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SUBMITTED ELECTRONICALLY VIA

Via Regulations.gov
April Lockler
Director, Office of Natural Resources Revenue
Building 85, Room A322
Denver Federal Center
6th Ave. and Kipling St.
Denver, CO 80225

Re: ***Comments of the American Exploration & Production Council on the Office of Natural Resources Revenue's Proposed Rule, "Federal Oil, Gas, and Coal Amendments," 91 Fed. Reg. 39,754 (June 30, 2026), Docket No. ONRR-2025-0001, RIN 1012-AA39***

Dear Ms. Lockler:

The American Exploration & Production Council appreciates the opportunity to comment on ONRR's proposed rule, Federal Oil, Gas, and Coal Amendments. AXPC is a national trade association representing leading independent oil and natural gas exploration and production companies in the United States. AXPC companies support millions of Americans in high-paying jobs and invest a wealth of resources in the communities where they operate. AXPC member companies produce more than half of U.S. onshore production each year, including many active operations developing federal minerals that require meeting BLM's lease, permitting, and bonding requirements.

Members hold and operate substantial Federal and Indian lease positions across the major onshore basins, and they are among the payors and reporters most directly affected by this rulemaking. That experience informs the comments below, which are directed to how the Proposed Rule will operate in practice.

These comments address the proposed amendments to the Federal oil and gas valuation provisions and the appeals provisions at 30 CFR part 1290. AXPC takes no position on the proposed amendments to the Federal coal provisions at 30 CFR part 1206, subpart F.

AXPC's position on the provisions at issue here has been consistent since the 2016 Valuation Rule was promulgated. In comments filed May 4, 2017 in response to ONRR's Advance Notice of Proposed Rulemaking, RIN 1012-AA21, 82 Fed. Reg. 16,325 (Apr. 4, 2017), AXPC explained that the 2016 rule "changes numerous longstanding valuation policies which oil and gas operators have relied on to program their accounting systems in paying federal royalties," and that it "created substantial confusion and uncertainty in how operators should meet their payment and reporting obligations."[1] AXPC recommended that the rule be repealed and replaced.[2] AXPC made a further point in 2017 that bears directly on this rulemaking: there is no sound reason for AXPC's members to maintain different valuation methods and accounting systems for Federal royalties than for the private and State mineral owners with whom they deal

[1] Letter from V. Bruce Thompson, President, Am. Expl. & Prod. Council, to Luis Aguilar, Regulatory Specialist, Off. of Nat. Res. Revenue (May 4, 2017), Docket No. ONRR-2017-0002-0026, https://www.regulations.gov/comment/ONRR-2017-0002-0026.
[2] *Id.*

on the same properties.[3] Every additional divergence between the Federal royalty regime and ordinary commercial practice is a source of reporting error, and reporting error is what this record shows actually drives ONRR enforcement.

AXPC supports this rulemaking. ONRR has correctly identified the areas of its valuation regulations that generate the most cost for the least return — ambiguous standards that are applied for the first time on audit, years after the reporting decision was made.[4] AXPC's comments are directed at a single objective: that the final rule replace discretionary standards with published, prospective, bright-line rules that a lessee can apply at the time of reporting and that ONRR can verify without an audit.

That objective serves the Federal lessor as much as it serves lessees. A rule that produces a determinate answer produces royalty payments that are correct when made, on data both parties can see. A rule that reserves discretion to ONRR to reach a different answer later produces the same royalty eventually, less the cost of the audit, the appeal, and the litigation, and after a delay measured in years. AXPC does not seek a lower royalty; it seeks a knowable one.

I. Certainty Is the Measure of This Rulemaking's Success

ONRR has broad discretion to determine the value of production for royalty purposes, and the Interior Board of Land Appeals (the "Board" or "IBLA") has repeatedly confirmed that its exercise of that discretion is reviewed for reasonableness.[5] AXPC's recommendations do not ask ONRR to relinquish any authority it holds. They ask ONRR to **exercise that authority now, in the regulatory text, rather than case by case on audit years after a lessee has reported.** This helps create certainty before royalty reports are required to be submitted and can help reduce burdens of ONRR staff and the lessee.

ONRR's stated goals for this rulemaking are to reduce cost and administrative burden for industry and for ONRR, to reduce disputes, and to improve the accuracy of reporting.[6] The public record establishes that those goals stand or fall on whether the final rule's standards are determinate at the moment of reporting.
Congress identified the same problem when it adopted the FOGRMA limitations period. The legislative history describes the difficulty as "uncertainty and unfairness for lessees and operators subject to indefinite audit collection," and states that the burden of never being free of audit exposure by the Federal Government "is grossly unfair as well as the antithesis of simplicity."[7] That is the standard AXPC asks ONRR to apply to each provision here.

The Office of Inspector General reported in January 2026 that of 841 enforcement referrals reviewed for FY 2021–2023, 737 — 88 percent — were curable violations, and that the most frequent triggers were royalty reporting, production reporting, and electronic payment problems rather than substantive valuation disagreements.[8] The same report documented an average referral delay of 1,327 days — roughly 3.6 years — between the identified issue and the enforcement referral, and documented Audit Management staffing falling from 148 to 109 between January 2024 and July 2025, with enforcement investigators dropping from twelve to seven.[9] A regime whose dominant failure mode is reporting error, surfaced years after the

[3] *Id.*
[4] 91 Fed. Reg. at 39,754 – 39,755.
[5] 91 Fed. Reg. at 39,755.
[6] 91 Fed. Reg. at 39.754.
[7] H.R. Rep. No. 104-667, at 13–14 (1996).
[8] DOI OIG, *ONRR Needs To Consistently Enforce Compliance and Timely Revenue Collection*, Report No. 2024-CR-008, at 5–9 (Jan. 2026).
[9] *Id.*

fact, by a shrinking audit staff, is one in which clarity at the time of reporting is the highest-return intervention available to the agency.

Recent Board decisions illustrate the cost of resolving these questions after the fact rather than in the rule. In *EPL Oil & Gas, LLC*, 200 IBLA 66 (2025), the lessee filed its first refund request in September 2016; ONRR issued its order to perform a restructured accounting in July 2020; the Director decided the appeal in June 2023; and the Board vacated in June 2025 on procedural grounds, leaving ONRR free to begin again. Nine years elapsed, the production months at issue ran from 2010 through 2016, and the underlying question — which pipeline segments were gathering and which were transportation — remains unresolved today.[10] The eleven issues ONRR identified in that proceeding were all transportation-allowance methodology questions: gathering versus transportation segment identification, value-based versus volume-based allocation, and depreciation dates.[11] Those are precisely the provisions this rulemaking proposes to amend. In *Fidelity Exploration & Production Co.*, 200 IBLA 1 (2025), an onshore measurement dispute that began with a 2010 BLM inspection produced an ONRR order in 2021, which the Board reversed in 2025 as time-barred without reaching the merits.

A bright-line rule paired with an open-ended exception is not a bright-line rule. *Sanare Energy Partners, LLC*, 200 IBLA 36 (2025), is instructive on this point, and it illustrates why AXPC's recommendations are directed at drafting rather than at authority. In that case, a BSEE regulation provided that a group of installations including a central installation with processing equipment and one or more satellites was a single facility — and then added that the agency may decide that the complexity of the individual installations justifies classifying them separately.[12] The lessee argued the exception had consumed the rule. The lessee lost, before both the Board and a Federal district court, because the exception was in the text and the agency's reading of it was rational.[13] That outcome was also reached only after years of proceedings, over fees that were modest by comparison to the cost of contesting them.[14] The lesson AXPC draws is not that agencies should lack discretion; it is that discretion left undefined in the text of the regulations is resolved eventually, expensively, and in a forum where neither party wanted to be.

AXPC therefore asks ONRR to apply a single test to each provision: can a lessee apply this provision correctly, at the time of reporting, without predicting how ONRR will later exercise its discretion? Where the answer is yes, the provision produces royalty that is correct when paid, verifiable without extensive disputes, and unlikely to generate an appeal.

II. Removal of the Default Provision (§§ 1206.105 and 1206.144) and the Definition of "Misconduct" (§ 1206.20)

Proposed text. Sections 1206.105 and 1206.144 are removed and reserved. Section 1206.20 is revised and republished without the definition of "misconduct." Proposed § 1206.104(a)(1) provides that ONRR "may monitor, review, and audit the royalties that you report, and, if ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR may establish a reasonable royalty value based on other relevant criteria." Proposed § 1206.104(c) permits ONRR to establish such a value where gross proceeds do not reflect reasonable consideration because "(1) There is misconduct by or between the contracting parties; (2) You have breached your duty to market the oil...; or (3) ONRR cannot determine if you properly valued your oil." Proposed § 1206.104(g)(2)

[10] *EPL Oil & Gas, LLC*, 200 IBLA 66 (2025).
[11] *Id.*
[12] *Id.*;30 C.F.R. § 285.112.
[13] *Sanare Energy Partners, LLC*, 200 IBLA 36 (2025).
[14] *Id.*

permits the same where contracts are not written and signed by all parties. Proposed § 1206.101(d)(2) requires valuation under § 1206.102 where value does not reflect reasonable value due to "(i) Misconduct by or between the parties to the arm's-length contract; or (ii) Breach of your duty to market."

AXPC supports the removal of the default provision at §§ 1206.105 and 1206.144 and the associated definition of "misconduct" at § 1206.20. ONRR's rationale is sound and is consistent with the comments industry previously submitted.[15] As ONRR explains, when it adopted the default provision it did not identify who within the agency would make the determination, whether the determination required approval, or whether it could be appealed, and the resulting ambiguity "could likely create inconsistency in how the default provision is applied."[16] That the provision has been invoked only once since 2016 confirms that its practical effect was less collection than uncertainty — lessees priced the risk, and almost none ever faced the tool.

AXPC asks ONRR to carry that same reasoning through to the authority that remains. Proposed §§ 1206.104 and 1206.143 preserve ONRR's ability to depart from reported value on the same findings the default provision required.[17] ONRR states in the preamble that "the authority to determine value when necessary already exists and is permissible under FOGRMA as part of the audit process and lease terms making the regulation language redundant."[18] What AXPC asks is that the criteria be published. As drafted, §§ 1206.104 and 1206.143 identify no decisionmaker, no approval requirement, and no appeal path — the same three features ONRR identifies as the defects that made the default provision difficult to apply consistently.[19] A lessee preparing a royalty report cannot conform its reporting to "other relevant criteria" it cannot read.[20] AXPC requests that the final rule (i) specify the ONRR official who may make a value determination under §§ 1206.104 and 1206.143, (ii) state in the regulatory text the criteria that govern the determination, and (iii) confirm that such a determination issues as an Order appealable under 30 CFR part 1290.

AXPC further asks that ONRR not retain "misconduct" as an operative trigger while deleting its definition. ONRR proposes to remove the definition from § 1206.20 while retaining the term in proposed §§ 1206.101(d)(2)(i), 1206.104(c)(1), and 1206.143(c)(1).[21] ONRR's stated concern is that the 2016 definition was so broad that lessees and ONRR's State and Tribal partners "were left without meaningful guidance or transparency as to what might be considered misconduct."[22] We agree this definition should be deleted. But deleting the definition while leaving the term in the operative provisions does not resolve that concern; it removes the only text a lessee could consult in conforming its conduct. ONRR should either strike the term from the operative provisions as well, or retain a definition narrowed to intentional conduct undertaken for the purpose of reducing royalty value.

AXPC further notes that it supports ONRR's retention of the definition of "audit" at § 1206.20 and asks that it be preserved in the final rule. The republished § 1206.20 retains the definition of "audit" as "an examination, conducted under the generally accepted Governmental Auditing Standards, of royalty reporting and payment compliance activities."[23] AXPC supports that.

[15] 91 Fed. Reg. at 39,755 – 39.756.
[16] 91 Fed. Reg. at 39,756.
[17] 91 Fed. Reg. at 39,778, 91 Fed. Reg. at 39,782.
[18] 91 Fed. Reg. at 39,756.
[19] *Supra* note 17.
[20] 91 Fed. Reg. at 39,778.
[21] 91 Fed. Reg. at 39,777 - 39,778, 39,782.
[22] 91 Fed. Reg. at 39,756.
[23] 91 Fed. Reg. at 39,773.

