



NEW MEXICO OIL AND GAS ASSOCIATION

Oil Conservation Commission

Case No. 21528

January 4, 2021

Exhibit B

Part 28

TITLE 19
CHAPTER 15
PART 28

NATURAL RESOURCES AND WILDLIFE
OIL AND GAS
NATURAL GAS GATHERING SYSTEMS

19.15.28.1 ISSUING AGENCY: Oil Conservation Commission.
[19.15.28.1 NMAC – N, xx/xx/xxxx]

19.15.28.2 SCOPE: 19.15.28 NMAC applies to persons engaged in oil and natural gas gathering and processing within New Mexico.
[19.15.28.2 NMAC – N, xx/xx/xxxx]

19.15.28.3 STATUTORY AUTHORITY: 19.15.28 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.
[19.15.27.3 NMAC – N, xx/xx/xxxx]

19.15.28.4 DURATION: Permanent.
[19.15.27.4 NMAC – N, xx/xx/xxxx]

19.15.28.5 EFFECTIVE DATE: {Date}, unless a later date is cited at the end of a section.
[19.15.28.5 NMAC – N, xx/xx/xxxx]

19.15.28.6 OBJECTIVE: To regulate the venting and flaring of natural gas from natural gas gathering systems to prevent waste and, public health and the environment.
[19.15.28.6 NMAC – N, xx/xx/xxxx]

19.15.28.7 DEFINITIONS: Terms shall have the meaning specified in 19.15.2 NMAC except as specified below.

A. “ALARM” means advanced leak and repair monitoring technology for detecting natural gas or ~~crude oil leaks or releases~~ that is not required by applicable state or federal law, rule, or regulation, and which the division has approved as eligible to earn a credit against the reported volume of lost natural gas pursuant to Paragraph (3) of Subsection B of 19.15.28.10 NMAC.

Justification: NMOGA has removed crude oil leaks from the definition because the objective of this rule is to “regulate the venting and flaring of natural gas” not crude oil leaks or releases which are regulated per Part 29.

B. “AVO” means audio, visual and olfactory.

C. “Custody transfer point” means the transfer of natural gas from upstream separation, processing, or treatment or ~~in-field gathering~~ to a pipeline or any other form of transportation ~~occurring at sales metering equipment~~.

Justification: The additional language clarifies where custody transfer occurs from production operations to gathering lines to make clear that this point can occur after (downstream of) some upstream operator’s in-field gathering, but before the connection point with a natural gas processing plant or a transmission system.

D. “Emergency” means a temporary, infrequent, and unavoidable event in which the loss of natural gas is uncontrollable or necessary to avoid a risk of an immediate and ~~substantial~~ adverse impact on safety, public health or the environment, but does not include an event arising from or related to:

Justification: NMOGA has struck “substantial” from the definition because it seems unlikely that the division meant to limit “emergencies” to only those which would have a large adverse impact on safety, etc.. Any immediate and adverse impact on safety, etc. should be deemed an emergency.

- (1) the operator’s failure to install appropriate equipment of sufficient capacity to accommodate the anticipated or actual rate and pressure of the natural gas gathering system;
- (2) the operator’s failure to limit the gathering of natural gas when the volume of natural gas exceeds the capacity of the natural gas gathering system;

(3) scheduled maintenance;
(4) unscheduled maintenance or a malfunction that results in venting or flaring of natural gas by an upstream operator for which the operator fails to comply with Paragraph (2) of Subsection D of 19.15.28.8 NMAC;

Justification: Added language for clarity.

(5) the operator's negligence, ~~including a recurring equipment failure; or~~

Justification: NMOGA agrees that negligence does not constitute an emergency, but recurring equipment failure may or may not be due to negligence.

(6) three or more emergencies at one site for similar causes experienced by the operator within the preceding 60 days, unless ~~the division determines the operator could not have reasonably anticipated the current event and~~ it was beyond the operator's control.

Justification: Weather events, such as lightning strikes and hard freezes, can cause equipment failures at multiple sites on the same day. As a consequence, NMOGA proposes that the emergency must occur at the same site and for similar causes in order for it not to be treated as an emergency.

E. "Flare" or "Flaring" means the controlled combustion of natural gas without beneficial use in a device designed for that purpose. Combustion of gas from low pressure sources, including but not limited to vapor recovery towers or storage tanks, is not flaring for the purposes of 19.15.28 NMAC.

Justification:

- NMOGA has modified this definition to clarify that combustion related to low pressure sources, in addition to safety considerations, is primarily done for the purpose of controlling emissions when a sufficient quantity of gas is available and is authorized by the New Mexico Environment Department. As noted in the prehearing statement, in order to avoid having the terms venting and flaring apply to emissions or combustion from low pressure sources, NMOGA has proposed revisions to the definitions of venting and flaring that would exclude low pressure sources that NMOGA is concerned about.
- Because emissions and combustion from such low pressure sources would not be venting and flaring, then the remaining sections generally would not apply to such low pressure sources. To facilitate this change, NMOGA has also removed references to reporting of low pressure sources in 19.15.27.8.G(2), and 19.15.28.8.F(2). These changes are critical. The Commission may note that NMOGA has not removed low pressure sources (and in fact has added additional low pressure sources) to the exceptions in 19.15.27.8.D(5) and 19.15.28.8.B(3)(a). NMOGA believes that the retention of and addition of exceptions for low pressure sources confirms and bolsters that these rules do not apply to low pressure sources. NMOGA has reflected in each of the applicable justifications its intent to eliminate low pressure sources from the proposed rules.
- Often emissions and combustion during production operations are necessary or expected during normal operations. This should not be deemed venting and flaring – which under the proposed rules are required to be limited and reduced. Instead, the commission must recognize that oil and gas production facilities and facilities within the natural gas gathering system have emissions (and combustion) as part of the normal aspects of safe oil and natural gas production and that these emissions are typically necessary, may avoid increased emissions to the atmosphere, may result in a beneficial use or at a minimum are not excessive. Owners and operators of these facilities evaluate and, if necessary, properly authorize these emissions with the NMED. Typically, at low pressure sources, all natural gas that is economically recoverable has been recovered, and therefore emissions from low pressure sources are not readily captured or routed to a sales line and should not be considered waste. Such low pressure sources includes: emissions from pneumatic controllers, emissions or combustion from storage tanks or other low-pressure production vessels, emissions or combustion during the loading out of liquids from storage tanks or other low-pressure production vessels to a transport vehicle, and emissions or combustion from pneumatic pumps, to name a few. Emissions from these sources are more appropriately addressed by NMED under its federally delegated authority and state authorizations to regulate air emissions. In fact, in many cases, air

quality regulations or authorizations mandate the combustion of gas from storage tanks to avoid emissions into the atmosphere.

