

H-3102-1 - QUALIFICATIONS OF LESSEES

I. Requirements

A. General Requirements

Keywords

LESSEE  
QUALIFICATIONS

All potential lessees, all other parties who hold an interest (as defined by 43 CFR 3000.0-5(1)), and all persons who are members of an association that is the party who holds or controls more than 10 percent of the stock in a lessee which is a corporation or association must meet the following criteria:

1. Be a citizen of the United States or be a qualified stockholder in a lessee that is incorporated under the laws of the United States or of any State or territory thereof. See 43 CFR 3102.2.
2. Be in compliance with the Federal acreage limitations. See 43 CFR 3101.2.
3. Not be a minor in the State in which the lands are located. See 43 CFR 3102.3.
4. Except for an assignment or transfer of an oil or gas lease, be in compliance with the provisions of Section 2(a)(2)(A) of the MLA, 30 U.S.C. 201(a)(2)(A). See 43 CFR 3102.5-1(d).
5. Be in compliance with the reclamation provisions of Section 17(g) of the MLA. See 43 CFR 3102.5-1(f).
6. Not be in violation of Section 41 of the MLA concerning schemes, arrangements, plans, or agreements, or fraud and misuse of the oil and gas leasing procedures.

## H-3102-1 - QUALIFICATIONS OF LESSEES

B. Who May Hold Leases

Federal oil and gas leases or interests therein may be held by:

1. Citizens of the United States.

2. Associations (including partnerships and trusts) of such citizens. To be in compliance with the MLA, it is necessary that all associations of companies, individuals, etc., ensure that their members are complying with the MLA. Just as stockholders owning more than 10 percent of the stock in a corporation are charged with their proportionate ownership of the corporation's leased acreage, beneficial owners of more than 10 percent of an association must include their pro rata share of the association's total acreage in computing the acreage chargeable to them individually.

NOTE: Occasionally a bid or noncompetitive offer may be received showing two or more names with a percentage of unequal portions, e.g., Jane Doe with 60 percent and John Doe with 40 percent. A bid form or lease form signed by two or more persons is prima facie a bid or application by an "association" within the meaning of Section 27 of the MLA (see Edward Lee, 515 I.D. 299 (1925)). Thus, the bid or offer is acceptable and should be treated as an association. However, both parties must sign the bid form/lease form certifying as to qualifications by each to hold the lease as members of the association.

A sole proprietorship is not authorized to hold a lease or interests therein since it is not an alter ego of an individual, but is a specific independent entity. See J.F.C. Oil and Gas, 60 IBLA 191 (1981).

NOTE: A bid or offer received from an entity identified as "Jim Jones and Jan Jones, d/b/a Jones Enterprises" is an indication of a sole proprietorship. The "dba" (doing business as) likely reflects that an individual or group of individuals are a sole proprietorship. Although a sole proprietorship may not hold a lease, in the case of "Jones Enterprises," if the bid or lease form was signed by both Jim Jones and Jan Jones, the bid or offer is acceptable since it is possible to determine the full names of the interest holders; the "Jones Enterprises" is surplusage (see McClain Hall, Arthur R. Frank, 61 IBLA 202 (1982)).

Keywords

WHO MAY HOLD  
LEASE  
INTERESTS

CITIZENS

ASSOCIATIONS

SOLE  
PROPRIETORSHIPS  
NOT ALLOWED  
TO HOLD LEASES

## H-3102-1 - QUALIFICATIONS OF LESSEES

Keywords

3. Trusts. Lease interests should be held in the name of the trust/trustee, e.g., William H. Glenn, Jr., Trust/John Doe et al., Trustee; or Estate of Mary Smith, Trust/5th National Bank of Utah, Trustee. Trustees or guardians and their beneficiaries must all be either United States citizens or qualified corporations. See 43 CFR 3000.0-5(1) and 3102.1. Like any other holder of Federal leases or interests therein, trusts may not exceed maximum allowable acreage holdings. See 43 CFR 3101.2.

TRUSTS

4. Corporations organized under the laws of the United States or of any State or Territory thereof. Qualifications to hold Federal oil and gas leases or interests therein are applicable equally for profit and nonprofit corporations, provided the corporation's charter authorizes the acquisition of leases. This includes banks or other fiduciary corporations.

CORPORATIONS

5. Municipalities (city, town, etc.).

MUNICIPALITIES

6. Minors may not acquire or hold Federal oil and gas leases or interests therein, except through a legal guardian or trustee acquiring a lease or interest therein on behalf of the minor. The trustee or guardian must be either a United States citizen or qualified corporation. As with other nonqualifying lessees, minors may hold a Federal lease for up to 2 years if it is acquired through inheritance, judgment, or decree. See 30 U.S.C. 184(g) and 43 CFR 3102.3.

