

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

Cole Jester

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Oil and Gas Commission

Department Department of Energy and Environment

Contact Peter Alberg E-mail Peter.Alberg@arkansas.gov Phone 501-335-7025

Statutory Authority for Promulgating Rules Ark. Code Ann. Sec. 15-71-110(d) and Ark. Code Ann. Sec. 23-119-104

Rule Title: General Rule K- Digital Asset Mining Business Requirements

Intended Effective Date
(Check One)

Date

☐ Emergency (ACA 25-15-204)

Legal Notice Published

12/14,15,16/2024

☒ 10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment

01/13/2025

☐ Other _____
(Must be more than 10 days after filing date.)

Reviewed by Legislative Council

02/13/2025

Adopted by State Agency

01/28/2025

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Peter Alberg

Peter.Alberg@arkansas.gov

02/13/2025

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501-683-5814

larry.bengel@aogc.state.ar.us

Phone Number

E-mail Address

Director, Oil and Gas Commission

Title

2/11/2025

Date

Rule K-1 Applicability, General Provisions and Definitions
REVISED MARK-UP DRAFT

a) Applicability

- 1) This rule shall apply to any digital asset mining business, as defined by this rule.

b) General Provisions

- 1) A digital asset mining business in operation before the effective date of this rule shall be in full compliance with the noise provisions enacted in Ark. Code Ann. § 14-1-604(b)(3) no later than ninety (90) days after this rule is effective.
- 2) No digital asset mining business created after the effective date of this rule shall operate in Arkansas without first obtaining a permit in accordance with the provisions of this rule. An existing digital asset mining business shall not operate in Arkansas without first applying for a permit with the Oil and Gas Commission within ninety (90) days of the date this rule is promulgated. A digital asset mining business shall operate in accordance with Rules K-1, K-2, and K-3, and shall not operate if its digital asset mining permit application or transfer request is denied or its digital asset mining permit is revoked by the Commission.
- 3) A digital asset mining business may operate in Arkansas if the digital asset mining business:
 - A) Is issued a permit from the Commission in accordance with Rules K-2 or K-3;
 - B) Establishes that the business is not a prohibited foreign-party-controlled business as defined by and in accordance with Ark. Code Ann. § 14-1-606;
 - C) Maintains compliance with all local government ordinances;
 - D) Maintains compliance with any rule or rate for utility service provided by or on behalf of a public entity;
 - E) Maintains compliance with all applicable state and federal laws, including but not limited to, Ark. Code Ann. § 14-1-601 *et seq.* and § 23-119-101 *et seq.*;
 - F) Pays all applicable taxes and government fees in acceptable forms of currency; and
 - G) Operates in a manner that will not cause any stress on the electric public utility's generation capabilities or transmission network.

c) Definitions

- 1) “Applicant” means an entity who makes an application to the Oil and Gas Commission to operate a digital asset mining business.
- 2) “Blockchain network” means a group of computers operating and processing together to execute a consensus mechanism to agree upon and verify data in a digital record for the purpose of generating digital assets.
- 3) “Digital asset” means cryptocurrency, virtual currency, and natively electronic assets, including without limitation stable coins, nonfungible tokens, and other digital-only assets, that confer economic, proprietary, or access rights or powers.
- 4) “Digital asset miner” is an individual who mines for digital assets and holds the digital asset mining business permit issued under this rule.
- 5) “Digital asset mining” means use of electricity to power a computer for the purpose of securing or validating a blockchain network.
- 6) “Digital asset mining business” means a group of computers working at a single site that consumes more than one megawatt (1 MW) of electrical energy on an average annual basis for the purpose of generating digital assets by securing a blockchain network.
- 7) “Director” shall mean the Director of Production and Conservation of the Oil and Gas Commission.
- 8) “Home digital asset mining” means mining digital assets in areas zoned for residential use.
- 9) “Legislative body” means the quorum court of a county or the city council, board of directors, board of commissioners, or similar elected governing body of local government.
- 10) “Local government” means a county, a city of the first class, a city of the second class, or an incorporated town.
- 11) “Mining facility” means the building or other portable building structure where the digital asset mining computers are located.
- 12) “Node” means a computational device that contains a copy of blockchain-distributed ledger technology and includes a series.
- 13) “Ordinance” means an ordinance, resolution, or other appropriate legislative enactment of a legislative body.

14) “Person” means an individual or legal entity.

15) “Regulated entity” means a:

A) Digital asset miner;

B) ~~any person associated with~~ Person owning or operating a mining facility ~~a digital asset miner~~ or a ~~mining facility~~ digital asset mining business;

C) Mining facility; or

D) Digital asset mining business.

16) “Residence” means a permanent dwelling place, unit, or accessory structure.

Rule K-2 Digital Asset Mining Business Permitting Requirements

- a) No digital asset mining business created after the effective date of this rule shall operate in Arkansas without first obtaining a permit in accordance with the provisions of this rule.
- b) An existing digital asset mining business shall not operate in Arkansas without first applying for a permit with the Oil and Gas Commission within ninety (90) days of the date this rule is promulgated.
- c) A digital asset mining business shall operate in accordance with this rule and shall not operate if its digital asset mining permit application is denied, its digital asset mining permit is revoked by the Commission, or its digital asset mining permit is expired.
- d) Any Digital Asset Mining Permit issued by the Commission shall not exceed a term of 5 years from the date of issuance.
- e) The applicant shall file a completed initial permit application or renewal application, utilizing a form prescribed by the Director, which shall contain the following:
 - 1) A completed Organization Report on a form prescribed by the Director;
 - 2) Documentation establishing that the digital asset mining business is currently in good standing status with the Arkansas Secretary of State;
 - 3) A survey plat of the property boundaries on which the mining facility will be located that shows the location of the mining facility, and the location of all power and water lines and other utility services providing service to the mining facility;
 - 4) A current topographic map, aerial or satellite imagery, or other type of map that shows the location of the mining facility and the distance of all surrounding residences within a two (2) mile radius of the mining facility;
 - 5) A copy of an agreement with the entity supplying the electric power to the mining facility which certifies that the electric usage by the mining facility will not negatively impact the local electric grid or increase electric costs to the local customers;
 - 6) A copy of an agreement with the local water utility or private water well owner supplying water to the mining facility which certifies that the water usage by the mining facility will not negatively impact the local water supply and water rates of the local customers;