- It is unnecessary for the commission to specifically address every potential source of gas emitted or combusted during normal operations, particularly emissions or combustion from low pressure sources. Because these sources should not be treated as venting and flaring under the rule, they also should not be mandated for measurement or estimation, reporting or inclusion in the gas capture percentages proposed by the division. As noted in the prehearing statement, these definitions draw from other jurisdictions (such as the 2016 Bureau of Land Management (BLM) and the State of Colorado, Colorado Oil and Gas Conservation Commission (COGCC)) both of which have agreed generally that emissions and combustion from low pressure sources should not be considered waste and that venting and flaring limitations apply to high pressure natural gas that should otherwise have gone to sales. NMOGA requests that the Commission adopt similar exclusions for low pressure sources from the definitions of venting and flaring.

F. “**Flare stack**” means ~~an appropriately designed stack~~ **a device** equipped with a burner used for the combustion ~~and disposal~~ of natural gas **without beneficial use**.

Justification: Not all flaring is waste and use of the term “disposal” presumes waste. The proposed rule establishes design parameters in the section on performance standards, including for all flare stacks and combustion units. Finally, NMOGA proposes use of the term “device” instead of “stack” because allows for more inclusivity. The addition of “without beneficial use” further clarifies that a burner in a heater treater or other fired piece of equipment is not a “flare stack.”

G. “**Gathering pipeline**” means a pipeline that gathers natural gas **within a natural gas gathering system**, ~~from custody transfer point to the connection point with a natural gas processing plant or a transmission or distribution system.~~

Justification: The proposed edit provides additional clarity and removes redundancy with the definition of “natural gas gathering system”.

H. “**GIS**” means geographic information system.

I. “**GPS**” means global positioning system.

J. “**Malfunction**” means a sudden, unavoidable failure or breakdown of equipment beyond the ~~reasonable~~ control of the operator that ~~substantially~~ disrupts operations and requires ~~correction~~ **mitigation**, but does not include a failure or breakdown that is caused entirely or in part by poor maintenance, careless operation, or other preventable equipment failure or breakdown.

Justification: NMOGA has struck “substantial” from the definition because it seems unlikely that the division meant to limit “malfunctions” to only those which would have a large disruption on operations. NMOGA utilizes the term mitigation to align with other areas where we are asked to address leaks and represents the use of operational changes whether temporary or permanent to address the malfunction. NMOGA has also deleted use of the term “reasonable” because it is a subjective interpretation of a situation and creates uncertainty.

K. “**Natural gas**” means a gaseous mixture of hydrocarbon compounds, primarily composed of methane, and includes both casinghead gas and gas as those terms are defined in 19.15.2 NMAC.

L. “**Natural gas gathering system**” means the gathering pipelines and associated facilities that compress, dehydrate or treat natural gas ~~from after~~ the custody transfer point ~~to the~~ **ending at the** connection point with a natural gas processing plant or transmission or distribution system.

Justification: The proposed edit provides additional clarity. The definitions should remain clear that subject pipelines are those segments of pipe transferring gas from production equipment to the point of delivery to, but not inclusive of, a natural gas processing plant, transmission pipeline system, or natural gas distribution system. This is sound policy given federal regulation of gas gathering.

M. “**New gathering pipeline**” means a gathering pipeline **constructed and** placed into service after {effective date of rule}.

Justification: Adding “constructed” provides clarity that a new gathering pipeline is a pipeline that was not existing previously.

N. “Vent” or “Venting” means the release of uncombusted natural gas to the atmosphere, but does not include:

(1) the emission of gas from devices or equipment, such as pneumatic devices and pneumatic pumps, that are designed to emit as part of normal operations if such emissions are not prohibited by New Mexico Environment Department, Environmental Protection Agency or tribal authority;

(2) unintentional leaks that are not the result of inadequate equipment design; and

(3) natural gas released from, or downstream of, a tank unless there is no separation occurring at equipment upstream of the tank; the separation equipment is not sufficiently sized to capture the entrained gas; or the natural gas is sent to the tank during circumstances when the gas cannot be sent to the gathering line or the combustion equipment used to flare the gas is not operating.

Justification: NMOGA has taken this definition from Colorado Oil and Gas Conservation Commission’s recently adopted regulations but adjusted it to meet the division construct. This definition is tailored to work with the requirements in Part 19.15.27.8.D.(5) NMAC for normal operations where venting and flaring is and should be authorized. Please see additional justification in definition of “flare or flaring”.

19.15.28.8 VENTING AND FLARING OF NATURAL GAS:

A. ~~The unnecessary or excessive surface loss or destruction without beneficial use~~ Venting and flaring of natural gas from a natural gas gathering system constitutes waste and is prohibited by Sections 70-2-2 and 70-2-3 of the Oil and Gas Act. ~~except as authorized in Subsection B of 19.15.28.8 NMAC.~~ The operator has a general duty to avoid the unnecessary or excessive surface loss or destruction without beneficial use maximize the gathering of natural gas during gathering operations. ~~and to minimize the release of natural gas to the atmosphere. The operator shall flare rather than vent natural gas except when flaring is not technically feasible or would pose a risk to safe operations or personnel safety and venting is a safer alternative than flaring.~~

Justification: Classifying all venting and flaring as waste is contrary to the definition of “surface waste” in the Oil and Gas Act. The proposed changes properly communicate the concept of surface waste and the corresponding obligation imposed on operators. With regards to the statement that natural gas shall be flared rather than vented, this requirement is not related to the prevention of waste but is rather an air emissions matter within the jurisdiction of the EPA under the Clean Air Act and any delegation of that authority to the NMED.

B. The operator shall not flare or vent natural gas except:

(1) to the extent authorized by a valid ~~federally~~ legally and practically enforceable air quality permit, authorization or other requirement established issued by the New Mexico environment department, the US EPA, or a Tribal authority with Clean Air Act delegation;

Justification: The term “federally enforceable” is changed to “legally and practically enforceable” (which has meaning under the Clear Air Act and OOOOa) because some air permit terms and conditions in permit instruments used by the NMED may not be “federally enforceable.” Additional authorization types are added. Additional agencies are added because on Tribal lands in New Mexico, air quality permits are typically issued by the US EPA and not the NMED. There may also be situations when a Tribal authority has been or will be delegated authority to implement the Clean Air Act and the associated permits.