MINORS

7. Heirs and Devisees. When a bidder, offeror, lessee, assignee, or transferee dies, the lease rights transfer to the heirs, devisees, executor, or administrator, whichever is appropriate, provided the person or entity is qualified to hold Federal leases or interests therein in their own right. If the person or entity is not qualified to hold a Federal lease or interest therein, they may still obtain the lease, but only for a period not to exceed 2 years. The unqualified person or entity must transfer the lease before the end of the 2-year period or the lease will become subject to cancellation. See 43 CFR 3106.8-1(b).

HEIRS AND  
DEVISEES

## H-3102-1 - QUALIFICATIONS OF LESSEES

8. Joint tenants are not prohibited from holding oil and gas leases. Bids and offers may not be rejected and requests for approval of an assignment or transfer may not be disapproved because bidders, offerors, or assignees call themselves "joint tenants." However, in approving actions involving joint tenants, the Bureau recognizes each tenant as owning a proportionate share of the lease, as if each were a co-lessee. See Turner C. Smith, Jr., Signe D. Smith, 89 I.D. 386 (1982), regarding joint tenancies. When a lease is held jointly by persons as joint tenants or tenants-in-common, the acreage contained in the lease is charged to the joint tenancy or tenancy-in-common, which is the lessee. Moreover, each joint tenant or tenant-in-common is charged personally with his/her proportionate share of lease acreage. Neither the individual tenants nor tenancy-in-common may exceed maximum allowable acreage holdings.

KeywordsJOINT  
TENANTS

9. Aliens may acquire Federal oil and gas leases or interests therein only through stock ownership, holding, or control in a lessee or potential lessee that is incorporated under the laws of the United States or any State or territory thereof, but only if the laws, customs, or regulations of their country do not deny similar or like privileges to United States citizens. Thus, if an individual who is a citizen of a foreign country applies or bids for a Federal oil and gas lease or requests approval of an assignment or transfer, the bid or offer must be denied. Foreign firms that are not incorporated under the laws of the United States or a State or territory thereof also are not qualified to hold Federal lease interests. Aliens may not acquire an interest in a Federal oil and gas lease through the ownership of depository units (similar to corporate shares of stock) issued by a master limited partnership. Holders of depository units have neither control nor liability with respect to the operation of the partnership. Such master limited partnerships are not corporations.

ALIENS

MASTER  
LIMITED  
PARTNERSHIPS

## H-3102-1 - QUALIFICATIONS OF LESSEES

Keywords

10. Entities in violation of Section 2(a)(2)(A) of the MLA, 30 U.S.C. 201(a)(2)(A)), may not be issued any additional mineral leases. Section 2(a)(2)(A) requires that any entity that holds and has held a Federal coal lease for 10 years beginning on or after August 4, 1976, and who is not producing coal in commercial quantities from each such lease, cannot qualify for the issuance of any other mineral lease granted under the MLA. This deadline was extended to December 31, 1986, by the Department of the Interior Appropriations Act for Fiscal Year 1986. In accordance with Solicitor's Opinion M-36951 (February 12, 1985), however, such entities may obtain Federal mineral leases issued under the MLA through assignment or transfer, except transfers of Federal coal leases. Any entity who has filed an action that would bring it into compliance with Section 2(a)(2)(A), e.g., arms-length assignment of the coal lease, is qualified for issuance of leases while the action is pending BLM review.

MLA  
SECTION  
2(a)(2)(A)  
COMPLIANCE

a. The BLM Washington Office prepares a listing of entities in violation of Section 2(a)(2)(A), including any subsidiaries, affiliates, or persons controlled by or under common control of the noncomplying entity, which is transmitted to all State Offices. The listing of entities is issued by the Washington Office whenever any changes or updates are made.

SECTION  
2(a)(2)(A)  
VIOLATORS  
LIST

b. Prior to issuing any oil and gas lease, the most recent listing must be checked by SO Lease Adjudication to see if the bidder or offeror appears as a noncomplying entity. See H-3110-1 and H-3120-1. If a competitive sale bid or noncompetitive lease offer has been made, such bid or offer must be rejected. In the event of an improper rejection, i.e., the entity is able to submit conclusive evidence of compliance with Section 2(a)(2)(A), the decision of rejection is to be vacated and the lease bid or offer shall be processed to completion. This approach should avoid any unnecessary appeals.

SECTION  
2(a)(2)(A)  
LIST CHECKED  
PRIOR TO LEASE  
ISSUANCE

c. When a lease is erroneously issued to a noncomplying entity during the effective period when the entity was on the list, the lease is required to be cancelled.

CANCELLATION  
ACTION

INTERIM GUIDANCE (EXPIRES 09/30/92)

## H-3102-1 - QUALIFICATIONS OF LESSEES

Keywords

11. Effective December 22, 1987, entities in violation of Section 17(g) of the MLA (added by the Federal Onshore Oil and Gas Leasing Reform Act of 1987) who have failed or refused to comply with reclamation requirements with respect to any prior oil or gas lease, may not be issued, or receive by assignment, any additional oil or gas lease until the entity complies with the reclamation requirements. See Manual Section 3102.5 and 43 CFR 3102.5-1(f).