- 7) A notarized affidavit certifying that the digital asset mining business operating the mining facility is not a prohibited foreign-party-controlled business and is in compliance with Ark. Code Ann. § 14-1-606; and
- 8) A technical description, including schematics and engineering specifications of the system proposed to be utilized or the local government location approvals necessary to comply with noise-reduction techniques in accordance with Ark. Code Ann. § 14-1-604(b)(3), including without limitation schematics or specifications that demonstrate:
 - A) The digital asset mining business will use a liquid cooling or submerged cooling process for the mining facility;
 - B) The mining facility shall be fully enclosed around all sides, including above and below the equipment producing the noise, with material that is reasonably calculated by industry standards to reduce noise emissions to a level that is acceptable to a reasonable person under similar circumstances; or
 - C) Upon approval by the local government, the mining facility may use a passively cooled pre-manufactured container without additionally enclosing the container in a complete envelope if the mining facility is located or relates to an area:
 - i) That is at least two thousand (2,000) feet away from the nearest residential or commercial use structure; or
 - ii) That is zoned for industrial use or an otherwise approved use.
- f) Additionally, the digital asset mining business shall:
 - 1) Publish general public notice of the application ~~no more than ten (10) at least forty five (45)~~ days prior to filing the application with the Commission in a newspaper having a general circulation in the county, or in each county, if there shall be more than one, within a one (1) mile radius from the proposed mining facility is located. In addition, the public notice should be large font and surrounded by a printed border to highlight the published notice; and
 - 2) Provide notice by mailing, ~~at least forty five (45)~~ no more than ten (10) days prior to filing the application with the Commission, via certified mail, FedEx, UPS, or other method that provides proof of mailing and delivery to the following persons and entities:
 - A) Any local government having jurisdiction over the area where the mining facility is proposed to be located;
 - B) The Division of Environmental Quality;

- C) All surface owners of record within one (1) mile of the mining facility; and
- D) Any other persons as determined by the Director of the Commission.
- 3) The notice given by the digital asset mining business shall contain the following:
 - A) The name and address of the applicant.
 - B) A brief description of the nature and purpose of the application.
 - C) A description of the land on which the mining facility will be constructed.
 - D) A statement which explains that a copy of the application and exhibits may be obtained from the Commission or the digital asset mining business. When the Commission receives a request for a copy of the application from an interested party, the Commission may direct the digital asset mining business to deliver the application to the interested party. The cost of such notice and mailing of the application shall be paid for by the digital asset mining business.
 - E) A statement which explains that all comments or objections regarding the application must be in writing and submitted to the Commission prior to the expiration of the forty-five (45) day notice period specified in subparagraph f) 1) above g) 1) below.

g) Objections

- 1) Objections to the application must be received by the Director within forty-five (45) days after the publication date of the notice specified in subparagraph f) 1) above or the postmark date of the notice specified in subparagraph f) 2) above, whichever date is later. If an objection is received, the application shall be referred to the Commission for determination without imposition of a filing fee, and a hearing shall be conducted in accordance with General Rules A-2 and A-3 and all other applicable hearing procedures.
- 2) If a timely objection is not received by the Director and the application is deemed administratively complete, the permit shall be issued unless the Director deems it necessary to refer the application to the Commission for determination for the purpose of protecting public health and safety, protecting the environment, or preventing damage to property. No filing fee shall be assessed by the Commission for any hearing set pursuant to this referral by the Director.
- h) If the applicant satisfies the requirements of all applicable statutes and this rule, a permit shall be issued, unless:

- 1) The applicant has falsified or otherwise misstated any material information on or relative to the permit application;
 - 2) The applicant is or was an owner, officer, director, partner, member, or manager of digital asset mining business, or other person with an interest in the entity exceeding five-percent (5%), that has failed to abate any outstanding violations of statutes or rules, or comply with orders of the Commission as specified in a final administrative decision of the Commission in accordance with the provisions of this rule;
 - 3) The applicant is a current permit holder that has failed to abate outstanding violations of any statutes or rules, or comply with orders of the Commission as specified in a final administrative decision of the Commission in accordance with the provisions of this rule; or
 - 4) If the Director determines that the applicant or permit holder, or an owner, officer, director, partner, member, or manager or other person with an interest exceeding five-percent (5%) in the digital asset mining business, has a history of violating any applicable statutes, Commission rules, permit condition or order of the Commission, the Arkansas Pollution Control and Ecology Commission, or any other state or federal regulatory agency, the permit shall be denied.
- i) If a permit is denied pursuant to subparagraph h) above, the applicant may request a hearing with the Commission on this determination, in accordance with General Rules A-2, A-3, and other applicable hearing procedures.
- j) Digital Asset Mining Permit Revocation Procedures
- 1) The Director may revoke a digital asset mining permit if:
 - A) The permit holder fails to meet permit conditions as specified in the digital asset mining permit;
 - B) The digital asset mining permit was issued in error;
 - C) The permit holder fails to meet any applicable statute or law; or
 - D) The permit holder falsified or otherwise misstated any material information in the application form.
 - 2) The Director shall notify the permit holder in writing of the revocation of the digital asset mining permit. Following the notice of revocation, the permit holder shall have thirty (30) days from the date of the digital asset mining permit revocation notice to appeal the Director's decision to revoke the digital asset mining permit. If the permit revocation is appealed, a hearing contesting the permit revocation shall be conducted in accordance with General Rules A-2, A-3, and other applicable

hearing procedures. Operation of the mining facility may not commence or continue during the appeal process. A revocation of a digital asset mining permit for which an appeal has not been timely filed shall become a final administrative decision of the Commission.

