



NEW MEXICO OIL AND GAS ASSOCIATION

# **Oil Conservation Commission**

**Case No. 21528**

*January 4, 2021*

**Exhibit A**

**Part 25 and Part 27**

**19.15.7.25 VENTED AND FLARED NATURAL GAS (Form C-115B):**

**A.** An operator shall file form C-115B in accordance with ~~19.15.27 NMAC~~ and 19.15.28 NMAC.

**B.** An operator shall file form C-115B using the division's web-based online application on or before the 15th day of the second month following the month in which venting or flaring occurred. An operator may apply to the division for exemption from the electronic filing requirement based upon a demonstration that such requirement would be an economic or other hardship.

[19.15.7 NMAC – N, xx/xx/xxxx]

**Justification:** Based on NMOGA's proposal to utilize C-115 for reporting vented and flared natural gas, the reference to Part 27 is no longer needed.

**TITLE 19  
CHAPTER 15  
PART 27**

**NATURAL RESOURCES AND WILDLIFE  
OIL AND GAS  
VENTING AND FLARING OF NATURAL GAS**

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

**19.15.27.2 SCOPE:** 19.15.27 NMAC applies to persons engaged in oil and gas development and production within New Mexico.  
[19.15.27.2 NMAC – N, xx/xx/xxxx]

**19.15.27.3 STATUTORY AUTHORITY:** 19.15.27 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]

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

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

**19.15.27.6 OBJECTIVE:** To regulate the venting and flaring of natural gas from wells and production equipment and facilities to prevent waste and protect correlative rights, public health, and the environment.  
[19.15.27.6 NMAC – N, xx/xx/xxxx]

**19.15.27.7 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 ~~27.9~~ 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. The reference to Part 28 appears to be a scrivener’s error since this is Part 27.

**B. ~~“Average daily production” means has the same meaning as in Subsection A of 19.15.6.7~~**  
NMAC.

**Justification:** Based on NMOGA’s added definition of “Facility daily average production,” this term is no longer needed. See proposed definition below.

**C. “AVO”** means audio, visual and olfactory.

**D. “Completion operations”** means the period that begins with the initial perforation of the well in the completed interval and concludes ~~upon startup of production. on the earlier of 30 days after commencement of initial flowback or when permanent production equipment is first placed into service.~~

**Justification:**

- The division has proposed revisions to the definitions for the following terms: *Completion operations, Initial flowback, Startup of production, Production operations, and Separation flowback*. Each of these terms are used or have similarly worded terms used in the Environmental Protection Agency’s New Source Performance Standard OOOOa (NSPS OOOOa) and are defined at 40 CFR 60.5430a. NSPS OOOOa applies (with limited exception) to all new oil and gas wells and supplies relevant terms describing when operators move through the pre-production process into the production phase. Even though NSPS OOOOa is an air emissions regulation and Part 27 is not an air emissions regulation, it is helpful to use the same definitions

in both Parts 27 and 28 for the simple reason that these terms are well established and understood by operators in defining what stage of operations the production facility is in. Using these definitions will promote consistency between the division, NMED, BLM and EPA rules without running afoul of the jurisdictional limits of the agencies. Operators are familiar with those terms, utilize those terms in connection with all new or modified operations, and those terms provide the general framework for when operators move from one phase to another. NMOGA's proposed amendments align more closely to NSPS OOOOa.

- The definition of "*Completion operations*" proposed by the division creates the potential that "*Completion operations*" end and "*Production operations*" (discussed below) begin at a different point in the process than currently under NSPS OOOOa. Under the division's proposed definition, completion operations conclude "on the earlier of 30 days after commencement of initial flowback or when permanent production equipment is in use at the well." This phrase has the potential of deeming operators to be out of completion and into production before this actually occurs from a technical perspective. Permanent production equipment is not defined but presumably would include either permanent separators or permanent tanks. Many companies may use either permanent separation equipment or permanent storage tanks during the flowback process; and yet, are still in flowback. Operators should be encouraged to utilize permanent production equipment where necessary, but its use cannot alter when an operator has initiated production. Instead of using these ambiguous and undefined terms, the commission should utilize the existing and well-known definition under NSPS OOOOa for startup of production and those terms that reference startup of production. Under NSPS OOOOa, the definition of "*Startup of Production*" provides appropriate limitations (which companies are already complying with) beyond just the use of permanent production equipment. Specifically, "*Startup of production*" is defined, as stated below, to ensure that operators are only deemed in production where there is continuous recovery of salable quality gas AND separation and recovery of any crude oil, condensate or produced water.
- Thus, NMOGA recommends that the commission adopt the following definitions of startup of production and completion operations:

**"Startup of production"** means the beginning of initial flow following the end of flowback when there is continuous recovery of salable quality gas and separation and recovery of any crude oil, condensate or produced water.

**"Completion operations"** means the period that begins with the initial perforation of the well in the completed interval and concludes upon startup of production. ~~on the earlier of 30 days after commencement of initial flowback or when permanent production equipment is first placed into service.~~

- NSPS OOOOa also has definitions of "*Initial flowback*" and "*Separation flowback*" – the same terms used by the division. Specifically, under NSPS OOOOa, these terms are defined as follows:

**"Initial flowback"** means the period during a well completion operation which begins at the onset of flowback and ends at the separation flowback stage.

**"Separation flowback"** means the period during a well completion operation when it is technically feasible for a separator to function. The separation flowback stage ends either at the startup of production, or when the well is shut in and permanently disconnected from the flowback equipment.

- For similar reasons, NMOGA proposed the following changes to the division's definitions of "*Initial flowback*" and "*Separation flowback*" to align to the existing definitions in NSPS OOOOa that are well known to operators.

**"Initial flowback"** means the period during a well completion which begins at the onset of flowback and ends at the separation flowback stage. ~~completion operations that begins with the onset of flowback and concludes when it is technically feasible for a separator to~~

function.

**“Separation flowback”** means the period during completion operations that begins when it is technically feasible for a separator to function. The separation flowback stage ends either at the startup of production, or when the well is shut in and permanently disconnected from the flowback equipment. ~~and concludes on the earlier of 30 days after the commencement of initial flowback or when permanent production equipment is placed into service.~~

- Finally, NMOGA has modified the term *“Production operations”* (see definition below) to use the term *“Startup of production”* (used in *“Initial flowback”* and *“Separation flowback”*) instead of referencing the “period that begins on the earlier of 31 days following the commencement of initial flowback or when permanent production equipment is placed into service.” By using the term *“Startup of production”* and other terms that are consistent with NSPS OOOOa throughout the proposed rules, the commission will ensure compliance, avoid uncertainty and avoid inconsistency.

**E. “Drilling operations”** means the period that begins when a well is spud and concludes when casing and cementing has been completed and casing slips have been set to install the tubing head.

**F. “Delineation well”** means a well located in a spacing unit the closest boundary of which is two miles or more from:

(1) the outer boundary of a defined pool that has produced oil or gas from the formation to which the well is or will be ~~drilled~~**completed**; and

(2) an existing gathering pipeline as defined in 19.15.28 NMAC.