III. Index-Based Valuation for Federal Gas and NGLs (§§ 1206.141 and 1206.142)

Proposed text (unprocessed gas; § 1206.142(d) is parallel for residue gas and NGLs). Section 1206.141(c): "Alternatively, you may elect to value your unprocessed gas under this paragraph (c), which allows you to use an index-based valuation method to calculate royalty value. You may not change your election more often than once every two years."
— (c)(1)(i): single index pricing point — value is "the published bidweek index price to which your gas may flow for that respective production month."
— (c)(1)(ii): multiple points — value is "the highest of the published bidweek index prices to which your gas may flow for that respective production month, whether or not there are constraints for that production month."
— (c)(1)(iii): sequential points — "you must use the first index pricing point at or after your gas enters the pipeline."
— (c)(1)(iv): "You may adjust the number calculated under paragraphs (c)(1)(i) and (ii) of this section by reducing the value by 20 percent, but not more than 74 cents per MMBtu for sales from the OCS Gulf of America and by 13 percent, but not more than 45 cents per MMBtu, for sales from all other areas."
— (c)(1)(v): publication selection locked for two years.
— (c)(1)(vi): "ONRR may exclude an individual index pricing point found in an ONRR-approved publication if ONRR determines that the index pricing point does not accurately reflect the values of production. ONRR will publish criteria for index pricing points available at www.onrr.gov."
— (c)(2): "You may not take any other deductions from the value calculated under this paragraph (c)."
— (e)(1): where there is no written sales contract and an index pricing point exists, "you must value your gas under paragraph (c) of this section."
— (f): "Under no circumstances may your gas be valued for royalty purposes less than zero."
— (g): "If you elect to value your gas under paragraph (c) of this section, ONRR reserves the right to collect actual transaction data in the future to assess the validity of the index-based valuation option."
Section 1206.142(d)(2)(ii) (NGLs): "You must reduce the number calculated under paragraph (d)(2)(i) of this section by the amounts that ONRR posts at www.onrr.gov for the geographic location of your lease. The method that ONRR will use to calculate the amounts is set forth in the preamble to this regulation. This method is binding on you and ONRR. ONRR will update the amounts periodically using this method." Section 1206.142(d)(4): "ONRR will post changes to any of the rates in this paragraph (d) on its website."

A. AXPC strongly supports extending the index-based option to arm's-length dispositions

AXPC strongly supports ONRR's proposal to extend the index-based valuation option for unprocessed gas, residue gas, and NGLs to arm's-length dispositions at the lessee's election.[24] This is one of the most valuable provisions in the rulemaking for AXPC's members. ONRR reports that of the roughly fifty comments received in the 2020 and 2021 proceedings, commenters noted strong support for extending the option to arm's-length dispositions, and that ONRR received similar requests in the 2016 proceeding but declined to act on them at the time.[25] AXPC agrees, for the reason ONRR itself gave when it adopted the index-based option in 2016: the option "provides a lessee with a valuation option that is simple, certain, and avoids the requirements to unbundle fees and 'trace' production."[26] An index-based value is calculated from a published third-party figure that both the lessee and ONRR can see, at the time of reporting, without

[24] 91 Fed. Reg. at 39,755.
[25] 91 Fed. Reg. at 39,776.
[26] 81 Fed. Reg. 43,346.

an audit.[27] It eliminates the unbundling exercise, the allowance-by-allowance substantiation, and the years-later reconstruction of transportation cost detail that generate the disputes documented in *EPL Oil & Gas* and in the OIG's referral data.

AXPC believes ONRR's projected adoption rate is conservative — but only if the option delivers valuation certainty and not merely reporting simplification. ONRR reports a roughly 16 percent adoption rate for the existing non-arm's-length option and anticipates a higher rate under the proposal.[28] Adoption will depend almost entirely on the questions addressed in Sections III.B through III.G below. A lessee that must continue to maintain full gross-proceeds and allowance documentation in case ONRR later revisits an index-reported value bears the cost of both regimes and receives the certainty of neither, and may not elect due to this uncertainty.

B. The published midpoint price should be a fixed standard ONRR may not adjust

AXPC strongly supports the proposal at §§ 1206.141(c)(1)(i) and 1206.142(d)(1)(i) to value production at the published bidweek index price — the midpoint or volume-weighted average — rather than the highest bidweek price, and asks that ONRR adopt it as a fixed standard.[29] ONRR's reasoning is correct: the published price "more closely approximate[s] the price many lessees likely receive as gross proceeds," gas sales prices are themselves frequently set by reference to the published average index price, and the change will lower administrative burden for lessees and for ONRR alike.[30]

By "fixed," AXPC means that where a valid election is in effect, the royalty value of the production is the published midpoint bidweek price for the applicable index point and production month as reported in the ONRR-approved publication, less the adjustments the regulations provide — and that ONRR does not retain authority to substitute a different price, to apply an additional or alternative measure of market price, or to redetermine value on the ground that the published price does not reflect the value of that lessee's gas. The determination should be arithmetic: published figure, applicable adjustment, volume. AXPC requests that the final rule state this expressly, and that any provision elsewhere in Part 1206 authorizing ONRR to establish value by other means be made inapplicable to production properly valued under a valid index-based election.

A published third-party price is the only input in this entire valuation scheme that ONRR and the lessee can each verify from the same document before any audit occurs. The benefits associated with pointing to a particular price are significantly eroded if ONRR reserves discretion to depart from the published figure. AXPC notes that ONRR already publishes a monthly Federal Gas Index Option price on its Valuation and Pricing page, alongside its Indian Gas Index Zone, Indian major portion, and NYMEX oil price series. So pointing to a price is not an issue.

AXPC emphasizes that a fixed standard provides certainty to both parties and can be beneficial to ONRR. In production months when the published midpoint exceeds a lessee's realized price, that lessee will pay royalty on the published price without recourse.[31]

C. Value should be determined at the index point of actual delivery

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[27] 91 Fed. Reg. at 39,756.
[28] *Id.*
[29] 91 Fed. Reg. at 39,757.
[30] *Id.*
[31] 91 Fed. Reg. 39,754.

AXPC requests that ONRR conform §§ 1206.141(c)(1)(ii) and 1206.142(d)(1)(ii) to the reasoning that supports the change in price basis. Those paragraphs require, where gas may flow to more than one index pricing point, that value be determined at the highest published bidweek price among those points, "whether or not there are constraints for that production month."[32] ONRR reconsidered its 2016 position that the highest bidweek price was necessary to protect the Federal lessor, concluding that the published price better approximates what lessees actually receive.[33] The identical reasoning applies to the selection of the pricing point. Valuing gas at the highest of several points, expressly disregarding constraints, does not approximate the price the lessee receives where physical or contractual constraints direct the gas elsewhere — and it leaves the single most consequential variable in the calculation subject to ONRR's after-the-fact determination of where gas "may flow."[34]

This matters across AXPC's onshore membership. Nearly all Federal onshore gas now moves to market by pipeline — a result BLM has actively encouraged in order to reduce venting and flaring — and the pipeline a given volume enters is determined by the gathering and processing infrastructure connected to the well. Firm transportation commitments, interconnect limitations, processing dedications, and periodic takeaway constraints routinely determine where that volume can physically go. A rule that permits ONRR to value that gas at a higher-priced point on the theory that it "may flow" there, while foreclosing the constraint evidence that would rebut that theory, reintroduces the uncertainty ONRR removed at the price-basis stage.[35]

AXPC requests that value be determined at the index point to which the gas is actually delivered. In the alternative, ONRR should replace "whether or not there are constraints" with a provision permitting a lessee to demonstrate that firm transportation commitments, capacity constraints, interconnect limitations, or processing dedications preclude delivery to a higher-priced point.[36]

Proposed §§ 1206.141(c)(1)(vi) and 1206.142(d)(1)(vi) permit ONRR to exclude an individual index pricing point if ONRR determines it "does not accurately reflect the values of production," with the criteria for index pricing points to be published on ONRR's website. AXPC does not object to ONRR maintaining the integrity of the index points it approves. AXPC asks that the exclusion authority be structured so that a lessee is not separately having to value production in addition to using the index price.

Two requests. First, the <u>criteria</u> for index pricing points should appear in the regulatory text rather than on a website. AXPC does not object to ONRR publishing the list of qualifying index pricing points on its website and updating it as market geography changes — that is publication. The *criteria* that determine whether a point qualifies, and the decision to exclude a point a lessee is using, are methodology, and should be established and revised only through notice and comment. Second, an exclusion to using or relying on such index pricing criteria should also take effect prospectively, on stated advance notice. Not through an unpublished analysis later created by the agency.

The stakes for AXPC's members are notable. A substantial share of Federal onshore gas is produced in a basin whose principal index point has traded below zero for extended periods, which is precisely the circumstance in which a determination that a point "does not accurately reflect the values of production" might be advanced. An exclusion applied retroactively to those months would revalue years of correctly reported production against a point of information the lessee was not on notice that it should be using. AXPC asks ONRR to foreclose that outcome in the text.

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[32] 91 Fed. Reg. 39,780.
[33] 91 Fed. Reg. 39,757.
[34] 91 Fed. Reg. 39,781.
[35] *Id.*
[36] 91 Fed. Reg. 39,781.

D. AXPC supports monthly publication of index prices and factors; notice and comment should attach to methodology and index changes

AXPC supports updating the index-based transportation adjustments to reflect current data. The existing figures were calculated in the 2016 rulemaking and no longer reflect market conditions.[37]

AXPC notes that ONRR has itself identified this approach as the path to fewer disputes. In its 2011 Advance Notice of Proposed Rulemaking, ONRR asked whether — "[i]n the interest of simplifying the determination and verification of location adjustments" — it should prescribe a fixed differential per unit volume or a fixed percentage to be deducted from index value, whether a flat percentage with a cap would be preferable on a regional or nationwide basis, and observed that it could calculate such an adjustment monthly and make it available on its website.[38] ONRR raised the same possibility for processing allowances. That is the design AXPC supports, and ONRR's own stated rationale for it — simplifying both determination *and verification* — is the rationale these comments advance throughout.

AXPC supports ONRR publishing index prices and the associated valuation factors monthly on its website.[39] ONRR already does this for other published prices used in royalty valuation — its Valuation and Pricing page carries monthly Indian Gas Index Zone prices, Indian oil and gas major portion prices, NYMEX oil prices, crude oil market center prices, and a Federal Gas Index Option price.[40] That is an established, workable convention: it puts a current, verifiable number in front of every reporter each month, from a single public source, and it lets ONRR keep pace with market movement without a rulemaking for every period. AXPC asks ONRR to apply the same convention here, and to state in the final rule that the applicable figures for a production month are those published on ONRR's website for that month.

The distinction AXPC draws is between publishing a value and changing how the value is derived. Monthly publication of a price or factor calculated under a fixed, disclosed method is administrative implementation, and AXPC supports it. Changing the method itself — the formula or basis by which a factor is calculated, the structure or level of the transportation adjustment, the identity of the approved publications, the index or index pricing points from which values are taken, or the substitution of one index for another — is a change in valuation methodology. AXPC requests that the final rule provide that any change in valuation methodology or in the index used is made through notice-and-comment rulemaking, takes effect prospectively only, and does not apply to production months preceding its effective date.

One conforming point: proposed § 1206.142(d)(4) should be narrowed. As drafted it states: "ONRR will post changes to any of the rates in this paragraph (d) on its website."[41] Read literally, that permits ONRR to change the index-based transportation adjustment percentages and caps — which ONRR has set in the regulatory text — by website posting. AXPC does not object to ONRR posting the monthly figures that the regulation's method produces; AXPC asks that § 1206.142(d)(4) be revised so that it authorizes publication of values, not amendment of the rates or the method by which they are calculated. ONRR's proposal is internally inconsistent as written: it fixes the percentages and caps in the regulatory text, which implies

[37] 91 Fed. Reg. 39,757.

[38] 76 Fed. Reg. 30878, 30881 (May 27, 2011).

[39] 91 Fed. Reg. 39,781.

[40] ONRR, **Valuation & Pricing**, https://www.onrr.gov/valuation/federal-gas-index-option.htm (listing Indian Gas Index Zone, Indian Oil Major Portion, Indian Gas Major Portion, Federal Gas Index Option, NYMEX Oil Prices, and Crude Oil Market Centers)

[41] 91 Fed. Reg. 39,781.

amendment only by rulemaking, and then provides for changing them by posting. Lessees make locked two-year, lease-by-lease elections in reliance on these figures, and a mid-election-period change to the method — or a change applied retroactively on audit — would strand those elections.