Rule K-3 Digital Asset Mining Business Permit Transfer Procedures

a) Definitions

- 1) “Current permit holder” means the person required to hold the permit or to whom the permit was issued and who is the owner of the digital asset mining business and possesses the full rights and responsibilities for operating the business in accordance with applicable Arkansas law, rule, or order of the Commission.
- 2) “New permit holder” means the person acquiring the digital asset mining business and who obtains the full rights and responsibilities for operating the business and possessing the permit in accordance with applicable Arkansas law, rule, or order of the Commission.
- 3) “Transfer” means any voluntary or involuntary assignment, devise, release, transfer, takeover, buyout, merger, sale, conveyance, or other transfer of any kind.

b) The provisions of this rule apply to all transfers of the interest of the permit holder, including but not limited to:

- 1) A change of ownership of the right to operate the digital asset mining business;
- 2) A change of ownership or membership in the corporate entity that operates the digital asset mining business or a change in the designation of the owner or operator under an operating agreement or other similar agreement;
- 3) An action of the owners of separate interests who designate a new owner to be permit holder; or
- 4) A change required by the appointment, by a court of competent jurisdiction, of a trustee or a receiver to exercise custody and control over the digital asset mining business.

c) Notification of a transfer shall be given to the Director, or his or her designee, by the current permit holder on a form prescribed by the Director.

d) The notification shall be signed by the current permit holder and the new permit holder, or by authorized representatives specified on the Commission Organization Report filed in accordance with Rule K-2 e) 1).

e) Prior to the Director, or his or her designee, approving the transfer request, the new permit holder must:

- 1) Be authorized to do business within the State of Arkansas; and
- 2) Comply with all applicable provisions of state law and Rule K-2.

- f) A transfer to a new permit holder shall be denied by the Director, or his or her designee, if:
- 1) The new permit holder has not fully satisfied all applicable statutory and rule requirements;
 - 2) The Commission has not approved the transfer in accordance with paragraph e) above;
 - 3) The new permit holder has falsified or otherwise misstated any material information on or relative to the transfer application; or
 - 4) No further permits or authorities may be issued in accordance with paragraph e) above.
- g) The new permit holder shall assume compliance with all existing permit obligations and be responsible with complying with all regulatory requirements associated with the permit.
- h) If the digital asset mining business or mining facility is in violation of any rules, statutes, or orders of the Commission at the time of the transfer request to the new permit holder, the transfer request shall be denied pending abatement of all violations by the current permit holder. However, if the new permit holder, after being notified of the violation(s), agrees in writing to the transfer approval including conditions to abate all violations, the transfer may be approved by the Director, or his or her designee, in accordance with this rule. Failure to abate the violations within the time-period specified by the Director, or his or her designee, may result in revocation of the transfer approval and other applicable enforcement actions in accordance with General Rule A-5.
- i) The current permit holder is not responsible for any regulatory violation caused by the actions of the new permit holder during the permit transfer process. However, if the transfer is denied by the Director, or his or her designee, the current permit holder will assume all responsibility for any violations caused by the new permit holder. Nothing in this subparagraph shall affect the contractual rights and obligations between the person or entity transferring the permit and the person or entity acquiring the permit.
- j) The transfer request shall not affect the rights of the Commission, or any obligation or duty of the current permit holder arising under any applicable Arkansas law, rule, or order of the Commission.
- k) The Director shall notify the current and new permit holder of the transfer approval or denial in writing. Following the approval or denial of the transfer approval request, the current or new permit holder shall have thirty (30) days from the date of the approval or denial to appeal the Director's decision in accordance with General Rules A-2, A-3, and other applicable hearing procedures. A transfer request approval or denial, for which a

timely appeal has not been filed, shall become a final administrative decision of the Commission.

1) Permit Transfer Revocation Procedures

- 1) The Director may revoke a digital asset mining business permit transfer approval if the permit holder fails to comply with conditions as specified in the permit transfer approval, the permit transfer approval was issued in error, or the permit holder falsified or otherwise misstated any material information in the application form.
- 2) The Director shall notify the permit holder of the digital asset mining business permit transfer revocation in writing. Following the revocation notice, the permit holder is required to cease operation of the mining facility. The permit holder shall have thirty (30) days from the date of the permit transfer revocation to appeal the Director's decision to revoke the transfer approval in accordance with General Rules A-2, A-3, and other applicable hearing procedures. Operation of the mining facility may not commence or continue during the appeal process. A revocation of a permit transfer approval for which an appeal has not been timely filed shall become a final administrative decision of the Commission.

Rule K-4 Digital Asset Mining Business Enforcement Procedures

- a) Any regulated entity operating a digital asset mining business is subject to the enforcement provisions of this rule and the Arkansas Data Centers Act of 2023, Ark. Code Ann. § 14-1-601 *et seq.* and the digital asset mining provisions of Ark. Code Ann. § 23-119-101 *et seq.*
- b) Notice of Non-Compliance
 - 1) A Notice of Non-Compliance may be issued when any regulated entity is not in compliance with any requirement of this rule, Ark. Code Ann. § 14-1-601 *et seq.*, or § 23-119-101 *et seq.*, and:
 - A) The non-compliance was not caused by the regulated entity's deliberate action;
 - B) Any action necessary to abate the non-compliance was commenced immediately, and was or will be completed within a specified date, as established by the Director, or his or her designee, not to exceed thirty (30) days from the date that the regulated entity was determined to be out of compliance; and
 - C) The non-compliance has not caused and cannot reasonably be expected to cause significant harm to public health and safety or damage to property.
 - 2) The Notice of Non-Compliance shall be documented in writing and delivered via first class mail to the regulated entity or to the regulated entity's representative as reported on the Commission Organization Report. The written notification shall indicate the nature and circumstances of the non-compliance, and the time within which and the means by which the non-compliance is to be abated.
 - 2) If abatement is not completed as specified in the written notification, the Director, or his or her designee, may issue a formal Notice of Violation in accordance with subparagraph (c) below.
 - 4) The provisions of this subparagraph shall not apply to the following types of incidents, which may require a Notice of Violation to be issued in accordance with subparagraph (c) below:
 - A) Conducting any regulated activity prior to issuance of the appropriate Commission permit;
 - B) Failure to bring an existing mining facility into compliance with Arkansas law or Rule K-2.

c) Notice of Violation(s)

