

NOTICE OF RULE MAKING

Arizona Commerce Authority Rule Notice of Rule Making No. 21-06

1. Rule(s):

International Operations Center Program

2. Preamble.

A. A.R.S. § 41-1520

B. The proposed Rules will govern the International Operations Center Program. The Rules are necessary to implement the recent changes to the program, which was created in 2014 by the Arizona legislature and amended in 2021.

3. The exact wording of the rule.

See attached.

4. The name and contact information of agency personnel with whom persons may communicate regarding the rule.

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5. Where written submissions on the proposed rule may be inspected (by appointment only).

Arizona Commerce Authority
100 North 7th Avenue, Suite 400
Phoenix, Arizona 85007

6. The time during which written submissions may be made and the time and place, if scheduled, where oral comments may be made.

Written submissions may be made within thirty (30) days after the date of posting of the Notice of Rule Making. Written submissions should be directed to:

Attention: International Operations Center Program Guidelines
Arizona Commerce Authority
100 North 7th Avenue, Suite 400
Phoenix, Arizona 85007



Submissions also may be transmitted electronically within the same time period by directing the submission to:

Attention: International Operations Center Program Guidelines
CindyG@azcommerce.com

No hearing to receive oral comments has been scheduled at this time.

7. Any known timetable for agency decisions or other action in the proceeding.

None at this time.

8. The date of posting the Notice of Rule Making.

August 25, 2021.

9. The deadline for the Authority to file a notice of adoption of the rule.

No later than 180 days from August 25, 2021.



INTERNATIONAL OPERATIONS CENTER AND RENEWABLE ENERGY INVESTMENT AND PRODUCTION FOR SELF-CONSUMPTION PROGRAM

SECTION 1. OVERVIEW

The International Operations Center Program, authorized by A.R.S. §41-1520, provides utility tax relief, consisting of deductions from the tax base for gross proceeds of sales or gross income derived from sales of electricity or natural gas to a business that operates an International Operations Center (“IOC”) in Arizona that is certified by the Arizona Commerce Authority (the “Authority”) pursuant to A.R.S. §42-5063(C)(7). The requirements to qualify as an IOC are set forth below, but generally, an Owner, Operator must:

- Invest a total of \$1,250,000,000 in a facility within a ten-year period;
- Invest not less than \$100,000,000 per year in the facility, with carryforward credit provided for years in which more than \$100,000,000 is invested; and,
- Self-consume energy from a compliant renewable energy facility.

Pursuant to A.R.S. §43-1164.05, applicants that were initially certified prior to January 1, 2019 qualify for the Renewable Energy Investment and Production for Self-Consumption Program, which provides an income tax credit for investment in new renewable energy facilities that produce energy for self-consumption using renewable energy resources, if the power will be used primarily for an IOC.

The Authority is authorized to certify IOCs through December 31, 2030.

SECTION 2. ELIGIBILITY REQUIREMENTS

- A. Initial eligibility is available to an Owner, Operator or Affiliated Entity who achieves all the following requirements:
1. Invest a minimum of \$100,000,000 in new capital assets, including costs of land, building and IOC equipment per year for ten consecutive taxable years.
 - a. Investments greater than \$100,000,000 in any taxable year may be carried forward as a credit toward the investment requirement in future years.
 - b. Investments to meet this criterion commence in the taxable year in which the application is submitted.
 2. Invest a minimum of \$1,250,000,000 in new capital assets on or before the ten-year anniversary of certification by the Authority.
 3. Invest a minimum \$100,000,000¹ in one or more Renewable Energy Facilities (“REF”) in Arizona that produce energy for self-consumption using renewable energy resources within a three-year period beginning the date of the initial application or by December 31, 2030, whichever is earlier.
 - a. Investment
 - i. May be in multiple REFs
 - ii. Minimum investment of \$30,000,000 per REF

¹ Minimum investments take into account the combined investments made by an Owner, Operator, or affiliated entity, including investments made by a third-party entity on behalf of and for the benefit of the Owner, Operator or affiliated entity (A.R.S. §41-1520(D)(3)).