Proposed §§ 1206.141(c)(1)(iv) and 1206.142(d)(1)(iv) cap the index-based transportation adjustment at 13 percent, but not more than 45 cents per MMBtu, for production outside the OCS Gulf of America, and at 20 percent, but not more than 74 cents per MMBtu, for OCS Gulf of America production. AXPC supports updating these figures from the values ONRR calculated in 2016. AXPC asks ONRR to address a structural feature of the caps that the update does not cure: they are stated in nominal dollars and carry no escalation mechanism.

ONRR's stated reason for the update is the reason to index. ONRR explains that the initial adjustments were calculated in the 2016 Valuation Rule and that it proposes to adjust them to more closely align with current market conditions.[42] A cap fixed in nominal dollars in 2026 will diverge from current market conditions for precisely the same reason the 2016 figures did, and on the same schedule. Long-term transportation and gathering agreements commonly carry annual CPI-based or fixed-percentage escalators, and FERC-regulated pipeline rates are themselves adjusted by index. Actual transportation cost will rise; 45 cents will not. The divergence compounds in every year the final rule remains in place, and curing it would require another rulemaking to change a dollar figure.

The consequence falls on the provision ONRR is trying to make attractive. An election is prospective, lease by lease, and locked for two years, so a lessee commits to a nominal cap across a period in which its own transportation cost is contractually scheduled to increase. Once the cap binds — that is, once 13 percent of index value exceeds 45 cents — the adjustment stops operating as a measure of transportation cost and becomes a fixed reduction unrelated to cost. That suppresses adoption, which in turn reduces the administrative savings ONRR projects at 91 Fed. Reg. 39,756, and it does so progressively: the option becomes less attractive each year even though nothing in the rule has changed.

AXPC accordingly requests that ONRR index the caps — both the 45-cent onshore figure and the 74-cent OCS figure — to a published measure of pipeline transportation cost, such as the Bureau of Labor Statistics Producer Price Index for pipeline transportation of natural gas or the index FERC applies to regulated pipeline rate adjustments, with the escalation formula and the base year stated in the regulatory text and the resulting annual figure posted on ONRR's website. This request sits on the same side of the line AXPC draws in Section III.D. The formula would be fixed in the rule and amendable only through notice and comment; what ONRR posted each year would be the value the formula produces, not a new methodology. Indexing is also symmetrical: if transportation costs fall, the cap falls with them.

In the alternative, if ONRR prefers not to adopt a formula, ONRR should commit in the final rule to recalibrating both the caps and the 13 percent and 20 percent factors using current market data at a stated interval — AXPC suggests not less often than every three years — with any recalibration applied prospectively only and with an affected lessee permitted to revisit its election notwithstanding the two-year lock. AXPC's preference is the formula. A commitment to recalibrate depends on ONRR initiating a future rulemaking, and the ten-year life of the 2016 figures is the evidence of how that commitment fares in practice.

Additionally, the final rule should allow for adjustments. The current index-based option provides an adjustment for areas outside the Gulf of 10 percent, "but not less than 10 cents per MMBtu nor more than

[42] 91 Fed. Reg. at 39,757.

30 cents per MMBtu."[43] The 2020 proposed rule likewise carried a 10-cent minimum.[44] The present proposal at §§ 1206.141(c)(1)(iv) and 1206.142(d)(1)(iv) carries a percentage and a cap and **no minimum at all**.[45] We do not believe the omission was deliberate, and suggest AXPC ask ONRR to confirm whether it was intended and to state the basis for it.

The omission matters most in the conditions the adjustment exists to address. A percentage-based deduction shrinks as price falls, while gathering, compression, and treating fees under fixed-fee midstream contracts do not move at all. In a $1.00 per MMBtu month, a 13 percent adjustment yields 13 cents against fixed fees identical to those incurred in a $4.00 month. The adjustment is therefore smallest precisely when transportation and gathering are the largest share of realized value — the inverse of what a cost-recovery adjustment should do, and a direct disincentive to electing the option in the basins where basis is widest. AXPC recommends an adjustment be allowed and that the adjustment be expressed as the greater of a stated percentage or a stated number of cents per MMBtu, subject to a stated cap. Illustratively, for areas other than the OCS Gulf of America:

> "You may adjust the number calculated under paragraphs (c)(1)(i) and (ii) of this section by reducing the value by the greater of 13 percent or [X] cents per MMBtu, but not more than 45 cents per MMBtu, as adjusted under paragraph (c)(1)(vii)."

Lessees and Operators can provide unbundled gathering and transportation cost data from their operations to support a floor at a specific level, subject to appropriate treatment of confidential business information. The 45-cent cap and the 13 percent rate converge at an index price of approximately $3.46 per MMBtu. Above that price the effective adjustment rate declines continuously: at $5.00 it is 9 percent, and at $6.00 it is 7.5 percent. Because gathering and transportation rates escalate on their own terms — most midstream agreements carry annual CPI or similar contractual escalators — a nominal cap fixed in 2026 will understate cost recovery by a widening margin every year it remains in place and will do so fastest in the price environments this rulemaking is intended to encourage.

This point also answers a question ONRR asked directly. At 91 Fed. Reg. 39,757, ONRR seeks alternatives that would avoid "potentially iterative, controversial rulemakings" to update the adjustment. A self-executing escalator is that alternative, and offering one helps ensure that *methodology* are made in rulemaking, providing certainty to everyone. This could be accomplished by pursuing these alternatives, listed in the order of preference:

1. Annual escalation of the cap by the change in the Gross Domestic Product Price Index or the CPI-U, with ONRR posting the resulting figure each year (publication of a value under a fixed method — consistent with the line AXPC draws in Section III.D);
2. Periodic recalculation of the cap by ONRR using the same data source and method it used to derive the original adjustment, with the recalculated figure posted — which is recalibration under a fixed method rather than a change to the method; or
3. A commitment in the regulatory text to review and, if warranted, revise the adjustment by rulemaking at stated intervals of not more than five years.

Under any of these, the mechanism should sit in the regulatory text and adjustments should apply prospectively only, consistent with AXPC's recommendations in this Section of our comments.

E. NGL price publications and posted location differentials belong in the regulatory text

[43] § 1206.172(d)(1)(iii).
[44] 81 Fed. Reg. 43,346.
[45] 91 Fed. Reg. 39,780-39,781.

AXPC requests that ONRR address three aspects of the NGL index-based valuation mechanics in the final rule.

First, AXPC supports monthly posting of the location-based deductions and asks that the method for calculating them be placed in the regulatory text. Proposed § 1206.142(d)(2)(ii) requires a lessee to reduce the commercial price bulletin value "by the amounts that ONRR posts at www.onrr.gov for the geographic location of your lease," states that "[t]he method that ONRR will use to calculate the amounts is set forth in the preamble to this regulation," provides that "[t]his method is binding on you and ONRR," and adds that "ONRR will update the amounts periodically using this method."[46] AXPC has no objection to the posting mechanism or to periodic updates calculated under a fixed method — that is the same convention discussed in Section III.D, and it is workable. AXPC's concern is the location of the method. A method that lives only in a preamble is not enforceable as a regulation, notwithstanding the text's statement that it binds both parties, and a lessee cannot hold ONRR to it. AXPC requests that the method be set out in § 1206.142(d)(2), and that any change to the method — as distinct from a periodic update of the amounts calculated under it — be made through notice-and-comment rulemaking and applied prospectively only.

Second, ONRR should specify the standards and process for approving — and for withdrawing approval of — a commercial price publication, and should update the list of approved publications and index pricing points. ONRR's current list was established by Federal Register notice effective August 1, 2011.[47] Fifteen years of pipeline construction, market center development, and price reporting agency changes have occurred since. If lessees are to make locked two-year elections keyed to approved publications and pricing points, the list needs to reflect current market geography — and AXPC asks that ONRR refresh it as part of this rulemaking rather than by later notice. Withdrawal of a publication's approval should be prospective only, and an affected lessee should be permitted to change its election notwithstanding the two-year lock.

Third, AXPC asks ONRR to confirm that the requirement to use an ONRR-approved publication will not operate as a cost barrier. Responding to ONRR's question at 91 Fed. Reg. 39,768: subscription costs for commercial price bulletins are not trivial for smaller independents. ONRR should approve a range of publications broad enough that members can rely on subscriptions they already maintain.

F. The zero floor, and the treatment of negative index months

AXPC supports the proposal that reported value under the index-based option may not be less than zero and asks ONRR to acknowledge the characterization that follows from it. The floor addresses periods in which index-derived value net of the transportation adjustment is negative — a real occurrence in constrained basins.[48] The floor is a departure from measured value in the lessor's favor, and ONRR should explain in the final rule why no corresponding limitation is warranted. More importantly, the floor confirms that the index option is an administrative convention rather than a period-by-period measure of actual value.

AXPC asks ONRR to resolve a question the floor raises but does not answer what becomes of the negative amount. ONRR explains that the provision addresses circumstances in which the value of gas received under a lessee's contract is negative and clarifies that a lessee may not report a negative value in those cases but may report zero.[49] In such a month the lessee has paid to move its gas to market. The floor does not reduce that cost; it assigns the whole of it to the lessee, while the Federal lessor takes a zero-royalty month and no further exposure. In the next month, when the same gas at the same index point yields a positive

[46] *Id.*
[47] 76 Fed. Reg. 37,828 (June 28, 2011).
[48] 91 Fed. Reg. 39,757.
[49] 91 Fed. Reg. at 39,757

value, the lessor takes the full royalty. Across any period containing both, the lessor realizes more than the value of its share of the production stream. AXPC asks ONRR to permit netting in one of two ways, either of which corrects that asymmetry without disturbing the floor itself.

First, and as its preferred approach, AXPC asks ONRR to permit a lessee valuing processed gas under the index-based option to net a negative residue gas value against the positive value of the natural gas liquids recovered from the same processing of the same lease production in the same production month. Section 1206.142 values processed gas as the sum of its residue gas and gas plant product components. Those components are not separate production. They are one wellstream, separated under one processing arrangement, and the lessee contracted for the arrangement as a package. Reporting the residue component at zero while reporting the NGL component at full value does not measure the value of the production; it measures the favorable half of it. The netting AXPC requests is bounded on every side — one lease, one production month, one processed stream — and is arithmetic performed on figures the lessee already calculates under § 1206.142(d). The floor would continue to apply to the combined result, so no lessee would report a value below zero.

Second, in the alternative or in addition, AXPC asks ONRR to permit a lessee to carry a negative index month forward and apply it against positive index value for the same lease in later production months within the same two-year election period. The election period supplies a natural and self-limiting boundary. A lessee electing the index option commits for two years without knowing what the index or its own realizations will do, and the carryforward would be available only inside that committed window, only for the lease to which the election applies, and only against value that same election produces. It could not cross election periods, could not be sold, transferred, or refunded, and could never generate a payment from the Federal Government to a lessee, because the floor would continue to apply to each month's reported value.

AXPC recognizes that a royalty obligation is computed monthly and that ONRR may view netting across production months as a departure from that structure. Two points bear on that concern. The first is that ONRR has already adopted a departure from monthly measured value in this very provision, and in the lessor's favor: the floor sets the measured result aside whenever it is negative. The question the final rule presents is therefore not whether the index option departs from period-by-period measurement — it does, as Section III.F above notes — but whether the departures are permitted to run in only one direction. The second is that the intra-month, intra-stream netting AXPC requests first involves no cross-period accounting whatever and is verifiable on the face of a single Form ONRR-2014.

If ONRR declines both mechanisms, AXPC asks that the final rule say so expressly and give the basis, so that lessees in basins where negative bidweek pricing recurs can price that exposure into a two-year election rather than discover it in the first constrained month after the election is locked.

G. An index election should substitute completely for gross-proceeds tracking

This is AXPC's most important request regarding the index-based option, and it defines whether the option is worth electing at all.

The bright line AXPC asks for is this: where a lessee has a valid election in effect, the index-derived value is the royalty value, and the lessee is not required to track, maintain, reconcile, or report the gross proceeds, allowances, or unbundling detail for that production. The Federal Government takes the index as the measure of value — accepting the months in which the index exceeds what the lessee realized along with the months in which it falls below.[50] AXPC is asking ONRR to accept both sides of that trade, and AXPC's members accept both sides of it as well.

The symmetry is real, and the election structure guarantees it. Elections are prospective only, made lease by lease, and locked for two years in either direction.[51] A lessee cannot look back at a production month and choose the more favorable method; it commits before it knows what the index or its own realizations will be. In months when the published midpoint exceeds a member's realized price — which happens routinely, and by construction happens for roughly half of all sales at any index point — that member pays royalty on the higher number without recourse. Over a two-year commitment across a lease position, the differences run in both directions. What AXPC seeks is not a lower royalty. It is one calculation instead of two.

