permittees from leasing State lands, and in turn would hurt State income.

Several comments specific to qualifications for renewals stated that the concept of denial for noncompliance would decrease a permittee's security of tenure, in turn leading to less investment in permits and a decreased ability to achieve rangeland objectives. Some commenters were concerned that nonrenewal of a permit would decrease the value of the permittee's or lessee's private property and improvements, affected their ability to secure financing, and not renewing the lease constituted a ''taking,'' and the provision was contrary to TGA. Some asserted that disqualification on the basis of cancellations of other permits and leases should extend to renewals, not just new permits. Others suggested that applicants be disqualified when other permits or leases are suspended (in addition to cancelled permits and leases) or when not in compliance with other permits and leases at the time of application.

There was also some concern about the ability of BLM personnel to determine affiliation. One commenter asked whether he would be responsible for the actions of someone he sold his ranch to. An Indian tribe that holds permits and subsequently leases the permits to individual tribal members expressed concern that the tribe would be judged by the behavior of the individual permittees under the concept of affiliation.

The statutory basis for these regulations is found in FLPMA and TGA. FLPMA (43 U.S.C. 1740) authorizes the Secretary to promulgate rules and regulations necessary to implement the requirements of the Act. Regarding requirements for first priority for renewal, 43 U.S.C. 1752 requires among other things that applicants must be found to be in compliance with the terms and conditions of the permit and pertinent rules and regulations. The amendments pertaining to the disqualification of applicants are intended to reflect the requirements of TGA and FLPMA that public lands be managed in a way that protects them from destruction or unnecessary injury and provides for orderly use, improvement, and development of resources. The Department believes that the provisions of this section of the rule are critical to BLM's ability to ensure that permittees and lessees are good stewards of the land. The provisions will benefit good stewards by ensuring tenure in the renewal of permits and leases and by giving them an advantage in the issuance of new permits and leases. Comments on ''takings'' are discussed in the General Comments discussion above.

Neither conservation use nor elimination of the requirement that applicants must be engaged in the livestock business is inconsistent with TGA. The TGA gives preference to landowners engaged in the livestock business but does not require it. This change is made necessary by the increasing number of part time ranchers, permits held by financial institutions and other non-ranching organizations, and permits where the livestock operator is in an initial developmental stage and is not yet ready to run cattle on the range.

The concepts of ''permit violations,'' ''satisfactory record of performance'' and ''substantial compliance'' are defined in general terms by the text of this final rule. Application on a case-by-case basis will be done by the authorized officer, within the framework established by this final rule, based upon review of the record. For renewals, it will extend only to review of the permittee's record on the permit or lease for which renewal is sought. On new permits, it will include a review of State and Federal leases within the prior 36 months, and of any existing judicial bar on holding a permit. References to permits cancelled for violations are used to distinguish such cancellations from administrative cancellations such as those that might occur when the land is to be devoted to another public purpose. Basing qualifications on whether past permits and leases have been cancelled for violation is intended to focus attention on those types of violations that justified decisive and substantial corrective action. As with all decisions under 43 CFR part 4100, denial of permit and lease applications under these provisions is subject to appeal under subpart 4160.

Consistency in application of the qualification requirements is of concern to the Department. These regulations will assist in achieving standardization, as will periodic information bulletins, instruction memoranda, technical guides, handbooks and training. The comment suggesting that permittees and BLM seek a mutual understanding of these provisions at the time of permit issuance is the type of guidance that may be provided. An appeal process is available under subpart 4160 when the permittee or lessee believes the regulations have been inappropriately interpreted in a specific circumstance.

Determining compliance with the terms and conditions and rules and regulations at the time of permit renewal stems from a statutory provision (43 U.S.C. 1752(c)). The Department expects that a finding of noncompliance will be an exception rather than a common occurrence. It is not feasible to require the authorized officer to investigate applicants to identify unrecorded instances of noncompliance, as suggested by several commenters. The resources required to conduct such a check would not be worth the results.

The Department disagrees that looking back at an applicant's history of performance on Federal or State grazing leases will violate privacy protections. The information used to evaluate historical performance will be established records that are available to the public. As stated above, the Department will use records of performance to confirm the ability of the applicant to be a steward of the public land. Although current performance may indicate stewardship, it does not provide as complete information as does the applicant's longer-term record of performance. However, consideration of the record is not without limitation. The Department chose the 36-month cut off of consideration of applicant and affiliate performance as a fair yet sufficiently rigorous measure of potential stewardship. The 36-month look-back applies only to applications for new permits or leases.

In regards to the comment that willful and repeated violations should result in a permanent debarment, the Department has chosen to reject the recommendation as excessively harsh. Due to the severity of such a penalty it is best left to the judicial system.

In essence, where there is a record of prior noncompliance, the burden of proof is on the permittee. The record of compliance will be determined based upon a review of the public record. If there are any extenuating circumstances to be considered, it will be the responsibility of the permittee to support them.

An applicant's record on State permits is relevant to consideration of the applicant's compliance record for purposes of obtaining new permits. If an applicant has violated the terms and conditions of a State lease to such an extent that the lease was cancelled, it is reasonable to assume that person is more likely to violate the terms or conditions of a Federal lease than is a person with a good record of compliance on State leases or permits. This is particularly true since consideration of State leases is limited to the allotment for which a new Federal permit or lease is sought. The Department disagrees that these provisions will discourage leasing of State lands. Only those few persons who