- 1) A Notice of Violation may be issued by the Director, or his or her designee, when any regulated entity is in violation of any requirements of Ark. Code Ann. § 14-1-601 *et seq.*, § 23-119-101 *et seq.*, or rules, orders, or any permit conditions of the Commission. Unless otherwise determined by the Commission after notice and a hearing, a regulated entity shall not be compelled by the Commission to abate violations of the Arkansas law or rules, orders, or any permit conditions of the Commission in the absence of the issuance of an underlying Notice of Violation.
- 2) The Notice of Violation shall be in writing and contain:
 - A) A statement regarding the nature of the violation, including a citation to the specific section of Ark. Code Ann. § 14-1-601 *et seq.*, or § 23-119-101 *et seq.* or rules, orders, or any permit conditions of the Commission alleged to have been violated;
 - B) The suggested action needed to abate the violation, including any appropriate remedial measures to prevent future violations;
 - C) The time within which the violation shall be abated; and
 - D) A notice of any civil penalties, as specified in subparagraph e) below, that the Director will request the Commission issue.
- 3) The Notice of Violation may include a cessation requirement, or a separate cessation order may be issued for the following types of violations:
 - A) Operating a digital asset mining business or mining facility without a Commission permit;
 - B) Improper disposal or discharge of cooling fluids;
 - C) Failure to comply with the violation abatement timeframe established in a Notice of Violation.
- 4) The Director, or his or her designee, shall send, via certified mail, the Notice of Violation to the regulated entity charged with the violation(s), or the regulated entity's representative as reported on the Commission Organization Report, or provide personal delivery of a copy of the notice to the regulated entity, or the regulated entity's representative.
- 5) The regulated entity charged with the violation(s) may request a Director's review of the Notice of Violation and provide the Director, in writing, any information in

mitigation of the violation(s) within thirty (30) calendar days of the mailing or personal delivery of the original Notice of Violation, unless a shorter time period is specified in the Notice of Violation for instances where there is a condition that creates an imminent danger to the health or safety of the public or threatens significant environmental harm or damage to property. Such written information may include a proposed alternative to the required action needed to abate the violation(s). Upon timely receipt of such documentation from the regulated entity, the Director shall conduct a review.

- 6) During the review, the Director may consider any of the following criteria in reaching a final Director's decision regarding the violation(s):
 - A) The regulated entity's history of previous violations, including violations at other locations and under other permits;
 - B) The seriousness of the violation, including any irreparable harm to public health and safety, the environment, or damage to property;
 - C) The degree of culpability of the regulated entity; and
 - D) The existence of any additional conditions or factors in aggravation or mitigation of the violation, including information provided by the regulated entity.
- 7) Upon completion of the review, the Director shall issue a final Director's decision to:
 - A) Affirm the violation;
 - B) Vacate the violation;
 - C) Amend or modify the type of violation and abatement requirements specified in the violation;
 - D) Establish probationary or permanent modification or conditions to any underlying permit related to the violation, which may include special monitoring or reporting requirements; or
 - E) Enter into a settlement agreement to extend the amount of time provided to complete remedial actions necessary to abate the violations or reduce the amount of the requested assessed civil penalty.
- 8) The final Director's decision shall be delivered to the regulated entity, or the Regulated entity's representative, as reported on Commission Organization Report, via first class mail. The final Director's decision may be appealed to the Commission by filing an application in accordance with General Rule A-2, A-3,

and other applicable hearing procedures. The Director must receive the application to appeal the final Director's decision within thirty (30) days of the mailing of the final Director's decision. The application shall state the reason for the appeal and the application shall be scheduled to be heard by the Commission in accordance with General Rule A-2, A-3, and other applicable hearing procedures.

- 9) A Notice of Violation for which a Director's review has not been requested shall become a final administrative decision of the Commission thirty (30) days following the mailing of the Notice of Violation.
 - 10) A final Director's decision not appealed to the Commission within thirty (30) days of the mailing of the final Director's decision shall become a final administrative decision of the Commission.
 - 11) All violations specified in a Notice of Violation which have become a final administrative decision in accordance with subparagraph c) 9), included in a final Director's decision which has become a final administrative decision of the Commission in accordance with subparagraph e) 10), or included in an order of the Commission, shall be fully abated within the time frame specified in the original Notice of Violation, final Director's decision, or order of the Commission. No further permits or authorization shall be issued to the regulated entity until all outstanding violations specified in a Notice of Violation which has become a final administrative decision in accordance with subparagraph c) 9), a final Director's decision which has become a final administrative decision of the Commission in accordance with subparagraph c) 10), or by order of the Commission have been fully abated.
- d) In addition to the issuance of a Notice of Violation, the Director and the Commission may initiate investigative or enforcement proceedings upon receipt of a complaint by:
- 1) Initiating a referral to the Attorney General for enforcement in accordance with Ark. Code Ann. § 14-1-606;
 - 2) Making reasonable investigations and inspections;
 - 3) Examining properties, leases, papers, books, and records;
 - 4) Holding hearings;
 - 5) Requiring the keeping of records and the making of reports;
 - 6) Taking such action as may be reasonably necessary to enforce state law and Commission rules, including compliance with Ark. Code Ann. §§ 14-1-601 *et seq.* and 23-119-101 *et seq.*

e) Civil Penalties

- 1) The Director shall determine whether to request the assessment of civil penalties based on failure to comply with the applicable abatement requirements for violations issued under subparagraphs (e) (2), (3), and (4) below. If a civil penalty is requested by the Director, the regulated entity may voluntarily agree to the assessment and pay the civil penalty as requested or modified by the Director, or the Director or his designee may file an application, in accordance with General Rule A-2, A-3, and other applicable hearing procedures, to request the issuance of the requested civil penalty by the Commission. The maximum amount of the Director's requested civil penalty shall be computed as provided in subparagraphs (e) (2), (3), and (4) below. However, the Commission is not bound by the Director's request, or the amounts provided below, and may impose civil penalties of up to five thousand dollars (\$5,000.00) per day per violation as permitted by statute.
- 2) Administrative violations are defined as failure to file required reports and forms and to provide required notices. The Director may request the assessment of up to two thousand five hundred (\$2,500.00) dollars per administrative violation, plus up to five hundred dollars (\$500.00) per day for each day the violation remains unabated after the specified compliance date. The per-administrative-violation civil penalty request shall be calculated as follows:
 - A) No previous violation of the same rule: one thousand dollars (\$1,000.00). One previous violation of the same rule: one thousand five hundred dollars (\$1,500.00). Two or more previous violations of the same rule: two thousand five hundred dollars (\$2,500.00).
 - B) The time frame used for determining previous violations shall be limited to the regulated entity's violation record for the preceding five (5) full calendar years before the issuance of the violation.
- 3) Operating violations are defined as failure to maintain compliance with Commission digital asset mining rules. These violations include, but are not limited to, regulated activities such as operating a mining facility without the proper permit or transfer of ownership and failure to maintain a mining facility in compliance with these rules. The Director may request the assessment of up to five thousand dollars (\$5,000.00) per operating violation plus up to two thousand five hundred dollars (\$2,500.00) per day for each day the violation remains unabated after the specified compliance date, with the exception that operating violations as specified in statute are limited to a maximum of five thousand dollars (\$5,000.00) per day per operating violation. The per-operating-violation civil penalty shall be calculated as follows:

- A) No previous violation of the same rule: two thousand five hundred dollars (\$2,500.00). One previous violation of the same rule: five thousand dollars (\$5,000.00).
 - B) The time frame used for determining previous violations shall be limited to the regulated entity's violation record for the preceding five (5) full calendar years before the issuance of the violation.
- f) All civil penalties assessed and paid to the Commission in accordance with this subpart shall be deposited in the Commission operating fund.