**Justification:** NMOGA supports the added definition for delineation well with the minor edit to use “completed” to align with the complete interval in the horizontal well rules (19.15.16.15 NMAC).

**G. “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 the division intended 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 production;

(2) ~~except as otherwise provided in (4) below,~~ the operator’s failure to limit production when the production rate exceeds the capacity of the related equipment or natural gas gathering system as defined in 19.15.28 NMAC, ~~or exceeds the sales contract volume of natural gas;~~

**Justification:** NMOGA has added language to clarify that the capacity issues addressed by this provision is not related to the causes stated in provision (4) below. NMOGA has removed sales contract because a sales contract typically does not specify or otherwise address volume. In limited instances where a sales contract includes a minimum volume commitment, those volumes are usually not allocated to individual wells. As such, the limiting factor is potential takeaway capacity constraints at the wellhead, and NMOGA agrees that if an operator has failed to limit production when the rate exceeds capacity that event should not be considered an emergency.

(3) scheduled maintenance;

(4) venting or flaring of natural gas ~~for more~~ **lasting longer than four eight** hours that is caused by an emergency, unscheduled maintenance, or malfunction of a natural gas gathering system, as defined in 19.15.28 NMAC **(the first eight hours of venting or flaring caused by such event shall be considered an emergency);**

**Justification:** Four hours is an insufficient time and should be changed to eight hours for the

following reasons:

- Logistical matters:
  - Time is needed to obtain relevant information on the cause of the event, travel to the field office (as necessary), and drive to the location (unpaved roads, lower speed limits, traffic, and weather conditions).
  - The situation must be assessed, efforts undertaken to troubleshoot the cause, and evaluate safety considerations.
  - To properly respond, which may include restricting production, at least 8 hours may be required.
- Safety considerations:
  - Tight response times increase safety risks. If an operator attempts to address an emergency or flare event within too short of a time, the likelihood of accidents or shortcuts might increase.
  - Operators must be provided adequate time to troubleshoot and approach facility safely within tight timeframes.
  - Well conditions could impact response time (e.g., well control, sour well site).

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

**Justification:** NMOGA agrees that negligence should not constitute an emergency, but recurring equipment failures 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. Complex equipment has numerous possible failures types (i.e. compressors have lubrication problems, damaged cylinders, rod packing etc.)

**H. “Facility average daily production” means the yearly average production from a facility serving a well or wells, on a per well, per producing day basis.**

**Justification:** Certain requirements of this rule as written seem to apply on an individual well basis but instead should apply to the facility serving a well or wells. Therefore, we have replaced “Average daily production” with “Facility average daily production” for proper application.

**HI. “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 19.15.27 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 division's 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.

**IJ.** “Flare stack” means ~~a an appropriately designed stack~~ 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. This is appropriate as these technical details are best managed in drilling, completion and performance standards, not the definition. 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.”

**JK.** “Gas-to-oil ratio (GOR)” for purposes of 19.15.27 NMAC means the ratio of natural gas to oil in the production stream expressed in standard cubic feet of natural gas per barrel of oil.

**KL.** “Initial flowback” means the period during completion operations that begins with the onset of flowback and ends at separation flowback. ~~concludes when it is technically feasible for a separator to function.~~

**Justification:** Please refer to justification under “Completion Operations”.

**LM.** “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.

**M.N.** “N2” means nitrogen gas.

**N.O.** “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.

**Ø.P.** “Production operations” means the period that begins upon the startup of production and concludes when production ceases and wells are plugged and abandoned. ~~means the period that begins on the earlier of 31 days following the commencement of initial flowback or when permanent production equipment is placed into service and concludes when the well is plugged and abandoned.~~

**Justification:** Completions can take longer than 31 days and by including a pre-defined time frame that does not fit the realities is arbitrary and unreasonable; the realities include operational performance, safety, completion design, weather delays all influence the amount of time it takes to start producing. Please also refer to justification under “Completion Operations.”

**P.Q.** “Producing in paying quantities” mean the production of a quantity of oil and gas that yields revenue in excess of operating expenses.

**R.** “Startup of production” means the beginning of initial flow following the end of flowback when there is continuous recovery of salable quality gas and separation and recovery of any crude oil, condensate or produced water.

**Justification:** Please see “Completion Operations” justification.

**Q.S.** ~~“Separation flowback” means the period during a well completion operations that begins when it is technically feasible for a separator to function, and concludes on the earlier of 30 days after the commencement of initial flowback or when permanent production equipment is placed into service.~~ Separation flowback ends either at the startup of production or when the well is shut in and permanently disconnected from the flowback equipment. \

**Justification:** Please see “Completion Operations” justification.

**R.T.** “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”.

[19.15.27.7 NMAC – N, xx/xx/xxxx]

#### 19.15.27.8 VENTING AND FLARING OF NATURAL GAS:

**A.** The unnecessary or excessive surface loss or destruction without beneficial use Venting and flaring of natural gas during drilling, completion or production operations constitutes waste and is prohibited by Sections 70-2-2 and 70-2-3 of the Oil and Gas Act. ~~except as authorized in Subsections B, C and D of 19.15.27.8~~



NMAC. The operator has a general duty to maximize the recovery of natural gas and avoid to minimize the unnecessary or excessive surface loss or destruction without beneficial use release of natural gas to the atmosphere. During drilling, completion and production operations, the operator shall flare natural gas rather than vent natural gas except when flaring is technically infeasible 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. Venting and flaring during drilling operations.**

(1) The operator shall capture or combust natural gas if technically feasible reasonably practical using best industry practices and control technologies.

**Justification:** The term “technically feasible” should be modified to prevent this section from requiring efforts that are possible but at unreasonably great cost or depend upon unproven technologies or techniques.

(2) A flare stack shall be located at a minimum of 100 feet from the nearest surface hole location unless otherwise approved by the division and shall be enclosed and equipped with an automatic ignition system or continuous pilot.

**Justification:** Generally, for drilling operations, flares are only used in emergency situations. Enclosed flares do not help to reduce the volume of surface waste, which is the focus of this rule. Typically, enclosed flares are used for aesthetic reasons such as light reduction. Additionally, enclosed flares are not typically designed for large capacity, which might be needed during a drilling emergency. Furthermore, operators can use engineering calculations to determine the acceptable spacing distance, such as radiation calculations and dispersion analysis.

(3) In an emergency or malfunction, the operator may vent natural gas 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 G of 19.15.27.8 NMAC.

**Justification:** NMOGA has struck “substantial” because it seems unlikely the division meant to limit “emergencies” or “malfunctions” to only those which would have a large adverse impact on safety, etc.

**C. Venting and flaring during completion and recompletion operations.**

(1) During initial flowback, the operator shall route flowback fluids into a completion or storage tank and commence operation of a separator as soon as it is technically feasible for a separator to function.

(2) During separation flowback, the operator shall capture and route natural gas from the separator:

(a) to a gas flowline or collection system, reinject into the well, or use on-site as a fuel source or other purpose that a purchased fuel or raw material would serve; or  
(b) to a flare if routing the natural gas to a gas flowline or collection system, reinjecting it into the well, or using it on-site as a fuel source or other purpose that a purchased fuel or raw material would serve would pose a risk to safe operation or personnel safety, provided that the flare is equipped with an automatic igniter or continuous pilot.