(2) during an emergency or malfunction, ~~but only to avoid a risk of an immediate and substantial adverse impact on safety, public health, or the environment.~~ The operator shall report natural gas vented or flared during an emergency or malfunction to the division pursuant to Paragraph (1) of Subsection F of 19.15.28.8 NMAC; or

Justification: Emergency and malfunction definitions already cover the concept of avoiding immediate and substantial risk and impacts, repeating that language here adds confusion and the definition language should prevail. In addition, the requirement to report is clear in Paragraph F and

does not need to be repeated here, which adds confusion. The proposed language provides simplification and clarity to the regulation.

(3) during the following activities unless prohibited by applicable state and federal law, rule, or regulation for the emission of hydrocarbons and volatile organic compounds:

(a) ~~scheduled~~ repair and maintenance, including blowing down and depressurizing equipment to perform repair or maintenance;

Justification: It is not clear why only scheduled repair and maintenance are included in this exception. All repair and maintenance repair activities, both scheduled and unscheduled, should be subject to this exception. While unscheduled repair and maintenance may be associated with emergencies or malfunctions, this is not always the case. For example, there will be occurrences when repairs or maintenance need to take place immediately to ensure operational integrity and avoid emergencies and malfunctions. These activities, which must be encouraged and performed, would then fall outside the exceptions for both scheduled maintenance and emergencies or malfunctions.

- (b) normal operation of a gas-activated pneumatic controller or pump;
- (c) normal operation of a dehydration unit and amine treaters;
- (d) normal operation of a compressor or compressor engine and turbines;
- (e) normal operation of a storage tank or other low-pressure production vessel, but not including venting from a thief hatch that is not properly fully and timely closed and maintained ~~or from a seal that is not maintained on an established schedule on a tank routed to a flare or control device~~;
- (f) gauging or sampling a storage tank or other low-pressure vessel;
- (g) loading out liquids from a storage tank or other low-pressure vessel to a transport vehicle;
- (h) fugitive emissions components, such as valves, flanges, connectors

Justification:

- Activities identified in paragraphs (b)-(g) of the proposed rule are normal operations, however, it is not inclusive of all normal operations that should be identified. To improve clarity, NMOGA has identified other similar low-pressure normal operations that do not constitute unnecessary or excessive surface waste. Note that alternative language has been proposed by NMOGA related to tank thief hatches to align with the proposed language in the reporting section of this rule, for clarity and consistency.
- Please reference the justification in the definitions section for “flare or flaring”. NMOGA has proposed changes to the definitions of venting and flaring to properly ensure that emissions and combustion from low pressure sources (e.g., each of the types of sources referenced in (b)-(h)) are not included as venting and flaring for purposes of these regulations.

- ~~(h)~~ blowdown to repair a gathering pipeline;
- ~~(i)~~ pigging a gathering pipeline; ~~or~~
- ~~(kj)~~ purging a gathering pipeline; or
- ~~(l)~~ Commissioning of pipelines, equipment, or facilities.

Justification: It is necessary to flare or vent during these operations to ensure safe operation and safety of personnel. When starting up operation of new equipment, there is often water (used to hydro test) or solids (from stimulation flowback) that need to be purged from the equipment or pipeline. This can only be done by releasing this low pressure gas with untreatable impurities to atmospheric tanks which allows for the small volumes of gas to also be released until a stable hydrocarbon stream is achieved.

C. Performance standards.

- (1) The operator shall monitor annual gas capture percentage in accordance with 19.15.28.10 NMAC and if not in compliance with 19.15.28.10(A) take all reasonable actions to prevent and minimize leaks and releases of natural gas from a natural gas gathering system and shall implement an operations plan to address mitigative actions to be taken to improve gas capture percentage. Plans submitted to the division shall be treated as confidential business information (“CBI”). minimize the waste of natural gas for each non-contiguous natural gas gathering system. The plan should include procedures to reduce leaks and releases, such as a routine maintenance program, cathodic protection, corrosion control, liquids management and integrity management. The operator shall file its operations plan with the division:

Justification:

- Operators should have flexibility to address improvements to their assets and operations using strategies appropriate for mitigating specific situations of gas loss when not attaining the prescribed gas capture rates.
 - Mitigation plans could include elements such as routine maintenance, corrosion control, or liquids management as determined by the operator to be effective in meeting gas capture requirements. The suggested changes follow the general direction of the upstream gas management plan in allowing operators to utilize best-available methods and technology to meet gas capture requirements.
 - Asking the division to potentially address such things as gathering line maintenance programs, cathodic protection, corrosion control, liquids management and integrity management is not within the division’s expertise or authority, has the potential to conflict with the requirements of other state and federal agencies, and better left to the agencies tasked with overseeing gathering operations.
 - The primary objective of any plan should be driving operators to comply with gas capture requirements where necessary. For operators who have successful procedures and processes in place currently that provide for overall high capture rates – an additional plan for operators meeting the required capture rates is unnecessary.
 - If the division requests the plan it should be treated as confidential business information (“CBI”), because it likely contains proprietary information. A New Mexico Inspection of Public Records Act request by a member of the public should not allow these plans to be released given the protections in Section 71-2-8 NMSA.
 - It is critical that the concept of integrity management be removed as gas gathering lines were/are not built to accommodate In-Line Inspection tools (ILIs) or for continual pressure monitoring/ routine pressure testing since many lines have multiple tie-ins or are made up of multi-diameter piping and these practices would not be workable or feasible.
- ~~(a) — for a natural gas gathering system placed into service after [effective date of rule], within 60 days following the date the natural gas gathering system is placed into service;~~
- ~~(b) — for a natural gas gathering system in place on or before {effective date of rules}, within 90 days following {the effective date of these rules}; and~~
- ~~(c) — for a natural gas gathering system to which the operator added a new gathering pipeline during the calendar year or changed the operations plan, an updated operations plan no later than March 31 of the following year.~~

(a) An operator whose gas capture percentage is not in compliance with 19.15.28.10(A) shall establish and submit to the division a mitigative action plan within 90 days of the reporting in 19.15.28.10(B).

Justification: If a gathering operator is meeting gas capture targets, additional operations and maintenance mitigative measures do not provide benefits to waste or emissions reductions and pose an unnecessary burden to operators already in compliance. Operators

not meeting gas capture targets should identify specific causes and determine / utilize appropriate measures to reduce emissions. Ninety (90) days is an appropriate timeline for operators not meeting gas capture targets to develop mitigative measures due to the time required for operators to conduct the testing and sampling / analysis needed for identifying and prioritizing appropriate mitigative measures.