Rule K-1 Applicability, General Provisions and Definitions
REVISED CLEAN DRAFT

a) Applicability

- 1) This rule shall apply to any digital asset mining business, as defined by this rule.

b) General Provisions

- 1) A digital asset mining business in operation before the effective date of this rule shall be in full compliance with the noise provisions enacted in Ark. Code Ann. § 14-1-604(b)(3) no later than ninety (90) days after this rule is effective.
- 2) No digital asset mining business created after the effective date of this rule shall operate in Arkansas without first obtaining a permit in accordance with the provisions of this rule. An existing digital asset mining business shall not operate in Arkansas without first applying for a permit with the Oil and Gas Commission within ninety (90) days of the date this rule is promulgated. A digital asset mining business shall operate in accordance with Rules K-1, K-2, and K-3, and shall not operate if its digital asset mining permit application or transfer request is denied or its digital asset mining permit is revoked by the Commission.
- 3) A digital asset mining business may operate in Arkansas if the digital asset mining business:
 - A) Is issued a permit from the Commission in accordance with Rules K-2 or K-3;
 - B) Establishes that the business is not a prohibited foreign-party-controlled business as defined by and in accordance with Ark. Code Ann. § 14-1-606;
 - C) Maintains compliance with all local government ordinances;
 - D) Maintains compliance with any rule or rate for utility service provided by or on behalf of a public entity;
 - E) Maintains compliance with all applicable state and federal laws, including but not limited to, Ark. Code Ann. § 14-1-601 *et seq.* and § 23-119-101 *et seq.*;
 - F) Pays all applicable taxes and government fees in acceptable forms of currency; and
 - G) Operates in a manner that will not cause any stress on the electric public utility's generation capabilities or transmission network.

c) Definitions

- 1) “Applicant” means an entity who makes an application to the Oil and Gas Commission to operate a digital asset mining business.
- 2) “Blockchain network” means a group of computers operating and processing together to execute a consensus mechanism to agree upon and verify data in a digital record for the purpose of generating digital assets.
- 3) “Digital asset” means cryptocurrency, virtual currency, and natively electronic assets, including without limitation stable coins, nonfungible tokens, and other digital-only assets, that confer economic, proprietary, or access rights or powers.
- 4) “Digital asset miner” is an individual who mines for digital assets and holds the digital asset mining business permit issued under this rule.
- 5) “Digital asset mining” means use of electricity to power a computer for the purpose of securing or validating a blockchain network.
- 6) “Digital asset mining business” means a group of computers working at a single site that consumes more than one megawatt (1 MW) of electrical energy on an average annual basis for the purpose of generating digital assets by securing a blockchain network.
- 7) “Director” shall mean the Director of Production and Conservation of the Oil and Gas Commission.
- 8) “Home digital asset mining” means mining digital assets in areas zoned for residential use.
- 9) “Legislative body” means the quorum court of a county or the city council, board of directors, board of commissioners, or similar elected governing body of local government.
- 10) “Local government” means a county, a city of the first class, a city of the second class, or an incorporated town.
- 11) “Mining facility” means the building or other portable building structure where the digital asset mining computers are located.
- 12) “Node” means a computational device that contains a copy of blockchain-distributed ledger technology and includes a series.
- 13) “Ordinance” means an ordinance, resolution, or other appropriate legislative enactment of a legislative body.

- 14) "Person" means an individual or legal entity.
- 15) "Regulated entity" means a:
- A) Digital asset miner;
 - B) Person owning or operating a mining facility or a digital asset mining business;
 - C) Mining facility; or
 - D) Digital asset mining business.
- 16) "Residence" means a permanent dwelling place, unit, or accessory structure.

Rule K-2 Digital Asset Mining Business Permitting Requirements

- a) No digital asset mining business created after the effective date of this rule shall operate in Arkansas without first obtaining a permit in accordance with the provisions of this rule.
- b) An existing digital asset mining business shall not operate in Arkansas without first applying for a permit with the Oil and Gas Commission within ninety (90) days of the date this rule is promulgated.
- c) A digital asset mining business shall operate in accordance with this rule and shall not operate if its digital asset mining permit application is denied, its digital asset mining permit is revoked by the Commission, or its digital asset mining permit is expired.
- d) Any Digital Asset Mining Permit issued by the Commission shall not exceed a term of 5 years from the date of issuance.
- e) The applicant shall file a completed initial permit application or renewal application, utilizing a form prescribed by the Director, which shall contain the following:
 - 1) A completed Organization Report on a form prescribed by the Director;
 - 2) Documentation establishing that the digital asset mining business is currently in good standing status with the Arkansas Secretary of State;
 - 3) A survey plat of the property boundaries on which the mining facility will be located that shows the location of the mining facility, and the location of all power and water lines and other utility services providing service to the mining facility;
 - 4) A current topographic map, aerial or satellite imagery, or other type of map that shows the location of the mining facility and the distance of all surrounding residences within a two (2) mile radius of the mining facility;
 - 5) A copy of an agreement with the entity supplying the electric power to the mining facility which certifies that the electric usage by the mining facility will not negatively impact the local electric grid or increase electric costs to the local customers;
 - 6) A copy of an agreement with the local water utility or private water well owner supplying water to the mining facility which certifies that the water usage by the mining facility will not negatively impact the local water supply and water rates of the local customers;