(3) If N<sub>2</sub> or H<sub>2</sub>S natural gas concentrations does not meet pipeline quality specifications in natural gas exceeds the gathering pipeline specifications, the operator may flare the natural gas for 60 days or until the N<sub>2</sub> or H<sub>2</sub>S natural gas concentrations meets the pipeline quality specifications, whichever is sooner, provided that:

(a) the flare stack is equipped with an automatic igniter or continuous pilot;

- (b) the operator analyzes natural gas samples ~~twice~~ **at least once** per week;
- (c) the operator routes the natural gas into a gathering pipeline as soon as the pipeline specifications are met; and
- (d) the operator provides the pipeline specifications and natural gas analyses to the division upon request.

**Justification:** The commission has always recognized that flaring and venting during drilling and completions operations are necessities and therefore not a “waste” under the Oil & Gas Act. In addition, regulations pursuant to 40 CFR 60 subpart OOOOa apply to well completions with hydraulic fracturing. NSPS OOOOa regulations prescribe emission standards for this type of activity, have been established through a robust cost benefit analysis during the EPA rulemaking process, and the industry has been complying with these provisions for several years.

- We are requesting adding the clarification “from the separator” to maintain consistency with NSPS OOOOa requirements while expanding the requirements to completions without hydraulic fracturing.
- NMOGA also reworded (3) to be more general to pipeline specifications without referencing a specific impurity. Other impurities in addition to N<sub>2</sub> and H<sub>2</sub>S, such as oxygen or CO<sub>2</sub>, may cause the produced natural gas to be unfit to send to the gathering system. This language is more general to cover the variety of impurities that may exist. Please see further justification for the various impurities in 19.15.27.8.D.(5)(m).
- Since, operators have every incentive to sell the gas as soon as it is feasible sampling more than once per week is unnecessary.

**D. Venting and flaring during production operations.** The operator shall not vent or flare 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 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 notify the division of venting or flaring resulting from an emergency or malfunction pursuant to Paragraph (1) of Subsection G of 19.15.27.8 NMAC;~~

**Justification:** Emergency and malfunction definitions already cover the qualifier 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 G (1) and does not need to be repeated here, which adds confusion. The proposed language provides simplification and clarity to the regulation.

- (3) to unload or clean-up liquid holdup in a well to atmospheric pressure, provided
  - (a) the operator does not vent after the well achieves a stabilized rate and pressure;
  - (b) for liquids unloading by manual purging, the operator remains present on-site **or in close proximity** until the end of unloading, takes ~~all~~ reasonable actions to achieve a stabilized rate and pressure at the earliest practical time and takes ~~all~~ reasonable actions to minimize venting to the maximum extent practicable;

**Justification:** Field operators are responsible for a group of wells within a given area. If a well or wells need liquids unloading to improve production the length of time involved may vary according

to the well depth, production, and age, along with the cause of excess liquids. The process of excess liquids unloading can be a short duration such as an hour, or longer such as 12 hours or more. In the event excess liquids are due to an upset condition, the field operator is responsible for bringing many wells back into routine production. Field operators need the flexibility to be in close proximity to wells which are unloading in order to monitor more wells and restore production more quickly. The word “all” in subparagraph (b) above, could be interpreted to include some non-routine or experimental actions that is beyond the intention of the division.

- (c) for a well equipped with a plunger lift system or an automated control system, the operator optimizes the system to minimize the venting of natural gas; or
- (d) during downhole well maintenance, only when the operator uses a workover rig, swabbing rig, coiled tubing unit or similar specialty equipment and minimizes the venting of natural gas to the extent that it does not pose a risk to safe operations and personnel safety and is consistent with best management practices;
- (4) during the first 12 months of production from a delineation well, or as extended by the division for good cause shown, provided:
  - (a) the operator proposes and the division approves the well as a delineation well;
  - (b) the operator is in compliance with its statewide gas capture requirements; and
  - (c) if a delineation well is capable of producing in paying quantities within 12 months of the division’s approval, the operator submits an updated form C-129 to the division, including a natural gas management plan and timeline for connecting the well to a natural gas gathering system; or

**Comment:** NMOGA appreciates the division’s acknowledgement of challenges associated with developing a new prospect in a previously undeveloped area. This limited allowance for venting or flaring provides operators with the ability to evaluate the productivity of prospective area where gathering lines are not immediately available.

- (5) during the following activities unless prohibited by applicable state or federal law, rule, or regulation for the emission of hydrocarbons and volatile organic compounds:
  - (a) gauging or sampling a storage tank or other low-pressure production vessel;
  - (b) loading out liquids from a storage tank or other low-pressure production vessel to a transport vehicle;
  - (c) scheduled repair and maintenance, including blowing down and depressurizing production equipment to perform repair and 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.

- (d) normal operation of a gas-activated pneumatic controller or pump;
- (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 or from a seal that is not and maintained on a tank routed to a flare or control device an established schedule; and
- (f) normal operation of dehydration units and amine treatment units
- (g) normal operation of compressors, compressor engines, and turbines
- (h) fugitive emission components, such as valves, flanges, connectors

**Justification:**

- Activities identified in paragraphs (a), (b), (d), and (e) of the proposed rule are normal operations, however, it is not inclusive of all normal operations that need to 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 proposed language in the reporting section of this rule [19.15.27.8.G.(2)(j)], 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 (a), (b), and (d) through (h)) are not included as venting and flaring for purposes of these rules.

(if) a bradenhead test;

(ig) a packer leakage test;

(kh) a production test lasting less than 24 hours unless the division requires or

approves a longer test period; or

(li) when ~~N<sub>2</sub> or H<sub>2</sub>S concentrations in natural gas~~ **does not meet** ~~exceeds the~~ gathering pipeline **quality** specifications, provided the operator analyzes natural gas samples ~~twice~~ **at least once** per week to determine whether the specifications have been achieved, routes the natural gas into a gathering pipeline as soon as the pipeline specifications are met and provides the pipeline specifications and natural gas analyses to the division upon request.

**Justification:** There are other impurities addressed through gas quality specifications of the transporter or impacting marketable conditions that are not limited to N<sub>2</sub> and H<sub>2</sub>S concentrations (e.g., CO<sub>2</sub>, Oxygen).