(b) For operators under a mitigative action plan, any changes to the plan or proof of gas capture percentage in compliance with 19.15.28.10(A) and subsequent termination of the mitigative action plan shall be submitted to the division no later than March 31 of the following year.

Justification: Procedure review and update processes for gathering pipeline operators typically occur on an annual basis. Operators should have flexibility to update and adjust mitigation plans to reflect improvements and changes to gas capture percentage as work is accomplished.

~~(2) — During scheduled maintenance, replacement, or repair of a new or existing natural gas gathering system, the operator shall not vent natural gas during blowdown and shall route natural gas to a portable flare stack which complies with the flare stack standards, inspection, and recordkeeping requirements in Subsection E of 19.15.27.8 NMAC.~~

~~(3) — During unscheduled maintenance, replacement or repair of a new or existing natural gas gathering system, to the extent that it is technically feasible and would not pose a risk to safe operations or personnel safety, the operator shall not vent route natural gas during blowdown and shall route natural gas to a portable flare stack which complies with the flare stack standards, inspection and recordkeeping in Subsection E of 19.15.27.8 NMAC.~~

Justification: Strike from this section as venting and flaring during scheduled and unscheduled maintenance is allowed as per 19.15.28.8.B(2) and (3)(a). This will simplify the rule and address all venting / flaring situations in one section. These sections, (2) and (3) are not appropriate as they dictate that you have to flare vs. vent. The prohibition of vent versus flare is not a waste reduction provision but an air emissions issue under the jurisdiction of NMED which has performance standards and reporting requirements.

~~(42) The operator shall conduct a weekly monthly AVO inspection of the compressors, dehydrators and treatment facilities associated with a natural gas gathering system to confirm those components are operating properly and there are no leaks or releases except as allowed in Subsection B of 19.15.28.8 NMAC. This section does not apply to sites required to perform a monthly AVO inspection as required by the New Mexico Environment Department, Environmental Protection Agency, or a tribal authority.~~

Justification:

- Sites subject to a monthly AVO inspection required by NMED, EPA, or a tribal authority should not be subject to duplicative or inconsistent AVO inspection requirements under this regulation. The addition above will promote consistency between the division, NMED, and EPA rules without running afoul of the jurisdictional limits of the agencies. Further, this would align with July 20, 2020 NMED News Release on draft ozone precursor emissions rules that stated “NMED and the Energy, Minerals and Natural Resources Department (EMNRD), which also released draft rules today, worked closely together throughout the process to ensure the draft rules are complementary and do not result in redundant or conflicting requirements.”
- Many facilities are in remote areas and require significant investments in manpower to access. Operators believe an equivalent level of monitoring is possible through monthly inspections. Federal AVO inspection requirements are never as frequent as weekly. Storage tanks subject to NSPS OOOO and OOOOa require monthly AVO inspections on the closed vent system. Additionally, the General Construction Permit for Oil and Gas facilities in NM have a requirement to visually inspect piping and

units controlled by a VRU monthly.

(a) During an AVO inspection the operator shall inspect all components, including flare stacks, thief hatches, closed vent systems, pumps, compressors, pressure relief devices, valves, lines, flanges, connectors, and associated piping to identify defects, leaks, and releases by:

(i) visually inspecting **externally** for cracks and hole; loose connections; leaks; broken and missing caps; ~~broken, damaged seals and gaskets~~; broken, missing and open hatches; and broken, missing and open access covers and closure devices; and to ensure a flare stack is operating in conformance with its design;

Justification: AVO inspections can provide opportunities for operators to identify components at a facility that are not operating properly. The proposed language may be interpreted to require operators to open seals and gaskets to visually inspect for damage. This is not a common practice during an AVO inspection and may lead to unnecessary waste not typically associated with an AVO inspection. Incorporating this practice into an AVO inspection would also pose a safety issue when opening up the equipment to visually inspect for damage. Operators have specific practices, procedures, and guidelines for how and when to safely open equipment such as seals and gaskets to check for damage.

(ii) listening for pressure and liquid leaks; and

(iii) smelling for unusual and strong **hydrocarbon** odors.

Justification: During an AVO inspection, operators are looking for hydrocarbon leaks. Hydrocarbon odors should be the focus when smelling for unusual or strong odors. The presence of “unusual or strong odors” does not necessarily indicate a leak, release, or the improper operation of production equipment.

(b) The operator shall make and keep a record of an AVO inspection for no less than five years and make such records available for inspection by the division upon request.

(c) Subject to the division’s prior written approval, the operator may use a remote or automated monitoring technology to detect leaks and releases in lieu of an AVO inspection.

Commentary: NMOGA appreciates the opportunity to utilize emerging technologies and alternative methods for leak detection to increase efficiency and reduce operational burden.

~~(53) The operator shall perform an annual instrument monitoring of the entire length of a gathering pipeline using an AVO technique, ALARM technology, **aerial visual inspections**, or other valid method to detect leaks and releases. The operator shall record and **upon the division’s request**, report to the division the date and time of the monitoring, **and** the method and technology used. **Records of monitoring shall be retained by the operator for at least five years. Personnel conducting inspections shall be knowledgeable on the methods and technology being used, and the name of the employee(s) who conducted the monitoring. If the operator uses ALARM technology to detect and isolate a leak or release within 48 hours of discovery and repair the leak or release within 15 days of discovery, the operator may obtain a credit against its reported volume of lost natural gas pursuant to Paragraph (4) of Subsection B of 19.15.28.10 NMAC.**~~

Justification:

- Credits related to ALARM are governed and fully described by Subsection B of 19.15.28.10 NMAC. This sentence is redundant and should be removed in the interest of simplification.
- Personnel conducting inspections should not be exposed to identification in the public record while working on behalf of the operator. It is critical to protect the privacy of the individuals that conduct such monitoring.
- Operators ensure employees conducting inspections are knowledgeable on the methods and technology being used and this can be included as part of the

- requirement.
- Visual inspections of pipeline right-of-way are proven through decades of use to be an effective means of detecting leaks and should not be disqualified.
- Any instrumented survey should qualify as ALARM technology.

D. Reporting to affected upstream operators.

(1) No less than 14 days prior to the date of scheduled maintenance, replacement or repair of a natural gas gathering system, the operator shall provide written, telephonic, or electronic notification to each upstream operator whose natural gas is gathered by the system of the date and expected duration that the system will not gather natural gas.

Justification: There will be occurrences when repairs or maintenance need to take place to ensure operational integrity and avoid emergencies and malfunctions but cannot be “scheduled” 14 days in advance. Electronic or telephonic notification is a common method that fosters effective communication and should be allowed.