- iii. Minimum of twenty (20) megawatts of generating capacity, or minimum of forty thousand (40,000) megawatt -hours generated per year, per REF
 - b. Timing
 - i. Construction of the REF shall begin not later than six months after the receipt of the initial application by the Authority.
- 4. Creates renewable energy for self-consumption.
 - a. A portion of the renewable energy produced at each REF must be used for self-consumption in Arizona.
 - b. By the fifth year an REF is in operation, at least 51% of the energy produced must be used for self-consumption in Arizona.
 - i. Self-consumption includes the power used by related entities if the related entities are directly or indirectly under the same ownership interests that collectively own more than eighty percent.
 - ii. Power that an REF transfers to a utility qualifies as self-consumption if the utility is the same utility that provides power to the Owner's, Operator's IOC in Arizona, regardless of whether the Owner, Operator or an Affiliated Entity owns or leases the renewable energy facility or the land on which it is located at the time of the transfer.
- B. IOCs certified before January 1, 2019, pursuant to A.R.S. §43-1164.05, are eligible to receive an income tax credit against the taxes imposed for investment in the new REF described in this section if the power will be used primarily for an IOC. An IOC that is initially certified after December 31, 2018, may not claim the tax credit.

SECTION 3. SUBMITTAL AND PROCESSING OF APPLICATIONS

- A. All applications must be submitted through the Authority's electronic application system.
- B. The application shall include:
 - 1. Name, address, and federal tax identification number for the Owner, Operator, and Affiliated Entity (if applicable).
 - 2. Name and contact information of an individual who can be contacted regarding the application.
 - 3. The address of the site where the facility is or will be located, including, if applicable, information sufficient to identify the specific portion or portions of the facility comprising the IOC, including parcel number(s) and/or legal description and aerial depiction.
 - 4. An estimate of the total investment the Owner, Operator, or an Affiliated Entity, including investments made by a third-party entity on behalf of and for the benefit of the Owner, Operator, or affiliated entity, will make, over a three-year period beginning on the date the application is received, in new REFs in Arizona that produce energy for self-consumption by the IOC using renewable energy resources.
 - 5. The expected location of each of the REF(s), including parcel number(s) and/or legal description and aerial depiction that comprise the total investment estimated in A.R.S. § 41-1520(B)(3) and the earliest date that each facility is expected to be operational.
 - 6. A statement that a portion of the power generated by each REF, as required by A.R.S. § 41-1520 (D)(4) is for self-consumption and will be used for the IOC use.

7. Lessor of an IOC facility that uses power for self-consumption, must provide a copy of the lease, where lessee is an IOC.
 8. Documentation of the ownership of REF or lease agreement, if applicable, will be required.
- C. The Authority will attempt to make a determination with regard to each Substantially Complete application within 60 days after receipt of any or all information requested by the Authority in order for the application to be rendered complete or, in absence of a request for additional information, within 60 calendar days of the application's submission. If the Authority does not respond within the requisite timeframe, then, consistent with A.R.S. § 41-1520 (C), the application will be deemed approved, and the Authority thereof will issue written certification to the Owner or Operator, within 14 calendar days following expiration of the 60-day period.
 - D. If the Authority denies the application, the Owner or Operator may appeal the decision in accordance with A.R.S. Title 41, Chapter 6, Article 10. However, the denial prohibits a Taxpayer from receiving Utility Relief or receiving tax credits under this program unless the appeal is successful.
 - E. If an application is approved, the Program Manager will request the Owner or Operator remit a non-refundable processing fee of \$50.00. The fee may be made by credit card by accessing the ACA payment portal or made by check, ACH, or wire transfer.
 - F. After receipt of the required processing fee, the Authority will issue a written certification to the Owner or Operator, and the Authority shall send a copy of the certification to the Department of Revenue ("Revenue").
 - G. Proprietary business information contained in the application and any annual report is regarded as confidential and may not be disclosed to the public. However, the Authority and Revenue are authorized to disclose a certified IOC's name and share all information necessary to administer the program.