- In order to rid the system of the contaminant, the operator must have the opportunity to purge the gas stream of the impurity.
- Introduction of Oxygen in the gas stream is typically related to operational upsets or startup of new equipment (both new and returned to service). To purge O<sub>2</sub>, the operator must continue production and flare the gas until the O<sub>2</sub> is cleared.
- Sometimes the introduction of O<sub>2</sub> to the system is caused by improperly maintained equipment, but most frequently it occurs due to normal operational activities, such as:
  - Commissioning activities: oxygen (air) needs to be purged out of new vessels and piping.
  - Nitrogen Lift: Wells may be brought back on with nitrogen lift using nitrogen generation units. If a well was flowing naturally but was shut-in and only needs gas lift for a short duration, the nitrogen is not 100% purity and will introduce oxygen into the system.
  - Aerated fluids (e.g. Foam-air) well interventions: Working on/cleaning out wells with lower than virgin reservoir pressure is often approached by using aerated fluids. Even if nitrogen generation units are used instead of using untreated air, the nitrogen is not 100% purity and will introduce oxygen into the system.
- Wells with elevated H<sub>2</sub>S, which is related to reservoir conditions, will take longer periods of time to assess, install proper treating solution, and treat the well compared to resolving issues of O<sub>2</sub> contamination.
- CO<sub>2</sub> and N<sub>2</sub> can also be related to a reservoir or enhanced recovery efforts.
  - There are less stringent specifications in commercial agreement for H<sub>2</sub>S, CO<sub>2</sub>, & N<sub>2</sub> vs O<sub>2</sub>. Many gatherers are willing to take gas with H<sub>2</sub>S, CO<sub>2</sub>, & N<sub>2</sub> and treat it at their processing plant for an added fee. Oxygen is the only impurity that gatherers have a zero tolerance for due to safety and liability concerns.
  - We see no specific information that indicates why N<sub>2</sub> and H<sub>2</sub>S are the only two impurities that have been called out specifically.

#### (n) 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 pipelines and equipment, there is often oxygen, water (used to hydro test), solids (from stimulation flowback), or other contaminants that need to be purged from the pipeline or equipment. Oxygen is a significant safety concern and not properly purging new pipelines and equipment can result in significant risk of explosion. This risk can only be eliminated by releasing the purge gas

until the impurities, including oxygen, are clear from the pipelines or equipment.

**E. Performance standards for separation, storage tank and flare equipment.**

(1) The operator shall design completion and production separation equipment and storage tanks for maximum anticipated throughput and pressure to ~~maximize hydrocarbon recovery and minimize waste~~ excess natural gas flashing and vapor accumulation.

**Justification:** The commission should not require operators to design facilities for maximum throughput and pressure as this could lead to facilities being oversized and reduced operational control efficiency. NMOGA's suggested revision aligns the rule language more closely with the statutory authority to reduce waste. Operators cannot predict what the maximum actual flow rates will be in the future. Geological differences, technological improvements, and other factors impact such predictions in ways that operators cannot know and account for during the design phase. The division is seeking to establish challenging Gas Capture requirements. If an operator can meet those requirements, they should be allowed the freedom to manage their operations as best meets business needs without prescribing certain choices or behaviors.

~~(2) The operator shall equip a permanent storage tank associated with production operations that is installed after {effective date of rule} with an automatic tank gauging system that reduces the venting of natural gas.~~

**Justification:** As noted in the definitions, NMOGA believes that emissions from storage tanks should not be considered venting except in the limited circumstances described in the definition of venting. As such, and with the proposed revisions to the definitions of venting and flaring, this is appropriate for deletion. The term "automatic" should also be removed from this provision. Since the opening of the thief hatch for gauging purposes is not waste, requiring automatic tank gauging does not reduce waste. Moreover, purchasers still require manual tank gauging.

(3) The operator shall combust natural gas in a flare stack ~~that is properly sized and designed and operated~~ to ensure proper combustion of gases sent to the flare ~~at maximum destruction efficiency.~~

**Justification:** NMOGA supports proper combustion, but design destruction efficiency 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. Further, due to variable operating conditions, every flare cannot be "operated at its maximum destruction efficiency" at all times. According to EPA, while combustion equipment has achieved control efficiencies in excess of 99.9 percent in test sites, the control efficiency achieved in the field is lower. At best, EPA estimates that these units can achieve "95 percent control continuously and 98 percent control on average when designed and properly operated to meet 98 percent control." EPA reached this conclusion after extensive study and review of the performance of 19 different makes/models of combustor control devices. [ EPA, Control Techniques Guidelines for the Oil and Natural Gas Industry 4-11 (2016) ("CTG"), Docket ID: EPA-HQ-OAR-2015-0216-0236]

(a) A flare stack installed or replaced after May 31, 2021 shall be equipped with an automatic ignitor or continuous pilot.

(b) A flare stack installed before June 1, 2021 shall be retrofitted with an automatic ignitor, ~~or~~ continuous pilot, or technology that alerts the operator that the flare has may have malfunctioned ~~no~~ by the later of ~~than 18~~ 24 months after {effective date of rule} or by an alternative date approved by the division.

**Justification:**

- The grammatical changes above provide clarity around the type of retrofit required. It is important to incentivize the development of new technology to monitor and optimize flare operation and efficiency. Various technologies (e.g. thermocouple, acoustic monitoring, or a fire eye/thermal camera) could be used to remotely monitor the presence of a flame. NMOGA anticipates that technological developments will provide operators additional methods to monitor and optimize flares. NMOGA appreciates the division providing

operators three (i.e. automatic ignitor, continuous pilot, or other technology to remotely monitor flares) options to ensure flares are properly operated.

- Remote monitoring systems can provide alerts that a process condition is outside of an expected value; however, an alert does not necessarily mean that a malfunction has occurred. For example, high winds can shift a flame sufficiently that an alert triggers even when the flare has not malfunctioned. Alerts from remote monitoring systems serve to provide the operator notice that a malfunction may have occurred, but they do not guarantee that a malfunction has occurred.
- Operators will need 24 months to retrofit flare stacks installed before June 1, 2021 with an automatic ignitor or continuous pilot or technology that alerts the operator that the flare has malfunctioned. This requirement will require scoping, fund allocation, design and engineering, procurement, installation, training, and startup. New Mexico industry typically allocates capital resources on an annual cycle, with budgets for 2021 already set or nearly set so modifications will need to be completed in 2022 and 2023 to match budgeting cycles. Given the number of modifications required by the proposed draft rule, it will be exceedingly difficult, perhaps impossible, to adequately and safely complete them in the proposed timeframes, especially considering that all operators with similar equipment will be looking for similar parts and will be seeking contractors with similar experience and skills to install the modifications. This will likely exceed New Mexico's parts and labor capacity. NMOGA has added "or by an alternative date approved by the division" to provide a regulatory extension procedure for flare stacks that need additional time to comply due to unusual circumstances, such as the need to obtain additional land or long lead-time equipment.

(c) A flare stack located at a production facility well where the facility average daily production is with an average daily production of equal to or less than 10 barrels of oil or 60,000 cubic feet of natural gas shall only be required to be equipped with an automatic ignitor or continuous pilot if the flare stack is replaced after {effective date of the rule}.

**Justification:** Flares are typically located at a facility servicing one or more wells. NMOGA's suggested revision ensures that multiple wells that, as a group, on average produce 10 barrels of oil or 60,000 cubic feet of gas or less per day and are serviced by a single facility, would each still meet these criteria. This change would also promote the use of facilities that service multiple wells thus further promoting waste reduction.

**Commentary:** NMOGA supports the transition away from manual ignition flares for facilities receiving production from wells as proposed in 19.5.27.7.E(3)(a)-(c). Operators should only be using manual ignition flares in situations where it is technically infeasible to use a combustion device equipped with either an auto-igniter or continuous pilot. Manual ignition flares are not as reliable in ensuring combustion as continuous pilot and auto-igniter flares.