MLA SECTION  
17(g)  
RECLAMATION  
COMPLIANCE

a. Noncompliance with the reclamation requirements begins on the effective date of the imposition of a civil penalty by the Field Office operations authorized officer under the provisions of 43 CFR 3163.2 or when the bond is attached by the BLM. When an entity is identified by the Field Office as being in violation of the reclamation requirements, the Field Office must notify the SO Lease Adjudication promptly, and the State Director must notify the BLM Washington Office (WO-620) in writing. The SO Lease Adjudication also must issue a decision to the entity notifying it of the reclamation violation and prohibition on the issuance of additional oil and gas leases or approval of any oil and gas assignments until the period of noncompliance is ended.

b. The BLM Washington Office shall prepare a nationwide listing of all such entities, also identifying all subsidiaries, affiliates, or persons controlled by or under common control of each such entity, and transmit the listing to all State Offices. The listing of entities is issued by the Washington Office whenever any changes, additions, or deletions are made. All State Offices are to ensure that this reclamation violation list is made available to all Field Office operations personnel promptly.

MLA  
SECTION 17(g)  
VIOLATORS  
LIST

c. Because the reclamation noncompliance also affects any subsidiary, affiliate, or person controlled by or under common control of an entity, the State Office also must notify all such related entities of the prohibition on lease issuance and assignment approval.

AFFILIATES  
NOTIFIED OF  
PROHIBITION

H-3102-1 - QUALIFICATIONS OF LESSEES

Keywords

d. Prior to issuing any oil and gas lease or approving any lease assignment, the most recent listing must be checked by SO Lease Adjudication to see whether the bidder, offeror, or assignee appears as a noncomplying entity. If a competitive sale bid or noncompetitive lease offer has been made, such bid or offer must be rejected. In the event of an improper rejection, (i.e., the entity can submit conclusive evidence of compliance with Section 17(g)), the rejection decision is to be vacated and the lease bid or offer is to be processed to completion. This approach should avoid any unnecessary appeals. No transfers of record title or of operating rights are to be approved to any name appearing on the list.

SECTION 17(g)  
 VIOLATORS  
 LIST CHECKED  
 PRIOR TO  
 LEASE ISSUANCE

e. When a lease is erroneously issued to a noncomplying entity that appears on the listing at the time such lease was issued by the authorized officer, the lease is required to be cancelled.

CANCELLATION  
 ACTION

f. The noncompliance shall end when the United States has been reimbursed for all costs incurred as a result of the specific infraction. When such noncompliance ends, the Washington Office must be notified immediately by the State Office as to the date the noncompliance ended. The violation list will be modified accordingly and transmitted to all State Offices.

## H-3102-1 - QUALIFICATIONS OF LESSEES

C. ReciprocityKeywords

1. Prior to 1982, the BLM maintained a list of nations that, with respect to mineral leasing, had been determined to grant reciprocal privileges to United States citizens. Under new procedures set forth in the Federal Register (47 FR 27622, June 25, 1982), the reciprocal nations list was eliminated and replaced with a list of nations that deny United States citizens or corporations privileges similar to or like those that the United States accords aliens under the MLA. Currently, no nations are placed on such a list of nonreciprocal countries.

RECIPROCAL  
COUNTRIES  
LIST  
ELIMINATED

a. Upon request, the Assistant Secretary, Land and Minerals Management (A/S-LMM), will determine whether a nation denies similar or like privileges to United States citizens or firms. This is done in conjunction with BLM staff, and in coordination with the Solicitor's Office, the State Department, and other concerned Federal agencies. Final determinations are normally made by the A/S-LMM with the Solicitor's concurrence. See Illustration 2, Page 1, for a list of those nations reviewed under the procedures to-date and the results of such reviews.

RECIPROCAL  
STATUS  
REVIEW  
PROCEDURES

b. Reviews are conducted upon request by a private party or the Federal Government. The request must be accompanied by supporting factual and legal analysis or a summary of the laws, customs, and regulations of a foreign country. Requests submitted with insufficient factual material will not be reviewed. Public comment may be requested by the Department of the Interior through a Federal Register notice, particularly in instances where the information submitted, although detailed, is not comprehensive or where it appears based on the evidence that the foreign country may, in fact, deny similar or like privileges.

c. Requests for review should be submitted directly to the A/S-LMM. If a State or Field Office receives a request, forward the request to the Washington Office to the attention of the Assistant Director, Energy and Mineral Resources.

REQUEST FOR  
REVIEW FOR  
RECIPROCITY

2. The reciprocity provision of Section 1 of the MLA does not mandate that the Department find a nation "reciprocal" before its citizens may own, hold, or control stock in a firm which holds an interest in mineral leases when the firm is incorporated in the United States or a State or territory thereof.

INTERIM GUIDANCE (EXPIRES 09/30/92)