A dual-track regime eliminates the benefit ONRR is trying to confer. ONRR's stated purpose in extending the option is to allow lessees to use an average market price "instead of using their gross proceeds and unbundling allowances to enable more streamlined reporting," and ONRR estimates $2 million in reduced administrative costs on that basis.[52] That estimate necessarily assumes lessees stop doing something. If an electing lessee must nonetheless maintain gross-proceeds documentation, allowance substantiation, and unbundling detail — against the possibility that ONRR will later compare them to the index — then the lessee performs both calculations, bears the cost of both, and receives the certainty of neither. The projected savings do not materialize, and the adoption rate ONRR forecasts will not either. A lessee evaluating this option will ask a single question: can I turn off the gross-proceeds tracking for this lease? If the answer is no, the option is a reporting format, not a simplification.

The proposed text already points in AXPC's direction, and ONRR should finish the job. Proposed § 1206.141(c)(2) provides that "[y]ou may not take any other deductions from the value calculated under this paragraph (c)" — the index value less the specified adjustment is the whole computation, with no allowances to substantiate and nothing to unbundle.[53] And proposed § 1206.141(g) frames the records provision as ONRR reserving "the right to collect actual transaction data in the future to assess the validity of the index-based valuation option" — that is, to evaluate the option, not to revalue individual months.[54] AXPC supports that framing and asks ONRR to make it explicit, because a reader could also take "assess the validity" to mean assessing whether a particular lessee's index-reported value was valid.[55] Those are very different provisions, and the difference determines whether members can stop maintaining a parallel gross-proceeds record.

The same reasoning applies to ONRR's verification interest. ONRR explains that it wants records "to ensure that the index-based valuation option aligns with the value under arm's-length transactions for royalty purposes over time."[56] AXPC understands that interest and does not dispute it. But it is a question about whether the *option* is properly calibrated — a program-level question ONRR can answer from the substantial arm's-length data it already receives from the many lessees who do not elect the option, from the price reporting agencies whose indexes are themselves built from arm's-length transaction data, and through periodic review in a future rulemaking. It is not a reason to require every electing lessee to maintain a parallel gross-proceeds record for every lease and every month.

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[50] 81 Fed. Reg. 43,338.
[51] 30 C.F.R. § 1206.142(d); 30 C.F.R. § 1206.141(c).
[52] 91 Fed. Reg. 39,756.
[53] 91 Fed. Reg. 39,780.
[54] 91 Fed. Reg. 39,781.
[55] *Id.*
[56] 91 Fed. Reg. 39,757.

ONRR has already accepted this reasoning on the record. Responding to comments in the 2020 Rule, ONRR stated that "[r]equiring a lessee each and every month to value gas by both gross proceeds and the index-based valuation method forces a lessee to use two valuation methods and increases the burden of either method individually."[57] AXPC asks ONRR to give that conclusion effect in the text of this rule.

AXPC accordingly requests three things. First, that the final rule state that a lessee with a valid election is not required to maintain or produce gross proceeds, allowance, or unbundling records for the purpose of valuing production covered by that election. Second, and at minimum, that records obtained from an electing lessee may not be used to redetermine the royalty value of any production month covered by a valid election, whether under § 1206.143 or otherwise. Third, that if ONRR concludes it must collect transaction data to monitor the option, it does so through a defined periodic program-level collection — a sample, a stated interval, a stated purpose — rather than through an open-ended authority exercisable lease by lease on audit. In doing so, ONRR should either limit this to data available to the lessee or seek to obtain some information from Midstream companies, as these are typically the companies that hold data and information that they consider confidential and do not typically share with the lessee on a regular basis.

H. Election mechanics

AXPC supports the election structure ONRR describes in the preamble and asks that the regulatory text state it. The preamble explains that elections are made lease by lease, apply only to production after the effective date, may not be changed more often than once every two years in either direction, and may not be made retroactively.[58] The proposed text carries only part of that. Sections 1206.141(c) and 1206.142(d) state the two-year restriction, but do not state that elections are lease-by-lease, that they operate prospectively, or that they may not be made retroactively.[59] By contrast, ONRR did include an express no-retroactive-election clause for oil exchange agreements at proposed § 1206.101(c)(1). AXPC requests that the corresponding language be added to §§ 1206.141(c) and 1206.142(d). This matters directly to AXPC's request in Section III.G: the prospective, locked, lease-by-lease structure is what makes the symmetry AXPC accepts a fair bargain for the Federal lessor, and it should appear in the rule rather than only in the preamble.

AXPC asks ONRR to clarify the mandatory application of the index option where there is no written contract. Proposed §§ 1206.141(e)(1) and 1206.142(f)(1) provide that where a lessee has no written sales contract and an index pricing point or commercial price bulletin exists, the lessee "must" value under the index paragraph.[60] That is a mandatory application of a provision the rule otherwise describes as elective. AXPC does not object in principle, but asks ONRR to confirm (i) that the two-year election restrictions do not bar a lessee in that situation from moving to gross proceeds once it has a written contract, and (ii) that a lessee valuing under a mandatory application receives the same treatment AXPC requests in Section III.G — that is, the index value is the royalty value and no parallel gross-proceeds record is required.

Additionally, AXPC notes that reopening the election is a cure that can reasonably be applied in certain situations due to new facts or a disruption in the status quo. However, that disruption itself may be avoidable: ONRR can simply provide that the inputs applicable to an election are fixed as of the first production month of the election period and remain applicable for its duration. That is administratively simpler for both parties than tracking which lessees became eligible to re-elect and when, and it preserves the reliance that makes a two-year commitment reasonable in the first place. Suggested language:

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[57] 86 Fed. Reg. 4,612.
[58] 91 Fed. Reg. 39,756.
[59] 91 Fed. Reg. 39,757.
[60] 91 Fed. Reg. 39,780 – 39,781.

> "The transportation adjustment percentage and cap, any posted location differential or processing factor, the ONRR-approved publication you selected, and the index pricing point applicable to your production are determined as of the first production month to which your election applies and remain applicable for the duration of the election period, notwithstanding any subsequent revision by ONRR."

AXPC prefers using a freeze/lock-in mechanism; however, there should also be the ability to use a reopener for specific situations as an express alternative, with one addition to the reopener: a lessee that changes its election under the reopener should not be barred from returning to the index option at the next regular window, and the reopener change should not restart the two-year clock to the lessee's disadvantage.

Four further clarifications. First, the proposal does not say how an election is made or evidenced — whether by the reporting on Form ONRR–2014 itself or by separate written notice — or when it must be made relative to the first production month to which it applies. Because an election is locked for two years and cannot be made retroactively, the moment of election needs a definite and documented trigger. Without one, the question of whether an election was made, and when, becomes an audit issue years later, on a record the lessee had no notice to build. Second, ONRR should confirm that a lessee acquiring a lease mid-election-period takes the lease subject to the existing election and may make its own election at the next available window and should state how an election travels on assignment. Third, ONRR should provide an initial election window opening on the compliance date, as discussed in Section XII below. Fourth, ONRR should confirm that a change in the ONRR-approved publication, an exclusion of an index pricing point under § 1206.141(c)(1)(vi), or a revision to a posted location differential or transportation adjustment permits an affected lessee to revisit its election notwithstanding the two-year lock. A lock that binds the lessee to inputs ONRR can change is not symmetrical.

Finally, Sections 1206.141(c) and 1206.142(d) state the two-year restriction but not the level at which an election operates within a lease.[61] We read the proposal as applying an election uniformly to all gas-associated product codes on the lease — unprocessed gas, residue gas, NGLs, and fuel, loss, and unaccounted-for volumes — and believe that is the correct reading. Applying different valuation methods to individual product codes drawn from the same wellstream and the same processing arrangement would produce inconsistent results from a single set of facts and would not reduce administrative burden for anyone.

The point of the request is to have that reading stated rather than left to inference. It determines how a lessee configures its reporting systems before the compliance date, and a lessee that reads it the other way will have made a two-year election it cannot unwind. Suggested request: that the final rule state expressly that an election under § 1206.141(c) or § 1206.142(d) applies to all gas-associated product codes reported for the lease.

IV. The 10 Percent "Unreasonably Low" Trigger (§ 1206.143(c)(2))

Proposed text. Section 1206.143(c): "ONRR may direct you to use a different measure of royalty value if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because: . . . (2) You have breached your duty to market the gas, residue gas, or gas plant products for the mutual benefit of yourself and the lessor by selling your gas, residue gas, or gas plant products at a value that is unreasonably low. ONRR may consider a sales price unreasonably low if it is 10 percent less than the lowest reasonable measures of market price, including, but not limited to, index prices and prices reported to ONRR for like-quality gas, residue gas, or gas plant products."

[61] *Id.*

Section 1206.20 defines "like quality" as "similar chemical and physical characteristics."

AXPC supports ONRR's use of a quantified threshold and asks that ONRR define the benchmark it is measured against.[62] As proposed, ONRR may treat a gas price as unreasonably low — and as evidencing a breach of the duty to market — where it falls 10 percent below "the lowest reasonable measures of market price," including index prices and prices reported to ONRR for like-quality gas.[63]

A defined threshold is more useful to AXPC's members than no threshold at all. ONRR has the authority to inquire into whether a lessee has marketed for the mutual benefit of lessee and lessor, and AXPC does not ask ONRR to abandon it.[64] A rule that tells a lessee, in advance and in numbers, what circumstances will prompt that inquiry is exactly the kind of provision these comments advocate — provided the lessee can actually compute it. As drafted, it cannot: the benchmark is undefined, because "the lowest reasonable measures of market price" leaves the comparator to be selected later.[65] A threshold measured against an unspecified reference point gives a lessee a number without a denominator, and gives ONRR a standard whose application will be contested every time it is used.

The substantive difficulty is that a price below index is a routine and lawful outcome of ordinary onshore marketing, not an indicator of a marketing failure. Percentage-of-proceeds and percentage-of-index arrangements, firm-sales contracts entered for takeaway security, netback arrangements, basis differentials in constrained basins, seasonal capacity limitations, and periods of negative basis all produce realized prices below a published index without any failure to market. The four subsections below set out the market facts that make this so, each documented in the public record and none involving any conduct by a lessee. Together they explain why the comparator, and not the percentage, is where the drafting work needs to be done.

A. Index-based pricing is the ordinary structure of gas sales, and ONRR has said so

ONRR has already found that gas sales prices are commonly set by reference to published index prices. In explaining its change from the highest bidweek price to the published bidweek index price, ONRR states that gas sales prices are often based on the published average index price, and that adopting that price as the ONRR standard would be most in line with industry pricing.[66] That finding is correct, and AXPC endorses it.

It also has a consequence ONRR should follow through. Published bidweek indexes represent the price of gas flowing every day of the forthcoming production month, and forward physical contracts settle against them.[67] Those indexes are constructed from arm's-length transaction data — the price reporting agencies calculate them from fixed-price and physical basis transactions between non-affiliated counterparties, reported under FERC's price-reporting policy statement, with outliers screened and the result expressed as a volume-weighted midpoint.[68] A published index is thus not an independent measure of value against which a lessee's realized price can be tested; it is an average of realized prices, including prices realized by lessees selling under exactly the arrangements § 1206.143(c)(2) would treat as suspect. However, roughly half of all arm's-length sales at any index point are, by construction, below the midpoint.

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[62] 91 Fed. Reg. 39,782.
[63] *Id.*
[64] 30 C.F.R. § 1206.146(a).
[65] 91 Fed. Reg. 39,782.
[66] 91 Fed. Reg. 39,757.
[67] 87 Fed. Reg. 25,237.
[68] *Id.*

B. Negative and deeply discounted regional prices are structural, documented, and outside any producer's control

The public record establishes that below-index and negative realizations at Waha are a function of pipeline takeaway capacity, not of marketing effort. The Energy Information Administration has explained the mechanism directly: when regional growth in production outpaces pipeline takeaway capacity additions, capacity constraints exert downward pressure on spot prices at the Waha Hub.[69] EIA further documented that Waha prices were below zero for 46 percent of trading days in 2024, and that the Waha-to-Henry Hub basis widens under constrained pipeline conditions and narrows as constraints ease — an average of $2.07 below Henry Hub in 2024 against 42 cents below in the second half of 2021.[70] AXPC cites the Waha data because it is the best-documented example, not because the phenomenon is confined to one region: wherever production growth outpaces takeaway capacity, the same mechanism produces the same result.

