

CHAPTER 1
ISSUANCE OF QUALIFYING CERTIFICATES

ARTICLE 1
ISSUANCE OF QUALIFYING CERTIFICATES

- § 4101. Purpose.
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NOTE: Rule-making authority cited for formulation of regulations for the issuance of qualifying certificates by the Board of Directors of the Guam Economic Development Authority, 12 GCA Chapter 58.

§ 4101. Purpose.

The purpose of this part of the rules and regulations is to establish, pursuant to 12 GCA Chapter 58, further standards and criteria for the issuance of Qualifying Certificates for tax benefits, in addition to those set forth in said 12 GCA § 38104, which are that any enterprise in agriculture, commerce, industry, tourism and improvements of real property may be deemed tax exempt if it is specifically determined by the corporation to be beneficial, desirable and necessary to the economic development of Guam.

§ 4102. Requirements.

Any applicant for a Qualifying Certificate must meet the following requirements:

- (a) The applicant shall be duly licensed to do business in Guam. In the case of an individual or partners in a firm, he or they must be bona fide residents of Guam; and in the case of a corporation, it must be created under the laws of the territory of Guam, or it must be a duly constituted "possession" corporation created under the laws of a state of

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the United States of America and limited to doing its principal business in the territory of Guam. (Amended by Executive Order 66-16, effective September 7, 1966)

(b) Upon filing an application, the applicant shall certify in writing that it shall at all times employ at prevailing wage rates a total employment force of which at least fifty percent (50%) shall be either United States citizens or permanent residents of the United States; provided, however, that for reasons of hardship, satisfactory to the Board, temporary exemptions hereto, for specific periods of time, may be granted by the Board:

(1) No resident employee of an industry or business granted a certificate of tax benefit under the provisions of Title LIV shall be laid off his job or have his work week reduced to less than forty (40) hours for the sole purpose of creating employment for non-resident workers.

(2) For the purpose of this part, "prevailing wage rates," as determined by the Department of Labor and Personnel, shall be used as a guide.

(3) The Department of Labor and Personnel is hereby empowered to investigate any complaint filed pursuant to this Section and to settle the same by issuance of an appropriate order after notice of hearing. Any willful violation of this Section, or of any order of the said Department issued hereunder, may be cause for an industry or business to forfeit the benefits extended under the provisions of said 5 GCA Chapter 70.

(c) The applicant must agree to furnish written monthly reports beginning thirty (30) days after the date of the issuance of the Qualifying Certificate, said reports to include, but not limited to, financial data, employment data and payroll data.

§ 4103. Minimum Investment.

An applicant must undertake to invest in a new industry or business in Guam:

(a) At least Twenty-Five Thousand Dollars (\$25,000) paid-in-capital for a fishing industry, or in an industry or business, for the processing, manufacturing, creation or production of articles, goods or commodities. Any such industry or business under this Subsection shall maintain at all times such minimum investment as is stipulated.

(b) At least Fifteen Thousand Dollars (\$15,000) paid-in-capital, for agricultural enterprise under this Subsection shall maintain at all times such minimum investment of at least Fifteen Thousand Dollars (\$15,000) paid-in-capital.

(c) Sufficient investment to construct a first-class tourist hotel having at least one hundred (100) rooms, and with at least Two Hundred Fifty Thousand Dollars (\$250,000) paid-in-capital, constructed in accordance with plans and specifications filed with and approved by the government agencies and authorities concerned. Tax benefits to be granted shall be at the discretion of the Board of Directors. A first-class hotel is defined to include the following minimum requirements:

- (1) Each room must have a private bathroom.
- (2) The hotel must have adequate:
 - (A) Dining room facilities.
 - (B) Banquet and/or meeting facilities.
 - (C) Convention facilities.
 - (D) Related shop facilities.
- (3) Adequate air conditioning systems.
- (4) Adequate recreational facilities such as swimming pools, etc. (Amended by Executive Order 68-3, effective March 1, 1968.)

(d) At least Fifty Thousand Dollars (\$50,000), paid-in-capital, in the establishment of a business engaged in the ownership of real estate or industrial plants for the use of others, and to be leased to a tax exempt business that has qualified and continues to qualify for a Qualifying Certificate. For the purpose of this Subsection, the basis for computing the investment shall be limited to amounts invested in new construction and the creation of new improvements.