(4) A flare stack ~~located at a well spud~~ constructed after {effective date of rule} shall be securely anchored and located at least 100 feet from the well and storage tanks unless otherwise approved by the division.

**Justification:** Newly spud wells are often connected to existing facilities, which facilities include existing flare stacks. The date of the spud is thus independent of the flare installation date. The proposed language is meant to add clarity that the rule applies to newly constructed flares, regardless of well spud. "Unless otherwise approved by the division" has been added because flare stacks constructed after the effective date of this rule may not always be able to avoid wells or storage tanks if closer than 100 feet. Piping and facility layouts are already complete. New rights of way and new surface disturbance might be necessary to change flare location. Furthermore, operators can use engineering calculations to determine the spacing distance is acceptable such as radiation calculations

and dispersion analysis.

(5) The operator shall conduct an AVO inspection on the frequency specified below to confirm that all production equipment is operating properly and there are no leaks or releases except as allowed in Subsection D of 19.15.27.8 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.”

(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 holes; loose connections; leaks; broken and missing caps; ~~broken, damaged seals and gaskets~~; broken, missing and open hatches; 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 of olfactory inspections. 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 conduct an AVO inspection ~~weekly~~ monthly:

- (i) during the first year of production; and
- (ii) on a production facility well where the facility with an average daily production is greater than 10 barrels of oil or 60,000 cubic feet of natural gas.

(c) The operator shall conduct an AVO inspection ~~weekly~~ monthly if it is on site, and in no case less than once per ~~calendar quarter~~ month with at least ~~20 calendar days~~ between inspections on a production facility well where the with an facility average daily production is equal to or less than 10 barrels of oil or 60,000 cubic feet of natural gas; and once per calendar year on shut-in, ~~temporarily abandoned~~, or inactive wells.

**Justification:**

- AVO inspections are a formal inspection requiring documentation; however,

operators routinely inspect facilities and equipment as part of their daily activities. The proposed frequencies for formal AVO inspections are not technically justified given the significant administrative burden and low likelihood for identifying opportunities to reduce waste. The formal AVO requirements above may also be interpreted to require multiple operators to be present on site for each inspection. For example, to inspect a thief hatch, operators often have a safety requirement for two individuals to be on site for the duration of the inspection, particularly at sites processing gas with concentrations of H<sub>2</sub>S.

- Temporarily abandoned (TA'd) wells are isolated downhole via a mechanical bridge plug and the hole is loaded with inert fluid. The potential for a leak of natural gas is extremely unlikely. Given the administrative burden and low probability for a natural gas leak at a TA'd, these wells should not be subject to mandatory AVO inspections.
- Using data and statistics available on the division's website, NMOGA estimated the number of statewide AVO inspections that would be required from various AVO inspection frequencies.

Well Category	Division Proposed Frequency	NMOGA Proposed Frequency
Active Non-Stripper Wells	1,220,440 (weekly)	281,640 (monthly)
Active Stripper Wells	375,432 (monthly)	125,144 (quarterly)
Inactive Wells	119,860 (weekly)	2,305 (annual)

- ~~(i) on a well with an average daily production equal to or less than 10 barrels of oil or 60,000 cubic feet of natural gas; and~~
- ~~(ii) on shut-in, temporarily abandoned, or inactive wells.~~

**Justification:** Language in (i) and (ii) have been incorporated in (c) above.

(d) The operator shall make and keep a record of an AVO inspection for not less than five years and make such record available for inspection by the division upon request.

(7) 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.

#### F. 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 during drilling, completion, and production operations regardless of the reason or authorization for such venting or flaring.

(2)

**Justification:** Adding "or estimate" since the rule provides optionality to estimate technically infeasible volumes or volumes from wells with APDs issued before May 31, 2021.

(3) The operator shall install equipment ~~on flowlines that are piped from equipment such as high pressure separators, heater treaters and vapor recovery units~~ to measure the volume of natural gas vented or flared from a well authorized by an APD issued after May 31, 2021 that has an **facility** average daily production greater than 10 barrels of oil or 60,000 cubic feet of natural gas.

**Justification:** "Flowlines" is a confusing term as it typically means the multiphase flow of fluids from wellheads to separation equipment, including oil, water, and gas. Flare measurement is installed on process piping, most likely in a single location on the flare piping to the flare stack, after the point where gas from various pieces of process equipment (high pressure separators, heater



treaters, scrubbers, etc.) has been aggregated. Operators require flexibility in selecting the best metering location based on their specific piping layout. The recommended meter installation location is on the flare or vent process piping where you can achieve the best measurement certainty and after the point where gas from various processing equipment has been aggregated.

**Commentary:** Existing facilities were designed in good faith at the time of construction based on best practices and regulations. As outlined in API MPMS 14.10, it can be very difficult to modify an existing flare header (piping) system to later accommodate flare measurement, given requirements to reduce chances for liquids contacting the flare meters and requirements for straight run of pipe to improve certainty.

(4) Measuring equipment shall conform to an industry standard such as American Petroleum Institute (API) Manual of Petroleum Measurement Standards (MPMS) 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.~~

(5)

**Justification:**

- NMOGA supports the change from the informal rule 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/ pressure, liquid dropout, etc.), NMOGA further supports the clarification that measurement equipment should follow industry standards related to installation and operation, thus improving likelihood of quality measurement.
- API MPMS 14.10 is a recommended 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 qualify 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.

(6) 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 measurement equipment.

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

**Justification:** Low flow rate or low pressure gas is difficult to measure due to limitations on metering technology. Estimation is a more reliable approach in these circumstances. Certain operations cannot be practically measured. An example includes measuring the off-gassing from circulated drilling fluids during drilling operations (there is no reasonable and safe way to collect the gas to then measure it).

(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 commission 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.

(67) For a well that does not require measuring equipment, as per subparagraph (2) of this subpart, the operator shall estimate the volume of vented and flared natural gas based on the result of an annual GOR test for that well reported on form C-116.

**Justification:** Added language for clarity.

**Commentary:** NMOGA supports allowing a Gas-Oil-Ratio (GOR) calculation for wells with an APD issued prior to May 31, 2021. Given the challenges of flare measurement, GOR calculations are a standard approach that relies on quality measurement to then determine flared or vented volumes by subtraction e.g. High Pressure Flared Gas = GOR\*Oil – Sales Gas – Beneficial Use Gas. If the GOR and sales gas volumes are determined with quality measurement, and the beneficial use gas is based on manufacturing data, then the flared or vented volumes can be known with certainty by subtraction as well as or better than difficult flare measurement can accomplish.

(78) If the division deems existing measuring equipment or GOR test is insufficient, it shall provide notice to the operator of the reason and request for additional measuring equipment. The operator shall install additional measuring equipment or request a hearing, ~~whenever the division determines that the existing measuring equipment or GOR test is not sufficient to measure the volume of vented and flared natural gas.~~

**Justification:** Changes provide notice to operator of the basis for the requested change to the existing measurement method and an opportunity for operator to request a hearing if disagreement.