SECTION 4. ANNUAL REPORTING REQUIREMENTS

- A. Within thirty days after the end of each taxable year following certification of the IOC, and within thirty days after the tenth anniversary of the certification of the IOC, the Owner or Operator of the IOC must submit to the Authority the following:
 - a. Written information demonstrating whether the IOC has or has not satisfied the requirements prescribed in Section 2.
 - b. Until the requirements prescribed in Section 2 are met, the Owner, Operator or Affiliated Entity shall keep detailed records of all capital investment in the IOC, including costs of land, buildings and IOC equipment, and all utility relief directly received by the Owner, Operator.
- B. Each year after the initial certification of the IOC, on or before the anniversary date of the application, the Owner, Operator, or Affiliated Entity must submit to the Authority the following:
 - a. Documentation of the Owner's, Operator's, or Affiliated Entity's progress toward the capital investment requirements in the REF as prescribed in Section 2(A)(3);
 - i. This documentation is not required after the Authority receives a report documenting that the investment threshold has been reached.
 - b. Documentation for each REF that demonstrates that the required portion of the power generated by each facility is for self-consumption must be submitted to the Authority to remain certified.
- C. Demonstration of Qualifying Investment – In addition to other documentation approved at the discretion of the Authority, copies of the following forms of documentation, corroborating Qualifying Investments at the IOC and REF within the relevant time periods may be used to

demonstrate satisfaction of the relevant Qualifying Investment Thresholds of the IOC: (a) "Arizona Business Property Statements" filed with the relevant County Assessor, (b) "Affidavits of Property Value" filed with the relevant County Recorder, (c) real estate settlement sheets, (d) paid invoices with the associated cancelled checks or other proofs of payment and (e) IRS Forms 4562 filed with Federal income tax returns, together with all supporting schedules that identify, at a minimum, the items of property acquired, the dates and the costs thereof.

- a. **IOC investment threshold of \$1,250,000,000 made by the Owner or Operator.** Minimum investment must be completed within ten (10) consecutive taxable years beginning in the tax year when the initial application is received.
 - b. **REF investment threshold of \$100,000,000 made by the Owner, Operator, Affiliated Entity or Third-Party Entity.** Minimum investment must be completed within a three (3) year period beginning on the date the initial application is received or by December 31, 2030, whichever is earlier.
- D. Demonstration of Self-Consumption – In addition to other documentation approved at the discretion of the Authority, documentation from the relevant utility company in a format describing the monthly electricity generated by the REF(s) and the monthly consumption of the IOC, including any relevant power agreements.
- E. All reports must be submitted through the Authority's electronic application system.

Section 5: Revocation of IOC Certification

- A. An IOC remains certified unless ownership of the IOC is sold, conveyed, transferred, or otherwise directly or indirectly disposed of to another entity in which the original owner holds less than a Controlling Interest.
- B. If the Authority determines that the requirements of Sections 2 and/or 4 have not been satisfied, the Authority will revoke the certification of the IOC and notify Revenue in writing, and the owner or operator will forfeit further entitlement to Utility Relief.
 - a. The Owner or Operator may appeal the revocation.
 - b. The Authority may give special consideration or allow temporary exception if there is an extraordinary hardship due to factors beyond the Owner's or Operator's control.
 - c. If the Owner or Operator fails to make a minimum capital investment of \$100,000,000 in a taxable year, taking into account any excess investment amounts carried forward from previous years, the Owner or Operator may avoid revocation of its certification by paying Revenue within 60 days after the end of a taxable year the amount the Utility Relief provided, pursuant to this Section 5, in that year.

Section 6. Definition of Program Terms

The following terms, which are used in more than one section of these Rules have the meanings provided below.

