

**ADMINISTRATIVE RULE REVIEW SUBCOMMITTEE
OF THE
JOINT BUDGET COMMITTEE**

Wednesday, February 12, 2025

8:00 a.m.

Room A, MAC

Little Rock, Arkansas

A. Call to Order

B. Adoption of Subcommittee Rules

C. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309

1. DEPARTMENT OF ENERGY AND ENVIRONMENT, OIL AND GAS COMMISSION (Kesia Morrison, Daniel Pilkington, Lawrence Bengal)

a. SUBJECT: General Rule K: Digital Asset Mining Business Requirements

DESCRIPTION: 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 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 Commission promulgate rules to regulate this industry.

The Proposed Rule Amendments

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.

Post Public Comment

Following the close of the public comment period, the agency made the following changes to the rule, based upon public comments:

The Arkansas Oil and Gas Commission has proposed amendments to the rule to address concerns regarding the 45-day public notice timeframe in Rule K-2(f).

The Arkansas Oil and Gas Commission has proposed amendments to the rule to address concerns regarding the definition of “regulated entity” in Rule K-1(c)(15).

PUBLIC COMMENT: A public hearing was held on January 6, 2025. The public comment period closed on January 13, 2025. The agency provided a Responsive Summary for OGC General Rule K Promulgation, which includes a summary of public comments received and agency responses thereto. Due to its length, that summary is attached separately.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following question and was provided with the following agency response:

1) Under Rule K-2, Sections h.2 and h.4, the rules reference an interest in a digital mining business or entity “exceeding five percent (5%)”. Is this language intended to implement Arkansas Code Annotated § 14-1-606, which concerns prohibited foreign-party-controlled businesses, and which also defines “interest” as “an ownership interest of greater than zero percent (0%)”? **RESPONSE:** The language referenced in Rule K-2, Sections h.2 and h.4 about ownership interests does not implement Arkansas Code § 14-1-606. In both instances, the rule refers to a permit applicant’s ownership in an entity that is in violation of state rules, which can affect eligibility for a permit. These provisions are about bad actors, not foreign ownership.

The proposed effective date is May 31, 2025.

FINANCIAL IMPACT: The agency states that the proposed rule does not have a financial impact. However, with respect to the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed rule, the agency states: “Private digital asset mining businesses will incur financial impact as a result of the passage of Acts 173 and 174 of 2024 (Fiscal Session). However, any financial impact is the result of those acts, and not this rule which implements the acts.”

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 23-119-104, the Oil and Gas Commission shall promulgate rules to implement Title 23, Subtitle 4, Chapter 119 of the Arkansas Code, which concerns digital asset mining businesses, including without limitation rules establishing requirements for: 1) permitting; 2) application for a permit; 3) renewal of a permit; 4) the requirements and terms for a permit; and 5) the establishment and operation of a digital asset mining business. Further authority for the rulemaking can be found in Ark. Code Ann. § 23-119-105(e), which provides that the Commission shall promulgate rules establishing: 1) the procedures for ensuring compliance with state law, the requirements and terms of a permit, and rules of the Commission; and 2) penalties for failure to comply with state law, the requirements and terms of a permit, or rules of the Commission, including without limitation

financial penalties and the suspension or revocation of a permit issued under Title 23, Subtitle 4, Chapter 119 of the Arkansas Code, which concerns digital asset mining businesses. Financial penalties under Ark. Code Ann. § 23-119-105(e)(2) shall not exceed five thousand dollars (\$5,000) per day of a violation. *See* Ark. Code Ann. § 23-119-105(e)(2)(B).

The proposed rule implements the following Acts from the 2024 Fiscal Session:

Act 173, sponsored by Senator Joshua Bryant, which amended the Arkansas Data Center Act of 2023; created requirements for noise reduction in the operation of a digital asset mining business; clarified the ability of an Arkansas resident to engage in home digital asset mining; and prohibited foreign-party-controlled ownership of a digital asset mining business in Arkansas; and

Act 174, sponsored by Senator Missy Irvin, which amended Arkansas law concerning digital asset mining businesses; amended the Arkansas Data Centers Act of 2023; and amended Arkansas law to provide for the permitting and regulation of digital asset mining businesses.

D. Adjournment