The condition has intensified since. Daily Waha prices first averaged below zero in 2019, occurring 17 times that year, six times in 2020, once in 2023, 49 times in 2024, and 39 times in 2025.[71] In 2026 the frequency reached record levels, with extended consecutive-day streaks of negative pricing and monthly averages below zero, and a single-day settlement in April 2026 near negative $10 per MMBtu.[72]

Two features of this record bear directly on the duty to market. First, the constraint is infrastructure, not conduct: no producer can market its way out of a basin-wide takeaway deficit, and the remedy — incremental pipeline capacity — is being supplied by third parties on their own schedule. Second, the market's documented response to sustained negative pricing has been that some producers shut in wells. That is the practical alternative ONRR's proposed trigger would be pushing lessees toward. A duty-to-market standard under which the only compliant response to a negative index is to cease producing would reduce Federal royalty to zero on the affected volumes, defeat the production-incentive rationale on which this entire rulemaking rests, and conflict with the lessee's obligations under its lease and applicable waste-prevention requirements. AXPC does not believe ONRR intends that result, and asks that the final rule foreclose it.

C. Wellhead pricing is lawful and sometimes used, and a wellhead price necessarily sits below a downstream index price

Lessees may and sometimes do sell Federal gas at or near the wellhead. Title passes to the purchaser at the wellhead or at a nearby delivery point, and the gas then physically moves through the gathering, treating, and processing system connected to the well. The pricing point is a contractual choice, and it carries a corresponding allocation of cost: where the sale occurs at the wellhead, the purchaser bears the downstream gathering, compression, treating, transportation, and processing costs, and the price it pays is reduced to reflect them. A lessee selling at the wellhead correspondingly takes no transportation or processing allowance for those services, because it did not incur them.

A wellhead price is therefore expected to be materially below a published index price at a downstream hub, by arithmetic rather than by any failure to market. The difference between the two equals the downstream costs the purchaser assumes plus its margin for assuming them. Because essentially all Federal onshore gas now reaches market by pipeline, and must be gathered, treated, processed, and moved to a downstream delivery point before it gets there, that spread is substantial — and it widens precisely when regional basis is widest. A rule that measures a wellhead-priced sale against an index at a downstream delivery point is

[69] *Natural gas pipeline capacity from the Permian Basin is set to increase*, EIA (Sept. 10, 2024).
[70] Reuters, *U.S. Gas Drops on Storage Build, Permian Bottlenecks Keep Waha Negative* (Apr. 9, 2026).
[71] *Id.*
[72] *Id.*

not testing whether the lessee marketed prudently; it is measuring the cost of the services the lessee did not perform and did not deduct.

This is the clearest illustration of why the comparator in § 1206.143(c)(2) has to be defined. The published index prices ONRR would use as a benchmark are quoted at downstream market hubs.[73] A lessee that sells at the wellhead, reports gross proceeds, and claims no allowance will diverge from those prices by more than ten percent as a matter of course — and in constrained periods, by a multiple of that. The divergence reflects the pricing point, not the diligence of the marketing effort, and the lessee's reporting is complete and correct.

The proposed text confirms the gap. Section 1206.143(c)(2) benchmarks against prices "for like-quality gas," and ONRR proposes to define "like quality" in § 1206.20 as "similar chemical and physical characteristics."[74] That definition addresses *what the gas is*. It says nothing about *where it is sold*. So the only qualifier ONRR places on the comparison is one that a wellhead sale and a downstream hub index will typically satisfy — the gas is chemically and physically similar — while the variable that actually drives the price difference is left unaddressed. AXPC asks ONRR to add delivery point and pricing point to the comparability requirement, either by amending § 1206.143(c)(2) or by expanding the definition. That single change would resolve most of what concerns AXPC about this provision.

The physical connection shapes the terms available, even though it does not eliminate the ability to sell. Gathering connections are ordinarily secured by acreage dedications — commitments of production from a defined area to one midstream company, frequently structured to run with the land and paired with minimum volume commitments — which midstream companies require to justify the capital they invest in building the connection. A dedication does not deprive a lessee of the ability to sell its gas; it does determine which system the gas moves through and, as a practical matter, shapes the netback available at the wellhead. That arrangement is arm's-length, is the consideration the producer gives to obtain a connection at all, and commonly predates the production being valued by years.

AXPC accordingly requests that the final rule provide (i) that the comparison under § 1206.143(c)(2) be made to prices for gas of like quality at the same pricing point and delivery point as the lessee's sale, and (ii) that a lessee does not breach the duty to market by selling at the wellhead or another upstream pricing point under an arm's-length contract, where the price reflects the purchaser's assumption of downstream gathering, treating, transportation, and processing costs. Wellhead pricing is a recognized commercial structure that allocates cost and risk between the parties, and Federal royalty is correctly measured on the gross proceeds it produces, without an allowance the lessee does not claim. However, when a lessee elects to sell at the wellhead, the use of index pricing may not be proper or deemed applicable. This would allow lessees an election between selling at the wellhead or the reliability of using an index price.

D. The proposal is internally inconsistent on negative values

ONRR cannot simultaneously provide for negative index-derived values and treat below-index realizations as evidence of breach of the duty to market. ONRR proposes the zero floor at §§ 1206.141 and 1206.142 precisely because it recognizes that the value of gas under a lessee's contract may be negative, and it seeks to address how a lessee reports in that circumstance.[75] That provision is an acknowledgment on the face of this rulemaking that negative realized values occur in the ordinary course.

[73] See 30 C.F.R. §§ 1206.141(c), 1206.142(d).
[74] 91 Fed. Reg. 39,782.
[75] 91 Fed. Reg. 39,757.

There is also a drafting problem. Section 1206.143(c)(2) would apply where a price falls 10 percent below the lowest reasonable measures of market price.[76] Where the applicable index is itself negative — as Waha has been for extended periods in each of the last three years[77] — a price 10 percent below a negative index is a *higher* price, and the provision produces either no result or the opposite of the intended one. ONRR should address how the trigger is intended to operate in negative-price environments, which are no longer exceptional in regions where a substantial share of Federal onshore gas is produced.

AXPC's recommendations for § 1206.143(c)(2). First, define the comparator in the regulatory text: the comparison should be to gas of like quality at the same pricing point and delivery point as the lessee's sale, during the same production month, with ONRR bearing the burden of establishing comparability. A price for gas sold at the wellhead is not comparable to a published index at a downstream market hub, and the two should not be measured against each other. Second, frame the threshold as what it is — a screen that prompts inquiry — rather than as evidence of a breach, and provide that the lessee has an opportunity to explain the divergence before any determination issues. Third, identify in the text the arrangements that do not themselves indicate a failure to market: wellhead and other upstream pricing points under arms-length contracts, percentage-of-index and percentage-of-proceeds contracts, firm-sales arrangements, sales under acreage dedications, and periods of negative or constrained basis. Fourth, state how the threshold operates when the applicable index is at or below zero. If ONRR concludes it cannot specify a comparator that works across pricing points, basins, and market conditions, AXPC's alternative recommendation is that the provision be withdrawn and the duty to market addressed, as it is today, on the facts of the individual case — but AXPC's preference is a threshold members can compute in advance.

V. Onshore Gathering (§ 1206.20)

> **Proposed text.** Section 1206.20: "*Gathering* means: 1. For production from non-OCS leases, the movement of production from the well to the BLM-approved FMP for royalty measurement." Proposed §§ 1206.110(a)(1) and 1206.152(a)(2) condition a transportation allowance on the fact that "[t]he movement to the sales point is not gathering." Section 1206.20 defines "transportation allowance" to exclude gathering costs.

AXPC supports codifying that onshore gathering ends at the BLM-approved measurement point, and asks ONRR to confirm on the record that this codification is not a change in interpretation. ONRR states that the change "does not impact the current interpretation of gathering for onshore leases and maintains the same effective definition for gathering as onshore Indian leases, ensuring conformity between BLM and [BIA] leases."[78] That is the correct outcome and AXPC supports it. Codification of settled practice is precisely the kind of amendment that reduces audit exposure at no cost to either party, because it converts an interpretation that must be established case by case into a rule that can be applied from the face of the regulation.

AXPC requests that ONRR make two points explicit in the final rule. First, that because the onshore definition codifies existing interpretation, it may not be used to reopen or recharacterize prior-period reporting that was consistent with that interpretation. Second, that where BLM has approved more than one measurement point for a property, or where the approved point changes, the applicable point for royalty purposes is the FMP approved and in effect for the production month at issue. Absent that clarification, a subsequent BLM measurement approval could be argued to alter the gathering/transportation line for months already reported.

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[76] 91 Fed. Reg 39,782.
[77] *Supra* note 70.
[78] 91 Fed. Reg. 39,758.

AXPC also asks ONRR to address what governs when the approved measurement point is later determined to have been something other than the point the lessee used.[79] This is the practical gap in a definition that keys deductibility to BLM approval, and it arises regularly onshore where Federal production is commingled with fee, State, and Indian production. In *Fidelity Exploration & Production Co.*, 200 IBLA 1 (2025), the lessee measured a commingled stream at a master sales meter; BLM later determined that commingling and off-lease measurement had not been approved, so the correct measurement point was the individual well meter on the lease. The Board's earlier decisions in *XTO Energy, Inc.*, 191 IBLA 110 (2017), and *Priority Energy, LLC*, 186 IBLA 363 (2015), reflect the same pattern, with ONRR determining on its own audit that measurement had occurred downstream of a commingling point without the required BLM approval.

Under the proposed definition, that determination would move the end of gathering upstream retroactively.[80] Movement the lessee treated as deductible transportation would become non-deductible gathering for every affected production month — a substantial disallowance arising not from any change in the lessee's operations but from a later determination about the status of an approval. AXPC does not suggest that ONRR intends this result; it is a consequence of tying a deduction to an approval whose status can be revisited. AXPC requests that the final rule state (i) what governs the gathering/transportation line where no BLM-approved measurement point is in place, (ii) that the applicable point is the one approved and in effect for the production month, and (iii) that a subsequent determination regarding the validity or scope of a measurement approval applies prospectively for purposes of the transportation allowance. Commingling of Federal with fee and State production is routine onshore, and members need to know the deductibility consequence at the time they build and report the system, not after.

VI. Transportation Allowances (§§ 1206.110–112 and 1206.152–154)

Proposed text. Section 1206.153(b)(12) (gas; § 1206.111(b)(12) is parallel for oil): "*Flow assurance costs.* You may deduct costs associated with ensuring the flow of gas through a pipeline. This includes, but is not limited to, flow assurance chemicals, pipeline pigging equipment, and heated pipelines. This does not include the cost of operations required for producing gas, such as, but not limited to, chemicals injected into the wellbore to bring production to the surface."

Section 1206.153(b)(14): "*Costs to repair, replace, or restore operability of a plugged or damaged pipeline.* You may deduct your reasonable actual costs . . . . If you receive insurance compensation, you must reduce your allowance by the compensation received."

Section 1206.153(b)(9): supplemental compression, dehydration, and treatment costs are allowed "only if such services are required for transportation and exceed the services necessary to place production into marketable condition required under § 1206.146."

Section 1206.153(c)(8): non-allowable costs include "costs to place your gas, residue gas, or gas plant products into marketable condition disallowed under § 1206.146 and costs of boosting residue gas disallowed under § 1202.151(b) of this chapter."

Section 1206.152(g)(2): ONRR may direct modification where consideration paid under an arm's-length transportation contract "does not reflect the reasonable cost of the transportation because you breached your duty to market."

A. Flow assurance and pipeline remediation costs

[79] *Id.*
[80] *Id.*

AXPC strongly supports the addition of flow assurance costs at proposed §§ 1206.111(b)(12) and 1206.153(b)(12) and pipeline repair, replacement, and restoration costs at §§ 1206.111(b)(14) and 1206.153(b)(14), and specifically supports ONRR's decision to make these categories available to onshore lessees. ONRR states that although these categories arise most often in subsea movement, they "may also apply to certain onshore lessees," and that ONRR therefore did not restrict them by lease type.[81] That judgment is correct and important to AXPC's members. Onshore transportation systems use paraffin and hydrate inhibitors, pigging programs with associated launchers and receivers, and heated flowlines on transportation segments, and incur repair and restoration costs on those segments. These costs have become more widespread as production that was once vented or flared is instead captured and moved by pipeline, consistent with BLM's waste-prevention objectives. AXPC asks that ONRR retain the lease-neutral drafting in the final rule and confirm in the preamble that these categories are fully available to onshore lessees.

