that would have been used to calculate the forage value index included in the proposal to amend the grazing fee formula, which has not been carried forward in this final rule. The Department has decided to base settlement of unauthorized use on the average private grazing land lease rate, reported annually by the National Agriculture Statistics Service, for the individual State in which the unauthorized use occurs rather than on an average across the 17 States. This change will provide for a more fair settlement across all affected States.

In accordance with the above discussion, the proposed rule is adopted as final except for the noted change from the average private grazing land lease rate for all 17 western States to the average private grazing land lease rate for each individual State.

Subpart 4160—Administrative Remedies

Section 4160.1 Proposed Decisions

The proposed rule would have amended this section to provide clarification that a final decision may be issued without first issuing a proposed decision when action under § 4110.3–3(b) of this part is necessary to stop resource damage, or when action is taken under § 4150.2(d) to close an area to unauthorized grazing use. It would have served to expedite the decision process where immediate action is necessary and would have clarified what information must be contained in a proposed decision. The provision is adopted as proposed.

A number of comments objected to the use of the term ''interested public.'' Comments indicated a concern that the use of the term broadens public participation which may result in delays due to administrative appeals and thus uncertainty for permittees. Comments questioned whether the ''interested public'' would have an interest in the matter they appeal and whether the ''interested public'' would automatically have ''standing'' to challenge the final decision of an authorized officer. One commenter suggested that decisions should be sent to affected public land users, and any party showing a concrete and particular injury from the decision.

The term ''interested public'' replaces the term ''affected interest'' in the existing rules. The definition of the term ''interested public,'' adopted by today's action, appears at § 4100.0–5. One of the goals in adopting the changes to this section is to clarify that the ''interested public'' will be notified of all proposed decisions in order to involve the public in an early stage of the decision making process. Under the existing rules ''affected interests'' were notified of proposed decisions on permits and leases. Today's change provides for notification to the ''interested public.'' The Department expects that by involving the interested public early in the decision making process on such issues as permit issuance, renewal and modification, increasing and decreasing permitted use, and development of activity plans and range improvement programs, there will be fewer protests and appeals because parties will have a better understanding of the final decision and the factors considered in reaching the decision. The determination of whether a person has ''standing'' to appeal a final decision of the authorized officer has not been changed. Any person whose interest is ''adversely affected'' by a final decision of the authorized officer may appeal the decision. The OHA determines if a party is ''adversely affected'' and thus has standing to bring an appeal. The Department did not adopt the suggestion to send decisions to only affected public land users and parties showing a concrete and particular injury from the decision since this would have the affect of limiting public participation.

Comments were received on the proposed clarifying amendment to allow the authorized officer to forgo issuance of a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d). Some comments were supportive of the change. Others indicated that the change was not needed because BLM currently has the ability to place decisions in effect on issuance or on a date specified in the decision without issuing a proposed decision. Other commenters asserted that the provision raises procedural questions, does not provide security of tenure, impacts private and State lands, removes incentives to settle appeals, creates uncertainty for lending institutions, and lowers property values and thus the local tax base.

The changes adopted today clarify that in the case of determinations under § 4110.3–3(b) or § 4150.2(d), the authorized officer does not have to first issue a proposed decision. The Department is making this change to clarify what had been implicit in the existing rules. This is consistent with the interpretation in the existing BLM Manual.

These changes clarify that the authorized officer may act quickly to arrest damage to rangeland resources resulting from conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage. There continues to be a provision to consult with the affected permittees or lessees, the interested public, and the State having lands or responsible for managing resources within the area. The authorized officer will have developed a record prior to taking action which will allow permittees and lessees, the interested public, and the affected State the opportunity to provide pertinent information and to discuss the impacts of adopting a final decision without a protest period. The changes being made preserve the rights of appeal and the ability to seek a stay by those affected by BLM's decisions. Clarifying the existing provision and practice should not create uncertainty for lending institutions nor lower property values and thus the local tax base. Nor should it raise concerns with security of tenure or remove incentives for settling appeals. The Department's intent in adopting this provision is to clarify that the authorized officer does not have to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with §§ 4110.3–3(b) or 4150.2(d).

Other comments recommended a notification period for violations, sought an expansion of the protest time period, and suggested a definition of repeated willful violations. The Department is not adopting these suggestions because existing early communication provides sufficient notification and time for protest. Regarding the willful violation suggestion, the Department has concluded that it is more effective to retain discretion to consider each violation of the grazing rules individually to determine the appropriate action.

Section 4160.3 Final Decisions

Under the proposed rule, this section would have been amended to clarify the process for filing an appeal and a petition for a stay of a final decision. Decisions would have been implemented at the end of a 30-day appeal period except where a petition for stay has been filed with OHA, in which case OHA has, under § 4.21 of this title, a period of 45 days from the end of the appeal period in which to decide on the petition for stay. A stay, if granted, would have suspended the effect of the decision pending final disposition of the appeal. Under the present grazing administration appeals process, decisions other than those pertaining to situations where