(2) As soon as possible but no more than 24 hours after discovery of the need for unscheduled maintenance, replacement or repair of a natural gas gathering system, the operator shall provide written, telephonic, or electronic notification to each upstream operator whose natural gas is gathered by the system of the date and expected duration that the system will not gather natural gas.

Justification: Electronic or telephonic notification is a common method that fosters effective communication and should be allowed.

(3) The operator shall make and keep a record of each notification for no less than five years and make such records available for inspection by the division upon request.

E. Measurement of vented and flared natural gas.

(1) The operator shall measure or estimate the volume of natural gas that it vents, flares or beneficially uses regardless of the reason or authorization for such venting or flaring.

Justification: Adding "or estimate" since the rule provides optionality to estimate technically infeasible volumes.

(2) The operator shall install equipment to measure the volume of natural gas vented or flared from a natural gas gathering system.

(3) Measuring equipment shall conform to an industry standard such as American Petroleum Institute Manual of Petroleum Measurement Standards Chapter 14.10, Measurement of Flow to Flares, ~~be an orifice meter or other measurement device or technology such as a thermal mass or ultrasonic flow meter approved by the division that, at the time of installation, complies with the accuracy ratings and design standards for the measurement of natural gas, such as the American petroleum institute, international organization for standards, or American gas association.~~

Justification:

- NMOGA supports the change to remove the requirement to comply with BLM 43 CFR 3175 as that rule does not apply to flare or vent gas measurement. Given the challenges of flare measurement (changing composition, low flow rate/low pressure, liquid dropout, etc.), NMOGA further supports the clarification that measurement equipment should follow industry standards related to installation and operation, thus improving the likelihood of quality measurement.
- API MPMS 14.10 is the recommend standard reference for flare meters and is not specific to any one technology as it recognizes each technology may have a good fit depending on the flare conditions. There are also safety considerations in meter selection (e.g. restrictions, pressure drop) that each Operator must evaluate, which make it difficult to recommend a one-size-fits all meter.
- NMOGA does not believe the commission should be qualifying metering technologies or

processes. During the last three years, the Bureau of Land Management (BLM) has unsuccessfully attempted implementing this practice within house staff. Considering the limited availability of state staffing and resources, NMOGA recommends the commission rely on industry standards, such as API MPMS 14.10, Measurement of Flow to Flares.

(4) Measuring equipment shall not be designed or equipped with a manifold that allows the diversion of natural gas around the metering element except for the sole purpose of inspecting and servicing the measuring equipment.

(5) ~~For an event for which~~ **Where** metering is not practicable, such as low flow rate or low pressure venting and flaring, the operator shall estimate the volume of vented or flared natural gas.

Justification: Low flow rate or low pressure is difficult to measure due to limitations on metering technology. Estimation is a more reliable approach in these circumstances. An example might include a pipeline blowdown vent; using the pipeline length, diameter, and pressure, one can accurately calculate the volume of gas vented.

(6) All beneficial use gas may be determined through estimation.

Justification: The regulatory and industry practice is to allow all beneficial use to be determined by estimation. BLM Rule 43 CFR 3178 allows for calculation using manufacturing data of all beneficial use gas. Often, beneficial use gas is too low in volume or too inconsistent in use to accurately measure (e.g. gas supplied to a burner controlling temperature, gas supplied to a pneumatic system, gas routed to purge a flare line). This change does not preclude the use of metering technology (where technically feasible and practical) if that is preferred by the operator but ensures the proposed rule will protect the choice of the operator to estimate beneficial use gas. COGCC Series 900 rule allows for estimation of vented, flared or used volumes Section 903 (4) Measurement and Reporting.

F. Reporting of vented and flared natural gas.

(1) **Venting or flaring caused by emergency or malfunction or of long duration.**

(a) The operator shall notify the division of venting or flaring that exceeds 50 MCF in volume and either results from an emergency or malfunction or lasts eight hours or more, that is not authorized by the NMED, the US EPA, or a Tribal authority with Clean Air Act delegation cumulatively within any 24-hour period from a single event by filing a form C-129 with the division as follows:

Justification: Long duration events permitted by the NMED, EPA, or Tribal authority should not be included here. Please see justification in 19.15.28.8.B.(1). An operator could conceivably have two events in the state on the same day. The C-129 points to a single event and combining two events would be confusing. Also, a single C-129 for a long duration event should be sufficient.

(i) for venting or flaring that equals or exceeds 50 MCF but is less than 500 MCF from a single event, notify the appropriate division district office in writing by filing a form C-129 with information available no later than 15 days following discovery or commencement of venting or flaring; or

Justification: Events permitted by the NMED, EPA, or Tribal authority should not be included here. Please see justification in 19.15.28.8.B.(1). Operators often conduct reviews after unplanned events and may determine that information provided soon after an event needs to be updated. So, the ability to provide correct available information at more than one stage of the reporting process is needed.

(ii) for venting or flaring that equals or exceeds 500 MCF or otherwise qualifies as a major release as defined in 19.15.29.7 NMAC from a single event, notify the appropriate division district office verbally or by e-mail as soon as possible and no later than 24 hours following discovery or

commencement of venting or flaring and provide the information required in form C-129, as available. No later than 15 days following the discovery or commencement of venting or flaring, the operator shall file a form C-129 that verifies, updates, or corrects the verbal or e-mail notification; and

Justification: Events permitted by the NMED, EPA, or Tribal authority should not be included here. Please see justification in 19.15.28.8.B.(1).

Operators often conduct reviews after unplanned events and may determine that information provided soon after an event needs to be updated. The ability to provide correct available information at more than one stage of the reporting process is needed.

(iii) no later than 15 days following the termination of venting or flaring, notify the appropriate division district office by filing a final form C-129.

(b) The operator shall provide and certify the accuracy of the following information in the final form C-129:

- (i) operator's name;
- (ii) name and type of facility;
- (iii) equipment involved;
- (iv) representative analysis of vented or flared natural gas;

Justification: Operators take periodic samples of natural gas to meet regulatory, operational and contractual needs and can submit the most recent analysis which may not be the day the vent or flare event occurred. However, due to the mix of gas inputs to the gathering system, an analysis of the exact mix of gas vented or flared may not be available. It's impossible to capture a sample of natural gas vented or flared as the event is occurring due to safety considerations. In order to promote compliance with this regulatory provision, a representative analysis should be the requirement.

(v) date(s) and time(s) that venting or flaring was discovered or commenced and terminated:

- (vi) measured or estimated volume of vented or flared natural gas;
- (vii) cause and nature of venting or flaring;
- (viii) steps taken to limit the duration and magnitude of venting or flaring; and
- (ix) corrective actions taken to eliminate the cause and recurrence of venting or flaring.