AXPC supports the distinction ONRR draws between pipeline flow assurance chemicals and chemicals injected within the wellbore, which is administrable and consistent with the underlying principle that production costs are not transportation costs.[82] AXPC asks ONRR to confirm that a chemical program serving a transportation segment does not become non-deductible merely because the same chemical is also used in production operations elsewhere on the property; the test should be the point of injection and the function served.

AXPC also asks ONRR to confirm the treatment of insurance recoveries. The proposed rule requires a lessee receiving insurance compensation to reduce its allowance accordingly. AXPC requests that ONRR specify that the reduction is taken in the period the compensation is received rather than by amending the original reporting period, so that a routine insurance recovery does not generate a retroactive reporting correction and associated interest.

B. "Directly allocable" and "reasonable method"

AXPC asks ONRR to move the allocation guidance it has already developed from the preamble into the regulatory text as safe harbors. The proposed rule conditions deductibility on costs being "directly allocable" to allowed transportation equipment and requires the lessee to use "a reasonable method" of allocation, but defines neither term.[83] Allocation is unavoidable for onshore members: a single compressor, power feed, chemical program, or pipeline segment routinely serves Federal, State, fee, and Indian production, and often serves both production and transportation functions.

ONRR has already decided what it considers a reasonable allocation — the judgment simply sits in the preamble, where it does not bind.[84] A lessee that follows preamble guidance retains full exposure to a contrary determination on audit. That is the pattern the record shows: in *EPL*, one of the eleven contested issues was whether allowances should be allocated on a value basis or a volume basis, litigated years after the reporting.[85] AXPC requests that the final rule provide that allocation on the basis of throughput volume, or on the basis of metered or reasonably estimated consumption for shared equipment and power, constitutes a reasonable method, and that costs allocated on either basis are deemed directly allocable. ONRR would remain free to examine whether the underlying measurements are accurate — which is the question an audit is well suited to answer. What the safe harbor removes is the separate, methodological

[81] 91 Fed. Reg. 39,758.
[82] *Id.*
[83] 91 Fed. Reg. 39,759.
[84] 91 Fed. Reg. 39,755.
[85] 200 IBLA 66 (2025).

dispute about which allocation approach ONRR would have preferred, which an audit is a costly way to resolve and which ONRR can resolve once, now, for every reporter.

C. Modification of arm's-length transportation rates (§§ 1206.110 and 1206.152)

AXPC requests that ONRR confirm that an arm's-length transportation rate is presumptively reasonable. The proposed sections permit ONRR to direct a lessee to modify its allowance where the consideration paid under an arm's-length transportation contract reflects a breach of the duty to market. ONRR elsewhere in this preamble identifies arm's-length dealing between parties with opposing economic interests as the best indicator of value.[86] AXPC asks that the modification authority be exercised only where ONRR establishes that the contract is not in fact arm's-length, or that the rate was set for the purpose of shifting value out of the royalty base — and that the final rule say so.

AXPC also notes an unexplained difference between the oil and gas versions. Proposed § 1206.110(f)(2) (oil) conditions the modification authority on the lessee "transporting your oil at a cost that is unreasonably high."[87] Proposed § 1206.152(g)(2) (gas) omits that qualifier, leaving the authority to turn on a bare finding of breach.[88] The oil formulation is the better one because it identifies the conduct at issue, and AXPC asks ONRR to conform the gas provision to it.

VII. Marketable Condition (§ 1206.146(c))

> **Proposed text.** Section 1206.146(c): "Your gas or gas plant products are in marketable condition when it meets the required quality specifications for either: (1) *Delivery to a Mainline Pipeline.* If your gas or gas plant products are delivered to a mainline pipeline that transports gas to market, it must meet the quality specifications set by that pipeline operator. This is typically the specifications required for delivery at the outlet of a gas processing plant; (2) *Delivery other than Mainline Pipeline.* If your gas or gas plant products are delivered to market by means other than through a mainline pipeline, then your gas is in marketable condition when it meets the specifications required by the receiving transporter or purchaser; or (3) *Alternative Market for Unprocessed Gas.* If your gas is never processed and you can reasonably support that a market exists at another location, you can use the quality specifications required at that alternative delivery point."

A. ONRR Should Adopt § 1206.146(c) Only With the Clarifications Below.

The marketable condition rule has been litigated for three decades, and those cases have produced standards industry now follows. Reopening the rule risks trading known standards for renewed uncertainty. As drafted, § 1206.146(c) neither simplifies nor clarifies marketable condition, and if ONRR will not resolve the ambiguities identified in subsections ii through iv, the amendment adds nothing to the existing regulations and should not be adopted.

i. ONRR Should Resolve the Preamble/Text Conflict on Minimum Pressure.

Proposed § 1206.146(c) refers only to "quality specifications." Pressure is not mentioned. The preamble says otherwise: marketable condition requirements often include a minimum delivery pressure, a tariff may not define that minimum, and the governing figure is the pressure at which the mainline pipeline accepts delivery.

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[86] 91 Fed. Reg. 39,757.
[87] 91 Fed. Reg. 39,778.
[88] 91 Fed. Reg. 39,781.

The conflict should be resolved in the text. Compression to a pipeline's acceptance pressure is among the largest costs in any allowance calculation, and whether it is a non-deductible marketable condition cost or a deductible transportation cost under § 1206.153(b)(9) will often determine the allowance. AXPC asks that ONRR either (i) provide that quality specifications alone determine marketable condition, or (ii) if pressure is included, state that the governing pressure is the figure in the applicable tariff or transportation agreement, and that where none is stated the lessee may use the pipeline's published or documented minimum delivery pressure for the production month. An unpublished, fluctuating operating parameter cannot be administered.

ii. If Pressure Is Included, ONRR Should Confirm the Obligation Is Met Once.

It has been the Department's interpretation that natural gas only has to be compressed to marketable condition pressure one time to satisfy the lessee's duty to place production in marketable condition.[89] In practice, ONRR disavows that this principle applies when gas is recompressed at the outlet of a gas processing plant. ONRR instead requires the producer to place gas into marketable pressure before the plant and again as it leaves the plant for sale, insisting this is required by its "residue boosting" regulation at 30 CFR 1202.151(b) and 30 CFR 1206.153(c)(8). However, the very language ONRR relies on is expressly subject to the other gas valuation regulations, which of course include the marketable condition rule as interpreted in the 2003 *Devon* decision.

Those sections were adopted during an era of less sophisticated processing methods, prior to the widespread use of cryogenic gas processing, where most processing now occurs. Under that method the gas is pressurized before or at the plant inlet, pressure and temperature are then dramatically reduced to extract the natural gas liquids, and the residue stream is repressurized into the residue pipeline at the tailgate. Decompression and recompression are part of processing and should not be treated as another round of meeting marketable condition.

Production that meets the applicable specification under paragraph (c)(1), (2), or (3) is in marketable condition and does not have to be put in marketable condition a second or third time. AXPC asks ONRR to confirm that reading and to codify the 2003 Devon Valuation Determination as a new paragraph (d):

> **(d)** Marketable condition is determined for each quality specification; marketable condition is not determined by gas stream as a whole. A lessee does not need to place any component of the gas into marketable condition more than once. Where production reaches marketable condition more than once, the lessee may elect which conditioning event it will deduct.

iii. ONRR Should Let a Lessee Establish a Specification by a Reasonable Method.

Paragraph (c) says where marketable condition is measured, not how to determine a specification the tariff or agreement leaves unstated, or the lessee cannot readily obtain. ONRR identifies the gap: a mainline tariff sets out gas quality requirements, but "[t]he tariff may not define the minimum pressure."

A lessee should still be able to report a supportable figure that ONRR can verify. ONRR addresses a similar situation in the preamble, letting a lessee "use a reasonable method to calculate and allocate" platform buoyancy costs and document those methods when requested. AXPC recommends the same approach as a new paragraph (c)(4):

[89] *See* Department of the Interior, *Valuation Determination for Coalbed Methane Production from the Kitty, Spotted Horse, and Rough Draw Fields*, Powder River Basin, Wyoming at 30 (2003) ("in general, Devon is not required to condition the production to marketable condition more than once at its own expense")

> **(4)** If the specification under paragraph (c)(1), (2), or (3) of this section is not stated in, or is not readily available from, the applicable tariff or transportation agreement, you may use a reasonable method to determine or estimate it and should provide documentation supporting your determination upon request. You may use that method to pay royalty until ONRR reviews it and either affirms it or issues an appealable denial. A denial shall apply prospectively where the method had a reasonable basis.

Paragraph (c)(4) answers only what a lessee does when the specification cannot be found, and leaves the allowance provisions where the proposal puts them. A decision to deny should have a go-forward impact only if the methodology had a reasonable basis.

iv. ONRR Should Adopt the § 1206.146(c)(3) Alternative Market Provision.

AXPC supports the alternative market provision for gas that "is never processed."[90] Where gas is sold without processing there is no plant outlet or mainline pipeline to supply a specification, and an established alternative market is the right measure.

The Denver-Julesberg Basin in northeast Colorado illustrates the point. Companies seeking gas rich in natural gas liquids come at some distance from the processing facilities to purchase from producers and ship the gas to plants for NGL removal. These purchasers take title at the point of purchase, often imposing minimums on Btu content rather than maximums, and they pay extra for liquids content. The NGL-rich gas is the sales product. These are real arm's-length markets with specifications of their own.

As proposed, however, a lessee need only "reasonably support that a market exists at another location," a standard first applied on audit. AXPC asks that the text confirm that documentation of two or more competing offers from unaffiliated purchasers for the gas in its current condition near the lease is sufficient, consistent with ONRR's example at 91 Fed. Reg. 39,760–61.

v. A Definition of "Mainline Pipeline" Is Not Necessary.

ONRR also asks whether a definition of "Mainline Pipeline" would be beneficial.[91] AXPC does not think a definition is needed. Paragraph (c) already does the work a definition would do. Paragraph (c)(1) governs processed gas and paragraph (c)(2) every other delivery, by the specification the receiving transporter or purchaser requires.[92] In the case of OCS production for example, gas moved to shore for processing is measured the same way whether or not its line is called a mainline pipeline, and a definition would add a term to argue over without changing that result.

vi. ONRR Should Address the Unbundling Problem.

If the proposal intends to reduce the disincentives to investment on federal leases, the most significant change needed is to clarify permissible methods of "unbundling" charges ONRR believes include costs of making production marketable.[93]

Unbundling is ONRR's answer to a third-party service provider, such as a gas gatherer, charging a single fee to provide more than one service, such as moving gas through a pipe and also removing carbon dioxide. To unbundle that charge, ONRR requires lessees to use the non-arm's-length methodology it prescribes for

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[90] 91 Fed. Reg. 39,782.
[91] 91 Fed. Reg. 39,769.
[92] Proposed § 1206.146; 91 Fed. Reg. 39,782.
[93] 91 Fed. Reg. 39,756.

lessee-owned facilities. Lessees have their own cost and technical data. They do not have it for third-party equipment, which third parties treat as highly confidential. ONRR can compel that data by subpoena, but federal law bars ONRR from disclosing it to lessees. When the lessee cannot unbundle because it cannot obtain the third party's actual costs, ONRR denies the bundled fee in full.

ONRR has agreed to work with producers on reasonable alternative methods of estimating a third party's costs without the third party's data, but that accommodation has two limits. ONRR refuses to be bound by the alternative and, on subsequent audit, faults the lessee for not supporting deductions with the third party's "actual" cost data. And ONRR has capacity for only a few scores of these requests, which makes negotiated estimates infeasible as nationwide policy.

Compounding the problem, ONRR publishes Unbundling Cost Allocations it may "update and modify," with the consequence that a lessee "may be subject to additional royalty obligations and associated interest." One public company has described the initiative as requiring recomputation of allowable transportation and processing costs going back 84 months for every plant that processed its gas. ONRR should confirm that a UCA revision applies prospectively from publication.

AXPC asks ONRR to consider the following additional language:

> **(e)** If a lessee has made an initial reasonable effort using available information to unbundle costs that may include payment for services required to place production in marketable condition, ONRR shall not disallow the deductions on the ground that the lessee failed to use confidential third-party information.
> **(f)** A lessee may seek ONRR's concurrence in a proposal to unbundle costs for compliance with the marketable condition rule. A lessee may use that proposal to pay royalty until ONRR denies its concurrence. ONRR may not deny the proposal on the ground that the lessee has failed to use confidential third-party information.
> **(g)** If ONRR concurs, the lessee's unbundling may be audited to assure compliance with the method, not to require the use of another method of unbundling.

vii. The RIA Should Reflect the Royalty Consequences of This Amendment.