"Affiliated Entity" means any of the following:

- (a) An entity that is included in the same Arizona income tax return as the Owner or Operator of the IOC.
- (b) Any entity in which the Owner or Operator of the IOC is entitled to a distributive share of the entity's income or loss.

- (c) Any entity, including a single-member limited liability company, that is disregarded for Federal income tax purposes and is directly or indirectly owned wholly or in part by the Owner or Operator of the IOC.

“Biomass” means organic material that is available on a renewable or recurring basis, including:

- (a) Forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody materials harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement.
- (b) Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed coproducts and waste products, including fats, oils, greases, whey and lactose.
- (c) Animal waste, including manure and slaughterhouse and other processing waste.
- (d) Solid woody waste materials, including landscape or right-of-way tree trimmings, rangeland maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, but excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic.
- (e) Crops and trees planted for the purpose of being used to produce energy.
- (f) Landfill gas, wastewater treatment gas and biosolids, including organic waste by-products generated during the wastewater treatment process.

“Controlling Interest” means at least eighty percent (80%) of the voting shares of a corporation or of the interests in a noncorporate entity.

“International Operations Center” or “IOC” means a facility or connected facilities under the same ownership that are subject to the investment thresholds under A.R.S. § 41-1520 (D) and that self-consume renewable energy from a qualified facility pursuant to A.R.S. § 41-1520 (D).

“Operator” means any individual, entity, or Affiliated Entity, other than an Owner, that operates an International Operations Center facility, pursuant to a lease or other contract with the International Operations Center Owner. The term “Operator” includes a licensed property management company, a property lessor or any other individual or entity responsible for the control, oversight or maintenance of a facility.

“Owner” means an individual, entity, or Affiliated Entity, holding fee title to an International Operations Center facility.

“Qualifying Investments” means, in respect to an IOC or REF for a specified period of time, the aggregate non-duplicative monies expended during such specified period of time to acquire, construct or expand an IOC or REF, including costs of land, buildings, improvements, machinery and equipment installed thereat, whether owned or leased or paid for pursuant to a right to use agreement.

“Renewable Energy Facility” means a facility in which the Owner, Operator, or Affiliated Entity, or a third-party on behalf of and for the benefit of the Taxpayer, invested at least \$30,000,000, that has at least twenty megawatts of generating capacity or a minimum typical annual generation of forty

thousand megawatt hours, that is located on land in this state and that produces electricity using a renewable energy resource.

“Renewable Energy Resource” means a resource that generates electricity by using only the following energy sources:

- (a) Solar light
- (b) Solar heat
- (c) Wind
- (d) Biomass, including fuel cells supplied directly or indirectly with biomass generated fuels.
- (e) Battery storage that is independent from or coupled with other sources.

“Substantially Complete” means, in respect to the application, that all matters are fully addressed by the application and that any and all documents required by the Authority are attached or can be supplied within 14 calendar days after receipt of notification by the Authority of any deficiencies (or within an additional 14 calendar day period if requested by the Owner, Operator or affiliated entity and granted by the Program Manager).

“Taxpayer” means an individual, corporation, an S corporation, a partnership or a limited liability company. A unitary group required to file a combined return shall be treated as a single Taxpayer. An Arizona affiliated group required to file a consolidated return shall be treated as a single Taxpayer.

“Third-Party Entity”² means an individual or entity, unaffiliated with the Owner or Operator, that by contract or other written agreement agrees to invest, on behalf of and for the direct benefit of the IOC Owner or Operator, in one or more new REF(s) in the state to produce energy for self-consumption by the IOC Owner or Operator using renewable energy resources.

“Utility Relief” means the mitigation of the tax burden on the retail purchaser of electricity or natural gas through the application of A.R.S. § 42-5063 (C)(7), A.R.S. § 42-5159 (G)(2) and A.R.S. § 42-6012(2).

² Investments by a third-party are allowable to meet the required investment thresholds for a REF. However, to qualify for utility relief, the entity must be an IOC Owner, Operator or Affiliated