(c) At the division's request, the operator shall provide ~~and certify~~ additional information by the specified date.

Justification: Certification is typically completed for truth, accuracy and completeness. It is unclear how and whether operators could certify given that the additional information that is unspecified. We do not know what type of information the division may request and cannot verify how accurate the data may or may not be, especially if it will be coming from a third party.

(d) Notwithstanding the notification requirements of 19.15.29 NMAC, ~~the~~ operator shall file a form C-141 129 for a gas release instead of ~~and file~~ a form C-129 141 for the release of a liquid during venting or flaring that is or may be a major or minor release under 19.15.29.7 NMAC.

Justification: This change is necessary to ensure operators are not required to file a C-141 in addition to the C-129 for gas vented or flared and to eliminate compliance issues due to lack of reporting as required by Part 29. Initially this won't resolve the conflict with Part 29 and this section, until Part 29 is amended to conform to the changes. When the information requested on the current C-141 is evaluated, it is clear that the form is more appropriately used to report liquid releases. Form C-129 has always been associated with gas, so use of that form to report natural gas events is appropriate.

(2) **Monthly reporting of vented and flared natural gas volumes.** The operator shall report the volume of vented and flared natural gas for each month in each category listed below. Beginning ~~June July 1, 2021~~, the operator shall ~~gather data for submit~~ quarterly reports in a format specified by the division ~~and submit by November 15, 2021 for the third quarter and February 15, 2022 for the fourth quarter.~~ Unless otherwise approved by the division. ~~B~~beginning January 2022, the operator shall submit a form C-115B monthly on or before the 15th day of the second month following the month in which it vented or flared natural gas. The operator shall specify whether it estimated or measured each reported volume. In filing the initial report, the operator shall provide the methodology (measured or estimated using calculations and industry standard factors) used to report the volumes on the form and shall report changes in the methodology on future forms. The operator shall make and keep records of the measurements and estimates, including records showing how it calculated the estimates, for no less than five years and make such records available for inspection by the division upon request. The categories are:

Justification:

- The monthly reporting for Part 28 will need to include gas gathered volumes in addition to vented and flared volumes thus expanding the title of this section.
- Added language and dates to clarify that quarterly reports would be due for third and fourth quarters of 2021. NMOGA would like to note that since the “format specified by the division” is still unknown, there may be some difficulties to meet the required timeframe to report.
- Currently, the midstream operators do not have a reporting mechanism setup for reporting to the division. Therefore, the commission should provide a reasonable timeframe for implementation of C-115B reports.

- (a) emergency;
- (b) non-scheduled maintenance and malfunction;
- (c) routine repair and maintenance, including blowdown and depressurization;
- (d) beneficial use, including pilot and purge gas, fired equipment and engines;
- (e) gathering pipeline blowdown and purging;
- (f) gathering pipeline pigging;
- (g) ~~uncontrolled storage tanks;~~
- (h) ~~venting as a result of normal operation of pneumatic controllers and pumps;~~
- (i) ~~improperly closed or maintained thief hatches that are routed to a flare or control device; and~~

Justification: NMOGA proposes removal of (g), (h), and (i) because it is infeasible to measure or calculate with reasonable accuracy for the purposes of compliance with statewide gas capture requirements. In addition, (g) and (h) are generally volumes that are not recoverable and do not constitute waste. The existing regulatory framework enforced by EPA via NMED adequately addresses these as a source of emissions so there is no need to duplicate. In addition, based on NMOGA’s proposed definition of venting and flaring these categories would not be considered venting or flaring.

- In the case of “uncontrolled storage tanks”, these volumes are normal operating losses regulated by NMED.
- In the case of pneumatic controllers, natural gas use in this manner is an accepted part of normal oil and gas operations and is allowed and/or permitted through other regulatory programs. The natural gas is used, not wasted. However, OOOOa restricts the use of high bleed pneumatics and draft NMED requirements are proposing a shift from natural gas activated pneumatic controllers and pumps to air activated. Significant production in NM flows through facilities regulated by OOOOa. New facilities are installing pneumatic controllers and pumps which do not use natural gas. Existing facilities are replacing pneumatic controllers and pumps which use various means of activating. Therefore, this category will be significantly reduced as a source of venting due to attrition over time. Further, this deletion is consistent with our proposed revisions to the definition of venting which does not consider pneumatic controllers and pumps to be venting.
- In the case of thief hatches, generally, facility design does not include routing thief hatches to a flare or control device even where the storage is routed to a flare or control device. A thief hatch improperly closed or maintained is a different circumstance and generally is a volume that is not recoverable and does not

constitute waste. There are numerous variables, e.g. seal leaking, thief hatch left open, etc., that make it difficult to consistently calculate volumes for compliance with statewide gas capture requirements.

(j) — other not described above.

Justification: NMOGA believes that venting and flaring is going to fall within the NMOGA proposed categories listed such that it makes “other” unnecessary. Leaving “other” as a category would introduce uncertainty as to how it would be accounted for in the operator’s lost gas and gas capture calculation.

(3) The operator shall report the gas gathered, the lost natural gas for each month on a volumetric basis and the gas capture percentage basis on form C-115B.

Justification: C-115B form has not been proposed but it would need to include reporting of gas gathered volumes in order to accurately calculate the lost natural gas on a volumetric basis and gas capture percentage. Gas gathered is the volume of gas entering the natural gas gathering system.

(a) To calculate the lost natural gas on a volumetric basis, the operator shall add ~~deduct~~ the volume of natural gas used for beneficial use, vented or flared during non-scheduled maintenance and malfunction, routine repair and maintenance (including blowdown and depressurization), gathering pipeline blowdown and purging, and gathering pipeline pigging, an emergency and ALARM credits authorized by Paragraphs (5) and (6) of Subpart B of 19.15.28.10 NMAC, from the volume of natural gas reported on its form C-115B for the calendar year month. Formula is illustrated below:

Lost Gas = Non-scheduled maintenance and malfunction + routine repair and maintenance + gathering pipeline blowdown and purging + gathering pipeline pigging

Justification: In the division’s proposal, including ALARM credits in the monthly calculation creates uncertainty due to not knowing when the credits will be approved and when they can be applied. Therefore, changing the way lost gas is calculated provides clarity and certainty on what the true lost gas volume really is.