ONRR's Preliminary RIA summary table at 91 Fed. Reg. 39,770 reports no royalty impact for the marketable condition amendments. If pressure is part of the standard, the amendment may have a material royalty impact the table does not capture. ONRR should quantify it or explain why it cannot. An unquantified provision is the more vulnerable one on review, which puts the balance of this rulemaking at risk.

VIII. Processing Allowances (§§ 1206.159–1206.161)

Proposed text. Section 1206.160(b)(2): where an arm's-length processing contract covers more than one gas plant product and the costs attributable to each cannot be determined from the contract, "you must propose an allocation procedure to ONRR. (i) You may use your proposed allocation procedure until ONRR issues its determination. (ii) You must submit all relevant data to support your proposal. (iii) ONRR will determine the processing allowance based upon your proposal and any additional information that ONRR deems necessary. (iv) You must submit the allocation proposal within three months of claiming the allocated deduction on Form ONRR-2014."

AXPC requests that ONRR supply the missing procedural elements of the cost-allocation proposal process at § 1206.160(b)(2). The proposal imposes a three-month deadline on the lessee and none on ONRR.[94] It does not state the standard ONRR will apply beyond "any additional information that ONRR deems necessary," the time within which ONRR will act, or the consequence if ONRR rejects the proposal after the lessee has used it.[95] AXPC requests that ONRR supply each of these — the same four elements ONRR identifies as missing from the 2016 default provision and cites as the reason for repealing it.[96] A submission requirement with a deadline running only against the lessee transfers all timing risk to the lessee, and Section IX below explains why a deadline on ONRR needs a stated consequence to have effect.

AXPC supports retaining the 50 percent arm's-length throughput exception at § 1206.161(l)(i)(2), which permits use of the volume-weighted average prices charged to other persons under arm's-length contracts for processing at the same plant.[97] It is administrable and produces a verifiable number.

AXPC asks that the modification authority at § 1206.159(e)(2) be conformed to Section VI.C above — exercisable where ONRR establishes that a processing arrangement is not arm's-length or was structured to shift value, not as a general authority to second-guess negotiated fees.

IX. Non-Arm's-Length Allowances and Depreciation (§§ 1206.112(i), 1206.154(i), 1206.161(h))

Proposed text. Section 1206.112(i)(4) (oil; §§ 1206.154(i)(4) and 1206.161(h)(4) are parallel for gas): a lessee may propose a depreciation schedule where none exists or where the existing schedule does not comply with part 1206. "(iii) ONRR will consider the following factors when reviewing a proposed depreciation schedule for approval: (A) The lessee's or a prior owner's published capitalization policy, depreciation policy, fixed asset useful life policy . . . ; (B) Consistency with audited financial statements . . . ; (C) Documents prepared in support of the recording and capitalization of fixed assets under U.S. GAAP . . . ; (D) Purchase price allocation reports prepared in accordance with U.S. GAAP by independent experts . . . ; (E) Practices typical of the industry; and (F) Any information that ONRR deems relevant regarding the depreciation schedule. (iv) You may use your proposed depreciation schedule to calculate a transportation allowance beginning with the production month following the month when ONRR received your proposal until ONRR accepts or rejects it. If ONRR rejects your proposed depreciation schedule, you must amend your Form ONRR-2014 for the months that you used the rejected method and pay any additional royalty due, plus late payment interest."

AXPC supports the acquired-asset and alternative-in-service-date provisions. They address a real and inequitable gap. Under current regulations, a lessee acquiring a transportation or processing system may be denied any capital cost recovery simply because it cannot obtain the prior owner's depreciation schedule or because that schedule was non-compliant.[98] Given the volume of midstream and gathering-asset transactions among AXPC members, this gap has real cost, and ONRR's proposal to allow a compliant acquired schedule to carry over — and to permit a proposed schedule where none exists — is a sound fix. The alternative in-service date is a necessary companion: without it, a lessee whose costs become allowable only upon this rule's effective date could not realize the recovery the rule intends.

AXPC supports the new definitions at § 1206.20. Defining actual cost, capital cost, depreciation, depreciation schedule, first-of-month convention, fixed assets, in-service date, life of the reserve, operating

[94] 91 Fed. Reg. 39,785.
[95] 91 Fed. Reg. 39,785.
[96] 91 Fed. Reg. 39,756.
[97] 91 Fed. Reg. 39,787.
[98] 91 Fed. Reg. 39,761.

expense, overhead, reserve, salvage value, the two depreciation methods, units of production, and useful life is straightforwardly useful, and AXPC agrees with ONRR that aligning these definitions with U.S.[99] GAAP and common industry practice means members will not need to substantially rework their accounting systems. AXPC also supports permitting method elections at the individual-asset or asset-group level and re-categorizing maintenance as an allowable operating expense.

AXPC's concern is with the approval process, and it is the same concern ONRR expresses about the default provision. Under §§ 1206.112(i)(4), 1206.154(i)(4), and 1206.161(h)(4), a lessee may propose a depreciation schedule, which ONRR reviews "for reasonableness and consistency with a lessee's own policies and reporting, standard industry practices, and other factors."100 If ONRR later determines the schedule is "inaccurate or insufficient," the lessee must correct its Form ONRR-2014 reporting within 30 days under § 1210.30 and pay late payment interest.[101] That regime identifies no decisionmaker, states no standard beyond an open reference to "other factors," imposes no deadline for ONRR action, and provides no appeal path — and unlike the default provision ONRR is repealing for those very defects, it attaches an automatic financial consequence to the lessee who reported in good faith while waiting.[102] The burden is not trivial. ONRR estimates 753 respondents and an average of 61.54 hours per response for the Federal oil and gas depreciation collection.[103] Members will spend that time to obtain a determination the rule does not describe.

AXPC requests that the final rule (i) identify the ONRR official who acts on a proposed schedule, (ii) state the review standard in the regulatory text rather than through an open-ended reference to "other factors," (iii) impose a deadline for ONRR action, with the proposed schedule deemed accepted if ONRR does not act within it, (iv) provide that a determination on a proposed schedule issues as an Order appealable under part 1290, and (v) waive late payment interest where a lessee reported in accordance with a schedule proposed in good faith, with any rejection applied prospectively. Item (v) is the most important. Interest assessed for the period during which ONRR was reviewing a submission it required is a charge for the agency's processing time, and it will deter members from using a provision ONRR intends as a benefit.

On item (iii), AXPC emphasizes that a deadline without a stated consequence will not function as a deadline. The Board has now held three times in short succession that agency timing language does not constrain agency action unless the authority imposing it specifies what follows from a missed deadline. In *Sanare Energy Partners, LLC*, 200 IBLA 36 (2025), an appropriations act directing that the Secretary "shall bill" within 60 days did not divest ONRR of authority to bill five months late, because the provision specified no consequence; the Board described such a deadline as a spur to prompt action rather than a bar to tardy completion. In *EPL*, 200 IBLA 66 (2025), a tolling agreement stating that ONRR "will" complete its audit and issue an order within two years created no remedy when ONRR did not, in part because the agreement used "will" rather than "shall" and attached no consequence. And in *Fidelity*, 200 IBLA 1 (2025), correspondence extending compliance dates was held not to toll anything because it never said so. AXPC cites these decisions not to criticize the outcomes, which follow from the text the parties and Congress wrote, but to make a drafting point: if ONRR intends its review of a proposed depreciation schedule to be timely, the final rule must say what happens if it is not. A deemed-accepted default is the simplest formulation and costs ONRR nothing it cannot recover, since a schedule accepted by default remains subject to correction prospectively.

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[99] 91 Fed. Reg. 39,787.
[100] 91 Fed. Reg. 39,761.
[101] 91 Fed. Reg. 39,761.
[102] *Id.*
[103] 91 Fed. Reg. 39,772.

AXPC also identifies two drafting inconsistencies among the parallel depreciation-schedule provisions. First, proposed § 1206.112(i)(4) (oil) and § 1206.161(h)(4) (gas processing) each include a paragraph (iv) permitting a lessee to use its proposed schedule pending ONRR's decision; proposed § 1206.154(i)(4) (gas transportation) contains no corresponding paragraph.[104] As drafted, a lessee proposing a schedule for a gas transportation system is not told what to do while ONRR reviews it. Second, § 1206.161(h)(4)(iv) — which governs *processing* allowances — states that the lessee may use the proposed schedule "to calculate a transportation allowance."[105] AXPC raises these only so they can be corrected before the final rule.

X. Provisions of the 2016 Valuation Rule This Proposal Does Not Address

AXPC appreciates that this rulemaking is targeted, and raises the following items because each involves the same principle the proposal otherwise advances: replacing a published, externally verifiable standard with an ONRR-determined one. AXPC asks ONRR to address these in the final rule where it can do so within the scope of this proposal, and otherwise to state its intention to take them up in a subsequent rulemaking.

A. Restore the FERC- and State-approved tariff exception (§§ 1206.153 and 1206.154).

The 2016 Valuation Rule deleted the provision allowing ONRR to approve a lessee's use of a FERC- or State regulatory-approved tariff as an exception from the requirement to calculate actual costs.[106] This is the clearest example in part 1206 of a published, third-party-verified rate being replaced with a cost calculation subject to audit. A FERC-tariffed rate is filed, public, and identical for every shipper. It cannot be manipulated by the lessee, requires no allocation methodology, and can be verified by ONRR in minutes without a data request. Restoring it would remove an entire category of transportation-allowance dispute — the same category that produced the eleven-issue dispute in *EPL Oil & Gas* — at no risk to the Federal lessor.[107] AXPC urges ONRR to restore the exception.

B. Reconsider the transportation and processing allowance caps (§§ 1206.110, 1206.152, and 1206.159).

The 2016 Rule eliminated ONRR's authority to approve transportation allowances exceeding 50 percent of production value and processing allowances exceeding 66⅔ percent, terminated all prior approvals, and eliminated the extraordinary processing cost allowance entirely.[108] A fixed percentage cap is a bright line, and AXPC does not object to bright lines. It objects to a bright line set without regard to actual cost and with no mechanism for the cases ONRR itself acknowledged would exceed it. Where a lessee's reasonable, actual, documented costs exceed the cap, the effect is a royalty on value the lessee never received. AXPC asks ONRR to restore a defined exception process with a stated standard and a deadline for ONRR action, or, in the alternative, to explain why no exception is warranted.

In particular, AXPC asks ONRR to restore a defined exception process for the 50 percent transportation and 66⅔ percent processing allowance caps. Caps that are too harsh potentially defeat provisions ONRR is adopting in this same rule**.** The flow assurance and pipeline repair, replacement, and restoration deductions at §§ 1206.153(b)(12) and (14) — which AXPC supports in Section VI.A, and which ONRR deliberately made available onshore — have no effect for a lessee already at the cap. Additionally, caps bind more often now than when they were set, for reasons unrelated to the extraordinary circumstances they

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104 91 Fed. Reg. 39,774.
105 91 Fed. Reg. 39,771.
106 81 Fed. Reg. 43,352
107 200 IBLA 66 (2025).
108 81 Fed. Reg. 43,343, 43,352–53.

contemplated: fixed-fee gathering and processing rates that do not fall with commodity prices, and the requirement to gross up liquids prices by transportation and fractionation costs and then deduct those costs subject to the same cap.

A. Restore the 1.3 multiplier on the BBB rate of return (§§ 1206.112 and 1206.154).

The 2016 Rule reduced the multiplier on remaining undepreciated capital costs from 1.3 to 1.0 times the Standard & Poor's BBB bond rate.[109] This rulemaking otherwise takes considerable care with the capital-recovery framework for non-arm's-length allowances — acquired assets, alternative in-service dates, proposed schedules, and roughly fifteen new definitions. Restoring the 1.3 multiplier would complete that work. AXPC notes that the change is purely arithmetic, requires no new judgment by ONRR or lessees, and generates no audit exposure of any kind.

C. Reconsider the elimination of netting of the transportation factor (§§ 1206.110, 1206.113, 1206.115, 1206.152, 1206.153, and 1206.155).

The 2016 Rule eliminated netting where an arm's-length contract reduces the price by a transportation factor, and instead requires the cost to be reported as a separate entry on Form ONRR-2014.[110] This is a reporting-mechanics change with no effect on royalty owed, and it is precisely the kind of divergence between Federal royalty reporting and ordinary commercial practice that AXPC identified in 2017 as a driver of reporting error. Given that the OIG found reporting failures account for 88 percent of ONRR's enforcement referrals, AXPC asks ONRR to reconsider whether the separate-entry requirement is worth the error rate it produces.[111]

D. Reconsider the treatment of residue gas boosting compression (§ 1206.153).

The 2016 Rule specified that the costs of boosting residue gas are not allowable transportation costs.[112] This provision interacts directly with proposed § 1206.146(c)(1). If marketable condition is set by reference to the pressure at which a mainline pipeline accepts delivery, and boosting compression to reach that pressure is categorically non-deductible, then the lessee bears the full cost of meeting a specification set by a third party and subject to change without notice. AXPC asks ONRR to address the two provisions together and to permit deduction of compression required to move gas beyond the point at which it is otherwise in marketable condition.