#### G. Reporting of vented or flared 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 19.15.27.8.D.(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. 19.15.27.8.D.(1)

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

**Justification:** Events permitted by the NMED, EPA, or Tribal authority should not be included here. Please see justification in 19.15.27.8.D.(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 19.15.27.8.D.(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. Dependent on the timing of venting or flaring events, samples may not have been taken immediately prior to event. In order to promote compliance with this regulatory provision, a representative analysis should suffice.

(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 as outlined below:

(a) emergency;

(b) non-scheduled maintenance or malfunction;

(c) routine repair and maintenance, including blowdown and depressurization;

(d) insufficient availability or capacity in a natural gas gathering system during separation phase of completion operations or production operations.

(e) natural gas that is not suitable for transportation or processing because concentration of impurities exceeds pipeline quality specifications; of N<sub>2</sub> or H<sub>2</sub>S concentration;

(f) venting or flaring in excess of four eight hours that is caused by an emergency, unscheduled maintenance or malfunction of a natural gas gathering system as defined in 19.15.28 NMAC;

(g) delineation well

(h) other not described above;

**Justification:** The division seeks additional transparency related to reasons producers vent or flare, as well as timing and volumes. The C-129 data enhancements recommended above would provide information closer to the time of an event and would eliminate the need for producers to provide the information on a C-115B. The C-129 data would correlate to proposed non-transported disposition codes in 19.15.27.8.G(2) for C-115 reporting. If the needed information is provided on Form C-129, followed by the C-115, then the C-115B becomes duplicative reporting and could lead to confusion.

(viii) steps taken to limit the duration and magnitude of venting or flaring;

(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 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 in 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. 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 submit gather data for 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. Operators are to use existing V & F non-transported disposition codes to continue to report data on the Operators Monthly Production Report (Form C-115). Unless otherwise approved by the division, beginning January 2022, the operator shall report the volume of vented and flared natural gas, measured or estimated in accordance with 19.15.27.8.F, on the Operators Monthly Production Report (Form C-115). submit a form C-115B monthly on or before the 15th day of the second month following the month in which 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 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 reported volumes should include vented or flared natural gas according to the categories listed below.~~

**Justification:**

- 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 for quarterly reporting.
- Once the requirement moves to a monthly report, the commission should provide a reasonable timeframe for implementation of the enhanced reporting. To achieve accurate data field personnel must be trained on the new requirements. Considering NMOGA's proposed changes as outlined above, Production Accounting systems may require at least 12 months to program and update in order to handle the additional categories to provide the level of accuracy and detail the division is requiring. Additionally, Production Accounting systems are not designed to accommodate other forms for reporting such as the C-115B, as proposed by the division, which would likely take even longer. Many, if not most, Production Accounting systems are contracted and managed by a third party and the operators are at the mercy of the third party to implement such changes.

The categories are:

- (a) emergency;
- (b) non-scheduled maintenance or malfunction;
- (c) routine repair and maintenance, including blowdown and depressurization;
- (d) routine downhole maintenance, including operation of workover rigs, swabbing rigs, coiled tubing units and similar specialty equipment;

- ~~(e) manual liquid unloading;~~
- ~~(f) uncontrolled storage tanks;~~

**Justification:** Infeasible to measure or calculate with reasonable accuracy for the purposes of accounting for production or for compliance with statewide gas capture requirements. In addition, these are generally volumes that are not recoverable and do not constitute waste.

- In the case of “uncontrolled storage tanks”, these volumes are normal operating losses regulated by NMED.
- Liquids unloading and downhole maintenance are necessary in order to maintain production and ultimately avoiding early abandonment of the well. Best management practices exist in order to minimize any necessary venting. Further, generally accepted calculation methodology results in an overestimation of the volume released. Volumes released from liquids unloading and downhole maintenance are estimated and reported annually as required in EPA's greenhouse gas reporting program.

~~(g)(d) insufficient availability or capacity in a natural gas gathering system during separation phase of completion operations or production operations;~~

**Justification:** Flaring during completion operations is allowed 19.15.27.8.C.(2)(b) and OOOOa until continuous recovery of saleable quality gas and separation and recovery of any crude oil, condensate, or produced water. See definition of “*Startup of production*” 19.15.27.7.Q NMAC (as proposed by NMOGA).

~~(h)(e) natural gas that is not suitable for transportation or processing because concentration of impurities exceeds pipeline quality specifications; of N<sub>2</sub> or H<sub>2</sub>S concentration;~~

**Justification:** Please see further justification for the various impurities in 19.15.27.8.D.(5)(m).

~~(i) venting as a result of normal operation of pneumatic controllers and pumps, unless the operator vents or flares less than 500,000 cubic feet per year of natural gas;~~

**Justification:** 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. OOOOa already restricts the use of high bleed pneumatics and proposed NMED requirements are proposing a shift from natural gas activated pneumatic controllers and pumps to air activated. The existing regulatory framework enforced by EPA via NMED adequately addresses and tracks this as a source of emissions so there is no need to duplicate. Further, this deletion is consistent with our proposed revisions to the definition of venting which does not consider the normal operation of pneumatic controllers and pumps to be venting.

It is infeasible to measure or calculate, with reasonable accuracy, for the purposes of production accounting, any volume associated with this circumstance. For example, EPA’s greenhouse gas reporting program broadly groups pneumatic controllers into three categories each with its own emissions factor which may not reflect actual volumes of natural gas being released.

~~(j) improperly closed or maintained thief hatches that are routed to a flare or control device;~~

**Justification:** Facility design does not include routing thief hatches to a flare or control device even where the storage tank 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. It is infeasible to measure or calculate, with reasonable accuracy, for the purposes of production accounting, any volume associated with this circumstance. 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. Please reference the justification in the definitions section of “flare or flaring” for more background on why this type of low pressure venting or flaring should be excluded.

~~(4)(f)~~ venting or flaring in excess of ~~four~~ **eight** hours that is caused by an emergency, unscheduled maintenance, or malfunction of a natural gas gathering system as defined in 19.15.28 NMAC; and

**Justification:** Please see justification in definition of emergency 19.15.27.7.G.(4).

~~(g)~~ delineation well as defined in 19.15.27.7.F.;

**Justification:** Necessary since delineation well is listed as an allowed event under 19.15.27.8.D.(4).

~~(4) — 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 venting and flaring category would introduce uncertainty as to how it would be accounted for in the operator’s lost gas and gas capture calculations.

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

**Justification:** Since the C-115 will include categories as outlined in subparagraph (2) of this subpart, the division will have all the information needed to prepare a report and post on their website, for transparency, similar to the reports currently posted in the “Statistics” section (e.g. C-115 Venting and Flaring Data by Operator 2015 to current). Similarly, the division is compiling and reporting water use data under the Produced Water rule (19.15.16.21 NMAC). Further, operator’s Production Accounting Systems are not currently setup to report in percentages.