(b) To calculate the ~~lost natural~~ monthly gas capture on a percentage basis, the operator shall deduct the volume of lost gas reported in (3)(a) above ~~natural gas reported on its form C-115B for the calendar year, but not including the volume of natural gas used for beneficial use, vented or flared during an emergency and ALARM credits authorized by Paragraphs (5) and (6) of Subpart B of 19.15.28.10 NMAC,~~ from the total volume of natural gas gathered, and divide by the total volume of natural gas gathered. Formula is illustrated below:

Monthly Gas Capture % = (Total gas gathered – Lost gas)/Total gas gathered

Justification: NMOGA believes the additional wording and formula illustrations provide clarity and streamline the process for operators in determining compliance.

Commentary: NMOGA supports the changes from the original draft rule related to the midstream gas capture equation, specifically the change from performing a system balance to instead calculating capture relative to the gas gathered.

~~(4) — Upon request by the division, the operator, at its own expense, shall retain a third-party approved by the division to verify any data or information collected or reported pursuant to Subsections E and F of 19.15.28.8 NMAC and make recommendations to correct or improve the collection and reporting of data and information, submit a report of the verification and recommendations to the division by the specified date, and implement the recommendations in the manner approved by the division.~~

Justification: This is duplicative of 19.15.28.10.C..

~~(5) Upon the New Mexico environment department's request, the operator shall promptly provide a copy of any form filed pursuant to 19.15.28 NMAC.~~

Justification: Any form filed pursuant to Part 27 is available to the general public and the NMED on the division's website. In addition, this requirement has no relation to the prevention of waste.

[19.15.28.8 NMAC – N, xx/xx/xxxx]

19.15.28.9 LOCATION REQUIREMENTS:

A. The operator shall file with the division a GIS digitally formatted as-built map:
(1) for a new gathering pipeline or natural gas gathering system, no later than 90 days after placing the gathering pipeline or system into service;
(2) for an existing gathering pipeline or natural gas gathering system, no later than May 31, 2021; and
(3) for an addition to an existing gathering pipeline or natural gas gathering system, no later than 90 days after placing the addition into service.

B. To ensure proper field identification of a gathering pipeline in an emergency, the as-built map shall include a layer which identifies the pipeline size and construction material type.

~~C. No later than May 31 of each year, the operator shall file with the division an updated GIS digitally formatted as-built map of its gathering pipeline or natural gas gathering system, which shall include a GIS layer that identifies the date, location and volume of vented or flared natural gas of each emergency, malfunction and release reported to the division since 19.15.28 NMAC became applicable to the pipeline or system.~~

Justification: Duplicative of A(3) and duplicative of all information provided on Forms C-141 and C-129. Resubmitting location information poses an unnecessary administrative burden, is duplicative of existing data already required by and submitted to the division and has nothing to do with reducing surface waste since the information is already provided on other reports.

C. An operator may assert request confidentiality for the GIS digitally formatted as-built map and GIS layer, which the division will review shall maintain as confidential as required by pursuant to Section 71-2-8 NMSA 1978.

Justification: Section 71-2-8 (“confidentiality statute”) states that “the provisions of any confidential contract or any other confidential information required or possessed” by the EMNRD “shall be held confidential by the department upon written request of the party supplying it.” NMSA § 71-2-8 (emphasis added). If information is deemed confidential by the operator, the EMNRD does not have the discretion to deny a request for maintaining its confidentiality under the confidentiality statute. NMSA § 71-2-8 (confidential information “shall be held confidential by the department”) (emphasis added). And nothing in the New Mexico Inspection of Public Records Act (IPRA) allows for release of this information as the IPRA “incorporates limitations on access to public records found in other statutes and sources of legal authority.” New Mexico Office of the Attorney General, *New Mexico Inspection of Public Records Act Compliance Guide*, 16 (2015).

[19.15.28.9 NMAC – N, xx/xx/xxxx]

19.15.28.10 STATEWIDE NATURAL GAS CAPTURE REQUIREMENTS:

A. Statewide natural gas capture requirements. Commencing January 1, 2022, the operator of a natural gas gathering system or systems shall begin to reduce the operator's annual volume of vented and flared natural gas in order to capture ninety-eight percent of the natural gas gathered in each of two reporting areas, one north and one south of the Township 10 North line, by December 31, 2026. The division shall calculate and publish each operator's baseline gas capture rate based on the operator's 2021 quarterly reports as per 19.15.28.8.F.(2) monthly data reported on form C-115B for each reporting area in which the operator has a natural gas gathering system. In each calendar year between January 1, 2022 and December 31, 2026, the operator shall increase their annual percentage of natural gas captured in each reporting area in which it operates based on the following formula: (2021 baseline loss rate minus two percent) divided by five. An operator may submit a hearing request for relief from this requirement.

Justification: NMOGA proposed clarifying the language that we are reporting by operator and adding language as an attempt to clarify the timing of the initial baseline. The reporting requirements for gathering systems is a new requirement for operators. Additionally, the reporting requirement for 2021 is currently proposed at quarterly. The reporting frequency was revised for the gas capture baseline to correct the typographical error. As explained in the reporting section, time is needed to implement new reporting requirements so reporting should not begin until sufficient time is allowed. Earliest initial reporting period should not begin until third quarter of 2021, assuming that the rule is finalized before the end of the first quarter. The division should allow an operator to request a hearing for an alternate gas capture percentage requirement to allow for unusual circumstances.

(1) The following table provides examples of the formula based on a range of baseline natural gas capture rates.

Baseline Natural Gas Capture Rate	Minimum Required Annual Natural Gas Capture Percentage Increase
90-98%	0-1.6%
80-89%	>1.6-3.6%
70-79%	>3.6-5.6%
0-69%	>5.6-19.6%

(2) If the operator's baseline capture rate is less than sixty percent, the operator shall submit by the specified date to the division for approval, a plan to meet the minimum required annual capture percentage increase.

(3) An operator that acquires a natural gas gathering system from another operator shall comply with its statewide applicable reporting areas natural gas capture requirements for the acquired system no later than December 31, 2026, unless the division approves a later date. The operator may either report and manage compliance with the natural gas capture requirement separately for the acquired system, or the operator may include the acquired system in its applicable regional area reporting and compliance obligations.

Justification: The draft rule text is ambiguous as to how a company determines its capture requirement for a newly acquired system. The suggested text would permit the operator to either include a new system in its existing capture framework or account for it separately; the 98% target must be met either way, but this clarification will provide a reasonable flexibility in how to account for it. In addition, the reference to December 1 rather than 31 of 2026 in the draft rule text appears to have been a typographical error.

(4) Operators that are affiliated may, but are not required to, consolidate their natural gas capture reporting and compliance obligations.