E. Non-arm's-length pipeline loss allowances (§§ 1206.112 and 1206.154).

The 2016 Rule eliminated the deduction for pipeline losses, both actual and theoretical, in non-arm's-length transportation.[113] AXPC asks ONRR to restore a deduction for documented actual losses, which are a real cost of moving production and are measurable from metering data both parties can verify.

XI. Appeals — Standard of Review and Timeliness (§ 1290.105(f))

Proposed text. Section 1290.105(f): "The ONRR Director will review the record that was before the ONRR issuing office along with the written statement of reasons submitted by the appellant and render

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[109] 81 Fed. Reg. 43,345, 43,352.
[110] 81 Fed. Reg. 43,344, 43,352.
[111] DOI OIG, *ONRR Needs To Consistently Enforce Compliance and Timely Revenue Collection*, Report No. 2024-CR-008, at 5–9 (Jan. 2026).
[112] 81 Fed. Reg. 43,352.
[113] 81 Fed. Reg. 43,345, 43,352.

a decision in the case. The ONRR Director will determine if there is credible evidence to support the Order and shall review all conclusions of law de novo. Such decision will be made in a timely manner and not unreasonably withheld." The authority citation for part 1290 is revised to add 30 U.S.C. 1724 and 43 U.S.C. 1331.

A. The credible-evidence standard should not be codified.

AXPC appreciates ONRR's invitation to comment on the standard of review.[114] AXPC does not support codifying a credible-evidence standard and asks ONRR to remove that clause from the final rule.
A credible-evidence standard asks only whether some evidence supports the Order. The proposed text requires the Director to *review* the appellant's written statement of reasons, but the standard it then applies asks only whether credible evidence supports the Order, not whether the appellant's evidence outweighs it.[115] The Director must therefore read the appellant's submission without being directed to weigh it.

That is narrower than what the Director does today. In current practice the Director considers the factual and legal arguments an appellant presents and decides the matter on that basis. Codifying credible evidence would replace that practice with a deferential formulation, and would do so at the only stage of review the appellant can reach as of right.

It is also a poor fit for the determinations this rulemaking creates. Index-point selection, allocation methodology, marketable-condition specifications, depreciation-schedule rejections, and cost-allocation proposals under § 1206.160 are fact-intensive determinations in which the appellant' s evidence is the entire substance of the appeal. A standard that does not require the Director to weigh that evidence leaves the appellant no forum in which it will be weighed before the Board.

The Director-level stage carries consequences beyond that appeal. Under 43 C.F.R. § 4.410(b)(3), the Board reviews only issues raised in the appellant's prior participation, and it recently declined to reach an argument for that reason.[116] A lessee must therefore raise every issue before the Director or forfeit it. Pairing a mandatory, issue-preserving stage with a standard under which the decisionmaker need not weigh the appellant's evidence puts lessees to considerable expense for a proceeding that cannot change the outcome, and it does so at the stage where an informed decision would be least costly for both parties. AXPC notes that ONRR resolves the large majority of appeals informally, and that a review standard requiring engagement with the appellant's submission would make those informal resolutions more likely, not less.

B. AXPC does not propose a substitute standard in this rulemaking.

AXPC is not asking ONRR to adopt a different standard of review in the final rule, and specifically does not ask ONRR to substitute a standard drawn from 5 U.S.C. § 706. Section 706 governs a reviewing court's examination of final agency action. An appeal to the ONRR Director is not judicial review of another decisionmaker; it is the agency deciding its own case, with full authority to reach the correct result on the record before it. Importing a judicial-deference formulation into that stage would carry the same defect as credible evidence, which is that it directs the Director to defer where the Director is instead exercising the agency's own decisional authority.

The standard of review also warrants a record of its own. The Proposed Rule states a standard without analysis of the alternatives, of how the standard interacts with the 33-month period under 30 U.S.C. § 1724(h)(1), or of how it would apply to the new categories of determination this rule creates. Commenters

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[114] 91 Fed. Reg. 39,769.
[115] 91 Fed. Reg.39,768.
[116] *Sanare Energy Partners, LLC*, 200 IBLA 36, 49–50 (2025).

have not been given the material needed to evaluate it, and the record assembled in a valuation rulemaking is not the record on which an appeals standard should be settled.

AXPC accordingly requests that ONRR remove the review-standard sentence from proposed § 1290.105(f) in the final rule and, if it wishes to revisit the standard, do so through a separate rulemaking directed to part 1290, with a preamble that identifies the alternatives and their consequences.[117] AXPC would participate in that proceeding. Nothing in this rulemaking depends on resolving the standard now, and removing the sentence leaves the Director's existing practice undisturbed.

If ONRR retains any portion of paragraph (f), AXPC does not object to the codification of de novo review of conclusions of law, which states existing practice and is useful to have in the text.

C. Timeliness.

AXPC supports a timeliness commitment and asks that any such commitment carry an outer limit and a stated consequence. A commitment that decisions "will be made in a timely manner and not unreasonably withheld" is welcome.[118] As Section IX explains, however, the Board has repeatedly held that agency timing language without a specified consequence does not constrain agency action, and in *EPL* it drew a distinction between "will," which it read as expressing intent, and "shall," which it read as mandatory.[119] The proposed paragraph uses "shall" for the Director's review of legal conclusions and "will" for the timeliness commitment.[120] AXPC suggests a defined period, for example twelve months from the completion of briefing, after which the appellant may treat the appeal as denied and seek further review. That formulation preserves ONRR's ability to take the time a complex appeal requires while giving the timeliness commitment practical effect. If ONRR removes paragraph (f) in its entirety, AXPC asks that the timeliness provision be taken up in the same separate rulemaking.

D. Appealable determinations.

Independent of what becomes of paragraph (f), AXPC asks ONRR to confirm which determinations under this rule are appealable Orders under part 1290, including determinations under §§ 1206.104 and 1206.143, rejections of proposed depreciation schedules, rejections of cost-allocation proposals under § 1206.160, and determinations regarding the applicable index pricing point.[121] A determination that carries a royalty consequence but is not an appealable Order is effectively unreviewable. Because this confirmation concerns the part 1206 provisions rather than the part 1290 review standard, it can be made in the final rule regardless of how ONRR resolves paragraph (f).

XII. Cross-Cutting Matters

A. Prospective application

AXPC requests that ONRR state in the final rule that the amendments apply prospectively to production months beginning on the compliance date, and that they may not be used to recharacterize reporting for prior periods. This applies in both directions. The onshore gathering definition, which ONRR states does not change existing interpretation, should not become the basis for reopening prior-period reporting; and

[117] 91 Fed. Reg. 39,768; 91 Fed. Reg. 39,756.
[118] 91 Fed. Reg. 39,792.
[119] 200 IBLA 66 (2025).
[120] 91 Fed. Reg. 39,792.
[121] 91 Fed. Reg. 39,768.

clarifications that benefit lessees should not create an expectation of retroactive amendment. Prospective application is the single most administrable rule and is consistent with ONRR's stated goal of reducing disputes.

Prospective application is also consistent with how FOGRMA already allocates time. A royalty obligation becomes due on the last day of the calendar month following the month of production, and the Board recently confirmed that the seven-year limitations period runs from that date — not from when ONRR learns of an underpayment, and not from when a predicate determination by another bureau becomes final.[122] AXPC recognizes ONRR's concern that a lessee could withhold records and run out the clock. Congress addressed that concern directly: ONRR may issue a subpoena that tolls the period where records are not produced, may toll on notice where a lessee does not substantially comply with a restructured accounting order, may toll for intentional misrepresentation, and may enter a written tolling agreement. 30 U.S.C. § 1724(d). Those tools remain fully available. AXPC's request is that the new provisions apply going forward, not that ONRR's collection window be shortened.

B. Compliance date

Responding to ONRR's question at 91 Fed. Reg. 39,769: yes, ONRR should adopt a separate compliance date, and it should be not less than six months after the effective date. Members will need to reconfigure reporting systems for the index-based option, evaluate elections lease by lease, prepare depreciation schedules that ONRR estimates will average 61.54 hours each, and revise allowance calculations.[123] ONRR should also open an initial election window for the index-based valuation option beginning on the compliance date, so that no lessee is disadvantaged by the timing of the rule's effectiveness relative to its election cycle.

C. Binding effect of ONRR guidance and training

AXPC asks ONRR to use this rulemaking to confirm that written ONRR guidance is binding on ONRR, and that non-binding guidance will not be used to set compliance deadlines. ONRR's published training materials currently carry a disclaimer providing that the materials may not precisely reflect a company's valuation scenario and that reliance on the training does not preclude ONRR from making contrary audit findings.[124] The practical effect is that a reporter can attend ONRR training, apply the reporting treatment ONRR presents, and face an audit finding on that same treatment years later. Reporting-code guidance delivered verbally or by slide at in-person training is particularly difficult to locate afterward, and this dynamic contributes directly to the reporting-error category that the OIG found accounts for 88 percent of enforcement referrals.[125]

The 2016 Rule's implementation illustrates the problem. Compliance with the corrected reporting and payment obligations under that rule was set by a Dear Reporter Letter dated November 20, 2019 establishing a July 1, 2020 deadline — a document with no binding effect, *see Devon Energy Corp. v. Kempthorne*, 551 F.3d 1030, 1039–41 (D.C. Cir. 2008) — followed by an oral statement at a June 2020 ONRR training that the agency did not intend to pursue civil penalties against reporters who had not completed compliance, and a suggestion that reporters document their good-faith efforts. Reporters were

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[122] *Fidelity Exploration & Production Co.*, 200 IBLA 1 (2025).
[123] 91 Fed. Reg. 39,771.
[124] ONRR, *Compliance Communications*, Reporter Training 2025, Disclaimer slide (June 2025); ONRR, *ONRR Compliance Process*, Reporter Training 2025, Disclaimer slide (June 2025).

[125] DOI OIG, *ONRR Needs To Consistently Enforce Compliance and Timely Revenue Collection*, Report No. 2024-CR-008, at 5–9 (Jan. 2026).

left to calibrate multi-year reporting corrections, and their civil penalty exposure, against a non-binding letter and a verbal assurance. That is not a workable basis for compliance planning, and it is avoidable. AXPC requests that ONRR (i) commit to issuing reporting and valuation guidance in writing, in a single publicly accessible location, (ii) provide that any compliance deadline associated with this rule will be established in the rule itself rather than by subsequent non-binding correspondence, and (iii) provide that a reporter who applies written ONRR guidance in effect for the production month will not be assessed interest or penalties if ONRR later revises that guidance, with any revision applied prospectively. This costs the Federal lessor nothing in principal royalty and would eliminate a substantial share of the disputes documented in the OIG's referral data.

D. Severability

AXPC asks ONRR to address severability with specificity, and to provide that the marketable-condition, verification, and appeals amendments are not severable from the transportation-allowance and index-based valuation amendments. Lessees will make investment, election, and reporting decisions in reliance on the rule as an integrated package — most directly in electing the index-based option, which is a locked two-year commitment made on the assumption that the rule's other provisions remain in place. A severability clause preserving the obligations while permitting the benefits to be vacated would defeat those expectations.

Conclusion

AXPC supports this rulemaking and appreciates ONRR’s willingness to revisit provisions that have generated disproportionate dispute for the royalty they produce.

The recommendations above share a single premise, and it is not a challenge to ONRR’s authority. ONRR will decide what “directly allocable” means, which index point applies, what a reasonable depreciation schedule looks like, and when a price is unreasonably low. The only question this rulemaking presents is when those decisions get made — once, in the regulatory text, where every lessee can read them and report to them; or repeatedly, years later, on audit and appeal.

A published price, a published transportation factor, a published allocation safe harbor, and prospective application give ONRR royalty it can verify without an audit and give lessees a number they can calculate without predicting the agency. That is a better outcome for the Federal lessor than the same royalty collected four years later, less the cost of collecting it.

AXPC appreciates the opportunity to comment and would welcome the opportunity to discuss these recommendations with ONRR staff.

Respectfully submitted,

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