- 7) A notarized affidavit certifying that the digital asset mining business operating the mining facility is not a prohibited foreign-party-controlled business and is in compliance with Ark. Code Ann. § 14-1-606; and
 - 8) A technical description, including schematics and engineering specifications of the system proposed to be utilized or the local government location approvals necessary to comply with noise-reduction techniques in accordance with Ark. Code Ann. § 14-1-604(b)(3), including without limitation schematics or specifications that demonstrate:
 - A) The digital asset mining business will use a liquid cooling or submerged cooling process for the mining facility;
 - B) The mining facility shall be fully enclosed around all sides, including above and below the equipment producing the noise, with material that is reasonably calculated by industry standards to reduce noise emissions to a level that is acceptable to a reasonable person under similar circumstances; or
 - C) Upon approval by the local government, the mining facility may use a passively cooled pre-manufactured container without additionally enclosing the container in a complete envelope if the mining facility is located or relates to an area:
 - i) That is at least two thousand (2,000) feet away from the nearest residential or commercial use structure; or
 - ii) That is zoned for industrial use or an otherwise approved use.
- f) Additionally, the digital asset mining business shall:
- 1) Publish general public notice of the application no more than ten (10) days prior to filing the application with the Commission in a newspaper having a general circulation in the county, or in each county, if there shall be more than one, within a one (1) mile radius from the proposed mining facility is located. In addition, the public notice should be large font and surrounded by a printed border to highlight the published notice; and
 - 2) Provide notice by mailing, no more than ten (10) days prior to filing the application with the Commission, via certified mail, FedEx, UPS, or other method that provides proof of mailing and delivery to the following persons and entities:
 - A) Any local government having jurisdiction over the area where the mining facility is proposed to be located;
 - B) The Division of Environmental Quality;

- C) All surface owners of record within one (1) mile of the mining facility; and
 - D) Any other persons as determined by the Director of the Commission.
- 3) The notice given by the digital asset mining business shall contain the following:
- A) The name and address of the applicant.
 - B) A brief description of the nature and purpose of the application.
 - C) A description of the land on which the mining facility will be constructed.
 - D) A statement which explains that a copy of the application and exhibits may be obtained from the Commission or the digital asset mining business. When the Commission receives a request for a copy of the application from an interested party, the Commission may direct the digital asset mining business to deliver the application to the interested party. The cost of such notice and mailing of the application shall be paid for by the digital asset mining business.
 - E) A statement which explains that all comments or objections regarding the application must be in writing and submitted to the Commission prior to the expiration of the forty-five (45) day notice period specified in subparagraph g) 1) below.

g) Objections

- 1) Objections to the application must be received by the Director within forty-five (45) days after the publication date of the notice specified in subparagraph f) 1) above or the postmark date of the notice specified in subparagraph f) 2) above, whichever date is later. If an objection is received, the application shall be referred to the Commission for determination without imposition of a filing fee, and a hearing shall be conducted in accordance with General Rules A-2 and A-3 and all other applicable hearing procedures.
 - 2) If a timely objection is not received by the Director and the application is deemed administratively complete, the permit shall be issued unless the Director deems it necessary to refer the application to the Commission for determination for the purpose of protecting public health and safety, protecting the environment, or preventing damage to property. No filing fee shall be assessed by the Commission for any hearing set pursuant to this referral by the Director.
- h) If the applicant satisfies the requirements of all applicable statutes and this rule, a permit shall be issued, unless:

- 1) The applicant has falsified or otherwise misstated any material information on or relative to the permit application;
 - 2) The applicant is or was an owner, officer, director, partner, member, or manager of digital asset mining business, or other person with an interest in the entity exceeding five-percent (5%), that has failed to abate any outstanding violations of statutes or rules, or comply with orders of the Commission as specified in a final administrative decision of the Commission in accordance with the provisions of this rule;
 - 3) The applicant is a current permit holder that has failed to abate outstanding violations of any statutes or rules, or comply with orders of the Commission as specified in a final administrative decision of the Commission in accordance with the provisions of this rule; or
 - 4) If the Director determines that the applicant or permit holder, or an owner, officer, director, partner, member, or manager or other person with an interest exceeding five-percent (5%) in the digital asset mining business, has a history of violating any applicable statutes, Commission rules, permit condition or order of the Commission, the Arkansas Pollution Control and Ecology Commission, or any other state or federal regulatory agency, the permit shall be denied.
- i) If a permit is denied pursuant to subparagraph h) above, the applicant may request a hearing with the Commission on this determination, in accordance with General Rules A-2, A-3, and other applicable hearing procedures.
- j) Digital Asset Mining Permit Revocation Procedures
- 1) The Director may revoke a digital asset mining permit if:
 - A) The permit holder fails to meet permit conditions as specified in the digital asset mining permit;
 - B) The digital asset mining permit was issued in error;
 - C) The permit holder fails to meet any applicable statute or law; or
 - D) The permit holder falsified or otherwise misstated any material information in the application form.
 - 2) The Director shall notify the permit holder in writing of the revocation of the digital asset mining permit. Following the notice of revocation, the permit holder shall have thirty (30) days from the date of the digital asset mining permit revocation notice to appeal the Director's decision to revoke the digital asset mining permit. If the permit revocation is appealed, a hearing contesting the permit revocation shall be conducted in accordance with General Rules A-2, A-3, and other applicable

hearing procedures. Operation of the mining facility may not commence or continue during the appeal process. A revocation of a digital asset mining permit for which an appeal has not been timely filed shall become a final administrative decision of the Commission.

Rule K-3 Digital Asset Mining Business Permit Transfer Procedures

- a) Definitions
 - 1) “Current permit holder” means the person required to hold the permit or to whom the permit was issued and who is the owner of the digital asset mining business and possesses the full rights and responsibilities for operating the business in accordance with applicable Arkansas law, rule, or order of the Commission.
 - 2) “New permit holder” means the person acquiring the digital asset mining business and who obtains the full rights and responsibilities for operating the business and possessing the permit in accordance with applicable Arkansas law, rule, or order of the Commission.
 - 3) “Transfer” means any voluntary or involuntary assignment, devise, release, transfer, takeover, buyout, merger, sale, conveyance, or other transfer of any kind.
- b) The provisions of this rule apply to all transfers of the interest of the permit holder, including but not limited to:
 - 1) A change of ownership of the right to operate the digital asset mining business;
 - 2) A change of ownership or membership in the corporate entity that operates the digital asset mining business or a change in the designation of the owner or operator under an operating agreement or other similar agreement;
 - 3) An action of the owners of separate interests who designate a new owner to be permit holder; or
 - 4) A change required by the appointment, by a court of competent jurisdiction, of a trustee or a receiver to exercise custody and control over the digital asset mining business.
- c) Notification of a transfer shall be given to the Director, or his or her designee, by the current permit holder on a form prescribed by the Director.
- d) The notification shall be signed by the current permit holder and the new permit holder, or by authorized representatives specified on the Commission Organization Report filed in accordance with Rule K-2 e) 1).
- e) Prior to the Director, or his or her designee, approving the transfer request, the new permit holder must:
 - 1) Be authorized to do business within the State of Arkansas; and
 - 2) Comply with all applicable provisions of state law and Rule K-2.