Justification: The draft rule does not address the possibility of nominally separate operators that are part of a larger company. Companies may have a variety of reasons (such as historical mergers and acquisitions) for using separate operating entities that are part of the same corporate family and that are served by the same regulatory compliance departments. Allowing, but not requiring, a corporate family to consolidate its reporting and capture percentage performance is a reasonable

flexibility that is consistent with the overall objective of 98% gas capture.

B. Accounting Certification. ~~After baseline has been set in February 2022, the operator shall submit a report certifying compliance with its statewide reporting area annual gas capture percentage calculated by deducting from the total volume of natural gas gathered, the volume of lost gas reported in 19.15.28.8.F.(3)(a) minus any ALARM credits, and divide by the total volume of natural gas gathered in 19.15.28.8.F.(3)(e). No~~ later than February 15 28 each year beginning in 2022~~3~~. The operator's volume of vented and flared natural gas shall be counted as lost natural gas and excluded from the volume of natural gas gathered or used for beneficial use in the calculation of its statewide natural gas capture requirements, except that: ~~Formula is illustrated below:~~

$$\text{Annual Gas Capture \%} = \frac{\text{Total gas gathered} - (\text{Lost gas} - \text{ALARM credits})}{\text{Total gas gathered}}$$

~~(1) — the operator may exclude from the volume of gathered natural gas the volume of vented and flared natural gas pursuant to Subparagraph (a) of Paragraph (2) of Subsection F of 19.15.28.8 NMAC for which the operator timely filed, and the division approved, a form C-129; and~~

~~(2) — the operator may exclude from the volume of gathered natural gas the volume of natural gas as a beneficial use pursuant to Subparagraphs (d) or (h) of Paragraph (2) of Subsection F of 19.15.28.8 NMAC, provided that the operator identifies the volume of vented natural gas, the reason that the operator vented the natural gas rather than capturing it and any other relevant information requested by the division;~~

Justification: Calculating the annual gas capture percentage has been streamlined by changes proposed in 19.15.28.8.F.(3)(a) and (b). The compliance certification with the gas capture requirement begins after the baseline year. If the baseline year is 2021, then the first year needing to certify gas capture rate will be 2022. Therefore, the first compliance certification for the 2022 reporting year is not due until February 2023.

Commentary: A baseline year extrapolated from six months of 2021 data would potentially give an artificially low baseline year because operators will not have engineering systems in place to capture all venting and flared volumes (results in an artificially low baseline capture). The division is seeking transparency under routine conditions and thus should consider this for the 2021 year.

~~(31)~~ an operator that used a division-approved ALARM technology to monitor for leaks and releases may obtain a credit against the volume of lost natural gas if it discovered the leak or release using the ALARM technology, and the operator:

- (a) isolated the leak or release within 48 hours following field verification;
- (b) repaired the leak or release within 15 days following field verification or another date approved by the division;

Justification: To be consistent with Part 27 and provide a definite timeframe.

- (c) timely notified the division by filing a form C-129 ~~or form C-141~~;

Justification: Part 19.15.28.9.F.(1)(d) states C-141 required for liquid releases.

~~(d) timely reported the volume of natural gas leaked or released on form C-115B as an ALARM event pursuant to Subparagraph (n) of Paragraph (2) of Subsection F of 19.15.28.8 NMAC; and~~

Justification: Division scrivener's error.

(e) used ALARM monitoring technology as a routine and on-going aspect of its waste-reduction practices.

(i) For discrete waste-reduction practices such as aerial methane monitoring, the operator must use the technology at least ~~twice~~once per year; and

Justification: This monitoring requirements should match the requirement in 19.15.28.8.C.(5) for annual instrument monitoring of gathering pipelines.

(ii) for waste-reduction practices such as automated emissions monitoring systems that operate routinely or continuously, the division will determine the required frequency of use.

(42) An operator may file an application with the division for a credit against its volume of lost natural gas that identifies:

- (a) the ALARM technology used to discover the leak or release;
- (b) the dates on which the leak or release was discovered, field-verified, isolated, and repaired;
- (c) the method used to measure or estimate the volume of natural gas leaked or released;
- (d) a description and the date of each action taken to isolate and repair the leak or release;
- (e) visual documentation or other verification of discovery, isolation, and repair of the leak or release;
- (f) a certification that the operator did not know or have reason to know of the leak or release before discovery using ALARM technology; and
- (g) a description of how the operator used ALARM technology as a routine and on-going aspect of its waste-reduction practices.

(53) For each leak or release reported by an operator that meets the requirements of Paragraphs (3) and (4) of Subsection B of 29.15.28.10 NMAC, the division, in its sole discretion, may approve a credit that the operator can apply against its reported volume of lost natural gas as follows:

- (a) a credit of forty percent of the volume of natural gas discovered and isolated within 48 hours of discovery and timely repaired; and
- (b) an additional credit of twenty percent if the operator used ALARM technology no less than once per calendar quarter as a routine and on-going aspect of its waste-reduction practices.

(64) A division-approved ALARM credit shall:

- (a) be used only by the operator who submitted the application pursuant to Paragraph (4) of Subsection B of 29.15.28.10 NMAC;
- (b) not be transferred to or used by another operator, including a parent, subsidiary, related entity or person acquiring the natural gas gathering system;
- (c) be used only once; and
- (d) expire 24 months after division approval.

C. Third-party verification. ~~Upon request by the division, the operator, at its own expense, shall retain a third party approved by the division to verify any data or information collected or reported pursuant to Subsections F and G of 19.15.27.8 NMAC and this Part, make recommendations to correct or improve the collection and reporting of data and information, submit a report of the verification and recommendations to the division by the specified date, and implement the recommendations in the manner approved by the division.~~ The division may request that an operator retain a third party to verify any data or information collected or reported pursuant to Subsections F and G of 19.15.27.8 NMAC and this Part, make recommendations to correct or improve the collection and reporting of data and information, submit a report of the verification and recommendations to the division by the specified date, and implement the recommendations in the manner approved by the division. If the division and the operator cannot reach agreement on the division's request, the operator may file an application for hearing before the division. The operator, at its own expense, shall retain a third party approved by the division to conduct the activities agreed to by the division and the operator or ordered by the division following a hearing.

Justification: The proposal by the division does not include notice to the operator of the reasons for being required to conduct a third-party review or the ability to address the issue with the division in advance of the demand. Operators need to understand what prompted the division to take such action and the ability to challenge the demand when appropriate due to the cost and burden involved.

[19.15.28.10 NMAC – N, xx/xx/xxxx]

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