~~(a) To calculate the~~ lost natural gas on a volumetric basis ~~the operator shall be calculated by adding~~ deduct the volume of natural gas vented or flared for non-scheduled maintenance and malfunction, routine repair and maintenance including blowdown and depressurization, insufficient availability or capacity in a natural gas gathering system, and venting or flaring in excess of eight hours that is caused by an emergency, unscheduled maintenance, or malfunction of a natural gas gathering system sold, used for beneficial use, vented or flared during an emergency, and vented or flared because it was not suitable for transportation or processing from the natural gas produced. Formulas are illustrated below:

**Lost Gas = Non-Scheduled maintenance and malfunction + Routine repair and maintenance + Insufficient availability or capacity + In excess of eight hours that is caused by an emergency, unscheduled maintenance, or malfunction of a natural gas gathering system**

~~(b) The lost natural~~ **monthly gas capture** on a percentage basis, ~~the operator shall be calculated by adding~~ deducting the volume of lost gas reported in (3)(a) above from the total volume of natural gas produced natural gas sold, used for beneficial use, vented or flared during an emergency, vented or flared because it was not suitable for transportation or processing, and divide by the total volume of natural gas produced. Formula is illustrated below:

**Produced Gas = Sales gas + All Non-transported Disposition codes reported on C-115**

**Monthly Gas Capture % = (Produced gas – Lost gas)/Produced gas**

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

~~(4) The operator shall report the vented and flared natural gas on a volumetric and percentage basis to all royalty owners in the mineral estate being produced by the well on a monthly basis, keep such reports for not less than five years and make such records available for inspection by the division upon request.~~

**Justification:** See NMOGA’s motion to strike.

~~5) 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 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 19.15.27.9.C.

~~(6) Upon the New Mexico environment department’s request, the operator shall promptly provide a copy of any form filed pursuant to 19.15.27 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.

[19.15.27.8 NMAC – N, xx/xx/xxxx]

**19.15.27.9 STATEWIDE NATURAL GAS CAPTURE REQUIREMENTS:**

**A. Statewide natural gas capture requirements.** Commencing January 1, 2022, the operator shall begin to reduce the annual volume of vented and flared natural gas in order to capture ninety-eight percent of the natural gas produced from its wells 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 natural gas capture rate based on the operator’s 2021 quarterly reports as per 19.15.27.8.G.(2) monthly data reported on form C-115B for each reporting area in which the operator operates a well. 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 proposes adding language as an attempt to clarify the timing of the initial baseline, clarify the percentage increase is done on an annual basis, and allow operators to seek relief as necessary. No other state or federal agency has a 98% gas capture requirement and the experience in North Dakota indicates that it may be difficult for all operators to achieve the 98% goal over a five-year period. There may be circumstances where the gas capture requirement puts an operator in a situation of undue hardship, unforeseen circumstances or other unusual circumstance that warrant a hearing for an alternate gas capture percentage requirement.

(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 one or more wells from another operator shall comply with its statewide applicable reporting area natural gas capture requirements for the acquired well(s) no later than December 31, 2026, unless the division approves a later date.

**Justification:** “Applicable reporting area” addresses operators involved in both the north and south reporting areas. The reference to December 1 rather than 31 of 2026 in the draft rule text appears to have been a typographical error.

**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 produced, the volume of lost gas reported in 19.15.27.8.G.(3)(a) minus any division approved ALARM credits, and divide by the total volume of natural gas produced. ~~No~~ later than February 15 28 each year beginning in 2022~~3~~, the operator shall submit a report certifying compliance with its statewide gas capture requirements. The operator’s volume of vented and flared natural gas shall be counted as produced natural gas and excluded from the volume of natural gas sold or used for beneficial use in the calculation of its statewide natural gas capture requirements, except that: **Formula is illustrated below:**

$$\text{Annual Gas Capture \%} = (\text{Produced gas} - (\text{Lost gas} - \text{ALARM credits})) / \text{Produced gas}$$

(1) — the operator may exclude from the volume of produced natural gas the volume of natural gas vented or flared pursuant to Subparagraphs (a) and (h) of Paragraph (2) of Subsection G of 19.15.27.8 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 produced natural gas the volume of natural gas reported as a beneficial use or vented or flared from a delineation well and reported on the operator’s form C-115.

**Justification:** Calculating the annual gas capture percentage has been streamlined by changes proposed in 19.15.27.8.G.(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:** Operators have a concern establishing a baseline for the gas capture target using data extrapolated from only six months of 2021 reporting. During these six months, abnormal conditions may exist during a time when drilling and completion activity is suppressed, training of field operators on new requirements will be ongoing, and operators will be trying to determine how to gather the data for quarterly reports “in a format specified by the division” that is not yet known. As the division is seeking transparency under normal conditions, it should consider these factors for the 2021 reporting 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;
- (c) timely notified the division by filing a form C-129 ~~or form C-141~~;

**Justification:** Part 19.15.27.8.G.(1)(d) states C-141 required for liquid releases.

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

**Justification:** Division scrivener error

(d) 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
- (d) a description and the date of each action taken to isolate and repair the leak or
- (e) visual documentation or other verification of discovery, isolation and repair of
- (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;
- (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 29.15.27.10 NMAC;
- (b) not be transferred to or used by another operator, including a parent, subsidiary, related entity, or person acquiring the well;
- (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 the basis for the division to take such action and the ability to challenge the demand when appropriate due to the cost and burden involved.

**D. Natural gas management plan.**

(1) After May 31, 2021, the operator shall file a natural gas management plan with each APD for a new or recompleted well. The operator may file a single natural gas management plan for multiple wells drilled or recompleted from a single well pad or that will be connected to a central delivery point. The natural gas management plan shall describe the actions that the operator will take at each proposed well to meet its statewide natural gas capture requirements and to comply with the requirements of Subsections A through F of 19.15.27.8 NMAC, including for each well:

- (a) the operator's name and OGRID number;
- (b) the name, API number, location and footage; and
- (c) the anticipated dates of drilling, completion and first production.

(2) Beginning January 1, 2022, An operator that, at the time it submits an APD for a new or recomple~~tion~~ well, is cumulatively, for the year, not in compliance with its baseline natural gas capture rate for the applicable reporting area if the APD is submitted in 2022 or its natural gas capture requirement for the previous year if the APD is submitted in 2023 or after shall also include the following information in the natural gas management plan:

**Justification:**

- Removed “statewide” as the gas capture requirements are not statewide, see description in Subsection A of 19.25.27.9 NMAC.
- Additional language is for clarity and consistency. An operator filing a new APD is allowed to use the simple Gas Management Plan described in Subparagraph D (1) of 19.15.27.9 NMAC only if that operator has not allowed its natural gas capture percentage in the reporting area applicable to a the subject APD, cumulatively across the current calendar year, to fall below the requirement for the previous calendar year as the operator is working towards meeting the requirement that must be met by the end of the current year. Should an operator fall below the gas capture level required for the previous calendar year, the operator will be required to submit the more detailed Gas Management Plan as set forth below. Operators are required to monitor their Natural Gas Capture performance in order to comply with this section.

**Commentary:** The division’s decision to only require a more robust gas management plan when operators are not in compliance with their gas capture requirement incentivizes operators to remain in compliance with their natural gas capture requirement.