(e) For the purpose of satisfying the amount of minimum paid-in-capital required in the foregoing Subsection, the appraisal value of land necessary and vital to the operation of such business or industry (as determined by the Board) and previously existing buildings (as appraised for tax purposes) may be included, but shall not exceed such percentage of the total amount of investment required as is deemed by the Board appropriate to the enterprise contemplated by the applicant.

§ 4104. Restrictive Certificates.

In order to encourage new business investments of One Million Dollars (\$1,000,000) or more the Board of Directors may from time to time recommend the issuance of Qualifying Certificates containing restrictive clauses relative to the issuance of a Qualifying Certificate to an additional and competing entity so long as the applicant under consideration for such restrictive certificate complies with the following minimum requirements:

(a) Applicant must propose to engage in manufacturing.

(b) Applicant's specific enterprise must be one which has not heretofore existed as a commercial operation on Guam since July 21, 1950.

(c) Applicant must demonstrate to the satisfaction of the Board its intention and ability to make a minimum investment of One Million Dollars (\$1,000,000), of which not less than ten percent (10%) shall be paid-in-capital, in the proposed enterprise, such minimum investment to be

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calculated on the basis of only the land, buildings, machinery and equipment, inventories and working capital, to be located or expended on Guam.

(d) Applicant must satisfy the Board as to its intention and ability to employ a minimum of one hundred (100) full-time employees at the time that full production is achieved, of whom eighty percent (80%) must be U.S. citizens or permanent residents of the United States.

(e) Applicant must agree to a time table satisfactory to the Board wherein a specific program is laid out for the organization and commencement of the enterprise up to full production and the total minimum investment of One Million Dollars (\$1,000,000), no later than twenty-four (24) months from the date of the granting of the applicable Qualifying Certificate.

(f) Applicant must agree to furnish written progress reports to the Authority monthly, beginning thirty (30) days after the date of the issuance of the Qualifying Certificate, said progress reports to contain all pertinent information relative to the progress and status of applicant's program in accordance with the time table agreed to.

(g) As evidence of good faith, applicant must deposit in a local bank of savings and loan association not less than Seventy-Five Thousand Dollars (\$75,000) of unencumbered funds, which funds must be on deposit at the time that the application for the Qualifying Certificate is filed.

(h) Applicant must furnish a Certificate satisfactory to the Board indicating that at no time during the life of the Qualifying Certificate shall applicant engage in any business in Guam competitive to that which existed on Guam at the time of the issuance of the Qualifying Certificate.

§ 4105. Fees.

The following fees shall be assessed to each applicant and/or recipient of a Qualifying Certificate:

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Section Under Applicant Filed	Original Filing	Annual Continuing Surveillance Fee
2 GAR § 10440.2(a)	\$100.00	\$500.00
2 GAR § 10440.2(b)	\$ 25.00	\$ 50.00
2 GAR § 10440.2(c)	\$100.00	\$500.00
2 GAR § 10440.2(d)	\$100.00	\$250.00

§ 4106. Authority.

These Rules and Regulations are made pursuant to 12 GCA Chapter 50, and shall become effective upon approval and promulgation by the Governor.

ARTICLE 2

**ISSUANCE OF QUALIFYING CERTIFICATES FOR COMPANIES
ENGAGED IN THE RECYCLING AND THE TRANSSHIPMENT OF
RECYCLABLE MATERIALS**

SOURCE: Added by P.L. 27-074:3 February 10, 2004), Exhibit A (“Part 5 of the Rules and Regulations of the Guam Economic Development and Commerce Authority on the Issuance of Qualifying Certificates”). Codified to this Article, renumbered and designations added pursuant to the authority of 1 GCA§ 1606.

- § 4201. Introduction.
- § 4202. Purpose
- § 4203. Definitions.
- § 4204. Application and Filing Fees
- § 4205. Additional Information required from Recycling and Shipping Companies.
- § 4206. Minimum Recyclable materials
- § 4207. Publication of Application and Hearing on Application
- § 4208. Waiver of Docking and Stevedoring Fees
- § 4209. Port Authority not obligated to provide free services
- § 4210. Interest from rebated tax

§ 4201. Introduction.

The rules and regulations (“Rules”) set out in this Part describe the general procedures for obtaining a recommendation from GEDCA for the issuance of a Qualifying Certificate (“QC”) to companies engaged in recycling and/or the transshipment of recyclable materials. These Rules are adopted pursuant to the provisions of Chapter 58, of Title 12 of the Guam Code Annotated, as amended (“QC Law”), and Section 7 of Public law 25-127 (the “Recycling and Transshipment of Recyclable Materials Law”) and the AAL.