- f) A transfer to a new permit holder shall be denied by the Director, or his or her designee, if:
 - 1) The new permit holder has not fully satisfied all applicable statutory and rule requirements;
 - 2) The Commission has not approved the transfer in accordance with paragraph e) above;
 - 3) The new permit holder has falsified or otherwise misstated any material information on or relative to the transfer application; or
 - 4) No further permits or authorities may be issued in accordance with paragraph e) above.
- g) The new permit holder shall assume compliance with all existing permit obligations and be responsible with complying with all regulatory requirements associated with the permit.
- h) If the digital asset mining business or mining facility is in violation of any rules, statutes, or orders of the Commission at the time of the transfer request to the new permit holder, the transfer request shall be denied pending abatement of all violations by the current permit holder. However, if the new permit holder, after being notified of the violation(s), agrees in writing to the transfer approval including conditions to abate all violations, the transfer may be approved by the Director, or his or her designee, in accordance with this rule. Failure to abate the violations within the time-period specified by the Director, or his or her designee, may result in revocation of the transfer approval and other applicable enforcement actions in accordance with General Rule A-5.
- i) The current permit holder is not responsible for any regulatory violation caused by the actions of the new permit holder during the permit transfer process. However, if the transfer is denied by the Director, or his or her designee, the current permit holder will assume all responsibility for any violations caused by the new permit holder. Nothing in this subparagraph shall affect the contractual rights and obligations between the person or entity transferring the permit and the person or entity acquiring the permit.
- j) The transfer request shall not affect the rights of the Commission, or any obligation or duty of the current permit holder arising under any applicable Arkansas law, rule, or order of the Commission.
- k) The Director shall notify the current and new permit holder of the transfer approval or denial in writing. Following the approval or denial of the transfer approval request, the current or new permit holder shall have thirty (30) days from the date of the approval or denial to appeal the Director's decision in accordance with General Rules A-2, A-3, and other applicable hearing procedures. A transfer request approval or denial, for which a

timely appeal has not been filed, shall become a final administrative decision of the Commission.

1) Permit Transfer Revocation Procedures

- 1) The Director may revoke a digital asset mining business permit transfer approval if the permit holder fails to comply with conditions as specified in the permit transfer approval, the permit transfer approval was issued in error, or the permit holder falsified or otherwise misstated any material information in the application form.
- 2) The Director shall notify the permit holder of the digital asset mining business permit transfer revocation in writing. Following the revocation notice, the permit holder is required to cease operation of the mining facility. The permit holder shall have thirty (30) days from the date of the permit transfer revocation to appeal the Director's decision to revoke the transfer approval in accordance with General Rules A-2, A-3, and other applicable hearing procedures. Operation of the mining facility may not commence or continue during the appeal process. A revocation of a permit transfer approval for which an appeal has not been timely filed shall become a final administrative decision of the Commission.

Rule K-4 Digital Asset Mining Business Enforcement Procedures

- a) Any regulated entity operating a digital asset mining business is subject to the enforcement provisions of this rule and the Arkansas Data Centers Act of 2023, Ark. Code Ann. § 14-1-601 *et seq.* and the digital asset mining provisions of Ark. Code Ann. § 23-119-101 *et seq.*
- b) Notice of Non-Compliance
 - 1) A Notice of Non-Compliance may be issued when any regulated entity is not in compliance with any requirement of this rule, Ark. Code Ann. § 14-1-601 *et seq.*, or § 23-119-101 *et seq.*, and:
 - A) The non-compliance was not caused by the regulated entity's deliberate action;
 - B) Any action necessary to abate the non-compliance was commenced immediately, and was or will be completed within a specified date, as established by the Director, or his or her designee, not to exceed thirty (30) days from the date that the regulated entity was determined to be out of compliance; and
 - C) The non-compliance has not caused and cannot reasonably be expected to cause significant harm to public health and safety or damage to property.
 - 2) The Notice of Non-Compliance shall be documented in writing and delivered via first class mail to the regulated entity or to the regulated entity's representative as reported on the Commission Organization Report. The written notification shall indicate the nature and circumstances of the non-compliance, and the time within which and the means by which the non-compliance is to be abated.
 - 2) If abatement is not completed as specified in the written notification, the Director, or his or her designee, may issue a formal Notice of Violation in accordance with subparagraph (c) below.
 - 4) The provisions of this subparagraph shall not apply to the following types of incidents, which may require a Notice of Violation to be issued in accordance with subparagraph (c) below:
 - A) Conducting any regulated activity prior to issuance of the appropriate Commission permit;
 - B) Failure to bring an existing mining facility into compliance with Arkansas law or Rule K-2.

c) Notice of Violation(s)

- 1) A Notice of Violation may be issued by the Director, or his or her designee, when any regulated entity is in violation of any requirements of Ark. Code Ann. § 14-1-601 *et seq.*, § 23-119-101 *et seq.*, or rules, orders, or any permit conditions of the Commission. Unless otherwise determined by the Commission after notice and a hearing, a regulated entity shall not be compelled by the Commission to abate violations of the Arkansas law or rules, orders, or any permit conditions of the Commission in the absence of the issuance of an underlying Notice of Violation.
- 2) The Notice of Violation shall be in writing and contain:
 - A) A statement regarding the nature of the violation, including a citation to the specific section of Ark. Code Ann. § 14-1-601 *et seq.*, or § 23-119-101 *et seq.* or rules, orders, or any permit conditions of the Commission alleged to have been violated;
 - B) The suggested action needed to abate the violation, including any appropriate remedial measures to prevent future violations;
 - C) The time within which the violation shall be abated; and
 - D) A notice of any civil penalties, as specified in subparagraph e) below, that the Director will request the Commission issue.
- 3) The Notice of Violation may include a cessation requirement, or a separate cessation order may be issued for the following types of violations:
 - A) Operating a digital asset mining business or mining facility without a Commission permit;
 - B) Improper disposal or discharge of cooling fluids;
 - C) Failure to comply with the violation abatement timeframe established in a Notice of Violation.
- 4) The Director, or his or her designee, shall send, via certified mail, the Notice of Violation to the regulated entity charged with the violation(s), or the regulated entity's representative as reported on the Commission Organization Report, or provide personal delivery of a copy of the notice to the regulated entity, or the regulated entity's representative.
- 5) The regulated entity charged with the violation(s) may request a Director's review of the Notice of Violation and provide the Director, in writing, any information in

mitigation of the violation(s) within thirty (30) calendar days of the mailing or personal delivery of the original Notice of Violation, unless a shorter time period is specified in the Notice of Violation for instances where there is a condition that creates an imminent danger to the health or safety of the public or threatens significant environmental harm or damage to property. Such written information may include a proposed alternative to the required action needed to abate the violation(s). Upon timely receipt of such documentation from the regulated entity, the Director shall conduct a review.

