

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

Rule K-1 Applicability, General Provisions and Definitions
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 any person associated with a mining facility, a digital asset miner, or a mining facility.
- 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 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) 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) 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. 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.



OIL & GAS COMMISSION

Sarah Huckabee Sanders
GOVERNOR

Shane E. Khoury
SECRETARY

NOTICE OF RULE CHANGE Request for Public Comment

The Oil and Gas Commission (“OGC” or “Commission”) proposes this rulemaking to promulgate General Rule K regulating digital asset mining. Oil and Gas Commission General Rule K provides the regulatory structure for ensuring that digital asset mining businesses are managed in a manner that best protects the public interest. General Rule K has four (4) separate rules: K-1 “Applicability, General Provisions and Definitions,” K-2 “Digital Asset Mining Business Permitting Requirements,” K-3 “Digital Asset Mining Business Permit Transfer Procedures,” and K-4 “Digital Asset Mining Business Enforcement Procedures.” Oral and written comments by industry representatives and the public will be received and made a part of the record during the public comment period.

Pursuant to the Arkansas Administrative Procedures, Arkansas Code § 25-15-201, et seq., and Arkansas Code § 15-71-110 and Ark. Code Ann. § 23-119-104, the OGC by this notice solicits comments of any interested party to the proposed rule by submitting comments in writing on or before the end of the public comment period, which is January 13, 2025. Comments sent by regular mail should be sent to Lawrence Bengal at the address below.

Full and complete copies of the proposed general rule are available for inspection and review at the OGC offices in North Little Rock, Arkansas, at 5301 Northshore Drive, phone 501-683-5814; or may be viewed on the OGC website at <https://www.aogc.state.ar.us/rules/new.aspx>.

A public hearing will be held on January 6, 2025, beginning at 3:00 p.m., Central Time, to accept comments on the rulemaking. The hearing will be held in the Commission Room at the Department of Energy and Environment headquarters building at 5301 Northshore Drive, North Little Rock, AR 72118, phone number 501-683-5814. Written and oral statements may be submitted regarding the proposed rulemakings to the Presiding Officer for consideration at the Public Hearing. If the hearing is postponed and rescheduled, a new legal notice will be published to announce the details of the new hearing date.

Written comments may also be submitted to Shannon Raglin by email at Shannon.Raglin@aogc.state.ar.us, until 11:59 p.m., on January 13, 2025, and must also include the commentator’s name, mailing address, and e-mail address.

By: Lawrence E. Bengal, Director
Production and Conservation
Oil and Gas Commission
5301 Northshore Drive
North Little Rock, Arkansas 72118

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT _____
BOARD/COMMISSION _____
BOARD/COMMISSION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ EMAIL _____
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
PRESENTER EMAIL(S) _____

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?

2. What is the subject of the proposed rule? _____
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. _____

15. What is the proposed effective date for this rule? _____

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE _____

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.



OIL & GAS COMMISSION

Sarah Huckabee Sanders
GOVERNOR

Shane E. Khoury
SECRETARY

Proposed Promulgation of OGC GENERAL RULE K: RULES REGULATING DIGITAL ASSET MINING BUSINESS AND DATA CENTERS.

September 27, 2024

PURPOSE AND AUTHORITY

The Department of Energy and Environment, Oil and Gas Commission (“OGC” or “Commission”) proposes this rulemaking creating General Rule K. General Rule K has four (4) separate rules: K-1 “Applicability, General Provisions and Definitions,” K-2 “Digital Asset Mining Business Permitting Requirements,” K-3 “Digital Asset Mining Business Permit Transfer Procedures,” and K-4 “Digital Asset Mining Business Enforcement Procedures.” The Oil and Gas Commission has general rulemaking authority pursuant to Ark. Code Ann. § 15-71-110(d), and specific rulemaking authority pursuant to Ark. Code Ann. § 23-119-104.

BACKGROUND

In the 2023 General Session, the Legislature passed the Arkansas Data Centers Act of 2023 to encourage the development of digital asset mining in the state, and to regulate the businesses. Since 2023, there has been a marked increase in the number of digital asset mining businesses starting up in the State of Arkansas. The business plans and patterns of development demonstrated that there was a greater need for state regulation and intervention to protect the citizens of this state, as well as public utilities. In the 2024 fiscal session, the Legislature passed Acts 173 and 174 of 2024 to further regulate this industry. Act 174 specifically requires that the Oil and Gas Commission promulgate rules to regulate this industry.

THE PROPOSED RULE AMENDMENTS

Oil and Gas Commission General Rule K provides the regulatory structure for ensuring that digital asset mining businesses are managed in a manner that best protects the public interest. Rule K-1, “Applicability, General Provisions and Definitions” provides that the rules are only applicable to those digital asset mining businesses that consume more than one megawatt (1MW) of electricity on an average annual basis. This rule also requires that all digital asset mining businesses must obtain a permit from the OGC in order to operate. Rule K-2, “Digital Asset Mining Business Permitting Requirements,” describes the permit application procedure, conditions that preclude issuance of a permit, and permit revocation procedures. Rule K-3, “Digital Asset Mining Permit Transfer Procedures,” sets forth the requirements regarding the transfer of ownership interest, notification, and permit transfer procedures. Rule K-4, “Digital Asset Mining Business Enforcement Procedures,” sets forth the procedures for addressing non-compliance with the rules, and the procedure to address non-compliance and violations. This rule also sets forth procedures for appealing a decision of the director and states what civil penalties may be imposed for violations. The enforcement provisions will be executed by current OGC staff through existing procedures.

NECESSITY AND PRACTICAL IMPACT OF RULE AMENDMENTS

When the legislature passed Acts 173 and 174 in the 2024 Fiscal Session, the public policy that was expressed is that the digital asset mining businesses require more defined regulatory boundaries in order to protect the citizens of the State of Arkansas. The acts themselves prevented foreign ownership of these enterprises, and created a regulatory structure that includes the delegation of permitting and enforcement powers to the Oil and Gas Commission. Rule K implements these policy decisions by creating a regulatory structure that implements the legislative priorities. Rule K is necessary to fully execute the policy created in Acts 173 and 174. The rules are necessary to comply with the legislative mandates.

Rule K-1 Applicability, General Provisions and Definitions
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 any person associated with a mining facility, a digital asset miner, or a mining facility.
- 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 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) 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) 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. 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.