§ 4202. Purpose

The purpose of this Part of these Rules is to provide the general procedures and forms governing the issuance of a QC to qualified companies engaged in recycling and/or the transshipment of recyclable materials and the compliance by QC beneficiaries with the terms of their QCs, pursuant to the QC Law and the Recycling and Transshipment of Recyclable Materials Law.

§ 4203. Definitions.

In these Rules, the following terms shall have the following meanings:

(a) “GEPA” shall mean the Guam Environmental Protection Agency.

(b) “GEDCA” shall mean the Guam Economic Development and Commerce Authority formerly known as Guam Economic Development Authority created in Chapter 50 of Title 12 of the Guam Code Annotated.

(c) “Qualifying Certificate” or (“QC”) means a contract valid for a given period of time, executed by *I Maga'lahren Guåhan* on the recommendation of GEDCA, between the government of Guam and the Beneficiary, which has qualified for certain tax rebates or tax exemptions or for both in return for meeting certain employment, investment, and other requirements as described in the QC law and in the Qualifying Certificate. A QC issued under

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this Part is a QC that has been issued a pursuant to the provisions of the QC Law and the general QC Rules and Regulations, with one (1) or more benefits authorized by the Recycling and Transshipment of Recyclable Materials law.

(d) “Recycling” means the method by which recovered resources are converted for use as raw material or feedstock to make new products, as defined in §51102. (35) Of Chapter 51, of Title 10 of the Guam Code Annotated.

(e) “Recycling Company” means any business licensed by the Department of Revenue and Taxation, and who have been issued a permit, from the Guam Environmental Protection Agency pursuant to § 51104 of Title 10 of the Guam Code Annotated, to conduct business on Guam in which eighty percent (80%) of its operations is specifically committed to recycling.

(f) “Recyclable materials” means materials which still have useful physical or chemical properties after serving a specific purpose for the same or other purpose. Recyclable materials are as follows:

- (1) batteries (i.e., lead-acid, portable computer batteries, nickel-cadmium, sealed types for power backup);
- (2) automobiles, buses, and trucks or any form of motorized vehicle;
- (3) tires (passenger/commercial);
- (4) enameled white goods;
- (5) home appliances (other small appliances that are not considered enameled white goods);
- (6) glass and plastic bottles;
- (7) foam padding;
- (8) lead;
- (9) metals (ferrous/non-ferrous);

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- (10) organic material (i.e., tree trimmings, palm fronds, grass, food waste, soiled cardboard);
- (11) paper products;
- (12) wood pallets and scrap wood;
- (13) construction and demolition debris ('C&D');
- (14) x-ray film;
- (15) automobile oil and fluids;
- (16) freon and other refrigerant gases;
- (17) electronic waste (i.e., computers, circuit boards, televisions, and portable phones);
- (18) heavy equipment; and
- (19) other recyclable materials deemed recyclable by GEPA pursuant to the Rules and Regulations.

(g) "Port Authority of Guam" means the public corporation and autonomous agency of the Government of Guam created in Chapter 10 of Title 12 of the Guam Code Annotated that oversees the operation, maintenance, and requirements of Guam's seaports. The Port Authority of Guam is the agency that is responsible for the implementation or waiver of docking fees for all shipping companies involved in the transshipment of recyclable materials from Guam to a designated location.

(h) "Shipping Company" means a company licensed under the Laws of Guam to conduct business transactions in the transshipment of recyclable materials from Guam to off-island recycling centers.

(i) "Transshipment" means to transfer for further transportation from one ship or conveyance to another and volume of materials are properly accounted for by a Certified Public Accountant, and show proof that the materials were received by the off-island recycling centers.

(j) “Off island Resource Recovery Facilities,” means a bona fide recycling entity public or private that is authorized by its government of jurisdiction to receive shipments of recyclable materials from Guam.

(k) “Household Hazardous Waste (HHW)” means unwanted household products, labeled as toxic, flammable, corrosive, or labeled as HHW. All HHW collections shall be coordinated closely with GEPA, and all agencies requiring or issuing permits for handling such waste.