- 6) During the review, the Director may consider any of the following criteria in reaching a final Director's decision regarding the violation(s):
 - A) The regulated entity's history of previous violations, including violations at other locations and under other permits;
 - B) The seriousness of the violation, including any irreparable harm to public health and safety, the environment, or damage to property;
 - C) The degree of culpability of the regulated entity; and
 - D) The existence of any additional conditions or factors in aggravation or mitigation of the violation, including information provided by the regulated entity.
- 7) Upon completion of the review, the Director shall issue a final Director's decision to:
 - A) Affirm the violation;
 - B) Vacate the violation;
 - C) Amend or modify the type of violation and abatement requirements specified in the violation;
 - D) Establish probationary or permanent modification or conditions to any underlying permit related to the violation, which may include special monitoring or reporting requirements; or
 - E) Enter into a settlement agreement to extend the amount of time provided to complete remedial actions necessary to abate the violations or reduce the amount of the requested assessed civil penalty.
- 8) The final Director's decision shall be delivered to the regulated entity, or the Regulated entity's representative, as reported on Commission Organization Report, via first class mail. The final Director's decision may be appealed to the Commission by filing an application in accordance with General Rule A-2, A-3,

and other applicable hearing procedures. The Director must receive the application to appeal the final Director's decision within thirty (30) days of the mailing of the final Director's decision. The application shall state the reason for the appeal and the application shall be scheduled to be heard by the Commission in accordance with General Rule A-2, A-3, and other applicable hearing procedures.

- 9) A Notice of Violation for which a Director's review has not been requested shall become a final administrative decision of the Commission thirty (30) days following the mailing of the Notice of Violation.
 - 10) A final Director's decision not appealed to the Commission within thirty (30) days of the mailing of the final Director's decision shall become a final administrative decision of the Commission.
 - 11) All violations specified in a Notice of Violation which have become a final administrative decision in accordance with subparagraph c) 9), included in a final Director's decision which has become a final administrative decision of the Commission in accordance with subparagraph e) 10), or included in an order of the Commission, shall be fully abated within the time frame specified in the original Notice of Violation, final Director's decision, or order of the Commission. No further permits or authorization shall be issued to the regulated entity until all outstanding violations specified in a Notice of Violation which has become a final administrative decision in accordance with subparagraph c) 9), a final Director's decision which has become a final administrative decision of the Commission in accordance with subparagraph c) 10), or by order of the Commission have been fully abated.
- d) In addition to the issuance of a Notice of Violation, the Director and the Commission may initiate investigative or enforcement proceedings upon receipt of a complaint by:
- 1) Initiating a referral to the Attorney General for enforcement in accordance with Ark. Code Ann. § 14-1-606;
 - 2) Making reasonable investigations and inspections;
 - 3) Examining properties, leases, papers, books, and records;
 - 4) Holding hearings;
 - 5) Requiring the keeping of records and the making of reports;
 - 6) Taking such action as may be reasonably necessary to enforce state law and Commission rules, including compliance with Ark. Code Ann. §§ 14-1-601 *et seq.* and 23-119-101 *et seq.*

e) Civil Penalties

- 1) The Director shall determine whether to request the assessment of civil penalties based on failure to comply with the applicable abatement requirements for violations issued under subparagraphs (e) (2), (3), and (4) below. If a civil penalty is requested by the Director, the regulated entity may voluntarily agree to the assessment and pay the civil penalty as requested or modified by the Director, or the Director or his designee may file an application, in accordance with General Rule A-2, A-3, and other applicable hearing procedures, to request the issuance of the requested civil penalty by the Commission. The maximum amount of the Director's requested civil penalty shall be computed as provided in subparagraphs (e) (2), (3), and (4) below. However, the Commission is not bound by the Director's request, or the amounts provided below, and may impose civil penalties of up to five thousand dollars (\$5,000.00) per day per violation as permitted by statute.
- 2) Administrative violations are defined as failure to file required reports and forms and to provide required notices. The Director may request the assessment of up to two thousand five hundred (\$2,500.00) dollars per administrative violation, plus up to five hundred dollars (\$500.00) per day for each day the violation remains unabated after the specified compliance date. The per-administrative-violation civil penalty request shall be calculated as follows:
 - A) No previous violation of the same rule: one thousand dollars (\$1,000.00). One previous violation of the same rule: one thousand five hundred dollars (\$1,500.00). Two or more previous violations of the same rule: two thousand five hundred dollars (\$2,500.00).
 - B) The time frame used for determining previous violations shall be limited to the regulated entity's violation record for the preceding five (5) full calendar years before the issuance of the violation.
- 3) Operating violations are defined as failure to maintain compliance with Commission digital asset mining rules. These violations include, but are not limited to, regulated activities such as operating a mining facility without the proper permit or transfer of ownership and failure to maintain a mining facility in compliance with these rules. The Director may request the assessment of up to five thousand dollars (\$5,000.00) per operating violation plus up to two thousand five hundred dollars (\$2,500.00) per day for each day the violation remains unabated after the specified compliance date, with the exception that operating violations as specified in statute are limited to a maximum of five thousand dollars (\$5,000.00) per day per operating violation. The per-operating-violation civil penalty shall be calculated as follows:

- A) No previous violation of the same rule: two thousand five hundred dollars (\$2,500.00). One previous violation of the same rule: five thousand dollars (\$5,000.00).
 - B) The time frame used for determining previous violations shall be limited to the regulated entity's violation record for the preceding five (5) full calendar years before the issuance of the violation.
- f) All civil penalties assessed and paid to the Commission in accordance with this subpart shall be deposited in the Commission operating fund.