- (a) the anticipated volume of produced natural gas in units of MCFD for the first year of production;

**Commentary:** NMOGA appreciates he decision to provide anticipated volumes of production for the first year of production instead of the 3 years proposed in the informal rule. Besides constituting highly confidential proprietary business information, this type of long-term forward looking information represents a snapshot in time; therefore, operators cannot anticipate changes in reservoir performance, the introduction of new technologies, or any other variables that can alter a well’s gas volumes forecast. A one- year outlook is more important/beneficial to meeting the intent of the division as it is within the first year of production that the producer will see peak gas volumes and thus the most important time period needing assurance that the gatherer has the necessary gas takeaway in place to handle such peak.

- (b) the existing natural gas gathering system the operator has contracted or anticipates contracting with to gather the natural gas, including:
- (i) the name of the natural gas gathering system operator;
  - (ii) the name and location of the natural gas gathering system;
  - (iii) map of the natural gas gathering system as built or as planned if it has not yet been built; and of the well location and the anticipated pipeline route connecting the production operations to the existing and/or planned interconnect of the natural gas gathering system;

**Justification:** NMOGA appreciates that the division has not been prescriptive regarding the form of this required map. With the suggested revisions, it will be clear that operators are required to submit a map that fairly illustrates the orientation of the subject well and the gas gathering system that is anticipated to be used other than a rudimentary, hand-drawn document. The suggested changes narrow the scope of what will be provided to just the relevant information associated with the well/APD, aligns the information with the intent of the division, and serves to respect certain confidential business information.

(iv) the maximum daily capacity of the segment or portion of the natural gas gathering system to which the well will be connected; and

**Justification:** Operators cannot be expected to accurately predict the maximum daily capacity on any entire gas gathering system at a point in the future. Even the maximum daily capacity listed in the natural gas management plan is a best estimate from the midstream operator of the natural gas gathering system. By limiting the required information to a portion of the natural gas gathering system, the operator has a better chance of a more accurate projection. The proposed change is thus more in line with the intent of the rule making and relevant to the APD being submitted.

(c) the operator's plans for connecting the well to the natural gas gathering system, including:

(i) the anticipated date on which the natural gas gathering system will be available to gather the natural gas produced from the well;

(ii) whether, ~~at the time of application~~, the natural gas gathering system has existing has or will have capacity to gather the anticipated natural gas production volume from the well prior to the date of first production; and

**Justification:** This change is meant to recognize that existing capacity at the time of APD submission is not as important as what the anticipated capacity will be at the time a well is expected to be placed on production. The capacity will change between the time of submission and first production. The suggested changes are more relevant to meeting the intent of the proposed rules and providing accurate information. The original language doesn't contemplate the possibility of expansion or new infrastructure that would increase capacity prior to the first production date.

(iii) whether the operator anticipates the operator's existing well(s) connected to the same segment or portion of the natural gas gathering system, referenced in Subparagraph (iv) of Paragraph (2) of Subsection D of 19.15.27.9, will continue to be able to meet anticipated increases in line pressure caused by the well and the operator's plan to manage production in line with the increased line pressure.

**Justification:** If operator anticipates that the new well considered in the APD will cause operator's other wells to have difficulty in gas capture, operator will offer a general plan to manage production, operations, and development to maximize gas capture. The suggested language change is intended to make clear that the operator of planned wells is required to explore the impacts from planned wells in a reasonably limited area of the anticipated gas gathering system.

(3) The operator may ~~submit a request asserting~~ confidentiality for information specified in Paragraph (2) of Subsection D of 19.15.27.9 NMAC, which the division ~~will review~~ shall maintain as confidential as required by ~~in accordance with~~ 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).

(4) The operator shall certify that it has determined based on the available information at the time of submitting the natural gas management plan either:

(a) it will be able to connect the well to a natural gas gathering system in the general area with sufficient capacity to transport one hundred percent of the volume of natural gas the operator anticipates the well will produce commencing on the date of first production, taking into account the current and anticipated volumes of produced natural gas from other wells connected to the pipeline gathering system; or

(b) it will not be able to connect to a natural gas gathering system in the general area with sufficient capacity to transport one hundred percent of the volume of natural gas the operator anticipates well will produce commencing on the date of first production, taking into account the current and anticipated volumes of produced natural gas from other wells connected to the pipeline gathering system.

**Commentary:** NMOGA supports the changes, removing the requirement/burden on producers to get a certification from each operator of a natural gas gathering system in the general area and subjecting the producers APD approval process and development plans to an outside party, which has no incentive to submit a timely certification nor adhere to requirements that enable sales to a direct competitor.

(5) If the operator determines it will not be able to connect a natural gas gathering system in the general area with sufficient capacity to transport one hundred percent of the anticipated volume of natural gas produced on the date of first production from the well, the operator shall submit a venting and flaring plan to the division that evaluates the potential alternative **beneficial** uses for the natural gas until a natural gas gathering system is available, including,:

**Justification:** Adding beneficial use to encourage operators to explore alternative technologies and it would make it clear that any gas volumes so used would not be counted against an operator's Gas Capture Requirements as it would not be considered Lost Gas.

- (a) power generation on lease;
- (b) power generation for grid;
- (c) compression on lease;
- (d) liquids removal on lease;
- (e) reinjection for underground storage;
- (f) reinjection for temporary storage;
- (g) reinjection for storage;
- (h) reinjection for enhanced oil recovery;
- (i) fuel cell production; and
- (j) other alternative **beneficial** uses approved by the division.

(6) If, at any time after the operator submits the natural gas management plan and before the well is spud:

- (a) the operator becomes aware that the natural gas gathering system it planned to connect the well to has become unavailable or will not have capacity to transport one hundred percent of the production from the well, no later than 20 days after becoming aware of such information, the operator shall submit for the division's approval a new or venting and flaring plan containing the information specified in Paragraph (45) of Subsection D of 19.15.27.9 NMAC; and
- (b) the operator becomes aware that it has **cumulatively, for the year**, become out of compliance with **its baseline natural gas capture rate or the statewide natural gas capture requirements**, no later than 20 days after becoming aware of such information, the operator shall submit for the division's approval a new or revised natural gas management plan **for each well it plans to spud during the next 90 days** containing the information specified in Paragraph (2) of Subsection D of 19.15.27.9. NMAC; and **shall file an update for each plan until the operator is back in compliance with its baseline natural gas capture rate or natural gas capture requirement.**

**Justification:** Additional language added to be consistent with Subparagraphs D (1) and (2) of 19.15.27.9 NMAC and to clarify that the APDs that will require a new or revised natural gas management plan are only the ones that were previously approved in a year when the operator was in compliance and are now expected to be drilled within the next 90 days. The original language is vague

and can be interpreted to read that a new GMP is required for all APDs going forward.

(7) If the operator does not make a certification as per paragraph (4) of this subpart or fails to submit a complete adequate venting and flaring plan as per paragraph (5) of this subpart, ~~or if the division determines that the operator will not have adequate natural gas takeaway capacity at the time a well will be spud~~, the division may:

**Justification:** Recommend the removal and substitution of the word “adequate” since there is no definition for “adequate” in the current rules. Adequate is a very subjective adjective that may vary drastically from operator to operator, one person’s view of adequacy may be very different from another’s. NMOGA also suggest removing the last sentence as it is not relevant, nor does it apply since subpart (6) addresses circumstances and requirements for approved APDs.

- (a) deny the APD; or
- (b) conditionally approve the APD

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