§ 4204. Application and Filing Fees

(a) To apply for a QC under the Recycling and Transshipment of Recyclable Materials Law, an eligible entity shall file with GEDCA the same documents and the same filing fee required in the QC Law and in Part 1 of GEDCA’s QC rules and regulations. The documents to be filed include, but are not limited to:

(1) A completed and verified application (GEDCA Form QC-1);

(2) An Affidavit of Corporate Applicant for a Qualifying Certificate On Compliance With The QC law (GEDCA form QC-2);

(3) An executed authorization permitting GEDCA to release to the public non-proprietary information about the application (GEDCA Form QC-3);

(4) A completed notice of application for a Qualifying Certificate (GEDCA Form QC-4). (b) In its application the applicant shall state the specific tax rebates and/or exemptions for which it is applying.

2022 NOTE: The Compiler’s Office was not provided with Part 1 of GEDCA’s Qualifying Certificate rules and regulations or the forms referenced above.

§ 4205. Additional Information required from Recycling and Shipping Companies.

In addition to the material required under Section 4204, supra, a QC applicant seeking tax rebates and/or exemptions under this Part must complete GEDCA Form QC-11. The disclosures made in GEDCA Form QC-11 must include a description of the recyclable materials collected and/or transshipped, the volume, of the recyclable materials collected and/or transshipped, and the off island final destination of all recyclable materials collected and/or transshipped, as the case may be. This form shall be certified by a Certified Public Accountant as to the accuracy of the information therein contained.

2022 NOTE: GEDCA Form QC-11 was appended to Appendix A of P.L. 27-04 and is reproduced at the end of this article.

§ 4206. Minimum Recyclable materials

In order to qualify for the benefits available under the Recycling and Transshipment of Recyclable Materials Law a person(s), developer, contractor, company or corporation must divert from Guam's waste stream a minimum of two thousand (2,000) cubic feet or forty thousand (40,000) pounds of recyclable materials per year.

§ 4207. Publication of Application and Hearing on Application

At the direction of GEDCA, an applicant for a QC under this Part shall publish in a daily newspaper of general circulation on Guam no later than seven (7) days after filing its application with GEDCA, a resume of its application (GEDCA Form QC-4). Following publication thereof, GEDCA shall, within a reasonable period of time conduct a public hearing on the application in a manner prescribed by the rule making provisions of the AAL. The applicant, at the applicant's expense shall publish notice of such hearing (GEDCA Form QC-5) in a daily newspaper of general circulation on Guam before the scheduled hearing date pursuant to the Open Government Law.

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2022 NOTE: The Compiler's Office was not provided with GEDCA Form QC-4 or GEDCA Form QC-5.

§ 4208. Waiver of Docking and Stevedoring Fees

A shipping company engaged in the transshipment of recyclable materials may be granted a waiver of their docking and stevedoring fees for each verified load of recyclable materials shipped provided that the shipping company is

(a) a holder of a permit issued by GEPA and

(b) a CPA certifies the volume and composition of the recyclable materials transported by the shipping company in the manner prescribed by Section 4205 of these Rules and Regulations.

§ 4209. Port Authority not obligated to provide free services

The Port Authority of Guam is not required under the law or these rules and regulations to provide free stevedoring services to any shipping company engaged in the transshipment of recyclable materials.

§ 4210. Interest from rebated tax

All interest earned from the rebated amount for recycling, or for the transshipment of recyclable materials, shall be allocated to the Guam Environmental Protection Agency, Solid Waste Management Fund to assist in the administrative cost for the implementation of this Act.

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RECYCLABLE MATERIALS VOLUME OF MATERIAL FORM
(GEDCA FORM QC-11)

Pursuant to Section 5 of GEDCA's rules ("Rules") for issuing qualifying certificates ("QCs") under the Recycling and Transshipment of Recyclable Materials Law, the undersigned Beneficiary certifies that the following recyclable materials were recycled or transshipped in _____ tax year.

VOLUME OF MATERIAL REPORT				
CATEGORY	DESCRIPTION	VOLUME	RECYCLING CENTER	LOCATION
<i>example:</i>				
<i>Auto</i>	<i>Car batteries</i>	<i>4,000 lbs</i>	<i>NP Recycling Co.</i>	<i>Portland, OR</i>
<i>Electronics</i>	<i>Computer monitors</i>	<i>1,000 lbs</i>	<i>Hu Nan Corp.</i>	<i>Beijing, China</i>

CERTIFIED:
 CPA Firm by:

QC Beneficiary by:

 SIGNATURE

 SIGNATURE