
    - Directly allocable costs of the space needed to house the allowed equipment
    - Directly allocable costs of electricity to run the equipment
    - Directly allocable costs of buoyancy needed to support the additional weight of the equipment

The proposed rule would also increase eligibility for non-arm's length allowances. Similar to how operators have non-arm's-length sales, they may also have non-arm's-length contracts for services that are eligible for allowances—transportation, processing, or washing assets. And, as with non-arm's-length sales, this makes determining the market cost of the service difficult. In these situations, ONRR allows a lessee to deduct capital costs through a non-arm's-length allowance. The proposed rule would allow operators to propose a depreciation schedule for non-arm's-length assets, making depreciation eligible to be included as allowances. The proposed rule would also allow leases to select an alternative in-service date when a fixed asset has not previously been included in a depreciation expense or a return on initial investment. These provisions would make more assets and services available to be deducted, increasing total deductions.

The addition of these allowances would lower the royalty value of federal resources and decrease royalty collections. Expanding these deductions may not even achieve the proposed rule's goal of reducing regulatory burdens because the RIA states that OCS lessees will incur some administrative costs to claim the additional deductions, such as finding and analyzing documentation and setting up non-arm's-length depreciation schedules. <u>TCS urges ONRR not to allow these additional deductions as transportation and processing allowances.</u>

Conclusion

Taxpayers rely on the Department of the Interior and ONRR to manage federal natural resource development and collect a fair return on it. In its fiduciary role, ONRR should aggressively defend the lessor’s interest—American taxpayers’ interest—when valuing resources and otherwise. The proposed rule departs from ONRR’s primary accounting and auditing role and does not demonstrate that its revised valuation methods would protect the public’s financial interest. TCS urges ONRR to abandon the proposed oil and gas amendments and prevent an estimated $331.1 million annual reduction in royalty collections, or nearly $3 billion over ten years at an annual discount rate of 3%.